

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **SCA: 0021 of 2021**
5

6
7 **DURAN DALLEY**

8
9 **v.**



10
11 **REGINA**
12

13 **Appearances:**

Appellant in Person/Mr. John Furniss as
Amicus

Mr. Greg Walcolm for the Respondent

16 **Before:**

Justice Cheryll Richards Q.C.

17 **SCA Hearing:**

30th July 2021

18
19 **Oral Decision Delivered:**

30th July 2021
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21 **HEADNOTE**

22 ***Criminal Law – Threat to Kill (s.88C of the Penal Code (2019 Revision)***
23 ***– Disorderly Conduct at a Police Station (s.126 of the Police Act (2017 Revision)***
24 ***– Appeal against conviction – Application of s.177 and s.181 of the Code***
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29 **SUMMARY COURT APPEAL JUDGMENT**
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1 1. On the 24th February 2021, the Appellant was convicted after trial in the Summary Court
2 of two offences:

- 3 • Charge #1276/2020-(2) – Disorderly Conduct at a Police Station contrary to s.126
4 of the ***Police Act (2017 Revision)***
- 5 • Charge #1276/2020-(3) – Threat to Kill Contrary to s.88C of the ***Penal Code (2019***
6 ***Revision)***

7 The offences were committed on the 29th day of January 2020 at the West Bay Police
8 Station.

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10 2. The Appellant was acquitted of charge #1276/2020-(1), Being Drunk and Disorderly
11 contrary to s. 165 of the ***Penal Code (2019 Revision)***.

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13 3. On the 28th April 2021, he was sentenced as follows:



- 14 • 14 months' imprisonment on charge 3 - Threat to Kill; and
- 15 • 2 months' imprisonment concurrent on charge 2 - Disorderly Conduct at a Police
16 Station.

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19 4. Section 88C of the said ***Penal Code*** provides as follows:

- 20
21 “(1) *A person who without lawful excuse makes to another person a threat,*
22 *intending that person would fear it would be carried out, to —*
23 *(a) kill; or*
24 *(b) cause serious harm to, that person or a third person commits an offence*
25 *and is liable to imprisonment for ten years.*
- 26 (2) *A threat may be committed in a public place or a private place”*
27

28
29 5. On the 30th April 2021, the Appellant filed a notice of appeal against conviction on the
30 grounds of abuse of process and unfair trial (conjecture). No details were provided in the
31 notice as to the nature of the alleged abuse or unfairness of the trial.



1 **THE CRIMINAL PROCEDURE CODE**

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3 6. The appeal is brought pursuant to s.165 of the *Criminal Procedure Code (2021*
4 *Revision)* which provides in part as follows:

5 *“Save as hereafter in this Code provided, any person who is dissatisfied with any*
6 *judgment, sentence or order of the Summary Court in any criminal cause or matter*
7 *to which that person is a party may appeal to the Grand Court against such*
8 *judgment, sentence or order either by motion on matters of law or fact (or both) or*
9 *by way of case stated on a point of law only as hereafter provided: Provided that in*
10 *no case shall the complainant appeal from a decision dismissing a complaint except*
11 *by way of a stated case on a point of law.”*
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13
14 7. By s.177 of the said *Code*, the appeal is not a re-hearing unless the Court is of the view
15 that the justice of the case requires it. By s.181 of the *Code*, the powers of the Court on
16 the hearing of an appeal include the power to “*confirm, reverse, vary or modify the*
17 *decision of the Summary Court, including the passing of some other sentence (whether*
18 *more or less severe)*” or to remit the matter to the Summary Court for retrial, or to make
19 such other order in the matter as it may think just. The Court may dismiss an appeal if
20 the Court is of the view that no substantial miscarriage of justice has actually occurred.
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22 **FACTUAL SUMMARY**

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24 8. The case against the Appellant is summarised by the learned Magistrate in the Ruling
25 and Sentencing Note. On two occasions on the day in question the Police were called to
26 the Department of Vehicle Licensing (DVL) in West Bay. This is a building across from
27 the West Bay Police Station. The Appellant was said to be causing a disturbance and
28 behaving in a drunk and disorderly manner. On the second occasion the Police escorted
29 the Appellant from the DVL across the road to the Police Station.



1 The Appellant is described as being visibly intoxicated and staggering. PC, Bush one of
2 the escorting officers gave evidence that he “*put his hand on the shoulder of the*
3 *Appellant to steady him.*”
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5 9. On arrival at the door to the station, the Appellant accused PC Bush of pushing him and
6 threatened to kill him and blow his head off. PC Bush gave evidence that he was afraid
7 when this was said. The Appellant was arrested for the three offences and when
8 cautioned he continued to threaten to kill the officer. PC Bregani, the second escorting
9 officer, supported the account given by PC Bush of a hand being placed on the shoulder
10 of the Appellant to steady him. PC Bregani described the Appellant as loud, angry and
11 incoherent and testified that the Appellant threatened to blow PC Bush’s head off and to
12 kill him.

13
14 10. The Appellant gave evidence at trial. He denied being intoxicated at the material time
15 and denied threatening to kill the Officer. He was adamant that he had been pushed by
16 PC Bush and it was not a case of being assisted as he walked on unsteady feet.
17

18 **THE SUBMISSIONS ON APPEAL**

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20 11. The Appellant indicated that he wished to represent himself on the appeal. He was
21 represented at trial by Defence Counsel, Mr. John Furniss. Mr. Furniss was present at
22 the hearing of the appeal and assisted the Court as *Amicus*.
23

24 12. The Appellant referred to the three charges which had been laid against him as set out
25 above and submitted that there are factual circumstances which evidence the weakness
26 of the case against him. He said that he had been given bail within 15 minutes of his
27 arrival at the Police Station.

1 He was wearing a pair of slippers and had no weapon on him. His premises were not
2 searched for any weapon. The matter took four months to get to Court and another 14
3 months for the case to be tried.

4
5 13. He said that before the trial he was offered a plea bargain and he refused it because he is
6 innocent and he wanted justice. He said further that he is appealing the conviction and
7 is not concerned about the sentence. He said he never said what is said by the Police to
8 have been said by him. He submits that he thinks that the Prosecution, the Police and the
9 Magistrate did something wrong.

10
11 14. He was asked by the Court to set out what it is he says was done wrong by each, the
12 Prosecution, Police and Magistrate. He said that the Prosecution did not look at the facts,
13 the case was not properly handled and was brought to Court without facts. He said that
14 they 'did not do a good job at all'.

15
16 15. With respect to the Police, he submitted that the Police eavesdropped when he was with
17 his lawyer and had personal feelings against him, (the Appellant). He said that he had
18 not been drunk and while he was going over to the Police Station the Police Officer
19 pushed him. He wanted to prove his case and to say on which side of his body the
20 Officer pushed him. He said the procedure which the Police followed was wrong, the
21 investigation was sloppy, they did not search his premises to see if he had a gun, and yet
22 they claimed to be in fear of their lives. The Appellant said further that they did not
23 produce video footage, they did not proceed with the case on the first day of trial and the
24 Magistrate told them that they did not put together the case properly and they were to
25 offer him a plea bargain.



1 16. With respect to the learned Magistrate, the Appellant submitted that before the case he
2 could see that there was no intention to give him a fair trial. The Magistrate overlooked
3 all the things and took her personal feelings into account and did not look at the facts.
4 The Magistrate took off her blindfold and could see whether poor man, beggar or
5 whoever it is before her, that is why justice should be blind.

6
7 17. The Appellant's attention was drawn by this Court to paragraphs of the reasons of the
8 learned Magistrate, dealing with the burden of proof and findings as to corroboration.
9 The Appellant's response was that the Magistrate is a judge and would know what to
10 write. He also submitted that the Magistrate had not considered that the two officers are
11 co-workers in the same system. With respect to the admission which he is said to have
12 made that he was told to calm down by the Officer, the Appellant said that he had been
13 seeking assistance to find out the problem.

14
15 18. The Prosecution submitted that the learned Magistrate did not err in law, had properly
16 directed herself and assessed the evidence and each element which required to be proved
17 to the requisite standard. It was further submitted that there is no reason to interfere with
18 the findings in respect of the verdict.

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20 19. Mr. Furniss submitted that the issue of the Appellant being pushed was dealt with in the
21 course of the trial. The Appellant had alleged that when he had moved to the car park of
22 the police station that is when he made the remark about being pushed. It is also correct
23 that he was bailed very shortly thereafter and that his house was never searched and there
24 is no evidence that he had a firearm.



1 20. Mr. Furniss was asked by the Court, he having been present at the trial, whether there is
2 any error that he could identify which was made by the learned Magistrate. Counsel
3 responded that he could not identify one in relation to the facts. The learned Magistrate
4 heard the evidence and believed the officers and rejected the evidence of the Appellant.

5
6 21. Prosecuting Counsel was asked to make submissions on sentence given that the
7 Appellant is unrepresented. Counsel submitted that there are no apparent errors. Counsel
8 further submitted that under the United Kingdom Sentencing Council Guidelines (dated
9 1st October 2018), the offence of Threat to Kill in the circumstances of this case, would
10 fall into category 2 Harm and culpability B. This has a starting point of 12 months which
11 would be aggravated by the antecedent history of the Appellant and the fact that the
12 threat was made to a public officer. The sentence of 14 months would also be in line
13 with the observations of the Cayman Islands Court of Appeal in the case of *Duane*
14 *Bodden v. R¹*.



15 **DECISION**

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17 22. The Ruling and Sentencing Note provided indicates that the learned Magistrate adverted
18 to the burden and standard and proof and reminded herself that the Appellant had nothing
19 to prove. This also indicates that consideration was given to all of the evidence.

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21 23. The notes of evidence show that the issue of whether or not the Appellant had been
22 pushed by the Officer was squarely before the Summary Court as was the issue of
23 whether or not the Appellant had made any threats. Nothing new is raised on appeal.
24 There is no evidence of or appearance of bias as is asserted. The learned Magistrate
25 appears to assess the evidence with some care. This led to the dismissal of charge 1

¹ CICA 5 of 2015, Judgment dated 13th January 2017

1 against the Appellant on the basis that there was insufficient evidence in proof of this
2 charge. The learned Magistrate found the two officers to be credible witnesses who did
3 not seek to embellish and did not falter under cross-examination. The fact that there is
4 no evidence of a search of the Appellant's premises or of him being found with a gun
5 does not mean that he could not have and did not make the threats with the requisite
6 intent. The learned Magistrate accepted the evidence of PC Bush that he was in fear at
7 the time. That Court also had the opportunity to see and hear the Appellant as he gave
8 evidence and did not find him to be believable in respect of aspects of his evidence.

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10 24. Against this background, at the conclusion of the appeal hearing, this Court stated:

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12 a. I can see no basis to disturb the findings of the learned Magistrate who applied the
13 proper legal test as is set out at paragraph 26 onwards of the Ruling and Sentencing
14 Note. The learned Magistrate was entitled to listen to the witnesses and form a view
15 of the credibility of one or other witness. The learned Magistrate concluded that she
16 was satisfied to the required standard that the prosecution witnesses were speaking
17 the truth and did not believe that the Appellant was a credible witness.

18
19 b. The Court cannot and ought not to substitute its own views as to witnesses in
20 circumstances where a tribunal of fact had the opportunity to see and hear all the
21 witnesses. Additionally there appear to be no errors in law made by the learned
22 Magistrate. The appeal against conviction is dismissed.



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c. As to sentence: Although the Appellant expressed the view that he is not concerned about the sentence, having considered the circumstances of the offending and the Appellant’s conviction record which includes offences of violence, it cannot be said that the sentence imposed is manifestly excessive or out of line with the gravity of the offending. An appeal against sentence would also have been dismissed.

Dated this 30th day of July 2021



Honourable Justice Cheryll Richards Q.C.
Judge of the Grand Court