

2-09-09

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

APPEAL NO. 6 OF 2009
SCA No. 32/07
C# 2206/04

BETWEEN:

SHANE EDWARD CONNOR

Appellant

and



HER MAJESTY THE QUEEN

Respondent

BEFORE: THE RT. HON. SIR JOHN CHADWICK P.
THE HON. MR. JUSTICE MOTTLEY J.A.
THE HON. MR. JUSTICE VOS J.A.

Reasons for Judgment delivered orally on 2 September 2009

APPEARANCES:

I.P.

for the Appellant

Ms. K. Gunn

for the Respondent

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THEIR LORDSHIPS' RULING

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Chadwick P.

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On 22 October 2007 the appellant, Shane Connor, was convicted in the Summary Court after trial of the offence of threatening violence. He was sentenced to twelve months' imprisonment.

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The offence, which had been committed as long ago as 8 March 2004, was said to consist of a threatening phone call to his then wife, Iesha Connor. He was alleged to have said to her: "I'm going to pick up my gun and kill you." The Magistrate, after hearing the evidence, both of the accused and of Mrs. Iesha Connor, found that charge proved. She said this:

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"While he had no burden to discharge, I must state that I did not accept the defendant's assertions that he did not use the words alleged. In the context of all his testimony, including his admissions, I

1 didn't find his assertions
2 credible. Having considered all
3 of the evidence in the matter, I
4 found that I preferred the
5 evidence of Mrs. Connor on this
6 point. I found as a fact that
7 the defendant used the words
8 described while speaking to
9 Iesha Connor on the phone on
10 March 8th 2004."

11 At the time when the phone call took place
12 a police officer, DC Sandra Bennett, was with
13 Mrs. Connor. Her evidence was that Mrs. Connor
14 had handed the phone to her. She had listened
15 for a while. She heard somebody speaking, but
16 she could not understand everything that he was
17 saying. He sounded agitated and angry, but --
18 as she, Ms. Bennett, was new to the Cayman
19 Islands -- the dialect was strange to her and
20 she did not pick up everything. "On the phone
21 I didn't understand what he had said." In
22 those circumstances, the Magistrate, correctly,
23 placed no reliance on the evidence of
24 Ms. Bennett as corroborating the allegation
25 that the words to which I have referred were

1 said by the defendant.

2 Connor appealed to the Grand Court by
3 appeal notice dated 23 October 2007. That
4 appeal came before Justice Henderson on 6
5 March 2009. He reviewed the Magistrate's
6 conclusions and came to the conclusion that
7 no error could be found. The appellant appeals
8 from that decision to this Court; as he is
9 entitled to do under section 29 of the Court of
10 Appeal Law (2006 Revision), on a point of law
11 alone and not upon any question of fact. So it
12 is not for this Court to consider whether on
13 the evidence the Magistrate was correct to make
14 the finding that she did.

15 The point of law -- or, more precisely,
16 the two points of law -- which the appellant
17 seeks to raise in this Court arise from the
18 course of the trial. The Crown accepts that
19 those matters of complaint would, if made good,
20 constitute points of law on which an appeal
21 could properly be brought. It is necessary,
22 therefore, to refer in a little detail as to
23 what happened at the trial.

24 The trial commenced, as appears from the
25 Magistrate's own notes of evidence, on 6

1 November 2006. The complainant, Iesha Connor,
2 was called and sworn. She was examined
3 in-chief on behalf of the Crown; and she was
4 cross-examined by counsel, Mr. Meghoo, who was
5 then representing the defendant. She completed
6 her evidence in the course of the afternoon of
7 the first day.

8 The police officer, Sandra Bennett, was
9 then called and examined in-chief by the Crown.
10 In the course of her examination, she gave the
11 evidence to which I have already referred. As
12 I have said, she did not confirm that the words
13 alleged were said. She was then cross-examined
14 shortly by Mr. Meghoo. He asked her only three
15 questions: whether she was present at the time
16 of the phone call, where it happened, and
17 whether she had been handed the telephone by
18 Mrs. Iesha Connor. Counsel did not ask her --
19 and, in the circumstances, he must be taken to
20 have exercised a positive judgment not to do
21 so -- to confirm that she had not heard the
22 words allegedly uttered by Mr. Connor. That
23 would have been a question which was
24 unnecessary -- given the evidence she had
25 already given -- and would have carried

1 potential dangers. There was no re-examination
2 and Ms. Bennett was released.

3 The Magistrate's note then records that
4 "due to defendant's behaviour towards his
5 counsel in court, Mr. John Meghoo is given
6 leave to come off the record."

7 It is clear from what Mr. Connor has told
8 us that he lost confidence in his counsel
9 because his counsel was not prepared to put to
10 Ms. Bennett questions which he, Mr. Connor,
11 thought ought to be put. But counsel are, of
12 course, instructed on behalf of defendants in
13 order to exercise their professional judgment;
14 and that, clearly, is what Mr. Meghoo had done
15 in this case.

16 The trial was then adjourned. The
17 adjournment lasted from 6 November 2006 until
18 22 October 2007. During that period, of some
19 eleven and a half months, it seems that there
20 were a number of applications to the court to
21 renew bail or to obtain substitute legal
22 representation for Mr. Connor.

23 When the trial resumed on 22 October 2007,
24 another counsel, Mr. McGhee, appeared for the
25 defendant. He addressed the court in these

1 terms:

2 "I have received the notes. I
3 cannot continue the particular
4 trial given my instructions.
5 Mr. Connor parted company with
6 Mr. Meghoo because things
7 weren't being carried out the
8 way Mr. Connor wanted.
9 Frivolous and vexatious matters
10 can't be put. If the trial
11 continues, there will be at
12 least an application for the
13 witness Iesha Connor to be
14 recalled. There were also
15 matters to be put to the
16 officers as well. My
17 application, if I am to stay on
18 the record, is either recall the
19 witnesses who were called or to
20 restart the trial."

21 The Crown opposed restarting the trial and
22 pointed out that there was no purpose in
23 recalling either Mrs. Connor or Ms. Bennett.
24 The Crown wanted the matter to continue.

25 The Magistrate then had to give a ruling

1 on the application that had been made to her.
2 She indicated that Mr. McGhee found himself in
3 an awkward position; but the Crown, she said,
4 was also in a difficult position. It was
5 dealing with a matter which occurred in early
6 2004 and it has a complainant -- that is,
7 Mrs. Iesha Connor -- who was fatigued, given
8 the history of the matter. The court file
9 shows the exhaustive history. The Magistrate
10 directed herself that she must balance the
11 concerns of all the parties, being mindful of
12 the fact that justice must not only be done,
13 but it must be seen to be done. She referred
14 to the fact that Officer Bennett was in Cayman
15 Brac and she went onto say this:

16 "I cannot grant the application
17 to restart the trial. Further,
18 I will not recall the
19 complainant in this matter.
20 Officer Bennett will be recalled
21 only if defence counsel remains
22 in this matter. In fairness to
23 counsel, however, I will
24 understand if he decides that he
25 can proceed no further. If that

1 is the case, then the trial will
2 proceed today without counsel."

3 There was then what must have been a short
4 adjournment and Mr. McGhee came back to tell
5 the court I will be with withdrawing from the
6 case: "It appears I no longer enjoy his
7 confidence. For that reason, I will not be
8 staying in court for the matter."

9 So the trial continued with the defendant,
10 Mr. Connor, in person. He cross-examined the
11 police officer, Officer Wilson, who was present
12 in court; and he then gave his own evidence
13 in-chief and was cross-examined upon it. As I
14 have indicated, after hearing that evidence,
15 the Magistrate reached the conclusion that the
16 charge was made out.

17 Interestingly, after the Magistrate had
18 given her reasons, Mr. Connor said to the
19 Court:

20 "The court find me guilty. I
21 respect the Court's decision.
22 It's for the betterment of me
23 and my life."

24 The subsequent appeal history suggests that he
25 has since taken a different view.

1 The short question for this Court on an
2 appeal under section 29 is whether the judge
3 erred in law in determining that the witness
4 Iesha Connor should not be recalled, that the
5 officer, Sandra Bennett, should not be
6 recalled, and that she should not in the
7 circumstances restart the trial -- a course
8 which would have required an adjournment.

9 We are satisfied that the Magistrate
10 cannot be criticized for the decision which she
11 took. She was dealing with what was
12 essentially a domestic dispute. It had taken
13 place at the beginning of 2004. She, clearly,
14 took the view that it was time to bring the
15 matter to a conclusion, given what she
16 described as the exhaustive history. She had
17 already heard the evidence of the principal
18 witness, Iesha Connor, and the evidence of the
19 police officer, Ms. Bennett, cross-examined by
20 counsel at a time when the defendant was
21 represented. There was nothing to be gained by
22 recalling them. She was entitled to take the
23 view that "enough is enough" and the matter
24 needed to be brought to a conclusion.

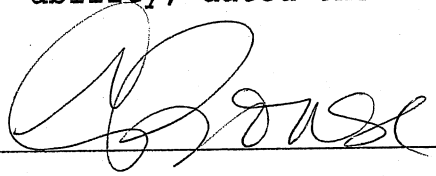
25 There was no error of law. In those

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circumstances, this appeal must be dismissed.

REPORTER'S CERTIFICATE

Certified correct to the best of my skill and
ability, dated the 4th day of September 2009.



CAROL ROUSE

