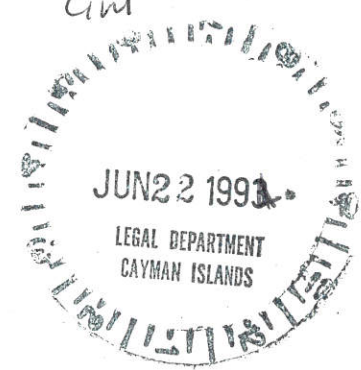


6. 6. 94
Civil

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 109/94



THE ATTORNEY-GENERAL
V
CHARLES LINDBERG SMITH

Handwritten signatures and initials:
OB
FW
JA
SM
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MOTION FOR COMMITTAL FOR CONTEMPT OF COURT

Mr. Michael Clarke - Crown Counsel for the Attorney-General
Mr. John Furniss for the respondent

BEFORE SMELLIE J

JUDGMENT

On Monday 7th March 1994 the trial of the indictment in Regina v Royce Pouchie and Steve Brown, for the offence of causing grievous bodily harm, was proceeding in this court.

On that date, the virtual complainant and witness for the prosecution, a Mr. Gregory Myles, was in the course of his testimony in-chief.

The customary mid-morning break was taken at about 11:30 a.m. and the witness ventured downstairs to the main entrance of the court building, outside.

The evidence reveals that the respondent, who had been sitting throughout in the courtroom during that morning's proceedings, also left the courtroom at about the same time.

This motion which is brought by the Honourable Attorney-General, with the leave of the court, seeks the committed of the respondent for alleged contempt of court arising from an assault committal by the respondent upon the witness Myles during the incident which transpired as they met outside, in precinct of the court, on the morning of 7th March.

The Chief witness for the Attorney-General on the motion was Mr. Franz Manderson, Assistant Chief Immigration Officer who happened to be at the Courts that morning on other business but who was aware of the trial then underway in the Grand Court.

He was aware that Myles, whom he had seen before, was a witness in that trial.

He testified that at about 11:30 a.m. when the proceedings in the Grand Court adjourned, he was about leaving the courts building to return to his office.

That as he walked out at the main door at the front downstairs he saw the witness Myles, who appeared to be arguing with another person whom he identified to be the respondent, Charles Lindberg Smith.

He heard the respondent say to Myles "if my brother goes to jail you will get a hole in your head".

That although he had not heard whether Myles replied or indeed whether Myles had earlier spoken, he also heard the respondent ask twice "are you threatening me?" That question had been directed at Myles who was then standing immediately in front of the respondent.

According to Officer Manderson the respondent then dismounted the bicycle which he was astride and walk towards Myles who, at the same time, started to walk away.

As the respondent caught up with Myles he pushed him on his shoulder.

Officer Manderson, who was then about 15-20 feet away, tried to intervene by shouting to the respondent to desist.

Instead the respondent struck Myles an open-handed slap to the head.

Officer Manderson then physically intervened and prevented a further escalation of the incident between the two.

A report was immediately made by Officer Manderson to Detective Constable Curt Walton, the investigating officer in the case then being tried. A report from Myles was also taken by Officer Walton. The respondent was then nowhere around but returned later and Walton's attempt to apprehend him later that day at the court building was unsuccessful as he fled when approached.

The respondent was not apprehended until some three weeks later.

Upon arrest he was interviewed under caution about the incident.

In his interview he sought to explain away the threat to the witness Myles the threat, which had been overheard by Officer Manderson.

In effect his account was that a third person, a Curtis McCoy who he said had been present on the morning of 7th March at the same time and place, at the front of the courts building, had reported to him that Myles, for some unexplained reason, had threatened to shoot him, the respondent.

He then, his account goes, accosted Myles and asked him about it. According to him, Myles then repeated the threat. Then it was he said in his interview that he told Myles "I would do the same thing to him, I would blow a hole in his head."

It was then, he also stated in his interview, that he pushed Myles and slapped him on his face.

In his evidence-in-chief on this motion, the respondent sought to maintain that account, an account which I unhesitatingly and completely reject.

In so doing I take account in particular of the sequence of events witnessed by Officer Manderson who impressed me as being an observant and careful witness.

The first thing he heard as he exited the courts building was the respondent's threat to the witness Myles "if my brother goes to jail, you will get a hole in your head."

Although he was unable to hear whether Myles replied he was clear that only then did he hear the respondent ask "are you threatening me?" That sequence of events is not consistent with the respondent's account.

And there are other clear indicia of the real reasons for the respondent's actions that morning.

He had been taking an inordinately keen interest in the proceedings. In the evidence he admitted that he had attended on a number of occasions at court for the remands in the case before the day of trial and had specifically attended to observe the trial that day. Even though, on his account, he was due at work that morning.

One of the defendants was a relative of his, said by him to be a cousin, the other a friend.

In his interview to the police and in his evidence-in-chief the respondent entirely denied threatening Myles in any way in connection with the trial. He repeated in examination-in-chief that his reference to Myles getting a hole in the head was only a personal retort to the threat he said Myles had issued to him.

He denied relating that threat in anyway, as described by Officer

Manderson, to a brother of his being on trial.

Yet later in cross-examination in what seemed to me to be a less than guarded moment, he let slip the following admissions to Crown Counsel:

By Crown Counsel it was suggested: "Before you said the words about a hole in the head you said "If my brother goes to jail"

Response: I did not use those words , I said "my cousin".

Question: You said "If my cousin goes to jail I will put a hole in your head?"

Response: Yes I used those words but they had nothing to do with the case.

I have no hesitation in finding that the threat had everything to do with the case and to so find notwithstanding the recalcitrance of the witness Myles in these contempt proceedings on failing to attend to testify.

I am entirely satisfied that the respondent accosted and assaulted Myles with the objective of intimidating him from giving further testimony in the proceedings then underway.

Whether the respondent used the words "my cousin" or "my brother" is neither here nor there although for reasons already noted I prefer the account of Officer Manderson. Upon either account the threat reveals the respondent's real motive, that of intimidating the witness Myles from further testimony potentially harmful to a relative of the respondent.

This victimisation of a witness is not only a grievous wrong to the

person affected but also a contempt of the court See Moore v. Clerk of Azziz, Bristol (1972) 1 ALL.E.R. 58).

Accordingly I find that the motion brought by the Honourble Attorney-General is proved and the case against the respondent for contempt of court is established.

SENTENCE

The authorities cited from Archbold 42nd Ed. paragraph 28-46 show that the appropriate scale for a contempt of this nature, which was, on the finding of the court, deliberately aimed at intimidating a witness; ranges from 3-9 months immediate imprisonment.

In recent months there have been at least 3 cases in which contempt has been found in this jurisdiction.

In Danielle Pars v. Alex Antonio Brown Cause 144/92, the respondent was sentenced to 3 months imprisonment for disobedience of a court order made in the context of proceedings to restrain domestic violence.

I consider this to be an even more blatant case and one which on the authorities, can, in my view, only appropriately be dealt with by a term of imprisonment.

What is at risk here is the impression that the attempted interference with the due administration of justice can be committed and lightly passed over by some form of punishment that might not serve as a true deterrent.

I am however mindful of the age of the respondent who is only 20 years old and of the fact that he has no other relevant conviction.

In all the circumstances of the case a term of imprisonment of 3 months is the appropriate sentence and I so pronounce.

6th June, 1994


A. Smellie Q.C.
Judge