



IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL No.012/2021

SCA 0021/2021

SC 1276/2020

BETWEEN:

**Duran Dane Martin Dalley**

**Appellant**

- and -

Her Majesty the Queen

**Respondent**

BEFORE: **The Rt Hon Sir John Goldring, President**  
**The Hon Sir Richard Field, Justice of Appeal**  
**The Hon C. Dennis Morrison, Justice of Appeal**

Date of Hearing: 16 November 2021

Appearances: Appellant in person  
Mr. Scott Wainwright of DPP for the Respondent

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JUDGMENT

Revised from transcript of oral judgment 16 November 2021 and Approved

Released 15 December 2021

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**MORRISON, J.A.**

1. On 24 February 2021, the Applicant was convicted after trial in the Summary Court for the offences of (1) disorderly conduct at a police station, contrary to section 126 of the Police Act (2017 Revision); and (2) making a threat to kill, contrary to section 88C of the Penal Code (2019 Revision). The Applicant was acquitted of a third charge of being drunk

and disorderly, contrary to section 165 of the Penal Code (2019 Revision).

2. On 28 April 2021, the Applicant was sentenced to 14 months' imprisonment on the charge of making a threat to kill and 2 months' imprisonment on the charge of disorderly conduct at a police station.
3. Activating the right of appeal against conviction and sentence in the Summary Court, given by section 165 of the Criminal Procedure Code (2021 Revision), the Appellant appealed to the Grand Court. The grounds of appeal were that there had been an abuse of process and an unfair trial, but no particulars were provided. The appeal was heard by Richards J ('the judge') on 30 July 2021, and was dismissed in an oral decision given on the same day.
4. In her ruling on the appeal, after considering the evidence, the findings of the Magistrate, and the submissions of the Applicant, the judge stated her conclusions as follows (at paragraph 24 of her decision).

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

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

*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."*

5. By notice of appeal dated 4 August 2021, the Applicant now seeks leave to appeal against the decision of the judge on the following grounds: Abuse of process, unfair trial, and abuse of power. Although section 29 of the Court of Appeal Act restricts appeals from the Grand Court exercising its appellate jurisdiction to matters of law only, or against sentence, we have nevertheless considered the Applicant's application in respect of all aspects of his appeal.
6. Before considering the Applicant's complaints, we will first indicate the circumstances of the offences for which he was convicted, all of which were allegedly committed at the West Bay Police Station on 29 January 2020. This is how the judge summarised the evidence (at paragraphs 8-10 of her factual summary):

*"On two occasions ... the Police were called to the Department of Vehicle Licensing ... in West Bay. This is a building across from the West Bay Police Station. The Appellant was said to be causing a disturbance and behaving in a drunk and disorderly manner. On the second occasion the Police escorted the Appellant from the [Department of Vehicle Licensing] across the road to the Police Station.*

*The Appellant is described as being visibly intoxicated and staggering. PC Bush one of the escorting officers gave evidence that he 'put his hand on the shoulder of the Appellant to steady him.'*

*On arrival at the door to the station, the Appellant accused PC Bush of pushing him and threatened to kill him and blow his head off. PC Bush gave evidence that he was afraid when this was said. The Appellant was arrested for the three offences and when cautioned he continued to threaten to kill the officer. PC Bregani, the second escorting officer, supported the account given by PC Bush of a hand being placed on the shoulder of the*

*Appellant to steady him. PC Bregani described the Appellant as loud, angry and incoherent and testified that the Appellant threatened to blow PC Bush's head off and to kill him.*

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

7. Before us today, the Applicant has, as he did before the judge, represented himself. He makes a number of submissions which essentially amount to a complaint of abuse of process. He complains about the nature of the evidence that was adduced against him. He suggests, if we may put it this way, that the cards were stacked against him, and that it appeared that his innocence was not considered at all before the Magistrates' court. In all of those circumstances, he urges us to allow his appeal and to quash his convictions.
8. As regards sentence, he tells us that he is not really interested in the issue of sentence but, having spent a considerable amount of time in custody, he is more concerned now with the question of quashing his conviction.
9. In our view, as is clear from the Magistrate's ruling and sentencing note, the Summary Court gave careful attention to the evidence on both sides and analysed it in accordance with the established principles. This is how the Magistrate dealt with the matter in her sentencing note, and we will quote now from the record of the proceedings before the Magistrates' court.

*"In considering the entirety of the evidence, I have reminded myself that the burden of proof rests with the Crown at all times. The defendant has nothing to prove. If I have any doubt at all in relation to the matter, I must give that doubt to the defendant. I must be satisfied beyond a reasonable doubt that the Crown has met the particulars of the charge.*

*Accordingly, in relation to the drunk and disorderly charge, while the*

*Defendant was drinking and whilst he was talking non-stop, there is very little evidence of drunk and disorderly at the [Department of Motor Vehicle Licensing]. In fact, PC Bush says that there was not enough in his opinion on the first visit to arrest and on the second visit - he agreed to go over to the station with them. As such, charge (1) is dismissed.*

*In relation to charge (2) these are admissions by the Defendant that he was told to calm down by the Sgt. Clearly he was behaving in the manner which amounts to disorderly conduct. The charge is proved.*

*In relation to charge (3) the threat to kill, I find the Defendant guilty. He is selective in his recollection of what he may or may not have said. However, PC Bush and PC Bregani were both very reasonable and fair in their evidence and demeanor. I found them to be credible witnesses. They did not seek to embellish. They did not falter under cross examination.*

*They corroborated each other - in at least the words 'blow off your head' and 'I will kill you'.*

*Having observed and listened to the defendant he was not believable at times - this is because he was honest when he wanted to be - and then he was forgetful of events."*

10. In the circumstances, the Magistrate therefore found the case against the Applicant to be proved.
11. The issues before the Summary Court were entirely issues of fact. It is clear that the Magistrate, whose duty it was to assess the credibility of the witnesses and to make findings of fact, did so applying the correct principles. In these circumstances, as the judge concluded, no basis has been shown for interference with the conclusions of the Summary Court.
12. Despite the fact that the Applicant makes no complaint about sentence, Mr. Wainwright

pointed out to us that, in her sentencing remarks, the Magistrate observed that, in sentencing the Applicant to 14 months' imprisonment for making a threat to kill, "the court used the case of *Duane Bodden v R* [CICA (Crim) 005 of 2015] as guidance where the Court of Appeal said that 16 months was not excessive where a police officer was threatened". But, as Mr. Wainwright quite properly observed, what this court actually did in *Duane Bodden v R* was to reduce a consecutive sentence of 16 months to 9 months' imprisonment on account of the guilty plea of the Appellant. It is clear, therefore, that the Magistrate plainly erred in thinking that *Duane Bodden* provided authority for the sentence of 14 months' imprisonment in this case.

13. Accordingly, although, as we have said, the Applicant makes no specific complaint against sentence, we will reduce the sentence for making a threat to kill from 14 months to 12 months' imprisonment to reflect the fact that, unlike in *Duane Bodden*, the Applicant in this case was sentenced after trial.
14. So, in the circumstances, the application for leave to appeal against conviction is refused. But we will give the Applicant leave to appeal against sentence, and allow the appeal to the extent that the sentence for making a threat to kill is reduced from 14 months' imprisonment to 12 months' imprisonment. The sentence of 2 months' imprisonment for disorderly conduct is to run concurrently with this sentence.