

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **Neutral Citation Number: [2025] CIGC (Crim) 35**
5 **SCA 8 of 2025**
6

7
8
9 **COREY SHAMAR PUSEY**



10
11 **V.**

12
13 **R**
14

15 **Appearances: Mr. Jonathon Hughes of Samson Law for the Appellant**

16
17 **Mr. Orrett Brown, Crown Counsel, Office of the Director of Public**
18 **Prosecutions for the Respondent**
19

20
21 **Before: The Hon. Justice Cheryll Richards KC**
22

23 **Submissions Heard: 11th July 2025**
24

25 **Judgment Delivered: 19th August 2025**
26
27

28
29 ***Criminal Law** – Appeal against convictions and sentences pursuant to s.165 of the Criminal Procedure*
30 *Code (2021 Revision). Principles on Appeal. No specific direction given by Magistrate on the defence raised*
31 *in the case of self-defence. Whether absence of direction renders the convictions unsafe and unsatisfactory.*
32 *Whether Orders made pursuant to the Protection from Domestic Violence Act (2021 Revision) and Stalking*
33 *(Civil Jurisdiction) Act 2018 appropriately made as part of a criminal sentencing exercise.*
34



JUDGMENT

- 1
2
3 1. This is an appeal against conviction and sentence which is brought pursuant to section 165 of the
4 ***Criminal Procedure Code*** (2021 Revision).
5
- 6 2. On the 6th November 2024, the Appellant was convicted after trial in the Summary Court of three
7 offences. He was sentenced on the 29th April 2025 to various terms of imprisonment. Notice of
8 Appeal was filed on the 6th May 2025. The three offences are:-
9
 - 10 i) Common Assault contrary to section 215 of the ***Penal Code*** (2022 Revision).
11 The particulars are that he on the 8th day of July 2023, at Panton Street, George Town,
12 Grand Cayman, Cayman Islands unlawfully assaulted Lysandra Hydes-Pusey. The
13 sentence is 30 days imprisonment consecutive to the sentence imposed on Charge 2.
14
 - 15 ii) Threats to Kill, contrary to section 88C (1) of the ***Penal Code*** (2022 Revision). The
16 particulars are that he on the 8th day of July 2023 at #8 Frost Street, Bodden Town, Grand
17 Cayman, Cayman Islands without lawful excuse, made to Raheem Khalil Dallay a threat
18 to kill him, intending that he would fear that the threat would be carried out. The sentence
19 is 26 months imprisonment.
20
 - 21 iii) Assault Causing Actual Bodily Harm, contrary to section 216 of the ***Penal Code*** (2022
22 Revision). The particulars are that he on the 8th day of July 2023, at #8 Frost Street, Bodden
23 Town, Grand Cayman, Cayman Islands, unlawfully assaulted Raheem Khalil Dallay
24 thereby causing him actual bodily harm. The sentence is 11 months imprisonment
25 concurrent to the sentence imposed on Charge 1.
26
- 27 3. In addition to these sentences, Orders were made under the ***Protection from Domestic Violence***
28 ***Act*** (2021 Revision) in respect of Ms. Hydes and under the ***Stalking (Civil Jurisdiction) Act*** 2018
29 in respect of Mr. Dallay.
30
- 31 4. The Appellant was represented at trial by Counsel who does not appear on this appeal.
32



1 **CASE SUMMARY**

- 2
- 3 5. In summary, the evidence at trial was that the first complainant, Ms. Hydes and the Appellant Mr.
- 4 Pusey, were married but estranged. Ms. Hydes was in a relationship with the second complainant,
- 5 Mr. Dallay.
- 6
- 7 6. The events leading up to the alleged assaults began in the evening of the 8th July 2023, when all
- 8 three attended a street party in George Town. At about 12 am while Ms. Hydes and Mr. Dallay
- 9 were speaking together, Mr. Pusey approached them. There was a heated conversation between
- 10 the two men. Ms. Hydes intervened and Mr. Dallay left the area. Ms. Hydes' evidence is that
- 11 after Mr. Dallay left and while she was speaking with Mr. Pusey he asked her "if I am not going
- 12 to stop disrespecting him for this nigga". Ms. Hydes said that they were cursing at each other and
- 13 arguing when Mr. Pusey slammed his car door against her body and leg.
- 14
- 15 7. Mr. Pusey does not deny seeing them at the event but denies slamming the car door against Ms.
- 16 Hydes.
- 17
- 18 8. Later that night sometime after 3am, Mr. Pusey drove his car to the home of Ms. Hydes. Mr.
- 19 Dallay was visiting her at the time. Ms. Hydes and Mr. Dallay were outside the home when Mr.
- 20 Pusey drove up. Mr. Dallay alleges that Mr. Pusey stopped his car, got out and attacked him and
- 21 a fight started between them. Mr. Dallay testified that during the fight Mr. Pusey removed an
- 22 object from the back of his vehicle and threw it at him. This hit him in his forehead causing an
- 23 injury. They got into a fight again. During the fight Mr. Pusey said that he was going to kill him.
- 24 Mr. Dallay said that he felt threatened and in danger.
- 25
- 26 9. Ms. Hydes testified that as soon as Mr. Pusey drove up, she called the police and was on the
- 27 phone to them. When Mr. Pusey got out of his car, he pushed her to one side and proceeded
- 28 towards Mr. Dallay and a fight began. She repeatedly tried to intervene but kept getting pushed
- 29 back. She says that she saw when Mr. Pusey went to his vehicle and took out a tool which
- 30 appeared to be a wrench which he threw at Mr. Dallay.
- 31
- 32



1 10. Mr. Pusey testified that he saw his wife at the party. He approached her to talk to her, and she
2 became upset and threw a glass at him. He denied hitting her with the car door. He said that later
3 that night he went to visit Ms. Hydes to try to work out their relationship. He said that he remained
4 in his vehicle and was sitting inside it when someone grabbed him and pinned him to the car. He
5 looked around in the vehicle for something to defend himself. He found a spray can and hit Mr.
6 Dally three times with it to his face, that is when Mr. Dally released him.

7
8 11. PC Shanique Frater and PC Maxwell Thomas responded to the 911 call of Ms. Hydes and gave
9 evidence of what they saw on arrival and of interviewing Mr. Pusey under caution.

10
11 **AMENDED GROUNDS OF APPEAL**

12
13 12. The Grounds of Appeal on conviction and sentence argued before this Court are as follows: -

- 14
15 i) The learned Magistrate erred by not directing herself correctly on the issue of self-
16 defence.
17 ii) The evidence with respect to the alleged threat to kill was vague and insufficient
18 to found a finding of guilt, especially in light of the misdirection on self-defence.
19 iii) The resultant convictions were therefore unsafe and unsatisfactory.
20 iv) The learned Magistrate erred in the context of a criminal sentencing exercise by
21 invoking powers to make orders which are vested in the Civil Courts. To this extent
22 the sentence passed was unlawful.

23
24 **POWERS OF THE COURT ON APPEAL**

25
26 13. The Court's powers on an appeal from a decision of the Summary Court are set out in s.181 of
27 the *Criminal Procedure Code* (2021 Revision): -

28
29 "181. The court may adjourn the hearing of the appeal, and may, upon the hearing thereof
30 confirm, reverse, vary or modify the decision of the Summary Court, including the passing
31 of some other sentence (whether more or less severe) or remit the matter to the Summary
32 Court for retrial, or may make such other order in the matter as it may think just, and may,



1 by such order, exercise any power which the Summary Court might have exercised, and
2 such order shall have the same effect and may be enforced in the same manner as if it had
3 been made by the Summary Court: Provided that the court may, notwithstanding that it is
4 of the opinion that the point raised in the appeal might be decided in favour of the
5 Appellant, dismiss the appeal if the court considers that no substantial miscarriage of
6 justice has actually occurred.”

7
8 **GROUND 1 – THE ABSENCE OF A DIRECTION ON SELF-DEFENCE**

9
10 14. Counsel submits that the Appellant raised self-defence in his evidence and that the proper course
11 for the learned Magistrate (“the Magistrate”) was to have given herself the directions on self-
12 defence as set out in Chapter 18 of the *Crown Court Compendium*¹: -

- 13
14 a. Did the Appellant believe or may he have believed that it was necessary to use force to
15 defend himself from an attack?
16 b. Was the amount of force used by him reasonable in the circumstances, including the
17 dangers as he believed them to be?

18
19 15. Counsel submitted that it was for the prosecution to disprove the Appellant’s case to the criminal
20 standard and that if he may have been acting in self-defence, he was entitled to be found not
21 guilty.

22
23 16. Counsel’s submission is that the Magistrate did not address her mind to the issue of self-defence
24 and in particular to the interaction between self-defence and the burden and standard of proof.
25 Counsel said that under the heading directions in the verdict judgment, self-defence is not
26 mentioned at all. There are no directions in accordance with established legal principles. Self-
27 defence is not mentioned at all in the judgment except where there is a summary of the Appellants’
28 evidence and there is no indication therein that the Magistrate rejected the defence raised or did
29 not believe that the Appellant had discharged the evidential burden upon him.

30

¹ July 2024



1
2 17. Counsel submitted that: -
3

4 “13. A Magistrate trying a case must not only make findings of fact, but must take care to
5 ensure that she directs herself appropriately on issues of law. These are the same duties
6 which rest on a judge of the Grand Court when hearing judge-alone trials in that
7 jurisdiction.”
8

9 18. Reliance is placed on the Court of Appeal judgment in the case of *K Richards v R*². In that case,
10 the appellate Court held that:

11 “A judge sitting alone by virtue of the **Criminal Procedure Code** (1995 Revision),
12 s.127(1) had a duty to make specific findings of fact and to state separately the conclusions
13 of law which he had drawn from them. The appellant was entitled to know the reasons for
14 the court’s decision, and a written record of them was essential to the proper conduct of an
15 appeal.”
16

17 19. Counsel has drawn to this Court’s attention the statements made in the judgment as to the duty
18 of a judge sitting alone to demonstrate that he has advised himself of the applicable legal
19 principle. The Court stated:

20
21 “28 Harre, J., in *Bertolino v. R. (2)*, considered (*1990–91 CILR at 116*) that ‘it was now a
22 fundamental principle of justice that parties to litigation were entitled to know the reasons
23 for decisions of a court of law.’ In a commentary in *Current Law* to a provision in the
24 Northern Ireland (Emergency Provisions) Acts of 1973, 1991 and 1996, where trial by
25 judge alone was introduced into Northern Ireland in serious criminal cases, and where
26 reasons for judgment are statutorily mandated, the learned editors say that-
27 ‘the judgment is, for appeal purposes, the equivalent of a judge’s direction in a jury trial. It
28 is a requirement of the provision that the judgment should contain every reason or detail
29 relied upon by the judge in coming to a guilty verdict.’

² [2001] 1 CILR 496



1 29 Over a period of years the Court of Appeal of Jamaica has provided guidance to judges
2 of the Supreme Court and resident magistrates who try and decide criminal cases sitting
3 without a jury in Jamaica. In *R. v. Carrol* (8), Rowe, P. (as he then was) said:

4
5 ‘We hold that . . . judges sitting alone in the High Court Division of the Gun Court,
6 when faced with the issue of visual identification, must expressly warn themselves
7 in the fullest form of the dangers of acting upon uncorroborated evidence of visual
8 identification. In this respect we hold that there should be no difference in trials by
9 judge and jury and trials by a judge alone.’

10
11 30 Wright, J.A., in *R. v. Cameron* (7), advised the trial judge that-

12 ‘he must demonstrate in language that does not require to be construed that in coming to
13 the conclusion adverse to the accused person he has acted with the requisite caution in
14 mind. Such a practice is clearly in favour of consistency because the judge will then be
15 less likely to lapse into the error of omission whether he sits with a jury or alone.’

16
17 31 Carey, J.A., in *R. v. Donaldson* (9), drew attention to the difficulty of an appellate court
18 which has the duty to determine whether the trial judge has fallen into error by applying
19 some rule incorrectly or not applying the correct principle. He said:

20
21 ‘If then the judge inscrutably maintains silence as to the principle or principles
22 which he is applying to the facts before him, it becomes difficult, if not impossible,
23 for the court to categorize the summation as a reasonable one’

24
25 32 When a trial judge sitting alone has advised himself of the applicable principles
26 of law and given himself any necessary warning, he must indicate clearly in his judgment
27 his reasons for acting as he did, in order to demonstrate that he has acted with the requisite
28 degree of caution in mind and has therefore heeded his own warning. No specific form of
29 words is necessary for this demonstration. ‘What is necessary is that the judge’s mind
30 upon the matter be clearly revealed’: see *R. v. Simpson* (15) ([1993] 3 LRC at
31 641, *per* Downer, J.A.).



1 33 We respectfully adopt the principles of law as stated in the cases referred to above and
2 apply them to the resolution of the issues of law raised in this appeal.”

3
4 20. Counsel submits that in the instant case, the Magistrate misdirected herself in failing to address
5 her mind to the legal principles of self-defence which were central to the Appellant’s case at trial.
6 Alternatively, Counsel submits that if the Magistrate did turn her mind to these principles in
7 failing to record them in her ruling, the Magistrate has made it impossible for this Court to
8 properly assess the thought-processes which ultimately led to her finding of guilt.

9
10 21. Counsel says that the convictions for Assault ABH and Threats to Kill are unsafe and
11 unsatisfactory because of this and that given the cloud which hangs over the proceedings as a
12 whole it is also just for this Court to set aside the conviction for Common Assault.

13
14 22. In response, Counsel for the Respondent submits that the Magistrate properly discharged her
15 duties as a judge sitting alone. Counsel submits that while the general proposition in the cited
16 cases is accepted, there are wider principles. In particular there is that set out in the case of
17 **Whittaker v R**³ that a Judge or Magistrate sitting alone does not necessarily err by failing to state
18 every relevant legal principle in a judgment. His duty is not as in a jury trial to provide instructions
19 on every relevant aspect of the law.

20
21 23. In **R v Willard Keith Simon**⁴ Quin J stated: -

22
23 “More recently our Court of Appeal in **Randy Martin v. R**⁵ delivered their reasons for
24 dismissing the Appeal on the 7th December 2010. Mottley J.A. again adopting **R v.**
25 **Thompson**⁶ also adopted **R v. Thain**⁷ where Lowry LCJ said at page 478:

26
27 “Where the trial is conducted and the factual conclusions are reached by the same
28 person, one need not expect every step in the reasoning to be spelled out expressly,

³ 2020 1 CILR 29

⁴ Grand Court Ind 51/2014, Unreported Judgment dated 22nd day of June 2015, page 3

⁵ Crim. App. R. 2 of 2010

⁶ [1977] NI 24

⁷ [1985] NI 457



1 *nor is the reasoning carried out in sealed compartments with no inter-*
2 *communication or overlapping, even if the need to arrange a judgment in a logical*
3 *order may give that impression. It can safely be inferred that, when deliberating*
4 *on a question of fact with many aspects, even more certainly than when tackling a*
5 *series of connected legal points, a judge who is himself the tribunal of fact will (a)*
6 *recognize the issues and (b) view in its entirety a case where one issue is*
7 *interwoven with another.”*

8
9 Following Lowry LCJ in **R v. Thompson** and **R v. Thain**, Mottley J.A. said in **Randy**
10 **Martin v. R**, at paragraph 31:

11
12 *“From these cases the following guidance may be discerned. A judge sitting in a*
13 *criminal case without a jury, in rendering his decision and giving his reasons for*
14 *so concluding, is not required to review every fact and to detail each argument on*
15 *which the prosecution and defence rely as if he were summing up to a jury. The*
16 *judge must set out the conclusion reached and make clear the reasons for arriving*
17 *at that conclusion. He is required to have regard to any difficult or unusual points*
18 *of law and to show how those points of law have in anyway impacted the*
19 *conclusion that he has reached.”*

20
21 24. In the case of **Dioncicio Salazar v R**⁸, another case cited by the Respondent, the Caribbean Court
22 of Justice considered an appeal from the Court of Appeal of Belize. The Appellant had been
23 convicted of murder following a trial before a judge sitting alone. The Court of Justice referred
24 with approval to the above cited case of **R v Thompson** and the statements made therein and
25 stated: -

26
27 “[29] Equally a judge sitting alone and without a jury is under no duty to "instruct", "direct"
28 or "remind" him or herself concerning every legal principle or the handling of evidence.
29 This is in fact language that belongs to a jury trial (with lay jurors) and not to a bench trial
30 before a professional judge where the procedural dynamics are quite different (although

⁸ [2019] CCJ 15



1 certainly not similar to those of an inquisitorial or continental bench trial). As long as it is
2 clear that in such a trial the essential issues of the case have been correctly addressed in a
3 guilty verdict, leaving no room for serious doubts to emerge, the judgment will stand.”
4

5 25. Counsel submits that the verdict judgment in the instant case demonstrates that the Magistrate
6 was fully aware of her duties in the case. The Appellant raised the issue of self-defence to which
7 the Magistrate referred while reviewing the case. This said Counsel is an issue which was
8 intricately interwoven with the credibility of the witnesses and of the Appellant. The Magistrate
9 was faced with two competing versions of the incident, and the Magistrate had to decide which
10 if any version to accept. In such case, said Counsel it is not surprising that the Magistrate
11 identified credibility as the central issue for determination. Counsel submitted that no specific
12 direction on self-defence was required and that it is apparent from the judgment that the
13 Magistrate rejected the Appellant’s version of events and thus implicitly his claim of self-defence.
14

15 ANALYSIS

16
17 26. In respect of the first charge of Common Assault of Ms. Hydes, no issue of self-defence arose.
18 The defence was a denial. The Magistrate had to determine who was telling the truth about what
19 happened at the earlier incident. There were clear directions given as to the burden and standard
20 of proof and the issues affecting the credibility of Ms. Hydes to include her previous conviction
21 for dishonesty and the history of animosity between the parties and the inconsistencies in the
22 evidence.
23

24 27. As to the second and third charges and the issue of self-defence, there was no jury to charge in
25 this case. The factual circumstances of the case are of significance to the outcome of this appeal.
26 Of note is that the factual positions and evidence of the two sides were starkly different. This is
27 not a case where the defence position at trial was that Mr. Pusey felt that he was under attack or
28 may have felt he was under attack. Neither is there an issue as to the reasonableness of the force
29 used.
30



1 28. The prosecution's case from the evidence of the two civilian witnesses was that the Appellant
2 was the aggressor. The defence case is that he was not. He remained in his car, and they
3 approached and attacked him.

4
5 29. It is a case in which the issue of self-defence was properly to be resolved by determining who
6 was the aggressor in the situation.

7
8 30. The Appellant stated in evidence : -

9
10 "I left home 2:00/3:00 ish. I don't have a good memory of the time. I don't recall exactly
11 what time I reached Lysandra's house. It was in the morning time 3:00 to 4:00. I drove a
12 company van to her house. When I pulled up I saw Lysandra and Raheem standing up by
13 one car. The two approached me while on the phone to the police. I was like "we can talk,
14 there's no need for the police". I kissed Lysandra, he came up and pin me against the door
15 and punched me to my face while I was sitting in the vehicle. He was to the rear of the
16 van. I wasn't paying him much mind, I was speaking to Lysandra. The vehicle is a right
17 hand drive. Lysandra's home was to my right. I pulled up outside her house. The curb
18 was to the right.

19
20 I was sitting in the vehicle when I notice someone grab me. I had nothing to say to him. I
21 was talking to my wife. Someone pinned me to the car. I tried to open the door so hard that
22 I broke the lock. I couldn't get to the handle on the outside. I looked around the vehicle
23 for a weapon to defend myself. I found a spray can and hit him 3 times to the face. That
24 is when he released me and I could drive off. He fell over. That is when I saw the police
25 approach. I told the police they ganged me. Police didn't care and they put me in custody.
26 Lysandra attacked me when she hit me to my head with the phone that she had. All hits
27 were to the right side of my face. I had cut to my lip and head."

28
29 31. Thus, the primary question was did the Appellant get out of his car and approach and attack the
30 complainant or was the Appellant attacked by the complainant as he remained in his car as he
31 said he was.



1 32. It is clear that the Magistrate had the issue of who was the aggressor well in mind as the central
2 issue in the case. It was stated: -

3
4 “46. Mr. Dallay was not present when the police arrived on the scene. Mr. Phuran invited
5 me to conclude that Mr. Dallay absented himself because he had been the aggressor and
6 assaulted the defendant as he asserted and that Mr. Dallay was avoiding detection and using
7 the time to frame his story. ...”

8
9 33. The Magistrate did not accept that the Appellant remained in the car as he said he did, noting that
10 on the evidence of the police on their arrival the defendant was outside of the car. In addition, the
11 Appellant had given an account to the police under caution and stated that he had not hit anyone.
12 He had failed to mention anything about using a spray can to defend himself. He received injuries
13 to his back which the Magistrate found to be inconsistent with his account of being punched
14 while pinned up against the car door.

15
16 34. The Magistrate stated: -

17
18 “ 49. In fact, the defendant’s whole account seemed contrived. PC Frater’s account of
19 seeing the defendant out of the van is undeniable evidence that the defendant was lying
20 when he said he never got out of the van and corroborates to that extent Mr. Dallay and
21 Miss Hydes’ evidence that the defendant was outside the vehicle at some point. The
22 assertion that the defendant was able to get close enough to Miss Hydes to kiss her through
23 the car window was simply incredible and wholly inconsistent with his account of wanting
24 to avoid a confrontation, particularly knowing she was on the phone to the police and Mr.
25 Dallay was present.”

26
27 35. In my view the Magistrate’s mind on the matter of self defence is clearly revealed by a number
28 of statements in the verdict judgment including the following: -

29
30 “50...I am sure that the defendant went to Miss Hydes’ house knowing full well he was
31 unwanted and when he saw her and Mr. Dallay together **he decided to confront them**
32 **again and violently attacked Mr. Dallay.**” (Emphasis added.)



1 “53. I am left sure that Miss Hydes was being truthful about the defendant assaulting her
2 after the street party. I also accept the evidence of her and Mr. Dallay about the events
3 outside Miss Hydes’ home as true and accurate. **I am left sure that the defendant**
4 **attacked Mr. Dallay by punching him and throwing a tool at him causing injuries to**
5 **his face** and that during the confrontation the defendant threatened to kill Mr. Dallay with
6 intent to cause him to fear that the threat would be carried out thereby causing Mr. Dallay
7 to fear that happening.” (Emphasis added.)
8

9 “54. There is no doubt in my mind that **while the defendant started the fight** and caused
10 actual bodily harm to Mr. Dallay, that Mr. Dallay eventually got the upper hand, hence the
11 injuries noted to both Mr. Dallay and the defendant and likely why the defendant’s first
12 account was to claim that he had been set upon.” (Emphasis added.)
13

14 36. The findings of fact of the Magistrate included the following: -
15

16 “55. In conclusion I make the following findings of fact of which I am sure beyond a
17 reasonable doubt –
18

- 19 i. There had been a confrontation between the defendant and Mr Dallay when the
20 street vibes party ended – including the defendant telling Mr Dallay to stay away
21 from Miss Hydes.
22 ii. The defendant argued with Miss Hydes and he struck Miss Hydes intentionally
23 with the car door.
24 iii. The defendant drove to Miss Hydes’ home uninvited and unwelcomed.
25 iv. The defendant came out the car **and threw the first punches at Mr Dallay**
26 **making contact with his face.**
27 v. **The defendant retrieved a tool from his van and threw it at Mr Dallay**
28 **causing him an injury to his forehead.**
29 vi. **The defendant returned to start a second fight with Mr Dallay;** and
30 vii. The defendant made a threat to kill Mr Dallay intending to and causing Mr Dallay
31 to fear that the threat would be carried out.” (Emphasis added.)
32



1 37. In the context of the particular circumstances of this case, these statements were sufficient to
2 address the issue of self-defence. This was a “bench trial before a professional judge”. In my
3 view it is abundantly clear that the Magistrate addressed her mind to the essential issues in the
4 case and resolved them by way of very detailed factual findings which demonstrate without room
5 for doubt that there was at the forefront of her mind the relevant legal principles and the burden
6 and standard of proof.

7
8 38. I do not accept as Counsel for the Appellant submitted orally in reply that the Magistrate in failing
9 to state that it was for the prosecution to negative self-defence imposed a higher burden on the
10 Appellant in error. It is plain from the statements detailed above that the focus at all times was
11 on whether the Magistrate could be sure on the evidence of the prosecution.

12
13 39. I am therefore satisfied that the issue of the absence of a specific direction or form of words as to
14 self-defence is not such as to make the verdicts unsafe and unsatisfactory with respect to these
15 charges.

16
17 **GROUND 2 – NATURE OF THE EVIDENCE OF THREAT TO KILL**

18
19 40. Counsel for the Appellant makes two points, in relation to the charge of Threats to Kill. Firstly,
20 that the defence of self-defence applies equally to this charge as it may amount to a lawful excuse
21 for a threat.

22
23 41. The alternative submission is that the offence requires an accused to use a particular form of
24 words which when heard constitute a genuine threat to kill. Counsel submits that in a case of this
25 kind, the reality or likelihood of the threat being carried out is important to the view of the
26 complainant and the extent to which he is put in fear.



1 42. Counsel says that neither in the charge nor in the evidence is the form of words set out. The
2 evidence recorded from Mr. Dallay is that: -

3
4 “We began to tussle I started to hit him in his face. During the tussle he was saying he was
5 going to kill me. I felt threatened and in danger.”

6
7 43. Counsel questions how a tribunal could properly assess the reality of a threat without
8 understanding the actual words used.

9
10 44. Counsel for the Respondent submits in robust response that any objective assessment would find
11 the words said to have been used to be threatening. The irresistible inference is that the Appellant
12 must have intended the complainant to fear that the threat would be carried out.

13
14 45. Counsel submits that the context in which the threatening words were uttered is important. The
15 context itself justified the finding that the elements in s.88C were satisfied. The Appellant was
16 found to be the aggressor; the men were fighting each other. The Appellant used a weapon to hit
17 Mr. Dallay to his head. The submission is that the Magistrate was entitled to conclude that the
18 Appellant intended that Mr. Dallay would fear that the threat would be carried out against him.

19
20 46. I accept the submissions of the Respondent on this. In my view the Magistrate having accepted
21 that Mr. Dallay was under attack, it was then open to the Magistrate to find that the statement
22 made of “he was going to kill me” was sufficient in the context of the circumstances for a
23 determination to be made on this charge.

24
25 **GROUND 3 – LAWFULNESS OF SENTENCE**

26
27 47. Counsel for the Appellant submits that the Protection Orders were wrongly made because the
28 Summary Court has no express statutory authority to impose these orders as part of a criminal
29 sentencing exercise. Counsel’s submission is that the *Penal Code* prescribes the sentences which
30 a criminal court may pass including ancillary orders such as costs and sexual harm prevention
31 orders. The submission is that the Orders were made in the absence of enabling legislation, and



1 that the Summary Court being a creature of statute cannot in the criminal jurisdiction make orders
2 which are covered by non-criminal statutes.

3
4 48. Additionally, Counsel submits that there is no reference in the Court’s ruling to the applications
5 which led to the Orders made and thus no way of assessing the legality of them.

6
7 49. Counsel for the Respondent in reply submitted that the Magistrate did not err or act unlawfully
8 by imposing the Protection Orders. The Orders were made on the application of the prosecution
9 and the defence consented to them being made.

10
11 50. Counsel has set out in some detail the relevant provisions of the *Protection from Domestic*
12 *Violence Act*.

13
14 51. Counsel submits that the courts which have jurisdiction to make such orders under s.2 of the *Act*
15 include a court of summary jurisdiction. By s.4 a court is empowered to make an order on the
16 application of a prescribed person against whom an act of domestic violence has been committed.

17
18 52. In addition, an application may be made with the leave of the court on behalf of a spouse by a
19 police officer or any other person, whether or not that person is a member of the household
20 residence. In determining the application the court may take into account whether it is in the best
21 interest of the prescribed person identified.

22
23 53. Counsel submits that the prescribed person in this case is Ms. Pusey and that from the evidence
24 at trial and the information contained in her victim impact statement it was obvious that it was in
25 her best interest for the Magistrate to impose a protection order in her favour.

26
27 54. Counsel also submits that the *Act* cannot properly be described as civil in nature given that it has
28 penal provisions by which it prescribes offences, powers of arrest and bail. The submission is
29 that the better view is that the *Act* is quasi criminal in nature.

30
31 55. With respect to the *Stalking (Civil Jurisdiction) Act* (2018 Revision), Counsel for the Respondent
32 references the victim impact statement of Mr. Dally dated 15th January 2025 in which he
33 expresses reluctance to apply for an order fearing its lack of effectiveness in the face of what he



1 described as a continued pattern of aggressive and threatening behaviour and a history of violence
2 and harassment from Mr. Pusey.

3
4 56. Counsel submits that the Order in this case was made on the application of the prosecution and
5 the Appellant's attorney consented to it. The prosecution could properly make such an application
6 pursuant to section 4(5) of the *Act* given the reluctance of Mr. Dallay to do so. Counsel submits
7 that there is an interconnection with the *Penal Code* given that by section 155 (6) of the *Code*
8 there are powers of arrest if a protection order is contravened. Counsel said also that by section
9 5 of the *Act* an unrepresented person who applies should be informed of the right to make a
10 criminal complaint under the relevant provisions of the Criminal Code.

11
12 57. It is also submitted that the suggestion that the Magistrate could not exercise powers under the
13 *Act* where stalking is proved in a criminal court would potentially lead to an absurdity because
14 there are no alternative provisions under the *Penal Code* to protect a victim of stalking.

15
16 58. Having considered all the submissions, my view is that the important question in each case is
17 whether the Summary Court has jurisdiction to make the orders under the relevant statutes. To
18 this may be added the following: -

19
20 Was an application made by a person who was so empowered under the Acts?

21
22 Was there evidence before the Court as to the factual circumstances such that there was a
23 proper basis for the making of the Orders?

24
25 Was the person against whom the order was proposed to be made given advance notice and
26 an adequate opportunity to make representations on the proposal before the order was
27 made?

28
29 59. These are the substantive questions. Even if the question of forum is a matter of substance, there
30 is in theory nothing to prevent the court from closing and reconvening in a civil jurisdiction to
31 deal with the application. Counsel for the Respondent notes that in any event these were Orders
32 made by consent.



1
2 60. While I think that the submissions being made in the instant case may not necessarily focus on
3 the substantive questions, I accept in part that it would provide helpful clarity for there to be
4 formality by way of a written application, a brief ruling and a detailed order.

5
6 61. I have considered the instant case and the substantive questions.

7
8 62. An act of domestic violence is defined in the *Protection from Domestic Violence Act* in part as
9 where the conduct caused or is intended to cause physical, emotional or psychological abuse.
10 Emotional or psychological abuse is defined as including a number of behaviours, such as
11 following the prescribed person to any place and making unwelcome and repeated or intimidating
12 contact with the prescribed person. Physical abuse means any act or omission which causes or
13 threatens physical injury.

14
15 63. It is noted that in the verdict judgment, the Magistrate referred to what was happening between
16 the parties as a history of ongoing animosity (para 42) and the conduct of the Appellant as classic
17 controlling and harassing behaviour. There was a finding of a physical assault of Ms. Hydes.

18
19 64. I also accept that on the evidence it was open to the Magistrate to find that the second
20 complainant, Mr. Dallay had been subjected to stalking as defined in the *Stalking (Civil*
21 *Jurisdiction) Act*.

22
23 65. Counsel for the Respondent submits and I accept that the *Acts* provide the Magistrate with
24 additional powers to make the protection orders because it had been found that the Appellant
25 committed an act of domestic violence towards Ms. Hydes and subjected Mr. Dallay to stalking.

26
27 **CONCLUSION**

28
29 66. For all the reasons set out above, the appeal against convictions and sentence is dismissed. The
30 convictions and sentences are affirmed.

1 **TIME SPENT ON CURFEW**

2
3 67. The Appellant sought and was granted leave to address the Court directly and submitted that he
4 had not received any credit for the time which he had spent in curfew before he was sentenced.

5
6 68. Counsel for the Appellant drew the Court's attention to the *Cayman Islands Sentencing*
7 *Guidelines* and the principles set out at paragraph 12.

8
9 69. The Court records indicate that the Appellant was on a curfew from 10pm to 7am up to the date
10 of sentence. The calculation of Counsel is that this was a total of 659 days. The Court noted that
11 this was during the night hours, and the curtailment of liberty would have been limited except for
12 perhaps weekend night outings. The Appellant is afforded credit of 15 % or 99 days.

13
14 **Dated this the 19th day of August 2025**

15 

16 **The Hon. Justice Cheryll Richards KC**
17 **Judge of the Grand Court**