IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION- CAYO DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT No. IC 0004 OF 2023

BETWEEN:

RUDOLPH ANTHONY SLUSHER

and

The POLICE

Appearances:

Ms. Romey Wade for the Crown

Mr. Darrel Bradley for the Appellant

2024: December 6; January: 23; February: 12; 20; 25;

March 4.

JUDGMENT

[1] **CREARY DIXON, N:** Mr Rudolph Slusher was convicted for using insulting words and damage to property on January 23, 2023. The Learned Magistrate imposed a fine of two hundred dollars ($200) or three months imprisonment in default, for insulting words. He was also bound over to keep the peace for a period of three months with effect from the

10th January 2023. On the charge of damage to property, he was fined four hundred dollars ($400) or four months imprisonment in default, and compensation in the sum of three hundred dollars ($300). He now appeals against these convictions and the sentences imposed.

Background

[2] The undisputed facts are that on February 2, 2022 at about 9:00pm, the complainant Ms Ruth Bailey noted that her neighbour's dog was in her yard. She called out to Mr Slusher who was on his verandah, to get his dog out of her yard. His response was to shout out "Bitch! I don't tink is me you di talk to! Bitch!" In a heated exchange between the two, the appellant then threw a glass bottle he had in his hand into the complainant's yard hitting a window and damaging a louvre blade. He was subsequently convicted of the offences of using insulting words and damage to property.

[3] His grounds of appeal against these convictions are that:

(i) The verdict of guilty is unreasonable and cannot be supported by the evidence. In support of this assertion, the appellant submitted that the offence in question is tenable only if the accused is in public, and the evidence at the trial was that the appellant at all material times was in his residence or his yard, and at no times was he in a public place; and

(ii) The appellant submitted that the verdict of guilty on the charge of damage to property and the fine and compensation imposed are unreasonable and cannot be supported by the evidence as no evidence was submitted for the damages to support the conviction or quantum to support the compensation. . In support of this ground, the appellant asserts that there was no evidence that the virtual complainant tendered any receipt or estimate for the repair costs nor were any photographs tendered of the damages.

The Law

The elements of the offence of using insulting words are found in Section 4 (1) (xi) of the Summary Jurisdiction (Offences) Act Chapter 98, which states that:

[4] ***(1) A person who- (xi) uses to or at any other person or in the hearing of any person, any threatening, abusive, profane, obscene, indecent or insulting words or behaviour, whether calculated to lead to a breach of the peace or not, such several offences being committed in a street, or public place, or in a private enclosure or ground; is guilty of a petty offence. (My emphasis).***

Ground #1:

Insulting Words

[5] There is no dispute that the appellant uttered the insulting words from the comfort of his verandah. The question which arises, is whether the verandah fell within the definition of "public place" or "private enclosure or ground", such that all the elements of this offence would be satisfied.

According to Crabbe, the author of "Understanding Statutes"[1] In the interpretation or construction of an Act, the Court proceeds on the basis that

> *"every word ought, prima facie, to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context*[2]

Lord Atkinson in ***Victoria (City) v Bishop of Vancouver Islands***[3] said that

> *In the construction of statutes, their words must be interpreted in their*

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[1] Vc crabbe

[2] *Attorney General for Ontario V Mercer, (1883) 8 A.C. 767 at p.778*

[3] [1921] 2 A.C. 384 at p.387

ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical meaning.

[6] What then, is the ordinary and grammatical meaning of the words "private enclosure or ground"?

The appellant commended the case of ***Phyliss Clarke vs. Margaret Williams Action No. 16 of 1*** which offers a definition of "enclosure":

The ordinary meaning of enclosure is open land which has been fenced. The dictionary meaning is 'land fenced in together with the particular meaning well known in legal circles of the fencing of common land'. That being so, I am of the opinion that a building or a dwelling house is not an enclosure. Consequently, words uttered inside a building, other than a building to which the public has access, are not caught under this particular provision of the Ordinance. Taken into account that Section 4 of the Summary Jurisdiction (Offences) Ordinance can trace its ancestry to the Town Police Clauses Acts, this is not surprising. On this ground also the complaint for threatening words could have been dismissed.

[7] In that case, it was decided that Section 4 (xi) did not apply to words uttered inside a *dwelling house*. In the present case, the words were uttered on the verandah of the house. A verandah, is considered a part of a dwelling house. Therefore, from the definition advanced above, a verandah, would not be considered a private enclosure or ground.

It was obvious that The Learned Magistrate held the view that the word "verandah" fell within the definition of "private enclosure or ground". In addressing this ground of appeal, and the reason for the conviction, she stated that

"the law is explicit, as it states that the offence can happen within the hearing and sight of that person ,including in a private enclosure". [Her emphasis].

[8] In The Learned Magistrate erred in not applying the ordinary and grammatical meaning to the words "private enclosure or ground", thereby excluding the word "verandah". The effect of such an exclusion is that this provision would not apply to the accused, as he was on his verandah when he uttered the offending words. He ought not to have been convicted of this offence.

[9] Further support for an interpretation and application of this provision to the present case, is found in the well-known rule of statutory interpretation, that an Act should be read as a whole in order for it to be understood. Elmer Driedger, a leading authority on statutory interpretation, opines that "An Act can only be understood if it is read as a whole.Its drafting proceeded on that basis. It was not passed ina vacuum. It is part of the circumstances that gave it its birth. It is only by recognizing these facts that the object intended to be achieved by the Act can be appreciated. That can only come about if the Act is read as a whole.[4]

[10] When read as whole, several things are appreciated:

(i) The word "premises" as defined in the Act, includes a yard and a d=house(which includes a verandah): "premises" includes land, whether covered with water or not, canal, trench, pond, ***yard***, garden, stalling, wharf, ***house*** or other property; "[My emphasis].Notably, the disputed section , Section 4(xi) does not use the word "premises". As pointed out by Alcantara in the ***Phyllis Clarke*** case mentioned above,

[4] *Warburton v Loveland* (1832)5 E.R. 499 at p 506

"The Legislature, by using the words "private enclosure" instead of premises, obviously intended to restrict the ambit of this particular offence".

In other words, the Legislature did not use the word "premises" in Section 4(ix), because it did not intend that Section 4 {ix} should be applicable to individuals uttering words from their houses, yards or verandahs.

(ii) The sections before and after Section 4 (ix) are speaking to offences created in ***public spaces.***

For example, the section which comes before Section 4(xi) states that an offence is created where someone:

(x) sells or distributes, or offers for sale or distribution, or exhibits ***to public view***, any profane, indecent or obscene book, paper, print, drawing, photograph, painting or Carrying cask, etc., along footway. Affixing bills to buildings, etc. Loitering for prostitution. Selling, etc., obscene articles. or sings any profane or obscene song or ballad, or writes or draws any indecent or obscene word, figure or representation upon any wall, door, window, shutter, paling or other conspicuous place, or upon any paper and exposes the said paper to ***public view***, or uses any profane, indecent or obscene language ***in any street or in any public place***, to the annoyance of any other person;

The section which follows it, Section xii, states that:

(xii) in any street or ***public place*** or in any private enclosure or ground is guilty of disorderly conduct, or in any **street or public place** or within **public hearing or public view** unlawfully fights with any other person…

The inference is that Sections 4(x), 4(xi) and 4(xii) should all speak to offences created in the public domain where the public have unfettered access.

This ground of appeal therefore succeeds.

Ground 2:

Damage to Property

The verdict of guilty on the charge of damage to property and the fine and compensation imposed are unreasonable and cannot be supported by the evidence as no evidence was submitted for the damages to support the conviction or quantum to support the compensation. .

[11] In support of this ground, the appellant asserts that there was no evidence that the virtual complainant tendered any receipt or estimate for the repair costs nor were any photographs tendered of the damages. He stated that there are no particulars given regarding the window and type of damage caused. With respect to the compensation ordered, there are no details or particulars of loss, including no receipts for the repairs or replacement costs to justify an order for payment.

[12] For some time after they were received by the Court, the notes of evidence and reasons for judgment were incomplete. A page and a small part of the bottom of the notes were missing. The Court is grateful to The Learned Magistrate and Clerk of Court for Belize City, who acted with alacrity once notified, to submit a completed document to the Court a few weeks ago before the delivery of this judgment. The completed documents were served on Counsel for the appellant and respondent immediately. Counsel for the Appellant was invited to amend his grounds and submissions taking into

consideration the completed documents filed.

[13] Counsel did not amend his submissions and hence this judgment is based upon the submissions received by the Appellant prior to receipt of the completed documents.

[14] The Appellant conceded in his submissions that the oral evidence of the Complainant could be received by a Judge; In respect of his contention that no particulars were given regarding the window and type of damage caused, notes of evidence showed where the complainant described her window as a storm guard, white in colour, which cost approximately three hundred dollars ($300). The window was dented by the bottle and could no longer be closed tightly. She also indicated that it still had not been fixed. It is true that the complainant provided no receipts or photographs, but since the Appellant has conceded that this evidence could be received by a judge, all that will be said on this issue is that The Learned Magistrate quite rightly referred to the best evidence rule and relied on the case of ***Hocking v Alquist Bros Ltd{1943 2 All ER 722]***[5] to support the position that is very well explained by the Crown Counsel :

> *Where the condition of a material object is in issue or relevant to an issue, it should be produced for inspection by the court. Oral evidence however can be given even where the said object is not produced, although the failure to produce the object may lessen the weight that may be attached to the evidence.*

[15] The Learned Magistrate placed great weight on the oral evidence of the complainant. She outlined that she found the complainant to be a credible witness who was unshaken during cross-examination and whose mannerism was undeterred. The Learned Magistrate also very ably outlined her computation of the fine and compensation ordered: the cost of the window being $300 and a figure The Learned Magistrate did not find unreasonable,

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[5] In this case, although oral evidence was given of the condition of clothing, it was not necessary for the clothing to be produced.

the accused was ordered to compensate the complainant in this sum. She explained that she did not believe that the actions of the accused warranted a term of imprisonment and the damage to the window was minor; hence he was instead fined four hundred dollars ($400).

[16] At the eleventh hour, the appellant sought to introduce a new ground of appeal in their submissions, stating that it was an oversight on the appellant's part to do so before. The appellant stated that an award of compensation is to be given "on the application of a complainant", and there is no indication from the notes of evidence, that the complainant asked for or requested compensation; the exercise of this discretion, is only triggered upon an application by the complainant.

The appellant is clearly relying on Section 12 of the Summary Jurisdiction (Procedure) Act, Cap 99which states that:

> *12. The court may, in its discretion, on the application of the complainant, adjudge any person convicted before it of a summary conviction offence to make compensation, not exceeding one thousand dollars, to any person injured by the commission of the offence, and any compensation so awarded shall be regarded and dealt with in all respects as if it were recovered on a judgment of a district court under the District Courts (Procedure) Act, Cap. 97. [My emphasis].*

[17] There is no evidence that the complainant requested compensation, however, the court can take the initiative to order compensation without a request being made by the complainant pursuant to Section 60 (2) of the Summary Jurisdiction (Procedure) Act Cap 99 which reads that:

> *60.- (2) Wherever an order is made against the defendant, the court may order that the defendant shall pay to the complainant such costs, and shall also, subject to the provisions of any Act in that behalf, pay to the complainant or any other person such compensation as the court thinks just and reasonable.*

[18] Conclusively, the Court does not find the fine or compensation in respect of the offence of damage to property, to be unreasonable. As I am authorized to do pursuant to Section 124 of the ***Senior Court's Act 2022***, I see no reason

to modify, amend or reverse the decision of The Learned Magistrate; there is no reason to disturb the conviction or sentence imposed by The Learned Magistrate. The appeal against the conviction and sentence for the offence of insulting words, is however allowed, and the conviction quashed.

Disposition

The court orders as follows:

1. The appeal against the conviction for the offence of insulting words is allowed and the conviction quashed.

2. The appeal against conviction for the offence of damage to property is dismissed and the conviction is affirmed.

3. The appeal against sentence for the offence of damage to property is dismissed and the sentence is affirmed.

4. Each party to bear their own costs.

Natalie Creary Dixon

High Court Judge