J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEALS 113/77 & 122/77

BEFORE: THE HON. MR. JUSTICE WATKINS J.A.
THE HON. MR. JUSTICE ROBOTHAM J.A. (Ag.)
THE HON. MR. JUSTICE ROWE J.A. (Ag.)

REGINA

vs

CARMEN SHAW - 113/77

REGINA

vs

IRVING OcCONNOR - 122/77

Mr. W.B. Frankson and Mr. G. Cruickshank for appellant Shaw

Mr. Ian Ramsay and Mr. G. Cruickshank for appellant OcConnor

Mrs. Marva McIntosh for the Crown.

OCTOBER 12, 13, 1977

ROBOTHAM J.A. (Ag.)

These are appeals brought by Carmen Shaw and Irving OcConnor, in respect of their convictions by Carey J. for contempt of Court in the St. Catherine Circuit Court on April 29, 1977.

At the conclusion of the joint hearing on October 13, 1977, we unanimously dismissed the appeals against the convictions, and allowed the appeals against the sentences. The sentence of three months imprisonment imposed on Shaw, and that of six months imprisonment imposed on Irving OcConnor was in each case varied to one of imprisonment until the rising of the Court. We then promised to put our reasons in writing, and this we now proceed to do.

The convictions of both appellants, who are brother and sister, spring from utterances made bythem in the foyer of the Spanish Town Court House, immediately after the conclusion of a case of rape, which was brought against their brother Hugh

OcConnor. He was convicted on April 27, 1977 and sentenced to a term of imprisonment. The victim was a young girl whom we shall call "X". She is the daughter of Vincent Bryan, to whom the offending words were addressed by each of the appellants.

It transpired that immediately after the sentence was passed, and whilst "X" was still inside the Court room, the appellant Carmen Shaw accosted Vincent Bryan the father of "X", and said to him:-

> "Don't mind we are going to kill all of them from Hedge go right down".

"Hedge" is an allusion to Constable Hedge who arrested Hugh OcConnor on the charge of rape.

The appellant Irving OcConnor also accosted Vincent Bryan, and what transpired between them can best be portrayed by quoting Bryan's evidence on that point verbatim:-

> Q. "The Male accused whom you know as Irving OcConnor what did he say?
>
> A. He said they are going to kill us ma'am and him come before my face and say we must meet up.
>
> Q. Go slowly. He said he is going to .....?
>
> A. ..... kill us.
>
> Q. And then he come before your face and say what?
>
> A. Vin we must meet up and I must kill you."

It was agreed that when these words were used by both appellants to Vincent Bryan, he was standing on the landing outside the Court room in company of his sister, and his friend Jack Brown, and that neither "X", nor any other witness in this case was within earshot at the time. Jack Brown gave testimony supporting Vincent Bryan.

Both the appellants denied using the words when they gave evidence on their own behalf before Carey J.

The learned judge in his statement of cause prepared by virtue of section 34 of the Judicature (Appellate Jurisdiction) Act rejected the appellants' evidence to the effect thay they did not use

the words and accepted both Bryan and Brown as witnesses of truth. He recorded therein the following:-

> "I found that the female contemnor used the words alleged against her and that the words were a reference to witnesses who had given evidence in the case against her brother.
>
> I found also that the male contemnor a brother of the accused Hugh OcConnor had used the threatening words rehearsed in Court, by the witnesses before me to Mr. Vincent Bryan, father of the virtual complainant in the case.
>
> I held that to utter words of threats concerning witnesses in a case, or to threaten relatives of witnesses, amounted to a contempt as affecting the administration of justice".

Mr. Frankson, on behalf of the appellant Carmen Shaw in his usual forthright and persuasive manner sought to convince the Court that she could not stand convicted for contempt of Court because the words alleged to have been used were not uttered to, or in the presence of any witness in the case against Hugh OcConnor. They therefore could not be construed as being either in intimidation or victimization of any such witness. Even assuming that such threats, (if indeed they could be regarded as threats, not having been directed to any particular witness) were calculated to be in intimidation or victimization of any witness, there was no evidence that they were communicated to the witness. In this respect therefore, there was no mens rea, and even if the use of the words themselves could constitute mens rea, there was no actus reus. It was pointed out to him that it would lead to disastrous consequences and amount to a mockery of the law of contempt of Court if in every case in which it was sought to ground a citation for contempt of Court some act had to be done towards putting the threat into effect before the charge could successfully be made.

He dealt at length with the requirements of the law relating to threats. On this point, if on no other, we were in full agreement with him on the law as stated by him. It is a fallacy, however, to equate a case of threats with one of contempt of Court, Whereas in a case of threats the words must be directed to a particular person, whereby that person is put in fear, in the case of contempt of Court the words used need only be such as are

calculated to interfere with the administration of justice.

He further submitted that the categories of contempt of Court are closed and contempt can only arise by conduct which:-

(a) 'bscandalizes the Court or

(b) obstructs the administration of justice or

(c) interferes or causes injury to the court itself, a litigant, a witness, an officer of the Court, or a juror .'

Whilst there is established authority to show that the law relating to contempt of court has developed along those lines, we are not prepared to say in the light of an everchanging civilization and the state of the nation, coupled with the sophisticated criminal behaviour of today, that the categories should be regarded as closed. Even if one is accused of living in a ivory tower, one could not fail to know of the reluctance of witnesses to come forward at present, for fear of revengeful action being taken against them of their loved ones.

The use of threatening words to a witness before, during or after the completion of a case is contempt of Court. That is well established. Can the situation be said to be any different if the words are used in point of time and place to the parent of an infant witness, which parent has a duty to protect his child and to cause offences against such child to be reported to the Police and to co-operate in any consequential prosecution?
We think not. Indeed it would be tantamount to driving a horse and cart through the law of contempt of Court if an offender were permitted to deliberately utter threats to such a near relative, well knowing that there is every likelihood of such threats being relayed to the party for whom they were intended, thereby achieving the desired effect, and yet he could because of an inflexible interpretation of the law, escape punishment for contempt of Court.
During the course of the argument several cases were cited. The first was. R v Duffy and others Exparte Nash (1960) 2 All E.R. page 891. In this case there was a motion for writs of attachment

against Peter Duffy and others, the Daily Sketch, and the Daily Graphic Ltd., on the grounds that an article published in the the Daily Sketch purporting to describe the criminal background of Nash was, or might be prejudicial to him on the hearing of his appeal to the Court of Criminal Appeal. The Court there held that the article although published while the matters was sub-judice, (the appeal not having been heard) was not a contempt of court because there was no real risk that a fair, hearing of the appeal would be prejudiced.

Lord Parker C.J. in his judgment had this to say at page 894 (H):-

> "Accordingly the question in every case is whether, in all the circumstances existing at the date of publication including the content and form of the article, the circulation of the paper in which it appears, and the state of the proceedings the article was intended or calculated to prejudice the fair hearing of the proceedings."

Here the learned law Lord was applying the same test as that which Lord Goddard C.J. applied in R v Oldhams' Press Ltd. Exparte AG. (1956) 3 All E.R. at p. 497, where he said:-

> "The test is whether the matter complained of is calculated to interfere with the course of justice".

With due respect to the arguments advanced by both attorneys for the appellants the test adumbrated by Lord Goddard C.J. in R v Oldhams' Press Ltd. is the very same which has to be applied in these appeals, namely, "were the words directed to Vincent Bryan by Carmen Shaw and Irving OcConnor such as were calculated to interfere with the course of justice?".

He next referred to the well known case of:-

Attorney General v Butterworth and others (1962) 3 All E.R. p. 326.

This was a case in which it was sought to victimize one Greenlees the treasurer of a trade union by relieving or attempting to relieve him of his post in the trade union by reason of his having given evidence before the Restrictive Practices Court. His evidence was adverse to the trade union, and when it was sought

thereby to deprive him of his honourary offices, motions for writs of attachment were brought by the Attorney General against Butterworth and others. The Court there held that the motive of Butterworth and the others, whether predominant of not, was to punish Greenlees for having given evidence and accordingly they had committed contempt of Court since they had victimised Greenlees.

Lord Denning M.R. at page 329 (E) said:-

> "I have no hesitation in declaring that the victimization of a witness is a contempt of court whether done whilst the proceedings are still pending, or after they have finished".

Donovan L.J. in his judgment at page 332 said:-

> "The question to be decided here as in all cases of alleged contempt of Court is whether the action complained of is calculated to interfere with the proper administration of justice. There is more than one way of so interfering. The authority of the courts may be lowered by scurrilous abuse: Its effectiveness to do justice may be destroyed or diminished in a pending case by frightening intending witnesses from the witness box. After giving evidence a witness may be punished for having done so, thereby deterring potential witnesses in future cases from risking a like vengeance. I see no such difference between any of these three methods as makes the first two contempt of Court and the third not".

Further on in the judgment at page 333 para. (c) he said:-

> "I return to the finding in the present case that none of the respondents had any future proceeding in mind or any intention to interfere with the course of justice. I regard that state of affairs as immaterial. The question is whether the respondents' action was calculated so to interfere, and this involves a consideration not of their state of mind on this particular point but on the inherent nature of their act."

These words dispose of Mr. Frankson's submission that there was no mens rea or actus reus on the part of Carmen Shaw.

Finally, he referred to the case of:-

Balogh v Crown Court at St. Albans (1974) 3 All E.R. p. 283.

In this case a clerk to solicitors did acts preparatory to introducing "laughing gas" into a Court with a view to enlivening its proceedings. The Court of Appeal presided over by Lord Denning M.R. held that the acts of the clerk were merely preparatory to his committing the offence, in that he never got the opportunity to

actually introduce the gas into the ventilating system, and therefore he was not guilty of contempt of Court.

On the basis of this case Mr. Frankson argued that the acts of Carmen Shaw went no further than preparation on her part to commit an offence. With this we were also unable to agree.

This case recognised the power of a judge to punish summarily for contempt of Court, wherever there had been a gross interference with the course of justice in a case that was being tried, was about to be tried, or was just over. It further stated that this jurisdiction should be exercised only where the contempt had been proved beyond reasonable doubt and where it was urgent and imperative for the judge to act immediately, to prevent justice being obstructed or undermined.

Mr. Frankson in the course of his submission made the point that the procedure resorted to by Carey J. in this case was open to some doubt in that there was no need for him to have resorted to the use of his summary powers. Again, we are unable to agree with this submission. Mr. Ramsay for the appellant Irving OcConnor followed Mr. Frankson at the conclusion of his arguments on behalf of Shaw. He adopted the arguments of Mr. Frankson and in his own erudite manner he exhorted us to guard jealously the weapon of contempt of Court which judges over the years have used in such a discreet manner. It is not disputed that the powers which a judge exercises for punishing for contempt of Court are wide and that they should be exercised only in the most extreme cases. In these perilous days, however, behaviour which tends to bring the administration of justice into disrepute, or which tends to make witnesses or potential witnesses hesitant because of the fear ot consequences to come forward to meet the to meet the cause of justice, must be met with a swift and firm hand. For this reason, we think the learned judge acted quite properly in this case in resorting to the summary remedy.

This court entertains no doubt that the words used by both appellants were such as were calculated to interfere with the course of justice and amounted to contempt of Court. We are fortified in our view by the specific reference made to the arresting coun-

stable Hedge by the appellant Shaw, and the fact that the infant victim in the case of rape against the brother of the two appellants, was the daughter of the person to whom the offending words were used.

If anyone ventures to say that by virtue of this decision the Court is entering upon ground previously untrodden, then our reply would be that the time is ripe so to do. As Donovan L.J. said in the course of his judgment in Butterworth's case, "the administration of justice is a continuing thing, which is not bounded by the day's cases. It has a future as well as a present; and if somebody pollute the stream of today so that tomorrow's litigant will find it poisoned, is he to appeal to the court in vain?"

On the question of sentence, upon the conclusion of their arguments, each attorney acting on the instructions of his respective client conveyed apologies to the Court. Assurances were given that the words were not meant to be intimidatory of anyone, nor were they intended to interfere with the administration of Justice. On the contrary, the words, ill-chosen and ill-advised as indeed they were, were used in a moment of agitation and grief over what had befallen their brother.

This repentent attitude albeit late in the day fell upon receptive ears, and considering that both appellants had spent twenty-one days in incarceration prior to their being bailed, it was decided to vary the sentences in the manner previously stated.