

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA # 132/92

ALFRED W. PEARSON V. REGINA

Mr. Murray for the Crown
Mr. Archie for the appellant

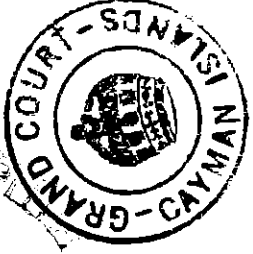
Schofield J.

Alfred Whinlock Pearson ("the appellant") appeals against his convictions in the learned Magistrate's Court on the following charges:

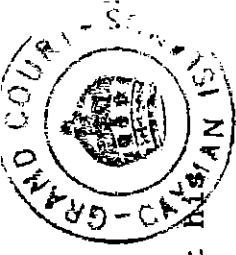
- 1) 404/92 - Disorderly conduct, contrary to section 151(b) of the Penal Code;
- 2) 405/92 Assaulting police, contrary to section 63 of the Police Law;
- 3) 406/92 Resisting arrest, contrary to section 63 of the Police Law;
- 4) 407/92 Damage to property, contrary to section 244 of the Penal Code

Although the charge sheet in 407/92 erroneously states that the offence is contrary to Law 16 of 1981 no point has been taken on this error.

The prosecution evidence came from Detective Constables Robert German and Brent Jefferson. They testified that they saw the appellant in his yard at about 10:30 a.m. on 27th January, 1992. They addressed him and the appellant became abusive. Later in the morning they received instructions from a superior officer to take the appellant to the police station. They found him painting the front of his aunt's house in Shedden Road. The prosecution case is that at first the appellant ignored the officers, then became aggressive and swore at the officer's, whereupon D.C. Jefferson told the appellant that he was under arrest for disorderly conduct. The appellant continued his aggressive behaviour and poked D.C. German in the chest with his paint brush. The officers then tried to forcibly arrest the appellant but had to call for reinforcements before they could do so.



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D. C. German testified that later he discovered that his shirt and trousers had paint on them and he had to throw the clothes, value about \$60, away.

The appellant testified that he was painting the front of his aunt's house when he felt someone grab his arm from behind and he was pushed up against the porch. He looked around and saw the two officers who he knew to be policemen although they did not identify themselves. A struggle developed because he was trying to pull his arm, which was hurting, away from them. He denied swearing at the officers. The officers radioed for help but it did not take four officers to subdue him.

The appellant called his 81 year old aunt, Doris Frederick, whose porch he was painting. Her evidence corresponded with that of the appellant.

Although counsel for the appellant argues that on the first count, the words related in the charge sheet constituting the disorderly conduct - "Don't fuck with me or you'll be sorry" - were not proved to have been spoken by the appellant, D.C. Jefferson testified that the appellant said "Don't fuck with me or you will regret it". There is so little difference between the two sets of words that the Court could not properly distinguish between them. D.C. German said he could not remember the exact words spoken, but he did recite the word "fucking" which would support Jefferson's evidence and, if spoken by the appellant, constitute an offence under the relevant section of the Penal Code.

The case basically rests on credibility. Some criticism may be levelled at the way in which the learned Magistrate approached the evidence. He reviewed the defence case first and then the prosecution evidence, thus giving an impression that he may have shifted the burden of proof. However, he had the advantage of seeing the witnesses and assessing them in the

flesh. He considered the evidence in its totality and on an independent review of the evidence I am unable to say his assessment was wrong. There is some minor discrepancy between the officers over where the struggle started, one said at the side of the house and the other said at the front by the right hand side, but that is the kind of discrepancy one expects from the evidence of honest witnesses. One does ponder why an 81 year old aunt would bother to attend Court to perjure herself, but the learned Magistrate did see her and came to the conclusion that her emotions for her nephew got the better of her. I can see no reason, on appeal, for interfering with the convictions.

The sentences imposed for all offences, bar 406/92 resisting arrest, were reasonable fines. That was an appropriate approach to sentence. The appellant was a first offender and the offences were not the most serious of their kind. There was no reason, therefore, for the learned Magistrate to step out of that line of sentencing for the resisting arrest charge. The learned Magistrate erred in adopting a custodial approach to that sentence, albeit that a suspended sentence was imposed.

The appeal succeeds only to the extent that on charge 406/92, resisting arrest, for the sentence of 4 months imprisonment suspended for 2 years I substitute a fine of \$150 or 3 weeks imprisonment in default. One month to pay.



Judge

Dated this 23rd July, 1993