

IN THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO: ANUHCR2018/0144

BETWEEN:

THE QUEEN

and

SEPHROY JOHN

Appearances:

Mr. Curtis Cornelius, Counsel for the Crown
Mr Andrew O'Kola, Counsel for the Defendant

Before: The Honourable Mr Justice Colin Williams

2021: September 22nd, 23rd, 24th, 28th

JUDGMENT

Background

[1] **WILLIAMS J.:** On 29th August, 2016 there was a pay dispute between the Defendant, Sephroy John and the virtual complainant, Robert Mason, the employer. That dispute escalated from words into action. The Defendant is now charged with malicious damage to Mr. Mason's property. It is an offence contrary to section 44 of the **Malicious Damage Act Cap 258 of the Laws of Antigua and Barbuda Revised Edition 1992**.

[2] The '*Particulars of Offence*' (as amended) reads:

"Sephroy John on the 29th day of August 2016 at South Street in the Parish of Saint John in the State of Antigua and Barbuda unlawfully and maliciously damaged an Isuzu Motor Truck registration number C5488 valued at ECC\$4,615.00, the property of Robert Mason."

The Law

[3] Section 44 of the **Malicious Damage Act** states:

"Whosoever shall unlawfully and maliciously commit any damage, injury, or spoil to, or upon, any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, the damage, injury, or spoil being to an amount exceeding five hundred dollars, shall be guilty of a misdemeanor, and shall be liable to imprisonment for any term not exceeding two years, with or without hard labour, and in case any such offence shall be committed between the hours of nine of the clock in the evening

and six of the clock in the next morning, shall be liable to be imprisoned for any term not exceeding three years, with or without hard labour.”

- [4] The fundamental elements of the offence that the Crown is required to prove are that the Defendant:
- I. Damaged property of another person;
 - II. Acted unlawfully;
 - III. Acted maliciously;
 - IV. Caused damage in excess of \$500.00.
- [5] Put another way – in order to find Sephroy John guilty of the offence of malicious damage, the fact-finding forum must be satisfied that the Defendant:
- Had knowledge of the existence of the property;
 - Knew of the existence of a risk that his conduct may damage the property;
 - Was aware of the risk;
 - Proceeded with the offending conduct despite his awareness of the risk;
 - Caused damage without any lawful authority;
 - Understood that no such lawful authority existed; and
 - The damage was above the threshold.

Judge-Alone Trial

- [6] This matter was tried by a Judge sitting alone without a separate jury. This is because of the **Criminal Proceedings (Trial By Judge Alone) Act**, No 8 of 2021 which was assented to by the Governor-General on 28th May, 2021. Statutory Instrument 2021, No. 46 which was titled **Criminal Proceedings (Trial by Judge Alone) (Notice of Commencement Order)** was published in the Gazette appointing the 7th day of June, 2021, as the date the new law entered into force. The **Act** provides at section 4 (2) (h) that any person who is indicted for offences under the **Malicious Damage Act**, Cap. 241 “*shall be tried before a judge of the court sitting alone without a jury.*”

Crown’s Case

- [7] Robert Mason was in the recycling business. On afternoons he would collect discarded boxes from business places and take them to be recycled. He drove his Isuzu truck. The Defendant and another employee, Jania Mason, would “*break down*” the boxes and load them on the truck. The Defendant and Janiah would normally meet Mr. Mason at his home on South Street, St. John’s, around 5:00 p.m. Mr. Mason would then drive to the various locations collecting the discarded boxes. They would work until about 9:00 p.m.
- [8] On the afternoon of the 29th August, 2016 Mr. Mason did not meet the two employees at his home. Mr. Mason then drove to the corner of Temple and High Streets where as he said in his evidence in chief, “*I would make the first stop.*” Mr. Mason did not see the employees when he got to that location. Mr. Mason then went and picked up another person to assist in the loading of the boxes on the truck. When Mr. Mason returned to the corner of Temple and High Streets, he encountered the Defendant and Jania. Mr. Mason informed them that he was dismissing them.

- [9] The first of several arguments between the Virtual Complainant and the Defendant occurred at the corner of Temple and High Streets. The Defendant told Mr. Mason that because he (Sephroy John) was on the job, Mr. Mason could not fire him. The Defendant remained on the truck as Mr. Mason drove from the first location. When Mr. Mason arrived at the stoplight at the corner of Market and High Streets, he then *“recognized Sephroy in the truck”* and Mr. Mason sought the assistance of some police officers, who were in a police vehicle, to have the Defendant removed from his truck.
- [10] The Defendant informed the police that he was not going to get off the truck unless Mr. Mason paid for the work that was done. Mr. Mason told the police that he did not owe the Defendant any money as the Defendant and Jania had not done any work.
- [11] In the presence of the police Mr. Mason agreed that he would pay the two terminated employees \$15.00 each. They were told to go to Mr. Mason’s house later that evening to be paid. The police left.
- [12] Mr. Mason then proposed to the Defendant that he, (Sephroy John) and Jania could continue to work, but they would be only given half of their wages, amounting to \$30.00 each. That proposal was declined.
- [13] When Mr. Mason arrived home after 8:30 p.m., he met both the Defendant and Jania waiting on him. Mr. Mason told them that they had not done any work for \$15.00 each as they did not even take up a box. Mr. Mason said he went inside his house and the only money he had was a \$20.00 note. He then, along with the Defendant and Jania, went to a nearby shop, ‘Daily Fresh’, at the corner of South and Market Streets where he changed the \$20.00 note. Mr. Mason told the men that he was going to give them \$10.00 each. The Defendant refused to accept that sum and left.
- [14] Mr. Mason, along with Jania returned to his house at South Street. Mr. Mason said that when he arrived home, he saw the Defendant *“with a table banging it to the front part of the truck.”* Mr. Mason went into the truck, took out a cutlass and chased the Defendant away. The Virtual Complainant then heard stones hitting the fence. Mr. Mason said he went and hid behind a jeep as he wanted to see what the Defendant would do. Mr. Mason said:
- “Mr. John came back in the corner of Corn Alley and South Street. He looked around for a little while. He had some stones in his hand. He threw one straight into the truck, into the windshield. Then he ran back across, north on Corn Alley. I move from behind the jeep and look to see the damage. I saw the windshield shattered.”*
- [15] The Virtual Complainant said that the Defendant was about 10 feet away from the truck when the Defendant pelted the stone at the truck’s windshield.

Defendant’s Case

- [16] The Defendant pleaded ‘*not guilty*’. He acknowledged giving the caution statement to the police on the 31st August, 2016. He also accepted that he answered questions during an interview on the 26th March, 2017. At trial, Mr. John testified on oath.
- [17] Mr. John acknowledged that he did hit the truck with the table – but he was not banging it repeatedly against the truck. Mr. John said that when the Virtual Complainant returned from the ‘Daily Fresh’

shop, he, Mr. John, was seated on the domino table in front of the truck. He acknowledged that he was upset with the Virtual Complainant. He acknowledged that he did pelt stones at the Virtual Complainant when Mr. Mason was behind a galvanize fence. He however denies returning to the area and pelting a stone at the windscreen of the truck.

- [18] The Defendant testified that when he was offered \$10.00 while at 'Daily Fresh' shop, he refused that payment. *"I told him if I didn't get paid he will lose more than that. I told him that because I was upset."*
- [19] Mr. John testified that when he left 'Daily Fresh' and went to Mr. Mason's home: *"I took a table and hit the front of his truck. The bumper. I sat on the table and wait till they reach. My back was facing the front of the truck. Mason went straight to the truck and grabbed his cutlass. Mason swing the cutlass. I ducked and ran off... I picked up two stones and throw them behind a galvanize fence where he was scoping me. I ran up Corn Alley... I got picked up and went to another studio in Ottos."*
- [20] During cross examination, Mr. John admitted that he was displeased when the offer of payment from Mr. Mason went down to \$30.00, then \$15.00 then \$10.00.
- [21] Mr. John reiterated that upon leaving 'Daily Fresh': *"I went ahead of Mr. Mason to his house. I was upset. I banged the table on the truck then sat on it. I wasn't seated too long before Mr. Mason came... He reached into the truck. Got his cutlass and swing it at me... He swing the cutlass behind me. Mason started chasing me. I ran away. Grabbed two stones and threw them at Mason. I ran into Corn Alley."*

Other Witnesses

- [22] Jania Mason testified that on the day before the incident, the Virtual Complainant had a conversation with both the Defendant and himself. His understanding was that if they went to the Virtual Complainant's house and Mr. Mason was not there, then they both should proceed to start 'breaking down' the boxes and meet Mr. Mason at a designated spot. The witness said that when he and the Defendant went to Mr. Mason's house on the 29th August, 2016 they did not meet him. In keeping with the instructions received the previous day, the Defendant and Jania proceeded into town and commenced work. Jania said the Virtual Complaint was his uncle; and that uncle turned up later with another person on the truck and told the Defendant and Jania that they were fired because they came to work late.
- [23] Jania said when he and the Defendant went to his uncle's home the evening in question: *"My uncle and Sephroy was talking about some money. They were still arguing... After the argument died down, he (the Virtual Complainant) went to change the money to give us the little bit of money, like \$10.00 each. Sephroy was telling uncle to give him something extra; he wasn't satisfied."*
- [24] Jania went on to say in his testimony what he saw when he and the Virtual Complainant returned to his uncle's house from "Daily Fresh": *"Sephroy was in front of the truck sitting on a domino table. Uncle went in his truck for a cutlass. He came out swinging the cutlass. Sephroy duck. The cutlass hit in front of the truck. Sephroy run off to the next side of the road..."*
- [25] Jania said he then left; he went and spoke with someone who had a vehicle and then he went with the person to pick up Sephroy. They went to a studio.

- [26] The investigating officer, Amethyst Adams-George, also gave viva voce evidence. She said that she was on duty at the CID, St. John's Police Station, on the night of 29th August, 2016 when Mr. Mason made a report. She went to South Street where Mr. Mason pointed to a blue Isuzu truck and she *"observed a shattered wind screen. Also I saw a dent on the front bumper."*
- [27] Two days later Officer Adams-George saw the Defendant at the police station. She informed him of her investigations and cautioned him. The Defendant elected to give a statement to her, which she wrote down. The Defendant was then released from custody.
- [28] On 26th March, 2017 Officer Adams-George again saw the Defendant in police custody. She was present when Senior Sergeant Anthony cautioned the Defendant and conducted an interview. Officer Adams-George wrote down the questions and answers.
- [29] On 20th May, 2017 the Virtual Complainant handed over to Officer Adams-George an estimate in relation to the damage to the vehicle. The estimate was tendered and admitted into evidence without objection.
- [30] The estimate prepared by Vero George of Vero Auto Body Repairs is dated the 17th May, 2017. According to the estimate, the repairs would cost \$4,615.00. The estimate lists three items: Cost of windshield - \$2,000.00; Cost of material - \$515.00; and Cost of labour - \$2,100.00.
- [31] The caution statement and the interview were both tendered in evidence by the Crown. In the caution statement, the Defendant said: *"I ran up to his truck and knock the hood of the truck with a table."*
- [32] In the police interview, the Defendant said: *"I put the table in front of the vehicle and stood up in front of it. He went for his cutlass in the vehicle and swung it behind me then I shift away from the truck. When the cutlass know some part of the truck, I really don't know where. Then he started chasing me with the cutlass and stood up between the galvanise fence. I picked up two stones and threw it at the galvanise fence to frighten him so I could have time to take off."*
- [33] The Defendant was asked specifically about his state of mind and whether he damaged the vehicle:
- Q: *So is it honest to say that you were somewhat angry after you were fired?*
A: *Yes. A little anger was in me and I got more angry (sic) when he said he wasn't paying me.*
- Q: *Is it a possibility that the truck got damaged during the confusion unintentionally by you?*
A: *No.*
- Q: *Is it a possibility that while throwing stones to get away from Mr Mason who was running you with a cutlass as you stated you damaged the truck?*
A: *No. We were far away from the truck; actually we were around the corner.*
- Q: *Mr Mason said he saw when you throw a stone and hit the windscreen of his truck. Is that correct?*
A: *No.*
- Q: *Did you knock Mr Mason truck with a table?*
A: *Yes. On the bumper part when I thought he was getting away.*

Q: Did you damage Mr Mason truck when you use[d] the table and hit the truck?

A: No.

[34] Then later in the interview, there was this exchange:

Q: *Why didn't you waited (sic) for Mr Mason to pay you rather than going there to make confusion?*

A: *I never went to make a confusion. I went to get paid and he said he not going to pay me.*

Q: *After you realise you weren't getting paid, you got more upset and angry?*

A: *Yes, I did.*

Q: *Is it true to say that you said to yourself that you are not leaving Mr Mason property without getting paid and you will get paid by will or by force?*

A: *Yes. I did say that.*

[35] Five photographs taken by Corporal Philton Bascombe two nights after the incident, on the 31st August, 2016 were tendered in evidence by consent. Photograph number 1 showed the front of the vehicle. It is a mid-range shot. Any damage to the windscreen is more apparent in photographs No: 2 and No: 3. Photograph No: 2 is of the central area of the windscreen of the vehicle. Photograph No: 3 is a close up of the damage to the windscreen. The other two photographs are described by the photographer's caption as showing the firewall area of the motor vehicle and of showing a dented area on the firewall next to the right headlamp.

Crown's Applications

[36] The Crown made two applications that were denied.

[37] The first was to deem the witness Jania Mason hostile. The witness throughout his testimony referred to the Virtual Complainant as "*my uncle*." He was the other employee apart from Mr. John who was terminated by the Virtual Complainant on the 29th August, 2016. His statement to the police is recorded as being given at the St. John's Police Station in the presence of the Virtual Complainant who signed as witness. The statement is dated 13th May, 2017. The witness denied that the signature 'J. Mason' on the statement was his.

[38] In the written statement, it is recorded that the witness said: "*When we got to the house we saw Sephroy using a domino table to hit the front of my uncle's truck...*" However he did not state that bit in his evidence. The witness only referred to Sephroy sitting on the table in front of the truck.

[39] It was noted that Jania's statement to the police was dated the 13th May, 2017; that was almost nine months after the incident. While there can be no challenge to refreshing the witness's memory out of Court from the statement, the fact that it was not reasonably contemporaneous to the events referred to, was of some concern.

[40] The second application from the Crown was related to the first. Prior to closing its case, the Crown produced a Notice of Additional Evidence from Police Constable Annika Bowens. The content of Constable Bowen's statement was that she electronically recorded a statement from Jania Mason and that he signed it. However the Crown's application was denied since the testimony from the witness was not probative of any issue in the matter.

Credibility Considerations

- [41] Three witnesses testified to the essential facts of the case: the Virtual Complainant Robert Mason, the Virtual Complainant's nephew and former employee Jania Mason and the Defendant, Sephroy John.
- [42] Of the three witnesses who testified as to what transpired at South Street on the 29th August, 2016 I found the Defendant, Sephroy John to be the most forthright and credible. He impressed as a witness of truth. His testimony was coherent and logical. Mr. John readily acknowledged his state of mind on the evening in question. He spoke openly of what he said and did – even when his words and actions were potentially detrimental to his plea of not guilty.
- [43] The Virtual Complaint on the other hand at times seemed less than honest. On the day of the incident, there was a protracted disagreement with the Defendant, with Mr. John refusing to accept what the Virtual Complainant considered to be an unearned \$10.00. Then, according to Mr. Mason he sees the Defendant with a table *"banging it to the front of the truck... I said to him don't do that. But he refused to stop. He said if he don't get \$15.00 it is going to cost me thousands of dollars."* According to Mr. Mason, it is at this point that he *"opened the door of the truck, pull out my cutlass – machete – and I raise it up with my right hand. I say is either you stop or I am going to hit you. That was a joke I was making."*
- [44] It is difficult to imagine someone in those circumstances, having witnessed and heard what Mr. Mason said he did, arming himself with a weapon, warning the person, and despite all of that, not being serious but rather making a joke. The vehicle, as Mr. Mason accepted in cross examination, was used for business and if anything was to happen to it, his business would be affected. Why then would he be making a joke in the circumstances as they were?
- [45] There were a few instances where the testimony from the other witnesses was preferred to that from the Virtual Complainant. This is because the narrative that he presented did not seem reasonable nor logical. For example, both the Defendant and Jania spoke of the arrangement made the day before for them to meet at the corner of Temple and High Streets. Mr. Mason denies this. But in his testimony, he said when he left home, that the corner of Temple and High Streets is the location he went to; and that having gone there, he did not see either the Defendant or Jania, so he went and picked up someone else to work on the truck; then he returned to that precise location. He also denied under cross examination that he had no fixed system of operation as to where to start. He said that the starting point would depend on him - where he saw the most cardboard boxes. The only system, he said, was for Mr. John and Jania to meet him at his house: *"They don't know where I am going so I will have to take them."* So was it sheer coincidence that the point he chose to start on the 29th August, 2016 is the same point the witnesses went to and they all met up? Both the Defendant and Jania testified Mr. Mason told them the day before to meet him – corner of Temple and High Streets – that is the location they all went to.

Application

- [46] One may well consider that using a domino table, described by the Virtual Complainant as being 3' 6" square, to strike a vehicle is likely to cause damage. The Defendant acknowledges that he struck the front of the vehicle in the area of the bumper with the table. Officer Adams-George said that she saw damage to the front of the vehicle. The photographs exhibited in my view do not provide

conclusive proof that there was damage – notwithstanding the caption of the photograph 5 in particular describing “*a dented area on the firewall next to the right headlamp of C5488.*” The vehicle was taken to Vero Auto Body Repair for an estimate to be done with respect to repairs. But the estimate makes no mention whatsoever about any damage to the body of the vehicle or any cost for repairing this damage that the Police Officers referred to. It must be remembered that the law requires that the damage caused must exceed \$500.00. There was no proof of that.

- [47] The evidence from both the Virtual Complainant and the Investigating Officer, was that the windscreen was shattered. The case for the Crown was that the Defendant was teeming with anger; he threatened to cause the Virtual Complainant loss; he armed himself with a stone and approached the Virtual Complainant’s vehicle; he then fired the stone into the windscreen from about 10 feet away.
- [48] The photographs however appear to show no more damage than that which may occur as a result of debris being thrown up into the air by other vehicles while driving and causing a chip to the windscreen. Apart from the photographs which tell a completely different story to the viva voce evidence of the windscreen being shattered, it must be also noted that the incident occurred in August 2016, but it was not until the middle of May 2017 that an estimate to repair the windscreen was obtained. If the windscreen was indeed shattered, would there not be some urgency to have it replaced? Further, it is not unreasonable to expect that between obtaining the estimate and the date of trial in September 2021, if the actual work was done, then that fact of the actual cost of repairs would have been adduced. It is reasonable to infer that the vehicle continues to be driven with its “*shattered windscreen.*” It is difficult to imagine that someone of the Defendant’s physique pelting a stone into the windscreen of a vehicle from just 10 feet away and the damage to that windscreen being relatively minor – not being serious enough to interfere with the vision of the driver. In photograph number 1, the area of damage is not easily apparent.
- [49] The Virtual Complaint’s narrative as to how the windscreen got damaged – and not shattered as described by himself and the Investigator – is not believed.

Outcome

- [50] The Crown has failed to satisfy me as the fact finding forum, so that I am sure, that the Defendant is guilty of the offence as charged. In the circumstances, on the charge of malicious damage, I find Mr. Sephroy John not guilty.
- [51] The oral decision in this matter acquitting the Defendant of this offence was delivered on Monday 28th September, 2021. This written decision is being provided pursuant to the headnote of section 8 of the **Criminal Proceedings (Trial by Judge Alone) Act No 8 of 2021** which states: “*Judge to give reasons for conviction or acquittal.*”

COLIN WILLIAMS
High Court Judge

By the Court

Registrar