Neutral Citation Number: [2026] CA (Bda) 21 Crim

Criminal Appeal No 7 of 2026

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA
SITTING AS AN APPELLATE COURT
BEFORE THE HON ASSISTANT JUSTICE DOHERTY
CASE No. 12 of 2025

Dame Lois Browne-Evans Building
58 Court Street
Hamilton HM12
Bermuda

Date: 20 November 2026

Before:

THE HON IAN KAWALEY, PRESIDENT
THE HON NARINDER HARGUN, JUSTICE OF APPEAL
and
THE RT HON SIR GARY HICKINBOTTOM, JUSTICE OF APPEAL

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Between:

KYLE JEAN SMITH

Appellant

- and -

THE KING

Respondent

Appearances: **Mr Michael Scott, Browne Scott for the Appellant**
Mr Adley Duncan, Acting Deputy Director of Public Prosecutions for the Respondent

Hearing date(s): 3 November 2026
Date of Judgment: 20 November 2026

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HICKINBOTTOM JA:

Introduction

1. On 14 March 2025, before the Worshipful Acting Magistrate Cristen Suess, the Appellant Kyle Jean Smith ("the Appellant") was found guilty of two offences:

    (i) by conduct, threatening James Guishard with injury to his person or property with intent to cause him alarm contrary to section 332 of the Criminal Code Act 1907, which provides, so far as relevant: "Any person who… by written word or spoken word or conduct, threatens another with any injury to his person… with intent to cause alarm to that person… is guilty of a summary offence…";

    and

    (ii) resisting Police Officer Kristyn Minors when such officer was acting in the execution of her duty contrary to section 2(n) of the Summary Offences Act 1926 which provides, so far as relevant:

    > "Any person who… resists or willfully obstructs or assaults a police officer… whilst such an officer is acting in the execution of his duty… commits an offence against this Act".

2. The Appellant's appeal against those convictions was refused by the Honorable Assistant Justice Doherty on 26 January 2026.

3. By a Notice of Appeal dated 19 February 2026, the Appellant appealed to this Court out of time.

4. The appeal was only six days out of time, no point was taken by the Crown in respect of that lateness, and I have considered the reasons for it. Having done so, I would extend time so that this appeal is in time.

Background

5. Ms. Juanita Guishard ("Ms. Guishard") lived with her son, Jonathan Guishard ("Jonathan"), at 9 Wyndham Hill, Hamilton Parish ("the Property"). In February 2023,

Ms. Guishard was diagnosed with dementia, Jonathan effectively being her carer. Jonathan's name was added to the deeds of the Property as a co-owner.

6. At a time when Ms. Guishard may have been mentally incapacitated, Jonathan allowed the Appellant and his girlfriend to move into the Property and entered into a lease agreement with them in respect of several rooms at the Property. Ms. Guishard and Jonathan continued to live in the other rooms. Jonathan's brother, James Guishard ("James") was effectively banned from the Property, and he sought a Receivership Order in respect of his mother's (Ms. Guishard's) property which was granted in August 2023.

7. After a hurricane which caused a power outage, James moved his mother out of the Property and into his own house. James alleged that, on four occasions, he tried to recover his mother's property from the Property but each time was blocked from doing so by the Appellant.

8. Jonathan died on 16 October 2023.

The Events

9. In respect of the events that led to the charges against the Appellant, it was James' evidence (and the prosecution case) that James went to the Property on 25 October 2025 when the Appellant and he had a verbal altercation, the Appellant telling James that only Ms. Guishard could make him leave the property.

10. When James returned to the Property on 27 October 2023, the Appellant's car was not there, and James noticed that the new locks he had put onto the Property had been removed. On entering the Property, he saw that items were missing, including his mother's jewelry. He called the police. The police arrived in the form of Hector Cammock, a Consultant for the Forensic Support Unit of the Bermuda Police Service ("Mr. Cammock") who had been told there had been a burglary at the Property. However, as the Property had been partly boarded up and it was getting dark, they left the Property with a view to returning the next day.

11. James returned to the Property the following day. The Appellant's car was there, blocking the driveway. James entered the Property, and removed machetes and knives he found there, because (he said) he did not want to have a confrontation with the Appellant with weapons around. He then went back to his car, which was on the road outside the Property, and rang his wife whilst waiting for the police to arrive.

12. Whilst waiting, he saw the Appellant with a baseball bat approaching him whilst he was still in his car, yelling that he was going to "mess [James] up". He said that, as a result, he was fearful.

13. Mr. Cammock then arrived and saw the Appellant with a baseball bat and then with a piece of 4x2 timber.

14. The police having been contacted because, they were told, Mr. Cammock was in need of assistance, Officer Minors attended. Mr. Cammock identified the Appellant as the suspect who had threatened him, and Officer Minors went to detain him. She asked the Appellant to put his hands on the police car, but he refused and pulled his left hand from the officer and put it in the air out of her reach. Two other officers intervened, and the Appellant was forcibly arrested.

The Criminal Proceedings

15. Those events led to the Appellant being charged with several offences, of which the following remained extant at the time of the trial before the Magistrate:

    (i) intimidation of James, contrary to section 322 of the Criminal Code Act 1907 (Count 1);
    (ii) intimidation of Mr Cammock, contrary to the same provision (Count 2);
    (iii) resisting arrest, contrary to section 2(n) of the Summary Offences Act 1926 (Count 3); and
    (iv) intimidation of a further police officer who attended the scene, Officer Jackman (Count 5).

16. He was found guilty on Counts 1 and 3.

17. In respect of Count 1, the Magistrate said in her reasoned ruling:

> "Regarding Count 1, having considered the evidence of James…, in its entirety, but especially the portion of his testimony wherein he states that the [Appellant] said that he was going to "mess [him] up". The Court is satisfied that the [Appellant] did utter such a threat to [James] and that the said utterance was intended to cause alarm to [James]. To this end, the Court is satisfied, beyond all doubt, so that it feels sure that on October 28, 2023, the [Appellant] threatened [James], with intent to cause alarm to him, contrary to section 322 of the Criminal Code Act 1907."

18. In respect of Count 3, the Magistrate said this:

> "… In respect of Count 3, the Court has considered the evidence of Officer Minors, who testified that the [Appellant] failed to comply when she instructed him to put his hands on the police car and when she attempted to detain and handcuff the [Appellant], that he pulled his left hand away from

> her and put it above his head, out of her reach. This testimony was corroborated by Officer Jackman who stated in his testimony that he observed the [Appellant] 'pulling his arms away' from Officer Minors when she was attempting to detain him…
>
> The [Appellant] denies resisting arrest, testifying that he asked Officer Minors what she was arresting him for. The Court, however, accepts the evidence of Officer Minors, and subsequently corroborated by Officer Jackman, that the [Appellant] resisted Officer Minors whilst she was acting in the execution of her duty, contrary to section 2(n) of the Summary Offences Act 1926, and on that basis the Court finds the [Appellant] guilty of Count 3 of the Information."

19. The Appellant appealed to the Supreme Court, where Assistant Justice Doherty dismissed the appeal.

20. In respect of Count 1, the Judge accepted that, although it was not raised before her, the Magistrate ought to have considered the Appellant's right to defend the property he was renting under section 253 of the Criminal Code which provides:

> "It is lawful for any person who is in peaceable possession of a dwelling house… to use such force as he believes, on reasonable grounds, to be necessary in order to prevent the forcible breaking and entering of the dwelling house, either by night or day, by any person whom he believes, on reasonable grounds, to be attempting to break and enter the dwelling house with intent to commit any indictable offence therein."

21. However, having analysed the facts in some detail, the Judge concluded that, even if the Magistrate erred in not considering section 253:

> "This is a situation in my view where the proviso in section 18(1) of the Criminal Appeals Act 1952 should be applied, since there is no miscarriage of justice has occurred by the failure to consider the defence. The defence had no chance of success. [James] was not on the property or attempting to enter the property at the time the threat was uttered and the Appellant would not meet the objective standard of having a reasonable belief that [James] was attempting to break into the property at the material time as required for section 253 to apply."

22. In respect of Count 3, the Judge set out the ground of appeal, and why it failed, thus:

> "Mr. Scott submitted that the officer had no basis to arrest or detain the Appellant at the time because the Appellant was a tenant exercising his lawful

> authority in respect of his property. It was also suggested that the officer was without a basis to arrest because she had only hearsay evidence of a possible offence committed by the Appellant.
>
> In my view this ground is without merit. A police officer is entitled to rely on information received from other officers and witnesses in order to form the grounds for a lawful arrest. Here the officer had clear grounds to arrest the Appellant. She had received information that he threatened another officer with a baseball bat and that officer had pointed the Appellant out to he as the culprit. These are ample grounds for arrest, and it was incumbent on the officer to effect that arrest as part of her duties.
>
> The Appellant denied he resisted arrest but that was never put to Officer Minors or Officer Jackman in cross-examination by the Appellant's counsel. It is obvious from the record that the Magistrate accepted the evidence of the officers and rejected the evidence of the Appellant on this point."

The Appeal to this Court

23. Mr. Scott on behalf of the Appellant contended before this Court that the Judge erred in respect of each count.

24. In respect of Count 1, he submitted that the Appellant had lawful cause to threaten James because he (the Appellant) was a tenant of the Property; he was entitled to quiet enjoyment of the Property; and he was entitled to take such steps as were necessary to protect that quiet enjoyment either under section 253 or (as I understood his argument) under the general law entitling a tenant to quiet enjoyment of his property.

25. However, there is no force in this ground. Insofar as it was not common ground, on the evidence, the Magistrate was clearly entitled to find, as she did, that the Appellant uttered the threat (that the Appellant was going to "mess [James] up") and that that utterance was intended to cause alarm to James. Insofar as Mr. Scott sought to submit before us that there was insufficient evidence for the Magistrate to conclude the Appellant intended to cause James alarm, I reject that: the circumstances as set out in the evidence, including the fact that James was in fact alarmed, give ample evidence upon which that factual finding could be made. The elements of the offence had therefore been made good, subject to there being any lawful reason for such a threatening utterance to be made.

26. The Judge found that section 253 did not provide the Appellant with any justification or defence because, on the evidence, whilst the Crown accepted that the Appellant was a tenant of part of the Property, whatever he subjectively thought about his rights as a tenant, the Appellant did not have reasonable grounds for believing that James was attempting to break in when he uttered the threat. At the time, James was in his car which

was not on the Property, on the phone to his wife and waiting for the police to arrive. The Judge did not arguably err in concluding to the appropriate standard of proof that, on the evidence, the Appellant had no reasonable grounds for any belief that he might have had that James was attempting to break in when he uttered the threat. Belief to that objective standard is a requirement of any defence based on section 253.

27. The Appellant's reliance on his right to quiet enjoyment of the property he leased does not add anything to the section 253 point: one can only protect one's quiet possession of property lawfully, and one cannot commit a criminal offence to do so. The only way in which the Appellant could lawfully utter threats intending to cause alarm in the circumstances he uttered them to James is if he fell within the scope of section 253.

28. For those reasons, I would dismiss the appeal in respect of Count 1.

29. The focus of the appeal before us was on Count 1, but Mr. Scott maintained the appeal in respect of Count 3. He submitted that Magistrate and the Judge erred in upholding the conviction on that count, because Officer Minors was seeking to arrest the Appellant for intimidating Mr. Cammock in respect of which she was called to the scene but the court concluded that the Appellant committed no offence against Mr. Cammock. However, it is trite law that a police officer is able to arrest on the basis of reasonable suspicion of the individual having committed an offence. There was more than sufficient evidence upon which the Magistrate could conclude that the officer reasonably believed and suspected that the Appellant had committed arrestable offences against Mr. Cammock and others which warranted his arrest.

Conclusion

30. For those reasons, I do not consider any of the grounds of appeal have been made good. In my view, the convictions are sound; and I would dismiss this appeal.

HARGUN JA:

31. I agree.

KAWALEY P:

32. I also agree.