[2024] JMCA Crim 22

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MRS JUSTICE G FRASER (AG)

PARISH COURT CRIMINAL APPEAL NO COA2021PCCR00002

ANTHONY CURTIS v R

Ms Jacqueline Cummings for the appellant

Mrs Sharon Millwood Moore and Mrs Christina Porter for the Crown

30 September 2021 and 17 May 2024

Criminal law- Extortion - Whether the learned Parish Court Judge erred when he found the ingredients of the offence of extortion were proven based on the evidence - Whether the learned Parish Court Judge erred when he held that there was a case for the Appellant to answer – Whether the verdict was unreasonable having regard to the evidence and the inconsistencies in the Crown's case - The Larceny Act, section 42A

F WILLIAMS JA

[1] On 30 September 2021, when this appeal came on for hearing, with a promise that brief reasons were to follow, we made the following orders:

(i) Appeal dismissed.

(ii) Conviction and sentence affirmed.

This judgment is a fulfilment of that promise, with apologies for its late delivery.

Background

[2] The appellant was convicted on 31 March 2017 by a judge of the Parish Court for the parish of Saint Catherine ('the learned judge') for the offence of extortion, contrary to section 42A of the Larceny Act ('the Act'). The learned judge imposed a fine of $100,000.00 or, in the alternative, three months' imprisonment at hard labour.

Summary of the Crown's case

[3] The facts as found by the learned judge and which gave rise to the conviction were that on 2 June 2010, the appellant, an employee of the Jamaica Public Service Company Limited ('JPS'), went to the premises of the complainant and informed her that he was there to take out her JPS meter. She permitted him to enter her house. After making checks and realising that there was electricity in the house, powering her freezer and television set, whilst her meter was not registering the use of electricity, the appellant exclaimed: "is prison work this". The complainant had an illegal electrical connection. He further informed her that for what he had observed: "is fifty thousand dollars ($50,000.00) if you go to court". The evidence continued that the appellant asked the complainant: "what can you do for me?" She asked him what he meant by that and he responded: "give me $20,000.00". He stated that he was working with the police and took out his cellular telephone as if to make a call. She gave him $15,000.00, which she said was the money that she had to pay her rent. The denominations in which the money was given was 13, one thousand dollar notes (13 x $1,000.00) and four, five hundred dollar notes (4 x $500.00).

[4] When leaving, the appellant instructed the complainant not to tell her neighbours about what had taken place between them. A note was made of the licence plate of the vehicle that the appellant was driving at the material time and the complainant told her landlord of the incident. Her son (who was a witness to what had occurred on the appellant's visit to the premises) informed the JPS of what the appellant had done. The complainant and her son later went to the nearby police station where, in the presence of other JPS personnel, the appellant denied taking any

money from her. The sum of $15,000.00 was taken from the appellant's wallet in the same denominations that the complainant told the police that they were in (and that she later testified that they were in) when she gave him the money. That was done by a policeman they knew by the nickname "Troubles". The complainant did not make a formal report to the police at that time; but one was later made and the appellant was arrested and charged.

Summary of the defence

[5] The appellant, in sworn testimony, denied demanding or receiving any money from the complainant. He testified that he had been seated in the van he was driving on the day in question when the complainant approached him, asking whether it was her house that he was looking at. They spoke and he entered the complainant's premises; but only to inspect the meter. He denied using any of the words attributed to him by the complainant. He made a complaint to the police about the policeman's taking money from his wallet to give to the complainant. It was the investigation of that complaint that later led to his being charged and convicted.

Summary of the learned judge's decision

[6] The learned judge reviewed the evidence of the main witnesses. He also reviewed the section of the Act under which the appellant was charged, and identified what he considered to be the elements of the offence. He focused in particular on what constitutes a menace and found that a demand with a menace within the meaning of the Act had been made by the appellant in the instant case. He arrived at this view after reviewing the cases of: (i) **Thorne v Motor Trade Association** [1937] AC 797; (ii) **R v Tomlinson** [1895] 1 QB 706; and (iii) **R v Collister and Warhurst**

[1955] 39 Cr App R 100. He also had regard to the definition of the word "menace" in the Oxford Student's Dictionary. After rejecting the appellant's testimony, he found that all the elements of the offence had been made out on the Crown's case and found the appellant guilty.

The appeal

[7] Being dissatisfied with his conviction, the appellant, through his lawyer, filed and argued several grounds of appeal. They are as follows:

> "1. The learned Parish Judge erred when he found the ingredients of the offence of extortion were proved based on the evidence presented to the court.
>
> 2. The Parish Judge erred when he held that there was a case for the Appellant to answer on the evidence presented by the crown.
>
> 3. The verdict was unreasonable having regard to the evidence given in the matter and the glaring inconsistencies in the Crown's case."

Ground 1: The learned Parish Judge erred when he found the ingredients of the offence of extortion were proved based on the evidence presented to the court.

Summary of submissions

For the appellant

[8] On behalf of the appellant, Ms Cummings submitted (after reviewing section 42A of the Act, under which the appellant was charged) that the Crown at trial had not established all the elements of the offence of extortion, in particular the element of menace. On the authority of **R v Clear** [1968] 1 QB 670, she argued (at para. 15 of her written submissions) that menaces are serious or significant threats and are:

> "…threats and conduct of such a nature and extent that the mind of an ordinary person of normal stability and

> courage might be influenced or made apprehensive so as to accede unwillingly to the demand would be sufficient for a jury's consideration."

[9] In relation to the test, the excerpt from that case that she referred to (at para. 16 of her submissions) reads as follows:

> "The test of the menaces must be your answer to the question 'Were the menaces such – if any are proved – that they were likely to operate on a person ordinarily firm and courageous minded?"

[10] Ms Cummings submitted that there were no words or conduct on the part of the appellant which could intimidate or influence any person. She further referred to a dictum in **R v Boyle and Merchant** [1914] 3 KB 339, that:

> "If the **threat is of such a character that it is not calculated to deprive any person of reasonably sound and ordinarily firm mind of the free and voluntary action of his mind** it would not be a menace within the meaning of the section." (Emphasis as in the appellant's written submissions)

[11] Further advancing the appellant's case, Ms Cummings referred to the case of **Thorne v Motor Trade Association**, in which Lord Wright opined that the word "menaces" is to be liberally construed and was not limited to threats of violence, but includes threats of any action detrimental, or unpleasant to the person addressed.

[12] It was also argued that care had to be taken in using some of the cases referred to, as some of them dealt, not with extortion, but with other offences with different elements, such as demanding money with menaces, bribery and so on.

For the Crown

[13] On behalf of the Crown, it was submitted that this ground of appeal should fail as the learned judge carefully scrutinized the elements of the offence in his summation

and that there was sufficient evidence elicited at trial to establish the offence. The learned judge had considered both the dictionary meaning of the word "menace" and the meaning discussed in the various cases in coming to the correct decision that menaces were used by the appellant. The Crown submitted that the demand was to be seen in the question that, on the evidence, the appellant asked of the complainant: to wit, "what can you do for me?" and the request for $20,000.00.

[14] The facts of this case were similar to those of **R v Collister and Warhurst**, on which the learned judge relied, it was submitted. On the facts of this case (the argument continued) the menace was made before the demand and consisted in the declaration: "is prison work this!" and that "is $50,000.00 if you go to court"; as well as the indication that he was working with the police, as he took out his phone, as though he was about to make a call. The Crown submitted that the appellant's words relating to prison, court and the police, "were used as a warning to leverage the demand which followed" (see para. 14 of the respondent's written submissions). It was clear, as the learned judge found, it was submitted, that, from the appellant's utterances, the complainant would have perceived that there was a real threat that she would have been arrested, had she not paid the money. Apart from those two elements, the third (the demand having been made with a view to gain for himself), was also made out, the sum handed over, in the denominations to which the complainant testified, having been found in his wallet.

Discussion

[15] The indictment pursuant to which the appellant was charged, was, after amendment without objection, framed in the following terms:

> "Anthony Curtis on the 2nd day of June 2010 in the Parish of St Catherine with a view to gain for himself or another makes [sic] any [sic] unwarranted demand with menaces for the sum of $15,000.00 from Miss Etta Williams" (Emphasis added)

[16] It is convenient at this point to set out the provisions of section 42A of the Act, which speak to the elements of the offence to be proven. As the provisions of the Act are read, a similarity will be seen between its provisions and the underlined portions of the words of the indictment. Section 42A of the Act reads as follows:

> "42A.-(1) Every person who-
>
> (a) with a view to gain for himself or another; or
>
> (b) with intent to cause loss to another,
>
> makes any unwarranted demand with menaces, shall be guilty of the offence of extortion.
>
> (2) For the purposes of this section-
>
> (a) a demand with menaces is unwarranted unless the person making the demand, satisfies the Court that-
>
> (i) he has reasonable grounds for making the demand; and
>
> (ii) the use of the menaces is a proper means of reinforcing the demand;
>
> (b) 'gain' and 'loss' mean a gain or loss, respectively, in money or other property, including an office or employment, whether or not for remuneration, whether temporary or permanent and, for the purposes of this definition-
>
> (i) 'gain' includes a gain by keeping what one has, and a gain by getting what one has not; and
>
> (ii) 'loss' includes a loss by not getting what one might get and a loss by parting with what one has;
>
> (c) the nature of the act or omission demanded is immaterial and it is also immaterial whether or not the

> menaces relate to action to be taken by the person making the demand.
>
> (3) A person who commits an offence under subsection (1) shall be liable-
>
> (a) on conviction before a Resident Magistrate to imprisonment with hard labour for a term not exceeding five years;
>
> (b) on conviction in a Circuit Court to imprisonment for a term not exceeding fifteen years."

[17] From a comparison of the words in the indictment on which the appellant was tried and convicted, on the one hand, with the words of section 42A, on the other, it is clear that some four elements must be proven: (i) a demand must have been made; (ii) it must have been made with a menace; (iii) it must have been made with a view to the maker of the demand getting some benefit for himself or another person; and (iv) the demand must be unwarranted.

[18] To our minds, in the circumstances of this case, careful regard has to be paid to the words that, on the Crown's case, were said to the complainant. This is so in order to see whether it can fairly be said that a demand was in fact made, and that it was made with a menace. It is important to bear in mind the wider circumstances in which the interaction took place between the complainant and the appellant, as given in evidence and accepted by the learned judge.

[19] The evidence discloses that the appellant, an employee of the JPS, was a part of a team engaged in visiting residential premises to detect illegal connections or persons illegally abstracting electricity or trespassing on the works of the JPS. In fact, on the appellant's own evidence, he was assigned to "the Asset Protection Department and Risk and Asset Management". He said: "The role of that department is to carry

out investigation in the Company [sic] power line and equipment which includes meter investigation and tampering of the company equipment and power line". On the appellant's evidence, the team was in fact travelling in the company of the police or performing the job with police assistance because the area in which the complainant lived was what he described as a "red area", meaning that, when doing their job in that area, the team would be likely to "come under force".

[20] The substance of his testimony of his interaction with the complainant and her son was of an amicable interaction, at the end of which he gave her a card to visit a JPS office to have her electricity supply regularized. He was later called by his supervisor and requested to go to the police station.

[21] The complainant herself testified to having had an illegal connection at the material time; and, on it being discovered, asking for her son to be allowed to disconnect it. The words that the learned judge found were uttered by the appellant that amounted to a demand with a menace were: "is prison work this"; "if yu go to court it is $50,000.00"; "what can you do for me"; "give me $20,000.00" He also accepted that the appellant, whilst taking out his phone as if to make a call, told the complainant that he was working with the police, who were in Newlands (a nearby community).

[22] Accepting those words as having been said by the appellant was a finding that was open to the learned judge, the matter being largely one of fact and credibility. The learned judge having accepted that the appellant said those words, it only remained for him to relate the evidence to the elements that needed to be proven.

[23] Both the Crown and the appellant, as well as the learned judge, relied on the case of **R v Collister and Warhurst**. It will, therefore, be useful to give some consideration to that case. It was a case in which two young police officers were found guilty of demanding money by menaces and were sentenced to two years' imprisonment. Jeffries (the complainant in that appeal) testified to being approached by Collister who told him that he was on leave from the Merchant Navy and was broke. Jeffries said that Collister should accompany him to his hotel, where he would arrange a night's lodging. As they walked together, Warhurst appeared. Collister told Jeffries that Warhurst was his sergeant (which he was not) and told Warhurst that Jeffries had importuned him for homosexual purposes, a criminal offence. Warhurst told Jeffries that "This is going to look very bad for you".

[24] Jeffries got the impression from what thereafter ensued that the appellants were trying to get money from him. In Jeffries' presence, Warhurst told Collister to type out a report but not to use it unless Jeffries failed to meet with them as promised. (He had arranged to meet with them the following night.) Jeffries also reported the matter to the police. When they met, Warhurst asked Jeffries whether he had brought anything and Jeffries, on instructions from the police, handed over £5.00. They were then arrested. They testified that they had, in fact, been importuned by Jeffries and that the money handed over was meant for them to buy a drink. The main ground on which the appeal was brought to the Court of Criminal Appeal was that the trial judge was wrong in leaving the case to the jury, as neither a demand nor a menace was proved by the prosecution. It was argued that, to constitute the offence, it was "necessary that there should be some actual substantive demand, either express or

by an unequivocal gesture", which was absent from the case. The appeal was dismissed, the court holding, so far as is relevant, (as captured in the headnote), that:

> "On a charge of demanding money by menaces, an actual substantive demand, either express or by unequivocal gesture, is not an essential ingredient of the offence, nor need the menaces be express. If, although there has been no such express demand or threat, the demeanour of the prisoner and the circumstances of the case are such that an ordinary reasonable man would understand that a demand for money was being made on him, and that demand has been accompanied by menaces, whether direct or veiled, so that the balance of an ordinary mind would be likely to be upset, these two elements of the offence are established."

[25] At page 106 of **R v Collister and Warhurst**, Hilbery J observed:

> "There was abundant evidence on which the jury could find, from the circumstances, that there was a demand intended and conveyed, as the judge pointed out, and it was a demand accompanied by instilling into the person to whom it was made the fear of a prosecution for importuning for an immoral purpose. In the circumstances this court is unable to do other than dismiss the appeals."

[26] In our view, the words spoken by the appellant to the complainant in this case amounted to an express demand. They were: (i) "what can you do for me?" (ii) "give me $20,000.00; (iii) "how much you have"; and (iv) "I'll take it" (when the complainant said that all she had was $15,000.00). The menace was the threat of arrest and prosecution and can be seen in the following words: (i) "is prison work this"; (ii) "Is $50,000.00 if yu go ah court"; and (iii) "I am working with the police". The offence? That of illegally abstracting electricity contrary to section 15 of the Larceny Act, an offence punishable with a maximum of five years' imprisonment on conviction before a judge of a Parish Court.

[27] In our view, the instant appeal is a stronger case than **R v Collister and Warhurst**, as there was a conviction in that case, although no money was expressly requested, as in the instant case, as the evidence indicated. If there could have been a conviction in **R v Collister and Warhurst** there could, all the more, also reasonably have been one in this case. However, if, for the sake of argument, we are in error in this case in concluding that the demand and menace were express, then, clearly, there is enough of an implicit demand and menace to make it irrefutable that the conviction is properly grounded. In the words of Hilbery J in **R v Collister and Warhurst**: in the instant case, "it was a demand accompanied by instilling into the person to whom it was made the fear of a prosecution…".

[28] It appears to us that the other cases cited also support the view that there was a demand made with a menace in the instant case. For example, the case of **Thorne v Motor Trade Association** makes it clear that the word "menace" should be given a liberal, and not a restricted, meaning. It also makes the point that a menace need not be in the form of a threat of physical violence; but may raise the spectre of some unpleasant consequence for the person against whom the demand with a menace is made.

[29] In addition, Halsbury's Laws of England, Criminal Law (Volume 25 (2020), paras. 1–552; Volume 26 (2020), paras. 553–1014) is also relevant in expounding on the definition of the term "menace". It states:

> "'Menaces' is given a wide meaning: it is not limited to threats of violence, but includes threats of any action detrimental to or unpleasant to the person addressed, and may also include a warning that in certain events such action is intended. To constitute 'menaces' the threats or

> conduct must be of such a nature and extent that the mind of an ordinary person of normal stability and courage might be influenced or made apprehensive so as to accede unwillingly to the demand."

[30] It will be recalled that in **R v Boyle and Merchant**, there was the requirement that, to stand the test of being a true menace, the words used must be "calculated to deprive any person of reasonably sound and ordinarily firm mind of the free and voluntary action of his [or her] mind…". In our view, that requirement was met, in the trial below, it having been solely within the remit of the learned judge to ascertain whether the complainant was "of reasonably sound and ordinarily firm mind…". The request for the payment of the money to the appellant was reinforced with the mention of a consequence that no reasonable person would want – that is, either having to go to court and pay more than twice what he was requesting, or, worse, be sent to prison. On the words that the learned judge found were said by the appellant to the complainant, it is also apparent that the complainant would have been "made apprehensive so as to accede unwillingly to the demand…", as discussed in **R v Clear**.

[31] The position is similar with respect to the case of **R v Tomlinson**. In that case, the principle, which was sufficiently enunciated in the headnote, reads as follows:

> "In order to constitute the offence of sending a letter demanding money with menaces, within the meaning of 24 & 25 Vict. c. 96, s. 44, it is not essential that the 'menace' should be a threat of injury to the person or property of the prosecutor, or a threat to accuse him of a crime; the offence may be committed if there be a threat to accuse him of misconduct not amounting to an offence against the criminal law."

[32] In that case, the menace accompanying the demand was to expose the prosecutor's alleged adultery to his wife and friends, adultery not being a criminal

offence. In the instant appeal, the menace related to a possible prosecution for a criminal offence, so the conviction here is all the more justifiable. Also, in **R v Tomlinson**, the judges were unanimously of the view that the word "menace" ought "to receive a liberal construction in practice…".

[33] Having established the meaning of "demand" and "menace", and that both elements of the offence were proven in the trial below, we may now consider the other elements of the offence. First, consideration may be given to whether the demand was unwarranted. It may be helpful to rehearse the particular sub-section of the Act that is relevant. That is section 42A (2)(a). It reads as follows:

> "(2) For the purposes of this section –
>
> a demand with menaces is unwarranted unless the person making the demand, satisfies the Court that –
>
> (i) he has reasonable grounds for making the demand; and
>
> (ii) the use of the menaces is a proper means of reinforcing the demand;" (Emphasis added)

[34] It will be recalled that, on the Crown's case, there was nothing stated in evidence to suggest that the demand was warranted at all. On the Crown's case, when the appellant, on leaving, advised the complainant and her family members not to tell their neighbours about their interaction, implicit in that was the inference that it was something clandestine, unusual and should not be brought to the attention of others. Additionally, however, sub-section 42A(2)(a) shifts the burden of proof at this stage of the consideration of whether the menace was warranted, requiring a defendant to show that it was, in fact, warranted. This, on the evidence, the appellant did not do. His defence, it is to be remembered, was a complete denial of the interaction of which

the Crown's witnesses testified. His contention was that he made no demand at all and received no money. He did not contend, for example, that he was collecting the money on behalf of his employer, the JPS. In the circumstances, therefore, the learned judge having accepted that a demand was made and that it was made with a menace, was entitled, on the evidence, to conclude that that demand was unwarranted.

Was the demand with a menace made with a view to gain for himself or another; or with intent to cause loss to another?

[35] These are the considerations outlined in section 42A(1)(a) and (b) of the Act.

[36] On the Crown's case, which was accepted by the learned judge, the money that the appellant demanded with a menace and received was money that the complainant told him was for the payment of her rent. However, even if she had not disclosed the particular purpose for which she had the money, the demand that the court found was made by him, if met, would necessarily involve money leaving the complainant's hands and going to his. This element was therefore proven as well.

[37] Ground one was, therefore, clearly not made out.

Ground 2: The Parish Judge erred when he held that there was a case for the Appellant to answer on the evidence presented by the crown.

[38] The learned judge refused the no-case submission that was made during the trial. The submission was made on the basis of the first limb of **R v Galbraith** (1981) 73 Cr App R 4, the relevant portion of which reads as follows:

> "…[W]hen a submission of no case was made the case was to be stopped when there was no evidence that the person charged had committed the crime alleged and was also to be stopped if the evidence was tenuous and the judge concluded that the prosecution's evidence taken at its highest was

> such that a properly directed jury could not properly convict on it; ..." (Emphasis added)

Summary of submissions

For the appellant

[39] It was submitted on the appellant's behalf (see para. 30 of the appellant's written submissions) that:

> "As outlined under the previous issue, the element of menace was not proved. It is the Crown's duty to prove all the elements of the offence. Where this is not done as seen in Galbraith, the judge cannot be seen to be able to properly direct a jury to properly convict upon it and as such contravened his duty, upon a submission being made, to stop the case."

For the Crown

[40] For the Crown, on the other hand, it was submitted at para. 30 of the Crown's written submissions dated 24 September 2021, that:

> "30. Based on the evidence elicited during the trial, we submit that there was evidence which a jury properly directed could possibly convict on and as such the Judge properly called upon the accused to answer as he had a duty to leave it to his jury mind. We submit the evidence was not of a tenuous nature."

Discussion

[41] Also of relevance to a discussion of this ground of appeal is **Practice Direction (Submission of No Case)** [1962] 1 WLR 227, in which Lord Parker CJ made the following observations:

> "A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence to prove an essential element in the alleged offence; (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so

> manifestly unreliable that no reasonable tribunal could safely convict upon it." (Emphasis added)

[42] Having spent some time, in discussing the first ground of appeal, to show that all the elements of the offence had been made out at the end of the Crown's case, including the important element of the menace, it should be apparent that there is no merit in this ground of appeal. This ground of appeal has therefore not been made out.

Ground 3: The verdict was unreasonable having regard to the evidence given in the matter and the glaring inconsistencies in the Crown's case.

Summary of submissions

For the appellant

[43] In relation to this ground, counsel for the appellant relied on the following cases: (i) **Taibo (Ellis) v R** (1996) 48 WIR 74 and **R v Locksley Carroll** (1990) 27 JLR 259. The main submissions were that, (i) in a matter such as this, the evidence needed to have been scrutinized more in order for the verdict to have been safe; and (ii) as set out in para. 34 of the appellant's written submissions:

> "34. We submit that the Learned Trial Judge was mistaken when he held that the inconsistencies between the complainant and her son were not material. Also, the Judge failed to reconcile the inconsistency between the complainant when she said the money, she that [sic] was collected by her from Western Union when Constable Travis Brown's investigation did not reveal any such transaction. The Trial Judge also did not reconcile the statement that Constable Travis Brown said about the ambiguities in the complaint statement that led him to collect a further statement."

For the Crown

[44] On the Crown's behalf, reliance was placed on the arguments advanced in respect of ground one. It was also submitted (see para. 33 of the Crown's written submissions) that:

> "33. The judge addressed his mind to the inconsistencies and rightly left the matters of credibility to his jury mind."

Discussion

[45] In his findings, the learned judge acknowledged that there were discrepancies in the evidence between the evidence of the complainant and that of her son. However, he found these to be of no moment, having regard to all the evidence in the case and the issues that presented themselves for resolution. At page two of his findings, he made the following observation:

> "I must admit however, that there are discrepancies in the evidence of Ms. Williams and her son Patrick Lewis; but I find that these discrepancies are slight and does [sic] not go to the root of the crown's case or affect it in any material particular."

[46] It is accepted that inconsistencies and discrepancies arose in the court below. This is a commonplace occurrence in most, if not all, trials. Just to give one example, of an inconsistency in the complainant's evidence, she testified at one point to first seeing the appellant standing at her gate; and later said that he was actually standing at the grille to the house. That is just one example of an inconsistency in the complainant's evidence but there were others.

[47] It will be recalled that another of the appellant's contentions was that the learned judge failed to reconcile what was said to be the inconsistency between the evidence of the complainant when she said that she had collected the money from Western Union, on the one hand, and, on the other, the evidence that Constable Travis

Brown's investigation, it was argued, did not reveal any such transaction. That contention requires some exploration. Travis Brown, who was a constable in 2010 when the incident occurred, in cross examination, testified as follows:

> "I recorded a further statement from Etta Williams because they [sic] were some ambiguities that we needed clarifications [sic] on
>
> In the meeting Ms. Williams said that money she paid she received it through Western Union
>
> She did not have any receipt.
>
> My contact with Grace Kennedy was to try to verify that fact
>
> I was not able to verify the fact that Ms. Williams said she received the money through Western Union…" (Emphasis added)

[48] The fact that Mr Brown was "not able to verify" what the complainant said as to where she got the money, is, in our view, proof of nothing. The fact that he was "not able to verify" the complainant's contention could be due to any number of factors and cannot justifiably be reduced to the sole adverse inference that her contention was untruthful. No exploration was made in cross-examination or at all of that response; and, without more information on the reason for Mr Brown's inability to verify the information, it would be improper to draw from the response an adverse inference against the complainant.

[49] Further, there was no exploration of the "ambiguities" which Mr Brown testified that the police needed to be clarified. There was, therefore, nothing for the learned judge to have reconciled. The question of where the money came from was not the central issue or, indeed, the only issue in the trial. It was only one part of all the testimony in the case, the main focus of which was on the question of what exactly

occurred during the interaction between the complainant and the appellant. Apart from questions of law, relating to the ingredients of the offence, the matter was primarily one of fact and credibility, as the learned judge himself observed. The learned judge heard and saw the witnesses and considered their testimony in arriving at the verdict, for which there was a sufficient evidential basis.

[50] As a result, this ground also fails.

Conclusion

[51] The appellant's closing submissions (at para. 37) make the following contention:

> "… all the literature shows that classic examples of extortion are protection schemes where figures with ties to organized crime demand shop owners to pay for their protection to prevent something bad for [sic] happening typically violence or harm to person or property. The threat of violence of physical harm to person or property to obtain gain is extortion."

[52] In the court's view, it is likely that it was the approach taken in the foregoing paragraph that was the downfall of the appellant's case. That is so because, although, historically, the offence of extortion might very well have come about in the circumstances referred to by the appellant, what is now required to prove the offence in this jurisdiction are the following: (i) the making of a demand (ii) the demand must be accompanied by a menace; (iii) the demand must be unwarranted; (iv) it must be made either with a view to making a gain for the person making the demand or another; or with intent to cause loss to another. Once these elements are proven, barring any other significant circumstance, a conviction will likely result. The factual background and circumstances in which offences of extortion will be committed will

have many permutations, given the breadth of the definition of the offence. It is by no means limited to protection-type schemes.

[53] On the elements to be proven and the evidence adduced in the court below, it was open to the learned judge to have rejected the appellant's case (as he did), which consisted primarily of a contention that a case was fabricated against him, arising from a purely amicable interaction in which he assisted the complainant by giving her a card to take steps to regularize her electricity supply. It was also open to the learned judge as well to examine the Crown's case (as he also did) and to accept the testimony of the complainant who, on both cases, readily admitted to having an illegal electricity connection.

[54] A perusal of the record of proceedings shows that there was enough evidence for the learned judge to have arrived at the verdict at which he did and that there is no basis for that verdict to be disturbed.

[55] It was for the foregoing reasons that we made the orders set out at para. [1] of this judgment.