



In The Supreme Court of Bermuda
APPELLATE JURISDICTION
2024: No. 12

BETWEEN:

WENDY HAYWARD

Appellant

-and-

FIONA MILLER
(a Police Inspector)

Respondent

Before: The Hon. Mr. Justice Juan P. Wolffe, Puisne Judge

Appearances: Mr. Vaughn Caines for the Appellant
 Mr. Matthew Frick for the Respondent

Dates of Hearing: 25th November 2024 & 3rd March 2025
Date of Judgment: 14th April 2025
Date of Reasons: 5th May 2025

JUDGMENT

Appeal against Conviction – Abuse of a Senior

WOLFFE J:

1. On the 18th March 2024 Magistrate Craig Attridge found the Appellant guilty of two offences of “Abuse of Senior” contrary to section 3(1) of the Senior Abuse Register Act 2008 (the “Act”). These offences were the subject of two separate Informations: (i) Cas

No. 21CR00564 in respect of victim Mary Josephine Hunt; and (ii) Case No. 21CR00565 in respect of victim Herman Basden. The two matters were consolidated for the purpose of trial and this was likely because at the material times of the offences Ms. Hunt and Mr. Basden were both residents at the Sylvia Richardson Care Facility (“SRCF”) and the Appellant was employed as a care worker¹ at the facility.

2. On the 26th March 2024 the Appellant filed a Notice of Appeal setting out the following grounds of appeal:

“(1) The learned Magistrate failed to consider the weight of all the evidence (specifically the physical evidence) in reaching his conclusion as to the Appellant allegedly abusing Mr. Basden.

(2) The learned Magistrate failed to take all the evidence (specifically the physical evidence) into account in reaching his conclusion regarding alleged abuse towards Ms. Hunt.

(3) The Learned Magistrate incorrectly interpreted the behavior of Ms. Hayward in consideration of the credibility on what constitutes abuse for the purposes of Section 3(1) regarding a. deliberate conduct; and b. a guilty mind reasonable doubt.”

3. On the 14th April 2025 I dismissed each ground of the appeal and the following paragraphs provide my reasons for doing so.

4. Although relating to a different set of facts, Grounds 1 and 2 essentially amount to the same complaint and so it would be more efficient to deal with them together. However, I will address Ground 2 in respect of Ms. Hunt first as it would appear that the trial unfolded with the hearing of the evidence which pertained to Ms. Hunt first and accordingly in his Judgment the Magistrate dealt with this evidence before turning his attention to the evidence relating to Mr. Basden.

¹ Section 2 of the Senior Abuse Register Act 2008 defines “care worker” as a person employed to care for seniors.

5. Furthermore, there is significant overlap between all of the grounds of appeal and it will therefore become evident that portions of what is said under one ground may equally be applicable to the other grounds.

The evidence in respect of Ms. Hunt (Ground 2)

6. The Prosecution's case, which was advanced by way of the oral evidence from several witnesses and from CCTV footage, was that at the material time Ms. Hunt, who was well into her nineties (there was no dispute that she was a senior for the purposes of section 2 of the Act as she was over 65 years of age), was suffering from "advanced Alzheimer's Dementia" (which was confirmed by a Dr. Fiona Ross whose statement was read in). It was a consensus of those at the SRCF that while she had a "sweet side" Ms. Hunt could also be combative and stubborn. Apparently, the behavior which Ms. Hunt exhibited was typical of other residents who resided at the SRCF.
7. The primary prosecution witness, Ms. Simone Trott, recalled that on the 25th March 2021 she saw and heard the Appellant jokingly call Ms. Hunt a thief and that this made Ms. Hunt very angry and agitated. The Appellant and Ms. Hunt went back and forth with the Appellant calling Ms. Hunt a thief and Ms. Hunt denying it. At the time Ms. Hunt was in a wheelchair.
8. At some point during this verbal confrontation Ms. Hunt picked up a vase and threw it at the Appellant thereby causing water to get all over the Appellant (the vase did not hit the Appellant). Ms. Trott, who said that she was less than three (3) feet away, then observed the Appellant slap Ms. Hunt once "*upside her head*", and, that she heard a "*pow*". She then saw the Appellant, with one hand, grip Ms. Hunt's hair (which had been up in a bun) and then with the other hand start pulling Ms. Hunt's hair. The Appellant then: (i) went into the bathroom, obtained a cup of water, and poured the water all over Ms. Hunt; (ii) gripped Ms. Hunt's wheelchair and repeatedly swung it around from left to right; and then she (iii) emptied the contents of Ms. Hunt's purse onto her [Ms. Hunt's] head and put the purse in the trash. Ms. Trott said that she [Ms. Trott] then took Ms. Hunt to her room to

change Ms. Hunt's clothes into a nightgown due to the water, crumbs and other items from Ms. Hunt's purse being poured and emptied onto her by the Appellant.

9. Ms. Trott said that when this was all occurring she was in shock, that the incident was frightening, and that she would not have expected a co-worker to hit an elderly lady. Instead, she said, a co-worker should remove themselves from the situation and not to assault a resident/patient/client (even if they themselves are assaulted). She accepted that after she saw the incident that she did not do anything to intervene between the Appellant and Ms. Hunt but that she got up and went to check on two other residents. She explained that she did this because there was a lot of emotions going through her mind and that she did not want to confront the Appellant and make the situation worse.
10. Following the incident Ms. Trott made a report to the nurse on duty and together they made a verbal report to Ms. Angela Brangman who was the Administrator of the SRCF (the "Administrator"). However, it was not until thirteen (13) days later on the 7th April 2021 that Ms. Trott gave a witness statement to the police.
11. The Prosecution also called a Ms. Zoletta Pearman, a nursing assistant at the SRCF, and she said that on the 25th March 2021 (the day of the incident) whilst she and the Appellant were outside waiting for their transportation that the Appellant told her that Ms. Hunt "*ducked*" her i.e. doused her with water, and, that she [the Appellant] pulled Ms. Hunt's hair twice. She reported this conversation to the Administrator and she further said that if she had been ducked with water she would have simply walked away or removed herself.
12. Registered nurse Ms. Nisha Suraj gave evidence for the Prosecution and she said that on the 25th March 2021 the Appellant came to her with wet clothing on and told her that Ms. Hunt did that to her. A little later Ms. Hunt came to her in tears, appearing nervous, and told her that someone had poured dirty water on her. In examination-in-chief she said that Ms. Hunt's hair appeared wet but in cross-examination she accepted that her hair was not wet. After she made a report as to what Ms. Hunt told her she did a head-to-toe assessment of Ms. Hunt but she did not observe any bruises or redness to Ms. Hunt's body. In cross-

examination she said that if Ms. Hunt was not hit hard then she would not have expected to see any redness or bruising.

13. The Administrator took the stand and she said that residents becoming combative is a common occurrence at the SRFC and that when this happens staff have to take evasive action and remove themselves from the situation in order to prevent injury and harm to the residents and to themselves. In this regard, all staff are trained on how to manage such situations and that the major concerns are patient safety and the duty of care to residents. She accepted in cross-examination that it would be inconsistent with staff training to just sit back and watch a resident being assaulted, and it would also be inconsistent with policy to delay reporting any incident which may have occurred.
14. The Administrator specifically said that (a) it is impermissible to punch or strike a resident or do anything like pour water on them, pull their hair, or to jerk their wheelchair to and fro, and (b) that if staff observe an injured resident then they should report it to the nurse.
15. As to the general behaviour of Ms. Hunt, she said that she was a physical threat but that she was ultimately a frail woman who could be managed easily by experienced staff.

The evidence in respect of Mr. Basden (Count 1)

16. Mr. Basden also suffered from advanced Alzheimer's Dementia (also confirmed by Dr. Ross) and he was in his late eighties (there was no dispute that he was a senior for the purposes of the Act). The Prosecution's primary witness in respect of Mr. Basden was a Suzette Swan who had been working at the SRFC for twelve (12) years. She recalled an incident when she and the Appellant went to Mr. Basden's room to clean him up. She said that at some point she saw the Appellant lose her temper and with a closed fist punch Mr. Basden on his leg very hard at least three (3) but no more than five (5) times. This caused welts (raised bruises) to form on Mr. Basden. She told the Appellant to get out of the room and that she would finish with cleaning up Mr. Basden. She said that at the time Mr. Basden appeared totally frightened by what the Appellant had done to him.

17. Ms. Swan further stated that she herself was “*kinda scared*” and upset about what she saw and that she did not say anything to the Administrator until the 26th March 2021. She also accepted that she did not tell a nurse who came into Mr. Basden’s room following the incident and she explained that this was because she was too upset to say something. But, she said, she did tell a Zina Minks (her shop steward) and she presumed that she [Ms. Minks] would tell the Administrator (Ms. Minks stated that she told a nurse what Ms. Swan told her). She was unable to say exactly when the incident occurred but she accepted that it could have been weeks before she reported it to the Administrator i.e. 4 to 6 weeks earlier. When Mr. Vaughn Caines (Counsel for the Appellant at trial and on this appeal) put to her in cross-examination that she only reported the incident with Mr. Basden after she had heard about the allegations relating to Ms. Hunt she first said that it was a coincidence but when shown her report to the Administrator she accepted that she wrote that she decided to come forward with her allegation after hearing what happened to Ms. Hunt. She denied colluding with her friends to go against the Appellant or doing anything to bolster Ms. Trott’s report about Ms. Hunt.
18. The Prosecution also called a Ms. Linda Simmons (a cleaner at the SRCF) who recalled that one day in March 2021 she was walking down the corridor across the open door to Mr. Basden’s room when she heard either bumping or thumping and a commotion which she said was not the norm. She did not go into the room and continued with her duties, but said that the sound “*disturbed*” her and “*disquieted her spirit*”. In cross-examination she stated that the Appellant told her that she had “*punched the shit out of Mr. Basden*” and she denied the suggestion put to her by Mr. Caines that she fabricated that evidence.
19. The Administrator stated that Mr. Basden was known to resist care but that he was not able to get up and injure someone. She did not see him as being a physical threat to anyone.

The Appellant's defence

20. The Appellant elected to give evidence and it appears that soon after entering into the witness box she stated that other workers were complaining that she was receiving more overtime than they were and that as a result overtime no longer was being offered to her. No doubt this evidence was a major plank in the Appellant's defence at trial and was obviously led to show that other care workers at SRCF had an animus towards her and that is why they made fabricated reports about her in relation to both Ms. Hunt and Mr. Basden.
21. As to what occurred (or did not occur) on the 25th March 2021 she recalled that early that morning Ms. Hunt was stating that she wanted to get out of the facility which was not the first time that she had done so. She interacted with Ms. Hunt throughout the morning and she said that Ms. Hunt was calling people names and striking out at them. This was getting out of control and so she pushed Ms. Hunt near to where Nurse Suraj was located.
22. She stated that later in the afternoon Ms. Hunt was still mad at her and that at some point Ms. Hunt picked up a vase off the table and said that she was going to get the Appellant. The Appellant then asked about a missing glucose monitor (it was unclear from the evidence as to whether the Appellant directly asked Ms. Hunt this or whether it was a general inquiry made of other residents as well) and being aware that Ms. Hunt had a habit of taking things that did not belong to her she went into Ms. Hunt's bag where she found the monitor. When she went back to Ms. Hunt that is when Ms. Hunt again picked up the vase. When she looked, she saw the water first and then the vase coming at her face. She did not know how it happened, but then Ms. Hunt was attached to her and she could not get Ms. Hunt off of her. With the vase in her hand she tried to get Ms. Hunt off of her and eventually she had to yank Ms. Hunt off of her. She then left and went straight to Nurse Suraj to report what had just happened.
23. She agreed that she jokingly called Ms. Hunt a thief but she denied pouring water all over Ms. Hunt, gripping Ms. Hunt's wheelchair and repeatedly swinging it around from left to right, or emptying the contents of Ms. Hunt's purse onto her [Ms. Hunt's] head. She

explained that she was defending herself and that when she was trying to get Ms. Hunt off of her the wheelchair was moving because the wheels were unlocked, and, that the reason Ms. Hunt's hair appears to be loose in the CCTV footage is because during the incident Ms. Hunt's "scrunchie" had fallen out (thereby suggesting that Ms. Hunt's bun did not fall out because she [the Appellant] grabbed her hair). She added that her own hair was messed up in the struggle with Ms. Hunt but the Magistrate made note in his Judgment that his view of the footage showed that the Appellant's hair was the same before and after the incident.

24. The Appellant also denied telling Ms. Pearman that she pulled Ms. Hunt's hair and she said that she told Ms. Pearman that she had to pull Ms. Hunt off of her.
25. The Appellant also told the Magistrate that she could not walk away from the situation because Ms. Hunt would have been left in danger and that she was in charge of Ms. Hunt, and, that there was nowhere for her to walk to. The Magistrate noted though that the CCTV footage showed that the Appellant did in fact walk away leaving Ms. Hunt alone.
26. In respect of the complaint involving Mr. Basden, she said that when she first started working at the SRCF he was always grabbing her arms hard which caused her to report his behavior to her superiors. Regarding the incident which was the subject of the trial she stated that she was called into Mr. Basden's room to assist Ms. Swan and Nurse Suraj with taking off his shirt because Mr. Basden was putting up a fight by moving and swinging his arms about. They eventually decided to just leave him and Nurse Suraj left the room. This, apparently, was the end of the incident. She denied punching Mr. Basden on his leg and she also denied saying to Ms. Simmons that she had punched the "*shit*" out of Mr. Basden.
27. I will now focus on each of the grounds of appeal.

Decision

Grounds 1 and 2

The learned Magistrate failed to consider the weight of all the evidence (specifically the physical evidence) in reaching his conclusion as to the Appellant allegedly abusing Mr. Basden; and,

The learned Magistrate failed to take all the evidence (specifically the physical evidence) into account in reaching his conclusion regarding alleged abuse towards Ms. Hunt.

28. Common themes which coursed through Grounds 1 and 2, and *ergo* through Mr. Caines' written and oral submissions, are that in reaching his decision the Magistrate (a) failed to take into consideration all of the evidence; (b) insufficiently applied weight to the evidence; and (c) failed to take into consideration the absence of certain crucial evidence. I am therefore compelled to preliminarily resolve these issues before moving on to substantively addressing each of the grounds of appeal.

29. Put succinctly, I do not accept Mr. Caines' submission that the Magistrate did not take into consideration all of the evidence heard at trial. It is obvious to me that he did and indicative of this is not only the voluminous handwritten notes that he took of the evidence but also his extensive recitation of the evidence and his findings of fact in his written judgment. Of the 28 page 152 paragraph Judgment, the Magistrate devoted 23 pages or 130 paragraphs to primarily summarizing the evidence of each witness for the Prosecution and that of the Defendant. Having reviewed the typed version of the Magistrate's notes I find that his summary of the evidence in his Judgment accords with the evidence written in his notes (there was no suggestion on this appeal that the Magistrate's notes were inaccurate). If indeed any comment can be made of the Magistrate it would be that he could have exercised more brevity in recounting the evidence.

30. Of course, as in any appeal, it is reasonable for the Appellant to launch criticism at the Magistrate for how he may have handled or assessed the evidence that he did hear. That is: (i) whether the Magistrate “properly” took into consideration all of the evidence; (ii) whether he did not properly or at all take into consideration the absence of pertinent evidence; and (iii) whether he made correct findings of fact from the evidence. On behalf of the Appellant Mr. Caines did rightly make critique of the Magistrate’s reasoning. However ultimately, I was not persuaded to the extent that I should disturb the Magistrate’s findings of guilt and I will say why in later paragraphs.
31. Another major feature of the Appellant’s appeal which straddled both Grounds 1 and 2 of the appeal was the absence of medical records which Mr. Caines submitted would have and should have documented any injuries which Ms. Hunt and Mr. Basden supposedly sustained at the hands of the Appellant. In this regard, reference was justifiably made to the evidence of nursing coordinator Ms. Debra Chase whose statement was read in by consent between the parties. Ms. Chase, who did not witness either of the incidents involving Ms. Hunt or Mr. Basden, stated that when she searched their respective medical charts that nothing about any injuries was recorded and that there was no signs of assault. The Magistrate dealt with this apparent lack of written evidence as to any harm or injury to Ms. Hunt or Mr. Basden.
32. In respect of Ms. Hunt, the Magistrate took note of the words “*other than redness, Mrs. Hunt showed no signs of assault*” which appeared in Ms. Hunt’s chart. The Magistrate concluded that from this one could infer that the observed redness to Ms. Hunt’s would “*at least, have been a sign of assault*” (see paragraph 85 of the Magistrate’s Judgment). I find that this was not a commonsense inference or conclusion which the Magistrate could have properly drawn from the facts (or the lack of) and it is inconsistent with the reasoning that the Magistrate properly applied directly after he made the inference. The Magistrate rightly acknowledged that the redness could not be qualified (which seems to suggest that there was no indication where the redness was located or how it may have gotten there), and, that no redness or bruising was observed by any witness, including Nurse Suraj who examined Ms. Hunt from head-to-toe. Had the Magistrate properly applied this correct

reasoning he would not have drawn the inference that the redness was a sign of assault, and to then go on to factor that inference into his overall decision that the Appellant was guilty of abusing Ms. Hunt. The Magistrate therefore erred in inferring and then concluding that the reference to redness in Ms. Hunt's chart was in fact a sign of an assault. I will however momentarily show that when considering all of the evidence heard at trial that the Magistrate was still entitled to find that the Appellant abused Ms. Hunt and hence was guilty of the offence charged.

33. The lack of written documentation as to any injury sustained by Mr. Basden is less problematic and the Magistrate properly dealt with this (in fact, he found it "concerning"). Unlike Ms. Hunt, the assault allegation relating to Mr. Basden was not reported until weeks after it occurred and so I find it unsurprising that upon examination of Mr. Basden weeks later would not have revealed any observable welts to his leg. The Magistrate was therefore correct in concluding that the absence of any indication of welts on Mr. Basden's chart, due to the elapse of time between the incident and the reporting of the incident, was not determinative of whether the Appellant had punched him weeks earlier.
34. Even if the Magistrate improperly drew an inference about the redness in Ms. Hunt's chart, and even if he may not have given due weight to the absence of any injury on Mr. Basden's chart, it is obvious to me that in coming to his final decision of guilt that the Magistrate properly and fully considered, interpreted, assessed and applied (a) the legal principles relevant to offences of this nature, and (b) other crucial pieces of evidence from both the Prosecution and the Defence.
35. I should start with the Magistrate's interpretation of the law in relation to what type of conduct constitutes "abuse". This is not a full throated criticism and is merely advice, but it would have been helpful if the legislators of the Act extended section 2 by including separate definitions as to what specific behavior amounts to physical abuse, sexual abuse, psychological abuse, and neglect. Such as along the same or similar lines as the definitions provided in the document "*Senior Abuse: General Principles and Procedures*" which was produced by the Senior Abuse Registrar under the auspices of the Ministry of Health and

Seniors (the “Ministry”), and which the Magistrate referenced in his Judgment. The upshot of the Act and the Senior Abuse Registrar’s document is that “abuse”, particularly in the context of “senior abuse”, is not just confined to physical abuse over a period of time, but it can also refer to a single act which is emotionally abusive, verbally abusive, humiliating, controlling, threatening, intimidating, or harassing (of course this should not be seen as an exhaustive list). It also matters not whether the act is minor or trivial.

36. So while in the authorities of *R v. Shone 2005 EWCA Crim 3662* and *Belboda v. Fiona Miller 2021 SC (Bda)(App)* there may have been physical evidence of abuse there need not be such for the offences to be made out by the Prosecution. If other forms of abuse are shown beyond a reasonable doubt to be present (such as those which are emotional or verbal) then the Court can still reach a finding of guilt.
37. To be clear, Mr. Caines quite properly raised the issue of the lack of documentary evidence of physical abuse on Ms. Hunt’s and Mr. Basden’s charts, however considering all of the other cogent evidence advanced by the Prosecution, particularly the direct evidence from Ms. Trott and Ms. Pearman (in respect of Ms. Hunt) and from Ms. Swan and Ms. Simmons (in respect of Mr. Basden), the Magistrate was correct to still conclude that the conduct of the Appellant towards Ms. Hunt and Mr. Basden fell within the definition of “abuse” as contemplated by the Act and the document from the Ministry. So even if Mr. Caines’ argument that there were no signs of physical abuse reported in Ms. Hunt’s or Mr. Basden’s charts may be sustainable, the Magistrate was entitled to look to the evidence of other types of abuse which the Appellant perpetrated on them and then still find the Appellant guilty of senior abuse. Clearly the Magistrate did this and he was correct to do so. In doing so he properly turned his mind to pertinent considerations such as: (i) the demeanour of the prosecution witnesses and of the Appellant when they were in the witness box; and (ii) any inconsistencies in the Prosecution’s case.
38. I will speak to demeanour when I cover Ground 3 below but suffice it to say at this juncture the Magistrate was entitled to assess the demeanour of the Prosecution witnesses and of

the Appellant when deciding the quality of and weight to attach to, and whether to accept or reject, their respective evidence.

39. In respect of any consistencies in the Prosecution's case, the Magistrate properly addressed his mind to them. In paragraphs 73 and 74 of his Judgment the Magistrate made reference to the inconsistencies in Nurse Suraj's evidence as to whether Ms. Hunt's hair was wet when she saw her after the incident. Presumably the Magistrate was also referring to the inconsistency in the evidence of Ms. Swan in relation to her first saying that she did not report about Mr. Basden only after hearing about the allegations surrounding Ms. Hunt, but then in cross-examination accepting that she did. The Magistrate, obviously against the backdrop of the entirety of the evidence which he heard, formed the view that these inconsistencies were minor and did not affect his overall acceptance of Nurse Suraj's and Ms. Swan's evidence. No doubt, in accepting Ms. Swan's evidence the Magistrate took into consideration his view that (a) her evidence was supported by that of Ms. Simmons who said that what she heard when she passed across Mr. Basden's room door disquieted her spirit, and (b) that the Appellant confessed to her that she punched the "shit" out of Mr. Basden. I therefore see no reason why the Magistrate should not have come to the conclusion that he did regarding these inconsistencies in the Prosecution's case.
40. I should add that even if Ms. Swan reported about Mr. Basden only after hearing about the allegations involving Ms. Hunt, there is nothing inherently wrong with one complaint by an individual precipitating the making of a separate complaint by another individual. In the criminal arena, particularly in sexual assault matters, this occurs routinely. Of course, when this does occur there is always the possibility of collusion having taken place between virtual complainants but without any sustainable evidence as to collusion such circumstances are often accepted by the Courts (including where the prosecution may rely on historical offences or on similar fact evidence). In the case-at-bar, the Magistrate concluded that there was no sustainable evidence of collusion between Ms. Swan and other care workers when she made her complaint about Mr. Basden. Having reviewed the evidence in this regard the Magistrate made the correct decision.

Ground 3

The Learned Magistrate incorrectly interpreted the behavior of Ms. Hayward in consideration of the credibility on what constitutes abuse for the purposes of Section 3(1) regarding a. deliberate conduct; and b. a guilty mind reasonable doubt.

41. In earlier paragraphs I covered the Magistrate's handling of what legally amounts to abuse. I repeat what I wrote there for the purposes of this ground and I will weave it into the credibility issue which is the subject of this ground.
42. In short, I find that the Magistrate properly considered the credibility of the Appellant when she took the stand. Having seen and heard her in the witness box he was in the best place to assess the tone and content of her evidence. With this, the Magistrate arrived at the conclusion that when he married what the Appellant said with the demeanour in which she said it, that (a) her version of events was "implausible", and (b) he did not find that she was an honest and credible witness. Accordingly, as he was entitled to do, he rejected major portions of her defence. For example, he rejected the Appellant's evidence that: her co-workers only complained about her maltreatment of Ms. Hunt and Mr. Basden because they were disgruntled that she was receiving an inordinate amount of overtime; that the Appellant, in self-defence, innocently struggled with Ms. Hunt who lashed out at her; and; Ms. Hunt's wheelchair had its brakes applied and so she could not have been jerking it about. Considering this, the Magistrate legitimately settled on the view that the Appellant instigated what occurred with Ms. Hunt by repeatedly calling her a thief and so any suggestion that Ms. Hunt was the aggressor was vacuous.
43. Moreover, in assessing the Appellant's credibility the Magistrate considered and accepted: the evidence of Ms. Pearman that the Appellant admitted to pulling Ms. Hunt's hair twice; the evidence of Ms. Simmons that the Appellant told her that she [the Appellant] "*punched the shit*" out of Mr. Basden; and, the evidence of the Administrator as to the frailties and immobility of both Ms. Hunt and Mr. Basden. From this, the Magistrate had good and justifiable reasons to reject the Appellant's denial of abusing Ms. Hunt and Mr. Basden or

her allegation that the Prosecution witnesses were biased against her and/or conspired/colluded against her (the Magistrate was clearly of the view that this allegation was not made out).

44. The Magistrate also correctly put what occurred with Ms. Hunt and Mr. Basden into the context of the Appellant's duties as a care worker and what is expected behavior of a care worker when dealing with an aggressive resident. Ms. Pearman and the Administrator spoke to SRCF policy that when confronted with such a scenario that care workers are trained to walk away and remove themselves from the situation. Obviously, such a retreat by a care worker has the overriding objective of de-escalating an incident and thereby avoiding harm or injury to the care worker, and most importantly to the resident. The fact that the Appellant breached policy and acted contrary to her training by physically engaging with Ms. Hunt and Mr. Basden, even if they may have been aggressive towards her (which the Magistrate did not accept), is a critical factor which the Magistrate properly took into consideration when determining whether to accept or reject the evidence of the prosecution witnesses vis-à-vis that of the Appellant. He clearly chose the evidence of the former.
45. Mr. Caines did correctly submit that the apparent failures of Ms. Trott and Ms. Swan to immediately intervene and stop the Appellant when they say that they saw the Appellant respectively abuse Ms. Hunt and Mr. Basden is factor to take into consideration in assessing the veracity or accuracy of their evidence. However, it was reasonable for the Magistrate to conclude that Ms. Trott was so shocked and proverbially paralyzed by what she saw the Appellant do to Ms. Hunt that she did not intervene (and therefore not because Ms. Trott was lying).
46. The Magistrate also properly took into consideration and applied the seminal rule in Browne and Dunn (1863) 6 R. 67 (H.L.) in respect of things said by the Appellant when she gave her evidence but which were not put to the relevant prosecution witness when they were on the stand. Such as the evidence that: Nurse Suraj stated to her that Ms. Hunt had alleged that the Appellant attacked her; a "Nurse Chris" told her that she could not get

any more overtime; and, that Ms. Trott saw the Appellant's hair also messed up after the encounter with Ms. Hunt. To this, the Magistrate, in assessing the Appellant's evidence, was entitled to draw the inference that the failure of Mr. Caines to ask the prosecution witnesses questions in relation to these evidential areas was because the Appellant did not give those accounts to Mr. Caines. In other words, that the Appellant gave this evidence for the first time when she went into the witness box. It was proper for the Magistrate to use this in determining whether or not he accepted the Appellant's version of the events. Which he clearly did not.

47. Having assessed the evidence and the credibility of the Appellant the Magistrate did not leave it there and automatically go on to make a finding of guilt. Nor did he shift the burden of proof onto the Appellant. Had he done so he would have been in gross error and this may have resulted in this appeal being upheld. However, it would appear that the Magistrate properly put to one side any reasonable doubt which he may have had about the Appellant's defence and he went on to consider whether the Prosecution had proven its case beyond a reasonable doubt. In this regard, he looked at and properly dealt with issues which related to the Appellant's defence at trial (and which formed the backbone of her appeal). Such as: Ms. Hunt and Mr. Basden's charts not indicating any injury to them; the late reporting of the incident involving Mr. Basden by Ms. Swan; and, the inconsistencies in the Prosecution's case.
48. Taking all of this into consideration, and following *Robinson v. Commissioner of Police [1995] Bda LR 64* (and other authorities cited by Mr. Matthew Frick for the Respondent) I see no reason why I, who did not have the advantage seeing and hearing the unfolding of the evidence from the mouths of the Prosecution witnesses and from the Appellant, should disturb the Magistrate's assessment of the Appellant's credibility and reliability.

Conclusion

49. In consideration of the above paragraphs I confirm my decision made on the 14th April 2025 to dismiss the entirety of the Appellant's appeal and remit this matter to the Magistrates' Court for sentence.

Dated the 5th day of May, 2025



The Hon. Mr. Justice Juan P. Wolffe
Puisne Judge of the Supreme Court of Bermuda