04/81

DISTRICT COURT OF QUEENSLAND AT TOWNSVILLE

WINMILL v CURR

McGuire DCJ

14 November 1980 — (1980) 7 Queensland Lawyer 265

CONTEMPT OF COURT – STATEMENT MADE TO POLICE PROSECUTOR WHILST COURT TEMPORARILY ADJOURNED – DEFENDANT SAID: "THE MAGISTRATE DOES EVERYTHING YOU SAY. HE IS IN YOUR POCKET" – DEFENDANT IN COURT AS AN INTERESTED OBSERVER – MAGISTRATE INFORMED OF STATEMENT – ORDER MADE BY MAGISTRATE FOR DEFENDANT TO SHOW CAUSE WHY HE SHOULD NOT BE DEALT WITH FOR CONTEMPT OF COURT – DEFENDANT SENTENCED TO MAXIMUM PENALTY OF 14 DAYS' IMPRISONMENT – WHETHER MAGISTRATE IN ERROR.

1. A court is strictly sitting during the period that a magistrate retires to his/her chambers to consider a ruling on a submission made in court. The word "sitting" should not be given a restricted meaning so that the court is not sitting when the magistrate is not physically seated on the Bench.

2. Whilst the magistrate was not in error in finding the charge proved, the imposition of the maximum sentence was a strong thing to do. Some greater tolerance should perhaps have been allowed. Defendant sentenced to the time already served namely, 10 days' imprisonment.

McGUIRE DCJ: These are contempt proceedings. The appellant Ian David Curr appeals against a conviction recorded against him for contempt of court in the Magistrates' Court at Townsville on 10 September 1980. He also appeals against the severity of the sentence imposed. The sentence was 14 days' imprisonment.

The actual charge preferred was that he wilfully insulted that court for that whilst the court was adjourned he uttered to Senior Sergeant John Edward Sanderson the words, 'The Magistrate does everything you say. He is in your pocket.' The magistrate was hearing a criminal charge in his court. After hearing submissions he then retired to his room, presumably to consider the application, with a view to returning to the court and making a ruling on it. The court was adjourned for that purpose.

In the interim, that is to say between the time of the magistrate's retirement and his return, the appellant is alleged to have said to one John Edward Sanderson, a Senior Sergeant of Police who was prosecuting the case before the court, "The Magistrate does everything you say. He is in your pocket." This statement was said to have been made in the court room itself.

The appellant was neither a party nor a witness to the proceedings then before the court. He was in court as an interested observer. Sanderson informed the magistrate of the appellant's alleged contemptuous utterance. In purported pursuance of s40(3)(b) of the *Justices Act*, the magistrate ordered that the appellant be taken into custody and brought before the court to show cause why he should not be dealt with for contempt of court.

Several hours elapsed between the alleged making of the contemptuous statement and the appellant's apprehension. When apprehended he was in the precincts of the office of the Clerk of the Court. On his being brought to the court the appellant was tried summarily for contempt of court and sentenced to 14 days' imprisonment, the maximum.

In *Westcott v Lord* [1911] VicLawRp 79; [1911] VLR 452; 17 ALR 433; 33 ALT 54, the headnote reads:

> "The jurisdiction of the Court of Petty Sessions to punish for misbehaviour in court is not limited to cases where the justices have themselves observed the misbehaviour ..."

In the case of *Balogh v St Albans Crown Court* (1975) 1 QB 73; [1974] 3 All ER 283, Lord Denning, when speaking of contempt committed in the face of the court, said this:

> "But I find nothing to tell us what is meant by "committed in the face of the court". It has never been defined. Its meaning is, I think, to be ascertained from the practice of the judges over the centuries. It was never confined to conduct which a judge saw with his own eyes. It covered all contempts for which a judge of his own motion could punish a man on the spot. So 'contempt in the face of the court' is the same thing as 'contempt which the court can punish of its own motion'. It really means 'contempt in the cognisance of the court' ..."

With great respect, it seems to me that Lord Denning's rather liberal interpretation of the phrase "committed in the face of the Court" is sensible and realistic. For present purposes, I adopt it. See also *R v Wright (No. 1)* [1968] VicRp 15; (1968) VR 164; *The Queen v Lefroy* (1873) LR 8 QB 134; *In re Johnson* (1888) 20 QBD 68; *R v Judge of the Brompton County Court* (1893) 2 QB 195.

It seems to me that a court is strictly sitting within the meaning of section 40(1)(a) during the period that a magistrate retires to his room to consider his ruling on a submission made to him in court, and before his return to the court to make his ruling. Alternatively, I would be prepared to hold that the magistrate was on his way to or from the court within the meaning of those words in the context of section 40(1)(a) when the alleged insult was made.

When does a Court cease to sit? Is the Court sitting only when the Judge or Magistrate is physically seated on the Bench? I think not. To afford the term 'sitting' as used in Section 40 of the *Justices Act* so restricted and narrow a meaning would, I think, in the circumstances of this case, tend to lend to it an air of artificiality and unreality. I have listened carefully to the submissions of the appellant that the proceedings were not regularly conducted according to law, but it seems to me that the requirements of section 40 and of natural justice were substantially observed. Lord Denning said in *Balogh's case*, referred to above:

> "The power of summary punishment is a great power, but it is a necessary power. It is given so as to maintain the dignity and authority of the Court and to ensure a fair trial. It is to be exercised by the Judge of his own motion only when it is urgent and imperative to act immediately so as to maintain the authority of the Court to prevent disorder, to enable witnesses to be free from fear, and jurors from being improperly influenced, and the like. It is, of course, to be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt."

See also *Keeley v Brooking* [1979] HCA 28; (1979) 143 CLR 162; 25 ALR 45; 40 ALT 139; (1979) ALJR 526; and *Dow v Attorney*-General (1980) Qd R 58; 2 A Crim R 176. It is here that I would like to strike a note of warning and caution: Courts of Justice, although naturally concerned to protect their dignity, integrity and authority when they are contemptuously challenged, should not react too strongly, too precipitously or over sensitively to every apparent insult. Finally, I would say this: Judicial respect is not a purchasable commodity. It cannot be traded in the market place. It cannot be commanded. It has to be deserved. It has to be earned. A Judge's authority is not the mailed fist any more than it is the language of sweet reasonableness. It is compounded of intangibles such as trust and confidence, impartiality and humanity – and, of course, learning. And because of this example of contemptuous conduct, in or out of the face of the Court, are, fortunately, rare. The appeal against conviction must fail.

I consider now the appeal against sentence. The appellant was sentenced to a maximum period of 14 days. The Magistrate said in his reasons for judgment the appellant had admitted a previous conviction for a similar offence. I must say, and say emphatically, that I think the Magistrate overreacted on sentence. To impose the maximum period was in the circumstances, I think, a strong thing to do. I would not myself have imposed such a sentence. Bad though the case, on the face of it, might seem, I think some greater tolerance should perhaps have been allowed. I think the appellant has been punished sufficiently. I allow the appeal on sentence. I reduce the sentence to the time already served, namely, 10 days. The appellant will serve no further imprisonment over this matter.
