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**JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATES' CRIMINAL APPEAL NO: 39/05**

**BEFORE: THE HON. MR. JUSTICE HARRISON, P.  
THE HON. MR. JUSTICE COOKE, J.A.  
THE HON. MRS. JUSTICE HARRIS, J.A.**

**ROY DENTON v R**

**Debayo Adedipe for appellant**

**Miss Paula Llewellyn, Snr. Deputy Director of Public Prosecutions &  
Miss Natalie Ebanks, Crown Counsel (Ag.) for the Crown**

**28<sup>th</sup> March 2007**

**ORAL JUDGMENT**

**HARRISON, P.**

This is an appeal against the conviction of the appellant by the learned Resident Magistrate for the parish of Manchester on 22<sup>nd</sup> October 2002 for the offence of assault occasioning bodily harm. The appellant was ordered to pay a fine of \$10,000.00 and in default of payment to serve six (6) months imprisonment at hard labour.

On reading the record of appeal, this Court took the unaccustomed step of calling on the Crown initially, to advise the Court whether or not the Crown could

support the conviction. Miss Llewellyn advised the Court, quite readily, that the Crown could not.

We agreed with counsel for the Crown. Consequently, without calling on counsel for the appellant, we allowed the appeal, quashed the conviction, set aside the sentence and entered a judgment and verdict of acquittal. These are our reasons for so doing.

The facts are as follows.

On 28<sup>th</sup> April 2001 at 6.00 p.m. Cpl. Donald Green and Cons. Dunn were on traffic duty in the town of Spaulding in the parish of Manchester. The appellant was standing at the entrance to a supermarket. Both police officers went up to the appellant. Cons. Dunn told the appellant that he was wanted on a warrant of arrest, and "was about to hold him." Cpl. Green testified that the appellant pushed away the hands of Cons. Dunn and "was about to run" when he Cpl. Green held the appellant who then "started throwing punches in [his] direction." Cpl. Green said that he "pulled my black baton and used it to block a number of punches" and the end of his baton caught one Michael Denton standing nearby. Cpl. Green said that he held the appellant in the waist of his pants and they both fell. He, Cpl. Green hit his back on a deep freezer in the supermarket and the appellant hit his head on the freezer sustaining a wound.

The appellant said, on oath, "that Cons. Dunn held him, at first and Cpl. Green came from beside a jeep where he had been standing and held him". Both police officers pulled him into the supermarket. He said that Cpl. Green hit

him in his head with the black baton, causing a wound which bled – blood ran onto his face.

Both sides agree that people in the supermarket began throwing articles, such as tins of beef, sardines and butter, at the police officers. Cpl. Green let go the appellant.

The appellant denied that he punched at the police officer or that he tore his uniform shirt.

The learned Resident Magistrate found, at page 18 of the record:

“On the evidence Constable Dunn was the one who had accosted the accused and Corporal Green came to his assistance. The Corporal was in uniform and came to the assistance of his colleague who was at the material time saying to the accused that there was a Warrant at the station for him for his arrest for traffic breaches and came under assault by the accused.”

The learned Resident Magistrate further found:

“The Court agrees with the submission of the learned Clerk of Courts that the policeman was acting lawfully under the powers of arrest given to him under the Jamaica Constabulary Force Act having seen an offence committed he was obliged to act. Having observed that his colleague was under attack he was bound to intervene. Any other stance would be unjustified. The court is of the opinion that an unlawful arrest does not arise in the circumstances.”

The appellant was charged on an indictment with two counts (1) assault occasioning bodily harm and (2) malicious destruction of property. The learned Resident Magistrate found that the latter charge was not proven. No warrant was put in as an exhibit at the trial.

Mr. Adedipe had argued before the learned Resident Magistrate that the police officers in the circumstances had no power to arrest the appellant either at common law or under the Jamaica Constabulary Force Act. The appellant was assaulted by the police officers and was entitled to defend himself from the assault. He relied on the case of *R v Owen Sampson* (1954) 6 JLR 292, a decision of this Court. We agree with Mr. Adedipe's submission, to the learned Resident Magistrate.

At common law, a police officer may arrest without a warrant, a person who commits a misdemeanour in the officer's presence. In addition, where a breach of the peace has been committed, in the officer's presence or the said officer is of the view, on reasonable grounds that a breach of the peace is about to be committed or renewed, he may arrest without a warrant. A police officer has a statutory power to arrest without a warrant under the provisions of the Constabulary Force Act ("The Act") section 15:

"15. ... any person found committing any offence punishable upon indictment or summary conviction ..."

(See *R v Owen Sampson* (supra)).

The said Act permits a police officer to arrest any person in respect of whom a warrant has been lawfully issued, although the warrant is not in the possession of the officer at the time of apprehension.

Section 16 of the said Act reads:

"16 Any warrant lawfully issued by a Justice for apprehending any person charged with any offence

may be executed by any Constable at any time notwithstanding that the warrant is not in his possession at the time but the warrant shall on demand of the person apprehended, be shown to him as soon as practicable after his arrest."

If the police officer has no warrant, or if no warrant exists, the arrest of a person in circumstances where no offence has been committed in the officer's presence, is unlawful. A person has a legal right to resist an unlawful arrest or unlawful detention.

In the instant case, Cpl. Green had testified before the learned Resident Magistrate that the appellant "...was wanted on a warrant" and that "Constable Dunn told him (the appellant) of the warrant.

No warrant was tendered as an exhibit at the trial, nor was any such warrant produced subsequently. The learned Resident Magistrate on the facts should have found that no warrant existed.

The learned Resident Magistrate was also in error to have found that:

"the policeman was acting lawfully under the powers of arrest given to him under the ... Constabulary Force Act having observed that his colleague was under attack."

The more reasonable view was that the appellant was not attacking Constable Dunn, but rather he was resisting an unlawful arrest by Constable Dunn. He was entitled, in law, to do so (see ***R v Robinson & Dunkley*** (1990) 27 JLR 453.)

For the above reasons we allowed the appeal and made the orders referred to above.