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J A M A I C A

IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL NO. 73/66

BEFORE: The Hon. Mr. Justice Lewis, Acting President
 The Hon. Mr. Justice Waddington
 The Hon. Mr. Justice Shelley

R. v A R N O L D W I L L I A M S

Mr. F. Clark for the appellant

Mr. W.K. Chin See for the Crown.

16th May, 1966.

WADDINGTON, J.A.,

The appellant was convicted on the second and third counts of an indictment and found not guilty on the first count. The first count charged him with assault occasioning actual bodily harm to Miriam Lindsay on the 25th of July, 1965; the second count charged him with assault occasioning actual bodily harm to the same person on the 27th of August, 1965, whilst the third count charged him with common assault on the 27th of August, 1965, in respect of the same person.

On the first count evidence was given by Miriam Lindsay, supported by a witness whom she called, but on that count, the learned Resident Magistrate found the appellant not guilty. In respect of the second count, evidence was given by the complainant alone to the effect that on the 27th of August, the appellant had assaulted her by hitting her with a hose on her arm and tearing her clothing.

In respect of the third count, the complainant said that the appellant had not assaulted her, although evidence was given by a constable, who was accompanying her from the police station back to her home, and who said that during that journey the appellant had hit the complainant with a stick.

In spite of this conflict in the evidence, in respect of the third count, the learned Resident Magistrate found the appellant guilty thereon.

/Counsel for...

Counsel for the Crown has we think quite properly conceded that the conviction in respect of the third count cannot be supported.

In respect of the second count, as I have mentioned before, the only evidence against the appellant consisted of the evidence that was given by the complainant. Mr. Clark on behalf of the appellant has taken the point that it appears from the record that a medical certificate was tendered in respect of the assault of the 27th of August but that that medical certificate had not been signed by the medical officer and was therefore inadmissible. Unfortunately, that certificate, if it was tendered, does not appear as part of the record, and on investigation made by this Court, it appears that the certificate cannot be found.

It seems to us that the learned Resident Magistrate having rejected the evidence of the complainant, in respect of the first count of the indictment, it would be unsafe to accept her evidence in respect of the second count of the indictment, her evidence on that count standing alone, and particularly in view of the conflict of evidence which appeared in respect of the third count of the indictment.

In all the circumstances of the case, we consider that the conviction on the second count is unsafe and should not be allowed to stand. In the circumstances, the appeal will be allowed and the conviction in respect of the second and third counts of the indictment quashed and the sentences set aside.