CA Criminal Law – Unlawful wounding – R.M. Court – Evidence – Sentence [illegible] – R.M. had analysed evidence properly – whether 12 months excessive – Appellant's first conviction. Appeal against conviction and sentence dismissed

JAMAICA

No cases referred to

✓ Comp

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO: 13/89

Evidence
Criminal Practice

BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Wright, J.A.
The Hon. Mr. Justice Downer, J.A.

R. v. DELROY HENRY

Norman Wright for Appellant

Miss Paula Llewellyn & Miss Marcia Hughes for Crown

March 15 & 16, 1989

CAMPBELL, J.A.

This is an appeal from a conviction in the Resident Magistrates Court for Saint Catherine. The appellant was on December 20, 1988 convicted of the offence of unlawful wounding, the complainant was Thaddeus Stoddart. The appellant was sentenced to imprisonment for 12 months at hard labour. The incident took place on a public passenger bus plying between Kingston and Naggo Head in Saint Catherine. The complainant was a passenger, the appellant a conductor on the said bus, the time of the incident was about 6.00 p.m. on October 9, 1986.

Mr. Stoddart was on his way home travelling in the bus to Naggo Head. At the Passage Fort T-Junction the appellant asked him for his fare; on the evidence, it appears that the complainant had first indicated that he was begging a ride. However, he subsequently tendered a dollar which the appellant refused, the appellant intimated that the fare was $1.30 even though he had from other passengers accepted $1.00. It appeared that the appellant was annoyed with the complainant because of the latter's reluctance to make payment and accordingly insisted on having the full fare. One Mark Wright who was a passenger and a friend of the complainant offered to pay the difference of 30¢. This was refused by the appellant. One Raymond Wright who had entered the bus at that stage, on being apprised of the situation also offered to make payment, again it was refused. It appears an altercation took place between the appellant and the complainant in the course of which, on the finding of the learned Resident Magistrate the complainant did use a small knife to push away the appellant's finger which was then pointed in the complainant's face. This undoubtedly annoyed the appellant even further and he said "Remember you point the knife in my face." The appellant then proceeded to the front of the bus and returned to the back step of the bus with a machete in his hand. The learned Resident Magistrate found that he pushed the complainant up in the bus and the complainant himself ran back into the bus. The passengers being alerted to the fact that some trouble was brewing endeavoured to scamper through the front door of the bus for their own safety.

The further finding of the learned Resident Magistrate was that the complainant moved further up in the bus, the appellant came up in the bus and attacked the complainant with the machete chopping him wildly, the complainant received chops to his left and right hands in endeavouring to ward off the blows being inflicted by the appellant with the machete. The medical evidence as to the nature of the wounds showed that they were really very serious wounds for which the appellant, in our view could properly have been charged with wounding with intent. The wounds comprised an 8 centimetre laceration to the ulna aspect of the right hand, a 4 centimetre laceration to the left thumb, a 4 centimetre laceration to the dorsum of the left hand, a fracture of the base of the thumb, a fracture of the second metacarpal of the right hand. The medical evidence was that the injuries were inflicted with a heavy sharp weapon, and were serious injuries which are likely to be permanent. The appellant gave evidence and in a nutshell he admitted inflicting the injuries to the complainant but said that he did so in self-defence, as the complainant had stabbed him in his forehead and was moving aggressively towards him to inflict further injuries. In his dilemma he used a machete which was near at hand to ward off further injuries. On his version, if accepted, there would no doubt be a case of self-defence. There was however a serious dent in his case when his own witness, District Constable Denzil Fisher whom he called to testify that he Fisher saw the appellant with a wound to his forehead did not testify that the appellant mentioned by whom the wound was inflicted, his evidence is that the appellant did not say who cut him. Be that as it may, the question whether self-defence should be considered by the learned Resident Magistrate would necessarily depend on his view as to whose evidence was to be considered as credible, since on the crown's case no issue of self-defence arose. The learned Resident Magistrate in his findings of fact stated that he accepted the evidence of the complainant Thaddeus Stoddart as to how he came by the injuries and pursuant to this he made detailed findings of fact as to the various incidents which constituted the entire transaction. The learned Resident Magistrate specifically found that Raymond Wright a witness who testified for the Crown was a witness of truth and on the basis of this witness' evidence, he found that at the time when the appellant attacked the complainant with the machete, the complainant had nothing in his hand. This witness was very frank inasmuch as he testified that, in an earlier incident when there was an altercation between the appellant and the complainant relative to the payment of the fare, at which time the appellant had put his finger in the complainant's face, the latter had used a small knife, a pen knife to push the appellant's finger from his the complainant's face. This was a point which Mr. Wright for the appellant emphasized before us. However, the Resident Magistrate stated specifically that he rejected the evidence of the appellant that he acted in self-defence at the material time. He found that as a fact what the appellant did, constituted retaliation, not self-defence. He found that the appellant reached for his machete and attacked the complainant subsequent to the altercation they had over the bus fare. The learned Resident Magistrate, having accepted the version of the Crown, inevitably had to conclude that there was no room for self-defence and he expressly stated that the evidence of the appellant which if accepted would support such self-defence was rejected by him.

Before us Mr. Wright argued many grounds of appeal comprising the complaint that the learned Resident Magistrate had not properly analysed the evidence nor had he isolated and dealt with material discrepancies between the evidence of the complainant and his witnesses which, had that been done would have highlighted the complainant as an untruthful witness whose evidence ought not to have been accepted. We pointed out to Mr. Wright that the evidence of the complainant so far as it was material did not stand alone. We pointed out to him repeatedly that it would be difficult to go behind the evidence of Mr. Raymond Wright which the learned Resident Magistrate accepted as credible evidence, he being a witness of truth. At the end of the day Mr. Wright without formally conceding, found himself unable to pursue those and other similar grounds of appeal. He thereafter made submissions relative to sentence. On this, he pointed out that the appellant was undoubtedly provoked by the attitude of the complainant and that one should bear in mind the level of violence in our society and that a person like the appellant, a conductor performing his lawful duties would likely become so irate as to retaliate in the way he did. We were not impressed by these submissions. What gives us concern is that, this incident took place on a public passenger vehicle. Further, even though the complainant at first appeared intransigent and was endeavouring to get a free ride, when he was fully confronted, he offered a dollar and more than one other passenger to avoid any "flare up" offered to pay to the conductor the balance of the fare namely thirty cents. This was rejected and we find it inexplicable as to why it should have been rejected when in fact thirty cents from one person is as good as thirty cents from another. Yet another aspect that gives us concern is that when the appellant proceeded to the front of the bus, armed himself with his machete and came back, he did not avail himself of the opportunity of frightening the complainant off the bus, instead he pushed him up in the bus and there inflicted the injuries on him, even though ~~the complainant~~ was endeavouring to back away from him the conductor. Such conduct in our view is reprehensible, even more so when it is indulged in on the principal means of transport, which is available to the majority of persons in this country. The sentence of imprisonment is a stern one having regard to the fact that the appellant is a first offender, but the gravity of the offence and the circumstance in which it was committed are such that we cannot properly say that the learned Resident Magistrate erred in any way in imposing the custodial term of one year's imprisonment at hard labour. Accordingly, the appeals against conviction and sentence are dismissed, the same are confirmed. The appellant being on bail and not having appeared in court the sentence of imprisonment will commence from the date of his apprehension, the bond is ordered estreated.