

CH. CRIMINAL LAW - Assault occasioning Actual Bodily Harm
- R.D. Court - Evidence - Verdict - whether verdict
unreasonable. Appeal dismissed.
It comes before the Court.

JAMAICA

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IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO: 77/88

EVIDENCE
CRIMINAL RECORD

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 OXFORD
LEROY WILSON
GEORGE DAWKINS

Mr. A. Kitchen for Appellants

Miss Y. Sibbles for Crown

February 28, 1989

CAMPBELL, J.A.

The appellants were convicted in the Resident Magistrate's Court for the parish of Saint Catherine on the 19th of May, 1988 for the offence of assault occasioning actual bodily harm. Each was fined \$1000.00 in default six months at hard labour. The offence was committed on the 2nd of April, 1987. Glenroy Richards the complainant said that at about 8.30 p.m., on that day he was lying on his bed at his home at Irish Pen Spanish Town. His back door was suddenly pushed open and the three appellants came into his room and drew him outside. Dawkins asked him for a motor tyre and when he said he knew nothing about it he was dragged to his front gate by Oxford and Dawkins and he was set upon by all three men. Wilson hit him on his left foot with a pickaxe stick. Oxford beat him with an iron pipe while Dawkins incited them to beat him. Dawkins is a teacher, who owns a car, Wilson is a body worker on cars and Oxford is a police officer. The complainant knew all of them, as they grew up together. There was light in the home which enabled him to recognize them.

The complainant's evidence was supported by other witnesses including Leroy Chambers and Angeila Richards and there was medical evidence supporting his evidence that he was hit in the area of his knee which was swollen and turned out to be fractured.

The appellants each gave sworn testimony in which they denied beating the complainant. The learned Resident Magistrate having seen and heard the witnesses said that on the totality of the evidence he rejected the defence and found that the Crown witnesses gave credible evidence. He accordingly found all three appellants guilty as charged. Mr. Kitchen before us referred to the grounds of appeal that were filed but to his credit he quickly abandoned all but the fourth ground when his attention was drawn to particulars in the evidence. In respect of ground 4, though it was not particularized as is required by rules of this court, we granted him permission to submit arguments to us to show as he complained that the verdict was unreasonable and against the weight of the evidence. Mr. Kitchen endeavoured to show firstly that Dawkins was in no way implicated because even though he conceded that Dawkins did tell the others to beat the complainant, there was no evidence that the complainant was beaten subsequent to such incitement. In the course of his submission Mr. Kitchen conceded that on the evidence:

- (a) the appellants went to the home on the night in question,
- (b) they went to elicit information regarding stolen car tyres belonging to Dawkins,
- (c) Oxford and Dawkins held on to the complainant while the latter was in his house and they took him outside into his yard and there proceeded to question him,
- (d) Dawkins did say to the others "let us beat the boy,"
- (e) Wilson thereafter did hit the complainant on his left foot in the area of the knee with a pickaxe handle and that there was on the medical evidence a fracture of the patella of the left knee,