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JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 70/89

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

R. v. DENNIS RAPPAPORT

Delroy Chuck for appellant

Brian Sykes for Crown

October 23 & December 11, 1989

GORDON, J.A. (Ag.):

This is an appeal from conviction on indictment for assault occasioning actual bodily harm, before the Resident Magistrate for the parish of St. Ann, on June 29, 1989. At the conclusion of the hearing, the appeal was allowed, the conviction quashed, and the sentence set aside. We promised to record our findings; this we now do.

The appellant terminated the complainant's employment and requested that he surrender the tenement he occupied as a consequence of employment. The complainant was given until the 20th January, 1989 to deliver up possession. On the 16th of January, 1989, the complainant was on the compound of Hope Botanical premises, St. Ann's Bay at about 2:45 p.m., when he saw the appellant who asked him when he was going to vacate the quarters. They argued and some time

afterwards, he saw the appellant enter his quarters. He went towards his quarters and saw the appellant leaving. He enquired of the appellant what he had "planted" in his house. In the course of the altercation that developed, he said the appellant punched him on the left side of his face; he grabbed a grille gate to prevent himself from falling and the appellant pushed the grille gate on him damaging his hand. In response to the appellant's shout, workers came and intervened. The complainant said he lost a tooth and the retina of his right eye was detached.

The appellant said he met the complainant in a passage on the compound. The complainant accused him of "planting" something in his room. As the complainant's attitude got progressively hostile, he felt trapped. He pushed pass the complainant and sought refuge behind a grille gate. The complainant had, in the meantime, picked up a piece of PVC pipe but was unable to strike him because of the barrier the grille gate presented. His defence to the charge was that he sought refuge behind a door to avoid the hostility of the complainant.

The sole ground of appeal argued by Mr. Chuck was that the verdict of the learned Resident Magistrate is unreasonable and cannot be supported by the evidence. Mr. Chuck referred to inconsistencies and conflicts in the complainant's evidence and sought to show that the complainant was the aggressor and if he did sustain any injuries from the gate, it was as a result of defensive action taken by the appellant.

On consideration of the evidence, we are of the view that the submission of Mr. Chuck was correct. The complainant was indeed the aggressor; he admitted that he concluded that the appellant had "planted" something in his room; he had the PVC pipe in his hand when the appellant grabbed the grille gate to close it behind him in order to

protect himself. He further said he did not get to hit him as he was behind the gate which blocked him. It is obvious that the accused honestly believed, that he was being attacked and did what he could to prevent the attack, and in so doing, injured the complainant. He clearly acted in self defence.

On this state of the evidence, Mr. Sykes quite rightly conceded he could not support this conviction.