

NO 163/65

J A M A I C A

IN THE COURT OF APPEAL

R.M.C.A. NO. 163/65

BEFORE : The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Moody (Acting)

R. v. D U D L E Y W H I T E

Mr. I. Ramsay, Q.C. appeared for the appellant

Mr. E.L. Miller appeared for the Crown.

9th November, 1965.

DUFFUS, P.,

In this case the appellant was charged on an indictment containing three counts - assaulting a Special Constable, assaulting a Constable and resisting a Constable in the execution of his duty. The learned Resident Magistrate imposed a fine of £15 on each of the first two counts and a fine of £5 on the third count.

Examination of the evidence discloses that the assault in count two was really the principal ingredient of resisting the Constable in the execution of his duty in the third count. On behalf of the appellant it has been urged on this Court that in these circumstances a nominal penalty only should have been imposed in respect of the third count, though technically the learned Resident Magistrate was correct in recording a conviction if he accepted the Crown's case. We agree with the submission, and as this Court has held on previous occasions, the correct sentence would have been a nominal penalty only. Therefore we set aside the sentence of the fine of £5, and in lieu thereof order that the sentence be one of a fine of £1 or an alternative of 7 days imprisonment. The other convictions and sentences are affirmed.

M.P.