

C. CRIMINAL LAW - Assault Occasioning Actual Bodily Harm - Facts - Appellant evidence diametrically opposed to complainant's - whether Resident Magistrate misdirected herself on facts - whether R. McFarlane failed to direct her mind to conflicts in evidence as to injuries suffered by complainant - no cross-examination of complainant in respect of injuries.

R.M. CRIMINAL APPEAL NO: 90/88

JAMAICA

Appeal dismissed [Per curiam "on the evidence before the Resident Magistrate she was entitled to find as she did"]

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

✓ Conf.

R. v. DWIGHT PHILLIPS

No case referred to  
M. Manley for Appellant

Miss P. Llewellyn for Crown

20th September, 1988

CAMPBELL, J.A.:

The appellant was convicted in the Resident Magistrate's Court for the parish of St. Andrew on the 5th of July, 1988, of the offence of Assault Occasioning Actual Bodily Harm. The victim was one Verona Simon, described as a businesswoman who had her place of business at No. 4, Northend Plaza, Constant Spring, Saint Andrew. The date of the assault was given as the 26th November, 1987 and the time was about 2.30 p.m.

The evidence of Verona Simon is that the appellant came to her premises with his girlfriend. There was some discussion about a wedding gown. This discussion culminated in a dispute as to whether some further sum of money should be paid before the wedding gown was delivered. The wedding gown was taken by force from Verona Simon and she made a report to the Half Way Tree Police Station as a result of which the girlfriend of the appellant and some other persons were arrested. The appellant returned to the complainant and demanded money in respect of some T-shirts which he alleged he had given to the

complainant to sell on his behalf. A dispute arose and from the evidence of the complainant, she was described in unpleasant and vulgar terms. She was set upon by the appellant who further described her as a thief. He pulled her to the ground as she was descending from her shop. He kicked her several times all over her body. She said she suffered bruises, some of which were shown to the learned Resident Magistrate. The appellant's version is diametrically opposed to that given by the complainant.

The learned Magistrate who had the opportunity of seeing the appellant and the complainant, of observing their demeanour and the manner in which they answered in cross-examination, was satisfied that the evidence of the appellant was to be rejected. She accepted the evidence of the complainant, and in the light of that evidence which she was entitled to accept, she found the appellant guilty as charged.

Before us, Mr. Manley, in a valiant effort, sought to show that the learned Resident Magistrate misdirected herself on the facts, but with commendable frankness, Mr. Manley had to concede that the basis on which he was positing the misdirection did not exist. He thereafter sought to show that the learned Resident Magistrate did not advert her mind to conflicts in the evidence relative to the injuries suffered by the complainant. It was pointed out to him that there was absolutely no cross-examination of the complainant in respect of the injuries which she said she suffered as a result of the assault. That being the position, Mr. Manley again found himself in some difficulty and though he did not expressly concede as he did in the case of the alleged misdirection on the facts one could see clearly that he felt there was no power to propel him further in his submission. He accordingly took his seat gracefully.

3.

We find that on the evidence before the learned Resident Magistrate, she was entitled to find as she did, that the appellant was the aggressor from the beginning to the end and that he did assault the complainant and inflict injuries on her in relation to which she testified and which evidence as we have earlier said, the learned Resident Magistrate was entitled to accept.

Accordingly, we find no merit in the appeal which is accordingly dismissed.