NMCS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 31/96

COR: THE HON. MR. JUSTICE FORTE, J. A
THE HON. MR. JUSTICE PATTERSON, J.A.
THE HON. MR. JUSTICE WALKER, J.A. (AG.)

R. V. EARL BRITTON

No appearance for Appellant

Lloyd Hibbert, Q.C. and Miss Sharon George for Crown

October 2 & 14, 1996

WALKER, J.A. (AG.)

On February 27, 1996 the appellant, Earl Britton, was convicted of the offence of carnal abuse in the Home Circuit Court, Kingston before Harrison J. sitting with a jury. He was sentenced to twelve years imprisonment at hard labour.

Leave to appeal against conviction and sentence was granted by a single judge who also granted a legal aid certificate to the appellant. In the result, however, the appellant was unrepresented at the hearing of this appeal.

Having regard to our decision we do not consider it necessary to recite the facts in detail. Suffice it to say the case for the prosecution revealed that the appellant, a man who was previously known to the complainant, entered

premises where the complainant lived with her parents and other members of her family, forced himself on the complainant and had sexual intercourse with her. The complainant, a young child of the age of 8 years at the time of this incident, gave sworn evidence that her ordeal took place in broad daylight. There was also evidence which established that immediately following upon this incident the complainant was taken to the Bustamante Hospital for Children where she was treated and remained for 8 days.

In his defence which was presented in the form of a terse unsworn statement the appellant denied molesting the complainant.

There was no corroboration of the complainant's evidence and the learned trial judge gave the requisite warning in that regard. However, he failed to give to the jury the warning necessitated by the fact that the complainant was a child of tender years. The short point which fell for our determination was whether the conviction of the appellant could be sustained against the background of such an omission. Mr. Hibbert frankly conceded that it could not, and we considered that he was eminently right in making that concession. It is an inflexible rule of practice that a jury should be warned of the danger of acting on the evidence of a child of tender years, and should at the same time be told why it is dangerous so to act. The dangers, of course, include the risk of unreliability and inaccuracy, over- imaginativeness and the susceptibility to being influenced by third persons. (Vide **Abraham v. R** (1992) 43 WLR 142).

In the circumstances, we allowed this appeal, quashed the conviction and set aside the sentence. In the interests of justice we ordered a new trial of the appellant to take place during the current session of the Home Circuit Court.