

JAMAICA

IN THE COURT OF APPEAL

R. M. CRIMINAL APPEAL NO: 47/80

BEFORE: The Hon. Mr. Justice Melville, J.A.
The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice White, J.A. (Ag.)

R. v. EZRA HALL

Mr. H. G. Edwards, Q.C. for the Applicant

Mr. G. Belnavis, for the Crown

May 21, June 27, 1980

MELVILLE J.A.

The appellant was convicted in the Resident Magistrates Court for the parish of St. Elizabeth on March 6, 1980 of wounding Keith Richards on the 4th of December, 1979.

Briefly, the Crown alleged that the appellant threw a stone which wounded the complainant, a police constable, in the head without any lawful justification; whilst the defence alleged that it was thrown in circumstances amounting to self defence. There was evidence to support either contention.

Nothing more need be said of the facts as the grounds of appeal argued before us turned on the admissibility of the medical evidence in the case. Firstly it was said that the Learned Resident Magistrate wrongly admitted in evidence a certificate tendered by the prosecution purporting to show the injuries suffered by the complainant, Mr. Richards; and secondly that he failed to receive in evidence a certificate relating to the injuries suffered by the appellant.

471

Section 50 and 51 of The Evidence Act provide as follows:-

"Part IV Medical Evidence"

- "50 (1) Notwithstanding anything contained in any law, but subject always to the provisions of this Part, any certificate or report, if accompanied by a sworn statement by the medical practitioner who has signed the certificate or report, shall be admitted in evidence in any criminal proceedings before a Resident Magistrate or Justices, or at any Coroner's Inquest, without the medical practitioner being called upon to attend and to give evidence upon oath.
- (2) Where, in any criminal proceedings before a Resident Magistrate or Justices it is intended to put in evidence a certificate or report as provided in subsection (1), the prosecution shall, at least three clear days before the proceedings, serve upon the defendant written notice of such intention, together with a copy of the certificate or report, and the defendant, at the commencement of the proceedings, may object to the admission of the certificate or report, and may require the attendance of the medical practitioner to give evidence on oath.
51. Nothing in this Part contained shall be deemed to prejudice or take away the rights of the defendant, or of the court or Coroner, as the case may be, at any stage of any proceedings to require the medical practitioner who has signed a certificate or report to attend and give evidence on oath."

What seems to be clear from the above provisions is that those sections were enacted to save the time of medical practitioners attending court to give viva voce evidence in criminal proceedings which are not of a serious nature: subject, of course, to the right of a defendant or the Court to require the attendance of the doctor to give the evidence in court. Once it is shown that the certificate or report is accompanied by a sworn statement by the medical practitioner who has signed the certificate or report; and if the proceedings are criminal in nature and conizable before a Resident Magistrate, Justices or a Coroner, then such certificate or report becomes admissible in evidence: that seems

472

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to be the plain effect of Section 50 (1) of the Evidence Act. On the face of it section 50, though perhaps originally intended to assist prosecutions, applies not only to the prosecution but to the defence also. The sub-section refers to "any certificate or report," so that this Court can see no reason why it should be confined to the crown alone and why it should not extend to the defence contrary to what was argued in the court below, but conceded by counsel for the Crown before us.

Consequently in answer to the second point raised by the appellant, it is our view that the learned Resident Magistrate was in error when he refused to admit in evidence the certificate tendered on behalf of the appellant, provided that it was signed by the Doctor and accompanied by a sworn statement in compliance with Section 50 (1) of the Evidence Act. We should add however that on application by the prosecution, the Court would have had the right to require the Defendant's doctor to attend court for cross-examination.

Where, however, it is the prosecution that is seeking to tender the certificate or report before the Resident Magistrate or Justices, not only must there be a compliance with Section 50 (1) of the Evidence Act but the requirements of Section 50 (2) have also to be satisfied. And even where the requirements of both subsections of Section 50 have been satisfied it is still open to an accused person to require the attendance of the medical practitioner to give the evidence on oath although it is the experience of this Court, that it is very rarely invoked, and one can only hope that this good and sensible practice which prevails at the bar will continue.

We have examined the certificate relating to Mr. Richards' injuries tendered by the prosecution in this case, and it is clear that it was not signed by the doctor nor was it contained in the doctor's sworn statement. What purports to be a certificate is

473

headed "an abstract from card No. 32008" and where it is usual for the doctor to subscribe the oath there appears "for Dr. Bapuji." This certificate was neither signed by nor sworn to by the doctor himself. There was here a failure to comply with the provisions of Section 50 (1) of the Evidence Act and for that reason the certificate ought not to have been received in evidence.

It is idle to speculate what the outcome of this case would have been but for the misreception of the prosecution's medical evidence on the one hand and the nonreception of that of the Defence on the other. For the reasons stated the appeal is allowed, the conviction and sentence are set aside, but in the interest of justice there should be a new trial before another Resident Magistrate for the parish of St. Elizabeth and we so order.