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J A M A I C A

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO. 158/65

BEFORE:           The Hon. Mr. Justice Duffus, President  
                  The Hon. Mr. Justice Henriques  
                  The Hon. Mr. Justice Shelley (Acting)

R.           vs.           G A S T O N           G O R D O N

Mr. F.M. Phipps for the Crown

Mr. E.C. Parkinson, Q.C. for the appellant

20th January, 1966.

HENRIQUES, J.A.,

The appellant in this matter was convicted by the learned Resident Magistrate for the parish of St. Catherine on the 30th of June, last of the offence of having maliciously wounded one Nicholas Fletcher. He was sentenced by the learned Resident Magistrate to imprisonment with hard labour for a period of three months.

The facts as revealed by the evidence which was given before the learned Resident Magistrate were to the effect that Nicholas Fletcher, who was a cultivator and known to the appellant for a period of some five years, was on the 14th of June last year on the roadway at the square at Redwoods, St. Catherine. There were several persons there at the time - it was around 5 o'clock in the afternoon. Whilst there, the appellant came upon the scene, went up to Fletcher and told him that he should not interfere with his Public Works business. Apparently, there was some exchange of words between the two men, and the complainant then stepped back, turned and moved off, and as he did so he glanced back only to see the appellant with a knife in his hand which the appellant took and stabbed him in the back. He fell down and was subsequently picked up by some men and taken to the Linstead Hospital. Doctor Randolph Lindo gave evidence to the effect that he carried out the medical examination of Fletcher, and that he had an incised wound one inch in length, about three-quarter's of an inch in depth on the left side of the lower part of the back of the chest, about four inches from the

/midline, and ...

midline, and that this injury was consistent with the infliction by a sharp object, and that Fletcher remained in hospital from the 14th of May to the 20th of May.

The appellant gave evidence on his own behalf and placed before the Court an entirely different version from that which had been spoken by the complainant and his witness. He deposed that on that particular day he was at Redwood, that he had gone there and he had seen the complainant and one Maragh and Cornelius Walker, and that he called them and they went into a shop and he proceeded to buy a flask of rum. The rum was divided into four glasses and the defendant was invited to partake of the rum. The complainant called him to come and drink the rum, but he, the appellant said that he wasn't drinking any of the rum, but the complainant said to him that you have to. He, the appellant refused - The rum was then thrown away and the complainant stepped up to him and said to him: "You, I am going to take away all the money from you." The complainant kicked him, they held on to each other and eventually they wrestled and fell to the ground and the other men joined in and he felt a number of blows; he was face down and the complainant on top of him, and he was being beaten and he felt a hand in his back pocket while he was in that unfortunate position, and in that back pocket he had had the amount of £44, and that eventually he was rescued by one George McCrae. He jumped off the ground and he ran and he never knew that the complainant had been cut, and he had no knife with him, and he did not in fact cut him.

The learned Resident Magistrate after listening to submissions made to him by learned Counsel for the defence at the trial recorded his findings, and in two respects they were as follows: one, "accept without any doubt that the accused man wounded the complainant in the manner depicted generally by the witnesses for the prosecution, and that the discrepancies, if the small individual differences in mode and manner of telling can be so called, are trivial and understandable." The other finding was to the effect that "the defence was rejected with respect to the allegation that the complainant was wounded in error by some other person, or in particular....

particular by the man, Cornelius Walker."

Several grounds of appeal have been argued before us. In effect, they might succinctly have been stated in one ground, namely, that the verdict of the learned Resident Magistrate is unreasonable and cannot be supported, having regard to the evidence. Counsel for the appellant has quite properly subjected the evidence to a close and critical examination, nevertheless, we find that we are unable to say that there was not sufficient evidence before the learned Resident Magistrate to justify him in coming to the conclusion to which he did. Therefore, the appeal against conviction must fail.

It is further submitted that the sentence imposed by the learned Resident Magistrate was in the circumstances manifestly excessive. It suffices to say in that regard that the circumstances revealed a knife wound in the back.

In our view this sentence cannot be said to be excessive. The appeal against sentence also therefore fails.