

IN THE COURT OF APPEALR.M. COURT'S CRIMINAL APPEAL NO. 224/66

BEFORE: The Hon. Mr. Justice Lewis, Ag. P.
The Hon. Mr. Justice Moody
The Hon. Mr. Justice Eccleston (Ag.)

R. v. GEORGE MYERS

Mr. Chester Orr and Mr. U. Gordon for the Crown

Mr. Hugh Small for the appellant

19th September, 1966

LEWIS, P. (Ag.),

This is an appeal against a conviction by the Resident Magistrate for the parish of Kingston of an offence against the Public Order Law, section 28 (b). The information charged that the appellant, at the corner of Spanish Town Road and Bond Street in the parish of Kingston, on the 7th of February, 1966, used certain abusive words whereby a breach of the peace was likely to be occasioned, to wit:- "There seem to be something common in regard to the oppressors, that is the same white parasite who is coming as the Queen. God damned the Queen."

The evidence was that on the night of the 7th of February, 1966, the appellant, along with certain other persons, held a joint political meeting at the corner of Bond Street and Spanish Town Road for the purpose of protesting

protesting vigorously against the impending visit of the Queen to Jamaica with particular reference to the fact that it was proposed to spend a sum of £45,000 in connection with that visit, and these speakers stressed that when so many starving people were about, it was a wrong thing to do to spend so much money on the visit of one person to Jamaica.

Assistant Superintendent Leopold Baldie was present along with other policemen including the witness, Ralph Forde, a Detective Constable and a recording of the appellant's speech was made. It appears that at the hearing of the case the prosecution, with the consent of the appellant, played back the recording of the speech and there was no dispute that it was an accurate recording. This Court was asked to have the recording played back but did not consider it necessary to do so.

During the course of his speech, the appellant said, inter alia, "That white parasite in the person of the Queen would be coming to Jamaica. The organizations represented there possess various views. Some were socialist and some were religious but in view of these views there was something in common regarding the white oppressor who is coming here as the Queen and on whom £45,000 would be spent for decorations." He also said, "God damn the Queen, God bless the Africans." The evidence was that he had a very sympathetic audience; people applauded, they showed their emotional involvement in what he was saying, but some also booed when reference was made to the Queen as being a 'white parasite', and when the words, 'God damned the Queen' were used. The meeting was by and large an orderly meeting, though there was evidence that they were 'extra noisy,' to use the words of the police, and that a considerable amount of indecent language was used arising out of what was said by the appellant. The appellant was convicted and fined

£50

£50 or three months' imprisonment.

On this appeal, Mr. Small, who has argued the appeal with great credit, has submitted that there was no evidence before the Court on which the learned Resident Magistrate could properly have come to the conclusion that the words used by the appellant were words which were likely to occasion a breach of the peace. He did not dispute that the words 'white parasite' and 'God damn the Queen' were abusive words. This Court is fully sensitive to the importance of freedom of speech amongst the inhabitants of Jamaica. People are at liberty to express in strong terms disapproval of their opponents or of the policy of Government, and to use all lawful means for the purpose of persuading the Government or their opponents to change their policies. What the law does not permit is the use of abusive language about their opponents or about those policies which is likely to occasion a breach of the peace.

Now, this meeting was held in West Kingston, and the evidence of the police is that as the appellant proceeded and repeated these insulting and highly abusive words about the Head of State, The Queen, people became progressively excited, broke out into indecent language, some booed, some cheered and had the police intervened to stop the use of this abusive language about the Queen, there would have been what the Superintendent described as 'another war in West Kingston.'

This Court has been asked to say that the whole audience was an anti-royalist audience and that there was no one in it who took or might have taken exception to the use of this abusive language about the Queen, and it has been urged that any booing that took place was booing of the Queen and not booing in disapproval of what was said by the appellant. This, however, is not consistent with what.....

what the witness, Baldie, said. The witness said, "I agree that booing is not necessarily a lack of intelligence." First of all, he said, "Each time the accused made reference to the Queen or called her a parasite, they booed. Regular indecent language was being used by the crowd." And later on he said, "I agree that booing is not necessarily a lack of intelligence. I rarely see people jumping in East St. Andrew meetings. Indecent language was regularly used as adjectives whenever people disapproved of what the speaker is saying" - I imagine the word should be, " 'disapprove' of what the speaker is saying." "In this case it was disapproved" - or 'disapproval' I presume - "to the Queen. The crowd booed at the use of the words 'white parasite' and 'white oppressor' when used."

Reference was made to the case of Jordon v. Burgoyne reported in (1963) 2 All E.R., at page 225 and particularly to a passage from the judgment at page 227, the purport of which is, that a speaker must take his audience as he finds it. That case had reference to a particular occasion on which the crowd consisted, inter alia, of a number of people at whom abusive and insulting words were thrown by the speaker, and who there and then reacted by creating a disorder, and Mr. Small submitted that since the crowd in this case was a sympathetic crowd, and no one actively protested against what was said, that it was not established that there was any likelihood of a breach of the peace being occasioned. In point of fact, however, the evidence discloses that breaches of the peace were actually occasioned by the loud use of indecent language and that moreover, people were whipped up to such a state of excitement that had the police or anyone in the crowd who was well disposed towards the Queen intervened to protest, there would have been a flare-up in West Kingston.

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The Court considers that on the evidence it is proved that the abusive language used was language likely to occasion a breach of the peace and that this conviction was rightly recorded.

The Magistrate imposed a sentence of £50 or three months' hard labour. The applicant has no previous convictions and is, apparently, a fairly young person, and the Court is of opinion that the sentence in the circumstances is manifestly excessive. The sentence will be set aside and a sentence of £30 or two months' imprisonment substituted. In the result, the appeal against conviction is dismissed, the appeal against the sentence is allowed and the sentence reduced to £30 or two months' imprisonment at hard labour.