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SUPREME COURT
KINGSTON
JAMAICA

Judgement Book

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 66/87

COR: The Hon. Mr. Justice Carberry, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Campbell, J.A.

R. v. KEN GRIFFITHS

Mrs. K. Bennett-Sherman for Appellant

Mr. Earle Wright for the Crown

October 27, 1987 & March 2, 1988

CAMPBELL, J.A.

The appellant was convicted in the Resident Magistrate's Court for Saint Andrew on February 28, 1984 on two counts of unlawful wounding and one count of Malicious Destruction of Property contrary to section 42 of the Malicious Injury to Property Act.

Against these convictions he appealed and his appeal came on for hearing on October 27, 1987.

Two of the grounds of appeal are common to both his convictions for unlawful wounding as well as for malicious injury to property. In relation to the charges of unlawful wounding the facts disclosed that on June 2, 1982 the first complainant Patsy Porteous and the girlfriend of the appellant had some fuss in the course of which the appellant came out of his room armed with an ice-pick and stabbed this complainant.

He also stabbed Roderick Porteous the second complainant who is the husband of the first complainant. The former had come to the assistance of the latter and was chased to the kitchen and therein stabbed many times by the appellant. The grounds of appeal complained that the "verdict was unreasonable having regard to the evidence and that the sentences were manifestly excessive." This latter ground was withdrawn.

Despite the valiant effort of Mrs. Bennett-Sherman the appellant's attorney-at-law in highlighting what she considered were material discrepancies in the evidence of the crown, we were not persuaded. Having ourselves carefully perused the evidence, we do not consider that the learned Resident Magistrate was wrong in her finding, even though this was baldly stated, that she accepted the evidence of both complainants and rejected the evidence of the appellant.

The third ground of appeal relates to the malicious destruction of property. It is as follows:

> "The Prosecution failed to prove an essential ingredient of the offence charged in Count III of the indictment that is to say the value of the property destroyed."

The evidence led in respect of this count was given by Everton Dunkley who said that when he saw Roderick Porteous being stabbed in the kitchen he rushed in, held the appellant by the right hand in which the ice-pick was, and pushed him outside. He then heard and saw stones smashing the front window of Porteous' bedroom. He saw appellant with stones in his hand after the glass was broken. Six panes of glass were broken and the stones that hit the window came from the direction of the appellant. Roderick Porteous in his evidence stated that he had valued the damaged windows. However up to the date of trial they had not been fixed and so he could not say what would be the cost to fix them.

Before us, Mrs. Bennett-Sherman submitted, as she did in a "no case submission" to the learned Resident Magistrate, that the prosecution not having led evidence of the value of the damage done to the window, the appellant was entitled to an acquittal because it was incumbent on the prosecution to prove that the said damage was in excess of ten dollars.

In R. v. Beckett (1913) 29 T.L.R. 332 an appeal was brought to the Court of Criminal Appeal on the ground that there had been no evidence as to the value of a plate glass window in a post office maliciously broken by the appellant which was alleged to be of a value exceeding £5. The issue however turned on whether evidence of value given by a witness which was based on what he had been told by the clerk of works who examined and assessed the damage was hearsay and consequently to be treated as no evidence. Phillimore J., said at p. 333:

> "It was said there was no evidence as to the value of the window; but a witness was called who, though he had no expert knowledge and though he had been able to accept the statement of the Clerk of the Works that the value of the window was £8, gave it as his own opinion that the value was £8 considerably more than £5. The appeal would be dismissed."

The above appeal proceeded on the basis that evidence of value is necessary where the offence was that of maliciously committing damage to an amount exceeding £5 but that expert evidence was not obligatory. We are persuaded by that authority, albeit inferential.

We are equally in no doubt that section 42 of the Malicious Injuries to Property Act, under which the appellant was charged requires proof of the fact that the "damage, injury, or spoil" is to an amount exceeding ten dollars. The Act after dealing with specific injuries in sections 2 to 41, for which punishments are provided then goes on in section 42 to prescribe punishment for injuries to property for which no punishment is otherwise expressly provided. This section specifically provides that the injury must exceed ten dollars. In section 43 the act prescribes punishment for all other injuries which are not dealt with in sections 2 to 42. It is significant that even though sections 42 and 43 may together be considered as the "residuary injuries" sections, the former which requires the injury to exceed ten dollars is a more serious offence being a misdemeanour which carries a term of imprisonment up to two years, whereas section 43 which is silent as to the amount of the injury done, is

a summary offence with a sanction of imprisonment for a term not exceeding two months, with the alternative of a forfeiture of a sum not exceeding ten dollars.

There being no proof at the close of the case for the Crown, of the amount of the damage done, the learned Resident Magistrate in the exercise of her discretion, on being alerted to this fact by the no case submission, could have allowed evidence of the amount of the injury to be called. But no such application having been made by the crown, the no case submission was wrongly overruled. At the close of the defence there was still no evidence of the amount of the injury. This being the situation, the appellant could not properly be convicted under the section under which this charge was laid.

In conclusion, the appeal in respect of the convictions for unlawful wounding is dismissed. The convictions and sentences are affirmed. The appeal in respect of malicious destruction of property is allowed. Though in normal circumstances an order of retrial on this count would appear appropriate, we have had regard to the fact that the damage was done nearly six years ago and it would be unjust to subject the appellant to a new trial. We accordingly enter a verdict and judgment of acquittal in respect of the count for malicious destruction of property.