

JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO. 75/87

COR: The Hon. Mr. Justice Carey, J.A.  
The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Forte, J.A.

R. vs. LEONARD AUGHLE

L.L. Cousins for Appellant

Miss Donaree Banton for the Crown

10th February, 1988

CAREY, J.A.:

In the Resident Magistrate's Court for the parish of St. Catherine, held in Linstead, on the 11th day of March, 1987 the appellant Leonard Aughle was convicted on an indictment which charged him for assault occasioning bodily harm to a ten year old boy named Fitz-Albert Smith. He was sentenced to pay a fine of \$200.00 in default 30 days imprisonment at hard labour.

The facts are quite short: Icy Foster who is the mother of this little boy testified that she saw him being beaten by the appellant with a cutlass and, according to her, the appellant was hitting the little boy over his back. She called to him and asked him why he was beating the child with the cutlass. The appellant, she said, looked up and ran back up the hill and he also threatened that

if she came near he would chop her. She said when she examined her little son she noticed there was blood on the back and front of his shirt and there was also a cut to the back of his head. She took off her son's shirt and she saw cuts and blood and about three prints of the cutlass on the child's back. On that very day she took the child to the doctor who, she said, examined him and she pointed out to the doctor the weals and the prints of the cutlass. A medical certificate was tendered. It is at variance with what the mother stated. The medical certificate showed that the examination took place some ten days later on the 29th of July, and the doctor recorded as his findings of injuries -

"An infected abrasion on the back of the head",

and there is also a note, "allegedly hit by a leather belt". One must assume that that history was given by the mother of the child, who had taken him to the hospital. Again, that is at variance with what the mother gave in evidence as the object used to inflict these injuries.

The evidence of the appellant was that there was some problem between his son and Foster's child; and the mother authorised him to give the boy a spanking which he did, using a belt. He denied, emphatically, that any cutlass was brought into play.

Mr. Cousins argued that the medical certificate to which reference has already been made, shows that the injuries disclosed in that certificate are not consistent with the mother's evidence. The effect of that he submitted was that her credit had been seriously affected, and in the circumstances, the learned Resident Magistrate ought not to have accepted her evidence.

Miss Banton for the Crown concedes this to be the position.

The Court also observed that at the hearing the little ten year old boy gave evidence, but there was no examination by the

Resident Magistrate on the voir dire. Learned Crown Counsel concedes, as we think rightly, that that was impermissible. We would call attention to R. v. Nelson 8 J.L.R. 72 and Section 54 Juveniles Act. The effect of that omission is that the evidence given by the boy unless corroborated, had no weight.

We entirely agree that the mother's evidence was so seriously discredited that in the circumstances of this case, there really was no case whatever for the appellant to answer.

In the circumstances, the appeal is allowed, the conviction quashed, and the sentence set aside.