

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 61/65

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

R. vs L E O N A R D S M A L L

Mr. K.A. Simmonds for the Crown

Appellant appeared in person.

7th March, 1966.

DUFFUS, P.,

Leonard Small, the appellant in this case was granted leave to appeal on the consideration of his application by a single judge of this Court.

On the matter coming before us today, the appellant informed us that he did not consider that he had received a fair trial. He states that he is a diabetic requiring constant medical attention, and that on the morning of his trial he had received an injection from the Prison's doctor for his diabetic condition, and following on that he had not had anything to eat.

The learned trial judge made certain enquiries of him before the trial started. The prisoner informed the judge that he had to take special food; that he had not received it that morning and that he was feeling bad. The judge asked him, "What is wrong now, can't you stand your trial now?" The prisoner answered and said, "Not today." The judge asked him, "When would you be able to stand your trial?" and the prisoner said, "Any time I feel better." There were one or two further questions by

the judge...

the judge which were answered, and the judge then said, "There does not seem to be anything wrong with you now, you seem to be able to talk alright, let's begin," and the Clerk of the Circuit Court asked the appellant whether he was still pleading not guilty, whereupon the accused replied, using a lot of very indecent language, to the effect that he had already said that he was not able to stand his trial. The judge thereupon, informed him that he should behave himself or that he would be restrained, and the appellant still using indecent words informed the judge that "a man was telling a lie on him." The judge thereupon, asked for a strait jacket to be brought to restrain the prisoner, and the transcript shows that the prisoner appears to have turned around away from the Court, whereupon, certain policemen attempted to turn the accused to face the Court, and the accused resisted the policemen, and the judge thereupon, directed the Clerk to proceed. The jury were empanelled, the witnesses for the Crown were called, gave their evidence and the prisoner did not ask any questions in cross-examination. The prisoner did not state his defence, and in fact, the prisoner took no further part in the trial whatever. He said nothing whatever from the time that the learned trial judge gave directions that he should be restrained.

The submission to this Court by the appellant is that he was definitely unwell on that day and was unable to conduct his defence, and that the learned judge ought to have granted him an adjournment which he had requested.

The Court finds that the judge who granted leave to appeal asked for certain further information on the matter. Crown Counsel who appeared in the Court below

was unable...

was unable to throw any light on the matter as he apparently had no recollection of the matter. The Registrar of this Court communicated with the Prison Authorities, and a letter, which the members of this Court have seen, was sent by Doctor A. R. Russell, the Prison Medical Officer which bears out the appellant's contention that he is a diabetic, and the Doctor states that on the morning of his trial he had received his usual injection - 80 units of insulin and the Doctor also stated he had not received any report of the illness of the appellant.

Learned Counsel for the Crown in reply to the submission by the appellant, submits that the learned judge had properly exercised his discretion when he directed the trial to continue. We are unable to agree. We feel that in the circumstances of this case where the appellant was not represented by Counsel, the learned judge ought to have made further enquiries into the complaint by the appellant that he was ill and unable to stand his trial. Certainly, it would not have been a difficult matter for the Prison Doctor to have been asked to attend at the Court and to have examined the appellant, and if he considered, in his opinion, that the appellant was unwell to so inform the judge. If he considered, on the other hand, that the appellant was well and fully able to take part in his trial, he could have so stated to the learned trial judge, but this was not done.

It would seem that what happened in this case, is that the prisoner lost his temper on hearing the judge direct that the trial should proceed, and he did not assist his cause by using foul language in the presence of the Court. It was indeed a most unfortunate matter. In these circumstances, the Court is unable to say that the trial

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was in fact, a fair trial. The prisoner was a sick man, and he may not, as he stated, have been able to conduct his case properly on that day.

In these circumstances, the Court allows the appeal and quashes the conviction, but as the interest of justice so require orders that a new trial take place during the current sitting of the Home Circuit Court. The appellant will be remanded in custody pending his trial.