

JAMAICAIN THE COURT OF APPEALRESIDENT MAGISTRATE CRIMINAL APPEAL NO: 28/88

BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Wright, J.A.
The Hon. Mr. Justice Forte, J.A.

R. v. OWEN BLYTHE
OSMOND BLYTHE

Mr. Norman Davis for Appellants

Ms. Marlene Harrison for Crown

25th April, 1988

CAMPBELL, J.A.:

The appellants Owen Blythe and Osmond Blythe were convicted of the offence of assault occasioning actual bodily harm and Owen Blythe was bound over for twelve months with surety in the sum of \$200.00 while Osmond Blythe was fined \$200.00 or 10 days at hard labour. They have appealed before us and the material ground of appeal is that the conclusion arrived at by the learned Resident Magistrate was incorrect, it was unreasonable having regard to the unreliability of the evidence in the context of the many material discrepancies and inconsistencies which existed in the case.

Mr. Davis who appeared for the appellants has highlighted many discrepancies in the evidence, e.g. Howard said that when Andrea was hit by a stone thrown by Owen, she went over to speak to Owen. Andrea herself however said, she formed an intention to do so but she did not in fact go over. Had she given evidence that she had gone over to speak to him it would have laid the basis, which is more probable as to the reason why, as she alleged, she was hit by Owen and Osmond. Her not having gone to remonstrate with Owen, creates an improbability as to why they should

have set upon her to beat her. Howard in his evidence said that Owen threw a stone at them, it missed him but it caught Andrea. Owen admitted in his evidence that he did throw a stone. Howard then said that he thereupon took a stick which he had and struck Owen and Owen fell to the ground and he Howard was able to take away the stone which Owen had in his hand which he was about to throw. Andrea who was there, who on the evidence of Howard was right beside him, said that, she did not see Howard with any stick nor did she see him hit Owen with any stick.

Again, Howard in his evidence said that when Robert Blythe came on the scene, Robert Blythe held him on his wrist and asked him what fuss existed between him and Owen. He was speaking normally, he was calm. Andrea in her evidence said that when Robert Blythe came on the scene he grabbed up Howard in his shirt front, he did not speak to Howard he only 'rough him up'.

Further evidence of Howard was that he was hit by Osmond on his left jaw while he Howard was held by Robert Blythe, Owen then went behind him and struck him with a stone which he had in his hand. Andrea who was present however said she saw no hitting of Howard by Osmond with his fist. What she said was that Osmond hit Howard in his head with a stone and Owen went behind Howard and also hit him in the head with a stone. Regarding the assault on herself she said that only Osmond thumped her in her face, he thumped her once, Howard to the contrary said that Osmond and Owen went and beat Andrea in the face with their hands. These are some of the discrepancies which learned attorney for the appellants have highlighted and they are confirmed from a perusal of the evidence. In our view these discrepancies coming from persons who were present at the scene narrating one incident are such that they really could not have been narrating the same incident. These discrepancies are in our view very material when considered in the context of the police officer's uncontradicted evidence that the appellants on the very night of the incident came and reported

the assault on themselves and that he saw that they were injured. That report he said was documented in the Station Diary. The complainants on the other hand came to make a report only two weeks after. His evidence gives credence to the view that the complainants were really not assaulted in the manner in which they said they were. The learned Resident Magistrate in our view must have been somehow bemused by the haphazard way in which the prosecution's case was presented. Osmond and Owen were charged in count 1 with assaulting Andrea, Ann-Marie and Howard occasioning to them actual bodily harm. Robert Blythe was not charged in this count, yet in count 2, we find that Robert Blythe is separately charged with a similar offence on Andrea Holt and Ann-Marie, yet at the trial the evidence disclosed that for Robert Blythe to be convicted it would have to be because of his participation in the assault by his sons on the complainants firstly, when he held Howard thereby enabling Osmond and Owen to hit Howard in his head with their fists and at the back of his head with a stone and to beat Andrea with their fists. Secondly, as the evidence goes Ann-Marie came on the scene. She says she was challenging Osmond as to why he had hit Andrea, whereupon she alleges that Robert Blythe held her pinning her hands to her sides, thereby enabling Owen and Osmond to assault her. There is no other way in which he could have been involved in these incidents.

It is doubtful whether count 2 ought to have been there and whether its existence did not create some confusion as to the manner in which the evidence was led. Be that as it may, the learned Resident Magistrate in our view ought to have considered the evidence very carefully, critically analysing the evidence relative to the alleged assault on Howard as distinct from the alleged assault on Ann-Marie. With regret, we do not see where he had embarked on this exercise. In particular he did not on the face of the record analyse the discrepancies which have been brought to our attention. Doubtless, he heard and saw the witnesses, but in a case where the evidence given by Howard and that of Andrea seemed to have been so diametrically opposed as to what actually took place, we cannot be sure

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that had he considered these discrepancies and analysed them fully, he would have come to the conclusion to which he came. For these reasons we consider that his decision was unreasonable having regard to the contradictory evidence which existed before him. In the result we feel constrained to allow the appeal to set aside the conviction and to enter a verdict of acquittal.