JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 25/88

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA

VS.

RICARDO THOMPSON

R. Pickersgill for the Appellant

Miss Y. Sibble for the Crown

April 25, 1988

ROWE P.:

The appellant Ricardo Thompson was convicted in the Resident Magistrate's Court for the parish of St. Catherine at Linstead by Her Honour Mrs. Gibson-Stellar, on the 23rd of September, 1987, for assaulting Steadman Johnson, thereby occasioning to him actual bodily harm and he was sentenced to pay a fine of six hundred dollars and in default three months imprisonment. The fine would certainly have been paid.

Mr. Pickersgill who appeared at trial for the appellant filed as his Ground of Appeal, that the verdict was unreasonable having regard to the evidence and he argued before us this morning in support of that Ground a number of matters. Before we get to the actual arguments of Mr. Pickersgill we will set out the facts as they emerged at the trial.

The Crown's case was that on the 20th of December, 1986, at about 9:15 p.m. Mr. Johnson, who was at his home, came from inside of his house intending to feed his dogs. He was outside so engaged, when he was set upon by somebody, who gave him a blow from behind and when he turned around he received a second and a third blow.

Mr. Johnson's evidence was that he saw the appellant, whom he had known for some four years before; that he saw the appellant stand some fifteen feet away from him and throw a stone at him. Mr. Johnson said he ran towards his varandah intending to arm himself and that the appellant ran after him unto the verandah and came within eight feet of him. He said he cried out for 'murder' and in so doing named the appellant as the person who was there attacking him.

He was cross-examined and the burden of the cross-examination was that Mr. Johnson had malice against the appellant because Mr. Johnson had given the appellant cows to rear and one cow had somehow disappeared, and Mr. Johnson had laid the blame for the cow at the appellant's door. There was some cross-examination that there were trees in the yard but Mr. Johnson maintained that the trees did not block his vision and that he was able to see someone coming into or going out of his home.

The appellant gave evidence and called a witness and his evidence was that he was at his home playing a game of cards and that the game started early. He was the house-master. He did not leave his house at all that night and his witness said: "Yes", he was at the home of the appellant. He was there with the appellant as the appellant played cards and he did not leave until the game broke up.

According to the appellant, the game finished about 2-3 a.m., whereas the witness said that the game went right down until 5 o'clock - daylight - before he went to his own home.

The appellant's witness in the course of the cross-examination said that he sometimes worked for the appellant and the appellant did say that for six to seven months before the trial he had been engaged in playing cards at his home every week-end.

The learned Resident Magistrate recounted the facts and said, it was open to the defence to attack the identification and that this was not done. She also found that the complainant recognized his attacker right away and he called out a name so much so that the complainant's wife over-heard. The learned Resident Magistrate referred to the discrepancy in the evidence between the appellant and his witness as to the time that the game broke up. She said in fact, the defendant gave evidence that he and his friends were playing games at his house all night, yet the only witness he called in support of his alibi, is a man who worked for him. The defendant with his evidence was not convincing and contradicted the defendant as to when the card game ended.

Mr. Pickersgill in the course of his submissions to us, said that the Resident Magistrate misdirected herself when she said that the defendant should have attacked the identification of the complainant and he said that the tactics which was adopted by the defence was to leave the prosecution to prove identification, to call the evidence as to identification and that the prosecution had failed to do so and consequently there was nothing for him to attack. There was no burden on him to try to lead evidence or to get information which would go to prove identification.

He said too that the Resident Magistrate ought to have made some specific reference to the malice on the part of Mr. Johnson and the effect which the malice could have upon the evidence given by him. As to identification, he also said, that there was at best a furtive glance by the complainant of the person who was attacking him and there was in insufficient evidence to show opportunity for recognition.

Mr. Pickersgill further complained that the learned Resident Magistrate discredited the witness for the defence on an issue which was

neither vital nor critical because the time at which, according to him, the game broke up, was not a material factor, the incident having taken place at 9:15 that night. He said too that the learned Resident Magistrate was wrong in saying that the appellant had a chance to concoct the defence before the police came to him on the following morning.

In our view these submissions are without merit. Mr. Johnson had given evidence of his prior and thorough knowledge of the appellant. He had given evidence of the opportunity which he had of seeing him; of the fact that the person who attacked him had come within fifteen and within eight feet of him unto his verandah and he impressed the learned Resident Magistrate as a person whose evidence could be relied upon. We find therefore that there was sufficient evidence of identification which could support a conviction.

The tactic of the defence in not frontally challenging the opportunities which Mr. Johnson said he had of observing his assailant might have back-fired but, of course, that is something for which the defence must take some responsibility.

The learned Resident Magistrate in discrediting the witness for the defence was entitled to do so having seen the particular witness and having listened to the cross-examination to have determined in her own mind whether he was a person upon whose evidence she could rely. She said that she could not so rely and the fact that he had some association with the appellant as an employee fortified her in her view that he was not a person whose testimony should be relied upon in the instant case.

The complaint that the learned Resident Magistrate did not refer to malice expressly could work both ways, in the sense that the complainant could have had malice against the appellant and the appellant could have had malice against the complainant. She drew attention to the fact that they were in business together and that was a sufficient finding in our view that she applied her mind to the possibility of one person

wishing to default and the other one wishing to attack the character of the defaulter.

There was a sufficiency of evidence, if accepted, which could support the conviction and we therefore determine that the appeal should be dismissed.