

CFM... how - Indecent Assault - whole
question of fact -
no reason to disturb finding of Resident Magistrate

(Hence dismissed) JAMAICA

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IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO. 48/88

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

to be referred to

R. vs. SELBURN FRATER

Appellant in person
Miss V. Grant for the Crown

June 6, 1988

CAREY, J.A.:

The appellant Selburn Frater was convicted in the St. Catherine Resident Magistrate's Court held in Spanish Town on the 3rd of March of this year on a charge of Indecently assaulting a girl of 12 years old whom we shall call 'X', and sentenced to 6 months imprisonment at hard labour. He now appeals against that conviction and sentence, saying that the learned Resident Magistrate should not have believed witnesses who testified on behalf of the Crown because they were telling "perfect lies".

The facts are, that on the 23rd September, 1986 at about 10 o'clock in the morning, Miss 'X' went down to a riverside, as she calls it, in St. Catherine, apparently near her home, as she had been sent there to cut broom weed. She carried with her a little knife. While she was thus engaged, she felt somebody grab her from behind.

She thought it was her mother but it was not; it was this appellant who was known to her. It should be said at once that the appellant acknowledged that he knew the young lady for some time. What he did, according to her, was to trip her up so she fell to the ground and hit the back of her head; he sat on her legs; he started to pull her panties off with one hand, and in the other hand he held a knife over her in a threatening position. She held on to her panties in an effort to resist his efforts and started to kick about and in that time the defendant took out his penis and was engaged in trying to force her panties off. At this time, fortunately for the little girl, two young men, whom she knew, came along and one of them flung a stone at the appellant who ran off through the bushes. She put the time at about 10 o'clock in the morning. Her evidence was corroborated by a young man, Mr. Robert Owens who testified that on or about that time he was attracted to the site while he was walking along the Rio Cobre River. First of all, he said he saw a foot on the ground, that foot extended into a belly lying on the ground behind a tree. He went around the tree and there he saw this appellant lying on the young girl. The appellant looked around, apparently saw that he was under observation, drew up his shorts which were then down at his legs, took up his knife which was on the ground beside him and also his hat which he had put conveniently by, and made off into the far distance.

The appellant denied any such incident took place; he acknowledged that he saw the young girl and he called a witness to support him that he was at the river but said he did not molest her, and nothing took place. He put the time, however, at 6:30 - 7:00 a.m. or thereabouts and the witness whom he called, testified that by about 9 o'clock she had already left the side of the river.

The learned Resident Magistrate who saw and heard the witnesses disbelieved entirely the story given by the appellant;

accepted the evidence of the little girl and the witness in corroboration and duly convicted him.

We have given very careful consideration to what is urged before us, but it was entirely a question of fact for the learned Resident Magistrate and we see no reason whatever to interfere or disturb her finding. In the result, the appeal will be dismissed, the conviction and sentence affirmed. The Court directs that the sentence is to commence from the date of the conviction.