

15th January, 1965.

J A M A I C A

COURT OF APPEAL

R. M. CRIMINAL APPEAL NO. 225/64

Before: The Hon. Mr. Justice Duffus - President  
The Hon. Mr. Justice Henriques  
The Hon. Mr. Justice Waddington

Mr. Dennis Daley for the appellant.

Mr. R. O. C. White for the Crown.

R E G I N A vs. THEOPHILUS EDWARDS

DUFFUS, P.:

The appellant was convicted on indictment for the offence of common assault and fined ten pounds or two month's imprisonment with hard labour. He appeals.

The facts, shortly, are that a strike was on at certain Public Works premises. A Land Rover belonging to the Public Works was driven into the area. The strikers apparently thought the Land Rover should not be driven on any official duties and the vehicle was stopped and the appellant sought to get the key of the vehicle. First of all, according to the evidence of Canute Grant, the complainant, the appellant held the driver by his neck trying to take it away. The key was then tossed by the driver to the complainant who is a clerical officer of the Public Works Department, whereupon the accused came around to the back of the vehicle, held on to his (complainant's) shirt and punched him in his left eye with his fist. That was the assault that was alleged. The defence was a complete denial by the appellant that he had taken any part in any assault on the complainant. A simple question of fact for the learned Resident Magistrate and he accepted the evidence of the complainant and his witnesses. This Court has not been shown any good reason why it should interfere with that finding.

Another complaint made by the appellant is that the driver of the vehicle, who had apparently been in sympathy with the strikers, was present in Court on the first occasion when the case was called up. He was not present in Court on the day of the trial and it would seem that the appellant may have wanted to call him as a witness but no application was made to the learned Resident

Magistrate to adjourn the case to get him. It does not appear from the notes that any application was made to the Resident Resident Magistrate or request made of the Clerk of the Courts to call this driver so that he could be cross-examined. The appellant has now submitted that it was the duty of the Clerk of Courts to have the witness there and to make him available to the defence. There is no merit in that submission. The appeal fails. Dismissed.

Sgd. Sir H. Duffus.

P.