

111/14/16/8

29th September, 1965.

J A M A I C A

IN THE COURT OF APPEAL

R. M. COURT CRIMINAL APPEAL No. 154/65

BEFORE: The Hon. Mr. Justice Henriques (Presiding)
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Moody (Acting)

R. v. W E S L E Y S T A P L E S

Mr. E. L. Miller appeared for the Crown
Appellant appeared in person.

WADDINGTON, J.A.,

The appellant was convicted in the Resident Magistrate's Court for the parish of Clarendon on the 29th of June this year on two counts of an indictment, the first count charging him with house-breaking and larceny and the second count with assault at Common Law. On the first count he was sentenced to six months imprisonment at hard labour, and on the second count twelve months imprisonment at hard labour, that sentence to be consecutive to the sentence imposed on the first count.

The case for the Crown was to the effect that on the second of June, 1965, at about 8.00 a.m. Rudolph Staples the father of the appellant locked up his room in which he lived at Peckham in Clarendon and went away. The appellant was seen by another witness, Rose Staples, the daughter of the complainant and sister of the appellant, to break off a window from the complainant's room to enter the room and then to emerge through the window, shortly after, carrying a suit case. A message was sent to Rudolph Staples and he returned home at about 7.30 p.m., and when he returned he saw the appellant chopping up some celotex, smashing some bottles and barrels in the yard and using words

/ threatening...

threatening to kill the complainant. The complainant made a report to the police; he had to sleep at the police station that night for fear of being harmed by the appellant, and he discovered subsequently that two shirts, a jacket, a bible, a flashlight and a grip were missing from his room, as well as a paper bag containing two sheets, two pillow cases and another small grip, altogether of the value of \$12.

The following day, the 3rd of June, the appellant, according to the evidence of Rudolph Staples came back to the complainant's yard and there, with a machette in his hand, attacked the complainant chopping at him with the machette. The complainant had to duck in order to escape the attack and thereafter the appellant flung a stone at him which he also had to duck, and then the complainant was able to rush the appellant and overpowered him taking away the machette from him.

The case for the defence was that the appellant used to live with his father in the room, that he had a key for the room which his father had given him and more over that the articles which were taken from the room had previously been given to him by his father. He said that on the 2nd of June he did not break into the room as Rose Staples had said, but that he had entered by means of the key and he had then removed the articles which his father had given him. With regard to the second count - the count for assault, he denied that he ever assaulted his father. He said that on the contrary he had been chased by his father and others in the yard, that they had beaten him. His father had a machette and he denied that he had any machette or that he had attempted to chop his father or throw a stone at him.

∟ Before.....

Before us the appellant has urged the very same matters which he stated in his defence before the learned Resident Magistrate. It appears to us that there was ample evidence before the Resident Magistrate on which he could have arrived at a finding of guilt on both counts of the indictment and we see no reason, therefore, to interfere with the conviction. The appeal is therefore dismissed. We are somewhat concerned however at the sentence which was imposed on the appellant. As I have mentioned before, he was sentenced to six months imprisonment at hard labour on the first count and twelve months imprisonment on the second count, the sentence on the second count to run consecutively to the sentence on the first count.

It appears from the record that nothing was known about the accused and from that I take it that he had no previous convictions, and it seems to us, reading between the lines of the evidence that this incident arose out of some sort of family dispute. In the circumstances, we think that we should like to have the benefit of the advice of the Probation Officer in this matter, and it may very well be that after he has gone into the background of the family relationship between the appellant and his father we may feel that a different type of punishment ought to be imposed in this case. We are not saying that we are going to interfere with the sentence, but before deciding that matter we should like the benefit of the Probation Officer's report. In the circumstances, we shall defer our decision on the question of sentence until after we have had the benefit of the Probation Officer's report.

The appellant, will of course, remain in custody until the matter is finally disposed of.

G. E. Waddington
J.A.