

CA Criminal Law - R.M. Court - Trial - Prejudice - Evidence - whether trial unfair
whether Resident Magistrate knew complainant before trial - whether
proceedings cross-examination of appellant and harassment of counsel by Resident
Magistrate. Application for leave to introduce fresh evidence
refused. Appeal dismissed. No case referred to
JAMAICA

IN THE COURT OF APPEAL

R. M. CRIMINAL APPEAL NO: 89/88

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

R. v. WILBERT BURRELL

D. Chuck for Appellant

Miss Paula Llewellyn for Crown

March 14 & April 26, 1989

CAMPBELL, J.A.:

The appellant, a Sergeant of Police, was on April 7, 1987 convicted in the Half-Way-Tree Resident Magistrates Court of the offence of Assault Occasioning Actual Bodily Harm and was sentenced to pay a fine of \$1000.00 or in default two months imprisonment at hard labour. The victim of the assault, the complainant, was at the time an Acting Corporal of Police. On the facts adduced in evidence, the verdict of guilty was inevitable once the complainant was accepted as a credible witness. His evidence was that he reported for duty at Hunt's Bay Police Station at about 12.05 a.m., on November 4, 1986. He proceeded upstairs to his cubicle to change into his duty uniform. The appellant, against whom he had previously made a report to their superior officer, saw him and immediately advanced on him and gave him a thorough punching up causing injury to his eye. The defence was a denial. Rather the appellant said that it was the complainant who came into his the appellant's cubicle and slashed at and injured him with a razor and ran away. He the appellant ran after

the complainant but never caught up with him much less to hit him. The learned Resident Magistrate rejected the defence and rightly so as being patently uncreditworthy.

The appellant sought to have his conviction set aside not on the ground that it was unsustainable on the evidence, but rather on grounds that he did not have a fair trial by an impartial and independent tribunal because the learned Resident Magistrate knew the complainant before and there was thus bias or the likelihood of bias; further the proceedings in court were vitiated by irregularities constituted by protracted cross-examination of him the appellant by the learned Resident Magistrate and harrassment of his counsel; these were not only unfair but prejudicial to a fair hearing.

To substantiate these grounds, leave was sought to adduce additional evidence by way of affidavits of the appellant and his counsel. The affidavits, in accordance with established practice, were referred to the learned Resident Magistrate for his report thereon. In his report the learned Resident Magistrate emphatically denied that he knew the complainant by name or by face or at all at the time when the case was tried. He further reported that it was verifiable and that he had himself verified that the complainant had been assigned to him as an orderly a month after the case had been decided.

In relation to his hearing the case instead of the Magistrate before whom it had been listed, he reported that he did so to facilitate the speedy despatch of an old case in the absence of the other Magistrate who had not attended court due to illness. He refuted the allegations of protracted cross-examination of the appellant or of harrassment of counsel, though he readily admitted firmness in the face of occasional offensive conduct on the part of counsel.

The report of the learned Resident Magistrate is to be preferred to the contrary contention of the appellant, especially as the record fails to show any protracted cross-examination of the appellant by the learned Resident Magistrate. Equally, the accusation of harrassment of counsel appears inconsistent with the record and the conduct of counsel who did not include "unfair trial" in the grounds of appeal filed early after the conviction when the alleged harrassment resulting in "unfair trial" if such did take place, would have been fresh in counsel's mind.

We accordingly did not grant leave to introduce the proposed fresh evidence and since the original ground of appeal namely, that the conviction was on the evidence unsustainable was not argued, and rightly so, we dismissed the appeal and confirmed the conviction and sentence and promised then to put our reason in writing which is now done.