

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

ADVOCACY PROGRAMME

YEAR II

CRIMINAL BRIEF

R. v. JIM DISTANT

NORMAN DAVIS

**IN THE RESIDENT MAGISTRATE'S COURT FOR THE CORPORATE AREA.
PRELIMINARY EXAMINATION HOLDEN AT HALF WAY TREE ON THE 12th
DAY OF SEPTEMBER 2009 BEFORE HER HONOUR MISS MAJORIE
WILSON, RESIDENT MAGISTRATE FOR THE CORPORATE AREA.**

Inf. No. 2686/09

Regina

Vs

Jim Distant

For Causing grievous bodily harm with Intent

Mr. N. Buchanan for Accused

Mr. Watt for Crown

AND THIS DEPONENT: RICHARD JAMES: on his oath saith as follows - I am 20 years old. I live on the streets in the vicinity of the intersection of Taylor Blvd and Chancellor Road in St. Andrew. I have lived on the streets for 4 years. I was raised by my mother and had to leave her home because she got married and my stepfather and I could not get along. At the time I was in fourth form at "Learn a Trade" Technical High School.

I hang out with other "street people" as they are known in Jamaica. I sell flowers including roses. I am otherwise called "Romeo" because I like to smile and chat-up with ladies at the stoplights. They like me but men resent me.

I 'hang out' at the intersection with other street persons including Mr. "Mac" who is wheelchair bound, "Smiley" who sells newspapers, and "Ruffian" who wipes windshields.

In July 2008, I noticed a driver that I had not seen before at the intersection. He was an elderly white man. He would collect newspapers daily from "Smiley". He always appeared serious and did not speak to "Ruffian" or me. He seemed to take to Smiley because he tipped him extra in US dollars but refused to deal with us. Smiley was proud about his tip and bragged of it. On one occasion he said "I've heard about you street boys. You harass people. Don't ever harass me or one day you'll pay!" We called him "Whitey" for fun. He would lower his power window to collect the papers. I did not attempt to sell him roses because I never saw him at anytime with a lady friend.

On, August 15, 2008 at 7:30 a.m I saw "Whitey" approach the intersection with a young attractive lady in the front passenger seat to his left. The light was showing red and so he stopped. He took down the power window on the passenger side to accept the newspapers from "Smiley". His lady friend noticed my roses and smiled at me saying that the roses were nice. I smiled back and started to "chat her up" and tease "Whitey". I said to her "wha a hot girl like you a do with "gramps?". "Buy some roses nuh". She smiled as if knowing I was simply being playful and that was my style with ladies.

She nodded and reached her hand to her bag in her lap. I was also placing the roses to the left side by the seat while she was accepting them. "Whitey" looked annoyed but I ignored him in the same way as he had ignored "Ruffian" and me. She was telling him to calm down. She said "Jim they are only teasing us and trying to make a living". Just then I heard the man say "To hell with you!" in reference to me. I then saw him thrust a steering wheel lock in the direction of my face and I had no time to avoid being hit. I felt a painful blow to my nose and I dropped back to the pavement hitting my head and "bursting it".

The next thing I remember was being placed in a patrol car. I was in too much pain to explain then the details of the incident. I saw when the patrol car pulled over "Whitey's" car and I pointed him out as the man who struck me. I can't

recall if he said anything at that time. I was then taken to the University of Jamaica Hospital where I was admitted and treated. I suffered a broken nose and a gash to my head as a result of the fall to the pavement.

Cross Examination:

It is true that 'Whitey' threatened Ruffian and me before that day. I agree that my hand was in the car at the time I felt the blow. My other hand was resting on the window frame to accept payment from the lady. It is not true that I brushed her in the area of her chest. It is not true that I was reaching for her handbag. It is true that I was placing the roses in the area of her lap. Yes her handbag was in that area. It is not true that she said to "Whitey" "Jim, help me I'm scared!". Yes "Ruffian" was wiping the windshield at the time this happened. He was on the right side of the car in front of Whitey. It is true that "Whitey" had not given him permission to clean the windshield. It is not true that I was holding the switch for the power window down to prevent it from going up. Yes it was true that the lady was buying roses and being friendly to me. It is not true I told Ruffian "I going tek some \$US off a Whitey woman today. Mek sure you wipe the windshield and distract Whitey" Yes Smiley was nearby at the time.

Signed: **Richard James**

12/9/09

Marjorie Wilson

Resident Magistrate
Corporate Area

12/9/09

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AND THIS DEPONENT: ROGER McINTOSH: on his oath saith as follows - I live in a small shack in the Chancellor Road area. I am paralysed from the waist down because both legs were amputated arising from complications due to diabetes. I also lost my job as a teacher as a result. My wife also left me. I was forced to move into the shack I now live. I beg from a wheelchair on the streets to pay for my medication and to pay my living expenses.

I know the street children who hangout at the intersection of Taylor Blvd and Chancellor Road. I beg in that same area. I know "Romeo", "Smiley" and "Ruffian"

I am a mentor to these youngsters. Street children in Jamaica have a bad reputation. I encourage them to be polite at all times to motorists they deal with and to have a positive outlook on life despite their hardships. They have responded well to my guidance.

In the month of July I remember seeing a motorist I had not seen before at the intersection. He was an elderly white gentleman. I noticed that he was serious because he would only open his window to collect newspapers from "Smiley". The youngsters were not rude Ruffian would wet and wipe his windscreen occasionally even without being paid, although without permission.

On August 15, 2008 I witnessed an incident at the intersection of Taylor Blvd and Chancellor Road. I noticed an attractive lady in "Whitey's" car for the first time when the car pulled up at the stoplights. At that time my wheelchair was on the left sidewalk on the passenger side of the car. I was a few feet in front of the car so I could see the upper bodies of "Whitey" and the lady. My face was roughly in line with the bottom edge of the front left window. At that time I saw "Smiley" deliver the papers through the passenger side. At about that time I heard "Romeo" attempting to sell the lady some roses and she was talking to him. "Ruffian" was wiping the windshield and smiling with the lady. They were all polite based on the manner that I observed.

I could not hear all the words exchanged between "Romeo" and the lady but I did hear her ask for the price of the roses when "Romeo" was showing her the roses. She appeared relaxed when speaking to "Romeo" and she was accepting them to her left side.

The next thing I saw was when the white man reached across the lady with a steering wheel lock and thrust it in the face "Romeo". At that time "Romeo" was at the window on the passenger side and his head was at the window and he was placing the roses in her hand at the window. "Ruffian" was at the window wiping the windshield.

I shouted for assistance when I saw "Romeo" fall to the sidewalk. At the time "Romeo" was hit "Ruffian" ran from the scene. He appeared fearful at that time because when "Romeo" was hit "Ruffian" threw up his arms, dropped his

windscreen wiper and said “ this White man mad!” I took my wheelchair to “Romeo’s” side. He appeared as if he was in pain. I then saw a uniformed policeman approaching the scene. I pointed to “Whitey’s” car as it sped away and told the police officer the driver was responsible for what happened. “Smiley” and the police officer lifted “Romeo” into the police car quickly and the car sped off with the siren blaring.

Cross Examination

I was about 15 feet away from the car at the time of the incident. No I did not ask them to stop referring to the man as “Whitey” before the incident. They were just being playful. Yes I have begged him before and he did not respond to me. Yes Ruffian ran away. Yes I have not seen him or “Smiley return. Yes there was water on the windshield where Ruffian was cleaning it with his wiper.

Signed: *Roger McIntosh*

12.9.2009

Marjorie Wilson

Resident Magistrate
Corporate Area

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Mr. N. Buchanan for Accused

Mr. Watt for Crown

AND THIS DEPONENT: MICHELLE WASHINGTON: on her oath saith as follows: I am a Registered Medical Practitioner attached to the Accident and Emergency Department of the University of Jamaica Hospital.

On August 15, 2008 I examined and treated a Richard James He was brought to the hospital by Det/Sgt Gayle Hanson. I made notes of my examination at the time. These are my notes. Witness given permission to refresh memory.

On examination I noted the following:

- a. Fracture to the nose and severe bleeding from the nose.
- b. 6 cm x 0.8 cm laceration to the scalp
- c. Fracture of the occipital bone not displaced.

The laceration was sutured with 10 stitches. Antibiotics and tetanus shots administered. X rays were ordered.

The patient was kept for 24 hr observation and discharged the next day.

In my opinion a moderate to severe degree of force by a blunt object to the nose and head caused these injuries.

Signed: *Michelle Washington*

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Mr. N. Buchanan for Accused

Mr. Watt for Crown

AND THIS DEPONENT: GAYLE HANSON: on his oath saith as follows - I am Det/Sgt of Police stationed at Golden Circle Police Station. On August 15, 2008 I was in a line of traffic at the intersection of Taylor Blvd and Chancellor Road. The University of Jamaica and the University of Jamaica Hospital are just up the road from that intersection. The traffic lights were showing red. I was alone on mobile patrol at the time.

At about that time I observed when a street boy who was by the side of a blue car dropped backwards onto the sidewalk. The car that he was beside was at the front of the line of traffic and there were about 3 cars between my car and that car.

I immediately switched off my engine and rushed along the sidewalk to the scene. As I proceeded to the scene I noticed that the car sped off through the red light up the road. I also noticed a street boy with a water bottle and a windshield wiper who ran from the scene.

When I reached the injured youngster he was in pain and bleeding from his nose and head. A man in a wheelchair who gave his name as Roger McIntosh pointed out the driver of the speeding vehicle as responsible. A newspaper vendor on the scene assisted me in placing the youngster in the patrol car.

I put on my siren and sped off in the direction of the University of Jamaica Hospital. The youngster was in pain so I did not ask him any questions at that time.

On the way I caught up with the blue car. It was a blue Honda Accord. I pulled it over to the curb and stopped in the road alongside the driver. I identified myself as Det/Sgt Gayle Hanson. The youngster pointed him out from the back seat as the person who had assaulted him without reason. He said in reference to the complainant "He got what was coming to him". I ordered production and took possession of his driver's licence to get his details. I ordered him to proceed to the Golden Circle Police Station and wait for me there. I asked him if he had a steering wheel lock and he said yes and handed it over to me. **This is the steering wheel lock. Admitted as Exhibit 1.**

I then dropped off the youngster at the University of Jamaica Hospital. By this time he had given me his name as Richard James otherwise called "Romeo". I then proceeded to the Golden Circle Police Station where I met the accused, Jim Distant., and a lady who he introduced to me as his wife. He said he was a Professor of the University of Deep South U.S.A. His wife was sobbing and complaining of her husband's 'temper' and the predicament it had caused to a Young man who had such charm. I separated them and questioned the accused.

I told him of the allegation against him and cautioned him. He said, "Officer I was protecting my wife and her property, I believe that is my right". I asked him what his wife meant by his temper. He replied "Officer my wife gets emotional,

sometimes she mistakes my protectiveness of her for insecurity and jealousy. I know better. If you please I do not wish to answer any more questions. Charge me if you wish and I will consult my lawyer”.

I then arrested and charged the accused for causing grievous bodily harm with intent contrary to section 20 of Offences against the Person Act. He was cautioned and in reply he said “I did what was right to protect my wife”.

I returned to the scene but I did not see the windshield wiper and neither have I seen him since.

Cross Examination

Yes, there is a problem of street children and people and their behaviour at stoplights. Yes, police are sometimes called in to respond to reports of theft and harassment at the stoplights, but I know of no recent such reports in relation to this intersection. It is true that police cannot sufficiently monitor the street boys because the force does not have sufficient members for this. It is true that the wife of the accused referred to his temper at the police station and the charm of the young man. I did not attempt to take a name from the newspaper vendor in order to take a statement because I am aware he had a previous conviction for larceny. I saw him plead guilty in the Resident Magistrate’s Court years ago for shoplifting. I did not see him as a potential credible witness.

Signed: *Gayle Hanson*

12.9.2009

Marjorie Wilson

Resident Magistrate
Corporate Area

12.9.2009

STATEMENT OF JIM DISTANT

I am a 60 year old University Professor at the University of Deep South U.S.A. I am a Professor in Business Management. The University of Jamaica is expanding its School of Business and I was invited to Jamaica as a Consultant and Lecturer for 1 year to work with the university on this.

I am married to a former student of mine Victoria.

I arrived in Jamaica in July to settle in and prepare for the arrival of my wife. The contract was effective from August 1, 2008. It was my first time in Jamaica. I live in a townhouse complex in Beverley Heights, St. Andrew.

My first month in Jamaica was a culture shock. I was disturbed by the indiscipline on the roads, the constant noise and loud music and the crime scene. I had accepted the invitation to come to Jamaica primarily because I felt a year from the stress of my job in the U.S.A would do me well.

I read the papers thoroughly everyday. I purchased my newspapers daily from a vendor at the intersection of Taylor Blvd and Chancellor Road. He seemed a friendly person and that is why I purchased from him. I paid him a month in advance with a generous extra for his friendly service so that I would not have to find change daily.

There were other street youngsters who were constantly at that intersection who were unfriendly and disrespectful. There were two youngsters, one who wiped windshields and the other who sold roses who were constantly disrespectful to women. They would tease me and call me "Whitey". I deny that I ever threatened them. An elderly gentleman in a wheelchair would beg at the intersection. I was sympathetic but did not give him money as I thought this would encourage the others.

My wife arrived in the island on August 14, 2008. The following day August 15, 2008 I was taking her to the campus to introduce her to my colleagues there. She was seated in the left passenger seat of my Blue Honda Accord Sedan. Her handbag was in her lap.

On arrival at the intersection of Taylor Blvd and Chancellor Road I met upon a red light and stopped my vehicle. I was at the head of the line of traffic. I lowered the power window and my wife took delivery of the papers on my request when the power window on her side was lowered. The rose vendor and the windshield wiper approached the car.

The windshield wiper was cleaning the windshield without my permission and was on my side of the car leering at my wife. The rose vendor approached my wife with roses and he was attempting to sell her at the window. His hand with the roses was partially in the car. He was using patois "nice lady, you body look ready, buy some roses from mi nuh, them pretty just like you. Wha a hot girl like you a do with gramps".

I tried to take up the power window on her side but it was not moving. I realized the reason for this was that the rose vendor had a finger on the switch to the power window on her side keeping it down.

At about this time the rose vendor who was apparently talking to my wife was using the roses to distract her. His hand with the roses was brushing against her chest and under the guise of placing them in her lap he appeared to be going for her handbag which was there.

I immediately reached for my steering wheel lock which I keep in the console area between the left and right front seats. By this time the rose vendor upper body was slightly in the car on the left side.

I thrust the steering lock in the vicinity of his upper chest to get him away from the car, but it missed and made contact in the area of the face. He fell to the ground and the windshield wiper fled at the same time apparently in fear. I then broke the stoplight to spare my wife any further distress by being at the scene and also because I feared a hostile crowd gathering at that time. I intended to drive to the police station on campus.

On my way to the station a policewoman who identified herself as Det/Sgt Gayle Hanson stopped the car. I immediately volunteered what happened at the scene namely that I was protecting my wife and her property and in that context I said that he got what was coming. He seemed hostile and demanded my driver's license and the steering wheel lock and that I meet her at the Golden Circle Police Station.

At the police station my wife was still in distress. We were trying to console each other. She said to me that she knew I was temperamental and that I should not let a young man who meant me harm but did not get to harm me ruin the day or the introduction of her to my colleagues. The officer apparently overheard what she said because she later asked me mistakenly about my "temper". I told him she used the word temperamental not temper and tried to explain the difference in meaning. He would not listen. I did say, however, that my wife gets emotional and I am very protective of her. I did not mention anything about insecurity or jealousy. I would not discuss anything of my personal life with a stranger.

Signed: *Jim Distant*

STATEMENT OF VICTORIA DISTANT

Victoria Distant states:

I am 27 years old. I attended the University of U.S.A and I am a graduate of that institution with a degree in Business Studies. I married my former professor, Professor Jim Distant in February 2006. We have no children.

I arrived in Jamaica on August 14, 2008 to join my husband for his stint in Jamaica. I have always wanted to visit Jamaica because I have heard what a beautiful country it is.

On August 15, 2008 I got dressed to travel with my husband to the University of Jamaica Campus.

We left the home and on reaching an intersection of two main roads I noticed several street people on the sidewalk there. I was surprised at the level of homelessness in the country.

My husband took down the window on my side in order to take delivery of the newspapers. Suddenly and to my surprise two street youngsters appeared at my side of the car.

One of these youngsters began cleaning the windshield without permission. He was leering at me, looking at my body up and down. I felt extremely uncomfortable.

The other youngster, who was selling roses, was aggressively trying to persuade me to buy roses. I did not wish roses and in any event I did not understand the dialect he was using. I became more uncomfortable when he brushed my chest with his hand as he was placing the roses in my lap without my permission.

I cried to Jim for help and I saw when he thrust the steering wheel lock in the direction of the youngster. The youngster shuffled at that time and the steering wheel lock caught him in the face.

I cried to Jim "Get me out of here!!". Jim sped off. I was emotionally distressed. A police car pulled us over and Jim cooperated fully with the police. We went to the police station.

At the police station both of us were distressed. I was trying to refocus Jim's attention on my meeting his colleagues for the first time because I knew that because of his love for me this kind of thing could distract him from that meeting and his mission in Jamaica. I may have referred to him as being temperamental in this context to mean that I did not wish his mood to change because of what happened to me. I was assuring him that I was fine and that he should not let a young man who meant me harm but did not get to harm me affect him. I did not use the word charm. The policewoman walked in while this was happening.

Signed: *Victoria Distant*

STATEMENT OF FLOYD MAIR

My name is Floyd Mair. I am 25 years old. I am homeless and sell newspapers for a living. My nickname is "Smiley".

I have a previous conviction for larceny. In December 2005 I pleaded guilty and in the Resident Magistrates Court to shoplifting. It was a few grocery items as I was hungry and without money because I had not yet started selling newspapers.

I know Ruffian, Romeo and Mr. McIntosh who hangout at the same area I sell newspapers. The intersection of Taylor Boulevard and Chancellor Road.

I also know a Mr. Distant. I call him Professor. I sell him newspapers. He would pay me a month in advance with a tip in US dollars.

He never dealt with Ruffian or Romeo because they were rude to him. I sell him newspaper every morning so I would hear if he threatened or was abusive to any of them. He never was.

On the day in question August 15, 2008 I gave Mr. Distant his papers through the left passenger seat. A lady friend of him took them and passed it to him.

I had to leave quickly to sell to the driver of the car behind his. While going to that car I passed Romeo and Ruffian. I heard Romeo say to Ruffian, "I going to tek some \$US offa Whitey woman today. He mek a mistake to bring her. Mek sure you wipe the windshield and distract Whitey."

I could not do anything at that time because my other customer was seeking change to pay me. I then heard Romeo cry out in pain, and I saw him drop to the pavement. Whitey's car sped off.

The police hurried on the scene. I tried to tell her what I heard but she responded “Nuh you me see plead guilty as a tief. Don’t tell me nutting!” The police left.

I did not return to that area because Ruffian and Romeo see me as Whitey’s friend and I was in fear of them taking things out on me in revenge.

I saw Whitey about two months after. He told me he was charged. I told him what I had heard and I offered to give evidence at court for him.

Signed: *Floyd Mair*