

C.A. CRIMINAL LAW - Conviction for Rioting -
The question at trial was identity of persons charged.
Anneal dismissed
JAMAICA
(Per curiam "appellant convicted on what we consider to be wholly unassailable evidence")

IN THE COURT OF APPEAL

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RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 69/88

No Case referred to.

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

REGINA

VS.

ARTHUR SMITH

Robin Smith for Appellant

Miss Antoinette McKain for Crown

July 13, 1988

ROWE P.:

This is an appeal by Arthur Smith against his conviction for rioting by the Resident Magistrate for St. Andrew, wherein he was fined \$500.00 or three months imprisonment at hard labour.

The prosecution's case was that on the 28th of November, 1984 Mr. Brett was at work at Western Terminals on the Wharf. He was then the Acting Chief Security Officer and his duty was, inter alia, to ensure that all vehicles entering Western Terminals or leaving Western Terminals, were searched.

There was great opposition from certain Customs Officers to this particular policy decision and on the 27th of November there was an incident where the gates were taken over and locked by those Officers, later reopened by the Protective Services.

On the morning of the 28th there was another incident, and in this incident a great number of persons, at one time numbering hundreds, especially customs officials, protested against the policy that vehicles should be searched. The prosecution's case was that the men protesting turned their wrath against Mr. Brett. He was chased through a car park. He attempted to climb a fence and when perched some ten feet above the ground the men came upon him and he was struck by several of them. But he said, the first person to strike a blow was the appellant Smith and that the appellant Smith struck him in his abdomen with a stone. When the men approached him the common cry was: "Where is Brett. Where is Brett. We want Brett," suggesting that the common purpose was to do harm to Brett, who in his capacity as Chief Security Officer, was attempting to enforce the policy which was not to the liking of these Customs Officers.

Mr. Brett was severely injured, as a result of which he spent some eleven days in the hospital and he was treated by surgery. He said he had brain surgery. One of his eyes is affected so that he now has lost 85% of the vision in that eye.

The one question at trial was the identity of the persons who were charged. Mr. Smith himself gave evidence and called a number of witnesses to say that he was at his desk and the rumpus outside did not in any way attract his attention. He said that he knew nothing of it, didn't see it, didn't enquire about it, and that he did not attack as one of a group and he did not assault Mr. Brett in any way.

The learned Resident Magistrate in rejecting the defence put forward by Smith found that the incident occurred as the prosecution said. He found that the witness Brett and those persons called to support him had the opportunity to see the appellant, and that whereas some of the Crown witnesses did not support Mr. Brett in every detail nevertheless,

Mr. Brett impressed her as a witness of truth and she was able to find the appellant Smith guilty on what we consider to be wholly unassailable evidence.

The fine of \$500.00 was minuscule having regard to the serious offence which was committed on that day.

We have listened attentively to the arguments put forward by Mr. Robin Smith this morning but they do not move us in any way to say that this conviction can be interfered with.

In the circumstances the appeal is dismissed and the conviction and sentence affirmed.