

CRIMINAL LAW - appeal from R.M. Court - (1) Indecent assault (2) Assault occasioning actual bodily harm - Amicable trial by defence after Crown had closed case and appellant given evidence to re-open Crown case to recall complainant to put his defence - caution comment by R.M. in finding JAMAICA - failure of counsel to put defence on basis for returning verdict against appellant - substantial miscarriage of justice - Nothing in findings to indicate R.M. directed his mind to corroboration of complainant's testimony although not required by law - Verdict unreasonable [conviction quashed]

IN THE COURT OF APPEAL
RESIDENT MAGISTRATE'S CRIMINAL APPEAL # 94/86

COR: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

No case referred to

REGINA vs. DENZIE BEAGLE

L. Sheckleford for appellant

John Moodie for Crown

May 1, 1987

CAREY, J.A.:

Before one of the Resident Magistrates sitting at Sutton Street, on the 29th of April last year, the appellant was convicted on counts of indecent assault and assault occasioning actual bodily harm and sentenced, as to the first count, to the maximum, i.e., 2 years imprisonment at hard labour, and as to count 2, to 3 years imprisonment at hard labour, the sentences being made to run concurrently.

The circumstances of the case are altogether shocking. The complainant, a teacher, who is the girlfriend of the appellant, testified that on the 20th of March, 1986 she was at school when she was visited there by the appellant. As a result of a conversation, she went to his home which was quite close to the school and certain events took place, in which, she claimed, she was indecently assaulted and received injuries. She stated that she was boxed in her face; she was beaten with a belt; all this being done when she was nude, and a knife was put to her throat which

caused some injury to her neck, and there was some injury to her wrist. In so far as the indecent assault was concerned, we do not propose to catalogue the list of, really, perversions that took place. There is no question that if those events took place, they certainly were acts of indecent assault.

The appellant denied that he committed the offences charged. He did admit that the complainant had accused him of infidelity and in the event, he had smacked her on her bottom.

The main grounds of appeal which have been raised before us, grounds 1 and 2, which are stated in the following form:

"1. The learned Resident Magistrate fell into grave error when he refused an application by the defence to recall the complainant who had already testified to establish from her whether or not the witness Wesley Nelson was at the premises before he was called to give his evidence, thereby denying the defence the opportunity of projecting Nelson's testimony in cross examination of the complainant with the resultant prejudice to the accused's defence.

2. The learned Resident Magistrate, with respect, grievously erred when he rejected the defence of Wesley Nelson as being a conveniently cautioned witness, notwithstanding that the witness' presence at the premises was not challenged by the prosecution and could have been confirmed or denied by the complainant had the application referred to at ground (1) above been approved."

These grounds arise from the fact that after the prosecution had closed its case, and indeed after the appellant had given evidence, counsel for the defence, who also appears in this Court, applied to the Court to re-open the Crown's case for the purpose of allowing him to recall the complainant so as to ask the witness, Wesley Nelson, about his presence at premises on the occasion of the incident which gives rise to these charges. That application was refused.

What we desire to say is this, it was a matter for the learned Resident Magistrate's discretion whether he would have permitted such a course and he would be entitled to refuse to re-open the Crown's

case. The circumstances under which that can be done are well known, for example, if a matter arises ex improviso and it may be that this was the view he took. But what is serious about this matter is that, having refused the application, he went on to make a finding which he recorded in the following form:

"6. Wesley Nelson purported to have a casual conversation with the complainant after she had left the room, I reject as a conveniently cautioned witness. Although the prosecutor did not challenge the presence of the witness, Nelson, as the Court invited him to consider doing, it is noted that the defence did not see fit to project Nelson's testimony in cross-examination of the complainant."

In our view, it must amount to a miscarriage of justice where, the Resident Magistrate having refused to permit counsel to recall a witness to put his defence, then uses the very fact that it has not been done, as a basis for returning a verdict adverse to an appellant. That constitutes a substantial miscarriage of justice; it was wholly unfair to the appellant. For that reason alone, this conviction cannot stand.

We also come to the view that the verdict was unreasonable. This was a case of indecent assault, where, although the law does not require corroboration, such confirmation should be looked for. There is nothing in the findings of the Resident Magistrate to demonstrate that he brought his mind to bear on that aspect of the case, and it seems to us passing strange that having regard to the degree and level of depravity that the victim complained of, that she could have remained in the company of the appellant for some time, washing the sheet which she said had been soiled in the course of the activities which had taken place, walked out, passed the appellant's step-father who was on the premises and made absolutely no complaint. It also seems to us curious that when the police were summoned to the school, she certainly gave no statement that she brought to the police attention, the fact that the

blouse that she had used to get herself cleaned, and which she was then wearing, had in fact been soiled. Those are factors which, we think, should have alerted the learned Resident Magistrate to examine with care, the story told by this person.

Mr. Moodie who appeared for the Crown candidly conceded that he would not support the conviction in this case. In the result, the appeal will be allowed, the conviction quashed, and the sentence set aside.