

CA: CRIMINAL LAW - Wounding - whether verdict  
unassailable - whether sentence excessive  
Appeal dismissed - (alleged discrepancy about initial  
finding of R.M. - victim's attack.)

JAMAICA

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IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 35/88

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT  
THE HON. MR. JUSTICE CAREY, J.A.  
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA

VS.

DONALD BLAKE

H. Cooke for the Appellant

Miss Y. Sibble for the Crown

May 4, 1988

ROWE P.:

The appellant Donald Blake was convicted in the Resident Magistrate's Court in St. Catherine by a very experienced Resident Magistrate on two counts of unlawful wounding and he was sentenced to serve six months on the first charge and three years imprisonment on the second.

The Crown's case, which he accepted, was that on the 25th of October, 1986 at about 10:30 a.m., a bus was travelling from Faint Hill and the complainants in the case were the conductor and the driver. They picked up as a passenger, the appellant Blake, who had with him a gas tank. On the Crown's case the conductor removed the gas tank from the seat and this act seemed to have enraged the appellant, who then attacked the conductor and wounded him with a knife on his finger and over his eye. The driver of the vehicle was asked to take the conductor to the Police Station to make a report and on the Crown's case the appellant then came out of the bus, flung stones at the driver, one of which caught him

at the side of his head and caused him to suffer a depressed fracture of the skull which injury was treated firstly at the Spanish Town Hospital, where he was a patient for five days and thereafter he was transferred to the Kingston Public Hospital, where he underwent an operation.

The Medical Certificate which was tendered regarded the injuries as not serious, but in our view, any depressed skull fracture, is indeed a serious wound.

The defence was that it was the appellant who was set upon by the conductor and the driver of the bus, he having upbraided the driver for driving negligently. He said firstly, that the driver attempted to hit him, the appellant, with a lug tool and he, having already received one blow to his shoulder, spun the conductor towards the driver and that is how the conductor received the injury over the eye. He said he scampered away from the scene. He was chased by the two complainants, who were throwing stones at him. He threw some stones and it appeared that one caught the driver. He was acting in self-defence.

The learned Resident Magistrate found as a fact that when the conductor insisted that the gas tank should not be kept on the seat the accused used a ratchet knife and inflicted wounds on his fingers and forehead. He found also that the driver started to reverse and it was then that the appellant, who was then outside of the bus flung stones at the driver through the window, one of which caught him in his head knocking him unconscious. He rejected the evidence of the appellant and he went on to find him guilty, considering the attack a vicious and violent one and then he imposed the sentences already referred to.

The burden of Mr. Cooke's submission is that the verdict was unreasonable, there being a number of inconsistencies and discrepancies in the evidence as given by the two witnesses for the prosecution.

We have listened carefully to his detailed presentation but we do not find that any of these so-called inconsistencies or discrepancies in any way went to the root of the case and in any way vitiated the finding

of the learned Resident Magistrate when he said he accepted the Crown's case.

We also listened to his submissions on the question of sentence. We agree with the learned Resident Magistrate that this was a rather vicious attack upon the driver and that in the circumstances and having regard to the injury which he suffered we ought not to make any reduction in the sentences imposed.

The appeals are therefore dismissed. We will order that the sentences run from the date of conviction.