

CA CRIMINAL LAW — Unlawful wounding — Plea of guilty by
accused explanation amounting to a plea of self-
defence — complainant then questioned by Resident Magistrate
Finding by R.M. that accused not defending self — Sentence
in their interest —
Procedure irregular — JAMAICA Plea of guilty might have
been entered and matter set for trial. ✓comp

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 52/88

(Appeal allowed — new trial ordered)

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

No Case referred to

REGINA

VS.

FOSTER PARKE

Debaya Adedipe for appellant

Miss V. Bennett for the Crown

July 21, 1988

ROWE, P.:

The appellant Foster Parke was convicted by the Resident Magistrate for St. Ann and he was fined \$500 or six weeks imprisonment at hard labour for unlawfully wounding Newton Liscome.

It appears from the Record that the appellant pleaded guilty and that both himself and the complainant were present in Court on the 8th of April this year. Having pleaded guilty the learned Resident Magistrate asked him for an explanation and he explained that the complainant was biting his ear and so he had to chop him at his neck with a machete to stop him from so doing. That explanation would amount to a plea of self-defence. However, the learned Resident Magistrate went on to question the complainant and the complainant gave an account that the accused had chopped him first and then he ran at the accused and it was in the second incident that he bit the accused.

The learned Resident Magistrate then went on to say:

"I find that the accused was not defending himself when he inflicted the wound on the complainant,"

and having regard to that finding he accepted the plea of guilty and imposed the sentence to which I have referred earlier on.

This was a wholly impermissible way of proceeding. What the learned Resident Magistrate ought to have done is this: Having taken the explanation of the accused, if that explanation amounted to a defence, such as self-defence, he ought then to have entered a plea of not guilty on the Records and then to have set the case down for trial. He had no jurisdiction to conduct an informal enquiry and upon that informal enquiry to go on to convict the appellant as he did.

In the circumstances the Ground of Appeal which states that:

"The learned Resident Magistrate erred in Law in entering a verdict of guilty and sentencing the appellant for the following reasons:

- (a) When the charge was read to the Appellant, who was not represented, he pleaded guilty and then immediately proceeded to explain the circumstances in which the alleged incident occurred.
- (b) That the explanation was, in substance that the accused/appellant chopped at the complainant in self-defence in circumstances in which he believed the complainant was about to do him harm,"

is one of merit and must be sustained. Having regard to the procedural irregularity there will be a new trial in the case. The appeal is allowed and a new trial ordered.