J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 57/89

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A.(Ag)

REGINA

VS.

MICHAEL CAUSWELL

F.M.G. Phipps, Q.C. and George Soutar for the Appellant

B. Sykes for the Crown

October 24 and December 13, 1989

WRIGHT, J.A.

On October 29 we dismissed this appeal against conviction in the Resident Magistrate's Court for the Parish of Kingston held at Sutton Street on the 6th day of June, 1989 before His Honour Mr. D. O. McIntosh for the offence of Assault Occasioning Actual Bodily Harm on one Dobson Guy and affirmed the conviction and sentence of a fine of $1,500.00 with the alternative of 4 months imprisonment at hard labour. We are now honouring our promise to put our reasons in writing.

Up until October 8, 1988 sixty-years old Dobson Guy had been employed for seven years to the Appellant at the latter's garage at 15 Arnold Road, Kingston 4. Mr. Guy was a watchman. During the night of October 7 Detective Corporal Calvin Ebanks, a friend of the appellant, stopped by the garage where he saw Mr. Guy and one Norman Scott. Mr. Scott was in the act of making a telephone call.

Mr. Guy testified that Mr. Ebanks accused him of selling telephone calls. But he denied this. His evidence was that Mr. Scott was a customer of the Appellant and that he had come to borrow a lug tool and a jack and also to call his, Scott's brother. However, Mr. Guy contended that the telephone was not working and his evidence was not contradicted on this point.

On the morning of October 8 both the appellant and Detective Corporal Ebanks arrived at the garage and Mr. Guy was summoned to the appellant's office where he was confronted with the charge of selling telephone calls, which he denied. The appellant, testified Mr. Guy, then took from under a settee in the office a 5 ft. length of wire cable about the size of the witness' little finger, doubled it and started to beat him in the presence of the Police officer. After receiving several blows to hand, shoulder and back Mr. Guy ran out the office but was chased and brought back by the appellant who then closed the door and continued to beat him until he started to cry. At that stage he said Mr. Ebanks intervened:

> "Do Mr. Mike, don't bother with him no more. Don't beat him no more. Give him a chance"

whereupon the appellant struck him another blow and said "a fire you, get out my place, you dam thief you." Mr. Guy then took his clothes and went to the Allman Town Police Station and made a report to District Constable Clinton Williams who observed his condition and sent him off to the Kingston Public Hospital for treatment.

The relevant portion of the District Constable's evidence was recorded thus:

> "I sent him to K.P.H. After he made the report I looked at him. I noticed multiple wounds as if he was beaten with a wire. The wounds were long wheals on his body - shoulder and back. I took statement from him which I recorded".....

In cross-examination it was suggested to Mr. Guy that he had run out of the office while it was being discussed that he should be charged for making illegal calls and had sustained his injuries by running into the door. This of course he denied. Said he "my left hand did swell up and wealt up."

There was tendered in evidence a medical certificate which Mr. Guy said was issued to him at the hospital and which was served on the defence over one month before the trial. Defence Counsel, quite properly in our view, objected to the admission of the certificate in evidence on the ground that it did not comply with Section 50 of the Evidence Act which provides for the admission of Medical Certificates in evidence at trials in the Resident Magistrate's Court. His objection was however over-ruled when the court learned that the Certificate had been served over a month before. Thereupon the learned Resident Magistrate proceeded to record that the certificate "shows multiple long wheals over back and left shoulder inflicted by blunt object(s)." When the District Constable was cross-examined he denied any dealings with the medical certificate before the court and produced from his diary another certificate which he had received but about which nothing had been done. He confirmed that some of the weals were bleeding when he saw Mr. Guy.

The defence was a flat denial of the charge. But what is more it did not support the suggestion put to Mr. Guy that he had run into the door and injured himself.

The appellant admitted that Detective Corporal Ebanks was his friend and that Ebanks at his request

would partol the premises at night. On the morning of October 8, 1988 Ebanks came to the office and made a report to him in the presence of Mr. Guy and while the possibility of preferring charges against him was being discussed Mr. Guy mumbling something whereupon he told Mr. Guy -

> "to get out the place, that he was fired immediately and I did not want to see him back in the premises again. He ran outside open the door and ran and I went after him behind him as I had not really finished giving him a piece of my mind ---------- at no time did I hit Mr. Guy."

Quite predictably Detective Corporal Calvin Ebanks saw no beating take place on the occasion in question. He reported to the appellant his observations of the previous night and he heard the appellant warning Mr. Guy saying he was a thief and that he should get out of the place. He saw "watchie" run out of the office and at that point the Corporal went into an adjoining office and then saw "watchie" going through the main office door. The appellant went outside but the Corporal remained in the adjoining office and at no time did he see the appellant hit Mr. Guy nor did he plead with the appellant to stop hitting Mr. Guy.

Mr. Guy had testified that the relationship between the appellant and the corporal was so close that he thought that the corporal was working with the appellant. Indeed, the corporal operated a wrecker which was serviced by the appellant. Further there was even an occasion when Mr. Guy had locked up the Corporal who had fallen asleep in a car on the premises. In the light of this evidence which was not contradicted either by the appellant or the Corporal the nature of his evidence is not surprising.

Among the findings of fact recorded by the learned Resident Magistrate are the following:-

"This Court was impressed with the witness of Mr. Guy and found him to be a witness of truth.

This Court found beyond all reasonable doubt that the accused Causwell on 8.10.88. did use a wire cable to beat the complainant causing injuries to his back and shoulder.

That at all relevant times Ebanks was present - Ebanks differ slightly saying he left Causwell's office and that the complainant did not return there.

It is only the complainant that attests to his receiving a beating. The physical evidence of a beating was corroborated by District Constable Williams who saw injuries consistent with a recent severe flogging with a wire cable. The evidence is further corroborated by the Medical Certificate.

Further when Williams served the summons there was no indication from accused that he was surprised as he would have been had the allegations been unfounded and a deliberate concoction."

Mr. Phipps challenged the conviction on the ground of misreception of evidence:

Viz. 1. The Medical Certificate

2. The opinion of a lay person

3. Evidence of the appellant's reaction when he was served the summons.

The admission of a medical certificate in evidence at a trial in a Resident Magistrate's Court is provided for by Section 50 of the Evidence Act which reads:-

"50 - (1) Notwithstanding anything contained in any law, but subject always to the provisions of this Part, any certificate or report, if accompanied by a sworn statement by the medical practitioner who has signed the certificate or report, shall be admitted in evidence in any criminal proceedings before a Resident Magistrate or Justices, or at any Coroner's Inquest, without the medical practitioner being called upon to attend and to give evidence upon oath.

(2) Where, in any criminal proceedings before a Resident Magistrate or Justices it is intended to put in evidence a certificate or report as provided in subsection (1), the prosecution shall, at least three clear days before the proceedings, serve upon the defendant written notice

> of such intention, together with a copy of the certificate or report, and the defendant, at the commencement of the proceedings, may object to the admission of the certificate or report, and may require the attendance of the medical practitioner to give evidence on oath."

There is no other enabling provision to this end. Accordingly, there is an irregularity where there has not been compliance with the Section. The learned Resident Magistrate was accordingly in error in both admitting the certificate in evidence and treating it as reliable evidence.

The second complaint relates to the evidence of the District Constable. His evidence was -

> "I noticed multiple wounds as if he was beaten with a wire. The wounds were long wheals on his body - shoulder and back." **(Emphasis supplied)**

The objection relates to the portion of his evidence which has been underlined. The complaint is that as a lay person he is not competent to give an opinion on a medical matter. When the evidence is looked at it is obvious that the witness was merely describing the injuries he claimed he saw and it is not without significance that he was not challenged as to the injuries he described but only as to his assessment as to how they could have been caused.

We see this matter to be no different from a case in which a witness is allowed to express his opinion outside the field of his expertise provided that he also states the facts on which his opinion is based. In R. v. Davies (1962) 3 All E. R. 97 the accused was charged with being unfit to drive through drink, contrary to section 6 of the Road Traffic Act, 1960. It was held that the testimony of a witness of his impression whether the accused had taken drink is admissible in evidence, if he states also the

lame and unsupported suggestion that he had run into a door! Could he have incurred multiple wheals to his back in that manner? What is more, the learned Resident Magistrate who saw and observed the witnesses accepted Mr. Guy as a witness of truth. In addition, there was the unchallenged evidence of District Constable Williams as to the bleeding wcals which he saw within the time that it took Mr. Guy to get to the Allman Town Police Station from 15 Arnold Road. What was the defence which the learned Resident Magistrate had to consider? First there was the unsubstantiated suggestion that the injuries had been sustained in a collision with a door. Then, there was the sworn defence of a **denial.**

We understand the principle to be that evidence wrongly admitted will procure the quashing of a resultant conviction if that evidence is such as to balance the scales against the appellant. In other words the conviction will be quashed if a miscarriage of justice has resulted. See Teper v. R. (1952) A.C 480; (1952) 2 All E.R. 447. In the instant case we find that the evidence properly admitted was so overwhelming that any jury properly directed would inevitably have convicted the appellant. We are confident that there was no miscarriage of justice or the likelihood thereof.

For these reasons we dismissed the appeal as earlier stated.

facts on which his impression is based although the witness is not an expert medical witness. See too R. v. Somers (1963) 1 W.L.R. 1306 where evidence was received from a doctor beyond the scope of his profession. It was held that the fact that he was not an expert in the matter went to the weight of his evidence and not to admissibility.

Again in R. vs. Mantock (1963) Gleaner Law Reports 61 where the charge was unlawful wounding no medical certificate was produced but evidence was adduced from at least three witnesses who were present at the scene and a constable who when called to the scene saw the complainant bleeding. It was held by the Court, dismissing the appeal which had been brought on the ground that no medical evidence had been tendered, that (per Lewis J.A.) at p. 2

> "It is inconceivable that the success of a prosecution for malicious wounding where witnesses had testified that the person assaulted had been cut and had bled could depend upon the production of a medical certificate."

In similar vein we hold that it is inconceivable that a witness in the position of District Constable Williams should be debarred from testifying as he did, evidence which had the effect of putting the nature of the injury beyond any equivocation. In our opinion this complaint is without merit.

Relying on Cross on Evidence 4th Ed. page 442 and Chapter 9 page 213 Mr. Phipps submitted that where inadmissible evidence is used the admissible evidence must be such that the jury would inevitably have convicted. We agree that the medical certificate was inadmissible and so was the appellant's reaction when served with the summons. As against that what was the admissible evidence? There was the clear evidence of the victim of the atrocities which was only sought to be challenged by the

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 67/89

BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Forte, J.A.
The Hon. Mr. Justice Gordon, J.A. (Ag.)

R. v. LLOYD MITCHELL

E. DeLisser for Appellant

Miss P. Williams for Crown

13th December, 1989

CAMPBELL, J.A.

The appellant was convicted of common assault on June 20, 1989 and fined $1,500.00 or 4 months imprisonment at hard labour. The appellant is a police constable and the common assault which was in the night of August 4, 1988 was upon Corporal Ronald Small who had reported to Sergeant Martin in the presence of the appellant that the latter had not turned up for duties at the Denham Town Remand Centre the night before. The appellant armed himself with an M16 rifle which was loaded and pointed the same to and touching the face of Corporal Small and threatened to kill him. The appellant denied this. The learned Resident Magistrate accepted Small's version. He was entitled so to do having seen and heard the complainant on the one hand and the appellant and his witness on the other hand.

Mr. DeLisser was allowed to argue supplementary grounds of appeal. He argued these with tenacity. They were

directed at findings of the Resident Magistrate which he submitted were either not supported by the evidence or were unreasonable. We found the basic findings of the Resident Magistrate supported by evidence which he was entitled to and did accept.

Appeal dismissed conviction and sentence affirmed.