

C.A. CRIMINAL LAW - Wounding - no medical certificate tendered by Crown
in proof of wound - whether Crown had ^{failed to} discharge onus of proof -
whether Resident Magistrate had misdirected himself in
findings.

Held dismissing appeal - JAMAICA absence of medical certificate
not fatal - evidence of injuries given and accepted by Resident
Magistrate - question of fact.

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO. 8/88

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

No case referred to

REGINA

v

ORVILLE GREEN

Horace Edwards, Q.C. for the Appellant

Miss Yvette Sibble for the Crown

November 8, 1988

MORGAN, J.A.:

The appellant, Orville Green was charged, convicted and sentenced in the Resident Magistrate's Court, Halfway Tree on an indictment for wounding before Her Honour Miss Joyce Bennett and fined \$400.00 or 3 months imprisonment at hard labour. He now appeals.

The appellant was an employee of his uncle, Raphael Maloney at Torrington Supermarket, St. Andrew where the complainant, one Ira Green, was also employed as a security guard. On the 7th June, 1986 about 6.00 p.m. the complainant and Mr. Maloney were arguing when the appellant took a piece of water pipe, hit him on his head and reprimanded him for having spoken to the appellant's uncle in the manner he did. The complainant fell and as he got up the appellant punched him in his mouth. He was injured in his head and his mouth. This was the case for the Crown.

The appellant's case was that the complainant came to work in a drunken state, was behaving in an obnoxious manner and refused to leave when requested to do so. However, Mr. Maloney eventually got him out of the shop and closed the door. At the request of the customers, Mr. Maloney

re-opened the door, whereupon the complainant forced his way in, punched Mr. Maloney, knocking off his glasses. The appellant then spoke to the complainant who punched at him, the appellant returned the punch. The complainant received no injuries.

Before us Mr. Edwards has argued that the prosecution had not discharged the onus of proof, that a medical certificate in proof of a wound was absent and so the evidence tendered by the defence that there was no wound should have been accepted.

Although a medical certificate is always useful, its absence in this case cannot be fatal, as evidence of injuries to the complainant was given and accepted by the learned Resident Magistrate. The appellant further argued that the learned Resident Magistrate misdirected herself, in that in her findings she accepted there was a "punch" and not a "hit" as evidenced by the complainant. Clearly this was not so. In her findings she stated:

"2. Court notes that even witness for the defence Raphael Maloney states that complainant hit accused sometime before accused punched complainant in retaliation."

What she did was to accept as having been corroborated by the defence, the sequence and timing of the blow. There was no merit in this argument.

There were two divergent accounts of the incident and the Magistrate who saw and heard the witnesses, as was her duty to do, decided the questions of fact and accepted the evidence of the Crown witnesses. There was evidence before her to come to the conclusion to which she came and there is no reason to interfere.

The appeal is dismissed and the conviction and sentence affirmed.