

CRIMINAL LAW - Wounding - *the Crown's case depended on one witness who credibly testified in court* (52)
JAMAICA

Appeal allowed
IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 84/88

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

REGINA

VS.

WINSTON ROWE

His case related to
Mr. Jack Hines and Mr. Richard Rowe for appellant

Mr. Canute Brown for the Crown

July 27, 1988

KERR, J.A.:

This is an appeal from a conviction in the Resident Magistrate's Court for the parish of Kingston for the offence of wounding. The trial took place some three years after the complainant, the unfortunate Walton Johnson, suffered his injury on the night of the 26th January, 1985. He was a mini-bus driver employed at the Norman Manley airport and was taking home members of the airport staff. His route took him along Maxfield Avenue on to Spanish Town Road and then as he turned left into East Avenue he heard a gunshot and he felt a burning to his eye but nevertheless he was able to park the bus. He was taken to the hospital. His right eye was damaged and had to be removed.

The crown's case depended on the evidence of one Errol Blake who said he was at a dance being held upstairs at premises overlooking East Avenue. He said that at about midnight he heard shots being fired by a man at a window and he said that man is the appellant. Some people spoke to the man and shortly after he fired one other shot about midnight.

He went downstairs and saw the wounded man in the van. In cross-examination he made certain admissions damaging to his credibility. He said he had not given a statement to the police; he was persuaded by some lady to give a statement to a lawyer who was visiting the area and who wanted to find out something. This statement he gave in July of 1987, some two and a half years after the event. According to him the first set of shots were fired from outside and then the accused fired from inside. He said that he knew that there were gunmen in the East Avenue area. He didn't remember the name of the accused but he used to see him on the road. He saw him sometime between 1985 and 1986 at a gate in Denham Town. He did not tell the name of the accused to the lawyer; he knew his face before and that it is clear from his evidence that it was when he saw the man sometime afterwards he said that he recall seeing him at the dance hall. He never went anywhere to identify the accused and the first time he was making a positive identification of him was in the court of trial. He gave no description as to the clothes the accused was wearing; he gave no description as to whether or not the accused was wearing a beard. He only told the lawyer that the accused was of dark complexion and nothing else. He did not notice whether the accused was wearing glasses at the time.

Detective Corporal Headley Ruddock said he carried out investigations and arrested the appellant. On arrest, the appellant said "I did not do anything". The appellant was on duty on the night in question and thirty rounds of ammunition was issued to him. He returned the thirty rounds after duty. Ballistic tests were carried out some eight months after the incident but were unable to determine which officer had any particular gun at the material time.

Submissions of no case to answer were not entertained by the Resident Magistrate.

When the appellant gave evidence, he said that on the night in question he was detailed for duty at the Majestic Theatre and that the manager of the theatre, Mr. Carlton Russell, came for him at 7:00 p.m.; he was issued with a gun and thirty rounds; he went with the manager to the theatre; he never left there until the show was over. The manager

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and himself counted money, they had a drink and the manager took him back to the station and he handed over his gun and the ammunition issued to him. He never went anywhere near any dance hall that night.

The appellant was corroborated in every material particular by the manager who came and gave evidence and who said the appellant, that night, was at the theatre throughout the whole show and afterwards and they had a drink together.

It seems to us that the evidence for the defence was patently more credible than that for the crown. But we were concerned as to whether the crown did make out a case worthy of an answer from the appellant. We are of the view that the evidence was insufficient to call upon him. There was no evidence as to lighting or as to Blake's opportunity to observe the appellant or as to any real reason why he did not give information to the police and there were the other weaknesses in his evidence as indicated earlier. It seems to us that the Resident Magistrate rested his finding of guilt on one single aspect of the evidence, namely, that the witness Blake had seen the appellant at Denham Town standing at some gate some time after the incident. It seems to us that this evidence relating to an alleged recognition some months after the event was insufficient to support the conviction.

For these reasons we allowed the appeal and quashed the conviction.