C.A. Criminal Law — Causing grievous bodily harm — Self-defence — whether summing-up adequate — Sentence [illegible] 7 (seven) years imprisonment excessive.
Leave to appeal refused. Sentence reduced to three years at hard labour suspended for three years. [mitigating factors]

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JAMAICA

No Cases referred to

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 70/93

BEFORE: THE HON. MR. JUSTICE RATTRAY, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

Criminal Practice (Sentence)

Evidence

REGINA vs. YVONNE JUMPP

Canute Brown for the appellant

Carl McDonald for the Crown

April 25, 26 and May 25, 1994

WRIGHT, J.A.:

Tenacious advocacy by Mr. Brown while failing to secure for his client leave to appeal against conviction nevertheless secured for her the allowing of her appeal against sentence, leave having been granted by a single judge. Accordingly, the application for leave to appeal against conviction was refused while the appeal against her sentence of imprisonment at hard labour for seven years was varied to one of three years imprisonment at hard labour suspended for three years. The reasons for our decision are set out hereafter.

The appellant was convicted by a jury in the Hanover Circuit Court presided over by Pitter, J. on June 2, 1993, on count 1 of a two-count indictment which charged her with causing grievous bodily harm to Pearlina Sinclair with intent to do her grievous bodily harm on October 21, 1992.

Evidence for the prosecution was given by Pearlina Sinclair and Neville Jumpp, the appellant's uncle. A peculiarity of the case is that there is on the case for the prosecution, no apparent reason for the assault by the appellant. In her defence she said she acted in self-defence.

Pearlina Sinclair testified that she and the appellant live in separate rooms in the same house and that in the night prior to this incident she attended a birthday party along with her boyfriend and the appellant and she was not aware of any dispute during that night. Indeed, she said that she and the appellant were friends; hence her presence at the party. The following morning at about 8 o'clock she was washing outside after which she went to the stand-pipe with her pot to catch some water and on her way back to her room while passing the appellant's room the appellant drew her little daughter inside and then threw hot water on her from behind severely burning her back and chest. She screamed and ran back to the pipe and Neville **Jumpp** turned on the water for her.

Mr. **Jumpp** put the time past 10 o'clock. He said that before the incident he had been into the appellant's room and saw her cutting up pepper and it is significant that Pearlina Sinclair testified that there were pepper seeds in the hot water thrown on her. Mr. **Jumpp** said that he had seen Miss Sinclair washing after which she went to the pipe with a pot, caught water and headed back towards her room. He was then standing by the pipe when he observed the appellant pull her child into the room and as the victim was passing the door she threw the pot of water on her from behind. The victim spun around "like a gig" and squealed. He then went to the appellant and asked, "How you burn up Pearlina with the hot water" and from her response her intended deed was not yet done.

Her defence was that she had, indeed, thrown the hot water but that it was directed at persons who, having beaten her the night before, were then at her door threatening to enter to beat her. Indeed, she said she threw the water only after her door had been kicked open and that she did not see Pearlina. She even sought to discredit her uncle by suggesting that he had endeavoured to obtain money from her to testify on her behalf. But Pearlina's evidence was that there was no one

apart from herself at the spot where she was burnt. Other persons on the premises were engaged in a game of dominoes at a point some distance from the house.

The issue for the determination of the jury was a simple question of facts and the directions by the learned trial judge were adequate.

The injuries were sufficiently severe, having regard to the syndrome of violence which pervades the society to warrant severe punishment. However, Mr. Brown was able to urge upon us certain factors which went to mitigating her punishment. The first factor was that through a breakdown in communication and the cancellation of the flight by which he had hoped to travel to Court to represent her he was not able to communicate with the Court nor could he get to Court until after the jury's verdict had been taken, although the Court did grant an adjournment of one-half hour before commencing the trial there being no other case which could be taken that day. However, the learned trial judge stated that the Court afforded the appellant such assistance as it could. But what is more to the point, the Court records did not indicate the appearance of counsel on behalf of the appellant. On Mr. Brown's own admission he was uncertain of his retainer in the case.

As Mr. McDonald for the crown pointed out, there was no irregularity in the trial, nor was there any contention of unfair treatment of the defence. The sole issue of self-defence had been adequately left to the jury.

In imposing a sentence of seven years imprisonment at hard labour upon the appellant the learned trial judge correctly took cognizance of the high incidence of violence involving the throwing of substances on persons "with devastating results." The reference there is to burning of people with acid. By distinction the appellant's weapon was hot water.

The decision to vary the sentence was influenced by the fact that the appellant had no previous convictions and that she

is the mother of six children, four of whom live with her and are solely dependent on her. Further, she herself became a victim as she gave birth to her youngest child since the incident, fathered by a man who pretended to be helping but soon abandoned her with the added burden of another child. When all the circumstances of the case, including the welfare of the children, were taken into consideration we felt that the justice of the case would be adequately met by varying the sentence as we did.

No case referred to.