

IN THE COURT OF APPEALRESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 54/73NORMAN MANLEY LAW SCHOOL
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Before: The Hon. Mr. Justice Luckhoo
The Hon. Mr. Justice Grannum (Acting)
The Hon. Mr. Justice Swaby (Acting)

Alfred Townsend v. R.

Mr. Horace Edwards, Q.C. for the appellant
Mrs. R. Walcott for the Crown

17th July, 1973.

Swaby: J.A. (Acting)

This is an appeal by the appellant, Alfred Townsend, against his conviction and sentence in the Half Way Tree Resident Magistrate's Court on April 24, 1973, for having indecently assaulted Claudia McGann.

The complainant in the case, a schoolgirl twelve years of age, who after being tested on the voire dire, gave sworn testimony that she had seen the accused on October 14, 1972, at about 9 a.m. at the Little Theatre, Tom Redcam Drive, St. Andrew where she had gone to attend creative dance lessons. There was no evidence as to the length of time she had seen and spoken with the appellant, but she said he had asked her name and address and where she went to school, then he offered to get some guineps for her. He took her out of the building and into the bushes under a tree where he threw her to the ground and indecently assaulted her by placing his penis, which he had taken out of his trousers after unzipping it, against her right leg and then discharged something white from his penis on her leg. He got up and in going away said she should not tell her mother about it. The only other witness for the crown was the arresting constable.

The real question in issue at the trial in the opinion of this court turned on the identity of the appellant. The appellant was at the Half Way Tree Court sitting on a bench in one of the court corridors on Thursday, October 19, 1972, and this young complainant was taken away from school to Half Way Tree. Her uncle is said to be the Superintendent of Police at that station and that was why she had been taken to Half Way Tree, but it does appear that the object for so doing

was with a view to her identifying the appellant. There is clear conflict as to how she came to identify him. Her own evidence is that Constable Ricketts, the investigating Constable, took her to where the appellant was in a passage like a hall and enquired whether the appellant was the man who assaulted her and she said yes. Constable Ricketts' evidence was that the appellant was sitting on a bench in front of the court house, that the complainant who had been brought there to see her uncle saw the appellant in the passage and identified him as being the man who had assaulted her.

The defence was an alibi. The sworn evidence of the appellant was that he worked at Stephenson's Lithographic Printers at 9 Collins Green

He went to work on October 14, 1972, at 8 a.m., punched the timecard and remained at work until 5:30 p.m. when he left again punching the timecard on leaving. He also said that he had gone to the Half Way Tree Court on October 19, and was sitting down when Constable Ricketts called him into a passage where he saw the complainant. Constable Ricketts asked her if he was the man who had troubled her and she said yes. Constable Ricketts then took him to the C.I.D. Office where he arrested him on this charge.

identification
The learned Resident Magistrate made findings and warned herself of the danger of accepting the uncorroborated evidence of a child, both on the question of the assault itself and as to the identification of the appellant. She recorded in the notes that the child was intelligent - that there was further identification of the appellant in court - and that the child's demeanour impressed her without reservation and, therefore, the court accepted her evidence. We do not quite know what the learned Resident Magistrate meant by identification again in court. The complainant had seen the appellant at the court house in a passage on October 19, the day that Constable Ricketts was alleged to have taken him to her and she purported to have identified him. We are of the view that the identification of the appellant in the way it occurred was altogether unsatisfactory. The police ought to have held an identification parade with a view to seeing whether the complainant could properly have identified him. Notwithstanding that the learned Resident Magistrate sat both as judge and jury and had warned herself as she clearly recorded in the notes of the proceedings, we feel that in the circumstances of this case the identification was so unsatisfactory that the question ought to have been resolved by her in favour of the appellant. We

... would, therefore, allow the appeal, quashed the conviction and set aside the sentence.

The appeal is allowed. The conviction is quashed and the sentence is set aside.