

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CRIMINAL APPEAL NO 6/2013

**BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MRS JUSTICE McINTOSH JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (Ag)**

DEREEK HAMILTON v R

Yushaine Morgan for the appellant

Alwayne Smith for the Crown

26 November 2013

ORAL JUDGMENT

MORRISON JA

[1] In this matter the appellant appealed against her conviction and sentence in the Resident Magistrate's Court for the parish of St Elizabeth. The appellant was actually sentenced on 30 May 2013. The appellant was charged on an indictment containing one count of unlawful wounding contrary to section 22 of the Offences Against the Person Act. The particulars of the offence were that the appellant on 11 September 2012, in the parish of St Elizabeth unlawfully and maliciously wounded Andre Hamilton.

[2] The Crown relied on the evidence of the complainant Andre Hamilton and the evidence of the complainant was that the appellant, who is his sister, came upon him seated in a business establishment. While he was still seated, he said, she draped him up. He said he had a machete which was close to his foot and she bent down and she tried to get the machete. Then he said, "Mi just feel my right foot start burn me. Instantly the whole place was flooded with blood." The complainant also said that the appellant grabbed up the machete in her hand and that was how he got cut. That was the account give of what happened by the complainant.

[3] The appellant in her evidence denied getting close to the machete although she said she was in fact trying to get a hold of it, but at the end of the day on her evidence, in fact, she did not inflict a wound.

[4] Mr Morgan for the appellant submitted that pursuant to section 22 of the Offences Against the Person Act, the question that should have been asked and answered by the learned Resident Magistrate is whether the appellant in grabbing up the machete, acted unlawfully and maliciously in wounding the complainant. To so find, he submitted, the learned Resident Magistrate should have been satisfied that the appellant through her own act caused the wound to the complainant intending to do the particular kind of harm that in fact was done or that the appellant actually foresaw that some physical harm would occur. In support of this submission, Mr Morgan provided us with authority in the case **R v Savage** [1991] 4 All ER 698. Mr Morgan submitted that that threshold was not met in this case and that the learned Resident Magistrate had therefore erred in her conclusion that the appellant grabbing the

machete was acting unlawfully and also in finding that the appellant intended or actually foresaw that her action would have resulted in the physical injury done to the complainant. In the result, Mr Morgan submitted, this is a case in which the court should interfere with the judge's findings of fact, because these findings are "obviously and palpably wrong" within the meaning of the phrase in **R v Joseph Lao** (1973) 12 JLR 1238.

[5] With this submission, Mr Alwayne Smith in his first solo appearance before the court on behalf of the Crown agreed. It is entirely to Mr Smith's credit that he took this position because, in our view, it is a completely irresistible submission. The evidence was entirely unclear as to how the complainant sustained the injury in the first place; but even if it was open to the learned Resident Magistrate to accept, as she did or appeared to have done, that in fact the appellant had grabbed up the machete, much more needed to be done to establish what was required of the statute, in that, in grabbing the machete, she acted unlawfully and maliciously foreseeing that the type of injury which resulted, would have been the consequence of her actions.

[6] In light of the above, we had no difficulty in coming to the conclusion that this appeal must be allowed. Because we have taken this stance, we have not felt it necessary to consider the submissions put forward by Mr Morgan on the question of sentencing but we wish to thank him for them as well.

[7] So in the result, the appeal is allowed, the conviction is quashed and the sentence is set aside. A judgment and verdict of acquittal is entered.