

**JAMAICA**

**IN THE COURT OF APPEAL**

**PARISH COURT CRIMINAL APPEAL NO 9/2018**

**BEFORE: THE HON MR JUSTICE MORRISON P  
THE HON MISS JUSTICE P WILLIAMS JA  
THE HON MRS JUSTICE FOSTER-PUSEY JA**

**CHRISTOPHER JOHNSON v R**

**Leroy Equiano for the appellant**

**Stephen Smith and Miss Alexia McDonald for the Crown**

**14 and 15 November 2019**

**P WILLIAMS JA**

[1] On 25 October 2017, the appellant, Christopher Johnson, was convicted by Her Honour Miss Natalie Brooks, Parish Court Judge in the Parish Court for the parish of Saint Catherine, for the offence of indecent assault. On 2 February 2018, he was sentenced to 12 months' imprisonment at hard labour, which was suspended for a period of 12 months.

[2] The evidence, which was led at the trial, established that the appellant and the complainant were known to each other for at least two years prior to the incident that led to his conviction. They were members of the same church. At the time of the incident, the complainant was a grade 10 student at a prominent high school in Saint Catherine

and she was a member of a youth group at the church. The appellant described himself as a director of that group, however, the complainant said he was the assistant director.

[3] The facts, which were undisputed at the trial, are that on 24 November 2015 the complainant went to the appellant's home where his wife was to assist her in preparing for an examination. Later that night, at some time around 9:00 pm, the preparation was completed and the appellant had to drive the complainant to her home.

[4] The complainant testified that whilst on this journey home the appellant did certain things to her. She said he started 'poking' her leg. He used his finger to stick her on her right leg. She told him, "my leg is not fat, stop". She said he then 'poked' her in her tummy, and she said, "my belly is not big". After this, she said he stretched his hand across her left side and started squeezing it. Then he moved up to her left breast and squeezed it. She said she slapped him on his hand. Under cross-examination, she testified that he had also started rubbing the area between her legs.

[5] She described how the appellant pulled off the road and asked her for a hug. She did so. After he let her go, he told her to go to the back of the car but she refused. He drove off and took her home. She did not report what had happened to her mother and other family members who were at home at the time. The next day at school, she told a friend what had happened and subsequently told a teacher. This set in motion events that eventually led to the appellant's arrest and charge for the offence.

[6] The complainant in her evidence also explained that when the appellant squeezed her breast and struck her on her leg she felt uncomfortable. She said when she slapped

him he said nothing. Under cross-examination she refuted suggestions that she was lying about the things that she said took place because the appellant had not returned the affection she had for him.

[7] The appellant denied doing any of the acts the complainant alleged. In his unsworn statement to the court, he said that on that night after his wife woke him and told him to take the complainant home he did exactly that. He said that the complainant got in the car and he took her straight home.

[8] The appellant filed some five grounds of appeal. At the hearing, Mr Equiano sought and was granted permission to add a sixth ground. He thereafter indicated that he would advance arguments in relation to only three grounds. The three grounds which he argued are as follows:

"...

b. The learned trial judge erred insofar as she failed to apply her mind to and give any weight to the character witness on behalf of the Defendant.

...

d. The Learned Trial Judge erred in returning a verdict, which went against the weight of the evidence adduced by the Crown.

...

f. The Learned Trial Judge erred by failing to appreciate that in order for the Appellant to be found guilty of the offence of indecent assault, he must have had the intention or otherwise being [sic] reckless with his action. Had she applied her mind to this issue and based on the

evidence adduced on the Crown's case it is likely her verdict would have been different."

[9] Mr Equiano in advancing his submissions gave the definition of an indecent assault as an assault accompanied with circumstances of indecency on the part of the prisoner towards the person assaulted. Counsel also referred to **R v Court** [1989] AC 28, where at page 45, Lord Ackner set out the ingredients the prosecution must prove on a charge of indecent assault.

[10] Mr Equiano contended that some of the actions of which the complainant spoke could only be considered playful. He noted that the learned Parish Court Judge, in her reasons for decision, described the behaviour as inappropriate, which seems to be equating inappropriate behaviour with indecency. He submitted that the learned Parish Court Judge failed to identify the circumstances that she found to be indecent and that the right-minded person would consider indecent. It was also counsel's submission that although specific intent is not required, at the minimum, the prosecution must prove that the appellant was aware of the indecent circumstances or that he was reckless of the intention.

[11] The learned Parish Court Judge clearly demonstrated an appreciation of the applicable legal principles involved in this case. In relation to the specific charge, she stated at paragraph 3 of her findings:

"In establishing the offence of Indecent Assault the prosecution must prove that the defendant assaulted the complainant and this assault was accompanied by

circumstances of indecency on the part of the defendant towards the complainant.”

[12] It is without doubt that the major issue for the learned Parish Court Judge was that of credibility and she identified that issue in the following statement at paragraph 4:

“The central issue in this case for the Court’s determination is that of credibility. The complainant contends that the defendant touched her inappropriately. The defendant on the other hand maintained that he at no time touched her inappropriately. In fact he had maintained throughout the case that he transported her straight home and did not assault her.”

[13] There was no complaint about the manner in which the learned Parish Court Judge conducted a thorough rehearsal of all the evidence in the case. She identified and resolved the inconsistencies that arose. She considered what the appellant said but she concluded that she rejected his version of what transpired that night. She properly recognised that the rejection of his account was not the end of the matter. She expressly indicated an awareness that she could only convict the appellant if the Crown proved the charge beyond a reasonable doubt. She went on to consider the Crown’s case. She said that having observed and assessed the complainant’s demeanour, she found her to be credible and reliable. The learned Parish Court Judge was entitled to do so.

[14] The learned Parish Court Judge stated that she found that the appellant’s actions towards the complainant were inappropriate but she also said that they fell “under the rubric of indecent assault”.

[15] Significantly, the learned Parish Court Judge, towards the end of her findings, made the following statement at paragraph 32:

“I bear in mind what the elements of the offence are and I find that the Prosecution has discharged its burden in proving that the defendant intentionally, indecently assaulted the complainant.”

[16] Once the Parish Court Judge accepted the complainant’s version of what happened that night, she had no need to consider questions of intention or recklessness on the part of the appellant. The possible playfulness or otherwise of any action on his part did not arise on his case. On the Crown’s case, the complainant demonstrated that in telling him to stop and in hitting him on his hands, she did not regard the action as playful. It cannot be said that the learned Parish Court Judge was plainly wrong in making the finding that she did and arriving at her conclusion. In these circumstances, there is therefore no merit to these grounds advanced by the appellant.

[17] The other ground, which was advanced by Mr Equiano, was as follows:

“ ...

b. The Learned Trial Judge erred insofar as she failed to apply her mind to and give any weight to the character witness on behalf of the Defendant.”

[18] In his submissions, Mr Equiano, however, had to acknowledge that the learned Parish Court Judge did in fact address the issue of good character when she considered the evidence of the witness who spoke to the appellant’s character. Counsel also noted

that the learned Parish Court Judge did in fact expressly state that she gave considerable weight to the evidence of good character.

[19] His complaint was that the learned Parish Court Judge's demonstration of how she applied this evidence was undesirable and unfair to the appellant and not in keeping with the guidelines.

[20] Mr Equiano pointed to this statement of the learned Parish Court Judge at paragraph 31:

"I give considerable weight to the evidence of good character in this case. I consider the fact the defendant is a member of the Jamaica Defence Force (JDF) and very active in his church, particularly in the Pathfinders' Club. I do not find that his involvement in these organisations translate into his being of good character. I also bear in mind that as he elected to give an unsworn statement from the dock he is not entitled to a full character direction. He is only entitled [sic] the direction as to his propensity to commit the offence."

[21] Counsel submitted that, having stated that she did not consider the appellant being a member of the Jamaica Defence Force (JDF) and activities at church as translating to good character, the question was what were the factors that caused the learned Parish Court Judge to consider good character. Counsel queried whether "her mention of character was merely to meet the requisite summation standard without demonstration [sic] how it applied".

[22] In making a response on behalf of the Crown, Miss McDonald submitted that the learned Parish Court Judge's usage of the word 'translate' in this context should be considered significant. She further submitted that in any event, having found that the

complainant was credible and reliable and having accepted that the appellant had acted in the manner she said he had, the learned Parish Court Judge was at liberty to find that any assertion of the appellant's good character would have been adversely affected.

[23] The learned Parish Court Judge at paragraph 21 stated:

"As there is evidence of the good character of the defendant before this court the court is duty bound to give the appropriate directions on it. I have to give to myself the standard good character direction as to propensity. The defence called Captain Othneil Blackwood of the JDF. Essentially his evidence was that the defendant has a strong sense of duty and is a good family man. He testified that the defendant is honest and trustworthy and has only been involved in matters which uphold the highest standard of discipline. It has long been recognised that the good character of a defendant is relevant to his credibility and to the likelihood that he would commit the offence in question."

[24] The learned Parish Court Judge clearly demonstrated her appreciation of the relevant principles. Her observation that the appellant being involved in the JDF and his church group does not translate into the appellant being of good character does not amount to a misdirection or lack of direction as Mr Equiano submitted. It can be viewed that the learned Parish Court Judge, in making that observation, was expressing that a person's job and involvement in church activities does not mean, without more, that person is of good character. We do not think she can be faulted for making the observation.

[25] It was after she had made her findings of facts that she returned to this issue and made the observation being complained about by Mr Equiano as set out in paragraph [20] above. Significantly, she continued and acknowledged that the appellant was entitled



to the direction as to his propensity to commit the offence. In the circumstances, the learned Parish Court Judge's entire treatment of the issue was fair and appropriate and the complaint is without merit.

[26] There is therefore no good reason for interfering with the appellant's conviction. Accordingly, the appeal is dismissed and the conviction and sentence affirmed.

[27] In light of the fact that the sentence that was imposed was in effect in abeyance while the appeal was pursued, the sentence of 12 months' imprisonment at hard labour suspended for 12 months takes effect from today's date, that is, 15 November 2019.