

JERSEY / JUDGMENT

Le Flock -v- The Attorney General

COURT
ROYAL COURT

BEFORE
M.C. St. J. Birt, Esq., Deputy Bailiff, and
Jurats de Veulle and Georgelin.
Perry Le Flock
-v-
The Attorney General
Magistrates'
Court Appeal
Appeal against
conviction by the Magistrates' Court of assault on a
prison officer.
Advocate J. Hawgood for the Attorney General.
The Appellant on his own behalf.

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[2005]JRC110
ROYAL COURT
(Samedi Division)
11th August 2005

Before:

M.C. St. J. Birt, Esq., Deputy Bailiff, and
Jurats de Veulle and Georgelin.
Perry Le Flock
-v-
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Advocate J. Hawgood for the Attorney General.
The Appellant on his own behalf.

JUDGMENT

THE DEPUTY BAILIFF: 1. This is an appeal against conviction in respect of a decision of the Assistant Magistrate on 7th July when he found the Appellant guilty of common assault on Prison Officer David Davies on 31st March 2005, at the prison. 2. Much of the evidence is not in dispute. It is agreed that earlier in the day the Appellant had asked Mr Davies to contact the Unit Manager, Mr Nightingale, because he, the Appellant, was coughing up blood. Mr Davies said at the time that he would do it when he could. The Appellant was not satisfied with this response and he started swearing at and abusing Mr Davies, calling him a variety of names in colourful language. 3. Much later at about 5.45 that evening Prisoner Officer Spence went to answer the Appellant's bell which he had rung in his cell. Mr Spence radioed for a second officer to come and help because the Appellant was on a two man unlock, in other words, two officers must open the cell door. 4. The Officer who answered the call and came to assist was, as it happens, Mr Davies. It is at this point that the evidence begins to diverge. Mr Spence, said before the Magistrate, that he opened the cell door and at that time Mr Davies was behind him and to the side. He says that the Appellant came out with his head down. He had a plastic cup in his left hand. The Appellant said something like 'fuck this' in an aggressive tone. He then swung his cup in what Mr Spence considered to be in an aggressive manner towards Mr Davies. The cup was not swung towards Mr Spence. When Mr Spence saw this happen he immediately grabbed the Appellant around the waist and put him to the ground. He did not see the cup hit Officer Davies. There was then a short struggle whilst the Appellant was on the ground and he was soon restrained. 5. The evidence of Mr Davies was somewhat different. He came to the door and as he did the Appellant saw him. The Appellant said something like 'not that cunt'. He said this towards Mr Davies. He pushed past Mr Spence and tried to assault Mr Davies. Indeed he did assault him. Mr Davies said that the Appellant's fist made contact with the left side of Mr Davies jaw. It was a light punch or a glancing blow. It was the Appellant's left fist which did it and the officer said that there was not a plastic mug in that left hand. He agrees that Mr Spence then put the Appellant on the floor and the Appellant was restrained. 6. The Appellant's evidence was that he did indeed have a plastic cup in his left hand as the door was opened. When he saw that it was Mr Davies standing behind Mr Spence he said something like 'Oh no, not that cunt again'. He agrees that his demeanour was aggressive towards Mr Davies because he was still angry with him from the events earlier in the day. He agrees that he made an aggressive gesture towards Mr Davies. It was a sort of lunge with the plastic cup in his hand, but he was not trying to hit Mr Davies and certainly did not make any contact with him. He says it was a form of emphatic gesture to indicate his dissatisfaction and anger with Mr Davies. He says there was no question of a clenched fist. He had the plastic cup in his left hand. He agrees that Mr Spence then put him to the ground, and indeed the Appellant has no complaint about that action. 7. He denies, therefore, that there was any assault either by striking Mr Davies or by attempting to strike him; he was simply making an emphatic gesture to indicate his disapproval of Mr Davies. 8. Mr Davies was examined by Dr Barrett at 1.55 p.m. the next day. There were no visible injuries to Mr Davies' face despite the fact that he apparently said that his jaw was sore. There appears to have been no examination of the Appellant's fists in order

to see whether they had any marks or injuries. 9. The Assistant Magistrate found an assault proved. He said that he did so to the extent that there was an attempt to assault prison officer Davies which resulted in a physical, albeit, relatively slight blow to the jaw of Mr Davies.

10. Now the Assistant Magistrate has seen and heard the witnesses give evidence, this Court has not. That is why the law makes it clear that this Court will not intervene unless it considers the Magistrate's decision was unreasonable. We can well understand why on the case as it was put to him, the Assistant Magistrate convicted the Appellant.
11. The weaknesses in the prosecution evidence which Mr Le Flock has pointed out to us today, were not emphasised in the Magistrate's Court. This is often the way particularly when a person is defending himself. It is only now that he has had time to consider the evidence and the transcripts in detail that Mr Le Flock has drawn our attention to the points upon which he relies today.
12. There are two key weaknesses in the prosecution evidence. First, all parties are agreed that, whatever Mr Le Flock did, he did it with his left hand. Given that it is also agreed that prison officer Davies was facing Mr Le Flock at the time this would therefore generally result in contact with the right side of Mr Davies' face. Yet he was absolutely clear in his evidence that the contact was with the left side of his face. As Mr Le Flock has pointed out, given that Mr Spence was standing between Mr Davies and the Appellant, this is quite difficult to understand.
13. Whilst in theory, this might have occurred if Mr Davies had turned his face to the right at the critical moment, there is no evidence that he did so and it would not be the natural way to turn if one saw a blow coming from the assailant's left fist which is what Mr Davies says he saw.
14. Secondly, Mr Davies' evidence was that he was struck by a clenched fist. He was clear about this, but that evidence is wholly inconsistent with the evidence of Mr Spence, which is that the Appellant lunged forward holding a plastic mug. That, of course, is also the evidence of the Appellant. We have seen the plastic mug and it is really very difficult to see how an approaching hand holding this mug could be mistaken for a clenched fist.
15. When these two matters are added to the fact that, despite Mr Davies saying he had a sore jaw, there was no evidence of any injury to him when he saw the doctor the next day, we are left with a real doubt as to whether the Appellant did in fact assault Mr Davies, or whether what in fact occurred was an angry gesture towards Mr Davies with the cup, but with no intention to strike him. We emphasise that the concerns which have led us to this conclusion were not clearly put before the Assistant Magistrate and we, therefore, have had an advantage which he did not have. We make no criticism of him for his finding on the evidence as it emerged, and the submissions which were made before him. But given the opportunity we have had, we consider that there is a real doubt as to whether the Appellant committed this assault and therefore we allow the appeal. Authorities Santos -v- AG [2001]JRC227. AG -v- Annison [1987-88]JLR N-9A. SG -v- Vaughan [1974].

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