

IN THE COURT OF APPEAL

SAINT VINCENT

Civil Appeal No. 8 of 1972

Between: HILARY MARS Defendant/Appellant
 and
 THE COMMISSIONER OF POLICE Plaintiff/Respondent

Before: The Honourable the Acting Chief Justice
 The Honourable Mr. Justice St. Bernard
 The Honourable Mr. Justice Bishop (P.C.)

Bayliss Federick for Defendant/Appellant
The Honourable Attorney General with Miss Monica Joseph
 for Plaintiff/Respondent

1972, September 25

JUDGMENT

ERIC BISHOP, J.A. (Ag.)

Hilary Mars was convicted of having in his possession on the 1st November, 1970 in the public road in Ashton, Union Island, a public place an offensive weapon namely a screw driver without lawful authority or reasonable excuse; contrary to Section 3(1) of the Prevention of Crime (Offensive Weapons) Ordinance No. 13 of 1955.

Mars was fined \$5.00 to be paid in 7 days in default 14 days imprisonment, and being dissatisfied with the decision of the learned Magistrate filed an appeal in which he gave these reasons for appealing:

- (1) That the magistrate's decision is erroneous in law.
- (2) That the decision is altogether unwarranted in relation to the evidence produced before the magistrate so that had the case been tried by a jury they would have acquitted the accused.

The facts which the learned magistrate had before him are briefly these: Sergeant Caine said that on the 1st November, 1970 at about 12.10 p.m. he was on duty and that at a distance of about 100 yards from the Police Station he saw the appellant in a public road fixing a truck. There was one Wilma Dembar

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nearby and as he approached she made a remark. He spoke to her and the appellant intervened asking "is bright you playing bright", there was then a verbal exchange between the appellant and the Sergeant in which he challenged the Sergeant to touch him. The Sergeant stepped off and the defendant pulled out a screw driver from his pocket, pushed it in front of the Sergeant and challenged the Sergeant to touch him again. Then according to the Sergeant the defendant ran into a house and he pursued the defendant. When the defendant reached the front door, he pushed the screw driver in front of the Sergeant again as though trying to make a stab. The Sergeant called on him twice to put down the screw driver but the defendant refused. The Sergeant then held the accused, took the screw driver away from him and arrested him.

In defence the appellant admits that he had a screw driver in his possession but he says that he was repairing a truck 50 or so yards away from the Police Station in the public road. The battery was weak and he called on his brother to give him a push. Sergeant Bascombe and the defendant's brother were talking about the fact that the defendant's brother was not wearing a shirt and Sergeant Caine then came on the scene. While Sergeant Caine was there, the defendant's brother became involved in an argument with the Sergeant; the defendant intervened and according to him the Sergeant told him "if you obstruct me I will lick you up". He then went into the house and when he came out he had the screw driver in his hand. The Sergeant asked him if he wanted to strike him with the screw driver and dared him to do so. The defendant said that he then took the screw driver and threw it on a table in the house. The Sergeant went into the house, took the screw driver from the table, threw it out of the window and advised a little girl to take it to the Police Station. Wilma Dembar supported the appellant's version.

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The sole question which has been raised here is whether the screw driver in the light of the facts and circumstances of the case is an offensive weapon.

The learned Magistrate in the reasons for his decision said this:

"From the defendant's testimony it was evident that he was not using the screw driver to accomplish his work. In addition the defendant's attitude in the Dock, clearly emphasised to me the fact that on the day in question he undoubtedly formed a felonious intent having in his possession in the public road the screw driver (as exhibited) with which he desired to manifest that intent. As he gave no reasonable and acceptable excuse for possession thereof I accordingly convicted him."

Section 3(1) reads in part as follows:

"Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence"

and "offensive weapon" is defined by Section 2 of the same Ordinance like this:

"Offensive weapon means any article made or adapted for use for causing injury to the person or intended by the person having it with him for such use by him."

Counsel for the appellant has urged on us that a screw driver is not an offensive weapon, that the appellant was a motor mechanic and was at the time engaged in such work, that he was performing the functions of a mechanic using that screw driver.

In reply counsel for the respondent submitted that the screw driver from the facts and circumstances of this case fell within the second part of the definition of an offensive weapon and invited the court to hold that words coupled with action of pulling out the screw driver amounted to an assault on the Police Officer, that there was no evidence that the screw driver was being used in repairing the truck. She submitted that the appellant intended to use the screw driver for the purpose of causing injury to Sergeant Caine.

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This is an inference from the facts and circumstances and we see no reason to disturb the facts and findings of the learned magistrate,

The appeal should be dismissed and the conviction and fine confirmed.

Eric H.A. Bishop
JUSTICE OF APPEAL (Ag.)

CECIL LEWIS, C.J. (Ag.)

I agree.

P. Cecil Lewis
ACTING CHIEF JUSTICE

ST. BERNARD, J.A.

I agree.

E.L. St. Bernard
JUSTICE OF APPEAL