COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Morrison, 2012 ONCA 897
DATE: 20121219
DOCKET: C53912

Rosenberg, Sharpe and MacFarland JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Jessiah Morrison a.k.a. Jessiah MacDonald

Appellant

Peter Copeland, for the appellant

Philip A. Perlmutter, for the respondent

Heard: December 17, 2012

On appeal from the conviction entered on June 2, 2009 and the sentence imposed on September 14, 2009 by Justice Laurence A. Pattillo of the Superior Court of Justice, sitting with a jury.

APPEAL BOOK ENDORSEMENT

[1] The appellant raises the following issues regarding conviction all dealing with the charge to the jury.

1. We agree with Crown counsel that the error respecting consent as a defence to wounding was harmless, since consent was not available on the facts of this case. This was an attack by three men on the unarmed

victim and there was no evidence of consent from the victim or any other source.

2. The instructions on s. 21(1) if anything may have been overly favourable. The jury would understand from those instructions that they could only convict of wounding if the appellant knew the principal offender intended to commit the offence of wounding. In any event, given the jury's verdict on the other counts it is apparent that the jury convicted the appellant not on the basis of s. 21(1) but on s. 21(2). The instructions on s. 21(2) were unobjectionable.

3. Finally, given the circumstances, the offence of assault was properly left as it was by the trial judge. This is not a case like *R. v. Haughton*, where the jury had no route to common assault.

[2] As to sentence, given the Supreme Court of Canada decision in *R. v. Knott*, there was no error in imposing probation. The sentence of imprisonment was fit. It properly recognized the appellant's lesser role, but took into account that of the three, this appellant's record for violence was far worse than the co-accused.

[3] Accordingly, the appeal from conviction and sentence is dismissed.