

### **Assault by beating**

Any act by which a person whether intentionally or recklessly causes another to apprehend immediate violence is an assault.

Any touching, hitting or punching without consent is an assault by beating

So, the key question for you to answer in relation to Count \*, having regard to all the evidence and the directions which I give you, is this

Did D\*\*?

If you are sure that the answer is “yes”, the defendant is guilty of Count \*.

If the answer may be “no”, he is not guilty of Count \*.

### **Racially Aggravated Assault by beating and Assault by beating**

These are alternative counts. You cannot find the defendant guilty of both Counts \* and \*.

#### Racially Aggravated Assault by beating

There are two elements of this offence. Firstly, an assault by beating, and secondly the element of racial aggravation.

An assault by beating is the unlawful use of force. Any punching is an assault by beating.

The prosecution case is that \*\*. If that is what happened, D\*\* assaulted C\*\* by beating.

The defendant denies this. He says he did not punch him. He says that C\*\*. If that may be true he did not assault him by beating.

#### Racial aggravation

This is the second element of Count \*.

The prosecution must prove that at the time of any assault by beating, or immediately before the assault, or immediately after the assault, the defendant demonstrated towards the victim of the offence hostility based on his membership or presumed membership of a particular racial group.

The prosecution say that he demonstrated that by saying \*\*\*

The defendant denies this.

If you are sure that he did assault C\*\* by beating, but you are not sure that there was any racial aggravation, you should find him guilty of simple assault, without racial aggravation.

So the two key questions for you to answer, having regard to all the evidence and the directions which I give you in relation to Counts \* and \* are.

Did the defendant punch C\*\*?

Did he immediately beforehand demonstrate hostility towards C\*\* based on his membership of a particular racial group, namely the \*\*\* community?

If the answer to the first question may be “no”, he is not guilty of either Counts \* or \* and you do not have to consider the second question. If you are sure that the answers to both questions are “yes”, the defendant is guilty of Count \*, racially aggravated assault by beating. If you are sure that the answer to the first question is “yes”, but the answer to the second question may “no”, he is guilty of Count \* assault by beating but without racial aggravation.