

WEST INDIES ASSOCIATED STATES
IN THE HIGH COURT OF JUSTICE
ANTIGUA

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(On Appeal from the Magistrate's Court, District "B")
Criminal Appeal No. 4/1968.

KIRTON CHARLES

Appellant

v.

JOSEPH E. BYRON
(Supt. of Police)

Respondent

Before:- The Honourable the Chief Justice
The Honourable Mr. Justice Glasgow
C.E. Hewlett for the Appellant
Charlesworth Ross, Acting Legal Assistant, for
the Respondent.

1968, May 26.

The Judgment of the Court was delivered by -
Lewis, C.J.

Section 58 of the Vehicles and Road Traffic Ordinance (Cap. 283) prescribes the procedure which must be adopted if the Magistrate on the hearing of a case of dangerous driving comes to the conclusion that there is a case for the Defence to answer on careless driving but not on dangerous driving. He must then direct or allow a charge of careless driving to be preferred and he may proceed to hear it, but he must inform the Defendant of the new charge and give him an opportunity to cross-examine any witnesses who have already given evidence if he so desires. In this case, this procedure was not adopted. The learned Magistrate evidently realised this after the appeal was lodged, and
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put into his Reasons for decision a paragraph which says that in the light of Section 58 of the Vehicles and Road Traffic Ordinance, at the close of the case for the prosecution, the hearing then proceeded in like manner as if there were two charges (one for dangerous driving and the other for careless driving) being tried together with consent. It would have been far better if the Magistrate had frankly conceded that what he had done was wrong rather than to try to gloss it over in the way that he has done. The Court deprecates this attempt on the part of the learned Magistrate to gloss over what was probably an unwitting error on his part. Learned Counsel for the respondent has conceded that the mistake of the Magistrate was fatal to the conviction. The Court will set aside the conviction and sentence and order a new trial before another Magistrate.

Conviction and sentence quashed, new trial ordered.
Costs \$25.20 to the Appellant.