

IN THE COURT OF APPEAL

DOMINICA

Magistrate's Criminal Appeal

No. 1 of 1973

Between: GEORGE WILTSHIRE Defendant/Appellant

and

P.C. HARRIETTE H. Complainant/Respondent

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Louisy (Ag.)

C.C. Beausolell for Defendant/Appellant

Miss I.O. Shillingford, Legal Assistant for Complainant/
Respondent

1973, March 20

JUDGMENT

ST. BERNARD, J.A.

This is an appeal against conviction on the 12th January, 1973 for larceny of coconuts valued at \$46.30, the property of the Commonwealth Development Corporation. The appellant was fined the sum of forty dollars payable on or before the 31st January, 1973 and in default three months imprisonment.

From his conviction the appellant has appealed on four grounds. Counsel abandoned grounds two and four and argued grounds one and three. Ground one was as follows:

"Counsel for the defendant was precluded from addressing the Court on the whole case at the close of the defence by the learned magistrate who forthwith convicted the defendant without having afforded counsel the opportunity to address the Court."

Counsel for the appellant contended that the magistrate erred when he convicted the appellant at the close of the defence without allowing counsel the opportunity to address on the whole case. He referred the Court to section 83 of the Magistrate's Code of Procedure Ordinance, Cap 26 of the Laws of Dominica. This section reads as follows:

/s/83

"83. The prosecutor shall not be entitled to make any observations in reply upon the evidence given by the defendant nor the defendant upon the evidence given in reply by the prosecutor, but this shall not preclude counsel on either side from addressing the Court on the whole case."

Counsel contends that this section gives ^{him} ~~counsel~~ the right at the end of the case to address and the magistrate should have invited him to do so before convicting the appellant.

In my view there is merit in counsel's contention. The magistrate in his reasons for decision stated that he was not aware that counsel wanted to address and so convicted the appellant. The conviction of the appellant was premature as the magistrate should have invited counsel to address the Court on the whole case before determination of the matter. This question arose in the case of Bascombe v. Commissioner of Police, 1971 (Magisterial Criminal Appeal No. 9 of 1971, Grenada). In that case this Court held that the right of counsel to address at the end of the case, if he had not done so at the commencement, was statutory and that the magistrate had erred in deciding the matter without inviting counsel to address on the whole case. The words of the section in the Grenada statute ^{are} ~~is~~ not the same as those in section 83 of the Magistrate's Code of Procedure Ordinance, Cap 26, but in my view section 83 has the same effect.

In my opinion the magistrate erred in not inviting counsel to address on the case before adjudicating. The appeal must succeed on this ground.

In respect of the other ground that the charge was bad for duplicity, in my view, there is no substance or merit in counsel's contention.

I would allow the appeal and remit the case for retrial before another magistrate.

E.L. St. Bernard
JUSTICE OF APPEAL
/CECIL LEWIS,

CECIL LEWIS, C.J. (Ag.)

The appeal is allowed and the case is remitted for retrial before another magistrate. Costs to the appellant, fifty dollars.

P. Cecil Lewis
CHIEF JUSTICE (Ag.)

LOUISY, J.A. (Ag.)

I agree.

Allan Louisy
JUSTICE OF APPEAL (Ag.)