IN THE COURT OF APPEAL

SAINT LUCIA

MAGISTERIAL CRIMINAL

APPEAL NO. 4 of 1976

BETWEEN: EVANS CALDERON - Appellant

Vs.

COLLIS BARROW, Superintendent of Police - Respondent

Before: The Honourable the Chief Justice
The Honourable Mr Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: Kenneth Foster for Appellant
P.J. Husbands, Crown Counsel for Respondent

1976, June 16, 18

J U D G M E N T

ST. BERNARD J.A. delivered the judgment of the court:

The appellant was charged with two offences under the Public Order Act, Cap. 143 of the Laws of St. Lucia. He was convicted of having used threatening words at a public meeting on the 18th December, 1975, whereby a breach of the peace was likely to be occasioned. The second charge for abetting other persons to use threatening behaviour whereby a breach of the peace was likely to be occasioned was dismissed on the ground that the evidence did not support the charge.

The short facts are that on the 18th December, 1975, the appellant, a member of the House of Assembly at a public meeting held at about 9.35 p.m. at Jeremie Street, Castries, while addressing a crowd of about seven

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hundred persons used the following words:-

> "I am prepared to stop Compton now regardless of the consequences. I will stand the consequences and if you all are ready follow me."

Persons in the crowd shouted, "we are ready, let us go." The appellant then put down the microphone and led the crowd to the gap leading to the home of the Premier, John Compton. The crowd then ripped down a sign which was placed on a steel pole at the entrance to the home, broke the branches of trees, placed stones at the entrance, and broke the windshield of the car of the Police Commissioner.

The crowd was moving up the gap to the Premier's residence with appellant. He was told by Superintendent Cuthbert Phillips that he would not be allowed to take the crowd to the Premier's residence. Appellant replied, "it is the will of the people I cannot stop them." As the crowd kept moving the appellant was told that the police would take action to prevent the crowd going to the house. The appellant said, "I am ready to die." The crowd became very angry and stoned the police vehicles. The appellant then called upon the people to stop but some of them called him traitor and asked for what reason did he bring them there. The time was now about 10.30 p.m. Eventually tear gas had to be used to disperse the crowd.

Appellant denied using the words alleged in the charge. He stated that he asked the audience whether they wanted independence or not and they replied in the negative. He then told them that if they did not want independence they must go and tell John Compton that they did not want independence. He asked them to follow him if they were ready. He stated that some members of the crowd insisted they go up to the Premier's house but he told them they should not do so, that they had registered

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their protest and should return.

There are four grounds of appeal as follows:-

(1) That the Defendant is not guilty

(2) That the words complained of, do not in law, constitute a threat

(3) That in any event, there was no evidence that the Hon. Premier was at his premises, or in this state, or that he was in any way affected by the statement, itself innocuous.

(4) The verdict is unsafe and/or unreasonable in view of the inconsistent verdicts delivered by the magistrate.

The first ground argued by counsel was ground four. He submitted that the conviction on the first charge and the acquittal on the second are so impossibly irreconcilable and so glaringly inconsistent that their incomprehensibility must lead to quashing the conviction on the first charge. He contended that the ingredient necessary to found a conviction was the same in both offences and that there was no distinction between the present case and that of R. v. Ian Drury (1971) 56 C.A.R. 104. He further contended that the words by themselves was not likely to inflame others to commit a breach of the peace and could only be so interpreted by the subsequent behaviour and the same contention applies to the second charge.

We are doubtful whether or not this principle of inconsistent verdicts applies to the decision of magistrates but if it does then there is no general rule of law that the mere fact the decision of magistrate may be inconsistent that the court will of necessity quash the conviction. In our view there is a difference between Drury's case and the present case.

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In Drury's case the essential ingredient was the same act of dishonesty running through all the offences charged. In the present case the first charge was completed when the threatening words which were likely to occasion a breach of the peace were used, while the second charge for abetting only begun, in our view, when the appellant joined in the march. The fact that breaches of the peace took place is relevant and confirm the effect of the appellant's speech upon the crowd. His subsequent behaviour is evidence that proves beyond a reasonable doubt that he could have foreseen the consequences of his words. The charge for abetting rested upon facts taking place after the offence of using threatening words had been committed.

The next ground argued was ground one. Counsel referred the coort to the evidence of Sergeant Augustine who stated that the theme that night was independence. Counsel stated the answers this witness gave in cross-examination supported the defence and that the benefit of the doubt should have been given to the appellant. We find no merit in this ground.

Grounds two and three were argued together. Counsel submitted that the words alleged by themselves did not constitute threatening words as if given their ordinary and grammatical meaning did not connote words of violence, force or harm. He also submitted that it was not proved that John Compton was in the state and if he was there was no personal insult to him.

Counsel for the respondent submitted that it was immaterial whether a breach of the peace occurred or not, but the fact that there was a breach of the peace in this case showed the effect of the words upon the

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audience. He referred to the evidence of Sergeant Springer who stated while the appellant was speaking he appeared furious and that all was peaceful until the use of the words charged.

We feel that the words used by the appellant on that night to the audience were threatening words whereby a breach of the peace was likely to be occasioned. We adopt the words of Parker, C.J. in Jordan v. Burgoyne (1963) 2 Q.B. 744 at page 749 where he states:-

> "that person must take his audience as he finds them, and if those words to that audience or that part of the audience are likely to provoke a breach of the peace, then the speaker is guilty of an offence."

The appeal is accordingly dismissed.

(E.L. St. Bernard)
JUSTICE OF APPEAL

(N.A. Peterkin)
JUSTICE OF APPEAL

(Maurice Davis)
CHIEF JUSTICE