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Case Name:

Between
Caesar Campbell, appellant, and
Regina, respondent

[2000] TCA J. No. 2
No. CR/APM 15/99

Turks & Caicos Supreme Court
Ground C.J.S.C.

Written reasons: February 16, 2000.
(16 paras.)

Appearances:

C. Griffiths for the appellant.
E. Welch for the respondent.

RULING

1 **GROUND C.J.S.C.**:— I will rule briefly on this preliminary point. I will tape what I say, and then have it typed up. Then it can stand as a ruling on this point for the future.

2 The brief factual background relevant to Mr. Griffiths's point is that the Appellant was convicted on the 3rd September last year. At the time of conviction the learned Chief Magistrate gave short oral reasons, which Mr. Griffiths, at least, noted. A Notice of Appeal was then filed on the 9th September, just in time.

3 Subsequent to that, on the 24th November 1999, in two completely unrelated cases (CR/AP 9 & 10/99) I gave a general ruling that the Chief Magistrate should, as a matter of course, provide reasons for his decisions, but this should be done in response to a Notice of Appeal, or at least when a Notice of Appeal was lodged.

4 Subsequent to that it appears that, in this case, the learned Chief Magistrate provided a "memorandum" of his reasons. Regrettably, but understandably given the timing of my ruling in the other matter, that memorandum was not made available to the parties to the appeal until shortly before this matter came on for hearing before me today. I have not got the exact date, but I accept what Mr. Griffiths says.

5 Mr. Griffithss objection to this practice is that the Magistrate, once he delivers his verdict, is functus officio and may not, therefore, return to or reopen the matter. He also says the practice itself is

unfair because it enables the Magistrate in his reasons to address the points taken in the Notice of Appeal.

6 In this particular case Mr. Griffiths also complains of the length of time between the verdict and the memorandum of reasons, and relies upon a particular factual circumstance. That is this - Mr. Griffiths submitted his notes of what the Magistrate said at the time to the Magistrate for his confirmation, as is the proper practice and as he should have done. The Magistrate said that he was unable to confirm the note because he did not now remember what he had said. Based on that, Mr. Griffiths urged that if he could not remember what he said, how could he remember the thought processes that led him to his judgment?

7 In support of his position that the Magistrate should have given reasons at the time, and that the subsequent reasons are unacceptable, Mr. Griffiths relies upon a judgment by a former Chief Justice of the Turks and Caicos Islands, Douglas CJ, in the case of Solon Georges -v- The Queen, Cr. App. No. 2 of 1993 (and that is at Tab 5 of Mr. Griffithss bundle). In that case the learned Chief Justice ruled that the Magistrate should give reasons, and that he should give them at the time of giving the judgment in court and before the pronouncement of his sentence. He also held that thereafter the Magistrate would become functus officio.

8 In support of that ruling the learned Chief Justice relied upon the Trinidadian case of Acqui -v- Pooran Maharaj [1983] 34 W.I.R. 282. That case is authority for the proposition that, although there is no statutory provision expressly requiring a Magistrate to state reasons for his decisions, the practice of doing so has grown up and been adhered to over the years, so that it will now properly be regarded as a rule of law, and that it is now a fundamental principle of justice that parties to litigation are entitled to know the reasons for decisions of a court of law. I say straightway that I accept that proposition unhesitatingly.

9 However, the case itself goes beyond that, because it appears on reading it that the practice which had grown-up in Trinidad, and which is endorsed by the Court of Appeal in that case, was the practice of the Magistrate delivering his reasons not at the time of his verdict, but subsequently if, and only if, a Notice of Appeal was filed. In other words, what transpired in this case. Indeed, it was in reliance in part on that case that I had made my general direction on the 24th November concerning the giving of reasons.

10 That same proposition is also endorsed in another case reported in the same volume of the West Indian Reports, also in the Court of Appeal of Trinidad and Tobago: Alexander -v- William, at page 340.

11 It appears on reading both of those cases that the practice had grown up in Trinidad, was well established, and was wholly accepted and endorsed by the Court of Appeal: not only that they saw nothing wrong with it, but they purported to enforce it in those decisions.

12 Based on that I think, with great respect to Chief Justice Douglas, that his decision in Solon Georges -v-The Queen was wrong. It may be that in arriving at it he had been influenced by the practice in the Cayman Islands, a jurisdiction in which he had been Magistrate before coming here as Chief Justice. In the Cayman Islands there was an express statutory provision, in s. 52 of their Criminal Procedure Code, which had been enacted in 1975. That provided that:

> "Every judgment in a summary trial except as otherwise provided by this Code or any other law shall be written by the magistrate and shall be dated and signed by such

magistrate in open court at the time of pronouncing it."

That statutory provision had, in fact, led to several of Mr. Douglas's own judgments as a Magistrate being overturned when he purported to give reasons later than the delivery of his verdict. Two such cases are reported in the 1984/85 edition of the Cayman Islands Law Reports. One of them is Gonzalez -v- The Queen [1984/85] C.I.L.R. 10, and another, just by way of example, is Helner -v- The Queen [1984/85] C.I.L.R. 171. What I find instructive in those cases is that the then Chief Justice of the Cayman Islands, Sir John Summerfield CBE, in considering the statutory provisions said this at page 24:

> "Non compliance with Sections 51 and 52 of the Code is a point which, so far as I am aware, has never been taken before. It has been the normal practice for the trial Magistrate to give his verdict, perhaps supported by verbal reasons, and leave the matter there unless there is an appeal. If there is an appeal he supplies written reasons for his decision which form part of the record of appeal. This practice stems from the time when the Grand Court tried offences summarily, and the appeal then went to the Jamaica Court of Appeal. The practice is written into the Grand Court Law. It is a practice which is recognised in several Caribbean countries including Jamaica. Clearly sections 51 and 52, enacted in 1975, altered the law in this regard, but the practice seems to have continued. Indeed, cases in which this practice has been followed have gone on second appeal to the Court of Appeal without attracting comment."

It is apparent from that, that what Sir John Summerfield was saying was that the statutory provisions in the Cayman Islands interrupted, and overturned, that previously established practice. But he also recognizes that previous of practice not only as one that was previously followed in the Cayman Islands without comment or criticism, but also one which had been prevalent throughout the region, and which had gone before the Court of Appeal in Jamaica on several occasions without them seeing fit to interfere with it.

13 Based on those cases I think that the practice that was prevalent in Trinidad, and which I adopted in my direction in November (and which was, therefore, followed by the Learned Chief Magistrate in this case), is so ingrained that there is no reason that it should not be followed in the Courts of this Jurisdiction. It is of course a convenient practice. It absolves the Magistrate from the duty of providing reasons in all of the innumerable cases that come before him, while at the same time enabling reasons to be provided in the small number of such cases which require further consideration by this court.

14 I think it goes without saying that the reasons to be provided should be provided promptly, and in the future I would hope that they will be. Indeed, I am sure that they will be. I do not think that the learned Chief Magistrate was to blame in this case, because the directions that I gave requiring reasons was over two months after the decision which is appealed against.

15 I therefore rule that the practice adopted here is acceptable, and indeed should be followed by the learned Chief Magistrate in all cases that come on appeal. I also rule in this case that, notwithstanding the delay (which I think explicable), the reasons which the learned Chief Magistrate in fact gave may stand.

16 Now, Mr. Griffiths said that those reasons were delivered shortly before the appeal, and to some extent he is taken by surprise. Maybe he does not go quite that far, but the point is they are reasons that he may wish to respond to or deal with. I think the way to address that is, if he needs time to amend his

Notice of Appeal, he can of course have it by way of an adjournment, or alternatively I will be flexible in allowing him to raise points without formal amendment on the appeal.

GROUND C.J.S.C.

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