

COURT OF APPEAL SITTING

DOMINICA

10th to 14th November 2014

STATUS HEARING

Case Name:

Felixia Colaie

v

Augustus Samuel Colaie

[DOMHCVAP2008/0012]

Date:

Monday, 10th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Ms. Lisa DeFreitas

Respondent:

Mrs. Zena Moore-Dyer

Issues:

Status of the matter – Whether counsel for the respondent was successful in finding someone to represent the respondent in the appeal as the respondent is currently senile and unable to represent himself

Result / Order:

[Oral delivery]

- 1. The appeal is set down for hearing during the next sitting of the Court in the Commonwealth of Dominica during the week of the 15th of June 2015.**
- 2. The Court rescinds the order for mediation based on information from counsel for the respondent.**

Reason:

The Court was informed that learned counsel for the respondent had been unsuccessful in

finding someone who was willing to represent the respondent in the appeal. According to learned counsel for the respondent, the children and wife of the respondent have all refused to get involved.

The Court pointed out that the record of appeal and skeleton arguments have all been prepared and so the matter may move forward if needs be. However, the Court found it best to adjourn the matter to allow learned counsel for the respondent time to decide on the steps she needs to take to move the matter forward.

Case Name:	Emmanuel Parillon (as PR of Parkinson Parillon) v Jonathan Joseph [DOMHCVAP2011/0027]
Date:	Monday, 10th November 2014
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Appellant:	Mrs. Zena Moore-Dyer
Respondent:	Mr. Michael Bruney
Issues:	Status of the matter – What is the obligation on the part of counsel as regards moving the matter forward, where the judge’s notes cannot be located or are incomplete – Whether lawyers involved have an obligation to come together to seek to construct the notes of evidence – Whether the attorneys in this matter have been

able to resolve the issue re notes of evidence where certain words were missing from the record

Result / Order:

[Oral delivery]

- 1. The Registrar of the High Court is directed to forward the corrected version of the notes of evidence to counsel for both parties within one week of this order.**
- 2. Thereafter, the parties are granted 14 days within which to settle or agree on the notes of evidence.**
- 3. In the event of there being no agreement, the matter shall proceed in accordance with the corrected version as provided by the Court.**
- 4. The appellant is required to take the necessary steps in order to prosecute the appeal.**

Reason:

The Court was informed that the notes of evidence had been submitted by the Court Reporting Unit but there were words missing. Counsel for the appellant believed that these omitted words were of consequence and if they cannot successfully be filled in, a retrial should be ordered. Counsel for the respondent was of the view that the words were not of consequence. The Court's position was that once there is a judgment together with notes as already provided by the Court which capture the bulk of the evidence, there is no need for a retrial.

Nonetheless, the Court felt it necessary for counsel to meet and agree on the notes of evidence in order to move the matter forward. However, the Court indicated that should there be no agreement, the matter will proceed with the corrected version provided by the Court.

Case Name:

Albert Abraham

V
Morris Isles

[DOMMCVAP2011/0002]

Date: Monday, 10th November 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mrs. Zena Moore-Dyer

Respondent: Mr. Gildon Richards

Issue: Status of the matter

Result / Order: [Oral delivery]
Matter adjourned to Thursday 13th November 2014 at 9:00 a.m. to report on the terms of settlement.

Reason: The Court felt that because the matter involved a relatively small sum of money (some EC\$3000), counsel should strive to settle the matter and report to the Court.

Case Name: Albert Abraham
V
Morris Isles

[DOMMCVAP2011/0002]

Date: Thursday, 13th November 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of

Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mrs. Zena Moore-Dyer

Respondent: Mr. Gildon Richards

Issues:

Status of the matter – Whether the parties, guided by their respective counsel, were able to meet and resolve the matter before coming to Court

Result / Order:

[Oral delivery]

- 1. The appellant is to take the necessary steps to prosecute the appeal.**
- 2. There being no indication of the status of the notes of evidence or transcript, the Registrar is directed to serve a copy of this notice on the Chief Magistrate.**

Reason:

The parties reported that they were unable to reach a resolution. In light of this, the Court made an order to move the matter forward.

APPLICATIONS AND APPEALS

Case Name:

Jules Mark

v

Reynold Eloi

[DOMHCVAP2013/0018]

Date:

Monday, 10th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of

Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mrs. Singoalla Blomqvist-Williams

Issue:

Application for leave to appeal

Result / Order:

[Oral delivery]

- 1. Leave granted to the applicant to withdraw the application and accordingly the application stands dismissed.**
- 2. Each party bear their own costs.**

Reason:

The appellant, Mr. Mark, indicated to the Court that he wished to withdraw the letter (application) that he put before the Court because he was satisfied with the progress being made in the court below. He indicated that the matter is now at the pre-trial stage and he is satisfied with this.

The Court considered the submissions re costs of learned counsel for the respondent who requested that the respondent be granted EC\$750.00 in costs. However, the Court felt that the justice of the matter required that each party bear its own costs.

Case Name:

**[1] Herbert Xavier
[2] Laretta Xavier
[3] Manuella Williams
v
The State**

[DOMHCRAP2012/0002]

Date: Monday, 10th November 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mrs. Dawn Yearwood-Stewart (for all three appellants)

Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions with her Ms. Sherma Dalrymple and Ms. Fernillia Felix

Issues: Whether the appellant should be granted leave to rely on affidavit evidence filed in support of grounds 1 and 9 of the Appeal? (Ground 1 is in relation to what transpired at the visit to the locus in quo. Ground 9 is in relation to a speedy trial.) – Whether the appellant should be allowed to bring additional grounds despite the fact that there was no formal application to that effect before the Court

Result / Order: [Oral delivery]

1. Leave granted to the appellants to rely on the affidavit evidence filed herein in support of grounds 1 and 9 of the grounds of appeal.
2. Leave also granted to the applicants to rely on the additional grounds as stated in the application.
3. Matter fixed for hearing on Wednesday 12th November 2014 at 2:00 p.m.

Reason: The Court considered the written submissions by learned counsel for the appellants that was already before it. Further, the learned Director of Public Prosecutions indicated that she was not objecting to either of the two grounds before the Court.

The Court adjourned the matter to the 12th of November 2014 as counsel on both sides indicated that they would be ready to proceed by then.

Case Name:

**Jules Mark
v
Yvette Hendrick**

[DOMMCVAP2012/0001]

Date:

Monday, 10th November 2014

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

In person

Respondent:

No appearance

Issue:

Application to set aside order made in the UK and registered in the Commonwealth of Dominica

Result / Order:

**[Oral delivery]
Application is refused.**

Reason:

The Court indicated that there was nothing it could do in the circumstances since it had already, on a previous occasion, upheld the decision of the magistrate in Dominica to have the child maintenance order made in the United Kingdom registered in the Commonwealth of Dominica. The Court advised that if the appellant was aggrieved with its decision, he

should seek to have the matter brought before the appropriate Court.

The Court also cautioned the appellant that due to the large number of frivolous claims he was bringing before the Court as regards to this matter, he was running the risk of having the Court make an order against him personally re abuse of process. The Court pointed out that the matter had been properly aired on several occasions in that it had gone to a single judge in chambers, it had been heard by the panel and had been properly considered.

Case Name:

Kenrick Tyson

v

The State

[DOMHCRAP2012/0003]

Date:

Monday, 10th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Wayne Norde and Ms. Bernadette Lambert

Respondent:

Ms. Sherma Dalrymple

Issues:

Criminal appeal against conviction – Whether the appellant should be granted leave to argue an additional ground being that the learned trial judge failed to direct the jury properly as to the status of Nasha Daniel as an accomplice and that she failed to give an accomplice direction – Whether the learned trial judge’s alleged failure a material irregularity – Whether accomplice directions were obligatory in the circumstances

– Whether the alleged omission render the conviction unsafe – Whether there was any other significance of the judge’s omission to give accomplice direction in circumstances where it clearly arose from the appellant’s case that someone else (in this case, Nasha Daniel who was the main eye witness) may have taken part in the act and may have caused the demise of the deceased – In those circumstances, what is, if any, the significance of the judge omitting to give the accomplice direction – Nasha Daniel had indicated her hatred for the accused and had indicated he was her ex-boyfriend, whether this ought to have been given any consideration as regards the principle of interest to serve – Whether the learned trial judge err in law and misdirected herself when she ruled against the appellant on a no case submission on the ground that the prosecution did not provide any evidence stating the cause of death regardless of the fact that a post mortem was done and report to that effect was available – Whether a post mortem the only method of proving cause of death in a murder trial

Result / Order:

[Oral delivery]

1. The appeal is allowed.
2. Conviction is quashed.
3. Leave is granted to the Director of Public Prosecutions to retry the appellant for the offence of murder if she so desires.

Reason:

In regards to the no case submission point of appeal, the Court pointed out that because there are other ways of proving death (for example through circumstantial evidence), it could not definitively be said by counsel for the appellant that the absence of the post mortem report, though available, would cause either prejudice or benefit to the appellant.

In relation to the appeal re the accomplice direction, the Court felt that the failure of the trial judge to give an accomplice direction was

fatal and rendered the decision unsafe. The law requires that very specific directions be given as regards accomplice direction in circumstances where the person giving the evidence was identified as an accomplice. There is an obligation on a judge, where the person who is giving evidence is an accomplice, to give special warnings about the need to be careful, the need for guarding against prejudice, and about interest to serve. In this case in particular, a strong warning should have issued especially since the main evidence in this matter was the accomplice evidence.

The Court felt strongly that this was one case where a very detailed and careful accomplice direction was required particularly as Nasha Daniel expressed her hatred of the accused. It is of no consequence if the accomplice point arises in the Crown's case or in the defense's case - these directions must be given once the issue of accomplice arises. The trial judge ought to have explained to the jury, what an accomplice is, what is the effect of it and should have gone even further and stated to the jury the dangers of relying on accomplice evidence.

Having regard to the above and having listened to the submissions by counsel for the appellant, the Court was of the view that the failure to give accomplice directions was fatal and led to the unfairness of the trial. As a consequence, the conviction of the appellant in these circumstances was unsafe.

The Court concluded that given the seriousness of the offense, the public interest in the matter being tried and the fairness to the accused person, leave should be granted to the Director of Public Prosecutions to retry the offense if she so chooses.

Case Name:

David St. Jean

v

The State

[DOMHCRAP2012/0004]

Date:

Monday, 10th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Ms. Bernadette Lambert with her Mr. Wayne Norde

Respondent:

Ms. Fernillia Felix

Issues:

**Criminal appeal against conviction –
Application for adjournment**

Result / Order:

[Oral delivery]

Matter adjourned to Thursday, 13th November 2014 at 2:00 p.m.

Reason:

The court had to decide how the matter should proceed since the respondent's submissions had not been received by appellant's counsel. The Court felt it just to allow the Office of the Director of Public Prosecutions time to serve learned counsel for the appellant with their submissions.

Case Name:

**[1] Jessie Bruney nee Paul as P.R. of St.
Ford Peter Paul**

v

**[1] Jules Carriere
[2] Leona Charles
[3] Charles Fabien**

[DOMHCVAP2011/0007]

Date: Tuesday, 11th November 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Michael Bruney

Respondent: Mrs. Dawn Yearwood-Stewart

Issues: Application by counsel for the appellant for adjournment to make the necessary application/s for his removal from the record – Whether costs should be awarded to the respondent

Result / Order:

[Oral delivery]

- 1. The appellant is to file skeleton submissions on or before the 2nd day of February 2015.**
- 2. The respondent is to file skeleton submissions in reply if necessary on or before the 20th of February 2015.**
- 3. The appellant is to pay costs in the sum of \$750.00**
- 4. The hearing of the appeal is adjourned to the next sitting of the Court in the Commonwealth of Dominica during the week of the 15th to the 19th of June 2015.**
- 5. This is the final adjournment of this matter.**

Reason:

The Court was of the opinion that despite the large number of adjournments and the length of time the respondent had been waiting to have the appeal heard, there would be no prejudice

suffered by the respondent if the Court were to grant one more adjournment. However, the Court pointed out that the respondents had filed their submissions and were ready to proceed and so this adjournment should be the final one.

Further, the Court also felt it prudent to allow Mr. Bruney the opportunity to make the proper application/s to be removed from the record.

Case Name:

[1] Levie Maximea

v

[1] The Chief of Police

[2] The Police Service Commission

[3] The Attorney General

[DOMHCVAP2013/0019]

Date:

Tuesday, 11th November 2014

Coram:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

In person

Respondent:

Ms. Pearl Williams

Issues:

Civil appeal – Claim for damages

Result / Order:

[Oral delivery]

Matter adjourned to Friday, 14th November 2014 at 9:00 a.m.

Reason: The Court discovered that certain relevant documents including the record of appeal and the amended fixed date claim form had not been served on the respondent.

Case Name: Mariette Warrington
v
Dominica Broadcasting Corporation
[DOMHCVAP2013/0007]

Date: Tuesday, 11th November 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	Ms. Cara Shillingford holding for Mr. David Bruney
Respondent:	Mr. Alick Lawrence, SC with him Ms. Rose-Ann Charles

Issues: Civil appeal – Contract law – Dominica Broadcasting Corporation Act – Whether the Board of Directors unanimously agreed to reappoint the appellant – Whether there was a valid contract between the appellant and the respondent - Whether the Board of Directors can appoint a General Manager without the advice of the Prime Minister – Whether the learned trial judge erred in holding that section 6(6) of the Dominica Broadcasting Corporation Act means there was a requirement for the Prime Minister’s advice to have been obtained – Whether the Board of Directors acted ultra vires their authority when they allegedly agreed to the re-appointment of the appellant knowing that they had not yet sought the advice of the

Prime Minister – Whether the learned trial judge erred in holding that the Board had no power to appoint without the advice of the Prime Minister and so the resulting contract was void and of no legal effect as it was ultra vires – Labour Contract Act – Whether the appellant was entitled to payment in lieu of leave

Result / Order:

Judgment reserved.

Case Name:

**[1] Hillary Shillingford
v
[1] Angel Peter Andrew
[2] Gloria Burnette nee Shillingford**

[DOMHCVAP2011/0032]

**[1] Gloria Burnette nee Shillingford
[2] Rashida N. Pierre
v
[1] Angel Peter Andrew**

[DOMHCVAP2011/0033]

Date:

Tuesday, 11th November 2014

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Mr. Lennox Lawrence for Gloria Burnette Shillingford and Rasheeda Pierre

Mr. Gildon Richards with him Ms. Cara Shillingford for Hillary Shillingford

Respondent:

Mr. Michael Bruney for Angel Peter Andrew

Issues:

Application for order to set aside trial – Whether application should be allowed despite the fact that three years had elapsed since the filing of the original application – Whether the matter should be sent to master for case management with a view to hearing a new trial - How should the agreement between Gloria Burnette Shillingford and Hillary Shillingford be viewed – Whether learned trial judge was correct in holding that the agreements between these two parties constituted a divesting of the appellant's authority – Whether trial judge properly considered the two approaches used by the court in determining the issue of delegation in particular the issue of reasonable custom and usage – Was there sufficient evidence before the Court to suggest that the method adopted by the parties was evidence of a custom i.e. the appointment of a sub agent – Did the appellants properly exercise their power to appoint a sub agent – Did the appellants properly exercise their power to make deductions from the purchase price to the persons in whose favour the deductions were made – Did the learned trial judge err in finding that there was a total surrender of the powers granted to Miss Shillingford – Was there a wrongful delegation of said power to Hillary Shillingford – Did the trial judge err in accepting the evidence of Mr. Andrew in favour of the evidence of Mr. Shillingford – Was the case of Mahon v The Air New Zealand and others applicable to this situation – Whether the trial judge wrongly hold that there was no oral agreement between the parties – Was the trial judge's reasoning unreasonable in his judgment seeing that he took into consideration the evidence of all parties but found the evidence of Gloria, Rasheeda and Hillary to be unreliable

Result / Order:

Judgment reserved.

Case Name:

Kelvin Alexander

v

The Police

[DOMMCRAP2014/0006]

Date:

Wednesday, 12th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Wayne Norde appearing amicus

Respondent:

Ms. Fernillia Felix

Issues:

Criminal appeal against sentence – Robbery – Stealing - Was the sentence imposed by the magistrate for the offence of theft too severe in the circumstances – Did the learned magistrate give proper consideration to the mitigating factors

Result / Order:

[Oral delivery]

Appeal against sentence allowed to the extent that the sentence imposed is varied to that of time served.

Reason:

In coming to its decision, the Court considered the oral submissions of Mr. Norde who appeared amicus as well as the comprehensive submissions by the office of the Director of Public Prosecutions. In their submissions, the Crown conceded that the magistrate erred in imposing the sentence and the Crown quite ably put before the Court the factors that the magistrate took into consideration which ought not to have been taken into consideration. The factors taken into consideration clearly

indicated that the magistrate did not address his mind to the fact that the Appellant plead guilty to the lesser offence of theft as distinct from robbery.

The Court was of the view that the appeal should be allowed to the extent that the sentence imposed was varied to that of time served, bearing in mind the mitigating factors which were overwhelming in this matter. The Court agreed with counsel for the appellant that the fact that the appellant was a first time offender, that he pleaded guilty to the offence and that the value of the item was small (\$325.00) were all mitigating factors. The Court also considered that there were no aggravating factors and the mitigating factors outweighed the aggravating factors.

The Court was also of the opinion that so far as the need to deter the offender, that would not be applicable; neither should the sentence reflect any great need to rehabilitate him. The greater part of the sentence, in this circumstance, would be to reflect the element of punishment. Accordingly, the Court was of the view that the sentence handed down was far greater than what ought to have been handed down by the learned magistrate.

Case Name:

Ronaldo Riley

v

The Police

[DOMMCRAP2014/0003]

Date:

Wednesday, 12th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Geoffrey Letang

Respondent: Ms. Fernillia Felix

Issues:

Criminal appeal against sentence – Dangerous Driving – Whether the magistrate erred when he decided to disqualify the appellant – Whether the learned magistrate properly lent his mind to the necessary factors in imposing a fine in these circumstances – What is the appropriate sentence to be imposed for the offence of dangerous driving where the offender is a school student who is unemployed

Result / Order:

[Oral delivery]

- 1. The appeal against sentence is allowed and the sentence is varied to the extent that the fine imposed by the learned magistrate is substituted by a probation order in the following terms and conditions:**
 - i. The appellant shall be on probation for a period of one (1) year commencing from today's date.**
 - ii. The appellant shall remain under the supervision of the probation officer according to the Probation of Offenders Act, Cap. 12:33 of the Laws of the Commonwealth of Dominica.**
 - iii. The appellant shall, whilst on probation, undergo counseling as determined by the probation officer at such time and place as required by the probation officer.**
 - iv. During the probation period the appellant shall be in good conduct.**
 - v. The appellant shall be liable to be sentenced for the original offence if he fails to comply with any provisions of this order or if he commits another offence.**
- 2. The sentence is also varied to the extent that the sentence imposed by the learned magistrate is set aside on the basis of excess of jurisdiction.**

Reason:

The Court was of the opinion that the learned magistrate did not properly lend his mind to factors such as the age of the appellant, the fact that the appellant is unemployed and attending school and the fact that the appellant is a first time offender, in coming to the decision to disqualify him.

The Court further held that since the appellant was a student with no means of income, a fine was not the appropriate sentence.

Case Name:

Sherwin Julius Alcendor

V

The Police

[DOMMCRAP2013/0010]

Date:

Wednesday, 12th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Mr. Darius Jones

Respondent:

Ms. Sherma Dalrymple

Issues:

Criminal appeal against conviction and sentence – Driving without licence and insurance – Whether sentence be altered to time served in the circumstances

Result / Order:

[Oral delivery]

- 1. Appeal against conviction and sentence allowed.**
- 2. The conviction is quashed.**
- 3. Sentence is set aside.**

Reason:

Having heard from learned counsel for the appellant and bearing in mind that the appellant has served nearly all of the time under the magistrate's order, and having heard from the Director of Public Prosecution and the intractable difficulty they are having in getting the magistrate to comply with the order, the Court decided to make an order accordingly. The Court also noted that the issues raised on the 24th of March 2014 touched and concerned critical matters relevant to the magistrate's own conduct of the hearing of the matter in the lower Court.

The Court felt that since the learned Director of Prosecutions intimated that the magistrate has not given reasons and had not complied with the Court's specific order to give reasons on or before the 1st of June 2014 and to comply with the other provisions of the Court's order made on the 24th of March 2014, the conviction of the appellant should be quashed.

The Court also agreed with the oral submissions of counsel for the respondent that where no reasons have been given, the Court can properly come to the conclusion that the magistrate had no good reason for reaching the conclusion that she did.

The learned counsel for the State also urged the Court to accede to the request of the appellant and allow the appeal in the interest of justice. The State also pointed out that the magistrate had a statutory duty to provide these reasons and her non-compliance for some seven months with the Court's order would prevent the matter from moving forward without the intervention of the Court.

Case Name:

Uranus Carbon

v

The Police

[DOMMCRAP2013/0037]

Date:

Wednesday, 12th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

In person (later assisted by Mr. Wayne Norde)

Respondent:

Ms. Evelina E.M. Baptiste, Director of Public Prosecutions

Issues:

Criminal appeal against conviction and sentence – Threats – Whether the Court can entertain the appellant’s claim that he was falsely accused when he pleaded guilty to the offence – Whether the appellant had an opportunity to object to the facts and mitigate his sentence – Did the learned magistrate impose a sentence that was excessive in the circumstances – Whether the learned magistrate considered the proper elements such as the aggravating and mitigating factors of the case as well as the sentencing principles when imposing a sentence

Result / Order:

[Oral delivery]

- 1. Appeal against conviction is dismissed and the conviction is affirmed.**
- 2. The appeal against sentence is allowed to the extent that the sentence is varied from three years to that of time served.**

Reason:

In relation to the appeal against conviction, the Court pointed out that the appellant had pleaded guilty to the offence. Further, the Court found that the sentence was excessive in all the

circumstances.

Case Name: **Rudolph Africa**
v
Paula Reynolds
[DOMMCVAP2014/0001]

Date: **Wednesday, 12th November 2014**

Coram: **The Hon. Mde. Louise E. Blenman, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: **Mr. Gildon Richards holding for Mr. Michael Bruney**
Respondent: **No appearance**

Issue: **Order for maintenance of children**

Result / Order: **[Oral delivery]**
Matter adjourned to the next sitting of the Court in the Commonwealth of Dominica in order to ensure that the respondent is served with the notice of hearing.

Reason: **The Registrar informed the Court that the respondent had not been served and enquiries had been made of the appellant's lawyer as to how to contact the respondent in order to serve her. Counsel was unable to provide the Registrar's office with any information as to the respondent's whereabouts. Therefore, more time was needed to serve the respondent.**

Case Name:

Kislon Eusebe

v

The Police

[DOMMCRAP2014/0007]

Date:

Wednesday, 12th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:

Ms. Saudia Cyrus

Respondent:

Ms. Sherma Dalrymple

Issues:

Criminal appeal against sentence - Did the learned Magistrate err and misdirect himself by ordering a fine (\$500.00), a restitution order and a compensation order of (\$2600.00), bearing in mind that the cost to repair the gold chain in question was stated as \$2600.00 and the value was stated as the same sum – Was it of any relevance that the virtual complainant still had a substantial portion of the chain – Did the learned magistrate's order amount to double compensation of the complainant – Did the magistrate comply with section 109 of the Magistrate's Code of Procedure Act, Cap. 4.20, which states that a magistrate may order compensation to a complainant but only upon the request or with the consent of the person who has suffered loss – Was there any evidence before the Court that such a request was made by the complainant

Result / Order:

[Oral delivery]

- 1. The appeal is allowed to the extent that the compensation order of \$2600.00 made by the magistrate is set aside.**
- 2. The fine of \$500.00 payable in three months**

in default of which, two weeks imprisonment and the restitution of the gold chain or such portion of the gold chain as was available, stands.

Reason:

This is an appeal against sentence arising from a compensation and restitution order as well as a fine imposed by the learned magistrate. The learned magistrate imposed a threefold sentence including:

1. fine of \$500.00.
2. compensation in the sum of \$2600 and
3. restitution order in respect of the gold chain which was damaged.

The appellant appealed against sentence claiming the imposition of the sentence was unfair as it would result in double compensation to the victim in respect of the gold chain. The State conceded that the compensation order ought not to have been made together with a restitution order.

In coming to its decision, the Court considered the fact that the victim did not request compensation, nor did the appellant offer compensation and in all the circumstances, the making of the compensation order by the learned magistrate was inappropriate.

Case Name:

Winslous Lynton Lafond

v

Cheryl Lafond

[DOMMCVAP2013/0011]

Date:

Wednesday, 12th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: No appearance

Issue: Civil appeal

Result / Order:

[Oral delivery]

1. Appeal allowed.
2. Decision of the magistrate set aside
3. Matter sent back to be tried by a different magistrate.

Reason:

The Court indicated that they had perused the documents pertaining to this matter beforehand and agreed that the decision of the magistrate should be set aside and that the matter should be remitted to the court below for trial before a different magistrate.

Case Name:

Peter Winston

v

Vincent Elwin

[DOMMCVAP2013/0012]

Date:

Wednesday, 12th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Glen Ducreay

Issues: Application for adjournment – Civil appeal

Result / Order: [Oral delivery]
Matter adjourned to the next sitting of the Court in the Commonwealth of Dominica.

Reason: Having heard from learned counsel for the respondent who indicated that he filed an application to strike out the matter yesterday and bearing in mind that the rules of the court require that at least seven days' notice be given to the other side before the application should be heard, the Court agreed that an adjournment should be granted for the next sitting of the Court of Appeal in the Commonwealth of Dominica.

Case Name: [1] Herbert Xavier
[2] Laretta Xavier
[3] Manuella Williams
v
The State
[DOMHCRAP2012/0002]

Date: Wednesday, 12th November 2014

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Ms. Dawn Yearwood-Stewart
Respondent: Ms. Evelina Baptiste, Director of Public Prosecutions

Issues:

Criminal appeal against conviction – Murder – Should the appellant be allowed to add a ground to the present appeal re the subjective element of self-defense – Whether the learned trial judge erred in law and misdirected himself when he allegedly failed to give full directions on manslaughter – Did the trial judge fulfill his duty to define provocation to the jury and did he adequately or at all explain to the jury the cases in which manslaughter could arise outside of provocation – Did the trial judge outline in detail and in accordance with the principles stipulated by law the two circumstances in which manslaughter could arise – Were the trial judge’s directions adequate or in keeping with what is required of a judge as regards directions re provocation – In his summing up, the trial judge indicated to the jury that they must bring back a verdict in which they have all agreed. By doing this, did the learned trial judge err in his directions in that his summing up does not indicate to the jury that a manslaughter conviction was opened to them since manslaughter requires simply a majority verdict – Did the learned trial judge, in addressing the jury on intent, fail to direct the jury that even if they found the necessary intent on the part of the accused, this was not inconsistent with self-defense or provocation – Did the trial judge give proper directions as regards the subjective element involved in the defense of self-defense – Did the learned trial judge give directions re the subjective element of self-defense as outlined in *Palmer v R* and *Sherfield Bowen v The Queen* – In *R v Palmer*, jury had to consider what the Court in that case called the “anguish of the moment” and its effect on the accused. Did his alleged failure to explain this principle to the jury render their decision unsafe – Based on all the alleged irregularities, lack of directions and misdirections identified, is there a lurking doubt (as stated in *Sangar Azia v The Secretary of State for the Home Department* [2012] UKUT 96)

in the mind of the Court that an injustice may have occurred and that the jury may not have returned the same verdict had they been given proper and full directions

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. Court orders that leave be granted to the learned Director of Public Prosecutions to retry the accused for the offense of murder if she so desires.**

Reason:

Having regard to the concessions made by the learned Director of Public Prosecutions which the Court found were properly made in keeping with the traditions of justice that the learned DPP should concede that the errors that were made in the summations were fatal and led to a miscarriage of justice, the Court found that the trial was unfair. The Court took into account the recent period within which this offense was committed, the seriousness of the offense, the interest of the family of the deceased and the accused person, and the quality of the evidence that was adduced at the trial. The Court also highlighted that in addressing a jury on the elements of murder where there is a possibility of a manslaughter verdict, it behooves a trial judge to make that clear distinction that manslaughter can arise in two circumstances: (1) where there is the presence of provocation and all the elements of murder and (2) where all the elements of murder exist save for the intent to kill and cause grievous bodily harm. These are very distinct and should be made clear to a jury by the trial judge.

Further, the trial judge has a duty to enunciate the principles of provocation based on the law. Having enunciated the principles, the trial judge then has to go further and seek to assist the jury in applying these principles to the factual situation. When the jury is about to retire, the judge has a duty to lead the alternative verdict

of manslaughter to the jury for their consideration.

The Court held that by telling the jury that they should bring back a unanimous verdict, the judge basically took away the option of manslaughter as a verdict.

The Court also drew to counsel for the appellants' attention the learning in *Che Gregory Spencer v The Director of Public Prosecutions* (SKBHCRAP2009/013A, delivered 10th February 2014) a judgment out of St. Kitts and Nevis which adopts the *R v Bunting* (1965) 8 WIR 276 principle but goes further.

The Court further held that the directions given re provocation, the directions on self-defense and the option of manslaughter as an alternative verdict were either missing or inadequate so much so that the resulting verdict was unsafe. Because of this, the Court had reason to quash the conviction. The failure of the trial judge to give proper self-defense and provocation directions was fatal.

Case Name:

David St. Jean

v

The State

[DOMHCRAP2012/0004]

Date:

Thursday, 13th November 2014

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Wayne Norde with him Ms. Bernadette Lambert

Respondent: Ms. Fernillia Felix

Issues: Criminal appeal against conviction and sentence – Murder – Application to argue an additional ground re the issue of the judge’s direction on provocation (leave was granted) – Did the learned trial judge err and misdirect herself in law when she inadequately and improperly directed the jury on self-defense – Did the learned trial judge err in law and misdirect herself when she failed to properly direct the jury on the subjective element of self-defense – Did the learned trial judge err and misdirect herself by failing to adequately address the jury on the element of excessive force in respect of the defense of self-defense – Did the trial judge fail to put the appellant’s case which was a defense of self-defense to the jury – Did the learned trial judge err by failing to direct the jury that an intention to kill or cause grievous bodily harm is not inconsistent with a defense of self-defense or provocation

Result / Order: [Oral delivery]
1. The appeal is allowed.
2. Conviction is quashed.
3. The sentence is set aside.
4. Leave is granted to the Director of Public Prosecutions to retry the appellant for the offence of murder if she so desires.

Reason: On the issue of misdirection of the defense of self-defense, the Court held that the learned trial judge misdirected the jury when she failed to give the jury adequate directions on the subjective component of self-defense. It must be conveyed clearly to the jury that the law requires them, in assessing whether it was self-defense, to take into consideration what the accused believed as distinct from what any other person believed in the circumstances.

Based on the summation of the judge, there was nothing that indicates that this point was brought home to the jury.

The Court further held that the learned trial judge failed to adequately direct the jury on the issue of excessive force. The learned judge directed the jury that if the force was excessive, they should find the accused guilty of manslaughter rather than directing the jury that self-defense is a complete defense to both murder and manslaughter.

The Court also agreed with submissions from the learned counsel for the appellant that the learned trial judge also erred in that she failed to put the appellant's case to the jury. This was his main defense, being the defense of self-defense. The learned trial judge failed to direct the jury to the evidence in relation to the defense of self-defense.

The Court also agreed with submissions of the learned counsel for the appellant and the concession made by the Office of the Director of Public Prosecutions that the learned trial judge erred in failing to direct the jury that an intent to kill was not inconsistent with the defense of self-defense or the partial defense of provocation.

Having regards to these errors made by the learned trial judge, which were admirably conceded by the Crown, the misdirection amounted to a miscarriage of justice which made the trial of the appellant unfair.

Case Name:

[1] Levie Maximea
v
[1] The Chief of Police
[2]

[DOMHCVAP2013/0019]

Date: Friday, 14th November 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:	In person
Respondent:	Ms. Pearl Williams

Issues: Did the learned trial judge err in dismissing the appellant's claim for damages and certain declarations – Did the alleged failure of the Police Service Commission to evaluate the performance of the appellant during his term of employment as provided in the Police Service Regulations (Section 31) affect his eligibility for promotion within the Police Force - Should his experience acting as Sergeant have been taken into account – Could it reasonably be held that adherence to sections 30 and 31 of the Police Service Regulations was a necessary pre requisite in respect of promotion within the Police Force – Did the promotion to the rank of Corporal and Acting Sergeant negate the obligation of the Police Service Commission to comply with the provisions of Regulations 31 of the Police Service Regulations

Result / Order:

[Oral delivery]

1. Appeal allowed.
2. Court orders as follows:
 - a. A declaration that the Chief of Police was in breach of the Police Service Regulations in so far as he failed to forward to the Secretary of the Police Service Commission and the Permanent Secretary responsible for the Police service a report each year in relation to the appellant.

- b. The matter is remitted to the lower court for a determination as to whether or not the appellant is entitled to damages resulting in breach of regulation 31 and if so, in what quantum.
- c. Costs to the appellant in the sum of \$2500.00.

Reason:

The Court considered the submissions and judgment of the learned judge and held that the promotion to the rank of Corporal and Acting Sergeant does not negate the obligation of the Commission to comply with the provisions of regulations 31 of the Police Service Regulations in view of Regulation 3 which makes the evaluation the basis for determining the eligibility of a police officer for promotion.