

of Appeal was amended on the 21st November 2012. Two of the Amended Grounds of Appeal were argued before the Court of Appeal on 4th November 2013. The others were abandoned.

5. The two grounds of appeal were:

Ground 2: The learned Chief Justice failed to properly consider the Trial Magistrate's duty to properly direct himself on the effect and significance of the Appellant's good character evidence, and

Ground 4: The Learned Chief Justice failed to properly assess the evidence in deciding whether the evidence supported the convictions imposed by the learned Magistrate.

6. The Appellant was a man of good character before his conviction. He was a retired Major in the Bermuda Regiment and the General Manager of the Bermuda Housing Corporation. He was in his late fifties. The Magistrate noted those features of his good character.

7. By way of contrast the complainant, aged 22 years at the time of the trial, had been convicted of offences of dishonesty and was on probation at the material time.

8. The contrast in character was recognized by the learned Magistrate but in the final analysis there was nothing in the evidence of the Appellant or his witness which caused the Magistrate to doubt the veracity of MC. The learned Magistrate did not find the Appellant to be a witness of truth. There is nothing in the character direction given to jurors to the effect that the evidence of a witness of good character must be preferred above that of a witness of bad character merely because of the differences in character.

9. The nature of the allegations of sexual assaults was such that the Appellant denied all the allegations of sexual assaults and therefore the issue was one of credibility – whether MC or the appellant could be believed. The learned Magistrate, after reviewing the evidence and considering the overall demeanour

and credibility of the witnesses, found that the complainant, MC, was an honest and credible witness that strived to give a true and accurate account of what he experienced. He never deviated once in regard to the material allegations that he was sexually assaulted by the Appellant in spite of forceful cross-examination. The learned Magistrate found that MC was a young and vulnerable man who needed to hold on to his job and housing through the Bermuda Housing Corporation and his vulnerability made him an easy prey for an older assailant.

10. As to the duty of the trial Magistrate, s.21 of the Summary Jurisdiction Act 1930 reads:

“Record of Judgment

When the case on both sides is closed the magistrate composing the court shall record his judgment in writing: and every such judgment shall contain the point or points for determination, the decision therein and the reasons for the decision and shall be dated and signed by the magistrate at the time of pronouncing it.”

11. There is no onus cast upon the Magistrate to discuss his treatment of the law applicable to the case in which he is giving his decision and to set out the directions which he gives himself in the making of his decision. He is presumed to know the law. Such a requirement would be unduly onerous and would detract from the speedy determination of summary trials. Juries are instructed as to the applicable law but do not give reasons for their decisions.
12. The issue in this case was one of credibility. The experienced and learned Magistrate believed the evidence of the complainant, MC, and disbelieved that of the Appellant. The Magistrate had the opportunity to see and hear the witnesses and to make his assessment of their credibility. The making of primary findings of fact was his responsibility and it is only in very rare cases that an appellate court, which did not have the opportunity of seeing and hearing the witnesses, can substitute its own findings of fact for those of the learned Magistrate.
- Crockwell v Miller (Police Sergeant) 2012 SC (Bda) 47 App.*

13. The Learned Chief Justice found in the appeal before him that he could find no sufficient basis for disturbing the findings of fact of the learned Magistrate. Nor can we. The inconsistencies, such as they were, did not lead the learned Magistrate to doubt the veracity of MC, for they were not in respect of the crucial matters connected with the assaults.
14. The evidence supported the convictions. The appeal against conviction is dismissed.

Signed

Ward, JA

Signed

Zacca, P

Signed

Evans, JA