

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

M.1532/83

IN THE MATTER of an appeal from a  
determination of the  
District Court at North  
Shore

BETWEEN ALISTAIR PACEY DUGDALE  
of Ministry of Trans-  
port, Traffic Officer  
Informant

AND GREEN of  
Road,  
Glenfield, Auckland  
Defendant

Hearing: 17th May, 1984

Counsel: Miss Sim for Informant  
Stainton for Defendant

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ORAL JUDGMENT OF SINCLAIR, J.

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This case stated comes before this Court as a result of a prosecution in the District Court at North Shore wherein the Defendant was charged with carelessly driving a motor vehicle. On the face of it what has occurred is somewhat extraordinary, but on hearing from Mr Stainton for the Defendant there could be an explanation for what did happen. It highlights the difficulties which arise when a Court attempts to deal with a situation by way of a short cut method where one party is represented by experienced counsel and the other party is represented by a departmental officer.

Shortly the Defendant appeared on three charges, one of which was the careless use, and after hearing one witness in particular there was apparently a discussion

between the prosecutor and counsel for the Defendant which suggested that there were difficulties in relation to the identification of the driver involved, this being a matter which, according to the counsel for the Defendant, had been raised at a much earlier stage in the prosecution. A further witness was called, it being indicated that the first witness was subject to recall, and after that witnesses' evidence had been heard in part, and while there were still further witnesses for the prosecution to call, the District Court Judge intervened and came to a conclusion that at that stage it was impossible to find that the prosecution had proved beyond reasonable doubt who the driver of the offending vehicle was. That was notwithstanding that the first witness had not been heard in full and, according to what I am informed today, there was other evidence which could have been brought which would have had a bearing on the matters in issue, particularly in relation to the driving of the vehicle.

Counsel for the Defendant relates certain discussions which took place between the prosecutor, the District Court Judge and himself in chambers, but they are not before this Court by way of affidavit and to my mind I am limited by the terms of the case stated. There could be no finding as to credibility in relation to the first witness and, indeed, there was none. The excuse used for adopting the course which was adopted, on the face of it, is that there were still defended cases to be dealt with in the North Shore Court that particular day and the District Court Judge had obviously come to the conclusion that the prosecution

was in difficulties on the question of identity and felt that this case should have been short circuited so that he could proceed to deal with the remaining Court business. As is often the case attempts at short circuiting only result in more work and a greater length of time being spent on the case than would have occurred if the hearing had gone the full distance in the first instance.

The Court was not in a position to predicate what might have been the situation as at the end of the prosecution case; there may have been a prima facie case established or there may not have been. If a prima facie case had been established there may have been evidence from the defence; there may not have been. Here, now, the prosecution complains that it has not had an opportunity to present its case. It was entitled to have the case presented unless, in open Court, and I stress in open Court because justice must be seen to be done in the open and not behind closed doors, there was a concession from the prosecution that there was no further probative evidence it could call on the question of identification. If that stage had been reached then the Court could, in open Court, have come to a decision. That stage had not been reached. Indeed, the District Court Judge himself recognised that maybe he had acted wrongly.

In all the circumstances it is my view that the matter must be remitted to the District Court for it to be re-heard and accordingly in respect of the first question in the case stated I find the answer to be in the negative. In relation to the second question I likewise find that the answer must be in the negative.

Accordingly the matter is remitted back to the District Court at North Shore for a new date of hearing to be allocated and for the matter to proceed to a full hearing. As was indicated by the District Court Judge who heard the case originally, it must be before another Judge.

*P. P. W. J.*

SOLICITORS:

Meredith Connell & Co., Auckland for Informant  
Mason Lawrie & Co., Auckland for Defendant