EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

MONTSERRAT

MNIMCRAP2018/0007

BETWEEN:

[1] RONDELL MEADE
[2] KARINA WEST
[3] JENNIFER MEADE

Appellant

and

THE COMMISSIONER OF POLICE

Respondent

CONSOLIDATED WITH:

MNIMCRAP2018/0008

KARINA WEST

Appellant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

MNIMCRAP2018/0009

RONDELL MEADE

Appellant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

MNIMCRAP2018/0010

JENNIFER MEADE

Appellant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:

The Hon. Dame. Janice M. Pereira, DBE — Chief Justice
The Hon. Mr. Paul Webster — Justice of Appeal [Ag.]
The Hon. Mr. Terrence F. Williams — Justice of Appeal [Ag.]

Appearances:

Mr. Kharl Markham, with him Ms. Chivone Gerald for the Appellants, Mr. Rondell Meade and Ms. Jennifer Meade
Mr. David Brandt for the Appellant Ms. Karina West
Mr. Oris Sullivan, Director of Public Prosecutions for the Respondents

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2018: November 28.

Criminal appeal – Starting the case de novo, (anew) – Whether new Magistrate had the jurisdiction to try the case anew – Whether new Magistrate had jurisdiction to try the matter anew on original charges – Whether new criminal charges had to be laid for the de novo trial – Validity of criminal charges – Interlocutory appeal from Criminal matters – Criminal Procedure Code Cap 4.01 Revised Laws of Montserrat 2013 – Supreme Court Act Cap. 2.01 Revised Laws of Montserrat 2013 – Magistrates Court Act Cap. 2.02 Revised Laws of Montserrat 2013

REASONS FOR DECISION

Introduction

[1] WILLIAMS JA [AG.]: These consolidated appeals arose from the same proceedings at the Magistrate's Court and raised issues concerning interlocutory appeals to this Court from the Magistrate's Court in a criminal matter and the procedure in a case left part heard upon the ending of a magistrate's tenure. The facts of the case are unimportant for the determination of these issues.

[2] The appellants were charged on the 29th January 2015 with assaulting a police officer, indecent language, disorderly conduct, and damage to property. The trial started before Magistrate, His Honour Mr. Wickramasooriya on the 9th June 2015 but was adjourned on the 29th March 2016, at the instance of the prosecution who were desirous of appealing the Magistrate's decision not to admit disputed

evidence. On 16th May 2017 the prosecution withdrew their appeal.

[3] At the resumption of proceedings at the Magistrate's Court, Magistrate Wickramasooriya had demitted office and was replaced by the newly appointed Magistrate, Her Honour Ms. Chatoor. On the 1st June 2018, the incoming Magistrate took charge of the matter and decided that she would hear the case *de novo*. The appellants objected, arguing that for Magistrate Chatoor to have jurisdiction, new charges would have to be laid. The prosecution submitted that there was no need for new charges.

Background

[4] The appellants gave oral notice of appeal of the Magistrate's decision. The Magistrate stated a case which asked primarily whether her decision to assume jurisdiction on the existing charges was correct in law. These were the questions:

(a) Whether the decision taken in the case as stated above was correct in Law;

(b) If not, what is the correct interpretation?

(c) Given section 201 of the Criminal Procedure Code, if a matter is to begin de novo on a new complaint, what is the ultimate effect?

(d) Was the interpretation given to Except where a longer time is specifically allowed by law, correct;

(e) If this interpretation is incorrect how is it to be interpreted and what is the ultimate effect?

(f) Can a nolle prosequi be entered accompanied by a voluntary bill? (This being a procedure used in indictable matters)

[5] When these matters came up for hearing before this Court, the DPP submitted that the Court had no jurisdiction to hear the appeals. The appellants contended

that their appeals were brought pursuant to s. 242 of the Criminal Procedure Code[1] which provides:

> "242. (1) Save as hereafter in this Code provided, a person who is dissatisfied with a judgment, sentence or order of the magistrate's court in a criminal cause or matter to which he is a party may appeal to the Court of Appeal against the judgment, sentence or order either by motion on matters of law or fact (or both), or by way of case stated on a point of law only, as hereafter provided and the Court of Appeal shall have jurisdiction to hear and determine any appeal in accordance with the provisions of this Part." (Emphasis added)

[6] In oral submissions, the appellants stressed that their appeals were by motion and not by way of the case stated by the learned Magistrate. This is inconsistent with the written submissions filed on behalf of Rondell Meade, Jennifer Meade, and Karina West which, in the first paragraph, states "The Appeal is by way of case stated. The case stated was filed 21st June 2018". Nevertheless, there is no moment in this distinction as the grounds of appeal are fully consistent with the case stated.

[7] The Court asked the appellants to consider the DPP's objection and to explain why they contended that the incoming Magistrate could not try the matter on the original charges. The appellants eventually conceded that she could. The appeal was dismissed. This judgment explains this Court's reasons.

Interlocutory Appeals in Criminal Matters?

[8] The jurisdiction of the Eastern Caribbean Court of Appeal to hear appeals from criminal proceedings in the Magistrate's Court is governed, in addition to s.242 of the Criminal Procedure Code, by s. 30 of the Supreme Court Act[2] and by s. 108 of the Magistrates Court Act.[3] Section 242 is already set out above. These are the other provisions:

> "30. (1) Subject to the provisions of the Magistrate's Court Act, the Criminal Procedure Code and to rules of Court, an appeal shall lie to the

[1] Cap 4.01, Revised Laws of Montserrat, 2013.
[2] Cap. 2.01, Revised Laws of Montserrat 2002.
[3] Cap 2.02, Revised Laws of Montserrat, 2013.

> Court of Appeal from any judgment, decree, sentence or order of a magistrate in all proceedings.
>
> 108. An appeal shall lie to the Court of Appeal from any judgment, sentence or order of the Magistrate's Court in any criminal cause or matter in accordance with, and subject to the provisions of Part 10 of the Criminal Procedure Code." (Emphasis added)

[9] The referenced sections all refer to appeals from "judgment, sentence or order", while s. 30(1) adds the word "decree". The crucial question is whether these sections, on their true construction, are confined to decisions of the Magistrate which are dispositive, i.e. which conclude the case, or whether they include any decisions that are made during the course of proceedings in the Magistrate's Court.

[10] The words "judgment, sentence, and order" clearly refer to the final decisions of a Magistrate. By the Supreme Court Act, s.2, "order" includes "decision and rule". In legal terms a "rule" is a declaration deciding on a point of law. In R v Recorder of Oxford, Ex parte Brasenose College[4] the decision of justices to dismiss a complaint was held to be an "order" for the purposes of s.31 and 72 of the Offices, Shops and Railway Premises Act 1963[5] permitting an appeal to Quarter Sessions as the justices were entitled to determine the complaint in this manner.

[11] In England and Wales s. 111(1) of their Magistrates Court Act (1980) provides:

> "(1) Any person who was a party to any proceeding before a magistrates' court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices com-posing the court to state a case for the opinion of the High Court on the question of law or jurisdiction involved; but a person shall not make an application under this section in respect of a decision against which he has a right of appeal to the High Court or which by virtue of any enactment passed after 31 December 1879 is final." (Emphasis added)

[12] Linguistically, section 111(1)'s "conviction, order, determination or other

[4] [1969] 3 All ER 428.
[5] Act of the Parliament of the United Kingdom.

proceeding" imports a broader access to appeal than the phrase "judgment, sentence or order" in the Montserratian statutory provisions extracted earlier. It shall shortly be explained that the Courts of England and Wales have construed s.111 (1), and its precursor, s.87 of the Magistrates Court Act 1952, to deny appeals of interlocutory decisions. The English authorities hold that applying for judicial review is the appropriate course. Determining the true construction and settling on the appropriate procedure is especially important in the instant case as although the England Wales Queen's Bench has jurisdiction, at first instance, in judicial review and, on appeal, from the Magistrates Court, this Court does not have first instance jurisdiction in judicial review.

[13] The appropriate starting point is the majority decision of the House of Lords in Atkinson v. U.S. Govt..[6] The case concerned a committal for extradition which applied the ordinary rules for committal for local crimes. Their lordships opined that the statute was a consolidation of pre-existing law and that the phrase "conviction, order, determination or other proceeding" was to be construed as confined to final decisions. Lord Morris of Borth y Gest dissented. Lord Reid put it this way (at pg.235):

> "So the case for the respondents is that they were parties to the litigation in the magistrates' court and are therefore entitled to question the decision of the court by applying for a stated case. If this subsection is to have a limited meaning it must be because "conviction, order, determination or other proceeding" has a limited meaning. I think it must be limited at least to this extent: it frequently happens that a court has to make a decision in the course of the proceedings - e.g., whether certain evidence is admissible - but it cannot have been intended that the proceedings should be held up while a case on such a matter is stated and determined by the superior court. So application for a case can only be made when the litigation or "proceeding" is at an end. But, as Lord Goddard pointed out in Card v. Salmon [1953] 1 Q.B. 392, 396, examining magistrates do not come to a final decision. If they decide to commit for trial the case goes on, and if they decide not to commit that is not a ground for a plea of autrefois acquit."

[6] [1971] A.C. 197.

[14] Lord MacDermott agreed with Lord Reid without elaboration. Lord Guest, at page 244, and Lord Upjohn, at page 248, concluded that an appeal was only competent from a magistrate's final determination. They did so by interpreting "other proceeding" ejusdem generis with the words "conviction, order or determination" which, in their view, contemplated terminal decisions.

[15] In Streames v. Copping[7] the English Divisional Court was asked to consider whether s. 111(1) of their Magistrates Court Act (1980) permitted appeals of interlocutory decisions. In that case the defendant's counsel had unsuccessfully submitted to the justices that the informations were bad for duplicity. A case was stated to appeal that decision and the proceedings adjourned sine die awaiting the Divisional Court's determination. The Divisional Court held that there was no jurisdiction to hear interlocutory appeals in criminal matters.

[16] In Streames v Copping the respondent argued that "other proceeding" should be read ejusdem generis with the other expressions that imported final determination. The Court applied Atkinson and held that the section 111 conferred no power for an appeal until the justices had reached a final determination on a matter before them, and that the Court had no jurisdiction to hear the appeal as the Justices decision did not finally determine the proceedings before them. May, LJ reading the unanimous decision of the Court concluded (pages 928-929):

> "To summarise, I think that the legal position in this field is as follows. Where either party contends that justices have no jurisdiction to hear and determine an information or complaint, and the justices uphold that contention, then the remedy available to the party aggrieved is to ask for leave to apply for judicial review seeking a finding from the Divisional Court that the justices were wrong to decline jurisdiction and an order for mandamus directing them to hear the information or complaint. Where, upon such a contention, justices decide that they do have jurisdiction to hear and dispose of the matter, they should not accede to an application there and then by the party against whom they have decided to adjourn any further hearing and state a case on the jurisdiction point. They should in general proceed to hear and determine the matter before them on whatever evidence is adduced and then, if either party is dissatisfied, he

[7] [1985] QB 920.

> can apply to the justices to state a case under section 111(1). The party against whom the justices decided that they did have jurisdiction at the outset of course always has the concurrent right to apply to the Divisional Court for leave to seek judicial review in the nature of prohibition. In some cases, if the party aggrieved did take that course, it might be desirable for the justices to adjourn their further hearing of the substantive matter until after the determination of the judicial review proceedings; in most cases, however, nothing will be lost if the justices do complete their hearing. It may be that on the facts they will decide the substantive issue in favour of the party contending that they had had no jurisdiction. If they do not, then all the issues can be determined by the Divisional Court on a case stated, at a substantial saving of time and money."
>
> Apart from questions of jurisdiction, where justices are asked to, and do rule on a point of law in the course of a hearing before them - for instance, on a question of the admission of evidence, or the construction of a statute or document - they should not at that stage, with nothing more, accede to an application by the party against whom they have ruled for an adjournment and for them to state what I can describe as an "interlocutory" case. If they purport to do so, then for the reasons I have given I do not think that this court has jurisdiction to hear it. The justices, having made their ruling, should complete the hearing and determination of the matter before them, and then state a case thereafter if they are asked to do so. In a very special instance, if the party aggrieved sought and obtained leave to apply for prohibition, then the justices might be wise to adjourn the matter pending the hearing of the application for judicial review, but they should not state a case under section 111(1) until after their final de-termination of the information or complaint before them."

[17] A recent case on this point is Highbury Poultry Farm Produce Ltd v Crown Prosecution Service; R (on the application of Highbury Poultry Farm Produce Ltd) v Telford Magistrates Court.[8] Before the start of the defendant's trial at the Magistrates Court, the defendant raised a preliminary point as to whether the offence charged required proof of *mens rea*. The District Judge ruled that it did not. The defendant applied under s.111(1) for an appeal by case stated and for judicial review. The dual application was based upon the uncertainty as to the correctness of the decision in Streames v Copping.

[18] The Divisional Court applied Atkinson and Streames v Copping and reiterated

[8] [2018] EWHC 3122 (Admin), [2018] All ER (D) 80 (Nov).

that If the effect of the Magistrate's ruling being questioned was that the proceedings remained extant, an appeal under section 111 (1) was inappropriate. The Court distinguished its earlier decision in R (oao Donnachie) v Cardiff **Magistrates' Court**[9] which included dicta that a district judge had wrongly declined to state a case in circumstances where he had decided that various informations had been laid in time by noting *inter alia* that the comments were *obiter* and had not considered Streames. The Court also applied the reasoning in Downes v RSPCA[10] where it was held that an appeal by way of case stated was not the appropriate where the district judge had made a preliminary ruling to the effect that the charges were laid in time, and that the Magistrates' Court therefore had jurisdiction to consider them.

[19] We therefore concluded that s.242 of the Criminal Procedure Code, s. 30 Supreme Court Act, and s. 108 Magistrates Code only permit appeals to this Court from final decisions, i.e. decisions that finally adjudicate the matter. Appeals are not permitted from interlocutory rulings. Further, that it makes no difference whether the appeal is by motion or by case stated. Nevertheless, we next considered the primary issue of this appeal.

Can the Magistrate Try the Case de novo On the Existing Charges?

[20] The parties did not contest that the trial could continue upon the departure of the first Magistrate. The issue of contention was whether, for the *de novo* trial, new charges had to be laid. The issue is of real importance as new charges would be barred for exceeding the time limit for bringing charges.

[21] The answer may be found in the Criminal Procedure Code which provides, at s12.

> "A summons, arrest warrant, search warrant or other judicial process issued in due form under law by a Court, judge, magistrate or justice of the peace is valid in all parts of Montserrat without the need for further

[9] [2007] 1 WLR 3085
[10] [2018] 2 Cr. App. R. 3

> authentication, backing or endorsement by a person before execution, and shall remain valid although the person who issued it died or ceased to hold office."

It cannot be disputed that a charge is a "judicial process issued in due form under law by a Court, judge, magistrate" as, by s. 26 of the Code a Magistrate draws up the charge upon receiving a complaint.

[22] A prosecution commences once the charge is properly laid.[11] A summary criminal trial begins when the first witness is called. It is the trial, not the proceedings, which are terminated by the departure of a judge who had part heard the trial evidence.

[23] A Magistrate has jurisdiction to try summarily any person charged with a summary offence (Magistrates Court Act s. 22(iv)). How the Magistrate should treat with matters heard before another Magistrate was explained by the Privy Council in Beswick v R.[12] The appellant had pleaded guilty before Resident Magistrate, Her Honour Ms. Francis, and the case was adjourned for trial. On the next date the appellant appeared before another Resident Magistrate, His Honour Mr. Lopez. He changed his plea to guilty and was sentenced. Thereafter, he was summoned to appear before Ms. Francis whereupon his sentence was vacated, he was tried, and convicted. On appeal, the Jamaican Court of Appeal held that Mr. Lopez had no jurisdiction as he had "intermeddled" in a case that had been commenced by Ms. Francis. Thus, the proceedings before Mr. Lopez was a nullity. The Court of Appeal upheld the conviction by Ms. Francis.

[24] The appellant appealed to the Privy Council. Their lordships allowed the appeal. They opined that Mr. Lopez clearly had jurisdiction to have acted as he did. It would have been different if Ms. Francis had started to take evidence. In that event Mr. Lopez could not have simply continued the trial from where Ms. Francis left it,

[11] Thorpe v. Priestnal (1897 1 QB 159.
[12] (1987) 36 WIR 318.

he would have to restart the trial and hear for himself all the evidence and witnesses.

Conclusion

[25] In conclusion on the instant appeals the answer to the first question stated is yes. The termination of the initial trial by the end of the original Magistrate's tenure did not affect the validity of the charges. Secondly, the incoming Magistrate Chatoor may restart the trial on the existing charges but must, of course, only rely on evidence examined or tendered before her. In the circumstances the other questions are no longer germane.

I concur.
Janice M. Pereira
Chief Justice

I concur.
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar