

Nov 26, 2004
Criminal

26/11/04

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

**CRIMINAL APPEAL NO. 9 OF 2004
(Summary Court Appeal 46/03)**

BETWEEN THE QUEEN RESPONDENT

AND OMAR WAYNE DUVAL APPELLANT

**BEFORE: THE RT. HON. JUSTICE ZACCA, PRESIDENT
 THE HON. JUSTICE G. COLLETT, J.A.
 THE HON. JUSTICE I. FORTE, J.A.**

Appearances:

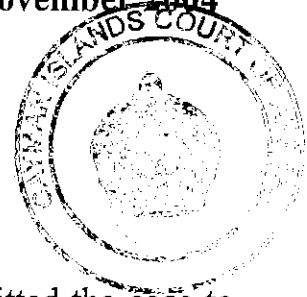
**Mr. N. Hill, Q.C. and Mr. P. Polack for the appellant
Mr. Scott Wilson for the Crown**

HEARD: 2nd August 2004

RELEASED: 26th November 2004

ZACCA P.

REASONS FOR JUDGMENT



On August 2, 2004 we dismissed this appeal and remitted the case to the Magistrate for trial. We promised to put our reasons into writing. This we now do.

The appellant appeared before the Magistrate on October 30, 2003 on four charges alleging breaches of the Misuse of Drugs Law. The charges

were signed by W.P.C. McFarlane in the presence of A. Bodden, a Justice of the Peace.

On November 22, 2002, premises occupied by the appellant was searched by the police. The appellant was arrested and interviewed on November 23 and 24, 2002. Following further investigations, there was a formal laying of the charges.

Before the Magistrate it was submitted that it was not W.P.C. McFarlane who had arrested the appellant and that the charges could not properly be signed by her. It was argued that a valid charge required the signature of the arresting officer who was P.C.H. Borden. It was further submitted that s.13(5) of the Criminal Procedure Code required strict compliance, and the failure to have the charges laid by P.C. Borden resulted in the charges being defective and void *ab initio*.

The Magistrate rejected these submissions and ruled that the charges were not defective.

On appeal to the Grand Court, Mr. Norman Hill, Q.C. who appeared for the appellant submitted that there had to be strict compliance with section 13, and that a failure to do so meant that the charges were not merely defective but void and the charges should be dismissed.

Panton J. rejected the submissions and dismissed the appeal and ruled that the trial should proceed without further delay.

The appellant now appeals to this Court. Mr. Hill, Q.C. for the appellant submitted as he did before the Grand Court, that the charges not having been signed by P.C. Borden, were defective and therefore void.

Section 13 of the Criminal Procedure Code reads:-

- (1) Criminal proceedings may be instituted either by the making of a complaint or by bringing before a Magistrate of a person who has been arrested without a warrant.
- (2) Any person, who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a Justice of the Peace.
- (3) A complaint may be made orally or in writing but if made orally shall be reduced to writing by the Justice of the Peace, and in either case shall be signed by the complainant and the Justice of the Peace.

Provided that where proceedings are instituted by a police or other public officer, acting in the course of his duty as such, a formal charge, drawn up in conformity with this code, duly signed by such officer may be presented to the Justice of the Peace and shall for the purpose of this code be deemed to be a complaint and shall be signed by the Justice of the Peace.

- (4) A Justice of the Peace, upon receiving any such complaint, shall unless such complaint has been laid in the form of a formal charge under subsection (3), draw up or cause to be

drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged.

- (5) When an accused person who has been arrested without a warrant is brought before a Magistrate, a formal charge shall be signed and presented by the police officer preferring the charge.

The section therefore provides two alternatives where criminal proceedings may be instituted:-

- (1) By the making of a complaint
- (2) By the bringing before a Magistrate of a person who has been arrested without a warrant.

Where a complaint is made before a Justice of the Peace, it must be signed by the complainant and the Justice of the Peace. It follows that if the complaint was being made by P.C. Borden then it should be signed by him. However, in the case before the Court, no complaint was made by P.C. Borden before a Magistrate.

The appellant was arrested without a warrant and section 13(5) provides that in such circumstances, a formal charge containing a statement of the offence with which the accused is charged shall be signed and presented by the police officer preferring the charge. It is to be noted that the section does not state that the charge be signed by the officer arresting the appellant but it is to be signed by the police officer preferring the charge.

In this case the police officer preferring the charge was W.P.C. McFarlane and it was she who signed it.

The formal charge was signed by W.P.C. McFarlane and A. Bodden a Justice of the Peace. Section 13(5) does not require that the formal charge be signed by a Justice of the Peace. It may be that the signing by the Justice of the Peace is merely witnessing the signature of the police officer.

The issue before the Court is whether under section 13(5) the officer who arrested the appellant is required to sign the formal charge.

Mr. Hill, Q.C. has relied on *R v Morais* (1988) 87 Cr. APP R 9. This case dealt with the preferring of an indictment and the proper person to sign the bill. In our view this case cannot support the contention of the appellant.

Miss Marlene Smith for the respondent relied on *Rubin v D.P.P.* (1990) 2 Q.B., 80 and *Hawkins v Bepey* (1979) 1 W.L.R. 419.

In the case of *Rubin v D.P.P.*, the information was laid in the name of the police force. It was submitted that the information was bad as the identity of the informant was not stated in the information. It was held that the failure to name the police officer laying the information did not invalidate it.

Watkins L.J. at page 247c stated:-

“The wrong description of the person entitled to prosecute was not, I think, a defect either in form or substance.”

.....
 “having said that, what I cannot accept is that the failure of the Chief Constable or some of his officers to ensure that a person laid the information in his own name (whether on behalf of another officer or not is immaterial) and which allowed the prosecution to be called Thomas Valley Police necessarily created an invalid information, that is, one that could not be proceeded on.”

In *Hawkins v Bepey*, the Chief Constable had issued instructions that informations laid by the police in Magistrates Court should as a general rule be laid by a Chief Inspector or Inspector Watkins J at page 800d said:-

“No one suggests that that instruction is in anyway improper. A similar instruction exists in other police forces. There is a sound administrative, if no other, reason for it. By obeying this instruction, does a Chief Inspector who lays an information, having had no connection with investigating the offence involved, become the prosecutor, that is to say, the one and only person thereafter to be so regarded for all purposes? I think not.....(the Chief Inspector) was acting in a representative capacity.”

The words of the statute must be given their natural meaning. Where there is a complaint laid before a Justice of the Peace, the complaint must be signed by the complainant and the Justice of the Peace.

Section 13(5) does not specifically require the signature of the arresting officer. It does not say so. What it says is that the formal charge

must be signed and presented by the police officer preferring the charge. It is not obligatory for the charge to be signed by the arresting officer or by someone involved in the investigation. Where there is an arrest without a warrant a formal charge is to be signed and presented to the Magistrate. It is what it says, a formal charge.

The Act therefore contemplates that one officer may arrest and another officer may proceed to lay a formal charge instituting the proceedings before the Court.

In this case the proceedings were instituted by a police officer acting in the course of her duty. It was she who formally drew up the charges and signed them. The requirements of the statute have been met.

For the above reasons we dismissed the appeal and ordered that the matter return to the Magistrate for the trial to proceed.

Zacca, P.

Collett, J.A.

Forte, J.A.

