

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION
MAGISTRATE COURT APPEAL
NO. 00001 AND 00002/2022

BETWEEN

VACARRO POITIER
JONISHA POITIER

APPELLANTS

AND

THE COMMISSIONER OF POLICE

RESPONDENT

Before: The Honourable Mr. Justice Gregory Hilton
Appearances: Jerone Roberts for Appellants
Kenny Thompson for Respondent
Hearing Dates: 24th April and 15th May, 2024

D E C I S I O N

[Appeal by Case Stated – Jurisdiction of Magistrate –
Magistrate Act Section 3 (2)(b)(d) and 9(1) –
Criminal Procedure Code Act Section 48, 49, 50, 51 and 59]

1. The Appellants were arraigned in Court No. 8 before the Assistant Chief Magistrate Subusola Swain on 17th June, 2019 on charges of Possession of Dangerous Drugs with intent to supply the same to another. The case was adjourned to 27th August, 2019 and then further adjourned to 26th November, 2019 for trial and no evidence was heard.
2. On 26th November, 2019 then Deputy Chief Magistrate Forbes was assigned as the presiding magistrate in Court No. 8 and he adjourned the matter for hearing first to 20th March, 2020 and then 14th April, 2020. No hearing of evidence occurred on either date (presumably due to Covid restrictions) and then further adjourned to 11th December, 2020 and again to 21st April, 2021 and finally to 15th June, 2021.
3. On 15th June, 2021 the Deputy Chief Magistrate had demitted office without hearing any evidence (as he had been appointed to serve as a Justice of Supreme Court) and on that date Magistrate Kara Turnquest-Deveaux adjourned all the Court No. 8 matters to 21st September, 2021 when it was expected that a substantive Magistrate would be in place sitting in Court No. 8.
4. Magistrate Samuel McKinney was subsequently assigned as the substantive magistrate in Court No. 8 and on 21st September, 2021 the Appellants with their Counsel appeared before him for trial and Counsel raised a point in limine challenging the jurisdiction of the Magistrate to try the matter on the basis that:

- a) As the Appellants were originally arraigned before Magistrate Subusola Swain, she was the Magistrate before whom the case should be tried; and;
 - b) As there was no transfer of the case/complaint to Magistrate Forbes or McKinney under the provisions of Section 50 or 51 of the Criminal Procedure Code that Magistrate McKinney had no jurisdiction to try the Appellants and as a result the existing complaint should be dismissed.
5. Magistrate McKinney rejection the Appellants point of limine in a written ruling on 21st January, 2022 after hearing arguments and submissions on 29th November, 2021; ruling that as no evidence had been taken in the matter he did have jurisdiction to try the matter and also that as the matter had originally been assigned to (and the appellants arraigned in) Court No. 8 that he being the now substantive Magistrate in Court No. 8 did not need to have transfer of the matter to him.
6. The Appellants filed a Notice of Intention to Appeal on 22nd January, 2002 stating ground namely:
1. That the Appellant having been initially arraigned by a Stipendiary and Circuit Magistrate could not be tried by a different Stipendiary and Circuit Magistrate unless there was a formal transfer of the Complaint by either.
 - (a) The Chief Magistrate pursuant to Section 50 of the Criminal Procedure Code (C.P.C.); or
 - (b) A Judge of the Supreme Court pursuant to Section 51 of the Criminal Procedure Code (C.P.C.).

2. That there was no formal transfer of the Complaint.

7. The Appellants also filed an "Application to a Magistrate's Court to State a Case" pursuant to Section 239 of the Criminal Procedure Code (C.P.C.) in terms set out here in below:

"I, the undersigned, was a Defendant in proceedings at Magistrates' Court No. 8 brought by the Commission of Police (Charge Sheet 403-19). After hearing submissions made by Counsel as to your jurisdiction to try my matter, you ruled that you had such jurisdiction. I am dissatisfied with your decision as it is wrong in law, and you have no jurisdiction in the matter. Hence I hereby apply, pursuant to s.239 of the Criminal Procedure Code Act (ch.91), to you to state a case for the opinion of the Supreme Court on the question set out below.

1. THE FACTS

The Submission made before you

I was arraigned by a Stipendiary & Circuit Magistrate other than yourself, and there was no transfer of the matter to you.

In the circumstances, on 29th November 2021 my Counsel submitted that you had no jurisdiction to try the matter.

THE RULING

On 21st January 2022 you ruled that you had jurisdiction to try the matter.

2. The Ground of which the Proceeding is questioned

Given that I was arraigned by a Stipendiary and Circuit Magistrate other than yourself, and given that there was no transfer of the matter to you, you have no jurisdiction to try the matter.

3. Ground of the Stipendiary and Circuit Magistrate Ruling

Your Ruling, as I understand it, was premised on the fact that since no evidence had been taken, and notwithstanding the fact that I had been arraigned before a different Stipendiary and Circuit Magistrate, you nonetheless had jurisdiction to try the matter.

4. The Question for the Opinion of the Supreme Court

As a result of the above, the question I wish to be considered by the Supreme Court is:

“Given that I was arraigned by a Stipendiary and Circuit Magistrate other than Stipendiary and Circuit Magistrate Samuel McKinney, and given that there was no transfer of the matter to Stipendiary and Circuit Magistrate Samuel McKinney, does the said Stipendiary and Circuit Magistrate Samuel McKinney have jurisdiction to try my matter?”

8. For reasons that are unclear the Appellants appeal and the case stated did not come for hearing before me until 7th February, 2024 and submissions were heard on 15th May, 2024.

9. The brief skeleton Arguments of Counsel for the Appellants are also set out below:

- A. The learned S & C Magistrate erred in law when he did not accept Counsel's submission that the matter had "Commenced" before another Magistrate.
- B. The learned S & C Magistrate erred in law when he did not apply the Court of appeal decision in **C.O.P. v. Nonard MC Cr App. No. 126 of 2018.**
- C. Notwithstanding having accepted that there was no transfer of the matter to him, the learned S & C Magistrate erred in Law when he ruled that he had jurisdiction to try the matter.
- D. The learned S & C Magistrate erred in Law when he refused to discharge the Appellants.
- E. The Appellants relies upon
 - (i) **C.O.P. v. Nonard**
 - (ii) **Sheldon Moore et al v. Superintendent of Police et al SCCr App. No. 250 of 2014.**

10. Counsel for the Respondent in his written submissions supported the decision of the magistrate and submitted that the Appellants application was an abuse of process. Counsel in brief submitted that as the Appellant were arraigned in the Magistrate Court No. 8 that the Magistrate sitting in that Court did not need to have the case transferred to them when (as in this case) the original Magistrate was reassigned to preside over a different Magistrate Court or demitted office.

11. I have considered the submission of Counsel for the Appellants and I find that they are without merit.

The question posed for the opinion of the Supreme Court is answered in the affirmative specifically that S & C Magistrate Samuel McKinney does have jurisdiction to try the Appellants matters.

12. With respect to the Counsel for the Appellants submission regarding when a case "Commences" and his reliance on the decision in **Sheldon Moore et al vs. Superintendent of Prison et al SC Cr App No. 250 of 2014**; I find that that case is not relevant to the issue before the Court. That case dealt with the jurisdiction of a Judge (in a Court of Appeal) whose constitutional age of retirement had been reached and that court held that the judge was still eligible to sit on the hearing of the appeal case which had "commenced" before he had reached the retirement age in which he had sat on when the appeal had been filed in the Court of Appeal as that constituted the "Commencement" of the appeal.

That case is not authority for the position that once a person is arraigned in the Magistrate Court that the Magistrate before whom the person is arraigned must be the Magistrate who must hear and conclude the trial unless (Prior to any evidence being taken) the matter is transferred by the Chief Magistrate under Section 50 of the Criminal Procedure Code (C.P.C.).

13. With respect to the Appellants Counsel reliance on the case of **C.O.P. vs. Nonard MC Cr. App. No. 126 of 2018** regarding when a particular complaint should be discharged. I find that that case dealt with a position where the evidence had commenced before a particular Magistrate who demitted office prior to completion of the trial and the Prosecution sought to have the matter tried before another Magistrate on the same complaint/charge sheet. The Magistrate in that case rightly ruled that he had no jurisdiction to hear the matter on the existing complaint/charge sheet as the Accused in that case would have been discharged on the existing part heard complaint and a new complaint would have had to be filed (if it could be done so within the limitation period for filing complaints) in the Magistrate Court.

14. In the present case the situation is very different. No evidence has been heard on the existing charge sheet/complaint.

Jurisdiction of magistrate are governed by the Magistrate Act Section 3(2)(d) which states:

“Each Magistrate has jurisdiction to hear and determine in accordance with the provisions of the Criminal Procedure Code Act, all and any complaints against any person being or coming within his district concerning the commission of any offence as regards any matter directed or authorities by that or any other Act to be presented or dealt with summarily....”

15. Section 59(1) and (3) of the Criminal Procedure Code (C.P.C.) is relevant in my view as it speaks directly to situations where a Magistrate has either demitted office or ceased to act in any matter (whether because they have died or been reassigned or demitted office) which are exactly the circumstances in this case. Section 59 (1) and (3) states:

59 (1) "Upon receiving a complaint and the charge having been signed in accordance with the provisions of Section 58 of this code, a Magistrate may, in his discretion, issue either a Summons or a Warrant to compel the attendance of the Accused person before a Magistrate Court having jurisdiction to inquire into or try the offence alleged to have been committed."

(3) "No Warrant or Summons shall be held to invalid by reason only that the Magistrate who issued the same has died or cease to hold office or has otherwise cease to act in the matter and any other magistrate assigned to the court may take such proceeding as may be necessary to enforce the said Warrant or to hear and determine the complaint in respect of which the Summons was issued."

16. In the present case the appellants matter was originally assigned to Court No. 8 where the presiding Magistrate was Magistrate Subusola Swain. She was reassigned to a different Magistrate Court without having head any evidence on the matter and the Deputy Chief Magistrate Forbes was assigned to Court No. 8 and he eventually, demitted office also without having heard any evidence in the case (as he was elevated to the Supreme

Court in 2021). Subsequently Magistrate McKinney was assigned to Court No.8 and his jurisdiction is the subject of this appeal.

17. In my view the Complaint charge sheet is still valid as no evidence has been heard by any Magistrate. Also the complaint being originally assigned to Court No. 8, it is that court (with its presiding magistrate) which must hear the complaint unless it is transferred to another Court or magistrate pursuant to either Section 50 or 51 of the Criminal Procedure Code (C.P.C.).
18. Magistrate McKinney who is the present Magistrate in Court No. 8 has jurisdiction to try the Appellants on the existing complaint and I so order that the case be heard and tried before him unless transferred as indicated earlier pursuant to Sections 50 or 51 of the Criminal Procedure Code (C.P.C.).
19. I also take this opportunity to indicate that Section 3(2)(b) and Section 9(1) of the Magistrate Act gives Magistrate power to adjourn matters where a sitting magistrate is unable to act due to illness or any other reason. And also Section 48 of the Criminal Procedure Code (C.P.C.) likewise gives Magistrates power to direct cases which come before them to be transferred to the Court before which the complaints ought to be enquired into or tried.
Clearly it was under these provisions that Magistrate Kara Turnquest-Deveaux acted to adjourn the matters in Court No. 8 when there was no Magistrate sitting in that court on 15th June, 2021.

20. The result is that the matter is now remitted back to Magistrate Court No. 8 with the presiding Magistrate Samuel McKinney sitting and for him to hear and determine in case.
21. Appeal is dismissed and the answer to the question posed in the “case stated” is answered in the affirmative.

Dated this 19th day of February 2025.

**Gregory Hilton
Justice of Supreme Court**