

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

CRI/BAL/71/3/2026

BETWEEN

WARDER JOSEPH

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Honourable Justice Darron Ellis**

Appearances: **Alicia Pickstock for the Applicant**

Myesha Saunders for the Respondent

Hearing Date: **11th June, 2026**

Ruling Date: **18th August, 2026**

JUDGMENT

Criminal procedure—Voluntary bill of indictment—Receiving—Indictable offence triable summarily—Whether accused must be afforded election under section 214 of the Criminal Procedure Code, Ch. 91 before proceedings may continue in the Supreme Court.

Introduction and Background

- [1.] Before the Court is an application by the Applicant challenging the continuation of these proceedings on the ground that he was not afforded an election pursuant to section 214 of the **Criminal Procedure Code, Ch. 91** (“the **CPC**”), before the prosecution proceeded against him by way of a Voluntary Bill of Indictment (“VBI”).
- [2.] The Applicant presently faces a charge of **Receiving** contrary to section 358 of the **Penal Code**. The offence is included in the Third Schedule to the CPC as an indictable offence triable summarily. Sections 344 to 359 of the Penal Code are expressly included in Part I of that Schedule.
- [3.] The Applicant was originally jointly charged with a co-accused. The indictment included offences triable on information before the Supreme Court. Neither the Applicant nor his co-accused was afforded an election pursuant to section 214 of the **CPC**. The Prosecution instead proceeded by way of a VBI and the matter came before the Supreme Court.
- [4.] The co-accused subsequently absconded and the proceedings against him were severed. The Prosecution now proceeds against the Applicant alone—the charge of **Receiving** remains upon the indictment.
- [5.] The Applicant contends that the failure to afford him the election contemplated by section 214 deprived him of a statutory right and that the proceedings ought not to continue before this Court. The Applicant submits that the appropriate course is:
- i) a stay of the proceedings as an abuse of the process or;
 - ii) a ruling that the present proceedings are a nullity or;
 - iii) that the Court declines to proceed further until the Applicant is afforded his right of election under section 214.
- [6.] The Prosecution maintains that the VBI was validly preferred pursuant to section 258 of the **CPC** and that the subsequent severance does not affect the jurisdiction of this Court to continue proceedings.

The Applicant’s Submissions

- [7.] Counsel for the Applicant submits that the central issue arising for determination is whether the Prosecution, by preferring a VBI, was entitled to place the Applicant directly before the Supreme Court on the charge of **Receiving** contrary to section 358 of the **Penal Code** without first affording him the right of election said to arise under section 214 of the **CPC**.

- [8.] The Applicant is charged with dishonestly receiving a motor vehicle knowing it to have been obtained by an offence. Counsel points out that section 358 falls within the range of offences, namely sections 344 to 359 of the Penal Code, identified in the Third Schedule to the **CPC** as indictable offences triable summarily. It is therefore submitted that the charge is one to which the procedure prescribed by section 214 applies.
- [9.] Reliance is placed particularly upon section 214(1), which provides that where a person charged with an offence referred to in the Third Schedule is brought before a qualifying magistrate, the magistrate is required to inform the accused that the offence may be tried summarily, that he has a right to trial by jury before the Supreme Court, and to ask whether he wishes to be tried by jury or consents to summary trial.
- [10.] Counsel emphasises the repeated use of the word “shall” and submits that the provision confers a mandatory and substantive statutory right of election upon the accused rather than a procedural formality capable of being dispensed with at the instance of the prosecution.
- [11.] In support of that construction, the Applicant relies principally upon **Attorney General v Hall** [2016] UKPC 28. It is submitted that the Privy Council recognised section 214 as conferring upon an accused a right to elect trial by jury and, more broadly, confirmed that the statutory provisions governing the mode by which criminal proceedings are brought before the Court must be observed.
- [12.] Counsel therefore contends that the Applicant’s right of election is personal to him and cannot be displaced merely because the prosecution prefers that the matter proceed in the Supreme Court.
- [13.] The factual circumstances in which the present VBI arose are also relied upon. The Applicant was originally jointly charged with a co-accused who faced other indictable offences. The prosecution proceeded by VBI without affording either accused an election. The co-accused subsequently absconded, following which the proceedings against him were severed, and the prosecution continued against the Applicant alone.
- [14.] Counsel submits that whatever justification may previously have existed for proceeding against the jointly charged accused in the Supreme Court ceased once the Applicant stood alone upon the charge of **Receiving**. Reliance is placed upon **Nicholls v Brentwood Justices** [1991] 3 All ER 359 for the proposition that the right of election is personal to the individual accused.

- [15.] Counsel further addresses the effect of the 2017 amendments to the CPC. In particular, reference is made to section 58(8), which provides that where an offence is triable either summarily or on information, and the accused has no right to elect the mode of trial, the prosecution may commence proceedings either summarily or on information without reference to a magistrate for determination of the mode of trial.
- [16.] The Applicant submits that the qualification contained in that provision is critical. In his case, section 58(8) enlarges prosecutorial discretion only in relation to offences for which the accused has no statutory right of election and does not displace the express right arising under section 214 in respect of Third Schedule offences.
- [17.] In that regard, the Applicant seeks to distinguish **Adrian Paul Gibson et al v Director of Public Prosecutions**, SCCOn/CrApp No. 138 of 2023. Counsel submits that the amendments considered in that case concern offences triable either way for which no right of election exists and cannot properly be construed as impliedly repealing or overriding section 214.
- [18.] Since **Receiving** under section 358 is expressly included in the Third Schedule, counsel contends that it remains within the category of offences for which Parliament has preserved an accused's election.
- [19.] The Applicant also rejects any suggestion that the preferment of the VBI itself constituted, or could operate as, a direction that the matter should not be tried summarily under section 214(2)(b). It is submitted that the subsection presupposes that the section 214 process has first been engaged and that the accused has been brought before a magistrate and informed of his statutory rights.
- [20.] Accordingly, counsel argues that a prosecutorial decision concerning the ultimate forum of trial cannot retrospectively dispense with what is said to be the anterior statutory requirement that the Applicant be afforded an election.
- [21.] The Applicant submits that the distinction between the forum in which the case may ultimately be tried, and the procedure by which that forum is lawfully engaged is fundamental. His complaint is not simply that the prosecution selected the Supreme Court as the forum for trial, but that it bypassed the statutory mechanism which, on his construction of section 214, Parliament required to precede that result.
- [22.] If the Prosecution could avoid section 214 merely by preferring a VBI, counsel argues, the statutory right of election in respect of Third Schedule offences could effectively be rendered nugatory.

[23.] Counsel additionally relies upon the delay said to have resulted from the procedure adopted. It is submitted that had the Appellant been afforded an election and consented to summary trial, the matter might have been disposed of earlier in the Magistrates' Court. The Applicant therefore characterises the alleged denial of his election as producing tangible prejudice and engaging considerations of fairness and his constitutional entitlement to a hearing within a reasonable time.

[24.] As to the legal consequence of the alleged non-compliance, the Applicant submits that the omission is not a mere procedural irregularity but goes to the legality of the proceedings themselves. Again relying upon **Attorney General v Hall**, counsel argues that where Parliament has prescribed the statutory route by which criminal proceedings are to reach a particular mode of trial, failure to comply with that route may invalidate the resulting proceedings.

[25.] The Applicant accordingly invokes the Court's inherent jurisdiction to prevent an abuse of its process. Counsel submits that permitting the proceedings to continue would sanction the circumvention of a mandatory statutory safeguard and compel the Applicant to undergo trial in a procedural posture which he never elected.

[26.] The Applicant therefore invites the Court to stay the proceedings as an abuse of process or to declare the present proceedings a nullity. At minimum, he submits that the Court should decline to proceed further unless and until he has been allowed to exercise the election contemplated by section 214.

[27.] In summary, the Applicant's case is that Parliament has expressly included the offence under section 358 of the **Penal Code** within the Third Schedule; section 214 consequently confers upon him a personal statutory right of election; the 2017 amendments do not remove that right; and the prosecution cannot circumvent it by the unilateral preferment of a VBI.

The Prosecution's Submissions

[28.] The Prosecution submits that the Applicant has not been unlawfully deprived of any right of election and that the proceedings are properly before the Supreme Court.

[29.] While accepting that the offence of **Receiving** contrary to section 358 of the **Penal Code** appears in the Third Schedule to the **CPC** and is therefore capable of being tried summarily, the Prosecution contends that it nevertheless remains an indictable offence which may lawfully be prosecuted on information before the Supreme Court.

[30.] The Prosecution relies firstly upon section 4 of the **CPC**, which provides, subject to the express provisions of the Code and any other law, that the Supreme Court may try

any offence. It further relies upon section 214(2)(b), which provides that a magistrate shall not proceed to hear and determine summarily a charge which may be tried on information where the Attorney General directs in writing that the case shall not be tried summarily.

[31.] Counsel submits that section 214 does not confer upon an accused an absolute right to insist upon summary trial. Rather, section 214 establishes the procedure applicable where a person charged with a Third Schedule offence is brought before a qualifying magistrate and the matter remains within the Magistrates' Court process.

[32.] In those circumstances, the accused must be informed that the offence may be tried summarily and that he has a right to trial by jury. The Prosecution contends, however, that the provision does not confer a corresponding right upon an accused to demand summary trial where the prosecution has lawfully instituted proceedings before the Supreme Court by way of VBI.

[33.] The Prosecution submits that this construction is reinforced by section 214(2)(b) itself. Even where an accused consents to summary trial, the magistrate is prohibited from proceeding summarily where the Attorney General directs in writing that the matter is not to be so tried. Accordingly, it is argued that an accused's election under section 214 cannot amount to an indefeasible right to summary disposition of the charge.

[34.] Central to the Prosecution's case are the amendments made to the **CPC** in 2017. Counsel submits that the Defendant's reliance upon **Attorney General v Hall** fails to take sufficient account of those amendments. According to the Prosecution, **Attorney General v Hall** was decided upon the **CPC** as it then stood and exposed a deficiency in the statutory framework concerning the use of a VBI for offences which were capable of being tried on information but did not fall within the former definition of an "indictable offence".

[35.] The Prosecution submits that Parliament responded to **Attorney General v Hall** through the **Criminal Procedure Code (Amendment) Act, 2017**. Of particular significance is the amendment to the definition of "indictable offence". Whereas the former definition referred, subject to section 214, to an offence triable "only" on information before the Supreme Court, the amended provision defines an indictable offence as "any offence which is triable on information before the Supreme Court."

[36.] Counsel contends that the removal of the former restriction materially enlarged the class of offences in respect of which a VBI may be preferred. The Prosecution also refers to the insertion of section 58(8) into the **CPC**. That provision expressly contemplates that where an offence is triable either summarily or on information, and the accused has no right to elect the mode of trial, the Prosecution may commence proceedings either summarily or on information without reference to a magistrate for determination of the mode of trial.

[37.] Particular reliance is placed upon section 258 of the **CPC** governing voluntary bills. Counsel submits that, following the 2017 amendments, the DPP is expressly empowered to proceed by VBI in respect of an indictable offence and that the amended definition now encompasses any offence triable on information. Since **Receiving** contrary to section 358 is capable of being tried on information, the Prosecution submits that it falls within that statutory authority notwithstanding that it is also capable of summary trial.

[38.] The Prosecution further relies upon section 258(5). Under that provision, once a voluntary bill and summons have been produced to a magistrate, the magistrate may deal with bail or remand. However, the magistrate's jurisdiction to deal with the accused in respect of the charge ceases.

[39.] Counsel submits that this provision is inconsistent with the proposition that, after a VBI has lawfully been preferred, the accused nevertheless retains an entitlement to have the charge returned to the Magistrates' Court for the purpose of making an election under section 214.

[40.] Reference is additionally made to **Article 78A of the Constitution**, which vests in the Director of Public Prosecutions the authority to institute and undertake criminal proceedings against any person before any court in respect of an offence against the laws of The Bahamas, as well as to take over, continue or discontinue such proceedings. The Prosecution submits that the **CPC** should be construed consistently with that constitutional allocation of prosecutorial authority.

[41.] The principal authority relied upon by the Prosecution is **Adrian Paul Gibson et al v Director of Public Prosecutions**. Counsel submits that the decision directly addresses the effect of the post-**Attorney General v Hall** statutory regime upon the DPP's ability to select the mode of trial and proceed by VBI in respect of offences capable of being tried either summarily or on information.

[42.] In particular, the Prosecution relies upon paragraph 16 of **Adrian Paul Gibson et al v Director of Public Prosecutions**, where *Isaacs JA* considered the preferment of a VBI to be a sufficiently clear written indication, for the purposes of section 214(2)(b), that the DPP had directed that the matter was not to be tried summarily.

[43.] On that reasoning, counsel submits that the VBI in the present case itself constitutes the relevant prosecutorial direction that the charge proceed before the Supreme Court rather than summarily. The Prosecution further relies upon paragraph 28 of **Adrian Paul Gibson et al v Director of Public Prosecutions**, where *Isaacs JA* considered the significance of the amendment to the definition of "indictable offence", including the

deletion of the word “only”. Counsel submits that the Court of Appeal concluded that the effect of the amendment was to permit the DPP to choose the mode of trial in respect of the offences there under consideration.

[44.] Reliance is also placed upon paragraph 33 of **Adrian Paul Gibson et al v Director of Public Prosecutions**, where the Court stated that section 258 of the **CPC** permits the DPP to “fast track” to the Supreme Court a case involving “any offence which is triable on information.”

[45.] The Prosecution submits that the present charge falls squarely within that description and that the preferment of the VBI consequently placed the matter properly before the Supreme Court.

[46.] Of particular significance, counsel points to Ground 4 in **Adrian Paul Gibson et al v Director of Public Prosecutions**. That ground concerned the offence of **Receiving** contrary to section 358 of the **Penal Code** and included the contention that the appellants had not been afforded the election under section 214. At paragraph 34, the Court of Appeal rejected that ground as being without merit.

[47.] The Prosecution therefore distinguishes **Attorney General v Hall** on the basis that it was decided under the pre-2017 statutory framework. In its submission, the subsequent amendments addressed the statutory difficulty identified in **Attorney General v Hall**, and the legality of the present VBI must consequently be determined by reference to the amended **CPC** and the interpretation subsequently adopted by the Court of Appeal in **Adrian Paul Gibson et al v Director of Public Prosecutions**.

[48.] On the issue of severance, the Prosecution submits that the subsequent absence and severance of the co-accused did not alter the jurisdictional basis upon which the Applicant was already before the Supreme Court. The Applicant came before this Court pursuant to the VBI and not because of the continued presence of his co-accused.

[49.] Accordingly, the Prosecution submits that severance does not invalidate the VBI, revest jurisdiction in the Magistrates’ Court or create a fresh entitlement to an election under section 214.

[50.] On the issue of abuse of process, the Prosecution submits that no procedural illegality has occurred. The DPP exercised a statutory and constitutional authority to institute the charge before the Supreme Court by VBI. The fact that **Receiving** is also capable of being tried summarily does not deprive it of its character as an indictable offence or invalidate the procedure adopted.

[51.] The Prosecution therefore invites the Court to reject the Applicant's contention that the proceedings are a nullity or an abuse of process and to direct that the trial proceed.

Issues for Determination

[52.] Against those competing submissions, I consider that the following issues arise:

- (i) whether section 214 required that the Applicant be afforded an election before the charge of **Receiving** could be brought before the Supreme Court;
- (ii) whether section 258 provided an independent statutory basis upon which the DPP could bring the **Receiving** charge before the Supreme Court by VBI;
- (iii) the effect of **Attorney General v Hall** and the subsequent 2017 amendments on the **CPC**;
- (iv) the effect of the Court of Appeal's decision in **Adrian Paul Gibson et al v Director of Public Prosecutions**, particularly its treatment of Receiving contrary to section 358;
- (v) whether the subsequent severance of the co-accused required the Applicant to be afforded an election under section 214; and
- (vi) whether continuation of the proceedings amounts to an abuse of process.

The Law and Analysis

Relevant Statutory Provisions

[53.] Section 214(1) and 214 (2) (b) of the **CPC** provide:

214(1) Where a person charged with an offence referred to in the Third Schedule to this Code **is brought before a magistrate's court** presided over by the Chief Magistrate, by a Deputy Chief Magistrate, by a Senior Stipendiary and Circuit Magistrate or by a stipendiary and circuit magistrate, the court shall inform the accused person that he may be tried summarily for such offence but that he has the right to be tried for that offence by jury before the Supreme Court, and shall ask him whether he wishes to be tried by jury or consents to be tried summarily by such magistrate; and if the accused person does not consent to be tried summarily, the presiding magistrate shall either remit the case to some other magistrate to hold a preliminary inquiry or may himself hold such preliminary inquiry in respect of the charge, in accordance with the provisions of this Code.

214 (2) (b) “the presiding magistrate shall not in any case proceed to hear and determine summarily a charge against any person which may be tried on information, if the Attorney-General in writing directs that the case shall not be tried summarily.”

[54.] Section 258 (1) and (5) of the **CPC** provides:

“(1) Notwithstanding any rule of practice or anything to the contrary in this or any other written law, the Attorney-General may file a voluntary bill of indictment in the Supreme Court against a person who is charged before a magistrate’s court with an indictable offence whether before or after the coming into operation of this section, in the manner provided in this section.”

“(5) Where a voluntary bill and summons have been produced to a magistrate pursuant to subsection (4), the magistrate, in accordance with the provisions of the Bail Act, may admit the person charged under the voluntary bill, to bail conditioned to appear before the Supreme Court on the relevant date specified in the summons or remand him into custody so to appear; and, upon so admitting the person charged to bail or remanding him into custody, the jurisdiction of the magistrate to deal with him in respect of the charge **shall cease**, but the warrant of the magistrate shall be sufficient authority for the detention of the person named therein, by the officer in charge of any prison.”

[55.] Section 58 of the **Criminal Procedure Code (Amendment) Act 2017** provides:

“ Section 58 of the principal Act is amended by the insertion immediately following subsection (7) of the following new subsection (8)—

(8) Where an offence is triable either summarily or on information and an accused person has no right to elect the mode of trial, the prosecution of such an offence may be commenced on behalf of the Crown either summarily as permitted by section 213 of this Code or on information as permitted by this Code, without any reference to the magistrate for determination of the mode of trial.

[56.] The **Criminal Procedure Code (Amendment) Act 2017** amends section 2 of the **CPC** by changing the definition of indictable offence as:

“indictable offence” means any offence which is triable on information before the Supreme Court”

[57.] Section 214 is plainly important. **Receiving** contrary to section 358 falls within the Third Schedule and is capable of summary trial. I therefore reject any suggestion that section 214 has ceased to have application to the offence itself.

[58.] The question, however, is not merely whether **Receiving** appears in the Third Schedule. The question is when, and under what procedural circumstances, the obligations imposed by section 214 arise.

[59.] The section has an important textual feature. Its operative obligation arises where a person charged with a Third Schedule offence “is brought before” the qualifying Magistrates’ Court. It is in that procedural setting that the magistrate “shall” inform the accused of the available modes of trial and obtain his election.

[60.] I accept that once those statutory circumstances arise, the obligations imposed upon the magistrate are mandatory. What I do not accept is that section 214 necessarily establishes an anterior jurisdictional condition which must be satisfied before a Third Schedule offence can reach the Supreme Court by any other procedure expressly authorised by the **CPC**.

[61.] To construe the section in that manner would require section 214 to be read in isolation. It must instead be construed together with section 258 and with the amendments made by Parliament following **Attorney General v Hall**.

Attorney General v Hall and the 2017 Amendments

[62.] In **Attorney General v Hall**, the Privy Council considered the statutory regime as it then existed. Of particular importance was the definition of “indictable offence”, which was then confined to an offence triable “only” on information before the Supreme Court. The statutory issue in that case arose against that pre-amendment definition and the resulting limits upon recourse to the voluntary-bill procedure.

[63.] The word “only” assumed considerable significance because it restricted the class of offences capable of engaging the VBI procedure. Parliament subsequently amended the **CPC**. The former definition was replaced so that an “indictable offence” now means “any offence which is triable on information before the Supreme Court.”

[64.] In my judgment, that alteration cannot be treated as merely linguistic. Parliament removed the very restriction which had materially informed the statutory analysis in **Attorney General v Hall**. The validity of the present VBI must therefore be determined under the amended statutory scheme, while giving **Attorney General v Hall** such effect as remains consistent with that scheme.

[65.] The 2017 amendments also introduced section 58(8). I accept the Applicant’s submission that this provision must be treated with some care because it expressly addresses the position where an accused “has no right to elect the mode of trial.”

[66.] Accordingly, I do not rest my decision upon section 58(8) alone. To do so would risk overlooking the express qualification which Parliament inserted into that provision. Nor do I treat section 58(8) as repealing or qualifying section 214 by implication. Rather, the question is whether the conditions which engage section 214 have arisen where the

DPP has invoked the distinct procedure under section 258. The more compelling provisions for present purposes are the amended definition of “indictable offence”, section 258 and, critically, the Court of Appeal’s interpretation of those provisions in **Adrian Paul Gibson et al v Director of Public Prosecutions**.

Section 258 of the CPC

[67.] Section 258 creates the statutory procedure for a VBI. Its opening words are significant. The provision operates “notwithstanding any rule of practice or anything to the contrary in this or any other written law.”

[68.] Following the 2017 amendment, the offence of **Receiving** under section 358 falls within the definition of an indictable offence because it is an offence triable on information before the Supreme Court. The fact that it is additionally capable of summary trial does not remove it from that definition. Section 258 therefore provides a statutory route by which the DPP may place an offence triable on information before the Supreme Court by VBI.

[69.] Section 258(5) is also significant. Once the statutory VBI procedure has been undertaken and the relevant documents produced, the jurisdiction of the magistrate to deal with the accused in respect of the charge ceases, save for the limited functions identified in the subsection.

[70.] That statutory consequence presents considerable difficulty for the Applicant’s contention that, notwithstanding the valid invocation of section 258, the Magistrates’ Court must thereafter exercise jurisdiction for the purpose of obtaining an election under section 214.

[71.] In my judgment, the better construction is that sections 214 and 258 provide procedures which operate in their respective statutory circumstances. Section 214 governs the election process when the accused is brought before the qualifying Magistrates’ Court in the circumstances contemplated by that provision. Section 258 provides a distinct statutory mechanism by which an offence triable on information may be brought before the Supreme Court by VBI.

[72.] It follows that the mandatory character of the magistrate’s duties under section 214 does not, without more, establish that the procedure prescribed by that section must be undertaken before the DPP may invoke section 258. Section 214 prescribes the duties of the magistrate where that provision is engaged; it does not necessarily follow that compliance with section 214 constitutes a condition precedent to the exercise of the DPP’s

statutory power under section 258. Where the DPP validly invokes section 258, the Court is concerned with the statutory requirements governing that distinct procedure.

[73.] Any residual uncertainty is, in my judgment, substantially resolved by the decision of the Court of Appeal in **Adrian Paul Gibson et al v Director of Public Prosecutions**.

[74.] The importance of **Adrian Paul Gibson et al v Director of Public Prosecutions** extends beyond its general discussion of the 2017 amendments. The case involved, among the charges before the Court, **Receiving** contrary to section 358 of the **Penal Code**. At paragraph 28, *Isaacs JA* addressed the amended definition of “indictable offence” and observed that the “sticking point” in the former legislation, namely the word “only”, had been deleted and the word “any” substituted.

[75.] At paragraph 33, His Lordship stated:

“Section 258 of the CPC allows the respondent to fast track a case involving ‘any offence which is triable on information’ to the Supreme Court and in the circumstances, the case is properly before the Judge.”

[76.] That statement is directly relevant to the present application.

[77.] More compelling still is Ground 4 of the appeal in *Gibson*. That ground concerned **Receiving** under section 358 and the contention that the appellants had not been afforded the election contemplated by section 214.

[78.] Having considered the statutory amendments and the operation of section 258, the Court of Appeal disposed of that ground at paragraph 34 in the following terms:

“This ground has been addressed in my treatment of grounds 2, 3 and 5. There is no merit in this ground.”

[79.] That conclusion is binding on this Court. The Court of Appeal necessarily rejected the proposition that the absence of a section 214 election invalidated a VBI in relation to a section 358 receiving charge under the amended code. No material distinction has been established here.

[80.] I therefore do not accept the Applicant’s submission that **Adrian Paul Gibson et al v Director of Public Prosecutions** is distinguishable merely because section 58(8) speaks of persons having no right of election. The Court of Appeal’s treatment of the **Receiving** count went beyond section 58(8) considered in isolation. Its reasoning expressly relied upon the amended definition of an indictable offence and the operation of section 258.

[81.] The Applicant understandably asks: if the prosecution can proceed by VBI whenever an offence is triable on information, what meaningful role remains for section 214?

[82.] In my judgment, the answer lies in the circumstances which engage each provision. Section 214 has not been repealed and must be given effect. Where a person charged with a Third Schedule offence is brought before a qualifying magistrate in the circumstances contemplated by that section, the magistrate must comply with its mandatory requirements.

[83.] Section 258 nevertheless provides another statutory route. The existence of the section 214 procedure does not mean that Parliament was incapable of simultaneously authorising the DPP to proceed by VBI in respect of an offence falling within the amended definition of indictable offence.

[84.] I therefore do not hold that an accused has somehow “lost” the right provided by section 214, nor that the prosecution may disregard a statutory election which has actually arisen before the magistrate.

[85.] My conclusion is narrower. The election procedure prescribed by section 214 is engaged by the procedural circumstances identified in that section. It does not operate as an absolute jurisdictional condition precedent to the DPP's invocation of the separate VBI procedure expressly authorised by section 258.

[86.] In light of that conclusion, it is unnecessary to decide whether the preferment of a VBI would, in addition, constitute the written direction contemplated by section 214(2)(b). Nothing in this ruling should be taken as determining that separate question.

[87.] That construction gives meaningful operation to both provisions and, importantly, accords with the binding interpretation of the post-2017 statutory scheme in **Adrian Paul Gibson et al v Director of Public Prosecutions**.

Severance

[88.] I turn then to the subsequent severance of the co-accused. The Applicant argues that even if the Prosecution was originally entitled to place the jointly charged accused before the Supreme Court by VBI, the position materially changed when the co-accused absconded, leaving the Applicant standing alone on the charge.

[89.] I cannot accept that submission. The Supreme Court did not acquire jurisdiction over the Applicant because the co-accused remained present. This Court's jurisdiction did not depend on the continued joinder of other charges in the indictment.

[90.] The charge came before this Court pursuant to the VBI preferred under section 258. Once that VBI was validly preferred, the Supreme Court became seised of the charge. Severance thereafter concerned the manner in which the persons and charges already before the Court were to be tried. It did not retrospectively alter the statutory basis upon which the Applicant had been brought before the Supreme Court.

[91.] The Court has not been directed to any provision of the CPC which provides that the severance of a co-accused causes an otherwise valid VBI to cease to have effect, revests jurisdiction in the Magistrates' Court or requires the mode-of-trial procedure to commence afresh.

[92.] Nor do I regard the severance as the commencement of a new prosecution against the Applicant. The offence of **Receiving** remains the same charge brought before this Court pursuant to the VBI.

[93.] It follows that if the charge was properly before the Supreme Court immediately before the severance, the subsequent absence and severance of the co-accused cannot, without more, deprive this Court of jurisdiction over that charge.

[94.] The Applicant therefore acquired no new or revived entitlement to a section 214 election merely because he thereafter stood alone upon the **Receiving** charge.

Abuse of the Process

[95.] The Applicant alternatively submits that continuation of the proceedings would amount to an abuse of process. I accept the general proposition that where Parliament confers a procedural protection upon an accused, the Court must treat that protection seriously. Statutory safeguards are not to be disregarded merely because compliance may be inconvenient.

[96.] The difficulty for the Applicant is that I have not found that the Prosecution acted contrary to the statutory scheme. The DPP proceeded pursuant to section 258. The offence of **Receiving** falls within the amended definition of an indictable offence because it is triable on information. The Court of Appeal in **Adrian Paul Gibson et al v Director of Public Prosecutions** has held that section 258 permits the prosecution to fast-track to the Supreme Court any offence triable on information and has specifically rejected a section 214 challenge involving the charge of **Receiving** contrary to section 358.

[97.] Nor has the subsequent severance rendered unlawful what was previously a lawful invocation of this Court's jurisdiction. In those circumstances, I am unable to conclude that requiring the Applicant, without an election, to stand trial in the Supreme Court amounts to an abuse of the Court's process.

DISPOSITION

[98.] For the foregoing reasons:

- I. Where the procedural circumstances prescribed by section 214 arise, the magistrate's obligations under that provision are mandatory.
- II. Section 214 is not, however, an absolute jurisdictional condition precedent to the DPP's use of the separate VBI procedure in section 258.
- III. Following the 2017 amendments, **Receiving** under section 358 is also an indictable offence for the purposes of section 258 because it is triable on information before the Supreme Court.
- IV. In light of **Adrian Paul Gibson et al v Director of Public Prosecutions**, the absence of a section 214 election did not invalidate the VBI or deprive this Court of jurisdiction over the Applicant's charge.
- V. The severance of the co-accused neither invalidated the VBI nor created a fresh requirement for an election under section 214.

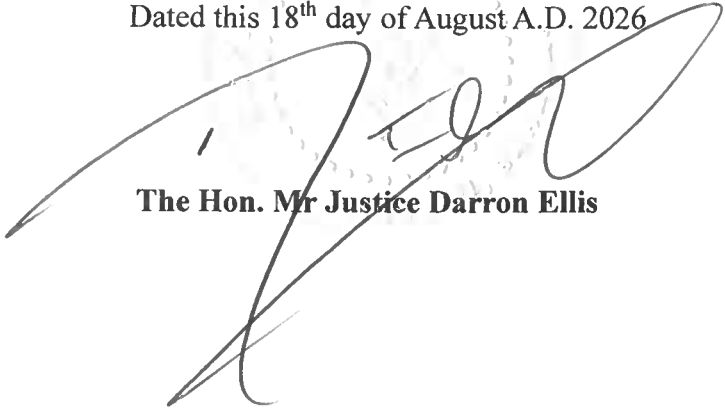
[99.] Accordingly, the Applicant may lawfully continue to be tried before the Supreme Court for the charge, notwithstanding that he was not afforded an election under section 214 before the VBI was preferred.

[100.] The proceedings are neither a nullity nor an abuse of the process of the Court.

[101.] The Applicant's application is dismissed.

[102.] The matter shall proceed to trial in the Supreme Court.

Dated this 18th day of August A.D. 2026


The Hon. Mr Justice Darron Ellis