

ORIGINAL

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN IN GEORGE TOWN, GRAND CAYMAN

SCA #24 OF 2006

PETER OLDE

- VS -

REGINA

Reasons for Judgment delivered by The Honourable
Mr. Justice Henderson on Monday, December 4, 2006,
at George Town, Grand Cayman.

APPEARANCES:

For the APPELLANT:

MR. S. HALL-JONES

For the RESPONDENT:

MR. G. KEIGHTLEY

1 PROCEEDINGS COMMENCED ON MONDAY,
2 DECEMBER 4th, 2006 AT 3:30 P.M.
3

4 THE COURT: This is an appeal from a
5 ruling by a learned magistrate in the Summary
6 Court refusing to quash the proceedings. To
7 understand the argument one must first
8 understand the chronology.

9 The appellant was arrested on
10 February 24th, 2006 for driving under the
11 influence of alcohol. It is conceded that this
12 is an offence for which one may be arrested
13 without warrant.

14 The following day, February 25th 2006, he
15 was released on what is referred to as "police
16 bail" and ordered to appear before a magistrate
17 on April 26th, 2006. On that latter date, the
18 appellant did attend at the courthouse but
19 nothing at all happened. His name was not on
20 the Court list. The case was not called.

21 It seems that charges had, in fact, been
22 filed in the registry on the previous day,
23 April 25th, and were date stamped that day. It
24 was through an error that the case did not
25 appear on the list and the defendant did not

1 therefore appear before a magistrate.

2 On April 27th, 2006 the error was noticed.

3 The registry issued a summons to the defendant
4 requiring him to appear on May 10th, 2006.

5 That summons was subsequently re-issued and the
6 defendant finally appeared in answer to it on
7 May 28th, 2006. His appearance was under
8 protest and for the purpose of advancing the
9 argument which is now the subject of this
10 appeal.

11 The time limitation for the prosecution
12 has passed and, therefore, if the appeal were
13 to succeed, the defendant could not be
14 convicted.

15 The argument is a simple one which turns
16 solely on the wording of section 14(1) of the
17 Criminal Procedure Code (2005 revision). That
18 section reads as follows:

19 Criminal proceedings may be
20 instituted either by the making of a
21 complaint or by the bringing before a
22 magistrate of a person who has been
23 arrested without a warrant.

24 Mr. Hall-Jones says that the plain and
25 ordinary meaning of those words is that there

1 are two alternate ways of instituting criminal
2 proceedings. He says the natural meaning of
3 the section is that these two ways are mutually
4 exclusive. If, as happened here, the defendant
5 is arrested without a warrant, he then must be
6 brought before a magistrate for criminal
7 proceedings to be instituted. Section 14(5)
8 provides the procedure in this case. It reads:

9 When an accused person who has been
10 arrested without a warrant is brought
11 before a magistrate, a formal charge
12 containing a statement of the offence
13 with which the accused is charged
14 shall be signed and presented by the
15 police officer preferring the charge.

16 That, says Mr. Hall-Jones, is the only way
17 in which criminal proceedings could have been
18 started, given the decision to arrest this
19 appellant without warrant. The alternative of
20 making a complaint and then compelling the
21 attendance of the defendant before the Court by
22 way of summons was not, on this submission,
23 open at all.

24 No authorities were cited by either party
25 to this appeal.

1 The logical conclusion of the argument
2 advanced for the appellant is that the
3 procedure for the institution of criminal
4 proceedings not having been brought to
5 completion prior to the expiry of the
6 limitation period, no proceedings can now be
7 pursued.

8 I see no persuasive reason to read the
9 section as offering two mutually exclusive
10 methods of proceeding. There is no sensible
11 reason why, when an attempt to institute
12 proceedings using one method is made but
13 difficulties are encountered, the authorities
14 should not be permitted to resort to the other
15 method. The language of the section does not
16 preclude such an interpretation. There was no
17 prejudice suffered by this defendant.

18 In these circumstances, my conclusion is
19 that the two methods provided in section 14(1)
20 for the institution of proceedings are
21 alternatives but they are not mutually
22 exclusive.

23 It is open to the Crown, having commenced
24 the institution of proceedings in one way but
25 not completed that, to change to the other

1 alternative method.

2 For these reasons, the appeal from the
3 ruling is dismissed.

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5 (PROCEEDINGS CONCLUDED AT 3:39 P.M.)

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