

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CASE NO: 2562 (1-4) OF 2003
SCA. NO: 46 OF 2003

BETWEEN:

OMAR DUVAL

Appellant

-and-

REGINA

Respondent

Before: The Hon. Justice Panton

Appearances:
Norman Hill, Q.C. and Peter Polack for the Appellant
Miss Marlene Smith for the Crown

Heard: May 21 and June 1, 2004



PANTON, J.

1. This is an appeal against a ruling made by Her Hon. Mrs. Margaret Ramsay-Hale on October 30, 2003, in relation to four charges alleging breaches of the Misuse of Drugs Law by the appellant, and signed by WPC McFarlane and A. Bodden, a Justice of the Peace. The charges arose from a search, on November 22, 2002, of premises occupied by the accused. After this search, the accused was arrested. He was interviewed

on November 23 and 24, 2002. There followed further investigations resulting in the formal laying of the charges.

2. The Magistrate ruled against a submission by Mr. Peter Polack for the accused that, seeing that it was not WPC McFarlane who had arrested the accused, the charges could not properly have been signed by her. A valid charge, he said, required the signature of the arresting officer. In this case, that person was H. Borden. He submitted that section 13(5) of the Criminal Procedure Code required strict compliance, and the failure in this regard meant that the charges were not merely defective, but void ab initio.
3. In her ruling, the learned Magistrate expressed the view that the narrow construction suggested by counsel was not justified by the language of the statute. She held that the sub-section meant nothing more than that the officer who presents or submits a charge to the Court is required to sign it. She said: "If it is unsigned, it is void. There is no reason to extend the meaning beyond that to say that if it is not signed by the investigating officer it is invalid".

4. Section 13 of the Criminal Procedure Code reads:

“(1) Criminal proceedings may be instituted either by the making of a complaint or by the 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 purposes 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 containing a statement of the offence with which the accused is charged shall be signed and presented by the police officer preferring the charge.

(6) Every complaint shall be for one matter only, but the complainant may lay one or more complaints against the same person at the same time and the court hearing any one of such complaints may deal with one or more of the complaints together or separately as the interests of justice appear to require.

(7) Subject to any other law, no person shall be arrested without a warrant otherwise than in connection with an offence prescribed in the First Schedule as an arrestable offence."

5. Before me, Mr. Norman Hill, Q.C., in his usual persuasive style, submitted that there has to be strict compliance with section 13, and that a failure so to do means that the charges are not merely defective but void, and are to be dismissed. Section 13, he said, is no different from section 106 of the said Code which requires any indictment preferred by the Attorney General to be signed by the Attorney General. His submission was that there was a parallel between the two sections and that they had the same result if not complied with, that result being invalidity. Section 13(5) he said requires that the person preferring the charge must have knowledge of the facts to communicate them to the Justice of the Peace.

6. The skeleton arguments advanced by the appellant seek to make a distinction between an “information” and a “complaint”, and to put some distance between the instant case and cases such as **Rubin v. DPP** (1989) 2 All ER 241 and **Hawkins v. Bepey** (1980) 1 All ER 797 on which the respondent has placed great reliance. The appellant has sought to bolster his position by relying on **R. v. Morais** (1988) 87 Cr. App. R. 9 and on Criminal Evidence Act, 1984, an English statute. In **Morais**, it was held that certification by way of signature of the proper officer was a necessary condition precedent to the existence of a valid charge. The case **R. v. Manchester Stipendiary Magistrate ex parte Hill** (1983) A.C. 328 has also been put forward in the skeleton arguments as being supportive of the appellant’s arguments.

7. **Morais** was concerned with section 2 of the Administration of Justice (Miscellaneous Provisions) Act, 1933, which reads:

“(1) Subject to the provisions of this section, a bill of indictment charging any person with an indictable offence may be preferred by any person before a court in which the person charged may lawfully be indicted for that offence, and where a bill of indictment has been so preferred the proper officer of the court shall, if he is satisfied that the requirements of the next following subsection have been complied with, sign the bill and it shall

thereupon become an indictment and be proceeded with accordingly.

Provided that if the judge... of the court is satisfied that the said requirements have been complied with, he may, on the application of the prosecutor or of his own motion, direct the proper officer (of the court) to sign the bill and the bill shall be signed accordingly.

(2) Subject as hereinafter provided no bill of indictment charging any person with an indictable offence shall be preferred unless.....(b) the bill is preferred by the direction or with the consent of a judge of the High Court."

Having considered the particular circumstances of the case, the court concluded that "there was no valid indictment, there was no trial, no valid verdict and no valid sentence".

8. Miss Marlene Smith, for the respondent, submitted that section 13 of the Code has been complied with, and that there is nothing unusual or undesirable in the complaint being signed by an officer other than the investigating or arresting officer. The formality of charging the appellant with the offences alleged should, she submitted, be considered as independent of the preferring and presentation of the charge before the Justice of the Peace.

9. As stated earlier, the respondent is relying on **Rubin v. DPP**. In that case, the information was laid in the name of the police force. It was contended 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. Since it was clear that a police officer had laid the information against the appellant and since that officer's identity was easily ascertainable the appellant had not been misled, and could not challenge the officer's authority to prosecute. Watkins, L.J. said at page 247c:

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

And, further, at d-e:

"... 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 prosecutor to be called the Thames Valley Police necessarily created an invalid information, that is, one that could not be proceeded on.."

10. In **Hawkins v. Bepey**, the chief constable had issued instructions that informations laid by the police in magistrates' courts should as a general

rule be laid by a chief inspector or inspector. Watkins, J. (as he then was)

said at page 800 d:

“No one suggests that that instruction is in any way 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.”

11. I am of the view that the learned Magistrate was correct in ruling as she did. I cannot agree with the interpretation being placed by Mr. Hill on the words of section 13 of the Criminal Procedure Code. One has to be very careful not to give a statute a meaning or interpretation given to another statute with different words. Unwittingly, this is what learned Queen's Counsel has done. It is of first importance that the words of a statute be given their natural meaning, and none other. This principle of law is acknowledged in the **Morais** case on which the appellant relies.

At page 14 of the judgment of the Lord Chief Justice of England, it reads:

“The answer, we feel, is to be found in the intentions of the draftsman in the first place. It seems to us that this Act was intended, so to speak, to fill the gap which was left by the abolition of the grand jury. It was intended to ensure not only that the proper requirements had been fulfilled before a

trial proper could start, but that also there should be a certification by way of the signature of the proper officer to indicate that he had inquired into the situation and satisfied himself that the requirements of the subsection had properly been complied with. We have come to the conclusion therefore that it is not merely a comparative meaningless formality that the proper officer's signature should be appended, but it is, **as the words of the Act itself prima facie indicate**, a necessary condition precedent to the existence of a proper indictment that the bill should be signed and only then and thereupon does it become an indictment."

It is absolutely clear that the Lord Chief Justice and McCowan and Pill, JJ were merely saying that all they were doing is giving effect to the words of the Act, nothing more. They were not laying down any principle for universal application. That means that section 13 of the Cayman Islands Criminal Procedure Code is to be given an interpretation which is not tainted by allusions to the abolition of the grand jury. This has to be made clear in the light of the reference in the skeleton arguments to the grand jury.

12. Section 13 of the Criminal Procedure Code, stated as simply as possible, makes the following provisions:

- (1) criminal proceedings may be instituted by the making of a complaint;
- (2) any person who believes from a reasonable and probable cause that an offence has been

committed by any person may make a complaint to a Justice of the Peace;

- (3) a complaint may be oral or written;
- (4) a written complaint, or an oral one reduced to writing, shall be signed by the complainant and the Justice of the Peace;
- (5) where the proceedings are instituted by a police officer acting in the course of his duty, a formal charge drawn up and signed by such officer may be presented to the Justice of the Peace and for the purposes of the Code shall be deemed to be a complaint;
- (6) the Justice of the Peace shall sign the formal charge; and
- (7) when an accused who has been arrested without a warrant is brought before a magistrate, a formal charge stating the offence shall be signed and presented by the police officer who is preferring the charge.

13. There is no provision in the statute that dictates that the police officer who arrests a person must be the officer who signs the charge or complaint. Nor is there any provision that the person laying the charge or complaint must have participated in the investigation. If the legislature intended that, it would have said so. The formulation of such words would not have been a difficult proposition. The legislation, as drafted and passed, contemplates that one officer may arrest an individual, and another officer having been informed of the circumstances leading to the arrest, may proceed to lay a formal charge or complaint thereby

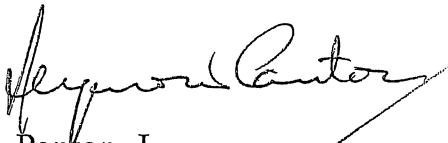
instituting the proceedings in court. It is not to be forgotten that a person may be arrested, yet have no formal complaint or charge laid against him; that is, no proceedings are instituted against him. The words of section 13 mean simply that whoever is going to prefer a charge must sign it.

14. In the instant case, the proceedings were instituted by a police officer.

That has not been challenged. She was acting in the course of her duty.

That has not been challenged. She formally drew up the charges, signed them, and presented them to a Justice of the Peace who signed them.

That is all that was required by the law. In the circumstances, the appeal is dismissed. The trial ought to be proceeded with without further delay.


Panton, J.
Judge of the Grand Court

