JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 12/08

BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.

DOUGLAS BECKFORD V REGINA

Mrs. Jacqueline Samuels-Brown for the appellant

Miss Kathy-Ann Pyke on Fiat for the Crown

September 29; October 2 & 9, 2009

PANTON, P.

1. The appellant was convicted in the Corporate Area Resident Magistrate's Court on two counts of an indictment for forgery and obtaining money by false pretences, and sentenced on October 2, 2007 to serve two concurrent terms of six months imprisonment. The indictment charged the appellant with forgery, uttering forged documents and obtaining money by means of false pretences, and alleged that these offences were all committed in the Corporate Area. The evidence presented, however, pointed to the offences having been committed, if at all, in the western parish of Saint Elizabeth.

2. It is agreed that the Resident Magistrate for the Corporate Area did not have jurisdiction. S ection 267 of the Judicature (Resident Magistrates) Act states:

> "For the purposes of the criminal law, the jurisdiction of every Court shall extend to the parish for which the Court is appointed, and one mile beyond the boundary line of the said parish: ..."

Further, the evidence did not allow for section 9(1) of the Criminal Justice (Administration) Act to come into operation. That section reads thus:

> "Every person who commits any indictable offence may be proceeded against, indicted, tried, and punished in any parish or place in which such person may be apprehended, or may be in custody for such offence, or may appear in answer to a summons lawfully issued charging the offence, as if the offence had been committed in that parish or place, and the offence shall for all purposes incidental to or consequential upon the prosecution, trial, or punishment thereof, be deemed to have been committed in that parish or place."

3. In view of the lack of jurisdiction, the question for determination is what order we should make on this appeal. Here again, both Mrs. Samuels-Brown and Miss Pyke are at one. They are of the view that the Court should make an order in these terms: "Appeal allowed. Convictions quashed. Sentences set aside". In support of this position, we were referred to the case ***R v Monica Stewart*** (1971) 12 J.L.R. 465. In that case, the Resident Magistrate failed to sign the order for trial on indictment. Notwithstanding the appellant's plea of guilty, this

Court was constrained to allow the appeal as the trial was a nullity. The relevant portion of the headnote reads:

> "The provisions of s. 272 of the Judicature (Resident Magistrates) Law, Cap. 179, which required the resident magistrate to hold an inquiry to ascertain whether the offence charged in the information against an accused person is within his jurisdiction, to make an order for trial to be endorsed on the information and to sign the order, must be strictly complied with and non-compliance with any of those provisions renders any trial on indictment relating to the charge laid in the information a nullity."

Edun, J.A. who delivered the judgment of the Court said at p. 469 G

> "This Court cannot ... amend any document nor in any way act ... so as to give itself jurisdiction over a matter adjudicated by the resident magistrate where she herself had none because of a non-compliance with the law.
> For the reasons given, the appeal is allowed, the conviction is quashed and the sentence is set aside".

In ruling as it did, the Court was signifying approval of the decision in ***R v Joscelyn Williams et al*** (1958) 7 J.L.R. 129. In that case, the Court comprised Cundall, C.J. (Ag.), Semper and Duffus, JJ. The judgment was delivered by Semper, J. In the final paragraph of the judgment, at page 133, he said:

> "Finding as we do, we are of the opinion that the appeal must be allowed and that the proceedings relating to the order for trial, indictment and conviction be accordingly set aside and annulled. While we do not here order a new trial, the proceedings being declared a nullity, it will be a matter for decision by the Clerk of the Courts whether he will now ask for an order on the information charging the appellants so that proceedings may be taken against them *de novo* either under section 274

> by way of indictment or by way of a preliminary investigation."

4. In both cases, there was no order for a new trial. This fact has strengthened the point agreed on by counsel that we should merely allow the appeal, quash the convictions and set aside the sentences without making any order as to a final disposition of the matter. It should be noted however that in both cases, the Court was not addressed on this aspect. Further, the judgments do not show any reference to the Judicature (Appellate Jurisdiction) Act which governs the hearing of appeals.

5. Mrs. Samuels-Brown cited the cases ***R v Rose and others*** [1982] 2 All ER 731 and ***R v Newland*** [1988] Q.B. 402. The former case was an appeal by the Crown to the House of Lords, and the headnote reads, in part:

> "Where in the course of a trial that had been validly commenced there was a material irregularity between the time the trial commenced and its conclusion with a judgment of conviction following an unequivocal verdict of guilty by the jury, the Court of Appeal had no jurisdiction to order a new trial by the issue of a writ of venire de novo but was required to quash the conviction. It followed therefore that the appeal would be dismissed."

In the latter case, the trial had taken place on an invalid indictment, and it was held that the relevant section of the English Indictment Act applied only to valid indictments. There had been no valid trial so, accordingly, no material irregularity had occurred in the course of a valid trial. Hence, the Court of Appeal had no

power to save the conviction by applying the proviso. It will be seen therefore that neither case is applicable in the instant situation.

6. It seems to us that the proper approach in dealing with the matter is to refer to the Judicature (Appellate Jurisdiction) Act. Section 14 provides for the determination of appeals in ordinary cases. It reads, in part:

> "14. - (1) The Court on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:
>
> Provided that the Court may, notwithstanding that they are of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred.
>
> (2) Subject to the provisions of this Act the Court shall, if they allow an appeal against conviction, quash the conviction, and direct a judgment and verdict of acquittal to be entered, or, if the interests of justice so require, order a new trial at such time and place as the Court may think fit."

By the above quoted provisions, it seems clear that if we are to allow the appeal, we are bound to either enter a judgment and verdict of acquittal or order a new trial. Confirmation of this approach is provided in the Privy Council judgment of ***DPP v Donald White*** (1977) 16 J.L.R. 26. In that case, this Court of Appeal held that the trial was a nullity and then quashed the convictions but neither

directed a verdict of acquittal nor ordered a new trial on the ground that it had no power to order a new trial in the circumstances. The Privy Council held that the Court of Appeal having allowed the appeal and quashed the convictions had "... two courses open: (a) to direct a judgment and verdict of acquittal, or (b) if the interests of justice so required, to order a new trial". (p.31A)

7. The Court of Appeal had considered the matter "to be of exceptional public importance" and had granted leave to appeal to the Privy Council. In answering the questions posed, the Privy Council said:

> "The absence of an order for a new trial after an appeal is allowed and the conviction quashed would presuppose that the Court of Appeal had ordered a verdict of acquittal to be entered. The accused could in such circumstances plead *autrefois acquit* in bar if rearraigned on the same indictment (or a new one charging the same offences)." (p.31D)

It is therefore not open to us to merely allow the appeal, quash the convictions and set aside the sentences.

8. In the instant case, Mrs. Samuels-Brown and Ms. Pyke addressed us on the question of a new trial. Ms. Pyke was of the view that although the investigation of the case was not as thorough as it should have been, there was sufficient material to warrant a new trial. She also pointed to the nature of the offence and the fact that the conduct of a public officer was involved, hence the desirability of the issues being publicly aired in a court. Mrs. Samuuels-Brown, on the other hand, submitted that the prosecution's case was very weak, and it

would be unfair to expose the appellant to another trial, given the expense and trauma.

9. The case for the prosecution was that a stolen motor vehicle certificate of title was presented to the appellant at the office of the Inland Revenue Department, Santa Cruz, St. Elizabeth, where he was employed as Collector in charge of Collections and Accounts. He signed on the back of this certificate that the transferor's identification had been seen and verified. There was on the back of the said certificate an area marked "Section 1" bearing the name, address and signature of the registered owner, as well as her Taxpayer Registration Number (TRN) and General Driver's Licence number. The certificate itself had been presented to the appellant by another employee, Miss Heidi Wright. It was alleged that the appellant was given money by Miss Wright who had corruptly received same from the transferee, Miss Tammique Brennor, who was present in the office.

10. The evidence, however, was quite deficient so far as it concerns proving the case against the appellant beyond reasonable doubt. Firstly, there was no evidence that the transfer had not in fact been signed by the owner of the vehicle. Secondly, there was no evidence that the appellant had not seen the identification that he purported to have verified. Thirdly, there was no evidence from Miss Heidi Wright who allegedly collected the money and passed it to the appellant. This was most crucial for there to be a proper conviction in view of the

fact that there was evidence that there was a discussion as regards the need to pay the arrears of taxes due on the vehicle being transferred.

11. We found it strange that an arrest was effected before such evidence had been secured. Given these glaring deficiencies, we concluded that no useful purpose would be served by the ordering of a new trial. It would have been unfair to the appellant to have allowed the prosecution the opportunity to attempt to correct the situation at this late stage. Accordingly, we allowed the appeal, quashed the convictions, set aside the sentences, and entered a judgment and verdict of acquittal.