evidence so challenged, no other conclusion could have been reached on the testimony of the eye-witnesses.

This leads to the last question on appeal. Was it murder or manslaughter? Mr. Macaulay submits that if there was no prior agreement in fact between the appellant and the party of intending illicit diggers for diamonds, then the appellant was acting in defence or protection of his master's property and the appellant would only be guilty of manslaughter.

Even assuming the absence of a preconcerted understanding to permit an illegal digging, there was evidence of the avowed intention of the appellant to kill, the request to disperse, the loading of his gun, the firing of his gun several times at persons on the run. The malice aforethought must be implied from the appellant's acts themselves by the application of the general rule that a man is presumed to intend the natural and probable consequences of his own acts—the use of a lethal weapon.

The appeal is dismissed.

Freetown
Nov. 6,
1961

Ames Ag.P.
Benka-Coker
and Wiseham
C.JJ.

[COURT OF APPEAL]

COMMISSIONER OF POLICE . . . . . *Respondent*

v.

FOFANA BANGALI . . . . . *Appellant*

[Cr. App. 18/61]

Criminal law—Procedure—Hearing adjourned to day certain—Accused brought before different magistrate on day other than day specified—Criminal Procedure Ordinance (Cap. 39 of Laws of Sierra Leone, 1960), s. 92.

Appellant was brought before a magistrate (Mr. Hoare) on July 5, 1961, charged with an offence against section 21 of the Alluvial Diamond Mining Ordinance. Appellant was remanded in custody until July 7 "pending valuation of the stones." On July 10 the charge was read to him, he pleaded not guilty and the case was then "remanded until July 24, 1961." On July 17, appellant was brought before a different magistrate (Mr. Koroma). The record stated: "17/7/61—Mandingo Interpreter called. Adama Soh S.O.K. Accused present, pleads guilty." Appellant was convicted and sentenced to 18 months' imprisonment. He appealed to the Supreme Court. The judge, relying on the fact that appellant had pleaded guilty, decided to treat the appeal as an application for leave to appeal, and then refused leave.

From this refusal, appellant appealed on the ground that, "The appellant's case having been adjourned to July 24, 1961, in pursuance of the powers of the court vested by section 92 of the Criminal Procedure Ordinance, Cap. 39, the magistrate wrongfully exercised jurisdiction in taking a plea and convicting the appellant on July 17, 1961, that is seven days before the adjourned date and without notice to the appellant."

Held, setting aside the proceedings before the second magistrate, that, in the circumstances of this case, the second magistrate should have read the charge to appellant before accepting his plea of guilty.

The court also said, obiter, "In our opinion when a prosecution has been instituted before one magistrate and the procedure laid down in the Criminal

Procedure Ordinance for summary trial has been put in motion and got to a stage where the prosecution has been adjourned for continuation on a certain day, if a different magistrate purports to continue it a week before that day, it ought to be apparent how he came to do so."

Berthan Macaulay for the appellant.
John H. Smythe (Solicitor-General) for the respondent.

AMES AG. P. The appellant was convicted by a magistrate at Kailahum of an offence against (presumably) section 21 of the Alluvial Diamond Mining Ordinance, Cap. 198, and sentenced to 18 months' imprisonment. An order of confiscation of diamonds was also made. He appealed to the Supreme Court. It was there pointed out that according to the record the appellant had pleaded guilty. The learned judge decided to treat the appeal as an application for leave to appeal and after hearing counsel for the appellant refused leave to appeal, without calling upon the respondent. This appeal is against that refusal.

The learned judge's judgment was as follows:

"Without calling upon learned counsel for the respondent I am not satisfied that there is anything on the record to show (a) that the appellant did not appreciate the nature of the charge or did not intend to admit he was guilty of it; or (b) that upon the admitted facts he could not in law have been convicted of the offence charged.

"Section 24 (1) (*a*) of the Alluvial Diamond Mining Ordinance, Cap. 198, clearly gives jurisdiction to the magistrate in a case of this nature. There is nothing to show that the provisions of section 92 (2) of the Criminal Procedure Ordinance, Cap. 39, were not complied with. I find no merit in the application. The leave of this court to appeal against conviction is therefore refused."

Before coming to the main question raised by this appeal, we point out that the phrase "upon the admitted facts" appears to be mistaken. The record shows that the police officer who prosecuted made a statement of the facts alleged by the prosecution but there is nothing to show that the appellant admitted all the details as stated. A plea of guilty admits the facts averred in the charge, and no more.

The ground on which the appeal was made to the Supreme Court was:

"The appellant's case having been adjourned to July 24, 1961, in pursuance of the powers of the court vested by section 92 of the Criminal Procedure Ordinance, Cap. 39, the magistrate wrongfully exercised jurisdiction in taking a plea and convicting the appellant on July 17, 1961, that is, seven days before the adjourned date and without notice to the appellant."

This was not considered by the learned judge at all: and the omission to do so is the basis of the first ground of the appeal to us. We could send the matter back to the court below to consider the ground but to avoid delay, we considered the arguments and will decide the question ourselves.

It is necessary to see what happened in the magistrate's court, so far as the record shows.

On July 5, the appellant was brought before a magistrate, by name, Mr. W. H. A. Hoare. The charge was read to him, the charge of an offence against section 21 of Cap. 198, which is set out at the beginning of the record of the proceedings. On that day, the appellant was remanded in custody until the 7th, " pending valuation of the stones." He ought, therefore, to have been brought before the court on the 7th. But he was not. The next proceeding was not until the 10th. On the 10th, the charge was read to him, and a plea was taken (which was not guilty) and the case was then " remanded until 24/7/61 to be remanded in custody." A remand until the 24th was quite lawful. The law formerly required remands to be for not more than eight days, but nowadays the only requirement is that it must be for some specific date (i.e., not sine die).

By the ordinary procedure the appellant would have been brought before the court on the 24th, and not until then. The ordinary procedure did not happen. The record shows that the appellant was brought before a different magistrate, by name, Mr. A. A. Koroma, on the 17th. Why, or by what process this was brought about, we do not know. The record does not tell us. The record is merely: " 17/7/61—Mandingo Interpreter called. Adama Soh S.O.K. Accused present. Pleads guilty."

There is nothing to connect the proceedings before Mr. Koroma of the 17th with proceedings before Mr. Hoare of the 10th. There is no case number, or charge number, or charge. There is but the plea of guilty.

In our opinion when a prosecution has been instituted before one magistrate and the procedure laid down in the Criminal Procedure Ordinance for summary trial has been put in motion and got to a stage where the prosecution has been adjourned for continuation on a certain day, if a different magistrate purports to continue it a week before that day, it ought to be apparent how he came to do so. Of course there are circumstances in which he could properly do so. Alternatively, a parallel prosecution could have been instituted before him.

Mr. Smythe, for the respondent, argued that the appellant had submitted to the jurisdiction of the second magistrate. And he may have done: but upon what charge? The circumstances were such that the charge should have been read over to him by the second magistrate, and it does not appear that it was.

The long and the short of it appears to be this. The Criminal Procedure Ordinance prescribes certain essential steps in summary trials. These must not only be observed but be recorded as having been observed. Otherwise appeals such as this one will arise, because it is not possible for an appeal court to say that some essential step was taken.

There is nothing to show that the appellant was charged de novo before the second magistrate on the 17th: an essential step which should have been taken before he accepted a plea of guilty. For these reasons, we find that there were some material irregularities in the procedure adopted that may have occasioned a failure of justice. We set aside those proceedings before the second magistrate and order the matter to be sent back to the magistrate's court for the prosecution of the charge preferred against the appellant on the 5th and the 10th to be proceeded with before a different magistrate.