FAULKNER *v.* COMMISSIONER OF POLICE

SUPREME COURT (Dobbs, J.): February 1st, 1966
(Mag. App. No. 3/66)

[1] **Courts—Supreme Court—appeals from magistrates' courts—power to amend charge—Supreme Court may amend where defect not fatal to conviction:** In an appeal against a conviction upon a defective charge, where the defect is not fatal to the conviction the Supreme Court may, in the exercise of its powers under the Courts Act, 1965, s.45(6), order the summons to be amended so as to remedy the defect (page 381, lines 30–41).

[2] **Criminal Procedure—appeals—appeals against conviction—no reference in charge to enactment creating offence—no miscarriage of justice if charge describes offence and gives time and place:** Where an offender is convicted on a charge which alleges facts amounting to an offence and showing clearly when and where the offence was committed, the omission from the charge of a reference to the section of the enactment creating the offence occasions no miscarriage of justice (page 381, lines 17–33).

[3] **Criminal Procedure—appeals—appeals against conviction—power to amend charge—Supreme Court may amend where defect not fatal to conviction:** See [1] above.

[4] **Criminal Procedure—charges—amendment—amendment on appeal—Supreme Court may amend where defect not fatal to conviction:** See [1] above.

[5] **Criminal Procedure — charges—form of charges—reference omitted to enactment creating offence—charge not nullity:** The omission of a reference to the section of the enactment creating the offence from a charge of an offence created by enactment does not render the charge a nullity (page 380, line 32—page 381, line 16).

The appellant was charged in a magistrate's court on a summons for disobeying a stop signal from a police officer in uniform.

The charge did not contain a reference to the section of the enactment creating the offence. The appellant was convicted. On appeal to the Supreme Court, he contended that the omission had rendered the charge a nullity and it was too late to amend the charge after conviction.

Statutes and Rules construed:

Criminal Procedure Act (Laws of Sierra Leone, 1960, *cap.* 39), s.42:
The relevant terms of this section are set out at page 380, lines 18–24.

s.43(1): The relevant terms of this sub-section are set out at page 380, lines 37–41.

s.43(2): The relevant terms of this sub-section are set out at page 381, lines 5–8.

Courts Act, 1965 (No. 31 of 1965), s.45(1):

"On an appeal against conviction, the Supreme Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred."

s.45(6): The relevant terms of this sub-section are set out at page 381, lines 35–38.

Criminal Procedure Rules (Laws of Sierra Leone, 1960, *cap.* 39), r.3(3): The relevant terms of this rule are set out at page 380, lines 26–31.

Road Traffic Regulations, 1960 (P.N. No. 77 of 1960), reg. 39(1)(h): The relevant terms of this regulation are set out at page 381, lines 22–25.

reg. 88: "Any person who commits a breach of or fails to comply with any of the provisions of, or who commits an offence against any regulation contained in these Regulations shall where no special penalty is provided, be guilty of an offence. . . ."

R. E. A. Harding for the appellant;
Adophy, Crown Counsel, for the respondent.

DOBBS, J.:

The appellant was charged before a magistrate in Freetown with the following offences, which I shall set forth verbatim as they appear on the summons:

"That you on Wednesday March 3rd, 1965 at 8.20 a.m. being the driver of car C 3085 on the highway at Savage Street, Freetown in the Western Area of Sierra Leone did drive the said vehicle in a manner dangerous to the public contrary to s.39(1) of the Road Traffic Act, 1964.

On the same date time and place did disobey a police stop signal in uniform contrary to . . . ."

On August 4th, 1965 the appellant was acquitted of the charge of dangerous driving but was convicted of the charge of disobeying the police stop signal and fined Le50. Through his solicitor Mr. Rowland Harding the appellant gave notice of appeal in court against the conviction but not, be it noted, against the sentence. The grounds

of appeal given then have not been subsequently amended and were as follows:

"1. On the second charge on the summons it says: 'contrary to . . . .' and there is no authority for such a charge and the court cannot convict and pass sentence on a charge that does not exist.

2. Furthermore it is too late for it to be amended; it has not been amended and cannot be amended.

3. The finding that the defendant came from behind the first prosecution witness cannot be supported by the evidence because the first prosecution witness deposed that she was facing Syke Street.

4. The verdict is against the evidence and cannot be supported."

I shall deal with the first and second grounds first. Mr. Harding referred me to s.42 of the Criminal Procedure Act (*cap.* 39), the relevant legislation in force at the time of the conviction. This reads:

"The rules contained in the first Schedule with respect to charges and informations shall have effect as if enacted in this Act, but those rules may be added to, varied, revoked, or revoked and replaced by further rules made by the Chief Justice with the approval of the House of Representatives, and the Chief Justice is hereby empowered to make such further rules."

Reference to these rules shows, *inter alia*, r.3(3) which is as follows:

"The statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by enactment shall contain a reference to the section of the enactment creating the offence."

The objection to the present charge is that r.3(3) has not been followed in that the relevant section of the enactment under which the charge has been framed has been omitted. Does this render the charge a nullity?

I now refer to s.43 of *cap.* 39. Sub-section (1) is as follows:

"Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge."

In this case it is quite clear what offence the appellant was charged with and where and when it was alleged he had committed it. I think sub-s.(1) has been complied with. I now turn to s.43(2) which is as follows:

> "Notwithstanding any rule of law or practice, a charge or information shall, subject to the provisions of this Act, not be open to objection in respect of its form or contents if it is framed in accordance with the rules under this Act."

Accepting that the present charge was not framed in accordance with the Rules, does the subsection render it a nullity? I do not think so. It merely renders it open to objection. This does not mean that the objection should in all cases be sustained. No objection was taken by the defendant although defended by counsel. It was open to objection; why was no objection made until after the verdict and sentence? I am not prepared to say that the charge was a nullity and I merely agree that it is not framed in accordance with r.3(3).

The matter does not end there. Even if I were of the opinion that the point raised might be decided in favour of the appellant I still have to consider whether any substantial miscarriage of justice has actually occurred: see s.45(1) of the Courts Act, 1965. Regulation 39(1)(h) of the Road Traffic Regulations, 1960, in force at the relevant time reads as follows: "Any person driving or in charge of a motor vehicle when used on any road— . . . (h) shall obey all directions, whether oral or by signal, given by a police officer in uniform to stop the vehicle. . . ." By reg. 88 a breach of, *inter alia,* the foregoing regulation amounts to an offence. It is clearly an offence for the driver of a motor vehicle to disobey the stop signal of a police officer in uniform. When he is charged with doing this, and sufficient details are given for him to be perfectly clear as to when and where the alleged offence was committed, how can it be said, because the number of the section and the name of the enactment had not been specified that there has been any miscarriage of justice?

I would also draw attention to s.45(6) of the Courts Act, 1965, which is as follows: "In addition to the powers conferred by the above subsection, the Supreme Court may in each case make any amendment or any consequential or incidental order that may appear just and proper." Under this power I order that the summons be amended by adding the words "regulation 39(1)(h) of the Road Traffic Regulations, 1960" after the words "contrary to" at the end of the second charge and I direct that consequential amendments

be made in any other documents wherein the conviction is recorded.

I accordingly dismiss the appeal so far as grounds 1 and 2 are concerned. I now have to consider grounds 3 and 4. I think ground 3 was either not accurately recorded or was not accurately given. I will repeat it: "The finding that the defendant came from behind the first prosecution witness cannot be supported by the evidence because the first prosecution witness deposed that she was facing Syke Street." According to the evidence the first prosecution witness deposed that she was facing Savage Street; it was the second prosecution witness who deposed that the first prosecution witness was facing Syke Street. I suppose Mr. Harding intended to make the point that the second prosecution witness so deposed and by mistake either on his part or on the part of the trial magistrate it was put down as the first prosecution witness. Anyway from his argument it was quite clear it was the latter that was intended.

I have carefully considered the evidence and think that I can deal with grounds 3 and 4 together as ground 3 is only a specific instance of the general proposition contained in ground 4 and to my mind the only instance worth considering. From the defence to this charge it is clear that the issue before the trial magistrate was not whether or not the first prosecution witness gave a signal at all but whether the signal she gave to the defendant was one for him to stop or one for him to proceed. Despite the discrepancy between the evidence of the first and second prosecution witnesses as to the direction in which the first prosecution witness was facing when she gave the signal, the second prosecution witness under cross-examination appeared to be very definite that the first prosecution witness did give the appellant a stop signal and that he did come up from behind her. It is clear from the trial magistrate's judgment that the first and second prosecution witnesses and the appellant demonstrated before him in court the kind of signal given by the first prosecution witness. The magistrate states he believed the first prosecution witness. To my mind there was ample evidence on which the trial magistrate could come to the findings of fact which he did come to and I do not think this court, not having seen the witnesses giving evidence or seen the demonstrations of the signals, could justly differ from the trial magistrate on his findings of fact.

The appeal is accordingly dismissed.

Appeal dismissed.