

		<p>COURT OF APPEAL SITTING</p> <p>MONTSERAT</p> <p>Monday 28th June 2010</p>
Date:		28th June 2010
Coram:		<p>The Hon. Justice Janice Georges-Creque</p> <p>The Hon. Justice Errol Thomas (Ag)</p> <p>The Hon. Justice Kenneth Allen Q.C. (Ag)</p>
		<p>MAGISTERIAL CRIMINAL APPEALS AGAINST</p> <p>CONVICTION</p>
Case Name:		<p>Dilleon Piper v. Commissioner of Police</p> <p>[Magisterial Criminal Appeal No. 3 of 2010]</p>
Appearances		
	Appellant:	Mr. Hogarth Sergeant
	Respondent:	Mr. Oris Sullivan with him Mr. Kenroy Hyman

Issues:		Appeal against sentence for unlawful assault - whether the decision of the learned magistrate was unreasonable or cannot be supported by evidence - whether the learned magistrate was erroneous in point of law - whether the sentence was excessive bearing in mind that the appellant has no antecedents.
Result:		1. The conviction is affirmed. 2. The sentence is quashed and substituted with – The appellant to enter into a recognizance to be of good behavior for a period of one year with one surety.
Reason:		On the question of sentence, the court considers, given the circumstances, that an appropriate sentence would be a probationary order, taking into account the age of the appellant; the circumstances under which the offence was committed and the fact that the appellant has no prior convictions.
Case Name:		Carlton O’Garro v. Commissioner of Police Magisterial Criminal Appeal No. 1 of 2010
Appearances		
	Appellant:	Mr. David S. Brandt

	Respondent:	Mr. Oris Sullivan and Mr Kenroy Hyman
Issues:		<p>Appeal against the conviction and sentence for driving without due care and attention. - whether the decision of the learned magistrate was unreasonable or cannot be supported by evidence - whether the learned magistrate failed to make the fact that local knowledge was going to be used known to the defendant or his counsel - whether the learned magistrate, contrary to S.164 (1) of the Criminal Procedure Code, Cap 4.01 did not inform the appellant at the time of sentencing of his right to appeal and the steps to be taken by him to prosecute the appeal.</p>
Result:		<p>The appeal is dismissed and the conviction and sentence is affirmed.</p>
Reason:		<p>The court agrees that the appeal is to be dismissed on the basis that the definition of road under the Road Traffic Act is wide and expressly covers open space to which the public has access. The court does not find that the magistrate erred, given the evidence which was led in terms of where the vehicle was parked and her taking judicial notice of that area and of local knowledge of the area, in coming to her decision that as an open space it was a road caught within that definition of the Road Traffic Act.</p>

Case Name:		Brennis Lopez Alcia et al v. Commissioner of Police Magisterial Criminal Appeal No. 2 of 2010
Appearances		
	Appellant:	Mr. Ralph Francis
	Respondent:	Mr. Oris Sullivan and Mr. Kenroy Hyman
Issues:		<p>Appeal against conviction for failing to stop when required to do so by Sergeant Joseph Chambers of the Royal Montserrat Police Force and for intentionally obstructing Sergeant Joseph Chambers in the exercise of his powers.</p> <p>Whether the Prosecution proved that the appellants were intercepted within the territorial limits of the Territory of Montserrat;</p> <p>Whether the learned magistrate erred in law in ruling that a DVD produced by the Prosecution was admissible in evidence;</p> <p>Whether the learned magistrate erred in law in finding at the end of the Prosecutions case that that appellants had a case to answer;</p> <p>Whether the learned magistrate erred in law and in fact that the</p>

		<p>vessel and contents, except personal belongings, were subject to forfeiture;</p> <p>Whether the learned magistrate erred in law in finding that the appellants were guilty.</p>
Result:		<ol style="list-style-type: none"> 1. The appeal is allowed. 2. The conviction is set aside. 3. The order for forfeiture is set aside. 4. The monies paid by the appellants are to be returned to them.
Reason:		<p>Based on the evidence appearing on the record, it does not satisfactorily establish that the offence was one committed within the Territorial limits of Montserrat. This evidence was critical to grounding the charge given the nature of the charge which is one of obstructing in the exercise of his powers because it would also raise the question whether or not, if the officer was outside of the territorial limits, whether or not he could be said to be lawfully exercising those powers.</p> <p>It is critical that clear and cogent evidence was lead before the Magistrate to establish that offence as occurring within the territorial limit of Montserrat. The court finds this lacking and on that basis the appeal is allowed and the conviction set aside. Having said that, the forfeiture following as a result of the conviction and the conviction having been quashed, the forfeiture cannot stand and so the order of forfeiture of the vessel</p>

		is set aside. The conviction having been quashed then it follows that the fines that were already paid must be returned to the respective appellants.
		HIGH COURT CIVIL APPEALS
Case Name:		University of Science, Arts, Technology (Montserrat) Ltd. v. Robert W. McChesney and Samuel P. McChesney Civil Appeal No. 3 of 2009
Appearances		
	Appellant:	Mr. Jean Kelsick
	Respondent:	Mr. David S. Brandt
Issues:		Appeal against the decision of the learned master contained in the Order dated 24 th July 2009 - whether the learned master acted in contravention of Rule 32.9 (3) of the Civil Procedure Rules 2000 - whether the learned master had no proper authority in law to select an expert in the manner she did - whether the appellant was afforded sufficient time to carry out investigations into the competence, suitability and impartiality of those experts - whether the learned master erred in principle in exercising her judicial discretion in arriving at the decision.
Result:		1. The appeal is dismissed. 2. Costs to the respondents in the sum of EC\$1,500.00.

Reason:		The court does not consider that there was an error in the decision of the learned master in selecting an expert from the list supplied by the respondents. This is what Rule 32.3 of the Civil Procedure Rules (CPR) was designed to achieve in the absence of an agreement. The concerns by counsel for the appellants are matters which may be addressed under CPR 32.3 and 32.4 to which the expert would be directed at the time of appointment. Accordingly, there is no merit in the appeal.
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