

**IN THE COURT OF APPEAL OF THE FALKLAND ISLANDS**

**Case no: SC/CRIM/01/17**

**BETWEEN:**

**REGINA**

**Respondent**

**-v-**

**Charles David James Murdo Hewitt**

**Applicant**

1. This is an application for leave to appeal the decision of the Chief Justice of the Falkland Islands that the Applicant's trial by a jury for a charge of attempted rape should be presided over by the Senior Magistrate Martine Kushner sitting as an Acting Judge of the Supreme Court.
2. The Applicant submits that the Chief Justice was wrong to appoint the Acting Judge to try the case and should have tried the case himself.
3. On 23 February 2017 the Chief Justice directed that the trial should take place on 17<sup>th</sup> April 2017 before the Senior Magistrate. The Chief Justice said at paragraph 5 of his directions: 'in circumstances where I am fixed to try another Supreme Court criminal trial on the Falkland Islands in early April 2017 and it has proved impossible for this trial to take place during the same Supreme Court sitting, this matter has been fixed for trial before the Senior Magistrate (as an Acting Judge of the Supreme Court)'.
4. On 2.12.2016, Martine Kushner the Senior Magistrate was appointed by the Governor to sit as Acting Judge of the Supreme Court. The appointment was in these terms omitting words which are irrelevant to the facts of this case: 'to sit as Acting Judge of the Supreme Court and .....to discharge the functions in the Falkland Islands of the Chief Justice as maybe necessary .....if the holder of that office is for any reason unable to perform the functions of that office'.
5. There is no limit placed by the notice of appointment on the functions which the Senior Magistrate can perform as an Acting Judge of the

Supreme Court. That is relevant as the Applicant seeks to argue that the Senior Magistrate as Acting Judge of the Supreme Court should be limited to dealing with case management issues and not the conduct of trials.

6. The Applicant concedes that there is nothing in the Administration of Justice Ordinance which would suggest that the Acting Judge could not hear a trial but nevertheless contends that this is the position.
7. It is further argued that there could be criticism of the verdict if the trial was conducted in front of the Acting Judge as that would be a deviation from the established protocol.
8. We are only concerned with whether or not there is an arguable ground of appeal. There is no basis for an argument that the Acting Judge did not have jurisdiction to preside over the trial. None is suggested in the notice of appeal.
9. There is nothing in either the Constitution or the notice of appointment of the Senior Magistrate as an Acting Judge of the Supreme Court which limits the functions of the Chief Justice that she can perform.
10. It was within the discretion of the Chief Justice to direct that the Senior Magistrate should preside over the trial so that it could be heard within a reasonable time which would not have happened if the Chief Justice had to conduct the trial.
11. If there were to be criticism of the verdict because the trial was conducted by the Chief Magistrate that would not be a valid criticism and could not found a ground of appeal.
12. If there were to be shortcomings in the conduct of the trial then, depending on the verdict, they could be the subject of an appeal.
13. In our judgment there is no arguable grounds of appeal against the decision of the Chief Justice and leave is accordingly refused.