

IN THE COURT OF APPEAL

ST. VINCENT

Magistrate's Criminal Appeal
No. 21 of 1972

Between: MELVIN CLARKE & Appellants
OLIVE CLARKE
and
COMMISSIONER OF POLICE Respondent

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Louisy(Ag.)

A. Williams for appellants
Miss M. Joseph(Legal Assistant) for respondent

February 2, 1973

The judgment of the court was delivered by -
CECIL LEWIS, C.J.(Ag.)

The appellants who are husband and wife were convicted on September 11, 1972 of the offence that they knowingly concealed 21 cases and 8 bottles of White Horse Whisky and 7 cases of 555 State Express Cigarettes, with intent to evade the payment of the duties thereon contrary to section 90 of the Customs Ordinance, Chapter 183 of the Laws of Saint Vincent 1926.

The evidence discloses that a policeman, Station Sergeant Bascombe, went to the house of the appellants on July 5, 1972 with a search warrant. He took with him a party of policemen. When he got to the house the male appellant was not at home, but his wife was. He told her that he had a warrant to search her house and that of her husband and he read the warrant to her. He asked her if she had any of the articles mentioned in the warrant on her premises, she told him yes. He then requested her to hand them over to him and she told him to come and he entered the house. Mrs. Clarke produced a bunch of keys and unlocked a

/room

room in the house. There was a bed inside this room and some cases packed one on top the other. The sergeant examined the cases and found the articles mentioned in the complaint. He took Mrs. Clarke along with the articles to Police Headquarters where the articles were unloaded and stored. Later that day he saw the appellant Melvin Clarke at the Police Station.

The goods were shown to the Supervisor of Customs, Theodore Ballah, who gave evidence that they had been brought into the State without payment of duty. He examined the marks on the goods and he examined the register in which is kept a record of all goods of this nature imported into the State, and he found that there was no record whatsoever of these goods having passed through the customs.

On that evidence the Magistrate came to the conclusion that there was a prima facie case for both appellants to answer. They declined to go into the witness box, called no evidence on their behalf and he convicted them.

It was argued that there was no evidence that either the husband or wife knew that the goods were on the premises and therefore, it could be said that either of them knowingly concealed the whisky and cigarettes with intent to evade the payment of customs duty thereon. This submission is untenable. It is quite clear from the evidence that neither appellant was in business. There was evidence that the goods were valued at some \$1,492.00 and duty payable thereon was \$2,280. And the question which naturally comes to one's mind is: What were the appellants doing with this vast amount of liquor and cigarettes on their premises? In the absence of any explanation to account for the presence of the goods in the house, it was not unreasonable for the magistrate to draw the inference on the evidence before him that the appellants had knowingly concealed the goods on their premises with intent to evade the payment of duty thereon and in the opinion of the court he rightly convicted them.

/However....

However, the Magistrate having convicted the appellants and forfeited the articles went on to impose a fine of \$1,000 on the appellant Melvin Clarke. He purported to do so on the authority of a case Bartholomew v. Commissioner of Police reported in 14 W.I.R., 168. That case was decided under the Customs Ordinance, 1960 of the laws of Grenada which is entirely different from the law of Saint Vincent, and has no relevance to the instant case.

What the Magistrate was purporting to do when he imposed the fine on the male appellant was to apply the proviso to section 90 which was introduced by Ordinance 19 of 1952.

This proviso reads as follows:

"Provided however that in lieu of the aforesaid penalty the Collector of Customs or the Senior Customs Officer may with the consent of such person impose a fine equivalent to treble the amount of duty payable on such goods which fine shall be paid within five days from the date of its imposition, and in default of payment within the prescribed time the offender shall be proceeded against for the recovery of the penalty hereinbefore first prescribed."

It will be observed that under this proviso the authority to impose a fine is confined to the Collector of Customs or the Senior Customs Officer and the proviso only becomes applicable if the person concerned gives his consent to the imposition of the fine in lieu of going before a Magistrate. No such consent was given.

So quite clearly the Magistrate had no jurisdiction whatever to impose a fine of \$1,000 or any fine at all under the proviso to section 90. The result is that the fine of \$1,000 is illegal and will be set aside but the conviction of both appellants will be upheld and the forfeiture confirmed. In lieu of the fine of \$1,000 a fine of \$240 is imposed. This must be paid within two months and in default of payment the appellant Melvin Clarke will undergo one month's imprisonment.