

ST. CHRISTOPHER NEVIS AND ANGUILLA:

IN THE COURT OF APPEAL

MAGISTERIAL APPEAL NO. 2 of 1975

CRIMINAL

BETWEEN: JAMES DAVIS - DEFENDANT/APPELLANT

V.

THE CHIEF OF POLICE - COMPLAINANT/RESPONDENT

Before: The Honourable the Chief Justice  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice Peterkin

Appearances: E. Walwyn for appellant  
Director of Public Prosecution for respondent

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1976, April 26, 27, 28

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J U D G M E N T

DAVIS C.J. delivered the Judgment of the Court:

The appellant was charged before the Magistrate for District "C" with the offence of being concerned in smuggling of goods, to wit: one Evinrude Outboard Motor, contrary to section 95 of the Trade and Revenue Ordinance, Chapter 258 of the Revised Edition 1961 of the Laws of St. Christopher, Nevis and Anguilla. He was convicted and fined \$100.00 to be paid in two (2) months and in default to be imprisoned for three (3) months. The Magistrate also declared a forfeiture of the Outboard Motor. He has appealed against this conviction.

The evidence led in support of the charge was that the M.V. "Anna Maria" entered the Charlestown Roadstead on the 18th day of March, 1974 with general cargo for that port, and among the cargo listed on the boat's Cargo Manifest, was one carton consigned to the appellant. According to the appellant, he received a message from the captain of the vessel to the effect that his son, Roland Davis in St. Thomas

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had given him - the captain - something to give to him and it is in his - the captain's - care. The cargo was discharged from the vessel, and according to the witness, Richardson, this was completed about 2.00 p.m. on that day. For some reason, which is not clear from the evidence, the carton consigned to the appellant, was not discharged along with the other cargo. The appellant went to the Charlestown pier about 5.00 p.m. in search of the Captain, St. Clair Caines. He waited for about 2 hours until Caines returned to the pier. Upon Caines' return, Caines and two other members of the crew, lifted the carton from the vessel on to the pier. Soon after this, Vincent Spooner, a Sergeant of Police, who deposed that he was in ambush, appeared on the scene, and challenged the captain about his having landed the carton without the permission of the Custom's officer. Spooner looked into the carton and saw that it contained an outboard engine. Caines then left and returned with the appellant, who claimed ownership of the engine. Spooner then said it was against the law to land goods after hours without the permission of the Custom's officer and that he would seize the engine.

I should mention here two incidents which were of a highly suspicious nature. One: that the captain had obtained clearance for his vessel to leave the port after the cargo was discharged leaving the carton belonging to the appellant on board, and the other was, that one "reeman was engaged to take the appellant home in his "pick up", and that Freeman reversed his said "pick up" on to the pier, just about the time when the carton was lifted unto the pier.

In his defence, the appellant said that after Spooner had said it is an offence to land goods after hours without the permission of the Custom's officer, he replied that it

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could be put back on board and landed the following day.

Counsel for the appellant sought and was granted leave to amend the ground of appeal which now reads as follows: "That the decision of the learned magistrate was erroneous in point of law, and that the decision is unreasonable or cannot be supported having regard to the evidence."

Counsel submitted that under section 95, two ingredients are necessary to prove the charge, namely: that there was an importation not prohibited by law, and that there was an intention to defraud the Revenue of Customs Duty. He conceded that there was an importation by the appellant, but argued that on the facts of the case, no reasonable jury could infer, beyond a reasonable doubt, that the appellant intended to evade the payment of Customs Duty. He further argued that the evidence showed that at no time did the appellant touch the cargo, and further that the pier is a bonded area, and the carton was lawfully there.

Counsel for the respondent submitted that the learned magistrate, in his reasons for decision, found that the intention of the appellant to take the engine to his home without payment of Customs Duty was shown by his own words, "I had hired Mr. Freeman to carry me home and he did not know what I had on the pier to carry home." He submitted that this was the only inference to be drawn from the facts of the case, and that this Court should not interfere. He referred the Court to section 138 of the Trade and Revenue Ordinance, Cap. 258, and submitted that the onus was on the appellant to show that duty had been paid.

We can dispose of this last submission in a few words. Section 258 is, in our view, only applicable in cases where a person is found to be in possession of goods suspected of having been smuggled.

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It is clear from the evidence of Sergeant Spooner that he was engaged, on that evening, in an exercise of crime prevention rather than crime detection. Had he waited a little longer in ambush, the intention of the appellant might have become apparent. We agree with counsel for the appellant that it is difficult, if not impossible, to found a charge of being concerned in smuggling goods when those goods are in the bonded area even if such goods came into the possession of the person charged, because the intention on the part of such a person to defraud the Revenue cannot easily be proved. In this case, there was no evidence of conspiracy between the captain and the appellant to land the goods surreptitiously nor is there any evidence of an unequivocal act on the part of the appellant to enable a Court to draw the inference that he intended to defraud the Revenue, although there are circumstances in the case which give rise to suspicion.

In the result the appeal will be allowed, the conviction quashed and the sentence and order for forfeiture set aside.

There will be no order as to costs.

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(MAURICE DAVIS)  
CHIEF JUSTICE

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(E.L. ST. BERNARD)  
JUSTICE OF APPEAL

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(N.A. PETERKIN)  
JUSTICE OF APPEAL