

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO: 04/94

BETWEEN:

MARILYN JOHN

VERNON WALLACE

APPELLANTS

AND

THE COMMISSIONER OF POLICE

RESPONDENT

Before:

The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr C.M. Dennis Byron - Justice of

Appeal

The Honourable Mr Satrohan Singh - Justice of

Appeal

Appearances:

Mr Hans Matadial for the Appellant
Mr Brian Cottle for the Respondent

March: 29, 1996

Byron J.A.

JUDGMENT

This is an appeal against the decision of the learned magistrate Mounsey convicting the appellants and fining them each \$8,000.00 for being in possession of cocaine with intent to supply contrary to section 7 (3) of the Drug Prevention of Misuse Act Chapter 219 of the Revised Edition of the Laws of St. Vincent and the Grenadines.

The first ground of appeal was that the appellants were improperly tried on an information after the information on which they had pleaded not guilty had been withdrawn. Review of the affidavit in support and the record indicates

that when the matter first came up on 1st September 1993 the appellants had pleaded not guilty before the learned magistrate Bruce-Lyle. The appellants subsequently appeared before the learned magistrate Mounsey on 23rd November 1993 and again pleaded not guilty. The matter was adjourned for trial to 7th December 1993. On that day the information was mislaid, so the learned magistrate Mounsey got the appellants to plead to a copy of the information prepared from the police files. By the time the matter was completed on 14th December 1993 the original information had reappeared and the magistrate noted the decision of the court on it and it forms part of the appeal record.

In these circumstances there was only one information and at no time were these proceedings disposed of by any verdict or withdrawal before the 14th December 1993. This ground therefore fails.

In grounds two and three the appellants contended that there was insufficient evidence to justify the decision. The prosecution case was that the police were executing a search warrant on premises of Clara Wallace. The appellants were present in a liquor and provision shop which adjoins her premises. In response to questions the appellant Wallace told the police that he was the owner of the shop and that the appellant John was his girlfriend and was selling in the shop. He also told the police that he was responsible for an adjoining room in which boat engines were stored. The police decided to search this room which had a padlock. The appellant Wallace asked the appellant John to hand him the keys to the room which she did. In the room a number of engines were stored. When questioned the appellant Wallace said that boat owners brought the engines for repair and he usually checked them before accepting them. In one of the engines which had its cover partly open a number of aluminium wraps were found containing what after testing proved to be 15 grammes of cocaine.

The defence case was a total denial that the appellants had control over the engine room and the engines. They sought to prove that the person with control was Gordon Wallace, the father of the appellant Wallace. Evidence was adduced to show that the engine room had a connection to the house and

outside. Both appellants denied that there was a lock on the door leading from the shop and that they had any keys to the room. They accused the police witnesses of lying about the conversation alleged to have taken place and about the appellant John

having or handing over any keys. They alleged that they keys to the storeroom were kept by Gordon Wallace who was the person who repairs the engines. *Two* witnesses were called and some photographs were tendered in support of these allegations.

After hearing the evidence and seeing all the witnesses the learned magistrate preferred the evidence of the prosecution witnesses. He had the advantage of seeing the witnesses and observing their demeanour, a privilege which we did not have. In keeping with well established practice a court of appeal would not normally substitute its own opinion on the issue of the credibility of witnesses in relation to findings of fact which were based on the truthfulness of the witnesses. On the other hand we would carefully examine the inferences drawn from the evidence which has been accepted.

The magistrate's belief of the evidence adduced by the police as to the information revealed in the statements made by the appellant Wallace, including the assertion that he checked the boat engines before accepting them, was sufficient to support the finding that he was in exclusive control of the storeroom and that he had concealed the cocaine in the outboard engine for the purpose of selling it in the shop.

However, the only evidence against the appellant John was that she was his girlfriend and that she actually had the keys which she handed to him on his request. This evidence did not indicate that she had knowledge of the existence of the cocaine which had been concealed, and was, therefore, insufficient to support the conclusion that she was engaged in a joint enterprise of selling the cocaine.

In the fourth and final ground of appeal Counsel for the appellants complained that the learned magistrate wrongly refused to adjourn to allow him to compel the attendance of Gordon Wallace to give evidence for the appellants

on the ground that he had asked the witness to come to court and he had not appeared. By that time the trial had taken place over the 7th and the 14th of December during which the appellants were putting the blame on the same witness. It is clear that the appellants had ample time and additionally, the witness's failure to attend was an indication that he did not intend to give the evidence that the appellants were depending on him to give.

Counsel also complained that the learned magistrate failed to visit the locus in quo. The extent of the oral and photographic evidence provided a rational basis for his refusal. In my view there was a reasonable basis for exercise of the discretions complained of and I would reject this ground of appeal.

I would therefore allow the appeal of the appellant John and set aside the conviction and sentence against her. I would dismiss the appeal of the appellant Wallace and confirm the conviction and sentence against him.

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C. M. Dennis
Justice of Appeal

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Vincent F. Floissac
Chief Justice

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Satrohan Singh
Justice of Appeal