GRENADA

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 4 OF 1999

BETWEEN:

ERIC LLEWELLYN JEMMOTT

Appellant

and

THE COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mr. Satrohan Singh	Justice of Appeal
The Hon. Mr. Albert Redhead	Justice of Appeal
The Hon. Mr. Albert Matthew	Justice of Appeal (Ag.)

Appearances:

Mr. Anselm Clouden, Mr. Gill with him for the Appellant
Mr. Hugh Wildman DPP (Ag.), for the Respondent

1999: November 24;
25.

JUDGMENT

[1] SINGH, J.A.: On June 16, 1999, Corporal Smartt of the Grenada Police Force, acting on a tip off, awaited the arrival of the appellant at the Grenada Point Salines International Airport on a BWIA aircraft emanating out of Barbados. At 4.40 p.m., the appellant disembarked from the aircraft and was met in the customs area by Corporal Smartt.

[2] Acting on his suspicions that the appellant came to Grenada in pursuant of an illegal drug transaction, Corporal Smartt, having told the appellant of his suspicions, requested of the appellant a search of his person. The appellant demonstrated reluctance at first but then submitted to the search by assisting the police officer to declothe him. Corporal Smartt

then found $64,719.00 US cash, strapped to the trunk and leg portion of the appellant's body. The appellant was then questioned by Corporal Smartt about the money. He eventually confessed that it was brought in to be given to two Venezuelans staying at the No Problem Hotel for the purpose of purchasing cocaine. The money was seized and the appellant was arrested. In a written interview with the police under caution, the appellant said, inter alia, "I did not come to Grenada to buy the cocaine, I only come to drop the money in Grenada." At the trial, the appellant said he came to Grenada with the money to buy land and he sought to secrete it on his body because he knew that in Trinidad it was illegal to take in so much cash.

[3] On these facts, on August 20,1999, the appellant, a Barbadian, was convicted before Magistrate Patricia Mark of the offence of doing an act preparatory to or for the purpose of trafficking in a substance he believed to be a controlled drug, to wit, Cocaine, contrary to section 18 (2) (c) and 18 (4) of the Drug Abuse (Prevention and Control) Act Cap 3 of the 1994 Revised Laws of Grenada. He was sentenced to imprisonment for 18 months and the Magistrate ordered forfeiture of the US$64,719. The appellant appealed and on November 25, 1999, we unanimously dismissed the appeal, affirmed the conviction, sentence and order of forfeiture made by the learned magistrate.

[4] In dismissing the appeal, we gave consideration to all the issues raised by Counsel for the appellant and found merit in none of them. The arguments indulged in by Counsel revolved around the issues of (1) the voluntariness of the oral confession of the appellant including the concept of fairness when such a statement was unrecorded. (2) At what stage should the Voir Dire as to its admissibility have been held. (3) Request for particulars of the offence charged (4) Search and Seizure (5) Reasonableness of the verdict of the Magistrate (6) the forfeiture.

[5] In determining these issues we gave the following reasons:

THE UNRECORDED CONFESSION

[6] As earlier mentioned, the appellant, upon being caught in flagrante, so to speak, eventually told the police that the $64,719.00 was to be used in an illegal drug transaction. The transcript showed that before he made this revelation, he had a discussion with Corporal Smartt as to the possible results of being convicted of the relevant offence. The transcript also showed that Corporal Smartt advised him of all the alternatives e.g. a fine, imprisonment and/or deportation. They also had an evangelical exchange during which Corporal Smartt reminded the appellant of the biblical advice "speak the truth and it will set you free."

[7] The argument of Mr. Clouden was that this evangelical exchange was an inducement by a person in authority which affected the voluntariness of the confession. In our opinion, having looked at the entire context from whence came the revelation, we concluded that from the moment the appellant realized he was caught, his desire was to speak the truth and that when he indulged in the discussion with Corporal Smartt as to the possible consequences of the crime, including the evangelical exchange, he was weighing his options and at the same time indulging in a veiled form of plea bargaining with the officer.

[8] Given these considerations, we did not share the view of Mr. Clouden that the evangelical exchange, in the context of this case, was in the form of an inducement. We also did not find that the evidence supported a view of hope of advantage. We therefore concluded that the oral statements were given voluntarily by the appellant.

[9] Addressing the submission of Mr. Clouden of unfairness because these statements were not recorded, we saw no miscarriage of justice resultant therefrom. We so concluded because, having found the statements to be voluntarily given, that made them admissible, and when regard is had to the unchallenged confession in the written interview under caution mentioned earlier, that written confession aided us in our acceptance of the truth of the oral confession.

THE VOIR DIRE

[10] A Voir Dire was done by the Magistrate during the trial to determine the voluntariness of these oral confessions. Mr. Clouden criticized the stage of the trial at which this happened.

{11] We found no merit in the criticism. We considered that what the Magistrate did was just and fair. We expressed the opinion that, in the interest of fairness to an accused, where the only evidence against the accused was his confession, that there could be no room for valid criticism of a Magistrate who did the Voir Dire during the trial or even before any other evidence was taken. The appropriate time for the Voir Dire, is usually just before the challenged evidence is due to be given.

REQUEST FOR PARTICULARS

[12] Counsel for the appellant at the trial, requested particulars of the offence but received none. Mr. Clouden described this as a miscarriage of justice based on the concept of unfairness. We agreed generally with the principle but concluded no unfairness in the context of the case. Particulars are required to ensure no surprise to the accused. We expressed the view, that because of the confessions of the appellant, there was no room for surprise, hence no miscarriage.

SEARCH AND SEIZURE

[13] We also found no merit in the ground of appeal that addressed the issue of Search and Seizure. We were satisfied from the evidence in the transcript, that whenever the search took place, it was with the consent and active participation of the appellant.

[14] The evidence disclosed that the police went to the airport with reasonable suspicion, and, with that state of mind, sought to execute the search. We accordingly disagreed with counsel's submission that it was an arbitrary search. We concluded that it was a search

that was acceded to by the appellant. In any event, even if it could have been said that the search was improper, that could not have tainted the evidence discovered therefrom, if such evidence was relevant and therefore admissible.

[15] Before the PACE Act of 1984, the method by which evidence was obtained was strictly irrelevant. Therefore evidence was admissible which had been stolen (R –v- Leatham) (1861) Cox CC 498) or obtained by an illegal search [Jones –v- R (1870) 345 p 759 Kuruma -v- R (1955) AC 197.]

[16] The authorities under the PACE Act show, that evidence obtained improperly or by trick, may be excluded, if the admission of the evidence would have such an effect on the fairness of the proceedings that the Court ought not to admit it.

[17] The PACE Act has not to date been incorporated into the laws of Grenada therefore the law pre PACE still applies to search and seizure in Grenada. However, even if the principles of PACE did apply, because of the strength of the confession, we would have concluded no unfairness.

REASONABLENESS OF MAGISTRATE'S DECISION

[18] We had no lurking doubt at the end of our deliberations as to the wisdom of the conviction in the matter. The appellant was caught red handed and he confessed more than once.

FORFEITURE

[19] The learned Magistrate, after conviction and sentence, invoked powers given to her by S 47(1) of the Drugs Act and ordered the forfeiture or confiscation of the $64,719.00. Mr. Clouden argued against this order on grounds that (1) there was no nexus established, connecting this sum of money with any illegal drug activity and (2) before such an order could have been made, the appellant should have been given the opportunity to show cause against the making of such an order {S 47(3)}.

[20] Because of the confessions of the appellant, we dismissed this ground as being without merit on both limbs.

[21] We expressed the opinion that the evidence was pellucid as to the connection of the $64,719.00 with the illegal drug trade. We also held that opportunity was given to appellant to show cause pursuant to S 47(3). The transcript showed that at the time forfeiture was being considered by the Magistrate, S 47(3) was discussed. Mr. Clouden then told the Magistrate that the money "was not the product of an offence." The onus was then on the appellant to lead evidence. Counsel did not seek to lead any evidence. The Magistrate then made the order. Given these circumstances we saw no miscarriage of justice to the appellant and were satisfied that the Magistrate complied with S 47 (3). We considered the forfeiture order a proper one and dismissed the appeal in its entirety.

[22] Dated this 24th day of January, 2000.

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Satrohan Singh
Justice of Appeal

I concur

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Albert Redhead
Justice of Appeal

I concur

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Albert Matthew
Justice of Appeal (Ag.)