

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.38 OF 2004

BETWEEN:

DARREN MILLER

Appellant

and

THE COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mr. Adrian D. Saunders

Chief Justice [Ag.]

The Hon. Mr. Brian Alleyne, SC

Justice of Appeal

The Hon. Mr. Michael Gordon QC

Justice of Appeal

Appearances:

Mr. Richard Williams for the Appellant

Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2004: June 24;
July 26.

JUDGMENT

[1] **SAUNDERS, J.A.:** Darren Miller was arrested and charged before the Magistrate with having in his possession a total of USC\$18,630.00 reasonably suspected of having been unlawfully obtained. After the Prosecution had led evidence, the Magistrate before whom he was tried rejected a no case submission. Miller and his witnesses then gave evidence. The Magistrate did not believe their account of how Miller came by the money. The learned Magistrate found Miller guilty. He was sentenced to pay a fine of \$1,000.00 forthwith in default of which he would suffer imprisonment for a term of four months. The Court ordered the forfeiture of the money. Mr. Miller has appealed.

[2] Before the Court of Appeal, the main arguments centered around the Magistrate's rejection of the no case submission. The question simply put was whether there was sufficient evidence to support reasonable suspicion. Miller was charged with contravening section 308 of the Criminal Code. That section states:

"Any person who is charged with having in his possession in any place, or conveying in any manner, anything which is reasonably suspected of being stolen or unlawfully obtained and who does not give an account to the satisfaction of the court as to how he came by the same, is guilty of an offence and liable to imprisonment for six months."

[3] It was vital to the case for the prosecution that, before Miller could be called upon to render an account, there should be cogent evidence giving rise to a reasonable suspicion that the money found was stolen or unlawfully obtained. The law is settled as to the test that should be used for the suspicion. With a statute worded as section 308 is, the test for the suspicion is objective¹. As was indicated by Wooding, CJ in **Bodoo v. Joseph**², not only must the suspicion exist but it should be reasonably held and whether it is reasonably held or not will depend upon all the known circumstances. Care must therefore be taken in applying authorities such as *R v June Williams*³, *R v Vincent Whyte*⁴, and *R v Melvin Spragg*⁵ where the test is subjective and, due to the peculiar wording of the Jamaica statute, it is essential that evidence be led that the arresting officer did in fact suspect and have reasonable cause to suspect. That is not the case with the St. Vincent and the Grenadines statute. As Liverpool, JA points out in **Berridge v. The Police**⁶, it is sufficient if the goods are found in the possession of the accused and there is evidence led to satisfy the Magistrate that in all the known circumstances there is reasonable cause to suspect the thing found to have been unlawfully obtained.

¹ See: *Berridge v. The Police*, unreported Dominica Magisterial Crim. Appeal No. 1 of 1993 per Liverpool, J.A.

² (1964) 7 W.I.R. 373 @ 379

³ (1970) 16 W.I.R. 269

⁴ (1972) 18 W.I.R. 291

⁵ (1975) 23 W.I.R. 371

⁶ See note 1 above

- [4] One must therefore examine the facts in this case to ascertain whether it could be said that there was reasonable suspicion that the US currency found in Miller's possession was unlawfully obtained.
- [5] Sergeant Haywood was the arresting officer. He said that, acting on information received, he and other officers boarded a Coast Guard ship and headed in the direction of Young Island. There they saw a white speedboat in the area. The boat was intercepted. A party of police officers boarded the boat and requested to carry out a search for controlled drugs. No drugs were found but under the pilot's seat, a Ziploc bag was recovered containing the following United States currency notes: 112 \$100.00 notes; 70 \$50.00 notes; 194 \$20.00 notes; 4 \$10.00 notes; and 2 \$5.00 notes. The money totalled US \$18,630.00. For what it is worth, there was no evidence as to the state of these notes, whether they were soiled or very worn or whether they were in reasonably good condition.
- [6] Miller was the captain of the boat. There were about six other persons on the boat with him. He was cautioned and asked to explain the presence of the money. His response was that he owned a rental and trucking business. Later Miller said that he and one, Kerry, who was also on the boat, had changed the money the previous day at the Bank of Nova Scotia. In the presence of the police, Miller asked Kerry to go and collect the receipts.
- [7] The police carried out further investigations. It turned out that Miller does indeed own a truck and two other vehicles. Haywood stated that from the time he knew Miller, only Miller drove those vehicles but the evidence does not disclose for how long a period of time Haywood knew Miller. Nor does it disclose whether the vehicles are registered as private or rental vehicles.

- [8] Harley Stoddard, another police officer attached to the Coast Guard, also testified. He supported Haywood's testimony. The only new evidence he added was to confirm that Miller did say that the money was his (Miller's) and that he had it to purchase a boat.
- [9] The final witness for the Prosecution was Inspector Francis. Inspector Francis is attached to the Financial Intelligence Unit. His evidence was to the effect that Miller had declined an interview with him, Francis. The Inspector stated that he "carried out investigation into the financial affairs of ...Miller... The results of the findings of that investigation have been compiled into the Prosecution statement relevant to be served upon the court, should the defendant be convicted".
- [10] It is unclear why the content of the Prosecution statement, alluded to by the Inspector, was never made a part of the evidence for the purpose of the trial. Had it been, the outcome of this matter may well have been very different. This statement discloses for example that the Bank of Nova Scotia disclosed that neither Miller nor Kerry Cadougan purchased US funds during the relevant period. Since this information is not on the record we therefore cannot consider it.
- [11] The prosecution closed their case and Counsel for Miller made a submission of no case to answer. It was overruled by the Magistrate. The question before us is whether the learned Magistrate was right in overruling the submission, whether on the known circumstances there was reasonable cause to suspect that the money was unlawfully obtained.
- [12] I am of the view that there was not. On the admitted evidence, Miller's account as to how he came by the money was not an implausible one. Nor was his explanation as to the source of the money and the purpose for which he said he had the money. The onus, at this stage of the proceedings, was on the prosecution, not on Miller. In all the circumstances I would allow the appeal and

quash the conviction and sentence. I would further order that the funds be handed back to Miller.

Adrian Saunders
Justice of Appeal

I concur.

Brian Alleyne, SC
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal