SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 34 OF 2004

BETWEEN:

DEON DAVIS

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

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| The Hon Adrian 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. Collin Williams, Director of Public Prosecutions, [Ag.] with
Ms. Sandra Robertson for the Crown

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2003: December 1; 2;
2004: September 20.

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JUDGMENT

[1] GORDON, J.A.: On 19th October 2002, the Appellant was charged with three counts under the Customs Control and Management Act No 14 of 1999. The first charge was that he offered a customs officer the sum of $2,000.00 U.S. currency to induce him to act in breach of his duty contrary to Section 100 (2) (a) of the Customs (Control and Management) Act No. 14 of 1999 (hereafter referred to as "The Act"); the second charge was that he knowingly made a statement in answer to a question put to him by a customs officer which under the Act he was required to answer which was false in a material particular, to wit that he had US$1,600.00 to declare whereas in fact he had on his person US$20,000.00 contrary to Section 108 (1) (b) of the Act; and, thirdly, that he failed to declare US$18,400.00 which

sum was being carried with him when he was requested to do so by a customs officer contrary to Section 81 (4) of the Act.

[2] The Appellant was convicted of the second and third offence, fined $1,000.00 in respect of the third and the sum of US$18,400.00 was forfeited to the State as the penalty for the second offence. He is dissatisfied with the decision of the learned Magistrate and has appealed to this Court against his conviction.

[3] The facts are quite simple. On the 19th October 2002 the Appellant landed at the E. T. Joshua Airport having arrived from abroad by Caribbean Star Airline. At the Immigration counter, where he, like all incoming passengers, presented himself, he was refused entry to St. Vincent. It would appear that prior to that date he had been refused landing in St. Vincent. The Immigration Officer supervising the particular shift, Cpl Patricia Williams, had been responsible for putting the Appellant on an out-bound flight on a previous attempt to enter St. Vincent. The Appellant was asked to sit down on a bench in the Immigration Office. Subsequently, Sergeant Desmond Haywood, who was on duty at the airport, upon seeing the Appellant in the Immigration Office, asked him how much cash was he carrying, to which the Appellant replied US$1,600.00. Clearly, something about the Appellant raised suspicion in the Sergeant's mind, and he advised the Appellant that he would be taken to Customs for search.

[4] The Appellant was taken to the Customs desk where Customs Officer Leroy James searched his luggage. During this period, Customs Officer James asked the Appellant how much money he had on him, to which the Appellant replied US$1,600.00. The Appellant was taken into the Customs cargo shed where he was searched and cash to the value of US$18,400.00 was found in his trouser pocket. This cash was in addition to the US$1,600.00 he had declared.

[5] There is no real dispute on the facts between the Appellant and the Respondent.

[6] The relevant sections of the Act are reproduced hereunder:

> "81…..(3)Anything chargeable with any duty which is found concealed or which is not declared, and any thing which is being taken into or out of the State contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment, shall be liable to forfeiture.
>
> (4) A person failing to declare anything contained in his baggage or anything carried with him or to produce his baggage as required by this section commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or three times the value of the goods involved whichever is the greater."
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> "108. (1) A person who for the purpose of any assigned matter, or who knowingly or recklessly –
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> (a) makes or signs or causes to be made or signed or delivers or causes to be delivered to the Comptroller or any officer, any declaration, notice, certificate or other document; or
>
> (b) makes any statement in answer to any question put to him by an officer which he is required by or under any enactment to answer,
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> which is false in a material particular commits an offence and is liable on conviction to a fine not exceeding five thousand dollars and any goods in relation to which the document or statement is made shall be liable to forfeiture.
>
> (2) ……."

[7] The principal ground of appeal oft the Appellant is that having been denied entry into St Vincent and the Grenadines by the Immigration Officer on duty at the airport, he has not "entered" for the purposes of the Act. The learned Director of Public Prosecutions counters this argument by referring to the Immigration and Restriction Act, Ch. 78, Section 2(2) which states "a person enters Saint Vincent and the Grenadines if he arrives by sea or air with the intention of disembarking in Saint Vincent and the Grenadines or if he disembarks in Saint Vincent and the Grenadines."

[8] A proper starting point for resolving the conflict between the Appellant and the Respondent is an examination of the principles of interpretation of penal statutes. In my view, there is equivalence between penal statutes, properly so called, meaning a statute creating a an offence against the state, and taxing Acts. Lord Hanworth MR in Dewar v I. R. C.[1] said "Either in the clear words of a taxing statute the subject is liable or if he is not within the words he is not liable". Again, in Pryce v Monmouthshire Canal Co[2] Lord Cairns said the following:

> Those cases which decided that taxing Acts must be construed with strictness, probably meant little more than this, that inasmuch as there was not any *a priori* liability in a subject to pay a particular tax, nor any antecedent relationship between the taxpayer and the taxing authority, no reasoning founded upon any supposed relationship of the taxpayer and the taxing authority could be brought to bear upon the construction of the Act, and therefore the taxpayer had a right to stand upon the literal construction of the words used, whatever might be the consequence"

[9] In the olden times penal statutes were very strictly interpreted, whether the offences created were felonies or misdemeanours. This derived from the attitude of the Courts *in favorem vitae* when relatively minor offences carried the death penalty. The rule of strict construction has, however, been relaxed in more modern times. As was said in Sedgwick, Statutory Law the distinction between the liberal and strict construction means little more than "that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment, the Courts refusing on the one hand to extend the punishment to cases which are not clearly embraced in them, and on the other equally refusing by any mere verbal nicety, forced construction or equitable interpretation to exonerate parties plainly within their scope." In Dickenson v Fletcher[3] Brett J put it thus:

> Those who contend that a penalty may be inflicted must show that the words of the Act distinctly enact that it shall be incurred under the present circumstances. They must fail if the words are merely equally capable of a construction that would, and one that would not, inflict the penalty."

[1] [1935] 2 KB 351
[2] (1879) 4 App. Cas. 197
[3] (1873) L.R. 9 C. P. 1

[10] Perhaps, for the purposes of this case, the best expression of the rule was by the Privy Council in The Gauntlet[4] where the following was stated:

> "No doubt all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a *casus omissus*, that the thing is so clearly within the mischief that it must have been intended to be included, and would have been included if thought of. On the other hand the person charged has a right to say that the thing charged, although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal statute is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

[11] In order to have a complete understanding of the sections under which the Appellant was charged, it is necessary to look at one other section and at the Third Schedule of the Act. The relevant parts of Section 79 of the Act and of Part II of the Third Schedule (as amended) read as follows:

> 79….(2) No goods or class or description of goods, prescribed in Part II of the Third Schedule may be imported into the State except in accordance with the conditions and restrictions prescribed in that Part"
>
> "20. Foreign currency exceeding ten thousand Eastern Caribbean Dollars, whether or not exchange control permission was granted from the country where the import originated except where such currency is declared in the prescribed from[sic] to the Comptroller in the absence of which it is liable to seizure."

[12] The bench in generic terms, and certainly this bench, is not so far removed from the realities of social and criminal evolution as to be unaware of the corrosive and corrupting influence of money laundering and the use of the proceeds of crime. In my view the prevention of such is the mischief that Sections 79, 81 and 108 seek to remove. The issue, therefore is whether in these particular and peculiar circumstances "the thing charged as an offence is within the plain meaning of the words used".

[4] (1872) L.R. 4 P.C. 184

[13] Section 79 of the Act falls within Part VIII of the Act which is entitled "Duties, Drawback, Prohibitions and Restrictions on Imported Goods. "Import" is defined in the Act as meaning "to bring in or cause to be brought into Saint Vincent and the Grenadines or the territorial sea". Learned Counsel for the Appellant argued that as the Appellant, having been denied entry into Saint Vincent he was in a similar position to a person who was intransit and hence none of the prohibitions or restrictions applied to him. Taking that argument to its logical conclusion, it would then mean that if a person sitting in an intransit lounge were found to have a kilo of cocaine or a machine gun on him, because of his status as an unentered passenger, he could be convicted of no crime under the Act. I find this logic specious. I am satisfied that both the mischief and the plain meaning of the words used in the Act are such that the Appellant was properly convicted of both charges.

[14] The final point made by learned Counsel for the Appellant was that section 108, pursuant to which the sum of US$18400.00 was forfeited to the State, did not authorize the forfeiture of money. His argument was that money was not goods. Learned Counsel offered no authority for this proposition. I am of the view, and do so hold, that in the context of the Act, "goods" means any form of personal chattel capable of being possessed which clearly includes currency. This ground too fails.

[15] This appeal is dismissed.

Michael Gordon, QC
Justice of Appeal

I concur.

Adrian Saunders
Chief Justice [Ag.]

I concur.

Brian Alleyne, SC
Justice of Appeal