EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

MONTSERRAT

MNIHCRAP2014/0001

BETWEEN:

WILLIAM WHITE

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mr. Mario Michel	Justice of Appeal
The Hon. Mde. Gertel Thom	Justice of Appeal
The Hon. Mr. John Carrington, QC	Justice of Appeal [Ag.]

Appearances:

Mr. Ralph Francis for the Appellant
Mr. Oris Sullivan for the Respondent

2016: October 25;
2017: October 25.

Criminal appeal – Appeal against conviction and sentence – Section 28 of the Drugs (Prevention of Misuse) Act – Possession of cannabis with intent to supply – Whether forfeiture of the appellant's money and motor vehicle was wrong in law – Whether the sentence imposed on the appellant was manifestly excessive

On 19th January 2013, a contingent of police officers approached the appellant whilst he was seated in the driver's seat of a motor omnibus parked near his home at Flemmings. The officers informed the appellant that they desired to search his vehicle, to which he consented. However, before leaving the vehicle, the appellant took something out of it which he held in his left hand and put his left arm at his back. The police wrestled the item from him, which was a plastic bag containing 142 grams of cannabis. The police also found a large amount of money on the appellant's person consisting of different denominations and currencies. The appellant was arrested and taken to a police station. Thereafter, the police obtained a warrant to search the appellant's home. Upon executing the search in the appellant's presence, the police found two large plastic bags together containing 1.84 kilograms of cannabis, as well as a quantity of money in the house.

The appellant was indicted for the offences of possession of cannabis for the purpose of drug trafficking, possession with intent to supply and simple possession. On 16th April 2014, the appellant was acquitted by a jury on the charge of possession of cannabis for the purpose of drug trafficking, but was found guilty of the charge of possession with intent to supply. As a result of this conviction, no verdict was rendered on the simple possession charge. The appellant was sentenced to 3 years' imprisonment and a fine of $15,000 to be paid within 2 years, in default of payment of which he would serve an additional year in prison. The motor omnibus belonging to the appellant and the sums of money found in his possession by the police at the time of his arrest and at his home during the search were ordered to be forfeited to the Government of Montserrat.

Being dissatisfied with the decision in the court below, the appellant appealed against his conviction and sentence on the grounds that: the indictment containing three counts is bad for duplicity in that each count alleges the commission of more than one offence; the conviction is unsafe and cannot be supported in law; the forfeiture of the appellant's taxi and money was wrong in law; and the sentence imposed on the appellant was manifestly excessive. However, during the course of his oral arguments, counsel for the appellant abandoned the duplicity and unfair conviction grounds.

Held: allowing the appeal in part; dismissing the appeal against conviction and affirming the conviction of the appellant for the offence of possession of cannabis with intent to supply; allowing the appeal against sentence to the extent that the sentence of one year imprisonment imposed in default of payment of a fine of $15,000.00 shall run concurrently with the three-year prison term; and quashing the forfeiture order, that:

1. It is an established principle of law that sentences will be deemed to run concurrently unless specified to run consecutively. There being no such specification in this case, the substantive and default sentences will run concurrently.

2. In order for an item to be forfeited by virtue of section 28 of the **Drugs (Prevention of Misuse) Act,** the court has to be satisfied that the item to be forfeited relates to the particular offence of which the offender has been convicted. In the present case, there is no evidence which relates the money and vehicle forfeited to the offence of possession of either the 142 grams of cannabis which the appellant had in his possession when he was arrested or the 1.84 kilograms found at his residence.

   Section 28(2) of the **Drugs (Prevention of Misuse) Act**, Cap 4.07, Revised Laws of Montserrat, 2002 applied; **R v Morgan** [1977] Crim LR 488 applied; **R v Ribeyre** (1982) 4 Cr App Rep (S) 165 applied; **R v Llewellyn** (1985) 7 Cr App Rep (S) 225 applied; **R v Cox** (1986) 8 Cr App Rep (S) 384 applied; **R v Simms** (1987) Cr App Rep (S) 417 applied; **Richardson and another v The Queen** [1989] ECSCJ No. 5 distinguished; **Constantine and Williams v The State (**1999) 57 WIR 361 distinguished.

3. It may well be that the money which the appellant had with him at the time of his arrest and the money found at his residence in the course of the search were monies derived from previous sales of cannabis by him (even out of the same consignment); and it may well be that his vehicle had at some time been used to transport cannabis; but, in the absence of any evidence relating the money found on the appellant and at his residence, and the vehicle in which he was sitting prior to his arrest, to the specific offence for which he was found guilty, it would not have been established that the money or the vehicle was relating to the offence. Furthermore, before or at the time of making the forfeiture order, the trial judge said nothing to suggest that he had even averted his mind to whether the vehicle was "relating to the offence", which is a precondition under section 28(2) of the Act to the making of a forfeiture order. Therefore, the forfeiture order made by the trial judge with respect to the appellant's vehicle and the money found on his person and at his residence on the day of his arrest in January 2013 must be quashed and the money and the vehicle returned to the appellant.

Section 28(2) of the **Drugs (Prevention of Misuse) Act**, Cap 4.07, Revised Laws of Montserrat, 2002 applied; **R v Morgan** [1977] Crim LR 488 applied; **R v Ribeyre** (1982) 4 Cr App Rep (S) 165 applied; **R v Llewellyn** (1985) 7 Cr App Rep (S) 225 applied; **R v Cox** (1986) 8 Cr App Rep (S) 384 applied; **R v Simms** (1987) Cr App R (S) 417 applied; **Richardson and another v The Queen** [1989] ECSCJ No. 5 distinguished; **Constantine and Williams v The State** 1999) 57 WIR 361 distinguished.

JUDGMENT

[1] **MICHEL JA:** On 3rd March 2014, the appellant was indicted for the offences of possession of cannabis for the purpose of drug trafficking, possession with intent to supply and simple possession.

[2] Very briefly, the facts are that on 19th January 2013, a contingent of police officers approached the appellant whilst he was seated in the driver's seat of a motor omnibus parked near his home at Flemmings. The officers informed the appellant that they wished to search his vehicle, to which he consented. Prior to exiting the vehicle, however, the appellant took something out of the vehicle which he held in his left hand and put his left arm at his back. The police wrestled the item from him, which turned out to be a plastic bag containing 142 grams of cannabis. The police also found a large amount of money on the appellant made up of different denominations and currencies. The appellant was arrested and taken to a police station. The police then obtained a warrant to search the appellant's home. Upon

conducting the search, in the presence of the appellant, the police found two large plastic bags together containing 1.84 kilograms of cannabis; they also found a quantity of money in the house.

[3] On 16th April 2014, after a trial before judge and jury, the appellant was acquitted on the charge of possession of cannabis for the purpose of drug trafficking, but was found guilty of the charge of possession with intent to supply. As a result of the conviction for possession with intent to supply, no verdict was rendered on the simple possession charge. The appellant was sentenced to 3 years' imprisonment and a fine of $15,000 to be paid within 2 years, in default of payment of which he would serve an additional year in prison. Motor omnibus registration number H1373 belonging to the appellant and the sum of €350 and £160 found in his possession by the police at the time of his arrest and the sum of US$23 and EC$19.85 found at his home during the search were ordered to be forfeited to the Government of Montserrat.

[4] By notice of appeal filed on 29th April 2014, the appellant appealed against his conviction and sentence on the following grounds:

(1) The verdict is unsafe and cannot be supported in law.

(2) The sentence imposed, that is, the fine of $15,000 to be paid within 2 years or 1 year imprisonment in default was wrong in law and principle and/or was not permissible in law.

[5] Although the appellant had not yet filed skeleton arguments in support of his appeal, on 5th November 2014 the respondent filed skeleton arguments (with authorities) which addressed not only the two grounds of appeal contained in the notice of appeal, but also touched on other issues arising from the orders made by the judge, including the issue of forfeiture.

[6] On 23rd June 2015, the appellant filed skeleton arguments in support of his appeal in which he made submissions not only on the two grounds of appeal contained in

his notice of appeal, but also on a third ground, that is, that the forfeiture of the appellant's taxi was wrong in law and principle and/or not permissible in law.

[7] On 8th July 2015, the respondent filed additional skeleton arguments, wherein it was stated that it was filed in response to the appellant's skeleton arguments. The respondent's additional skeleton arguments did not, however, appear to respond to the appellant's ground 3 contained in his skeleton arguments, that the forfeiture of the appellant's taxi was wrong in law and principle and/or not permissible in law.

[8] On 15th April 2016, the appellant filed fresh skeleton arguments in support of his appeal in which he argued that – (1) the indictment containing three counts is bad for duplicity in that each count alleges the commission of more than one offence; (2) the forfeiture of the appellant's taxi and money was wrong in law; and (3) the sentence imposed on the appellant was manifestly excessive.

[9] On 30th September 2016, the respondent filed a second additional skeleton argument (with authorities) which responded to 3 of the possible 6 grounds of appeal advanced by the appellant in his skeleton arguments filed on 23rd June 2015 and 15th April 2016, though not including the forfeiture grounds.

[10] The appeal was heard on 25th October 2016. In making his submission at the appeal hearing, counsel for the appellant, Mr. Ralph Francis, merged the conviction is unsafe ground with the indictment is bad for duplicity ground and submitted in effect that, because the count in the indictment charging the appellant for possession of cannabis with intent to supply did not indicate the quantity of cannabis which he was charged for possessing, it is not possible to determine from the verdict of the jury whether their finding of guilt against the appellant was based on the 142 grams of cannabis found in his possession by the police or on the 1.84 kilograms found in the dwelling house searched by the police or for both, and that, to that extent, his conviction is unsafe and should be set aside. In the course of argument, however, Mr. Francis diluted the potency of his submission

and argued that, because it could not be determined from the jury's verdict that they adjudged the appellant to have been in possession of the cannabis found in the dwelling house (which he swore that he no longer occupied) the appellant could only be considered to have been properly convicted for possession of the 142 grams of cannabis found in his possession at the time of his arrest and not the 1.84 kilograms found in the dwelling house.

[11] Mr. Francis' abandonment of the duplicity and unfair conviction arguments relieves the Court of having to make any determination on the safety of the conviction or the duplicity of the indictment. I would in any event have had no difficulty dismissing the duplicity ground because, although the evidence in support of the charges against the appellant disclosed 2 or 3 separate findings of cannabis, the count on which he was convicted, charged him with a single offence of possession of cannabis with intent to supply to another. The count was not therefore duplicitous. The safety of the conviction submission, stripped of its unhelpful duplicity accompaniment, may have presented a bit of a challenge, but, even had it found favour with us, the conviction was likely, in my view, to have been saved by the proviso.

[12] In relation to the excessive sentence ground which was advanced, sometimes in relation to the entire sentence of three years' imprisonment plus a fine of $15,000 to be paid within two years with one year imprisonment in default, and sometimes only in respect of the $15,000 fine and the default sentence, this may be disposed of fairly easily. There was an issue as to whether the three year sentence and the one year default sentence were to run consecutively or concurrently, the trial judge having failed to specify. This is easily resolved on the clear principle that sentences will be deemed to run concurrently unless they are specified to run consecutively. There being no such specification in this case, the substantive and default sentences will run concurrently, and the appellant having served in full his three year sentence, there is no further issue for consideration by this Court on the appeal against sentence. For the avoidance of any doubt, the trial judge's

sentencing order will be varied to specifically state that the three year sentence and the one year default sentence are to run concurrently.

[13] It should be noted for the record that, in the course of his oral submission at the appeal hearing, the Director of Public Prosecutions agreed to the variation of the judge's sentence with respect to the default prison term for non-payment of the fine.

[14] The final issue for determination in this appeal is the validity of the forfeiture of the appellant's vehicle and of the money found on his person and in his dwelling house.

[15] In the appellant's notice of appeal, no issue was taken with the forfeiture of the vehicle or the money; the appellant only challenged the safety of the conviction and the exorbitance of the sentence. However, in the appellant's skeleton arguments filed on 23rd June 2015, he submitted that the forfeiture of his vehicle was wrong in law and principle and/or not permissible in law, whilst in his skeleton arguments filed on 15th April 2016, he submitted that the forfeiture of the money was also wrong in law.

[16] In the June 2015 skeleton argument, the appellant submitted that there was no proper inquiry of the vehicle and that had there been one the court would not have made an order forfeiting the vehicle. The appellant submitted that section 28(2) of the **Drugs (Prevention of Misuse) Act**[1] ("the Act") under which the vehicle was forfeited applies only to articles "relating to the offence" and that the vehicle could not be included in that category since, according to the evidence, no drugs were found in the vehicle. He submitted further that the vehicle was not owned by the appellant and that the owner of the vehicle was not a party to the proceedings, so "the confiscation order" was wrong in principle and law. The appellant also invoked the human rights provisions of the Constitution in relation to the need for a

[1] Cap 4.07, Revised Laws of Montserrat, 2002.

court to be satisfied beyond reasonable doubt that a person whose property was being confiscated had benefited from the offence charged.

[17] In the submissions filed on behalf of the appellant on 15th April 2016 by his counsel, Mr. Ralph Francis, much of what was advanced in the June 2015 skeleton argument was not pursued. Mr. Francis submitted instead that the basis for the forfeiture of the appellant's vehicle appeared to be that it was used in the transportation of the drugs, but that this would be stretching the concept of transportation beyond that which is reasonable, because one does not need a vehicle to transport 142 grams or 5 ounces of cannabis and it could not be reasonably held that the vehicle was used for the transportation of the cannabis. He submitted further that in the House of Lords case of **R v Cuthbertson**,[2] Lord Diplock opined that if it is desired to forfeit something tangible that can fairly be said to relate to a transaction, the transaction must be made the subject of a charge of the substantive offence and that, in the present case, the vehicle was not made the subject of a charge of the substantive offence.

[18] In relation to the money, counsel submitted that the dictum of Lord Diplock was also applicable, because the money in this case was not made the subject of a charge of the substantive offence. He submitted further that there is no evidence that in fact the money was directly related to either the cannabis found in the house or on the appellant. He submitted that the record suggests that there was nothing more than speculation that the money was connected to the cannabis found.

[19] In the respondent's skeleton arguments filed on 5th November 2014, the respondent submitted that, by virtue of section 28(2) of the Act, the trial judge was obligated to order the forfeiture of the vehicle and the money, because the section specifically states that "where a person is convicted of a drug trafficking offence the court shall in passing sentence order forfeiture … of any article … relating to

[2] [1980] 2 All ER 401.

the offence". The respondent contends that, in accordance with section 2(1) of the Act, an offence under section 7(3) of the Act is a drug trafficking offence; possession of cannabis with intent to supply it to another is an offence under section 7(3); and that the vehicle and the money related to the offence because the money represented the working capital and the vehicle was used for transporting the drugs.

[20] In their oral submissions before this Court, counsel for both sides addressed the issue of forfeiture, but the appellant's counsel focused only on the forfeiture of the vehicle.

[21] On the issue of the forfeiture of the vehicle, counsel for the appellant repeated the submission made in his skeleton arguments that it was wrong in law to have forfeited the vehicle because there was no evidence that it was used to transport drugs or that it was related to the offence for which the appellant was charged.

[22] In response, the learned Director of Public Prosecutions, Mr. Oris Sullivan, who appeared for the respondent in the Court of Appeal, submitted, correctly I think, that "the issue before the court is really one of forfeiture and whether or not the court was authorized, having considered the evidence, to forfeit the bus and the monies from the appellant". The learned DPP went on to submit, correctly again, that "there are principally two issues that the court must consider; one is whether or not the appellant has been convicted of a drug trafficking offence and, secondly, the items forfeited must have been related to the offence".

[23] The DPP proceeded to argue that, in accordance with section 2 of the Act, when the appellant was convicted of an offence under section 7(3) of the Act for possession of cannabis with intent to supply to another, he was convicted for a drug trafficking offence. He submitted further that under section 28(2) of the Act the trial judge has the power to forfeit once there is a conviction. He said that it is the Crown's submission to the Court that the money represents "the working

capital of a man engaged in drug trafficking". He asked the Court to "look at how the money is made up, look at the amount and look at what the appellant had in his possession – a quantity of drugs ready for distribution". He submitted that, looking at the facts of the case, the court below "could have drawn an irresistible inference that this must have been working capital". The DPP then throws in the appellant's bus when he concludes that – "we say under those circumstances the court was right in forfeiting the taxi and in forfeiting especially the money which, from the evidence, there was this inference that ought to have been drawn or could have been drawn".

[24] On the question of whether the appellant's motor omnibus and the money found on him and in his dwelling house were properly forfeited by the trial court, I think it is necessary to set out the material parts of the Act under which the appellant was charged and convicted.

[25] Section 7(3) of the Act provides that:

> "… it is an offence for a person to have a controlled drug in his possession … with intent to supply it to another …"

Section 7(4) provides that:

> "… a person found in possession of a controlled drug in quantities that may be specified by regulation … shall be deemed to be in possession of such controlled drug for the purpose of supplying it to another … unless the contrary is proved the burden of proof being on the accused".

Regulation 23 of the Drugs (Prevention of Misuse) Regulations provides that:

> "The quantities of drugs specified for the purpose of section 7(4) of the Drugs (Prevention of Misuse) Act are –

…
(*e*) cannabis – fifteen grammes and above
… ".

[26] The conjoint effect of these statutory provisions is that the conviction of the appellant for the offence of possession of cannabis with intent to supply it to another means that the jury was satisfied beyond reasonable doubt that on 19th January 2013 the appellant was in possession of at least 15 grams of cannabis.

The fact of such possession being sufficiently proved was evidenced by the jury's satisfaction that the appellant was in possession of the cannabis which he had in his hand at the time that he was apprehended by the police near his bus, the evidence of which was never seriously disputed. There is no way of knowing from the conduct of the trial whether the jury was also satisfied that the appellant was in possession of the two quantities of cannabis found at his home, the evidence of which was strenuously disputed by the appellant. As it stands though, it makes no difference to the determination of the forfeiture issue whether he was convicted in respect of both sets of drugs or only the portion found on his person.

[27] This then takes us to section 28(2) of the Act, under which the vehicle and the money were forfeited. The subsection provides that:

> "… where a person is convicted of a drug trafficking offence the court shall in passing sentence order forfeiture to the Government of Montserrat of –
> (a) any article;
> (b) any money; or
> (c) any valuable consideration, relating to the offence."

Section 2(1) of the Act defines "drug trafficking offence" as including an offence under section 7(3) of the Act.

[28] This means that the appellant having been convicted of possession of a controlled drug with intent to supply to another under section 7(3), which is a drug trafficking offence by virtue of section 2(1), the court in sentencing him had to order forfeiture of any article or any money relating to the offence. If therefore the appellant's vehicle and the sums of money found on his person and in his dwelling house were "relating to the offence" for which he was convicted, then the court was not just entitled but required to forfeit them to the Government. If however neither the vehicle nor the money were so related, then their forfeiture was unlawful and ought to be set aside.

[29] The issue which this Court must determine, therefore, is whether the money found on the defendant's person at the time of his arrest, the money found at his home when it was searched by the police, and the motor omnibus in which he was seated at the time that he was confronted by the police were related to the offence of possession of cannabis with intent to supply to another, for which the appellant was convicted.

[30] It should be noted from the outset that the trial judge did not conduct any forfeiture hearing to determine whether the vehicle or the money 'related to the offence' so as to determine whether they ought to have been forfeited. It should be noted too that although the trial judge had some exchanges with defence counsel as to whether the quantities of money found on the appellant's person or at his residence were likely to have been derived from the operation of a taxi, he took no evidence on the issue; he also gave no indication of having taken judicial notice of anything, as the learned DPP suggested that he might have. Moreover, the trial judge said nothing whatsoever about the vehicle to indicate whether he determined that it was related to the offence for which the appellant was convicted.

[31] I was not able to find any cases from our own Court which addressed the issue of what makes an item (whether an article or money) be 'related to' a drug trafficking offence. Although the legislation providing for the forfeiture of items related to drug offences has been in force in the territories served by our court for upwards of 20 years, the issue appears never to have made its way to a written judgment delivered by the superior courts of the Eastern Caribbean. There was an oral judgment of the Court of Appeal, delivered by Robatham, CJ in the Saint Lucian case of **Richardson and another v The Queen**,[3] in which it was held that a quantity of money found in the dwelling house of the appellants, along with a quantity of cocaine which they were convicted of being in possession of, was properly forfeited by the court. The forfeiture order was made by virtue of section

[3] ECSC Crim. App. No. 15 of 1989.

26(1) of the **Dangerous Drugs Ordinance**[4] as amended by the **Dangerous Drugs (Amendment) Act 1975**,[5] which reads:

> "When any person has been convicted of an offence under this Ordinance, every article by means or in respect of which the offence was committed and monies which was found on any premises, vehicle, ship, boat, aeroplane or other conveyance of any description, seized and found to have been used in any manner in connection with the offence for which that person was convicted shall be forfeited …."[6]

The operative words here are – "monies which was found on any premises … and found to have been used in any manner in connection with the offence for which that person was convicted". The wording of this section is materially different from the wording of section 28 of the **Drugs (Prevention of Misuse) Act** of Montserrat and so the case does not offer much assistance in the construction and application of the relevant statutory provisions in and to the case at bar.

[32] Out of the West Indian Reports I found the case of **Constantine and Williams v The State**,[7] where the Court of Appeal of Trinidad and Tobago upheld the forfeiture by a trial judge of a quantity of money found by the court to have been paid by the two appellants to a third party to murder an identified fourth person. The appellants had been found guilty under the **Offences Against the Person Act of Trinidad and Tobago**[8] of conspiracy to murder the fourth person. The Court of Appeal based its decision on its finding that the money had been an integral part of the machinery to effect the agreed purpose of the conspirators and had been shown to relate to the conspiracy and so the order for the forfeiture of the money was justified.

[33] This decision is of doubtful validity though, because there is no indication of the source of the authority of the court to make the forfeiture order. The Court of

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[4] Cap. 55, Revised Laws of Saint Lucia 1957.
[5] No. 20 of 1975, Laws of Saint Lucia.
[6] This provision is erroneously referred to in the written copy of the oral judgment as being contained in section 10(5) of the Dangerous Drugs (Amendment) Act).
[7] (1999) 57 WIR 361.
[8] Chap. 11.08, Laws of Trinidad and Tobago.

Appeal purported to apply the English case of **R v Cuthbertson** in making the forfeiture order, but **R v Cuthbertson** was decided on the basis of section 27 of the **Misuse of Drugs Act 1971** of England which authorised the forfeiture of money related to the drug offence for which the person involved was convicted. There is no provision, however, in the **Offences Against the Person Act** of Trinidad and Tobago (or elsewhere) authorising the forfeiture of money or any other item relating to an offence committed under that Act.

[34] Unlike the Commonwealth Caribbean, in England there are several cases decided by the Court of Appeal which address the issue of forfeiture of money and other items of persons convicted of drug offences, based on legislation materially identical to the applicable legislation in Montserrat.

[35] In the case of **R v Morgan**,[9] the English Court of Appeal quashed a forfeiture order made in respect of a sum of £393 found on the appellant, together with a quantity of cocaine and cannabis and items associated with the sale of the illicit drugs. Lawton LJ, in giving the judgment of the Court of Appeal in that case, said:

> "The decision of the learned judge with regard to the forfeiture of the £393 (which was found in the appellant's possession at the time of the arrest) was unjustified. We have no doubt that it was part of his working capital for the purpose of his trade in drugs, but that does not justify an order under section 27 of the Misuse of Drugs Act 1971."

The court held that the money had to be related to the specific offence of which the appellant was convicted, not to possession of drugs from the sale of which he derived the money or to possession of drugs which he would use the money to buy.

[36] In the case of **R v Ribeyre**,[10] the English Court of Appeal quashed an order for the forfeiture of money found in the possession of a person convicted of possessing drugs with intent to supply and admitted by him to be the proceeds of drug dealing.

[9] [1977] Crim LR 488.
[10] (1982) 4 Cr App Rep (S) 165.

The court held that there was no power to order the forfeiture of the money under section 27 of the **Misuse of Drugs Act 1971**[11] because the money had not been shown to be related to the offences of which the appellant was convicted.

[37] In the case of **R v Llewellyn**,[12] the English Court of Appeal allowed an appeal against an order of forfeiture of money found by the police together with a quantity of cannabis with respect to which the appellant pleaded guilty to possession of with intent to supply. The trial judge, after hearing evidence from the appellant that the money was not related to the offences on which he had pleaded guilty, found as a fact that the money was the proceeds of sale of part of a consignment of cannabis which the appellant had in his possession for 2 weeks before the specific offence to which he pleaded guilty and that the cannabis which he pleaded guilty to possession of was part of that same consignment. Mr. Justice Stuart-Smith, who delivered the judgment of the appeal court, said that it was impossible to see how the money found by the police related to the cannabis which the appellant had in his possession at the material time. He stated further that it may well be that the money related to cannabis which the appellant had previously had in his possession and that the trial judge's finding on this issue was fully justified. He however stated that this did not mean that the court was able to make the forfeiture order that it did, because there was no evidence to show that the money related to the specific offence of possession of the cannabis which the appellant had in his possession at the time of his arrest. Justice Stuart-Smith concluded that "[t]he words of the statute are clear and must be strictly interpreted".

[38] In the case of **R v Cox**,[13] the English Court of Appeal quashed an order made by a trial judge for forfeiture of money found by the police at the home of the appellant together with a quantity of cannabis. The appellant had pleaded guilty to possession of the cannabis with intent to supply and, although the money was

[11] 1971 c 38.
[12] (1985) 7 Cr App Rep (S) 225.
[13] (1986) 8 Cr App Rep (S) 384.

found together with the cannabis, the Court of Appeal held that there was no evidence to show that the money forfeited related to the offence.

[39] In the case of **R v Simms**,[14] the English Court of Appeal quashed an order made by a trial judge for forfeiture of money found by the police at the appellant's home, together with a quantity of cannabis. The appellant pleaded guilty to possession of cannabis with intent to supply, along with other kindred offences. The appellant admitted that a portion of the money found by the police was related to the offence, but that another portion was not. The trial judge, after hearing evidence of the appellant and a witness called by him, determined that he did not believe the appellant and he made a forfeiture order in respect of all of the money. The Court of Appeal however held that, although the money was found together with the cannabis which the defendant pleaded guilty to possession of, and although the trial judge disbelieved the appellant's denial of a connection between the drugs and the money, the forfeiture order had to be quashed in respect of the money that the appellant denied was related to the offence, because there was no evidence that the money was related to the offence.

[40] The case of **R v Askew**,[15] also decided by the English Court of Appeal in 1987, was to like effect.

[41] These and other English cases which have addressed the forfeiture issue in drug cases, in particular, in cases of possession of cannabis with intent to supply, make it abundantly clear that for an item to be forfeited by virtue of section 27 of the **Misuse of Drugs Act 1971** of the UK (which is materially identical to section 28 of the **Drugs (Prevention of Misuse) Act** of Montserrat), the court has to be satisfied that the item to be forfeited relates to the particular offence of which the offender has been convicted.

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[14] (1987) 9 Cr App R (S) 417.
[15] [1987] Crim LR 584.

[42] In the present case, there is no evidence whatsoever which relates the money and vehicle forfeited to the offence of possession of either the 142 grams of cannabis which the appellant had in his possession when he was arrested or the 1.84 kilograms found at his residence. The course of speculation which the learned DPP invited the Court to take with him to see that the vehicle was being used to transport the cannabis is one that we cannot embark upon. The only evidence linking the vehicle to the offence which the appellant was convicted of (i.e. possession of cannabis with intent to supply) is the evidence that he was seated in the parked vehicle when he was approached by the police and that he appeared to take the cannabis from the vehicle when he was exiting it. This certainly would not relate the vehicle to the offence in accordance with the learning from the cases cited above. As I previously indicated, before or at the time of making the forfeiture order, the trial judge said nothing to suggest that he even averted his mind to whether the vehicle was "relating to the offence", which is a precondition under section 28(2) to the making of a forfeiture order.

[43] In terms of the money, the learned DPP defended the trial judge's forfeiture of the money found on the appellant on the basis that the money "represents the working capital of a man engaged in drug trafficking". He further submitted that "the court could have drawn an irresistible inference that this must have been working capital and we contend that it was working capital".

[44] This very issue has been addressed in previous cases, including in the case of **R v Morgan** discussed earlier. In that case, Lawton LJ, in giving the judgment of the court, said:

> "We have no doubt that [the money] was part of his working capital for the purpose of his trade in drugs, but this does not justify an order under section 27 of the Misuse of Drugs Act 1971."[16]

The Court of Appeal went on to hold that the money had to be related to the specific offence which the appellant was convicted of, not to possession of drugs

from the sale of which he derived the money, or to possession of drugs which he would use the money to pay for.

[45] The English Court of Appeal went even further in **R v Llewellyn**. In that case, the trial judge found as a fact that the money forfeited was the proceeds of sale of part of a consignment of cannabis which the appellant had in his possession before the specific offence to which he pleaded guilty, and that the cannabis which he pleaded guilty to possession of was part of that same consignment. The appeal court, in quashing the forfeiture order, held that it may well be that the money related to cannabis which the appellant had previously had in his possession, but this did not mean that the court was able to make the forfeiture order that it did, because there was no evidence to show that the money related to the specific offence of possession of the cannabis which was found at the appellant's home at the time of his arrest.

[46] In the present case, it may well be that the money which the appellant had with him at the time of his arrest and the money found at his residence in the course of the search were monies derived from previous sales of cannabis by him (even out of the same consignment); and it may well be that his vehicle had at some time been used to transport cannabis; but, in the absence of any evidence relating the money found on the appellant and at his residence, and the vehicle in which he was sitting prior to his arrest, to the specific offence for which he was found guilty, that is, possession of the 142 grams of cannabis found on his person at the time of his arrest and/or possession of the 1.84 kilograms found at his dwelling house at the time of the search, it would not have been established that the money or the vehicle was relating to the offence.

[47] The forfeiture provisions in the Drugs Acts can be very draconian in their effect, but the more draconian a statutory provision is, the more strictly it will be interpreted, and the forfeiture provisions in the Drugs Acts have been strictly interpreted by the courts.

[48] In this case, there was no evidence before the court below which related (in the way in which this term is construed in the cases) the money or the vehicle to the specific offence for which the appellant was convicted. The forfeiture order made by the trial judge with respect to the appellant's vehicle and the money found on his person and at his residence on the day of his arrest in January 2013 must therefore be quashed and the money and the vehicle returned to the appellant.

[49] In the result, the appeal is allowed in part and I make the following orders:

(1) The appeal against conviction is dismissed and the conviction of the appellant for the offence of possession of cannabis with intent to supply to another is affirmed.

(2) The appeal against sentence is allowed to the extent that (a) the sentence of one year imprisonment imposed in default of payment of a fine of $15,000.00 shall run concurrently with the three-year prison term also imposed and (b) the forfeiture order is quashed.

I concur.
Gertel Thom
Justice of Appeal

I concur.
John Carrington, QC
Justice of Appeal [Ag]

By the Court

Chief Registrar