

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VERSUS

FRANCIS BARREAU

Criminal Side No 81 of 2007

Mr. J. Camille for the Republic
Mr. A. Juliette for the Accused

JUDGMENT

B. Renaud J

The Accused, Francis Barreau, stands charged with the offence of trafficking in a controlled drug contrary to Section 5 of the Misuse of Drugs Act read with Section 26(1)(a) of the same and punishable under Section 29(1) of the said Misuse of Drugs Act read with the second Schedule of the same.

The particulars of the offence is that the Accused of Cote D'Or, Praslin on the 11th December, 2007 at Victoria, Mahe, was trafficking in a controlled drug by virtue of having found in possession of 3.9 grams of heroin which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

The Prosecution led the evidence of 4 witnesses.

PW1 Dr. A. K. Jackaria, the Forensic Analyst produced a certificate dated 12th December, 2007 confirming that he analyzed certain substance brought to him by PC. Robert Dufresne 11th December, 2007 at 09.10 hours. A Request Form signed by SP Philip Cecile dated 11th December, 2007 accompanied the substance that was brought for analysis. The Request Form was admitted and marked as Exhibit P1 and the Certificate of the Analyst as Exhibit P2.

The result of the examination of the Analyst is as follows – **“This whitish substance is ILLICIT HEROIN with a purity of 62.5%”**. The description of the substance analysed as set out in the Analyst’s Certificate is – **“One piece of red plastic wrapping one solid mass of a whitish substance. Net weigh: 3.9 grams”**.

The Request Form dated 11th December, 2007 was signed by SP.P. Cecile and sets out the substance to be analysed as follows- **“Some light white powder wrapped in a piece of red plastic bag, suspected to be controlled drugs namely heroin” – brought to you by PC. No. 216 Robert Dufresne”**.

PW2, PC Dufresne testified on the 11th December, 2007 at about 06.30 a.m. he was patrolling the Fishing Port in the company of Sgt. Veevers Rose and PC Allain Lucas. On the jetty, at a distance of about 20 meters ahead of him he saw the Accused in a silver coloured car moving very slowly in the direction of the town. The Accused was driving parallel to se at about 5 meters. He noticed the Accused doing some kind of movement

with his left hand as if throwing something in the sea through the left window of his car. P.C. Lucas drove his vehicle in front of that of the Accused and blocked his way. The witness came out of the vehicle and went in the direction of the sea where he had allegedly seen the Accused throwing something. There he saw what looked like a piece of red plastic floating. With the assistance of Sgt. Rose and PC Lucas they later retrieved a small package in the form which he presumed to be illegal drug. The content of that package was also seen by PC Lucas and Sgt. Veevers Rose. PC Dufresne kept that package in his possession. He then took the package to his Station and later that same day took it to SP Cecile where he obtained a Request Form (Exhibit P1) for the contents of that package to be analysed by the Forensic Analyst. PC Dufresne collected the certificate of the Analyst (Exhibit P2) at 14. 30 hours that same day.

PW3, PC Allain Lucas testified that he was the driver of the vehicle that was patrolling the Fishing Port about 6 a.m. in the morning of 11th December, 2007 in the company of PC. Dufresne, PC Leon and Sgt. Rose. Upon reaching the Fisherman Bar he saw a parked car that was about to take off. He overtook that car and stopped straight in front of it. After having stopped his car he saw the Accused, with his left hand threw something red through the left side window in the sea. The vehicle of the Accused was parked about 2 meters from the sea. He later found a red piece of plastic floating in the sea in the direction that the Accused seemed to have thrown something. PC Dufresne retrieved that little red package and upon opening it in the presence of the Accused, Sgt Rose and himself he found that in the plastic there was white substance like dry powder. The content in the plastic was not wet. The package was kept by PC Dufresne who later had the contents of that package analysed.

PW4, Sgt. Veevers Rose testified that on 11th December 2007 he was doing his usual patrol. His vehicle was being driven by PC. A. Lucas. When they reached the Pier he saw a small car with the Accused person in it. That car had stopped but they suddenly stopped in front of it. At that time he saw the Accused throwing a red thing in the sea. Immediately PC Lucas jumped on a boat, took a wooden pole and pushed that red thing close to the Pier so that PC Dufresne could pick it up. He asked the Accused to come out of the car. PC Dufresne had picked up the plastic which was tied up and inside that plastic he saw some powder. He later added that it was a bit like a paste. He arrested the Accused as he suspected that it was drug. Under cross-examination the following transpired:

Q. Look at the exhibit. Does it look like powder, paste or something else?

A. I do not know.

Q. Is it the first time you see this?

A. It is possible I saw it but I did not touch it.

Q. What did you see on the scene, is this powder?

A. It was not like that.

Q. Was it powder that you saw?

A. It was powder.

Under re-examination the witness answered as follows:

Q. *You have stated that when you, yourself first saw the substance in the plastic bag you could not identify it whether it was powder, dry, wet or pasty. What form was it?*

A. *It was bits and pieces like something that you have tied up and then broken.*

The 3 Police Officers testified that on that morning they retrieved the small plastic package. PC Dufresne testified that when that package was opened he saw some powder. PC Allain Lucas testified that when the plastic was opened inside it he saw some white substance like powder. Sgt. Veevers Rose testified that when the plastic was opened he saw inside it some powder or some bits and pieces.

Exhibit P1 is a letter of request drawn up and signed by SP. P. Cecile and what was supposed to be taken for analysis was – “**Some light white powder wrapped in a piece of red plastic bag, suspected to be controlled drugs namely heroin**”

Dr. Jackaria testified that what was brought to him on the 11th December, 2007 by PC Dufresne was “**One piece of red plastic wrapping one solid mass of a whitish substance. Net weight: 3.9 grams.**”

This is a very serious case before the Court. If the Accused is found guilty he faces a 10 year mandatory minimum sentence. The Accused had been remanded at the Montagne Posee Prison since 13th December, 2007 on the basis of Affidavit deponed by the Police.

In any case before the Court I have to bear in mind that witnesses may genuinely make mistakes and what is observed by one witness may not be perceived the same way by other witnesses even they were all present on the same scene and at the same time. Such inconsistencies are understandable. But when it comes to the material and substantial evidence which forms the basis of the offence then the Court has to take a different view. There must be consistency and cogency otherwise any material inconsistency could be fatal to the case. In this particular case I am most concerned with the inconsistent evidence with regard as to what the 3 Police Officers allegedly found that morning and what was analysed by the Forensic Analyst. To me they are two different sets of substances altogether. In fact what was before the Court as Exhibit P5 were solid pieces of whitish substance, somewhat like pieces of chalk.

On the basis of the evidence led by the Prosecution I find that what was

found on that morning was some whitish powder in a piece of red plastic wrapping and what was analysed by the Forensic Analyst as per Exhibit P2 and P5 was one solid mass of a whitish substance. There is no rationale explanation for such inconsistency and this Court is now unable to resolve this material issue without certain element of doubt as to what was really found that morning by the 3 Police Officers.

How can some powdery substance turned into a solid block an hour later? Where, when and how that transformation took place? There is no evidence which could enable this Court to resolve this serious inconsistency. This is a very serious lacuna in the evidence of the Prosecution which materially discredit the nexus which now leaves me with a serious doubt as to what was indeed found and if what was found was indeed what was analysed. I am left with a very serious doubt, and as required by law, I have to resolve this doubt in favour of the Accused.

For the reasons stated above, it is my considered judgment that the Prosecution has not proven its case beyond reasonable doubt as by law required. In the circumstances I have no alternative but to acquit the Accused of the charge against him.

The charged against the Accused is accordingly dismissed and the Accused acquitted and discharged.

B. RENAUD

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JUDGE

Dated this 6th day of August 2009