

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 53/2010

[2014] SCSC

THE REPUBLIC

versus

OLIVER HOAREAU

Accused

Heard: 28, 29 May 2012, 21 September 2012, 19 August 2013
Counsel: Mr. David Esparon, Principal State Counsel for the Republic
Mrs. Alexia Amesbury Attorney at Law for the accused
Delivered: 20 January 2014

JUDGMENT

Burhan J

[1] The accused in this case Oliver Hoareau has been charged as follows;

Count 1

The statement of offence is Possession of a Controlled Drug contrary to Section 6 (a) of the Misuse of Drugs Act read with Section 26 1 (a) of the same Act and punishable under 29 (1) of the said Misuse of Drugs Act read with the Second Schedule of the same Act.

The particulars of the offence are that Oliver Hoareau on the 3rd August 2010 at Grand Anse Praslin had in his possession a controlled drug being a preparation weighing 4.05 grams containing 0.1215 grams of Heroin (Diamorphine).

- [2] The accused denied the charge and the prosecution called its main witness agent Pierra Servina of the NDEA (National Drug Enforcement Agency) who stated in his evidence under oath that on the 3rd of August 2010 he was posted to Praslin and was on foot patrol at the Tamatave Estate at Grand Anse with agent Soubana, agent Barbier and agent Malbrooke when he had seen a man subsequently identified as the accused coming in their direction and on seeing them the accused had changed course and gone into the marsh and had thrown a piece of white plastic near a coconut tree. Witness had been about 4 metres away and was able to catch him. Agent Soubana had held the accused while witness Servina had gone to collect the white plastic thrown.
- [3] On opening the plastic he noted that there was some white powder inside which he suspected to be a controlled drug. He had taken possession of the bag and placed the accused under arrest. He had taken the accused and the exhibits to the Grande Anse police station and placed the exhibit in a khaki envelope sealed it, done the usual procedures and given a CB number 82/2010 to the exhibit. He had kept the suspected drug in his possession and subsequently put the drug in a small safe at the safe house of the NDEA on Praslin. He further stated there were no other exhibits taken into custody that day. They had thereafter taken the accused and the exhibit to Mahe to the NDEA station and he had subsequently taken the exhibit for analysis to the Government Analyst Mr. Bouzin. On the 9th of August 2010 he had gone back and collected the exhibits from Mr. Bouzin together with the report from the Government Analyst. The exhibits had been placed in an evidence bag by the Government Analyst and sealed. Witness identified the exhibits taken into custody by him in open court.
- [4] Under cross examination he denied there was any list containing names with him. He stated he did not know who had arrested Zabel. While travelling from Tamatave to Grand Anse he had placed the exhibit in the glove compartment of the car in which he was travelling with the other agents and the accused. He stated he had sat in the front seat to secure the exhibit when he kept it in the glove compartment which was empty prior to

him placing it. It is apparent that thereafter the accused and exhibits were taken to Grande Anse police station, the procedures done and the exhibit and accused were taken to the safe house and then Mahe. He stated that the drugs were shown to the accused after detection. He further stated the keys of the safe were with him and that the entries in the envelope were entered by agent Malbrooke.

[5] Witness Gary Soubana stated on the 3rd of August 2010 he was working for the NDEA. He affirmed the fact he was one of the members of the foot patrol that arrested the accused attempting to throw away the controlled drug. He too identified the exhibits taken into custody that day. He too stated the keys to the safe house were with agent Servina. According to his recollection agent Servina had sat at the back of the vehicle. It is clear from his evidence this was prior to going on the foot patrol and detection (vide proceedings of 29th May 2012 pg 37). He further stated that after the detection agent Servina had placed the exhibit in an envelope which was in his possession until they reached the safe house. They had proceeded to the police station by car and witness had not disembarked with agent Servina and the accused. He stated all he knew was that the controlled drug taken into custody was kept by agent Servina in his possession but he did not know exactly whether it was in his hand or pocket.

[6] M. Jimmy Bouzin the Government Analyst confirmed the fact that he received the exhibits from agent Servina for analysis. He stated he received a brown envelope containing one piece of transparent plastic wrapping some white powder with specs of white substance. He explained the procedures adopted by him in detail and the analysis conducted by him and stated he identified the substance to be heroin. He stated the total net weight was 4.05 grams but the purity level was 3 % and therefore the heroin content was 0.12 grams. After analysis he had placed the exhibit in an evidence bag and sealed it and thereafter agent Servina had collected the exhibit and the report on the 9th of August 2010. When the exhibits were handed over to him in open court, he affirmed the fact that the seals placed by him were intact and identified the exhibit as P5 and P6 and stated P6 was the powder he had analysed and identified his report as P2. This was the evidence of the prosecution.

- [7] The accused in defence gave evidence under oath. He denied the charge against him and stated that he was a farmer and did masonry work as well. He stated on the 3rd of August 2010 he was going from his garden to his flat where he was staying around 4.30 and 5.00 when four persons including a lady came along and identified themselves as NDEA agents and told they were going to search him. Mr. Servina had asked his name and he had told his name and the lady had looked at a book and he states “I think she saw my name” and he was taken to the police station in a vehicle. They had placed him in a cell and the next day brought him to Mahe. He had seen the drugs only in court. Under cross examination he stated the three men were Pierre Servina, Garry Soubana and Micky from the NDEA and admitted he was on a concrete road which was next to the marsh area at the time he met the officers of the NDEA. He denied he had thrown anything into the marsh. He stated he saw the officers coming about 50 metres away and when they told him to stop he had stopped. He stated he had not reported the fact he was arrested without any drugs been found to anyone. Thereafter the defence closed its case. The prosecution made submissions while the defence relied on the submissions made on no case to answer and the evidence of the accused.
- [8] When one considers the evidence of the prosecution in this case it is apparent that the accused was seen throwing the controlled drug by agent Servina and Soubana in the direction of the marsh. They had managed to retrieve the exhibit and found it was a white powder wrapped in a plastic. They had suspected it to be controlled drug and arrested the accused and taken him to the Grand Anse police station where the formalities were done and a case registered. The evidence of agent Servina is corroborated on these issues by the evidence of agent Soubana.
- [9] When one considers the chain of evidence in respect of the custody of the exhibit which has not been seriously challenged by the defence, it is apparent that the controlled drug taken into custody by agent Servina at the time of detection had been kept in his custody and handed over to the analyst. The analyst in open court identified the white powder which was handed over to him by agent Servina wrapped in a plastic in a sealed envelope as that analysed by him. He further stated the seals placed by him on the evidence bag after analysis were intact showing that no tampering had been done with the exhibit. Agent Servina identified the exhibit in open court as that taken into custody by him when

the accused had thrown it into the marsh. This court is satisfied therefore beyond reasonable doubt that the chain of evidence in respect of the detection, taking into custody, analysis and production in court of the exhibit has been established by the prosecution.

[10] The exhibit taken into custody by agent Servina has been identified as heroin by the analyst in his evidence and in his report. The quantity of pure heroin has been identified to be 3 % of 4.05 grams or 0.12 grams as set out in the charge.

[11] When one considers the defence the accused denied the fact that any drug was found on him or that he had thrown any drug into the marsh but was arrested on a prepared list and brought to court. However even though he was released on bail he had not sought to complain formally against the officers to any higher authority in respect of the false arrest. Further learned counsel for the accused referred to the contradictory nature of the evidence of the prosecution witnesses in the case. It appears that agent Servina was somewhat confused as to when he had placed the exhibit in the gloved compartment of the car but be that as it may it appears the exhibit was always in his possession and even when he placed it in the gloved compartment, he states the compartment was empty and he sat in front with it.

[12] Although agent Soubana states that Servina sat in the back of the vehicle he refers to the time prior to the detection when they were proceeding to Tamatave estate the place where the detection was made. In fact agent Soubana evidence is that the exhibits were through out in the possession of agent Servina. Even though there exists minor discrepancies they are not material contradictions that make one disbelieve the evidence of the witnesses.

[13] For the aforementioned reasons I will proceed to accept the evidence of the prosecution and reject the evidence of the defence. On consideration of the corroborated evidence of the prosecution, I am satisfied that the prosecution has proved beyond reasonable doubt that the accused was in physical possession of the controlled drug prior to throwing it into the marsh.

[14] The concept of possession connotes two elements, the element of custody or mere possession and the element of knowledge as held in the case of *DPP v Brooks (1974)*

A.C. 862. With regard to the element of knowledge the accused had on seeing the agents approaching thrown away the controlled drug namely Heroin. This clearly establishes the fact that the accused had knowledge of the fact he was in possession of a controlled drug.

[15] For the aforementioned reasons this court is satisfied that the prosecution has proved all the necessary elements of the charge against the accused beyond reasonable doubt and finds the accused guilty as charged and proceeds to convict him of same.

Signed, dated and delivered at Ile du Port on 20 January 2014

M Burhan
Judge of the Supreme Court