

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 29/2012

[2014] SCSC

THE REPUBLIC

versus

MARCUS MERITON

Accused

Heard: 16/01/13, 23/01/13, 24/01/13, 21/03/13, 13/05/13, 17/10/13
Counsel: Mr. Kumar, Assistant Principal State Counsel for the Republic
Mr. Juliette Attorney at Law for the accused
Delivered: 23 January 2014

JUDGMENT

Burhan J

[1] *Count 1*

Statement of Offence

Trafficking in a controlled drug, contrary to Section 4 read with 14(c) and Section 26(1) (a) of the Misuse of Drugs Act CAP133 as amended by Act 14 of 1994 and punishable under Section 29(1) and the Second Schedule referred thereto in the said Act.

The particulars of the offence are that, Marcus Meriton of Basin Bleu, La Louise Mahe, on 18th April 2012 at Basin Blue, La Louise, Mahe was found in possession of controlled drug having net weight of 29.0 grams of total substance containing 10.1 grams of Heroin (Diacetylmorphine) which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

- [2] The accused denied the charge and the prosecution called the Government Analyst Mr. Jimmy Bouzin whose evidence was not challenged by cross examination. Prosecution witness Nicole Justin Course stated he was working as an agent in the NDEA (National Drug Enforcement Agency) for a period of one and a half years and on the 18th of April 2012, he was patrolling the La Misere area with other agents, when he received information from their team leader Siguy Marie that a drug transaction was going on at the ex tracking station road. They had proceeded to the said area. He stated agent Florentine, agent Joseph and agent Moses and agent Siguy Marie were the other officers with him.
- [3] When they arrived around 20. 30 hrs they had seen a vehicle S3060 parked on the road side. They had parked their vehicle behind it and all had disembarked and agent Siguy Marie had gone towards the driver's side while agent Kenneth Joseph proceeded towards the passenger side of the vehicle. Agent Joseph had introduced himself as an NDEA agent to the passenger who they later knew as Alex Joseph while agent Siguy Marie had done the same to the driver who was Marcus Meriton the accused in this case.
- [4] The accused had suddenly started the vehicle and reversed onto their vehicle but the agents were able to pull Alex Joseph out of the vehicle and handcuff him and also handcuff the driver the accused Marcus Meriton as well. They had moved the vehicle as Siguy Marie had got stuck between them. Witness identified the accused in open court. A search was done on the accused and his vehicle but nothing incriminating was found. A small digital scale was found in the glove compartment of the car and foil paper which witness had kept in his possession after showing it to the other agents. He produced them as exhibits in open court.
- [5] Witness further stated that when they were trying to handcuff the accused he had thrown something. However even though a search was conducted with sniffer dogs nothing was

found. Thereafter the other agents had proceeded to the house of the accused to conduct a search. Witness had proceeded to the base while agent Siguy Marie, Joseph and Moses had proceeded to the residence of the accused in his vehicle with the accused. He denied that there was another Kia vehicle parked with the vehicle of the accused when they arrived on the scene. He stated what they recovered from the glove compartment of the car were drug utensils and that a search of the accused revealed nothing incriminating.

[6] Agent Siguy Marie gave evidence corroborating the evidence of agent Course in respect of the incident where the accused attempted to reverse his vehicle and had thrown something into the bush. He too stated although the surrounding area was thoroughly searched using sniffer dogs nothing was found. He affirmed the fact they had taken a digital scale and foil into custody from the car of the accused.

[7] Agent Siguy Marie further testified to the fact that thereafter on arriving at the residence of the accused at La Loius Lamisere it was about 10.35 p.m. He had gone in as the front door was open and he had seen a lady and he had introduced himself as an NDEA agent. The lady had informed them her name was Jeanne D'arc Meriton. He had asked where the room of the accused was and she had pointed to the bedroom of the accused. He informed her he was going to search the room and that Marcus was with them.

[8] They had taken Marcus to the room and on being questioned he had stated there were no illegal things inside and Marcus had opened the door with the key. Agents Joseph, Zrein and he had begun to search the room and he had opened a wardrobe and started to search inside when he had noticed a yellow plastic bag. He had taken it and opened it and asked the accused what was inside. The accused had sat on the bed and told him it was drugs and asked that he be given a chance. He opened the yellow plastic and found 3 pieces of cling film inside wrapping a brown substance. There were 4 pieces of yellow plastic which were sealed and on opening them noted a brown substance inside. There was another white and black plastic which contained a paste like substance which he suspected too was a controlled drug heroin. He had cautioned the accused and read him his constitutional rights and arrested him. Agent Siguy Marie had kept the suspected drugs in his possession while agent Joseph had kept the money he had found in the room in his possession. The accused and exhibits had been taken to the NDEA office and a

case registered and all procedures done and the accused was taken to the Beau vallon police station and detained.

- [9] The next day Agent Siguy Marie had taken the exhibits to be analysed and handed them over to analyst Mr. Jimmy Bouzin. He had handed over the exhibits which were sealed in an envelope and after verifying its contents Mr. Bouzin had accepted the exhibits for analysis. He had gone the next day and collected the exhibits which were in a sealed evidence bag and the analyst report. He identified the report P2. He identified the yellow plastic he had taken into custody and the 3 pieces of cling film wrapping a brown substance P6 A1 A2 and A3 and the 4 pieces of yellow plastic each wrapping a brown substance P7 B1 B2 B3 B4 and the black and white piece of plastic containing a brown paste substance P8 in open court as the exhibits he found in the yellow plastic bag he recovered from Marcus Meriton's wardrobe in his room.
- [10] Under cross examination he stated at the time they searched the accused nothing illegal was found on him and whatever was found that was not illegal was put back into his pockets. He further stated that the accused was handcuffed with his hands at the back but thereafter his hands were put in front and the handcuffs placed. The accused had taken the room key from his front pocket with his hands handcuffed and opened the door of his room.
- [11] The evidence of agent Siguy Marie in respect of the detection of the controlled drug in the wardrobe of the accused stands fully corroborated by the evidence of Agent Kenneth Joseph. He too stated that the accused attempted to reverse and escape when they first saw him and thereafter had thrown something which they could not find. He too stated the accused was searched and nothing illegal was found on him and whatever else was found was put back in the pocket of the accused. He corroborated the evidence leading to the search of the room and the finding of the controlled drug in the wardrobe of the room of the accused. He also produced in court the money recovered by him from the wardrobe and the wallet found in the room of the accused. He demonstrated to court how the accused had taken the key from his front pocket with his hands handcuffed in front of him.

- [12] Agent Florentine too gave evidence on similar lines in regard to the incident near the ex tracking station and it is apparent from his evidence that the other person taken into custody from the vehicle of the accused was subsequently released. Agent Florentine had not gone to the house of the accused. The prosecution thereafter closed its case.
- [13] The accused in defence elected his right to remain silent and in terms of article 19 (2) (h) no adverse inference should be drawn from same. His grandmother D'arc Meriton gave evidence that the accused was her grandson and living in her house at La Louise. She stated she was watching TV in the sitting room with her daughter in law when two persons had come running and ran inside her house. She had asked them who they were and they had said NDEA and the lady who was present stated "Madam please sit down". The man had asked her where the room of the accused was and she had pointed out the room to them.
- [14] She had continued to sit in the living room and according to her three minutes later she had heard a transport and another man had come with Marcus. She stated thereafter they had gone to her room and on their request she had opened a drawer for them. Nobody had asked her to accompany them but thanked her for her co operation. She stated there was a lock on the room of Marcus but the room was unlocked. She stated he had lost his key one year ago. She admitted there was a lock. After the key to his room was lost Marcus had opened the louvre blades and gone inside the room and opened the door with a screw driver and up to date she stated the lock remained in that state. The defence thereafter closed its case. Thereafter a locus inquo was conducted and both parties made submissions.
- [15] Having thus analysed the evidence in the case, the main contention of the defence is that the officers of the NDEA had 'planted' the controlled drug in the room of the accused. In support of this allegation the defence relies on the evidence of the grandmother of the accused who stated that two NDEA officers appeared first and searched the room of Marcus which was not locked as the key was lost while she was seated away in the living room and about three minutes later a vehicle arrived and an NDEA officer with Marcus had come in. Learned counsel correctly drew the attention of court to the fact that from the living room the room of the accused could not be seen as borne out in the locus inquo.

It is apparent that the defence contention is that while the first two officers were searching the room as there was no one with them the drugs could have had been and were 'planted'.

[16] Firstly this is a very serious allegation. The quantity of drug involved in this case is 29 grams, the pure quantity being 10.1 grams is a very large quantity when considering the fact the drug is heroin a Class A drug. The first question that arises is does the NDEA have such large quantities of controlled drug in their possession and carry around with them such large quantities to 'plant' on any person. On that ground alone it is unbelievable to come to the conclusion that they have such large quantities to plant on innocent persons. The next question would be why had this particular accused been chosen for them to 'plant' the controlled drug. No reason is given or even suggested in cross examination. The evidence of the NDEA officers is that they had seen the accused throw something when he was in the car near the tracking station. They however honestly state nothing was found. If they intended to 'plant' the drug it is the view of this court that this would have been the ideal moment to do so without attempting to 'plant the drug in an un known place like the room of the accused which they had never seen before. Most importantly even though the allegation is of a very serious nature no contemporaneous complaint has been made by the accused or his grandmother to the higher authorities against the two agents who are alleged to have gone into the room and 'planted' the drugs prior to the accused arriving.

[17] The evidence clearly indicates that while Florentine had left in the jeep with the agents and the other suspect to the NDEA office, the other agents Siguy Marie, Kenneth Joseph, Zrein had gone to the accused house in the vehicle of the accused. Further there was very little free time and opportunity for them to find such large quantity of controlled drug to 'plant' on the accused especially with the accused in the vehicle. It is also apparent that as the evidence shows that all were travelling in the same vehicle of the accused therefore it is very unlikely that some agents would have arrived before the vehicle arrived as mentioned by the grandmother. For all the aforementioned reasons this court would reject the defence contention that the drugs were 'planted' and the evidence of the defence.

- [18] Learned counsel also contended that the evidence of the NDEA officers that the accused had opened the door should not be believed as it would be impossible for a handcuffed person to take a key and open the door. It is the prosecution evidence that as the accused was handcuffed in front he had taken the key from his front pocket which was demonstrated in open court by agent Joseph (pg 20 of the proceedings of 23 rd January 2013 2.00pm.)). Further it is the position of the prosecution that nothing illegal was found in the body search of the accused and whatever was not illegal was put back in his pockets.
- [19] It is to be observed the fact that the room in which the controlled drug was found was occupied by the accused Marcus Meriton is not contested by the defence. The grand mother of the accused herself states that the room was occupied by the accused. Therefore there is no need for the prosecution to try to establish such a fact by leading false evidence
- [20] The officers of the NDEA deny strongly the allegation made by the accused that he was framed. It is apparent from their evidence that the accused had acted in a suspicious manner from the time the agents had introduced themselves by attempting to reverse and drive away and trying to escape. On being stopped and searched inside the glove compartment of his vehicle (and not the kitchen) they had found a digital scale and foil paper usual utensils associated with the drug trade. The evidence of Siguy Marie in regard to the detection of the controlled drug in the wardrobe in the room of the accused is corroborated by the evidence of agent Kenneth Joseph. Though subject to lengthy cross examination no material contradictions were forthcoming. It is clear that the evidence of the prosecution establishes the fact that the drugs were not planted on the accused but in fact found by them while searching the wardrobe in the room of the accused.
- [21] When one considers the chain of evidence in respect of the custody of the exhibits led by the prosecution there is no challenge in respect of same. Agent Siguy Marie has identified the exhibits as that found in the wardrobe of the accused and given for analysis to Mr. Bouzin. Mr. Bouzin has identified the said exhibits as that received from agent Siguy Marie and after analysis identified as heroin and that handed back to agent Marie after sealing same. The analyst has identified the seals placed by him were intact at the time

the exhibit was produced in court. Therefore this court is satisfied that the said exhibit has not been tampered after analysis and the chain of evidence in respect of the exhibits from the time of detection, analysis and production in court has been established beyond reasonable doubt by the prosecution.

[22] For all 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 possession and had control of the drug found in the room occupied by him.

[23] 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 find the drug asked to be given a chance. His behaviour soon after the detection clearly indicates that the accused had knowledge of the fact he was in possession of a controlled drug.

[24] 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 23 January 2014

M Burhan
Judge of the Supreme Court