

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 40/2010

[2014] SCSC

THE REPUBLIC

versus

LEO HERMITTE

Accused

Heard: 06/03/13, 04/07/13, 06/06/13

Counsel: Mr. Khalyaan Karunakaran, State Counsel for the Republic
Mr. Nichol Gabriel Attorney at Law for the accused

Delivered: 24 January 2014

JUDGMENT

Burhan J

[1] The accused in this case Leo Hermitte has been charged as follows;

Statement of offence

Trafficking in a controlled drug, contrary to Section 5 read with Sections 14(d) and 26(1) (a) of the Misuse of Drugs Act (CAP 133) and punishable under Section 29 read with Second Schedule to the said Act.

The particulars of the offence are that, Leo Hermitte on the 13th day of June, 2010 at Upper Les Mamelles, Mahe was found in possession of a controlled drug namely 30.4 grams of Cannabis (herbal materials) which gives rise to the rebuttable presumption of having possessed the said Controlled Drug for the purpose of trafficking.

- [2] The accused denied the charges and the prosecution in order to prove the charge against the accused called witness Berard Hoareau who stated that he was a police officer for 13 years and had been working with the NDEA (National Drug Enforcement Agency) for approximately two and a half years. He further stated that on the 13th of June 2010 he was on mobile patrol at Les Mamelles. On arriving at Chalam shop agent Joseph, agent Mellisa and he had proceeded on foot while agent Mickey Barbier had stayed in the vehicle. He explained that as people run on seeing the jeep they had decided to proceed on foot.
- [3] They had been walking on a foot path when they had seen the accused coming in their direction and at that point, they had come out and approached him and the accused had dropped a pink plastic cup. Witness had known the accused earlier. Witness had picked up the plastic cup and opened it in the presence of the accused and other agents and noted that the plastic cup contained a blue plastic in which herbal material suspected to be Cannabis was wrapped in. The accused had denied the drugs were his.
- [4] The accused was arrested and brought to the NDEA station while the drugs were kept in the custody of witness until he gave it for analysis the next day to Mr. Bouzin. He had thereafter collected the drug and the report. He further stated this was not a patrol done on information received but was a normal routine patrol. He had received the drugs back after analysis on the 15th June 2010 together with the analysis report. On the 14th of October 2010 the drugs had been taken for reanalysis to Mr. Purmanan. Witness identified the exhibit detected by him and taken by him for analysis in open court.
- [5] Under cross examination he stated the arrest had been made around 20.30 hrs and admitted it was dark but the lights in the flats were on. They were also using a torch. He stated that on the same day another person, a man, was arrested but was released as the

herbal material taken into custody was tobacco. He admitted that there was a river close by but the accused had dropped the exhibit and not thrown it to the river. He stated that the accused had refused to sign the envelope in which the exhibit was put in. He stated that the net weight of the exhibit by Mr. Bouzin weighed 30.4 grams. According to Mr. Purmanan's report the exhibit weighed 28.6 grams. He stated that when he collected the exhibit to take to Mr. Purmanan the exhibit had its seals intact.

[6] Mr Jimmy Bouzin the Government Analyst stated that on the 14th of June 2010 at 15.10 hrs he had received the exhibit in this case for analysis. He described the exhibit as being in a sealed evidence envelope which he had opened and found it containing a pink plastic cup and a blue plastic wrapping some herbal material. He had proceeded to analyse the said herbal material and described the tests he had carried out. He stated the herbal material was identified to be Cannabis net weight 30.4 grams.

[7] He stated that after he had analysed the said drug and identified it as Cannabis he had sealed the exhibit and handed it back to agent Hoareau. Thereafter on another date, the drug had been reanalysed by Mr. Purmanan as witness had left the jurisdiction for some time. The bag had been resealed by Mr. Purmanan after the analysis and Mr. Bouzin identified the seals placed by Mr. Purmanan in open court and stated they were intact and had not been tampered with. He stated further that at present as Mr. Purmanan had left the country and as it was witness Mr. Bouzin who had originally analysed the exhibit in this case, the prosecution were relying on his initial analysis of the exhibit done by him.

[8] In his evidence Mr. Bouzin clearly indicated and explained the chain of custody. He stated according to the entries Mr. Purmanan had received the exhibit from agent Berard Hoareau. It is clear that the exhibits had been handed over by Mr. Berard Hoareau to Mr. Purmanan with its seals intact as Mr. Purmanan had made the necessary entries which witness clarified was the writing and signature of Mr. Purmanan. (Pg 7, 9 and 10 of the proceedings of 6th March 2013 at 9.00 a..m.). Thereafter Mr. Purmanan after completing his analysis had handed over the exhibit sealed by him back to agent Hoareau. Mr. Bouzin having identified the seals of Mr. Purmanan, further stated the seals placed by Mr. Purmanan were still intact showing that the exhibit had not been tampered with after the analysis of Mr. Purmanan. Mr. Bouzin opened the evidence bag sealed by Mr.

Purmaman and identified the exhibit as that analysed by him at the first analysis. He stated there was no necessity for him to reanalyse the said exhibit again as he had done so already. He affirmed the fact it was the same exhibit and affirmed the identity of the herbal material as being Cannabis and identified his report as P1. It appears the loss in weight of the exhibit when Mr. Purmanan weighed the exhibit was due to a sample having been taken for the earlier analysis.

[9] Agent Joseph too gave evidence corroborating the evidence of Berard Hoareau in respect of the detection of controlled drug and the arrest of the accused. Both witnesses identified the accused as the person who had dropped the plastic cup containing the controlled drug. Thereafter the prosecution closed its case.

[10] The accused in defence made an unsworn statement from the dock. He stated he was a fisherman and on the day in question he had got into an argument with the police as they had picked up something from the ground and thereafter had accused him of being a drug trafficker. He denied being one and stated that he never worked as a drug trafficker. He denied the allegation but was remanded until 2010 and still is undergoing problems. The defence closed its case thereafter both parties made submissions.

[11] Having thus considered the evidence in this case the accused defence is that he had an argument with the police officers as they had picked up something from the ground and had accused him of being a drug trafficker. Though released on bail and having had the services of learned counsel no complaint has been made against the officers of this case to the higher authorities for falsely implicating him even though he was released on bail and had ample opportunity to do so.

[12] Further there is no necessity for the prosecution to prove a drug case with fingerprint evidence when the eye witness evidence indicates that they saw the accused have the drug with him and apprehended him with it. I therefore am of the view this contention of learned counsel bears no merit.

[13] Learned counsel for the defence has suggested to the witnesses that as the river was close by, the accused if he wanted to get rid of the exhibit could have thrown it into the river. It is apparent from the evidence of Mr. Berard Hoareau that they had come out and

confronted the accused who was running away from the police jeep, apparently taking him off guard and surprising him as he was not expecting officers to be on foot. As to why he did not attempt to throw it even under these circumstances is a question the accused would have to answer and not the prosecution witnesses. For the aforementioned reasons I proceed to reject the defence.

[14] When one considers the evidence of Mr. Berard Hoareau it stands corroborated by the evidence of witness agent Joseph. Though subject to cross examination no material contradictions arose for the witnesses to be disbelieved. As already set out the chain of custody of the exhibits has been established beyond reasonable doubt by the evidence of Berard Hoareau and Mr. Bouzin the analyst. Agent Berard Hoareau identifies the exhibits as that taken into custody by him and handed over to the analyst. The analyst Mr. Bouzin identifies the exhibit as that handed over to him by Berard Hoareau, analysed by him and identified as Cannabis herbal material weighing 30.4 grams. It is clear from his evidence that the chain of custody of the exhibit from the time of detection, taking into custody, analysis conducted by Mr. Bouzin and Mr. Purmanan and the production of the exhibit in court has been proved beyond reasonable doubt ensuring the fact that the exhibits were not tampered with.

[15] 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 dropping it on seeing the agents.

[16] 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 dropped the plastic cup containing the controlled drug. This clearly establishes the fact that the accused had knowledge of the fact he was in possession of a controlled drug. The quantity of controlled drug taken into custody attracts the rebuttable presumption of trafficking. The accused has failed to rebut the said presumption.

[17] 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 24 January 2014

M Burhan
Judge of the Supreme Court