

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO82/2015**

**[2017] SCSC 245**

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**THE REPUBLIC**

versus

**ERNEST EMMANUEL WILLIAM**

Accused

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Heard: 16<sup>th</sup> January 2016, 19<sup>th</sup> January 2016 and 11<sup>th</sup> July 2016  
Counsel: Mr. Ananth Subramaniam, Assistant Principal State Counsel for the Republic  
Mr. Nichol Gabriel Attorney at Law for the accused  
Delivered: 17 March 2017

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**JUDGMENT**

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**Burhan J**

[1] The accused Ernest Emmanuel William in this case has been charged as follows:

**Count 1**

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

*Particulars of offence are that, Ernest Emmanuel William of La Retraite, Mahe on the 29<sup>th</sup> October 2015 at La Retraite, Mahe was trafficking in a controlled drug by virtue of having found in possession of a substance having net weight of 2.68grams and which containing a controlled drug namely Heroin with a purity of 48% and having total heroin content of 1.28grams which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.*

- [2] The main witness for the prosecution agent Padayachy stated that he had been working with the NDEA (National Drug Enforcement Agency) for the past 3 years and stated on the 29<sup>th</sup> of October 2015, while he was on duty around 6.20 pm, he received credible information that the accused was doing a drug transaction at La Retraite. At that time he was on mobile patrol accompanied by agent Moumou and agent Hermine. Thereafter, they had planned their operation and proceeded in the direction of North La Retraite to the residence of the accused.
- [3] On reaching the premises, they had noticed the accused seated on a chair under a tree and they had approached him. They were dressed in civil clothing and informed him they were NDEA agents and showed their badges. They had conducted a body search on him for controlled drugs and found nothing illegal on him. They had informed the accused that they were conducting a search in the house and he had accompanied them. As they entered the house, they had noticed the other members of his family, three ladies, inside the house.
- [4] Thereafter witness had asked for his assistance in searching the house and the accused had replied that he was not responsible for what was found elsewhere in the house other than what was in his room. Thereafter the accused had shown them his room. Prior to conducting the search they had asked the accused whether there was anything illegal in his room or large sums of money. The accused had answered in the negative.
- [5] They had thereafter proceeded to search the bed and the wardrobe in the room, the accused indicated was his room. While they were doing so, they noticed in the second level of the wardrobe a piece of cling film with clear plastic, containing substance in between some men's clothes. After retrieving it from the wardrobe, they had shown it to

the accused who was with them. They had thereafter arrested him and informed him of his constitutional rights. Witness identified the accused as Ernest William.

[6] The agents of the NDEA had conducted further search on the house and as nothing illegal was found, they had taken the accused to the NDEA station and reached it around 7.00 p.m. Witness had weighed the exhibit and found it to be 2.96 grams and then placed it in an envelope in the presence of the accused and agent Moumou and sealed it. The accused had refused to sign the envelope and witness agent Padayachy had made note of same. He had placed the sealed exhibit in his locker, to which only he had the key. Thereafter agent Padayachy had taken the exhibit on the 30<sup>th</sup> of October 2015 to the Government Analyst for analysis. The sealed exhibit was handed over to the analyst together with a request letter. Mr. Bouzin had opened the letter in his presence and verified its contents. He had left the laboratory and thereafter on the 4<sup>th</sup> of November 2015 around 1.20 p.m. retrieved the exhibit from the Government Analyst together with the report P1. He stated the exhibit had been sealed by the analyst and returned to him. Witness identified the exhibits, the clear plastic and substance in open court as those taken into custody from the wardrobe in the room of the accused Ernest William.

[7] Under cross examination he stated he did not know who Ken John Charles was and such person was not present with them at the time they went to the house of the accused at La Retraite. He further stated when the other rooms of the house were being searched after the arrest of the accused, the other family members helped. The first room searched was that of the accused. The accused on seeing them had initially shown signs of fright and had then begun to argue with them. He denied they had planted any drugs on the accused. He admitted that the weight mentioned by the Government Analyst in his report was 2.68 grams. He stated they had not taken any finger prints of the exhibit.

[8] Mr. Alexander Moumou another NDEA agent, corroborated the evidence of agent Padayachy in respect of the information received by agent Padayachy while they were on mobile patrol on the 29<sup>th</sup> of October 2015 which was in relation to a drug transaction being done by Ernest William at his home. He corroborated the fact that they had gone to the house of Ernest William, questioned him and on searching the wardrobe in the room of the accused Ernest William, witness had seen agent Padayachy remove a piece of cling

film from between the clothes in the wardrobe. On opening the cling film. They had found a clear plastic containing a substance suspected to be controlled drugs. He further corroborated the fact that it was Ernest William who had pointed out his room to them and he identified the accused in open court as Ernest William.

[9] Witness further stated he was present at the time the controlled drug was found and identified the exhibits as the same controlled drug retrieved from the wardrobe in the room occupied by the accused. He too denied that agent Padayachy had planted the controlled drug. In cross examination he stated that as the name of the accused had come up in the information, they had searched his room first. He stated the weight of the drugs was around 2.00 grams. He too confirmed that the constitutional rights of the accused and the caution were explained to the accused after his arrest.

[10] The prosecution also called the Government Analyst who corroborated the fact that agent Padayachy had brought the controlled drug for analysis on the 30<sup>th</sup> of October 2015 in a sealed envelope and after verifying the contents with the request letter, he had proceeded to analyse the said substance. He described the tests conducted by him and stated that his analysis revealed the controlled drug was Heroin (Diamorphine) weighing 2.68 grams. He identified the exhibits in open court as those brought to him for analysis and the same exhibit that was analysed by him. He produced his report marked P1 affirming his findings. He also stated after analysis, he had resealed the exhibits and handed the exhibit back to agent Padayachy on the 4<sup>th</sup> of November 2015 and further clarified in open court on receipt of the exhibits from Mr. Padayachy that the seals placed by him when he had returned the exhibit to Mr. Padayachy were still intact.

[11] After leading the evidence of these three witnesses the prosecution closed its case. The accused made an unsworn statement from the dock.

[12] He stated he was sitting under a Mango tree when four people arrived. They were NDEA officers and they had told him to get up and searched him. He admitted they had asked him where he slept and he had gone inside and showed them. He admitted they had gone to the wardrobe and had told him there were drugs. He had asked them to show him but they had not done so but arrested him and brought him to the NDEA office. He stated the agent who arrested him was not the agent who had brought him to the NDEA. It was Ken

Jean Charles who had brought him to the NDEA. Another officer had taken him to court. Around 10.00 pm agent Padayachy came with an envelope and a plastic and asked him to sign it. He had refused to sign it and he was taken subsequently to the Central police station.

[13] The defence thereafter closed its case and both parties made written submissions. I have considered the evidence of both the prosecution and defence and the submissions made by both counsel.

[14] The main contention of defence is that the officers of the NDEA had planted the controlled drug on the accused. It appears despite having the services of an Attorney at Law for a considerable length of time and being in remand, no official complaint has been made against the officers concerned in this detection, to the higher authorities. Only when the officers were deponing was a suggestion made for the first time to them that they had planted the controlled drug on him. I am of the view considering the serious nature of the allegation, it warranted a contemporaneous complaint or even a complaint at the time the accused was given legal assistance, against the detecting officers in this case to the higher officials. No such contemporaneous complaint against the officers was ever brought to the notice of this Court.

[15] Further in his statement from the dock, the accused admits that he had showed them the place he sleeps and they had gone to the wardrobe and told him there were drugs. It is apparent he does not seek to deny the fact that he showed the the place he sleeps and the fact that the wardrobe in which the controlled drug was said to be found was in his room. He only states the drugs were not shown to him. In the light of so many admissions on his part in his dock statement that correspond to the evidence of the prosecution and his failure to make any contemporaneous complaint of the controlled drug being planted on him, I am inclined to disbelieve his defence that the controlled drug was planted on him. Further all the other occupants of the house were females and the controlled drug was found among the men's clothes in the wardrobe. For all these reasons I am of the view that the defence that the drug was planted is a belated and unsupported defence that should be rejected.

[16] The other contention of the defence is that there was a discrepancy in the weight of the controlled drug in the evidence of the prosecution witnesses as the weights given by them were different to the weight given by the Government Analyst. Learned counsel for the defence further submitted that witness Moumou had testified that the quantity of controlled drug was 2.00 grams and if a quantity of 48 to 100 milligrams is extracted for analysis purposes, the remaining quantity could not be over 2 grams which is the minimum threshold for trafficking.

[17] Firstly the weight taken by the NDEA officers soon after arrest and detection are approximated weights. The weight the court relies on is the weight given by the Government Analyst. The analyst weighs the substance prior to extracting a specimen for analysis. The weight of controlled drug as given by the analyst according to his evidence and report filed is 2.68 grams. It is this weight that court is to consider and not the weight of the substance after a sample has been removed for analysis. In this instant case the quantity taken into custody is 2.68 grams of Heroin ( Diamorphin) and therefore over 2 grams as specified in section 14 (c) (ii) of the Misuse of Drugs Act as amended by Act 3 of 2014 and therefore attracts the presumption of trafficking. Therefore the aforementioned contention of learned counsel for the defence bears no merit.

[18] In defence, the accused chose to make an unsworn statement from the dock. Further an unsworn statement from the dock is subject to certain infirmities, in that it is not under oath and has not been subject to cross examination. The value of a dock statement was considered in the case of **R.v. Campbell 69 Cr.App. R.221** which held:

*“A statement from the dock is not, of course, evidence. It is, as many think – the fact that a defendant is still at liberty to make a statement of fact from the dock, invite a jury to consider his version of the facts without taking the oath and without subjecting himself to cross-examination – an anomalous historical survival from the days before the Criminal Evidence Act 1898 when a person could not give evidence on his own behalf. There it is anomaly or not; the courts have to grapple with it and a statement from the dock unsworn now seems to have taken on in current practice a somewhat shadowy character half-way in value and weight between unsworn evidence and mere hearsay. A jury cannot be told to disregard it altogether. They must be told to give it such weight as they think fit, but it*

*can be properly pointed out to them that it cannot have the same value as sworn evidence which has been tested by cross-examination.”*

[19] On consideration of the evidence of the prosecution witnesses given under oath, I am satisfied that the evidence of agent Padayachy stands corroborated by the evidence of agent Moumou. Though subject to cross examination there were no material contradictions or omissions other than a slight discrepancy of the weight at the time the officers of the NDEA weighed it. It is apparent both officers gave the approximate weight at the time it was weighed by them from memory. What is material is the weight taken by the analyst and therefore the slight discrepancy in their evidence in regard to the approximate weight of the controlled drug has no bearing on the charge framed. As no material contradictions exist, I would proceed to accept the sworn, corroborated evidence of the prosecution and reject the unsworn uncorroborated statement of the accused.

[20] I have also considered the chain of evidence in regard to the exhibits in this case. It is apparent from the evidence that the controlled drug taken into custody from the accused wardrobe in his room was brought for analysis to the Government Analyst. The evidence of agent Padayachy establishes this fact. The Government Analyst evidence, affirms the fact that the controlled drug brought to him by agent Padayachy was analysed by him and confirmed to be Heroin (Diamorphine). He further stated that he had sealed and returned the exhibit to agent Padayachy. The analyst recognised in open court that the seals placed by him on the exhibits were still intact showing that there was no tampering with the exhibit from the time of analysis till the exhibit was produced in court. This court is therefore satisfied beyond reasonable doubt, on considering the aforementioned evidence that the chain of custody of the exhibit has been established by the prosecution and there was no possibility of anyone else tampering with the said exhibit.

[21] 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 of the accused, it is established on seeing the agents approaching the accused had become frightened and then begun to argue with them. The controlled drug was found in the room belonging to the accused

which room was pointed out to the agents by the accused himself, a fact admitted by the accused in his unsworn statement. The controlled drug was found concealed in between the men's garments on the 2<sup>nd</sup> shelf of the wardrobe in the room of the accused. Therefore it could be safely assumed from the aforementioned facts that the accused had knowledge and control of the control drug found among the clothes in the wardrobe in his room.

[22] For the aforementioned reasons, I am satisfied that the prosecution has proved the elements of possession and knowledge against the accused beyond reasonable doubt. The quantity of Heroin detected in the possession of the accused is 2.68 grams which attracts the rebuttable presumption that the accused was trafficking in the controlled drug. The accused has failed to rebut the said presumption.

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

Signed, dated and delivered at Ile du Port on 17 March 2017

M Burhan  
**Judge of the Supreme Court**