

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 70/2012

[2018] SCSC 140

THE REPUBLIC

versus

ELVIS VALENTIN

Accused

Heard: 10, 11 Jul 2014, 8 June, 9 Nov. 2015, 27 Mar, 12 June, 3 Aug, 6 Oct 2017

Counsel: B Confait, State Counsel for the Republic
A Amesbury for the accused

Delivered: 9 February 2018

JUDGMENT

Dodin J

[1] The accused, Elvis Valentin, stands charged as follows:

Count 1

Statement of offence

Trafficking in a controlled drug contrary to Section 5 with Sections 2 and 26(1)(a) of the Misuse of Drugs Act as amended by Act 14 of 1994 and punishable under Section 29 read with the second schedule of the said Act.

Particulars of offence

Elvis Valentin on the 24th December 2012, at Grand Anse, Praslin was trafficking in a controlled drug by administering or selling 37.4 grams of cannabis being a controlled drug.

Count 2

Statement of offence

Committing acts of Assault on an NDEA agent contrary to Section 16(6) (a) the National Drugs Enforcement Agency Act and punishable under Section 17(3) of the said Act.

Particulars of offence

Elvis Valentin on the 24th December 2012, at Grand Anse, Praslin assaulted NDEA agents namely, Agent Kenneth Joseph, Terry Madeleine and Joel Barra.

- [2] Kenneth Joseph, an NDEA agent, testified that on the 24th December, 2012, in the company of agents Terry Madeleine, Joel Barra and Terina Balhilde, at about 6 30 pm they went to the house of the accused and conducted observation after having received information that the accused was conducting drug transactions at his house. From a concealed position he observed two persons arriving at the house of the accused and asked for SCR 200 and SCR 100 worth of drugs respectively. He observed the accused go to a spot about 10 metres from the veranda with a torch and removed a white plastic from a blue plastic in which there were some wrappings and brought it to the men who then left. After a short while another man arrived and asked for SCR 100 worth of drug and the accused repeated the same procedures and the man left. As the accused was going back to the house, the witness testified that he went towards the accused and identified himself as NDEA agent. The accused dropped the bag and there followed a struggle between himself and the accused. The accused kicked him in the belly and chest and they both fell to the ground. A woman came out of the house screaming and more people

appeared. He had to use teargas to subdue the accused and handcuffed him. The accused was taken to Grand Anse Police Station and a case was registered against him. He was searched and money in the sum of SCR 482 was found on his person.

[3] Terry Madeleine testified that on the 24th December, 2012, they went to the house of the accused and conducted observations after hiding behind a bush in the company of agents Joseph, Joel Barra and Terina. After about half an hour two men came and asked the accused for herbal material and they bought for the value of SCR 200 and SCR 100 respectively which the accused retrieved from a bush in a blue plastic bag. Later another man came and asked to purchase SCR 100 of herbal material which the accused sold him after retrieving the plastic bag from the bush. When the accused was returning from placing the plastic bag in the bush agents Joseph and Barra approached him and identified themselves as NDEA agents. They tried to handcuff the accused and a struggle ensued until agent Joseph managed to use pepper spray to subdue the accused who was then taken to Grand Anse Police Station after having been reads his rights. Later the accused asked to be taken to see a doctor and he was taken to Baie Ste Anne Hospital.

[4] Doctor Myriam Leon testified that on the 24th December, 2012, she examined Terry Madeleine who had complained of having pain in the leg. She observed inflammation in the posterior leg but she did not know the source of it. On the same day she also examined one Kenneth Joseph who had light superficial scratches at the back of both legs. She did not know the provisions of those scratches. He made medical reports for both as requested. With regards to the accused she admitted in cross-examination that she probably also saw the accused but she could not recall as she was not asked to make a report in his case. She was later asked for a medical in confidence report about the accused which she complied from the records kept at the hospital.

[5] The testimonies of forensic expert, Jemmy Bouzin and Sergeant Malvina, the exhibits officer were not contested.

[6] The accused testified that on the 24th December, 2012 he came to Mahe with his partner Tracey Lesperance and their 2 month's old child to do some shopping and they took the last boat to Praslin, arriving home at around 7pm. He noticed several persons passing by his house but he did not know them. He had been informed that his sister and her husband

were coming by and he was waiting for them when two shirtless men approached him. One he later identified as Kenneth Joseph had his t-shirt over his face and the other one identified as Terry Madeleine had his t-shirt across his shoulder. There was also a lady whom he did not know with them. As soon as they reached him agent Joseph hit him across the face and he fell down and they got on top of him and placed handcuffs on him by cuffing his arms to his legs, then sprayed pepper spray in his face.

[7] At his house there were Marie-Michelle Madeleine, Hansel Vidot, Joveanie Vidot, Joseph Valentin and Tracey who came out to see what was happening. They screamed and other people in the area came to see. Then they removed the handcuffs from his feet and cuffed both hands. They took him to Grand Anse Police Station and placed him in a cell. He asked to be taken to see a doctor at first they refused. Agent Joseph pulled a plastic bag from his pocket and asked him for whom it was to which he said he did not know. Later after insisting they took him to see a doctor at Baie Ste Anne Hospital then returned to a cell at Grand Anse Police Station until the morning. The next day they took SCR 482 from him and told him it was drug money. When he was taken to Mahe he had was taken to English River Health Centre and photographs of his injuries were also taken. He has filed a civil case.

[8] Tracey Lesperance testified that on the 24th December, 2012, she came to Mahe with his partner, the Accused, and their two months' old daughter to do last minute Christmas shopping and they returned to Praslin on the last boat arriving Praslin after 6pm. Whilst on Mahe she received a call from her sister Amina Lesperance who informed her that NDEA agents had come to her place about three times. When at home she noticed three men without shirt approaching and jumped the accused. She believed they were strangling him and she tried to intervene but the child who was in her arm was hit and the accused was pushed to the ground and pepper spray was administered to his face. She screamed for help and neighbours came to see what was happening. She later took the child to the doctor. The accused was taken away and the next day she received a call to bring his clothes because he was being taken to Mahe.

[9] Joel Barra testified that on the 24th December, 2012 he was working as an NDEA agent on Prraslin together with agents Joseph, Madeleine and Balthilde. On the day agent Josph

drove them to a place at Grand Anse and dropped him and Terina Balthilde off whilst agents Joseph and Madeleine went further ahead. They were all in civilian clothes. Sometime later he heard shouting and screaming and together with agent Terina Balthilde, he went to see what was happening. He saw the accused being pressed to the ground and his hands had been cuffed to his ankles. The accused was struggling and asking why he was being arrested. He also assisted to hold him down. The accused's family were also there and asking what was happening and as more people were coming to the scene, they took the accused away to Grand Anse Police Station for formalities. At the station, agent Joseph removed a plastic bag from his pocket and showed to the accused. He recalled that later the accused was taken to Baie Ste Anne Hospital but he did not go.

- [10] Dr Bouyanapalli Venkatakishnan Roa testified that on the 26th December 2012 at 3.32 pm he examined the accused who had a history of assault. He recorded his findings which showed contusion below the left eye, also on the left hand. There was no laceration which indicates that the injuries were caused by blunt force like a fist or a blunt instrument.
- [11] Jovannie Vidot testified that on the 24th December, 2012, she received a call to come quickly as NDEA agents were beating her brother. She rushed to the accused's home and saw the accused on the ground handcuffed with his eyes closed. The accused told her he had been beaten and tear gassed. Other persons were also coming to see what was happening and the agents took the accused away to the police station.
- [12] Hansel Vidot testified that on 24th December, 2012, he accompanied his mother Jovannie Vidot to the accused's house and saw the accused handcuffed on the ground. The accused told them that he had been beaten and tear gassed. The onlookers started to get aggressive at which point agent Joseph pulled his pistol, cocked it and placed it close to the witness' head. One of the NDEA agents told agent Joseph not to do that and the agents took the accused away in their vehicle. He followed in another vehicle to Grand Anse Police Station where he witnessed agent Joseph take a plastic bag from his pocket and showed to the accused. As they were insisting on taking the accused to see a doctor, they were told to get out of the police station. They waited outside and later followed the vehicle

taking the accused to Baie Ste Anne Hospital where the accused was examined and given some medicines, then returned to the police station.

[13] Marie-Michelle Madeleine testified that on the 24th December, 2012, she received a call that NDEA agents were at her uncle's house. She went to see and found the accused on the ground and hand cuffed. The accused said he had been beaten and tear gassed. The crowd was very aggressive and so were the agents who placed the accused in their vehicle and took him to Grand Anse Police station whilst they followed in another vehicle. At the station agent Joseph took out a bag from his pocket and showed to the accused and told him to sign. The accused refused. They persisted that the accused is taken for medical assistance which eventually, was done and then he was returned to the station.

[14] Superintendent James Matombe testified that he was the commanding officer of Praslin and La Digue. He had gone over the occurrence book for the 24th December, 2012 and he found no entry in respect of Elvis Valentin for that day. He was not aware if the arrest was made by NDEA such entry is not made but he would have expected an entry if arrest made by the police.

[15] The case for the prosecution is that the accused was on the day in question observed selling drugs to three persons and that he was observed getting the drugs from the bushes and then returning the same there. He was observed collecting a total of SCR 400 from these persons. However, there is no detail of who these persons were. Upon being apprehended by the NDEA agents, the accused fought the agents causing them injuries. Learned counsel for the Republic submitted that all the elements of the offences have been proved by the prosecution beyond reasonable doubt. Learned counsel submitted that the accused was observed doing the transaction of selling which constitute the actus reus of the offence of trafficking. The accused also had exclusive access and control of the drugs and by his conversation with the persons who came to buy the drugs and the fact that the drugs were well packed in plastic ready for sale the element of intention to traffic the drugs has been established.

[16] On the second count. Learned counsel submitted that the accused engaged in physical acts of assault against the NDEA agents by retaliating when he was being apprehended.

In engaging in the physical act the accused intended to cause harm and did cause harm to the NDEA agents by kicking them which caused some inflammation. Learned counsel concluded that the offence of assaulting NDEA agents has been proved beyond reasonable doubt.

[17] The case for the defence is that the accused was deliberately targeted and assaulted for some other reason and then charged for the offences of drug trafficking and assaulting NDEA agents.

[18] It is of course not disputed that the drug produced in Court was cannabis herbal material but it is disputed whether the same was retrieved from the accused.

[19] The prosecution brought only two material witnesses in addition to the forensic expert and the exhibits officer. Joel Barra who was an NDEA agent involved in the incident at the time testified for the defence and on some critical aspects of the case contradicted the testimonies of agents Joseph and Madeleine. These are on the clothes they were wearing which Joel Barra maintained were civilian clothes as the other defence witnesses and the accused maintained; that the first time he saw the plastic containing drugs was when agent Joseph removed the same from his pocket at Grand Anse Praslin police station; that he did not go for medical assistance although the accused was taken for medical attention, meaning he was not assaulted by the accused as the charge states.

[20] Another issue which was not clear is that agent Joseph testified that the accused was shown the drugs on the scene and then shown again and cautioned at the police station where for the first time a search was conducted on the accused and the sum of SCR482 was found. Terry Madeleine testified that the accused was cautioned at the scene before he was taken to the police station. Agent Joseph also testified that at the station a case was registered against the accused but Superintendent James Matombe testified that he had searched the records and could not find any entry in respect of the accused on the 24th December, 2012.

[21] The standard that must be met by the prosecution's evidence in a criminal prosecution is that no other logical explanation can be derived from the facts except that the accused committed the crime, thereby overcoming the presumption that a person is innocent until

proven guilty. In other words the prosecution must prove beyond reasonable doubt that the drug in question was seized from the exclusive possession of the accused. When there is real doubt as to any material issue which is fatal to any element of the offence, such doubt must be interpreted in favour of the accused person.

[22] As stated in the case of R v Starr [2000] 2 SCR 144 [Canada]:

“It is rarely possible to prove anything with absolute certainty and so the burden of proof on the Crown is only to prove the guilt of the accused beyond reasonable doubt. What, then, is proof beyond a reasonable doubt?”

The words "reasonable doubt" are used in their everyday, ordinary sense and not as a legal term having some special connotation. The words have no magic meaning that is peculiar to the law. A reasonable doubt is an honest, fair doubt, based upon reason and common sense. It is a real doubt, not an imaginary or frivolous one resting on speculation or guess rather than upon the evidence you heard in this courtroom.

So you can see, the words "reasonable doubt" are ordinary words we use in our everyday language. So if you can say, I am satisfied beyond a reasonable doubt, the Crown has met the onus upon it. If you cannot say those words -- if you cannot say, I am satisfied beyond a reasonable doubt, the Crown has not met the onus on it, and the accused is entitled to have your doubt resolved in his favor.”

[23] The contradictions in this case are serious and they put the credibility of the two witnesses for the prosecution in question and raise serious doubts as to their veracity. It is of course not required for witnesses to give exactly the same testimonies even when they observe the same events. Each may understand or interpret the event from their own perspectives and understandably there would be minor inconsistencies which can be explained away and which would not give rise to reasonable doubt. But in this case even without having to consider the testimonies of the defence witnesses, I find the testimonies of the prosecution witnesses other than the forensic expert and the exhibit officer, lacking in consistency.

[24] With regards to the 2nd count, all the evidence point towards the accused having been overpowered and subjected to the effects of pepper spray and handcuffed. Of course, if two or three persons in civilian clothes tried to subdue any person, that person is entitled

to resist if he does not know who his assailants are. Again the evidence here is inconsistent as only agents Madeleine and Joseph testified that they were in uniform and that they identified themselves. Agent Madeleine further testified that one of the persons at the scene tore off agent Joseph's t-shirt, which agent Joseph did not mention at all despite rigorous cross-examination. Agent Barra who testified for the defence maintained that they were in civilian clothes as did all the witnesses for the defence who were at the scene. Without giving any opinion on whether the accused was assaulted by the agents as this is a subject of a separate civil suit, I find the evidence in support of the 2nd count insufficient to meet the standard of proof required in criminal law that the accused assaulted the NDEA agents. In fact, Joel Barra testified that he was not assaulted as when he arrived the accused had been subdued, and handcuffed.

[25] Consequently, I find that the prosecution has not adduced sufficient evidence to discharge the burden of proof to the standard required, that is proof beyond reasonable doubt that is necessary to convict the accused on each count. I therefore find the accused not guilty on both counts and I acquit the accused of both charges accordingly.

Signed, dated and delivered at Ile du Port on 9 February 2018

G Dodin
Judge of the Supreme Court