SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 1084

CO14/2018

In the matter between:

THE REPUBLIC **Republic**

(rep. by David Esparon)

and

LINDA MARIE **1st Accused**

(rep. by Nichol Gabriel)

DAVID CECILE **2nd Accused**

(rep. by Clifford Andre)

TELMA CECILE **3rd Accused**

(rep. by Clifford Andre)

Neutral Citation: *Republic v Marie & Ors* (CO 14/2018 [2019] SCSC 1084 (20 November 2019).

Before: Burhan J

Summary: Charges- Conspiracy to import a controlled drug and importation of a controlled drug. The essence of conspiracy is the agreement. Even though the controlled delivery failed, the crime of conspiracy is complete as the evidence clearly establishes a pre-arranged agreement between the 1st, 2nd and 3rd accused who clearly intended to play some part in the agreed course of conduct, in furtherance of the criminal purpose which in this case was the importation of a controlled drug. It is not necessary in order to complete the

offence of Conspiracy that any one thing should be done beyond the agreement. The conspirators may repent and stop, or may have no opportunity, or may be prevented, or may fail, nevertheless the crime is complete: it was completed when they agreed.

Heard: 06/08/18, 10/08/18, 16/08/18, 22/01/19, 12/02/19, 08/03/19, 11/04/19, 28/05/19, 06/06/19, 27/06/19, 28/06/19, 03/07/19, 24/07/19

Delivered: [20th November 2019]

ORDER

1st 2nd and 3rd accused found guilty and convicted on Count 1

1st accused found guilty and convicted on Count 2

3rd accused found guilty and convicted on Count 3

JUDGMENT

BURHAN J

[1] *Conspiracy to commit the offence of Importation of a controlled drug contrary to Section 16 read with section 5 of the Misuse of Drugs Act 2016 and punishable under the Second Schedule of the said Act.*

Particulars of offence are that, Linda Doris Marie, David Anthony Vincent Cecile and Elizabeth Telma Gelinta Cecile during the month of February, 2018, agreed with one another to pursue a course of conduct, that if pursued, will necessarily involve the commission of an offence by them under the Misuse of Drugs Act, namely the offence of Importation of a controlled drug, namely, Heroin (Diamorphine) having a net total weight of 204.1grams containing 126.5 grams of pure Heroin (Diamorphine).

Count 2

Importation a controlled drug contrary to Section 5 of the Misuse of Drugs Act 2016 and punishable under the Second Schedule of the said Act.

Particulars of offence are that, Linda Doris Marie, on 21st February, 2018, at the Seychelles International Airport, Pointe Laure, Mahe, imported into Seychelles a controlled drug , namely, Heroin (Diamorphine) having a net total weight of 204.1 grams containing 126.5 grams of pure Heroin (Diamorphine).

Count 3

Importation a controlled drug contrary to section 5 of the Misuse of Drugs Act 2016 and punishable under the Second Schedule of the Misuse of Drugs Act 2016.

Particulars of offence are that, Elizabeth Telma Gelinta Cecile, during the month of February, 2018, imported into Seychelles a controlled drug, namely, Heroin (Diamorphine) having a net total weight of 204.1 grams containing 126.5 grams of pure Heroin (Diamorphine) by causing the said controlled drug to be imported into Seychelles through the Seychelles International Airport, Pointe Laure, Mahe.

The Case for the Prosecution

[2] All three accused denied the charges against them. The prosecution opened their case by calling Officer Egbert Payet an investigator and exhibit officer for the ANB (Anti-Narcotics Bureau). He stated that he had received an exhibit envelope and an exhibit bag from Officer Renette Joubert which he had taken for analysis to the government analyst Julia Volcere together with the request letter. He had also received two phones one Samsung mobile phone belonging to Linda Marie in a navy blue pocket and a blue and red Nokia phone taken from David Cecile. He had also seized a white and pink Samsung phone from Barbra Mathiot. He had handed the phones over to Officer Dane Legaie for analysis. He had collected the exhibits back from the analyst on the 2nd of March 2018. He explained that the seals were intact at the time he handed over the exhibits and at the time he received them from the analyst, the seals placed by her were intact. Further at the time of the exhibits

being produced in Court, the seals were once again found to be intact. The Samsung phone of Linda Marie was produced as P4 (a), the Nokia phone of David Cecile was produced as P5 (a) and the Samsung phone of Barbra Mathiot was produced as P6 (a). The letter of request P1, sealed envelope containing the exhibits P2 the analyst report P3 were also produced by this witness.

[3] The next witness the government analyst Julia Volcere confirmed the fact she had received the exhibits in a sealed state from Officer Egbert Payet. She described how she conducted the analysis of the substances which were identified as P2 (b) and which she identified as heroin weighing 204.1 grams with 62% purity and having pure weight of 126.5. She identified her report as P3. She identified the exhibit analysed by her in open Court. She stated she had followed the UNODC guidelines in her analysis of the substances and explained same in great length under cross examination.

[4] The next witness Yves Leon stated he worked in the SSCRB (Scientific Support and Crime Record Bureau). His assistance was required on the 22nd of February 2018 by Officer Terrence Dixie, to photograph items taken into custody in respect of the importation of controlled drugs. He had got instructions from Officer Renette Joubert and proceeded to take the photographs. After taking the photographs, he had mounted them on an album and produced the album to Court as P8, photographs 1 to 4. He identified each of the photographs and also identified the exhibit P2 (a) and (b) as the exhibits he had photographed. Witness also identified the condoms he had photographed and the photographs of a Kia Picanto bearing registration number S 21337.

[5] Officer Renette Joubert stated she was attached to the ANB and on the 21st of February 2018, she had received information that there was a lady named Linda Marie who was to arrive in Seychelles on flight HM 060 from South Africa around 8.45 pm. Agent Talma and PC Lenclume and she had been at the airport and around 9.30 pm she had seen the lady approaching and had kept her under observation. When she approached the customs counters, she had gone through the red channel and she had been allowed to pass through. They had approached her and searched her luggage, nothing illegal was found and then Officer Talma told her that a body search had to be done on her. A body search had been

done nothing found and then Linda had been asked to squat. They had not been satisfied with the manner in which she was squatting. They had informed her they were taking her to the hospital. She had wanted to use the washroom and thereafter they had taken her to the Victoria hospital. They had taken an X-ray at the hospital and noticed some abnormalities in her vagina and the doctor had ordered a CT scan. The doctor had informed her that there was something in her vagina and she had agreed to remove it and witness Officer Renette, Linda and a nurse had gone into a room and she had removed something from her vagina which was inside a condom and placed it in a small bowl.

[6] The witness had examined the condom and noticed there were three layers of condoms and inside there was a plastic on which there was clear tape. Inside this covering there was a clear plastic with substance inside. The substance was light brown with small balls of powder which the witness suspected to be controlled drugs and she informed the suspect Linda Marie that she was being arrested for importation of a controlled drug. She had also cautioned her and explained her constitutional rights to her at the time of arrest. At the time Linda Marie was arrested the time was about 1.00 am. They had taken her to the ANB office and Inspector Leon had come to take photographs. After that she had taken the items into her custody and sealed them in an evidence envelope. She had then placed the exhibits in a safe box and prepared for a controlled delivery. Having obtained permission for same they had gone back to the hospital and the 1st accused Linda Marie had taken a call to the person who was supposed to come and meet her at the airport.

[7] She had called the number 2601922. The number was registered under the name of David in her phone which witness could see on the screen. The phone was on speaker and Linda had asked the person who answered the phone a male to come and pick her from hospital. The man had informed he was on the way. At that time officer Lenclume was with her and they had taken position and after about half an hour, a Kia Picanto bearing number 21337 came and Linda had got into the front passenger seat. The car had gone in direction of town. Witness identified the car from the photographs. Officer Talma and Officer Durup were in another car. She and Lenclume had taken their position at Bel Eau but as the controlled delivery was not successful they were asked to return to the office. At 8.30 am on the 22nd February 2018, witness had taken the sealed exhibit bag and envelope and given

it to Egbert Payet. Witness next identified the condoms and black plastic which were in the evidence bag marked P7 as P7 (a) and P7 (b) and the substance in evidence envelope P2 containing the powder marked P2(b) in the clear plastic wrapping marked P2(a) found in the condoms as the items taken into custody from the private parts of Linda Marie. Witness described how the powder was wrapped and found inside the condoms and also identified the items in the photographs.

[8] Witness Officer Renette Joubert then stated they had thereafter received information that a lady by the name of Telma was arriving in the Seychelles on the 7th of March 2018. They had on the said day observed her at the airport on arrival and after she had cleared customs they had approached her and witness and Officer Vincent Orphe had searched her and her bag and not found anything illegal. They had then arrested her for the charge of conspiracy to import a controlled drug. She too was cautioned and her constitutional rights read over to her. She identified the 1st accused as Linda Marie and the 3rd accused Telma Cecile as the lady named Telma who she had arrested at the airport on the 7th of March 2018.

[9] Witness Judith Emanuelle a nurse attached to the Victoria hospital, further confirmed the evidence of witness Renette Joubert in relation to the finding of the controlled drug in condoms found in the vagina of the 1st accused Linda Marie. Dr. Mohammed, a radiologist, stated that on the 22nd of February 2018, he as Radiologist had interpreted the CT scan images of one Linda Marie. He stated that after the CT scan is done and the images obtained and processed, it is sent to him for interpretation. After that he prepares a report and in this case, the report he prepared of Linda Marie was produced as P9. His report stated that the CT scan showed evidence of multiple foreign bodies in the private parts (vagina) of the subject Linda Marie. He produced the CD containing the images of the CT scan as P10. He further described the images appearing in the CD in open Court.

[10] The next witness Officer Hendrick Talma stated he was the head of the team that went to the airport and arrested Linda Marie. He corroborated the evidence of Officer Renette Joubert regarding meeting Linda Marie at the airport on arrival, the search of her person and her baggage, taking her to hospital and detection of the controlled drug in condoms inserted and hidden in her vagina and her subsequent arrest. He also described and

corroborated the evidence of Renette Joubert in respect of the failed controlled delivery in which a decoy substance was used and the fact a telephone call was made by the 1st accused Linda Marie in respect of the controlled delivery around 4.00 am to one David having phone number 2601922 for him to pick her up at the hospital.

[11] He further stated that after Linda Marie had been picked up at the hospital soon after the call at 4.00 am, he had been given details of the vehicle that had picked up Linda Marie in the controlled delivery and they had followed the vehicle a Kia Picanto towards the Bel Air cemetery but stopped before near the Indian Shop of Sundlar. At that moment witness Talma was with Officers Michael, Marie and Durup. They had stopped their vehicle behind the Kia Picanto but not close near a big wall. They had observed the driver get out of the vehicle and Linda too had gotten out and the driver had removed two bags from the car and put them on the ground. After placing the bags on the ground the driver took the car and drove away. Linda had then gone into the alley near the shop.

[12] About an hour later the same car came back and did not stop near the Indian shop but went up to Bel Air, made a turn and came and stopped near the shop where it had stopped before. They noticed a man in the front seat with the driver and a woman in the back. The man and the women disembarked from the car and went in the same direction Linda had gone. The man who was driving was the same person in the car before and he remained in the car. After some time the female passenger came back looking at her phone and then went near the parked car passed it and took a call. Then the driver and the other man came back and they all got into the car and drove away towards town. Linda came out after they left and the officers of the ANB picked her up and drove away to the ANB office as the controlled delivery was a failure. Witness identified the exhibits taken into custody the powder, the condoms and the paper wrappings.

[13] The next witness Dane Legaie gave evidence stating that he was working at the ANB as an IT technician and that he assisted in the extracting of information and evidence from electronic equipment. He clarified that he was handed over the phones of Linda Marie, David Cecile and Barbra Mathiot by Officer Payet to extract necessary information. He stated that a logical extraction of information was done on the phones using a tool called

UFED. He then used a software to analyse the information extracted such as messages, call logs, contacts and images. Thereafter he compiled a report in respect of each phone and a soft copy of the report was placed on a CD. His report on Linda Marie's phone was produced as P11 and the CD was produced as P12. Thereafter he proceeded to describe the information. He referred to records of calls and messages between Linda Marie and Barbara Mathiot. He also referred to messages from Elise Cecile (another name used by Telma Cecile) to Linda Marie on 19th of February 2018. He also produced the information extracted from the phone of David Cecile (2601922) and produced the reports of the logical and file extractions as P 13 and P14. He identified the phone of David Cecile from which he had made the extraction. He referred to calls coming into the phone of David Cecile on the 18th and 19th of February from South Africa. He referred in detail to the calls of the 21st of February 2018 with 2821279 (Barbra Mathiot phone) and 2574324 (Linda Marie's phone) on the 21st of February 2018 in the night at 11.50 pm and between 4.14 am and 06.17 hrs in the morning of the 22nd of February 2018. He then proceeded to identify the phone of Barbra Mathiot and produced the report of the information extracted as P15. He referred to the exchange of calls between this phone and 2601922 (David Cecile) and and 2574324 (Linda Marie) in the early hours of 22 February 2018. It appears from his evidence even though the calls were recorded, the duration of certain calls have failed to be recorded by their system.

[14] The prosecution thereafter called Barbra Mathiot who stated her sister was the 1st accused Linda Marie and they were residing at La Gogue. She stated that she knew both Telma and David Cecile as they too lived in La Gogue. She admitted that she had been initially charged with the other three persons, but that she had accepted a conditional offer and was released. She stated that in February 2018, she was standing near Cash Plus opposite the Catholic church and she had met Telma Cecile, the 3rd accused, who had asked her when she was going to South Africa. She stated she had been to South Africa around 4 times to buy clothing to sell in Seychelles and had stayed at the Oribi hotel. She had asked her to accompany her to South Africa and make a deal which was to get drugs. She had replied she was not going. Witness further stated that Telma Cecile would contact her on face book under the name of Elise Cecile. Witness had given Telma her telephone number which was 2821279. Later witness Barbra Mathiot had told Telma that there was one Linda Marie

who was willing to go and get the drug for her from South Africa. Witness stated that when Linda had visited her, she had put the proposition of Telma to her and Linda had been willing to bring the controlled drug, as she needed money to pay a person who she owed money to. She stated Linda would call her from her phone bearing number 2574324.

[15] Thereafter Telma had called her and said she was bringing money to buy the ticket for Linda Marie. Telma had given the money directly to Linda Marie and Linda Marie had given her 5000 SCR to buy the ticket. Witness Barbra had purchased the ticket for Linda Marie to leave for South Africa on the 17th of February 2018 and return on the 21st of February 2018 which were dates decided by Telma Cecile. Telma had informed her earlier that she would pay for the ticket and accommodation in South Africa. Witness stated that Telma Cecile had left for South Africa on the 16th of February 2018 and had informed her that they would be staying with a person called Karl. Telma had stated that she would come to the airport and meet Linda when she arrived in South Africa.

[16] After purchasing the ticket, she had given it to Linda who had thereafter left to South Africa on the 17th of February 2018 and Telma had phoned her from South Africa and told her that Linda had arrived. She further stated that on the 21st of February 2018, she had been at Amusement Centre. After drinks around 9.00 pm, she had called David Cecile to take her home he had informed her that he was going to the airport to collect Linda Marie. He had told her he would drop her at Bel Air and then come and collect her. At 11.00 pm, he had phoned her and told her he had seen Linda coming out with an NDEA (presently ANB) agent. She had asked him to come and take her to La Gogue and he had arrived in a red Sirion. He had told her that he was going to get something from Linda and give her money. He had then taken her home to La Gogue. Around 4.00 in the morning, David had called her and stated that Linda Marie had asked him to come and collect her from hospital and he had said he was scared as he had seen an NDEA agent coming out with her at the airport. She had volunteered to go with him. He had picked her up and when they were going in the vehicle, he had told her he had sent another driver by the name of Steven Albert to collect Linda from the hospital and had offered to pay him.

[17] On the way from La Gogue they had met Steven and he had confirmed that he had picked up Linda and dropped her at Bel Air. Both she and David had then got into Steven's car and proceeded towards Bel Air. She had sat at the rear of the vehicle and David had sat in front. They had stopped near a shop at Bel Air near the Bahai centre. David had alighted from the car and gone towards Linda's place. They had reversed and parked the car near the place where cars are washed. Then, as David had not come they had once again parked the vehicle near the shop and both she and Steven had got down from the vehicle and seen David in the alley. She had walked up to Linda's house and Linda had been standing with a plastic duty free bag in her hand near her house smoking. Linda had asked her what she was doing here and witness had felt sick and wanted to throw up and gone back to the car. Then Steven and David had come back and all had got into the car and driven away. They had gone back to La Gogue and while they were in the car Linda had called David to take the parcel and David had replied he was not coming back. Thereafter she had been dropped at La Gogue and Steven was paid SCR 500.

[18] Thereafter at 10.00 am, she had received a call from the daughter of Linda Marie, Salima Mathiot who stated that Linda Marie had been arrested and was being produced in Court in the afternoon. She identified the phone she was using P6. She identified the 1st accused Linda Marie as her sister and the 2nd accused as David Cecile and Telma Cecile as the 3rd accused. She stated she was thereafter also arrested and had given two statements to the police, her first on the 24th of February and the second on the 9th of March 2018, after the conditional offer.

[19] Thereafter, the prosecution called Steven Albert, a pirate taxi driver who corroborated the evidence of witness Barbara Mathiot and stated that the Picanto was Marvin's a friend's rented car which he was polishing to make it shiny and he had given his rented car to Marvin to use that night. As he had not yet finished the work on Marvin's car, he had kept the car overnight and had received a call from a Filipino lady to collect her from Amusement Centre but when he went amusement centre, she was not there. He had returned back and in anger switched off his phone. His girlfriend had woken him up at 4.00 am, sayng there was call for him on her phone (2713109 also seen in the telephone records of Officer Dane Legaie of David Cecile's phone). He had answered it and David

Cecile another pirate taxi driver he knew, had wanted him to collect a lady from the hospital as he was far away. He had accepted and picked the lady up and dropped her at Bel Air. He had asked the security at the hospital and on their directions found the lady and told her David had sent him and she had asked him "where is the money"? He had told her this was nothing to do with money and then taken her with her bag and dropped her at Bel Air. This all had occurred around 4.15 in the morning.

[20] After dropping her, he had gone back to La Gogue and met David Cecile and Barbra who had stopped him. David had told him there was something he had to get from this lady and as his car was not working, David had wanted him to take them back again to Bel Air. David and Barbra had got into his car and they had driven back to Bel Air. He corroborated the version of Barbra in respect of the events thereafter and added that when Linda came with the parcel up to David, she had asked for the money. David had tried to reach for the parcel and she had asked him what about the money, David had said "You know how these things goes on. If you want I have SCR 10,000/- at home I can give you in the meantime." Witness Steven stated he had heard these conversations before and had gone back to his car. When David had come back empty handed he had asked him "What kind of drug trip are you trying on me" and got into the car and they had driven back. On the way David's phone rang and it was Linda and she asked him to come and collect the things. He had told David he was not going back. Then they had gone back to La Gogue. David had taken the SCR 500 and had thrown it on his car seat. Witness identified this vehicle used that night in photographs 3 and 4 of P8.

[21] Witness Marlon Cherry an officer attached to the ANB stated that on the 22nd of February 2018, he was on duty and he was instrumental in arresting the 2nd accused David Cecile around 10.40 am that day near the petrol station at Pt Larue. Officer Tracy Laurencine stated she had recorded an under caution statement from the accused Linda Marie at 10.30 am on the 22nd of February 2018 which lasted till 12.30 pm. The statement was marked as P16. There was no objection to the statement of the 1st accused Linda Marie being marked in evidence. Witness admitted she had forgotten to sign the statement but identified her writing in the statement recorded by her.

[22] Juliette Naiken the investigating officer stated that she had written to the Department of Immigration and they had as requested by her, given her the travel details of Barbra Mathiot (P18), the 1st accused Linda Marie (P19), the 2nd accused David Cecile (P20) and the 3rd accused Thelma Cecile (P21). The prosecution next called Bill Zialor who stated he was the Enforcement officer for immigration who identified and marked the respective itemised documents as P18 to P21 respectively. Mr Franky Sultan, Manager for Security for Air Seychelles, produced the letter of request sent by the ANB to Air Seychelles as P22. The travel itinerary of Linda Marie and Elizabeth Cecile the 3rd accused was marked as P23 and P24 respectively. Thereafter the prosecution closed its case.

Case for the Defence

[23] In defence, the 1st accused Linda Marie gave evidence under oath. She stated she was 49 years of age, had three children and three grand-children and she was employed as a cleaner at Foyer de La Providence St Elizabeth. She stated that she was earning around SCR 6400/- per month. She admitted that she knew the 2nd accused David Cecile and his sister the 3rd accused Telma Cecile as they resided in La Gogue . She stated that she had taken a loan and was paying instalments and due to her family difficulties and money problems, she had decided to accept the offer of Barbra Mathiot, her sister, to go to South Africa to collect a drug for Telma Cecile, the 3rd accused, for SCR 75,000/. She further stated that Telma was going to pay for her accommodation and food. Telma had phoned her to give her the money for the ticket which she had collected from Telma herself.

[24] She had left Seychelles on the 17th of February 2018 and the brother of Telma, David Cecile had taken her to the airport in Seychelles and when she arrived in South Africa, Telma had met her at the airport in Johannesburg. She had stayed at the Oribi hotel and Telma had paid for her accommodation and food. Telma had come every day and met her and taken her to restaurants and to go shopping. She had stayed in South Africa and admitted she had come in a flight back to the Seychelles, on the 21st of February 2018. Prior to leaving for Seychelles Telma had come with a bottle of black label whisky in which was the black label and the controlled drugs. There was Durex and a cream and Telma had told her how to place the Durex with the controlled drug in her private parts using the cream which she

had done. She had inserted the Durex and then Telma had taken her to the airport at 10.45 in the morning. She had landed in the Seychelles. She had been given instructions that her brother David Cecile would come to collect her at the airport together with the mother and she was to be given SCR 20,000/=. She had landed at the airport and she too described how she was arrested by the ANB officers at the airport, taken to hospital, X rayed and the condoms containing the controlled drugs were removed from her private parts and given to the officers of the ANB. She corroborated the evidence of Officer Renette and other officers on these matters. She identified the exhibits produced and the photographs as the controlled drug and condoms she had brought into the country concealed in her private part.

[25] She also stated that the ANB officers had planned the controlled delivery and informed her to tell David the 2nd accused, if he told her that he had seen her with ANB officers that they had not found anything on her and to come and collect her. However David had not come but sent another person by the name of Steven who she knew as he too was from La Gogue a pirate taxi driver. She had gone to her house she was renting at Bel Air and on instructions of the ANB had not entered it but as arranged had called David regarding the collection of the package and he had said he was coming to collect it. He had come with her sister Barbra. She had gone towards him to give the package and asked for the money. However she had not got any money from him and he had told her he was calling a person and she was not answering. She stated in cross examination she had panicked and when he did not give her the money she had decided not to give him the package containing the controlled drug and some other items. David had got upset and he had left. Then the officers had made her call him again. She had called him again and he had said stop bothering him.

[26] Under cross examination she admitted that the 3rd accused Telma Cecile had made all arrangements in respect of the importation of the controlled drug with her sister Barbra and she had got a chance to meet her through her sister. She had also met Telma in South Africa and she had told her about the payment of the SCR 75,000/=. She admitted she had also met Telma in the Seychelles and taken the ticket money and given it to her sister Barbra to buy the ticket. She stated that even though her sister had told her about the offer, the drugs

were for Telma Cecile. She denied her sister was the mastermind in the operation. She denied her sister had falsely implicated Telma Cecile.

[27] She further stated that she was not paying David Cecile the 2nd accused as a taxi pirate as he was the one who had been instructed to take her to the airport and to collect her when she arrived. All these instructions were given to her by Telma Cecile. Telma had told her in South Africa that her brother would pick her up and that her mother would be there and she was instructed to give them the goods and they will give her the money. Under further cross examination from learned Counsel for the prosecution she once again admitted it was Telma who had given her the money for the air tickets at her mother's place at La Gogue She stated that the condoms filled with drugs were in the black label whisky box brought by Telma and given to her to bring to Seychelles. She further stated it was Telma Cecile who had told her to insert the controlled drugs into her vagina. She stated that the mother of the 3rd accused was Virginia Cecile and Telma had also given a bag containing soap, tooth brush and whisky and roll on to give her. Thereafter the defence of the 1st accused closed.

[28] The 2nd accused exercised his right to remain silent. No adverse inference should be drawn from this. The 3rd accused Telma Cecile gave evidence under oath. She admitted to traveling to South Africa on the 16th of September 2018 with a friend Aisha Antat. They had stayed at the guest house of a man named Karl Malcouzanne. She stated that before she left Barbra Mathiot had met her near Cash Plus and asked when she was going to South Africa and that she had someone who was to go there who did not know the place and she needed someone to send her with. Later Barbra had called and said it was her sister who was going and she had agreed to help. She admitted she had met Linda Mathiot and they had gone back to the guest house and all stayed in one room. She admitted that they went shopping and that Linda went with Karl to the discotheque. On the day she was leaving they heard Karl call Linda and tell her to come and collect something which was in a box of black label. She admitted that she was to return on the 23rd of February 2018, back to Seychelles but she had not and eventually arrived on the 7th of March 2018. She said she would deal with buying dresses and selling them. She had ordered some dresses and as

they were not ready she had delayed her departure from South Africa back to Seychelles. She denied being involved in drug business.

[29] Under cross examination, Telma Cecile denied discussing the importation of drugs with Linda Marie or Barbra Mathiot. She admitted that there was "no show" at the airport in Johannesburg on her part on her return ticket dated 23rd of February 2018. She admitted she was aware that the ANB was looking for her and that her brother had been arrested. She denied bringing the bottle of scotch stuffed with condoms containing controlled drugs to Linda in South Africa. She said she had not made a statement as no one had asked her to make one. She admitted they had cautioned her but she had not given one.

[30] The 3rd accused also called Aisha Antat who stated that she had accompanied Telma to South Africa on the 16th of February 2018. She produced a copy of the relevant entry in her passport. She corroborated the fact that she had stayed with Telma at Karl's guest house. Linda Marie too had joined them. They had gone shopping. She too stated that she had seen Karl give Linda a box of black label. Under cross examination she admitted she had gone with Telma earlier to South Africa in January 2018. She admitted she had gone twice in January and in February 2018 to South Africa. She denied any knowledge of condoms or drugs. She admitted that she became a police officer in April 2019. She stated that she was a home carer at that time and earned only SCR 5000 but her family would help her to travel. She admitted being arrested in Seychelles for drugs at Beau Vallon in January this year in 2019. She had not been charged. Thereafter the 3rd accused closed her defence.

[31] Thereafter the parties made written submissions.

Analysis of the Evidence and Findings

[32] Having considered the evidence of the prosecution and the defence carefully, it is clear that the 1st accused Linda Marie in her evidence under oath, admits the fact that she imported the said quantity of controlled drug namely heroin set out in Count 1 to Seychelles from South Africa, by hiding the controlled drug wrapped in condoms in her vagina. It is clear that she admits the evidence of the prosecution given by Officer Renette in respect of

her arrest at the Seychelles international airport and subsequent evidence concerning the finding of the controlled drug wrapped in condoms in her vagina. This evidence was also substantiated by the evidence of Dr. Mohammed and Judith Emanuelle, a nurse at Victoria hospital. Further the prosecution evidence and analyst report of Julie Volcere further reveals that the controlled drug brought into the Seychelles by Linda Marie on being sent to the government analyst was found to be heroin, having a net total weight of 204.1 grams and containing 126.5 grams of pure heroin. This is further affirmed by her report P3. I am of the view that on consideration of the evidence Julie Volcere and Egbert Payet, the government analyst has followed the correct procedure as recommended by the United Nations, in determining the purity of the quantity of heroin and analysing the exhibit. I am also of the view that the chain of custody of the exhibit has been established beyond reasonable doubt by the prosecution, indicating that there was no tampering with the exhibits. The mere fact that she did not gain anything for her services as mentioned in the submission is not a defence. On consideration of the evidence of the prosecution and the admission of the 1st accused Linda Marie under oath (judicial confession), I am satisfied beyond reasonable doubt that the prosecution has proved all the elements of Count 2 against the 1st accused Linda Marie and proceed to find her guilty on Count 2.

[33] In her evidence under oath, Linda Marie further stated that the importation of the said controlled drug was on instructions given by the 3rd accused Telma Cecile. It is her evidence that the 3rd accused had contacted her sister Barbra Mathiot to find a person to carry the drugs into Seychelles for her. The 1st accused Linda Marie stated in her evidence that she volunteered to do so as she was in desperate need of money and as she had been offered a free ticket to South Africa, lodging and SCR 75,000/= to do so. She stated that she personally collected the money from the 3rd accused for her ticket. It is clear that her own sister Barbra Mathiot had been the go between, introducing the 1st accused Linda Marie to the 3rd accused Telma Cecile for the purchasing the said ticket and the importation of the controlled drug. The 1st accused further stated that when she arrived in South Africa, she was met by the 3rd accused who took her to her guest house named Oribi and came and took her out shopping and paid for her meals and lodging. The 1st accused categorically stated it was the 3rd accused who brought the controlled drugs in a black label box with a bottle and the Durex (condoms) and told her how to carry it in her vagina. Telma Cecile,

the 3rd accused had also told her that the 2nd accused her brother David Cecile would come to the airport with her mother and she was to give the controlled drugs and the mother would give her the money promised.

[34] The evidence of Barbra Mathiot, an accomplice, is similar in nature and is supported by the evidence of the 1st accused Linda Marie in all these aspects. Barbra admits it was she who introduced her sister Linda Marie to the 3rd accused Telma Cecile and bought the ticket. It was also she who made the initial suggestion to her sister Linda that Telma was looking for a person to carry the drugs for her into Seychelles. She further stated that her sister Linda had agreed to carry the controlled drug into Seychelles as she urgently required the money.

[35] In her evidence Linda Marie stated that the 3rd accused Telma Cecile would message her under the contact name of Elise Cecile. Barbra Mathiot too confirmed this and stated that she received calls from the 3rd accused when she was in South Africa that her sister had arrived safely. The evidence of Dane Legaie in respect of telephone records confirms the fact that Barbra did receive calls from South Africa and there were exchanges of messages between one Elise Cecile and Linda Marie.

[36] The evidence of the 1st accused Linda Marie is that she was asked by the 3rd accused when David Cecile and her mother came to collect her at the airport on her return, Linda Marie was to hand over the controlled drug to them and that her mother would give Linda Marie the money. However this had not worked out as Linda Marie had at the airport itself been arrested with the controlled drug. The fact that David Cecile had been at the airport is confirmed by the evidence of Barbra Mathiot when she states that David Cecile had informed her on the phone that he had seen Linda Marie leaving the airport with Officers of the NDEA (present name ANB). Even though David had seen her being taken away by police officers at the airport, at the time of the controlled delivery when Linda had phoned him and told him to come to collect her, he had sent Steven a pirate taxi driver to collect her from the hospital and later at around 5.00 in the morning, at Linda Marie's request, David had gone to collect the controlled drug from Linda Marie in the same pirate taxi and

with the same driver with Linda Marie's sister Barbra. It is to be noted that at that time the 2nd accused was not acting as a taxi pirate as claimed by the defence.

[37] Linda Marie's evidence further establishes that David Cecile had come and asked for the controlled drug but when she was about to give it, she changed her mind as he had not brought the money promised and refused to give it. Her evidence clearly indicates that David was attempting to take the controlled drug. This evidence is supported by the evidence of Steven the pirate Taxi driver who then realised from the conversation that it was a drug transaction. The fact that the 2nd accused, David Cecile, was present at that early hour in the morning, on the telephone at the request of Linda, is confirmed not only by the evidence of Linda but also by the evidence of the ANB officers who were watching. Steven, the pirate taxi driver is an independent witness and actually heard the conversation between David and Linda. This is also the evidence of Barbra Mathiot who also accompanied him. I find it difficult to believe that David Cecile the 2nd accused would go at that time in the morning, just to collect a bottle of black label, soap, a tooth brush and roll on, that was sent by his sister.

[38] The evidence of Dane Legaie on the telephone records verifies the exchange of calls between Linda Marie and David Cecile around the early morning of the 22nd of February 2018 the time this incident occurred. I also observe that Linda Marie had given a very prompt and detailed statement to the police at the time she was arrested. Though cross examined at length, no contradictions were forthcoming. For all the aforementioned reasons, I will proceed to accept the evidence of Linda Marie which stands corroborated by the evidence of several prosecution witnesses and even by the independent telephone records of Dane Legaie. All the aforementioned evidence taken together clearly indicates the 2nd accused David Cecile, played a significant part in the conspiracy to import the controlled drug. Even though he failed to actually collect the controlled drug, he participated in a previously agreed arrangement to collect the said controlled drug from Linda Marie the 1st accused.

[39] In regard to Telma Cecile's contention that the controlled drug was given by one Karl to Linda I consider this unbelievable. In cross examination, no such suggestion in respect of

Karl was made to either Barbra Mathiot or Linda Marie or any of the prosecution witnesses. It appears this defence has been thought of at the last minute. I also observe that the witness called to corroborate Telma's version, Aisha Antat is a person who has been arrested by the police in relation to drug related offence and has been a regular traveller to South Africa despite having a monthly low income. Further, the moment Linda was arrested, the 3rd accused made a "no show" at the airport and missed her flight back to the Seychelles. She admitted that she had been aware of Linda's arrest with the controlled drugs. I am satisfied that she therefore deliberately missed her flight in the fear of being arrested in Seychelles. Her excuse that she stayed back to collect dresses as her order was delayed is unbelievable, as if that had been the reason, she would have had time to inform the airport authorities of her inability to fly on that date and had her return flight postponed to another date, prior to her intended date of departure, rather than putting a "no show" at the airport on the date of departure.

[40] For the said reasons, I reject the defence of the 3rd accused Telma Cecile and accept the corroborated evidence of Linda Marie, I am satisfied beyond reasonable doubt that the controlled drug was imported into Seychelles by and for the 3rd accused Telma Cecile by using the 2nd accused Linda Marie as a carrier of the controlled rug. I am also satisfied beyond reasonable doubt that both Telma Cecile and Barbra Mathiot (who entered into a conditional offer) and David Cecile the brother of Telma Cecile were the main participants in the conspiracy to import the said controlled drug, namely heroin weighing 204. 1 gram (pure 126.5 grms) into Seychelles. For the aforementioned reasons, I am inclined to reject the defence contention in the submissions that there exists no evidence against the 2nd and 3rd accused.

[41] The offence of conspiracy is completed when two or more persons agree to do an unlawful act or to do a lawful act by unlawful means, ***Archbold Pleading Evidence and Practice in Criminal Cases 42nd edition 28-4.*** The overt act (actus reus) is the stage of parties *agreeing* (emphasis added) to carry their criminal scheme into effect. The essence of Conspiracy is the agreement. ***Archbold 2012 Criminal Pleading Evidence and Practice 33-5.***

[42] The very plot is the criminal act itself: ***Mulcahy v. R. (1868) L.R. 3 H.L. 306 at 317; R. v. Meyrick and Ribuffi, 21 Cr.App.R. 94, CCA.*** Nothing need to be done in pursuit of the agreement: ***O'Connell v. R. (1844) 5 St. Tr. (N.S.)*** *1;* repentance, lack of opportunity and failure are all immaterial**: *R. v. Aspinall (1876) 2 Q.B.D. 48.*** As the essence of Conspiracy is agreement, withdrawal therefrom goes to mitigation only**: *R. v. Gortat and Pirog [1973] Crim.L.R. 648, Crown Court (Cusack J.).***

[43] Therefore, case law clearly reveals that it is not necessary in order to complete the offence of Conspiracy that any one thing should be done beyond the agreement. The conspirators may repent and stop, or may have no opportunity, or may be prevented, or may fail. Nevertheless the crime is complete: it was completed when they agreed, ***Archbold 2012 (supra).***

[44] In regard to the intention (mens rea) in the offence of Conspiracy, I would draw attention to the case of ***R v Anderson [1986] AC 27 at para E*** (followed in Seychelles in the case of ***Republic v Livette Assary SC (Criminal Side) 19 of 2009)*** where Lord Bridge held as follows:

"But beyond the mere fact of agreement, the necessary mens rea of the crime, in my opinion, established if, and only if, it is shown that the accused, when he entered into the agreement, intended to play some part in the agreed course of conduct in furtherance of the criminal purpose which agreed course of conduct was intended to achieve. Nothing less; nothing more is required".

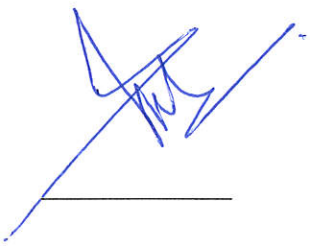
[45] Further In the case of **Dominique Dugasse & Ors v Republic (supra),** the Seychelles Court of Appeal referring to ***Archbold*** **(2012) 33-25** held, so far as mens rea of the offence of conspiracy is concerned, it needs be established that the accused, when he entered into the agreement, intended to play some part in the agreed course of conduct in furtherance of the criminal purpose which the agreed course of conduct was intended to achieve. Vide Lord Bridge in ***R v Anderson*** **[1986] AC 27**. Lord Griffiths in ***Yip Chiu-Cheung v R (1994) 99 Cr App R 406*** said:

"The crime of conspiracy requires an agreement between two or more persons to commit an unlawful act with the intention of carrying it out. It is the intention to carry out the crime that constitutes the necessary mens rea."

[46] In the light of the aforementioned case law and on consideration of the facts set out in the preceding paragraphs, I am satisfied beyond reasonable doubt that there was an agreement between the 1st, 2nd and 3rd accused to import the said controlled drug. Even though the controlled delivery failed, the crime of conspiracy is complete as the evidence clearly establishes a pre-arranged agreement between the 1st, 2nd and 3rd accused who clearly intended to play some part in the agreed course of conduct in furtherance of the criminal purpose of importation of a controlled drug.

[47] For all the aforementioned reasons, I am satisfied that the prosecution has proved beyond reasonable doubt all the elements of the offence in Count 1, namely Conspiracy to import a controlled drug against the 1st 2nd and 3rd accused. I therefore proceed to find the 1st, 2nd and 3rd accused guilty on Count 1 and convict them of same. I am also satisfied that the prosecution has also proved the elements of the offence of importation as contained in Count 2 against the 1st accused Linda Marie beyond reasonable doubt. I proceed to find the 1st accused guilty on Count 2 and convict her of same. Similarly, I am satisfied the prosecution has proved beyond reasonable doubt all the elements of importation of a controlled drug as contained in Count 3 against the 3rd accused Telma Cecile and this Court proceeds to find her guilty on Count 3 and convict her of same.

Signed, dated and delivered at Ile du Port on 20th November 2019.



M Burhan J