

**IN THE SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2021] SCSC 137  
CR 95/2019

**REPUBLIC**  
(*rep by Mr. Joshua Revera*)

**Prosecution**

and

**STEVEN DERRECK ANTOINE**  
(*rep. by Mrs. Alexia Amesbury*)

**Accused**

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**Neutral Citation:** *R v Antoine* (CR 95 of 2019) [2021] SCSC 137 (25 February 2021)  
**Before:** **Vidot J**  
**Summary:** Trafficking in a controlled drug & possession of controlled drug  
**Heard:** 05 and 06 October 2020  
**Delivered:** 25 February 2021

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**ORDER**

1. Count No.1; Trafficking in a controlled drug contrary to section 7(1) read with section 9(1) of MODA; charge proved beyond reasonable doubt. Therefore Accused is found guilty and convicted of the offence
2. Count 2; Possession of a controlled drug contrary to section 8(1) of MODA; Accused pleaded guilty to the charge. Accordingly the Accused is convicted of the charge

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**JUDGMENT**

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**VIDOT J**

**The Charge**

[1] The Accused was charged and convicted of the following offences after having pleaded guilty to the first count and tried on the second;

**Count 1**

**Statement of offence**

Trafficking in in a controlled drug contrary to section 7(1) read with section 19(1) of the Misuse of Drugs Act 2016 and section 22 (a) of the Penal Code and punishable under section 7(1) as specified under the Second Schedule of the Misuse of Drugs Act

**Particulars of Offence**

Steven Antoine of Pointe Aux Sel together with DS of Anse-Aux-Pins, Mahe, on the 18<sup>th</sup> June 2019, at Petit Barbarons, Mahe, were found trafficking in a controlled drug namely heroin (diamorphine) with a total net weight of 25.15 grams and purity of 64% amounting to 16.09 grams of heroin (diamorphine) by way of transporting the said controlled drug.

**Count 2**

**Statement of Offence**

Possession of a controlled drug contrary to section 18(1) and punishable according to the Second Schedule of the Misuse of Drugs Act

**Particulars of Offence**

Steven Antoine of Pointe-Aux-Sel, Mahe on the 18<sup>th</sup> June 2019 at Petite Barbarons, Mahe was found in possession of piece of clear plastic wrapping a piece of dark substance that is a controlled drug namely cannabis resin with a net weight of 22 grams.

[2] It must be noted that the Accused was charged with another person on the first count. Half way through the trial the charge against that person was dropped. So, the trial continued against Mr. Antoine only. The Accused pleaded guilty to the second count. He was accordingly convicted of the same.

## The Evidence

- [3] It was the 18<sup>th</sup> June 2019. Constable Stephen Joseph of the Anse Boileau was on duty. Together with PC Didon, PC Atala and other officers, they were conducting spot checks on vehicles at Petit Barbarons. Whilst on duty he received a call that informed him to be on the lookout for a silver Kia Picanto. That was around 2p.m. When the car approached the spot check station it was stopped. Apart from the driver, who was the Accused, two ladies occupied the car. The driver identified himself as Steven Antoine. The two lady passengers were seated on the back seat. One of the two was the person who was charged with the Accused. At that point they were asked to disembark and they complied. That was as per the testimony of Constable Joseph.
- [4] Constable Joseph further added that the Accused was asked to disembark and to go round the front passenger' s seat as a search of the interior of the vehicle was to be conducted and they wanted him to observe. Whilst doing the search they noticed that steering cover was loose. Then just by pressing upon it, the cover fell off. There, in the steering some packets were discovered. There were in all 8 packets. They were clear plastic packets. They were removed in the presence of the Accused and PC Didon. These packets were subsequently analysed by Mrs. Chettiar, Government analyst.
- [5] The Accused was informed of his constitutional rights and was afterwards brought to Anse Boileau Police Station, together with his car, driven by PC Didon. Arriving at the station the exhibits were counted and were placed in envelopes again the presence of the Accused and PC Didon. Later on, Officer Egbert Payet of the ANB was contacted and the exhibits were handed over to him and were brought to the ANB at Bois de Roses. The Accused was taken to that office as well. Other formalities which are not disputed, were followed in the handling over the exhibits.
- [6] PC Joseph's testimony in most part is corroborated by the evidence of PC Didon. There were however some discrepancies between the two testimonies but I do not consider such to be very material. PC Didon testified that when the vehicle was stopped the passengers were seated one in front and the other on the back seat. The person who was charged with the Accused was seated in front. The search started by verifying the doors of the

passengers' side and then the boot. It was only then that the search was focussed on the driver's area and that while PC Joseph was checking the horn area, the cover of the steering came off and the packets were found and retrieved. At that point the packets were not opened in his and the Accused presence. They were of clear plastic and the contents were visible. However, the packets were only opened in his and the Accused's presence at the ANB station.

[7] Egbert Payet was the ANB officer who received the exhibits from PC Joseph on the same day. He took them to SSCRB forensic lab on the 19<sup>th</sup> June 2019. He addressed a letter (exhibit P2) to Mr. Bouzin requesting analysis of the exhibits. On the 25<sup>th</sup> June 2019, the exhibits were returned accompanied with a certificate of analysis (exhibit P3). The certificate from Mrs. Chettiar identified the 7 packets of beige substance as being 25.15 grams of heroin with a purity of 64% and therefore, an average heroin content of 16.09 grams. The dark substance was concluded to be 22 grams of cannabis resin. These drugs were admitted without objections and it was clear that the procedures followed in handling these items as exhibits was not challenged. In any case, this Court is satisfied that these exhibits were not tampered with and the manner of handling them were in conformity with the law.

[8] The defence of the Accused appeared to have been that the drugs did not belong to him but to one or both passengers who were in his car. They belonged to one of the two ladies whom he was conveying to Port Launay. He therefore, elected to make a dock statement to explain that. Though little credibility is normally attached to dock statements whereby it is even considered not to be any evidence at all, this Court nonetheless attached some consideration to that statement in trying to understand the case.

[9] The Accused testified that he was installing CCTV cameras when he was called to pick up someone and make a trip. They were the two ladies who were in the vehicle with him when he was stopped and searched. He was requested to convey them to Port Glaud via Montagne Posee from Anse-Aux-Pins. When Diana embarked into the car, she asked if there was anywhere, she could stash something. He had suggested that he could have it placed in his steering in a place where he normally places his hashish. She did not specify

what stuff that she needed to place there and he did not query since he was in a hurry. On reaching Barbarons his vehicle was flagged down and subsequently searched. His version of the stop and search did not materially differ from that of the prosecution witnesses. However, when the officers were conducting the search, PC Joseph received a phone call. PC Joseph moved a distance away to answer the call and when he returned rather than continue to search the door area where he was searching, he went directly to the steering and discovered the items under the steering cover. PC Joseph removed the drugs therefrom. Thereafter PC Joseph signalled to the officer in a gesture that he concluded meant that they should go. He was placed in the car and driven to the Anse Boileau Police Station.

- [10] When at the station, the officers opened up the packet and he told the officers that Diana had told him it was two strands of hair. Upon arriving at the ANB office, a vehicle with ANB officers that was coming out, returned and entered the compound and as he was disembarking officers approached him and said that they knew that the drug was not his. They asked to whom was the drug to be delivered and he answered that he had no knowledge.
- [11] The Accused also made a confession to the Police. That confession was admitted without objection. In that statement he gives an account of events regarding the picking up of the ladies. He identifies them as Becca and Diana. However, in that confession, contrary to what he stated in his dock statement, he says that it was Becca who asked her if there was anywhere where she could place something.

## **Discussions**

- [12] The Accused pleaded guilty to the second Count, so therefore there is no need discuss the matter further apart from convicting the Accused of that count.
- [13] The first count is one of trafficking contrary to section 7(1) read with section 19(1) of the Misuse of Drugs Act 2016 (MODA). The nature and weight of the drugs seized are not in dispute and neither is it in dispute that the drugs were found under the steering cover. The only contention regards ownership of the drugs; the prosecution alleges that it belonged

the Accused whilst the latter seems to suggest in his confession that it belonged to Becca and in dock statement that it belongs to Diana.

[14] As correctly pointed out by Counsel for the prosecution, trafficking is defined in section 2 of MODA. That is the definition section of the Act and describes trafficking as follows;

(a) To sell, broker, supply, transport, send, deliver and distribute;

(b) To offer to do anything mentioned in (a) above; or

(c) To do or offer to do any act preparatory to or for the purposes in paragraph (a) above.

Therefore, in order to establish the act of trafficking it is imperative that the Prosecution proves that one or more of the means or methods above mentioned existed. It is abundantly clear from evidence adduced that the drugs were being transported and there are suggestions to conclude that (c) above is also satisfied as it appears that the drugs were to be delivered or distributed.

[15] The question to be determined by the Court before whether or not the Accused is found guilty and convicted relates to possession. That in who had control and knowledge of the drugs. The drug was found in the cover of the steering of the car that was in the custody and control of the Accused. At the time that the vehicle was stopped and searched he was in control of the vehicle. It was held in **R v Moustache [2011] SLR 126**, that when a controlled drug is found in a vehicle, it is presumed that it in the possession of the owner of the vehicle or the person in charge of the vehicle for the time being. This is a rebuttable presumption, and exactly what the Accused has attempted to rebut.

[16] In order to establish the offence of trafficking, it is essential that it is established beyond reasonable doubt possession or custody over the controlled drug and knowledge that it was indeed such a drug. In order for the Prosecution to establish custody and possession it must be shown that the accused had control over the drug. In fact, in the case of **R v Victor [2014] 55** referring to **DPP v Brooks [1974] AC 862**, it was held that the concept of possession consists of 2 elements; custody and knowledge. It was further held that a

person has possession if he has actual physical control, such as having the drugs in their hands or on his person and if he has the power and intent to control and use of the drugs.

[17] In **R v Florine [2008 – 2009] SCAR 71** it was held that “*in law, possession implies custody and control over the drugs and knowledge of the nature of the substance under which the defendant has custody and control.*” It further adds “*it is a misconception to assume that the drugs should be found in the physical possession of the defendant, it is enough that it is found under his control; DPP v Brooks [1974] AC 862. At the same time it is not required that he should have exclusive possession; Warner v Metropolitan Commissioner [1969] 2 AC 256. It is enough that he may hold custody or control jointly with another. All these matters were addressed by the Judge. As Lord Diplock stated in the case of DPP v Brooks (supra): “the only actus reus required to constitute an offence ..... is that the dangerous drugs should be physically in the custody or under the control of the accused”*”

[18] I find that in this case the Accused had full knowledge of the nature of the items that he placed under the steering cover. He admits that this was the place where he normally hides his hashish, I do not believe allegations that if were true, that Diana had asked for a place where she could stash away two strands of hair, that the Accused would have taken the liberty of hiding it there. In any case, if what Diana was carrying was hair, there would have been a need to hide it. At some other point he had stated that it was Becca who had told him that she needed a place to stash away something. If for one moment the Court was to admit that as the truth, it is disturbing that a passenger gets into one’s car and requests for a place to stash away what could be considered a small item and the driver would hide it under the steering cover. The driver would do that only if he was aware that the item to be hidden away was contraband. Again, it begs the question, why put it under the steering cover which is not a place for placing any item. Furthermore, the drugs were wrapped up in small plastic packet. This should have aroused suspicion to a drug user. The Accused admits that he is conversant with drugs as he testified that he *normally* stashes his hashish there. So, to my mind the Accused had full knowledge that the small packets contained controlled drugs.

[19] Despite knowledge of the controlled drugs this Court needs to decide whether the drugs belonged to the Accused or whether he had control over them. It was found in his vehicle and in an area which he had full control over. The Accused also gave conflicting accounts as to who gave him the packet. Even, if I was to accept that it was one of the passengers who handed him over the controlled drug, I refuse to believe that it was just given to him to stash away and that he did not know the nature of the item. Even if this Court is to believe that the drug was given to him by one of the two passengers, it was given to him to be stashed away in that compartment because the drug delivered belonged to him. The Accused has not rebutted the presumption that as the person being in charge of the vehicle that the drugs that were discovered was not his. The version of the Accused is devoid of any common sense. A passenger would not get into a person's car and asked for a place to stash away something and that that driver would suggest to place it under the cover of the steering. Moreover, the item is in clear plastic and wrapped up. To a drug user it would have been evidently clear that it was drugs.

### **Conclusion**

[20] Therefore, I find that the Accused was in fact trafficking in controlled drugs listed in Count 1. The drugs were above the threshold for which otherwise a charge of possession would have been levelled against the Accused.

[21] Since the prosecution has proven its case beyond reasonable doubt, the Accused is hereby found guilty of both counts.

Signed, dated and delivered at Ile du Port on 25<sup>th</sup> February 2021

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Vidot J