

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

V

COLLIN IGNACE

Criminal Side No. 78 of 2010

Mr. Vipin Benjamin State Counsel for the Republic

Mr. Nichol Gabriel Attorney at Law for the Accused

JUDGMENT

Burhan J

The accused in this case Collin Ignace has been charged as follows;

Trafficking in a controlled drug contrary to Section 5 of the Misuse of Drugs Act as read with section 14(d) and 26(1) (a) of the same as amended by Act 14 of 1994 and punishable under the Second Schedule of the said Muse of Drugs Act read with Section 29 of the same.

The particulars of the offence are that Collin Ignace, on the 24th of November 2010 in Cascade, was trafficking in a controlled drug by virtue of having been found in possession of 33.3 grams of Cannabis (herbal materials) which give rise to the rebuttable presumption of having the said controlled drug for the purpose of trafficking.

The prosecution's principal witness agent Pierre Servina of the NDEA (National Drugs Enforcement Agency) stated that he was on duty on the 24th of November 2010 and after receiving information that a person called Collin Ignace was selling drugs at his residence had proceeded on patrol to the Cascade area with Lance Corporal (LC) Mickey Barbe, Sergeant Dogley and another agent. When they were passing the bus stop at Cascade they had seen the accused Collin Ignace sitting at the bus stop facing the St Andre flat. They had identified themselves as NDEA agents and witness had proceeded to search him but found nothing illegal on him.

They had thereafter put him in their vehicle and gone to his residence at Cascade. Having entered the house with the accused outside the back door on top of a wall which was about one and a half feet high behind the house facing the mountain side they had found some herbal material on a black plastic bag similar to a bin liner bag as if it was being dried (Vide proceedings of 16th August 2011 1.45 pm). They had taken the black bag which contained herbal material which they suspected to be controlled drugs and brought it to the NDEA station for further investigation. At the time the drug was found the accused, Sergeant Dogley and LC Barbier were present.

The drugs were kept in his possession and placed in a brown envelope and CB385/10 number given and the envelope sealed. He had taken the drugs for analysis on the 29th of November 2010 with copies of request letters to the Government Analyst Mr. Purmanan. On the 1st of December 2010 he had collected the exhibits given for analysis from the analyst which was sealed in an exhibit evidence bag together with the analyst report and handed it to Sergeant Seeward for safekeeping in the exhibit store. He stated thereafter when he collected the evidence bag from Sergeant Seeward and handed it over to Mr. Purmanan in

court the seals placed by the Government Analyst were intact. Mr. Purmanan the Governmanet Analyst in his evidence too states the seals placed by him on the evidence bag P2 were intact prior to opening the said evidence bag in open court. It is also apparent from their evidence that at the time the herbal material was taken into custody it was green in colour but with the passing of time had dried and become dark in colour.

Witness Sergeant Dogley too corroborated the evidence of agent Servina in respect of the detection of the controlled drug and the taking into custody of the accused. He further stated that the wall on which the controlled drug was found was not even a meter away from the door and was within the property of the accused which was a vast property (Vide pg 5 of the proceedings of 16th September 2011 9.00 a.m.). He too stated the herbal material was on the black plastic and kept like someone had put it to dry.

Thereafter the statement under caution taken from the accused was admitted as evidence after a voire dire was held into its admissibility and after court ruled that the said statement P6 was admissible as it had been given voluntarily by the accused. The prosecution thereafter closed its case.

The accused in defence made an unsworn statement from the dock. He admitted he was arrested on the 24th of November 2010. Prior to this, his aunty Josephine had taken him to her house to do some work. After tea with his aunty he had gone to the bus stand. Around 8.00 p.m. when he was at the bus stop with his aunty, a vehicle stopped next to them and a person he knew as Kenneth Joseph pointed to him and said this is Collin. The persons in the vehicle including Sergeant Servina had got down from the vehicle and searched both him and his aunty. He further

stated that Kenneth Joseph lived in his area in Cascade. They had locked him and his aunty in the vehicle and made a call. His phone too had rung but he was unable to answer it as he was handcuffed. They had then proceeded to his house in the vehicle and got down on the road and walked on the footpath leading to his house. When they reached the house there were officers already in the garden of the house with torches. They had asked him whether there were drugs in his house and he had replied no. They had showed him a black plastic bag which was on his doorstep. He had denied the plastic bag was his. They had asked his permission and gone into his house and searched it but not found anything. They had taken him to their office. He stated he did not know that day or now to who the plastic bag belonged to. A few days later he had got in contact with his neighbour who had said she had phoned him that day when she had seen the officers in his house but he had not answered the call. He had told her he was arrested and handcuffed and could not answer the phone.

He further stated he was taken to the Anse Aux Pins police station and then the NDEA office. Officer Timothy Hoareau had come to pick him up from the Anse Aux Pins police station had told him that if he said the Cannabis was his he would speak to the judge and he would get 4 years and not five. In the NDEA office Mr. Hoareau had said he was going to fingerprint him and got him to sign the fingerprint document. He had seen Brian Dogley twice at his house and at the NDEA office and then in the court house. After fingerprinting he was taken back to Anse Aux Pins and remanded. He stated he had two witnesses his neighbour and his aunty.

His aunty Josephine Ibrahim stated that the accused was her nephew and that he had come to her house on the said date and she had gone with him to the bus stop

when the NDEA agents had arrived in a vehicle and handcuffed both of them and taken them both to his house. She was outside and the agents had gone inside and asked Colin to come in as they were going to search the house. She stated it was Collin's house and he stayed there alone. They had taken a plastic bag which was outside the house near some potted plants. She admitted that there was a black plastic bag near the small potted plants that was outside. Thereafter the defence closed its case and both learned counsel filed written submissions.

Having thus considered the evidence of the prosecution and defence the main contention of the defence is that the exhibits were not found in the possession of the accused or in his house but outside his house where there were people (NDEA officers) present prior to him arriving at the scene with the other officers. Firstly in his unsworn statement the accused states the black plastic bag which was shown to him was on the doorstep of his house. This evidence is contradicted by the evidence of his aunt Josephine who states that the black bag was near some potted plants.

However unlike the contradictory evidence of the defence when one considers the evidence of the prosecution, the evidence of Sergeant Servina that the controlled drug was found at the back of the house drying on black bin liner bag on a wall 1 ½ feet high, close to the back door within the property of the accused is corroborated by the evidence of Sergeant Dogley. Though subject to cross examination there were no material contradictions in the evidence of the prosecution in this regard. Further the accused in his statement under caution admits that he had kept two branches of a Cannabis plant on the wall near a window. He admits he had left the Cannabis to dry on the wall on a black plastic. It is trite law that as the statement had been retracted that the material facts pointing

to the guilt of the accused must be corroborated by independent evidence. The manner in which the herbal material was placed at the time of detection and the place as mentioned in his statement is corroborated by the evidence of the detecting officers who too state the herbal material was on a wall and placed on a black liner bag as if to dry. The evidence of the Government analyst corroborates the fact that the herbal material was in fact Cannabis as mentioned by the accused in his statement under caution. The evidence of the defence witness Josephine affirms the fact that the accused was living alone in the house where the Cannabis was found. For the aforementioned reasons this court will proceed to accept the evidence of the prosecution in regard to the detection and disregard the contradictory evidence of the defence.

The other main contention of the defence is that the exhibit which was described as green at the time of detection had now turned dark in colour inferring that therefore it could not be the same exhibit. The Government Analyst and the witnesses positively identified the herbal material as that which was analysed and detected by the officers of the NDEA and stated the reason why the colour had become darker was because the herbal material had dried with the passing of time. Further the percentage of Cannabinol is immaterial as the charge is based not on the fact that the accused was in possession of pure Cannabinol but in possession of Cannabis (herbal material).

When one considers the evidence of the prosecution the evidence of the prosecution witnesses are of a corroborative nature. Although subject to cross examination there were no material contradictions which would make this court disbelieve the witnesses. The Government Analyst identified the exhibit namely the herbal material P4a as that analysed by him and handed over to him for

analysis by agent Servina. Agent Servina identified the black plastic bag P4 and herbal contents P4a as that taken into custody from the house of the accused which he placed in a sealed brown envelope P3 which was handed over to the Government analyst for analysis. Mr. Purmanan also confirmed the fact that he had analysed the said herbal material he received from agent Servina in the sealed envelope P3 and identified it to be Cannabis weighing 33.3 grams. His report P1 confirms this fact. Therefore this court is satisfied that the chain of evidence from the time of detection to the time the controlled drug was produced in court has been established beyond reasonable doubt by the prosecution. As the prosecution evidence stands corroborated and no material contradictions exist this court will proceed to accept the evidence of the prosecution.

This court is therefore satisfied on considering the aforementioned evidence given by the prosecution witnesses that the prosecution has proved beyond reasonable doubt that the controlled drug set out in the charge namely Cannabis (herbal material) weighing 33.3 grams was in the possession of the accused at the time of detection and in his house occupied by him alone.

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 on considering the facts of the case that the herbal material at the time of detection was placed outside to dry and on considering the corroborated facts as set out in the statement under caution of the accused, it could be inferred from these facts and the relevant circumstances of this case that the accused had the necessary knowledge that he was in fact in possession of a controlled drug namely Cannabis (herbal material). The quantity detected in the possession of the accused on which the charge is

based attracts the rebuttable presumption that the accused was trafficking in the controlled drug. The accused has failed to rebut the said presumption.

For the aforementioned reasons on consideration of the evidence of the prosecution I am satisfied that the prosecution has proved all the essential elements of the charge against the accused beyond reasonable doubt. I therefore proceed to find the accused guilty of the charge and proceed to convict him of same.

M.N.BURHAN

JUDGE

SUPREME COURT SEYCHELLES.

Dated this 29th day of January 2013.