

GRENADA

IN THE COURT OF APPEAL

MAGESTERIAL CRIMINAL APPEAL NO. 9 OF 2003

BETWEEN

RONALD WHEATLAND

Appellant

AND

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mr. Brian Alleyne
The Hon. Mr. Michael Gordon QC
The Hon. Mr. Othniel Sylvester, QC, C.M.G

Justice of Appeal
Justice of Appeal [Ag]
Justice of Appeal [Ag]

Appearances:

The Appellant in person
Mr. Christopher Nelson, Director of Public Prosecutions

2003: December 1, 2

JUDGMENT

[1] **GORDON, J.A. [Ag]:** On 8th September 2003 the Appellant was convicted of being found in possession of a controlled drug, to wit cocaine, and, on the 10th September 2003 he was fined \$250,000.00 to be paid forthwith or in default three (3) years imprisonment. The

Appellant was also found guilty of trafficking (arising out of the same incident) and was cautioned.

- [2] The Appellant appealed against his conviction and argued his appeal in person.
- [3] On Tuesday 29th October 2002 the Appellant was arrested at the Point Saline International Airport after Det. Cpl. Kenny Smart became suspicious of his behaviour. The bag which he was checking in was searched and a number (6) of plastic bottles of various lotions were found from which a strong smell of cocaine emanated. Subsequent testing confirmed that the bottles did contain cocaine.
- [4] The burden of the Appellant's main argument was that there were a number of inconsistencies which made the Learned Magistrate's finding of fact, and hence the verdict of guilty unsafe.
- [5] The Appellant also argued strongly that the "Record of Interview" by the police of himself was not signed by him and indeed only his name written in capitals on the statement five times identified it as pertaining to him. He denied that the record was a true record of the interview or that he had signed it. There is no doubt that the signatures, which the Appellant admitted as being his, that appear on the Notice of Appeal and the Recognizance to prosecute Appeal are quite different from those appearing on the Record of Interview. The Appellant, who was represented by Counsel at the time, does not appear to have objected to the introduction of the Record at the trial.

- [6] Suffice it to say that there were certain discrepancies in the evidence in the prosecutions case but these were not, in my view, of such a nature as to allow a Court of Appeal to reverse the findings of facts of the trial court. The Appeal against convictions is therefore dismissed.
- [7] I would like to comment adversely on two aspects of this case. The first is specific and it is that the annalist's report was not included as a part of the Record. As it turns out, this was not of vital importance in this case, but as a practice such a report must be included so that a Court of Appeal may have a whole view of the evidence and not an abridged version. The second comment is of a more general nature. The current culture in jurisprudence abhors trial by ambush in any case and particularly so in criminal cases. In general, once an accused person pleads Not Guilty, then he is entitled to have disclosure of the prosecution's case made to him. Failure to do so might well result in a Court of Appeal reversing the decision of the Court below. In this case there was partial disclosure in that the Record of interview was, I am advised, passed to Counsel for the Appellant as was the annalist's report. However, nothing else was, not the police report of the case nor the photographs admittedly taken by the police. Disclosure means what it says; disclosure of the whole of the evidence in the hands of the prosecution, whether the same be advantageous to the accused person or not.
- [8] The Appellant appealed only against conviction, but I am of the view that this was because he brought this appeal personally and did not realize that he had also to appeal against sentence separately. In the circumstances I will address the subject of sentence.
- [9] As stated above the Appellant was fined the sum of \$250,000.00 to be paid forthwith or in default to serve a sentence of three years in prison. The Appellant has not paid the fine. The Appellant was arrested on the 29th October 2002 and has been in custody since that time, a period of some 13 months. The Appellant has no previous convictions. Fro the notes of evidence it does not appear that the Learned Magistrate invited the Appellant to

offer any reasons for the mitigation of sentence. One is ineluctably drawn to the conclusion that the Learned Magistrate had already decided to fine the Appellant the maximum permissible under the Act. Where no reasons are given for the exercise of a discretion by a trial court a Court of Appeal is entitled to review the decision of that Court and substitute its own discretion. In this case I am of the view that a sentence of time served, being some thirteen months and some days is penalty for the crime. Sentence is varied to time served. Until such time as the Appellant leaves the State the Appellant is to surrender his travel documents and shall remain at liberty.

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Michael Gordon J.A. [Ag]

I concur

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Brian Alleyne J.A

I concur

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Othniel Sylvester J.A. [Ag]