

SAINT KITTS AND NEVIS

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 9 OF 1993

BETWEEN:

NOEL HEATH

APPELLANT

and

CHIEF OF POLICE

RESPONDENT

Before:	The Rt. Hon. Sir Vincent Floissac	Chief Justice
	The Honourable C. M. Dennis Byron	Justice of Appeal
	The Honourable Satrohan Singh	Justice of Appeal

Appearances: Mr. Lee L. Moore with him Mr. C. Fitzroy Bryant for
the Appellant
Mr. Malcolm Holdip, D.P.P. with him Misses Yasmine Clarke
and D. Claxton-Morris for the Respondent

=====
1993: September 27
=====

J U D G M E N T

SIR VINCENT FLOISSAC, C.J.

The appellant was charged with the offence of being in possession of two hundred and three .45 live rounds of ammunition contrary to Section 20(1)(b) of the Firearms Act 1967 No. 23 of 1967 of the Laws of the Federation of Saint Kitts and Nevis.

On 29th June, 1993, in the Magistrate's Court of Magisterial District "A" of the said Federation, the appellant pleaded guilty of the offence charged and was sentenced by Magistrate W. Patterson to imprisonment for a term of two months. The appellant has appealed against his sentence on the ground that it is excessive.

In support of a reduction of the sentence, Counsel for the appellant relied on the following facts:-

- (1) The appellant pleaded guilty.
- (2) The appellant's explanation is that -
 - (a) A male teenager brought the ammunition to his rented home at Walwyn Avenue.
 - (b) He seized the ammunition from the boy with the intention of handing it over to the police.
 - (c) Thereafter, he was preoccupied with the renovation of the family home at Cardin Avenue to which he was planning to move and forgot about the ammunition.
 - (d) He did not personally move the ammunition from his rented home to his new or family home.
 - (e) The packet was retrieved by the Police intact.
- (3) No firearm was found on the premises or in the possession of the appellant and there was no evidence to rebut or discredit the appellant's plausible story.
- (4) Unlike the offence of unlawful possession of a prohibited weapon which attracts a mandatory custodial sentence, the offence of unlawful possession of ammunition permits a measure of tolerance or leniency when the circumstances warrant it and may be punishable by imprisonment or a fine.
- (5) The appellant is admittedly "a respected and respectable citizen" and a successful farmer with no previous conviction.

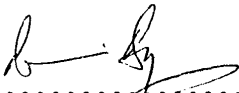
(6) The appellant is 42 years old.

(7) The appellant is a married man with six (6) children of ages varying from 1 year to 21 years.

In those circumstances, this court considers that a fine is more appropriate and would better serve the ends of justice and the aims of judicial punishment than a custodial sentence and the stigma attaching thereto. Accordingly, the sentence of imprisonment is set aside and in lieu thereof the appellant is fined \$1,000.00 (the maximum fine) payable within 24 hours. In default of payment of the fine within the prescribed time, the appellant shall serve a term of imprisonment of two (2) months. Further, the appellant is ordered to enter into a Bond (with two sureties) in the sum of \$1,000 to keep the peace and to be of good behaviour for the next three (3) years.



.....
SIR VINCENT FLOISSAC



.....
G. M. DENNIS BYRON
Justice of Appeal



.....
SATROHAN SINGH
Justice of Appeal