

COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 26 OF 1993

BETWEEN:

DAVE GEORGE

APPELLANT

and

POLICE

RESPONDENT

Before: The Honourable C. M. Dennis Byron -- Justice of Appeal
The Honourable Dr. Nicholas Liverpool -- Justice of Appeal
The Honourable Satrohan Singh -- Justice of Appeal

Appearances: Mr. Ronald O.B. Armour for the Appellant
Mr. Murrio Ducille, D.P.P. for Respondent

1993: September 15,

J U D G M E N T

BYRON, J.A.

On 9th June, 1993 the appellant was convicted by D. J. Moise, Magistrate District "G" for importing cocaine into the Commonwealth of Dominica, and for possession of cocaine with intent to supply it to another. On each offence he was fined \$5,000.00 made payable in four monthly instalments of \$2,500.00 each, or in default one year imprisonment.

He has appealed against these convictions on the ground that the certificate of the drug analyst was inadmissible because the sample of the alleged drug bore a different exhibit number to that noted on the certificate and against the sentences on the ground that they were excessive.

The Magistrate had accepted the prosecution's evidence that after arriving at Melville Hall Airport on a LIAT flight, the appellant attempted to run away during his customs search and a packet containing several pieces of alleged cocaine tied in plastic fell from his crutch in the struggle that ensued. The police relied on a certificate from Mr. Cowrie a drug analyst for the Commonwealth of Dominica to prove that it was cocaine that had fallen from the appellant's crutch, in accordance with the provisions of Section 29 of the Drug (Prevention) Act Chapter 40:07 of the Dominica Revised Laws of 1990.

Mr. Cowrie resides in St. Lucia. The evidence was that Woman Corporal Seraphine took the matter taken from the appellant to St. Lucia on 1st December, 1992. She witnessed Mr. Cowrie as he tested it and put it in a sealed envelope which he marked 6/92/11, and delivered it to her. She brought it back to Dominica on the said 1st December, 1992.

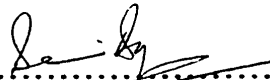
On the 9th December, 1992 she received Mr. Cowrie's certificate by post. The appeal was based on the fact that in the body of the certificate Mr. Cowrie described the matter he tested by reference to the number 7/12/92. I think that it is clear that if there was any doubt as to whether the matter to which the certificate referred was the same matter Mr. Cowrie had tested in the presence of Woman Corporal Seraphine and put in the envelope he marked 6/92/11, it would have been the duty of the Magistrate to reject the certificate and dismiss the case. But the Magistrate concluded that it was the same matter and although his reasons did not explain why, we are of the view that there was ample evidence to support that finding.

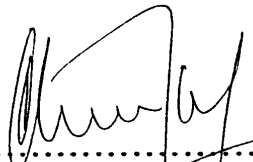
The information on the certificate itself indicated that it was prepared on and dated 7th December, 1992 and that Mr. Cowrie gave it 7/12/92 as his reference number. 7/12/92, therefore, was not an exhibit number, but merely the analyst's own reference number.

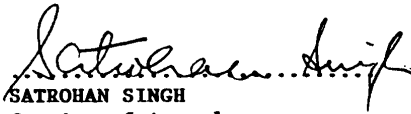
Other information on the certificate itself revealed (conclusively, in our view) that the matter to which it referred was received by Mr. Cowrie on the 1st December, 1992 from Woman Corporal Seraphine and related to the appellant.

With regard to the sentence, the quantity of cocaine certified by the analyst was 46.19 grams with 81% purity, justifying the conclusion that the appellant was a supplier and not merely a user of the drug. He has had previous convictions including one for narcotics as recently as 8th January, 1992 in which he was sentenced to pay \$2,000.00 or serve 12 months.

We do not consider, that by virtue of the nature of the offence, nor his own antecedents that the sentence was excessive. The appeal is therefore dismissed.


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C. M. DENNIS BYRON
Justice of Appeal


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NICHOLAS J. O. LIVERPOOL
Justice of Appeal


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SATROHAN SINGH
Justice of Appeal