

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA
IN THE HIGH COURT OF JUSTICE

CLAIM NO.ANUHCR2023/0062

BETWEEN:

THE KING

AND

DARIEN ISAAC

Appearances:

Mrs. Shannon Jones Gittens for the Crown
Mr. Lawrence Daniel for the Defendant

2025: May 9th;
May 30th
October 6th

DECISION

Background

- [1] **SMITH, J.:** The defendant is facing one count on the indictment filed September 2024. The indictment's particulars read as follows "Darien Isaac on 17th June 2020 at Deep Water Harbour in the parish of Saint John in Antigua and Barbuda, unlawfully imported a controlled drug weighing more than 5 kilograms to wit 41lbs of cannabis."

Jurisdiction

- [2] The trial was a judge alone trial or a bench trial under the jurisdiction of the criminal proceedings (trial by judge alone Act no7 of 2024. The charge on the indictment was mandated for trial before a single judge). As with all bench trials the judge is the trier of all facts and the law. Many of the directions used in a jury trial are also used by the judge in a judge alone trial.

Elements of the Offence

- [3] The elements of the offence of drug trafficking are as follows:-
- a. The defendant knew that cannabis was contained in the fridge. The Crown must show that at the time he knew or had knowledge of the contents in the door compartment of the fridge. In this case the defendant denied any knowledge of the cannabis.
 - b. That the defendant imported the controlled drug into the state of Antigua and Barbuda

- c. The controlled substance was indeed cannabis and that it weighed 41lbs.

The Actus Reus

- [4] The actus reus of the offence is that the defendant unlawfully imported the controlled drug. The Crown marshalled evidence to show that the shipment came into the island in the defendant's name. An employee of Tropical Shipping testified that on 15th July 2020 a vessel arrived at the Deep-Water Harbour and the defendant was notified of its arrival. The Bill of Lading was prepared and given to the defendant, however on the following day he requested that the information be changed from DTAC Appliances and Wholesale Enterprise to Darien Isaac.
- [5] Secondly, it was the defendant who attended at the Deep-Water Harbour with the Bill of Lading to collect the appliances. Customs Officer Dequane Thomas testified that he is a certified canine handler. On the 17th June he attended at the Deep Water Harbour and inspected the shipment that had arrived in the name of the defendant. It was his testimony that he smelt the strong aroma of cannabis. He also indicated that the dog started to behave in a way that indicated something was suspicious in the shipment. Officer Decastro also corroborated the testimony of Officer Thomas in relation to the reaction of the dog and the strong aroma of cannabis. It was this officer who removed the inner panel of the fridges and he testified that he saw a quantity of vacuumed sealed packages containing a bushy substance that resembled cannabis. Under cross examination he established where he saw the defendant standing in the warehouse near to the customs area. The investigating officer Samuel Tonge indicated that he was assigned as lead investigator by ASP Chambers. It was his testimony that upon arrival at the harbour he had conversations with the customs officers, canine personnel, and the defendant. He also perused the Bill of Lading, spoke to the defendant, and examined the consignment. He used a knife to pierce the fridge and found cannabis and cautioned the defendant. The defendant at this point indicated that the shipment was sent by a Desmond Farrell and said that the "consignment is mine, everything is mine".
- [6] Thirdly, the police analyst tested the controlled substance by taking samples and prepared a report which indicated that the substance found in the appliances was indeed cannabis.

Mens Rea

- [7] The Court now turns to the mens rea of this offence. The Crown has indicated that the defendant knew exactly what was contained in the appliances and that he had knowledge of the controlled substance.

Questions for the Court to decide

- [8] Did the defendant have knowledge and control of the drug? The evidence is that he had a business and a business certificate to bring in appliances. He had several businesses registered and involved in the sale of appliances. One witness said she bought an appliance for her mother, imported by the defendant, paid for, and delivered. This was the testimony of Mowada Isaac. The Crown has established that the defendant imported and distributed

appliances. The Court is guided by the Jamaican case of **Brian Bernal and Christopher Moore vs R**¹ where there was cannabis concealed in tins purported to contain pineapple juice. In that case it was stated that where the trial of a criminal charge involved proof of knowledge of possession of a prohibited substance which was concealed within a container it was necessary for the prosecution to satisfy the court that the defendant knew that he had the container and that the prohibited substance was in the container. The evidence to establish such knowledge will depend on the circumstances of the case and the inferences which can properly be drawn from the facts proved.

[9] What the Crown had to show was that the defendant had constructive knowledge meaning that he is deemed to have had knowledge of the contents in the fridge. It is essentially knowledge imputed to a person based on what they should have known if they had exercised reasonable care or diligence. In this case the Crown has adduced evidence that the shipment was in his name. The Court has looked at the testimony of the employee of Tropical Shipping. Her testimony supported the inference that the defendant knew exactly what was in the shipment which arrived in his company's name and which he later changed to his name.

[10] In the case of **The Queen vs Maduro**² a case emanating from the ECSC Court of Appeal it was held that "*A person is in possession of a controlled drug if that person has it in his custody or control with knowledge that the thing is in his custody or control. Although the person does not have the drug under his or her physical control, that person may still be in constructive possession of it. It was therefore open to the jury to believe that Mr. Maduro could have possessed the two bags of drugs without having physical custody of them or the boat from which they were recovered*".

Credibility of the witnesses

[11] In assessing the credibility of a witness, in general, the tribunal of fact will consider the witness's knowledge of the facts to which he testifies, his demeanour, his veracity, his integrity, any interest he may have in the case, and any bias or partiality towards a party to the proceedings. It is open to the tribunal of fact to accept all that a witness has said, if satisfied that the witness has been truthful. It is also open to the tribunal of fact to reject the testimony of a witness whom they do not believe in part or in whole, if satisfied that the witness has lied in part or on vital issues. The Court paid attention to all of the Crown witnesses in particular the defendant and his witness.

Good Character Direction

¹ [1997] UKPC 18

² HCVAP2009/016

- [12] The defendant has no previous convictions and appears before the Court as a man who is of good character. This means that I am to weigh this fact in the favour of the defendant. Good character is not a defence to the charges but it is relevant to my consideration of the case in two ways. First, the defendant has given evidence. His good character is a positive feature of the defendant which the court should take into account when considering whether I accept what he told me. Secondly, the fact that the defendant has not offended in the past may make it less likely that he acted as is now alleged against him.
- [13] However, what weight should be given to the defendant's good character and the extent to which it assists on the facts of this particular case are for you to decide. In making that assessment I may take account of everything I have heard about him.

Lies Direction

- [14] In the interview with the police, the defendant's veracity was put to the test. It was clearly established that he would tell lies and give evasive answers to advance his own ends. The police interview with the defendant has shown that he gave very evasive answers. At question 14 when asked where he got his appliances from, he said - a warehouse.
1. Question 16 - do you get your appliances from Desmond Farrell? – He answered - not really.
 2. Question 18 - who else do you get appliances from in Canada? - He answered - no one just the warehouse.
 3. Q25 - How much do you usually pay to clear appliances? - No set figure.
- [15] I have reminded myself that people lie for different reasons and that the defendant has nothing to prove. However, the Court is entitled to consider the lies and couple them with other evidence marshalled by the Crown to support their case.
- [16] In the *Maduro* case it was held that it was permissible for the prosecution to adduce evidence of possible lies told by Mr. Maduro in relation to a telephone call to his cousin on 4th November 2006 to support the charges of the blackmail of the 3rd November 2006 and to support the charge of unlawful possession of cocaine on 28th October 2006, because that evidence was relevant and admissible circumstantial evidence. **Deolal Sukhram et al vs The State (1993) 44 WIR 400** applied.
- [17] The Court has reminded itself that a **lie** is a statement used intentionally for the purpose of deception. The Court is also reminded that the lie can be evidence against the defendant, in effect using it as an implied admission of guilt. The Court has also reminded itself that people lie for various reasons

and that the lie is only evidence of guilt if I am satisfied the lie was made deliberately.

- [18] In this case I am of the view that the defendant lied deliberately and gave evasive answers in his police interview to cover up his guilt. I am also satisfied that the lie alone is insufficient evidence but that there was other evidence marshalled by the Crown that can be used to corroborate guilt.'

The Defence Case

- [19] The defendant in his unsworn statement from the dock indicated had no knowledge of the illegal substance found in the appliance. His testimony was a bare denial. He gave no explanation for why he asked people to send money abroad on his behalf. As already stated, the Court is aware that the defendant had nothing to prove.

- [20] In the case ***R vs Lambert [2002] 2 AC 545***, the House of Lords held that the defendant only bears an evidential burden in relation to calling evidence that he lacked the requisite knowledge, belief, or suspicion - it is for the prosecution to prove by reference to the available evidence that he had knowledge, belief, or suspicion.

- [21] In deciding whether the defence is made out, prosecutors may wish to have regards to the following:
- a) The credibility of any account given in interview – the Court notes the evidential burden on the defendant is only to establish that he had no knowledge.
 - b) The method of packaging. In this case the cannabis was vacuum packed and sealed.
 - c) If a possession offence is alleged, proximity to the supplier. In the case at bar no direct evidence in relation to the proximity of the supplier has been presented except that the moneys were sent to a person in Canada and that the shipment also came from Canada.
 - d) Content of any exhibit - telephone messages, documents, labelling.-In this case the cannabis was sealed and packaged for the purpose of exportation as was seen in the photographs presented.

- [22] Money found on the defendant was considered in ***R vs Batt (1994) Crim. LR 592***. It is not necessarily evidence of future supply. It may be evidence of supply in the past but on its own the money is not evidence of a future intent

to supply. In this case money was not found on the defendant or in home however, it was the prosecution's case that he had caused to be sent to Canada over \$96,000 ec dollars to persons resident in Canada. The Court is of the view that a clear inference can be drawn that this money was sent to facilitate the unlawful importation of cannabis into the state of Antigua and Barbuda.

- [23] The evidence of large sums of money being sent out of the jurisdiction over a relatively short space of time is admissible in cases of possession with intent to supply if it is of probative significance to an issue in the case ***R vs Morris* (1995) 2 Cr. App. R. 69**. And can be treated as part of the Crown's circumstantial case.

The Defendant's Witness.

- [24] The defendant called a witness who was a friend of the defendant. His testimony was that he was aware of the defendants business of selling juices, snacks, and electrical appliances.

Conclusion

- [25] Having said all of the above, this Court in assessing the facts and applying the facts to the law find the elements of the offence have been proved. I accordingly find Darien Isaac guilty of the unlawful importation of 41lbs of cannabis.

Sentencing

- [26] The sentencing brief was received from the Crown on 28th June and the probation report on 25th September 2025.

The Law and Sentencing Guidelines

- [27] The penalty for the offence of drug trafficking is governed by section 19A (4) of the Misuse of Drugs (Amendment) Act, 2008 which provides for a fine of \$300,000 or three times the street value of the drugs (whichever is greater). In this case that would amount to EC\$966,000. The Court is also empowered to impose a custodial sentence up to life imprisonment or it may order both a fine and imprisonment.

- [28] The Court is guided by the Sentencing Guidelines of the Eastern Caribbean Supreme Court, 2019 for drug and firearm offences re-issued on 6th January, 2025. The following is how the guidelines apply to this case.

First Stage

- [29] This stage was to determine the category of the offence based on the quantity of the drugs. In this case, it would be category 3 as the drugs weighed between 1-50kg – it was 17.05kg as seen from the evidence led.

Second Stage

- [30] The second stage was to determine the role played by the defendant and in this case it was seen that his role was a significant one as he had been motivated by some financial gain. He was also a major player in the operation charged with sending large sums of money and receiving a large quantity of drugs, most likely for further sale. This places the offence in category B.

- [31] Based on these two stages, the Court finds the appropriate starting point to be 20% of the maximum sentence (the guidelines state that life imprisonment should be treated as 30 years) which would be equivalent to 6 years imprisonment. The recommended range of sentence is 3 years imprisonment up to 9 years imprisonment. The Court will use the starting point of 3 years imprisonment.

The Pre-sentence Report.

- [32] Mitigation
The probation/pre-sentence report was prepared by Mr. Irvin Henry of the Probation Unit. The report revealed that the convicted man has no children, does not smoke or consume alcohol but is in a visiting relationship. It was also revealed that he is not known to the Court. He has a good educational background according to the author of the report having studied mathematics and accounting at ABICE. Since his graduation from ABICE he has been employed by the Government of Antigua and Barbuda in the Audit Department at Inland Revenue. The interviews with his former colleagues reveal surprise at the recent offending and suggest that the conduct is out of character. To support these views were opinions from community members who observed him to be “quiet, not known to be involved in quarrels or loud disagreements with others....”.
- [33] The interviews with his family members proved equally positive with his sister describing him as a “person motivated to work diligently to achieve his goals”. The sister stated that she was “surprised when she learned of his predicament because in her opinion, the present matter is out of his character”.
- [34] The author of the report indicated that he is of the view that “the present matter could have been influenced by a financial opportunity, stimulated by the defendants impulse to become a successful entrepreneur”. Counsel indicates the convicts age and states that he is of previous good character. He states also that the offence is out of character and that he has been consistently employed. He has no children.

[35] The convicted man maintains his innocence and therefore shows no remorse . The Court will now consider the aggravating and mitigating factors in this case and which when applied will adjust the sentence.

The Aggravating Factors

[36] The Court finds that the aggravating factors of the offence are:

- i) The drugs were imported into the country through the sea port
- ii) the manner in which it was concealed was sophisticated indicating premeditation
- iii) The court may take judicial notice of the prevalence of these types of offences where drugs are being brought into the country via the sea and air port

There are no mitigating factors of the offence.

[37] In relation to the offender, it is aggravating that he breached the trust of friends and family members by involving them in the operation where he was sending money overseas for drugs to be imported into the country.

[38] Construction of The Sentence

Having considered the starting point which, the Court will use as three years imprisonment, when the Court applies the aggravating factors, the sentence rises to six years. The positive feedback from the persons interviewed in the report as well as the fact that the convicted man is of previous good character and the fact that he is an asthmatic, will bring the sentence back down to three years. The Court does not deem a fine to be appropriate in this case.

[39] Since the convicted man has been in custody since he was found guilty on 30th May 2025, totaling 129 days, these days will be deducted from his sentence. He will therefore serve 2 years and 8 months.

[40] The probation department is to be commended for the very thorough and comprehensive report. It greatly assisted the Court in this sentencing exercise.

Ann-Marie Smith

High Court Judge

By the Court

Registrar