

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT VINCENT AND THE GRENADINES

SVGMCRAP2019/0004

BETWEEN:

**[1] CAULDRIC CHAMBERS
[2] ALWAKY STAPLETON**

Appellants

and

THE COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mr. Mario Michel
The Hon. Mr. Gerard St. C Farara

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Grant Connell for the Appellants
Mrs. Maria Jackson-Richards for the Respondent

2023: July 26;
September 18.

Magisterial criminal appeal – Appeal against conviction – Appellants found guilty of possession of a firearm without a licence, possession of ammunition without a licence and possession of a controlled drug with intent to supply – Whether the appellants’ convictions were unsafe and unsatisfactory – Whether a miscarriage of justice arose by the failure of defence counsel to make a no-case submission and the failure of the Chief Magistrate to stop the case from proceeding

On 3rd January 2018, police officers acting on information, descended to Rose Bank beach on the island of Saint Vincent where they found Mr. Cauldric Chambers, Mr. Alwaky Stapleton (“the appellants”) and one Mr. Fortune sitting on a boat with a Nike bag next to them. Upon searching the bag, the officers found a firearm containing one round of ammunition. The three men denied that the firearm belonged to them. Mr. Fortune explained that he came to conduct “weed business” with the appellants, and he pointed to an area about 30 to 40 meters away from them. When the officers searched that area, they found a sack containing a material that appeared to be cannabis which, upon subsequent testing, was determined to be the controlled drug cannabis. The

appellants denied knowing about the sack. The appellants and Mr. Fortune were charged with possession of a firearm without a licence, possession of ammunition without a licence, and possession of a controlled drug with intent to supply.

The matter was heard by the Chief Magistrate and the three men were represented by the same attorney. The evidence of PC Forde, one of the officers that descended to Rose Bank beach, was that all three men were in possession of the firearm, ammunition and cannabis. The Chief Magistrate accepted the sworn testimony of Mr. Fortune that he was conducting “weed business” with the appellants but he had no knowledge of the bag containing the firearm. For primarily those reasons, the appellants were convicted on all three charges whereas Mr. Fortune was only convicted on the charge of possession of a controlled drug with intent to supply.

Dissatisfied with their convictions, the appellants appealed to the Court of Appeal on three grounds. At the hearing, their counsel abandoned grounds 1 and 2 and only proceeded on ground 3; that their convictions were unsafe and unsatisfactory. Their argument was that a prima facie case had not been made out against them at the close of the prosecution’s case, and that a miscarriage of justice arose when their then counsel did not make a no-case submission, and by the Chief Magistrate when she failed to stop the case from proceeding.

Held: dismissing the appeal and affirming the appellants’ convictions that:

1. There is no absolute rule or duty on a trial judge or trial magistrate to pre-empt or to require defence counsel to make a submission of no case to answer at the close of the prosecution’s case. The responsibility of a trial judge or magistrate for the overall integrity of a criminal trial does not require or entitle them to interfere in the conduct of the case by experienced defence counsel, absence of any improper or irregular conduct. A judge or magistrate conducting a criminal trial has no knowledge of defence counsel’s strategy, the manner in which counsel plans to conduct the case for the accused, or the defence or defences which counsel intends to mount. Therefore, placing such a duty on the court to invite defence counsel to make a submission of no case to answer would be to strongarm the defence into following the court’s lead or wishes, and offend all the principles of justice and fairness. It is only where there is no evidence whatsoever linking the accused to the offence with which they are charged or where continuing the trial would be a waste of judicial time and resources, would a judge or magistrate be required to invite defence counsel to make a no-case submission or stop the case themselves. There being no such circumstances in the present case, the Chief Magistrate was not bound to require or to prompt defence counsel to make a no-case submission or to stop the case from proceeding.

R v Juett [1981] Crim LR 113 distinguished.

2. When determining issues of possession of articles like firearms, ammunition or illegal drugs, the court is not expected to adopt a cloistered approach to the myriad of ways in which offences of this type may be carried out. Possession entails that the article must be in the physical custody or control of the accused and that the accused must know that the article is in their physical custody or control. An accused need not have physical control over the article, and as long as they exercise control over it, they are in constructive possession of it. In the present case, there was ample evidence led by the prosecution upon which a finding of constructive possession by the appellants of the Nike bag containing the firearm and ammunition could be inferred. There was no requirement that the evidence given at trial that the Nike bag was found “next to” the appellants had to be qualified by or supported with evidence giving precise measurements of the distance. The term “next to” was sufficiently clear for the Chief Magistrate to ascertain where or how close the Nike bag was located relative to where the appellants were sitting. The absence of any evidence by the police officers of a precise measurement of that distance did not undermine the Chief Magistrate’s conclusion that the appellants were in constructive possession of the said Nike bag.

Levar Devere Browne v The Chief of Police SKBMCRAP2021/0003 (delivered 5th July 2023, unreported) applied; **DPP v Brooks** [1974] AC 862 applied; **R v Strong & Another** [1989] 10 LS Gaz R 41 distinguished.

3. There is no requirement for a magistrate or judge to consider whether the prosecution has established a prima facie case against the defendant if a no-case submission has not been made. In the present case, there was no miscarriage of justice caused by defence counsel’s failure to make a no-case submission. The appellants were represented by competent counsel who for various reasons may have opted to not make a no-case submission. Therefore, in the absence of a no-case submission, the Chief Magistrate was not required to determine whether a prima facie case had been made out. Rather, she was entitled to the benefit of the evidence of the defence’s witnesses. Upon hearing those witnesses, the Chief Magistrate accepted the sworn testimony of the co-accused, Mr. Fortune. The appellants’ submission that Mr. Fortune’s evidence was self-serving must be rejected because there was nothing to suggest that the Chief Magistrate considered Mr. Fortune’s caution statement or bore in mind evidence ventilated in a voir dire. Her reference to Mr. Fortune’s defence as a “cut-throat defence” came when she had applied her mind to the totality of the evidence at the close of the cases for the prosecution and the defence, as she was entitled to do.

Leonard Rudd (1948) 32 Cr App R 138 applied.

4. A judge or magistrate is not required to slavishly recite every fact or factor from the evidence relied upon by the parties or any of them in arriving at their decision. In the present case, the Chief Magistrate heard the evidence of both the prosecution and the defence. Upon considering all the evidence, she believed the evidence of Mr. Fortune and she chose to convict the appellants on all three charges, and Mr. Fortune only on the possession of the cannabis charge. The Chief Magistrate wrote a well-reasoned decision, in which she thoroughly considered the evidence and properly referenced all relevant authorities. The appellants have failed to show how the Chief Magistrate's decision was blatantly wrong, or that she misdirected herself, failed to apply the relevant law or improperly approached the task of deciding disputed facts, which would justify the Court's interference. On that basis, there is no reason to conclude that the convictions were unsafe or unsatisfactory.

Flat Point Development Limited v Mary Dooley ANUHCVP2015/0029 (delivered 13th March 2019, unreported) applied; **Wakeem Guishard v The Attorney General of The Virgin Islands** BVIHCVP2018/0006 (delivered 2nd October 2020, unreported) applied; **R v Juett** [1981] Crim LR 113 distinguished.

JUDGMENT

- [1] **FARARA JA [AG.]:** This is an appeal against the decision of the learned Chief Magistrate, in which she found Mr. Cauldric Chambers and Mr. Alwaky Stapleton (together, "the appellants") guilty of the offences of possession of an unlicensed firearm, possession of ammunition without a licence and possession of a controlled drug with intent to supply. The appellants have sought to appeal their convictions and the salient facts leading up to the said convictions are set out below.

Background

- [2] On 3rd January 2018, officers of the Royal St. Vincent and the Grenadines Police Force, acting on information, descended on the Rose Bank beach. The appellants, and one Mr. Sandy Fortune ("Mr. Fortune"), were sitting on a boat on the beach with a grey and black Nike bag next to them. The police officers identified themselves and interrogated the appellants and Mr. Fortune. Each of them was searched but nothing illegal was found on their person. The officers then carried out a search of the Nike bag which revealed a firearm with one

round of ammunition within the chamber of the gun. The gun was shown to them and each of them denied that it belonged to them.

- [3] After further questioning, Mr. Fortune informed the officers that he came to conduct “weed business” with the appellants. He then pointed out to an area in the surrounding bushes approximately 30 to 40 meters away from where the appellants were sitting. There, Sergeant Nolan Dallaway (“Sergeant Dallaway”) found a brown nylon sack containing plant-like material which appeared to be cannabis. The appellants denied knowledge of the nylon sack and its contents, but Mr. Fortune insisted that the appellants knew about it.
- [4] The appellants and Mr. Fortune were transported to the Central Police Station and were escorted to the Criminal Investigations Department where they were cautioned and charged with, possession of a controlled drug with intent to supply contrary to section 7(3) of the **Drugs (Prevention of Misuse) Act**;¹ possession of a firearm without a licence contrary to section 4(3) of the **Firearms Act**;² and possession of ammunition without a licence contrary to section 4(3) of the **Firearms Act**. The contents of the brown nylon sack were tested and weighed, and it was found to contain 16,344 grammes of seeds, crushed leaves and stalks of the plant of the genus cannabis from which the resin had not been extracted.
- [5] The matter was heard in the Serious Offences Court before the Chief Magistrate, where the appellants and Mr. Fortune were all represented by the same attorney. On 7th December 2018, the appellants were found guilty on all three charges, whereas Mr. Fortune was found not guilty on the charges of possession of a firearm and possession of ammunition, but guilty of possession of cannabis. The appellants were sentenced to 4 years imprisonment for possession of a firearm, 3 months imprisonment for possession of ammunition and 6 months imprisonment for possession of cannabis. These sentences were set to run concurrently. Mr. Fortune was sentenced to 6 months imprisonment

¹ Cap. 284 of the Revised Laws of Saint Vincent and the Grenadines 2009.

² Cap. 386 of the Revised Laws of Saint Vincent and the Grenadines 2009.

on the possession of cannabis charge. He has not appealed his conviction and sentence.

[6] In her Reasons for Decision, the learned Chief Magistrate noted that the prosecution's case was that the appellants and Mr. Fortune were all in possession of the firearm, the ammunition and the cannabis. This was supported by the evidence given on oath by PC Dymion Forde ("PC Forde"), who was among the police officers who descended on Rose Bank beach on the day in question, and who found the firearm and the cannabis.

[7] The defence called three witnesses – the appellants and Mr. Fortune. She noted that the appellants denied ownership of the Nike bag and denied any involvement in the "weed business", although under cross-examination, the first appellant, Mr. Chambers, admitted to being next to the sack of cannabis when it was found by the police. After considering the evidence, the learned Chief Magistrate said that she believed the evidence given by Mr. Fortune when he said he came to conduct "weed business" with the appellants but that he knew nothing about the bag with the firearm. For those reasons, the appellants were convicted on all three charges and Mr. Fortune was convicted only on the possession of cannabis charge.

The appeal

[8] By notices of appeal filed on 24th December 2018, the appellants expressed their dissatisfaction with the decision of the Chief Magistrate and sought to appeal her decision on three grounds: (i) the decision is unreasonable and cannot be supported by evidence; (ii) insufficient evidence was found in the possession of the appellants; and (iii) the conviction is unsafe and unsatisfactory. However, counsel for the appellants, Mr. Grant Connell, indicated in his written and oral submissions that he intended only to pursue the third ground of appeal. This ground is dealt with in detail below.

Whether the appellants' convictions were unsafe and unsatisfactory
Appellants' submissions

- [9] Counsel for the appellants submitted to this Court that the prosecution in the court below failed to make out a prima facie case against the appellants. He contended that a miscarriage of justice arose when their counsel at the time did not make a submission of no case to answer, nor did the learned Chief Magistrate stop the case from proceeding. The evidence led by the prosecution did not provide any elements which could have made out a prima facie case of possession and, based on the authority of **R v Juett**,³ there was a duty on the learned Chief Magistrate to invite, then counsel for the appellants, to make a submission of no case to answer.
- [10] He argued that save and except for the evidence ventilated in the voir dire, there was no evidence to corroborate anything submitted by the prosecution prior to the caution statement of Mr. Fortune being tendered and read. The learned Chief Magistrate misled herself and used the evidence of a co-defendant against the others in what she termed as a "cut-throat defence". Counsel for the appellants argued that the said defence of Mr. Fortune, which seemingly guided the Chief Magistrate's findings, could not arise prior to the close of the prosecution's case as the prosecution still had to make out a prima facie case before the defendants would have been called upon to answer it.⁴
- [11] In support of his proposition that no prima facie case had been made out against the appellants, Mr. Connell posited that the only nexus between the appellants and the firearm, ammunition and cannabis was a vague description given by Mr. Fortune in his caution statement. The exact distance where each bag was found with reference to the appellants was not specific and was relative to each defendant since nothing illegal was found on their person. He took particular issue with the use of the term "next to" as it related to the location of the Nike bag containing the firearm. He complained that the prosecution led no specifics as to how close the bag containing the firearm was to the appellants and the assertion that the bag was "next to" them was too vague to make out a prima

³ [1981] Crim LR 113.

⁴ See paragraph 1.3 of the appellants' skeleton arguments.

facie case of possession.⁵ For those reasons, he contended that the appellants' convictions were unsafe and unsatisfactory and should be quashed.

Respondent's submissions

- [12] Counsel for the respondent, Mrs. Maria Jackson-Richards opposed the appeal and maintained that the convictions were not unsafe or unsatisfactory. She posited that the use of the term "next to" to describe the location of the Nike bag relative to the appellants was the local parlance, as well as in line with the dictionary meaning of the word. Had the bag been any significant distance away from the appellants, the reporting officers would have given precise measurements as they did for the nylon sack containing the cannabis. Therefore, no further qualification was required for the term "next to" and the literal meaning should be applied.
- [13] She submitted that the prosecution had made out a prima facie case against the appellants. They were in constructive possession of the firearm, as it was found next to them on a boat on the beach where they were the only individuals present at the time. Due to their proximity to the bag, it was reasonable to infer that they had knowledge and control of the bag and its contents. She argued that there was no duty on the learned Chief Magistrate to invite counsel for the appellants in the court below to make a no-case submission and that **Juett** could be distinguished from the case at bar, as it was decided on its own special facts.
- [14] She cited the case of **Leonard Rudd**⁶ as authority for the Chief Magistrate's reliance on Mr. Fortune's evidence against the appellants who were his co-accused in the court below. She submitted that the learned Chief Magistrate was entitled to consider the evidence of both the prosecution and the defence, and that there was sufficient evidence from both sides to satisfy her beyond a reasonable doubt of the appellants' guilt on all the possession charges. Accordingly, there was no miscarriage of justice, and the convictions ought to be upheld.

⁵ See paragraph 1.4 of the appellants' skeleton arguments.

⁶ (1948) 32 Cr App R 138.

Discussion

- [15] The principles governing appellate interference are well-settled and have been explored in several decisions of this Court. As Blenman JA said in **Flat Point Development Limited v Mary Dooley**:⁷

“[38]...The appellate court ought not to second guess the trial judge who has been immersed in the case and has had a unique opportunity of hearing and seeing the witnesses and testing their evidence and gaining a feel of the case, an opportunity which is denied to an appellate court.

[39] It is the function of the appellate court to make sure that the judge has correctly directed himself to and applied the relevant law and has properly approached his task in deciding disputed facts and has not erred in principle. After this has been determined, the appellate court has to stand back and determine whether the findings of fact were open to the judge to make. If they were, the appellate court should not interfere....”

- [16] Furthermore, in **Wakeem Guishard v The Attorney General of The Virgin Islands**,⁸ this Court noted that:

“[47]...a judge is not required in his decision to slavishly recite or regurgitate each and every fact or factor from the evidence which has been alluded to or relied upon by the parties in their submissions, nor is a judge required to state every principle of law upon which the parties have relied in their argument. It is also not the task of a judge to conduct a detailed analysis of all the evidence he has heard or which has (sic) presented at the trial or relied on in the submissions made by the parties. What is of the utmost importance is for the judge to render a decision which is clear and well-reasoned, and upon which the parties can be certain as to why they won or lost, and which will enable an appellate court to decide whether or not the decision is sustainable....”

- [17] Bearing these principles governing appellate interference in mind, I turn now to the issues raised in this appeal. Counsel for the appellants contended that there was a duty on the learned Chief Magistrate to invite then counsel for the appellants to make a submission of no case to answer at the close of the prosecution’s case. He argued that the prosecution’s case was tenuous at best and she should have stopped the matter from proceeding. He cited **Juett** in support of this proposition.

⁷ ANUHCVP2015/0029 (delivered 13th March 2019, unreported).

⁸ BVIHCVP2018/0006 (delivered 2nd October 2020, unreported).

[18] In **Juett**, the English Court of Appeal said this:

“Counsel submitted that the miscarriage of justice arose, secondly, from the failure of those representing the appellant (of whom he was one) to submit that there was no case to answer at the end of the prosecution case. He did not, of course, submit that the learned Judge was at fault in not acceding to a submission that was never made, nor did he criticise the Judge for failing to take the matter into his own hands. But there had, he submitted, in the result been a miscarriage of justice in the sense defined by Lord Hewart C.J. in *R v Bywaters*, [1924] 17 Cr App R 66 at 68:

"No doubt, if the result of trying together two persons who might have been tried separately had been a miscarriage of justice this Court would interfere. But what is meant by miscarriage of justice? It means that a person has been improperly found guilty."

In any ordinary case we should have little sympathy with this submission. If an experienced criminal advocate omits to make a submission which it is open to him to make (particularly a submission of so routine a nature as one of no case to answer) the reason will ordinarily lie in his expert assessment of what is necessary or desirable in his client's interests. This is his responsibility. He will have his reasons. The responsibility of the trial Judge for the overall integrity of a criminal trial does not require or entitle him to interfere in the conduct of his case by experienced defending counsel, in the absence (of course) of improper or irregular conduct. If, for better or worse, such counsel omits to make a submission at the close of the prosecution case, it will not be found (sic) an appeal that the outcome proves to be worse and not better.

There are, however, special features in this case which cause us unease concerning the appellant's conviction on count 2. Despite long and persistent interviews with the police he made no admission that he was present at the scene of the crime, and no admission that he had handled a gun. Even Carter was unable positively to identify him as having been present. In the course of an appalling criminal career the appellant had not, for over 25 years, been involved in any offence involving a firearm. And it would appear that Carter could well have had reasons for wishing to incriminate the appellant to the greatest possible extent. In all these circumstances we conclude that the appellant's conviction on count 2 is unsafe, and we accordingly rule that it must be quashed. To that extent the appeal against conviction is allowed.”

[19] It appears to me that this case did not lay down any absolute rule or impose any duty on a trial judge or trial magistrate to pre-empt or require defence counsel to make a no-case submission. In fact, the case says that they are not required or entitled to do so, in the absence of improper or irregular conduct. A judge or

magistrate conducting a criminal trial serves as an impartial arbiter of facts and law, ensuring fairness and due process. They have no knowledge of defence counsel's strategy, the manner in which they plan to conduct their case or the defence they intend to mount. To place a duty on the presiding judge or magistrate to interrupt a trial to invite or to require defence counsel to make a submission of no case to answer would take the power out of the hands of counsel, and strongarm the defence into following the court's lead, rather than independently assessing the strength of their client's case. This would offend all principles of justice and fairness. It may only be incumbent on a trial magistrate or trial judge to invite defence counsel to make a no-case submission or to stop the case themselves in cases where there is no evidence whatsoever linking the accused to the offence with which they are charged, and where continuing the trial would be a waste of the court's time and resources.

- [20] In **Juett**, the appellant's conviction was quashed, not because the judge failed to take matters into his own hands but because there were special features of the case which caused the Court of Appeal unease concerning the appellant's conviction on count 2. Count 2 charged the appellant with possession of firearms with intent to commit an indictable offence. The reason why his co-defendants, Carter and Lucas, were not charged in the second count was that although both were alleged to be accessories to the robbery, neither was said to have been present at the scene of the robbery carrying a gun. Despite long and persistent interviews with the police, the appellant made no admission that he was present at the scene of the crime, and no admission that he had handled a gun. Even Carter was unable positively to identify him as having been present. In the course of an appalling criminal career, the appellant had not, for over 25 years, been involved in any offence involving a firearm. Further, Carter could well have had reasons for wishing to incriminate the appellant to the greatest possible extent. In all these circumstances the court concluded that the appellant's conviction on count 2 was unsafe, and accordingly ruled that it must be quashed.
- [21] Counsel for the appellants in the case at bar sought to argue that there were special features in this case that warranted the quashing of the appellants' convictions. He contended that no prima facie case of possession was made

out by the prosecution at the trial. He took particular issue with the statement that the Nike bag was found “next to” the appellants. He cited the case of **R v Strong & Another**⁹ as support for the proposition that the term “next to” needed to be qualified. In that case, the court said:

“Taking the case of Strong first, if he may not have known about the presence of the cannabis in the motor car, in other words unless he is proved to have known about the cannabis, he cannot be in joint control of it. Of course it stands to reason that knowledge of its presence in these particular circumstances is a sine qua non of possession. But even if he did know of its presence, that is not enough. The mere fact that someone, for instance, had told him that there was cannabis in the car would not be enough to saddle him with possession. In short, the mere presence in the same vehicle as the drug, and in particular when there is no evidence of knowledge, would not amount in the circumstances of this case to evidence from which a jury could properly infer possession, whether individual or joint.”

[22] This Court is, of course, cognisant of the elements which must be satisfied to ground a conviction for possession of firearms, ammunition, or illegal drugs, which are essentially strict liability offences. In determining issues of possession of such articles, a court is not expected to adopt a cloistered approach to the myriad ways in which offences of this type are carried out. In **Levar Devere Browne v The Chief of Police**,¹⁰ Ward JA found that it is perfectly possible for possession to exist without actual physical custody of the article. Possession entails that the article must be in the physical custody or under the control of the accused (in legal terms, the *actus reus*) and the accused must know that the article or thing is in their physical custody or under their control (the *mens rea*). An accused need not have physical custody over the article, and so long as they exercise control over it, they are in constructive possession of it. This learning is in line with the decision of the Privy Council in **DPP v Brooks**.¹¹

[23] In the court below, the prosecution’s case was rather straightforward. The appellants and Mr. Fortune were sitting on a boat on the beach and the bag containing the gun was next to them in the boat. PC Forde, who was one of the officers who encountered the appellants and Mr. Fortune on the beach on the

⁹ [1989] 10 LS Gaz R 41.

¹⁰ SKBMCRAP2021/0003 (delivered 5th July 2023, unreported).

¹¹ [1974] AC 862.

day in question, stated this in his sworn testimony before the learned Chief Magistrate at the trial. Sergeant Dallaway, PC 239 Joanne Jackson and PC 771 Mikel Bowens further corroborated the evidence of PC Forde. The term “next to” was sufficient for the learned Chief Magistrate to ascertain the location of the Nike bag relative to the appellants. I agree with the submission of counsel for the respondent that if the bag was any significant distance away from the appellants, the police officers would likely have given precise measurements as they did with the nylon sack containing the cannabis. Although the Nike bag was not on their person, the prosecution’s case was that the appellants were in constructive possession of it. The absence of evidence as to a precise measurement of distance did not undermine the Chief Magistrate’s conclusion that the appellants were in constructive possession of the Nike bag and its contents. Accordingly, there was ample evidence led by the prosecution upon which a finding of constructive possession by the appellants could be inferred.

[24] The appellants were represented by competent counsel in the court below, who for various reasons, must have decided that a prima facie case had been made out. Perhaps another attorney may have made a no-case submission and it may or may not have been successful, however, the court could not declare that there was no case to answer when such a submission had not been made. While the evidence led by the prosecution on its own may not have been sufficient to prove guilt beyond a reasonable doubt, I do not find that there was any miscarriage of justice brought about by the failure of defence counsel to make a no-case submission or that the prosecution failed to make out a prima facie case.

[25] In any event, upon the conclusion of the prosecution’s case, and in the absence of a no-case submission, the learned Chief Magistrate had the benefit of hearing the witnesses for the defence. Although the appellants and Mr. Fortune, who were represented by the same counsel, were charged on all three counts of possession, they mounted separate defences. While the appellants maintained that they were not conducting “weed business” with Mr. Fortune and that they knew nothing of the firearm, Mr. Fortune admitted in his sworn testimony that he came to conduct a business transaction involving cannabis with the appellants,

but that he knew nothing of the gun. Mr. Fortune's evidence was accepted by the Chief Magistrate and the evidence of both parties enabled her to arrive at the conclusion that the appellants were guilty on all three counts.

[26] Counsel for the appellants argued that the learned Chief Magistrate erred in using the evidence of a co-accused, Mr. Fortune, against the appellants as his statements were somewhat self-serving. However, I do not find that she so erred based on the authority of **Rudd** furnished to this Court by counsel for the respondent. In that case, the court said:

“... while a statement made in the absence of the accused person by one of his co-defendants cannot be evidence against him, if a co-defendant goes into the witness box and gives evidence in the course of a joint trial, then what he says becomes evidence for all the purposes of the case including the purpose of being evidence against his co-defendant. That is the law as we have always understood it, and there is ample authority to that effect...”

[27] There is nothing to suggest that the learned Chief Magistrate considered Mr. Fortune's caution statement or bore in mind evidence that may have been ventilated in a voir dire. Mr. Fortune went into the witness box to give his evidence and that evidence became evidence in the trial which it was open to her to consider. Counsel for the appellants argued that Mr. Fortune's evidence only became available after the close of the prosecution's case and accordingly could not have been considered by her to determine whether a prima facie case had been made out for the appellants to answer. He complained that the learned Chief Magistrate referred to Mr. Fortune's evidence as a “cut-throat defence” and that it was integral in her arriving at her decision.

[28] In my view, this argument holds no merit. There is no requirement for a magistrate or judge to consider whether the prosecution has made out a prima facie case against the defendant if a no-case submission has not been made. The court is entitled to the benefit of hearing evidence from both sides before arriving at a decision. In this case, the Chief Magistrate was only compelled to descend into an analysis of the evidence at the end of the case for the prosecution and the defence, as no submission of no case to answer was made which would have prompted her into analysing the evidence at the close of the

prosecution's case to determine whether there was a prima facie case. Her reference to a "cut-throat defence" only came when she was applying her mind to the totality of the evidence at the end of the case for both the prosecution and the defence.

[29] Furthermore, in accordance with the principles in **Wakeem Guishard**, the learned Chief Magistrate was not required in her decision to slavishly recite or regurgitate each and every fact or factor from the evidence which was alluded to or relied upon by the parties, nor was she required to specify what evidence she considered and at what point in the proceedings she considered them in arriving at her decision to convict the appellants. The appellants cannot suggest, and this Court cannot extrapolate, that the Chief Magistrate must have had Mr. Fortune's caution statement in mind at the end of the prosecution's case and for that reason, she could not determine that the prosecution had not made out a prima facie case. Defence counsel did not make a no-case submission and therefore there was no requirement for her to apply her mind to the question of whether a prima facie case had been made out.

[30] The learned Chief Magistrate heard the evidence of both the prosecution and the defence and upon considering the testimonies of all the witnesses, she stated that she believed the evidence of Mr. Fortune and she chose to convict the appellants on all three charges, and Mr. Fortune only on the possession of the cannabis charge. She wrote a well-reasoned decision in which she referenced all the relevant authorities and considered the evidence thoroughly, as she was entitled to do. As this Court said in **Flat Point**, the appellate court ought not to second guess the trial judge who has been immersed in the case and has had a unique opportunity of hearing and seeing the witnesses and testing their evidence and gaining a feel of the case.

[31] The appellants have failed to show that the learned Chief Magistrate's decision was blatantly wrong, that she misdirected herself, that she failed to apply the relevant law or that she did not properly approach the task of deciding disputed facts such that this Court should interfere. There are no special features surrounding the appellants' convictions which cause this Court unease such that

it would be minded to quash the conviction, as was done in **Juett**. The learned Chief Magistrate arrived at conclusions which were open to her on all the evidence, and I see no basis upon which I can conclude that the convictions were unsafe or unsatisfactory.

Disposition

[32] For the reasons given above, I would dismiss the appeal and affirm the appellants' convictions.

I concur.
Dame Janice M. Pereira
Chief Justice

I concur.
Mario Michel
Justice of Appeal

By the Court

Chief Registrar