

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO. SLUCRD2013/1454

THE KING

vs.

AMRAAN JAMES

Defendant

BEFORE : The Honourable Justice V. Georgis Taylor-Alexander
APPEARANCES : Mr. Linton Robinson Counsel for the Crown
Mr. Alberton Richelieu Counsel for the Defendant

2024: November 08;

JUDGMENT

Voir Dire – Allegation of identifying witness and suspect being detained together before identification procedure – Procedure for an identification parade – Code D of PACE – Failure of police to make enquiries of the witness whether he had been shown photographs of the Defendant in the media or elsewhere.

- [1] **TAYLOR-ALEXANDER J:** The Defendant, Amraan James, was indicted on the 7th of November 2014 for Possession of and Possession with Intent to Supply, Marijuana contrary to the Drugs (Prevention of the Misuse) Act Cap 3.02 of the Revised Laws of Saint Lucia. The Defendant's defence is one of alibi, and that he never placed the drugs in the house nor does he have knowledge of the drugs in the house.
- [2] By application made on the 31st of May 2021, the Defendant challenged evidence of identification relied on by the Crown that placed the Defendant in the house where the drugs

were recovered. The Defendant submits that the identification evidence was rendered unreliable when the identifying witness was kept in a holding cell with him prior to the identification procedure. He also submits, that the identification of him as the suspect, was influenced by the Police when they showed the identifying witness a photograph of him before the identification parade. The Crown challenges this assertion, submitting that the Defendant and the witness were never held together, and that the Defendant was kept at an entirely separate police station to the witness. The Crown also challenges the assertion that the identifying witness was shown a photograph of the Defendant at the house where the drugs were found. A Voir Dire was held on the 19th of September 2024 to interrogate the circumstances surrounding the identification procedure.

Crown's case in brief

- [3] Multiple bags of green plant material determined after analysis to be marijuana, were found at a dwelling house at Vide Boutielle, Castries, following a raid by the police drug squad. Fermin James, who was outside the dwelling house at the time, because he had accompanied his taxi driver friend Ricardo John to drop off a passenger at the residence on the 3rd of August 2013, identified the Defendant as a person whom he saw in the balcony of the house in which the green plant material was found. According to Fermin James' evidence, on arrival at the residence at 7: 45 p.m., he got out of the vehicle to collect the taxi fare on behalf of Ricardo John. He stood ten (10) yards from the balcony of the house from where he saw a fellow that was sitting in the balcony. He says there was a light on in the balcony and inside the house. At one point, he walked closer to the house to recover the taxi fare and was standing on the steps to the house seemingly closer to the balcony. He described the man whom he saw in the balcony. According to Fermin James, about one (1) minute after he walked onto the steps, the police drug squad arrived and everyone started running including the person whom he saw on the balcony. He, Fermin James ran after he heard gunshots.
- [4] Fermin James and Ricardo John were both arrested that night and were taken to Custody Suites, where they were placed in a cell. The person seen on the balcony was not recovered by the police that night. The Defendant Amraan James turned himself over to the police two (2) days following, after he heard that the police had been looking for him. It is the Crown's case that upon arrest, Amraan James was taken to the Marchand Police Station. At an identification parade conducted at the Vieux Fort Police Station, Fermin James identified the Defendant Amraan James as the person whom he had seen in the balcony of the house on the 3rd of August 2013.

The Defendant's Submissions

- [5] The Defendant submits that on arrest that he was kept at Custody Suites, or was brought there and housed there for part of his detention, for ninety (90) hours, when he was allowed to be seen by Fermin James, Ricardo John and Edmund Alfred prior to the identification procedure, where he was identified by Fermin James, as the person whom he saw in the balcony of the house where the drugs were recovered. As such, the Defendant submits that the identification procedure and the parade lineup was influenced and rendered unreliable.
- [6] The Defendant also submits that the identification procedure breached the procedural requirements of PACE Code D, in that no inquiry was made of the witness, as to whether they had been shown photographs of the suspect in the media or elsewhere. The Defendant submits that such an inquiry would have been crucial to ensure that the identification was not influenced by prior exposure of the witness to the Defendant. The submission of the Defendant is especially relevant, as in the witness statement of Edmund Alfred, he states that on their arrest at the residence at Bisee he, Fermin James and Ricardo John were shown a photograph of the Defendant Amraan James.
- [7] The Defendant submits in reliance on **ABDUL MUNIM KHAN v STATE OF HYDERABAD 1953 Cr.L.J. 785**, a Criminal Appeal from the Judgment and Order of the Court of the Special Tribunal IV Trimulgherry Hyderabad, India, that the police failed in their duty to ensure all precautions were taken to ensure the fairness of identification procedure. Counsel relied for support on the dicta Chief Justice of Hyderabad in that case, who said: -

“the desirability of exercising a most careful scrutiny about identification parades cannot be overemphasized. It is the duty of the Magistrate conducting the test identification parade to see that all precautions are taken in the matter of satisfying himself that the witnesses had no opportunity to see the accused before. Even the omission to observe a minor necessary procedure, at the time of holding the identification parade would detract from its value. The proceedings should be conducted in such a way as not to leave any room or loophole to create the slightest suspicion in the mind of the Court. The Officer, conducting the test identification parade, should, therefore, exercise the utmost scrutiny and vigilance at the time of the test identification parade”

- [8] The Defendant submits that the case emphasizes that even minor procedural failures or undue exposure before the identification can undermine the reliability of the procedure. He submits that the lack of diligence and scrutiny by the police in this case affects the reliability of the identification parade and it is to be excluded as corroborating evidence.

The Crown's Submissions

- [9] The Crown in principle does not disagree with the practice and procedure relied on by the Defence for the conduct of identification parades. The Crown however refutes the contention that a reasonable inference can be drawn that Fermin James must have been influenced in making the identification. The Crown submits that the issue of undue influence was not canvassed during cross examination of Fermin James at the Voir Dire, where it ought properly to have been canvassed.
- [10] The evidence elicited from Fermin James at the Voir Dire established that he was never in a holding cell with Amraan James, that he was never shown a photograph of Amraan James by the police nor did he see newspapers or was shown pictures of anyone prior to participating in the identification parade. As such, there remains no evidence of any such undue influence as alleged by the Defendant. The Crowns prays the dismissal of the application.

The Evidence on the Voir Dire

Lester Byron

- [11] On 3rd August 2013, at 7:15 p.m. he was on an intelligence driven operation at Vide Bouteille. They searched a wall structure. He arrested three (3) persons, Fermin James, Lucius Edmund and Ricardo John on suspicion of drug trafficking. Ricardo John and Fermin James were arrested outside a wall structure near a white bus. Lucius Edmund was arrested near American Drywall by the Highway (Vide Bouteille). He was escorted back to the wall structure. Officer Byron had seen Lucius on the balcony of the wall structure and he ran in the direction of American Drywall. The three (3) men were escorted to Custody Suites at Central Police Station where they were detained.
- [12] He described Custody Suites as a wall structure with a heavy metal red gate, to which you can only gain entry if someone on the inside let you in. Inside the red gate is a short open area that leads you to the main building. There is a white door beyond which is a small waiting area. There

is another white door that leads to a screening area, then there is a reception area containing a desk with officers behind it.

- [13] Facing the officers behind there is a room where persons are detained before being taken to the holding cell. To the right of the desk is the AFIS room for fingerprinting and photographing. Next to the AFIS room is the investigators room, then the supervisor's office.
- [14] He says there is a short hallway that takes you to a big metal door. Left of the hallway is the kitchen. Beyond the red metal door, the hallway continues to the end of the building. Both sides of the hallway contain holding cells separated by concrete walls. The rest of the property is open wall, surrounded by wall and open fencing. The alleyway at Custody Suites separates the cells. There are multiple cells. Persons in cells opposite each other can see persons in the opposite cell.
- [15] He said he read the three (3) persons their rights and handed them over to the Officers at the desk. He gave instructions that Lucius Edmund was to be separated from Fermin James and Ricardo John, to restrict communication between the three (3) of them. This was based on intelligence he had prior to the commencement of the operation.
- [16] On Monday, the 5th of August 2013 he met the Defendant Amraan James at the Criminal Investigations Department (CID). He recognised him as a Customs Officer. He also recognised him as being present at the wall structure on the night of the operation. He informed him of what was found at the premises and arrested him, after which he was escorted to Marchand Police Station where he was detained. He decided to detain the Defendant there as it is customary that persons in law enforcement are not detained with other suspects. Marchand Police Station is always empty and he thought that it was best to keep the Defendant there. At the Marchand Police Station, he read the Defendant his rights. He conducted an interview with him in the presence of his lawyer, and on that day escorted the Defendant to Custody Suites to the investigators/charge room to conduct the interview. The Defendant remained there until he was escorted back to the Marchand Police Station. Officer Byron did not observe the Defendant Amraan James go anywhere near the holding cells. He did not take Amraan James to the Drug Squad to read him his rights in custody.
- [17] The following day, on Tuesday, he took the Defendant back to the same charge room, and showed him the plant material recovered during the operation. The Defendant did not get close to the holding cells. The Defendant's lawyer was with him when he was first taken to Custody Suites. On the second occasion, Justice of the Peace Mc Vane and a person who identified

herself as Amraan James' girlfriend was there. The person who identified herself as the Defendant's girlfriend, was there at the execution of the operation at Vide Bouteille and he had taken a statement from her. The Defendant's lawyer was also present. Those were the only occasions he took the Defendant to Custody Suites. Officer Byron said he knew where the other three (3) men were but he, Byron did not see them. He was always in the Defendant's presence while he was at Custody Suites, after which he was escorted back to Marchand Police Station where he continued to be detained. He said he reviewed the Custody Book at Custody Suites to ensure that the three (3) men were there, that they were fed and in good health. He obtained copies of that record. He did not see any entry of Custody Suites for the Defendant. He admitted that he did not tender any custody documents to show that the Defendant was detained at the Marchand Police Station. He said the entry at Marchand is recorded by the station, and not by him. He did not produce any document to prove the Defendant's movement into and out of Marchand Police Station.

- [18] He says that on Monday, 4th August 2013, the Defendant was at Custody Suites for less than one (1) hour. On Tuesday, 6th August 2013, he was at Custody Suites for less than an hour. He, Officer Byron did not go to Marchand Police Station on the 7th August 2013 to ascertain if the Defendant was there. At the time of giving his evidence he could not find a station diary for the Marchand Police Station. He says that on the 8th August 2013, Ricardo John and Fermin James were released from custody.
- [19] He says the Defendant is not his liming partner nor has he ever socialised with him. He says the Defendant's girlfriend came to the house during the bust, while he was executing the warrant. On that night she did not show him a photograph of the Defendant.
- [20] Officer Byron said he gave instructions for the Defendant Amraan James to be fingerprinted, but he is unable to say where he was fingerprinted. He says that in 2013, there was physical fingerprinting at the Stations. If someone is at Custody Suites they would be fingerprinted and photographed at Custody Suites. He is not aware that the Defendant was fingerprinted and photographed at Custody Suites. He said it was not possible that the Defendant was brought to Custody Suites for fingerprinting and photographed after which he was charged as persons are only fingerprinted and photographed after they are charged. He maintained that the Defendant was not kept at Custody Suites in cells close to the identifying witness. The Defendant was only kept in a cell at the Marchand Police Station.

Emmanuel Joseph

- [21] He is a retired Superintendent of the Traffic Department who conducted the identification procedure. He spoke with Amraan James at the Marchand Police Station. Amraan James was a suspect in custody and he told him he wanted to conduct an ID parade for the case for which he was in custody. Amraan James had no objection to him conducting the procedure. He asked that his lawyer be informed.
- [22] On 9th August 2013, at 2:15 p.m. he met the Defendant and his lawyer. In the presence of his lawyer, the Defendant selected eight (8) young men of similar description and brought them to a screen equipped room at the Vieux Fort Police Station. The western end of the wall is numbered one (1) to nine (9). The eight (8) men occupied positions under numbers one (1) to eight (8). He brought the Defendant to the room with his attorney. The suspect had no objections to the persons on the line-up, although he switched around the persons on the line-up. The Defendant himself occupied position eight (8). Present in the room other than the suspect and his lawyer were the eight (8) men, Officer St. Catherine and SPC Jn. Marie.
- [23] At 3:50 p.m. he went to the Criminal Investigations Department (CID) where he met Fermin James and introduced himself. He issued him a warning in accordance with Code D of PACE and took him to the screening room. In the presence of the Defendant's lawyer, Fermin James pointed out the suspect at position eight (8). In the presence of his lawyer, Officer Joseph told the suspect he was positively identified and he was cautioned after which the Defendant said nothing. He asked him if he had complaints about the identification procedure and he said no. Still shots of the line-up were taken by PC Leonce, then Officer Joseph dismissed the parade. He made notes in the Vieux Fort Station diary. He completed all forms for the parade and handed it to Officer Byron.
- [24] Officer Joseph agreed that there is no written record that he had enquired of the witness if he had seen a photograph of the suspect before or a photograph of him in the media prior. He accepted that he made no such enquiry of the witness. He also agreed that the Code D of PACE caution he administered is merely to inform the witness that the suspect may or may not be present on the line-up.

Fermin James

- [25] On Saturday 3rd August 2013, at 6:30 that evening somebody came for a water taxi trip. He was by the Soufriere Police Station. He did not know the person before that trip to Castries. He,

Fermin accompanied Ricardo John. They went in Ricardo's car, a Toyota Hiace white car. He was in the front passenger seat, and the person was in the back.

- [26] When they got to Castries they went to somewhere, he does not know the name of the place. The road was narrow. Ricardo backed into the place. The person they were taxiing went to get the money to pay him. It was just the three (3) of them on the vehicle. Fermin James stood up behind the van waiting for the money, Ricardo went into the passenger seat. Fermin James took a walk closer to the house. That was the first time he went there. He cannot describe the house. He walked two (2) feet closer to the house. The guy they taxied was speaking to someone by the balcony. There was light in the balcony. He, Fermin James was ten (10) to twelve (12) feet away from the other guy. He was not able to observe the guy on the balcony.
- [27] He recalls giving a statement to the police on the 5th of August 2013. What he said was the truth. The events were fresher then, than today. He cannot give a description of the guy on the balcony. He cannot recall if he was able to observe, see the man on the balcony. While they were there a vehicle came with police on board. He does not recall telling the police that he saw what the person on the balcony looked like. Upon refreshing his memory, he admitted in his statement he told the police he could see the guy in the balcony's face. He acknowledged that it is today he cannot recall today what that person looked like.
- [28] They did not get the money they were waiting for. The police came and the two (2) guys ran. He heard the gunshot, he went behind the house, and he lay down flat. The police came and said police and he got up, and they brought him to the front of the house. The police had three (3) of them cuffed together. He, Ricardo and the guy they taxied. During the bust at the scene, he did not see the guy on the balcony at all. He spent three (3) days in the cell in Custody Suites. It was just him and Ricardo. The guy they taxied was not in the cell. He never saw the guy who was on the balcony in the cell.
- [29] Two (2) days after his release he had to meet the Police in Vieux Fort. The Police asked Ricardo and him to meet them by the mall in Vieux Fort. At the Vieux Fort Police Station, the Police had him to stand by a glass. There were at least ten (10) guys standing there. They asked him to see if he saw the guy he saw standing on the balcony. They asked him to point on the guy he knows. He said, "I just point on somebody inside the place". Nobody showed him a picture of who to point out. He did not see any newspaper pictures.
- [30] On cross-examination he said that at the house where he was arrested, from where he stood, he could not see the guy's face, who was in the balcony. The guy they gave the ride was standing

just outside the balcony. The guy whose face he could not see was sitting inside the balcony. He cannot say how tall he was. The guy they taxied ran. He returned with the police ten (10) to fifteen (15) minutes later. The Police took them downstairs the house to witness what was downstairs, then they took them upstairs. The only lady that was there was the Justice of the Peace. The police did not show him any photograph in the house.

Ricardo John

- [31] He recalls the 3rd of August 2013 at about 6:30 p.m. He was on the taxi stand by the police station in Soufriere. A guy came to ask for a taxi to Castries. He and Fermin went. He was driving, and Fermin James, his friend was in the front passenger seat. The guy sat in the back. He stopped where the guy asked to be taken. The guy said he was going to get the money for the taxi. Ricardo sent Fermin James to get the money for him. He remained in the cab waiting. He saw two (2) big vans arrive with police uniforms. He stayed in the bus for about fifteen (15) minutes. The police told him to get out of the bus which he did. The police took him to the house. The man they were taxiing was not at the house at the moment when he, Ricardo was brought to the house by the Police.
- [32] The Police took them to Custody Suites and they slept there for three (3) days in a cell. Fermin was in the same cell with him. The guy they were taxiing was not in the same cell with him. He was not able to see other persons in other cells.
- [33] At the house they were never taken downstairs the house, they were taken upstairs. He did not see any girl at the house. The Justice of Peace who was present was a man. He gave a statement to the police. He signed the statement. He agrees that he cannot recall everything he told the police. The events were fresher in his mind then. The statement he gave the police is true and correct.

Edmund Alfred

- [34] He is a security officer at the RC Boys School. On Saturday, 3rd August 2013 between 8:00 p.m. to 9:00 p.m. he was walking by American Drywall at Bisee. He was held by police officers and brought to a house at Bisee. He did not know the house before. The house they brought him to is at La Clery. He was brought inside the house. At the house, there were some officers and a lady. He did not know the officers before. It is the officers who informed him that they were police and some had Police written on their clothing. The officers had packets in a bag. They told him to sign his name on the package. He said he cannot sign his name as the packets did not belong

to him. The female lady signed her name. This happened downstairs in the dwelling house. The house has a downstairs and an upstairs. The Officers brought them all upstairs. There were two (2) other fellas, they did not sign on the packets either. He had seen the other two (2) fellas before but he did not know them. When they were brought upstairs, the same lady who was downstairs showed them a picture. She was there together with the Officers. The picture was of somebody, he did not recognise the person. It was a male person. He asked her if she was a police officer. She was asked to go outside by the police. She went outside. He and the two (2) other guys, three (3) of them were brought to a vehicle and were taken to Custody Suites. They stayed there for more than three (3) days.

- [35] He knows the Defendant. The Defendant was there in Custody Suites with him. They were not charged in three (3) days. After they were charged, he left, he was brought to Bordelais Correctional Facility. The Defendant was still at Custody Suites. On cross-examination he admitted that the Defendant is his cousin and that he had been to that house in La Clery many times before although he stated that the Defendant was not living there.

Assessment of Evidence given on the Voir Dire

Edmund Alfred

- [36] Edmund Alfred's evidence is relevant to the Voir Dire for two (2) reasons. He stated that he was taken to Custody Suites with Fermin James, Ricardo John and that the Defendant was at Custody Suites with him before an identification procedure, where the Defendant was identified by Fermin James as a person who was on the balcony of the house, where the raid took place. He also stated, that at the house on the night of the raid, a female person whom he assumed was a police showed him and the two (2) witnesses a photograph of a male person. If that is in fact found to be the case, that the identifying witness was shown a photograph of the Defendant, the identification of the Defendant by Fermin James at the later identification parade would potentially be inadmissible evidence as being intentionally influenced by the police.¹
- [37] I found Edmund Alfred to be a less credible witness on the stand than that of the other witnesses at the Voir Dire, and found discrepancies between his evidence and that of the other witnesses. He asserted that he only became involved in the raid when he was arrested by the police on the highway near where the incident took place. This evidence was contradicted by Lester Byron who said that he had seen this witness at the house before he fled. Based on the factual matrix

¹ See Section 100(1)(a)(i) and (b) of the Evidence Act of St. Lucia

of this case, I concluded that Edmund Alfred was the person referred to by the other two (2) witnesses as the person who was given a taxi ride to the house at Vide Bouteille. Their evidence was that they had transported a person on a taxi to the residence where the raid took place. Fermin James' evidence was that that person ran when the police arrived but that that person was transported with him and Ricardo John to Custody Suites. Edmund Alfred's evidence that he and the others were shown a photograph by a female at the house was also contradicted by Ricardo John, who did not remember any girl at the house, and Fermin James who denied being shown any photograph at the house. While there were gaps in the evidence of Ricardo John and Fermin James, I found these gaps were accounted for by the passage of time due to the 11-year gap between their statements to the police and their testimony on the Voir Dire. This lapse may have led to some forgetfulness or inability to recall precise details, but I accepted the inconsistencies in their evidence on those grounds. These two (2) witnesses also contradicted Alfred's evidence that they were at Custody Suites together with the Defendant. Fermin James stated that although they were brought to Custody Suites with the guy whom they taxied, they were not in the same cell with him. They also stated that at no time while they were at Custody Suites, did he see the guy he had seen on the balcony. Ricardo John said that the guy they taxied was not in the same cell with him, nor was he was not able to see other persons in other cells. This contradiction weakened Alfred's credibility, as it pointed to weaknesses in his version of events.

- [38] It has also not escaped me, that Edmund Alfred in his evidence admitted to being the cousin of the Defendant which raises concerns about possible bias in his evidence. This connection made his testimony more self-serving and susceptible to scrutiny, as it could have influenced his account of the events in favor of the Defendant.

Fermin James

- [39] His evidence was relevant to the issue of whether he had been influenced in his identification of the Defendant, as the person whom he saw on the balcony. As stated earlier, I found inconsistencies in his evidence to be explained by the passage of time. On the material issue of whether he had been influenced to make the identification of the Defendant, he stated that he not been shown a photograph of the Defendant at the residence where the raid occurred. Although when he gave his evidence on the Voir Dire he could not remember what the person whom he saw looked like, he agreed that the statement he gave the police was earlier in time and was true and correct. In that statement, he gave a description of the person whom he saw on the balcony.

- [40] Despite the inconsistencies with his evidence on the stand and his statement, these are issues for the jury, once I am satisfied and I am, that his statement was not coerced and was made when events were fresher in his mind.

Ricardo John

- [41] His evidence at the Voir Dire, was helpful to provide his observations while at Custody Suites, and confirmed the Crown's submissions that the Defendant Amraan James was not held with or visible to Ricardo John during his incarceration at Custody Suites.

Lester Byron

- [42] He gave evidence that supported the Crown's case that the Defendant Amraan James' detention was at the Police Station Marchand and that while the Defendant had been brought to Custody Suites to the charging room on two (2) occasions, none of these occasions extended beyond an hour and he, Byron was at all times in the Defendant's custody when he was at the charging room at Custody Suites. He says the Defendant was always returned to Marchand Police Station and that at no time was the Defendant brought to the cells at Custody Suites.
- [43] Byron admitted that he did not have a written record of the Defendant's detention at the Marchand Police Station. He also could not definitively state where or whether the Defendant was fingerprinted at the Custody Suites. While these gaps in Byron's evidence were noted, I accepted his testimony on balance and the gaps in his evidence did not undermine his overall reliability as a witness. I weighed the lack of documentation against the overall plausibility of his account and found no reason to dispute his overall evidence, even though there were some procedural uncertainties.
- [44] On the material issue of whether the witness Fermin James had been housed with the Defendant at Custody Suites, I preferred the evidence of Fermin James, Ricardo John and Lester Byron. These witnesses' evidence satisfies me that Fermin James and Ricardo John were not housed with the Defendant in detention, which supports the conclusion that the identification process was not contaminated by any inappropriate interaction between the identifying witness and the Defendant.

The Failure to make enquiry of the Witness as to whether he had been shown photographs or media clippings of the Defendant

- [45] I remind myself of my own decision in **R v Eron Collymore et al, SLUCRD 2016/0661A, 0662A, 0663A, 0664A, 0665A, 066A, 0667A** where I opined at paragraph 10 of the judgment that:

“The holding of an identification procedure is designed to test the ability of a witness to identify a person seen on a previous occasion, and to provide safeguards against mistaken identity. The correctness of the procedure used is therefore important, although it is concomitantly accepted that only breaches in procedure, that result in unfairness, would result in the evidence being withdrawn.”

- [46] I accept the Crown’s submission that there was no, or no material derogation from PACE Code D as the best practice or from Police Standing Order 47. The identifying witness in his evidence at the Voir Dire confirmed that he had not been shown any photograph of the Defendant prior to the identification parade, nor had he been shown any media clippings regarding the case. This makes the issue of the Identification Officers' failures in so far as these existed academic, as it did not affect the substantive issue of whether the identification was reliable or whether it had been tainted by improper influence.

Disposition

- [47] It is my finding that the identification procedure was unaffected by improper influence, neither did I find a material breach that compromised the fairness of the identification procedure. The overall integrity of the evidence is upheld, and the Defendant's application is dismissed.

Justice V. Georgis Taylor-Alexander
High Court Judge

BY THE COURT

REGISTRAR