

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

CASE NO.: SLUCRD2017/0051, 0051A

BETWEEN:

THE QUEEN

vs

CHANDLER FITZ

Defendant

Appearances:

Mr. Linton Robinson Counsel for the Crown

Mr. Leslie Mondesir Counsel for the Defendant

2020: November 20

2021: January 20

RULING

[1] **PRICE-FINDLAY J.:** This was a pre-trial application brought on behalf of the Defendant asking for the following orders:-

1. That the analyst report be excluded in so far as it applies to testing One Hundred and One Point Seventy Nine (101.79) kg of cannabis.
2. That Count Two (2) of the indictment be withdrawn (that count being "in possession with intent to supply).
3. That Count One (1) be amended to read Forty One Point Forty Four (41.44) kg the weight of the drug actually tested.

[2] During the course of the applicant's argument the applicant argued that the entire amount of the drug tested ought to be discounted as there was not compliance with Section 4 (1) of the Administration of Justice Act (Miscellaneous Provisions).

- [3] Further the Applicant argued that there was no disclosure by the Forensic Lab of the protocols which were followed in testing only a select portion of the drugs and not the entirety of the material seized by the police.
- [4] It is accepted that the police in this matter recovered Two (2) polythere sacks and Two (2) plastic bags from a Suzuki Swift vehicle on the 17th January, 2017 on the Grand Riviere Highway. The Defendant was the driver of the vehicle.
- [5] The Defendant and the vehicle were taken to the Richfond Police Station where he was arrested and charged with Two (2) counts: - 1. Possession of Marijuana. 2. Possession of Marijuana with intent to supply.
- [6] At the station the bags were opened and revealed to contain very similar looking packages. The packages were opened by making incisions and all were revealed to contain plant like material which appeared to be cannabis.
- [7] This procedure was conducted in the presence of the Defendant. Exhibit tape was placed on each incision and PC 738 Antoine signed the tape. The Defendant signed as well as WPC 759 Mader and PC 489 Wilfred signed on the tape.
- [8] The packages were placed into the respective bags from which they came. The contents of the black plastic bag were placed in Two (2) different Exhibit bags and labelled 3A and 3B. The Exhibit bags were sealed with tape. PC 738 Antoine signed, the Defendant signed the seals of the bag. WPC 759 Mader and PC 489 Wilfred also signed.
- [9] The entire exhibit included all the packages numbering Twenty Seven (27) in all were submitted to the Forensic Lab for testing, samples were taken from Eleven (11) packages of those Twenty Seven (27) packages and tested.
- [10] In the analyst's notes she stated "Due to the nature of the material, net weights slightly varied. The average weight of the Eleven (11) samples, net weight was calculated to use as representation weight for each sample net weight".

- [11] She calculated the net weight of the Twenty Seven (27) parcels to be One Hundred and One point Seventy Nine (101.79) kg.
- [12] The process by which the testing is done is set out in the Sample Selection Sampling Plans and Off Site sampling handbook used by the St Lucia Forensic Lab.
- [13] These protocols are in conformity with recognized international standards:

Principle

¹ *“Sample Selection is an important initial step in forensic drug analysis. The goal of sample selection is to select a sample that is truly representative of the total population o a single item. In order to meet this goal, homogeneity must be considered among the drug packaging and its contents. Drug packaging can include bags, layers of packaging, capsules, etc. Proper sample selection relies upon careful, detailed visual inspections as well as personal experience. Among the homogenous population or item, the sample selected must be taken at random, with no inherent bias in the selection process. Sample selection applies to taking a sample from one package (an item) and/or choosing from which packages to choose (the population)”*.

² *“When it would be more practical and informative to describe a population as a whole, but analysis of every item in a population would be overly burdensome, a statistical sampling approach can be used. This approach allows an inference to be made as to the probability that a specific proportion of a population contains a particular substance, based on the analysis of a reduced number of items within the population. When this approach is used, only the proportion of the items and the weight associated with that proportion can be reported as containing the substance confirmed in the reduced number of items tested. The entire weight of the population can be reported for descriptive purposes, but the confirmed substance cannot be attributed to 100% of the population, without having tested every item in that population. The proportion reported should aim to exceed the greater of the legal weight threshold and/or the sentencing guidelines for the minimum amount associated with the highest category for a specific substance”*.

³ *“The sampling strategy described in this procedure is based on the statistics of the hypergeometric distribution. A hypergeometric distribution is a discrete probability distribution that describes the probability of successes (random draws for which the object drawn has a specified feature in draws), without replacement, from a finite population that contains exactly a specific number of objects with that feature, wherein each draw is either*

¹ Sample Selection, Sampling Plans and Off-Site Sampling page 2

² Sample Selection, Sampling Plans and Off-Site Sampling page 2

³ Sample Selection, Sampling Plans and Off-Site Sampling page 3

a success or a failure. When applied to forensic drug analysis, the applied hypergeometric distribution results in the probability that each item analysed (draws) has the specific feature of the confirmed substance. A successful sample contains the confirmed substance, whereas a fail does not contain the confirmed substance. Based on the number of successful draws with limited or no failures, the result will be the probability that a specific percentage of the total population will contain the confirmed substance”.

Procedure

⁴ “1. Determining the use of statistical versus non-statistical sampling

1.1. Determine the population(s) present by grouping similar items by any combination of the following characteristics:

1.1.1 Packaging type (ziplock bags, wraps, etc.)

1.1.2 Packaging size

1.1.3 Packaging characteristics (similar label imprints)

1.1.4 Package layering (need not be identical if net weights are consistent)

1.1.5 Content appearance (green plant material, white powder, etc.)

1.1.5.1 If contents are not readily viewable through the packaging, ensure all items are viewed separately to establish similarities and the expectation of homogeneity.

1.1.6 Net weight of contents

1.1.6.1 Weigh 3-5 items individually to determine average net weight and consistency among packaging contents. (Refer to Example below.)

1.1.7 Colour test results of net weighted items”.

Note: This is not an all-inclusive list. All elements do not need to be present in order to make a determination of a population. The analyst may use his/her best judgment and can articulate justifications in the case notes for how the population(s) were determined. The technical reviewer, technical leader or designee determines appropriateness of atypical determinations.

⁵ “1.2.2.2 The percentage of items needed to reach the greater of either the weight threshold or the minimum amount associated with the highest category for a specific substance. 10% of items is considered appropriate, but not mandated”.

“1.2.2.3 Refer to Hypergeometric Distribution Table 1 to determine how many items to test using a statistical method, for comparison to a non-statistical method”.

[14] It would appear to this Court that the protocols of the St Lucia Lab were carefully followed in this case and that based on these protocols the conclusion of the analyst was that all Twenty-Seven (27) packages contained the substance cannabis, even though only Eleven (11) of the packages were tested.

⁴ Sample Selection, Sampling Plans and Off-Site Sampling page 4

⁵ Sample Selection, Sampling Plans and Off-Site Sampling page 5

- [15] The Court can find no reason based on the methodologies adopted by the Lab to state that the Twenty-Seven (27) packages submitted contained any substance other than cannabis.
- [16] Further, the taking of the average weight of the Eleven (11) packages and determining the average total weight of all Twenty-Seven (27) packages using that average weight is also something with which this Court can find no fault bearing in mind the methodology set out in the Lab protocols.
- [17] In any event even if the Court were to agree with the Defendant's position, the weight of the Eleven (11) packages exceeds the weight requirement for the charge in the Second (2nd) count of the indictment, that is possession with intent to supply. The weight will have implications for sentencing but not for substance of the Count itself.
- [18] In the circumstances the Court cannot grant the Defendant his application to exclude the analyst's report as it pertains to the reference to One Hundred and One Point Seventy-Nine (101.79) kg, nor can the Court withdraw the Second (2nd) count on the indictment, possession with intent to supply.
- [19] The Court is also not inclined to amend Count One (1) to read Forty-One Point Four (41.44) kg.
- [20] The Defendant also questioned the procedure adopted by the police which he claims is contrary to Section 4 of the Administration of Justice (Miscellaneous Provisions) Act.
- [21] Section 4 states:-
- ⁶*"A sample of any controlled drug within the meaning of section 4 of the Drugs (Prevention of Misuse) Act or any other substance which has been seized by the police for the purposes of a criminal investigation shall be admitted as evidence in a criminal trial if, in the presence of the accused, his or her attorney-at-law or agent:-*
- (a) *The sample is taken from the bulk of the substance;*
- (b) *The sample and the substance from which it is taken are weighed or otherwise measured;*
- (c) *The sample is secured in a container which is wrapped and sealed; and*
- (d) *The container is signed or initialled by a senior police officer and the accused or the accused's attorney-at-law or agent.*

⁶ Administration of Justice (Miscellaneous Provisions) Act page 8 Section 4 Sub Section 1

⁷“A sample under subsection (1) shall be admitted as evidence in a criminal trial although the accused or the accused’s attorney-at-law or agent has refused to sign or initial the container containing the sample”.

⁸“Where a sample of any substance is taken, the police shall issue a certificate in the form set out in schedule 2”.

⁹“Where the accused or the accused’ attorney-at-law or agent has refused to sign or initial the container containing the sample the police shall issue a certificate, in the form set out in schedule 3”.

¹⁰“A copy of the certificate shall be served on the accused, the accused’s attorney-at-law or agent, and the person executing such service shall make an endorsement of service on the original certificate”.

¹¹“In any proceedings where it is desired to admit a sample for use as evidence, the original police certificate is conclusive of facts stated in the certificate”.

- [22] In this case the analyst only tested a sample of the drugs, but the entirety of the drug was submitted to the Forensic Lab. It was the Lab which tested a representative sample of the drug.
- [23] Section 4 of the Administration of Justice (Miscellaneous Provisions) Act speaks to my mind to the scenario where the police submit a sample of the drugs seized for analysis rather than the Forensic Lab testing a sample of the whole.
- [24] Sub Section (1) speaks to a sample of any controlled drug seized – may be submitted as if certain conditions are met.
- [25] But when one looks at Sub Section (7) – it speaks to the police officer submitting a sample which the Court interprets to mean that it is the police taking the sample and submitting that sample to the Lab.

⁷ Administration of Justice (Miscellaneous Provisions) Act page 8 Section 4 Sub Section 2

⁸ Administration of Justice (Miscellaneous Provisions) Act page 8 Section 4 Sub Section 3

⁹ Administration of Justice (Miscellaneous Provisions) Act page 8 Section 4 Sub Section 4

¹⁰ Administration of Justice (Miscellaneous Provisions) Act page 8 Section 4 Sub Section 5

¹¹ Administration of Justice (Miscellaneous Provisions) Act page 8 Section 4 Sub Section 6

- [26] This is not the situation in this case. The police did not take a sample nor did they submit a sample to the Forensic Lab. The entire Exhibit of Twenty Seven (27) packages were submitted and the Lab selected Eleven (11) of those packages for testing.
- [27] The Court is fortified in its position when it looks at Sub Section (8) – where the sample submitted for analysis under Sub Section (7) – again this section speaks to a sample being submitted for testing – in this case the entire Twenty Seven (27) packages were submitted not a sample.
- [28] Schedule 2 – speaks again to a certificate to be issued by the police after a sample from the bulk has been taken by the police not by the Forensic Lab.
- [29] In this case the bulk was submitted by the police for analysis after the packages were opened in the presence of the Defendant. He was informed by the police of their suspicions as to what the substance was. The packages were counted in the Defendant's presence. Incisions were made in the packages in the presence of the Defendant. The packages were sealed in his presence and the seals of those packages were signed by at least Three (3) police officers and the Defendant himself.
- [30] The Court can find no fault with the procedure adopted by the police officer in this matter in dealing with these exhibits.
- [31] No samples were taken by the police, all Twenty-Seven (27) packages were submitted for analysis, therefore Section 4 of the Administrative Justice (Miscellaneous Provisions) Act do not come into play in this matter.
- [32] The Court finds that the law does allow for a representative sample of the controlled drug to be tested and there is no need or requirement in law for all the drugs seized to be tested.
- [33] The Court finds that the samples were taken from random blocks contained in each of the polythere bags which were similar in both size and appearance to the other blocks contained in the bag.

- [34] The Court finds that the Forensic Lab followed internationally accepted protocols in testing a representative sample of the drugs submitted to it in this matter.
- [35] The Court finds that the weight of One Hundred and One Point Seventy-Nine (101.79) kg was properly arrived at, by the Forensic Lab using the weight of the Eleven (11) tested blocks given the similarity in size and appearance of the untested blocks.
- [36] Therefore, the Court will dismiss the application and the matter will proceed to trial.

MARGARET PRICE-FINDLAY
HIGH COURT JUDGE

BY THE COURT

REGISTRAR