

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

SAINT LUCIA

CRIMINAL CASES NOS. SLUCRD 2002/1907, 1908

BETWEEN:

THE QUEEN

Claimant

AND

- 1. SYDNEY PRESCOD**
- 2. TERRY CHARLES**
- 3. ULANDA FREDERICK**
- 4. NICKY ISIDORE**

Defendants

Appearances:

Mr. S. Cenac, Crown Counsel, for the Crown
Mr. L. Theophilus, Counsel, for Sydney Prescod
Mr. A. Alcide, Counsel, for Terry Charles
Mr. D. Greene, Counsel, for Ulanda Frederick and Nicky Isidore

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2011: June 28 and 29
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RULING

- [1]. **BENJAMIN, J. :** At the close of the case for the Crown, Defence Counsel submitted that there was no evidence sufficient to call upon either of the defendants to lead a defence. The Court was invited to apply Section 962 (1) of the Criminal Code of Saint Lucia 1992 which reads:

"If, at the close of the case for the prosecution, the Court considers that there is no evidence that the accused committed the offence charged in the indictment, or any other offence of which he might be convicted on the indictment, it may then direct the jury to return a verdict of not guilty."

- [2]. The case for the Crown was led through twelve (12) witnesses, six (6) of whom were presented as being in the RBTT Bank on the Vieux Fort-Laborie Highway on Monday, December 16, 2002 when two (2) persons were alleged to have entered the Bank and committed robbery at gunpoint. In the course of the incident, Leroy Montoute, a bank employee, sustained a gunshot wound to his leg.
- [3]. In the case of both defendants, it cannot be gainsaid that no witness identified either of them as perpetrators of the act of robbery, of being in or in the vicinity of the Bank at the time or in possession of a firearm on the day in question.
- [4]. Each of the defendants has been indicted jointly with the other on two (2) counts, namely: robbery with violence contrary to Section 365 (1) of the Criminal Code of Saint Lucia 1992; and using a firearm with intent to cause a wound contrary to Section 27 (1) (a) of the Firearms Act No. 11 of 2001.
- [5]. The evidence in relation to each count as it relates to each defendant must be considered separately. It is cardinal that any statement made by a defendant seeking to implicate another defendant cannot be used against that other defendant.

THE CASE AGAINST SYDNEY PRESCOD

- [6]. The Crown essentially relied upon the doctrine of recent possession in its case against Sydney Prescod. As earlier iterated there was no visual identification of the two (2) persons who are alleged to have entered the Bank on the day in question armed with firearms.
- [7]. The witnesses, Vincent Joseph, Leroy Montoute, Dahlia Leonce, Philbert Francis, Sydney Pitcairn and Sherrian Saltibus, all purported to testify as to what they saw while in the Bank during the incident. Each gave varying descriptions of the appearance and clothing of the two (2) robbers. Aldon Charlery stated that he observed two (2) persons wearing masks outside of the Bank on the day in question. He said that the two (2) men were by a railing and looked suspicious. He specifically responded that he was unable to describe the men.
- [8]. Leroy Montoute was a teller employed by the Bank and he testified to having been shot in his right thigh by one of the perpetrators in the Bank. He was never called to identify anyone after the incident. Indeed, no identification procedure involving either of the defendants was ever conducted by the Police.
- [9]. The evidence of Leroy Montoute was that he was ordered by the person armed with the firearm to move to the back area of the building and he did so. It was while in this area that he sustained the gunshot wound to his right leg. Montoute said that upon returning to the front of the Bank after being shot he observed that the money left in his cash drawer

was gone. Sydney Pitcairn was the Officer-In-Charge of the Bank at the time and he told the Court of being forced to put the cash from the till manned by Montoute which was left open, into a bag provided by one of the men with a gun. He was unable to say how much money he put in bag but he did recall that he put in Eastern Caribbean currency and foreign currency which he was unable to specify.

[10]. The witnesses, Leroy Montoute and Philbert Francis, who was alone in an office at the Bank observing what was transpiring at the Bank via a security monitor, both spoke of a special bundle prepared by each teller in case of theft or loss of cash or as bait in the language of Leroy Montoute. He said that the object is to enable the tracking of the cash lost or stolen by the serial numbers. Each of these witnesses explained that a bundle of 25 \$20 notes is prepared periodically and is comprised of randomly selected notes. The serial numbers of these notes are recorded and verified by a supervisor or the Branch Manager and auditor in accordance with bank procedure.

[11]. Leroy Montoute stated that he had prepared such a bundle and it was among the cash in his cash drawer. Such a bundle was prepared on October 28, 2002. The witness identified a document as listing the serial numbers of each note verified by the signature of his supervisor Sydney Pitcairn and of the auditor. Sydney Pitcairn did not make mention of the security bundle nor was he shown the document listing the serial numbers.

[12] On December 20, 2002, Philbert Francis attended at the Vieux-Fort Police Station where in the presence of Sydney Prescod he compared a bundle of cash comprised of \$20 bills with a list of which he had made copy of the original held at the Bank. He matched twenty-

five (25) notes to the list of serial numbers and initialed each note. The list and the notes were identified and have been tendered as exhibits.

[13]. Corporal Curtis Roberts, a scenes of crime examiner, stated that at 8:10 a.m. on December 18, 2002 he met Inspector Emmanuel Joseph and other Police Officers to the Rainbow Hotel. They accompanied Sydney Prescod. At a hotel room, Inspector Joseph handed over to him a sum of money which the Inspector told him, in the presence of Sydney Prescod, was found on the person of Sydney Prescod. This cash was put in an exhibit bag on which the exact amount was recorded.

[14]. Corporal Roberts searched the room and found travel documents in the name of Jeannie Leonce and cash comprised of US\$144 and EC\$20. A black spectacle case containing Barbados currency was also found and packaged and labeled as to the amount. Also recovered was a black pouch containing money including Eastern Caribbean currency, euros and pounds. This was labeled "CR4". It is this bundle that Philbert Francis testified to having examined. Corporal Roberts stated that Mr. Francis handed over a list with serial numbers which he compared with the notes found in "CR4". Corporal Roberts noticed that the serial numbers on the list corresponded to the numbers of some of the \$20 notes.

[15]. In cross-examination, Corporal Roberts agreed that he could not say to whom the spectacle case and the pouch belonged. He confirmed that he never saw Sydney Prescod wearing glasses. Further he admitted that he was unable to say to whom the room was registered or who occupied the room.

- [16]. Inspector Emmanuel Joseph assisted in the investigations and visited the scene. He met Sydney Prescod at Central Police Station, identified himself and informed this defendant of the report. He heard Police Constable Soudatt inform the defendant that he wanted to conduct a search at his apartment at Rainbow Hotel in Rodney Bay. Before they left, the Inspector said he searched the defendant's person and found EC\$200, US\$340 and BDS\$600 currency.
- [17]. Inspector Joseph stated that they proceeded to the apartment of Sydney Prescod which was searched by officers. He recalled that there was found a black attaché case containing a large sum of money. That money was counted by the Scenes-of-Crime Officer. The Inspector also handed over to the Investigating Officer the money found on the person of Sydney Prescod. The Inspector admitted not having any documentary evidence that the apartment was that of Sydney Prescod.
- [18] The Jury must therefore determine whether the money was found in the defendant's apartment, whether he was in possession of the money and whether that money was part of the moneys taken from RBTT Bank on December 16, 2002. In this regard, there is the evidence of Philbert Francis and Leroy Montoute as to the preparation of the special bundle and the supporting listing and the testimony of Philbert Francis and Corporal Roberts as to the notes corresponding to the list. Inspector Joseph spoke of the defendant being told that his apartment would be searched and of the search in the defendant's presence. He also spoke of Sydney Prescod having directed them to the apartment.

- [19] There is evidence to support the specific identification of notes stolen during the incident of December 16, 2002 being recovered on December 18, 2002. This is evidence upon which a reasonable jury properly directed can apply the doctrine of recent possession and arrive at a conclusion of guilt on the count of robbery without irrationality.
- [20] The Crown's case has been presented on the basis of a joint enterprise of two (2) persons acting in concert in the Bank to effect the robbery. Both were armed with firearms as testified to by witnesses in the Bank. One of the perpetrators used a firearm to wound Leroy Montoute, whose viva voce testimony provides evidence of that act taking place in the course of the incident.
- [21] It is open to the Jury to conclude that whoever is found in possession of the money soon after the incident participated in the robbery which involved the using of a firearm to cause a wound to Leroy Montoute. Accordingly, the defendant ought to be asked to lead a defence to the second count on the Indictment.
- [22] Accordingly, the submissions in relation to the defendant, Sydney Prescod, are overruled and this defendant will be invited to lead a defence to both counts.

CASE AGAINST NICKY ISIDORE

- [23] The case against this defendant cannot be founded on visual or other identification at the scene or in the vicinity of the Bank. In this regard, prior references to the evidence of the persons present in the Bank at the time of the incident are equally applicable. This

evidence operates to provide the details of the incident, that is, as to how the actus reus was perpetrated but not as to the identity of the perpetrators.

[24] Aldon Leance testified that he went to the Bank on the day in question. He observed two (2) unidentified masked men outside the Bank acting suspiciously. He also said he saw a red car come up and was idling with only a driver in it. He recalled seeing this car in Vieux-Fort several times before. He knew the owner to be one Erastus who was not the driver. He described the car as a Mazda with yellow, red and another colour. One Erastus Lucombe was presented as a witness but his testimony added nothing to the case for the Crown.

[25] Inspector Emmanuel Joseph met the defendant, Nicky Isidore, at Central Police Station on December 17, 2002 and identified himself to him. He told him he was investigating a bank robbery at Vieux-Fort. He told the defendant he had reason to believe he was driving a maroon Mazda Car PC6609 at the location of the RBTT Bank. He searched the defendant's person and recovered a key with Mazda written on it as well as EC\$2,540 and US\$25. These items the defendant was said to claim as his property.

[26] Inspector Joseph testified that in the presence of the defendant he showed Erastus Lucumbe the key and he identified the key as his and further stated that it was the key to the car he rented to the defendant. The defendant was reminded of the caution and agreed to show the Inspector where the car was. Thereafter, the defendant directed the Inspector to fenced premises at Black Bay, Augier where a maroon Mazda motor car

registration number PC6609 was found locked. The key opened the door and started the car. This was done in the presence of the defendant.

[27] There is no evidence that sufficiently links this vehicle to the one seen by Aldon Charlery who was never asked to identify the car. The stark evidence is that at its highest, the defendant was found with a key to a car which Erastus Lucumbe said he rented to him and that car was pointed out by the defendant to the Police. There is no admission or direct evidence that the vehicle was used as part of the robbery.

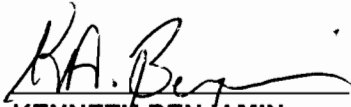
[28] Further on in his evidence, Inspector Joseph stated that on December 20, 2002, the defendant Nicky Isidore, took himself and the Investigating Officer to another area in Black Bay, Augier in Vieux-Fort not far from where the car was pointed out. The defendant went into a bushy area and recovered a rusty double-barrelled shotgun and one round of forty-five (45) ammunition. In the words of the Inspector "he indicated that it was used in the robbery." The shotgun was handed over to the Investigating Officer. There was no evidence as to any testing or analysis being done. During cross-examination, it was admitted by Inspector Joseph that the defendant did not indicate who used the firearm and this firearm was never shown by him to any of the witnesses. In any event, the descriptions given of the firearms used were far too general to be cogent.

[29] The sum of the evidence is that the defendant was found in possession of the key to a maroon Mazda car. There is no positive that the said car was involved in the robbery. The defendant voluntarily recovered a secreted firearm which he told the Police was used in the robbery. This does not provide proof of Nicky Isidore being a part of the robbery as

there was no disclosure as to how he came by that information or how he knew the firearm to be where he found it. For completeness, the defendant being in possession of EC\$2500 without more does not throw up any link to the robbery.

[30] It seems to me that to leave the case to the jury would be an invitation to speculate by filling the blanks in the evidence. There is a real risk of the defendant being convicted purely on a prejudicial rather than probative basis.

[31] Accordingly, the defendant Nicky Isidore will not be called upon to lead a defence to either of the two (2) counts.


KENNETH BENJAMIN
HIGH COURT JUDGE