

COURT OF APPEAL SITTING

SAINT CHRISTOPHER AND NEVIS

10th – 13th June 2014

APPLICATIONS AND APPEALS

Case Name:

Craig Bradshaw

v

The Director of Public Prosecutions

[SKBHCRAP2011/0009]

Date:

Tuesday, 10th June 2014

Coram:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:

Mr. John Cato

Respondent:

Ms. Greatess Gordon for the Director of Public Prosecutions

Issues:

Appeal against sentence – Unlawful carnal knowledge – Virtual complainant was 13 at time of offence and became pregnant as a result – Whether sentence imposed by learned trial judge too harsh for first time offender

Result / Order:

[Oral delivery]

- 1. The appeal against sentence is allowed.**
- 2. The sentence of 20 years imposed by the trial judge is quashed and a sentence of 12 years is imposed.**
- 3. Time spent on remand to be taken into account.**

Reason:

The Court found that although the learned trial judge had mentioned the guiding principles for sentencing, there was no evidence that he applied those principles

and the relevant cases.

There was no evidence that the trial judge used a benchmark in this case. It did not appear that he started from a benchmark and then considered the aggravating and mitigating factors in order to arrive at the sentence which he imposed. Rather, he seemed to have started from the maximum sentence of life imprisonment and moved to 20 years, which was a wrong approach.

Counsel on both sides agreed to a benchmark of 8 years, which the Court accepted. Then, after weighing the strong aggravating factors against the mitigating factors, the Court considered a sentence of 12 years to be appropriate.

The mitigating factors were as follows:

- a) The appellant was a first time offender;
- b) The appellant was a relatively young man;
- c) The appellant was known to be of good behavior and disposition generally;
- d) There was no violence other than that associated with the commission of this type of offence;
- e) The Social Inquiry Report stated that the appellant showed remorse.

The aggravating factors were as follows:

- a) The appellant had sexual intercourse with a minor using no protective device and thus exposed the minor to infection and pregnancy;
- b) The minor became pregnant as a result of the offence.

Case Name:

Jermul Jules

V

The Director of Public Prosecutions

[SKBHCRAP2011/0008]

Date:

Tuesday, 10th June 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Dr. Henry Browne, QC
Respondent: Mr. Travers Sinanan, Director of Public Prosecutions

Issues: Appeal against conviction and sentence – Robbery –
Record inadequate (missing some relevant pages) –
Whether learned trial judge erred in failing to give
proper direction on doctrine of recent possession

Result / Order: [Oral delivery]
1. The appeal is allowed.
2. The sentence is set aside and the conviction
quashed.

Reason: The Court noted that the Director of Public
Prosecutions quite properly conceded that the learned
trial judge erred in directing the jury on the doctrine of
recent possession, which was what the case for the
prosecution turned on. At trial, even after the Crown
had sought to bring to the judge's attention the
direction that he ought to give, the one which was
ultimately given was woefully inadequate and of no
assistance to the jury.

Case Name: Allister Forde
v
The Director of Public Prosecutions
[SKBHCRAP2011/0024]

Date: Tuesday, 10th June 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. O'Neil Simpson

Issues: Appeal against sentence – Shooting with intent

Result / Order:

[Oral delivery]

The matter is adjourned to next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis at the instance of the appellant in order to instruct counsel.

Reason:

The appellant indicated that he wished to appeal his conviction as well as his sentence. He also wanted to retain and instruct counsel. The Court granted him some time to do so.

Case Name:

Ourtic Gileard

v

The Director of Public Prosecutions

[SKBHCRAP2011/0025]

Date:

Tuesday, 10th June 2014

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: Mr. O'Neil Simpson for the Director of Public Prosecutions

Issues:

Appeal against conviction and sentence – Robbery

Result / Order: [Oral delivery]
Hearing of the appeal is adjourned to next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week of 27th – 31st October 2014.

Reason: To give the appellant an opportunity to retain counsel.

Case Name: Keithley Griffin
v
The Director of Public Prosecutions
[SKBHCRA2011/0010]

Date: Tuesday, 10th June 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Dr. Henry Browne, QC
Respondent: Mr. O'Neil Simpson for the Director of Public Prosecutions

Issues: Appeal against conviction and sentence – Unlawful carnal knowledge – Whether appellant was denied fair trial within meaning of section 10 of Saint Christopher and Nevis Constitution Order 1983 – Whether Crown was under an obligation to cause appellant, virtual complainant and infant child of virtual complainant to undergo DNA testing in circumstances where the accused, having been confronted about the offence made following single statement to police officers: “I don’t know anything about that, test me if you want” – Whether sentence imposed by learned trial judge unduly severe – Application of s. 154 of the Evidence Act (Act No. 30 of 2011, Laws of Saint Christopher and Nevis)

Result / Order:

[Oral delivery]

- 1. Appeal against conviction is dismissed. The conviction is upheld and the verdict of the jury is affirmed.**
- 2. Appeal against sentence is allowed.**
- 3. The sentence of 20 years is quashed and a sentence of 14 years is imposed.**
- 4. Time on remand to be accounted for.**

Reason:

The Court found that section 154 of the Evidence Act (which had been used by the appellant to argue that the police were obliged to carry out DNA testing on him, the virtual complainant and her infant child upon him telling the police to test him if they wanted to) was not persuasive, the section having more to do with prosecution's right to make a request for DNA evidence, rather than a request from accused.

The appellant made the following single statement to the police investigator when confronted about the offence: "I don't know nothing about that, test me if you want." The Court noted that this was the sole reference at to such a request. It was never repeated, neither by the appellant nor by distinguished counsel on his behalf. The Court did not consider that the Crown was under any obligation to order that testing be done on the appellant, virtual complainant and her child based solely on the appellant making that remark when confronted with the allegation.

The Court noted there was other evidence before the jury. There was the evidence of the virtual complainant, the evidence of other witnesses, and the evidence of the appellant himself denying, in its entirety, the witness allegation that he was a bus driver after September 2008. Ultimately, the jury decided unanimously that the appellant was guilty of the offence.

In the circumstances, the Court did not consider that the appellant was denied a fair trial on the basis that the police did not take up the "challenge" to carry out the DNA tests on his making the (abovementioned) remark.

There was no basis to vitiate the entire trial on the argument advanced.

In relation to sentencing, the learned trial judge failed to follow the sentencing guidelines. He did not establish the benchmark and then subsequently consider the aggravating and mitigating factors and adjust the sentence accordingly.

A benchmark of 8 years was accepted, and, having regard to the significant aggravating factors which outweighed the mitigating factors, the Court was of the view that the sentence should be increased to 14 years.

The aggravating factors were as follows:

- a) The appellant had sexual intercourse with a minor without the use of a contraceptive device, thus exposing her to infection and pregnancy;**
- b) The virtual complainant became pregnant as a result of the offence;**
- c) The appellant abused the trust placed in him as a bus driver on a public route. As a bus driver, he was in a position of trust and confidence and members of the public ought to feel safe on boarding the bus and not be in danger of being lured into pathways and assaulted.**
- d) The severe disparity between the appellant's age and that of the virtual complainant, the appellant being 43 years old and the virtual complainant being 15 years old at the time of the offence.**

The only mitigating factor was that the appellant was a first time offender.

Case Name:

David Morton

v

The Director of Public Prosecutions

[SKBHCRAP2011/0011]

Date:

Tuesday, 10th June 2014

Coram:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]
Appearances	
Appellant:	In person
Respondent:	Mr. O'Neil Simpson for the Director of Public Prosecutions
Issues:	Appeal against conviction and sentence – Rape – Virtual complainant 16 years old at time of offence – Sentence of 18 years imposed by learned trial judge – Whether excessive
Result / Order:	[Oral delivery] 1. The appeal against conviction, having been withdrawn, is dismissed. 2. The appeal against sentence is allowed. 3. The sentence of 18 years is quashed and a sentence of 15 years is imposed on the appellant for rape with time spent on remand being accounted for in calculating the time.
Reason:	The appellant, in his argument, indicated that he was merely asking for a reduction of his sentence, citing his mother's failing health and his desire to be there to render support for her as his basis for that request. He did not cite any factors that rendered judge's decision incorrect. The Court, however, examined the facts of the case and noted that it was not clear whether the learned trial judge used a benchmark when he imposed the 18 year sentence. The Court accepted a benchmark of 10 years. Starting from there and taking into account the aggravating factors, it held that further 5 years should be added to the benchmark. The aggravating factors greatly outweighed the mitigating factors. The mitigating factors were that the appellant was 22

years of age at the time of the offence, and that this was the first time that he was convicted of an offence of this nature.

The aggravating factors were as follows:

- a) A weapon was used in the commission of the offence;
- b) The appellant threatened to kill the virtual complainant;
- c) The violent nature of the attack;
- d) The virtual complainant suffered injury during the attack;
- e) The victim ran from the appellant and he pursued her, caught her and then dragged her onto the school grounds and choked her;
- f) The events leading up to the offence began earlier in the night;
- g) There was a demand for money before and after the attack;
- h) The appellant having a previous conviction for wounding and choking of the victim in this case showed that he had a propensity to be violent.
- i) The virtual complainant was 16 years of age when the offence was committed.

Case Name:

Davril Battice Ruan

v

Chief of Police

[SKBMCRAP2013/0031]

Date:

Tuesday, 10th June 2014

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Ms. Greatess Gordon

Issues:

Appeal against sentence – Possession of controlled

drug – Possession of controlled drug with intent to supply

Result / Order: [Oral Delivery]
Hearing of the appeal is adjourned to Wednesday, 11th June 2014.

Reason: To allow the appellant to meet with his counsel.

Case Name: Dustin Lapsey
v
Chief of Police

[SKBMCRAP2013/0034]

Date: Tuesday, 10th June 2014

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: Mr. O'Neil Simpson

Issues: Appeal against sentence – Whether sentence imposed by learned magistrate was excessive

Result / Order: [Oral delivery]
The appeal is withdrawn.

Reason: The appellant, having already served his time, made an application to withdraw the appeal.

Case Name:

**Sean Smith
v
The Chief of Police**

[SKBMCRAP2013/0033]

Date:

Tuesday, 10th June 2014

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

Respondent: Ms. Greatess Gordon

Issues:

Appeal against conviction and sentence – Aggravated assault – Appellant charged by police with battery under s. 12(1) of Small Charges Act (Cap. 75, Revised Laws of St. Christopher Nevis and Anguilla) which carries maximum sentence of 2 months imprisonment hard labour – Court deemed assault by appellant sufficiently serious for it to amount to aggravated assault upon a female in accordance with s. 12(2)(b) of Small Charges Act which carries maximum sentence of 6 months imprisonment hard labour – Whether learned magistrate erred in imposing a greater sentence than that for which appellant was charged

Result / Order:

[Oral delivery]

- 1. The Registrar is directed to serve upon the appellant Mr. Sean Smith a notice of hearing of his appeal fixed for Friday, 13th June 2014 at 9:00 a.m.**
- 2. The court office is to arrange for service on appellant.**
- 3. The hearing is adjourned to Friday, 13th June 2014.**

Reason:

There was no evidence on file to prove that the appellant had been served with a notice of the day's hearing.

Case Name:

Lawten Forbes

v

Chief of Police

[SKBMCRAP2013/0030]

Date:

Tuesday, 10th June 2014

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

No appearance

Respondent:

Mr. O'Neil Simpson

Issues:

Appeal against conviction – Breaking and entering dwelling house – 10 year delay in prosecution of appeal – Whether learned magistrate had sufficient evidence upon which to arrive at verdict of guilty – Whether learned magistrate properly considered requirements of Turnbull direction in contemplating matter of identification evidence arising in case

Result / Order:

[Oral delivery]

- 1. The Registrar is directed to serve upon the appellant Mr. Lawten Forbes a notice of hearing of his appeal fixed for Friday, 13th June 2014 at 9:00 a.m.**
- 2. The hearing is adjourned to Friday, 13th June 2014.**

Reason:

There was no evidence on file to prove that the appellant had been served with a notice of the day's hearing.

Case Name:

**Timothy Abbott
v
The Commissioner of Police
[SKBMCRAP2013/0001]**

Date:

Tuesday, 10th June 2014

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Hesketh Benjamin

Respondent:

Ms. Greatess Gordon

Issues:

Appeal against conviction and sentence – Fraudulent conversion – Section 51 of Magistrate’s Code of Procedure Act (Cap 3.17, Revised Laws of Saint Christopher and Nevis 2009) – Whether learned magistrate erred in failing to give appellant opportunity to elect whether to be tried by jury or to have case dealt with summarily, contrary to s. 51 of Act – Whether learned magistrate’s decision to proceed in manner which deprived appellant of opportunity to have counsel cross-examine certain prosecution witnesses breached his right to a fair trial – Whether decision of learned magistrate unreasonable or cannot be supported having regard to the evidence – Whether appellant’s conviction and sentence based on wrong principle or were such that a magistrate viewing circumstances reasonably could not properly have so decided – Whether sentence of 9 months imprisonment with hard labour imposed by learned magistrate unduly severe

Result / Order:

[Oral delivery]

The matter is adjourned to the next sitting of Court of Appeal in the Federation of Saint Christopher and Nevis during the week commencing 27th October 2014.

Reason:

Counsel for the appellant requested that the matter be adjourned.

Case Name:

Gweneth Williams

V

The Chief of Police

[SKBMCRAP2013/0011]

Date:

Tuesday, 10th June 2014

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

Ms. Greatess Gordon

Issues:

Appeal against conviction and sentence – Disorderly conduct – Whether there was sufficient evidence for learned magistrate to have found appellant guilty

Result / Order:

[Oral delivery]

The matter is adjourned to the next sitting of Court of Appeal in the Federation of Saint Christopher and Nevis commencing 27th October 2014.

Reason:

The appellant requested an adjournment.

Case Name:

Mary Christopher

V

The Chief of Police

[SKBMCRAP2013/0012]

Date: Tuesday, 10th June 2014

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Ms. Greatess Gordon

Issues: Appeal against conviction and sentence – Possession of controlled drug – Whether decision of learned magistrate unreasonable or cannot be supported having regard to the evidence – Whether judgment passed was based on wrong principle or was such that a magistrate viewing circumstances reasonably could not properly have so decided

Result / Order: [Oral delivery]

1. The Registrar is directed to serve upon the appellant Ms. Mary Christopher a notice of hearing of the appeal fixed for the week commencing 27th October 2014.
2. The hearing of this appeal is adjourned to next sitting of Court of Appeal in the Federation of Saint Christopher and Nevis commencing the 27th October 2014.

Reason: There was no evidence on file to prove that the appellant had been served with a notice of the day's hearing.

Case Name: West Indies Power (Nevis) Limited
v
Nevis Island Administration
[SKBHCVAP2013/0003]

Date: Wednesday, 11th June 2014

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Terence Byron
Respondent: Ms. Dia Forrester, with her, Mr. Jomokie Phillips

Issues: Interlocutory appeal – Case management

Result / Order: [No order made]

Reason: Given the state of the matter, the Court was of the view that there was nothing for it to do at the moment. The parties were told that they were free to take the steps that they considered were necessary.

Case Name: Denzil Hinds
v
The Director of Public Prosecutions for the
Federation of Saint Christopher and Nevis
[SKBHCRAP2012/0022]

Date: Wednesday, 11th June 2014

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Keisha Spence
Respondent: Mr. Travers Sinanan, Director of Public Prosecutions

Issues:

Contempt proceedings – Attorney-at-law summarily committed to prison for 10 days for contempt of court – Learned trial judge found comments and gestures made by defence counsel during cross-examination of complainant at trial highly offensive and inappropriate – In giving appellant opportunity to show cause why he should not be committed, appellant was provided only with copy of transcript of sitting to which contempt proceedings related – Appellant requested transcript of entire trial in order to show cause – Learned judge refused appellant's request – Whether learned trial judge erred in not allowing appellant to have copy of transcript of entire proceedings – Whether learned judge erred in depriving appellant of opportunity to be represented by counsel of his choosing upon his request – Whether learned judge erred in law and/or misdirected himself in finding that the words and/or conduct included in transcript were contemptuous – Whether learned judge erred in law and misdirected himself in failing to allow appellant adequate time and/or facilities upon his request to prepare his defence in contravention of his fundamental human right to secure protection of the law – Whether learned judge erred in imposing custodial sentence on appellant

Result / Order:

[Oral delivery]

The Registrar of the High Court is hereby directed to take all steps necessary to cause to be prepared a transcript of the entire proceedings in relation to the matter in the court below and that the said transcript be made available to the parties no later than Friday, 18th July 2014.

Reason:

Counsel for the appellant indicated that she had requested the transcripts but was having difficulty obtaining them.

Case Name:

Clive Grant
v
The Director of Public Prosecutions

[SKBHCRAP2011/0027]

Date: Wednesday, 11th June 2014

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. O'Neil Simpson for the Director of Public Prosecutions

Issues: Appeal against conviction and sentence – Burglary – Possession of stolen goods – Identification – No direct evidence on identification – Doctrine of recent possession – Stolen items taken from appellant – Appellant in possession of house breaking implements – Whether there was sufficient evidence to identify appellant as perpetrator – Consecutive sentences imposed for 2 charges arising out of 1 incident

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed. The conviction is upheld.
2. Sentence is varied to the extent that the sentence of 8 years imposed for burglary in SKBHCR2011/0045 and the sentence of 5 years reduced to 3 years and 4 months imposed in SKBHCR2011/0042 for possession of housebreaking implements are to run concurrently and not consecutively.

Reason: The Court held that there was no miscarriage of justice in this matter, notwithstanding that the virtual complainant could not identify the appellant. There was sufficient evidence before the jury upon which it could have properly come to a verdict of guilty – the presence of circumstantial evidence as to the colour of the phone which had been stolen; the chips, scratches and description of the phone; the fact that the phone was found on the appellant in a bag the appellant identified as belonging to him; and, the evidence that the

appellant was hiding.

The jury would have heard all the evidence – that is, the appellants' version, the police's version as well as that of the virtual complainant – and, as the trier of fact, would have determined which version it accepted.

The trial judge properly directed the jury on the relevant principle of law, the doctrine of recent possession. This doctrine states that where a person is said to be found in possession of something that has been taken, and that thing has been identified as belonging to another person, and the person in possession of the item is found with it shortly after that item has gone missing, then the law allows the presumption that that person found with it is the taker of it, failing an explanation. This doctrine was applicable on the facts even in the absence of direct evidence of identification.

Concerning the appellant's sentence, having regard to the circumstances of the offence, what transpired afterwards, as well as the numerous convictions for similar offences, the Court held that it was proper for the trial judge to take these factors into account and decide that 8 years was an appropriate sentence for the robbery and 3 years, for possession of housebreaking implements. However, the law is clear on the legal principles that guide imposing consecutive sentences. This case did not fall within this category. Accordingly, the Court held that the learned trial judge erred in imposing consecutive sentences.

Case Name:

Glenville Isles

V

The Director of Public Prosecutions

[SKBHCRAP2011/0030]

Date:

Wednesday, 11th June 2014

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal**

The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Travers Sinanan, Director of Public Prosecutions

Issues:

Appeal against conviction and sentence – Attempted murder – Whether conviction sound in law – Whether there was violation of appellant's rights which resulted in miscarriage of justice – Whether sentence was too harsh

Result / Order:

[Oral delivery]

The hearing of this appeal is adjourned to the next sitting of the Court in the Federation of Saint Kitts and Nevis beginning the week of 27th October 2014.

Reason:

The appellant applied for an adjournment. There was no objection by the Director of Public Prosecutions.

Case Name:

Joseph Herbert

v

The Director of Public Prosecutions

[SKBHCRA2011/0014]

Date:

Wednesday, 11th June 2014

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

**Appellant /
Applicant:** In person

Respondent: Ms. Greatess Gordon for Mr. Travers Sinanan, Director of Public Prosecutions

Issues: Appeal against conviction and sentence – Buggery – Application for adjournment

Result / Order: [Oral delivery]
Hearing of this appeal, at the request of the appellant, is adjourned to the next sitting of the Court in the Federation of St. Kitts and Nevis during the week commencing 27th October 2014.

Reason: The appellant indicated to the Court that his attorney was out of the Federation of St. Kitts and Nevis. The appellant therefore requested an adjournment to contact and instruct counsel. There was no objection by the Director of Public Prosecutions.

Case Name: General Security Services Limited
v
St. Christopher and Nevis Solid Waste Management

[SKBMCVAP2013/0021]

Date: Wednesday, 11th June 2014

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Miselle O'Brien-Norton holding papers for Mr. Hesketh Benjamin
Respondent: Ms. Angelina Gracy Sookoo

Issues: Contract for security services to be provided to respondent by appellant company – Whether terms of contract breached by appellant – Termination of

contract by respondent – Sums owed to appellant at time of termination of contract – Case dismissed by learned magistrate – Whether decision of learned magistrate unreasonable and cannot be supported having regard to evidence – Whether decision of learned magistrate based on wrong principle or was such that a magistrate viewing the circumstances reasonably could not properly have so decided

Result / Order:

[Oral delivery]

The matter is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis commencing the week of 27th October 2014.

Reason:

Counsel for the appellant requested an adjournment of the matter.

Case Name:

**John Cato
v
Jessica Ferdinand**

[SKBMCVAP2007/0003]

Date:

Wednesday, 11th June 2014

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant: In person

Respondent: Ms. Robin Herbert-Thompson

Issues:

Land purchased by respondent from third party – Appellant acted as agent in purchase of land – Proceedings commenced by appellant in court below for monies owed to him by respondent for services rendered in his capacity as agent – Whether learned magistrate was biased – Appellant ordered to pay costs

in amount of \$1,500.00 – Whether learned magistrate had jurisdiction to order costs in amount of \$1,500.00 when claim was only for \$1,000.00 – Whether learned magistrate’s discretion exercised in punitive manner – Case management – Notice of appeal filed but no recognizance on file

Result / Order:

[Oral delivery]

The matter is adjourned to the sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis commencing the week of 27th October 2014, by which time the appellant shall comply with all directions, otherwise the appeal will be dismissed with costs.

Reason:

The appellant made an application for the matter to be adjourned to allow him to file his recognizance to complete the record of appeal.

Case Name:

**Andre Phipps
v
Beulah Mills**

[SKBMCVAP2013/0012]

Date:

Wednesday, 11th June 2014

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

Respondent: Ms. Angelina Gracy Sookoo

Issues:

Case management – Proceedings brought against appellant in court below for breach of lease agreement between appellant and respondent – Terms of agreement – Whether rent inclusive of water and electricity – Utility bills not paid by appellant –

Recovery of outstanding sums

Result / Order: [Oral delivery]
The appeal listed as magisterial civil appeal 2013/0012 is hereby dismissed for want of prosecution.

Reason: There was no appearance of or on behalf of the appellant. Also, no notice of appeal had ever been presented to the Court evidencing the filing of an appeal (although the court record showed that a notice of appeal had been filed by an attorney on behalf of the appellant).

Case Name: Edwin Glasford
v
Venetta Berridge
[SKBMCVAP2013/0032]

Date: Wednesday, 11th June 2014

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Terence V. Byron
Respondent: Ms. Deidre Williams

Issues: Road traffic accident – Whether decision unreasonable or cannot be supported having regard to the evidence – Whether learned magistrate erred in failing to apply principle of law in case of *Eudelle Adams v Patrick Ribeiro* SKBHCV1991/0217 (dated 23rd September 1994, unreported)

Result / Order & Reason: [Oral delivery]
Upon application by the appellant to discontinue the

appeal filed on 22nd January 2008 and with no objections by the respondent, this appeal is dismissed with no order as to costs.

Case Name:

Keithroy Isaac

V

St. Clair Kelly

[SKBMCVAP2013/0025]

Date:

Wednesday, 11th June 2014

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:

In person

Respondent:

No appearance

Issues:

Contract – Agreement for sale of passenger bus to respondent – Term of contract that registration number of bus would be leased to respondent for period of 2 years – Payments for lease of registration number made by respondent for only 2 months – Registration number retained by respondent – Whether written agreement between appellant and respondent legally enforceable – Whether licence to use registration number capable of being assigned or transferred

Result / Order:

[Oral delivery]

Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis commencing the week of 27th October 2014.

Reason:

The respondent could not be located for the notice of hearing to be served on him.

Case Name: **Lefco Equipment Rental & Construction Co. Ltd**
v
Robert (Bob) Getz
[SKBMCVAP2012/0009]

Date: **Wednesday, 11th June 2014**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal**
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:
Appellant: **Ms. Farida Hobson**
Respondent: **No appearance**

Issues: **Contract – Supply of goods and services by appellant to respondent – Sums owed to appellant under agreement – Whether appellant’s claim statute barred**

Result / Order: **[Oral delivery]**
1. Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis commencing the week of 27th October 2014.
2. The Registrar of the High Court shall cause a notice of hearing to be served on the respondent.

Reason: **Counsel for the appellant requested an adjournment to allow her to file a skeleton argument. There was no evidence that the respondent had been served with a notice of the day’s hearing.**

Case Name: **Wentworth Richardson**

V
Jason Hamilton

[SKBMCVAP2013/0022]

Date: Wednesday, 11th June 2014

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Keisha Spence

Issues: Enforcement of judgment debt – Legal fees owed to respondent by appellant – Whether barrister can sue for legal fees owed to him by client – Whether learned magistrate erred in not giving sufficient weight to evidence presented to her by appellant – Whether learned magistrate erred in not allowing appellant to present his case in absence of solicitor who was on record as acting for him – Application for adjournment

**Result / Order
& Reason:**

[Oral delivery]

1. Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis commencing the week of 27th October 2014 to allow the appellant a final opportunity to seek legal representation.
2. If, at the next sitting, the appellant does not have legal representation, he would have to present his own case or withdraw the appeal.
3. Costs for the day in the sum of \$250.00 to be paid before 27th October 2014.

STATUS HEARING

Case Name: Manuel Antonio de los Santos Marte
v
Miriam Lorenzo Altagracia
[SKBMCVAP2013/0003]

Date: Wednesday, 11th June 2014

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Terence V. Byron
Respondent: Mr. John Cato

Issues: Status of matter – Whether learned magistrate erred in ordering appellant to repay money which she found had been loaned to him by respondent – Whether decision unreasonable or cannot be supported having regard to evidence – English not appellant’s native language – Whether merits of appellant’s defence at trial substantially affected by level of competence of interpreter used in court

Result / Order & Reason: [Oral delivery]
Upon application by the appellant to discontinue appeal filed on 11th April 2013 and with no objections by the respondent, this appeal is dismissed with no order as to costs.

APPLICATIONS AND APPEALS

Case Name: Davril Battice Ruan
v
Chief of Police

[SKBMCRAP2013/0031]

Date: Wednesday, 11th June 2014

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant / Applicant:	Mr. John Cato
Respondent:	Ms. Greatess Gordon

Issues: Appeal against sentence – Possession of controlled drug – Possession of controlled drug with intent to supply – Application (by appellant) for adjournment of matter

Result / Order & Reason: [Oral delivery]
Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis commencing the week of 27th October 2014 to enable the appellant to seek legal representation.

Case Name:

Cecil Rock
v
National Bank Trust Company (St. Kitts-Nevis-Anguilla) Limited
The lawfully appointed attorney for Joseph Edwards and Ione Edwards

[SKBMCVAP2013/0024]

Date: Wednesday, 11th June 2014

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. John Cato

Respondent: Ms. Miselle O'Brien-Norton

Issues:

Recovery of cost of cleaning and repair services carried out on premises previously rented by appellant – Whether learned magistrate displayed bias in favour of respondent during hearing – Whether decision was against the weight of the evidence

Result / Order:

[Oral delivery]

1. The appeal is allowed to the extent that the total sum awarded by the learned magistrate is varied to the extent that it is reduced by the sum of \$842.24.
2. There is no order as to costs.

Reason:

Grounds of appeal 1 and 2, which were both related to bias, were abandoned by the appellant.

With regard to grounds 3 and 4, that the learned magistrate erred in not allowing the appellant to present his case when his solicitor, who was on record as acting for him, did not show up for the hearing (because he was involved in another court matter), the Court stated that there was no record to support the appellant's submissions and also, there was no merit in the submissions.

In relation to ground of appeal 5, that the decision of the learned magistrate was against the weight of the evidence, the Court held that this was not the case; the decision of the learned magistrate was not against the weight of the evidence.

Learned counsel for the appellant, Mr. Cato, argued that there was not sufficient evidence on which the magistrate could have found that the respondent was entitled to the sum claimed for cleaning of the premises and for repairs to be done as there was no evidence as to the state of repair of the property, both when the appellant entered it in 1999 and when he left it in 2008.

The Court, having examined the record, was satisfied that, based on the evidence, in particular, that of Mrs. Edwards and Ms. Maynard (Administrative Assistant at National Bank Trust), the learned magistrate could have come to the decision which was arrived at, that the appellant was liable for the cost of cleaning the premises and the repairs to be done, and the learned magistrate was within her right to award the claimants the sum of \$5,854.30, being the cost of the repairs and cleaning; there was sufficient documentary evidence in support of the costs incurred by the claimant.

On the issue of costs, the Court found that it was within the magistrate's discretion to award costs in the matter, having found that the claimants were successful in their claim, and there was no basis on which the Court could interfere with the exercise of the discretion of the learned magistrate.

In relation to the sum of \$842.24 which was awarded by the learned magistrate to the claimant, this sum being the cost of claimant's ticket to travel to St. Kitts for the hearing of the matter, Mr. Cato submitted that there was no evidence on the record to support this claim and nor was a claim made for this sum. Having examined the record, the Court agreed with the submissions of counsel for the appellant that indeed there was no evidence on the record which showed that the claimant had made a claim for the sum of \$842.24 and nor was there any evidence on the record which showed that this sum was incurred for the purpose of the hearing of the claim.

Case Name:

**The Attorney General of St Christopher and
Nevis**

v

[1] Hon. Sam Condor

[2] Hon. Shawn K. Richards

[SKBHCVAP2013/0005]

The Rt. Hon. Dr. Denzil L. Douglas – Prime Minister

v

[1] Hon. Sam Condor

[2] Hon. Shawn K. Richards

[SKBHCVAP2013/0006]

Date: Thursday, 12th June 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellants: Ms. Angelina Gracy Sookoo (for the appellant in SKBHCVAP2013/0005)
Ms. Simone Bullen-Thompson (for the appellant in SKBHCVAP2013/0006)

Respondents: Ms. Talibah Byron (instructed by Mr. DeLara MacClure Taylor)

Issues: Senators (Increase of Number) Act, 2013 – Whether Attorney General proper party to claim – Whether court’s jurisdictions under ss. 36 and 96 of the Saint Christopher and Nevis Constitution Order 1983 could be merged and properly heard and determined together – Whether learned judge erred in holding that natural and ordinary meaning of proviso to s. 26(2) of Constitution was that the Senate does not increase in number from three to four until person who is already senator also holds office of Attorney General – Whether learned judge erred in holding that it was unlawful to appoint Mr. Jason Hamilton as senator and Attorney General because there were already three senators appointed – If appointment of Jason Hamilton as fourth senator and Attorney General unlawful, does fact that he participated in passing of the Senators (Increase of Number) Act, 2013 render the Act void ab initio – Whether appointment of fourth senator by Governor General on advice of Prime Minister justiciable – Effect of s. 44(2) of Constitution – Whether s. 44(2) operates

as absolute and unequivocal constitutional ouster of jurisdiction of High Court to invalidate passing of 2013 Act – Application to consolidate appeals SKBHCVAP2013/0005 and SKBHCVAP2013/0006

Result / Order:

[Oral delivery]

Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week of 27th – 31st October 2014.

Reason:

The appellant requested that the matter be adjourned due to the illness of counsel.

Case Name:

[1] Carmel Bernadette Agnes McGill

[2] Laszlo Stephen Siegmund

v

[1] The Attorney General of St. Christopher and Nevis

[2] KHT Land Holdings Limited

[SKBHCVAP2013/0022]

Date:

Thursday, 12th June 2014

Coram:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellants:

Mr. E. Anthony Ross, QC, with him, Ms. Dollrita Jack-Cato

Respondents:

Ms. Violet Williams holding papers for Ms. W. Alethea Gumbs (for the 1st respondent)

Mr. Emile Ferdinand, QC, with him, Mr. Damian Kelsick and Ms. Keisha Spence (for the 2nd respondent)

Issues: Compensation for acquisition of land by the State – Indefeasibility of certificate of title – Whether learned judge erred in striking out appellants’ claim on grounds that it disclosed no reasonable cause of action or was statute barred by the Public Authorities Protection Act (Cap. 5.13, Revised Laws of Saint Christopher and Nevis 2009) – Appeal against findings of fact of learned judge – Whether facts raised on pleadings of appellants/claimants were sufficient to show serious case to be tried

Result / Order: [Oral delivery]
1. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the Federation of Saint Christopher and Nevis during the week of 27th – 31st October 2014.
2. Costs of travelling and accommodation for the period 11th – 13th June 2014 are awarded to Mr. Anthony Ross, QC, counsel for the appellant.

Reason: The first respondent requested an adjournment because Ms. Gumbs (counsel for the first respondent) was ill.

Case Name: Development Bank of St. Kitts-Nevis
v
[1] Osbert Chapman
[2] Lionel R. Williams
[3] Prudence France
[SKBHCVAP2013/0015]

Date: Thursday, 12th June 2014

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Glenford Hamilton, with him, Ms. Deidre Williams

Respondents: Mr. Arudranauth Gossai (for the 3rd respondent, who was also present)

Issues: Appeal against order made by learned trial judge in court below on application to amend claim form and for extension of time to file witness statements – Court struck out statement of case of its own initiative – Whether learned trial judge erred in failing to grant application to extend time to file witness statements – Whether learned trial judge erred in ruling that appellant in the had not satisfied the criteria under rule 26.1(2)(k) of the Civil Procedure Rules 2000 in relation to application for extension of time to file witness statements

Result / Order: [Oral delivery]

1. The appeal is allowed.
2. The order of learned trial judge is set aside.
3. Leave is granted to the appellant to file witness statements within 14 days and the matter is to proceed in accordance with CPR 2000.
4. Costs to appellant in the sum of \$2,000.00 as agreed.

Reason: Having heard submissions from counsel on both sides, the Court noted that in the court below, the appellant had indicated in its written submissions that it no longer wished to pursue the application in relation to the amendment of the claim form. The appellant having done so, the learned trial judge ought not to have proceeded to extensively address the issue and virtually determine the case on the basis of the withdrawn application.

In relation to the application for an extension of time to file the witness statements, the Court held that the relevant criteria is set out in the line of cases starting with the decision of this Court in the case of *John Cecil Rose v Anne Marie Rose* SLHCVAP2003/0019 (delivered 22nd September 2003, unreported) where Sir Dennis Byron CJ stated (at paragraph 2 of the judgment):

“Granting the extension of time is a discretionary power of the Court, which will be exercised in favour of the applicant for good and substantial reasons. The matters which the Court will consider in the exercise of its discretion are: (1) the length of the delay; (2) the reasons for the delay (3) the chances of the [matter] succeeding if the extension is granted; and (4) the degree of prejudice to the Respondent if the Application is granted.”

The Court was satisfied that the appellant had met the requirements in the present case.

In relation to the issue of the dismissal of the claim, the Court noted that there was no application to strike out the claim. Also there was no indication that the learned trial judge had proposed to make an order dismissing the matter of his own initiative, but nevertheless, he still went on to do so. If the judge was inclined to dismiss the matter he ought to have followed the procedure set out in rule 26.2 of the Civil Procedure Rules 2000 and given the appellant an opportunity to be heard on that point.

Case Name:

Lawten Forbes

v

Chief of Police

[SKBMCRAP2013/0030]

Date:

Friday, 13th June 2014

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:

Appellant:

Dr. Henry Browne, QC, with him, Ms. C. Marissa Hobson-Newman

Respondent:

Mr. O’Neil Simpson, with him, Ms. Greatess Gordon for the Director of Public Prosecutions

Issues: Appeal against conviction – Breaking and entering dwelling house – 10 year delay in prosecution of appeal – Whether learned magistrate had sufficient evidence upon which to arrive at verdict of guilty – Whether learned magistrate properly considered requirements of Turnbull direction in contemplating matter of identification evidence arising in case

Result / Order: [Oral delivery]
1. The appellant's conviction is upheld.
2. The sentence imposed by the learned magistrate is set aside and substituted by caution, reprimand and discharge.

Reason: The Court found that there was no basis to overturn the conviction. However, with regard to the sentence imposed by the learned magistrate, the Court held that it would be inhumane, inappropriate and fundamentally unfair, in terms of the right to a fair trial, not to set it aside in the circumstances; there was a very long delay in getting the appeal heard, through no fault of the appellant's.

Case Name: Sean Smith
v
The Chief of Police
[SKBMCRAP2013/0033]

Date: Friday, 13th June 2014

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal [Ag.]

Appearances:
Appellant: Dr. Henry Browne, QC
Respondent: Ms. Greatess Gordon, with her, Mr. O'Neil Simpson, for

the Director of Public Prosecutions

Issues:

Appeal against conviction and sentence – Aggravated assault – Appellant charged by police with battery under s. 12(1) of Small Charges Act (Cap. 75, Revised Laws of St. Christopher Nevis and Anguilla) which carries maximum sentence of 2 months imprisonment hard labour – Court deemed assault by appellant sufficiently serious for it to amount to aggravated assault upon a female in accordance with s. 12(2)(b) of Small Charges Act which carries maximum sentence of 6 months imprisonment hard labour – Whether learned magistrate erred in imposing a greater sentence than that for which appellant was charged

Result / Order:

**[Oral delivery]
Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in the Federation during the week of 27th – 31st October 2014.**

Reason:

Counsel for the appellant requested an adjournment.