

SEYCHELLES / JUDGMENT

# R vs Dufrene (CO 55.2012)

## [2014] SCSC 4 (16 January 2014)

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COURT  
Supreme Court

CASE / FILE NUMBER  
CO 55.2012

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IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 55/2012

[2014] SCSC

THE REPUBLIC

versus

ROBERT DUFRENE

Accused

Heard: April 2013, 10 May 2013, 9, 10 July 2013  
29, 30, 31 January 2013, 12, 19, 26 February 2013, 5, 18 March 2013, 8

Counsel: Mr. Khalyaan Karunakaran, State Counsel for the Republic  
Mrs. Alexia Amesbury for the accused

Delivered: 16 January 2014

#### JUDGMENT

Burhan J [1] The accused in this case has been charged as follows; Count 1 Statement of offence, Trafficking in a Controlled drug namely Cannabis resinous material, contrary to Section 5 read with Section 14 and 26 (1) of the Misuse of Drugs Act (Cap 133), punishable under Section 29 (1) and the Second Schedule of the same. The particulars of the offence are that Robert Collin Dufrene, a Police Officer of Mont Fleuri, Mahe, aged 29 years, on 27 August 2012, was found in possession of a controlled drug, namely Cannabis resinous material having a total weight of 25.2 grams which gives rise to the rebuttable presumption of having possessed the said controlled drugs for the purpose of trafficking. Alternative to Count 1 Statement of offence, Possession of a controlled drug, namely Cannabis resinous material contrary to Section 6 read with Section 15 and 26 (1) of the Misuse of Drugs Act (Cap 133) and punishable under Section 29 (1) and the Second Schedule of the same. The particulars of the offence are that Robert Collin Dufrene, a Police Officer of Mont Fleuri, Mahe, aged 29 years, on 27 August 2012, was found in possession of

a controlled drug, namely Cannabis resinous material having a total weight of 25.2 grams. [2] The accused denied the charges. Witness agent Patrick Hortere testified to the facts in respect of the detection. He stated that on the 27th of August 2012 he was working as an agent of the NDEA (National Drug Enforcement Agency) and was patrolling the region of Mont Fleuri cemetery with four other agents in a Terios when they had come across two persons near the big cross in the cemetery. They had identified one as Jude Amice and the other as the accused Robert Dufrene. Witness had seen Robert Dufrene on seeing them throw something with his right hand a distance of about 3 metres.

[3] Witness had been seated on the left hand side of the jeep behind the passenger seat of the vehicle and had immediately disembarked and gone in the direction the object had been thrown and picked it up and observed that it was Cannabis Resin and had thereafter shown it to the accused and the other agents, He had thereafter cautioned the accused and arrested him. He stated the accused had been arrested around 18.00 hours. They had thereafter conducted a search of the premises of the accused and nothing illegal was found. Witness described the exhibit as rectangular in shape and black in colour and identified the exhibit he had taken into custody as P4. He identified the accused and stated that the accused had been an officer of ADAMS the earlier drug unit and a police officer at the time of arrest and had also been working in the fire service and was well known to them. [4] Under cross examination it was revealed that Jude Amice had been arrested earlier that day by the officers of the NDEA on the morning of the 27th of April 2012 and was released at 9.15 at night. Witness admitted at present he was not in the NDEA and had left two months ago and stated he had informed the accused of his constitutional rights prior to arrest but could not remember them at present. He stated they were in the Terios jeep they were using and were not in uniform and had shown their badges the moment they disembarked. He admitted that Jude Amice had been arrested earlier that day and released on bail for possession of Cannabis Resin but was not arrested in respect of this incident as it was the accused who had thrown away the drug. He denied this was the drug that had been taken from Jude Amice earlier that day. [5] It is apparent from his cross examination that the exhibit had been weighed prior to it being handed over to the Government Analyst. He further stated the other agents with him at the time the accused was arrested were agents Terry Florentine, Agent Barra and agent Naiken. It is clear from his evidence that the exhibits were in his custody until it was handed over to the Government Analyst. [6] The Government Analyst Jimmy Bouzin testified to the fact that on the 28 th of August 2012, he received a rectangular piece of brown substance for analysis which was brought sealed in a brown envelope by agent Patrick Hortere. He stated after analysis he had identified the dark brown substance as Cannabis Resin. It weighed 25.2 grams and after analysis he had placed the exhibit in a evidence bag and sealed it. He identified the evidence bag in open court and stated the seals placed by him were intact. He thereafter identified the exhibit P4 in open court as that brought by agent Hortere for analysis and that analysed by him and identified as Cannabis Resin. He produced his report as P5. [7] Agent Joel Barra testified on similar lines in respect of the events leading to the detection of the controlled drug and the arrest of the accused. It

is apparent that this officer was sitting in the front of the jeep which was been driven by agent Florentine. He stated that it was the same officers who had arrested Jude Amice earlier that day. Agent Barra stated it was he who had arrested Jude Amice and picked up the drug Jude Amice had thrown away. He too had seen the accused Robert Dufrene throw away the drug with his right hand. He denied the drug was taken from the pocket of Hortere. He admitted under cross examination he had a brother who was involved in the drug trade. He admitted that he had arrested him. He denied kicking the accused at the station. [8] The other witness Collin Naiken too testified to the facts concerning the detection and arrest of the accused Robert Dufrene. He too identified the exhibit P4 as that taken into custody that day. He also gave evidence in respect of the search conducted at the house of the accused. [9] The prosecution also called witness Jude Amice who confirmed the fact that he had been arrested earlier that day by the same officers. He admitted there was a little piece of drug in his possession at the time he was chased and arrested by the officers of the NDEA. It is apparent from his evidence that he had informed the officers of the NDEA that he had purchased the quantity of drug found in his possession from the accused who he identified in open court and who he stated he knew for some time as they had played football together. He stated he knew him as Collin. After his arrest it is apparent from the evidence of Jude Amice that on the instructions of the agents of the NDEA he had contacted the accused and arranged a meeting to get more drugs at the Mont Fleuri cemetery.

- [10] He further stated that this was the usual meeting place where he met the accused when the drugs he had received from him finished and the money had to be given and where the fresh stock to sell was obtained from the accused (vide page 6 of the proceedings of 19th February 2014 at 9.a.m.). He stated prior to meeting the accused he had been given money SR 4000 in old 100 rupee notes by agent Florentine. He too confirmed the fact that he had seen the agents pick up the drug at the cemetery at the time of detection. He too stated that the exhibit in this case was not the drug he had been arrested with that morning. What had been found in his possession had been clearly lesser than the exhibit in this case. Under cross examination he stated he had not been charged as yet. He too described in detail the events leading to the arrest of the accused. He stated that he had seen the NDEA jeep approaching and had turned to look at it and had not seen the accused throw anything but had seen the officers get down and pick up something. He had seen what it was only when they had shown it to him. [11] Sergeant Seeward of the NDEA testified to the fact that the occurrence book had registered an incident in respect of the arrest of one Jude Amice around 10.30 a.m. on the 27th of August 2012. The exhibit taken into custody from Jude Amice was in his possession and he showed same to court and learned counsel for the accused. The report in respect of the Jude Amice case was made by agent Joel Barra the detecting officer. He also referred to another case been registered by agent Hortere at 18.15 hrs against the accused Robert Dufrene. He stated the exhibits were usually weighed at the NDEA office to determine whether the offence fell under possession or trafficking and the drugs taken from Jude Amice had not been sent for analysis. He also stated that everything including information received was not written in the occurrence book for fear of there

being a leak and the operation failing. He also mentioned that priority in respect of analysis of drugs was given to trafficking cases over cases of possession as was the case against Jude Amice.

- [12] Agent Terry Florentine giving evidence stated that he was the team leader in respect of the detection incidental to this case. It is apparent from his evidence too that Jude Amice had been arrested for possession of controlled drug and on questioning him he had agreed to cooperate and had given the name of Robert Dufrene as the person from whom he had purchased the drug. He affirmed the evidence given by Jude Amice and gave details of the contact calls made to Dufrene in respect of the purchase of another quantity of controlled drug. He also gave details of the telephone conversation which had been placed on loudspeaker for them to hear details of the conversation. He admitted that Jude Amice was used to arrest the accused in this case.
- [13] Witness further stated that his superior officer Nicole Franchete was aware of the operation they were doing and had authorized same orally. He admitted they had not produced the phone records in this case. He further stated in this particular case in which the accused Dufrene was arrested Amice was released as he was used by them to get to the accused. He stated he was unaware a letter of authorization was necessary for the arrest of the accused. It is apparent from his evidence that the name of the informant or the person from whom the information is received is not entered in the investigation diary in order to keep it confidential. Thereafter the prosecution closed its case and the defence made a submission on no case to answer. [14] By ruling dated 28th May 2013 this court made order that the accused had a case to answer. The accused in defence gave evidence under oath.
- [15] He stated his name was Robert Collin Dufrene. He admitted he was a police officer for 10 years and gave details of his service record. He stated during his service he had noted and seen the tricks the NDEA agents were doing. He stated as he always used the road the NDEA used he felt the NDEA thought he was after them. He explained in detail what he had done from the time he woke up on the 27th of August 2012. [16] The accused stated he had taken his daughter from Mont Fleuri to her grandmother's residence at Copolia. On the way he had met an aunty who had asked him to come and visit his cousin Jerina who had a medical problem. After dropping his daughter he had gone back to Mont Fleuri and showered and got ready as he was on special duty that day. He stated at work three persons were arrested and he had personally arrested one individual. After work he had bought some fish and come home and kissed his wife and daughter. He had told his wife he was going to visit Jerina and had gone to Belvedere.
- [17] While he was at his auntie's place his phone had rung and Jude Amice had told him the money was ready. He further stated that Jude Amice owed him a balance of SR 4000 for an "I pad" he had given him. Jude Amice had told him he was at Baba shop and would meet him further down next to the cemetery. He stated that he had called him about three to four times that day. He admitted they had met in the middle of the cemetery where there was a big cross. When he had arrived at the cross Jude Amice was not there and he had called him

and asked him whether he was coming. He had said he was doing a deal and was coming soon. He had said he did not talk about any deal and had hung up. [18] Jude Amice had arrived about 15 to 20 minutes late and apologized. He noticed him removing money and noted it was old currency and asked him what type of money he was giving. He had stated the police is coming and the police had arrived. He stated Jude had told him it was the NDEA and he had said there is nothing wrong. Agent Joel Barra had got down from the vehicle and come straight in his direction and kicked him. He stated they pretended to search for about 10 minutes and then Hortere and come back and shown what he had thrown. He denied he had thrown anything. [19] The accused further stated he was not right handed but left handed. He stated that when he was at ADAMS he had searched Joel Barra several times. He had noticed this officer doing transactions with one Dean Rath and a cousin of Rath's but ignored it as it did not concern him. It is for this reason he stated he was set up and he further stated his house had been searched and nothing incriminating found.

- [20] Under cross examination he admitted he had not told anyone of what the NDEA was upto as they do not fall under the police. If he reported them to the Superior officers they would cause problems for him. He admitted he knew Jude Amice for the past four years. Jude Amice had agreed to pay for the note book in instalments. He also admitted receiving several calls up to 4 or 5 that day from Jude Amice. He admitted he had seen Hortere search around the place and at one point about 5 metres from him bend down and take something and show him. At that time he had been standing next to the vehicle with agent Naiken. However soon thereafter he stated he had not seen him picking up anything. (pg 4 of the proceedings of 10th July 2013 9 a.m.). Mrs Molly Margaret Cole gave evidence affirming the fact that she had seen the accused on the 27 th of August 2012 with his daughter and that she had spoken to him about her sick daughter and he had visited her daughter later during the day. She had heard him receive a call he had left and not returned thereafter.
- [21] Witness Aubrey Dufrene stated he worked at the Air Seychelles and Jude Amice had come to his house and apologized to him and stated that his brother had been arrested by the NDEA and he had been forced to set up his brother by using false money. He had told him he was rushing and would call him later. He had called him later but as witness was busy he had told Jude Amice he would call back later. However he had not and had never seen him again after that. He stated that Jude was with him now in Roche Caiman where he is staying and says hello and leaves. The defence thereafter closed and both parties made submissions.
- [22] Having considered the evidence before court it is clear from the evidence of the prosecution witnesses that after having arrested Jude Amice in the morning for the offence of being in possession of controlled drugs on questioning him the NDEA agents were informed that he had purchased the drugs from the accused Robert Collin Dufrene. Thereafter a meeting for Jude Amice to purchase more drugs was arranged at the usual place they used to meet and do their drug transactions namely the Mont Fleuri cemetery by Jude Amice under the vigilance of the NDEA agents. Several phone calls were made by Jude Amice to the accused under the supervision of the agents. Finally at the meeting place the accused was arrested

when on seeing the NDEA agents he attempted to throw away the quantity of Cannabis Resin he had brought to be given to Jude Amice. [23] The prosecution evidence of this detection and the facts set out above is supported by the uncontradictory evidence of Jude Amice, agents Hortere and Barra and agent Florentine. Though there may be slight differences in their evidence the contradictions are not of a material nature that this court would disbelieve their evidence in totality. Though subject to lengthy cross examination the evidence of agent Hortere did not waiver when he stated he saw the accused throw an object which he picked up and suspected it to be Cannabis Resin. His evidence stands corroborated by the evidence of agent Joel Barra and even the accused under oath admits that agent Hortere was present and seen him pick up something which evidence however he attempted to change soon after. Even Jude Amice states he had seen agent Hortere pick up something from the ground and had known what it was when it was shown to him. It is apparent from his evidence that his attention was on the oncoming police vehicle around the time the agents saw the accused throw something. I therefore will proceed to accept the prosecution evidence on this issue though the accused denies he threw anything. [24] The defence further contended that the entire episode was a set up by the agents of the NDEA and the controlled drugs taken from Jude Amice that morning were 'planted' on the accused. Jude Amice himself states the quantity of controlled drug he was arrested with was very much less than what was detected with the accused. In fact this is further clarified in that the charge against Jude Amice according to the entries was for possession as borne out by the evidence of agent Seward. Further the Cannabis Resin taken into custody from Jude Amice was produced by agent Seward to court separately. Therefore the contention of learned counsel for the defence that the drugs of Jude Amice were 'planted' on the accused bears no merit. [25] Considering the fact that Jude Amice was the main informant in this case to the officers of the NDEA it is understandable why they chose to leave out making entries in his name or in respect of him in the occurrence book. The officers of the NDEA are free to take the necessary steps that would prevent the identity of their informants being disclosed in order to ensure that their informant and information stands protected. It appears in this case too the NDEA agents initially attempted to protect the information and informant but due to a clever piece of cross examination in respect of the time of arrest of Jude Amice and his release time were compelled to reveal his identity as the informant. This does not in any way affect the credibility of the evidence of the prosecution. [26] The accused does not deny in his evidence he was in a lonely cemetery at that time with Jude Amice when the agents arrived but his version is that he had gone to the centre of cemetery to collect the balance money owing from for an Ipad Jude Amice had purchased. I find this first not be an appropriate place to conduct such a transaction of paying of a debt in respect of an Ipad and also observe that this has not even been suggested to witness Jude Amice during his cross examination when he was giving evidence. [27] The accused further in his evidence states during his service in the police he had noted and seen the tricks the NDEA agents were doing. He stated as he always used the road the NDEA used he felt the NDEA thought he was after them. He also stated that it was agent Joel Barra who had falsely set him up as he had searched him several times when he was working for ADAMS and had observed him doing

transactions with one Rath and his cousin. It is to be borne in mind it was not only agent Barra who had been in the team that made the detection but several other officers as well including agent Florentine agent Hortere and agent Naiken. Further the evidence of Jude Amice a friend and associate of the accused himself further implicates the accused. I therefore cannot agree with learned counsel for the defence that the accused being a police officer himself was falsely set up by the agents of the NDEA.

- [28] When one considers the chain of evidence which has not been seriously challenged by the defence, it is apparent that the controlled drug taken into custody by agent Hortere at the time of detection had been kept in his custody and handed over to the analyst. The analyst identifies the Cannabis Resin which was handed over to him in a sealed envelope as that analysed by him and identifies it open court ensuring that no tampering had occurred to the exhibit. He further states the seals placed by him on the evidence bag after analysis were intact. Witnesses agent Hortere and Naiken identify the exhibit in open court as that taken into custody at the Mont Fleuri cemetery. This court is satisfied therefore beyond reasonable doubt that the chain of evidence in respect of the detection, taking into custody, analysis and production in court of the exhibit has been established by the prosecution in this case beyond reasonable doubt. [29] Learned counsel for the accused also drew the attention of court to section 24A(1) (a) of the Misuse of Drugs Act Cap133 as amended by Act 4 of 2012 and submitted that the failure of the chief officer of the NDEA to authorise in writing a person to act as an undercover officer, in this case Jude Amice, was a fatal irregularity and therefore the case against the accused should be dismissed.
- [30] A reading of the said section clearly indicates it applies to a situation which envisages a presupposed and pre planned detection and not a situation where information is obtained from a suspect and is acted upon immediately with the co operation of the suspect as in this instant case. Further it is the view of this court that the word “may” both in section 24A (1) (a) and (b) creates a doubt as to whether such authorisation in writing is a mandatory requirement. In fact sub section (b) specifically states that the authorisation “may be revoked in writing” which once again makes it not a mandatory but a discretionary requirement that the revocation should be in writing. In this instance case the evidence of agent Florentine indicates oral authorisation was obtained for the NDEA agents to proceed with their investigations and operation with the assistance of Jude Amice who had informed them that he had purchased the drugs from the accused. It is apparent that even if this shortcoming be accepted it is of a technical nature and has not caused any prejudice to the accused in this case and therefore not fatal to the case of the prosecution [31] Learned counsel also took objection to the fact that the charge was not properly drafted as only section 14 and 26 (1) had been mentioned and not the relevant subsections. However the particulars of offence clearly indicate that the charge was in respect of Cannabis Resin and the cross examination indicates that learned counsel was well aware of this and had not been misdirected or misled on this issue. Therefore it cannot be said that the said omission in the charges has caused any prejudice to the accused. [32] For all the aforementioned reasons I reject the defence of the accused. I am satisfied on considering and analysing the

evidence of the prosecution that the corroborated and uncontradicted evidence of the prosecution should be accepted and for the reasons contained herein am satisfied that the prosecution has proved beyond reasonable doubt that the accused Robert Collin Dufrene was in possession of a quantity of 25.2 grams of Cannabis Resin. [33] The concept of possession connotes two elements, the element of custody or mere possession and the element of knowledge as held in the case of DPP v Brooks (1974) A. C. 862. With regard to the element of knowledge the accused had on seeing the agents approaching had thrown away controlled drug namely Cannabis Resin. This clearly establishes the fact that the accused had knowledge of the fact he was in possession of a controlled drug. [34] For the aforementioned reasons I am satisfied that the prosecution has established the elements of possession and knowledge against the accused beyond reasonable doubt. The quantity of Cannabis Resin detected in the possession of the accused is 25.2 grams which attracts the rebuttable presumption that the accused was trafficking in the controlled drug. The accused has failed to rebut the said presumption. [35] For the aforementioned reasons this court is satisfied that the prosecution has proved all the elements of the charge as set out in count 1 beyond reasonable doubt and proceeds to find the accused guilty of the charge in count 1 and convict him of same. No order is made in respect of the alternative count of possession. Signed, dated and delivered at Ile du Port on 16 January 2014 M Burhan Judge of the Supreme Court 12

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