

COURT OF APPEAL SITTING

Saint Vincent and the Grenadines

Monday, 29th January to Friday, 2nd February, 2007

Coram: His Lordship, the Hon. Mr. Michael Gordon, QC – Justice of Appeal (President)
His Lordship, the Hon. Mr. Denys Barrow, SC – Justice of Appeal
His Lordship, the Hon. Hugh A. Rawlins – Justice of Appeal

Date: 29th January, 2007

Judgments

Dominica Agricultural Industrial and Development Bank v Mavis Williams
High Court Civil Appeal No.20 of 2005 – Dominica

Appearances:

Appellant: Ms. Roxanne Knights holding for Mr. Anthony Astaphan S.C., Alick C. Lawrence and Francine Baron Royer

Respondent: Ms. Nicole Sylvester holding for Reginald Armour S.C., Ms. Vanessa Gopaul and Mr. Lennox Lawrence

Issue: Wrongful dismissal, assessment of damages.

Result: Appeal allowed. Damages awarded to the Respondent in the sum of \$46,668.03 instead of \$1,216,641.12. Costs in the High Court in the sum of \$13,092.01. Each party to bear their own costs of the Appeal.

Date: 29th January, 2007

Kashif Mustaphakhan v The Queen
High Court Criminal Appeal No.19 of 2003 – Grenada

Derek Parke v The Queen
High Court Criminal Appeal No. 20 of 2003 – Grenada

Appearances:

Appellant: Ms. Nicole Sylvester holding for Cajeton Hood

Respondent: Mrs. Sandra Robertson-Draton Assistant DPP (Ag.) holding for Christopher Nelson DPP and Darshan Ramdhanni

Issue: Possession of a controlled drug, Trafficking a controlled drug, Conspiracy to export a controlled drug – Appeal against conviction and sentence.

Result: Appeal dismissed of each of the appellants and their convictions confirmed. One single sentence of 7 years for the First Appellant and a single sentence of 5 years for the second Appellant is substituted for the three sentences given on the three counts to run concurrently handed down by the learned Trial Judge.

Date: 29th January, 2007

Mervin Edward v The Queen
High Court Criminal Appeal No. 1 of 2006 – Saint Lucia

Appearances:

Appellant: Ms. Nicole Sylvester holding for Jeannot Walters
Respondent: Mrs. Sandra Robertson-Draton Assistant DPP (Ag.) holding for Mr. Leslie Mondesir Senior Crown Counsel

Issue: Wounding – Appeal against conviction and sentence

Result: The appeal against conviction is dismissed. The appeal against sentence is allowed to the extent that the sentence of 8 years imprisonment on each count to run concurrently is varied and replaced by a sentence of 6 years imprisonment on each count to run concurrently from 3rd February 2006.

Date: 29th January, 2007

Applications:

Reliance Press Limited v National Properties Limited
High Court Civil Appeal No.7 of 2005

Appearances:

Appellant: No appearance for Appellant/Respondent
Respondent: Ms. Roxanne Knights for the Respondent/Applicant

Issue: Application to dismiss Appeal.

Result: Matter stood down to Wednesday 31st January

Date: 29th January 2007

East Caribbean Flour Mills Limited v Ormiston Ken Boyea
High Court Civil Appeal No.7 of 2005

Appearances:

Appellant: Mr. L.A. Douglas Williams for the Appellant
Respondent: Mr. Stanley John for the Respondent.

Issue: Interlocutory appeal against the decision of the Learned Trial Judge in that whether she erred in finding that evidence of tapes and records were hearsay evidence and therefore ruled them inadmissible.

Result: Matter to be heard at the next sitting of the Court of Appeal. Directions to follow.

Reason: **Rawlins J.A.:** The substantive appeal should be heard and that should be done before the full court, further there is no transcript or copy of the judgment being appealed on file.

Date: 29th January, 2007

High Court Criminal Appeal Against Sentence

Denzil Sam v The Queen
Criminal Appeal No.3 of 2006

Appearances:

Appellant: Appellant in Person
Respondent: Mr. Colin Williams D.P.P. (Ag.) for the Respondent

Issue: Burglary - Appeal against sentence of 5 years imprisonment

Result: Appeal dismissed. Conviction and sentence affirmed.

Reason: **Gordon J.A.:** Appellant had a long list of previous convictions dating as far back to when he was age 11. The Court is of the view that the sentence in this matter is appropriate.

Date: 29th January, 2007

High Court Criminal Appeals Against Conviction

Livingston Forbes v The Queen
Criminal Appeal No.3 of 2005

Appearances:

Appellant: Appellant in Person
Respondent: Mr. Colin Williams D.P.P. (Ag.) and Mrs. Sandra Robertson-Draton Asst. D.P.P. (Ag.) for the Respondent

Issue: Manslaughter – Appeal against conviction and sentence of 14 years Imprisonment.

Result: Matter stood down until Tuesday 30th January 2007.

Date: 29th January, 2007

Garry Williams v The Queen
Criminal Appeal No.19 of 2005

Devon Steele v The Queen
Criminal Appeal No.20 of 2005

Gregory Durrant v The Queen
Criminal Appeal No. 21 of 2005

Appearances:

Appellants: Appellants No. 1 and 2 in Person, Cecil Blazer Williams for appellant No. 3
Respondent: Mr. Colin Williams D.P.P. (Ag.) for the Respondent

Issue: Robbery – Appeal against conviction and sentence of 6 years hard labour

Result: Appeals No 19 and 21 of 2006 traversed to the next sitting of the Court of Appeal.
Appeal No 20 of 2006 stood down.

Reason: Appeal No. 19 and 21 of 2006 were traversed as the records were received on Friday 26th and it is quite voluminous. Counsel for the Respondent has requested time to prepare a response to skeleton arguments. Further the record appears to be incomplete. Appellant in 20 of 2006 has requested that the Court proceed with his appeal on sentence only.

Date: 29th January, 2007

Othniel Bowens v The Queen
Criminal Appeal No.15 of 2005

Hassan Mohammed v The Queen
Criminal Appeal No. 23 of 2005

Appearances:

Appellant: Appellant No. 1 in Person, Mr. Richard Williams holding for Mr. Arthur Williams for appellant No.2

Respondent: Mr. Colin Williams D.P.P. (Ag.) and Mrs. Sandra Robertson-Draton Asst. D.P.P. (Ag.) for the Respondent

Issue: Aggravated Burglary and Attempted Murder – Appeal against conviction and sentence of five (5) years imprisonment

Result: Appeal No 15 of 2005 matter stood down. Appeal No 23 of 2005 matter traversed to the next sitting of the Court of Appeal

Reason: Counsel for Appellant in Appeal No. 23 of 2005 has indicated that he received the record on 26th January 2007 and the record is quite voluminous and an

adjournment is requested to adequately prepare the appeal. Appellant in Appeal No. 15 of 2006 requested that his appeal be heard at this sitting on the issue of sentence only.

Date: 29th January, 2007

Myron Brazel aka David Cole v The Queen
Criminal Appeal No.1 of 2006

Appearances:

Appellant: Appellant in Person
Respondent: Mr. Colin Williams D.P.P. (Ag.) and Mrs. Sandra Robertson-Draton Asst. D.P.P. (Ag.) for the Respondent

Issue: Abduction – Appeal against conviction and sentence of 3 years imprisonment.

Result: Appeal dismissed. Conviction and sentence affirmed.

Reason: The Court is satisfied that the Appellant had a fair trial and the jury was properly directed and came to a conclusion on the facts to which they were entitled to come.

Date: 29th January, 2007

Othniel Bowens v The Queen
Criminal Appeal No.15 of 2005

Appearances:

Appellant: Appellant in Person
Respondent: Mr. Colin Williams D.P.P. (Ag.) and Mrs. Sandra Robertson-Draton Asst. D.P.P. (Ag.) for the Respondent

Issue: Aggravated Burglary and Attempted Murder – Appeal against conviction and sentence of five (5) years imprisonment

Result: Appeal dismissed. Conviction and sentence affirmed.

Reason: **Barrow J.A.:** The Court took notice of the Applicant's remorse as well as his indication not to waste the court's time and that was viewed as a measure of rehabilitation. However, the offences on which the Appellant was convicted were very serious and the court is of the view that the sentencing in the circumstances was very lenient. In most cases, this sentence would be increased, but because of the remorse and responsibility shown the sentence will be upheld. It would send a wrong message to the public as well as the fact that it would be a betrayal of public confidence if for the offence of attempted murder a sentence of 5 years is reduced.

Date: 29th January, 2007

High Court Civil Appeals

Fancy Rotary Village Corporation et al v Garnet S. Henderson
Civil Appeal No.3 of 2006

Appearances:

Appellant: Mr. Samuel E. Commissiong for the Appellant
Respondent: Mr. Olin Dennie for the Respondent

Issue: Appeal against an order by the Learned Master made on an assessment of damages.

Result: Appeal is dismissed. Two thirds of cost of High Court awarded to Respondent.

Reason: The court feels that there is an adequacy of evidence to support the Master's finding of fact and there are no grounds for upsetting those findings so the appeal is dismissed.

Date: 29th January, 2007

St. Vincent Insurances Limited v Thomas Ramage et al
Civil Appeal No.5 of 2006

Appearances:

Appellant: Mr. Samuel E. Commissiong for the Appellant
Respondent: Mr. Richard Williams for the First Respondent
Ms. Nicole Sylvester for the Second and Third Respondent

Issue: Appeal against the decision of the Learned Master in that he erred in finding against the Appellant as they were added after the issue of liability had been determined, in that he erred in law as the damages for pain and suffering awarded against the Appellant was excessive.

Result: Matter stood down

Date: 29th January, 2007

High Court Criminal Appeals Against Conviction

Devon Steele v The Queen
Criminal Appeal No.20 of 2005

Appearances:

Appellant: Appellant in Person

Respondent: Mr. Colin Williams D.P.P. (Ag.) and Mrs. Sandra Robertson-Draton Asst. D.P.P. (Ag.) for the Respondent

Issue: Robbery – Appeal against conviction and sentence of 6 years hard labour

Result: Appeal Allowed. Sentence varied from 6 years to 4 years imprisonment. Sentence to run from date of conviction.

Reason: The court took into consideration the appellant's remorse, but also weighed the seriousness of the offence and the circumstances of the case.

Date: 29th January 2007

High Court Civil Appeals
Doreen Leslie v Bradley Davis et al
Civil Appeal No.13 of 2006

Appearances:

Appellant: Mr. Richard Williams for the Appellant
Respondent: Mr. Emery Robertson for the Respondent

Issue: The Learned Trial Judge erred in that she had no discretion to set aside the judgment in default because all conditions of Part 13.3 were not fulfilled.

Result: Appeal is allowed. Judgment and order set aside. No order as to costs.

Reason: The Court took into consideration that all of these cases make the very **salutary** point that our rules vary from the English rules in terms of the existence and the exercise of their discretion. The approach of our Rules is to establish as a matter of policy the preconditions for setting aside or for exercising a discretion. So in England there is a broad discretion and the factors that the Respondent mentioned are in fact factors which are to be considered and different weight according to different circumstances must be given to them. In our Rules as a matter of policy, the rule makers have laid down certain criteria which if they are not satisfied means that no judge has the jurisdiction to set aside. Part 13 is compendious and you must satisfy all of them, so when the learned Judge made a decision in her judgment she stated that one of those conditions was not satisfied then there was no basis to exercise a discretion.

Date: 29th January, 2007

C.K. Greaves & Company Limited v Osley Baptiste
Civil Appeal No.9 of 2006

Appearances:

Appellant: Mr. Samuel E. Commissiong for the Appellant
Respondent: Mr. Richard Williams for the Respondent

Issue: Appeal against the decision of Learned Trial Judge in finding that the Claimant suffered pain and suffering and that the finding that the Claimant's monthly earning was \$3,000. Further the Learned Trial Judge erred in that his award of damages to the claimant were excessive.

Result: Traversed to the next sitting of the Court of Appeal because of late receipt of the record.

Date: 30th January, 2007

High Court Criminal Appeals Against Conviction

Livingston Forbes v The Queen

Criminal Appeal No.3 of 2005

Appearances:

Appellant: Appellant in Person

Respondent: Mr. Colin Williams D.P.P. (Ag.) and Mrs. Sandra Robertson-Draton Asst. D.P.P. (Ag.) for the Respondent

Issue: Manslaughter – Appeal against conviction and sentence of 14 years imprisonment

Result: Appeal against sentence allowed. Sentence varied from 14 years to 9 years from the date of arrest.

Reason: The Court took into consideration a number of previous decisions including some cited in the Kelvin Samuel case as well as others and as a result was of the view that in the circumstances the sentence was excessive.

Date: 30th January, 2007

Magisterial Criminal Appeals Against Sentence

Adrian Prescod v Commissioner of Police

Magisterial Criminal Appeal No.42 of 2005

Appearances:

Appellant: Appellant in Person.

Respondent: Mrs Sandra Robertson-Draton, Asst. D.P.P. (Ag.) for the Respondent

Issue: Appeal against sentence of two 3-year terms of imprisonment to run concurrently.

Result: Appeal dismissed. Conviction and sentence stand.

Reason: **Barrow J.A.:** At this stage this court has no discretion in relation to sentencing.

The only thing that can be done is to decide if as a matter of principle the sentence, which was imposed, is wrong in law.. If the sentence is excessive then it is wrong in law and then this court can exercise a discretion. As a matter of law, this sentence was not excessive so there is no basis upon which we can interfere with the sentence.

Date: 30th January, 2007

Kevon Barbour v Commissioner of Police
Magisterial Criminal Appeal No.43 of 2006

Appearances:

Appellant: Appellant in Person.
Respondent: Mrs. Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Possession of firearm, possession of ammunition, burglary – Appeal against sentence of 3 years, 1 year and 2 years respectively all to run concurrently.

Result: Appeal dismissed.

Reason: **Barrow J.A.:** One of the things about pleading guilty is that it saves the court and the administration of justice from wasting time and normally a person is given a discount in the sentence for that, but an element in that is the expression by the plea of guilty of contrition and remorse for what the person did. In this case the Appellant was caught in the act, so his plea of guilty made absolutely no difference. The purpose of this court is to review sentences, which have been appealed. We can review the sentences on the basis not of what we would have given had we been the Magistrate but on the basis of whether when the Magistrate imposed that sentence it is a sentence which is in line with what any reasonable Magistrate was entitled to impose. So if a sentence that any reasonable Magistrate would impose would be three years and a Magistrate imposes a sentence of 5 years or 7 years then we know that that sentence is wrong as a matter of principle and therefore wrong in law. In this case the maximum for the offence for which the Appellant convicted was 7 years. The Magistrate imposed a sentence of 3 years. One of the aggravating features which impressed the Magistrate is that this firearm was found under the seat of a vehicle in which the Appellant had ridden to go and commit this crime.

Date: 30th January, 2007

Damien Glynn v Commissioner of Police
Magisterial Criminal Appeal No.53 of 2006

Appearances:

Appellant: Appellant in Person.
Respondent: Mrs. Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Theft – Appeal against sentence of 15 months imprisonment imposed on a previous conviction but suspended for one year takes effect. 15 months imprisonment for this offence to run consecutively.

Result: Sentence of 15 months imprisonment stands. Order for compensation vacated.

Reason: **Gordon J.A.:** The compensation should be removed for the reason that it has to be determined whether somebody can pay money. One cannot impose a fine or compensation on a person who doesn't have the means and then you know the automatic consequence would be that they are imprisoned for it.

Either they are to be imprisoned or they are not to be imprisoned.

Date: 30th January, 2007

Marcus Thomas v Commissioner of Police
Magisterial Criminal Appeal No.54 of 2006

Appearances:

Appellant: Mr. Ronald Marks for the Appellant.

Respondent: Mrs Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Possession of firearm – Appeal against sentence of 2 ½ years imprisonment.

Result: Appeal allowed. Sentence reduced from 2 ½ years to 2 years.

Reason: In keeping with previous decisions and, in this case because of the expectation which may have been created in the appellant based on the indications given by the Prosecution, as well as for the reason that the Magistrate, had she been aware that there was not a previous conviction, may have been minded to go on the lower end of the range, we think it would be appropriate to reduce the sentence given these particular facts.

Date: 30th January, 2007

Perry Matthews v Commissioner of Police
Magisterial Criminal Appeal No.57 of 2006

Appearances:

Appellant: Appellant in Person.

Respondent: Mrs. Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Possession of firearm, possession of ammunition, possession of a controlled drug with intent to supply. Appeal against sentence of 5 years imprisonment to run concurrently.

Result: Appeal dismissed.

Reason: The weapon was a machine gun, a very serious weapon to be walking about with thereby aggravating the circumstances.

Date: 30th January, 2007

Trevor Grant v Commissioner of Police
Magisterial Criminal Appeal No.58 of 2006

Appearances:

Appellant: No appearance of Appellant
Respondent: Mrs. Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Theft, possession of offensive weapon, assault – Appeal against sentence of 9 months imprisonment, 3 months imprisonment and 9 months imprisonment to run concurrently.

Result: Appeal dismissed.

Reason: The Appellant has served his sentence.

Date: 30th January, 2007

Wayne John v Commissioner of Police
Magisterial Criminal Appeal No.59 of 2006

Appearances:

Appellant: Appellant in Person.
Respondent: Mrs. Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Possession of Ammunition – Appeal against sentence of 2 years imprisonment and deportation on completion of sentence.

Result: Appeal allowed. Sentence varied. Reduced from 2 years to 1 year. Deportation order stands.

Reason: **Barrow, J.A.:** The sentence is distinctly excessive. Even with ammunition along with a firearm it is usually one year. We have seen one case, in this sitting where the Magistrate gave two years for the gun and four months for the ammunition by itself.

Date: 30th January, 2007

Peter Chandler v Commissioner of Police
Magisterial Criminal Appeal No.62 of 2006

Appearances:

Appellant: Appellant in Person.
Respondent: Mrs. Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Possession of Ammunition – Appeal against sentence of 18 months imprisonment.

Result: Appeal dismissed.

Reason: **Gordon J.A.:** We cannot disagree with the Magistrate on the issue of factual finding. The facts were enough to fix the Appellant with possession of the ammunition and once that was the case and the Magistrate believed it there is nothing that could be done except that we could possibly look at the sentence.

Date: 30th January, 2007

Magisterial Criminal Appeals Against Conviction

Commissioner of Police v Ordan Graham
Magisterial Criminal Appeal No.56 of 2006

Appearances:

Appellant: Mr. Colin Williams D.P.P. (Ag.) for the Appellant
Respondent: Mr. Emery Robertson for the Respondent

Issue: Uttering seditious words – Appeal against decision of Learned Magistrate to uphold a no case to answer submission.

Result: Traversed to the next sitting of the Court of Appeal.

Date: 30th January, 2007

Jasmond Charles v Commissioner of Police
Magisterial Criminal Appeal No.29 of 2006

Appearances:

Appellant: Appellant in person
Respondent: Mrs. Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Burglary – Appeal against conviction and sentence of 18 months imprisonment.

Result: Appeal against conviction and sentence is dismissed.

Reason: **Gordon J.A.:** The Court took into consideration the Appellant had over 20 previous convictions and further found no reason to interfere with the decision of the Magistrate.

Date: 30th January, 2007

Edmond McAllister v Commissioner of Police
Magisterial Criminal Appeal No.30 of 2006

Appearances:

Appellant: Mr. Stephen Williams for the Appellant.
Respondent: Mrs. Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Assault causing actual bodily harm – Appeal against conviction and sentence of a fine of \$2,500 to be paid in one month or 3 years imprisonment.

Result: Sentence varied to a fine of \$500, Compensation of \$1500 to be paid within 5 months in default of fine 3 months imprisonment. In default of compensation 9 months imprisonment.

Reason: **Gordon J.A.:** The Court took into consideration the age of the Appellant, the means of the Appellant and the undertaking by the Appellant to apologize to the virtual complainant.

Date: 30th January, 2007

Gregory Alexander v Commissioner of Police
Magisterial Criminal Appeal No.35 of 2006

Appearances:

Appellant: Appellant in Person
Respondent: Mrs Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Possession of a firearm, possession of ammunition. Appeal against conviction and sentence of 3 years imprisonment and 4 months imprisonment respectively to run concurrently.

Result: Conviction and sentence affirmed. Time served in relation to this offence to be taken into consideration.

Reason: **Barrow J.A.:** It would be wrong for us to interfere with the sentence which the Magistrate imposed. If the Magistrate makes a decision that we cannot say it is wrong in principle then we have no right to interfere with that decision.

Date: 30th January, 2007

High Court Civil Appeals

St. Vincent Insurances Limited v Thomas Ramage et al
High Court Civil Appeal No. 5 of 2006

Appearances:

Appellant: Mr. Samuel E. Commissiong for the Appellant

Respondent: Mr. Richard Williams for the First Respondent
Ms. Nicole Sylvester for the Second and Third Respondent

Issue: Appeal against the decision of the Learned Master in that he erred in finding against the Appellant as they were added as a party after the issue of liability had been determined, and he erred in law as the damages for pain and suffering awarded against the Appellant were excessive.

Result:

1. The order for the payment of damages and costs by the Appellant is set aside.
2. The Second and Third Respondents shall pay to the First Respondent damages in the sum of \$50,000.00 previously paid to the First Respondent.
3. The Second and Third Respondents are to make payment on or before the 31st day of July 2008 in default the full sum of \$122,026.70 becomes due and payable to the First Respondent.
4. The Appellant shall pay interest on the special damages on \$65,026.70 at the rate of 3% from the date of the issue of the Claim Form to the date of assessment of damages and 5% thereafter until payment.
5. The Appellant pay interest on the General Damages of \$50,000.00 at the rate of 6% from the date of assessment until paid.
6. The Appellant will pay costs at the prescribed rate of \$26,254.01.
7. Each party shall bear his own cost of this appeal.

Reason: Order by Consent

Date: 30th January, 2007

Magisterial Criminal Appeals Against Conviction

Joel Letteen v Commissioner of Police
Magisterial Criminal Appeal No.46 of 2006

Appearances:

Appellant: Mr. Stephen Williams for the Appellant
Respondent: Mrs. Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Indecent Assault – Appeal against conviction and sentence of 9 months imprisonment.

Result: Appeal dismissed.

Reason: **Rawlins J.A.:** Although there were some contradictions we don't always have consistency, but based on the evidence, especially the evidence of the virtual complainant and also the reasons for decision given by the President of the Family Court which were very sound, the court can find no reason to interfere with this decision.

Date: 30th January, 2007

Fitzroy Ash v Commissioner of Police
Magisterial Criminal Appeal No.55 of 2006

Appearances:

Appellant: Mr. Carl Glasgow for the Appellant.
Respondent: Mrs. Sandra Robertson-Draton, Asst. D.P.P. for the Respondent

Issue: Damage to Property – Appeal against conviction and sentence of 1 year imprisonment and compensation of \$600.00 to be paid by 29th September 2006 or a further 3 months imprisonment.

Result: Appeal allowed. Sentence varied to time served. Compensation \$600 to be paid within 3 months. Failure to do so a further 2 months imprisonment.

Reason: The Court was of the view that the sentence of imprisonment was excessive.

Date: 30th January, 2007

Maurice Clifton v Commissioner of Police
Magisterial Criminal Appeal No.63 of 2006

Appearances:

Appellant: Mr. Ronald Marks for the Appellant.
Respondent: Mrs. Sandra Robertson-Draton, Assistant D.P.P. (Ag.) for the Respondent

Issue: Possession of a firearm – Appeal against conviction and sentence of 23 months imprisonment.

Result: Stood down

Date: 30th January, 2007

Applications

Reliance Press Limited v National Properties Limited
High Court Civil Appeal No.7 of 2005

Appearances:

Appellant: No appearance for Appellant/Respondent
Respondent: Ms. Roxanne Knights for the Respondent/Applicant

Issue: Application to dismiss Appeal.

Result: Leave granted to withdraw application.

Date: 30th January, 2007

Magisterial Civil Appeals

Ennis Morgan v Nemon Wood
Magisterial Civil Appeal No.8 of 2006

Appearances:

Appellant: Mr. Moet Malcolm for the Appellant.
Respondent: Mr. Bertram Stapleton for the Respondent

Issue: Slanderous statements – Appeal against decision of the Learned Magistrate in that the evidence was unreasonable and cannot be supported and further the award of damages of \$6,000.00 was excessive.

Result: Stood down

Date: 31st January, 2007

Magisterial Criminal Appeals Against Conviction

Maurice Clifton v Commissioner of Police
Magisterial Criminal Appeal No.63 of 2006

Appearances:

Appellant: Mr. Ronald Marks for the Appellant
Respondent: Miss Sandra Robertson-Draton Asst. D.P.P. (Ag.) for the Respondent

Issue: Possession of a firearm – Appeal against conviction and sentence of 23 months imprisonment

Result: Sentence vacated. Probation Report ordered. The matter is remitted to the Magistrate's Court for a new sentencing procedure. The Appellant remains on remand until such time.

Reasons: **Gordon J.A.:** The court considered very carefully the plea made by counsel. We took into account the fact that the Appellant was unrepresented at his trial. Nevertheless this is a firearm offence. We feel, and in saying this we are by no means making a general statement, but we feel that this matter will benefit from a probation report and remit the matter to the Magistrate for a new sentencing procedure.

Date: 31st January, 2007

Marlon Friday v Commissioner of Police
Magisterial Criminal Appeal No.9 of 2006

Appearances:

Appellant: Appellant in Person
Respondent: Mrs. Sandra Robertson-Draton Asst. D.P.P. (Ag.) for the Respondent

Issue: Assault – Appeal against conviction and sentence of a fine of \$500.00 in default one month imprisonment. Compensation in the sum of \$400.00 to be paid to the virtual complainant in default one month imprisonment.

Result: Appeal dismissed.

Reason: **Barrow J.A.:** We are very grateful for the submissions by the Appellant's counsel and we are happy that notwithstanding it was not his intention to do so he confirmed that there was available evidence before the Magistrate upon which the Magistrate could have convicted without any reliance upon the testimony or the evidence and lack of testimony from the medical doctor. I am sure that in his studies the Appellant's counsel would have come across situations many times when an Appellate Tribunal reviewing the evidence would say, "We find that although the learned Trial Judge misdirected himself and may have misled the jury, there was an abundance of evidence upon which the jury could have properly convicted and in the circumstances we consider that no miscarriage of justice was done". In this particular case we think that this is classically an instance of the same and we think that there is no merit whatsoever in the appeal.

Date: 31st January, 2007

Magisterial Civil Appeals

Ennis Morgan v Nemonid Woods
Magisterial Civil Appeal No.8 of 2006

Appearances:

Appellant: Mr. Moet Malcolm for the Appellant.
Respondent: Mr. Bertram Stapleton for the Respondent

Issue: Slanderous statements – Appeal against decision of the Learned Magistrate in that the evidence was unreasonable and cannot be supported and further the award of damages of \$6,000.00 was excessive.

Result: Appeal dismissed.

Reason: **Barrow J.A.:** We have considered the submission made by counsel for the Appellant and confess that we were engaged by the question of whether the defamatory words as found by the Magistrate amounted to nothing more than vulgar abuse. It is regrettable that counsel did not put before us the particular passages on Gatley on Libel and Slander but we took the trouble to look at it

ourselves after the sitting ended. We are satisfied on the treatment in Gatley that the question whether it was vulgar abuse or not is preeminently a question of fact for a jury in a jury trial. The question on the other hand for instance whether the words are imputations of crime is a question of law. In this particular instance the Learned Magistrate made a determination of fact that the words were not vulgar abuse. The way in which the Magistrate chose to express it was not as clear as it ought to have been but we think the sense comes out clearly enough. The statement that somebody is a thief is a statement imputing crime to a person and it is a statement which is manifestly capable of being defamatory in the circumstances rather than purely abusive. Abusive statements are given in the text of Gatley, including you are a scoundrel, you are a villain, you are a cruel bastard and that sort of thing. Imputation of a crime I think stands in a different context. It does not inevitably mean that calling a person a thief is an implication of a defamatory nature or would be understood by the reasonable listener as a defamatory statement. We think however that it was open to the Magistrate in the particular circumstances to so regard that particular statement "You bull down them young boys at Richland Park." We think that is a clear statement of a defamatory nature. It was open to the Magistrate to find that it was of a defamatory nature. In the circumstances we uphold the judgment of the Magistrate that there was defamation. As regards the argument that the damages awarded were excessive, it has been brought to our attention that there was another defamation case arising out of the very incident in which the defendant/appellant in this case was the complainant in that case and that the complaining in that case received an award of \$6,000 for words which we broadly gather were of a similar nature. It therefore seems to us that the level of the award was entirely within the purview of the learned Magistrate. Accordingly we find no basis upon which to interfere with the award.

Date: 31st January, 2007

East Caribbean Flour Mills Limited v Ormiston Ken Boyea
High Court Civil Appeal No.7 of 2005

Application

Appearances:

Appellant: Mr. L.A. Douglas Williams for the Appellant
Respondent: Mr. Stanley John for the Respondent.

Issue: Interlocutory appeal against the decision of the Learned Trial Judge in that whether she erred in finding that evidence of tapes and records were hearsay evidence and therefore ruled them inadmissible.

Result: **Rawlins J.A.:** Directions:
1. Solicitors of the Appellant should prepare a record of appeal, which shall include the notes of the proceedings before the Hon. Madam Justice Thom and the documents, which were filed in the High Court.

2. For the purpose of preparing the record solicitors for the parties shall settle the record on or before Monday the 26th day of March 2007.
3. Solicitors for the Appellant should file and serve a record of appeal on or before Friday the 9th day of April 2007.
4. Solicitors for the parties shall refile their skeleton arguments and therein insert references to the record of appeal where necessary on or before Monday the 23rd day of April 2007.
5. The appeal shall be set down for hearing during the next sitting of this court in the State of Saint Vincent and the Grenadines in May 2007.