

Court of Appeal Special Sitting

Date Friday March 6th 2009

Coram: Hon. Mr. Hugh Rawlins, Chief Justice
Hon. Ms. Ola Mae Edwards, Justice of Appeal
Hon. Mrs. Janice George-Creque, Justice of Appeal

**SAINT KITTS
AND NEVIS**

JUDGMENT

Case Name: Travis Duporte v The Director of Public Prosecutions
[Crim. App. No. 17 of 2006]

Appearances:

Appellant: Mr. Al Elliott holding papers for Dr. Henry Brown

Respondent: Miss Diana Thomas holding papers for the Director for Public Prosecutions

Issues: Criminal Appeal- Murder – Appeal against conviction – whether unsafe of unsatisfactory – Identification – no identification parade held – whether admission of identification evidence unfair – whether direction to jury sufficient – Evidence – failure to give direction on weakness and inconsistencies in the prosecution case – whether directions were sufficient on circumstantial evidence – Appeal against sentence – death penalty – whether sentencing procedure was adopted upon a conviction of murder

Result: Held, dismissing the appeal against conviction and affirming it and quashing the sentence of death and substituting instead, a sentence of life imprisonment.

Reason:

1. If an eye-witness of a criminal incident makes plain to the police that he cannot identify the culprit, it will very probably be futile to invite that witness to attend an identification parade. If an eye-witness may be able to identify clothing worn by a culprit, but not the culprit himself, it will probably be futile to mount an identification parade rather than simply inviting the witness to identify the clothing. If a case is one of pure

recognition of someone well-known to the eye-witness, it may again be futile to hold an identification parade. **R v Forbes** [2001] 1 A.C. 473 applied.

2. It is unnecessary for a judge to scrutinize every piece of prosecution evidence especially where the evidence is not only based on visual identification but also, direct and circumstantial evidence pointing to the guilt of the appellant.

Malcolm Maduro v The Queen HCRAP 2007/004 – Judgment delivered on 19 December 2008 followed.

3. Where there is not only identification evidence but both direct and circumstantial evidence pointing to the guilt of the accused, detailed scrutiny of each piece of prosecution evidence is not required. It must be a matter for the Judge to determine in the exercise of his discretion what evidence required detailed scrutiny and what merely merits a passing reference. It will normally be sufficient if the Judge draws the attention of the jury to material discrepancies and weaknesses going to the root of the prosecution case.

Byers (Everette) v R (1996) 49 WIR 83, P.C. followed.

4. In a case where a man's life is at stake, the Court must conform to the strictures of the law, the sentence of death pronounced upon the appellant was in contravention of the procedural guide laid down by the Court of Appeal.

Mitcham et al v The Director of Public Prosecutions Criminal Appeals Nos. 10, 11 and 12 of 2002 – St. Christopher and Nevis – Judgment delivered on 3 November 2003 followed.

SAINT LUCIA

HIGH COURT CIVIL APPEALS

Case Name:

**The Royal Bank of Scotland trading as Natwest v Caribbean Destination Management Services Limited
[Civ. App. No 10 of 2008]**

Appearances:

Appellant: Mrs. Candice Cadasse-Polius
Respondent: Mr. Mark Maragh
Miss Diana Thomas for Windward Enterprises Limited

Issues: Whether this court has jurisdiction

Result: Judgment is reserved for later in the day

Reason:

Coram: Hon. Mrs. Janice George-Creque, Justice of Appeal
Hon. Mrs. Rita Joseph-Olivetti, Justice of Appeal
Hon. Mr. Michael Gordon, QC, Justice of Appeal (Ag)

Case Name: Dorina Joseph et al v Nora St. Louis et al
[Civ. App. No. 25 of 2008]

Appearances:

Appellant: Mrs. Petra Nelson with her Mrs. Lydia Faisal

Respondent: Mr. Andie George

Issues: Prescription

Result: The matter was set down for the week of 23rd March 2009 for the Anguilla sitting held in St. Lucia.

Reason: Submissions in response of the respondent to be filled and served by the appellant no later than 18th March 2009.

Coram: Hon. Mr. Hugh Rawlins, Chief Justice
Hon. Mrs. Janice George-Creque, Justice of Appeal
Hon. Mrs. Rita Joseph-Olivetti, Justice of Appeal, (Ag)

Case Name: Richard Frederick et al v The Comptroller of Customs et al
[Civ. App. No. 37 of 2008]

Appearances:

Appellant: Mrs. Petra Nelson with her Mrs. Lydia Faisal and Ms. Carol Gideon

Respondent: Mr. Kenneth Monplaisir QC with him Miss Rene St. Rose

Issue: Whether admission can be with drawn by notice. Whether the judge erred in finding defendant filed in personal capacity could stand as the defence of the Attorney General – Whether relief from sanctions not having been applied for could be granted – Locus (Terrence Lenard)

Result:

1. The decision is reserved to a date to be notified to the parties
2. Solicitors for the parties shall file written submissions on the issue as to what is civil proceeding for the purpose of this appeal within 7 days

Coram: Hon. Mrs. Ola Mae Edwards, Justice of Appeal
Hon. Mrs. Rita Joseph-Olivetti, Justice of Appeal (Ag)
Hon. Mr. Michael Gordon, QC, Justice of Appeal (Ag)

Case Name: Courtesy Taxi Cooperative Society Limited v Lucien Joseph
[Civ. App. No. 43 of 2008]

Appearances:

Appellant: Mrs. Lydia Faisal

Respondent: Mr. Eghan Modeste

Issues:

Result: Judgment reserved

Reason: The appeal is to be determined on the submissions of both counsel

Case Name Royal Bank of Scotland trading as Natwest v Caribbean Destination Management Services Limited et al

[Civ. App. No 10 of 2008]

Appearances:

Appellant: Mrs. Candice Cadasse-Polius
Respondent: Mr. Mark Maragh for Caribbean Destination Management
Miss Dina Thomas for Windward Enterprises Limited

Issues:

Whether the court has jurisdiction

Result:

1. The court has jurisdiction to review the decision of a single judge: Christenbury Eye Centre applied para. 3 of head note.
2. Basic principle applied mutatis mutandis.
3. However the court is of the view that this is not a proper case for exercise of its jurisdiction. Application of 23rd October 2008 is dismissed in its entirety.
4. No order as to costs.

Reason:

1. Do not think that this to be an appropriate case for application of slip rule as there is nothing to indicate genuine mistake.
2. There was no proper application before the court – should have been an appeal not an application to vary – no leave sought or granted.
3. Paragraph 6 of the Order is clearly wrong having regard to the transcript. So clear that that was an error that the court will of its own accord correct order by deleting \$16, 66.67 and substituting instead \$1000.00.

SAINT LUCIA COURT OF APPEAL SPECIAL SITTING

CHAMBERS

Date:

Friday March 6th 2009

Before:

Hon. Mr. Michael Gordon, QC, Justice of Appeal (Ag)

Case Name:

Bryan Stephens v Joanne Rowan et al
[Civ. App. No. 34 of 2008]

Issue:

Application to add a party – application for stay of execution

Appearances:

Appellant: Mr. Alberton Richilieu

Respondent: Mrs. Petra Nelson holding papers for Mr. Dexter Theodore for the 3rd Respondent

Result:

1. The application to join a new respondent in the name of Georges is granted.
2. The matter is deemed to be a priority in respect of preparation of transcript.
3. Record to be prepared, filed and served by the appellant within 14 days of receipt of Notice of readiness of transcript from the registry.
4. Skeleton arguments by the appellant to be filed and served within 21 days of receipt of notice of readiness.
5. Within 14 days of service of the appellant's skeleton arguments the respondents shall file and serve skeleton arguments.
6. The matter to be heard by the full court at its next sitting in St. Lucia.

Reason:

The application was not opposed.