JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 66/95

BEFORE: **THE HON. MR. JUSTICE DOWNER, J.A.**
THE HON. MR. JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE PANTON, J,A,

REGINA V. BRITTAN MADDEN

Mrs. Jacqueline Samuels-Brown for the appellant

Mrs. Vinette Graham-Allen and Miss Marlene Malahoo for the Crown

February 8, 9, 10, 11, 2000 and December 20, 2001.

PANTON, J.A.

On April 24, 1995, the appellant was convicted for breaches of section 210 (1) of the Customs Act in the Resident Magistrate's Court for the Corporate Area presided over by His Honour Mr. O.L. Parkin. The informations and penalties relative to the convictions are as follows:

1. Information number **1744/92** charged the appellant with "knowingly harbouring uncustomed goods to wit **one Honda Accord motor car** serial no. IHGCA562XJA83322". The date of offence is stated as **5th March, 1992**, and the penalty imposed was **$1,326,732.21.**

2. Information number **3068/92** charged him with knowingly harbouring uncustomed goods to wit **one 1991 Honda Accord motor car** registered 9195 AT with chassis number 1HGCB7660MA100712". On this information, he was ordered to pay a penalty of **$5,108,616.** This offence was alleged to have been committed **between July, 1991 and April, 1992.**

3. Information number **7558/92** charged that he was knowingly concerned in dealing with goods, to wit, **one 1988 Cherokee Jeep** chassis no.1JCMT7898JT006521, in a manner to evade the duties thereon". The penalty imposed was **$1,698,052.20.** The offence was allegedly committed on **a date unknown in 1989.**

4 Information number **1135/93** charged that he **on a date unknown in 1993** "was knowingly concerned in dealing with prohibited goods, to wit, **one 1991 Acura Legend motor car** chassis no. JH 4KAH261MC000274, in a manner to evade the prohibition applicable to such goods". He was ordered to pay a penalty of **$3,484,174.50.**

5. Information number **1136/93** charged that he on **a date unknown in 1993** "was knowingly concerned in dealing with goods to wit **one 1990 Nissan Pathfinder**..chassis number JN8HD1778LW22415 in a manner to evade the restrictions applicable to such goods". For this offence, the appellant was ordered to pay a penalty of **$3,083,995.20**.

The motor vehicles were ordered to be confiscated, and in respect of each penalty, there is an alternative of two years imprisonment. The appellant was ordered to pay the sum of $1,326,732.21 (the penalty on information number 1744/92) within two months of the date of the imposition of the penalty, and thereafter to pay the other penalties at a rate of $200,000 per month until the total amounts ordered are liquidated. He was also ordered "to provide four sureties who must be supported by a guarantee from a reputable bank". Having given verbal notice of appeal, the payment of the penalties was "suspended pending due prosecution and result of the appeal", and the appellant was allowed bail in the sum of "$5,000,000 with ... three sureties, with additional surety for $1,000,000".

The trial commenced on February 11, 1993, and lasted for more than two years. The hearing in this Court lasted four days ending on February 11, 2000. In his undated "findings of facts" which is stamped as having reached this Court more than four years after the trial of the informations, the learned Resident Magistrate found as follows:

> 1. the appellant and one Marjorie Rowe met and discussed the importation of two motor vehicles, namely, an Accura Legend and a Pathfinder, for Miss Rowe's brother;
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> 2. the appellant subsequently advised Miss Rowe of the arrival of the motor vehicles within the jurisdiction;
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> 3. the two motor vehicles were placed at locations indicated by Miss Rowe;
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> 4. the appellant licensed the Accura Legend and the Pathfinder in the names of Miss Marjorie Rowe and her sister Winsome Rowe respectively;
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> 5. the appellant sold a Honda Accord to David Grey, then to Edwin Noble who later sold it to Winston Zaidie;
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> 6. the appellant sold a Honda Accord to one Reita Taylor; and
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> 7. the appellant arranged for a Cherokee jeep to be imported and delivered at the premises of one Leighton DaCosta.

The appellant filed four grounds and four supplementary grounds of appeal. Three of these eight grounds may conveniently be taken together. They are the original grounds 3 and 4, and the supplementary ground 1.

Ground of appeal 3 reads:

> "The trial of the appellant is a nullity".

Supplementary ground of appeal 1 expands ground of appeal 3 thus:

The whole trial was null and void for unconstitutionality for the following reasons:-

(a) The trial was not conducted in its entirety by an independent and impartial court established by law; in that the discretion regarding sentence and its determination were not exercised/made by the learned Resident Magistrate who heard the evidence in the case.

(b) A third-party, not the court, determined the sentence in the case of your appellant.

(c) The said third-party heard neither evidence nor submissions and the said sentence was not and could not have based (sic) on any evidence adduced in the case. In any event the evidence adduced as to value was inadmissible. The said third party was the virtual prosecutor in the case.

(d) The sentence is an integral part of the whole trial and cannot be determined by secret process external to the trial by a person or persons not part of the tribunal and which the appellant is not permitted to participate in.

Wherefore it is submitted that there was a breach of section 20 (1)(3)(5) (sic) of the Constitution as the Commissioner of Customs was/is not an "independent and impartial Court established by the law".

And further that there were breaches of the rules of natural justice to wit "(a) audi alteram partem, (b) nemo potest index in rem suam esse".

Ground 4 reads:

"The sentence imposed (by the learned Resident Magistrate) is unlawful in that it is not the result of the exercise of a judicial discretion."

The abovementioned grounds, in summary, challenge the constitutionality and validity of the trial by virtue of the fact that the sentencing process had an input from the Commissioner of Customs.

At the time of the commission of the offences alleged in the informations, and at the time of sentencing, the Customs Act provided that for every breach of section 210 the offender incurred a penalty of two hundred dollars, or treble the value of the goods, at the election of the Commissioner of Customs. By Act 35 of 1997, the situation has been changed in that the penalty is now "not less than treble the import duties payable on the goods nor more than treble the value of the goods"; in addition, the Commissioner no longer has a role to play.

In **R. v. Richard King and Leo Cox** 29 J.L.R. 334, the validity of the trial process was similarly challenged by Mrs. Samuels-Brown. The challenge failed then, and we see no good reason why it should succeed now. In the instant case, as in **King and Cox,** the appellant complained that the discretion of the Resident Magistrate was exercised by the Commissioner of Customs. We wish to point out, as was done in **King and Cox,** that section 217 of the Customs Act "clearly gives a discretion to the Resident Magistrate in cases such as this", and in the instant case there is nothing to indicate that the Resident Magistrate did not exercise that discretion. Section 217 reads as follows:

> "Where a penalty is prescribed for the commission of an offence under this Act or any regulations made hereunder such offence shall be punishable by a penalty not exceeding the penalty so prescribed; provided that where by reason of the commission of any offence the payment of any customs duty has or might have been evaded the penalty imposed shall, unless the court for special reasons thinks fit to order otherwise, and without prejudice to the power of the court to impose a greater penalty, be not less than treble the amount of the duty payable."

The position therefore is that the Resident Magistrate would have been aware of his powers under this section and, having considered that there were no special reasons to order otherwise, proceeded to impose a penalty in keeping with section 210. To that end, he had before him evidence from Milton Moore, a customs officer whose duties included the valuation of motor vehicles, and the calculation of duties thereon. Exhibit 32, which was received into evidence without objection, gives details of the CIF value of each vehicle, and the computation of the duties payable. At the trial, the attorney-at-law who had conduct of the defence was given no less than ten weeks within which to study this exhibit, and on resumption he cross-examined the witness appropriately.

According to the witness, he physically examined each vehicle and checked and compared his findings with the corresponding entry in the North American Dealers Association "(NADA)" assessment in order to ascertain the value. NADA he says is a monthly publication. The duties, he said, are based on the cubic capacity rating of the vehicle. These duties are obtained from the customs tariff. Learned attorney-at-law for the appellant submitted that the valuation was not in accordance with our law. This submission was influenced by the fact that Mr. Moore used the NADA assessment to assist him in arriving at a valuation. We do not see why the use of the NADA assessment should be regarded as being contrary to our law. Such use can do no more than provide valuable assistance in arriving at a true value. It was also said that there had been no finding that the goods were dutiable. In this regard, we are of the view that the absence of a specific finding is not fatal when it is considered that there was evidence in the form of exhibits 27 and 28, The Jamaica Gazette Supplements, that, firstly, a licence was required to import a motor vehicle (see exhibit 27), and, secondly, a set rate of duty was

prescribed for the importation of such items (see exhibit 28). In addition, the Resident Magistrate found that in relation to the motor car that was sold to David Grey and later to Edwin Noble, the appellant "knew or ought to have known that duty was not paid". Inferentially, that is a finding that the goods were dutiable and that such duties had not been paid. To put the matter beyond doubt however, and to demonstrate that there is no merit whatsoever in the assertion that there is a flaw in this regard in the prosecution's case and indeed in the findings as recorded by the learned Resident Magistrate, one need only to consider the provisions of section 250 of the Customs Act. It reads:

> "In any prosecution under the customs laws, the proof that the proper duties have been paid in respect of any goods, or that the same have been lawfully imported or exported, or lawfully put into or out of any aircraft or ship, or lawfully transferred from one aircraft or ship to another aircraft or ship shall lie on the defendant".

As far as the constitutionality of the sentencing process is concerned, it was submitted on behalf of the appellant that there was a breach of section 20 of the Constitution. The portions of the section which have formed the basis for this submission are as follows:

> " 20 (1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.
>
> (2) ...
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> (3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(4)...

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

However, section 25 of the Constitution reads:

"25. (1) Subject to the provisions of subsection(4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may take such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of any of the provisions of the said sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal.

(4) Parliament may make provision, or may authorise the making of provision, with respect to the practice and

> procedure of any court for the purposes of this section and may confer upon that court such powers, or may authorise the conferment thereon of such powers, in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section."

In **R.v. Noel Samuda** (SCCA No. 134/96 (unreported) delivered December 18, 1998), three of five Judges of the Full Court of the Court of Appeal decided that this Court had no power to entertain a challenge to the constitutionality of the sentence imposed in that case, as the Supreme Court's original jurisdiction had not been invoked. Gordon, J.A. at page 68 said that his view was fortified by the decision of the Privy Council in **Trevor Walker and Lawson Richards v. The Queen** (1993) 43 WIR 363. This position coincided with that taken by Bingham, J.A. at pages 82 and 83. Harrison, J.A., although agreeing with Gordon, J.A. and Bingham, J.A., that the Court had no jurisdiction, came to that conclusion by a slightly different route. A breach of section 17(1) of the Constitution was being alleged. He said that **Pratt and Morgan** had held that a sentence of a description which it was lawful to impose prior to independence could not be classified as unconstitutional in contravention of section 17(1). "Additionally", he said, at p.102 "if such a right is sought to be enforced under section 25, presumably in civil proceedings, original jurisdiction would reside only in the Supreme Court".

So, by virtue of the interpretation given by the majority in the **Samuda** case, this Court appears to have fettered itself so far as the entertainment of an appeal in the matter now complained of is concerned. That position may have to be reconsidered in an appropriate case. The instant matter before us is not one such, as there is no factual base

for the complaint- in that (a) it has already been demonstrated that there was no secret administrative process involving the Commissioner of Customs, (b) the Resident Magistrate was independent and impartial in the exercise of the powers and the discretion given to him by the legislation, (c) the proceedings were conducted in the full glare of publicity in the Corporate Area criminal court, and (d) the general burden of proof was on the prosecution.

The trial of the several informations together

Supplementary ground of appeal 2 reads:

> "The trial was a nullity in that the learned Resident Magistrate acted without jurisdiction and/or made a fundamental error of procedural law in proceeding to try the appellant on the several informations simultaneously".

The appellant's main contention in this regard was that there was no common factor, apart from the appellant himself, to warrant the joint trial of the several informations. Mrs. Samuels-Brown submitted that at common law there has always been a rule against a single trial of multiple informations; and that there is no statutory provision to sanction it. Seeing that there is no authority for such a trial, she contended, the trial was a nullity. There was no consent on the part of the appellant, and he was prejudiced by the joint trial, she said.

Mrs. Graham-Allen submitted that there was no statutory provision which prevented the joint trial; nor was the procedure contrary to common law or to practice. To succeed, the appellant, she said, had to show that the Criminal Justice (Administration) Act did not apply; also that the common law did not allow it.

The jurisdictional competence of the Resident Magistrate was similarly in issue in the case **R. v. Richard King and Leo Cox** (supra). The very same arguments were

advanced then by Mrs. Samuels-Brown. There, the authorities were reviewed. Forte, J.A., (as he then was) referred at page 337 (para I) to the fact that "the whole question was analytically considered by the House of Lords in the case of **In re Clayton** [1983] 2 A.C.473". He said:

> "... in our view, the dicta of Lord Roskill therein (referring to **In re Clayton**) is not only in keeping with our own opinions, but should be considered as settling all the controversy that surrounded this question not only in the English jurisdiction, but in our own".

Forte, J.A. continued by quoting the words of Lord Roskill and expressed the view that they were "appropriate in our own situation". Lord Roskill at page 491 had said:

> "Common sense today dictates that in the interests of justice as a whole magistrates should have a discretion in what manner they deal with these problems....Today I see no compelling reason why your Lordships should not say that the practice in magistrates' courts in these matters would henceforth be analogous to the practice prescribed in **R. v. Assim** (1966) 2 Q.B.249 in relation to trials on indictment. **Where a defendant is charged on several informations and the facts are connected, for example motoring offences or several charges of shoplifting, I can see no reason why those informations should not, if the justices think fit, be heard together...."**

Lord Roskill continued:

> "Of course, when this question arises, as from time to time it will arise, justices will be well advised to inquire both of the prosecution and of the defence whether either side has any objection to all the informations being heard together. If consent is forthcoming on both sides there is no problem. If such consent is not forthcoming, the justices should then consider the rival submissions and, under any necessary advice from their clerk, rule as they think right in the overall interests of justice".

In continuing the judgment in the **King and Cox** case, Forte, J.A.concluded (at page 338 E) that at common law the important considerations in determining whether informations can be tried together are: (i) are the facts closely connected, and (ii) does the overall interests of justice require that they be tried together.

The common law position is relevant in the instant situation as the statute does not seem to cover the facts presented by the prosecution.

The relevant statute is the Criminal Justice (Administration) Act. Section 22 thereof makes provision for "joint trial in summary cases" as indicated by the marginal note. The section reads:

> "22.- (1) Where, in relation to offences triable summarily--
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> (a) persons are accused of similar offences committed in the course of the same transaction; or
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> (b) persons are accused of an offence and persons are accused of aiding and abetting the commission of such offence, or of an attempt to commit such offence; or
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> (c) persons are accused of different offences committed in the course of the same transaction, or arising out of the same, or closely connected, facts, they may be tried at the same time unless the Court is of the opinion that they, or any one of them, are likely to be prejudiced or embarrassed in their, or his defence by reason of such joint trial.
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> (2) Where, in relation to offences triable summarily--
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> (a) a person is charged with two or more offences arising out of acts so connected as to form the same transaction; or
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> (b) a single act or series of acts is of such a nature that it is doubtful which of several offences the

> facts which can be proved will constitute, and a person is charged with each or any of such offences, such charges may be tried at the same time unless the Court is of the opinion that such person is likely to be prejudiced or embarrassed in his defence by reason of such joinder."

The Crown submitted that section 22 (2)(a) was applicable to the instant case. The appellant's attorney-at-law, Mrs. Jacqueline Samuels-Brown, conceded that "it could be said" that "informations 1135 and 1136/93 are the only ones which... arose together". We are of the view that the concession is justified. We are also of the view that by no stretch of the imagination could it be said that the acts giving rise to the other offences were "so connected as to form the same transaction". So, the Criminal Justice (Administration) Act does not apply to the situation. However, there being no specific prohibition by the Criminal Justice (Administration) Act, or indeed by any other Act, we are of the view that these informations may be tried together at common law.

We note that the appellant was represented by experienced counsel at the trial. No objection is recorded as having been raised to the joint trial of the offences. It is reasonable to assume, therefore, that the trial proceeded with the full consent of the appellant and his counsel. That was clearly the sensible approach for them to have taken. Apart from the two informations that Mrs. Samuels-Brown conceded could be said to have arisen together, there were three other informations. We fail to see how it would have been helpful to the appellant or the administration of justice to have had three separate trials of these three informations where all that was alleged in each was that the appellant imported a motor vehicle without the necessary permit or in breach of the restrictions placed on the importation. We see nothing to indicate that the appellant was

prejudiced in any way by this joint trial of the informations. Accordingly, this ground of appeal fails.

Grounds 1 and 2 and Supplementary ground 4 may be taken together. They are as follows:

> **Ground 1**- The learned Resident Magistrate erred in law in failing to uphold the submission of no case on behalf of the appellant.
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> **Ground 2**- The verdict of the learned Resident Magistrate is unreasonable and/or cannot be supported having regard to the totality of the evidence adduced by the prosecution in that:
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> (a) the prosecution failed to establish sufficient evidence to prove the legal ingredients of the charge of knowingly harbouring uncustomed goods contrary to section 210(1) of the Customs Act (Information 1744 of 1992 and 3068 of 1992)
>
> (b) the prosecution failed to establish sufficient evidence to prove the charges of being knowingly concerned in dealing with goods contrary to section 210(1) of the Customs Act (Informations 1135 of 1993, 1136 of 1993 and 7558 of 1993).
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> **Supplementary ground 4**- The learned Resident Magistrate erred in coming to his verdicts of guilty on the informations as he failed to make findings as to facts which were necessary to the proof of the charges.

These grounds of appeal complain of a lack of a factual base so far as evidence is concerned, as well as a lack of findings of facts to support the verdicts returned by the learned Resident Magistrate.

THE FACTS presented by the prosecution were as follows:

Re: Information number 1744/92: One Mrs. Reitta Taylor bought the subject matter of this information, a Honda Accord, for $110,000 from the appellant whom she had not known before but to whom she had been introduced by a third party. The transaction took place about October, 1989. The documents given to her by the appellant in relation to the car were stolen when the car was broken into in October, 1990. The car was seized by the police in March, 1992.

Re: Information number 3068/92: The 1991 Honda Accord motor car which was the subject matter of this charge was sold by the appellant to one Edwin Noble. Exhibit 8 is an agreement between the appellant and Noble in respect of the car. It reads:

> "It is hereby agreed between Mr. Britton Madden and Mr. Edwin Noble that Mr. Madden owner of a 1991 Honda Accord chassis # 1HGCB7660MA100712 will accept from Mr. Noble a cheque for $250,000. Mr. Noble will in turn hold the Accord as security for a period of maximum 10 working days, wherein if the motor car is not sold by then Mr. Noble will be refunded the sum of $250,000 or pay over the balance of full purchase price of $550,000."

It was signed by both parties and bears the date 16/10/91. At the time, Mr. Noble was managing director of Executive Auto Brokers Ltd. of 44 Molynes Road, Kingston 10. The agreement was done on stationery bearing the letter head of the company. The original of this agreement was given to the appellant while Mr. Noble kept a copy. According to Mr. Noble, the appellant gave him the documents for the car and they all appeared genuine. The documents included the registration certificate, certificate of fitness and title. On October 17, 1991, the car was transferred to Mr. Noble. He in turn sold it to Dino Michelle Limited during the said month of October, 1991. In April, 1992, the police seized this car.

Prior to the transaction with Mr. Noble, the appellant, according to the prosecution, had negotiated a sale of the said vehicle in July, 1991, to one David Gray who in turn had transferred it to one Howard Dunkley. The "clearance documents" for the car were not forthcoming following a request of the appellant by Mr. Gray. Accordingly, both transactions involving Messrs Gray and Dunkley fell through.

Re: Information number 7558/92-Leighton DaCosta, a businessman, has a brother named Lincoln DaCosta who resides in the United States of America. Lincoln is also known as George. The appellant and Leighton DaCosta had a conversation in June 1989, "about jeep coming down from United States of America". The appellant, according to Leighton DaCosta, told him that he (the appellant) "was the person to bring down the vehicle". Leighton DaCosta was to pay the appellant $60,000 for the importation. According to the prosecution, the appellant, Leighton DaCosta and George DaCosta all met in Jamaica. At that meeting, Leighton handed $60,000 cash to his brother George who in turn handed the money to the appellant. The latter gave George a receipt . A "couple days later" a Cherokee jeep was delivered to George by three men, including the appellant. Leighton, in the presence of the appellant, gave one of the men the registration plates for a pick-up that he owned but which had been parked in his yard, it having been damaged. These plates were eventually placed on the Cherokee jeep. Two days later, the various documents for this vehicle were delivered to Leighton DaCosta, and the registration plates returned. George drove the jeep for the remainder of his stay in Jamaica. The jeep was left in the custody of Leighton as it had really been sent by his brother George to him. On the 5th September, 1992, the police seized this vehicle from Leighton DaCosta who turned over all the relevant documents to them.

In respect of **informations numbers 1135 and 1136/93**, one Marjorie Rowe met the appellant, whom she did not previously know, in a plaza on Molynes Road, St. Andrew, in May 1991. The meeting had been arranged after the appellant had telephoned her. She had earlier had a telephone conversation with her brother Donovan Rowe who was living in the United States of America. At the meeting in the plaza, the appellant told her that he was "handling" the importation of two motor vehicles for her brother. The vehicles, he said, were in Jamaica and he wished to know in whose names they should be registered. She inquired of him why he needed this information as the vehicles should be licensed in the names in which they had been shipped, and then transferred to her. Nevertheless, she proceeded to give the appellant her own name as well as that of her sister Winsome Rowe as the persons in whose names the vehicles should be registered. She also gave him their ages and addresses.

On a later date, the appellant telephoned her to inquire as to the address for the delivery of the motor vehicles. She advised him that he should deliver them to her mother's residence at 47 Upper Mark Way, St. Andrew. Two days later, the vehicles were delivered at about 8.00 p.m.

Marjorie Rowe requested of the appellant the registration certificates and plates, as well as the certificates of fitness in respect of the vehicles. At his request, she provided him with the registration plates from a motor car that she owned but which was undergoing repairs at the time. These plates were placed, apparently by the appellant, on the Acura Legend and the registration certificate and certificate of fitness were duly presented to her by the appellant. Both documents (Exhibits 1 and 2 respectively) indicate that they were issued on June 4, 1991. In the meantime, Winsome Rowe received the

documents in respect of the Pathfinder which was registered in her name. Marjorie Rowe said that she paid no customs duties in respect of either motor vehicle. There is also no evidence that the appellant paid any duties.

In the case of the Acura Legend, the police seized it in or about October, 1991. As far as the Pathfinder is concerned, Winsome Rowe sold it to one Fitzroy Black between December 1991 and January, 1992. The police seized it on March 5, 1992.

In respect of all the charges, with the exception of 1135/93 and 1136/93, there was evidence of the appellant receiving payment for the motor vehicles and /or a transfer from him to the purchasers. In the case of 1135 and 1136/93, the evidence points unmistakably to direct importation by him and the taking of the motor vehicles through the entire registration process. In all the cases, there is no evidence of any duty having been paid by the appellant in respect of the motor vehicles which were all either registered in his name or were imported by him. In all cases, he dealt with the goods in some way. If there is any flaw in the evidence presented, it is in respect of information number 1744/92 where he is charged with harbouring the goods (that is, the vehicle) in March, 1992 (the time of the seizure by the police) whereas the evidence indicates that he had sold it to Miss Taylor in 1989. The appropriate action to be taken by this Court in such a situation is not to dismiss the charge but rather to amend the information to coincide with the evidence, if it is thought necessary.

As indicated earlier, section 250 of the Customs Act places a burden on someone in the position of the appellant to show that the proper duties have been paid, or that the goods have been lawfully imported into the country. The learned Resident Magistrate was therefore quite correct in ruling that there was a case to answer. Further, the

appellant denied having anything whatsoever to do with the vehicles involved. The closest that he placed himself in relation to any of these transactions was being present when the Cherokee jeep was handed over by George DaCosta to his brother Lincoln DaCosta. The learned Resident Magistrate had two stories before him. It was really a question of whom to believe. Were the witnesses for the prosecution truthful or not? In returning verdicts of guilty, the learned magistrate clearly stated that he accepted the evidence presented by the prosecution, and did not believe the appellant. The burden placed by section 250 of the Customs Act on the appellant had not been addressed by the appellant. It is mystifying that it could be said that there was no case to answer and that there had been no findings of fact which related to proof of the charges and the guilt of the appellant.

Supplementary ground 3- "the learned Resident Magistrate in coming to his decision failed to take into account the fact that the witness David Gray was of bad character and that the witnesses Marjorie Rowe and Leighton DaCosta were persons with an interest to serve. Accordingly the learned Resident Magistrate failed to demonstrate in his findings of fact that in accepting their evidence he acted with the requisite cautions in mind".

This ground of appeal is based on the requirement that a trial judge is to warn himself as to the need for caution in acting on the evidence of certain witnesses, for example accomplices. In **Regina v. Fitzroy Craigie and Desmond Harvey** (RMCA No.9/93- delivered on July 29, 1993), this Court reminded trial judges that a failure to give such a warning in cases of such a nature will result in the conviction being quashed.

So far as the witness David Gray is concerned, there is evidence that he was convicted of a breach of the Dangerous Drugs Act during the currency of the trial of the appellant on these charges. If his evidence was of any real significance, then its assessment by the learned Resident Magistrate would have been important. As it has turned out he was supposed to have purchased a vehicle from the appellant; however, he received no documents in respect of that vehicle. The most that can be said of that transaction is that it was an aborted "sale". In the circumstances, there was no need for the Resident Magistrate to regard the witness as being in any special category and so requiring a warning.

The evidence given by Marjorie Rowe indicated meetings with the appellant at the appellant's request. She was aware that her brother was sending the vehicles from the United States of America, and as far as she was concerned, the appellant was responsible for the clearance, licensing and insuring of these vehicles. There is nothing on the record to suggest that her position was one of involvement in a scheme to defeat the purposes of the Customs Act and the Regulations made thereunder. Accordingly, she cannot be placed in the category of having given special evidence which required a warning of itself by the tribunal of fact. The same goes for the witness Leighton DaCosta whose brother, like Donovan Rowe (Marjorie Rowe's brother), lived in the United States of America and was in contact with the appellant in relation to the importation of the relevant motor vehicle. Both Marjorie Rowe and Leighton DaCosta were merely recipients of the kindness and generosity of relatives at a time when many Jamaicans depended on relatives or friends resident overseas for the "luxury" of being able to drive a motor vehicle. It was a period characterized by import licensing and shortage of foreign

exchange. The evidence, far from indicating any connivance or complicity in anything illegal on their part, suggests that they were innocent recipients who had no role to play in relation to the importation of the vehicles. The warning of which judges were reminded in **Craigie and Harvey** (supra) was therefore inappropriate and inapplicable.

The appellant having failed in relation to all the grounds of appeal advanced, the appeal is hereby dismissed and the convictions and sentences are affirmed.