

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No. 122/77

BEFORE: The Hon. Mr. Justice Leacroft Robinson,
President
The Hon. Mr. Justice Henry, J.A.
The Hon. Mr. Justice Rowe, J.A. (Ag.)

R. v. NORMA KEENE & VINCENT DEVONISH

B. Macaulay, Q.C., and E. Witter for appellant Norma Keene.

Appellant Devonish did not appear and was not represented.

F.A. Smith for the Crown.

January 25, 26 & 31, 1978

PRESIDENT:

The evidence in this case indicated fraudulent conduct on the part of a number of people including the appellant. The learned resident magistrate found, and there was evidence to support his findings, that some person or persons in the licensing section of the Trade Administrator's Department was or were party or parties to the fraud of using a quota which was not intended for that purpose to grant licences for, and thus permitting the importation of, banned and restricted goods, which goods they were under a duty to prevent from entering the Island, except such restricted goods as were properly authorised by the Trade Administrator or his Deputy and that the appellant Norma Keene wrongfully used her office as a clearance officer in the Trade Administrator's Department to effect clearance of those goods without getting the prior approval of the Trade Administrator or his Deputy, where appropriate, although she well knew that prior

approval was a prerequisite in the case of restricted goods and that she was acting contrary to the established policy and practice of the Department, and "contrary to every rule, practice and regulation of the Department", of which she was fully aware.

That the appellant Norma Keene was involved in rascally conduct is not in doubt but it has been argued that what she did, having regard to the precise wording of the indictment, cannot properly be said to be part of a conspiracy to allow banned and restricted goods into the Island because her role was not required to be played and could not be played until after the goods were already in the Island, in other words that the importation was complete before she came into the picture.

As against this, it is submitted that the charge is conspiring not merely unlawfully to import goods into the Island, but to secure the importation of such goods into the Island and that to secure such importation involves more than merely getting the goods into the Island but involves as well their clearance through customs and their receipt into the hands of the importer.

To evaluate the merits of the respective contentions necessitates a proper appreciation of the meaning of the word "secure".

According to the Concise Oxford Dictionary "secure" means, inter alia, "untroubled by danger or apprehension; safe against attack, impregnable; reliable; certain not to fail or give way; guarantee, make safe against loss".

It is in my view inconceivable that persons would conspire to bring about the unlawful importation of goods into the Island to the tune of \$137,536.00, without at the same time including plans to ensure that they get possession of the goods so imported, as otherwise the whole object of the importation would be frustrated. The importation would be troubled by the

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danger of apprehension of the goods on their arrival in the Island. The importation would not be safe against attack. It would not be impregnable or reliable.

In so far as the importer was concerned, the importation would not have been made safe against loss.

I, therefore, hold that to secure the importation of goods into the Island involves ensuring also their clearance into the hands of the importer and so holding I find that the learned resident magistrate was justified in finding, as he did, that the acts of Mrs. Keene were "her part in the general conspiracy to allow into the Island banned and restricted goods " and that so finding he was entitled to find her guilty of the offence as charged, namely, that she and others conspired together to defraud the Government of Jamaica by using false documents and fraudulent devices to secure the unlawful importation into the Island of restricted goods.

The appeal against conviction is, therefore, dismissed.

There was also an appeal against sentence, on which we heard no argument. I don't know if that appeal is being pursued.

(Mr. Witter argues re sentence).

ROBINSON, P.:

As regards the appeal against sentence, it is said that in all the circumstances of the case the sentence passed was "manifestly excessive". In normal circumstances I would not say that it is. But when it is considered that the appellant had hitherto borne an unblemished record, had previously been an excellent worker and will, doubtless, have lost her job as a civil servant as a result of this conviction, and bearing in mind that she is the mother of two young children, ages nine and six years, respectively, and that she does not seem, on the evidence before us, to have benefited financially from the conviction.

amount of compassion would not be amiss.

The appeal against sentence is, therefore, allowed.

I may say this, that we regret that the maximum, by way of a fine, is a mere \$100.00. We can't go beyond it. We will substitute for the sentence of imprisonment a fine of \$100.00. In default of payment, she will have to go to prison for three months at hard labour.

(Mr. Witter argues re payment of fine).

ROBINSON, P.:

Very well, she may be allowed to continue on her bail until tomorrow by which time I take it the fine will be paid.