IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 24, 25, 26/95

COR: THE HON MR JUSTICE CAREY J A
THE HON MR JUSTICE WOLFE J A
THE HON MR JUSTICE HARRISON, J.A (AG.)

DANHAI WILLIAMS)
DESMOND CARTY)
ANN McFARLANE) REGINA
LOY D'OYEN)

Ian Ramsay & Mrs. Jacqueline Samuels-Brown for Williams

Terrence Ballantyne & Miss Christine Hudson for Carty

Walter Scott & Leighton Pusey for McFarlane

Mrs. Valerie Neita-Robertson for D'Oyen

Franks Phipps, Q.C., Dr. Lloyd Barnett & Miss Kathryn Phipps for Crown

15th, 16th, 22nd, 23rd, 24th, 25th, 26th April,
1st, 2nd, 3rd, 8th May & 25th June, 1996

HARRISON, J A (AG.)

The appellants who were jointly tried were convicted on the 23rd day of September, 1994 in the Resident Magistrate's Court for the parish of Kingston, at Sutton Street before His Honour Mr. D. O. McIntosh, one of the Resident Magistrates, for the parish, on individual informations for the offences of being knowingly concerned

in the fraudulent evasion of import duties of customs on a motor vehicle, a Toyota Camry motor car, 4TISV21E9MU350950, contrary to section 210(1) of the Customs Act. The appellants Williams, McFarlane and Carty, at the election of the Commissioner of Customs, were each ordered to pay a penalty of $861,056.85 and in default of payment to be imprisoned for a period of two years. Each appealed against conviction and sentence. The appellant D'Oyen however, was admonished and discharged, he appealed against conviction only.

The facts of this case are as follows:

On the 25th day of April 1991, the vessel Kirk Challenger docked at the port of Kingston, with cargo, including a 1991 Toyota Camry motor car "ID#471SV21E9MU350950 consigned to one "Ewan Lee (Ewen) Kings House Rd". The vessel's manifest, (exhibit A1), showed that it related to import licence #"063264" and the bill of lading reference was "CHA078 110413". This bill of lading, (exhibit A2), dated 22. 4. 91, shows the consignee as "Ewan Lee (Ewen) Kings House Rd", the import licence "#063264", and the "description of packages etc," as "I car 1991 Toyota Camry ID 4T1SV21E9MU350950".

On the 16th day of November, 1990, an import licence No. 063264, (exhibit A11) had been granted to one "Ewan Lee of Christina P.O." to import, inter alia, "one 1990 Toyota Camry." This licence was signed by "Ann McFarlane for Trade Administrator"; she is one of the appellants. This licence was delivered at the request of the applicant Ewan Lee, to one Howard McDonald, on the 19th day of November, 1990. On the 27th day of February, 1991 Ewan Lee, by letter, requested, "an extension to pay the Bank of Jamaica the appropriate Foreign Exchange to facilitate importation ..", because, according to the writer, "... I also purchased a used Toyota Camry for Five Thousand Dollars." By letter dated the 28th day of April 1991 from Ann

McFarlane to Ewan Lee of Christiana P.O., regarding, " import licence No. 063264... to import...one (1) Toyota Camry m/car," he was apprised of the amount he should pay to the Bank of Jamaica, and advised further by this notation:

> "Additional F/E ... to BOJ is required if US$ value on arrival exceeds value on import licence."

The date on this letter was amended by the defendant McFarlane to "April 10, 1991." A further letter dated the 9th day of September, 1991, was sent to "Ewan Lee," in respect of "one (1) 1990 Toyota Camry motor car" for which US$8,971 should be paid. A letter dated the 19th day of September 1991 from the Bank of Jamaica shows that this latter amount was paid by Ewan Lee on the same date.

On the 8th day of October 1991, an application was made to amend the ship's manifest, (Exhibit A1). This application therefor (exhibit A3) sought an amendment of the description of the "1991 Toyota Camry, ID#4TISV21E9MU350950" that arrived on the Kirk Challenger on the 25th day of April 1991, to read "1988 Toyota Camry." The amendment was granted and signed by a senior customs officer a Mrs. McGregor, "1056," on the 8th day of October, 1991.

Paul Morris, customs clerk, a prosecution witness was handed, the form of amendment, (exhibit A3), and the bill of lading, (exhibit A2), by the defendant Williams who requested him to prepare a bill of sight in respect of the said motor car. Morris prepared the bill of sight, (exhibit A4), showing that the ship Kirk Challenger, on the 25th day of April 1991, by bill of lading CHAO78118413 brought cargo, namely:

> "One (1) 1988 Toyota Camry, 4 doors deluxe car #4T1SV21E9MU350950 ... mileage 28,868 etc ..."

and consigned to Ewan Lee (Ewen). On this bill of sight, (exhibit A4), Morris admitted:

> "I have written 1988 vehicle. That is not correct. What is recorded on Bill of Sight is not the correct mileage I saw."

This document, (exhibit A4), is signed on its face and on the reverse side by "Mrs. McGregor, Senior Surveyor, 1056. Western Terminals LH, 8th October 1991", she was Morris' supervisor. This said notation and signature on the back is beneath the phrase "For Official use only. Examination and Bill of Sight required date 8th October 1991." On the reverse side of this exhibit A4, are the words:

> "Goods examined, satisfied that the goods have been properly described. Value estimated to be seventy-five thousand five hundred and sixty-eight dollars.
> May be accepted for the purpose of making entry as under -
> Final entry may be allowed
> Date: 8/10/91
>
> Sgd Proper Officer
> 4521
> Supervisory Officer."

The authenticating officers are customs officers; the signature above "supervisory officer," being one Holness and the other one Ross. The amount of $75,568.00 is endorsed on the face of the document, (exhibit A4), and was thereafter used as the value of the said motor car.

This document, (exhibit A4), as also exhibits A1, A2 and A3, contained a serial number "4T1SV21E9MU350950" - called a VIN (Vehicle Identification Number), which could be utilized to determine, the model and year of the motor car, in that, the 10th digit "M" designated the year 1991.

This bill of sight, (exhibit A4), along with import licence no. 063624 (exhibit A 11) were handed to prosecution witness Christopher Kennedy, a customs broker. At first he said in evidence in chief that he received them from the appellant Williams, but then he retracted. His evidence was not relied on by the learned Resident Magistrate as linking the appellant Williams with the offence. Kennedy said, on receiving the bill of sight, (exhibit A4), signed by Mrs. McGregor, whose signature he recognized, and the import licence, (exhibit A11), he prepared an import entry, a C78 form (exhibit A5) and seven copies, and gave them he said to the "person." He said he did not see the motor vehicle.

The C78 form, (exhibit A5) contained inter alia:

> (i) the name of the importer, "now Ewan Lee Ewen," without the brackets around the name Ewen:
>
> (ii) the address is "21 North Kings House Rd."
>
> (iii) the date of the report of the vessel - "25/4/91"
>
> (iv) the import licence number, "063264"
>
> (v) the notation, "bill of sight" dated "8/10/91,"
>
> (vi) the bill of lading number, "CHA078110413"
>
> (v) the value of the motor car "$75568.00"
>
> (vi) the description of the motor car "One 1988 Toyota Camry (4) door ... S/N 4T1SV21E9MU350950 ..etc" and
>
> (vii) the interest payable "$100,878.33 and the percentage "133.53%."

This is all the relevant information necessary for the clearance of an imported motor car.

Another prosecution witness, Frank Gordon Barrett, Acting Director of Operations, in charge of Queen's Warehouse, outlined the system in use, for the clearance of motor vehicles. When eventually, the customs broker goes to the customs inspector, for the final inspection, he should have the bill of sight, the bill of lading and the C78 form. Barrett said:

> "The customs inspector would then ensure the particulars on the Bill of Sight and on Bill of Lading corresponds with vehicle. If so satisfied, the customs officer will make his inspection report at the back of the C78 and then write usually at the bottom of the form 'Examination and Release of Goods." The customs inspector then prepares a customs release in triplicate."

The customs release form (exhibit 6) was written up by the appellant Desmond Carty on the 10th day of October 1991. He would have been handed, as the customs inspector, the bill of lading, (exhibit A2), the bill of sight, (exhibit A4), the application to amend manifest, (exhibit A3), and the C78 form (exhibit A5). Each of these documents referred to a "1988 Toyota Camry" and included the VIN reference. The C78, (exhibit 5) according to the witness Barrett, showed at the:

> "Bottom right hand column ... a computer printout from machine indicating payment of customs duty. The invoice inspectors inspects (sic) these documents from the Bill of Sight and Bill of Lading."

According to the system in operation, both the invoice inspectors and the manifest branch clerk would have already inspected all these documents and verified them as accurate before they are submitted to a customs inspector. As such the appellant

Carty would then have to inspect the documents presented to him, as well as the motor car and authorise its release, if satisfied.

With respect to the valuation and assessment of duty on motor vehicles, in August 1991 a new procedure was introduced. As a guide to the Customs Department a document, the North American Auto Dealers' Association Guide called NADA (exhibit 8) which inter alia, introduced the VIN reference as a means of identification and valuation, was employed. The witness Barrett stated that that reference number was one of the most important factors used to identify a vehicle. Customs officers attended seminars on the use of the NADA guide ".. about three to four months before ..." its introduction in August 1991. Barrett said however, that:

> "In late October, early November, I perused the Nada guide and discovered the model, year and other vital information could be taken from serial number of a vehicle. I photocopied the page pertaining to the model number in the guide which I placed on each of the Assessors and Supervisors desks ..." [Emphasis add]

He stated as well:

> "Before the vehicle is released the officer should check vehicle and serial number. Since this investigation I became aware that the Releases are made on the basis of the documents" [Emphasis added]

and he confessed, with understandable deference:

> "If I see a Bill of Sight signed by a senior customs officer I would be satisfied that the information contained therein is correct."

A prosecution witness Leighton Wilson, Customs Officer, Branch Manager for Contraband Enforcement Team stated that there was a difference between the treatment of new vehicles and used vehicles being imported. In respect of a new

vehicle, the importer was required to produce to Customs a valid seller's invoice, while the importer of a used vehicle had a bill of sight prepared.

The NADA guide (exhibit 8) specifically indicated that the 10th digit of the VIN reference, the letter "M", designated the year of the vehicle, 1991.

Each appellant argued as a ground of appeal that at the close of the prosecution's case, there was no case to answer.

It is clear to us that there is no positive evidence in the case, that at the time of this event, customs officers were aware that the VIN served a particular purpose. Prosecution witness Rupert Venson, Senior Surveyor of Customs, in a vivid testimony of the nature of the system, stated that he was defendant Carty's supervisor and in October of 1991, he Venson "did not know what the VIN number meant." He confirmed further that if he, as a releasing officer, then, had been given bill of lading, showing a 1991 car (exhibit A2), along with bill of sight, showing 1988 car (exhibit A4) both "for a motor vehicle with the same VIN number," and shown, application for amendment (exhibit A3) "showing how the vehicle came to be a 1988 vehicle", he would have released the vehicle. We note that Carty was such a releasing officer.

With respect to the appellant Carty, at the close of the prosecution's case, he should have been viewed as someone in a system, in which he Carty would have seen customs officers' signatures authenticating documents, exhibits A3, A4, & A5, containing references to a 1988 used motor car, exhibit A4 which verifies that he was dealing with a used motor car, a VIN number that had no significance other than a serial number reference and a practice where goods were being released on the basis of the documents only. He acted as his fellow officers did, when he issued the customs release, (exhibit 6), in the circumstances. We can find no evidence of, or draw any inference of the requisite mens rea in him.

In the case of the appellant Ann McFarlane a prosecution witness Phillip Paulwell, who was Trade Administrator in 1991, stated that the appellant as Assistant Trade Administrator had authority to sign, approving amendment to licences, which amendment were often granted after the motor vehicles arrived in Jamaica. Based on the prevailing practice then, on presentation of the bill of sight, (exhibit A4) and the C78 form, (exhibit A5), to the appellant Ann McFarlane in 1991, and requesting an amendment of the trade licence, (exhibit A11), to read a 1988 motor car, it would be granted, so said this witness. On this witness' evidence, the clearance of the said motor car by appellant McFarlane was "properly authorised." on the 9th day of October 1991.

This appellant had quite properly advised the importer Ewan Lee in her letter of the 28th day of April 1991, that he would be required to pay additional foreign exchange, if on arrival of the motor vehicle its value exceeded the value stated in the import licence. She wished to ensure that the proper duty was paid.

We do not accept that an adverse inference could be drawn from the fact that the name "Ewen" was added to exhibit A11 by the appellant McFarlane on the 10th day of October 1991. Both the shipping company and the Customs Department had already accepted the fact that the import licence No. 063264 (exhibit A11) granted to "Ewan Lee" was valid for the importation by "Ewan Lee (Ewen)". Although the VIN was on the documents handled by the appellant McFarlane and the NADA booklet was in her office, there is no evidence that she was "instructed as to ... significance of these identifying numbers."

In the circumstances, we do not find that a case was made out against her.

The appellant D'Oyen a motor car dealer, sold to prosecution witness Beverley Hoo, a 1991 Toyota Camry motor car, exhibit 7, which had passed through customs as a 1988 model and released on the 10th day of October 1991 to Ewan Lee Ewen.

D'Oyen had previously advertised for sale "about the 5th day of October, 1991," a 1991 Toyota Camry for sale at his business premises. D'Oyen handed to Hoo, exhibit A5(1), a C78 form, detailing the correct description of the said 1991 car. This differed from exhibit A5, which referred to a 1988 motor car. Exhibit A5 was never in D'Oyen's possession.

No evidence existed linking appellant D'Oyen with any of the acts or transactions involved in the passage of the said motor car through customs. One cannot infer from his mere possession in the ordinary course of business, albeit that the correct duty thereon was not paid, that defendant D'Oyen was the importer of the motor car (exhibit 7). Although section 250 places an onus on the defendant to prove that the proper duties have been paid, this does not relieve the prosecution of its initial burden of proving guilty knowledge. The presumptive knowledge that arises from the fact of possession may be displaced by evidence of lack of knowledge. In **R. v. Cohen** [1951] 1 All E R 203 it was decided that possession simpliciter established a prima facie case that the defendant knowingly harboured uncustomed goods. In the instant case the presumption of knowledge that arises from the fact that the defendant D'Oyen handled the said car is displaced, on the prosecution's case itself, both by the production of the C78 form, exhibit A5(1) referring to a 1991 Toyota Camry motor car and the fact that he received this car for sale in the ordinary course of business. The said exhibit A5(1) would have shown that an import licence had been issued for the car, that duty had been paid, that it had been cleared by customs and by a bill of

sight. We therefore saw no evidence nor evidence from which an inference could be drawn to put him on his enquiry as to whether or not the proper duty had been paid and so establish the requisite mens rea of being "knowingly concerned."

We are of the view that at the close of the prosecution's case there was no case to answer in respect of the appellants McFarlane, Carty and D'Oyen; Williams was correctly called upon to answer the charge.

Mr. Ramsay for the appellant Williams, as his first ground of appeal argued that the said appellant was prejudiced by the fact that the prosecution failed to provide the statements and names of the prosecution witnesses Kennedy and Morris until a short while before each witness entered the witness box, and only provided the statement of the witness Morris, in respect to a substantial portion of his evidence- in- chief at the trial, during the hearing of this appeal.

With respect to the provision of the statement prior to the commencement of a trial, their Lordships in **Franklyn v R** (unreported) delivered on the 22nd day of March 1993, said per Lord Woolf:

> "Undoubtedly a defendant will be assisted in preparing his defence if he is provided with copies of statements on which the prosecution proposed to rely prior to the commencement of his trial. It is therefore desirable, where this is practicable, for statements to be provided. Clearly the more serious and the more complex the proceedings the greater the desirability that statements should be provided and the more likely that it will be practicable to provide the statements. In the converse situation, where the offence is trivial, to be dealt with summarily, where the issues are simple, the provision of statements before the trial is less important."

Their Lordships then examined the similarity of procedure in Jamaica and England where, in petty offences "... it is not normally practical or necessary ..." for the defendant to be served with the witnesses' statements, but in indictable offences, depositions or statements of witnesses are served. Reference was made to offences triable, either summarily or on indictment in which by the Magistrate's Court (Advance Information) Rules 1985 (S.I. 1985 No. 601) (U.K.), on request the prosecution must provide to the defendant, the witnesses' statements unless such disclosure would lead to intimidation or harm to the witness. Their Lordships then stated the consequences under the latter statute:

> "If the requirements are not complied with, then the court is required to adjourn the proceedings pending compliance with the requirement, unless the court is satisfied that the conduct of the case for the accused will not be substantially prejudiced by the non-compliance with the requirement."

Their Lordships then referred to the fact that in Jamaica Resident Magistrates do try serious offences, that statements in such cases are never disclosed, "unless the situation falls within the memorandum dated the 29th July 1982 from the Director of Public Prosecutions to all Crown Counsel and Clerks of the Court. This memorandum dealt, inter alia, with the opening of the prosecution's case at Circuit Court and Gun Court trials and, on request, in the Resident Magistrate's Court. Their Lordships cautioned that in order to ensure a fair trial -

> ".. where the provision of a statement of a witness is reasonably necessary ... it should be provided as being a facility required for the preparation of his defence."

Their Lordships referred to the judgment of Forte, J A in **R v Bidwell** delivered on 26th June 1991 (unreported) and continued:

> "It follows that the present practice of refusing to provide the defence statements of proposed witnesses to a prosecution, as a matter of course, is inappropriate. Where a request is made for the disclosure of the statements in a case which is to be tried summarily, if it is not a case only involving petty offences, the request should be carefully considered. If there are no circumstances making this course undesirable, for example because of the need to protect the witnesses, then the preferable course in the interests of justice is to disclose the statement."

Their Lordships referred to the case of **Linton Berry v R** [1992] 2 AC 364 and then observed that in the instant case of **Franklyn v. R** - (supra)

> "... even if requests had been made, and in accordance with the existing practice not complied with, there would have been no danger of either appellant being unfairly prejudiced in the preparation or conduct of his defence."

The reasons were that the case was opened by the prosecution, the defence had every opportunity to deal with matters first arising during the trial and that requests for adjournments and the recalling of a witness were granted.

In **Berry v R** [1992] 3 W L R 153, their Lordships, after referring to the practice which imposed a duty on Crown Counsel to inform the defence of any discrepancy between the statement of a prosecution witness and his testimony at the trial, said, per Lord Lowry at page 162:

> "Bearing in mind ... the concept of counsel for the Crown as 'minister of justice whose prime concern is its fair and impartial administration', their Lordships, while not feeling bound to accept in relation to

> Jamaica, the comprehensive principles, almost amounting to criminal discovery, which the defendant has attempted to rely on, recognize that the Purvis-Barrett principles (dealing with discrepancies) do not cover every situation in which fairness may demand that the prosecution make available material to the defence ..."

Alluding specifically to non-disclosure of statements, Lord Lowry continued, at page 165:

> "What their Lordships find still more important in this case is that important evidence was adduced which had not been foreshadowed in the depositions.
>
> They consider that it was the Crown's clear duty to give advance warning of that evidence by furnishing the three statements to the defence. Failure to do this was in their Lordships' view a material irregularity. **R v Maguire** [1992] 2 WLR 767, 782 ... One must adopt the maxim that the more difficult (short of impossibility) is the defending advocate's task, the more vital it is to see that he does not labour under unfair disadvantage. Had the statements been supplied, the defence could have planned their campaign, prepared a more effective cross-examination, been ready to object, if challenging admissibility, and been prepared to let the judge and jury see the statements if that course appeared to offer prospects of success."

It seems to us that in summary trials, if a request is made by the defence, the provision of the statements of prosecution witnesses to the defence is a facility that ought to be afforded to them in order to assist the defence in the preparation of its case, except in the case of petty offences or where the prosecution is of the view that it is necessary to withhold the statement for the protection of a witness. The disclosure of such statements must be made in ample time in order to afford the

defence full opportunity to make use of this facility. This approach is adopted in order to ensure fairness. After a request is made, nondisclosure or a late provision of the statement requested, will result in an adjournment in the former instance until the statement is provided, and in the latter, to give the defence an opportunity to prepare itself, if it so desires.

The late delivery of the statements in the instant case was undesirable. Learned and experienced counsel for appellant Williams could have sought an adjournment then. He did not do so. He is deemed to have waived the right thereto and so acquiesced in the decision that the trial continue. Furthermore, when at the trial, that aspect of the evidence in chief, contained in the statement not delivered to the defence until the hearing of this appeal, was being led, counsel must have been aware that he had no statement relating to such evidence. Counsel made no request for the statement nor for an adjournment. Mr. Ramsay did not advance before us any complaint that the appellant Williams' defence was thereby hampered nor that any discrepancy was revealed in the statement of the witness Morris. We do not find that this appellant was prejudiced by the non-compliance in the circumstances.

This ground of appeal therefore fails.

Mr. Ramsay argued as his second ground of appeal that the information on which the appellant Williams was charged was bad for vagueness in that there was an omission of a material particular, namely, the amount of duties allegedly defrauded. Dr. Barnett for the prosecution in reply stated that section 210 of the Customs Act did not make the amount of duty an essential part of the offence. We agree. Section 210 makes it an offence for -

> "...<u>any</u>, fraudulent evasion ... of <u>any</u> import ... duties of customs. ..." [Emphasis added]

We agree for the further reason that section 64 of the Justices of the Peace Jurisdiction Act, provides:

> "64(1) Every information ... issued or made ... in connection with any proceedings before ... a Court of summary jurisdiction for an offence, shall be sufficient if it contains a statement of the specific offence ... together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.
>
> (2) The statement of the offence shall describe the offence shortly ... without necessarily stating all the essential elements of the offence ..."

For the above reasons we find no merit in this argument. This ground also fails.

As his third ground of appeal, Mr. Ramsay argued, that the learned Resident Magistrate was wrong to have convicted the appellant Williams, because the witness Paul Morris whose evidence he accepted was unreliable, and had an interest to serve, and consequently there being no corroboration he should have taken that into account and warned himself of the danger of convicting on such evidence in the absence of corroboration.

Mr. Phipps, Q.C. in reply argued that:

> "... the Crown's case re Williams (was) directed at his involvement with the C78 entry form ... where that evidence is deficient on the single point of identification (it is) supplemented by the evidence of Morris. ... that entry prepared by Christopher Kennedy ... what is required is the nexus that Williams was person. Nexus was established by calling Mr. Morris ... Corroboration supplied by inferences ...(from) bits of evidence."

and that the learned Resident Magistrate recorded findings of fact, as he was required so to do by section 291 of the Judicature (Resident Magistrate's) Act, as distinct from stating his reasons. He was here intimating that there is no statutory requirement that the said Resident Magistrate recite in his findings that he warned himself of the danger inherent in dealing with the evidence of an accomplice, so found. With all respect to this novel approach of learned Queen's Counsel we disagree with this submission.

The prosecution witness was, on the evidence, a self-confessed accomplice. He admitted that he recorded incorrect information on the bill of sight (exhibit 4A). The learned Resident Magistrate recorded, in his findings,

> "The Court accepted the evidence of Morris that it was Williams whom he assisted in preparing a fraudulent bill of sight. That it was written up by him in his handwriting, and that the bill of sight was a necessary document in the perpetration of the fraud."

In these circumstances, it was imperative that the learned Resident Magistrate demonstrate in his findings, which would be contrary to the submission of leading counsel for the prosecution, that the witness Morris was an accomplice. This recognition would highlight this witness as having a purpose to serve, an obvious taint. A finding, simpliciter, that he " ... accepted the evidence of Morris ...", makes that finding inherently flawed. A jury would be warned, and a judge sitting without a jury should warn himself, that it is dangerous and unsafe to convict, on the evidence of an accomplice in the absence of corroboration. However, even in the absence of such corroboration, a judge is entitled to act upon such evidence and convict if satisfied that, despite the taint, the witness is speaking the truth. However, the judge must reveal his thought processes, that he is so proceeding. Commenting on the

responsibility of a Resident Magistrate in his findings of fact in dealing with the special category of cases, of which an accomplice's evidence is one example, Gordon , J.A. in **R v. Vince Stewart** SCCA 73/89 (unreported) said:

> "... the authorities indicate that where the decision of the tribunal is governed by the application of settled legal principles, e.g. the desirability of corroboration, it must appear that the tribunal's mind was adverted to it ... Even if there is a presumption that the judge knows the law, there is no presumption as to its application." [Emphasis added]

See also **Chiu Nang Hong vs. Public Prosecutor** [1964] 1 WLR 1279. As to the approach of this Court to the failure of Resident Magistrates to follow its decisions, Wolfe, J.A. in **R. v. Fitzroy Craigie & ors.** delivered on the 29th day of July, 1993, said:

> "We wish to re-emphasize that Resident Magistrates hearing cases in which evidence of special category has to be considered must state in their findings of fact that they are aware of the necessity to warn themselves that caution is required in acting upon the evidence and further must demonstrate in such findings that the legal principles have been applied in resolving the factual issues which arise for determination. Failure to conform to these directives from the court will be fatal to any convictions which are recorded in such circumstances."

There was no corroboration of Morris' evidence. Although counsel for the appellant Williams, in his address referred to Morris as someone with "an interest to serve," we are unable to say that the learned Resident Magistrate applied the law he is presumed to know. In the absence of a finding with regard to Morris, we are of the

view that this conviction cannot stand. Williams' conviction rested entirely on the undoubtedly tainted evidence of this witness.

In the light of this, there is no need for us to reveal our thoughts in regard to the other grounds argued, interesting though they are, for the final determination of this appeal.

We find, in the instant case that the submissions of Mr. Ballantyne, Mr. Scott and Mrs. Neita-Robertson that at the close of the prosecution's case there was no case to answer` in respect of defendants Carty, McFarlane and D'Oyen respectively, are valid. In the case of the defendant Williams for the reasons stated by us his conviction cannot be allowed to stand.

In all the circumstances, the appeal of each defendant is allowed, the convictions are quashed and the sentences are set aside.