

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Mag. App. No. P 039 of 2016

BETWEEN

**BERNARD SAMAD
CUSTOMS AND EXCISE OFFICER III**

Appellant

AND

**NAVINDRA DEONARINE
WINSTON ROGER BEDASSIE
LENNOX BALKARAN**

Respondent No. 1

Respondent No. 2

Respondent No. 3

PANEL:

R. Narine, J.A.

M. Mohammed, J.A.

APPEARANCES:

Mr. G. Peterson S.C. and Ms. S. Sheppard appeared on behalf of the Appellant.

Mr. J. Singh appeared on behalf of Respondents Nos. 1 and 3.

Mr. K. Ramkissoon appeared on behalf of Respondent No. 2.

DATE OF DELIVERY: November 27, 2018.

JUDGMENT

Delivered by M. Mohammed, J.A.

INTRODUCTION

1. Respondent No. 1, Navindra Deonarine, Respondent No. 2, Winston Roger Bedassie and Respondent No. 3, Lennox Balkaran were all charged with the fraudulent evasion of import duties of customs relating to the importation of one used Toyota Prado SUV and one used Subaru Impreza motor car on July 3, 2007, contrary to **section 213(e) of the Customs Act Chapter 78:01 (as amended)**.
2. Deonarine and Bedassie were also charged with removing from the Port in Port of Spain one used Toyota Prado SUV and one used Subaru Impreza motor car without the authority of the Proper Officer on July 3, 2007, contrary to **section 83(e) of the Customs Act Chapter 78:01 (as amended)**.
3. At the close of the case for the prosecution, counsel for Bedassie made a submission of no case to answer, which was upheld by the magistrate. Counsel for Balkaran also made a submission of no case to answer, which was overruled by the magistrate. Deonarine and Balkaran were called upon to answer the case against them. The magistrate, after consideration of the evidence in the matter, dismissed the complaints against Deonarine and Balkaran. He ordered that the Toyota Prado SUV and the Subaru Impreza motor car be retained by the Customs and Excise Division until the proper duties were paid on them.
4. The appellant has appealed the decision of the magistrate.

THE CASE FOR THE APPELLANT

5. On July 4, 2007, the appellant, Customs Officer Bernard Samad, who was then an Investigator attached to the Preventative Branch, upon receiving certain information, went to the Spectrum at the Port in Port of Spain. At the Spectrum, imported vehicles are stored before being delivered to the importers. Whilst there, Customs Officer Samad extracted two Bills of Lading, carrying the name of the importer as Casa Enterprises Ltd., and conducted further investigations into them. The Bills of Lading also carried the description of two vehicles, a used Toyota Prado SUV and a used Subaru Impreza motor vehicle. They had certain markings, including signatures in red ink and a Customs stamp dated July 3, 2007. The Bill of Lading for the Toyota Prado SUV was dated June 4, 2007 and the Bill of Lading for the Subaru Impreza was dated June 5, 2007.

6. On July 5, 2007, Customs Officer Samad, along with Customs Officer Fitzgerald Daniel, went to the Baggage Room of the Piarco International Airport where they met the third named respondent, Lennox Balkaran, who was at that time a Customs Officer. Customs Officer Samad conducted an interview with Balkaran and took a voluntary statement from him. That statement was read by Balkaran and signed by him. At the interview, Balkaran was shown certain documents, including the two Bills of Lading that came from the Spectrum. Customs Officer Samad asked him if the signatures on those documents belonged to him and he replied, "No". In his written cautionary statement, Balkaran stated that:
 - *He was employed as a Customs Officer and his duties included examining and delivering imported vehicles based on the customs entries presented to him by Customs clerks and importers.*

 - *On July 3, 2007, he visited the Spectrum at around 12:00 p.m. where he met several persons, including Customs Officer Beena Mohammed and a Customs clerk, Alan Ramroop. The reason for his visit to the spectrum was to visit a Customs clerk, Fareeda Rackal. He left the Spectrum at around 1:30 p.m.*

- *The signatures on the two Bills of Lading shown to him by Customs Officer Samad did not belong to him.*
- *He did not deliver any vehicles from the Spectrum between the first week in June to the time of the interview, July 5, 2007.*

7. Later that day, Customs Officer Samad, along with Customs Officer Daniel and other Customs Officers, visited the premises of Casa Enterprises Ltd. which was located at Dow Village in California, Couva. While there, they met the first named respondent, Navindra Deonarine, the owner and manager of Casa Enterprises Ltd. Deonarine was in the presence of the second named respondent, Winston Bedassie, who was then a Customs Clerk. Customs Officer Samad identified himself to Deonarine and told him that he was conducting investigations into the removal of two vehicles from the Port. He asked Deonarine whether those vehicles were in his possession and he replied, "Yes". He also asked Deonarine if he had the relevant documents concerning those vehicles and he said, "Yes". Deonarine retrieved the documents, which included copies of the C-82 form, wire transfers from Royal Bank in Couva and duplicates and triplicates of the Bills of Lading, and gave them to Customs Officer Samad. Customs Officer Samad then cross-referenced the vehicles with the information on the documents and they corresponded. At that time, Customs Officer Samad had in his possession a document from the Automated System for Customs User (Asecuder) Network in Customs which showed the values which were declared to Customs. When he compared the Asecuder document to the wire transfer documents, he observed that the values on the former document were significantly higher. He asked Deonarine if the numbers on the wire transfers were correct and he answered in the affirmative. Customs Officer Samad then seized the two vehicles and made arrangements for them to be transported to the Queens Wharf in Port of Spain.

8. On July 8, 2007, Customs Officer Samad, in the company of Customs Officer Daniel, Bedassie and other Customs Officers went to Princes Town where they met Customs Clerk Richie Bachan. Customs Officer Samad conducted an interview with him and he agreed to give a written statement.

9. On July 9, 2007, Bedassie went to Customs Officer Samad's office at the Preventative Branch in Port of Spain and had a conversation with him. Whilst there, Bedassie gave a written statement under caution in which he gave the following information:

- *He was a Customs clerk and also operated a business offering Customs brokerage services. He employed Rishi Bachan and Nikita Edmund who were both apprentice Customs clerks.*
- *He prepared and submitted documents to Customs for approximately ten companies, including Casa Enterprises Ltd. which was owned by Navindra Deonarine. He worked with this company for approximately a year and a half.*
- *In June, 2007, Deonarine visited his business place and presented him with certain documents, including the invoices and copies of the Bills of Lading for two vehicles. Deonarine signed two blank C-75 forms and the invoice declarations in his presence. He asked Deonarine why the values of the vehicles were so low and he was shown a letter of comfort from the exporter, Apex Auto.*
- *He prepared the Customs entries for the vehicles in question, which were collected by Deonarine. Deonarine told him that he would take the entries to the Valuations section of Customs. The next day, Deonarine returned the entries to him with the valuation approvals. He submitted them to the Long Room for processing and they were subsequently completed.*
- *On July 3, 2007, he gave Richie Bachan the documents for the two vehicles in question, including Bills of Lading and asked him to clear the vehicles from the Port of Spain docks. Bachan contacted him that evening and informed him that Balkaran had given clearance for both vehicles. Bachan told him that one of the vehicles was a Toyota Prado SUV. He said that upon being informed of this, he "got frightened one time because he knew that was trouble".*
- *He signed for the receipt of the two vehicles and gave the keys to Deonarine. Deonarine subsequently gave him an envelope containing \$15,000.00 and told him that the money was for Balkaran for delivering both vehicles. He then met Balkaran, who was in a white motor car at the time, and gave him the envelope containing the sum of money.*

10. On July 10, 2007, Deonarine visited Customs Officer Samad's office and had a conversation with him in the presence of Customs Officer Daniel. Whilst there, Deonarine gave a written statement under caution where he stated that:

- *He was a director at Casa Enterprises Ltd. which was in the business of importing used motor vehicles, parts and accessories from Japan and Singapore. He hired Bedassie to conduct Customs clearances for the imports.*
- *In March, 2007, he imported two damaged vehicles from Apex Auto in Japan, a Subaru motor car and a Toyota Prado SUV. He requested that the vehicles be repaired before they were exported. The vehicles were shipped on April 14, 2007 from Japan but the shipping agents informed him that the vessel would be delayed for about a month. The vehicles arrived in Trinidad in or around June 27, 2007. He received the original Bills of Lading, invoices and other relevant documents in the mail. He gave those documents to Bedassie so that he could prepare the clearance documents for the vehicles.*
- *At the request of Bedassie, Deonarine went to his office in Couva where he was given a brown envelope with a number of customs entries. Bedassie told him to give the envelope to Customs Officer Roberts at the San Fernando Customs Office and he did so. Customs Officer Roberts then gave Deonarine several Customs entries which he was to give to Bedassie. On the next day, Deonarine gave the Customs entries to Bedassie. Sometime later, Bedassie called him and told him to prepare a cheque in favour of the Comptroller of Customs and Excise for approximately \$21,000.00, which he delivered to Nikita Edmund, an employee of Bedassie. He understood the cheques to be in satisfaction of the duties on both vehicles.*
- *On July 3, 2007, Bedassie contacted him and told him to bring \$15,000.00 in cash to the Spectrum in order to clear the vehicles. He, his father and an employee went to collect the vehicles. While at the Spectrum, Bedassie requested the \$15,000.000, which he handed over. After his employee signed for the delivery of the vehicles, they drove them out of the Spectrum. Shortly afterwards, he saw Bedassie and the driver of a white Nissan Almera motor vehicle having a conversation.*
- *At the time of the giving of the statement, Customs Officer Samad showed him two sets of documents, one in relation to a Toyota commercial van valued at 614,800*

Yen and the other for a used Subaru Impreza motor car valued at 420,700 Yen. Both invoices contained a declaration and a signature which appeared to be his. He did not put his signature on those documents. He was also shown two C-75 forms in relation to the vehicles and admitted that the signatures thereon belonged to him. However, he had signed those forms before they were filled out.

11. On July 19, 2007, Customs Officer Samad went to the Piarco International Airport where he met the Customs and Excise Supervisor Mr. Jagdeo Persad. He made a request in writing for the release of a Customs and Excise rubber stamp which was used at the Airport. The stamp was released to him and he placed his markings on it. On August 3, 2007, he submitted the stamp and other documents to the Forensic Science Centre. On October 24, 2007, he retrieved the stamp and the documents, together with a certificate of analysis in relation to them. The certificate showed that the stamp was the one used on the Bills of Lading, which was purported to have Balkaran's signatures. At the hearing, the magistrate made certain enquiries about the stamp and Customs Officer Samad indicated that it was found on Balkaran's desk and that several persons had access to the desk and its contents.

12. Acting Assistant Comptroller at the Customs and Excise Division, Brenda Wills, gave evidence that on November 3, 2007, Mr. Samad gave her copies of certain documents relating to the import of the vehicles in question, including C-82 forms, Invoices, Bills of Lading and C-75 forms and asked if the values listed therein could be verified. She conducted an investigation in relation to the Subaru Impreza vehicle and determined that the value came up to \$US4, 600.00. Her investigations showed that at that time, the vehicle would have been valued between US\$12,000.00 and US\$15,000.00 which gave it a discount of sixty-something percent. According to Wills, such a discount did not conform to normal trading discount values without reason. She said that if the vehicle was discounted for a particular reason, it ought to have been so stated on the invoice. There were no such indications on the invoices in relation to the vehicles in question. Wills then examined the second set of documents in relation to the commercial van and the chassis number showed it to be a Hilux. She visited the retention warehouse and was shown the vehicles in question. She examined the Subaru motor vehicle and found that the chassis number

on it did not correspond to the number on the documents. She then examined the second vehicle, a Toyota Prado SUV and noted that the description of that vehicle on the documents was shown to be a Toyota commercial van, which carried a duty of ten percent. A Toyota Prado SUV carried a duty of forty percent.

13. Wills testified that she did not find attached to the Customs documents a letter from the exporter Apex Auto explaining that the vehicles in question were “accident vehicles” (sic), which had been repaired at the cost of the importer.

14. Mr. Chee Young gave evidence that in the present matter, he identified several documents, including the C-82 forms, the Invoices, Bills of Lading, pack lists, Certificates of Origin and the C-75 forms in respect of a van and a Subaru Impreza motor vehicle. The vehicles were imported by Casa Enterprises Ltd. from a company named Apex. He testified that he placed his signature on the relevant documents, including the C-82 forms. However, he did not enter the information on those documents, which were given to him by his employee, Customs Clerk Roger Bedassie.

THE CASE FOR THE RESPONDENTS

15. Deonarine and Balkaran elected not to give evidence and no witnesses were called on their behalf.

THE MAGISTRATE’S REASONS

16. At pages 514 to 519 of the Record of Appeal, the magistrate gave reasons for his decision to dismiss the charges against Deonarine and Balkaran, which can be summarised as follows:

- The magistrate accepted that the vehicles in question were removed from the Spectrum without proper authority. However, he went on to find that Casa Enterprises Ltd. was responsible for evading customs duties and removing the vehicles from the Spectrum without the relevant authority. Since Casa Enterprises

Ltd. was not before the court and there was no nexus between the respondent, Navindra Deonarine, and Casa Enterprises Ltd., the charges against Deonarine ought to be dismissed. The magistrate reasoned that the only way that the court could go behind the veil of incorporation was if evidence is lead with respect to the Directors and their personal liability in the matter.

- With respect to the respondent Balkaran, the magistrate accepted that it was brought to his attention that the wrong duties were paid but found that his exposure in the matter was only with respect to the date that the vehicles were allowed to leave the Spectrum. The magistrate found that Balkaran's involvement in the matter did not concern the payment and assessment of duties and as such, there was no evidence against him to show that he fraudulently evaded customs duties.

THE APPEAL

17. The statements attributed to Deonarine and Bedassie were key features of the case against them. Accordingly, it is necessary to frontally address the issue concerning the breach of the Judges' Rules in relation to them. Counsel for Deonarine and Bedassie in essence challenged the admissibility of the written cautionary statement attributed to them on the basis that they were obtained in breach of the Judges' Rules. It was submitted that in the circumstances, the Court ought to attach no weight to those statements.
18. In cross-examination, Customs Officer Samad admitted that at the time of the giving of the statements by both Deonarine and Bedassie, he neither administered a Rule Three caution nor a Rule Two caution. He further accepted that no efforts were made to secure the services of a Justice of the Peace or a senior officer to authenticate those statements.

19. In cases where there is a breach of the Judges' Rules, a statement may be permitted into evidence provided that it would, in all the given circumstances, be fair to admit it. In the decision in **Ancil Edmund and Ors v The State**¹, John JA, on the issue of the breach of the Judges' Rules, said at paragraph 90:

"It is well settled that the Judges' Rules are not rules of law but administrative guidelines for police officers to follow during interrogation with persons in custody, including the taking of statements, oral and written. Breaches of those rules do not automatically make a confession inadmissible, the real issue is whether the effect of the breach was to render the proceedings unfair or suspect." [emphasis added]

20. In the Privy Council decision in **Shabadine Peart v The Queen**², Lord Carswell at paragraph 424 gave the following guidance:

*"In their Lordships' opinion the overarching criterion is that of the fairness of the trial, the most important facet of which is the principle that a statement made by the accused must be voluntary in order to be admitted in evidence ... From the foregoing discussion it is possible to distil four brief propositions: (i) The Judges' Rules are administrative directions, not rules of law, but possess considerable importance as embodying the standard of fairness which ought to be observed; (ii) The judicial power is not limited or circumscribed by the Judges' Rules. A court may allow a prisoner's statement to be admitted notwithstanding a breach of the Judges' Rules¹³; conversely, the court may refuse to admit it even if the terms of the Judges' Rules have been followed; (iii) If a prisoner has been charged, the Judges' Rules require that he should not be questioned in the absence of exceptional circumstances. The court may nevertheless admit a statement made in response to such questioning, even if there are no exceptional circumstances, if it regards it as right to do so, but would need to be satisfied that it was fair to admit it. The increased vulnerability of the prisoner's position after being charged and the pressure to speak, with the risk of self-incrimination or causing prejudice to his case, militate against admitting such a statement; (iv) **The criterion for admission of a statement is fairness. The voluntary nature of the statement is the major factor in determining fairness. If it is not voluntary, it will not be admitted. If it is voluntary, that constitutes a strong reason***

¹ Cr. App. Nos. 22, 28 & 30 of 2006.

² [2006] UKPC 5.

in favour of admitting it, notwithstanding a breach of the Judges' Rules¹⁴; but the court may rule that it would be unfair to do so even if the statement was voluntary.
[emphasis added]

21. Notwithstanding the departures from the guidance in the Judges' Rules, the magistrate was charged with a discretion to admit the statements if it was fair under all of the circumstances. This court will not lightly interfere with a magistrate's discretion unless it can be shown that the decision of the magistrate was palpably wrong. Counsel for Deonarine and Bedassie have not provided this Court with particulars as to the involuntary nature of the statements nor have they shown the prejudice that these respondents would have suffered as a result of the admitted breach of the Judges' Rules. In fact, Mr. Singh has indicated, and we agree, that the statement attributed to Deonarine was an exculpatory one and did not implicate him in the commission of any offences. We do not have the benefit of the magistrate's reasons on how he dealt with the issue of admissibility of the statements. We have however reviewed the proceedings and are of the view that it cannot be demonstrated that the statements attributed to both Deonarine and Bedassie were not given voluntarily.

22. The evidence of Customs Officer Samad and Customs Officer Daniel was that on July 9, 2007, Bedassie arrived at the Preventative Branch in Port of Spain and upon being informed of the investigations in the mater, indicated that he wished to give a statement. Upon being informed of his constitutional rights and privileges, Bedassie replied, "***Ah come to say what really happen.***" Similarly, on July 10, 2007, Deonarine arrived at the Preventative Branch in Port of Spain and upon being informed of the investigations in the mater, indicated that "***he wished to make a statement***". He was cautioned and told of his rights and privileges and he was asked if he wanted to have an attorney present and he replied in the negative. However, after the making of both statements, they were neither authenticated by a senior officer nor a Justice of the Peace. The voluntary nature of the statements being a significant factor in the assessment of fairness to warrant their admission, we find that they were properly admitted, notwithstanding any possible breach of the Judges' Rules. Those introductory utterances (*supra*), attributed to Deonarine and Bedassie, in and of themselves spoke cogently in favour of the voluntariness of the statement.

We now move on to consider the substantive grounds of appeal.

Ground 1: The Learned Magistrate erred in law in upholding a no case submission on behalf of the respondent Bedassie.

THE SUBMISSIONS MADE ON BEHALF OF THE APPELLANT:

23. Counsel for the appellant, Mr. Peterson S.C., submitted that the magistrate, at the stage of the submission of no case to answer, erred in his assessment of the evidence. He submitted that the evidence before the magistrate at that stage was sufficient to establish a prima facie case and the magistrate ought to have called upon the respondent Bedassie to answer the case against him. The decision in **R v Galbraith**³ was relied on in support of this submission.
24. Mr. Peterson S.C. submitted that both the oral and documentary evidence supported a prima facie case against Bedassie. He argued that the magistrate failed to properly consider the compelling evidence in Bedassie's statement, which amounted to a confession of his complicity in the commission of both offences charged. It was further submitted that the ingredients of the offence which the prosecution was required to establish under **section 213(e) of the Customs Act** were that, (i) the respondent was "knowingly concerned" in the fraudulent evasion of import duties and (ii) that the fraudulent evasion of duties related to the importation of the vehicles. Mr. Peterson S.C. relied on the dicta of Lord Lane CJ in **Attorney General's Reference (No. 1 of 1981)**⁴ for the proposition that the word "fraudulent" in this particular context meant dishonest conduct intended to evade the appropriate duty chargeable on the goods. It was submitted that the magistrate erred in finding that in order for the prosecution to succeed with the charge with respect to fraudulent evasion, there must be proof of "fraudulent representation"⁵.

³ [1981] 2 All ER 1060.

⁴ [1982] Q.B. 848.

⁵ See the Transcript of the Proceedings dated December 22, 2010 at page 71, lines 45-47.

25. Mr. Peterson S.C. contended that the magistrate interpreted the term “fraudulent evasion” narrowly and this significantly contributed to his error in upholding the submission of no case. It was submitted that the phrase “in any way knowingly concerned” in **section 213(e) of the Customs Act** has the effect of capturing persons other than the “importer” stated on the documents relating to the importation of the goods. According to Mr. Peterson S.C., a person could be concerned in the importation of goods without necessarily being the named importer on the documentation associated with the importation.

THE SUBMISSIONS MADE ON BEHALF OF BEDASSIE:

26. Counsel for Bedassie, Mr. Ramkissoon, submitted that the decision of the magistrate to uphold the submission of no case to answer was sound in law, having regard to the lack of evidence to connect the respondent with the charges in question. He relied on the decision in **The State v Kerry Samad**⁶ in support of his submission.
27. Mr. Ramkissoon submitted that the only evidence in respect of Bedassie was that of a signed statement which contained nothing to implicate him in the commission of the offences charged. Mr. Ramkissoon contended that there was nothing in Bedassie’s statement which suggested that he was in any way a participant in the wrongful removal of the vehicles in question or in evading customs duties. In addition, it was submitted that Bedassie did not possess the requisite mental element to satisfy **section 213(e) of the Customs Act**. The decision in **Darren Bhola v Canserve Caribbean Ltd, Darren Nurse and Cindy Gibbs**⁷ was relied on in support of this submission.
28. Mr. Ramkissoon submitted that Bedassie had no knowledge of any fraudulent evasion when he completed the C-75 form. He contended that the decision in **Attorney General’s Reference (No. 1 of 1981)**⁸ was inapposite and inapplicable as the fraudulent/dishonest conduct deliberately intended to evade the prohibition did not arise, having regard to the evidence.

⁶ Crim. App. No. P 042 of 2015.

⁷ Mag. App. No. P 068 of 2015.

⁸ AG’s Reference (n. 4).

29. In his further submissions, Mr. Ramkissoon submitted that the handing over of the money by Bedassie to Balkaran, as stated by Bedassie in his statement, was insufficient to establish a nexus with the offences in question. He submitted that there was no evidence to show that those monies were *“consideration for removing the vehicles or the fraudulent evasion of duties”*.
30. Mr. Ramkissoon also submitted that there was no evidence that Bedassie was responsible for removing the vehicles from the Spectrum without the authority of the Proper Officer. He added that the goods in question were properly reported and entered and further, it was unreasonable in the circumstances for Bedassie to question the payment of duties when all the documents in his possession were given to him by other parties and suggested that proper duties had been paid and that the vehicles had been qualified for removal.

THE LAW, ANALYSIS AND REASONING

31. **Section 83 of the Customs Act** regulates the unloading, entry, removal and delivery of goods in the Customs area. It provides:

Save in accordance with any Regulations made under this Act, or with the written permission of the Comptroller—

...

...

...

...

(e) no goods shall be removed from any part of the Customs area or from the State warehouse into which the same shall have been conveyed unless such goods have first been duly reported and entered, and authority for their removal or delivery has been given by the proper Officer;

...

32. Section 213 sets out the penalties for evading Customs laws regarding imported or exported goods. It provides:

213. Any person who—

...

...

...

...

(e) is in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of Customs, or of the laws and restrictions of the Customs relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of goods;

...

shall, in addition to any offence for which he may be convicted under any written law, incur a penalty—

- (i) on summary conviction in the case of a first offence, to a fine of fifty thousand dollars or treble the value of the goods, whichever is the greater, and to imprisonment for a term of eight years;*
- (ii) on summary conviction in the case of a second or subsequent offence, to a fine of one hundred thousand dollars or treble the value of the goods, whichever is the greater, and to imprisonment for a term of fifteen years; and*
- (iii) on conviction on indictment, to imprisonment for a term of twenty years, and in any case the goods may be forfeited.*

33. The magistrate concluded that no prima facie case had been made out against Bedassie. In the seminal decision in **R v Galbraith**⁹, Lord Lane CJ, on the issue of a submission of no case to answer, explained that:

“(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the Crown’s

⁹ Galbraith (n. 3).

evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

34. A magistrate, in deciding whether to dismiss a complaint against a defendant at the close of the prosecution's case, upon a submission of no case to answer, must consider whether there is evidence which, if accepted, would provide evidence of each element of the charge. Even where there is some evidence against the defendant, it may be so tenuous, either because it is vague or inherently weak, that it is open to the magistrate as a matter of discretion to dismiss the complaint. The magistrate must assess the quality and reliability of the evidence in order to determine whether it is inherently weak, vague or inconsistent with the other evidence in the case.
35. The main issue for the magistrate's consideration, as the tribunal of both law and fact, was whether Bedassie was "knowingly concerned" in the fraudulent evasion of import duties and whether that fraudulent evasion of the duties related to the importation of the two vehicles in question.
36. The evidence against Bedassie came mainly from a statement given by him in the course of investigations into the matter¹⁰. Further, the evidence of Customs Broker, Gilbert Chee Young, was that he placed his signature on the C-82 forms which related to the vehicles in question. He however said that he did not enter the information on the forms but rather the forms were given to him by his employee, Roger Bedassie.

¹⁰ See paragraph 9.

37. The magistrate, in his ruling on the submission of no case to answer, said:

"...I have to give my decision based on the evidence in this matter, okay? Not based on what I think happened okay, or what I come to – what conclusion I could come to, you know by trying to involve all sorts of different things from the evidence, okay. Based on the evidence in this matter, okay, you did not know that what you were filling out in the Customs Entry was wrong information. Let me just put it like that, "wrong" okay?

Even if I feel that you knew what you were doing was incorrect and that the values were low and that you knew you were part of an illegal transaction, I can't factor that into my decision, okay. I have to go by what the evidence says. And there is no evidence to suggest that at the time you compiled the entry you knew that it was false or wrong information.

Okay, in the circumstances I am of the opinion that there is no prima facie case made out against you... you are free to go. Okay?"¹¹

38. We have assessed the evidence against Bedassie in order to determine whether it supported a prima facie case against him. Of note are the following:

- (i) Upon being informed that one of the vehicles in question was a Toyota Prado SUV, he became frightened, because according to him, **"He knew that was trouble."** An explanation was proffered as to why he continued with the transaction, that is, the importer, Deonarine, presented him with a letter of comfort from the exporter, Apex Auto, which gave an explanation for the low value of the vehicle.
- (ii) It cannot be gainsaid that what transpired after Bedassie took delivery of the vehicles, that is, the handing over of TT\$15,000.00 by Deonarine to Bedassie to give to Balkaran for delivering the two vehicles, certainly leads to "raised

¹¹ See the Transcript of the Proceedings dated December 22, 2010 at page 3, lines 3-24.

eyebrows”. This warranted an explanation from Bedassie as to the purpose of that payment.

39. In our view, from the combination of circumstances highlighted above, certain reasonable inferences could be drawn. The indication that he got frightened upon being informed that one of the vehicles was a Toyota Prado SUV and that *“he knew that was trouble”*, combined with the payment of the sum of money to Balkaran upon delivery of the vehicles, could, on one possible view of the evidence, lead to the inference that Bedassie knew that the Customs entries contained false information, the purpose for which was to evade import duties. This was sufficient to constitute the ingredients necessary to make out a prima facie case under **section 213(e) of the Customs Act** namely (i) that Bedassie was knowingly concerned in the fraudulent evasion of import duties and (ii) that the fraudulent evasion of duties related to the importation of the vehicles in question. The evidence also supported a prima facie case in relation to the second offence charged under section **83(e) of the Customs Act**, that is, the removal of the motor vehicles from the Port without the authority of the Proper Officer.

40. The term *“in any way knowingly concerned in”* in **section 213(e) of the Customs Act** captures more than the importer of the goods and extends to other relevant persons who are indirectly associated with the importation. Further, in accordance with the guidance given in **Attorney General’s Reference (No. 1 of 1981)**¹², the term “fraudulent evasion” ought to have been given a wide interpretation. In that case, Lord Lane CJ, in dealing with section 170(2) of the Customs and Excise Management Act 1979 of the UK, which is materially similar to the provisions of **section 213(e) of the Customs Act of Trinidad and Tobago**, said:

“In order to prove an offence under Section 170(2) of the 1979 Act, it was not necessary to prove that acts of deceit had been practised in the presence of a customs officer but merely that there had been fraudulent conduct in the sense of

¹² AG’s Reference (n. 4).

dishonest conduct deliberately intended to evade the prohibition or restriction with respect to the goods or the duty chargeable thereon. [emphasis added]

41. Lord Lane CJ went on to say at page 854:

“It is to be noted that neither in that forerunner of the Modern Act nor in the 1979 Act itself is there any suggestion that customs officers need to be deceived or defrauded in order to establish guilt. Indeed, what has to be “fraudulent” is not behaviour towards a customs officer but the evasion or attempt at evasion of the prohibition. Consequently, it seem to us to be inappropriate to import narrow definitions of the word “fraudulent” from branches of the law dealing with fraud practised on other persons.” [emphasis added]

42. It appears to us that the magistrate erroneously construed the term “fraudulent evasion” narrowly and restrictively, when it ought to have been given a wide interpretation in light of the guidance of Lord Lane CJ at paragraphs 40 and 41 above. This approach by the magistrate would have contributed to him exercising his discretion in allowing the submission of no case to answer, a discretion we find was wrongly exercised having regard to the evidence referred to at paragraph 38 above.

43. Upon an assessment of the evidence and for the foregoing reasons, we are of the view that the magistrate erred in attaching insufficient weight to the evidence against Bedassie and in upholding the submission of no case to answer in respect of him.

This ground of appeal is meritorious.

Ground 2: The Learned Magistrate’s decision that the charges had not been made out against the Respondents Deonarine and Balkaran was unreasonable and/or cannot be supported having regard to the evidence.

THE SUBMISSIONS MADE ON BEHALF OF THE APPELLANT:

44. Mr. Peterson S.C. submitted that there was evidence at the close of the evidential stage of the trial to satisfy the magistrate beyond reasonable doubt of the guilt of Deonarine and Balkaran. It was submitted that the magistrate’s decision was unreasonable and could not be supported having regard to the evidence. Mr. Peterson S.C. pointed out that the magistrate accepted material evidence led by the prosecution and made crucial findings of fact in support of the prosecution case, namely (i) that there was an unauthorized removal of the vehicles from the Spectrum, (ii) that there was an evasion of duties and (iii) that a false declaration was made by at least one of the respondents. Notwithstanding those findings, the magistrate dismissed the charges against the respondents.
45. It was further submitted that the magistrate failed to consider the true nature of the offences in question. Mr. Peterson S.C. submitted that the offence of fraudulent evasion of duties is a continuing offence and that isolated acts by different individuals must all be looked at when assessing the evidence to make a determination. The decision in **R v Green**¹³ was relied on in support of this submission.

THE SUBMISSIONS MADE ON BEHALF OF DEONARINE AND BALKARAN:

Navindra Deonarine

46. Mr. Singh submitted none of the prosecution witnesses gave evidence which implicated Deonarine in the commission of either of the two offences charged. He suggested that the

¹³ [1975] 3 All ER 1011.

prosecution relied on the written statement taken from Deonarine as the foundational basis for their case. He submitted that the statement did not implicate Deonarine in the commission of either of the offences charged but rather, sought to exculpate him of any wrongdoing. It was further submitted that Deonarine in his statement indicated that he signed blank forms and this was consistent with the account of the prosecution witness Gilbert Chee Young. Mr. Chee Young was the Customs Broker who was called by the prosecution to tender the Customs documents into evidence. He said unequivocally that those forms were brought for him to sign with no information on them and that he could not verify any of the information on them.

47. The declarations are contained in both the C-75 and C-82 forms. The C-82 form speaks to the value of the goods. In his statement, Deonarine disavowed the signature on the form and said that even though it resembled his, he never signed the form. It was submitted that the prosecution never subjected those signatures to any forensic examination as they sought to do with the signatures purported to be that belonging to Balkaran. It was submitted that in the circumstances, the facts which were necessary to show commission of the offences with the requisite *mens rea* or intent did not exist. Mr. Singh submitted that the only evidence of any participation on the part of Deonarine was that he drove the vehicles out of the Spectrum.

Lennox Balkaran

48. Counsel for Deonarine and Balkaran, Mr. Singh, submitted that the prosecution did not produce any evidence of any positive act being done by Balkaran which would add incrementally to “knowingly evading duties”. He submitted that on the charge of being knowingly concerned in the fraudulent evasion of Customs duties, the prosecution must prove (i) that there was a fraudulent evasion of the duties of Customs and (ii) that the accused person was knowingly concerned therewith.

49. Mr. Singh further submitted that in any case where a tribunal of fact is asked to make a finding of joint culpability for the commission of a criminal offence, there must exist a basic factual

foundation in order for the court to come to such a finding. He conceded that the court might take the view that when added together, there might be the irresistible inference that there was joint criminal conduct. However, he submitted that such a conclusion must be supported by a reasoned process, which can only be viable if it is referable to a minimum factual foundation. He submitted that the instant case is one, at least where Balkaran is concerned, devoid of the barest minimum facts.

50. Mr. Singh submitted that there ought to be some evidence of participation in the activities in question in respect of Balkaran. The decisions in **R v Neal**¹⁴, **R v Ciaparra**¹⁵, **R v Jakeman**¹⁶ and **McNeil v H.M. Advocate**¹⁷ were relied on in support of this submission. Mr. Singh however contended that in the instant case, Balkaran did no acts which facilitated the evasion of the customs duties. He argued that the prosecution only produced evidence that Balkaran was present at the Spectrum on the day that the offence was alleged to have occurred and that there were documents with signatures which purported to be his. He submitted that the scientific evidence only concluded that it was “probable” that the signatures between the disputed signatures were executed by the same person. He submitted that in the circumstances, a tribunal of fact would be fully justified in rejecting this evidence as non-probative.

51. Mr. Singh also relied on the decision in **R v Panayi**¹⁸ as the authority for the proposition that the offence of “knowingly being concerned in the fraudulent evasion of duties” is an offence of specific intent. In that case, Bush J said at page 192:

“They cannot knowingly be involved in the evasion if one of the essential ingredients, namely, the fact that they are within territorial waters...”

¹⁴ [1984] 3 All ER 156.

¹⁵ (1988) 87 Cr. App. R. 316.

¹⁶ (1982) 76 Cr. App. R 233.

¹⁷ (1986) S.C.C.R. 288.

¹⁸ [1989] 1 WLR 187.

Though it is possible in some cases to equate recklessness with knowledge or general intent, this cannot be done in this kind of case where the specific intent is required of being knowingly concerned in any fraudulent evasion...”

FURTHER SUBMISSIONS MADE ON BEHALF OF DEONARINE AND BALKARAN:

52. In the closing submissions before the magistrate, the prosecutor sought to rely on the disputed signature on the delivery note as the linchpin of its case. Mr. Singh submitted that the forensic report was non-probative but more importantly, there was an incurable flaw in the gathering of the signatures which were used for comparison. A review of the evidence did not show how the complainant came into possession of the specimen signatures which he submitted to the Forensic Science Centre for the purpose of comparison. It was submitted that this lacuna in the evidence was fatal to the sustainability of any submission which sought to rely on the probity of the report. It was submitted that the court was without any evidence as to whether the handwritings which were submitted were the handwritings of Balkaran. There was no evidence led before the magistrate as to how those documents were gathered and whether Balkaran was ever given the opportunity to accept those signatures as his own.

53. Mr. Singh also submitted that Mr. De Coteau did not sign off on the report as a document examiner, but rather as a scientific officer. He submitted that by virtue of the Evidence Act, the report of a scientific officer, document examiner and several other designations are automatically admitted without the necessity of having to call the person to give viva voce evidence. However, the court is empowered to question whether a scientific officer is qualified to render an opinion on disputed handwriting.

THE LAW, ANALYSIS AND REASONING

We find it practical to deal with the case for Balkaran and Deonarine separately.

Lennox Balkaran

54. In finding Balkaran not guilty, the magistrate took into account the level of his involvement in the matter and reasoned that the extent of his involvement in the enterprise concerned the unauthorized removal of the vehicles. She found that he was not implicated with respect to the charge of fraudulent evasion of duties since the evidence did not show that he facilitated the evasion of import duties.

55. The magistrate's oral reasons were as follows:

*"... Yes, all I am concerned about, listen, I am not saying again, at the end of the day, that Mr. Balkaran is not liable, you know... Okay. I am just saying that it's at what stage he becomes liable, according to the evidence."*¹⁹ (sic)

*"Okay, now if his involvement, which is mine to decide, if his involvement was at that stage it would have facilitated, okay, the unauthorized removal of the vehicles, as opposed to his involvement relative to the duties section of the case."*²⁰ (sic)

*"When he went ahead and facilitated the removal of the vehicle without enforcing the increased duty after having, you know, whether or not, he, after the assessment, was still assisting the importer in evading duty."*²¹ (sic)

...

...

"... At the end of the day it is clear that a false declaration may have been made to customs by the importer Casa Enterprises Ltd. It is clear that this Customs Officer Mr. Balkaran, that was brought to his attention, that improper, or lower duties were in

¹⁹ See Transcript of the Proceedings dated December 23, 2010 at page 17, lines 18-23.

²⁰ See Transcript of the Proceedings dated December 23, 2010 at page 18, lines 15-20.

²¹ See Transcript of the Proceedings dated December 23, 2010 at page 23, lines 4-9.

fact paid, but at the end of the day Mr. Balkaran's exposure in this matter was only with respect to the date that the vehicles were allowed to leave the Spectrum. And therefore his involvement in this related not only.... It related not to the payment and assessment of duty in this matter, and that is really where the crime of fraudulent evasion took place, okay, with respect to the duties part of it, and Mr. Balkaran is only charged for the fraudulent evasion, okay.

Mr. Balkaran's involvement in this matter only took place with respect to the unauthorized removal, since he's not charged for that, there's nothing to answer with respect to the removal, but with respect to the fraudulent evasion there's nothing to suggest that he was involved, or his stamping and signing took place in order to facilitate the evasion of import duties. The stamping and the signing only took place to facilitate the vehicles from leaving the port.

*Okay, so in those circumstances there cannot be any finding of guilt against Mr. Balkaran and those matters are dismissed."*²² (sic)

56. The evidence adduced by the prosecution in respect of Balkaran was that:

- (i) He was present at the Spectrum on the day that the vehicles were delivered;
- (ii) There were signatures on the Bills of Lading in relation to those vehicles, which appeared to be his;
- (iii) The Customs and Excise Division stamp found on his desk, which was subject to forensic analysis, showed that it was the same stamp used on the Bills of Lading.

57. This signatures found of the Bills of Lading were subjected to handwriting comparisons which revealed that ***"it is probable the questioned writing and the questioned signature 'L. Balkaran' in red ink on Exhibits T1-T2 were executed by the Q1-Q3 and R1-R3 specimen writer"***. However, no evidence was led by the prosecution as to the specimen signatures and how they were obtained or if Balkaran accepted those signatures as his own. On the prosecution case, none of the witnesses accounted for the obtaining of the specimen signatures. The sources of the specimen writings, as described in the Certificate of Analysis were: *"(i) one letter addressed to*

²² See Transcript of the Proceedings dated December 23, 2010 at page 26, lines 21-47.

the Personal Officer - Customs and Excise bearing specimen writing purportedly of Lennox Balkaran, (ii) a Customs and Excise Regional Training School Examination Answer Booklet in the name of Lennox Balkaran bearing six pages of specimen writing purportedly of Lennox Balkaran and (iii) A Customs and Excise Division Application for sick leave form in the name of Lennox Balkaran bearing specimen writing purportedly of Lennox Balkaran.”

58. We agree with Mr. Singh that it was incumbent on the prosecution to have laid the evidential foundation as to how these specimen signatures came into the possession of the investigator, Customs Officer Samad. Evidential value could have also been placed on the signature had someone from the Customs and Excise Division, who was familiar with Balkaran’s signature, given evidence that the signatures found on the Bills of Lading belonged to him. In the absence of such evidence, an issue arises as to the validity of the comparator signatures.
59. We move on to consider the remaining evidence against Balkaran. A Certificate of Analysis tendered into evidence by the prosecution showed that a Customs and Excise stamp, which was purportedly found on Balkaran’s desk, was the same stamp that was used on the Bills of Lading. However, Customs Officer Samad indicated that several persons had access to that desk and its contents, including the stamp. The other evidence against Balkaran was that he was present at the Spectrum on the day that the vehicles were delivered. In our view, these remaining pieces of evidence are insufficient to support an inference of such cogency in order to sustain proof of guilt to the requisite criminal standard.
60. In the circumstances, the magistrate was justified in dismissing the charge against Balkaran. Although our findings are based on a different process of reasoning, in our view, the magistrate was correct in not being satisfied beyond reasonable doubt of Balkaran’s culpability.

Navindra Deonarine

61. With respect to the respondent Deonarine, the magistrate gave the following oral reasons for dismissing the charges against him:

*"...Now, at the end of the day, I really have to [come to] the conclusion as to whether or not, with respect to the removal from the Spectrum, whether or not Mr. Deonarine removed the vehicles unauthorized and so on. Okay, but, more than that, it really is, it comes down to a technical issue of whether it is Casa Enterprises Limited because at the end of the day, okay, I accept that the vehicles were removed, you know, without proper authority. The only technical issue here is whether or not this Defendant is liable or whether it is really the Company liable, okay."*²³

...

...

"So, it is only with respect to that, that Casa Enterprises of course at the end of the day, did evade Customs duty and they did, remove from the Spectrum the vehicle without authority. But, Casa Enterprises is not before the Court and there's no nexus between Navindra Deonarine and Casa Enterprises Ltd..."

*So that is my findings with respect to Mr. Deonarine, in those circumstances the matter against Mr. Deonarine is dismissed, because I cannot be satisfied beyond reasonable doubt. Okay."*²⁴ [emphasis added]

62. The magistrate found that Casa Enterprises Ltd. was the proper party against whom proceedings should have been brought. The magistrate also found that there was no nexus between the respondent Deonarine and Casa Enterprises Ltd and as such, he was not satisfied beyond reasonable doubt as to Deonarine's guilt.

63. Although it has not been argued before us, this ground of appeal is determinable by reference to the cautionary statement attributed to Deonarine. In that statement, Deonarine is alleged to have said, ***"I, Navindra Deonarine, owner of Casa Enterprises, wish to make a statement."*** On the face of it, this clearly establishes a nexus between Casa Enterprises Ltd. and Deonarine. We

²³ See Transcript of the Proceedings dated December 23, 2010 at page 25, lines 16-27.

²⁴ See Transcript of the Proceedings dated December 23, 2010 at page 25, lines 46-47 and at page 26, lines 1-8.

wish to highlight the fact that the magistrate in his reasons found that Casa Enterprises Ltd. did in fact evade Customs duty and did remove the vehicles from the Spectrum without proper authority. Therefore, we are of the view that the magistrate misconstrued the evidence and palpably failed to consider the weight and significance of Deonarine's statement.

This ground of appeal is meritorious in part.

Ground 3: The Learned Magistrate erred in law when he rejected legally admissible evidence substantially affecting the merits of the case.

THE SUBMISSIONS MADE ON BEHALF OF THE APPELLANT:

64. Mr. Peterson S.C. submitted that the magistrate rejected legally admissible evidence of the wire transfer documents relating to the two motor vehicles which were wrongly removed from the Spectrum. Those documents were in possession of the respondent Deonarine, who handed them over to the complainant in the case, the appellant, during the course of the investigation. It was submitted that those documents were relevant to the issues in the case and were therefore admissible. Mr. Peterson S.C. contended that the wrongful exclusion of the wire transfer documents affected the merits of the case as the vast difference in values in those documents and the document generated by the Asecuder system would show that not only were the duties evaded, but also that Deonarine knew the values of the vehicles when he made certain declarations to Customs.

THE SUBMISSIONS MADE ON BEHALF OF BEDASSIE

65. Mr. Ramkissoon submitted that the magistrate was correct in law to reject some of the documentary evidence in the matter which the prosecution sought to adduce since the respondent Bedassie was not the author or maker of those documents.

THE SUBMISSIONS MADE ON BEHALF OF DEONARINE AND BALKARAN

66. Mr. Singh did not address this ground of appeal in either his written submissions or his oral submissions before the court.

THE LAW, ANALYSIS AND REASONING:

67. In the court below, counsel for the prosecution sought to tender into evidence documents relating to the wire transfers in respect of the vehicles in question, under **section 14 of the Evidence Act Chapter 7:02**. The magistrate refused to tender the documents into evidence. Before so doing, the following exchange took place between the magistrate and the prosecutor:

***His Worship:** In this case, if you can establish to me that those Wire Transfers relate to purchases relative to these specific transactions which are before the Court....*

***Ms. Soondarsingh:** Yes, please, Your Worship, yes, please, they are.*

***His Worship:** Does it say that those Wire Transfers are a full payment, for example, for these vehicles?*

***Ms. Soondarsingh:** Yes, please, Your Worship.*

***His Worship:** So, you are saying that the Wire Transfers is specific... for the purpose of purchasing vehicles generally, or these vehicles?*

***Ms. Soondarsingh:** They have the names of the vehicles on the Wire Transfers, please.*

...

...

***His Worship:** You see, Ms. Soondarsingh, these are not specific to those vehicles. Okay, had it contained, for example, an engine number – a chassis number... but unless there is evidence so far, which I do not think that there is, that this is the first transaction that this Importer attempted to import for the year, okay, and this is the*

*only Prado and this is the only Subaru that he imported, okay, this is – it cannot speak specifically to that and therefore it would be prejudicial to him.*²⁵

68. The magistrate essentially found that the wire transfer documents were not specifically relevant to the vehicles in the present case. He found that there were no features in the documents which suggested that they related to those vehicles, for example a reference to the chassis numbers of the vehicles.

69. It is important to underscore how the wire transfer documents came into possession of the appellant. According to the evidence, the appellant, during the course of his investigations, approached Deonarine and enquired whether he had the vehicles in his possession, to which he responded in the affirmative. Deonarine then produced several documents in respect of those vehicles, including the wire transfers, copies of a C-82 forms and the Bills of Lading. The appellant in his evidence said that he examined those documents. He then cross-referenced them with another document which he obtained from the Asecuder System at Customs, which showed the values which were declared to the Customs. He observed that there was a “vast difference” in the values in both sets of documents²⁶. A reasonable inference could be drawn that the wire transfer statements referred to the vehicles in question. In this regard, we do not agree with the magistrate’s finding that there was no nexus between the wire transfer documents and the vehicles.

70. Further, since the wire transfer documents were retrieved from the respondent in the course of an investigation, they were admissible by dint of that fact. The prosecution was accordingly absolved of a duty which they otherwise would have borne, that of calling the maker of the document, if available, to verify its contents or otherwise by satisfaction of the prerequisites of **section 14 of the Evidence Act**.

²⁵ See the Transcript of the Proceedings dated June 10, 2010 at page 10, line 16 to page 12, line 3.

²⁶ See the Transcript of the Proceedings at page 327, lines 4-33.

71. In our view, the magistrate erred in law in refusing to admit the wire transfer documents into evidence.

This ground of appeal is meritorious.

DISPOSITION

72. Having regard to our findings stated above, the appeal is allowed in part. For the reasons stated at paragraphs 54-60 above, the order of the magistrate in respect of the respondent Balkaran is affirmed. The orders of the magistrate in respect of the respondents Bedassie and Deonarine are set aside.

73. With respect to Deonarine, under **section 145 of the Summary Courts Act Chapter 4:20**, this Court is empowered to make such orders for disposing of the case as the justice of the case may so require, including substituting a finding of guilty. However, we decline to make such a substitution given that a live issue in the case surrounded the credibility of witnesses, a matter which this Court is ill-equipped to deal with.

RETRIAL

74. We turn now to consider whether it is appropriate to order a re-trial of this matter. We have considered the list of non-exhaustive factors to be considered when exercising the power to order a new trial as set out by Lord Diplock in **Reid v R**²⁷. A factor that points against the ordering of a retrial is the significant period of time which has elapsed, some eleven years, since the alleged offences. However, we find that this factor is outweighed by the inherent seriousness of the offence and the fact that the offence affects the collection of revenue for the State. These factors generate a strong public interest in Deonarine and Bedassie being retried. The balance comes down in favour of ordering a retrial.

²⁷ (1978) 27 WIR 254.

75. The matters against Navindra Deonarine and Roger Bedassie are hereby remitted to the Magistrate's Court, to be heard before another magistrate.

Rajendra Narine, J.A.

Mark Mohammed, J.A.