

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Mag. App. No. P 090 of 2016

BETWEEN

HARRINATH SAWH

APPELLANT

AND

DESI-LEE BONTERRE

RESPONDENT

PANEL:

A. Yorke-Soo Hon, J.A.

M. Mohammed, J.A.

APPEARANCES:

Mr. S. Cazabon and Mr. R. Ramoutar for the Appellant

Mr. S. A. Roberts for the Respondent

DATE OF DELIVERY: 14th December, 2017

JUDGMENT

Delivered by M. Mohammed, J.A.

PROCEDURAL HISTORY

1. On the 12th September, 2007, the appellant, Harrinath Sawh, on behalf of the Telecommunications Authority of Trinidad and Tobago (the Authority), filed a complaint against the respondent, Desi-Lee Bonterre. The complaint alleged that on the 30th March, 2007, at No. 5 King Street, Point Cumana in Carenage, the respondent operated radio-transmitting equipment without a licence granted by Authority, as required by section 36 (1) (b) of the Telecommunications (Amendment) Act 2001, contrary to section 65(a) of the Telecommunications (Amendment) Act 2001.
2. The respondent pleaded not guilty to the offence on the 1st October, 2007 and the matter proceeded to trial.
3. On the 7th November, 2008, the prosecution successfully amended the charge against the respondent from one of “*operating a radio communication service without a licence*” to “*operating radio-transmitting equipment without a licence.*”
4. The prosecution called two witnesses, Nalini Mahadeo, a Wireless Engineer attached to the Authority and the appellant, who was a Technical Officer and Telecommunications Inspector at the Authority. After hearing the evidence of these witnesses, counsel for the respondent made a submission of no case to answer on the 4th August, 2009. This submission was overruled by the magistrate on the 13th November, 2009 and the respondent was called upon to answer the case against him. The respondent elected to give evidence and called one witness, Lester Anthony Wilson.

5. The magistrate, after hearing the evidence and submissions of counsel on both sides, found the respondent not guilty of the offence on the 14th June, 2011.
6. On the 22nd June, 2011, the appellant filed a Notice of Appeal which sought to challenge the magistrate's decision.

THE CASE FOR THE APPELLANT

7. The respondent submitted an application to the Authority, dated the 14th November, 2006, for a licence to install, operate and use amateur radio-transmitting equipment. This application was denied because the requisite documents, namely copies of his Identification Card, Passport and Amateur Radio Certificate, were not attached.
8. In March, 2007, the appellant received instructions from the Authority to obtain a warrant to search the respondent's premises, located at King Street, Point Cumana in Carenage. On the 28th March, 2007, the appellant obtained a search warrant to search the respondent's premises. On the 29th March, 2007, the appellant visited the respondent's house where he observed several antennae located on the roof, as well as a tower. On the 30th March, 2007, the appellant, together with a party of police officers, visited the respondent's premises and called out to him to open the front gate. The respondent eventually opened the gate and invited them in. The appellant introduced himself to the respondent and showed him the warrant to search his premises. The respondent then took the appellant and the party of police officers to his "radio room" where the appellant observed several pieces of radio communication equipment which were powered up and operational. The appellant was able to hear active conversations emanating simultaneously from the various pieces of equipment. He asked the respondent whether he had a licence to operate the equipment and he responded, "No". The respondent however informed the appellant that he had applied to the Authority for a licence.
9. The appellant asked the respondent if he had installed the radio-transmitting and receiving equipment and he replied, "Yes". The appellant then asked the respondent whether he used the

same equipment for radio-transmitting and receiving purposes and he said, “Yes”. The appellant informed the respondent that he was in breach of the Telecommunications Act by operating the said equipment without a licence. The appellant then proceeded to seize several pieces of equipment from the radio room. A note was made of the equipment which were seized, which was subsequently signed by the respondent.

THE CASE FOR THE RESPONDENT

10. The case for the respondent was one of a denial of the version of events postulated by the appellant.
11. The respondent held dual citizenship in the countries of the United States of America (US) and Trinidad and Tobago. He obtained certificates in both computer networking and wireless communications with the ETA (sic), an educational institute in the US. The respondent gave evidence that at the time when the appellant visited his premises, he was a member of the Radio Emergency Associated Communication Team (REACT) and also had a US licence from the Federal Communications Committee.
12. The respondent testified that on the 30th March, 2007, he was at his premises located at No. 5 Kings Street, Point Cumana in Carenage when he was awakened by persons from the Authority, as well as police officers. The respondent went to his front gate and greeted the persons there and was informed that they had a warrant to search his premises for radio-transmitting equipment. He granted the persons access to his premises. He enquired as to the purpose of the search and was told that they had received information that he had several pieces of equipment, which they wanted to inspect. The respondent, the appellant and the party of police officers then went inside of the house, into one of the front rooms. That room was found to contain several pieces of electronic equipment, including computers, fax machines, radio equipment and cordless telephones. The appellant enquired into the purposes for which the equipment were used, and the respondent indicated that he was a member of several voluntary organisations and that he did minor repairs to certain equipment. According to the respondent, after he repaired the equipment, he would test them to ensure that they were properly working and capable of transmitting and receiving signals.

Once he determined that the items were in proper working order, he would return them to their respective owners. At the time of the search, the appellant had several radios for repair on his bench. They were not in working order and were unable to be powered up.

13. The respondent gave evidence that on the day in question, he had several pieces of equipment at his premises which were capable of transmitting and receiving signals, four of which were in good working order. Two of those pieces of equipment related to the REACT frequency and two were separate from REACT. There were other pieces of equipment located in the room, which were either partially working or not working at all. The four working devices were not powered on at the time that the appellant and the police officers visited the respondent's premises. The devices were unplugged as a result of the voltage surges which had occurred in the area in which the respondent lived. In cross-examination however, the respondent said that he had operated those pieces of equipment on several occasions prior to that day.
14. The respondent said that in order for REACT members to know when a person was in distress, the necessary equipment would have to be powered on. He also admitted that at the time of the search, he did not have a license from the Authority authorising him to operate radio-transmitting equipment.
15. The respondent called one witness, Lester Wilson, the former President of the REACT Team 4928, one of the nine REACT teams in Trinidad and Tobago. Wilson testified that the respondent was a member of the REACT team and was in charge of emergency management. That position entailed coordinating and compiling information to be sent to the Office of Disaster Preparedness and Management. Wilson also gave evidence that on the 30th March, 2007, a licence was in effect, allowing REACT members to operate telecommunications equipment by virtue of an agreement between REACT and Illuminat Trinidad and Tobago Ltd., a communications services provider. There was also an agreement in force between REACT and Radio Communication Services Limited which allowed REACT to use a certain frequency to transmit signals over long distances, in exchange for a quarterly rental fee.

THE MAGISTRATE'S DECISION

16. The magistrate's decision, as set out at page 293 of the Record of Appeal, was as follows:

"...The Court considered the evidence of the prosecution's witnesses Ms. Mahadeo and Mr. Sawh and having carefully considered the evidence the Court was not satisfied that on that particular date Mr. Bonterre was operating (1), and (2) that the equipment was ... radio transmitting equipment.

The Court felt that it was placed in a position where it had to determine that the equipment was in operation and also, that each piece of equipment was a radio or at least one of it was the radio transmitting equipment and that equipment was operating on the day.

*The Court felt that the question as to whether the equipment was radio transmitting equipment – position of the law and fact – and that by the Inspector saying in evidence that it was radio transmitting equipment – that was really an issue for the Court to decide on factual evidence which was put before it **and the Court felt if it had to determine this on a balance of probability, it may have gone differently, but because the Court needed to be satisfied beyond a reasonable doubt and the Court was not so satisfied and therefore finds Mr. Bonterre not guilty.**" (sic) [emphasis added]*

GROUND OF APPEAL:

17. The appellant advanced one ground of appeal, that the decision of the Learned Magistrate was unreasonable and could not be supported having regard to the evidence.

SUBMISSIONS MADE ON BEHALF OF THE APPELLANT

18. Counsel for the appellant, Mr. Cazabon, submitted that one of the core issues that had to be determined was whether the devices seized at the respondent's premises were radio-transmitting equipment. He submitted that both the Telecommunications Act and the International Telecommunications Union Convention were silent on the definition of "*radio-transmitting equipment*". Mr. Cazabon submitted that in those circumstances, regard must be had to the natural and ordinary meaning of the words. He suggested that radio-transmitting equipment referred to equipment capable of sending out or broadcasting radio communication or equipment that were capable of passing on radio communication from one person, place or thing, to another. According to Mr. Cazabon, when this definition was applied to the evidence which was before the magistrate, there was sufficient to prove the offence beyond reasonable doubt.
19. Mr. Cazabon argued that the prosecution's case was not only strongly supported by the evidence of its witnesses, but also by the evidence of the respondent himself. The appellant gave evidence that he saw the radio-transmitting equipment powered on and operating at the time of his inspection and that he heard active conversations emanating simultaneously from those pieces of equipment. In addition, the respondent gave evidence that he was in possession of pieces of radio-transmitting equipment on the 30th March, 2007. It is in this regard that Mr. Cazabon submitted that the magistrate was wrong in finding that the equipment found at the respondent's premises were not radio-transmitting equipment.
20. Mr. Cazabon relied on the decision in **Hill v William Hill (Park Lane) Ltd.**¹ as authority for the proposition that Parliament is presumed to have not intended to use redundant words in a statute. Mr. Cazabon submitted that in section 36(1)(b) of the Telecommunications Act, which provides that, "*no person shall install, operate or use any radio-transmitting equipment without a licence granted by the Authority*", the word "*operate*" ought to be given a separate meaning from the word "*use*". He submitted that the word "*operate*" signified a broader concept of control and management of the use of the radio-transmitting equipment. According to Mr. Cazabon, this meant

¹ [1949] AC 530.

that even if the respondent was not using the radio-transmitting equipment on the day that the search was conducted, it could not be implied that he was not operating the equipment, as the operation would have been ongoing. It was submitted that the respondent's clear intention was to continue the operation as, according to him, the only reason that the equipment were not plugged in on the day in question was because of a power surge in the area.

21. It was argued that the respondent gave clear evidence that he installed the radio-transmitting equipment at his house, that he was in the habit of using the radio-transmitting equipment and that he was the one in control of the equipment. In particular, the respondent determined when to plug in and unplug the equipment and decided to what use they would be put. According to Mr. Cazabon, this type of control was precisely the mischief which the legislature would have had in mind when it employed the word "*operate*".
22. Mr. Cazabon also submitted that the magistrate's reasons were clear from a perusal of the Record of Appeal and that those reasons were made apparent in her oral ruling on the 14th June, 2011. He relied on the decision in **Francis Jones v Sgt. Sheldon David #11730**², where this Court said that, "*the absence of written reasons by the magistrate does not automatically generate an iron-clad, free standing ground of appeal*". This Court went on to say at paragraphs 38-39:

"[38]...In very exceptional cases the absence of written reasons may generate a free standing ground of appeal where, for example, because of the absence of those reasons, counsel is unable to even formulate a meaningful appellate challenge.

[39] The approach to be adopted by the Court of Appeal is a pragmatic, functional one. This approach is context driven and it involves an examination of the evidentiary record, the specific issues raised and any brief oral reasons given by the Magistrate. If the case is (a) factually, a straight forward one; (b) legally, not a complex case; and (c) if the reasons for the magistrate's decision are capable of being ascertained by reference to the record of evidence, then the absence of

² Mag. App. No. 64 of 2014.

written reasons may be less likely to deprive the Court of Appeal of its ability to perform the appellate function..." [emphasis added]

23. Mr. Cazabon submitted that the issue as to the consequences which flowed from the failure of the magistrate to give written reasons for her decision did not arise in the present case.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT

24. Mr. Roberts, on behalf of the respondent, submitted that the prosecution failed to adduce evidence before the Court of the specific radio-transmitting equipment that it claimed were being used. He further submitted that the prosecution failed to show whether the devices seized were in fact radio-transmitting devices and whether they were capable of transmitting radio-waves. According to Mr. Roberts, the prosecution simply showed the magistrate the various unplugged devices and asked her to assume that they were radio-transmitting devices. No evidence was led by the appellant to show how he determined that the devices were in fact radio-transmitting equipment and were properly functioning.
25. Mr. Roberts contended that the essential elements of the offence had not been proved. He submitted that the prosecution failed to prove that there were radio-transmitting equipment in the mode of transmitting, which were being operated by the respondent. Mr. Roberts submitted that the appellant's evidence, that he heard active conversations emanating from the devices, did not satisfy the requirements of the charge as audio was capable of being heard through several other media, such as tapes, CDs or radios. He submitted that there was no evidence that the devices seized were capable of transmitting radio-waves. Mr. Roberts suggested that a spectrum analyser, which is a device capable of measuring and determining radio frequency signals, could have been utilised to ascertain whether there were radio transmissions entering the property. He submitted that in cross-examination, the appellant admitted that the Authority had employed such devices in the past but that they were not used during the investigations in the present case.

26. With respect to the evidence of the presence of antennae outside of the respondent's house, Mr. Roberts submitted that it was not an offence to merely have antennae on a premises. He further submitted that it was not an offence to have equipment capable of radio-transmitting "*simpliciter*". Mr. Roberts contended that several household electronic items were radio-transmitting devices, including mobile phones, computers, cordless phones and other wireless devices. In support of this contention, Mr. Roberts relied on the evidence of one of the prosecution witnesses, Ms. Mahadeo, at page 47 of the Record of Appeal, where she accepted under cross-examination that a cordless phone was a radio-transmitting device.
27. Mr. Roberts submitted that the magistrate's brief oral reasons were sufficient for this Court to perform its appellate function. He further submitted that the magistrate adequately considered the weight and the significance of the relevant circumstances as established on the evidence and that the conclusion arrived at was reasonably supported by the evidence.

FURTHER SUBMISSIONS MADE ON BEHALF OF THE APPELLANT AND THE RESPONDENT

28. During the hearing of this appeal, the Court requested further submissions from both parties on the considerations which other Commonwealth jurisdictions take into account with respect to the proving of an offence similar to the one in question, that is, the installing, operating or using of radio-transmitting equipment without a licence.
29. Mr. Roberts, in his further submissions filed on the 29th September, 2017, initially indicated that no authorities were found dealing with the offence of operating such a broad class of devices known as "*radio-transmitting equipment*".
30. In further submissions filed on the 4th December, 2017, Mr. Cazabon, in response to the argument that the equipment found were not proven to be in operation, submitted that it was clear from both the prosecution and defence cases that the respondent was using and operating radio-transmitting equipment from his house. He submitted that this operation was ongoing on the day that the search

was conducted, on the 30th March, 2007. Mr. Cazabon also submitted that in the relevant section of the Telecommunications Act, which reads, “no person shall install, operate or use any radio-transmitting equipment”, the word “operate” had the effect of broadening the scope of the offence. It was argued that there was no credible explanation from the respondent which suggested that he was not operating the equipment that were seized at his premises.

31. In his further submissions, Mr. Cazabon also relied on the decision in **Rex v Gignac**³, a decision of the High Court of Canada. That case involved an appeal by way of a stated case, against, inter alia, the decision of a magistrate to dismiss an information charging the respondent with the offence of establishing a radiotelegraph station without having obtained a licence, as required by the Radio Telegraph Act R.S.C 1927 ch195. The evidence before the Court was that the Inspector and Constable who were investigating the matter visited the residence of the respondent, who was then out of town, and found the radio receiving set in operation. In arriving at his decision in the matter, Armour J. said:

“The Magistrate came to the conclusion that there was no evidence to prove that the defendant had established a radiotelegraph station within the meaning of sec. 6 of the Act... I do not think that the Magistrate was right in the conclusion he came to on the evidence, because, in my opinion, he should have found that the respondent had so established a radio-telegraph station without having been granted a licence so to do from the proved facts, namely, that the radio receiving set was installed in the respondent's home; that the respondent had admitted that he was the owner of the radio set and that he had no licence therefor; that he was the owner and occupant of the house where the radio receiving set was found on the 4th September, 1933, that house being his home; and that he paid for the electricity used therein; and that the radio set in question was attached to the electric house current. On those proved facts, I think that the learned Magistrate should have convicted the respondent of the first offence charged, namely, of establishing a radiotelegraph station...”
[emphasis added]

³ [1934] O.R. 195.

32. On the 7th December, 2017, Mr. Roberts filed submissions in response to the appellant's further arguments. He submitted that in the decision in **Rex v Gignac**⁴, with respect to the second offence charged in that case, namely, "unlawfully working a radiotelegraph apparatus in Canada without a licence", it was said that there ought to be some action by a defendant to show that he "worked" the apparatus. Mr. Roberts submitted that the word "worked" was tantamount to the word "operate" in the case at bar and that there was no evidence to suggest that on the 30th March, 2007, the respondent operated the radio-transmitting equipment. In **Rex v Gignac**, Armour J said:

"The next question is whether the respondent "worked" a radiotelegraph apparatus.

Once more, referring to the same dictionary, "to work" means 20. "to set in action, cause to act; to direct the action of; ... to actuate, operate, manage: with various objects as a machine or apparatus."

In this case I think the Magistrate was right in holding that to "work" the radio receiving set required the turning on of the electric current, followed by such necessary manipulation of the dials as would bring in the station desired.

On the 4th September, 1933, the day the officers visited the respondent's house and found the radio receiving set in operation, the respondent was out of town, and there was no evidence to show that he aided, abetted, counselled or procured any person to commit the offence mentioned in the second case.

... Can the owner of the receiving set be said to "work" the set if, in his absence from the house, someone turns on the electric current and manipulates the dials so as to cause the set to function? I think not.

I find, therefore, that the Magistrates' findings on the facts in the second case were right, as was his interpretation of the word 'work.'" [emphasis added]

⁴ Gignac (n. 3).

THE LAW

33. **Section 36 (1) of the Telecommunications (Amendment) Act 2001** provides that:

Subject to subsection (2), no person shall—

(a) establish, operate or use a radio-communication service;

(b) install, operate or use any radio-transmitting equipment; or

(c) establish, operate or use any radio communication service on board any ship, aircraft, or other vessel in the territorial waters or territorial airspace of Trinidad and Tobago, other than a ship of war or a military aircraft or satellite registered in Trinidad and Tobago,

without a licence granted by the Authority.

...

34. **Section 65 (a) of the Telecommunications (Amendment) Act 2001** provides that:

A person who fails to comply with or acts in contravention of section 21(1), 33, 36(1), or 73;

...

...

commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years, and, in the case of a continuing offence, to a further fine of ten thousand dollars for each day that the offence continues after conviction.

ANALYSIS AND REASONING

The Failure of the Magistrate to Give Reasons

35. The magistrate's oral reasons did not reveal how she analysed the evidence on either side in arriving at her decision, but merely stated her conclusion in the matter. She did not in any way explain what features of the evidence before her generated reasonable doubt in her mind. We are therefore not in agreement with the submission of Mr. Roberts that the magistrate's oral reasons were sufficient for this Court to perform its appellate function.
36. However, as explained by this Court in the decision in **Francis Jones v Sgt. Sheldon David #11730**⁵, the approach to be adopted is that the absence of reasons will not automatically generate an iron-clad, free standing ground of appeal. The approach is a pragmatic, functional one which involves examining whether, (i) the case is factually difficult or straight-forward; (ii) the law is simple or complex; and (iii) the reasons for the magistrate's decision are capable of being ascertained by reference to the record of evidence.
37. In our view, the case is factually straight-forward and surrounds the discovery of certain equipment at the respondent's premises upon a search warrant being executed. The case is also legally uncomplicated. Although the offence in question is one that is not commonly seen in the Magistrates' Courts, that consideration in and of itself does not make the case a legally complex one. We are therefore required to adopt the pragmatic, functional approach and we proceed to examine the evidentiary record and the relevant issues raised to determine whether the reasons for the magistrate's decision are capable of being ascertained.
38. The magistrate did not articulate any reasons for her decision. Upon an examination of the Record of Appeal, contrary to what was submitted by Mr. Cazabon, we cannot necessarily glean or imply the reasons for her decision. Mr. Cazabon did not contend that the failure of the magistrate to give reasons prejudiced his ability to advance a meaningful appeal. Rather, the thrust of his argument

⁵ **Francis Jones** (n. 2).

was that “*the decision of the Learned Magistrate was unreasonable and could not be supported having regard to the evidence*”. In effect, Mr. Cazabon argued that the magistrate’s decision was clearly and palpably wrong.

Whether the Magistrate’s Decision was clearly and palpably wrong

39. In the decision in **Wayne Rodriquez v Thomas Nimblett Police Sgt #7340**⁶, Archie, J.A. (as he then was) said at paragraph 13:

“[13] Where a finding of fact is based on an assessment of truthfulness of a witness, it is axiomatic that an Appellate Court ought not to overturn it unless the magistrate has so clearly misconstrued the evidence, or palpably failed to consider the weight and the significance of the relevant circumstances as established or disproved on the evidence. Where inferences are drawn from primary findings of fact, the Appellate Court may more readily intervene but should not substitute its own view if the conclusion reached by the fact finder is reasonably supported by the evidence.” [emphasis added]

40. Upon an examination of the Record of Appeal, we consider the following pieces of evidence to be of particular importance:

- (i) When the appellant was invited by the respondent into his “radio room”, he observed several pieces of radio communication equipment installed, powered up and operational. The appellant was also able to hear active conversations coming simultaneously from the various pieces of equipment⁷.

⁶ Mag. App. No. 308 of 2003.

⁷ See the Record of Appeal at page 94, lines 36-50 and page 95, lines 2-3.

- (ii) The appellant asked the respondent whether he installed the radio-transmitting and receiving equipment and he replied, “Yes”. The appellant also asked the respondent whether he used the same equipment for radio-transmitting and receiving purposes and he responded, “Yes”⁸.
- (iii) The respondent explained that he was a member of REACT, a non-profit organisation that rendered emergency assistance to the public⁹. He indicated that REACT members communicated by way of radio and by telephone¹⁰. When questioned as to what he meant by radio communication, the respondent said that, “Radio communication mean, a transmitter and receiver in the AM mode and VHF mode, which is two bands”¹¹.
- (iv) When the respondent was asked whether, as a member of REACT, he had at his premises on the day in question, radio equipment that were capable of transmitting and receiving, he said, “I have several pieces of equipment at my premises capable of doing that”¹².
- (v) The respondent said that on the 30th March, 2007, he had at his premises several pieces of equipment that were capable of transmitting and receiving signals but that they were, at the time, not “hooked up”¹³.
- (vi) When the respondent was questioned about the number of pieces of radio-transmitting equipment which he had at his premises on the day in question, that were capable of transmitting and receiving signals, he responded that he had a total of four, which were in working order and which were located in the front room of his house¹⁴, the same room which the appellant entered and heard active conversations emanating from the devices contained therein.

⁸ See the Record of Appeal at page 109, lines 3-9.

⁹ See the Record of Appeal at page 179, lines 7-11.

¹⁰ See the Record of Appeal at page 180, lines 13-17.

¹¹ See the Record of Appeal at page 180, lines 29-30.

¹² See the Record of Appeal at page 180, lines 44-49.

¹³ See the Record of Appeal at page 181, lines 6-22.

¹⁴ See the Record of Appeal at page 182, lines 48-49, page 183, lines 1-23 and page 184, lines 1-14.

- (vii) The respondent gave evidence that he repaired radio-transmitting equipment as a hobby and said that after effecting the repairs, he would test the equipment to ensure that they were properly functioning before returning them to their owners¹⁵.
- (viii) The respondent testified that he had at least six antennae on his premises which were in working order, which served to break down electromagnetic waves into intelligent signals for radio and which facilitated the receiving of signals for radio-transmitting equipment¹⁶.
- (ix) The respondent admitted that before the 30th March, 2007, he operated the several pieces of equipment in his possession, which were capable of transmitting and receiving signals. He said that he would operate those pieces of equipment in furtherance of his activities with the several organisations that he was a part of. He also said that on the occasions on which he operated those equipment, he did not have a licence from the Authority authorising the use of them¹⁷.

41. In light of these pieces of evidence, we are of the opinion that the magistrate's findings were completely contrary to the weight of the evidence. This conclusion is also supported by the decision in **Rex v Gignac**¹⁸ (see paragraph 31 above). The evidence of the appellant, who was the investigator in the matter, was that the devices found at the respondent's premises were pieces of radio-transmitting equipment. The respondent himself testified that he was in possession of four functional pieces of radio-transmitting equipment on the day in question, but that they were unplugged at that time. Although, as submitted by counsel for the respondent, the use of a spectrum analyser to prove that the devices were radio-transmitting equipment might have been ideal, on the facts of this case, it was not necessary. This is because the evidence before the magistrate was of

¹⁵ See the Record of Appeal at page 190, lines 23-50 and page 191, lines 1-4.

¹⁶ See the Record of Appeal at page 191, lines 15-29 and 48-50.

¹⁷ See the Record of Appeal at page 209, lines 24-50 and page 210, lines 1-25.

¹⁸ **Gignac** (n. 3).

sufficient cogency to safely enable the drawing of an inference that the devices seized were in fact radio-transmitting equipment.

42. Mr. Roberts argued that there was no evidence that the respondent operated the radio-transmitting equipment on the relevant day, at the relevant time. In dealing with this submission, we wish to highlight the very important piece of evidence which formed the core of the prosecution's case and which was given by the appellant. On the day that the search warrant was executed, the appellant, upon entering the room in the respondent's house where the equipment was found, saw several pieces of radio communication equipment which were powered up and operational. The most crucial part of the appellant's evidence however was that he heard active conversations emanating simultaneously from various pieces of those radio communication equipment. Upon reviewing the evidentiary record, we note that the appellant's evidence was unencumbered by any material inconsistencies and contradictions. In our view, the appellant's evidence on this issue was cogent and compelling.

43. Mr. Cazabon's further submissions, summarised at paragraphs 30-31 above, reinforces our conclusion that there was ample and cogent evidence in the case from which the magistrate could reasonably and properly have convicted the respondent.

CONCLUSION

44. The magistrate did not articulate the reasons for her decision and we are unable to glean or imply those reasons from a review of the evidentiary record. However, the absence of the magistrate's reasons did not prejudice the appellant's ability to advance a meaningful appeal. It is clear to us that the magistrate's finding was completely contrary to the weight of the evidence. The evidence of the prosecution witnesses was clear, cogent and compelling. In our view, the prosecution had proven its case beyond reasonable doubt.

45. Applying the reasoning in **Wayne Rodriquez v Thomas Nimblett Police Sgt #7340**¹⁹, we find that the magistrate palpably failed to consider the weight and the significance of the relevant circumstances as established on the evidence.
46. 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. **Section 145 of the Summary Courts Act** provides that:

*145. On any appeal from a decision of a Court of summary jurisdiction, no objection shall be taken or allowed to any proceeding in such Court for any defect or error which might have been amended by such Court, or to any complaint, summons, warrant, or other process to or of such Court for any alleged defect therein in substance or in form, or for any variance between any complaint or summons and the evidence adduced in support thereof in such Court. **If any error, defect, or variance mentioned in this section appears to the Court of Appeal at the hearing of any appeal to be such that the appellant has been thereby deceived or misled, the Court of Appeal may either refer the case back to the Magistrate or Justice with directions to rehear and determine the same, or reverse the decision appealed from, or make such other order for disposing of the case as justice may require.** [emphasis added]*

DISPOSITION

47. Having regard to our findings stated above, the appeal is allowed. The order of the magistrate is set aside. We exercise our powers under **section 145 of the Summary Courts Act** and substitute a finding of guilty.

¹⁹ **Wayne Rodriquez** (n. 6).

48. The Court now calls upon counsel for the respondent to enter a plea in mitigation on his client's behalf.

Alice Yorke-Soo Hon, J.A.

Mark Mohammed. J.A.