

COURT OF APPEAL SITTING
SAINT VINCENT AND THE GRENADINES
17th to 18th September 2012

JUDGMENT

Case Name: Kenroy Hyman v The Commissioner of Police
[Magisterial Criminal Appeal No. 2 of 2011]
(Montserrat)

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Richard Williams holding papers for Mr. Khari Markham of Allen Markham and Associates

Respondent: Mr. Colin Williams, Director of Public Prosecutions holding papers for Ms. Kathy-Ann Pyke, Director of Public Prosecutions

Issues: Criminal appeal – Self-defence – Unlawful assault – Whether magistrate applied wrong principle on the issue of self-defence – Whether the burden of proof shifted from the prosecution to the defence when self-defence was raised by the appellant

Result & Reason: Held: dismissing the appeal and confirming the appellant’s conviction, that:

1. A defendant, who has raised the defence of self-defence in a criminal case, does not bear the burden of proof and does not

have to make out any case. It is the prosecution which must negative self-defence.

2. The test to be applied in self-defence is that a person may use such force as is reasonable in the circumstances if he honestly believes it to be in defence of himself or another. This principle was applied by the magistrate to the facts of the case. The magistrate considered evidence of the appellant's behaviour and demeanour before the incident and afterwards, thereafter she rejected the appellant's defence of self-defence. As the magistrate is the decider of both fact and law, she was entitled to reject the appellant's defence and render a verdict averse to the appellant.

Solomon Beckford v The Queen 1988 AC 130 applied; Curvin Jeremiah Isaie v The Queen Saint Lucia HCRAP 2006/006 (delivered 14th July 2008) followed.

3. The magistrate had the advantage of seeing and assessing the witnesses demeanour when they gave their testimony. From this, she determined that the evidence before her proved that the appellant was the aggressor which negative his defence. The Court of Appeal would not disturb the magistrate's finding of fact, which resulted in the appellant's conviction, as there was ample evidence disproving the appellant's defence.

Case Name:

[1] Kenneth M. Kryss
[2] Joanna Lau
(as Joint Liquidators of Fairfield Sentry
Limited, In Liquidation

V
Stitching Shell Pensioenfonds

**[High Court Civil Appeal No. 36 of 2011]
(Territory of the Virgin Islands)**

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
[Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Graham Bollers holding papers for Mr. Paul Girolami, QC

Respondent: Mr. Richard Williams holding papers for Ms. Catherine Newman, QC

Issues: Anti-suit injunction – Company in liquidation – Respondent submitting proof of claim in liquidation – Pre-judgment garnishment orders obtained by respondent in Netherlands against company prior to liquidation – Funds garnished main asset of company in liquidation – Funds held by Dutch Bank at its branch in Ireland for account of company in liquidation – Respondent commencing proceedings in Netherlands – Basis of jurisdiction of Dutch courts – Priority of claims – Whether respondent should be restrained from continuing proceedings in Dutch courts – Principles for granting anti-suit injunction

Result & Reason: Held: allowing the appeal, that:

1. The submission by Shell of its proof of claim in the liquidation was a submission to the BVI jurisdiction in respect of the liquidation process; it indicated Shell's acceptance of the statutory scheme under the Insolvency laws of the Virgin

Islands for the benefit of all unsecured creditors (foreign and local) to be treated equally. Accordingly, Shell ought not to be permitted to pursue the Dutch proceedings where, by virtue of its pre-judgment garnishment orders, it may gain a priority over Sentry's general body of creditors having claimed in the liquidation.

In re Vocalion (Foreign), Limited [1932] 2 Ch 196 cited; *Robertson (1875)* LR 20 Eq 733 cited.

2. The ends of justice in the circumstances of this case require that the integrity of the court's process in the supervision and administration of the statutory scheme under the Insolvency laws be protected. Accordingly, Shell, is restrained from pursuing or continuing its proceedings in the Dutch courts.

Amchem Products Inc. v Workers' Compensation Board (1993) 102 DLR (4th) 96 cited.

3. The learned judge erred in proceeding on the assumption that the basis of the Dutch courts' jurisdiction was the fact that the respondent was a Dutch company. The respondent commenced proceedings in the Dutch courts merely because Citco Bank is a Dutch entity. The evidence strongly suggests that Shell instituted the Dutch proceedings not in reliance on any principle of natural forum, but solely for the purpose of gaining a priority over other creditors of Sentry.

Case Name:

**Paul S. Webster v Lois Dunbar
[High Court Civil Appeal No. 4 of 2011]**

(Anguilla)

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
[Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Duane Daniel holding papers for Ms. Jean M. Dyer

Respondent: Mr. Stephen Williams holding papers for Mrs. Cora Richardson Hodge

Issues: Civil appeal – Divorce – Constructive Trust – House purchased in husband’s name only – Common intention – Detrimental reliance – Whether wife's contribution gave her a beneficial interest or a share therein

Result & Reason: Held: allowing the appeal to the extent of reducing the respondent’s beneficial interest in Parcel 98 to 10%; confirming the other orders made by the trial judge; and ordering that the parties bear their own costs of the appeal and in the court below, that:

1. The basic principles are that an appellate court will not impeach the finding of facts by a first instance or trial court that saw and heard witnesses give evidence, except in certain very limited circumstances. A limited circumstance exists where a trial judge misdirects himself or herself and draws erroneous inferences from the facts. In that instance, an appellate court is in as good position as the trial judge to evaluate the evidence and determine what inference should be drawn from the proved facts.

The trial judge, from her vantage point, drew an inference from the facts and made the assessment that the cheque for \$62,500.00 went towards the purchase of Parcel 98. Consequently, the Court of Appeal is in as good a position as the trial judge to draw its own inference. On that basis, there was no clear evidence as to when the decision to buy Parcel 98 was made and when the price of the land was discussed. What is certain is that the cheque was dated in August 1998 and the agreement for the sale was dated in March 1999. Further, the deposit of \$60,000.00 and the subsequent instalments were all paid by cashier's cheque which *ex facie* were purchased by the appellant. Accordingly, the trial judge's inference from the facts that the respondent contributed \$62,500.00 towards the purchase price of Parcel 68 cannot stand.

Michael v Michael Antigua and Barbuda High Court Civil Appeal No. 15 of 2008 (delivered 29th June 2010, unreported) followed; Grenada Electricity Services Limited v Isaac Peters Grenada High Court Civil Appeal No. 10 of 2002 (delivered 28th January 2003, unreported) followed.

2. A person who does not have the legal title for a property and is claiming a beneficial interest in that property must prove that there was a common intention between the parties that they should share the beneficial title and on that common intention they acted to their detriment. Common intention can be established by direct evidence of an agreement between the parties that the person without the legal title will have a beneficial interest in the property and where there is no express agreement but the parties have conducted themselves in

such a way as to show that they intend joint ownership of the property. In the present case, there was direct evidence establishing common intention to own the property jointly. Once it has been shown that there was a common intention that the respondent should have an interest in the house, any act done by her to her detriment relating to the joint lives of the parties is sufficient detriment to qualify her for a beneficial interest in Parcel 98. The respondent's purchase of blinds, building materials and general assistance in the construction process are acts done by her to her detriment and would therefore qualify her for a beneficial interest in Parcel 98.

Grant v Edwards and Another [1986] 2 All ER 426 applied; Lloyds Bank Plc. v Rosset and Another [1991] 1 AC 107 applied; Eves v Eves [1975] 3 All ER 768 distinguished.

3. The respondent's claim to a beneficial interest in Parcel 98 is based in large part on her alleged financial contribution to the purchase price. Since she has failed to discharge the evidentiary burden of proving that she contributed the cheque in the amount of \$62,500.00 to the purchase money it follows that the cheque cannot be used to show either common intention or detrimental reliance. Based on her contributions and disregarding the \$62,500.00 cheque an award of a 10% interest in the property is warranted.
4. There was ample evidence to support the judge's findings that the respondent acquired a beneficial interest in the Mercedes Benz, Persian rugs, chandeliers and paintings. These awards were made on the bases of common intention and findings by the judge that

they were purchased by the respondent. The Court has found no reason to upset these findings.

Case Name:

**[1] Maguerite Desir
[2] Maguerite Desir
(Qua Executrix of the Will of the late
Albertha Bella Butcher)
v
Sabina James Alcide**

**[High Court Civil Appeal No. 30 of 2011]
(Saint Lucia)**

Date:

Tuesday, 18th September 2012

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Ronald Marks holding papers for Mr. Peter I. Foster

Respondent: Mr. Carlyle Dougan, QC holding papers for Mr. Dexter Theodore

Issues:

Civil appeal – Saint Lucia Civil Code – Undue influence – Improbation of a deed – Bias on the part of the trial judge – One attorney as notary signing deed for vendor – Second attorney as friend and confidant of purchaser advising vendor on preparation of documents transferring vendor’s property to purchaser – Vendor an ill and wealthy person dying shortly after the properties were transferred – The two

attorneys subject to rigorous cross examination at trial on how they performed their roles – Duty of an attorney-at-law who witnesses the signature of an elderly and infirm party on a deed of conveyance – Need for judge to make a finding on the issue – No evidence of bias on part of judge

**Result &
Reason:**

Held: allowing the appeal in part and quashing the order for the improbation of the deed, while dismissing the appeal against the finding of undue influence, and dismissing the appeal as regards bias shown by the judge, and awarding one half of the costs in the court below to the appellant:

- 1. The learned trial judge properly applied the common law on undue influence to the facts as found by him, and the appeal against this part of his judgment is dismissed.**

Polinere and Others v Felicien (2000) 56 WIR 264; Stoneham and Tewkesbury (United Districts) v Ouellet [1979] 2 S.C.R 172; and Archambault v Archambault [1902] AC 575 considered; Murray v Deubery and Another (1996) 52 WIR 147; and Egger v Egger St. Lucia High Court Civil Appeal No. 17 of 2002 (Delivered 26th April 2002, unreported), applied.

- 2. A deed in Saint Lucia may only be improbated if all parties to it are joined in the litigation. The failure to join the two notaries who participated in the signing and execution of the impugned deed rendered the action for improbation impossible.**

Civil Code, Article 1142; and the Code of Civil Procedure, Article 148 and Article 179 applied; Immeubles Canton Ltd v Imperial Oil Ltd [1975] J.Q. no 51; Gingras v Poulin [1929] Q.J. No 3 or 48 B.R. 410 or

No 1873 (S.C. 1452); *Brossard v Brossard* [1926] JQ No 6 or 41 BR 484; *Burland v Moffatt* (1885) 11 S.C.R. 76 followed.

3. The fact that a company is owned and controlled by a party to an action does not avoid the necessity of joining the company as a party to the action where one of the remedies sought is the deprivation of property or the affecting of the rights of the company. The failure to join the company which was the purchaser under the deed as a party to the action further rendered the action for improbation impossible.

Salomon v Salomon (1897) AC 22; and Code of Civil Procedure, Article 148 applied.

4. Bias is not shown by a trial judge severely criticizing witnesses and parties when he makes harsh and severe findings against their conduct if such findings are required by the pleadings, the nature and direction of the cross-examination of witnesses, or his findings as to their conduct.
5. An attorney-at-law who witnesses the signature of an elderly and infirm party on a deed of conveyance must prepare to be questioned about the steps he took to ensure he was not being used as part of an enterprise to defraud or harm the individual or his or her family. A careful lawyer is well advised not to prepare, far less witness, a deed or transfer form for such a person in circumstances that are capable of raising the slightest suspicion without demanding a medical certificate relating to the person.
6. An attorney, far less a Notary Royal, who is called on to sign a deed of conveyance on behalf of a party who is not able to

write her name due to age and infirmity must expect to be questioned in due course on oath about the circumstances in which he so acted. One would ordinarily expect the attorney, as with any qualified, and ordinarily competent and careful solicitor, to make a written note of the circumstances, the questions he asked the party to ascertain if she was aware of all the implications of the transaction, and the answers that showed him she fully and voluntarily consented to it. The attorney would carefully preserve the contemporaneous note for production in the event that he is called on to testify, perhaps many years later, as to the circumstances that existed at the time. In a suitable case, a careful attorney might even send a subsequent letter to the client confirming the instructions that had been received, the advice that had been given, and any action that had been taken. A filed copy of that letter would be carefully retained to substantiate the attorney's response to a claim of negligence or improper conduct. An attorney-at-law is a learned person, advising a client for a fee on the contents of a document whose execution he is witnessing, he is not a lay person merely witnessing a signature over the counter.

Hawkins v Clayton (1988) 164 CLR 539 applied.

APPLICATIONS AND APPEALS

Case Name:

[1] Daniel Cummings
[2] BDS Limited

V

[1] The Hon. Dr. Ralph E. Gonsalves

[High Court Civil Appeal No. 18 of 2011]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
[Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Maia Eustace holding papers for Mr. Emery Robertson

Respondent: Mr. Anthony Astaphan, SC, with him, Mr. Graham Bollers

Issue: Application for leave to appeal

Result / Order / Reason: [Oral delivery]
By consent, the hearing of the application is adjourned to the next sitting of the Court of Appeal in this jurisdiction.

Case Name: Sir James Fitz Allen Mitchell v Ephraim Georges (Sole Commissioner of the Ottley Hall Commission of Enquiry)
[High Court Civil Appeal No. 14 of 2011]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
[Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mrs. Louise Mitchell-Joseph

Respondent: Mr. Anthony Astaphan, SC with Mr. Graham Bollers holding papers for Mr. Joseph Delves

Issue: Application to leave to appeal to Her Majesty in Council

Result / Order / Reason:

[Oral delivery]

By consent, hearing of the application is adjourned to the next sitting of the Court of Appeal in Antigua from 29th October 2012.

Case Name:

Sonya Young v Vynette Frederick
[High Court Civil Appeal No. 22 of 2011]

Nigel Stephenson v The Director of Public Prosecutions
[High Court Civil Appeal No. 23 of 2011]

Vynette Frederick v The Director of Public Prosecutions
[High Court Civil Appeal No. 24 of 2011]

Patricia M. Chance v The Director of Public Prosecutions
[High Court Civil Appeal No. 25 of 2011]

Linton Lewis v The Director of Public Prosecutions
[High Court Civil Appeal No. 26 of 2011]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice

[Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: **Mr. Keith Scotland with him Mrs. Kay Bacchus-Browne and Ms. Maia Eustace**

Respondent: **Mr. Anthony Astaphan, SC with him Mr. Richard Williams and Mr. Graham Bollers**

Issue: **Application for conditional leave to appeal to Her Majesty in Council**

Result / Order:

- [Oral delivery]**
- 1. Application for leave to appeal to Her Majesty in Council in respect of the combined appeals is dismissed.**
 - 2. The Court made no order as to costs for the reasons the Court gave in the substantive appeals.**

Reason:

The Court held on the consolidated applications for permission to appeal to Her Majesty in Council that the conditions contained in Section 99 (2) of the Constitution of Saint Vincent and the Grenadines and as distilled in the cases of *Martinus Francois v The Attorney General Civil Appeal No. 37 of 2003 (St. Lucia)* and *Daryl Sands v Garvey Louison et al Civil Appeal No. 1 of 2007 (Grenada)* have not been met. It is clear on the supplemental affidavit filed in support of the application and the grounds sought to be set out therein as the basis of the application neither individually nor collectively satisfy the test for the grant of leave. There is no issue advanced in respect of Civil Appeal No. 22 of 2011, in the case of the appeal entitled *The Chief Magistrate, Sonya Young v Senator Vynette Frederick* and therefore it ought to be and is hereby dismissed without more. The grounds raised by the applicant in the Court's

view taken as a whole amount to nothing more than a complaint in respect of the Court's application of the facts to the relevant law. The principles and the applicable law are well settled and accordingly even though the matters may be of general interest to the public no issue has been raised which is and can be said to be a matter which raises a question of great general or public importance or otherwise which ought to be submitted to Her Majesty in Council. In *Martinus Francois v The Attorney-General* Civil Appeal No. 37 of 2003, the Court had this to say, "Leave under this ground is normally granted when there is a difficult question of law involved". In construing the phrase, "great, general and of public importance," the Court usually looks for matters that involve a really serious issue of law or a constitutional provision that has not been settled, or an area of law in dispute, or a legal question which poses dire consequences for the public". This is not the case here. Accordingly, the application is hereby dismissed.

Case Name: Neville Jobe v The Queen
[High Court Criminal Appeal No. 8 of 2011]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
[Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him Ms. Sejilla McDowall

and Mr. Colin John

Issues: Criminal appeal against sentence – Wounding with intent

Result / Order: [Oral delivery]
The appeal is dismissed and the sentence is affirmed save that the time spent on remand will be taken into consideration.

Reason: The Court found no reason to interfere with the sentence taking into consideration the nature and viciousness of the attack.

Case Name: Edward Taylor v The Queen
[High Court Criminal Appeal No. 14 of 2011]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: In person
Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him Ms. Sejilla McDowall and Mr. Colin John

Issues: Criminal appeal against conviction – Attempted murder

Result / Order: [Oral delivery]

The matter is adjourned to the next Court of Appeal sitting in St. Vincent and the Grenadines. This will be the final adjournment.

Reason: To allow the appellant time to instruct counsel.

Case Name: Godwin Sam v The Queen
[High Court Criminal Appeal No. 5 of 2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice [Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him Ms. Sejilla McDowall and Mr. Colin John

Issues: Criminal appeal against conviction – Burglary

Result / Order: [Oral Delivery]
The appeal against conviction is dismissed and the sentence is affirmed.

Reason: The judge took into consideration time spent on remand and in custody in sentencing the appellant.

Case Name: **Jeremy Laborde v The Queen**
[High Court Criminal Appeal No. 11 of 2012]

Date: **Monday, 17th September 2012**

Coram: **The Hon. Mde. Janice M. Pereira, Chief Justice**
[Ag.]
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: **In person**

Respondent: **Mr. Colin Williams, Director of Public Prosecutions, with him Ms. Sejilla McDowall and Mr. Colin John**

Issues: **Criminal appeal against conviction and sentence – Robbery**

Result / Order: **[Oral delivery]**
The appeal is hereby dismissed and the sentence is affirmed.

Reason: **The Court found no reason to interfere with the sentence.**

Case Name: **Austin McDowald v The Queen**
[High Court Criminal Appeal No. 12 of 2012]

Date: **Monday, 17th September 2012**

Coram: **The Hon. Mde. Janice M. Pereira, Chief Justice**
[Ag.]

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him Ms. Sejilla McDowall and Mr. Colin John

Issues: Criminal appeal against conviction and sentence – Robbery

Result / Order: [Oral delivery]
The appeal is dismissed and the sentence is affirmed.

Reason: The appeal had no merit.

Case Name: Kevin Westfield v The Commissioner of Police
[Magisterial Criminal Appeal No. 48 of 2011]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against sentence of a fine of

\$750.00 in one month in default six months imprisonment – Possession of an offensive weapon

Result / Order / Reason:

Matter stood down until later this morning in order that the attorney, Mr. Emery Robertson be located.

Case Name:

**Courtney Ollivierre v The Commissioner of Police
[Magisterial Criminal Appeal No. 23 of 2012]**

Date:

Monday, 17th September 2012

Coram:

**The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant:

No appearance

Respondent:

Mr. Colin John with him Mr. Carl Williams

Issues:

Criminal appeal against sentence of six months imprisonment – Theft

Result / Order / Reason:

Matter stood down to determine whether the appellant is on bail or in custody.

Case Name:

**Junior Jack v The Commissioner of Police
[Magisterial Criminal Appeal No. 24 of**

2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against sentence of six months imprisonment – Theft – Escaping lawful custody

Result / Order / Reason: Matter stood down to determine whether the appellant is on bail or in custody.

Case Name: Odelle Horne v The Commissioner of Police
[Magisterial Criminal Appeal No. 25 of 2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against sentence of eighteen months imprisonment – Theft

Result / Order: [Oral delivery]
The appeal is hereby dismissed.

Reason: The appellant did not appear to prosecute the appeal despite having been served with notice of the hearing.

Case Name: Calvin Henry v The Commissioner of Police
[Magisterial Criminal Appeal No. 27 of 2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: No appearance
Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against sentence of nine months imprisonment – Unlawful possession

Result / Order: [Oral delivery]
The appeal is dismissed.

Reason: The appellant failed to appear despite having been served with a notice of the hearing.

Case Name: Mark John Dublin v The Commissioner of Police
[Magisterial Criminal Appeal No. 31 of 2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondents: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against sentence of three years imprisonment - Whether or not sentence is reasonable in the circumstances - Presenting false document

Result / Order: [Oral delivery]
The appeal is dismissed and the order of the magistrate is affirmed.

Reason: The magistrate acted properly weighing the mitigating and aggravating factors in arriving at her sentence.

Case Name: Kevin Westfield v The Commissioner of Police
[Magisterial Criminal Appeal No. 48 of 2011]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Samantha Robertson
Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against sentence of a fine of \$750.00 in one month in default six months imprisonment – Possession of an offensive weapon

Result / Order / Reason: Matter stood down to obtain instructions as to whether or not to withdraw opposition to the appeal.

Case Name: Junior Jack v The Commissioner of Police
[Magisterial Criminal Appeal No. 24 of 2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against sentence of six months imprisonment – Theft – Escaping lawful custody

Result / Order: [Oral delivery]
The appeal is dismissed.

Reason: The appellant no longer wished to proceed with the appeal.

Case Name: Courtney Ollivierre v The Commissioner of Police
[Magisterial Criminal Appeal No. 23 of 2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant:	In person
Respondent:	Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against sentence of six months imprisonment – Theft

Result / Order: [Oral delivery]
The appeal against sentence is dismissed and the sentence of the magistrate is affirmed.

Reason: The magistrate properly took into account the aggravating and the mitigating factors.

Case Name: Josiah Rodney v The Commissioner of Police
[Magisterial Criminal Appeal No. 5 of 2003]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against sentence of a fine of \$500.00 to be paid in one month or in default three months imprisonment – Driving at night without rear registration plate light

Result / Order: [Oral delivery]
The appeal is dismissed and sentence of the magistrate is affirmed.

Reason: The fine of \$500.00 was one-quarter of the maximum and was imposed after a full trial.

Case Name: Kevin Westfield v The Commissioner of Police
[Magisterial Criminal Appeal No. 48 of 2011]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal

**The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Ms. Samantha Robertson

Respondent: Mr. Colin John with him Mr. Carl Williams

Issues:

Criminal appeal against sentence of a fine of \$750.00 in one month in default six months imprisonment – Possession of an offensive weapon

**Result / Order /
Reason:**

**[Oral delivery]
By consent, the appeal is allowed and sentence is varied to the extent of time spent on remand.**

Case Name:

**Raymond Ryan v The Commissioner of Police
[Magisterial Criminal Appeal No. 48 of 2010]**

Date:

Monday, 17th September 2012

Coram:

**The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Ronald Marks

Respondent: Mr. Colin John with him Mr. Carl Williams

Issues:

Criminal appeal against conviction and sentence of five years imprisonment – Possession of controlled drug with intent to supply and possession of ammunition

**Result / Order /
Reason:**

[Oral delivery]

By consent, due to the appellant's mental condition, the appeal is allowed to the extent that the sentence is varied so as to give credit to the appellant's 34 days spent on remand/custody. This is taking into account in calculating the term of imprisonment imposed by the magistrate.

Case Name:

**Joe Bobb v The Commissioner of Police
[Magisterial Criminal Appeal No. 54 of
2011]**

Date:

Monday, 17th September 2012

Coram:

**The Hon. Mde. Louise Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

No appearance

Respondent:

Mr. Colin John with him Mr. Carl Williams

Issues:

**Criminal appeal against conviction and
sentence of eighteen months imprisonment –
Escaping lawful custody**

**Result / Order /
Reason:**

**Matter stood down to ascertain the
whereabouts of the appellant.**

Case Name:

**Adrian Richards v The Commissioner of
Police**

[Magisterial Criminal Appeal No. 13 of 2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Duane Daniel

Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against conviction and sentence of nine months imprisonment – Unlawful and malicious wounding

Result / Order: [Oral delivery]
Matter adjourned to the next sitting of the Court of Appeal in this jurisdiction.

Reason: Counsel for the appellant requested an adjournment of the matter as he was not yet ready. There was no objection by the prosecution.

Case Name: Jovel Espinoza v The Commissioner of Police
[Magisterial Criminal Appeal No. 16 of 2012]

Terry Bannister v The Commissioner of Police
[Magisterial Criminal Appeal No. 17 of 2012]

**Desmond Pavy v The Commissioner of Police
[Magisterial Criminal Appeal No. 18 of 2012]**

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances: **Appellant:** Mr. Jomo Thomas
Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against conviction and sentence of nine years imprisonment – Possession of a controlled drug

Result / Order: [Oral Delivery]
1. Leave is granted to the respondent to file and exchange written submissions together with photocopies of authorities on or before 31st October 2012.
2. The appeal is adjourned and traversed to the next sitting of the Court of Appeal in this jurisdiction.

Reason: The appellants' skeleton arguments were filed on 17th September 2012. The prosecution needed time to peruse the skeleton arguments.

Case name: Cleferin Wyllie v The Commissioner of Police
[Magisterial Criminal Appeal No. 26 of

2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against conviction and sentence of a fine of \$250.00 to be paid in one month, in default two months imprisonment – Using threatening language

Result / Order: [Oral delivery]
The appeal is dismissed and the conviction is upheld.

Reason: The Court found no reason to upset either the conviction or the sentence of the magistrate.

Case name: Elliot Rocque v The Commissioner of Police
[Magisterial Criminal Appeal No. 28 of 2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: In person
Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against conviction and sentence of eighteen months imprisonment – Trespassing and stealing

Result / Order: [Oral delivery]
The appeal is dismissed.

Reason: The appellant no longer wished to continue with his appeal.

Case name: Jason Lawrence v The Commissioner of Police
[Magisterial Criminal Appeal No. 15 of 2012]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against conviction and sentence of three years imprisonment – Possession of firearm and ammunition without licence

Result / Order: [Oral delivery]

The appeal is hereby dismissed and the sentence and conviction affirmed.

Reason: The Court found no reason to disturb either the conviction and or sentence imposed by the magistrate.

Case name: Joe Bobb v The Commissioner of Police
[Magisterial Criminal Appeal No. 54 of 2011]

Date: Monday, 17th September 2012

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Colin John with him Mr. Carl Williams

Issues: Criminal appeal against conviction and sentence of eighteen months imprisonment – Escaping lawful custody

Result / Order: [Oral delivery]
The appeal is dismissed.

Reason: The appellant failed to appear despite having been served with a notice of hearing.

Case name: Venus Pitt v Koleen Thomas

[Magisterial Civil Appeal No. 2 of 2012]

Date: Tuesday, 18th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
[Ag.]
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:	In person
Respondent:	Mr. Stephen Williams

Issue: Claim for damages

Result / Order / Reason: [Oral delivery]

1. The matter is traversed to the next sitting of the Court of Appeal in St. Vincent and the Grenadines as counsel for the appellant, Mrs. Kay Bacchus-Browne is out of State.
2. The appellant must be served with notice of appeal.

Case name: Rodney Sterling v The Financial Intelligence Unit
[Magisterial Civil Appeal No. 5 of 2012]

Date: Tuesday, 18th September 2012

Coram: The Hon. Mde. Janice M. Pereira, Chief Justice
[Ag.]
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:	No appearance
Respondent:	No appearance

Issues: Proceeds of Criminal and Money Laundering

(Prevention) Act Cap. 181 – Whether or not the decision of the magistrate is unreasonable

Result / Order:

**[Oral delivery]
The appeal is dismissed.**

Reason:

Notice of discontinuance was filed on 13th September 2012.

Case name:

**Michael T. Findlay (Duly appointed attorney on record for Muriel Findlay Small v Elroy Arthur
[High Court Civil Appeal No. 17 of 2010]**

Date:

Tuesday, 18th September 2012

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. R. Andrew Cummings, QC with him Ms. Annique Cummings

Respondent:

Mr. Carlyle Dougan, QC

Issue:

Application for possessory title

Result / Order:

**[Oral delivery]
1. The appeal is allowed and the decision of the learned trial judge set aside.
2. The appellant/applicant is awarded costs being 2/3 of what was awarded in the court below**

Reason:

The learned trial judge erred in construing and applying the law as to adverse possession as defined in Section 2 of the Possessory Titles Act 2004 of Saint Vincent and the Grenadines. Section 2 provides that adverse possession means factual possession of an exclusive and undisturbed nature of the piece or parcel of land in Saint Vincent and the Grenadines for a continuous period of 12 years or more accompanied by the requisite intention to possess the said land as owner thereof. This section requires a coincidence of factual possession and intention to possess. While factual possession started in 1993 it is clear that the trial judge found that the intention to possess was manifested in 2003. It became clear then that the 12-year period for adverse possession would crystallize in the year 2015. The applicant therefore had not satisfied the criteria of the Possessory Titles Act 2004 to obtain adverse possession.