Neutral Citation Number: [2023] CA (Bda) 25 Crim

Criminal Appeal No. 2 of 2023

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS APPELLATE JURISDICTION
THE HON MRS JUSTICE SUBAIR WILLIAMS
CASE NUMBER 2022: No. 3

Before:

THE PRESIDENT, SIR CHRISTOPHER CLARKE
JUSTICE OF APPEAL GEOFFREY BELL
and
JUSTICE OF APPEAL IAN KAWALEY

- - - - - - - - - - - - - - - - - - - -

Between:

SHAE BUTTERFIELD

Appellant

- and -

THE KING

Respondent

Ms. Sara-Ann F. Tucker, Trott and Duncan Limited, for the Appellant

Mr. Adley G. Duncan, Crown Counsel, Office of the Director of Public Prosecutions, for the Respondent

Hearing Date: 9 November 2023
Date of Judgment 17 November 2023

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APPROVED JUDGMENT

KAWALEY JA:

Procedural History

1. The Appellant appeared before the Magistrates' Court on 28 October 2019 charged with the following two offences:

(a) possession of Cannabis with intent to supply in Pembroke Parish on 16 February 2019, contrary to section 6 (3) of the Misuse of Drugs Act 1972;

(b) possession of Delta-9 Tetrahydrocannabinol with intent to supply in Pembroke Parish on 16 February 2019, contrary to section 6 (3) of the Misuse of Drugs Act 1972.

2. He pleaded not guilty and represented himself at his trial which commenced on 11 December 2020 and continued on 6 January 2021, 30 March 2021 and 3 November 2021 before the Worshipful Khamisi Tokunbo. On 21 December 2021, the Learned Magistrate delivered a 5 ½ page Judgment recording his decision to convict the Appellant on both charges. A forfeiture order was made in respect of $2,668.00 cash seized from the Appellant and sentencing was adjourned until after a social inquiry report could be obtained.

3. By a Notice of Appeal dated 5 January 2022, the Appellant appealed against his conviction to the Supreme Court. The appeal was heard by the Supreme Court (Subair Williams, J) on 9 November 2022, exactly a year before the further appeal before this Court was heard. As at the present appeal, the Appellant was represented by Ms Tucker. Two grounds of appeal were ultimately pursued (one having been abandoned in the course of the hearing):

(a) the Learned Magistrate was said to have misdirected himself in relation to the credibility of the Crown's witnesses (Ground 1); and

(b) the Learned Magistrate failed to consider any points of law or assist the Appellant as an unrepresented defendant with any points of law which arose in his favour in relation to the Crown's case (Ground 3).

4. For the reasons set out in her Judgment delivered on 16 December 2023, the Learned Judge dismissed the Appellant's appeal to the Supreme Court. By a Notice of Appeal dated 20 January 2023, the Appellant appealed to this Court on the following grounds:

"*1. The Learned Judge erred in law as she failed to refer to the supplemental submission and case of Tafari Wilson v Fiona Miller (Police Sergeant) [2018] SC (Bda) 6 A App (23 January 2018), in the substantive body of the Judgment in aid of Ground 3.*

2. The Learned Judge erred in law as she either failed to apply the relevant Tafari Wilson authority or failed to apply it correctly which led to an erroneous finding as it relates to the Worshipful Magistrate's obligation to provide a reasoned ruling which included the legal issues the court had considered and applied any relevant legal principle which properly considered aided him in determining the guilt or innocence of the accused in aid of Ground 3."

The Prosecution case at trial

5. Two Police Officers gave oral evidence that on the night of 16 February 2019 they were on duty in full uniform at Goose Gosling Field (formerly known as BAA Field) on Woodland Road in Pembroke. They approached the Defendant who was standing on a plastic bag containing plant material which was seized. He was detained after a chase (during which he dropped a cellphone) and $2668.00 cash found on his person was also seized. One Police officer retrieved the plastic bag the Defendant was standing on. The other retrieved two small red ziplock bags which the Defendant was clutching in his hands until he was detained. A third Officer witnessed the arrest. The contents of the plastic bags were examined and were found to contain:

(a) (red plastic bags clutched by the Appellant during the chase) 0.38 grams of delta-9-tetrahydrocannibinol ('shatter'); and

(b) (plastic ziplock bag Defendant was standing on when first approached) 21 individual packets of cannabis weighing nearly 10g and 0.7g of 'shatter'.

The Defendant's case

6. The Defendant gave evidence and denied running away from the Police because he had drugs on him, insisting that he ran for his own safety believing that he was being approached by men

in black. He explained the cash he had as being a down payment received in connection with his business, Ascendant Technologies. Under cross-examination, he denied having any drugs in his hand and denied that the cash represented the product of drug sales. He contended the drugs were in the jacket he was wearing, which he had purchased from his uncle earlier that evening. He admitted: "*Yes police found a knife and drugs on me…The drugs on me were not for supply.*" He called, *inter alia*, a witness who testified that the Appellant was an electronic sub-contractor whom he paid around $2700 on 16 February 2019 to purchase materials.

The Magistrates' Court Judgment

7. The Learned Magistrate's Judgment summarised the key elements of the Prosecution and Defence cases and essentially concluded that the case turned on whether the Prosecution had satisfied him of the Appellant's guilt and/or whether the Appellant had raised any doubts about his guilt. He noted that the Appellant claimed he was paid by the contractor the day before the incident while the contractor testified the payment was made on the same date. He found that:

> "*…each of the prosecution witnesses were credible and truthful…the defendant on the other hand was not, in my view, a credible witness…I reject the Defendant's version as to the incident …*
>
> *In my opinion that (his version) all amounts to a concocted story designed to evade responsibility and accountability for his illegal activity on that night. It was a big lie…*
>
> *In the circumstances I am satisfied so that I feel sure that the Defendant is guilty as charged in both counts of possessing the controlled drug cannabis and Delta-9 Tetra hydrocannibinol, both with intent to supply on the 156/2/19 in Pembroke Parish.*"

The Supreme Court Judgment

8. The Supreme Court Judgment only dealt explicitly with three grounds of appeal which are no longer pursued before this Court. The central complaint raised on this appeal is that the Judge

failed to refer to the supplemental authority of *Tafari Wilson v Fiona Miller (Police Sergeant)* [2018] SC (Bda) 6 App (23 January 2018) and accordingly erred by failing to conclude that the Learned Magistrate's decision recorded inadequate reasons for his decision.

9. The appeal was heard by the Judge on 9 November 2022. The day after the hearing, the Appellant's attorneys emailed to the Judge a transcript of the Appellant's trial evidence annotated with comments by counsel. (The formal record was derived from the Magistrate's notes). The covering email referred to the "*further authority referred to in the note for ease of reference should Court require it*". On the final page of the annotated transcript, the following Note by the Crown appeared:

> "*It is the Crown's submission that the point of knowledge was put to the defendant in more than one way throughout the cross examination. The Learned Magistrate , in his well reasoned judgment, has stated that after analyzing the evidence and the defendant's demeanor, he has found the defendant to be untruthful and his evidence to be a concocted story to rid himself of culpability for his criminal behavior.*"

10. The Appellant's counsel (on the same page of the annotated transcript) commented as follows:

> "*In the Judgment of the Wor. Magistrate we are consumed with the finding that the Appellant is guilty as charged. In both counts of possessing the controlled drug cannabis and delta-9 Tetrahydrocannabinol with intent to supply. The unsafety is in the fact that the Defendant was not specifically challenged about the knowledge he apparently had of these specific drugs in his control and the Magistrate does not provide how he came to his conclusion on this particularly important aspect of the Defence case. An accused person is entitled to a reason*[ed] *judgment on the legal issues the court has considered to determine the outcome of the trial and the decision must record that the Magistrate both considered and applied any relevant legal principle which properly considered could determine the guilt or innocence of the accused. See Tafari Wilson v Fiona Miller (Police Sergeant) [2018] SC (Bda) 6 App (23 January 2018) pg 8.*"

11. In paragraphs 24-27 of the Judgment, Ground 3 is addressed. The specific complaint addressed under that ground was said to be that "*the magistrate rejected the Appellant's defence of lack of knowledge*" (paragraph 24). The Judge noted that the Learned Magistrate having rejected the Appellant's evidence had to independently assess the strength of the Prosecution's case. She then concluded (paragraph 26):

> "*…I see no reason to doubt that the magistrate employed the correct approach as is evident from his written judgment.*"

12. Whether the knowledge element of the offences had been proved was explicitly addressed in the Judgment (paragraphs 24-25). The Judge did not explicitly address the adequacy of the reasons recorded for the Magistrates' Court's conclusions on the knowledge issue, nor was the *Tafari Wilson* case mentioned. The reasons point did not constitute a freestanding ground of appeal and was not addressed during the appeal hearing itself. The point was set out in five sentences at the end of a 19-page long attachment to an email sent to the Judge the day after the hearing. It was a point which only entered centre stage in the context of the Appellant's further appeal to this Court.

The legal requirements for reasons in judicial decisions

Preliminary

13. By the end of the hearing of the present appeal, it was clear that the appeal lacked merit. This was in large part because the Court was assisted in advance of the hearing by counsel's clear written submissions and authorities. The present appeal has, nonetheless, afforded this Court what appears to be its first opportunity to opine on the application of section 83 (5) of the Criminal Justice and Procedure Act 2015 (the "CJPA") to criminal judgments delivered by the Magistrates' Court. Section 83 (5) provides as follows:

> "*(5) The record of proceedings must include the magistrates' court's final judgment in writing, which will include—*
>
> *(a)the point or points for determination;*
>
> *(b) the decision made on such points; and*
>
> *(c) the reasons for the decisions.*"

14. On a straightforward reading of this statutory provision, as a matter of preliminary analysis there seems to be little room for doubt about the meaning of its express terms. Every magisterial

judgment in a criminal case must be recorded in writing and set out the legal and/or factual points to be decided and the reasons for the relevant decision (s). Construing the provision in light of practical legal experience and seasoned with a modicum of common sense, it would also seem obvious that the contents and scope of a judgment must, by necessary implication, be shaped by the characteristics of the points which arise for determination in each case.

15. There was no discernible difference in principle between the parties as to what this statutory provision required in general terms. This was clear from the local and persuasive authorities upon which Ms Tucker for the Appellant and Mr Duncan for the Crown respectively relied. The real controversy turned on how the relevant statutory requirements should be applied in the particular circumstances of the present case. What I consider to be the general or minimum requirements of section 83(5) will first be addressed before turning to the practical question of whether those general or minimum requirements have been met by the impugned magisterial decision in the present case.

The general and/or minimum requirements of section 83(5)

16. What principles of statutory construction should inform interpreting section 83(5) of the CJPA? Professor Andrew Burrows (as he then was) in '*Thinking About Statutes: Interpretation, Interaction, Improvement*' (Cambridge University Press, Hamlyn Lecture Series: Cambridge, 2018) at page 5 has opined that:

> "…*it is tolerably clear today that our judges have moved from an old literal to a modern contextual and purposive approach. We no longer give words their literal or dictionary meaning in so far as the context and purpose of the statute indicate that that is not the best interpretation of what Parliament has enacted...*"

17. Section 83(5) has been drafted with admirable clarity. Its literal meaning is perfectly clear. Its underlying purpose is equally clear once one remembers that the law generally requires, as an incident of fair hearing rights, that a person against whom a judicial decision has been made should be able to identify and understand the reasons for the adverse decision. Why is it necessary to identify the purpose of section 83(5) when its express terms are clear? In my judgment the purpose of this statutory provision, as in the case of most statutory provisions, is essential to enable one to identify the implicit requirements of this provision in relation to the

minimum requirements a judgment must meet to comply with the statute. If the purpose of section 83 (5) is to give statutory force to common law fair hearing rights, not forgetting that fair hearing rights are also constitutionally protected by section 6 of the Constitution, it follows that the statutory requirements must be intended to be applied in a fluid context-driven manner. Authorities relied upon by both the Appellant and the Respondent make it clear that section 83(5) is designed to give specific statutory force to a wider legal principle.

18. In the Appellant's Supplemental Submissions (at paragraph 15), Ms Tucker set out the following instructive guide to good practice for Commonwealth Magistrates[1]:

> "15. *The giving of reasons for decision is consistent with the fundamental principle of the common law that justice must not only be done but must manifestly be seen to be done. The giving of reasons promotes transparency and accountability through the provision of 'accessible reasoning [which is] necessary in the interests of victims, the parties, appeal courts and the public'. Reasons for decision serve the dual function of allowing "the parties to see the basis for the judge's decision" and "to see the extent to which their arguments have been understood and accepted". The giving of reasons for decision furthers judicial accountability in the broader democratic sense: ...those who are entrusted with the power to make decisions affecting the lives and property of their fellow citizens should be required to give in public an account of the reasoning by which they came to those decisions.*
>
> *As pointed out by Justice Murray Gleeson: Providing reasons promotes good decision-making because decision-makers who know that their decisions are open to scrutiny and who are obliged to explain them are more likely to make reasonable decisions…"*

19. The primary point made is that "*accessible reasoning*" is "*necessary in the interests of victims, the parties, appeal courts and the public*". In other words, the common law requirement for reasons to be given by, *inter alia*, Magistrates envisages reasons being given in a form which is accessible to both litigants and the general public. A learned and esoteric legal treatise only comprehensible to a narrow band of women and men learned in the law would not, save in a case which solely concerned a pure point of law, satisfy the requirement for reasons thus defined. That the shape taken by the requirement to give reasons is informed by the context because of the rationale underpinning the rule is even more explicitly supported by a judicial

[1] Commonwealth Judges and Magistrates Association, '*A Guide for the Magistrate in the Commonwealth: Fundamental Principals and Recommended Practices*', 4th edition (2001), paragraph 9.1.

authority which the Appellant's counsel placed before the Court. In *Flannery-v-Halifax Estate Agencies Limited* [1999] EWCA Civ 811, an appeal concerning a decision of the Manchester County Court, Henry LJ (delivering the judgment of the English Court of Appeal) stated as follows[2]:

> "*We make the following general comments on the duty to give reasons:*
>
> *(1) The duty is a function of due process, and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties - especially the losing party - should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know (as was said in Ex p. Dave) whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not.*
>
> *(2) The first of these aspects implies that want of reasons may be a good self-standing ground of appeal. Where because no reasons are given it is impossible to tell whether the judge has gone wrong on the law or the facts, the losing party would be altogether deprived of his chance of an appeal unless the court entertains an appeal based on the lack of reasons itself.*
>
> *(3) The extent of the duty, or rather the reach of what is required to fulfil it, depends on the subject-matter. Where there is a straightforward factual dispute whose resolution depends simply on which witness is telling the truth about events which he claims to recall, it is likely to be enough for the judge (having, no doubt, summarised the evidence) to indicate simply that he believes X rather than Y; indeed there may be nothing else to say. But where the dispute involves something in the nature of an intellectual exchange, with reasons and analysis advanced on either side, the judge must enter into the issues canvassed before him and explain why he prefers one case over the other. This is likely to apply particularly in litigation where as here there is disputed expert evidence; but it is not necessarily limited to such cases.*
>
> *(4) This is not to suggest that there is one rule for cases concerning the witnesses' truthfulness or recall of events, and another for cases where the issue depends on reasoning or analysis (with experts or otherwise). The rule is the same: the judge must explain why he has reached his decision. The question is always, what is required of the judge to do…and that will differ from case to case. Transparency should be the watchword.*" [Emphasis added]

[2] Transcript pages 8-9.

20. In the Skeleton Argument of the Respondent, Mr Duncan advanced the following cogent arguments:

> "*15. The case at the centre of this appeal declares a proposition, which is in no way in dispute, that magistrates are obliged to provide a reasoned decision at the end of a criminal trial.*
>
> *16.The proposition is based, in a narrow sense, on a statutory mandate originating in the Criminal Justice and Procedure Act, and, in a broad sense, on a constitutional premise of fairness. Accounting for both its statutory and constitutional foundations, the obligation is discharged entirely when the requirements of the Criminal Justice and Procedure Act are met, in a manner which vindicates the fairness of the proceedings generally. ...*
>
> *21.The entitlement a defendant has, as expressed by the court in Tafari Wilson, is to 'a reasoned judgment on the legal issues the court has considered to determine the outcome of the trial'. These reasons, when given, 'must enable the parties to understand how the court resolved the questions which determine the guilt or innocence of the accused" but, "the reasons need not be elaborate'.*
>
> *22.The Respondent proposes that the level of articulation required in a reasoned judgment depends on the legal issues engaged and the factual issues in dispute.*"

21. The main authority Crown Counsel relied upon was *Dionccio Salazar-v- The Queen* [2019] CCJ 15. In his Judgment delivered on behalf of the Caribbean Court of Justice, Justice Wit opined as follows:

> "*[27] In the case of a bench trial conducted before a professional judge, the safeguards are directly to be found in the reasoning in the judgment of the trial judge. In accordance with the European Court of Human Rights, reasoned judgments oblige judges to base their reasoning on objective arguments, and also preserve the rights of the defence. However, the extent of the duty to give reasons varies according to the nature of the decision and must be determined in the light of the circumstances of the case… While courts are not obliged to give a detailed answer to every argument raised … it must be clear from the decision that the essential issues of the case have been addressed.*[3]

[3] *Taxquet v Belgium* (Application no. 926/05).at [91].

> *[28] The Court of Appeal in Northern Ireland stated in R v Thompson*[4] *with respect to the duty of the judge giving judgment in a bench trial: He has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant legal aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision by others. His task is to reach conclusions and give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that if there is an appeal it can be seen how his view of the law informs his approach to the law. [29] Equally, a judge sitting alone and without a jury is under no duty to 'instruct', 'direct' or 'remind' him or herself concerning every legal principle or the handling of evidence. This is in fact language that belongs to a jury trial (with lay jurors) and not to a bench trial before a professional judge where the procedural dynamics are quite different (although certainly not similar to those of an inquisitorial or continental bench trial). As long as it is clear that in such a trial the essential issues of the case have been correctly addressed in a guilty verdict, leaving no room for serious doubts to emerge, the judgment will stand.*" [Emphasis added]

22. The decisions of the Supreme Court upon which the Appellant's counsel relied were broadly consistent with the authorities cited on the older common law reasons rule. The most recent case was the decision of Delroy Duncan (sitting as an Assistant Justice) in *Tafari Wilson* [2017] SC (Bda) 6 App (23 January 2018). In that case, Duncan AJ concluded:

> "*19. The law unquestionably imposes an obligation upon a Magistrate to provide a reasoned decision at the end of a criminal trial. The reasons must enable the parties to understand how the court resolved the questions which determine the guilt or innocence of the accused. However, the reasons need not be elaborate…*
>
> *23. I also do not accept the assertion made by the Crown that section 83 (5) of the CJPA only imposes a duty upon a Magistrate to provide a factually reasoned judgment which need not include or identify the relevant legal principles which the Magistrate must consider to render the judgment. I find that an accused person is entitled to a reasoned judgment on the legal issues the court has considered to determine the outcome of the trial.*"

[4] [1977] NI 74.

23. In my judgment the reference to the "*legal issues the court has considered*" (and must set out) cannot sensibly be understood as extending to legal issues which are not controversial and which the Court need not decide. Section 83 (5) only requires the judgment to include the "*point or points for determination, the decision made on such points and the reasons for the decisions.*" Other Supreme Court decisions cited included two of my own decisions which are primarily illustrative of how section 83(5) operates in practice, providing no real elucidation of the conceptual parameters of the statutory requirements: *Trott-v- The Queen* [2016] SC (Bda) 100 App (23 November 2016); *Whitehurst-v-Miller* [2017] Bda LR 41.

24. Having regard to the authorities cited on both sides, I am bound to accept the submissions of Mr Duncan, Crown Counsel, as to the way in which section 83 (5) of the CJPA operates in practice. As he elegantly put it in paragraph 22 of the Respondent's Skeleton Argument:

> "*…the level of articulation required depends on the legal issues engaged and the factual issues in dispute…the points for determination must be set out, so too the resolution of those points with accompanying reasons…a straightforward case without particularly complex legal issues or intractable factual questions requires less elaboration in fulfilment of these obligations than a complex case would.*"

Merits of the appeal: were the requirements of section 83(5) met in the present case by the Judgment of the Magistrates' Court?

25. The potential issues arising from the charges laid against the Appellant included (1) whether the legal and factual elements of possession were proved, (2) whether the factual elements of intention to supply were proved, and (3) whether the substance in question was cannabis. It is clear from the record of the trial in Magistrates' Court that the Appellant's defence made it necessary for the Court to determine the following main issues:

    (a) whether the Appellant merely ran away from men he identified as Police Officers, or merely rans for fear of being attacked;

    (b) whether as a matter of fact the Appellant was in possession of the plastic bag containing delta-9 tetrahydrocannabinol which was found on the ground;

(c) whether as a matter of fact the second plastic bag containing cannabis was seized from the Appellant's hand or seized from the pocket of his jacket;

(d) whether the Appellant knew that the plastic bag admittedly found in his possession contained cannabis; and

(e) (a non-dispositive point) whether the over $2500 in cash found in the Appellant's possession in mixed denominations was likely to be the proceeds of a deposit received from a contractor for electronic work or the proceeds of illicit drug sales.

26. The Prosecution case could not have been stronger. The Crown case was as follows. He was observed by the Police standing on a plastic bag later found to contain cannabis packaged for supply. He ran when approached by the Police. When arrested he was clutching two other plastic bags also found to contain cannabis packaged for supply. He also had cash consistent with past drugs sales on his person. Every experienced criminal lawyer knows that a defence which suggests that the entirety of the Police case has been fabricated will likely fail unless there are grounds for credibly suggesting a motive for such 'dark deeds'.

27. Although the Appellant's case viewed as whole was rejected by the Learned Magistrate as lacking credulity, the specific issues the Defence chose to challenge were well chosen ones:

(a) the fact that the Appellant ran when approached by the Police was obviously highly incriminating. The contention that he did not realise they were Police Officers did not involve challenging the Prosecution evidence to any extent;

(b) his contention that the plastic bag the Police said he was standing on had nothing to do with him could potentially be accepted without finding that the Prosecution witnesses had given deliberately false evidence;

(c) his contention that the plastic bags said to have been found in his hand was in fact in his jacket pocket could also potentially be accepted without finding that the Prosecution witnesses had given deliberately false evidence (their recollections might have been mistaken);

(d) he advanced an explanation (buying his jacket from an uncle) as to how drugs could have been in his possession without his knowledge and not be intended for supply;

(e) he called a witness to support his explanation as to the source of the cash.

28. As the Court was dealing with familiar offences where the law is settled and no obvious points of law arose for determination, this was a case which turned on relatively straightforward factual issues. If the disputed parts of the Prosecution case were proved to the Court's satisfaction, then (taking into account the unchallenged parts of the Crown case) the two charges of possession with intent to supply would have been validly established. If the Appellant's defence raised a reasonable doubt, or was accepted, he would have been entitled to be acquitted.

29. Part of the well settled legal backdrop is the consideration that once the Crown proved possession of the plastic bags seized, the Appellant was presumed to know that they contained controlled drugs: Misuse of Drugs Act 1973, section 32 (2). It is also well settled that because the presumption of innocence is constitutionally protected by section 6 (2) (a) of the Bermuda Constitution, although an accused person proven to be in possession of an article containing controlled drugs bears an evidential burden of raising an issue as to knowledge, the Crown retains the ultimate legal burden of proof. These points of law did not have to be explicitly addressed provided it was clear from the decision that they were given appropriate effect.

30. The Learned Magistrate's Judgment opened with a description of the charges and a summary of the Prosecution case. He reproduces his notes of the Appellant's evidence and cross-examination. He identifies the matters for determination as follows:

> "*The Defendant admits the officers found drugs on him, but says the drugs were not in his clenched hand but in a jacket he had just purchased from his uncle earlier that night who wanted to sell it. That he ran from the police because he was scared, had cash on him and didn't know they were police. He just saw person dressed all in black so he ran for his safety.*
>
> *The Defendant also…denies the drugs found in the clear plastic bag where he was standing was his. He agrees when arrested that he was told to release what was in his hand but says nothing was in his hand...his evidence with the contractor Tyrone Butterfield conflicted on the date of cash payment by at least one day*…"

31. The Judgment, having set out the factual points for determination in an economical, narrative form, then proceeds to explain why the Court rejects the Defence version of events and finds the Prosecution version to have been proved to the Magistrate's satisfaction. In short, he found the Appellant's evidence to be a "*concocted story*", made up to escape responsibility for the offences charged and that the Prosecution had proved the charges to the requisite standard of proof. This was a decision clearly open to the Magistrate to reach. It hardly provokes an instinctive reaction of incomprehension or surprise that he did reach the conclusion he reached. The Appellant's version of events was like the plot in a novel which, although carefully constructed, created a story which looked at overall simply defied belief. Each link in the chain of the defence was not impossible to believe; but that so many unusual exculpatory events should have occurred in relation to a single event, viewed cumulatively, was simply impossible to believe.

32. In the Skeleton Submissions of the Respondent, it was validly argued (at paragraph 23): "*In what the Respondent submits was a straightforward case where the sole issue was credibility, it sufficed in these circumstances for the learned magistrate to set out, as he did, the points for determination at the outset of his judgment, the resolution of those points at the end of the judgment, with the relevant reasons throughout.*"

33. In oral argument, the redoubtable Ms Tucker attempted to add flesh to the bare bones of her inadequate reasons complaint without being able to identify any area of forensic doubt. At the end of the day, therefore, the complaint that section 83 (5) of CJPA had not been complied appeared to amount to a complaint of style rather than of substance, far removed from the sort

of circumstances where such complaints have been upheld in the past. In *Trott-v- The Queen* [2016] SC (Bda) 100 App (23 November 2016), for instance where the non-standard offences related to counterfeit currency, I quashed a conviction for non-compliance with section 83 (5) on the following grounds:

> "*18. The Judgment in the present case fails to comply with all three requirements of section 83 (5):*
>
> *(a) none of the main points for determination based on Defence Counsel's objections and closing submissions were expressly identified…;*
>
> (b) *because the points for determination were not expressly identified, it is impossible to safely infer that in finding that each charge was proved the Learned Magistrate consciously addressed these key issues. The charges and issues were not so straightforward that this Court can confidently rely on implicit findings based on a clear rejection of the Defence case and acceptance of the Prosecution case.*"

34. In *Whitehurst-v-Miller* [2017] Bda LR 41 (1 May 2017), I held:

> "*Where there is so complete* [a] *failure to comply with section 83 (5) of the Criminal Jurisdiction and Procedure Act, as occurred in the present case, so the appellate Court has no documented basis for finding that the issues which arose for determination were consciously considered and determined against the accused, the relevant conviction cannot be properly viewed as a safe one.*"

35. Having presided over most magisterial appeals to the Supreme Court between 2012 and 2018, I have previously determined on several occasions that the Worshipful Khamisi Tokunbo's criminal judgments (written in a very similar economical style to that reflected in the Judgment impugned in the present case) were adequately comprehensive and analytically sound. This provides further general support for the conclusions which I would in any event have reached based solely on the arguments presented in the present case.

36. In summary, the convictions recorded against the Appellant have not been shown to be unsafe and in these circumstances the appeal against conviction must be dismissed.

BELL JA:

37. I agree.

CLARKE P:

38. I, also, agree.