

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**MAG. APP. NO. 37 of 2003**

**BETWEEN**

**BRENDA RAMCHARAN**

**APPELLANT**

**AND**

**WPC ARCHIE #11694**

**RESPONDENT/**

**CORAM:**

***M. Warner, J.A.***

***R. Nelson, J.A.***

**APPEARANCE:**

***Mrs. P. Elder for the Appellant***

***Mr. R. Boodoosingh for the Respondent***

**DATE DELIVERED:**

***21<sup>st</sup> November, 2003***

## **JUDGMENT**

### **Delivered by Warner J.A.**

1. This is an appeal against a conviction for being in possession of a quantity of cocaine for the purpose of trafficking for which the appellant was sentenced to a term of imprisonment for three years.
2. The case for the prosecution was that at about 1:30 a.m. on the 13<sup>th</sup> December 1997, a party of police officers which included the complainant, Woman Police Constable Joanne Archie, went to the appellant's home at St. James Street, Marabella to execute a warrant to search the premises for firearms and ammunition.
3. When they arrived there, the complainant knocked on the door to the premises. She was able to see the appellant in one of the rooms. The appellant asked who was there. She was told that it was the police. The complainant, Archie, saw her '**make a motion**' and run to the back of the premises. They, (the members of the party), forced the door open. The complainant ran after the appellant and saw her '**making a motion**' as if she was pushing something in her underwear. This account is substantiated in most parts, by another Police Officer, Pierre, who added that he saw the appellant pick something up from the area where she stood. The complainant took the appellant to the toilet area. She became suspicious about the appellant's behaviour and requested a pair of gloves from one of the officers. She searched the appellant and found a plastic

bag which contained a creamish coloured substance, hidden in the appellant's vagina. The contents of the bag and substance were weighed in the appellant's presence and amounted to 21.6 grammes. The substance was later analysed at the Forensic Sciences Centre, and it was found to be cocaine. It weighed 8.1 grammes.

4. The appellant denied that any substance was found on her or at all. She testified that at some stage of the incident she heard the officer say "**Ah ha, I found something.**" When however, she asked that it be shown to her, nothing at all was produced. The appellant also made allegations that one of the officers threatened to slap her in the face, and that the complainant pulled down her underwear in the presence of two male police officers. She however, denied that there was any intimate search of her person.

5. The learned Magistrate reasoned that -

- (1) the appellant must have been engaged in some activity which caused such an intimate search to be carried out at that time of the morning;
- (2) that something must have occurred to cause the complainant to request a pair of gloves;
- (3) that whilst the police were in pursuit she made the motion as if putting something in her underwear;

(4) that the appellant's evidence that the police officer had handcuffed her hand to his and raised it in the air, showed that he was attempting to prevent her from interfering with her body.

6. The case resolved itself into a determination of issues of fact. It was therefore incumbent on the Magistrate to direct his mind to plausibility of the two versions.

7. The element of time is crucial. One senses from the evidence that events flowed swiftly, one into the other – the sighting; the evidence that the appellant picked up something from the corridor; the breaking or pushing of the door; entry; and the seizure of the appellant's person. There seems however, to have been no allowance in terms of time for the appellant to perform the delicate and intricate act of pushing the package containing the cocaine into her body part. This aspect of the case seemed to have been overlooked by the Magistrate in his assessment of the evidence, perhaps because of its sensitive nature. However, we think that it was an issue upon which the Magistrate ought to have focused. It strikes at credibility. There are other inconsistencies in the evidence which we do not think it is necessary to highlight, since we are of the opinion that the case presented against the appellant raised serious doubts. In all the circumstances we will not order a retrial.

8. Finally, we ought to mention the issue of good character which Counsel for the appellant has raised. Counsel argued that the

Magistrate's failure to take into account the appellant's good character was another area in which the learned Magistrate erred.

9. The appellant, it was contended, had put her good character in issue, when, from questions put to the complainant in cross-examination, evidence was elicited that the appellant had never been convicted of any criminal offence. The complainant's evidence ran thus -

***"I attempted to get a criminal record of the defendant, and I did get one. I have it here, it is endorsed on the cover of the case jacket. As far as I am aware of the information I got no records of the defendant. The normal course of a criminal record you get the criminal records department in Port of Spain. I found no criminal records of the defendant."***

We agree with Counsel's submission on this issue.

10. The Magistrate in his reasons had not stated whether he had considered the relevance of the good character to appellant's credibility and the likelihood of her having committed the offence. While, as it has emerged, the outcome of this matter does not rest on the success of submission, we think that it is indeed important to underscore that whenever good character is raised in a magisterial matter, the magistrate is under a duty in assessing the evidence, to consider the accused's good character in relation to the accused's credibility and propensity to commit the offence. It follows that the Magistrate's reasons should also reflect that good character has been considered. We hasten to add though, that it is only in an exceptional case that a conviction would be quashed solely on account of this lapse.

11. For reasons stated above we would allow this appeal and quash the conviction and sentence.

Margot Warner,  
Justice of Appeal

R. Nelson,  
Justice of Appeal