



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

CLAIM NO. 2016HCV01145

THE HON. MISS JUSTICE NICOLE SIMMONS

THE HON. MR. JUSTICE CHESTER STAMP

THE HON. MRS. JUSTICE LORNA SHELLY – WILLIAMS

**IN THE MATTER OF THE JUDICATURE
(RESIDENT MAGISTRATES) ACT**

AND

**IN THE MATTER OF THE CONSTITUTION
OF JAMAICA AND**

**IN THE MATTER OF THE EXTRADITION
ACT**

AND

**WRIT OF HABEAS CORPUS
SUBJICIENDUM**

BETWEEN	FLOYD SHELDON FACEY	CLAIMANT
AND	THE DIRECTOR OF CORRECTIONAL SERVICES	1st DEFENDANT
AND	THE ATTORNEY GENERAL	2nd DEFENDANT
AND	THE DIRECTOR OF PUBLIC PROSECUTIONS	3rd DEFENDANT

IN OPEN COURT

Abel Don Foote and Stacy Knight instructed by Knight, Junior and Samuels for the Claimant, Ms Althea Jarrett instruted by Director of State Proceedings for the 1st and 2nd Defendant, Mr Leighton Morris for the 3rd Defendant.

Extradition Act - Extradition Treaty - provisional warrant - non disclosure – standard of proof.

Heard: 7th & 8th November, 2016 and 17th March, 2017

SIMMONS J

[1] I have read the judgment of Shelly – Williams J and I agree with her reasoning and conclusion. There is nothing further that I wish to add.

STAMP J

[2] I have read the judgment of Shelly – Williams J and I agree with her reasoning and conclusion. There is nothing further that I wish to add.

SHELLY – WILLIAMS J

[3] This is an application by the Claimant who is accused of having committed drug related offences in the United States of America for a Writ of Habeas Corpus.

BACKGROUND

[4] On the 13th of October 2015 a Diplomatic Note from the Unites States of America requesting the provisional arrest for extradition purposes of the Claimant was received by the Ministry of Foreign Affairs and forwarded to the Ministry of Justice the said afternoon.

[5] On the 15th of October 2015 a provisional warrant under section 9(1) (b) of the ***Extradition Act (the Act)*** was issued by her Honour Mrs. Simone Wolf Reece,

Resident Magistrate for the Corporate Area. A request on information was made by Corporal Donald Thomas.

- [6] On the same day, the warrant was executed on the Claimant in the parish of St James by Detective Sergeant Ronald Walker. At the time the officer was also armed with a photograph of the Claimant. The photograph was shown to the Claimant, who was asked if it was his picture, and he indicated that it was a younger version of himself.
- [7] On the 14th of December 2015 a second Diplomatic Note and authenticated documents relevant to the request for the extradition of the Claimant were received by Ministry of Foreign Affairs and were forwarded to the Ministry of Justice. These documents were later disclosed to Counsel for the Claimant. The authenticated documents included affidavits from witnesses alleging that the Claimant participated in illicit drug transactions during the months of January 2013 and February 2013. It is alleged that the Claimant on different occasions contacted Mr. Marvin Dodd and instructed him either personally or through others in respect of the collection and distribution of drugs.
- [8] On the 4th of March 2016 Her Honour Mrs. Grace Henry-McKenzie ruled that a prima facie case had been made out against the Claimant and ordered that he be committed to custody for the purpose of extradition.
- [9] On the 15th of August 2016 the Claimant filed an Amended Fixed Date Claim Form seeking a writ of Habeas Corpus. The grounds as filed are reproduced below in full:
- (1) The learned Parish Judge erred in her assessment of a vital issue to wit; whether or not the provisional warrant which caused the Applicant to be arrested was in fact a nullity.

- (2) The learned Parish Judge erred in committing the Applicant without first ascertaining whether or not there was information upon oath to ground the warrant of the subject.
- (3) The learned Parish Judge erred in committing the Applicant in circumstances where the Requesting State's witness (the apprehending officer), itemized conditions which must be satisfied in order for the arrest warrant to be properly executed; notwithstanding these conditions not being fulfilled the Applicant stood committed.
- (4) The learned Parish Judge erred in finding that there was sufficient evidence upon which to identify the subject as the evidence taken as a whole cast doubt on the identity of the subject.
- (5) The learned Parish Judge erred in her assessment of the evidence in its totality thereby finding that there was sufficient evidence satisfying the test of beyond a reasonable doubt upon which to commit the Applicant.
- (6) The learned Parish Judge erred in committing the Applicant as it was unsafe so to do.
- (7) The Learned Parish Judge erred in her interpretation of the Extradition Treaty and Extradition Act whilst presiding over the committal hearing.
- (8) The Applicant did not receive a fair hearing in keeping with the constitutional and due process of law.
- (9) The Applicant was committed without his Attorney-at-law first receiving full disclosure before the hearing thereby abrogating his constitutional right of having sufficient facilities to prepare his defence.

GROUND ONE

Was the warrant a nullity?

[10] Counsel for the Claimant submitted that a Resident Magistrate for the parish of Kingston does not have jurisdiction to issue a warrant that is executed in St James. Counsel for the Claimant argued that Section (3) of the **Judicature (Resident Magistrates) Court Act** sets out the scope of the jurisdiction of a Resident Magistrate and argued that once the Magistrate exceeded her jurisdiction then the rest of the process that followed was a nullity. Counsel for the Claimant also argued that the Resident Magistrate in exercising her power to order the warrant was subject to Section 9 of the **Justice of the Peace Jurisdiction Act (JPAct)** and had also exceeded her jurisdiction. In support of his arguments counsel relied on the cases of **Director of Public Prosecutions v. Paul Lewis** [2010] JMCA Crim 83 and **R v. Monica Stewart** (1971) 12 J.L.R. 468.

[11] In the case of **Director of Public Prosecutions (supra) v Paul Lewis**, Morrison J at paragraph 17 of the case stated that:

“What these provisions of the Act demonstrate, it appears to me, is that the jurisdiction of a Resident Magistrate is entirely parochial and is exercisable only in relation to such parish or parishes to which he may from time to time be assigned.”

In the case of **R v Monica Stewart** (supra) the Court of Appeal allowed the appeal where the Magistrate had failed to sign the order for indictment on the ground that it is the order for indictment which gives the Magistrate the jurisdiction to commence the trial of an indictable case.

[12] Counsel for the First and Second Defendants Ms. Althea Jarrett submitted that the court should rely on **the Act** to ascertain the power of the Resident Magistrate to issue a provisional warrant. She argued that the procedure relating to extradition offences is governed by the provisions of the Extradition Treaty and **the Act**. She

further submitted that Section 9(1)(b) of **the Act** is applicable to the issuance of provisional warrants.

[13] Counsel for the Third Defendant Mr Leighton Morris agreed that Section 9 (1) (b) of **the Act** is the relevant enactment applicable to provisional warrants issued for the purpose of extradition. He submitted that Section 9 of **the J P Act** applies to warrants and orders relating to summary offences and that the Resident Magistrate exercises powers by virtue of Section 15 of the **Judicature (Resident Magistrates) Act** which provides that a Resident Magistrate is ex officio a Justice of the Peace.

Discussion

[14] The starting point in the analysis is the Extradition Treaty between Jamaica and the United States of America entered into on the 4th of June 1983. Article one (1) of the treaty requires each state, in accordance with the terms and conditions of the treaty, to extradite to the other state any person charged with or convicted of an extraditable offence by a court of the Requesting State. **The Act** details the procedures that are to govern extradition cases from the time a warrant is requested to the time when the fugitive is extradited.

[15] **The Act** lays down the procedure by which a requesting state may apply the return of a fugitive to their respective country. In brief, the procedure for the extradition of a fugitive starts with the formal request made by the requesting state following upon which a warrant for the arrest is issued by a Resident Magistrate (now Parish Judge). The requesting State forwards authenticated documents in support of their request to the Minister who may issue an Authority to Proceed. The matter is then heard by a Resident Magistrate who will determine if a prima facie case for committal has been made out. A fugitive who is committed to custody for extradition may make an application for habeas corpus before the Full Court.

Section 9 of **the Act** describes the warrants that can be issued by a Resident Magistrate. Section 9 states:

“(1) A warrant for the arrest of a person accused of an extradition offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued----

(a) on receipt of an authority to proceed, by a magistrate within the jurisdiction of whom such person is or is believed to be; or

(b) Without such an authority, by a magistrate upon information that such person is in Jamaica or is believed to be on his way to Jamaica; so, however, that the warrant, if issued under this paragraph, shall be provisional only.

(2) A warrant of arrest under this section may be issued upon such information as would, in the opinion of the magistrate, authorized the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, or a person alleged to be unlawfully at large after conviction of an offence, within the jurisdiction of the magistrate.

(3) A warrant of arrest issued under this section (whether or not it is a provisional order) may, without an endorsement to that effect, be executed in any part of Jamaica, whether such part is within or outside the jurisdiction of the magistrate by whom it is so issued, and may be so executed by any person to whom it is directed or by any constable”.

[16] Section 9 (1)(b) of **the Act** gives authority to a Resident Magistrate to issue a provisional warrant on information. The warrant itself is addressed „to all and each of the Constables of Jamaica Constabulary Force,” and is therefore not limited to a particular constable or a particular parish. Section 9(3) of **the Act** specifically states that a warrant (whether or not it is a provisional order) under that section can be executed in any part of Jamaica. These two sections of **the Act** taken together clearly establish that the warrant issued by the Resident Magistrate can be executed in any parish in Jamaica.

[17] Ground one therefore fails.

Information on Oath

- [18] Counsel for the Claimant argued that in order to issue a provisional warrant the Resident Magistrate has to be provided with information on oath to ground such a warrant. Counsel argued that Section 9(1)(b) of **the Act** must be read in conjunction with Section 9 of the **JP Act**. He submitted that Section 9 of the **JP Act** provides that the information to ground a warrant must be made on oath or affirmation of the informant and that the Resident Magistrate erred when she committed the Claimant without first ascertaining whether or not there was such information.
- [19] Counsel for the First and Second Defendants argued that there is no requirement for the information that grounds the provisional warrant to be on oath. In support of her submissions Miss Jarrett relied on the cases of **Vincent Ashman v Commissioner of Correctional Services, Director of Public Prosecutions and the Attorney General** [2012] JMSC Full 2 and **Trevor Forbes v Director of Public Prosecution and The Commissioner of Correctional Services**, (unreported) Court of Appeal (Jamaica) SCCA no 9/2004, judgment delivered 3 November 2005. Counsel also argued that at the stage where the issue of a provisional warrant is being considered, the Resident Magistrate must be concerned that it was a genuine request.
- [20] Counsel for the Third Defendant submitted that the Resident Magistrate in this case acted on the Diplomatic Note and the sworn information of Detective Corporal Donald Thomas to form the basis of the provisional warrant. Mr. Morris argued that the information that was submitted to the Resident Magistrate conformed to **Extradition (Forms) Regulations 1992** and as such the second ground is without basis.
- [21] I find this to be an unusual ground to be argued by counsel for the Claimant especially in light of the fact that the information that grounded the provisional warrant was in fact, sworn. This seems to be an entirely academic argument. The

simple answer to this ground is that the information on which the provisional warrant was issued was sworn and as such, there is no merit to this ground.

Grounds three and four

Whether the Claimant was properly arrested and placed before the court and did the Resident Magistrate have sufficient evidence to verify the identity of the Claimant?

[22] These grounds were argued together.

[23] Counsel for the Claimant argued that the identity of the Claimant was in doubt. He based this argument on the following:

- (a) the warrant on which the Claimant was arrested had an erroneous endorsement to the back of it.
- (b) the Claimant was questioned as to his identity by the arresting officer before he was told of his right to an Attorney. That denial of an Attorney made the subsequent statement of the Claimant about the photograph inadmissible.

[24] Counsel for the First and Second Defendant argued that the endorsement which stated that it was executed on „the within name defendant Lloyd Sheldon Facey instead of Floyd Sheldon Facey was an error. She further argued that in any event, even if there was a defect in the warrant the Resident Magistrate derives her jurisdiction from the authority to proceed and not the provisional warrant. In support of her submissions she relied on ***Trevor Forbes v Director of Public Prosecutions*** (supra) and ***Regina v Commissioner of Correctional Services et al ex parte Mark Anthony Davis*** Supreme Court, Jamaica judgment delivered 19 December 2003.

[25] Counsel for the Third Defendant adopted the submissions of the first and second Defendant and added that the Claimant was in court during the extradition proceedings and as such the Resident Magistrate had decided that he was the

subject of the request. In this regard, Mr. Morris relied on the case of **Lebert Ramcharan and Donovan Williams v CCS and the DPP** (2007) 73 WIR 312.

[26] In considering this ground, it must be recalled that the learned Resident Magistrate took into consideration the evidence of the arresting officer Detective Sergeant Walker. He gave evidence that he went to the home of the Claimant armed with a provisional warrant and a photograph. He took the Claimant to the Barrett Town Police Station and showed him the photograph and asked him if it was his picture. The Claimant confirmed that it was a younger picture of him. He was asked to sign the photograph which he did. The Claimant was also asked for identification and he submitted a driver's license and his passport to the officer. Detective Sergeant Walker then indicated that he endorsed the warrant with the incorrect name. The officer said that this was done in error.

[27] Would the defect on the endorsement at the back of the warrant affect the identity of the Claimant in the committal proceedings? In the case of **Lebert Ramcharan and Donovan Williams v The CCS and DPP** (2007) 73 WIR 312 the identification of the Claimant was challenged. In that case the photographs identifying the Claimants were not certified. Harris JA resolved the issue and stated at 370 to 371 that :-

"If, on the contrary, the absence of certification of the photographs rendered them inadmissible, this would not be an impediment to the magistrate being able to determine whether the correct persons were present in court. Both appellants were brought before the court on warrants. Before their attendance in court, they were shown photographs of themselves by the police to whom they admitted that they were the persons depicted in the photographs and that they were Leebert Ramcharan and Donovan Williams. There can be no doubt that, on viewing the appellants, the magistrate would have been convinced that they were the persons who were subject to the extradition requests".

[28] It is clear that a defect on the endorsement would not affect the identity of the claimant in the Committal Proceedings.

[29] The next issue is would a defect on the provisional warrant affect the Resident Magistrate's jurisdiction to hold a committal hearing? This issue was resolved in the case of ***Trevor Forbes v Director of Public Prosecutions (supra)***. In that case, there was a defect on the face of the provisional warrant where the Claimant was described as a convicted person whilst on the authority to proceed he was described as an accused. Smith JA stated that;

“The submission of learned Queen’s counsel on behalf of the appellant that the Magistrate had no jurisdiction to hold the committal proceedings because the authority to Proceed was „issued based on a provisional warrant which incorrectly referred to the appellant as a convicted person“ is untenable.”

[30] In this case the error is on the endorsement which is on the back of the warrant as opposed to the warrant itself. The officer who apprehended the Claimant had the assistance of the passport and the driver's license of the Claimant to verify his identity. In any event, the authenticated documents included affidavit evidence against the Claimant. The affidavits had attached to them photographs of the Claimant. The Resident Magistrate had the Claimant in court and would have decided that the Claimant was the subject being sought. This would be the same position whether or not the Claimant had been allowed to converse with an attorney before being asked if he was the person in the photograph.

[31] There was therefore sufficient evidence before the learned Magistrate for her to determine whether Mr. Facey was properly before the court. I therefore find that the defect on the endorsement on the provisional warrant did not affect her jurisdiction to commence a committal hearing. These grounds therefore fail.

Grounds five and six

[32] These grounds were also argued together. They challenge the sufficiency of the evidence before the Resident Magistrate.

[33] Counsel for the Claimant submitted that the evidence before the Resident Magistrate was insufficient as:

- (a) The evidence was riddled with inconsistencies.
- (b) The telephone calls that were alleged to have been between the Claimant and Mr. Dodd spoke to drugs by different names.
- (c) Mr. Dodd indicated on one occasion that he was going to pick up cocaine and he in fact picked up hashish.
- (d) The voice identification was weak

[34] Mr. Foote argued that the evidence which was presented to the court was insufficient to establish a case beyond a reasonable doubt. However, in the course of his submissions accepted that the appropriate standard for committal proceedings was a prima facie case and not beyond reasonable doubt. Counsel sought to rely on the Court of Appeal case No 96 of 2005 case of **Hartford Montique v The Commissioner of Corrections and The Director of Public Prosecutions** (unreported) Court of Appeal, Jamaica SCCA 96/2005, judgment delivered 8 2007. He further submitted that the only direct evidence came from the affidavit of Mr. Marvin Dodd. He described Mr. Dodd's evidence as vague and weak and that the Magistrate should not have made the order to extradite the Claimant based on that evidence.

[35] Counsel for the first and second Defendants deferred to the submissions of the third Defendant on these grounds. Counsel for the third Defendant submitted that a prima facie case had been made out once the Magistrate took into consideration the totality of the evidence. Mr. Morris relied on the case of **Lebert Ramcharan and Donovan Williams v CCS and the DPP** (unreported) Court of Appeal, Jamaica SCCA no. 107/105, judgment delivered 16 March 2007 in support of his submissions.

[36] The starting point as to how a Magistrate ought to approach committal hearings in extradition matters is that she should do so as an examining justice. Section 10 (1) of **the Act** states that:

“a person arrested in pursuance of a warrant issued under Section 9 shall, unless previously discharged under subsection (4) of that section, be brought as soon as practicable before a magistrate (in this Act referred to as “the court of committal, who shall hear the case in the same manner as nearly as may be, as if he were sitting as an examining justice and as if that person were brought before him charged with an indictable offence committed within his jurisdiction”.

Section 10(5) (b) of **the Act** states that the Magistrate is allowed to commit the person to be extradited once the evidence is sufficient to warrant his trial if the offence had been committed in Jamaica. The test that the Magistrate is required to apply is not whether or not the evidence satisfies him beyond a reasonable doubt but whether a prima facie case has been established.

[37] In this case, the Court is being asked to review the evidence that was placed before the Magistrate to determine whether or not there was sufficient evidence to establish a prima facie case. I first have to ascertain what direct evidence was before the Magistrate against the Claimant. The evidence to ground the counts on the indictment came mainly from the affidavit of Mr. Marvin Dodd. The affidavit of Mr. Dodd disclosed that he was a confidential informant for the DEA and he detailed a number of incidents in which he was involved in the receipt and the distribution of drugs.

[38] The indictment produced in the authenticated documents indicates that the Claimant was charged with three counts of conspiracy, one count of attempting to possess with intent to distribute a controlled substance, and two counts of possession with intent to distribute a controlled substance.

[39] In relation to the charge of conspiracy the crown would have to prove;

(a) that there was an agreement,

- (b) that the defendant joined the agreement,
- (c) that the defendant knew what he was agreeing to, and
- (d) that when he joined the agreement the defendant intended that he or some other party to it should carry out the agreement.

[40] The evidence before the court from Mr. Dodd was that he was in telephone contact with the Claimant and that they discussed the receipt of and the distribution of controlled substances. The Claimant told Mr. Dodd that he would be receiving drugs on a weekly basis. Mr. Dodd's evidence is that he picked up drugs i.e. either cocaine or hashish on a number of occasions on the direct instructions of the Claimant or from other persons on the Claimant's behalf. There is therefore in my opinion, sufficient evidence on which the Resident Magistrate could rely to satisfy a prima facie case of conspiracy.

[41] The next charge against the Claimant was that of attempting to distribute a controlled substance. The prosecution would need to prove that:

- (a) Steps were taken that were more than preparatory to the commission of the offence.
- (b) There was an intention to commit the full offence.

It does not matter if the offence which the defendant is intending to commit is impossible for reasons unknown to him.

[42] Mr. Dodd's evidence is that he received either cocaine or hashish during the months of January to February 2013 and that he received instructions from Mr. Facey and from another person called Michigan to pick up these drugs. He did pick up the drugs from two gentlemen, namely Rugna and Mr. Jean Baptiste. The drugs were taken from him by the DEA agents.

[43] It is my view that based on the above evidence the Resident Magistrate could find that a prima facie case of attempting to distribute the controlled was established.

[44] The final counts on the indictment concern the possession with intent to distribute a controlled substance. The Crown would need to prove that the Defendant;

(a) Had custody and control of the substance

(b) That the Defendant intended to distribute the substance.

[45] Mr. Dodd in his evidence stated that he had discussions with Mr. Facey concerning drugs and that he received cocaine and hashish based on the instructions of either Mr. Facey or Michigan.

[46] In light of the evidence that Mr. Facey was in Jamaica when the drugs were either picked up or dropped off in the United States of America the Crown would be required to establish constructive possession in the Claimant. In this case, the question is whether Mr. Facey was either in proprietary possession or custodial possession of the drugs? In seeking to answer the question the court considered a number of cases including *Hall v Cotton and Tredwell* [1987]1 QB504 and *R v Maduro* (2008) 73 WIR 225.

[47] It is well established that a person can be in possession of an item although he is not physically in control of it. This principle was laid down in the case of *Hall v Cotton* (supra). In that case, Cotton owned two shotguns which he took to Treadwell's house for safe keeping. Treadwell did not have a shotgun certificate. Treadwell decided to clean the guns before returning them. Cotton was charged for transferring the shotguns to Cotton whilst Treadwell was charged for possession of a shotgun without a license. The court held that by leaving the guns at Treadwell's house Cotton still retained possession of them and as such Treadwell could not be held to be in possession of them. Cotton had proprietary possession of them whilst Treadwell had custodial possession of them.

[48] This case was followed in the case of *R v Maduro* (supra). In that case dive operators discovered an unmanned dinghy which they towed to an island and

contacted the police. The dive operators gave evidence that they were contacted by Mr. Maduro and another man who requested that they return the bag of drugs. Mr. Maduro told them they could do it the hard way or the easy way. Mr. Maduro and the other man left on the approach of a boat from custom department. The following day the dive operators were at an establishment that had a bar and a restaurant. They observed Mr. Maduro at the said establishment and called the police. Mr. Maduro who was arrested denied that he chartered the vessel that the dinghy was assigned to and that he had approached the dive operators to return the drugs. He was convicted and he appealed his conviction.

Rawlins CJ stated at paragraph 28 of the decision that:

“A person is in possession of a controlled drug if that person has it in his custody or control with knowledge that the thing is in his custody or control. Although the person does not have the drug under his or her physical control, that person may still be in constructive possession of it.”

[49] In this case Mr. Dodd gave evidence that the Claimant told Mr. Dodd that he would be receiving drugs on a weekly basis. On the 17th of February 2013 Mr. Facey told Mr. Dodd that he was sending “the thing”. Mr. Dodd understood “the thing” to be hashish. He told him that he was to deliver it to Michigan. Michigan spoke to him and he collected one kilogram of hashish from someone named Rugna.

[50] In my opinion, this evidence would be enough for the Magistrate to find that a prima facie case had been made out for constructive possession of a controlled substance.

[51] In relation to these grounds Counsel for the Claimant submitted that the evidence was riddled with inconsistencies and opinions and as such the Resident Magistrate should not have satisfied beyond a reasonable doubt.

[52] The manner in which evidence should be assessed in extradition matters is that the all the evidence should be taken into consideration and to weigh up the evidence.

In the case of *R v Governor of Pentonville ex parte Osman* [1989] 3 All ER 701, Lloyd L.J. stated at page 721;

“In our judgment it was the magistrate’s duty to consider the evidence as a whole and to reject any evidence which he considered worthless. In that sense it was his duty to weigh up the evidence. But it was not his duty to weigh the evidence. He was neither entitled nor obligated to determine the amount of weight to be attached to any evidence to compare one witness with another. That would be for the jury at trial”.

In the case of **Lebert Ramcharan and Donovan Williams v CCS and the DPP (supra)** Hibbert J in the Full Court at paragraph 25 stated that:

“It is the duty of a magistrate in both preliminary examination and extradition hearings to determine whether or not, on the basis of the evidence adduced before him, a prima facie case has been made out.”

[53] The inconsistencies that were highlighted by counsel for the Claimant are:-

- (a) Mr. Dodd indicated on one occasion that he would have been receiving cocaine and he in fact received hashish.
- (b) That Mr. Dodd indicated that he spoke in code but that the code was not consistent as different words were used to describe the drugs.

On the evidence before her the learned Resident Magistrate in my view, was entitled to find that whether the code used was „thing“ or „stuff“ in their telephone conversations, Mr. Dodd and the Claimant were discussing controlled substances. The inconsistencies highlighted by counsel for the Claimant are not of such a nature that a Resident Magistrate weighing up the evidence would be unable to find that a prima facie case had been made out.

[54] Counsel for the Claimant also expressed the view that there was no evidence or inadequate evidence of voice identification and as such, the Magistrate should not

have granted the order to extradite the Claimant. In considering this evidence, I looked at the evidence relating to voice identification. In paragraph 19 of the affidavit of Mr. Dodd, he stated, that he had attached a picture of Floyd Sheldon Facey who he knew as „Jiggs“ and „Dutch“, who he worked with to distribute cocaine and hashish. His evidence is that because he knew Mr. Facey personally, he recognized his voice as that of the person with whom he spoke on the phone during these transactions.

[55] Counsel for the Claimant in his submissions appeared to have been questioning the creditability of the witness and this is matter to be determined by a tribunal of fact. This position is supported in the Privy Council case of **Lloyd Brooks v Director of Public Prosecution** (1994) 31 J.L.R. 16 at 23B, where their Lord Woolf stated:

“Questions of credibility, except in the clearest of cases, do not normally result in a finding that there is no prima facie case. They are usually left to be determined at trial.”

[56] In this case, the Magistrate correctly relied on the affidavit evidence of Mr. Dodd and found that there was adequate evidence of identification. Grounds 5 and 6 fails.

Grounds 7 and 8

These grounds are concerned with the issue of disclosure and the Claimant’s Constitutional right to a fair hearing.

[57] Counsel for the Claimant submitted that he had made several requests for all documents related to the extradition of the Claimant. He stated that he had not received full disclosure prior to the extradition hearing and as such could not have sufficiently prepared the defence of the Claimant. He submitted that in light of this the order for the Claimant to be extradited should not have been made. In support of his argument, Counsel for the Claimant relied on a number of cases including **Ferguson v Attorney General** (1999) 57 WLR 403 and **Nickoy Grant v R** [2013] JMCA Crim 30. He highlighted that ultimately the appeal in Nickoy Grant was

allowed as a result of non disclosure. Specific reference was made to paragraphs 27-28 of the decision which state:-

“The Charter provides for protection of an individual’s right to due process. He is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law (section 16).[28] Section 16(6) provides further that:“Every person charged with a criminal offence shall -(a) ...(b) have adequate time and facilities for the preparation of his defence.” This provision requires the prosecution to inform the defendant of the nature and extent of the allegations being made against him. The prosecution therefore has a duty to disclose to the defendant the evidence which is material to the case in a timely manner to allow for the preparation of his defence”.

[58] Counsel for the 1st and 2nd Defendant acknowledged that there were two documents that were not disclosed but argued that the non disclosure did not affect the Claimant’s right to a fair hearing. Counsel for the third Defendant also acknowledged that two documents were not disclosed however he submitted that the contents of the documents were incorporated in the authenticated documents that were disclosed to counsel for the Claimant prior to the extradition hearing. He argued that Counsel for the Claimant would therefore, have been seized of all the facts that were being relied on to ground the extradition of the Claimant.

[59] What were the two documents that were not disclosed? The first document is the information to ground the request for the provisional warrant. That document contained:-

- (a) the name of the person who is requesting the warrant,
- (b) the name of the Claimant and his alias
- (c) the offences he is accused of,
- (d) the penalties in relation to the offences he is charged for,
- (e) that he is likely to be in Jamaica
- (f) that the application is being made on behalf of the United States.

- (g) that the United States would demand his extradition in due course and
- (h) there are reasonable grounds for supposing that the fugitive may escape.

[60] The second document is the report of the fact of the issue of a provisional warrant of arrest. That report must be sent to the Minister once a provisional warrant is issued pursuant to the Section 9(4) of ***the Act***. The report repeats the name of the Claimant, his alias, the offences for which he is charged and the penalties. The report repeats the same information that is contained in the information to ground the request for the provisional warrant.

[61] The information detailed in these two documents is repeated in the authenticated documents. The authenticated documents included the affidavit from the Attorney from the Department of Justice. That affidavit has a number of attachments, two of which are:

- (a) an indictment detailing the charges against the Claimant.
- (b) the penalties associated with the charges against the Claimant.

[62] Having considered the submissions by Counsel for the Claimant and the Defendants I find that the Crown did disclose to the Claimant the authenticated documents which contain the evidence that is material to the case. The documents that were not disclosed to the Claimant touched and concerned the information that grounded the provisional warrant and the report of the issue of a provisional warrant to the Minister. These documents exist only to detain the Claimant and to place him before the court. The documents that are utilized for the hearing before the Resident Magistrate are the authenticated documents. The authenticated documents encapsulated all the salient details in the two documents that had not been disclosed and as such the Claimant was not prejudiced. I do not find that there was a breach to the Claimant's right to a fair trial.

Order

The Claimant having failed on each ground, the application for habeas corpus is refused.

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Simmons J

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Stamp J

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Shelly – Williams J