

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

SCA No. 7/2018

4 PHILSON WALBERT GEORGE

5 V

6 REGINA
7



8 **Appearances:**

Mr. Philson George IP

9 Mrs. Nichole Petit for the Crown/Respondent
10

11 **Before:**

Honourable Justice McDonald-Bishop (Actg.)

12 **Hearing:**

31st August 2018
13

14 **HEADNOTE**

15 *Criminal Law –Traffic Law– Speeding – Points argued:*
16 *Road not published as a road in Gazette; Improper use of the handheld radar.*
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JUDGMENT

1. This is an appeal brought by Mr. Philson Walbert George (“the Appellant”) from his conviction and sentence in the Summary Court on 13th June 2018, following a trial before Magistrate P McFarlane (Ag) (“the Magistrate”). The Appellant was issued a traffic ticket by Police Constable Athelston Watts (“PC Watts”) for allegedly driving at a speed of 57 miles per hour within 40 mph maximum speed limit zone on the Linford Pierson Highway, Grand Cayman, Cayman Islands. The fine was assessed by PC Watts at \$340.00.

2. The Appellant appeared before the Summary Court where he contested the ticket - reportedly on the basis that the handheld radar gun was not used correctly by PC Watts and, further or alternatively, that there is a possibility that he was not the driver who was speeding because there were other vehicles driving on the road in the vicinity he was driving at the time the ticket was issued and so the speed could be that of another road user.

3. During the course of the trial, he also contended that the road on which he was stopped was not declared to be a public road by notice in the Gazette and so he cannot be held guilty of the offence of driving at an excessive speed for which the ticket was issued.



1 *THE FACTUAL BACKGROUND*

- 2
- 3 4. From the written reasons of the Magistrate, the following core facts have been extracted
- 4 as constituting the background to the appeal.

5 *The Crown's case*

- 6 5. On Sunday 11th February 2018, in the afternoon, PC Watts was conducting traffic
- 7 checks along the Linford Pierson Highway in the vicinity of the roundabout, just
- 8 beyond Pro Plus Gardening Services, and before Halifax Road. The maximum speed
- 9 limit for that area was 40 mph. PC Watts observed that a motor vehicle, being driven by
- 10 the Appellant, was speeding. He pointed the device in the direction of the motor vehicle
- 11 and the speed was locked in the handheld radar at 57 miles per hour for a period of three
- 12 seconds. PC Watts described the traffic flow as being between light to moderate and
- 13 that the Appellant's motor vehicle was between 700 to 1000 feet away from where he
- 14 was positioned at the time he observed it approaching.

- 15
- 16 6. PC Watts testified that he had received training in the use and operation of the handheld
- 17 radar gun; that the device was tested twice on the day in question - prior to him using it
- 18 and after the conclusion of his shift; and that he noted the results in a log. He also
- 19 indicated that there was no possibility that he had locked the radar gun onto the speed of
- 20 another vehicle.



1 7. PC Watts maintained under cross-examination that the road was declared to be a public
2 road, by notice in the Gazette, and denied the Appellant's suggestion that the part of the
3 road at which he was stopped, was not known as the Linford Pearson Highway.

4
5 8. PC Watts accepted, among other things, that:

6
7 a. Although he had been trained in the use of the handheld radar gun by Mr. Colin
8 Redden, he has never read the operational manual for the device known as
9 "Genesis Scout";

10
11 b. He was trained to use the handheld radar gun in 2009;

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13 c. Mr. Redden has the certification documents relating to the officers who he trained
14 to use the handheld radar gun;

15
16 d. He would not issue a speeding ticket to someone driving on a private road; and

17
18 e. There were other vehicles on the road at the time the appellant was stopped.

19
20 9. PC Watts, the Magistrate noted, was resolute under cross-examination that the
21 appellant's vehicle was properly identified or "clocked" with the handheld radar gun
22 driving at 57 mph and that he had used the device "*correctly and in accordance with his*
23 *training*".



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THE APPELLANT'S CASE

10. The Appellant's defence was, according to the Magistrate, "*a little more than a bare denial that he was driving in excess of the speed limit*", which was backed by his suggestion to PC Watts and his subsequent submissions that the road was not declared by notice in the Gazette to be a public road. His assertion was that "*I know within myself that I wasn't speeding...*"

11. He admitted that he had declined to look at the handheld radar gun (showing the 57 mph) when it was shown to him and that he did not challenge the reading, by informing PC Watts that he was not speeding. He also accepted being aware that the speed limit in the area is 40 mph and that he had informed PC Watts that he intended to contest the ticket on the basis that the road was not gazetted.

12. The gravamen of his case, as usefully summed up by the Magistrate, was:

a. That the road, even though open to the public, was not a public road because of the widening of the Linford Pearson Highway, which had not yet been surveyed (leading to amended grid reference points); and

b. That PC Watts used the handheld radar gun incorrectly, or, otherwise, not in accordance with the user manual or his training.



1 13. The Appellant called no witnesses. He, however, sought to adduce several documents
2 (which were never attached to his witness statement) in support of his case. These
3 include information he received from the Lands and Survey Department through the
4 Freedom of Information Law (2015 Revision). The documents (with the exception of a
5 map which the prosecution accepted), were ruled inadmissible by the Magistrate, on the
6 basis that they were not in the proper form to be admitted.

7
8 *The outcome*

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10 14. The Appellant was found guilty by the Magistrate and was ordered to pay the ticket fine
11 of \$340.00 and costs of \$100.00. It was further ordered that he pay the total sum of
12 \$440.00 no later than 3:00 p.m. on 29th June 2018, in default of which, he must serve 4
13 weeks' imprisonment.

14
15 15. The Magistrate, in setting out the reasons for her conclusion and verdict, stated:

16 *"In all the circumstances, I was satisfied (having heard the*
17 *evidence of PC Watts and the [appellant]) so that I have no doubt*
18 *in my mind that on 11 February 2018:-*

19 i. *the road on which the appellant was stopped (the Linford*
20 *Pierson Highway) is a road within the meaning of the*
21 *Traffic Law (2011 Revision), notwithstanding that any*
22 *information (which may or may not have been accurate)*
23 *received by the [appellant] which may have suggested or*
24 *indicated that the part of the Linford Pierson Highway on*
25 *which he was stopped (and was being widened at the time*
26 *of the stop) is not yet declared a "public road" within the*
27 *meaning of the National Roads Authority law (2016*
28 *revision) and the Roads Law (2005 Revision).*

29 ii. *in the absence of any or any admissible evidence from*
30 *which I could properly conclude otherwise, that the*
31 *handheld radar gun was working correctly and was*
32 *properly used by PC Watts; and*



1 iii. *the [appellant] (and no other person who may have been*
2 *driving in or around the immediate vicinity at or around*
3 *the time the [appellant] was stopped) was accurately*
4 *recorded by the handheld radar used by PC Watts driving*
5 *57 miles per hour and was thus driving 17 miles per hour*
6 *in excess of the 40 mile per hour speed limit.”*



THE APPEAL

16. Aggrieved by the decision the Magistrate, the Appellant brought this appeal on the 19th June 2017 on nine grounds. There is substantial overlapping and close interconnectivity of some of the grounds, and so, they may conveniently be dealt with under three broad headings, as follows:

- a. The Magistrate erred when she relied on the broad definition of “road” under s.2 of the Traffic Law 2011 (the ground erroneously states (2003 Revision), which includes both ‘private’ and ‘public’ road, and found that the appellant was driving on a road, even though the road was not named and declared in the Gazette to be a “public road” within the meaning of the National Roads Authority Law (2016 Revision) and the Roads Law (2005 Revision) (grounds 1,2, 3,5, and 6).
- b. The Magistrate erred in accepting the evidence of PC Watts that (a) the radar gun, was properly used at the time the speed in excess of the speed limit was recorded; (b) the reading was from the appellant’s motor vehicle; and (c) he was standing in front of the motor vehicle at the material time of the recording (grounds 4, 7 and 8).
- c. The Magistrate erred in her conclusion that only expert evidence would be accepted to establish the fact that the handheld radar gun was not operated properly (ground 9).



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ISSUE (1)

17. Did the Magistrate err in her conclusion that the Appellant was driving on “a road” even though the road declared in the Gazette to be a “public road” within the meaning of the National Roads Authority Law (2016 Revision) and the Roads Law (2005 Revision) (Grounds 1,2,3,5 and 6)?

18. The Magistrate did not err in her finding that the Appellant was driving on “a road” within the meaning of the Traffic Law 2011. The grounds of appeal, which encapsulate this complaint, are without merit.

19. The Appellant was issued a traffic ticket for exceeding the speed limit, pursuant to s.92(1) of the Traffic Law 2011, which, in so far as is immediately relevant, reads:

“A person who drives on a road a vehicle other than an emergency vehicle -

- (a) at a speed in excess of the maximum speed prescribed for the Islands generally or for the place where such vehicle is driven;*
 - (b) at a speed in excess of the maximum speed prescribed for the class to which the vehicle belongs; or*
 - (c) at a speed in excess of the maximum speed posted for that road works, school zone, road block or barrier as it relates to section 116, 117 or 118,*
- commits an offence and punishable under section 94...”*

20. Section 2 of the Traffic Law 2011 states:

“road” means a public place where a vehicle may be driven or parked and such areas adjacent to that place as may be prescribed;”



1 21. The same section defines a “public place” as:

2 *“... a place to which the public has access -*
3 *(a) as of right, without payment;*
4 *(b) upon payment; or*
5 *(c) upon invitation, express or implied,*
6 *and includes commercial property to which persons attending for*
7 *commercial purposes are allowed access by the owner of those*
8 *premises, upon payment of a fee or not;”*
9

10 22. Section 2 of the Roads Law (2005 Revision), on which the Appellant relies in
11 advancing these grounds of appeal, provides:

12 *“public road means a road which-*
13 *(a) is maintained at public expense; or*
14 *(b) is dedicated in that capacity to the use of the public*
15 *as of right,*
16 *and which, in either event, is declared by the Highway*
17 *Authority to be a public road pursuant to this Law.”*
18

19 23. Similarly, the National Roads Authority Law (2016 Revision), on which he also relies,
20 states:

21 *“public road” means a road which –*
22 *(a) is maintained at public expense; or*
23 *(b) is dedicated in that capacity to the use of the public as of*
24 *right,*
25 *and which, in either event, is declared by the Cabinet to be a*
26 *public road under the Roads Law (2005 Revision); and, for the*
27 *purposes of section 21, “public road” includes the land on which*
28 *the road is built;”*
29

30 24. The statutory provision, pursuant to which the Appellant was ticketed, does not speak to
31 a “public road” and so, the Magistrate was only obliged to consider whether the
32 Appellant was driving on “a road” to which a prescribed maximum speed limit applies.
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1 25. The meaning of “road” in the Traffic Law 2011 was the applicable meaning and not that
2 of “public road” as contained in either the Road Law (2005) or the National Roads
3 Authority Law (2016), on which the appellant relies. It means that the distinction
4 between “road” and “public road” was without legal significance and, by extension
5 without legal effect, in all the circumstances of the case.

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8 26. Accordingly, the Magistrate made no error of law or fact in her finding that the
9 appellant was driving on “a road” for the purposes of ascertaining whether he was guilty
10 of the offence for which he was ticketed.

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12 27. Grounds of appeal 1,2,3,5 and 6 cannot succeed.

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1 *ISSUE (2)*

2 28. Did the Magistrate err in accepting the evidence of PC Watts that (a) the handheld
3 radar gun was properly used at the time the speed in excess of the speed limit was
4 recorded; (b) the reading was from the appellant's motor vehicle and (c) he was
5 standing in front of the appellant's motor vehicle at the material time (grounds 4, 7
6 and 8)?

7
8 29. Whether the radar device was properly used or operated by PC Watts was a question of
9 fact for the Magistrate's determination¹. The Magistrate's resolution of the issue
10 depended on the weight she attached to the evidence of PC Watts, which involved her
11 view of his credibility and reliability. It was open to the Magistrate, therefore, as judge
12 of the fact, to say what evidence she accepted and what evidence she rejected. The
13 appellant had no potent evidence to discredit PC Watts' evidence that he operated and
14 used the handheld radar gun in accordance with his training at the material time. Except
15 for the appellant's evidence that other vehicles were 'in the radar view' there was
16 nothing put before the Magistrate by the appellant or from anywhere else that was
17 seemingly of enough cogency to displace PC Watts' evidence that, although there was
18 light to moderate traffic on the road at the time, he observed (with his naked eyes) that
19 the Appellant was speeding which prompted him to target the appellant's motor vehicle.
20 The speed was then 'clocked' by the handheld radar gun for three seconds at 57 mph.

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¹ See *Scott v MacPhail* (1991) S.L.T. 907



1 30. The Magistrate had evidence before her that PC Watts was trained in the use of the
2 handheld radar gun and that it was checked both prior to and after its use at the scene
3 and was found to be in good working order. She had the evidence of PC Watts that it
4 was properly used or operated at the time the speed of the appellant's motor vehicle was
5 detected (notwithstanding the fact that PC Watts may not have read the user manual for
6 the device).

7

8 31. The Magistrate, in the light of all the evidence before her, including that of the
9 Appellant, who was not able to say definitively the speed at which he was driving,
10 found that the appellant "and no other person who may have been driving in or around
11 the time the appellant was stopped) was recorded by the handheld radar". Once there
12 was sufficient evidence to support that finding, which there was, this court is not
13 entitled to disturb the decision of the Magistrate on that issue.

14

15 32. The Appellant has also complained that the Magistrate failed to consider the credibility
16 of PC Watts in relation to his evidence that he was standing to the front of the
17 Appellant's vehicle when, according to him, the evidence showed that he was standing
18 to the side. This, too, was a question of fact solely for the determination of the
19 Magistrate. The credibility of the witness as well as of the Appellant was for the
20 Magistrate to decide, and so there is no basis on which this court could say that the
21 Magistrate erred in accepting PC Watts' evidence as to where he was standing in
22 relation to the appellant's vehicle. It was entirely a matter for the Magistrate who she
23 believed.

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1 33. This court cannot interfere with the Magistrate's ultimate finding that the appellant
2 drove in excess of the speed limit based on the observation of PC Watts, coupled with
3 the reading derived from the handheld radar gun, because it cannot be said that she was
4 plainly wrong in arriving at her conclusion².

5
6 34. Grounds of appeal 4, 7 and 8, which essentially challenge the Magistrate's treatment of
7 the evidence of PC Watts, therefore, fail.



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² See *Watt (or Thomas) v Thomas* [1947] A.C. 484 and *Bahamasair Holding v Messier Dowty Inc* [2018] UKPC 8

1 *ISSUE (3)*

2 35. Did the Magistrate err in her conclusion that only expert evidence would be
3 accepted to establish the fact that the handheld radar gun was not operated
4 properly (ground 9)?

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6 36. The Magistrate noted that given the Appellant's challenge to the Crown's case when he
7 first appeared in court, she advised him that if he intended to instruct an expert
8 regarding the appropriate operation of the handheld radar gun, with a view to adducing
9 this as expert evidence during the trial, he should disclose "*any proper report*" to the
10 Crown in advance of the trial. In the end, the appellant disclosed no expert report and
11 called no expert witness.

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13 37. In reviewing the Appellant's case at the end of the trial, the Magistrate observed that the
14 Appellant had "*suggested, but without any reference to or reliance on admissible (or*
15 *any) evidence that PC Watts used the handheld radar incorrectly, or otherwise not in*
16 *accordance with its manual or his training.*"

17
18 38. She then concluded that in the absence of evidence contrary to that given by PC Watts,
19 she was satisfied that the handheld radar gun was working correctly and was properly
20 used.



1 39. It is clear from the Magistrate's findings that the Appellant's unsupported assertion that
2 the handheld radar gun was improperly used was not enough to counter the evidence of
3 PC Watts, who is trained in the use of the device and who handled it on the day in
4 question. The weighing of the evidence was for the Magistrate and so, if she formed the
5 view that she could not rely on the mere say-so of the Appellant that the device was not
6 used properly, then that is a view that she could properly hold and this court must defer
7 to her view of the facts. She has seen and heard the witnesses and there is nothing to
8 show that her ultimate finding that the appellant drove above the prescribed speed limit
9 is unsupported on the evidence. I accept the submissions of counsel for the Crown that
10 there was sufficient evidence for the Learned Magistrate to come to the conclusion she
11 did. This ground fails.



ADDITIONAL GROUNDS ARGUED (BUT NOT FILED) BY THE APPELLANT

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3 40. At the hearing of the appeal, the Appellant raised several other issues, which did not
4 form part of the grounds of appeal as filed and in respect of which there was no prior or
5 any application during the course of the hearing for an amendment. However, given his
6 standing as an unrepresented litigant, and the fact that there was no discernible
7 prejudice to the Crown in relation to some of these matters, the Appellant was
8 generously allowed a fair degree of latitude to argue some additional issues.

9

10 41. In summary, the main additional issues that were allowed to be argued are:

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12 a. The non-disclosure by the prosecution of the user manual for the handheld radar
13 gun, despite the appellant's request for same from the police;

14

15 b. The road was not subject to a speed limit of 40mph as it was not declared a "public
16 road" by notice in the Gazette , albeit that a speed limit of 40mph is, admittedly,
17 displayed along the roadway; and

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19 c. The refusal of the Magistrate to admit documentary evidence tendered by the
20 Appellant, including from the Land and Survey Department, which would have
21 confirmed that the appellant was not driving on a public road.

22



1 42. In disposing of these extraneous matters raised by the Appellant in his submissions, I
2 will simply say that nothing raised by him in addition to his filed grounds of appeal is of
3 sufficient legal significance, weight, and gravity that would justify this court interfering
4 with the Magistrate's core finding of fact and law that he drove in excess of the speed
5 limit on the road in question at the material time. These are the reasons for this
6 conclusion:

7
8 a. *Non-disclosure of user manual for the handheld radar gun*

9 i. The Appellant had made request of the police for production of the user
10 manual for the handheld radar gun. It was not produced. He maintained
11 that the non-disclosure of the manual has rendered his conviction unsafe.

12
13 ii. This argument is, however, not accepted. The Appellant was clear in
14 stating that he took no issue with the working and reliability of the
15 handheld radar gun. He accepted or, at least, did not challenge the
16 evidence that it was in proper working condition.

17
18 iii. His challenge was to the use of it by PC Watts in circumstances, which, he
19 contended, could have resulted in a distorted reading which attributed the
20 excessive speed to his motor vehicle.



1 iv. PC Watts gave evidence that he properly used the handheld radar gun in
2 accordance with his training. It is also clear that the Appellant conducted
3 his cross-examination in this regard based on information he received
4 relative to the conditions required for proper operation of the device. As
5 Mrs. Petit correctly pointed out, he was not prevented from raising the
6 concerns he had about the proper use of the handheld radar gun for the
7 consideration of the Magistrate and he has not advanced anything before
8 this court to demonstrate that the information that is contained in the
9 manual would have affected PC Watts' evidence in a material way. One is
10 hard pressed to see how the user manual could have assisted the
11 Appellant's case.

12
13 v. It cannot be said that the Appellant was prejudiced or embarrassed in his
14 defence as a result of the non-disclosure of the user manual. Even more
15 importantly, there is no reasonable likelihood that the disclosure of the
16 user manual would have resulted in a different outcome at the trial. In
17 *Bonnett Taylor v The Queen*³, the Privy Council opined that the mere fact
18 of non-disclosure or delayed disclosure is not enough to justify a finding of
19 miscarriage of justice. The focus, according to their Lordships, "must be
20 on the impact which the failure to disclose had on the trial and on the
21 verdict that was pronounced in the end: *Teeluk v State of Trinidad and*
22 *Tobago*⁴.



³ [2013] UKPC 8

⁴ [2005] UKPC 14, [2005] 1 WLR 2421, para 39, per Lord Carswell

1 vi. In the final analysis, the Appellant has failed to show what effect the user
2 manual would have had if use was made of it at the trial⁵. I conclude,
3 therefore, that the conviction is not rendered unsafe due to non-disclosure
4 by the prosecution of the user manual.

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7 b. **The road was not subjected to a prescribed speed limit :**

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9 i. The Appellant's contention that the Magistrate erred because the roadway
10 on which he was travelling was not subjected to the maximum speed limit
11 of 40 mph as alleged by PC Watts, is grounded on his strongly held belief
12 that the road was not declared to be a public road by notice in the Gazette.

13
14 ii. However, this complaint lacks merit. As already indicated, the declaration
15 of the status of the road as a public road was immaterial to the
16 determination of the question of whether he drove in excess of the
17 prescribed speed limit, contrary to s.92(1) of the Traffic Law 2011.

18
19 iii. Furthermore, he admitted at the trial that the speed limit of 40 mph was
20 displayed along the roadway on which he was travelling when he was
21 issued the ticket. The Magistrate also noted that he accepted being aware
22 of the speed limit in the area to be 40 miles per hour.
23



⁵ principle from *Bonnett Taylor* at paragraph 13 applied

1 iv. There was uncontroverted evidence before the Magistrate of the prescribed
2 speed limit. The Magistrate was therefore correct to hold, in coming to her
3 decision on the ultimate issue to whether the Appellant was speeding, that
4 the prescribed maximum speed limit for that road was 40 miles per hour.
5

6 c. Inadmissible documentary evidence
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8 i. The Appellant sought to adduce documentary evidence, which was not
9 admitted by the Magistrate on the basis that it was not in the proper form
10 to be admitted.
11

12 ii. The Appellant contended in his submissions on appeal that the Magistrate
13 erred in not adhering to the provisions of s.33 of the Evidence Law (2011
14 Revision). This section provides, *inter alia*, that “a statement made by a
15 person in a document is admissible in criminal proceedings as evidence of
16 any fact of which direct oral evidence by him would be admissible” if
17 certain requirements are satisfied.
18

19 iii. Subsections (2), (3) and (4) set out the requirements to be satisfied, one of
20 which, in so far as is relevant to these proceedings, is that it is not
21 reasonably practicable to secure the person’s attendance.
22



iv. While the Appellant's argument before this court seems to suggest that he was relying on the requirement that it was not reasonably practicable for him to secure the attendance of the witnesses who were the makers of the documents, he did not make any effort to bring evidence to satisfy that requirement or pre-condition for admissibility of the documents. The Magistrate was, therefore, not wrong in her ruling that the documents were inadmissible.

DISPOSITION

43. I must commend the Appellant for his admirable preparation and zealous presentation of his arguments on appeal as a self-represented litigant. He has failed, however, to persuade this court to find that the verdict is unreasonable and the conviction unsafe. There was evidence before the Magistrate, presented by the prosecution, which, once she accepted as being true and reliable, was of sufficient cogency to lead to the conclusion that he drove in excess of the prescribed speed limit on the Linford Pearson Highway, on the 11th February 2018. It cannot be said that she applied the law incorrectly or that in her assessment of the facts, in the light of the applicable law, she was plainly wrong. Her reasoning and conclusion are, therefore, unassailable.

44. Accordingly, there is no basis on which this court could justifiably disturb the conviction or the sentence.



ORDER

45. The appeal is dismissed and the conviction and sentence are affirmed.

Dated this the 31st day of December 2018



[Handwritten signature]

Honourable Justice McDonald-Bishop
Acting Judge of the Grand Court