

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE**

**SCA No.: 25/15
CASE No.: 06480/13**

ANDREZ ANDRADE ANDERSON

V

REGINA

Appearances:

**Mr. Laurence Aiolfi of Samson & McGrath for
the Appellant**

**Mr. Patrick Moran, Deputy DPP, for the
Respondent**

Before:

Mr. Justice Malcolm Swift Q.C. (Actg.)

Heard:

30th June 2016



RULING

1. On the 29th April 2015, following a 3-day trial in March 2015, the Appellant was convicted by Magistrate Gunn of being concerned in the importation of ganja and possession of ganja with intent to supply. The street value of the drug was almost CI\$2m.
2. He appeals against his conviction on the basis that his conviction was unsafe because the Magistrate:

- i. did not warn herself of the special need for caution in an identification case;
 - ii. did not have sufficient regard to the lack of an identification parade, and
 - iii. failed to set out or have sufficient regard to weaknesses in the evidence of identification.
3. These grounds have been developed in the skeleton argument and in oral submissions on the 30th June 2016.
4. The Crown has submitted that the Magistrate did comply with the matters about which complaint is made, that the conviction is safe and that, even if the complaint were justified, the proviso under s.181 Criminal Procedure Code [2014 Revision] should be applied because of the strength of the evidence in the case and because no substantial miscarriage of justice has therefore occurred.
5. On the 30th June 2016 I indicated that the appeal was refused and that I would provide brief reasons for my decision. These are my reasons.
6. The Magistrate was required in this case to direct her mind to the matters set out in the well-known case of *Regina v. Turnbull*¹ and to direct herself on the special need for caution required before relying on evidence of identification, on the risk that a mistaken witness may still be convincing, on the need to examine the circumstances of the identifications closely, looking for discrepancies, and to highlight weaknesses in the evidence. Fleeting glances or longer observations in difficult conditions should result in acquittal unless supported by other specified evidence supporting the correctness of the identification.



¹ [1976] 63 Cr. App. R. 132

7. In Judge alone cases the guiding principle is set out in *Regina v. Thompson*² in which Lowry LCJ said:

“(the Judge) 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 aspect of the law or to give 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 may be seen how his view of the law informed his approach to the facts.”

This decision was followed and applied in *D. Whittaker v. Regina*³.

8. The Magistrate gave a detailed 78-paragraph Judgment setting out logically the evidence and the conclusions she drew. She set out as much of the evidence as was required for her decision-making. She identified the issue raised by the defence as an allegation of mis-identification and directed herself to consider the circumstances of the identifications in accordance with *Turnbull* to which she specifically referred in footnote 10 on page 15 and in footnote 11 on page 20. In the latter footnote, the Magistrate also demonstrated that she had well in mind the case of *France v. Regina*⁴ where it is clear that there are qualifications on the need for detailed *Turnbull* directions and it is only necessary to comply with the sense and spirit of that case, in that, no particular form of words needs to be used to convey the essence of that decision. *France* was a case in which evidence of identification without an identification parade was considered.

² [1977] NI 74

³ [2010] (1) CILR 29

⁴ [2012] UKPC 28 [2013] Crim L. R. 237 [and in Blackstone's Criminal Practice 2015 at F18.6 and F18.10]





9. When going through the detail of the evidence in relation to the ten (10) sightings, the Magistrate pointed out most of the evidential factors relevant to her decision on the strength of the identifications of the Appellant. She questioned, where necessary, evidence of the timing of observations. She dismissed observations which were of poor quality or were carried out in difficult circumstances. She pointed out weaknesses in the evidence (where for example there were issues concerning the distance involved, the length of the observations, the state of the lighting, the presence of obstructions or where such evidence was absent). She identified observations she properly classified as 'a fleeting glance' or 'a mere fleeting glance' and pointed out inconsistencies in the identification evidence.
10. In addition the Magistrate reminded herself that convincing witnesses can be mistaken, that more than one witness can be mistaken (para 59), and that she was obliged to acquit if there may have been another person with whom the officers might have confused the Appellant (para 57).
11. The Magistrate highlighted the role of supporting evidence and the effect of the accumulation of different periods of observation and identification (paras 63 and 64). She analysed the evidence and gave reasoned conclusions as to its reliability.
12. The Magistrate also clearly had well in mind the absence of a formal identification procedure (para 56) and as a very experienced fact-finder, would have had at the forefront of her mind the possible handicaps that the absence of such a procedure might cause to the Appellant in challenging the correctness of the identifications.
13. In addition the Magistrate had the assistance, not only of Crown Counsel but also of a very experienced defence attorney, Mr Furniss, who will have left no stone unturned in dealing with all of these issues.

14. It is correct that the Magistrate did not specifically say that she had directed herself that there was a special need for caution in identification cases, or that she had directed herself that there were potential lines of cross-examination curtailed by the absence of a formal identification procedure, but I find that she clearly had such matters in mind by the manner in which she dealt with the evidence and summarized the issues and from her references to the leading authorities in her footnotes. She was not required by authority to spell out each and every topic upon which she was required to direct herself especially those so basic that merely to refer to the leading case on identification in her judgment would clearly imply that she had directed her mind to them. Of course, in this case, the Magistrate went much further as I have indicated.

15. Particular criticism was directed at part of paragraph 77 of the Judgment where it was suggested that the Magistrate had misdirected herself. However I regard that part of paragraph 77 as a perhaps slightly unfocused way of expressing her decision on whether the fact that the Appellant was in custody when the identification was confirmed was an impediment to the general reliability of the identification evidence overall. It certainly does not suggest to me that she had misdirected herself.

16. The Magistrate also pointed out the evidence that supported the identification evidence and particularly the Appellant's attempt to escape. The Crown has also pointed out that there was a strong circumstantial case (aside from the identification evidence) that the Appellant had been in the company of the Defendant McCoy during the importation events, based on the Appellant's links to the Defendant McCoy through association, telephone contact between them, his flight ticket in McCoy's vehicle and his suitcase at McCoy's home. His passport was wet on arrest.



17. The Magistrate also found the Appellant in evidence to be evasive, vague, contradictory and incredible.
18. I find that Magistrate Gunn correctly directed herself on the law and how it should be applied to the facts of this case and that the absence of certain specific references complained of by the Appellant is counterbalanced by numerous factual findings and explanations of the evidence that demonstrate clearly that, although otherwise unspoken, the Magistrate directed herself on the matters about which complaint is made.
19. Even if the Magistrate's failure to enunciate in her judgment all of the matters upon which she had directed her mind meant that she had not in fact directed her mind to those matters, I find that no substantial miscarriage of justice has occurred and I would have dismissed this appeal under s.181 of the Criminal Procedure Code (2014 Revision).

Dated this the 30th day of June 2016



**Honourable Mr. Justice Malcolm Swift Q.C. (Actg.)
Acting Judge of the Grand Court**

