

ANGUILLA

IN THE COURT OF APPEAL

MAGISTERIAL APPEAL NO. 4/92

BETWEEN:

HUGH L. CHRISTIAN - Appellant

and

COMMISSIONER OF POLICE - Respondent

Before: The Honourable Mr Justice Byron, President
The Honourable Miss Justice Joseph J.A. (Ag.)
The Honourable Mr Justice Singh, J.A. (Ag.)

Appearances: Mr C. Abel for the Appellant
Mr K Defrietas and Mr S. Harrison for Respondent.

1992, MAY 12, 13

JUDGMENT

BYRON J.A.

On 8th October 1991 the Appellant was convicted of unlawfully cultivating Cannabis contrary to Section 9(1) as provided for by Section 9 (2) of the Drug Prevention of Misuse Ordinance 1988 and fined \$5,000.00 or in default 4 months imprisonment.

A brief synopsis of the facts found by the Magistrate in this case was that a party of five policemen under the command of Inspector Benjamin went to North Side at about 4:15 a.m. on 16/4/91 to carry out surveillance on plants which appeared to be of the genus cannabis. These plants were in pots and a wooden box in an area surrounded by a wire fence.

About 5:35 a.m. a man appeared with a bucket on his head and a white bottle on his shoulder, and entered the fenced area. After putting down the bucket and bottle he turned on a small flashlight and shone it around on the plants for a while. Then he turned it off, opened the bucket he had brought and began to water the plants with a small pan.

Inspector Benjamin and the two other police officers who gave evidence said that they recognised the man to be the Appellant, who was well known to them.

Inspector Benjamin got up and said "freeze, police". The man dropped the pan and jumped over the fence and ran away. The police chased in vain. A shot was fired in the air, and Benjamin shouted "Crumpo, no need to run I know it is you".

/Within....

Within an hour the police, armed with search and arrest warrants were at the appellant's home where he was arrested, after a search that revealed nothing.

The only issue raised in this appeal concerned the identification of the appellant, and counsel argued that the Magistrate's finding was unreasonable and wrong in law in that the guidelines of R v Turnbull (1976) 3 ALL ER 549 were not applied.

We do not agree. The Magistrate specifically referred to R v Tunbull in her reasons for decision. She considered the evidence with regard to light and found that there was sufficient light, with regard to distance and accepted that the police were concealed in the bushes around the fence and were about 8 feet from the appellant, with regard to time, and found that the police had him under observation during his approach to the plants and while he looked after the plants and then commenced to run away. She also accepted the evidence that the police knew the appellant for many years. She was impressed by the fact that the police went there for the purpose of surveillance, and that they recognised the appellant then and there without any uncertainty. She considered and rejected a proposition put by the defence that the police could have mistaken one Ras Brown for the appellant. The evidence disclosed that that the police also knew Ras Brown very well and although they admitted that the two men were sufficiently similar in appearance to be mistaken for each other in bad light they pointed out differences in appearance and maintained their confidence in the accuracy of their recognition of the appellant.

The Magistrate also considered and rejected the alibi of the appellant. He said he was at home in bed with his two little boys. The Magistrate found that his evidence was untruthful and she concluded that the testimony of his witness showed him up as not telling the truth.

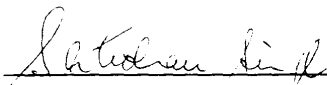
In conclusion the Magistrate after considering all the evidence said that she had no doubt at all that the appellant was the person the police had seen watering the plants.

We were not persuaded by counsel's valiant attempt to show that the learned Magistrate placed too much reliance on the lack of uncertainty by the police, that it was unreasonable for her to conclude that the light was not poor, that it was unreasonable for her to conclude that the police had opportunity and ample time to identify the appellant or that the verdict was unsafe and unsatisfactory. The appeal is dismissed.



JUSTICE BYRON, PRESIDENT

JUSTICE JOSEPH, J.A. (Ag.)



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