

MONTSERRAT

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 4 of 1991

BETWEEN:

DAVID PATRICK FOLEY

Appellant

and

THE COMMISSIONER OF POLICE

Respondent

Before: The Honourable Chief Justice Floissac

President

The Honourable Mr. Justice Byron J.A.

The Honourable Mr. Justice Matthew J.A (Ag)

Appearances: Mr. K. Allen and Mr. S. Barzey for the Appellant
Mrs. G. Thom for the Respondent

6th and 7th May 1992

JUDGMENT

FLOISSAC, C.J.

On the 2nd August 1991, the Magistrate sitting in the Magistrate's Court at Plymouth in the Colony of Montserrat convicted the appellant of having in his possession a controlled drug (namely portions of the plant cannabis sativa) contrary to section 7(2) of the Drugs (Prevention of Misuse) Ordinance No. 7 of 1989. The learned Magistrate imposed on the appellant a fine of \$500.00 payable in 1 month with the alternative of imprisonment for a term of three months. The appellant appeals against his conviction on the ground (inter alia) that the decision is erroneous in point of law.

At the trial, the Police produced two envelopes of things found at the appellant's home and purported to prove by Certificates of an analyst that those things included cannabis. Unfortunately, no such Certificate forms part of the Record of Appeal. Nor does the Record clearly indicate that the Certificates admitted in evidence were Certificates stating that the things included cannabis. The Certificates admitted were two Certificates produced by ASP Winston Telesford. The relevant extract of the record of his evidence reads as follows:

"On the 11th April this year, Sgt. Morson handed over to me the said sealed envelopes and their contents together with two Certificates purporting to be signed by Dr. Thomas. Upon examination of one of the Certificates, I noticed the words disposable reefers written on that Certificate.

As a result I went to Antigua where I had a conversation with Dr. Thomas. He directed his notes in my presence and amended the Certificate to read disposable razors instead of disposable reefers This is the amended Certificate to read 3 disposable razors and the other where he changes disposable reefers to razors. I was présent when he made the correction and signed it. (Admitted)...."

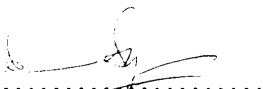
Counsel for the respondent (who did not appear for the respondent at the trial) informed the Court that she had since retrieved from the Registry two Certificates which she admits were not marked or otherwise identified as Exhibits in the case. She invited the Court to rectify the situation by incorporating those Certificates in the Record of Appeal. While this Court respects the integrity of Counsel and all other officers of the Court, it would be a perilous precedent for this Court to invoke its remedial powers in such circumstances.

The net result is that this Court is left with no legitimate means of verifying that the Certificates admitted in evidence were Certificates of an analyst stating, that the things found on the appellant's premises or the things delivered to him by Sgt. Morson included cannabis or a controlled drug possession of which is prohibited by section 7(2) of Ordinance No. 7 of 1989.

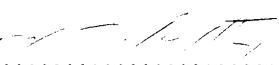
In the circumstances, the appellant's conviction cannot be sustained. The appeal is therefore allowed, the conviction is quashed and the sentence is set aside.



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V.F. FLOISSAC
Chief Justice



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C.M.D. BYRON
Justice of Appeal



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A. MATTHEW
Justice of Appeal(Ag)