

**IN THE CAYMAN ISLANDS COURT OF APPEAL**

**CRIMINAL APPEAL 17/2016**

SCA25/2015

C#06480/2013

**BETWEEN:**

Andrez Andrade Anderson

Appellant

- and

**HER MAJESTY THE QUEEN**

Respondent

**BEFORE:**

**The Rt Hon Sir Bernard Rix, Justice of Appeal  
The Hon Sir George Newman, Justice of Appeal  
The Rt Hon Sir Alan Moses, Justice of Appeal**

Appearances: Laurence Aiolfi of Samson & McGrath (permission to come off record)  
/ Patrick Moran D/DPP

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**JUDGMENT**

Revised from transcript of oral judgment 16 November 2016 and Approved  
Released 10 January 2017

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MOSES, JA (Orally)

1. This is an application for permission to appeal by Mr. Anderson following his conviction of being concerned in the importation of 175 pounds of ganja into Cayman Brac and possession of the same amount with intent to supply.
2. This is an appeal against a ruling of the Acting Justice Malcolm Swift, QC of the 30th of June 2016 which concerned an appeal from the conviction by the magistrate, Kirsty-Ann Gunn, on the 29th of April 2015. So this is a second appeal.

3. It started with counsel previously instructed seeking to come off the record on the basis that that Legal Aid had been withdrawn. We gave an opportunity for Mr. Anderson to continue to have his services but Mr. Anderson, as he was perfectly entitled to do, wished not to do so and sought an adjournment. He wished to seek an adjournment so he could privately instruct counsel of his choice to pursue this application.
4. In order to decide whether to grant that application for an adjournment, we decided to hear from Mr. Anderson as to the grounds which he wished to pursue. We are glad that we did so because he has advanced, with great courtesy, and if we may say so, with clarity, the grounds which he would pursue had he been granted permission to appeal.
5. To assess those grounds it is necessary to remind ourselves that in a very full ruling after a hearing of three days, the magistrate, Kirsty-Ann Gunn, concluded that this applicant had been involved in importing ganja with a Jason McCoy following the loading of that ganja on to a Jamaican canoe, the p" Punky Rib", which was intercepted by the police a mile off the Brac Reef hotel.
6. The evidence turned on the observations of two police officers; Special Police Constable Tibbetts and a colleague ACIO Scott during the course of the day of the 27th of September 2013 which culminated in the interception of the canoe.
7. There were, in total, some ten or so observations in total by those different police officers in different circumstances starting with an observation at 10:00 o'clock in the morning when food was being bought by McCoy in the company of a man identified as this applicant, seen on CCTV and in those circumstances not disputed. It is the observations thereafter that are disputed.
8. The judge went through them with clarity and reminded herself of the need to look for the circumstances of the observation in order to determine how accurate it was and how reliable it was, reminding herself during the course of her judgment that even a truthful and convincing witness could be mistaken.

9. The judge on appeal described that as fully following the guidelines of Turnbull, 1976 63 Cr. App. R. 132. We agree the judge showed herself not only familiar with those principles but nonetheless she deployed them accurately and fairly, distinguishing between some observations that were only fleeting and therefore not reliable and others which were reliable despite, on some occasions, them being in the dark and the use of night observation binoculars.
  
10. Mr. Anderson argued that there was a failure to follow the Turnbull guidelines in identification cases. We do not agree. It's plain from that very full judgment that she did and she observed them accurately. There is no ground for arguing to the contrary.
  
11. Next, he argued that there was no supporting evidence. That is not so. Whether there was a need for supporting evidence or not need not be decided. The fact of the matter was that there was not only substantial supporting evidence, but it was so strong that it is legitimate to question whether it might not have been sufficient to convict this applicant even without the observation evidence.
  
12. There was strong evidence of association through telephone contact right up until the day of this observation. There was no good reason for the applicant, as he explained it, to be in that situation on Cayman Brac. The explanation he gave about meeting some girl called "Jasmine" simply did not -- if it is not an unfortunate metaphor in the context of this case -- hold water.
  
13. There was further evidence of a damp passport found in his possession. He denied at trial that the passport was damp.
  
14. And there was further evidence both in his behaviour after he had been detained and at the time of his detention when he sought to run away claiming that he was frightened that he was being robbed or about to be robbed, all of which was powerful evidence to support the accuracy of the two observing officers as to the correctness of the identification.

15. In those circumstances the grounds that he advanced in relation to the absence of supporting evidence are not arguable.
  
16. Thirdly, he contended that there was no identification parade. The judge was well aware that there had been no identification parade and of the chance that that might have given possibly one of the witnesses' accuracy being tested. However, it must be recalled that one of the identifying officers ACIO Scott had seen Anderson in detention. It's not clear whether the other one had. In those circumstances an identification parade would have been utterly misleading and it was right not to hold it because all that would have been observed was the man seen shortly in detention.
  
17. In our judgment there is no arguable ground arising out of the absence of the identification parade.
  
18. Finally, Mr. Anderson wished to advance a further ground; namely, that there was no evidence whatever of contact with any of the ganja in the form of some contamination or of fingerprints. That is true. But as My Lord Justice Rix pointed out, in argument, if you are assisting someone else to import ganja when it is in possession of the other, then you yourself are guilty of possession with intent to import. There is nothing arguable in that new ground in our judgment.
  
19. In those circumstances, granting an adjournment would, on the merits of this application, serve no purpose whatever and indeed may cause damage to this applicant who would have to expend money on what we would regard as a "hopeless appeal". In those circumstances, we refuse the adjournment and refuse permission to appeal.