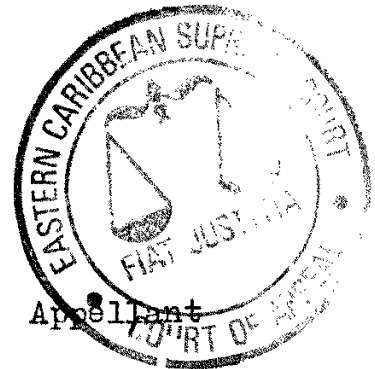


IN THE COURT OF APPEAL  
SAINT VINCENT

Criminal Appeal No. 18 of 1973

Between: BRENDON LLEWELLYN  
and  
COMMISSIONER OF POLICE



Appellant  
Respondent

Before: The Honourable the Acting Chief Justice  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice Louisy (Ag.)

Dougan for Appellant

Miss M. Joseph, Legal Assistant for Respondent

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1973, September 24

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JUDGMENT

The judgment of the Court was delivered by -

LOUISY, J.A. (Ag.)

The appellant was convicted on the 22nd May, 1973, of being in possession of dangerous drugs, and was sentenced to six months imprisonment with hard labour. From this conviction, he has appealed on the grounds - (1) that the decision was erroneous in point of law; and (2) that the punishment is excessive.

The facts of the case are that on the 14th day of March, 1973, Detective Sergt. Cumberbatch was on duty at Bay Street, when he got near to Coreas Super Market he saw the appellant and a group of men by Hazell's store. He also saw one Eric Hall with a pack of cigarettes in his hand. Hall walked away from the group and Detective Sergt. Cumberbatch became suspicious. He shouted to Hall and went to him. He told him that he was a policeman in plain clothes and that he suspected him of being in possession of marijuana. He asked him to let him see what was in the cigarette pack he had; Hall said that he had nothing in it and began squeezing it. Sergt. Cumberbatch grabbed his hand to take the pack away from him but he resisted.

/The .....

The appellant then pulled Hall away and said to Hall "give me the grass". Hall then gave the pack of cigarettes to the appellant who ran away with it. He was chased by the Police, and when he got near to a wall, he threw the pack over the wall. The police recovered the pack and examined it; he saw it was a small State Express pack containing three hand-rolled cigarettes, which the police say appeared to be marijuana. The appellant escaped but was later arrested. On the 5th April, 1973 Detective Sergt. Cumberbatch took the pack with the three cigarettes to Trinidad in a sealed envelope and handed the envelope to Gereld Popperwell, a Chemist, working with the Trinidad Government.

The Chemist gave evidence before the Magistrate and he said that the packet of cigarettes containing three hand-rolled cigarettes were brought to him by Detective Sergt. Cumberbatch. He analysed the contents of the cigarettes and he identified the contents as fragments of leaves and fruiting tops of the plant *Canabis Sativa*. He found the resin of the plant to be present in these plant fragments.

After examining the contents of the envelope, he returned them in a sealed envelope to Sergt. Cumberbatch.

Counsel for the Appellant abandoned ground 1(a). On grounds 1(b) and 1(c) which were argued together, he stated that there was no legal possession by the appellant, but transitory possession. He was not able to explain to the Court what was meant by transitory possession but submitted that type of possession excluded legal possession and the appellant should not have been convicted as he had no legal possession. It is difficult to understand the submission that the appellant had no legal possession. When the police held Hall the appellant said to Hall "give me the grass". Hall gave the appellant the pack of cigarettes and he ran away with it. The appellant knew exactly what was in the pack.

/In .....

In my view there is no merit in these grounds of appeal. The appellant committed a serious offence, in the circumstances related, in trying to obstruct the police in the execution of their duty. On the ground that the punishment is excessive, counsel submitted that the appellant at the time of the offence was 21 years old, that he had no previous convictions for a similar offence and he would urge the Court to impose a fine on the appellant and not a sentence of imprisonment. The Court has considered counsel's plea, and although the Court recognises the fact that the police are trying to stamp out offences involving the use of dangerous drugs, the sentence, in view of the appellant's hitherto clean record, is excessive. In the circumstances, the Court would vary the sentence of six months imprisonment with hard labour, to one of three months imprisonment with hard labour.

The appeal is dismissed. Conviction affirmed. Sentence of six months imprisonment with hard labour varied to one of three months imprisonment with hard labour.

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Allan Louisy  
Justice of Appeal (Ag.)