

STATE OF ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 8 OF 1997

BETWEEN:

[1] WARREN DEAZIE

[2] RUTH JOHN

Appellants

and

THE COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mr. Satrohan Singh

Chief Justice [Ag.]

The Hon. Mr. Albert Redhead

Justice of Appeal

The Hon. Mr. Albert Matthew

Justice of Appeal [Ag.]

Appearances: Mr. Ralph Francis for the Appellant
Mr. Keith Thom for the Respondent

1998: February 12; 23.

Criminal Practice and Procedure – Appeal by way of case stated – Various charges of resisting arrest, obstruction, assault and battery on the police, etc. accumulated in the course of a search re. Suspected possession of cannabis – Whether the police in the circumstances of the case, was clothed with authority to enter the private premises of a third party without a warrant, for the purpose of detaining and searching the first appellant whom they reasonably suspected of being in possession of a controlled drug – Section 10, Constitution; sections 23 and 24, Misuse of Drugs Act interpreted.

JUDGMENT

SATROHAN SINGH J.A.

On August 25, 1995 at about 10.30 a.m., police on duty at Codrington Village, Barbuda, observed the appellant Deazle and others in one Webber's yard, smoking what the police reasonably believed [because of its strong scent] to be cannabis. Upon observing the presence of the police they began running away. The police gave chase. Deazle swallowed the cigarette he was smoking and ran to the private home of Webber and stood by the doorway.

The police went to Deazle and told him they intended searching him as they suspected him of being in possession of cannabis. There was no evidence that the owner of the home [Webber] was present objected to the presence or the purpose of the police at his home. There was also no evidence to show that Deazle was an occupier of those premises. However, Deazle resisted the search on him. An altercation ensued as a result of which Deazle was charged for Resisting Arrest, Indecent Language, Threatening Language, Being Armed with an offensive Weapon, Assault, Escaping from lawful custody and Battery on the police. The second named appellant Ruth John, who came upon the scene after the police accosted Deazle and who interfered, was charged with obstruction. On April 14th, 1997, Magistrate Hyman convicted the appellants of the aforementioned offences but reserved sentence to await the outcome of this appeal.

This appeal is by way of case stated. The question asked of this Court is whether the police, in the circumstances of this case, was clothed with authority to enter the private premises of Webber without a warrant, for the purpose of detaining and searching Deazle whom they reasonably suspected of being in possession of a controlled drug.

S10[1] of the Constitution of Antigua and Barbuda, ensures protection of person or property from arbitrary search or entry. It reads:

“Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises”.

However, **S23[1] of the Misuse of Drugs Act** Cap. 183 of the Laws of Antigua and Barbuda [The Drugs Act] gives the police a right to enter premises without a warrant under certain circumstances but restricts the exercise of such a right to a place of business. And, **S23[2] of the Drugs Act** gives a police officer, without a warrant, the power to search and detain any person for the purpose of searching him, whom they have reasonable grounds to suspect is in possession of a controlled drug in contravention of the Act. Also, **S24** of the said Act powers a police officer to arrest without warrant a person who has committed or whom the police officer, with reasonable cause, suspects to have committed an offence under the Drugs Act, if that

police officer believes that person will abscond unless arrested. It is also provided that these powers afforded to the police under the Drugs Act, “shall not derogate from any other power of arrest conferred by any other law”. [Section 24[3] of the Drugs Act]. These laws which seem to conflict with the provisions of **S10[1] of the Constitution** were obviously enacted for the purpose of preventing or detecting crime. As such they would have been given constitutional sanction because of the provisions of **S10[2][c] of the Constitution** which states:

“Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required for the purpose of preventing or detecting crime”.

In this context I think it is relevant also to mention that **S22[1] of the Police Act Cap.330 of the Laws of Antigua and Barbuda** gives power to the police to arrest without warrant any person whom he suspects of having committed a felony.

Based on the aforementioned statutory provisions of law, it is my considered opinion that, except with the permission of the owner or occupier of private premises, no police officer has the right to enter those premises without a warrant for the purpose of pursuing investigations in any criminal matter concerned with those premises or with the owners or occupiers thereof, unless they have reasonable grounds for believing that a felony has been committed therein or is presently being committed therein. This protection is limited to private premises and to the owners and or occupiers of those premises and would not extend to uninvited guests seeking refuge therein. There is no such protection if the premises are a place of business. The police also have the right to search and detain without warrant, any person for the purpose of searching him, whom they have reasonable grounds to suspect is in possession of a controlled drug in contravention of the Drugs Act.

In the instant matter, the evidence does not show that these appellants were owners or occupiers of Webber’s premises. It shows Deazle and others allegedly committing a drug related offence in Webber’s yard and the police with reasonable grounds seeking to detain him for the purpose of searching him. It does not show that Webber was present and/or that he objected to the presence of the

police at his premises or that either himself or any occupier or his premises itself was the subject of the police search.

Given these circumstances, my short answer to the question posed by the Magistrate is that the police, when they arrested Deazle at the doorway of Webber's home, were not acting unlawfully and did not execute an unlawful arrest.

SATROHAN SINGH
Justice of Appeal

I concur

ALBERT REDHEAD
Justice of Appeal

I concur

ALBERT MATTHEW
Justice of Appeal (Ag.)