COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

MCCrApp. No. 121 of 2019

B E T W E E N

BARTHOLOMEW PINDER

Appellant

AND

THE COMMISSIONER OF POLICE

Respondent

BEFORE: **The Honorable Sir Michael Barnett, P, Kt**
The Honorable Mr. Justice Isaacs, JA
The Honorable Mrs. Justice Bethell, JA

APPEARANCES: **Mr. Geoffrey Farquarson, Counsel for the Appellant**
Ms. Linda Evans, Counsel for the Respondent

DATES: **15 October 2020; 1 December 2020; 15 December 2020;**
15 February 2021; 5 May 2021; 30 June 2021; 27 July 2021;
14 October 2021; 6 December 2021; 25 January 2022;
14 February 2022; 14 July 2022

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Criminal Appeal –Dangerous Drugs Act Ch. 228 - Possession of dangerous drugs with intent to supply – Conspiracy to possess dangerous drugs with the intent to supply – Penal Code Ch. 84 - Assault with a deadly instrument – Jurisdiction - Appeal against convictions – Appeal against sentences

Around 1.30 am on 8 November 2017, while patrolling the Exuma Cays, the police observed the appellant Bartholomew Pinder and his former co-accused, Billy Dee Robinson Jr. on an unlit grey boat speeding in the open water. The police identified themselves by microphone and beacon lights, however, the boat speed away. A high speed chase ensued. During the chase, the boat at several times, sought to ram into the police boat and at one point both men were seen throwing bags overboard into the water. The Police vessel giving chase eventually ran aground and the pursued boat was able to escape. A second Police vessel intercepted the boat and the occupants Pinder and Robinson were detained and later charged. The appellant was charged with possession of dangerous drugs with intent to supply, conspiracy to possess dangerous drugs with intent to supply and assault with a deadly instrument. On 24 July 2019, the appellant was convicted on all charges and was sentenced to four years imprisonment on the counts of the possession of dangerous drugs with intent to supply and conspiracy to possess dangerous drugs with intent to supply. He was sentenced to three years imprisonment on the counts of assault with a dangerous instrument. All sentences were to run concurrently. The appellant seeks to appeal his convictions and sentences.

Held: Appeal dismissed. The appellant's convictions and sentences are affirmed.

Based on the evidence adduced by the prosecution, The Court is satisfied that the magistrate would have been entitled to find a prima facie case had been made out against the appellant of having been in possession of dangerous drugs with the intent to supply, of having been part of a criminal conspiracy to commit the offence, as well as on the counts of assault with a dangerous instrument.

There was sufficient evidence upon which the magistrate could properly determine that the charges of possession of dangerous drugs with the intent to supply and conspiracy to possess dangerous drugs with intent to supply were made out and his decision to convict was supported by the evidence overall. The Court finds no merit on the grounds that the magistrate's verdicts were unsafe, unsatisfactory, or unreasonable.

The Court further finds that the sentences of 4 years imprisonment imposed by the magistrate on the counts of possession of dangerous drugs with intent to supply and conspiracy to possess dangerous with the intent to supply not to be unduly severe, unduly harsh or based on a wrong principle of law. There is no basis for this Court interfering with the sentences imposed by the magistrate.

Pearce (1979) 69 Cr App R 365 considered

Billy Dee Robinson v The Commissioner of Police MCCrApp. No. 124 of 2019 considered

JUDGMENT

Judgment Delivered by the Honourable Madame Justice Bethell, JA:

1. The Appellant, along with Billy Dee Robinson, was arraigned before Senior Stipendiary and Circuit Magistrate Derrence Rolle-Davis on 13 November 2017 on the counts of Possession of Dangerous Drugs with intent to supply, Conspiracy to Possess Dangerous Drugs with the intent to supply and four counts of Assault with a Deadly Instrument. They pleaded not guilty to all the counts. A trial ensued.

2. On the 24 July 2019, the Magistrate found the Appellant, along with his co-accused, guilty on all counts and he was convicted on the same. He was sentenced to a term of four years imprisonment on each of the drug charges. He was sentenced to a term of three years imprisonment each of the counts of Assault. All the sentences were to run concurrently from the date of conviction.

3. He has appealed his convictions and sentences on the following grounds:-

> "**1. That under all the circumstances of the case, the verdict was unsafe and unsatisfactory.**
>
> **2. That evidence was wrongly rejected, or inadmissible evidence was wrongly admitted.**
>
> **3. That the verdict was unreasonable or could not be supported having regard to the evidence.**
>
> **4. That some specific illegality or irregularity other than hereinbefore mentioned substantially affecting the merits of the case was committed in the course of the trial.**
>
> **5. That the sentence passed was based on a wrong principle of law.**
>
> **6. That the sentence passed was unduly severe.**
>
> **7. And that the sentence imposed by the Court was unduly harsh in the circumstances of the offences and the Appellant and likely to bring the system of justice into disrepute."**

4. We heard submissions from Counsel on 25 January 2022 and on 14 February 2022 and the matter was adjourned for decision.

5. We render it now.

Background

6. The case against the appellant was adduced from viva voce testimony, photographic evidence and a forensic report. Also tendered into evidence were samples taken at random from packages in six (6) crocus sacks discovered in the waters off Highbourne Cay.

7. The facts disclosed that two marine support units, during the evening of Tuesday 7th November 2017, set out on patrol from their base at Georgetown, Exuma in marked police vessels. One vessel, Sea Gulf 10, headed west to take up surveillance duties in the area between Exuma and Eleuthera. The other, Sea Gulf 17, headed east, to patrol the waters off the Exuma Cays.

8. At 1.30 am the following morning, in the area of Harvey Cay, just off Staniel Cay in the Exuma Cays, the police vessel Sea Gulf 17, with four Marines aboard, came across a grey Midnight Express vessel ("GME boat") which was heading west at a fast rate of speed. It did not have on any running lights. The beacon lights and siren were activated on the police vessel as well as the high beam lights were turned on and fixed on the GME boat, which the officers noted had two three hundred Suzuki engines.

9. Officers observed two male occupants on the boat. One was the driver of the boat, a light skinned male later identified to be, the appellant. Officer Rolle, one of the officers on board Sea Gulf 17 was able to identify the driver of the GME boat as the appellant once the high beams were turned on and aimed at the vessel. He had known him prior. The other occupant was a dark-skinned male, later identified to be Billy Dee Robinson. The officers ordered the vessel to stop. The captain of the GME boat ignored the command. A chase ensued for close to two hours through the Exuma chain of islands.

10. On a number of occasions, the GME boat attempted to ram the police vessel, but Officer Ford, the Captain of Sea Gulf 17, avoided impact on each occasion by swerving away. The police fired shots at the stern of the suspect vessel in an attempt to bring it to a stop as well as to prevent it from ramming the police vessel. This resulted in Billy Dee Robinson being shot.

11. In the area off Sampson Cay heading towards Hawksbill Cay, both males were seen throwing sacks overboard. The police marked the spot by hitting the GPS Man Overboard where the sacks were thrown.

12. The police vessel ran aground on a sandbar in the area of Highbourne Cay. By the time they managed to free the boat the GME boat had disappeared. The officers on board Sea Gulf 17 returned to and remained in the area which they had marked on the GPS.

13. The officers aboard Sea Gulf 10, having received information from Sea Gulf 17, proceeded to an area and noticed when a vessel, matching the description they had been given, exited the area of the Exumas, at a high rate of speed. They intercepted this vessel, a 33' grey Midnight Express with two three hundred Suzuki engines and brought it to a stop. On board this vessel were Bartholomew Pinder and Billy Dee Robinson. Robinson was suffering from a gunshot wound. Officer Wright, testifying for the Crown, stated that they smelt like wet marijuana.

14. The officers towed the suspect vessel along with appellant and Robinson back to the area where Sea Gulf 17 was waiting. The area was searched and in the presence of the appellant and Robinson, the police recovered six white crocus sacks containing packages which were later analyzed to be Indian Hemp, a dangerous drug, contrary to the Dangerous Drugs Act. The total weight of the drugs amounted to four hundred and thirty-three (433) pounds. They were arrested for the same.

15. The crocus sacks containing packages were brought to New Providence by the officer who pulled them out of the water. They were handed over to the investigating officer here in New Providence. They were marked by both officers for identification purposes.

16. In the presence of the investigating officer, samples were taken at random by the forensic chemist from packages in those crocus sacks. They proved to be Indian hemp, cannabis still containing its resin.

17. The appellant was interviewed by the investigating officer. A written record was made of that interview. At the end of that interview the appellant refused to sign or date the interview. What he stated during the interview was adduced into evidence by the investigating officer.

18. The Appellant is alleged to have stated that he was the owner of the GME boat and that he left Sandy Point, Abaco, with Robinson, to test drive it. According to the investigating officer, he admitted encountering police officers in the Exuma Cays but denied attempting to ram the police vessel or throwing any of the white crocus sacks into the sea.

19. Following an unsuccessful no case submission the appellant was called upon to answer the charges. The appellant elected to remain silent. He called one witness, David Lightbourn who testified, inter alia, that he is the owner and manager of Lightbourn's Marina at Sandy Point, Abaco. His marina is the only Marina in Sandy Point. The appellant is his god brother. He has known him his whole life. The appellant gets gas for his boat from his service station. His evidence was of little evidentiary value to the appellant's case.

20. At the close of the defense's case the Magistrate found the Appellant, along with his co-accused, guilty on the counts of possession to possess dangerous drugs with intent

to supply and conspiracy to possess dangerous drugs with the intent to supply. They were convicted on the same. They were both sentenced to a term of four years imprisonment on each of the drug charges, both sentences to run concurrently. The magistrate found both men guilty of the counts of assault with a dangerous instrument and they were convicted of the same. They were sentenced to a term of three years imprisonment on each of the counts of Assault. All the sentences were to run concurrently from the date of conviction.

Grounds one and three

21. I will deal with grounds 1 and 3 together.

> " **1. That under all the circumstances of the case, the verdict was unsafe and unsatisfactory.**
>
> **3. That the verdict was unreasonable or could not be supported having regard to the evidence."**

Issues raised:

22. The first issue is the Jurisdiction of the Magistrate Court to hear these matters**.**

23. Counsel for the appellant submitted that the court did not have jurisdiction to hear this matter as there was no evidence that the suspect vessel was registered in the Bahamas.

24. The magistrate's jurisdiction to hear these matters is derived from two sources. Firstly, from the Archipelagic Waters and Maritime Jurisdiction Act. Pursuant to section 9 (1) of this Act *"The Sovereignty of The Bahamas extends over the territorial sea.."*

25. Section 4(1) of this Act defines the territorial sea of the Bahamas:

> **"S.4(1) The territorial sea of The Bahamas comprises those areas of the sea having as their inner limits the baselines described in this section and as their outer limits a line established seaward from those baselines every point of which is at a distance of twelve miles from the nearest point of the appropriate baseline."**

In other words, twelve (12) miles from the nearest land mass/rock.

26. The learned magistrate held that on the evidence that the chase took place in the Exuma Cays, they forming part of The Bahamas chain of islands, he was satisfied that the events took place within the **territorial** waters of The Bahamas.(Emphasis added) He based this assertion on section 3 of the Interpretation and General Clauses Act, that Territorial Waters meant namely:

> **"3. Waters of The Bahamas" means the waters within the jurisdiction of the Bahamas."**

27. What was led before the court was that the various events occurred near to this cay or off that cay.

28. Had there been evidence led that the events occurred within twelve miles from the nearest point of land I would have accepted that the actions of the appellant were committed within the territorial waters of the Bahamas. No evidence of this nature was adduced.

29. The magistrate's jurisdiction however to hear this matter is also derived from a secondary source. If an offence or offences are committed on a Bahamian owned vessel the magistrate has the jurisdiction to hear the matter.

30. Section 10 of the Penal Code states:

> "**10. (1) Notwithstanding anything contained in any other written law, where any person on board a Bahamian vessel does any act or makes any omission which would be an offence if done or made in The Bahamas, that person shall, regardless of the position of the Bahamian vessel at the time of the act or omission, be guilty of that offence and may be tried by any court which would have had cognizance of the offence had that offence been committed in The Bahamas."**

31. Section 10(4) defines the meaning of Bahamian vessel:

> **"(4) In this section –**
>
> **"Bahamian vessel" includes any ship or boat, or any other description of vessel used in navigation, however propelled, and which –**
>
> **(a) Is registered under the Boat Registration Act, the Water Skiing and Motor Boat Control Act, 1970, or the Merchant Shipping Act, 1976: or**
> **(b) <u>Is wholly owned by persons (whether singly or in association) who are –</u>**
> **(i) <u>citizens of The Bahamas:</u>**
> **(ii) permanent residents of The Bahamas within the meaning ascribed by the Immigration Act, 1967; or**
> **(iii) bodies corporate established under the laws of The Bahamas, and having their principal place of business in The Bahamas, of which the beneficial ownership belongs wholly to any persons mentioned in subparagraph (i) or (ii); or**
>
> **(c) is registered in a country or territory the Government of which has with the Government of The Bahamas a bilateral arrangement permitting the boarding and search of any such**

vessel by law enforcement officers and the arrest by such officers of persons on board any such vessel;"(Emphasis added)

32. The appellant is said to have admitted to the interviewing officer that he was the owner of the GME boat. He lived in Sandy Point Abaco. The contents of the interview was not challenged by the defense. The defence witness testified that he knew him all his life. I note that on the Court docket the Appellant was charged as a citizen of The Bahamas.

33. Based on this, the vessel that he was on is considered to be a Bahamian vessel. Any act committed on board which would be an offence contrary to the Laws of the Bahamas would give the Magistrate jurisdiction to hear the matter.

34. I find no merit on this point

35. Counsel for the appellant submits that the docket alleges that the appellant was charged with being in possession of dangerous drugs with the intent to supply in the waters off Highbourne Cay. He was further charged with conspiring to possess dangerous drugs with the intent to supply in the waters off Highboune Cay. And assaulting officers with a dangerous instrument in the waters off Highbourne Cay. He contends that there was no evidence led to support the charges that the appellant was in possession of drugs in the waters off Highbourne Cay. Nor that he conspired with another to possess dangerous drugs in the waters off Highbourne Cay. Or that he assaulted officers with his vessel in the waters off Highbourne Cay. He submits that the evidence led was that the drugs were jettisoned off the vessel by Appellant and Robinson in the area off Sampson Cay heading towards Hawkbill Cay which he contends is some one hundred miles from the area particularized in the charges.

36. In short, the appellant's case is that he was not in possession of drugs anywhere near Highbourne Cay. That on the evidence of the prosecution, he gave up possession somewhere in the area of Hawksbill Cay. Further on the Respondent's case he attempted to ram the police vessel during the chase before the police vessel ran aground near Highbourne Cay. Therefore, as the charges were not proven as particularized it was fatal to the Respondent's case.

37. In my opinion the essential question for this court to consider is whether the appellant committed these offences contrary to the Statute Laws of the Commonwealth of the Bahamas. In other words, was he found to be in possession of dangerous drugs contrary to section 22(1) and 22(2)(b) of the Dangerous Drugs Act . And was the GME boat that he owned and drove on the date in question used to assault the police officers.

38. In my opinion, notwithstanding that the charges may not have been made out as particularized, it is sufficient if proven that dangerous drugs were on board the suspect vessel, namely a Bahamian vessel and that the said vessel was the instrument used to assault the police officers.

The second issue to consider is that of identification

39. Mr. Farquarson for the appellant submitted that the identification evidence was weak. There was no admissible evidence identifying anybody on board the GME boat prior to its apprehension with the persons on board after it was taken into custody.

40. The evidence in respect of identification was led through 4 police officers. These officers were on board Sea Gulf 17, a marine vessel equipped with high bean beacon lights. Those lights were fixed on the GME boat for close to two hours whilst a chase ensued. Once those lights lit up the GME boat the officers on board were able to see the individual driving the GME boat as well as the other male on board. They had them in their sight for nearly two hours. They never lost sight of them until the police vessel ran aground off Highbourne Cay, after crocus sacks had been jettisoned from the GME boat and after it had attempted to ram the police vessel on more than one occasion. The officers on board Sea Gulf 17 testified that the GMT boat came as close as 12 – 15 feet away from them on occasion. One of the officers, Jason Rolle, testified that he recognized the driver of the vessel as the appellant. He had known him from before. All the officers testified that the same men on board the GME boat that they had chased for nearly two hours were the same men in the same vessel that was later returned under tow by the other marine support vessel.

41. Further they identified the GME boat as the very vessel they had chased for close to two hours. Two officers had opened fire on it when they became in fear of their lives. They identified the other male, Robinson, who at the time of his return under tow, was seen to be suffering from a gunshot wound.

42. The evidence led was not that of a fleeting glance. Far from it. It was one where the high bean lights were fixed on the suspect vessel for 2 hours.

43. Once the magistrate accepted the evidence led by the 4 police officers, and he was satisfied of the same, he was entitled to find that they were identified as the appellant and Robinson.

44. I find no merit on this point.

45. Mr. Farquharson further submitted that the magistrate was not entitled to draw the conclusion that Robinson's gunshot injury was as a result of when the police officers fired shots at the GME boat.

46. The magistrate accepted the evidence led by the officers. He is the judge of fact. Unless it is clearly shown that he was erroneous in his judgment this Court wound not overturn his finding on the same. This Court accepts that as a judge of fact he had the benefit of hearing and observing the witnesses as they testified and to determine their veracity. He accepted their evidence that they were fearful for their lives and as a result two of them opened fire on the GME boat hitting the boat engines.

47. Robinson was identified as the passenger who was at the back of the GME boat.

48. The magistrate accepted the evidence of the police officers. He was entitled to draw the conclusion that Robinson was injured in the process.

49. I find no merit on this point.

50. Mr. Farquharson also submitted that what the appellant stated in his interview was inadmissible as he refused to sign the recorded interview. He admitted however that what the officer led in evidence as to what the appellant said during his interview was not challenged.

51. The record of interview may properly be considered as a mixed statement. Its content may be considered incriminating as well as self-serving. The appellant admitted to being the owner of the Grey Midnight Express vessel on which he was apprehended. He also admitted to having an encounter with the police in the Exuma Cays. He denied attempting to collide with the police vessel or throwing / jettisoning drugs from his vessel into the sea. See Blackstone's Criminal Practice, 1998, para F6.15 at page 1955 where the authors had this to say -"**In Pearce** (1979) 69 Cr App R 365 at pp. 368 and 370, the Court of Appeal could see no reason for casting doubt on the well-established practice, on the part of the prosecution, to admit in evidence all unwritten, and most written, statements made by an accused person to the police, whether they contain admissions or whether they contain denial of guilt."

52. It is noted that this mixed statement was not challenged as being obtained by oppression.

53. I find that the Magistrate correctly admitted the evidence. It was entirely within his discretion to accept the same.

54. I find no merit on this point.

55. The appellant further contends that there is no evidence of what was in the bags that were thrown from the suspect boat.

56. Mr. Farquharson submitted that there was no nexus between what was jettisoned from the suspect vessel to what was extracted from the water and what was sampled by the forensic chemist.

57. On the evidence adduced, the police in Sea Gulf 17 marked the area where the six crocus sacks had been jettisoned on the GPS Man Overboard. After losing sight of the GME boat a short time later, the officers returned to the area where they had marked on their GPS and waited while the other marine support vessel brought the appellant and Robinson back to the area. Where, after a short, search 6 white crocus sacks containing a number of packages were retrieved close to the area that they had been tossed.

58. The Court notes that the magistrate was satisfied on the prosecution's evidence that the six crocus sacks which were retrieved were that which were seen being thrown off the GME boat that the appellant drove. In paragraph 3 of his decision he found on the evidence that the appellant and Robinson were the only ones who were in possession of the drugs that was later verified to be drugs as defined by the Dangerous Act. I find no error in his conclusion.

59. I find no merit on this point.

60. Mr. Farquharson further submitted that based on the evidence a *prima facie* case had not been made out against the appellant to call upon him to lead a defence and that a no case submission had been wrongly rejected.

61. During his submissions Mr. Farquharson took the court through a number of inconsistencies of the officers who testified for the crown. For instance, one officer recalled that the appellant and his co accused had on foul weather gear. Another officer could not recall whether they had on such gear. One officer spoke to going "ashore and collecting drugs".

62. This court finds that these inconsistencies together with a number of others that the appellant counsel led the court through do not go to the root of the prosecution's case. What is evident throughout the testimony of the witnesses called by the prosecution is that the officers whilst on patrol in the Exuma cays tried to stop the vessel that the appellant was driving. A chase ensued, during which time the appellant and his co accused were seen jettisoning 6 white crocus sacks into the sea. A short while later, in the presence of the appellant, 6 white crocus sacks containing what was later analyzed to be 433 pounds of Indian hemp were collected from the water in the area where the police had noted they had been thrown. All of the officers on board Sea Gulf 17 spoke to being put in fear of their lives when the appellant, driving the GME boat, attempted on more than one occasion to ram the police vessel.

63. Based on the evidence adduced by the prosecution, I am satisfied that the magistrate would have been entitled to find a prima facie case had been made out and to have rejected the submission of a no case to answer. There was sufficient evidence on which he could have found that a prima facie case had been made out against the appellant of having been in possession of dangerous drugs with the intent to supply, of having been part of a criminal conspiracy to commit the offence, as well as on the counts of assault with a dangerous instrument.

The Respondent's Case

64. Counsel for the Respondent submitted that the evidence of the Prosecution witnesses was sufficient to prove the case and that the learned magistrate arrived at the correct decision in finding the appellant guilty. Further that the verdict was safe and satisfactory.

65. Counsel for the Respondent further submitted that there was no irregularity in the admission of evidence. And further, the magistrate being the tribunal of law and fact having heard the evidence and applying the law to the facts arrived at the correct decision.

66. It was the submission of the Respondent that the magistrate had the requisite jurisdiction to hear this matter as the incidents took place within the territorial waters of the Bahamas.

67. With respect to sentence, it was the Respondent's submission the sentences were not unduly severe nor harsh and that the sentences fell within the parameters of the law. Nor was there anything unduly harsh with respect to the sentences to bring the system of justice into disrepute.

THE ASSAULT CHARGES

68. Counsel for the appellant further submitted that at the highest the evidence was that of an attempted assault.

The Law

69. The appellant and his co accused were charged with Assault with a dangerous instrument contrary to section 265(5) of the Penal Code which states:

> **"265. Whoever is convicted of an unlawful assault of any of the following kinds, namely –**
>
> **(5) assault with any deadly or dangerous instrument or means, shall be liable to imprisonment for three years."**

70. The definition of assault is given in Title iii of the Penal Code.

> **"19. (1) "Assault" includes –**
>
> **(a) assault and battery;**
> **(b) assault without actual battery;**
> **(c) imprisonment, or detention and compulsion.**
>
> **(2) Every assault is unlawful unless it is justified on one of the grounds mentioned in Title vii of this Code."**

71. As the appellant was not charged with an actual battery, namely for instance, the police vessel being rammed resulting in the policemen on board being injured. I will turn to the definition of an assault without actual battery.

> **"21. (1) A person makes an assault without actual battery on another person, if, by any act apparently done in commencement of an assault and battery, he intentionally**

puts the other person in fear of an instant assault and battery.

(2) This definition is subject to the following provisions —

(a) it is not necessary that an actual assault and battery should be intended, or that the instrument or means by which the assault and battery is apparently intended to be made should be, or should by the person using them be believed to be, of such a kind or in such a condition as that an assault and battery could be made by means of them;

(b) a person can make an assault, within the meaning of this section by moving, or causing any person, animal or matter to move, towards another person, although he, or the person, animal or matter is not yet within such a distance from the other person as that an assault and battery can be made; and

(c) an assault can be made on a person, within the meaning of this section, although he can avoid actual assault and battery by retreating, or by consenting to do, or to abstain from doing, any act."

72. None of the justifications for force and harm as mentioned in Title vii arise on the facts of this case.

73. Assault puts a person in imminent fear of an immediate battery.

74. As the appellant was not charged with an actual battery, namely for instance, the police vessel being rammed resulting in the policemen on board being injured. I will turn to the definition of an assault without actual battery.

75. Based on the evidence at the close of the prosecution, I am satisfied that in evaluating the sufficiency of the evidence following the appellant's no-case submission, the magistrate would have been entitled to reject the submission. There was sufficient evidence on which a court could find that a prima facie case had been made out against the appellant on the charges of assault.

76. The magistrate accepted the evidence of the police officers and found on their evidence that the policemen in Sea Gulf 17 were put in fear of their lives when on more than one occasion the appellant maneuvered the GME boat he was driving in the direction of the police vessel. This caused the police vessel to swerve away to avoid contact with the GME boat. In order to avoid contact and to bring the GME boat to a stop the police opened fire on it resulting in the appellant's co-defendant being injured by the gunshots. The magistrate found that had the appellant been successful in his

attempt to ram the police vessel it would have facilitated the escape of both the appellant and his co-accused.

77. It is the finding of this court that there was sufficient evidence upon which the magistrate could properly determine that the charges of assault with a dangerous instrument were made out and his decision to convict was supported by the evidence overall. He is the judge of fact and law. He had the opportunity to hear and observe the witnesses. He accepted the evidence of the prosecution witnesses. I find no merit on the grounds that the magistrate's verdicts were unsafe, unsatisfactory, or unreasonable.

THE DRUG CHARGES

The law

78. The appellant and his co-accused were charged with possession of dangerous drugs with Intent to Supply contrary to section 22(1) of the Dangerous Drugs act Chapter 228 which states:

> **"22(1) It is an offence for a person to have a dangerous drug in his possession, whether lawfully or not, with intent to supply it to supply it to another in contravention of the provisions of this Act."**

79. Section 22(3) of the Dangerous Drugs act sets out the factors that must be met to make out a case of intent to supply:

> **"22(3) For the purposes of subsection (1), where a person is found in possession of two or more packets containing dangerous drugs or a quantity of dangerous drugs in excess of such quantity as may be prescribed in regard to that drug with intent to supply it to another or others, irrespective of whether that other or others be within The Bahamas or elsewhere."**

80. The Dangerous Drugs (Prescription of Minimum Amounts) Rules, 1989 sets out in section two and its Schedule what amount raises the presumption of possession with intent to supply:

> **"2. For the purposes of subsection (3) of section 22 of the Dangerous Drugs Act, the possess of any quantity of the dangerous drug named in the first column of the Schedule in excess of the quantity respectively specified against that drug in the second column of the Schedule shall raise the presumption of possession with intent to supply.**
>
> **SCHEDULE**
>
> | **First Column** | **Second Column** |
> | --- | --- |
> | **DANGEROUS DRUG** | **MINIMUM QUANTITY** |

Cocaine	**10 grams**
Indian hemp	**500 grams”**

81. The presumption to supply in this matter is raised in both instances. By the weight of the drugs, namely 433 pounds, being well over 500 grams. As well as by the amount of packages, there being in excess of two packages namely six (6) crocus sacks which themselves contained a number of packages.

82. The first issue for the Court to decide is whether the magistrate was incorrect to find on the evidence as led and from the inferences that he drew that the charges of possession of dangerous drugs with intent to supply and conspiracy to possess dangerous drugs had been made out. The drugs in question were contained in 6 crocus sacks weighing a total of 433 pounds.

83. The magistrate accepted the evidence of the prosecution witnesses that when the high beam light was directed on the GME boat, they were able to see the two individuals on board during the long chase lasting close to two hours. He accepted the evidence that that vessel was later apprehended and returned to the area where all 4 police officers on board Sea Gulf 17 identified the Appellant and Robinson as the men on board the very same vessel they were returned on who tried to ram them and who jettisoned 6 crocus sacks into the water. He accepted the evidence that the officers retrieved those very same crocus sacks close to the area where they had been ejected overboard which contents were later analyzed to be Indian hemp.

84. In brief, the magistrate was satisfied that what was retrieved was what was thrown off the GME boat by the appellant and Robinson which vessel was not only driven by the appellant but also owned by him.

85. The magistrate, being the tribunal of law and fact accepted the evidence of the prosecution’s witnesses. The evidence against the appellant was compelling. I find no error in his conclusion.

86. This ground is without merit.

87. There was sufficient evidence upon which the magistrate could properly determine that the charges of possession of dangerous drugs with the intent to supply and conspiracy to possess dangerous drugs with intent to supply were made out and his decision to convict was supported by the evidence overall. He is the judge of fact and law. He accepted the evidence of the prosecution witnesses. I find no merit on the grounds that the magistrate’s verdicts were unsafe, unsatisfactory, or unreasonable.

Ground 4. That some specific illegality or irregularity other than hereinbefore mentioned substantially affecting the merits of the case was committed in the course of the trial.

88. Counsel for the appellant based his submissions on this ground that the magistrate wrongly admitted identification evidence and that he wrongly admitted evidence of what the appellant said during his interview.

89. Both of these submissions have been dealt with in paragraphs 27 to 32 above and paragraphs 38 to 41 above.

90. I find no merit on this ground.

91. In summary, the magistrate was entitled to accept the evidence of the witnesses for the prosecution. He was satisfied that that the Prosecution had proven its case to the requisite standard, that is beyond reasonable doubt on all the counts. I am satisfied that his decision to convict was supported by the evidence. Grounds 1 through 4 are accordingly dismissed.

Ground 5, 6 and 7 will be dealt with together.

> **"5. That the sentence passed was based on a wrong principle of law.**
>
> **6. That the sentence passed was unduly severe.**
>
> **7. And that the sentence imposed by the Court was unduly harsh in the circumstances of the offences and the Appellant and likely to bring the system of justice into disrepute."**

92. Mr. Farquharson for the appellant made no submission in respect of the above grounds.

93. The Court is not sure which of the sentences or whether the appellant is contending that all of the sentences are based on a wrong principle of law, is unduly severe or is unduly harsh.

94. As noted earlier, the Appellant was charged along with Billy Dee Robinson. Billy Dee Robinson appealed his conviction and sentences on the assault charges and his sentences on the drug charges. His appeal, **Billy Dee Robinson Jr. v The Commissioner of Police** MCCrApp. No. 124 of 2019, was heard by a court differently constituted. Sir Michael Barnett P had this to say at paragraphs 23 to 27 of the said judgment:

> **"23. As to the appeal against the 4 years sentence, the appellant argues that it is unduly harsh. The amount of drugs in this case was 433 lbs. of marijuana. The appellant refers to three decisions where persons convicted of possession dangerous drugs of larger quantities were sentenced to only 3 years imprisonment.**
>
> **24. In the case of Donovan Hart v Commissioner of Police MCCrApp No. 178 of 2018, this case involved 1606lbs of**

marijuana; the defendant in that case received a 3 year sentence. In the case of Liston Perpall v Commissioner of Police MCCrApp No. 109 of 2013, this case involved 584lbs of marijuana; the defendant in that case received a 3 year sentence plus a fine. In the case of Dwayne Henderson v Commissioner of Police MCCrApp No. 172 of 2013, this case involved 852lbs of marijuana; the defendant in that case received a 3 year sentence (and it is noted that this took into account his previous convictions). Finally he refer to the case of Raleigh Seymour v Commissioner of Police 8 MCCrApp No. 83 of 2013 which involved 526lbs of marijuana; the defendant in that case received a 3 year sentence plus a fine.

25. However, the 4 years sentence is consistent with other sentences approved by this court. For example, in Sergio Coava v COP No 16 of 2014 the appellant, after a guilty plea, was convicted of possession of dangerous drugs with intent to supply and importation of the drugs. He was sentenced to 4 years imprisonment on each count and appealed those sentences as unduly harsh. His appeal was dismissed and the 4 years sentences were affirmed. In Webster v COP No 288 of 2014 the appellant, after a guilty plea, was convicted of two counts of conspiracy to possess dangerous drugs with intent to supply and two counts of possession of dangerous drugs with intent to supply. He was sentenced to 4 years on each count. The drugs involved were 149 lbs. of Indian Hemp and 17.4 lbs. of amphetamines. His appeal against the 4 years sentence was dismissed. The court said " Given the amount of drugs found in Webster possession and given the sentences this court has affirmed as appropriate in cases such as Junior Davis v Commissioner of Police MCCrApp & CAIS No 102 of 2013 and Garfield Palmer v The Commissioner of Police MCCrApp & CAIS No 116 of 2013 where the quantity of drugs was substantially less, we are of the view that the 4 year sentences imposed in this case area not outside the range of sentences which would reasonably be considered appropriate in the circumstances"

26. Finally in Wayne Price v Commissioner of Police MCCrApp & CAIS 320 of 2014, this court affirmed a sentence of 4 years for possession of 600 lbs. of marijuana.

27. In this case the appellant although the appellant has no previous convictions, he does not have the benefit of mitigation as a result of an early guilty plea. In our view, having regard to previous decisions of this court, there is no basis for this court interfering with the 4 years sentence imposed by the magistrate as being unduly harsh."

95. I endorse the reasoning of the Learned President and adopt the same in the present appeal.

96. In the circumstances I find that the sentence of 4 years imposed by the magistrate on the counts of possession of dangerous drugs with intent to supply and conspiracy to possess dangerous with intent to supply not to be unduly severe, unduly harsh or based on a wrong principle of law. There is no basis for this court interfering with the sentences imposed by the magistrate.

97. The appellant was sentenced to 3 years imprisonment on each of the counts of assault with a deadly instrument. Each sentence was to run concurrently and to run concurrently with the sentences handed down on the drug offences.

98. I have taken into account the manner in which the assault was carried out. Had not Officer Ford, the captain of the police vessel, swerved to avoid impact on each occasion, when the appellant, going at high speed, aimed the GME boat at the police vessel there may have been serious injury and or loss of life. I do not find that the sentence of 3 years imposed by the magistrate on the counts of assault to be unduly severe, unduly harsh or based on a wrong principle of law. There is no basis for this court interfering with the sentences imposed by the magistrate.

Disposition and Order.

99. For all the foregoing reasons, I dismiss the appeal and affirm the appellant's convictions and sentences.

Hon. Madam Justice Bethell, JA

100. I agree.

Hon. Sir Michael Barnett, P

101. I also agree.

Hon. Mr. Justice Isaacs, JA