

IN THE SUPREME COURT OF NEW ZEALAND

**SC 1/2006
[2006] NZSC 34**

ROSS ALEXANDER WILLIAMS

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: Applicant in Person
B J Horsley for Crown

Judgment: 24 May 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted in the District Court at Hamilton on two charges of selling cannabis and one of cultivating cannabis. The charges were laid jointly with four other offenders, two of them the sons of the applicant. The cultivation was carried out on plots of land owned by the Department of Conservation but adjacent to land owned and occupied by the applicant. Tracks led from his property to the plots and to a clearing on DOC land in respect of which there was circumstantial evidence that it was the site of a drying operation for cannabis.

[2] The evidence at the trial included extensive evidence of surveillance by police of the applicant's property and the DOC land from two observation posts. Some activities observed were filmed. The identity of the accused in the observations and films was not in dispute, but the interpretation of their activities was. The evidence of surveillance established cannabis cultivation in five plots and the fact it had been harvested at the time the operation was brought to a close on 26 March 2002. On that date the applicant was arrested after the police observed him apparently providing a sack to a group of men. A similar sack was recovered shortly afterwards in circumstances in which the compelling inference was that it was the sack provided by the applicant. It contained five pounds of cannabis.

[3] The evidence at the trial in the District Court lasted 11 weeks. It included evidence of the surveillance operation, supported by video and photographic evidence. According to the Crown interpretation of the observed activity, the accused had travelled to the plots of cannabis, provided the sack later found to contain cannabis, and had been involved in activity said to be evidence of cannabis cultivation in the plots. The identity of the applicant was not in issue in respect of the observations and film, but the interpretation of the film was.

[4] In addition to the direct evidence, there was substantial circumstantial evidence of material used in cannabis cultivation which was found on the property and linked in various ways to the accused. The Crown case was that although the drying area had been dismantled and the heaters said to have been used in it removed, debris and remnants which were linked to the accused were found nearby. The Crown relied also on tracks from the applicant's property to the cannabis plots and the drying area.

[5] At trial, the Crown case was tested exhaustively by the accused. Among other things they alleged police corruption and the planting of evidence.

[6] The applicant appealed against his conviction to the Court of Appeal. A number of grounds were advanced and dealt with thoroughly in an extensive judgment.¹ The Court of Appeal declined to grant leave to allow further evidence to

¹ CA63/05, 64/05, 66/05, 92/05, 101/05, 9 December 2005 (Hammond, Williams and Gendall JJ).

be given by a surveyor and an engineer, directed to the question whether one of the two observation posts was within line of sight of the activity described by the police witnesses. This had been a matter canvassed at the trial. The Court of Appeal held that the evidence was not fresh.

[7] The present application for leave to bring a further appeal to this Court is based wholly on the Court's jurisdiction under s 13(2)(b) of the Supreme Court Act 2003, by which the Court may grant leave to appeal if a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard. Eight grounds form the basis of the claimed miscarriage of justice. We are satisfied that separately and cumulatively they do not give rise to any risk that the convictions are unsafe. We deal with our conclusions on each of the grounds briefly:

1. The Court of Appeal was correct to reject the admission of the evidence of the surveyor and engineer. The evidence was not cogent and was not fresh, in the sense of being unavailable at trial. Whether the police were in a position to see the activity they described from the observation post was fully canvassed at trial. The jury had, in addition, the advantage of a view of the site.
2. Although the applicant claims that counsel in the Court of Appeal did not follow instructions to call additional evidence, no further evidence which might have been called (apart from the evidence excluded by the Court of Appeal) is identified.
3. A ground of appeal in the Court of Appeal based on the conduct of trial counsel was the subject of evidence admitted by the Court of Appeal. The applicant makes the further complaint that counsel at the appeal should have called trial counsel. There is no identification of why such course was necessary in order for the appeal to be properly considered.
4. The applicant maintains that evidence admitted (particularly in relation to a bolt cutter found at the applicant's property said not to have been lent to him until after samples of wire linked to the bolt cutter were taken) was

not addressed by the Court of Appeal. The point was said to be “one of central submissions in the appeal.” The Court of Appeal in fact dealt with this in the course of dealing with general submissions of improper police conduct in the operation and fabrication of evidence. It rejected any such suggestion. In addition, the bolt cutter evidence was part only of a large amount of circumstantial and direct evidence available to the jury.

5. The Court of Appeal is said to have disregarded evidence of unlawful search. The Court of Appeal concluded that the police observations and photographs of land, tracks and the area around the homestead, was not an unreasonable search. No error of principle in approach is identified. The conclusion that the evidence obtained was not tainted by unreasonable or unlawful search and that the search warrants obtained were valid, is not shown to have been arguably wrong.
6. Matters of complaint about circumstantial evidence relating to a heater box found near the clearing said to have been used for drying cannabis were squarely addressed by the Court of Appeal in the context of its rejection of additional evidence as neither fresh nor new. The suggestion that the heater box (which was linked by other evidence to the applicant) had been planted by the police, was canvassed at the trial. Again, it was a small part only of the evidence available. The necessary suggestion of police impropriety was fully considered by the Court of Appeal and rejected. No basis for questioning that conclusion is advanced.
7. The Court of Appeal rejected a complaint that counsel had insufficient time to prepare for the trial. The Court fully considered the actual conduct of the trial in concluding that there was no conduct of trial counsel which could give rise to a risk of miscarriage of justice. No basis for differing from that view is put forward on the present application.
8. The Crown evidence against the applicant was extremely strong. It was well open to the jury to conclude that he had in effect been caught red-handed in the cannabis operation.

[8] There is no merit in the suggestion that there was no evidential basis for the conviction. Overall, we are satisfied there is no risk that any miscarriage of justice may have occurred. The grounds in s 13(2)(b) are not made out. For these reasons, the application is dismissed.

Solicitors:

Crown Law Office, Wellington