COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
MCCrApp No. 217 of 2024

B E T W E E N

ROBERTSON BAPTISTE

Intended Appellant

AND

THE COMMISSIONER OF POLICE

Intended Respondent

BEFORE: **The Honourable Mr. Justice Evans, P**
The Honourable Mr. Justice Turner, JA
The Honourable Mr. Justice Kokaram, JA

APPEARANCES: **Intended Appellant, Pro Se**
Mr. Bradford McKenzie, Counsel for the Intended Respondent

DATES: **24 March 2026; 27 April 2026; 18 May 2026; 15 September 2026; 27 October 2026**

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Criminal Appeal –Appeal against Conviction - Extension of time to appeal – Housebreaking - Identification evidence – Video Surveillance Footage – Sufficiency of Evidence – Standard of Proof – Beyond reasonable doubt – Prospects of success – Interest of justice – Section 361 and 362 of the Penal Code, Chapter 84 - Section 9 of the Court of Appeal Rules – Section 17 of the Court of Appeal Act

The Intended Appellant was convicted of housebreaking, contrary to section 362 of the Penal Code, Chapter 84, and sentenced to three years' imprisonment. The conviction arose from a break-in at the property of Mr. Robert D. Sands ("virtual complainant"), on the island of Eleuthera, The Bahamas, while he was travelling outside the jurisdiction. Upon his return, the virtual complainant discovered that several items had been stolen and subsequently reviewed video surveillance footage from his property. The footage formed the principal evidence linking the Intended Appellant to the offence.

The Intended Appellant applied for an extension of time within which to appeal his conviction, contending that there was insufficient evidence to identify him as the perpetrator of the crime beyond a reasonable doubt. The principal issue before this Court was whether, having regard to the circumstances of the case and the merits of the proposed appeal, an extension of time was warranted in the interests of justice.

Held: The application for an extension of time to appeal is granted, and the appeal is allowed. The Court found that there are good prospects of success on this appeal and that the interests of justice warrant an extension of time. The conviction and sentence are quashed.

This Court found that the video footage was not a part of the Court's record, the virtual complainant did not identify the Intended Appellant, and there was no evidence linking him to the break-ins of the garage and shed. There were material inconsistencies in the police evidence which could not displace the presumption of innocence or the prosecution's burden to prove its case beyond a reasonable doubt.

In the absence of sufficient reasons from the learned magistrate addressing the deficiencies in the identification evidence, this Court found that there were significant prospects of success on appeal.

Anwar Strachan v. Commissioner of Police MCCrApp No.19 of 2023, applied
Edward Barrett v. The Commissioner of Police MCCrApp No.19 of 2018, applied
K. Richards v R [2001] CILR 496, applied
R v Galbraith [1981] 2 All E.R. 1060, mentioned
R v Turnbull [1976] 3 All ER 549, applied
Rodriguez Jean Pierre v The King [2023] UKPC 15, applied

J U D G M E N T

Judgment delivered by the Honourable Mr. Justice Kokaram, JA:

Introduction

1. After securing his home on the island of Eleuthera, The Bahamas, Mr. Robert Sands ("the virtual complainant") travelled outside the jurisdiction, only to return later to discover that his home had been broken into and several items stolen. Mr. Robert Baptiste ("the Intended Appellant" or "Mr. Baptiste") was charged and convicted by the learned magistrate of the offence of housebreaking contrary to section 362 of the Penal Code, Chapter 84 ("the Penal Code"). He was sentenced to 3 years' imprisonment. Mr. Baptiste was well known to the police, with a long list of antecedents for previous robbery and housebreaking charges. Notwithstanding this, the main issue which fell for the learned magistrate's determination was whether it could be proven beyond a reasonable doubt that Mr. Baptiste committed the offence of housebreaking.

2. In Mr. Baptiste's application to extend the time within which to file his appeal, he contends, principally, that there was insufficient evidence to identify him as the perpetrator of the crime. Indeed, a critical plank in the case before the learned magistrate was that Mr. Baptiste had been identified as the perpetrator by the video surveillance footage on Mr. Sands' property. In fact, without that footage there would have been absolutely no evidence to link Mr. Baptiste to the offence whatsoever. In such a case, the video evidence ought naturally to have been subjected to critical examination and anxious scrutiny by the learned magistrate. Unfortunately, neither

the record nor the notes of the proceedings below provide any sufficient explanation by the learned magistrate as to how this video footage was sufficient to establish, beyond a reasonable doubt, that the Appellant had in fact committed the offence of housebreaking.

3. We have considered the relevant factors to be taken into account in determining whether to exercise our discretion to extend the time for the Intended Appellant to appeal, including the length of the delay, the reasons for the delay, the merits of the proposed appeal, the prejudice that may be caused by granting or refusing the application, and the overall impact on the administration of justice. Having heard the submissions of the Intended Appellant on his proposed appeal and those of the Respondent, we are of the view, for the reasons set out in this judgment, that there are significant prospects of success on appeal. This was simply not a case in which the identification evidence was sufficiently compelling to secure a conviction. The overall interests of justice of the case warrant an extension of time to pursue a meritorious appeal and, in the absence of any further evidence from the court below, the quashing of the conviction.

Background facts

4. The facts may be briefly recited as follows. The virtual complainant lived at a property known as "Legend", situated just outside James Cistern. While the virtual complainant was travelling outside the jurisdiction, the property was cared for by his caretaker, Jean Francois. On or about 19 April 2024, the virtual complainant left Eleuthera after securing the property.

5. Between 19 and 27 April 2024, the virtual complainant reviewed the footage from his Ring surveillance system and observed a male attempting to break into the front door of his home. Upon his return, he discovered that the locks on the door of his garage and workshop had been pried open and damaged. Several items, including the battery and title for his Dodge Ram truck, a converter, and a machine battery, were missing and appeared to have been stolen. The virtual complainant had not given anyone permission to enter the property or remove any of the items. The matter was reported to the police.

6. The Intended Appellant was subsequently charged with the offence of housebreaking, alleged to have been committed on the island of Eleuthera, The Bahamas, between 19 and 27 April 2024. On 20 November 2024, the Intended Appellant was convicted of housebreaking, contrary to section 362 of the Penal Code. The learned magistrate sentenced the Intended Appellant to three (3) years' imprisonment, notwithstanding his prior convictions of a similar nature.

7. By his application filed on 3 December 2024, the Intended Appellant seeks to extend the time within which to appeal his conviction.

8. It is now settled that the main principle which guides the exercise of this Court's discretion to extend time pursuant to rule 17(2) of the Court of Appeal Act ("the COAA") is whether it is just in all the circumstances to extend the time. These provisions are to be read in conjunction with section 9 of the Court of Appeal Rules ("the COA Rules"), which empowers this Court, even after the expiration of the prescribed period, to extend any time limit where it is in the

interests of justice in the particular case. While consideration of such factors as the length of delay, the reason for the delay, prejudice, and the prospects of success on appeal are important, no one factor is dominant. In **Rodriguez Jean Pierre v The King** [2023] UKPC 15, their Lordships explained that the discretion conferred by rule 9 is unfettered and extremely wide, and that it is necessary to consider the overall justice of the case.

9. While we have considered all the relevant factors in the round, the merits of this proposed appeal were an obvious dominant feature in the disposition of this application. The period of 12 days' delay by the Intended Appellant in making his application was not inordinate, and there was an acceptable reason for the delay. In any event, the Intended Respondent has not taken issue with this period as being inordinate, and it was conceded in the written submissions that there was arguably good reason for the delay.

10. The real focus of this application is the merits of the appeal. Our findings on this issue are set out below.

Prospects of Success

11. The Intended Appellant acted pro se on this appeal, and we have considered his written and oral submissions fully. His grounds of appeal were simply a recital of two (2) statutory grounds, namely:

> **"(1) The decision of the Learned Magistrate to convict the Intended Appellant was unreasonable and could not be supported having regard to the evidence.**
>
> **(2) Under all the circumstances of the case, the decision is unsafe or unsatisfactory.**
>
> **(3) Such other ground(s) that the Court deems just and reasonable."**

12. Mr. Baptiste filed full written submissions in his own handwriting and made full oral submissions. The main thrust of his argument, as he explained to us extensively, was that there was insufficient evidence to identify him as the perpetrator and that there were too many inconsistencies in the evidence of the Intended Respondent, rendering it inherently unreliable. He relied on the well-rehearsed principles of **R v Turnbull** [1976] 3 All ER 549 and **R v Galbraith** [1981] 2 All E.R. 1060.

13. At the outset, I must observe that none of these matters, relating to the quality of the video evidence, were brought to the attention of the learned magistrate by Mr. Baptiste at his trial. Nor did he take issue with the quality of the identification evidence derived from the video footage, save to say that the Intended Appellant denied being the person in the video. It seems to me that it was only in preparing his appeal that Mr. Baptiste became armed with the well-rehearsed classical authorities on identification evidence, with which both the prosecution and the learned magistrate are familiar with.

14. While it is not for the Court of Appeal to come to its own conclusions on the evidence, the task of the appellate court is to review the findings of the learned magistrate and to determine whether it can withstand logical analysis. The applicable standard of appellate review of a magistrate's decision was underscored in **Anwar Strachan v. Commissioner of Police** MCCrApp No.19 of 2023, in which Charles, JA stated:

> **"53. It is well settled that, as an appellate court, we will not lightly interfere with the decision of a magistrate on primary facts, unless satisfied that it was "plainly wrong." In this regard, it is worth repeating what Sawyer P. expounded in Pedro Dean v Commissioner of Police MCCrApp No. 26 of 2010:**
>
> > **"…[w]here it is an issue of fact, unless the decision is shown to be, for example, one that no reasonable tribunal, properly seized of the facts, could have come to, then an Appellate Court should not interfere with the decision by the trial judge."**
>
> **54. A Court of Appeal will only interfere with a judge's factual findings if no reasonable judge could have reached that decision which could not be reasonably explained or justified…"**

15. In this case, a critical question arises: was that video referred to at the trial sufficient evidence to support a conviction beyond a reasonable doubt?

16. Unfortunately, the learned magistrate's decision provides no assistance in identifying the reasons for accepting the prosecution's case. The learned magistrate simply said:

> **"…the court finds that the prosecution proved its case to the requisite standard beyond a reasonable doubt, that between April 19th and 27th April the defendant unlawfully broke into and entered the home of Robert D. Sands situated at James Cistern with the intent to commit a felony, namely, stealing."**

17. The learned magistrate regrettably did not state the reasons why he came to that conclusion. This in itself is a reviewable error on the part of the learned magistrate. In **K. Richards v R** [2001] CILR 496, the Court of Appeal of the Cayman Islands observed that the trial judges, as well as magistrates', have a duty to give reasons for their decisions. Rowe, JA stated:

> **"When a trial judge is sitting alone has advised himself of the applicable principles of law and given himself the necessary warning, he must indicate clearly in his judgment his reasons for acting as he did in order to demonstrate that he has acted with the requisite degree of caution in mind and therefore heeded his own warning."**

18. No formula of words is recommended; what is required is for the learned magistrate, sitting as the arbiter of law and fact, to demonstrate that he addressed the relevant risks and to explain why he remained convinced by the evidence, even though uncorroborated, that the case against the accused was established beyond a reasonable doubt. This was emphasized in **Edward Barrett v. The Commissioner of Police** MCCrApp No.19 of 2018, where Jones, JA stated:

> **"17. The second case is Stuart v Commissioner of Police SCCrApp. No. 93 of 2008 where Sawyer P said at page 4:2-12 of the transcript:**
>
> > **"We would remind the magistrates once again that section 108(1) of the Criminal Procedure Code Act must be followed. We are not asking them to write extensive treatises. We do understand the burden placed on magistrates, but it is a burden the magistrates and judges in the higher courts accept. It cannot be put on one side, no matter the volume of work. It still must apply in every case. You must hear the other side. You must do what the statute says. You have no choice. The magistrates, like Courts of Appeal, are creatures of statute and they are bound by the statutes which govern their jurisdictions."**

19. The learned magistrate in this case failed to do so. What is more, the failure occurred in the face of the well-known difficulties with uncorroborated identification evidence, which were compounded in this case by the fact that the video was not tendered as evidence for the prosecution.

20. The identification of the Intended Appellant was said to have been made by means of a video image captured on a surveillance camera on a Ring system. The virtual complainant testified that, after the person who was attempting to break into the home pushed the button on the Ring system, it captured his facial features. It is important to note that his evidence was briefly recorded as follows:

> **"Before leaving Eleuthera, I properly secured and locked my property. My property consists of a triple a frame, facing the road and what I call the Bird House. Up the hill I built a garage and a shed. I have locks and deadlocks on my residence. I have a surveillance camera installed on my property and can view my property from where I am in any part of the world. Between the 19th and 27th April, 2024, I was viewing my property surveillance system which is a ring system. I viewed the camera recording after receiving necessary information from my property caretaker. I observed a male trying to break into the front door of my house. After he pushed the button to the ring**

> **system, the camera recorded the facial feature of a dark male on my property checking it as if he wanted to get into my property.**
>
> **I returned to Eleuthera and went to my property. I found the metal locks to the door of my garage and work shop pried and damaged. The battery of my Dodge Ram truck was missing, the title for the truck was missing and a converter were missing from the garage. The building was broken (sic) into and a machine battery was missing from the shed of my property. I reported the matter to the police. I gave no one permission to enter my property or steal anything while I was away from the island."**

21. There are a number of important observations to be made about this evidence. First, Mr. Sands describes his property as follows:

> "**My property consists of a triple a frame, facing the road and what I call the Bird House. Up the hill I built a garage and a shed. I have locks and deadlocks on my residence."**

22. Mr. Sands makes a distinction between his house, which he describes as the **"Bird House"**, and a garage and a shed situated **"up the hill"**. On the evidence, the garage and shed appear to be separate from the house. Second, what he subsequently discovered was that the locks to his garage and workshop, rather than those to his house, had been pried open and damaged. Third, there is no clarity in his evidence of what exactly was captured in the video. He says the video captured the image of a dark male **trying to break into the front door of his house**. He does not say that the video showed that the person was attempting to enter the garage or shed, nor does he explain what he meant by **"trying to break in"**. Fourth, the virtual complainant did not identify Mr. Baptiste as the person captured on the video. Finally, and perhaps most importantly, there is no reference in the notes of the proceedings to the video having been tendered into evidence or shown to the witnesses.

23. Neither of the two police officers, Sgt. Thurston and Police Inspector Miller, being the other witnesses for the prosecution, could attest to whether Mr. Baptiste was the person who attempted to break into Mr. Sands' shed and garage. Their evidence was limited to interviewing Mr. Baptiste after he was arrested and cautioned. It was only during his cross-examination that Inspector Miller stated that he recognised the Intended Appellant on the video, but he did not say what he saw him doing. Indeed, his evidence in relation to the video was not even established in his evidence-in-chief, and there was only a vague reference to it during cross-examination as follows:

> **"Q: Did I ask you in the interview if you know me?**
>
> **A: No Sir, I know you from working in Eleuthera three years prior to the arrest. The person I saw in the surveillance video received from the complaint residence is you."**

24. The main identifying evidence for the prosecution came from Assistant Superintendent Alexandria Albury. She was familiar with the Intended Appellant, having worked on the island for 10 years, and said that she had automatically recognised him as the man in the video. Her evidence-in-chief was brief and was as follows:

> **"…I was the Officer in Charge of Governor's Harbour Police Station in Savannah Sound in the South to Gregory Town in the north. On June 4, 2024, as a result of a housebreaking complaint at made by Robert Sands of James Cistern. I viewed a video of a dark male. I identified the male in the video as Robertson Baptiste, the defendant seated in court in a chair in front of the court. (Witness identified the defendant). I have been working in Eleuthera district for the past ten (10) years and had become familiar with many residents on the island. When I saw the face of the male in the video produced to the Police by the complainant I automatically recognized the person to be Robertson Baptiste, the defendant. Once I recognized the male in the video and being aware of the complaint. I along with Sgt 3397 Russell visited the home of the defendant on Queens Highway. Palmetto Point where I saw the defendant. I showed the defendant the video and his response was that the person in the video was not him. The defendant was taken to the police station where he was later charged for the offences for the crime."**

25. Assistant Superintendent Alexandria Albury stated that the video was shown to the Intended Appellant and that he denied it was him. The only challenge to her evidence was contained in the following brief exchange:

> **"How are you able to recognize me in the video?**
>
> **A. I lived in Eleuthera for ten (10) years and I am familiar with you. I had prior contact with you and saw your face in the video."**

26. While that answer was clear and uncontradicted, there was no evidence before the learned magistrate of the video footage. The video was not tendered into evidence before the learned magistrate, and it is not all clear whether the witness was referring to an image on the video as a matter of historical fact or whether the video was contemporaneously shown to her at the trial.

27. In examining the evidence before the learned Magistrate, we are therefore of the view that there was insufficient evidence to establish the case for the prosecution. We say so for the following reasons:

28. First, as explained earlier in this judgment, the virtual complainant's evidence did not establish that Mr. Baptiste broke into the house of Mr. Sands. The video did not form part of the Court's record.

29. Second, Mr. Sands did not identify Mr. Baptiste. At best, the video captured a man attempting to break into the front door of Mr. Sands' house, but there is no evidence of any breaking of the front door, as distinct from the evidence of broken locks at the garage or shed. The shaking of a door or the turning of the doorknob could hardly be described as "housebreaking" as defined in the Penal Code. The learned magistrate should have reminded himself of the elements of the offence of housebreaking with which the Intended Appellant was charged. Section 361 of the Penal Code states:

> **"361. In this Code —**
>
> **(1) a person commits housebreaking if he unlawfully breaks any building for the purpose of executing, or of facilitating or abetting the execution of the offence of stealing or any felony therein, by himself or by any other person, for the purpose of effecting or facilitating the escape therefrom of himself or of any other person after the commission of or attempt to commit the offence of stealing or any felony therein;**
>
> **(2) <u>a person breaks a building</u>, if, for any of the purposes hereinbefore mentioned in this section, he uses any force or threat of force to any person who is within the building, or <u>causes damage to anything which is in or forms part of the building, or commences to force or undo or open any lock, bolt, latch or other fastening</u>, or opens a closed door or window, or is aided in entering or quitting the building by any person who is therein, and who aids him for the purpose of abetting the commission of the offence of stealing or any felony therein by him or by any other person**;.." **[Emphasis Added]**

30. However, what Mr. Sands later discovered was that his garage and shed had been broken into, and the locks were damaged or pried open, but there was no evidence that his house had been broken into, where the video captured the image of the man. There was no evidence as to who broke into the garage or shed or when that took place.

31. Third, significantly, there was another person who had access to the residence, namely Mr. Sands' caretaker. He was neither interviewed nor called to give evidence in this matter.

32. Fourth, the video evidence was used only by Assistant Superintendent Albury as evidence that she recognized the man in the video. It is not clear what else she saw Mr. Baptiste do in the video. All her evidence amounted to was that she could recognise Mr. Baptiste's face from a video she had previously seen because she knew Mr. Baptiste. This is where the learned magistrate should have exercised extreme caution.

33. Fourth, the virtual complainant did not identify Mr. Baptiste either in the dock. In cross-examination, he was asked:

> **"You said you don't know me before the incident, how can you now say that's me on the video?**
>
> **A. Information received".**

34. This was a very unsatisfactory answer and, without any knowledge of the source of that information, it should have been disregarded as hearsay evidence.

35. Fifth, the Intended Respondent contends that Mr. Baptiste's identification was corroborated by the Intended Appellant. However, that evidence could not establish identification beyond a reasonable doubt, as demonstrated under cross-examination in the following exchange:

> **"You saw the person on the video on more than one occasion.**
>
> **A. Yes, one of my brethren saw the video and said, boy, this look like you in this video. My brother showed me the video before I was arrested.**
>
> **You saw the person in the video broke into the complainant's building?**
>
> **A. The person attempted to break into the building. He did not break into the building."**

36. The fact that the video looked like Mr. Baptiste is the very risk which **Turnbull** warned against.

37. Finally, in addressing the Intended Appellant's second main argument, the Intended Appellant contends that there were material inconsistencies in the evidence. While the testimony of Albury was unshaken, that does not mean it is beyond criticism. I have already pointed out the deficiencies in the identification evidence. Furthermore, what was unaccounted for was the material discrepancy between her evidence, that she went to the accused's home in the presence of Sgt. Russell and brought him to the station, and the evidence of Sgt. Thurston, who attested that the accused voluntarily came to the station.

38. It is perhaps easy for officers who may know of a repeat offender like Mr. Baptiste to link him to a similar offence. But a person's poor antecedents do not provide a justification to jettisoning

the foundational principles of a presumption of innocence and the burden on the prosecution to prove its case beyond reasonable doubt. It is therefore difficult for this Court, in these circumstances, to uphold the findings of the learned magistrate, given that the identification evidence was tenuous at best.

39. We are always mindful that the trier of fact has a considerable advantage over this Court, and a degree of deference ought to be given to the learned magistrate in arriving at his finding of fact. However, in the absence of reasons from the learned magistrate as to how he grappled with this issue, it could not be said, upon an objective review of the evidence, that the Intended Appellant was positively identified as the person who broke into Mr. Sands' shed and garage.

Conclusion

40. In the circumstances, there are good prospects of success in this appeal, and it is in the interest of justice that we grant this Intended Appellant an extension of time within which to appeal and allow the appeal. The conviction and sentence are quashed.

The Honourable Mr. Justice Kokaram, JA

The Honourable Mr. Justice Evans, P

The Honourable Mr. Justice Turner, JA