

**JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATES' CRIMINAL APPEAL NO. 09/2007**

**BEFORE: THE HON. MR. JUSTICE PANTON, P.  
THE HON. MR. JUSTICE COOKE, J.A.  
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

**YORK SEATON**

**VS.**

**REGINA**

**Mr. John Graham for the appellant.**

**Mr. Dirk Harrison, Deputy Director of Public Prosecutions (Ag.) and  
Miss Dahlia Findlay, Assistant Crown Counsel.**

**October 8 and 11, 2007**

**COOKE, J.A.**

1. The appellant was on the 24<sup>th</sup> March, 2006, found guilty by the Resident Magistrate for the parish of Portland, on three informations, after a trial which inexplicably, took almost four years to be completed.

- (a). Information 1805/01 charged the appellant with failing to retain the feathers on one wing of each of the twenty-seven (27) birds which had been shot contrary to Regulation 3 of the Wild Life Protection (Hunter's Returns) Regulations 1991.
- (b). Information 1808/01 charged the appellant with unlawfully having in his possession twenty-seven (27) protected birds to wit Ring-

tailed pigeons (*Columba Cariboea*) contrary to section 6A of the Wild Life Protection Act.

- (c). Information 1809/01 charged the appellant that he unlawfully hunted protected birds to wit the Ring-tailed pigeons (*Columba Cariboea*) contrary to section 6 (1) of the Wild Life Protection Act.

2. The original ground of appeal was:

"That the learned Resident Magistrate erred in that none of the evidence on which she purports to rely supports a conviction for any of the charges brought."

At the hearing the appellant argued the following further grounds of appeal:

- "3.1 That the learned Resident Magistrate erred in fact and in law in finding that the birds attached to the leather strap were shot by Mr. York Seaton;
- 3.2 That the learned Resident Magistrate erred in fact and in law in finding that the birds shot by each hunter was collected by bird boys working with that particular hunter at the time; and
- 3.3 That the learned Resident Magistrate erred in fact and in law in finding that the twenty-seven (27) ring-tailed pigeons attached to the leather strap with Y.P. etched on it were shot by Mr. York Seaton."

(3.1) and (3.2) are of similar import. There is no appeal in respect of the sentences imposed.

3. The resolution of this appeal will be determined by subjecting the findings of fact of the learned Resident Magistrate to scrutiny to see if those findings

have an evidential basis. It is to be noted that if those findings cannot be impeached, there is no suggestion (nor could there be) that the appellant would not have been properly convicted. His conduct would have been unlawful as charged in the respective informations.

4. The case for the prosecution in respect of its factual aspects (excluding the expert evidence as to the identification of the birds) rested entirely on the evidence of Mrs. Marva Moodie. She was a game warden employed to the National Environmental and Planning Agency Enforcement Branch. She recounted in her evidence what took place in respect of the appellant when at about 7 a.m. on the 8<sup>th</sup> September, 2001 she was at Park Mountain in Portland carrying out her duties monitoring bird shooting activities. In the Park Mountain vicinity there were some twenty-two (22) men engaged in bird shooting. The learned Resident Magistrate having seen and heard her give evidence "unreservedly" accepted her as a witness of truth and in particular "rejected the evidence of Mr. York Seaton to the extent that it conflicted with that of Mrs. Moodie."

5. The first twelve findings of fact by the learned Resident Magistrate were:

- "1. That on 8<sup>th</sup> September 2001 Mrs. Marva Moodie and her husband Mr. Devon Moodie Special District Constables employed to N.E.P.A. visited the Park Mountain area of Portland.

2. That their purpose there was to monitor bird shooting activities.
3. That when Mrs. Moodie and her husband arrived in the area, gunshots were heard.
4. That the accused men were among a group of hunters and bird boys seen at the ball ground that morning.
5. That the accused men were standing in the general area where bird boys were seen plucking birds.
6. That one person from among the group ran into the bushes and Mrs. Moodie called out to him.
7. That Mr. York Seaton called out to that person who had run, telling him to come out of the bushes.
8. That this man emerged from the bushes with what was referred to as a bird rack i.e. a piece of leather with 27 plucked birds attached to it.
9. That the leather strap had the initials Y.P. etched on it.
10. That the strap belonged to Mr. Y.P. Seaton.
11. That he infact identified the leather strap as belonging to him.
12. That the birds attached to that said leather strap were shot by Mr. York Seaton."

6. The appellant took issue with finding No. 12. The written submission on his behalf was couched thus:

"It is submitted that the genesis of the learned Resident Magistrate's errors began with her conclusions with respect to bird boys and the birds in their possession. The learned Resident Magistrate concluded that the birds shot by each hunter is [sic] collected by bird boys working with that particular hunter at the time. However, at the trial, no evidence was led as to whether the person seen with the bird rack with twenty-seven (27) ring-tailed pigeons was working as the bird boy or was the agent of the Appellant, Mr. York Seaton. In fact, no evidence was led to establish a nexus between the Appellant and this man, save and except that the Appellant had called to persons running away to return and that this man had returned from out of the bushes. It is submitted that this evidence, without more, is insufficient to establish a finding that this particular man was the bird boy or agent of the Appellant and that he had in fact collected the birds on the rack *and that the birds so collected were actually shot by the Appellant*. The prosecution did not seek to establish any evidential link between this man and the Appellant and it is submitted that the learned Resident Magistrate fell into error in coming to such a conclusion in the absence of any evidence in circumstances where Mrs. Moodie could have arrested the man with the rack or asked questions of him in the presence and hearing of the Appellant." (Emphasis mine)

7. This submission completely ignores the evidence of Mrs. Moodie on page 21 of the record where it is recorded that "Mr. York Seaton identified the birds on the rack to be his..." Then at page 36 of the record, under cross-examination, there is this bit of evidence from Mrs. Moodie.

"Question: Why didn't you arrest the man with the rack?"

Answer: Because Mr. Seaton identified the birds as his."

As already mentioned the learned Resident Magistrate had no doubt pertaining to the veracity of Mrs. Moodie. When the appellant "identified the birds on the rack to be his" the only reasonable construction to be placed on those words was that he had shot those birds. Accordingly there is an evidential basis for the finding of fact No. 12 "That the birds attached to the said leather strap were shot by Mr. York Seaton". Of course there is no dispute that those birds on the rack were Ring-tailed pigeons. Further, there is the evidence of Newlyn Seaton, the brother of the appellant who was a co-defendant. He said:

"I shot some birds and I retrieved it [sic] from the shooting spot commonly called the stand which is in the hills surrounding the playing field o/c ball ground. The stand is normally created. It is prepared by bird boys. I would shoot from a stand because it is the practice of bird shooting. It is the normal practice that stands are created so that you don't interfere with each other's shoot and in particular you do no [sic] endanger the other shooters."  
(Page 70 of the record)

This evidence would tend to suggest that there is a culture of organization as to the participants in the bird shooting exercise which is to secure the rewards of each hunter's efforts. It would appear that the twenty-seven Ring-tailed pigeons on the appellant's rack represented his reward albeit unlawful.

8. The evidence against the appellant is quite compelling. He was on a bird shooting expedition. He did shoot at birds. His bird rack had on twenty-seven ring-tailed pigeons – a protected specie. He claimed ownership of those birds. This evidence provides an ample evidential basis to properly ground the convictions which were pronounced. Therefore, the core complaint (which is the basis of the other complaints) that there was insufficient evidence to support the convictions fails. There is no issue that the birds in the possession of the appellant were not in accordance with Regulation 3 of the Wild Life Protection (Hunters Return) Regulations 1991. There was no retention of feathers on one wing. It is by hunting that the appellant came into possession of the protected birds. For the foregoing reasons we dismissed the appeal, and affirmed the convictions and sentences.