





1 Wallace said the man came out of the shop and put a cash register on to the  
2 front of the hood of the truck. Mr. Wallace said the man next jumped down  
3 off the truck went down to Rock Hole Road with cash register in his hand.

4 8. Mr. Wallace's evidence is that the driver sat in the truck for approximately  
5 three minutes. He said the driver stayed in the truck whilst the passenger was  
6 in the shop. The driver then got out of the truck and then went up into the  
7 Rock Hole area.

8 9. Mr. Wallace said there was nothing obstructing his view. He said the corner  
9 of Mary Street was lit up and there were lights on the eaves of Solomon's  
10 Grocery.

11 10. Mr. Wallace said the men were dressed in dark clothes but he noticed that  
12 they both had white T-shirts over their heads. He said it was not a mask it  
13 was a T-shirt, because it was ruffled.

14 11. Mr. Wallace said that when the truck hit the shop he called 911 and told the  
15 police to "*come quick*" because a truck had run into Solomon's Grocery store  
16 and a man has gone inside.

17 12. Mr. Wallace also saw the police arrive.

18 13. Under cross examination it was put to Mr. Wallace that he had said to the  
19 police that the man who entered the shop got out of the left side of the  
20 vehicle. Mr. Wallace said that was a mistake. He said the officer seemed to  
21 be in a hurry and he had not read the statement. Mr. Wallace said that in  
22 every other respect his statement was accurate, but he confirmed that the  
23 passenger got out of the right-hand side of the vehicle.

1                    Mr. Howard Ellington

2            14.        Mr. Ellington gave a statement on the 18<sup>th</sup> July 2010 and with the consent of  
3                    the Defence this statement was read into evidence.

4            15.        Mr. Ellington said he lived opposite “*Boosie’s shop*” Solomon’s Grocery. He  
5                    said at some time after 4 a.m. on the 18<sup>th</sup> July 2010 he heard a “*loud bang*”  
6                    come from the direction of Solomon’s Grocery. Mr. Ellington opened the  
7                    door of his house and he saw a white truck in the side of the Solomon’s  
8                    Grocery building. He said the truck ran into the front door area. He said he  
9                    “*walked up the road*” and he saw a man jump on to the hood of the truck. Mr.  
10                  Ellington said the man was wearing a “*black long blue jeans pants*” black T-  
11                  shirt and a yellow handkerchief covering his face. Consequently, Mr.  
12                  Ellington could only see the man’s eyes. He said the T-shirt was black with  
13                  short sleeves. He said the man had a cash register in his hand and the cash  
14                  register was dark in colour.

15           16.        Mr. Ellington said that when he saw this man he ran back to his door, and  
16                  then he looked back and saw another man come out of the shop. This man  
17                  was of a similar complexion to the first man. He was tall and slim and he was  
18                  also wearing a yellow handkerchief over his face, with only his eyes  
19                  exposed. This man also jumped on the hood of the truck and went in the  
20                  same direction as the first man.

21           17.        Mr. Ellington said the second man had a dark electric item in his hand that  
22                  looked like a computer, and he went inside and called the police.

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PC Nakea Mendez

18. PC Mendez had been an officer in the Royal Cayman Islands Police Service (RCIPS) for over two years. On the morning of the 18<sup>th</sup> July 2010 at approximately 4:19 a.m. he received a radio transmission from 911 that a burglary was in progress at Solomon's Grocery. He said he was at the Royal Bank of Canada in George Town when he received the radio transmission, and he was with PC Bowen.

19. PC Mendez and PC Bowen drove directly to Solomon's Grocery using the blue lights. PC Mendez said he did not use the siren because he had been told that a burglary was in progress and he did not wish the persons involved to hear the siren.

20. PC Mendez said that he turned right at Fort Street and then left on to Mary Street, towards North Church Street. He said from receiving the call, the time he took to get to Solomon's Grocery was about 15-20 seconds.

21. On arrival at Solomon's Grocery he saw the white F150 truck, and as he got closer he saw two males running away from the rear of the building. PC Mendez said he was on Mary Street and he could see the two men on Rock Hole Road through the open ground at the rear of Solomon's Grocery.

22. PC Mendez turned right on to Rock Hole road and he said the two men were still running ahead of him. He drove on to Rock Hole road to Diaz Lane. He said once the men got onto Diaz Lane, they both went in different directions. He said the one with the object in his hand went left, and the other, without

1 the object, went right. As a result, PC Mendez got out of his vehicle and  
2 pursued, on foot, the one with the object in his hand.

3 23. The officer described the object as being the size of the control unit of a  
4 computer CPU. PC Mendez also confirmed that both men being chased were  
5 wearing dark clothing.

6 24. PC Mendez's evidence is that he chased the man with the object along Diaz  
7 Lane. In the course of the chase, when he went into a tenement yard, heading  
8 towards Wahoo Close, he saw the man climb over a 3-4 foot fence, and then  
9 the man was out of his sight for about 3 or 4 seconds.

10 25. PC Mendez said he ran back towards Diaz Lane and the man came out  
11 without the object onto Diaz Lane again, this time heading towards Luna  
12 Lane. PC Mendez said he followed the man onto Luna Lane. PC Mendez  
13 said he had put on his flashlight and shone it on the man. He said the man ran  
14 onto Luna Lane, onto an open lot behind the apartments known as Lucky  
15 Apartments.

16 26. PC Mendez noted that the man he was pursuing took off a black jacket or  
17 hoodie that he was wearing at the time. PC Mendez identified the black  
18 jacket as an exhibit. PC Mendez said he continued to chase the man to the  
19 rear of the Lucky Apartments and on to Cruz Lane and then into some nearby  
20 bushes, with his flashlight shining on the man. PC Mendez said that the man  
21 had now run into a dead end. When he had the light on the man he  
22 recognised him as the Defendant, Devon Wright.



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Constable Cody Ryan Bowen

33. PC Bowen recalled being in the police patrol car with PC Mendez. PC Bowen said they received a radio transmission sometime around 4:15 a.m. from 911 that a burglary was in progress. As a result they drove from the Post Office, along Fort Street and down into Mary Street. He said it took less than 30 seconds to get to the location from receiving the transmission; later he said it only took a matter of seconds.

34. PC Bowen said that when they got to the location PC Mendez drove down Mary Street onto Rock Hole Road, and he saw two males, dressed in dark clothing, running along Rock Hole road towards Diaz Lane.

35. PC Bowen said they continued to give chase. He said what heightened their suspicion of the men was that both men were dressed in black and they were running at that time of the night when no one else was on the street.

36. He said one of the men was carrying a large object, the size of a speaker box. PC Bowen said when they entered Diaz Lane the two men looked back and they could have seen the police car. He said they split from each other. PC Bowen said the headlights of the police car were on, but he did not recall whether the blue lights or sirens were on.

37. PC Bowen said the man without the object ran down a side road on Diaz Lane. PC Bowen said he ran after the man without the object. He said he gave chase to the man who ran down the side road, but by the time he got to the little alley way, it was dark, there was a lot of bush in that area, and he realised that he had lost sight of the man.

1           38.     PC Bowen said he next went back onto Diaz Lane and he saw PC Mendez  
2                     giving chase to the other man, going down Luna Lane, and he then came  
3                     upon them after the Defendant had been apprehended by PC Mendez.

4                     Sgt. Leighton Groves

5           39.     In July 2010 Sgt. Groves was in the USG – the Uniformed Support Group,  
6                     based at the George Town Police Station. He said sometime after 4 a.m. on  
7                     the 18<sup>th</sup> July 2010 he was at George Town police station when he received a  
8                     report of a burglary at Solomon’s Grocery. As a result of the call he got into  
9                     his police vehicle and attended the scene.

10          40.     He had been informed that two persons had been seen running from the store  
11                     and, accordingly, he went from Solomon’s Grocery, along Diaz Lane, to  
12                     Wahoo Close. Sgt. Groves said he heard a noise at a chain link fence near  
13                     Wahoo Close. Shortly afterwards he drove onto Diaz Lane and he saw that  
14                     PC Mendez and PC Bowen had arrested the Defendant, Devon Wright, and  
15                     he was in their custody.

16          41.     Later that morning Sgt. Groves led a search for the cash register. Starting at  
17                     Solomon’s Grocery he moved down School Road, down to Diaz Lane and  
18                     then across to Wahoo Close. He said it was then that he found the cash  
19                     register. This was the cash register that was stolen from Solomon’s Grocery.  
20                     Sgt. Groves identified the cash register, which became an exhibit.

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PC Roje Williams

42. PC Williams' statement was read in. He arrived at the scene and observed the white Ford F150 Registration Number 98 214. He made enquiries and discovered that the owners had been off the island, but they also confirmed that their vehicle had gone missing.

Zoan Marin

43. She is attached to the Scenes of Crime Unit arrived at the scene at Solomon's Grocery and swabbed the Ford F150 truck and the cash register. She also took photos of the scene, which were produced as an exhibit.

Admissions

44. Admissions were produced by the Crown and included a certificate of analysis agreed between the parties from DNA LABS INTERNATIONAL dated the 29<sup>th</sup> July 2011, and submitted by Ms. Tiffany A. Royes, a forensic DNA analyst.

45. Ms. Royes confirmed that from swabs taken from the front right passenger side air bag, door arm-rest handle and on the front right passenger seat, DNA matching that of the Defendant was found.

46. In relation to the cash register, Ms. Royes found that there was no DNA of the Defendant found on it. Furthermore, it was established that there were no fingerprints of the Defendant on the cash register.

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Mr. Louis Solomon

47. Louis Solomon is the owner of Solomon’s Grocery. He gave a statement to the police in which he identified the cash register which had gone missing. He confirmed that he could not say how much cash was in the cash register. When he saw the cash register in police custody he identified it as his cash register that had been stolen from the shop. He also confirmed that the damage to his shop cost \$23,000.00.

Lawrence Brown

48. Mr. Brown was the owner of the Ford F150 truck and he confirmed that he gave nobody permission to take his truck, which had been removed from his residence.

Detective Constable Colin Pryce

49. Det. Constable Pryce gave two statements. He confirmed that on Tuesday the 20<sup>th</sup> July 2010 he interviewed the Defendant under caution, and the Defendant exercised his legal right to remain silent.

*Summary of the Case for the Prosecution*

50. The Crown submits that the evidence of the Crown witnesses Mr. Wallace and Mr. Ellington, show that the Defendant and the other man not before the Court acted as part of a joint enterprise to damage Solomon’s Grocery shop in order to gain unlawful entry and then steal the cash register.

51. The Crown submits that on the evidence before the Court it was clearly the Defendant who then entered Solomon’s Grocery as a trespasser and stole the

1 cash register. The Crown submits that PC Mendez and PC Bowen followed  
2 both men and then PC Mendez chased the Defendant, who ran off down Diaz  
3 Lane to Wahoo Close. While PC Bowen chased the other man, PC Mendez  
4 kept close on the Defendant who deposited the cash register near Wahoo  
5 Close. The Defendant was apprehended by PC Mendez shortly afterwards.

6 Case for the Defence

7 52. The Defendant said he was at home in Prospect when Harry/Harrington came  
8 and picked him up. He said Harrington had been drinking and he, the  
9 Defendant, had been smoking. He said Harry was halfway drunk, and he, the  
10 Defendant was “high.” He said Harrington had borrowed a truck. He said he  
11 never knew what the truck would be used for. He said it was a left-hand drive  
12 vehicle.

13 53. The Defendant said they were cruising around town in the truck and then  
14 suddenly Harry said “*hang on, brace yourself,*” and he turned right and  
15 crashed into a shop.

16 54. The Defendant said there had been no discussion and no joint enterprise. He  
17 said he was shocked and initially he could not get out of the vehicle, but he  
18 kicked the door. He said that he had heard sirens, but he did not want to be  
19 involved.

20 55. He said after the crash Harry had gone into the shop, grabbed the cash  
21 register and ran off with cash register. He said Harry said he must come with  
22 him, but he, the Defendant said no.

1           56.     The Defendant said he saw all kinds of people. He said he did not run away  
2                     with the cash register. He said they had not acted together and he did not  
3                     know that Harrington was going to crash into the shop. He said they did not  
4                     talk about it. The Defendant told the Court he did not want to be involved in  
5                     what Harrington did.

6           57.     Under cross examination the Defendant said he and Harry were “*just*  
7                     *chilling.*” The Defendant said he was smoking and Harry was drinking. He  
8                     said that Harry said he was going to chill over a drink with a girl down in  
9                     Rock Hole. The Defendant said he was “*all high up*” and the next thing he  
10                    knew the truck was in the building.

11          58.     The Defendant said he stayed in the vehicle for 5 to 8 minutes but then he  
12                    kicked the door open and he got out holding his head. He said he waited  
13                    another 7 or 8 minutes. In total he waited 15 minutes because he wanted to  
14                    tell the police, but they took too long. He said if the police had come he  
15                    would have told them what had happened. He said he waited for 15 minutes  
16                    and then he took off.

17          59.     The Defendant said he went down to Banana Way and got a draw of weed.  
18                    He said he tried to call some friends to pick him up and then he saw the  
19                    police coming and they started to chase him. He then dropped his weed  
20                    because he did not want to get involved. He said:

21                                *“I was going to tell the police, but they didn’t arrive.”*

22                                He said: *“It wasn’t me, it was the other person.”*





1                   “Where the trial is conducted and the factual conclusions are reached by  
2                   the same person, one need not expect every step in the reasoning to be  
3                   spelled out expressly, nor is the reasoning carried out in sealed  
4                   compartments with no inter-communication or overlapping, even if the  
5                   need to arrange a judgment in a logical order may give that impression.  
6                   It can safely be inferred that, when deliberating on a question of fact  
7                   with many aspects, even more certainly than when tackling a series of  
8                   connected legal points, a judge who is himself the tribunal of fact will (a)  
9                   recognize the issues and (b) view in its entirety a case where one issue is  
10                  interwoven with another.”

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12                  68.       Following Lowry LCJ in *R v. Thompson* and *R v. Thain*, Mottley J.A. said  
13                  in *Randy Martin v. R* at paragraph 31:

14                       “From these cases the following guidance may be discerned. A judge  
15                       sitting in a criminal case without a jury, in rendering his decision and  
16                       giving his reasons for so concluding, is not required to review every fact  
17                       and to detail each argument on which the prosecution and defence rely  
18                       as if he were summing up to a jury. The judge must set out the conclusion  
19                       reached and make clear the reasons for arriving at that conclusion. He is  
20                       required to have regard to any difficult or unusual points of law and to  
21                       show how those points of law have in anyway impacted the conclusion  
22                       that he has reached.”

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**Conclusion**

25                  69.       The case for the prosecution is that the Defendant and the driver acted  
26                  together in a joint enterprise to burgle Solomon’s Grocery.

27                  70.       The Crown submits that the Defendant with the driver caused damage to  
28                  Solomon’s Grocery store because they, without lawful excuse, deliberately  
29                  drove the vehicle into the building, willfully damaging the building, and  
30                  causing damage in the sum of CI\$23,000.00

31                  71.       The case for the prosecution is that the damage to the front door allowed the  
32                  Defendant to enter into Solomon’s Grocery store and steal the cash register.

1       72.    I have carefully listened to the witnesses and read the statements that the  
2            Crown has produced.

3       73.    Mr. Wallace gave clear and cogent evidence. He was viewing the scene even  
4            before the vehicle drove into the front door. The area was well lit and his  
5            view of the scene was uninterrupted. His evidence was that he saw the  
6            passenger get out of the right hand door, go into the shop, come out, place  
7            the cash register on the hood of the vehicle, and then make off, with the cash  
8            register, towards Rock Hole road. We know that it was the Defendant who  
9            was the passenger. The Defendant's DNA was found on the passenger side  
10          and the Defendant accepts that he was not the driver. Mr. Wallace said the  
11          driver waited in the vehicle on the left hand side for approximately three  
12          minutes and then followed the passenger down Rock Hole road.

13       74.    Mr. Wallace also noted that both the driver and the passenger had what he  
14          described as T-shirts over their heads.

15       75.    In addition Mr. Ellington, who lived opposite Solomon's Grocery, also  
16          described the two men – both wearing dark clothes, with what he described  
17          as yellow handkerchiefs covering their faces. Again, this demonstrates that  
18          both the driver and the passenger were acting in concert when the vehicle  
19          was crashed into the shop, and the cash register stolen.

20       76.    The Court notes that Mr. Ellington described the clothing over the men's  
21          faces as yellow handkerchiefs, whereas Mr. Wallace described them as T-  
22          shirts. What is clear from both witnesses' accounts is that both men were  
23          wearing clothing over their heads to conceal their identities. Additionally,

1 Mr. Ellington said that both men entered the shop. He said one came out with  
2 the cash register and the other come out with what looked like a computer.

3 77. On the evidence of Mr. Wallace and the unchallenged evidence of Mr.  
4 Ellington, I find that the driver and the passenger, namely the Defendant,  
5 were acting with a common intention to enter Solomon's Grocery and to  
6 execute a burglary with the theft of the cash register.

7 78. Section 19 of the Penal Code Law reads:

8 *“When two or more persons form a common intention to prosecute an*  
9 *unlawful purpose in conjunction with one another, and in the*  
10 *prosecution of such purpose an offence is committed of such a nature*  
11 *that its commission was a probable consequence of the prosecution of*  
12 *such purpose, each of them is deemed to have committed the offence.”*

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14 79. To put it another way, it is clear from the evidence that both the Defendant  
15 and the person not before the Court acted together when the driver drove the  
16 truck into the door of Solomon's Grocery and then the Defendant entered the  
17 shop as a trespasser and stole the cash register.

18 80. In my view, the prosecution has proved participation by the Defendant with a  
19 common purpose. The Court finds that they took the Ford truck and they  
20 planned the criminal damage to the door of Solomon's Grocery shop in order  
21 to steal the cash register and its contents.

22 81. PC Mendez gave clear, reliable and accurate evidence. He was consistent in  
23 examination in chief and in cross examination. He made the wise decision  
24 not to turn on the sirens. He saw the culprits leave the shop. He saw one with  
25 an object, and he was closely behind the men when the other man, without

1 the object, ran right and down towards the Annex and Eastern Avenue. PC  
2 Mendez's evidence is corroborated by PC Bowen, who chased the man  
3 without the object down the lane off Diaz Lane, until he lost him.

4 82. PC Mendez took the sensible decision to chase the man with the object and  
5 although the man was out of his sight for 3 or 4 seconds, he kept up the  
6 chase.

7 83. Given the fact that the cash register was found in the area close to Wahoo  
8 Close, the inescapable inference is that the Defendant tried to hide the cash  
9 register while still trying to run away from PC Mendez in order to escape  
10 detection.

11 84. PC Mendez, with the aid of his flashlight, was able to chase the Defendant to  
12 Lucky Apartments and on to Luna Lane, and eventually apprehend the  
13 Defendant.

14 85. The Defendant's evidence that he waited for 15 minutes after the car was  
15 crashed is clearly untrue. I find that the Defendant's evidence that they were  
16 just driving around when the driver suddenly said "*brace yourself*" and then  
17 crashed into Solomon's Grocery is not consistent with the evidence of Mr.  
18 Wallace or Mr. Ellington. Mr. Wallace said he heard the truck racing, from  
19 some distance away, up Mary Street, and making a sharp turn into Solomon's  
20 Grocery. He then saw the Defendant spring into action by entering  
21 Solomon's Grocery. And, Mr. Ellington's evidence is that it was only within  
22 seconds of hearing the "*loud bang*" across the road at Solomon's Grocery  
23 that he saw someone on the hood of the truck with a cash register in his hand.

1        86.    The Defendant was inconsistent, evasive and was not a witness of truth. I  
2                    have no difficulty in accepting PC Mendez as a witness of truth. He gave his  
3                    evidence in a clear and forthright manner.

4        87.    At the scene he persisted in chasing and ultimately apprehending the man  
5                    whom he saw go off with the object from behind Solomon's Grocery store,  
6                    and that man turned out to be the Defendant – a person whom PC Mendez  
7                    had known for approximately three years. If it had not been for PC Mendez's  
8                    speed of thought and speed of action, the Defendant would have got away.

9        88.    It is not uncommon for objects stolen in a burglary not to contain fingerprint  
10                    or DNA evidence. I therefore do not find this absence of DNA or fingerprints  
11                    materially weakens the case for the prosecution.

12       89.    I remind myself that the burden of proof is always on the prosecution. It is  
13                    for the prosecution to prove that the Defendant is guilty, and further, it is  
14                    never for the Defendant to have to prove his innocence.

15       90.    I also remind myself that the prosecution must prove the Defendant's guilt to  
16                    a high standard of proof, namely, that I must be satisfied that the Defendant  
17                    is guilty beyond all reasonable doubt of the charge of damage to property in  
18                    that he, with another person unknown, without lawful excuse, willfully  
19                    damaged Solomon's Grocery at a cost of CI\$23,000.00. Further, I must be  
20                    satisfied that the Defendant is guilty beyond all reasonable doubt of burglary  
21                    in that he, with another person unknown, entered as a trespasser, Solomon's  
22                    Grocery, and stole a cash register belonging to Louis Solomon.

1        91.     Based on the clear and reliable evidence of the witnesses for the prosecution  
2                    as well as the highly unreliable and inconsistent evidence of the Defendant, I  
3                    am entirely satisfied and sure that the Defendant is guilty on both Counts.

4        92.     Accordingly, I find the Defendant guilty of Count 1, namely damage to  
5                    property, and Count 2, burglary.

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9     Dated this the 16<sup>th</sup> day of August 2011

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13     **Honourable Mr. Justice Charles Quin**  
14     **Judge of the Grand Court**

