

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE

3 INDICTMENT NO: 30/11

4
5 THE QUEEN

6
7 V

8
9 ANDY JAMES MYLES



10
11
12 **Appearances:**

Mr. Kenneth Ferguson for the Crown

13
14 **Mr. John Furniss for the Defendant**

15
16 **Before:**

The Hon. Mr. Justice Charles Quin

17 **Heard:**

17th -22nd November 2011

18
19 **RULING**

20
21
22 ***Introduction***

23 1. The Defendant has pleaded not guilty to One Count of Burglary contrary to
24 s.243(1)(b) of the Penal Code (2010 Revision).

25 2. The particulars of the offence are that the Defendant, on the 2nd December
26 2010, at 88 Magellan Quay, George Town, Grand Cayman, entered as a
27 trespasser the dwelling house of Mrs. Delores Rollar ("Mrs. Rollar"), and
28 stole therein a gold necklace with a gold coin pendant, a black leather
29 handbag and wallet with an undetermined sum of cash, two credit cards, two
30 drivers' licences and a jewellery box, the property of Mrs. Rollar.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Case for the Prosecution

3. The Crown relied on the evidence of eight (8) witnesses and eight (8) exhibits.

1st Witness – Mrs. Delores Rollar (“Mrs. Rollar”)

4. Mrs. Rollar has lived at 88 Magellan Quay, Governor’s Harbour, with her husband for approximately 18 years. She described her home as a long home with most of the rooms facing the water. The front entrance to the house faces Magellan Quay. Upon entering the house by the front door, there is an office and a dining area to the left. Mrs. Rollar and her husband largely occupy the right side of the house.

5. On the evening of the 1st December 2010 Mrs. Rollar was alone, as her husband was overseas. Her house had experienced two robberies, so Mrs. Rollar had installed an electronic security system some months before the subject break-in. However, Mrs. Rollar admitted that the windows were not activated.

6. Mrs. Rollar recalls going to bed at approximately 10 p.m. on the 1st December. Very early on the morning of the 2nd December she was awakened by two men on either side of her bed. She said the men had their faces completely covered with masks. She recalled that one of the masks was red.

7. Mrs. Rollar said she was very startled and she said the men were fully clothed, wearing long sleeves and she thinks their heads were covered. She recalled the men telling her

1 “Get out of bed and open the safe.”

2 8. Mrs. Rollar told the Court that the men did not harm her.

3 9. Mrs. Rollar said the men took the gold pendant, which she described as a
4 pirate’s coin attached to a gold necklace/chain. She said the pendant was
5 expensive – with an approximate value of US\$2,294.00. She said the pendant
6 was either in the drawer of the night table beside the bed, or on top of the
7 night table.

8 10. Mrs. Rollar said that the two men led her to her husband’s office, which is at
9 the other end of the house. They took her to the safe in the office and told her
10 to open it. As soon as she tried to open the safe the security alarm was
11 activated and the alarm sounded. Mrs. Rollar said the men then pulled the
12 alarm control unit from the wall and ran.

13 11. Mrs. Rollar said she then called 911. She said she was petrified.

14 12. Mrs. Rollar said that afterwards she discovered that her handbag – containing
15 credit cards, two cell phones, car keys, drivers’ licences and some cash
16 amounting to between \$100 and \$150 – was missing from the closet in the
17 bedroom.

18 13. Mrs. Rollar also noticed that her silver jewellery box, which she kept next to
19 her bed on the night table, had disappeared.

20 14. Mrs. Rollar said the police arrived very quickly and she told the police about
21 the jewellery box and the gold pendant.

1 21. Asked whether the red bandana could have been left in the house by the
2 persons who installed the alarm system, Mrs. Rollar said she had not seen the
3 red bandana before the time immediately after the incident.

4 22. Asked if when she had described “something red” in relation to the intruders,
5 whether it was a mask, or was it the bandana she saw, Mrs. Rollar said she
6 was not certain.

7 *2nd Witness – Detective Constable Cardiff Robinson*

8 23. DC Robinson is an officer with the RCIPS and with the Burglary squad. He
9 said he recalled that, at 12:45 a.m. on the 2nd December 2010 he received a
10 911 call. He said he was in a patrol car with DC Roje Williams and SC
11 Altamont Rowe. They were in a mobile unmarked patrol vehicle wearing
12 blue denim clothing.

13 24. The 911 call stated that there had been a burglary at 88 Magellan Quay. At
14 the time they received the call they drove directly to Magellan Quay.

15 25. DC Robinson said that on the way to Magellan Quay he saw two men
16 walking along Drake Quay, towards Peninsula Avenue. The two men were
17 on foot and were approximately 25 metres away from the intersection of
18 Drake Quay and Peninsula Avenue. DC Robinson recalled the men looking
19 in the direction of the police car and stopping. DC Robinson said he could
20 see the two men from the street lights on Drake Quay and from the lights on
21 Admiral Retreat. DC Robinson said both men were wearing dark coloured
22 clothing with hoods over their heads and their faces were covered. DC

1 Robinson said the patrol vehicle stopped and he immediately alighted and
2 shouted at the two men,

3 *“Stop. Police.”*

4 DC Robinson said the men turned in the opposite direction and began
5 running. He said the men ran through an alley behind the Admiral Retreat
6 complex and they jumped off into the canal. DC Robinson said that at no
7 time did he lose sight of the men. DC Robinson said he stopped at the bank
8 of the canal and, with DC Rowe shouted,

9 *“Stop. Police. Get out of the water. Police.”*

10 DC Robinson said the two men disobeyed his order and swam away from
11 him. He said DC Rowe went to the other side of the canal and, although one
12 man swam away, the other one came back to the bank where DC Robinson
13 was standing. DC Robinson said that DC Mitchell was also standing on the
14 bank and he helped the man out of the water, at which time they discovered
15 that the man was the Defendant, Andy Myles

16 26. DC Robinson said he had known Andy Myles for two years. He said Andy
17 Myles was dressed in a yellow shirt.

18 27. DC Robinson said it was between 10 and 15 minutes from the time he
19 spotted the Defendant and the other man walking along the road to the point
20 where the chase ended and the Defendant came out of the water.

21 28. DC Robinson said he knew that the Defendant lived in Scranton on Myles
22 Road, beside the “Funky Tangs” store.

1 35. DC Robinson said Andy Myles did not struggle when he was fished out of
2 the water.

3 3rd Witness – Police Constable Roje Williams

4 36. PC Williams recalled that on the morning of the 2nd December 2010 he was
5 with DC Robinson and Special Constable Rowe and he was driving an
6 unmarked, left-hand drive American police motor vehicle. He said they were
7 all dressed in blue denim uniforms.

8 37. PC Williams recalled the 911 call, at 12:47 a.m., reporting that there was a
9 burglary at #88 Magellan Quay and they immediately headed towards that
10 address. He said that as they were on Peninsula Avenue driving with Drake
11 Quay on the right he saw two males walking towards the junction of the road
12 – that is, the junction of Drake Quay and Peninsula Avenue.

13 38. PC Williams said one male was wearing a grey hooded jacket and had his
14 face covered with a handkerchief or a bandana, and the other male was
15 dressed in full black and his face was also covered.

16 39. PC Williams said there were lamp posts at the Drake Quay intersection, and
17 he said there was also lighting from the Esterley Tibbetts Highway which,
18 PC Williams said, provided sufficient lighting for the entrance into Drake
19 Quay. He said he stopped the vehicle and both his colleagues gave pursuit to
20 the two men. He saw the men run to the rear of, what he thought was,
21 Admiral's Retreat – being followed by the two police officers DC Robinson
22 and SC Rowe. PC Williams said he drove the car to the opposite side of the

1 apartment to create a cordon around the two men. PC Williams said he heard
2 his colleagues shouting,

3 *“Stop. Police. Stop,”*

4 and also giving other commands. PC Williams said he and the officers
5 surrounded the area and other officers came on the scene to assist. PC
6 Williams said he saw two objects at the rear of the apartments – one looked
7 like a jewellery box and the other looked like a red tam or hoodie-type cloth
8 object. He said Officers Ennis and Mitchell arrived, after which he saw PC
9 Mitchell pull the Defendant out of the water.

10 40. PC Williams identified the jewellery box and the red cloth item from the
11 photographs.

12 41. PC Williams said that the estimated distance from 88 Magellan Quay to
13 where he first saw the two men was approximately $\frac{3}{4}$ mile.

14 *Cross Examination of PC Williams*

15 42. PC Williams confirmed that the Defendant was wearing a yellow shirt when
16 he was pulled out of the water. PC Williams could not recall what sort of
17 pants the Defendant was wearing.

18 43. PC Williams denied the suggestion that the headlights of the motor vehicle
19 were off. PC Williams said they were on.

20

21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

4th Witness – Mr. Neil Harris (“Mr. Harris”)

44. Mr. Harris is a Scenes of Crime Expert attached to the RCIPS. Mr. Harris served as a police officer with the Gwent Police Force in the UK and spent 10 years as a Scenes of Crime Officer. Mr. Harris produced three (3) photo albums – NH1, NH5 and NH7, which are now Exhibits 2A, 2B and 2C. Mr. Harris produced a black and red head covering which became Exhibit 3. Mr. Harris produced a water bottle – Exhibit 4; a pair of white socks – Exhibit 5; a black T-shirt – Exhibit 6A; a black head covering – Exhibit 6B; a red hat cover with two holes in it – Exhibit 7; and, a red bandana with logos – Exhibit 8. He said these were all packaged and sent off for DNA analysis. He recalls the report dated the 11th March 2011 being returned to him.

Cross Examination of Mr. Harris

45. Mr. Harris confirmed that that the red bandana, Exhibit 8, was found on the table. He said Mrs. Rollar showed it to him, Officer Mitchell and others. She said it was the first time she had seen it and she confirmed that it was not hers. Mr. Harris said he had been looking for items of evidential value and he did accept that Mrs. Rollar may well have drawn his attention to the bandana. He said he would be hard pressed to remember exactly how he came upon it.

46. Mr. Harris said there was a security guard outside the house. He went in his vehicle and PC Mitchell went in another vehicle.

47. Mr. Harris said the window was not secured, and that’s how he found it, and that did not cause the alarm to go off.

1 He said that the Defendant could be excluded as a contributor to any DNA
2 found on those items.

3 53. The Defendant could also be excluded from Exhibit 7 – the red hat with the
4 two eyeholes.

5 54. However, in relation to Exhibit 6B – the black head covering – a partial DNA
6 profile was obtained from this item which matched the DNA profile of the
7 Defendant. Mr. Walhl said the chance that a person, chosen at random from
8 the general population matching this DNA profile was approximately 1 in
9 every 2 billion individuals.

10 55. In relation to the red printed bandana: On the side with the print he found a
11 DNA profile with a mixture of 3 individuals, with at least one male
12 contributor. This DNA matched the Defendant and he could not be excluded
13 as a contributor. Mr. Walhl said that the chance that a person chosen at
14 random from the general population is a contributor to this mixed profile
15 would be 1 in every 2.2 million individuals.

16 On the side without the print of this item, Mr. Walhl found a mixture of at
17 least two individuals and one male contributor, and DNA matching that of
18 the Defendant. Mr. Walhl said the chance that a person chosen at random
19 from the general population would be contributor is 1 in every 34,000
20 individuals.

21 56. In this case I have heard the evidence of Mr. Thomas Walhl, who has been
22 called as forensic DNA expert on behalf of the prosecution.

1 57. Expert evidence is permitted in a criminal trial to provide the Court with
2 scientific information and opinion, which is within the witness's expertise,
3 but which is likely to be outside the experience and knowledge of the
4 tribunal. It is by no means unusual for evidence of this nature to be called;
5 and it is important that the Court should see it in its proper perspective,
6 which is that it is before the Court as part of the evidence as a whole, to assist
7 the Court with regard to one particular aspect of the evidence namely, the
8 DNA found on the black head covering, which is Exhibit 6B, and on the red
9 printed bandana, which is Exhibit 8.

10 58. A witness called as an expert is entitled to express an opinion in respect of
11 his findings and the Court is entitled and should have regard to this evidence
12 and to the opinions expressed by the expert in coming to its conclusions
13 about this aspect of the case.

14 59. I have to remind myself to bear in mind that if, having given the matter
15 careful consideration, I do not accept the evidence of the expert, I do not
16 have to act upon it. Indeed, I do not even have to act upon unchallenged
17 evidence of an expert. I also must remind myself that if I do accept the
18 evidence of Mr. Walhl, it is only in relation to those two Exhibits – namely,
19 the black head covering and the red bandana. And, whilst his evidence may
20 be of assistance to me in reaching a verdict, I must reach a verdict, having
21 considered all the evidence put forward by the Crown.

22

23

1 6th Witness – PC Kingsley Mitchell

2 60. PC Mitchell was on duty at Central Police Station and then went out on his
3 rounds in an unmarked police vehicle. He said that sometime between 12:30
4 a.m. and 12:45 a.m. he received a call to attend a location. He arrived at the
5 location, an apartment complex, with his vehicle and he saw PC Robinson
6 and other police officers there and a search in progress.

7 61. At the rear of the apartment complex PC Mitchell said he saw a jewellery
8 box and a red ski mask lying on the grass.

9 62. PC Mitchell got involved in the search. He said he had heard the water
10 splashing and he went to the dockside where he came upon the Defendant
11 who was in the water between a boat and a boarded ramp. He said he knew
12 the Defendant because he had met him before.

13 63. PC Mitchell said he had seen the Defendant swimming towards the boat from
14 under the ramp. PC Mitchell said he noted that the boat was tied up.

15 64. PC Mitchell said he had a clear view of the Defendant, and he issued some
16 commands to the Defendant to come towards him. After several commands
17 the Defendant moved towards PC Mitchell and PC Mitchell pulled him out
18 of the water. PC Mitchell said there were at least two or three other officers
19 beside and behind him.

20 65. PC Mitchell recalled that the Defendant was wearing a yellow shirt with
21 jeans, but PC Mitchell said he could not recall if the jeans were short or long
22 jeans.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Defence Case

Witness – Andy Myles, the Defendant

72. The Defendant admitted that he was fished out of the canal by Drake Quay by PC Mitchell.

73. The Defendant denied entering 88 Magellan Quay or stealing any gold necklace with a pendant or any of the other items.

74. Asked about the bandana that was found inside 88 Magellan Quay and how the DNA got on the bandana the Defendant said he has no bandana and he never went into those premises at all and he had nothing to do with the jewellery box. The Defendant said that he only knew about the jewellery box when the police brought it to his attention.

75. The Defendant said he was coming down from West Bay, having gone there to see a girl, and a group of persons had attacked him.

76. He said he was heading towards the 4-way stop in West Bay and he had crossed the street from the nearby restaurant when he stopped a lady in a car who gave him a ride to the Courtyard Marriott – just in front of Public Beach.

77. The Defendant said he did not want to walk on the main road after what happened (with the men attacking him) and he “ditched” (hid) away when he saw some cars coming.

78. He said he then saw a car approach with its lights off, and it came over towards him. He said that he did not know who was in the vehicle. The

1 Defendant said he then began to run and ran down to a boat. He said he saw
2 other men in front of him. He said people were running behind him. He said
3 he went on to the boat and fell into the water. He said he was not meaning to
4 go into the water.

5 79. It was put to the Defendant that when the vehicle without the lights had
6 approached him the police had also seen two people on the road. He said it
7 was not two people. He was by himself.

8 80. The Defendant confirmed that he was picked up out of the water and that he
9 gave a statement to the police, but he is not sure of the date on which he gave
10 the statement. The Defendant said he told the police that he could not tell
11 them about “any burglary” because he had no clue about any burglary. The
12 Defendant told his counsel and the Court that he did not commit the burglary
13 and he would not do it to a lady like that.

14 Cross Examination of the Defendant

15 81. The Defendant said he lives on Myles Road, which is about 3 to 4 miles
16 away from where the police picked him out of the water.

17 82. The Defendant said he had headed out for Silver Sands Restaurant around 9
18 p.m. He said he got a ride on a bus from town sometime after 9 p.m.

19 83. The Defendant said he had met a girl who told him her name was Suzette
20 earlier that day and they arranged to meet at 10 p.m. The girl did not tell him
21 where she lived, but it was somewhere near Northwest Point. He said the girl
22 did not give him her surname.

1 84. The Defendant said he was wearing a yellow shirt and short jeans pants. He
2 said he arrived at Silver Sands sometime after 9 p.m. and he waited but did
3 not see Suzette. He said Suzette did not give him a telephone number
4 because she had given her phone to her mother and he, the Defendant, did
5 not have a cell phone. So there were no phones and no surname of the person
6 he was to meet. He said he waited for Suzette until after 11 p.m. going up to
7 midnight and then he decided to hitch a ride. The Defendant said he was
8 waiting for the girl called Suzette for almost 2 ½ to 3 hours.

9 85. He said he got attacked by a car full of men close to the restaurant. He said
10 he was concerned because he had a curfew imposed by the Drug Court of 10
11 p.m. The Defendant said that after the attack, he fled down the road near the
12 old abandoned graveyard.

13 86. The Defendant said he got back on to the main road and admitted he does not
14 know the names of the roads.

15 87. The Defendant said he did not know the exact time the female came along
16 and gave him a ride to the Courtyard Marriott. He said he walked from there,
17 alone.

18 88. He said at the back of the apartment complex he heard people yelling. He
19 said he heard them cursing. He said that was when he jumped on to the boat
20 and ended up in the water. He said when he heard them call police he came
21 up “nice and smooth”. The Defendant said he had not intended to go into the
22 water.

1 89. The Defendant denied being on Drake Quay with another man. The
2 Defendant said that he was on the main road headed to George Town, and
3 that he was alone.

4 90. The Defendant said he saw other people, more than two, who were ahead of
5 him. He said he thought they were males and that he did not know where
6 they went, but they fled into the bush area.

7 91. The Defendant was asked about the black T-shirt and the black head
8 covering. It was put to the Defendant that there was DNA found on the head
9 covering which matched him and that he was dressed in that head covering to
10 cover his face. The Defendant said that he guessed that Crown counsel must
11 have been there at the scene. The Defendant acknowledged this was a little
12 strange, but he said he knows it was not him and that his DNA could not get
13 on the bandana.

14 92. The Defendant denied that the police shouted "Police."

15 93. The Defendant denied entering Mrs. Rollar's residence as a trespasser with
16 another man and stealing the gold necklace with the coin pendant, the black
17 handbag, the wallet and the jewellery box.

18 94. It was put to the Defendant that when the alarm went off he, and the other
19 gentleman, ran from the scene, to which the Defendant said, "*Not Andy*
20 *Myles, Sir.*"

21 95. It was put to the Defendant that it was at that stage that he left his bandana on
22 the desk across from the safe. The Defendant said he "*knows nothing about*
23 *that.*"

1 96. It was put to the Defendant that he was still in the vicinity of Magellan Quay
2 when the police arrived, and that's when they found him on Drake Quay. The
3 Defendant said he was by himself.

4 97. It was put to the Defendant that while he was in the water he took off the
5 dark clothing, to which the Defendant responded by asking how would he
6 have time to take off the dark clothing.

7 98. It was put to the Defendant that he had fabricated the evidence and that he
8 was lying to hoodwink the Court. The Defendant denied that he was
9 fabricating the evidence.

10 99. Asked about the DNA profile found on the bandana. He said he did not know
11 anything about that or about that house. He said that sometimes his mother
12 gives away clothes and it may have been that she sold the bandana to the Red
13 Cross. He said he has a lot of head scarves/handkerchiefs.

14 *Summary of the Crown Case*

15 100. In summary, Crown counsel says that the Crown witnesses are witnesses of
16 truth and their evidence is credible and reliable.

17 101. Mr. Ferguson submits that the Complainant was awakened sometime after
18 midnight at 88 Magellan Quay by two men in dark clothing and one with a
19 red mask or bandana.

20 102. The Complainant said that she had gone to bed sometime after 10 p.m. and
21 had been awakened by the men sometime after midnight, but she had no idea
22 how long the men had been in her home.

1 103. The police investigation reveals that the window near to the study had been
2 opened, although there were no marks of any sort, which gave the Scenes of
3 Crime expert the impression that the intruders entered with gloves.

4 104. The Complainant recalls the two men standing on either side of her bed when
5 they awakened her, after which they took her to the safe in the study. Whilst
6 opening the safe the electronic alarm system was activated and the alarm
7 went off. The two men pulled the alarm out of the wall and then fled the
8 scene. The Complainant said she could not recall which way the intruders left
9 the house. The Complainant said the men were in the house for
10 approximately 15 to 20 minutes after she was awakened. The Complainant
11 made a 911 call.

12 105. Officers Robinson, Williams and Rowe received a call at approximately
13 12:45 a.m. and drove from Smith Road directly to Magellan Quay. They did
14 not use the sirens or the blue lights and they arrived in the area at sometime
15 after 12:45 a.m. They saw two men dressed in dark clothing walking along
16 Drake Quay, which is between 75 and 100 yards from 88 Magellan Quay.
17 The officers drove up beside the two men. The two men ran off when they
18 saw the police officers. Officers Robinson and Rowe alighted from the
19 vehicle, and gave chase. Officer Robinson recalls telling the men to stop and
20 shouting "Police." Officer Robinson chased them behind the Admiral Retreat
21 apartments and saw both men jump into the water during which time he
22 never lost sight of the men.

1 106. Officer Robinson said one of the men got away and the other man came back
2 to the bank and was eventually fished out of the water by Officer Kingsley
3 Mitchell.

4 107. The man fished out of the water is Andy Myles, who Officer Robinson has
5 known for two years.

6 108. The police discovered a wet black T-shirt and a wet black head covering in
7 the vicinity of Drake Quay where the men jumped into the water. The Crown
8 relies on the fact that DNA identified on the black head covering matched the
9 DNA of the Defendant. The police officers also found a red ski mask with
10 two eyeholes cut into it, and they also found the jewellery box which was
11 identified by the Complainant as her jewellery box which she kept in her
12 bedroom. The jewellery box, as well as the ski mask with the two holes were
13 found by the police near to where the men were seen by the officers and near
14 to where the Defendant was apprehended by the police.

15 109. The police also found a red printed bandana in the study at 88 Magellan
16 Quay where the safe was kept and where the alarm was pulled off the wall by
17 the two intruders. The Crown points to the fact that the owner had never seen
18 this bandana before and only saw it after the intruders ran away because the
19 alarm had gone off.

20 110. The DNA forensic specialist found DNA on the inside and on the outside of
21 the red bandana which matched the DNA of the Defendant.

22 111. The Crown also relies on the evidence of the Defendant which is described
23 by the Crown as “ludicrous and pure fabrication.”

1 112. The Crown submits that the Defendant is lying about meeting a girl called
2 Suzette who had no phone, no address, and no surname.

3 113. The Crown submits that the Defendant is lying when he said he arranged to
4 meet this girl called Suzette at 10 p.m., which was his curfew time.

5 114. The Crown submits that the Defendant lied about being in the area at that late
6 hour after a date with a girl at a meeting spot in West Bay did not happen as
7 planned.

8 115. The Crown submits that the Defendant also lied about being picked up, after
9 midnight, by a woman who drove him to the Courtyard Marriott.

10 116. The Crown submits that the Defendant is lying when he says he was on his
11 own when the police responded to Mrs. Rollar's 911 call and the police
12 arrived at Drake Quay.

13 117. The Crown submits that the Defendant also lied about not having committed
14 the burglary at 88 Magellan Quay and about not having taken the items out
15 of the house.

16 *Summary of the Case for the Defence*

17 118. The Defendant says that he did not commit the burglary at 88 Magellan
18 Quay.

19 119. The case for the Defence is that the Defendant met a girl earlier that day. The
20 Defendant could not recall exactly when during the day he met the girl. The
21 Defendant said that the girl never told him her surname and he only knew her
22 as Suzette, but he arranged to meet her at Silver Sands at about 10 p.m.

1 120. The Defendant said that whilst he was in West Bay waiting for the girl he
2 was attacked by some men in a car and he had to avoid them.

3 121. The Defendant said he waited for the girl to arrive but she never showed up
4 so he left the location. Sometime after midnight he hitched a ride from a lady
5 and she took him to the Courtyard Marriott.

6 122. The Defendant said he walked from there to the Governor’s Harbour area,
7 and that is when he came upon the car with no lights. Because it had no lights
8 he thought it was the men coming to attack him again so he ran off. He said
9 he saw other men running but he could not identify them. He said he ran over
10 behind some apartments and jumped on a boat and slipped and fell in the
11 water. He then recalls “the men coming” and shouting expletives at him. The
12 Defendant said he does not recall any shouts of “*Police*.” The Defendant
13 does accept that he was eventually fished out of the water by Officer
14 Mitchell.

15 123. The Defendant said he knows nothing about the jewellery box.

16 124. The Defendant has no idea how his DNA could be on the black covering. He
17 said the black covering is not his.

18 125. The Defendant says the red bandana found in the study at 88 Magellan Quay
19 is not his and he does not know anything about it. The Defendant does not
20 know how DNA matching his DNA could have been found on the red
21 bandana.

22 126. The Defendant says he does have headscarves and bandanas but his mother
23 often sells them to the Red Cross – the implication being that the Defendant’s

1 mother may have sold the red bandana to the Red Cross and, somehow, the
2 burglar bought the red bandana and was wearing it when entering 88
3 Magellan Quay as a trespasser.

4 127. Defence counsel submits that the Defendant is not a contributor to any of the
5 DNA found on the red ski mask.

6 128. The Defendant denies entering 88 Magellan Quay and denies stealing a gold
7 necklace with a pendant or the jewellery box or the handbag with the credit
8 cards, phones, keys and money.

9 129. The Defendant says that although it looks very suspicious this is all just a
10 question of "*being in the wrong place at the wrong time.*" Defence counsel
11 contends that the Crown has not made out the case properly against the
12 Defendant.

13 ***Conclusion***

14 130. The Indictment charges the Defendant with burglary contrary to s.243(1)(b)
15 of the Penal Code. Section 243(1)(b) reads:

16 *"Whoever having entered any building or part of a building as a*
17 *trespasser steals anything in the building ... is guilty of the offence of*
18 *burglary."*

19
20 131. As the Tribunal of Fact I have endeavoured to remind myself of the
21 prominent features of the evidence, both on behalf of the Crown and on
22 behalf of the Defence, because it is my responsibility as the Tribunal of Fact
23 to judge the evidence and decide on the relevant facts of this case.
24 Accordingly, I have reviewed the evidence and I have taken into account the

1 arguments in the speeches of Crown Counsel, Mr. Kenneth Ferguson, and
2 counsel for the Defence, Mr. John Furniss.

3 132. I remind myself that the burden of proof is always on the prosecution. It is
4 for the prosecution to prove that the Defendant is guilty and further it is
5 never for the Defendant to have to prove his innocence. I also have to remind
6 myself that the prosecution must prove the Defendant's guilt to a high
7 standard of proof, namely, that I must be satisfied that the Defendant is guilty
8 of the charge of burglary beyond all reasonable doubt or, alternatively, I must
9 be sure that he is guilty. If I find that the prosecution has not made out the
10 case so that I am sure, I must find the Defendant not guilty. Accordingly, I
11 must review all the evidence and decide whether the Defendant is guilty of
12 burglary or not.

13 133. The Crown relies heavily on the evidence of the Complainant and the
14 evidence of Detective Constables Robinson and Williams, together with the
15 evidence of the forensic expert, Mr. Harris.

16 134. It has often been cited that circumstantial evidence can be powerful evidence.
17 It is important that I examine it with care and consider whether the evidence
18 upon which the prosecution relies in the proof of its case is reliable, and
19 whether it does prove guilt. Furthermore, before convicting the Defendant on
20 circumstantial evidence, I must consider whether it reveals any other
21 circumstances which are, or may be, of sufficient reliability and strength to
22 weaken or destroy the prosecution's case. Finally, I have to warn myself to
23 be careful to distinguish between arriving at conclusions, based on reliable
24 circumstantial evidence, and mere speculation.

1 135. In respect of circumstantial evidence I gain considerable assistance from the
2 decision of the Northern Ireland Court of Appeal in **R v. Courtney** [2007]
3 NICA 6, [2007] NI 178 and the judgment of the then Lord Chief Justice,
4 Lord Kerr where he states at paragraph 20:

5 *“Where, as in this case, the prosecution relies on circumstantial evidence*
6 *to establish the Defendant’s guilt, it is well established that a particular*
7 *approach to the evaluation of the evidence is required. This is perhaps*
8 *still best encapsulated in the well known passage from the judgment of*
9 *Pollock CB in R v. Exall [1866] 4 F&F 922 at 928; 176 ER 850 at 853*
10 *and endorsed by the Court of Appeal in Northern Ireland in R v. Meehan*
11 *No. 2 [1991] 6 NIJB 1:-*

12 *“What the jury (the Tribunal of fact) has to consider in each*
13 *case is, what is the fair inference to be drawn from all the*
14 *circumstances before them, and whether they believe the account*
15 *given by the prisoner is, under the circumstances, reasonable*
16 *and probable or otherwise.Thus it is that all the*
17 *circumstances must be considered together. It has been said that*
18 *circumstantial evidence is to be considered as a chain, and each*
19 *piece of evidence as a link in the chain, but that is not so, for*
20 *then, if any one link broke, the chain would fall. It is more likely*
21 *the case of a rope composed of several cords. One strand of the*
22 *cord might be insufficient to sustain the weight, but three*
23 *stranded together may be quite of sufficient strength. Thus it may*
24 *be in circumstantial evidence – there may be a combination of*
25 *circumstances, no one of which would raise a reasonable*
26 *conviction, or more than a mere suspicion; but the whole, taken*
27 *together, may create a strong conclusion of guilt, that is, with as*
28 *much certainty as human affairs can require or admit of.”*

29
30 136. The case against the Defendant depends, to some extent, on the correctness
31 of DC Robinson’s identification of the Defendant running behind the
32 Admiral Retreat apartments into the water and then out of the water. The
33 Defendant says there were other men in the vicinity also present. DC
34 Robinson says that he followed the two men and that the Defendant, who
35 eventually was fished out of the canal by DC Mitchell, never went out of his

1 sight. None of the police officers at the scene saw any other persons there or
2 in the vicinity.

3 137. I must warn myself of the need for caution before I could ever convict the
4 Defendant by reliance on the evidence of identification. I must remind
5 myself that witnesses who are convinced in their own minds may, as a result,
6 be convincing witnesses but, nevertheless, be mistaken.

7 138. I must examine the circumstances in which DC Robinson first saw the two
8 men; how long did he have the two men under observation; from what
9 distance did he see the two men; in what light did he see the two men; did
10 anything interfere with his observation of the two men; has DC Robinson
11 ever seen the Defendant before that occasion, and, if so, how often. These are
12 questions I must consider when analyzing the evidence of the identification
13 of the Defendant and in particular the visual identification of DC Robinson.

14 139. I accept the evidence of Mrs. Rollar, in that, the gold necklace with gold coin
15 pendant, the black leather handbag with its contents, and, the jewellery box,
16 were all in her bedroom on the evening of the 1st December 2010, but were
17 stolen from her house between midnight and 12:45 a.m. on the 2nd December
18 2010.

19 140. Mrs. Rollar describes the two men as fully clothed with masks over their
20 faces, and one of them was wearing a red mask or something red. She woke
21 to find the men on either side of her, and they took her into the study to
22 where the safe was. They were, she said, very interested in the safe. Whilst
23 she was opening the safe the alarm went off. The men clearly panicked and
24 pulled the alarm off the wall and then fled.

1 141. I accept Mrs. Rollar's evidence that the red bandana had never been seen
2 before, and the compelling inference is that the bandana was dropped whilst
3 the men were in the house.

4 142. I accept the evidence of Mr. Walhl that DNA matching the Defendant's DNA
5 was found on the inside and on the outside of the red bandana.

6 143. Mrs. Rollar made her 911 call at around 12:45 a.m. on the morning of the 2nd
7 December 2010.

8 144. Officers Robinson, Williams and Rowe were at Smith Road when they
9 received word of the 911 call and drove directly to the scene as fast as they
10 could without using the siren or the blue lights. Some minutes later they
11 arrived to see two men with their heads and faces covered, similar to that
12 described by Mrs. Rollar, walking down Drake Quay, some 75 to 100 yards
13 from the house that was burgled. Officer Robinson quickly got out of the car
14 and shouted for the two men to stop. The two men did not stop and instead
15 the men ran off and Officer Robinson ran all the way behind them until he
16 saw them jump into the river. One of the men managed to swim away but the
17 other man was fished out of the water by Officer Mitchell and turned out to
18 be the Defendant, Andy Myles.

19 145. At the location where the police apprehended the Defendant, the police found
20 the black T-shirt and the black head covering which had DNA which
21 matched that of the Defendant. Also found at the scene was the jewellery
22 box, identified by Mrs. Rollar as the one taken from her residence some 10 or
23 15 minutes earlier. Also found at the scene was a red mask with two holes,

1 and the strong inference is that this mask was used by one of the intruders to
2 conceal identification.

3 146. The Defendant says he was by himself just before, and at the time when, the
4 police apprehended him. I do not accept the Defendant's evidence. I accept
5 the evidence of DC Robinson, that he saw the two men fully clothed and
6 masked, and that he chased the Defendant and the other man down the back
7 of Admiral's Retreat, where he saw them jump into the water. I accept the
8 evidence of DC Robinson that he had the two men he was chasing in his
9 sight at all times and that when one of the two men was fished out of the
10 water he immediately recognised him as Andy Myles.

11 147. I must commend the quick actions of DC Robinson and his colleagues in
12 arriving at the scene so quickly after the 911 call from Mrs. Rollar informing
13 the police that the burglary had taken place. I also note that DC Robinson
14 acted quickly in beginning and continuing his pursuit of the men on foot and
15 I accept that he never lost sight of the Defendant.

16 148. I do not believe that the Defendant met a girl whose name, address and
17 telephone number he did not know and arranged to meet her at the time he
18 was supposed to be observing his Drug Court curfew. I do not believe that
19 the Defendant waited almost 3 hours for the girl to arrive.

20 149. I find it highly unlikely that a woman driving alone would offer a lift to a
21 man after midnight.

22 150. There is a sharp conflict as to whether the Defendant was alone or whether
23 he was with another man.

1 151. There is also sharp conflict as to whether the Defendant saw two or more
2 other persons ahead of them, with the inference being that DC Robinson and
3 the officers would have seen other persons on the road at that time.

4 152. I have observed the Defendant in the witness box and I found him to be
5 evasive in the manner in which he gave his evidence. I also find his account
6 of his movements on the evening of the 1st December 2010 into the early
7 morning of the 2nd December, to be highly improbable.

8 153. It is submitted by the Crown that the Defendant has lied to the police and lied
9 to the Court. Accordingly, I must decide whether the Defendant did in fact
10 deliberately lie. If I am not sure I can ignore the matter. But if I am sure he
11 lied I have to ask myself the question why did the Defendant lie.

12 154. I must remind myself that the mere fact that the Defendant tells a lie is not in
13 itself evidence of guilt. The Defendant may have lied for many reasons and
14 they may possibly be “innocent” ones, in the sense that they do not denote
15 guilty, for example, lies to protect somebody else or lies to conceal some
16 disgraceful conduct other than the offences for which he is charged, or lies
17 merely out of panic, distress or confusion. If I think there is, or maybe an
18 innocent explanation for a lie, then I should take no notice of it. If I am sure
19 that the Defendant did not lie for an innocent reason, then his lies can be
20 regarded as evidence supporting the prosecution case.

21 155. I do not believe the Defendant’s story. I find it highly improbable and I reject
22 it.

1 156. I do not believe that the Defendant lied for an “innocent” reason. I believe he
2 lied to try and make the Court believe he was elsewhere when the burglary
3 was committed.

4 157. I accept the evidence of DC Robinson as both reliable and accurate. DC
5 Robinson clearly saw the Defendant with another person and he made sure
6 that the Defendant did not escape. I also accept the evidence of DC Williams
7 in that he saw the two men run away from the police.

8 158. The Defendant was apprehended some minutes after the burglary took place.
9 In addition, there is the black wet head covering with DNA matching that of
10 the Defendant on it.

11 159. I find that the Defendant either owned or wore the bandana which was found
12 in the study at 88 Magellan Quay. I find that the fact that DNA matching that
13 of the Defendant was on the inside and on the outside of the bandana, the
14 compelling inference is that the bandana belonged to the Defendant and that
15 the Defendant was wearing the bandana at the time the burglary was
16 committed.

17 160. I agree with Crown counsel that the Defendant has fabricated his story. I
18 believe the police officers and I accept the evidence of the witness Mr.
19 Walhl.

20

21

1 161. When I consider all the evidence as well as this combination of
2 circumstances, I am satisfied beyond all reasonable doubt that the Defendant
3 is guilty of burglary with another person who has still not been apprehended
4 and is not before this Court.

5 162. Accordingly, the Defendant is found guilty of burglary as charged.

6

7

8

9 **Dated this the 29th day of November 2011**

10

11

12

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

