

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:**

29th November 2011

18
19 **SENTENCE RULING**
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22 1. On the 29th November 2011 the Defendant was found guilty of one count of
23 Burglary contrary to s.243(1)(b) of the Penal Code (2010 Revision), in that
24 on the 2nd December 2010, at 88 Magellan Quay, George Town, Grand
25 Cayman, the Defendant entered as a trespasser the dwelling house of Mrs.
26 Delores Rollar ("Mrs. Rollar"), and stole therein a gold necklace with a gold
27 coin pendant, a black leather handbag and wallet with an undetermined sum
28 of cash, two credit cards, two drivers' licences and a jewellery box, all the
29 property of Mrs. Rollar.

30 2. Counsel on behalf of the Defendant accepts that the Defendant has been
31 found guilty after a trial.

1 3. Defence counsel points to the fact that no physical harm was caused to the
2 victim, Mrs. Rollar. Further when the alarm went off, the Defendant and the
3 other intruder left the house. Defence counsel therefore points out that this is
4 not a charge of aggravated burglary, and indeed the Defendant initially asked
5 for a Summary trial.

6 4. Defence counsel accepts that the Defendant has previous convictions
7 including two in late 2010, for which he was sentenced in March 2011. On
8 one charge the Defendant was sentenced to 18 months' imprisonment, and on
9 another charge sentenced to 9 months' imprisonment. Defence counsel states
10 that the charge for which the Defendant was sentenced for 18 months was the
11 burglary of Elmslie Church Hall, George Town. The charge for which the
12 Defendant was sentenced to 9 months' imprisonment was the burglary of a
13 Spanish restaurant on Shedden Road, George Town.

14 5. Defence counsel draws the Court's attention to the Chief Justice's Guidelines
15 dated the 16th January 2002 which state that offences for burglary, without
16 aggravating circumstances, a second or subsequent offence will attract a
17 tariff of 3 to 4 years.

18 6. There are however several aggravating factors. First of all, the Defendant has
19 entered a dwelling house and continued to stay as a trespasser, even after
20 discovering that the owner was present in the house. The Defendant and his
21 companion then awoke the owner in her bedroom in the middle of the night,
22 and commanded that she go to the study and open the safe.

23 7. The owner complied with the instructions from the Defendant and his
24 companion and started to open the safe, as a result of which, the alarm was

1 triggered. It was only when the alarm went off that they fled the scene and,
2 thereafter, were apprehended by the police. It would be remiss of me if I did
3 not take this opportunity to commend Officers Robinson, Williams and Rowe
4 for the speed of thought and action in the apprehension and arrested the
5 Defendant.

6 8. The Defendant and his companion stole the owner's gold necklace with an
7 expensive gold pendant, her black leather handbag, wallet with cash, credit
8 cards and drivers' licences, as well as her jewellery box.

9 9. The Defendant and his companion clearly had planned this burglary. The
10 black head covering, the ski mask with the eye holes, the red bandana, as
11 well as the lack of fingerprint evidence, all demonstrate that the robbery at 88
12 Magellan Quay on the 2nd December 2010 was a professional enterprise, with
13 a high degree of planning.

14 10. The Defendant committed this burglary in the early hours of the 2nd
15 December 2010. The Defendant entered the home and, finding her present at
16 the home, awakened her from her bed in the middle of the night. This is, on
17 any view, a harrowing experience, and must have caused the victim
18 significant emotional and traumatic distress. The victim's home has been
19 violated. The Defendant has shown no regard for the privacy or the security
20 of the victim's home.

21 11. As the Lord Chief Justice of England and Wales Lord Judge stated in **R v.**
22 **Rebecca Saw** [2009] 2Cr. App. R. (S) 54 at paragraph 6:

23

1 *“The starting point must always – we emphasise, always – be that*
2 *burglary of a home is a serious criminal offence. The principle which*
3 *must be grasped is that when we speak of dwelling house burglary, we*
4 *are considering not only an offence against property, which it is, but*
5 *also, and often more alarmingly and distressingly, an offence against the*
6 *person. There is a longstanding, almost intuitive belief that our homes*
7 *should be our castles. The concept suggests impregnability and defiance*
8 *against intrusion. In the phrase coined by Sir Edward Coke in 1628,*
9 *when compiling his “Third Institute of the Laws of England” our homes*
10 *should be our “safest refuge”, where above all we should enjoy secure*
11 *tranquility and untroubled peace. Something precious is violated by*
12 *burglary of a home, and those who perpetrate this crime should be*
13 *sentenced and punished accordingly.”*

14

15 12. I accept that the Defendant did not physically harm the victim. I accept that
16 there were no guns involved and that consequently, the Defendant has not
17 been charged with aggravated burglary. However, this is still burglary of the
18 most serious kind and s.243 of the Cayman Penal Code states that anybody
19 who is guilty of the offence of burglary shall be liable to be imprisoned for a
20 maximum of 14 years.

21 13. The Defendant has 4 previous convictions for burglary – two convictions for
22 aggravated burglary for which he received a Sentence of 5 years in
23 September 2006, and two convictions for burglary for which he received 18
24 months and 9 months respectively in March 2011.

25 14. I find myself in total agreement with Lord Bingham, the former Lord Chief
26 Justice of England and Wales, when he stated in the English Court of Appeal
27 decision in *R v. Brewster and Ors* [1998] 1 Crim. App R. (S) 181 at page
28 182:

29

1 *“There are some professional burglars whose records show that from an*
2 *early age they have behaved as predators preying on their fellow*
3 *citizens, returning to their trade almost as soon as each prison sentence*
4 *has been served. Such defendants must continue to receive substantial*
5 *terms of imprisonment.”*

6
7 15. This was a cold, calculated burglary of a private dwelling in which the
8 intruders awakened the lady of the house, in what she described as terrifying
9 circumstances. It was only because the alarm went off that the Defendant and
10 his fellow intruder did not steal more property from the premises than what is
11 set out in the charges.

12 16. The Defendant is now a man of 25 years of age. He must take responsibility
13 for his actions and their consequences.

14 17. In light of the foregoing facts, and, in light of the Defendant’s appalling
15 record, I impose a sentence of imprisonment of seven (7) years, with time
16 spent in custody to be taken into consideration.

17 18. The Court must punish this offender with an appropriate term of
18 imprisonment. The Court is also mindful of the increase in burglaries of
19 commercial and residential premises, and accordingly, it is hoped that this
20 Sentence will act as a deterrent to others who have committed such offences
21 or who might be considering committing such offences.

22 **Dated this the 2nd day of December 2011**

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25 **Honourable Mr. Justice Charles Quin**
26 **Judge of the Grand Court**

