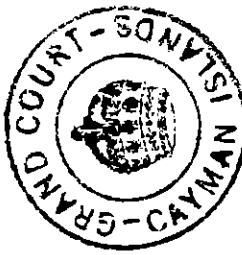


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IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN



IND. 05/91

REGINA V. TONY ALLAN WRIGHT

Mr. H. Levy for the Accused  
Mrs. Hernandez for the Crown

JUDGMENT

Schofield J.

The indictment against Tony Allan Wright ("the accused") alleges aggravated burglary, contrary to Section 231 (1) of the Penal Code, in that he on the 16th June, 1991, entered as a trespasser the dwellinghouse of Clifford McCallum situated at Mary Street, George Town, with intent to steal and at the time of the entry had with him a knife, an offensive weapon.

Clifford Richard McCallum is a young Jamaican. He is, he says, a missionary. Certainly he has the air and vocabulary of a committed Christian. In June last year he was a tenant of one the rooms in a house in Mary Street, George Town. The house belongs to Esther Smith or Clarke, otherwise known as Sister Esther. Evidently McCallum stayed at the house for a month or two. He is now living back in Jamaica.

McCallum testified that he went to sleep over his studies on the night of the 15th June, 1991. The bedside light was still on. In the early hours of the morning he was awakened by noises and saw the accused walking by his bed towards the closet. The accused had a knife with a shiny blade in his hand. McCallum got out of bed and the accused made off down a short passageway and out of the house. McCallum ran after him, lost sight of him momentarily as he was outside the house, but saw the accused return for his bicycle which was parked in the bushes. As the accused tried to go through a gate McCallum stepped in his way and asked him what he was doing in his room. The accused pulled out the knife and told McCallum to back off. McCallum said he attempted to persuade the accused against the error of his ways



but the accused rode off.

McCallum went to Central Police Station to report the matter. He gave a description of the accused. He was told that there was an operation on so he returned to his room and soon afterwards went back to the Police Station. There he was told that the police had arrested one man they suspected to be the alleged burglar. When a group of people were brought into the Police Station McCallum recognised the accused from amongst them.

Police Officers had been on a drugs raid on a house in Prospect when the accused arrived. He fitted the description they had been given in the report of the burglary and they arrested him along with others.

When interviewed about the matter the accused told police officers that he was staying at his brother's apartment in Mary Street and he went next door to get water. He called to a man to say what he was doing but there was no answer so he went inside the house, the kitchen door being open. He did not go in McCallum's room but he peeped inside and McCallum was sleeping. He said when he got by the road McCallum came out and asked him what he was doing over at the yard. The accused agreed he had the knife in his hand.

The accused gave a very similar explanation to the Court save that he said he did not enter the house and that he pulled the knife out of his pocket when McCallum stopped him and held his arm. McCallum put his hand in his own pocket as if to pull something out, so the accused pulled his own knife out but did not open it. He said his brother and girlfriend arrived at the house, which belongs to his step-father, and wanted to use the room, and so he, the accused, agreed to take his bicycle and go to the house at Prospect. That is when he went for the water.

The accused's brother Joel Jason Smith confirmed this latter



part of the accused's testimony and also said that the next day McCallum told him someone had tried to break into his room.

Corrine Alithea Anderson is the accused's aunt. She confirmed that the accused stays at the house in Mary Street and that he and other members of the household take water from the cistern of Sister Esther's house. Sister Esther is also related. There are hedges and flowers between the two houses. She has seen the accused riding a bicycle.

Eugene Anderson Farris stayed in Sister Esther's house. He is Sister Esther's son. He also confirmed that the accused would take water from their cistern and would call to them before he did so. He was home on the night in question but did not hear the accused call. McCallum told him that one night he saw someone standing in the door and he got frightened and went outside. The person was leaving the yard and he reported the matter to the police.

The case rests on credibility. If I am satisfied beyond reasonable doubt that the accused was in McCallum's room going towards the closet with a knife in his hand then I will be driven to the conclusion that he was there as a trespasser and with intent to steal. His explanation that he was going for water would be incredible and the only inference to be drawn would be that he intended to steal. On the other hand if there is a doubt that he was in the room the prosecution must fail.

There were several aspects of McCallum's evidence which, in their telling, seemed unlikely. He chased a man with a knife but did not attempt to alert the other tenants. He said the accused had the knife open in the room, which did not accord with his statement to police.

On the other hand the accused's evidence was, in two material respects, different to what he told the police on interview.

Furthermore his evidence of McCallum's behaviour, that he grabbed him and appeared to be pulling something from his pocket, did not accord with my assessment of McCallum. Two of the accused's witnesses are at present serving sentences in Northward Prison which does not give me a great deal of confidence in their reliability. On the other hand I cannot say they were discredited on cross-examination. The evidence of the aunt, Mrs. Anderson, stood firm. The accused clearly was staying next door to where McCallum was staying. Did not McCallum know the accused and did he not know that the accused was part of the family who owned those houses? Did the police really arrest the accused on description rather than on a name being given to them? Next certainly the accused had lawful cause to be in the yard or even in the house of Sister Esther, even if not in McCallum's room.

The onus is on the Crown to prove the case. There are doubts in my mind as to whether the accused did enter McCallum's room. He may have entered the house and aroused McCallum's suspicions, but I am not satisfied, given the totality of the evidence, that he actually entered McCallum's room.

I acquit the accused on the indictment and discharge him and order his release from custody unless he be held for any other lawful cause.



JUDGE



Dated this 22nd day of May, 1992