



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION**

INDICTMENT NO: 01/24

THE KING

v.

ROLAND MURPHY WELCOME

Before: The Hon. Justice Marlene I. Carter

Appearances: Ben Brown, Crown Counsel, for the Prosecution
Keith Myers for the Defendant

Judge Alone Trial: 5 – 8 August 2024

Verdict: 5 September 2024

HEADNOTE

Criminal Law - Trial by Judge Alone – Aggravated Burglary – Identification – qualified identification evidence

VERDICT JUDGMENT

The Indictment

1. The single count on the indictment is for the offence of Aggravated Burglary, contrary to Section 244 of the Penal Code. The Particulars of Offence were as follows:



"PARTICULARS OF OFFENCE

ROLAN MURPHY WELCOME, on the 9th day of November 2023, entered as a trespasser a dwelling, namely 2441 Sea View Road, East End, Grand Cayman in the jurisdiction of the Cayman Islands and stole \$300 belonging to Eileen Vidal and at the time of the said entry had with him an offensive weapon, namely a machete."

2. The Defendant elected trial by Judge alone pursuant to Section 129 of the Criminal Procedure Code.
3. The Cayman Islands Court of Appeal (CICA) has given some guidance on the duties of a Judge in a Judge Alone trial. In **K. Richards v R**¹ Rowe JA stated:

"When a trial judge sitting alone has advised himself to the applicable principles of law, and given himself any necessary warning, he must indicate clearly in his judgment his reasons for acting as he did in order to demonstrate that he has acted with the requisite degree of caution in mind and has therefore heeded his own warning. No specific form of words is necessary for this demonstration, what is necessary is that the Judge's mind upon the matter should be clearly revealed."

4. In **Randy Martin v R**², Mottley JA stated as follows:

"A judge sitting in a criminal case without a jury, in rendering his decision and giving his reasons for so concluding is not required to review every fact and to detail each argument on which the prosecution and defence rely as if he were summing up to a jury. The judge must set out the conclusion reached and make clear the reasons for arriving at that conclusion. He is required to have regard to any difficult or unusual points of law and to show how those points of law has in any way impacted the conclusion that he has reached."

5. In the case of **Dioncicio Salazar v The Queen**³ the Caribbean Court of Justice (CCJ) quoted, with approval, from the judgment of the Court of Appeal in Northern Ireland

¹ 2001 CILR 496

² CICA Crim. Appeal No. 2/2010 (Ind. 27/2009)

³ [2019] CCJ 15



in *R v Thompson*⁴ in which it was said of the duty of a judge sitting alone in a bench trial:

“He has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant legal aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision by others. His task is to reach conclusions and give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that if there is an appeal it can be seen how his view of the law informs his approach to the law.”

6. The CCJ continued:

“Equally, a judge sitting alone and without a jury is under no duty to “instruct”, “direct” or “remind” him or herself concerning every legal principle or the handling of evidence. This is in fact language that belongs to a jury trial (with lay jurors) and not to a bench trial before a professional judge where the procedural dynamics are quite different (although certainly not similar to those of an inquisitorial or continental bench trial).”

7. As in all criminal trials, the burden is on the Crown to prove beyond a reasonable doubt that the Defendant committed the offence for which he is on trial.

8. There is no burden on the Defendant to prove that he is innocent or to explain the evidence offered by the prosecution.

9. I will address my mind to the important or prominent aspects of the evidence in deciding the critical issues in this case. I will not decide every single point that has been raised, only such matters that will enable me to determine whether the charges on the indictment have been proved.

10. I will have regard to the whole of the evidence that has been presented at trial and form my own judgment about that evidence. The questions of fact at issue in this trial are for me to determine.

⁴ [1977] NI 74



11. If having considered all the evidence, I have a reasonable doubt as to whether the Defendant is guilty or not, I must resolve that doubt in favour of the Defendant and find him not guilty of the offence for which he is charged.
12. On the other hand, if, having considered the evidence, I am satisfied so that I am sure of the guilt of the Defendant, then it will be equally my duty to find him guilty as charged.

The Relevant Law

13. Section 244 of the Penal Code (2024 Revision) states:

“Aggravated burglary

244. (1) *A person who commits any burglary and at the same time has with the person any firearm or imitation firearm, any offensive weapon or any explosive commits the offence of aggravated burglary and is liable to imprisonment for life.*

(2) *For the purposes of subsection (1) —*

“explosive” *means an article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with themselves for that purpose;*

“firearm” *includes an airgun or air pistol;*

“imitation firearm” *means anything which has the appearance of being a firearm, whether capable of being discharged or not; and*

“offensive weapon” *has the meaning ascribed to it in section 78.”*

14. The Crown must satisfy me so that I am sure of the following:
 - (i) The Defendant entered a building or part of a building;
 - (ii) The Defendant did so as a trespasser;
 - (iii) The Defendant did so with the intention of stealing.
 - (iv) That the Defendant was at the time armed with an offensive weapon.

The Prosecution Evidence

15. The main witness for the Prosecution was the Complainant, Eileen Vidal. Her evidence addressed the facts and circumstances of the burglary, and the most relevant aspects of her evidence are considered in detail below.



16. The Prosecution also called several other witnesses:

(i) **Lloyd Anderson** is the officer who was called to the Complainant's residence as a result of the report of burglary early on 9 November 2023. He spoke to the Complainant at the residence, and she made a report to him of the circumstances surrounding the burglary. Her initial report to Anderson is consistent with her evidence at trial:

"She gave a brief description, slim built light brown complexion, low haircut, clean shaven face and dressed in white merino and light blue denim shorts.

...

Said she had seen him previously at her workplace at ESB but she did not know his name. If she should see him again she would be able to identify him.

She appeared to be still in a frightened state when she was communicating with us. She appeared very flustered."

He confirmed that he observed damage to the Complainant's bedroom door.

(ii) **Detective Inspector Collins Oremule** is the officer who conducted the photo identification procedure. There was no issue taken with the conduct of the procedure. The procedure was video, and audio recorded, and the recording tendered into evidence and played before the court. The officer stated that upon handing the Complainant the photo array, he told her to take time to go through them and, if she saw the person who she complained against, she must circle the person and the number and sign the form. The Complainant circled the photograph of the Defendant. She said to the officer that she was *"Not 100 percent sure, the person [is] very similar, I am 95 percent sure that this is the person."* He noted that the Complainant was upset at the time that she made the identification.

(iii) **Royal Forbes** – This witness is the owner of Eastern Star Bar. He stated that he was overseas when he received a telephone call about the incident at the Complainant's residence. He is the owner of that residence. He stated that he was able to view video clips from the CCTV, which was installed at the bar. He later handed over copies of those relevant video clips to the investigating officer.



His evidence was of having had an earlier interaction with the Defendant, whom he identified as the male in the CCTV images from the bar on the evening of 8 November 2023, earlier in the year on 20 September 2023. He related that he had received a report from patrons at the bar that a male was seen outside the bar who appeared to be suspicious. The male then entered the bar and was making them uncomfortable. He went to the bar and saw the male. *“At that time I knew who he was. I know him because he is a member of community I grew up in and he is also family.”* It was the Defendant. He spoke to the Defendant and asked him to leave the property. The Defendant became upset. The court was able to view this interaction between Forbes and the person who he identified as the Defendant on 20 September 2023. The witness was also shown each of the clips tendered into evidence from the evening of 8 November 2023 and identified the male in each of these clips as the Defendant.

In cross-examination, the witness, Forbes, stated, in relation to the video clips of the night of 8 November 2023: *“I have known Rolan Welcome for roughly a lifetime. He is family. Inside the bar, because I have known him so long, I can identify him without too much trouble. I saw the clip and I saw it was him. He was in the bar, and he was being boisterous. [Our] Relationship is not really, not much. It’s more to blood. To say we did not get on, I would say I do [get on with him]. My relationship with him is not strained. Contact with him little, relationship with him is distantly good.”*

(iv) **Tommy Taylor** is a Scenes of Crime officer attached to the George Town Police Station. His evidence was of his having gone to the residence of the Complainant and of taking photographs and searching for fingerprints or other forensic evidence in the areas indicated by the Complainant. This witness related that no forensic evidence was found at the Complainant’s residence which implicated the Defendant.

(v) **Officer Tiffany Rankine**’s evidence was unopposed and read into evidence. She testified that she prepared the photo array which was used by Detective Inspector Oremule at the photo identification procedure. She confirmed that the photo of the Defendant which appeared on the array was a photo that was recovered from the police records of the Defendant held by the Police.

(vi) **Officer Wanda Nixon** was the investigating officer in the case. Her evidence detailed the course of her investigation. She recorded a statement from the Complainant and also took photos of injuries noted on the Complainant’s shoulder and



index finger. She recovered CCTV footage from 8 November 2023 from the owner of the ESB, Rayal Forbes. It was Forbes who identified the Defendant from the CCTV footage as someone known to him. The Defendant was arrested on 7 January 2024, some significant time after the incident. She conducted the interview of the Defendant under caution. The officer confirmed when cross-examined, that there was no forensic evidence recovered from the scene of the Complainant's bedroom or apartment which implicated the Defendant.

17. The testimony of those witnesses and the various exhibits tendered was the extent of the evidence relied on by the prosecution to prove its case against the Defendant.

The Defence Case

18. The Defendant elected to give evidence under oath. I remind myself that if I do not accept the evidence of the Defendant, I must still return to the Crown's case to consider whether, on the evidence presented, the Crown has proved its case to the requisite standard before I can find the Defendant guilty, there being no onus on the Defendant to prove that he is innocent. If the Crown's evidence does not make me sure of the Defendant's guilt, then my verdict must be not guilty.
19. The Defendant denied that he was the man identified by the Complainant as having committed the offence.
20. The Defendant, upon being shown the CCTV of a man seen in the bar on the evening in question, stated that the image shown on the CCTV was not him.
21. He denied that the person seen on CCTV speaking to the witness, Rayal Forbes, and identified by Rayal Forbes as being the Defendant in September 2023, was in fact, him. His evidence was: *"I recognize that it is EE by the bar by the gas station. I don't remember if I have been there before or if I had ever been there. I see a person there it is an image that looks like a man. That was not me."*
22. The Defendant denied that the photograph used by the police to complete the photo spread which was shown to the Complainant and identified by the Complainant from that photo spread as being the man who had entered the bar and later entered her bedroom, was his photograph. It was part of the agreed and, therefore, unchallenged



evidence in this case that the photograph used in the photo identification procedure was a photograph taken of this Defendant in 2021, from the police system.

23. The Defendant, in an interview with the police in January 2024, stated that he did not know the Complainant's address. However, he admitted that he passed there on a footpath regularly. When he was asked about this further in cross-examination, he stated that he knew the house but had no knowledge of the Complainant being there or of tenants living at that home.
24. With regard to the witness, Rayal Forbes, the Defendant stated that while he knows Forbes, he did not know that he was related to him. *"I don't know what he is to me. ...I did not get on with RF because we don't interact."* There was no suggestion that there was any prior interaction that would give Forbes a motive for testifying as he did. The Defendant, however, suggested: *"I think he does not like me, I have no idea why I think so."* He confirmed that this was not because of any issue or argument that he had had with Forbes.
25. In examination in chief and in cross-examination, the Defendant stated that the person alleged to have committed the offence was not him and could not have been him because he does not remember and does not do things like that. In answer to his counsel as to his whereabouts on the night of 8 December, he stated, *"I don't remember where I was on that night."*
26. The Defendant, without any explanation or other basis stated, in answer to Crown Counsel, that the police used the wrong photograph [at the photo identification procedure], that Eileen Vidal had picked the wrong person and that Rayal Forbes had gotten it wrong from the bar when he said it was him on the CCTV: *"They all definitely have it wrong."*

Court's Reasoning and Conclusions

27. The facts as accepted by the court regarding the offence, and which are not in dispute are as follows:
 - 1) That on 8 November 2023, the Complainant was employed at the Eastern Star Bar ("ESB").



- 2) The Complainant worked two shifts that day, from 11 am – 1 pm and then from 5 pm - 12 midnight.
- 3) That during the course of the later shift, a male individual entered the bar. The individual was shouting for Ray, the manager of the bar.
- 4) The Complainant became upset and frightened as a result of the actions of this individual in the bar.
- 5) After the individual left the bar, the Complainant completed closing procedures at the bar at the end of her shift and proceeded to her home in the company of a co-worker.
- 6) The Complainant lived approximately three (3) blocks from the bar.
- 7) After she arrived at her home, the Complainant retired to bed and locked her bedroom door.
- 8) The Complainant was awakened by voices coming from the kitchen area of the home shortly after she had retired to bed.
- 9) That the Complainant's bedroom door was kicked in by a male.
- 10) That this male had entered the home by climbing in through a window in the kitchen to the home.
- 11) The male was armed with a machete
- 12) The male demanded money from the Complainant, saying: *"Give me the money. I know you was working. I know you have the money. Don't lie to me."*
- 13) The male put the machete to the Complainant's neck at the time he made these demands.
- 14) The Complainant gave the male money that she had with her passport. This was USD300.00.



28. From this evidence, which I accept, the Crown has satisfied the court that there was an aggravated burglary at 2441 Seaview Road, the home of the Complainant, in the early hours of the morning of 9 November 2023.
29. The main issue for the court's determination is that of identification, whether the prosecution has satisfied the court that it was this Defendant who broke into the Complainant's home as a trespasser, armed with a machete and took US 300.00 dollars from her. The Complainant's evidence is that the male who entered the bar earlier in the evening is the same male who kicked in her door and then proceeded to demand money from her as he held the machete to her neck.
30. The Defendant denies that he was the male in the bar. He further denies that he was the male who entered the Complainant's home in the early hours of 9 November 2023.
31. The issue of identification in this case is to be viewed from several angles. The Complainant positively identified this Defendant through a photo identification procedure. The circumstances in which she came to make that identification are crucial to the Crown's case. I am mindful of the directions in *Turnbull*⁵ regarding disputed identification evidence including the need for caution when relying on such evidence.
32. From the evidence presented, the court must examine the Complainant's interaction with the person at the bar in the early evening of 8 November 2023. The court must also examine the evidence of identification by the Complainant at the time of the burglary. The Complainant's evidence of having been confronted by the Defendant after she had returned from Cuba is also to be considered. As stated above, the Complainant also went through an identification procedure whereby she identified the male who entered her home from a lineup of photographs. There is further consideration on this issue of identification of the witness, Rayal Forbes, and whether and to what extent it bolsters the Complainant's evidence and, ultimately, the prosecution's case.
33. Regarding the interaction with the individual who entered the bar on the evening of 8 November 2023, the Complainant's evidence was that the individual when he entered the bar, was *"talking and saying all kind of nonsense and asking for my boss ...[he]*

⁵ *R v Turnbull and Camello* [1977] QB 224



seemed like really upset, out of himself.” She described that he was talking loudly, saying: *“Where’s Ray?”*. She went on to state that he *“looked like crazy, like a crazy person for me.”* The Complainant described being scared during this encounter, so much so that when the individual left the bar, she closed the main door to the bar. She says that the person was in the bar for not more than five (5) minutes, maybe one (1) to two (2) minutes. She was able to describe the person as having brown skin, short hair and eyes that were kind of big. She had seen him before: *“like randomly around East End”*, but she had never met him personally. She had seen him around the bar. She could not say when she last saw him before the incident. She recognized him as being someone who she had seen around the bar.

34. The court had the assistance of CCTV evidence regarding this interaction. The Complainant related, regarding each clip, that the man seen in the clip was the man who later entered her bedroom. It is evident from the CCTV evidence that the Complainant was very aware of the individual who entered the bar from the moment that he loudly announced his presence. While the other persons present did not appear to react in the same way to this individual’s presence, the Complainant appeared focused on this individual. There was nothing that was present that would have blocked the Complainant’s view of the individual. He was speaking loudly, and her attention appeared to be fixed on his movements and actions. The Bar appeared well-lit. I am satisfied that the Complainant could and did have a good opportunity to observe this individual during the time that he remained at the bar.

35. The second aspect of the Complainant’s identification was her interaction with the trespasser at her home. The Complainant’s evidence was that after she went to bed, she heard noises in the kitchen area *“like someone in the kitchen...like opening cabinets.”* She thought she heard a male voice. She had locked the door to her bedroom when she retired to bed. Someone was trying to open the door to her bedroom. The person then kicked in the door to her bedroom. She was two steps away from the door at this point [court estimated at 2 feet]. The door hit her on her hand when it was kicked in and the person put a machete to her neck. She described the person as being male, with brown skin and short hair, maybe around 5ft 6 or 5ft 7 inches in height. The male was wearing denim shorts and a white top. She had seen the male before, earlier the same night at her workplace. She remembered him from earlier by the bar.



36. In cross-examination, she related further that when the trespasser kicked in her door: *“At that stage, the lights were off in my room. The lights from the hall was on. They always remain on. When the door was kicked in the light in the hall was on. The light in the hall, ... the light is a ceiling light just a bulb in ceiling. It is right outside my room. When the door opened, I was standing there and I saw a person.”* She stated that it was the same person she had seen at the bar earlier in the evening.
37. The trespasser was close enough that he put the machete to her neck. She was able to describe the machete: *“It was kind of rusty, the handle was white, the length of the machete, including the handle and the blade was approximately 3 feet”* [witness demonstrated, court estimate].
38. The trespasser spoke to her. She believed that he was asking for the money from the bar. *“I know I know you was working. I know you have the money. Don’t lie to me.”* He asked for her boss: *“Where’s your boss? Where’s Ray?”* The trespasser went on to speak to her after she had handed him the US300.00, saying, *“I don’t want you to call the police, because I’m gonna come and look for you and I’m gonna find you. I know who you are and I know where you live.”*
39. When asked directly by Crown counsel whether the male who was in the bedroom was the same male that was in the bar earlier, the Complainant responded, *“100%.”* I note that this interaction with the trespasser happened mere hours after the Complainant had seen the individual in the bar. The trespasser was not masked. She had ample opportunity to observe and speak to him. She immediately gave a description of the individual after she called the police, which is consistent with the person seen in the bar.
40. The Complainant also gave evidence that the Defendant approached her after the incident at her home on 9 November 2023. She described that some 8-9 days after the incident, she was on her way home after working the night shift at ESB in the company of a coworker. When she was halfway home, a black Honda Fit with no plates at the back of the car, approached them. It came from the direction of the ESB. As the car came alongside her the car stopped. She was near to the passenger side of the vehicle. She described that: *“That person, the same man that break into my room, was in the passenger seat.”* Her evidence was that she was 100% sure that this was the same man that broke into her room. She related that he said: *“I know you went to Cuba. I know*



- you just came back. I'm watching you*". That encounter took about one minute to one and a half minutes. She described the lighting as coming from the pole lights from the streets, *"the streetlights"*. There was nothing between her and the gentleman in the car.
41. She immediately called her boss and told him what had happened. The evidence of Rayal Forbes supports this interaction to some extent. His evidence was that on 19 November at about 1:00 am, he received a phone call from the Complainant. He stated that the Complainant had left the bar just after closing, *"right before me because I was taking out garbage."* When she called, she was *"very frantic."* She stated to him that the Defendant had driven up to her. He stated that she sounded very scared. He stated that he drove and picked her up as *"She was almost in view from the bar 200-300ft."* He took her to her apartment, and he was aware that she had called the police. He was able to identify a video clip that he provided to the police. In court, he recalled that the clip showed a black vehicle passing by on the road moments after the Complainant and another worker had left the bar. He was able to say that he recognized the make of the vehicle since he had a similar vehicle.
42. The Complainant attended an identification procedure on 22 November 2023, thirteen (13) days after the incident. There was no challenge to the manner in which the identification parade was conducted or to the array of photographs with which the Complainant was presented. The Complainant was shown the array of photographs, and she identified the Defendant from that array as being the person who broke into her room. She stated in evidence that at the time that she pointed out that person from the array of photographs, she was one hundred percent sure that it was the same male who had been in her room.
43. In cross-examination, the Complainant explained in answer to questions from counsel for the Defendant, that she did not know the Defendant's name before she gave a statement to the police. She clarified that when she identified the Defendant in the police identification procedure, she did not know his name and had only gotten to know his name when it showed up on the news when he was arrested. Although she said that she was 95% sure, her evidence when confronted that she was not 100% sure was: *"I was sure who he was. When I saw the picture it matched the face."* She said she did not say one hundred percent because she was scared and was going through a lot.

“I was sure about it ...I cannot say at that moment 100% for the reason I say 95% because they come up to me with a bunch of photos and I was like...but then I saw it and I identify him.”

“.. the difference at that moment I was still in shock of that. I was scared. I was afraid and now for me all that’s behind. But, I was sure. For me 5% is nothing.”

44. When confronted with the suggestion that the man at the bar was not the same person that she pointed out in the identification procedure, she stated: *“It’s the same person.”*
45. Apart from the Complainant on this main issue of identification, the evidence of the witness, Rayal Forbes, is relevant. Mr. Forbes related that he had known the Defendant for *“roughly a lifetime.”* Mr. Forbes described their relationship as not being strained and that he knew the Defendant because he is a member of the East End community that he grew up in, and he is also family.
46. Mr. Forbes related that he became aware of the burglary after he received a call from the Complainant. He described downloading CCTV tapes from the bar. He described being able to identify the Defendant on those tapes. He also related an earlier incident in September 2023 in which the Defendant had visited the bar speaking loudly and upsetting his customers and where he had to ask the Defendant to leave the premises. The CCTV tapes from the night of that incident in September 2023 with the individual at the bar were played in court in the presence of the witness. Forbes identified himself and the defendant on that footage. The witness also looked at the other video clips from the night of 8 November 2023 and recognized the Defendant from that night at the bar, identified him as he spoke to the Complainant that night at the bar.

Conclusions

47. The prosecution’s evidence of identification is strong. I found the Complainant a compelling, reliable witness. She did not seek to embellish her account. She answered all questions in a straightforward manner. The Complainant’s evidence was tested and was not shaken in cross-examination. I believe her evidence. I find that her evidence is bolstered by that of Mr. Forbes to the extent that he could place the Defendant in the bar before the incident. The Complainant stated in evidence that she had seen the Defendant at some point before she saw him at the bar on 8 November 2023. While there is no indication that the Complainant was present during the interaction between



- Forbes and the Defendant in September 2023, Forbes' evidence is evidence that the Defendant had been in or around the bar and, therefore, in an area where the Complainant may have seen him before the night of 8 November. Forbes' identification of the Defendant at the Bar from the CCTV of the night of the 8th of November is evidence that supports the Complainant's account that it was the Defendant at the bar on the night of 8 November.
48. Forbes' evidence further supports the Complainant's evidence of her interaction with the Defendant on the night of 19 November, to the extent that Forbes could say that there was a black Honda Fit which passed on the road shortly after the Complainant had left the bar. The evidence of both is bolstered by the CCTV evidence from the bar on the nights of 8 November and of 19 November 2023 which evidence was of good quality and clear.
49. In concluding that the evidence of the Complainant and the witness, Forbes, bolsters or supports the other, I have considered the quality of each witness' evidence of identification separately and have considered the possibility of one of them being mistaken in their identification of the Defendant. I am satisfied that each witness has given honest, independent, reliable and credible evidence.
50. I have considered the Complainant and the other prosecution witnesses as they gave their evidence. The prosecution evidence, as a whole, was consistent and reliable.
51. I have considered the CCTV evidence and the testimony of the prosecution witnesses, and I find that it was the Defendant in the bar on the night of 8 November 2023. As related above, the Complainant had ample opportunity to observe the Defendant in the bar. She later had the opportunity to observe the trespasser who kicked open her bedroom door and held a machete to her neck in the early hours of 9 November. Her very description of the machete speaks to the fact that she was in a position to see this individual. Her descriptions are further bolstered through the photo identification procedure, by her picking the Defendant as being the person who entered her bedroom.
52. The fact that, at the photo identification procedure, the Complainant said that she was ninety-five percent sure that the photo that she identified was the person who entered her bedroom in the early hours of the morning of the 9th of November, does not diminish the strength of other parts of her evidence of identification of the Defendant.



She explained in evidence what she meant when she said she was 95% sure of her identification of the Defendant. The officer who conducted the photo identification procedure quite rightly did not in any way attempt to encourage the Complainant to make a more positive identification. The Complainant has explained that to her, “*the 5% is nothing*”.

53. I am mindful that a defendant should not be convicted on such evidence which may be termed qualified identification evidence alone.⁶ However, in this case, this qualified identification evidence is not the sole evidence upon which this court has relied in coming to its verdict. It is evidence which does have some probative value. Given the strength of the other prosecution evidence of identification, this qualified identification evidence can and does support the other evidence of identification in the prosecution case.
54. I have also considered carefully the evidence of the Defendant. I do not believe his account of not being in the bar. This is contradicted by the CCTV evidence and the evidence of Forbes and the Complainant. I am mindful that the Defendant’s response to many of the questions put to him was that he could not remember. He could not remember going to the bar. He denied that he had been there or that he had gone to the Complainant’s apartment in the early hours of 9 November, and of being armed with a machete and demanding money from her. However, the Defendant’s lack of memory, if that is what it is, does not equal him not having committed the offence for which he has been indicted. I found his account to be unreliable and inconsistent. I am careful to return to the prosecution’s case.
55. I am satisfied so that I am sure, on the evidence presented by the prosecution, that the Defendant is guilty of the offence of aggravated burglary as charged.

Handwritten signature of Marlene I. Carter in black ink, written over a horizontal line.

Hon. Justice Marlene I. Carter
Judge of the Grand Court

⁶ *George* [2002] EWCA Crim 1923 ; *Brown (Merrick)* [2011] EWCA Crim 80