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

**CAUSE NOS. 2708/05, 2588/05  
SCA NO. 29/05**

**JAMES OLIVER DILBERT**

**V.**

**REGINA**

**Appearances: Mr. John Furniss for the Appellant  
Ms. Gail Johnson of the Crown – the Respondent**

**Before: Hon. Justice Levers**

**Heard: April 7, 2006**



**JUDGMENT**

The Appellant, James Dilbert was charged with two offences. Attempting to enter a dwelling house contrary to sections 231 and 303 of the *Penal Code 1995 Revision* (attempted burglary) and trespass contrary to section 231 B of the *Penal Code Law 12 of 1975, 1995 Revision*.

He pleaded guilty to criminal trespass but pleaded not guilty to the charge of attempted burglary. He now appeals against his conviction for attempted burglary and the grounds of appeal are:

- 1) that there was no evidence produced by the Crown to show that the fingerprints found at the scene were unique to the Appellant;

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- 2) in the absence of any other evidence to place the Appellant at the location, the conviction was unsafe and unsatisfactory;
  
- 3) the Learned Magistrate had no power to introduce evidence regarding fingerprints lead in other cases and in particular in this case when she had not even been asked by the Crown to take judicial notice at that particular point at any time during the hearing or closing speeches.

Grounds one and three can be conveniently taken together. In this case the Crown lead evidence from an expert that fingerprints were lifted at the premises. The fingerprint found was outside the premises on the outside wall by a broken wire window. It is important to note that no fingerprints were found anywhere else on the inside of the premises.

The expert in cross-examination testified that “it appeared that somebody was holding on to go inside.” Items were lost inside the premises but no fingerprints were found that belonged to the accused inside the premises. The fingerprint taken from the scene when compared with the Appellant’s fingerprints had more than sixteen characteristics that they shared and in cross-examination the expert confirmed that he is convinced beyond a reasonable doubt that this is the Appellant’s fingerprints.

The Learned Magistrate in coming to her findings said:

“I take judicial notice of the unique character of a fingerprint; I have lead, cross-examined on and heard evidence with respect to fingerprints examination on many occasions. I also say it is a widely known fact that each fingerprint is unique to its owner.”

1 Whilst it is true to say that nowhere in the evidence does the expert say that a fingerprint  
2 is unique to its owner, he has discharged the burden placed on the Crown by concluding  
3 beyond a reasonable doubt that it is the Appellant's fingerprints and it is my view that the  
4 Learned Magistrate did not err in law when she says she could take judicial notice of the  
5 fact that once sixteen characteristics were established then she could conclude that this  
6 fingerprint was unique to the Appellant. Grounds one and three therefore fail.

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8 However, the concern that I have is that the Learned Magistrate went on to conclude:

9 "in the result I accept the evidence of the Crown's expert,  
10 I agree with counsel that the print would not be there for  
11 the purpose of simply hanging off the ledge. There is no  
12 other explanation for the presence of the Defendant's print  
13 being there except that he was at those premises and that  
14 it was he who gained entry through the screen onto the  
15 patio and into the home. In the result, I say that I am  
16 satisfied so that I feel sure of the Defendant's guilt and I  
17 convict."

18 It is my view that this fingerprint alone cannot establish intention to steal nor indeed  
19 entry into the premises. The evidence is strong but it does not read to an irresistible  
20 inference that this accused was the one who burglarized the premises.

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22 It is true that the accused lied as to his presence at the premises but his lies cannot convict  
23 him. His lies cannot lead to an irresistible inference that he had the intention to enter the  
24 premises or attempted to enter the premises.

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1 At the highest, this is a matter of trespass but it is certainly not attempted burglary. I  
2 therefore allow the appeal on the charge of attempted burglary and quash the conviction.

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4 Dated this 13<sup>th</sup> day of April, 2006

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8 Levers, J.  
9 Judge of the Grand Court

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