

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. MR. JUSTICE SCHOEFIELD

IND. 8/90

REGINA

v.

CARL ANDREW HEWITT

Mr. Ivor Archie - for the Crown
Accused - in person

JUDGMENT

Carl Andrew Hewitt elected to be tried on indictment and by Judge alone for the offence of burglary, contrary to section 220 (1)(b) of the Penal Code the particulars of the offence being that he:

'..... on or about the 14th day of February 1990 did enter as a trespasser Silver Sands Apartment No. 38, West Bay Road, Grand Cayman and stole therein US\$250.00 approximately and C.I.\$50.00 approximately and one briefcase, the property of Mr. Michael Forrest.'

The prosecution case is that Michael Forrest (P.W.1), who lives at Apartment 38, Silver Sands, West Bay Road, retired to bed at about 11.00 p.m. on 13th February, 1990. He secured all windows and doors before he retired. At about 3.30 a.m. that night he was awakened by his wife and he went downstairs. He found that three glass louvres had been removed from the window next to the sliding patio doors which are at ground level and which lead onto the beach and swimming pool area.

The three louvres missing were together and were at waist level from the ground. Mr. Forrest could not find anyone in the apartment although he smelled body odour, and at that stage he did not find anything disturbed. He called the police and, among others, Detective Constable Mark Miller (P.W.7) came to the apartment. D.C. Miller found two of the missing louvres and put them in the apartment for examination for fingerprints, giving Mr. Forrest instructions not to touch them.

After the police departed Mr. Forrest discovered that at

least US\$250.00 which had been in his wallet on a downstairs sideboard was missing. His wife told him that C.I.\$50.00 was missing from her purse which was on a table adjacent to the sideboard. He called the police again and they came to take an additional statement. After they had departed he realized that his briefcase and contents were missing from next to the sideboard. That briefcase, apparently, was later found outside the apartment by a gardener and was handed to Detective Sergeant Parsons (P.W.3).

Mr. Forrest testified that he does not know the accused and had not given him permission to enter his apartment.

At around 10.00 a.m. that morning Detective Constable Clarke (P.W.2) and Detective Sergeant Parsons visited the apartment. D.C. Clarke said that the gap left by the three missing louvres was large enough for a normal adult to get through. Sergeant Parsons recovered the third louvre from outside the apartment and saw the two which had been placed inside the apartment by D.C. Miller. D.C. Clarke dusted the scene for fingerprints and several prints were lifted from the windows and from the three louvres which were displaced. They were put onto white backing cards and Sergeant Parsons wrote up the cards. In particular Exhibit 1 shows a lift from the tenth louvre from the ground in the window from which the three panes had been removed. Exhibit 2 shows a lift from one of the three glass louvres recovered from outside the apartment. The lifts, six in all, were handed to Detective Woman Constable Zoan Bodden (P.W.8) who in turn handed them to Detective Sergeant Myrie of the Identification Bureau of the Police Force.

At about 7.30 p.m. on the 16th February, 1990, P.C. McLaughlin was called to the security guard room of the Treasure Island Resort, West Bay Road. He there arrested the accused on suspicion of burglary and took him to the police station.

On the 19th February, 1990, D.W.C. Bodden took two sets of finger and palm prints from the accused, who gave them voluntarily. She handed one set to Sergeant Myrie (P.W.9) who compared them with the lifts handed to him earlier by D.W.C. Bodden. It is as well to

note here that only four of the six lifts were identified by D.W.C. Bodden and Sergeant Myrie in Court because the other two, Exhibits 1 and 2, had been released to Inspector Cook of the Identification Bureau. However the six lifts had been marked and numbered in sequence by Sergeant Parsons and there can be no doubt that the witnesses were testifying about the series of lifts taken by D.C. Clarke and written up by Sergeant Parsons at Mr. Forrest's apartment. Sergeant Myrie is trained in the comparison and analysis of fingerprints but is not formally qualified. His superior, Inspector Cook (P.W.6), was away on leave until late February. Sergeant Myrie compared the lifts with the fingerprints taken by D.W.C. Bodden and formed an opinion which he conveyed to his superiors.

At about 3.00 p.m. the next day, the 20th February, 1990, Detective Superintendent Hall (P.W.4) interviewed the accused under caution in the presence of Sergeant Parsons. A record of the interview was admitted in evidence as Exhibit 3 after being accepted as a record of his interview and voluntarily given by the accused. It involves a denial of any involvement in the burglary of Mr. Forrest's apartment. There is also reference to another, irrelevant, allegation in the interview record, but the accused was not charged with any offence in connection therewith so such reference was not prejudicial to him.

The record shows that the accused was charged and taken before the Summary Court on the 21st February, 1990. Later in the month Inspector Cook returned to the Island and saw the fingerprint lifts Exhibits 1 and 2, which were included in the batch of six lifts referred to above. On 5th March, 1990, Police Sergeant Joseph (P.W.5) took another two sets of finger and palm prints from the accused. He put one of these on a form, Exhibit 4, which he handed to Inspector Cook on the same day. Inspector Cook has been engaged in the identification of persons by way of fingerprints for over twenty-five years. He compared the lifts Exhibits 1 and 2 with the impressions on Exhibit 4. A lift on Exhibit 1 belongs to the right thumb of the person whose print appears on Exhibit 4 i.e. the accused. A lift on Exhibit 2 belongs to his left thumb. Inspector Cook produced photographic enlargements of the accused's right thumb print as on

Exhibit 4 and of the lift on Exhibit 1. He pointed to sixteen ridge characteristics which conform between the two and said that there were another six or seven common ridge characteristics. Sixteen common ridge characteristics is sufficient to satisfy English Courts that fingerprints are from the same person, but for police purposes he would be satisfied with eight common characteristics. A comparison between Exhibit 2 and the accused's left thumb print showed ten common ridge characteristics. He is of the opinion that the two sets of prints were made by one and the same person.

That, then, is a summary of the prosecution evidence.

The accused elected to testify. He is Barbadian and he arrived here from Jamaica on 13th February, 1990. He cleared Immigration at about 10.00 p.m.

The accused denied the offence and he said the evidence was fabricated by Mr. Johnson (his witness, whose evidence I shall review), Mr. Hall and the investigating team. He said his Constitutional rights were violated as he was not charged within 72 hours of arrest.

When cross-examined the accused said he had never met Mr. Hall or Mr. Johnson before. He has never been to Silver Sands apartments. His fingerprints were placed at the apartment by the investigating officer because of his antecedents. He did not go to the Seven Mile Beach area that night. In his interview he told Superintendent Hall that he was living in prison because he was asked a stupid question.

The accused called Detective Inspector Johnson. The Inspector testified that he sat in on an interview with the accused and took photocopies of his passport and a copy of a set of fingerprints to send to Barbados, but by mistake he sent them to Bermuda. He handed a 'teletex' message from Barbados to Superintendent Hall but he did not look at its contents. He denied conspiring with Superintendent Hall to have the accused imprisoned.

There is no doubt from the evidence before me that the apartment of Mr. Forrest at No. 38 Silver Sands, West Bay Road, was entered on the night of the 13th/14th February, 1990, and that items were stolen therefrom. Evidence was led that about US\$250.00 was taken from Mr. Forrest's wallet and his briefcase and contents, later recovered, were also taken. The evidence relating to the C.I\$50.00 allegedly taken from Mrs. Forrest's wallet was hearsay and therefore inadmissible. It is clear that entry to the apartment was made by means of removing the three panes of glass from the downstairs louvre window.

I am satisfied beyond all reasonable doubt that the fingerprint which was lifted onto the card Exhibit 1 is the right thumb-print of the accused. I am so satisfied after a careful consideration of Inspector Cook's expert evidence and having been afforded the opportunity to test his opinion by reference to photographic enlargements in Exhibit 6. There are sixteen ridge characteristics clearly demonstrated on Exhibit 6 as common to both prints and I am in no doubt that they were made by the same person i.e. the accused. So far as the other lift is concerned (Exhibit 2) the prosecution has not seen fit to produce a photographic enlargement so I may test Inspector Cook's opinion. In any event his testimony was that there were only ten ridge characteristics which he was able to identify as common to both Exhibit 2 and the accused's thumb print on Exhibit 4. I have not been made satisfied beyond doubt that they were both made by the accused.

The accused alleges that his thumb-print was planted at the apartment. He does not say how that could be effected but if there is a possibility that such is the case then the accused is entitled to an acquittal. I have had the opportunity of seeing D.C. Clarke and D.S. Parsons give evidence of how D.C. Clarke lifted the print Exhibit 1 from the tenth pane of glass from the ground in the window by which entry was gained to the apartment and how D.S. Parsons marked up the card Exhibit 1. I have seen the other witnesses give evidence, including the accused. There is no doubt in my mind that D.C. Clarke and D.C. Parsons were honest and reliable witnesses. I do not believe that there was a conspiracy by these officers and other members of the

Police Force to associate the accused falsely with this burglary.

There is no doubt whatsoever in my mind that the accused left his right thumb impression on the outside of the louvre windows by which entry was gained to the apartment.

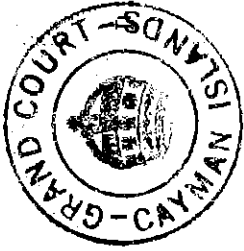
If there is an innocent explanation for the accused's thumb impression being on the window then, again, he is entitled to be acquitted. I have discounted the possibility of it being planted by the police. It must have been placed there by the accused between the time of his arrival through immigration at 10.00 p.m. on 13th February and the time of the burglary the next morning at about 3.30 a.m. The accused had no right to be at the apartment and, in fact, denies ever having been there. I can place no other inference on the evidence than that the accused was involved in breaking in to the apartment. There is no other inference to be drawn from the totality of evidence than that he broke into the apartment and stole from Mr. Forrest's wallet and he stole the briefcase. He is guilty of the offence as charged with the amendment of deleting from the list of items stolen the sum of C.I\$50.00.

One matter I ought to mention is that the accused maintains that his rights were violated by the length of time he was kept in custody by the police before he was taken to Court. He was arrested on the evening of Friday 16th February, 1990. The record shows that he was taken to Court on Wednesday 21st February, 1990 at 10.00 a.m. He fingerprints were taken on Monday, 19th February 1990, and were examined on 21st February, 1990. On 20th February Superintendent Hall interviewed the accused. He was thus held in custody from Friday evening to the following Wednesday morning before being taken to Court. The Court appreciates the pressure of work on our Police Force and the difficulties involved in investigating crimes committed in these Islands with no doubt limited manpower. However, these difficulties should not stand in the way of speedy access to the Courts and suspects should not be held in police custody for one hour, let alone a day, longer than is necessary. The Police Force,

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and the Courts, must be constantly vigilant to ensure that delays in the process of investigation do not occur so as to cause a suspect to be kept in police custody unnecessarily.

As it is I convict the accused on the indictment with the single deletion referred to above.



[Handwritten signature]

Schofiel

28th May, 1990