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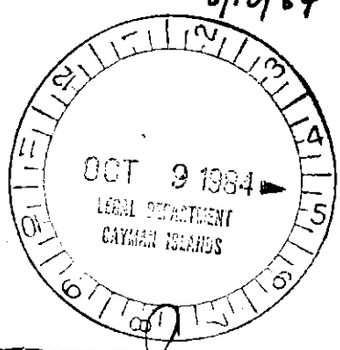


IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN
BEFORE THE HON SIR JOHN SUMMERFIELD CBE QC JP
CHIEF JUSTICE

CASE NO. 1734/83
APPEAL NO. 16/84

BREVAN WALTER BROWN V REGINA

BURGLARY

Mr. Hill QC (with him Mr McField) for appellant
Mr. Ground for respondent

JUDGMENT

The appellant was convicted of burglary and sentenced to 18 months imprisonment. The appeal is against conviction and sentence.

The appellant had also been charged with the theft of some jewelry but was acquitted.

The main point urged in relation to the conviction was that there was no cogent and reliable evidence that the appellant made an effective and substantial entry into the building.

Mr. Brooks owned a house at Frank Sound which he let to two tenants. The north window of the north bedroom was intact when one of the tenants left the house a few minutes before 8 a.m. on the morning of Friday 2nd December 1983. The north window is at the back of the house; the front of the house faces the road.

At 12.30 p.m. on that same Friday Mr. Brooks visited the house to inspect it. He drove up to the house and parked his truck. Getting out of the vehicle and before he closed the door of his truck he heard a noise like someone falling to the ground. He ran to the rear of the house. He found the appellant, whom he knew, directly under the north window of the north

bedroom. The bottom glass of that window was broken. It was open. The mosquito screen behind it had been pushed inside the house. There was glass below the window. It was the fifth time in a short period of time that the house had been broken into.

When Mr. Brooks came upon the appellant under the north window the appellant started to run towards the bush on the east side of the house. Mr. Brooks called him and told him it did not make sense to run. The appellant stopped and started to cry. He begged Mr. Brooks to give him a chance because he needed money to feed his two children and wife who couldn't get a job. Mr. Brooks told him that he was waiting for the Police. The appellant kept begging him to give him a chance.

That evidence alone is sufficient to justify the inference that the appellant had made substantial entry; in particular the state of the window and screen and the sound of someone falling to the ground giving rise to the inference that he had jumped from the window on hearing the arrival of the truck.

Later it was discovered that jewelry was missing from a jewelry box from the room of one of the tenants but the learned Magistrate gave the appellant the benefit of a very slender doubt and acquitted the appellant of the charge of theft. That fact is, therefore, of no relevance to the charge of burglary. It was urged that because of that finding the learned Magistrate's finding on the burglary charge could not stand. However, it does not follow that, because of the acquittal on the theft charge, the burglary charge cannot be sustained. The acquittal on the theft charge is compatible with a possible view of the facts, namely, the possibility that the jewelry had been stolen sometime earlier.

To return to the narrative, while the appellant was still crying Mr. Brooks flagged down a car driven by Mr. Ebanks. In the presence of the appellant Mr. Brooks told Mr. Ebanks that he had found the appellant "in my house". The appellant was still crying and "going on". Eventually the police arrived. The motor cycle the appellant had ridden when he went to

the house was found to the east of the house concealed in cocoplum bushes.

Mr. Ebanks' version of the conversation in the presence of the appellant was rather fuller. He said that Mr. Brooks told him that the appellant had just broken into his house and that this was the fifth occasion on which it had been broken into. The appellant then said he had stopped in the bush to defecate and when he looked down he could see the window into Mr. Brooks' house open and "he didn't know what there was something tempting him to go into the house". Mr. Brooks said it had happened five times. The appellant then said that he had done it this time but he did not do it on the other occasions. He again asked Mr. Brooks to give him a chance. He said he would "fix back any damage that was done to the screen and window". The police arrived and the appellant went away. In cross-examination Mr. Ebanks insisted that the appellant had admitted that he had broken into the house because he wanted to get milk for his baby

It was suggested that this was in conflict with what Mr. Brooks had said in cross-examination, namely, that the appellant told him that he had never been in the house. However, when one examines the context in which that remark appears it is clear that it relates to a point in time immediately after Mr. Brooks discovered the appellant's presence by the house. That was before Mr. Ebanks' arrival. Mr. Ebanks, of course, was relating events which occurred after his arrival.

That was the substance of the evidence for the prosecution. It may well be that the appellant had defecated in the bushes sometime earlier but that fact would not detract from the strength of the evidence for the prosecution if it is accepted. On that evidence it is clear that he had entered Mr. Brooks' house as a trespasser. There can be only one reasonable inference as to his intention at the time. His admissions are sufficient.

The appellant gave evidence. His version was substantially different from that of Mr. Brooks. He claimed that the was defecating in the bush on the east side of the house when Mr. Brooks arrived in his

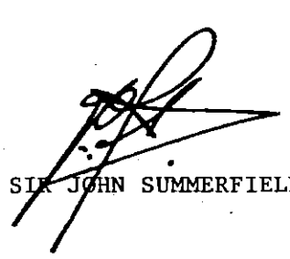
truck. Mr. Brooks walked around and called "who is there?", whereupon the appellant rose and pulled up his pants. Mr. Brooks summoned him over and a somewhat different conversation took place. He accused the appellant of breaking into his house but the appellant told him that he was on the east side defecating The appellant said that he did not cry; that he did not beg for a chance.

There was criticism of the fact that it is not apparent from the record that the appellant had been cross-examined about the admissions given in evidence by the prosecution witnesses. It is often difficult to tell whether that is so or not. One answer was recorded in this form: "I was telling them that I didn't know what they were talking about". That may have been in answer to a question about the admissions. More important, of course, is the fact that in his evidence he did not deny having made any of those admissions or try to explain them away in any way.

The learned magistrate gave a very brief judgment. It was the sort of judgment in a summary trial where the magistrate takes the view that it is a clear cut case. It is implicit from his finding that he accepted the evidence for the prosecution. By implication he must, have rejected to the appellant's version. His reference to behaviour obviously included admissions or else he would have expressed at least doubts about them. The evidence was ample to justify the finding.

Having regard to the prevalence of this type of offence the sentence of 18 months imprisonment was not unreasonable. The appellant had seven previous convictions. There was no suggestion that none of them were relevant.

The appeal against conviction and sentence is dismissed.



SIR JOHN SUMMERFIELD.

8th October 1984.