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OF

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

SCA#133/92

REGINA V. JUDSON C. CHRISTIAN

JUDGMENT

Mr. Furniss for the Appellant
Mr. Roberts for the Crown

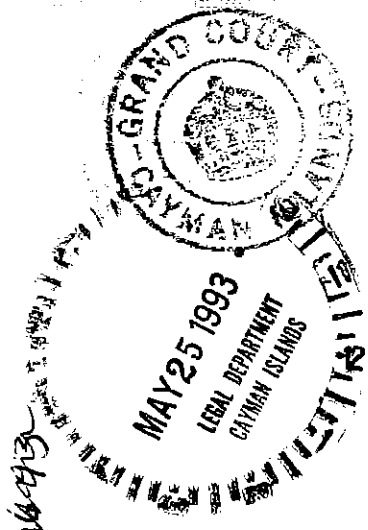
SCHOFIELD J.

On the 1st September, 1992, Judson Charles Christian ("the appellant") appeared before the Summary Court and pleaded "guilty" to three counts of burglary and one count of wounding. He pleaded "not guilty" to a charge of attempted burglary but was convicted after trial. He now appeals against that conviction.

The Crown led evidence from one witness. Police Constable Gregory Ebanks testified that he was driving a police vehicle at 9:15 a.m. on the 7th April, 1992, in company with Sergeant Myles. As a result of a report they went to Mrs. Wood's residence in Locust Lane, Northward. As they turned into the yard, from a distance of 15 to 20 feet they saw the appellant and a juvenile inside the garage, which was open to the driveway. P.C. Ebanks said he saw the appellant with his back to him trying to prise open with a knife the door to the house leading from the garage. The juvenile had a sock in his hand. When the appellant heard the police car he dropped the knife, which was exhibited, with the sock allegedly in the juvenile's possession, to Court.

The police officers asked the appellant what he was doing there and he told them he had come to wash clothes. Indeed the washer and dryer, which were about 5 feet away, and it seems in a separate washroom attached to the garage, were in operation.

The appellant admitted he was in the garage and was washing his clothes without Mrs. Wood's permission. He said in his evidence he was about 5 feet from the door and he denied having



the knife or trying to prise the door open. The knife was found he said, "down by the garage, like on the side by the garage cement."

The sum total of the learned Magistrate's judgment reads:

"It seems quite clear to me that the accused man was there washing clothes and he had the dryer going. But it seems equally clear that the temptation of the door was too great for him, and, as the Constable says, he was there trying to pry the door open, and that's what the policeman saw, because he would not have been able to see the accused man from the driveway. He would have had to get to the garage. It was on his approach to the garage. Yes, I find you guilty."

The police officer's evidence was that there was a straight view from the driveway into the garage. The appellant did not contradict that evidence. The officer was not asked whether one could see into the washroom from the driveway and although Crown Counsel put it to the appellant that this was not possible, the appellant denied it. The only evidence in connection with the view from the driveway therefore was to the effect that the police officer's view was unimpeded. Yet the learned Magistrate in his judgment appears to have made a finding in that connection against the evidence.

On my own independent review of the evidence I consider the prosecution case to be unsatisfactory and too weak in the circumstances to support a conviction. The Court heard the evidence of one police officer whose view of the incident was, on his own admission, fleeting. The second police officer present at the scene was not called. There was no supporting evidence, for example forensic evidence to show that the appellant ever had hold of the knife.

The appellant's conviction was unsatisfactory; it is quashed and the sentence imposed upon him, of 6 months imprisonment, is set aside.

On three burglary counts to which the appellant pleaded "guilty" he received a total sentence of 2 years imprisonment. On the wounding charge he received a further 3 months imprisonment. The burglaries were all of residential properties and were committed over a period of four months. The appellant had previous convictions for burglary. The wounding was committed by the appellant throwing a bottle at a lady and a piece of broken bottle lacerated the lady's leg leaving a scar.

The sentences imposed were legal and appropriate.

The appeal succeeds to the extent that the conviction and sentence for the charge of attempted burglary (1721/91) are set aside.



JUDGE



Dated this 21st day of May, 1993