



MC/CRIM/03/24

JUDGMENT

Rex

v

Coban Eriksen

before

HHJ Malcolm Simmons

JUDGMENT GIVEN ON

25 September 2024

Heard on 25 September 2024

Representation

Stuart Walker, Crown Counsel

Damian Sabino, Bird & Co Solicitors

Prosecution

Defence

This judgment will be published until 17 September 2028 for this reason:

- *As per Schedule 10 of the Criminal Procedure Evidence Ordinance, 2014, the conviction of the defendant will be considered spent.*

Any concerns about the publication or content of this document will be placed before the Judicial Officer(s) for consideration.



IN THE FALKLAND ISLANDS
MAGISTRATES COURT

Case No. MC/CRIM/03/24

BETWEEN:

REX

-v-

COBAN ERIKSEN

JUDGMENT

Before HHJ Malcolm Simmons (Senior Magistrate)

Mr. Stuart Walker appeared for the Prosecution

Mr. Damian Sabino appeared for the Defendant

The Defendant was present at trial, supported by an Appropriate Adult

Introduction

1. The defendant is charged with an offence under section 354 (1) (a) of the Crimes Ordinance 2014 that on 8th February 2024 he entered a dwelling, namely [an address], Stanley as a trespasser with intent to steal or do unlawful damage to anything therein.
2. He was interviewed by police on 23rd February 2024. A lawyer and Appropriate Adult were present.
3. On 18th July 2024 he entered a Not Guilty plea to the charge.

Directions

4. I have previously directed myself on how I should approach the evidence and how to approach my findings on the facts.
5. The burden is on the Prosecution to prove that the Defendant is guilty. The Defendant does not need to prove anything. The Defendant does not need to prove that he is innocent. The Prosecution will only succeed in proving that the Defendant is guilty if I am sure of the Defendant's guilt. If I am not sure, then I must return a 'not guilty' verdict.
6. I do not have to decide every point that has been raised in this case. I am entitled to draw inferences, that is, to come to common sense conclusions based on the evidence which I accept, but I may not speculate about what evidence there might have been or otherwise allow myself to be drawn into speculation. I have not made any findings of fact unless I am sure and, although I might not preface each finding of fact with that point, it should be taken that I am sure on the evidence of any factual finding that I have made. If I have made a factual finding it is on the basis that the Prosecution has the burden of proving its case so I am sure.
7. I have not conducted any reading into this case beyond the evidence sought to be and in fact relied on by the prosecution and defence. I have not considered any material that was not placed before the court or referred to in questioning of witnesses. I have not discussed the case or the evidence with anyone. Accordingly, the reasons for my verdict are entirely

based on the evidence, my assessment of it and of the witnesses and the conclusions that I have drawn from all the evidence.

8. Allegations of the type that arose in this case may be highly emotive. I have put aside any emotion and judged this case solely on the evidence.
9. The complainant gave evidence from behind a screen. That is entirely normal in cases such as this and is a process designed to elicit the best evidence from the witness. This does not reflect at all on the Defendant and did not affect my assessment of the evidence. I assessed this evidence in exactly the same way as I assessed other evidence in this case.
10. Inconsistencies in accounts can happen whether a person is telling the truth or not. I have considered all the evidence that has been presented in this case, including apparent inconsistencies in order to evaluate the truthfulness of each witness.
11. In deciding whether an account given by a witness is true, I have looked at all the evidence, including inconsistencies. If I am sure the account is true, I have relied upon it. If I am not sure, I have disregarded it.
12. The fact the Defendant is in the dock is not relevant. I have treated the evidence of all witnesses equally. I shall decide whether any witness has been truthful and accurate or not, by having regard to what they say, whether it is consistent with what they have said on other occasions, how they gave evidence and how it compares to other evidence and to common sense.
13. The defendant has previous convictions for burglary. The prosecution say that they show that the defendant has a tendency to commit offences of this type and so it is more likely that the defendant entered the property with the intention of stealing or causing criminal damage. The defence say that the previous convictions are different because, in respect of this charge, when the defendant entered the property, it was not with the intention of stealing or causing criminal damage but a 'cry for help'.

I will have to decide whether these previous convictions show that the defendant has a tendency to behave in this way. If I am not sure that his previous convictions show that he has such a tendency then I must ignore them. But if I am sure that they do show such

a tendency then this may support the prosecution case. It is for me to decide whether it does and if so to what extent. However, I must not convict the defendant wholly or mainly because of them. The fact that someone entered property in the past with the intention of stealing or causing criminal damage does not prove that he did so on this occasion. The defendant's previous convictions may only be used as some support for the prosecution case if, having assessed the evidence, I am satisfied that it is right so to do.

14. The defendant chose not to give evidence. That is his right but it has these consequences: the defendant has not given evidence in the trial to contradict or undermine the evidence of the prosecution witnesses. He gave an account to police that he stands by. That interview is part of the evidence, but it was not given on oath and tested in cross-examination.

When I asked Mr. Sabino whether the defendant was going to give evidence, he said the defendant understood that if he failed to do so, I would be entitled to draw inferences from that failure; in other words that I would be entitled to conclude that the defendant did not feel he had an answer to the prosecution case that would stand up to cross-examination.

I must decide whether or not the defendant's failure to give evidence should count against him. First, I must be sure that the prosecution case is so strong that it calls for an answer. Second, I must be sure that the true reason for not giving evidence is that the defendant did not have an answer that he believed would stand up to questioning.

Of course, it is for the prosecution to prove the guilt of the defendant and while the defendant's failure to give evidence can provide support for the case, I cannot convict the defendant wholly or mainly because of that failure.

15. I heard speeches from both sides and I may wish to take account of the arguments in the speeches I have heard. I have to say they have been helpful from both sides, but I am not bound to accept them. Counsel for each of the parties ask me to look at the case from their respective. Evidence is what I've heard from the witness box or what was read or the facts that have been agreed.

16. I take all of these matters into consideration in my assessment of the evidence.

The Evidence

17. The complainant was the occupier of [the property]. She lived alone.
18. On 8th of February 2024 at about 8.30pm she visited her friend, AB, who was residing at Murray Heights. The complainant said that when she left home, it still light. She closed the front door but did not lock it.
19. The defendant also resides at an address at Murray Heights, approximately four cabins from the property occupied by AB. The complainant was a regular visitor at AB's house, often travelling there in her private vehicle that she parked in the driveway.
20. She thought she had been at AB's home for about 30 minutes when she received a message from her neighbour, CD, requesting she call her. CD told the complainant what they had observed.
21. EF and his wife, CD, live next door to the property occupied by the complainant.
22. EF described the defendant moving around in the garden stooped over, apparently trying to make himself less noticeable. In cross-examination, he accepted that the defendant naturally walked with a stoop. EF described the defendant acting furtively and pausing before leaving the property, apparently waiting for a police car to pass before emerging onto the street.
23. CD described seeing the defendant acting in a suspicious manner, ducking down behind the fuel tank in the garden of [the complainant's property]. She said the defendant disappeared from view for about 5 – 10 minutes. When she next saw him, he was stooped over, walking along the fence line, between garages, in her words, "trying to sneak away", before leaving property.
24. The complainant gave evidence that, prior to leaving the house, she had neatly folded items of clothing that she placed in a washing basket in the kitchen.
25. In a message to CD, the complainant said she 'thought' the washing had been disturbed. In her evidence, she said she was sure it had been, in her words, "rummaged through". In addition, it was her evidence that drawers in a chest of drawers in her bedroom had been opened and partially closed. She described items being trapped in the drawers.

26. Although her property had been disturbed, nothing had been taken or damaged.

27. The complainant said that on 1st February 2024, the defendant had sent her a ‘follow’ request on Instagram. She said she ‘declined’ that request.

28. The complainant knew of the defendant. She knew he had been in trouble in the past and she said she was aware of the nature of those offences. She accepted that she had sent an email to police on 20th February 2024 in which she had alluded to the defendant committing offences against women and that he had been allowed to ‘get away with it’.

29. When police officers attended the defendant’s home address on 8th February, the defendant immediately asked “*do you have a warrant*”. The defendant was informed of the allegation of burglary and replied “*whatever I supposed to steal have you found it?*”. The defendant was arrested and cautioned and made no reply to caution.

30. The defendant was interviewed by police on 23rd February 2024. He admitted to having entered [the complainant’s property]. He said he had been on his way home from cricket practice and had entered the property on impulse. He said cricket finishes at 9pm.

31. The defendant said he did not know who lived at the address. He said he “just went there.” He told police it was a “cry for help”. He said he thought that by getting caught, he would get support he thought he needed, that he had not been receiving. He denied having gone through the occupier’s personal belongings. He denied having removed anything from the property. He told police he could not remember what he did inside the property. He said he could not remember opening a drawer.

Elements of the Offence

32. Under section 354 (1) of the Crimes Ordinance 2014, a person who

(a) enters any building or part of a building as a trespasser and with intent to commit an offence mentioned in subsection (2)…
commits burglary.

33. The offences referred to in subsection (1)(a) are —

- (a) stealing anything in the building or part of a building in question;
- (b) inflicting on any person in the building any grievous bodily harm;
- (c) doing unlawful damage to the building or anything in it.

34. The maximum penalty on conviction for burglary in a dwelling-house is imprisonment for 14 years or a fine, or both.

35. There is no need for the prosecution to prove that the ulterior offence was actually committed. It is trite law that it is no defence that the defendant only intends to steal if they find something worth stealing or that there is nothing worth stealing in the building when they enter it. The prosecution does not have to prove any attempt to carry out the ulterior offence.

36. The prosecution must prove that the defendant had the intention to steal or to cause damage at the time of entry.

Assessment of the Evidence

37. I remind myself that the burden is on the Prosecution to prove that the Defendant is guilty. The Defendant does not need to prove anything. The Defendant does not need to prove that he is innocent. The Prosecution will only succeed in proving that the Defendant is guilty if I am sure of the Defendant's guilt. I have not made any findings of fact unless I am sure and, although I might not preface each finding of fact with that point, if I have made a factual finding it is on the basis that the Prosecution has the burden of proving its case so I am sure. I recall the other directions I have given myself.

38. In arriving at a verdict, I have used a route to verdict, to which I shall turn having considered the evidence.

39. When assessing the evidence, I have put to one side the defendant's previous convictions and reached a verdict based solely on the evidence presented in this case.

40. There is no dispute that on 8th February 2024 the defendant, Coban Eriksen, entered the residential property at [address], Stanley, occupied by the complainant.

41. Entry to the property was gained through an unlocked front door. No damage was caused by the defendant in entering the property.

42. It was the defendant's case that his entering the property was a 'cry for help'. He told police that he was on his way home from cricket at the time.

43. The defendant chose not to give evidence. That is his right. I remind myself of the directions I have given myself.

44. The complainant knew of the defendant and she knew about his previous offending.

45. I listened to her carefully as she gave her evidence. She was an honest, reliable witness. She was very sure that clothing she had neatly folded had been disturbed. She was equally sure drawers in her bedroom had been opened and clothing rummaged through.

46. The defendant told police he did not know who occupied those premises. I do not accept that. I am sure he knew it was the complainant. She was a regular visitor at [AB's house], only a few doors from where he lived. It is no coincidence that only the week before, he had sent a 'follow' request to the complainant on Instagram. The defendant did not choose a random house to enter. He chose that specific house because it was the property occupied by the complainant, someone in whom he clearly had an interest.

47. Having entered her home, he proceeded to look through the clothes she had neatly-folded and left in a laundry basket in her kitchen before going into her bedroom and opening drawers in a chest of drawers that contained other items of the complainant's clothing.

48. There was no evidence any items had been taken or property damaged.

49. EF and CD were both honest, reliable witnesses who have known the defendant since he was a child. They described the defendant acting furtively in the garden of the complainant's property. They had a clear view of the defendant. They were in no doubt that it was the defendant whom they had observed in the garden.

50. CD described the defendant acting in what could only be characterised as a highly suspicious manner, before disappearing for 5-10 minutes.

51. The defendant told police that his entering the complainant's property was a 'cry for help'. The defendant would have the court believe that, on his way home from cricket, he suddenly had an urge to seek support that he believed he was not receiving and that being found on those premises was a vehicle to get that help and support.

52. However, his behaviour in the garden of the complainant's property, as described by EF and CD, is inconsistent with that assertion. He was clearly attempting to evade detection. So too was his confrontational attitude towards police when they arrived at his address later that same day.

53. The defendant's account that his entering the property was a 'cry for help' is simply not capable of belief.

54. The defendant clearly had a personal interest in the complainant. He targeted her home at night, searching through her clothing in a washing basket and in a chest of drawers in her bedroom.

55. I now turn to the agreed route to verdict.

Q1. Is the court sure that the defendant entered the dwelling known as [address]?

If no, not guilty
If yes, go to Q2

My answer: YES

Q2. Is the court sure that at the time the defendant entered [the property] he entered as a trespasser?

If no, not guilty
If yes, go to Q3

My answer: YES

Q3. Is the court sure that at the time the defendant entered [the property] as a trespasser he intended to steal, or cause unlawful damage, to anything therein?

If no, not guilty

If yes, guilty

My answer: YES

The defendant is guilty of the offence charged under section 354 (1) (a) of the Crimes Ordinance 2014, that on 8th February 2024 he entered a dwelling, namely [address], Stanley as a trespasser with intent to steal or do unlawful damage to anything therein.