

**IN THE SUPREME COURT OF BELIZE, A.D. 2013**  
**(APPELLATE JURISDICTION)**

**APPEAL FROM THE INFERIOR COURT FOR THE BELIZE JUDICIAL DISTRICT**

**Inferior Appeal No. 37 of 2012**

**JOEL MCGREGOR**

**APPELLANT**

**AND**

**THE POLICE**

**RESPONDENT**

**BEFORE The Honourable Mr. Justice Adolph D. Lucas**

**Appearances: Ms. Kaysha T. Grant for the Respondent  
Applicant in Person**

**J U D G M E N T**

[1] The appellant appealed against his convictions and sentences for the crimes of burglary and damaging property. He was tried before Magistrate Dorothy Flowers in Belize City. For burglary he was sentenced to seven years imprisonment and for damaging property a sentence of six months imprisonment was imposed on him. Sentences are to run concurrently with effect from the date of convictions on 17 February 2012.

[2] The evidence of the prosecution disclosed that on 6 September 2010 Mrs. Wendy Castillo left her house in Hattieville Village, Belize District, at 7:00 am and went to her workplace. Her house is a concrete bungalow structure and the yard is fenced with 6 ½ feet in height chain link. Before leaving her house Mrs. Castillo closed the windows and locked the doors of the house. About 3:30 pm on the said day, while she was in the company of her husband the latter received “a call from the police station”.

[3] Mr. and Mrs. Castillo left from where they were and they proceeded to their house; policemen were waiting for them there. They entered the house. Mrs. Castillo observed a door that leads to the back stairs was damaged. The metal which held the frame to the door was ripped off; a metal casing around the upright to the door was removed. Mrs. Castillo went to the front entrance door which she found open.

[4] Mrs. Castillo observed the entire kitchen was ransacked and there were some grocery items on the floor. The bedroom was also ransacked and missing therefrom were jewellery and other items. Cosmetic items were also found missing from the bathroom. Total items stolen from the house was over BZ \$16,000.00.

[5] About 10:00 the night of 6 September 2010 Mrs. Castillo was called to attend at Hattieville Police Station. There she saw the appellant whom she knew. Without any prompting the appellant said loudly that it was not him who entered the house but he knew where some of the items were and he would take them to the location.

[6] Policemen and Mrs. Castillo, led by the appellant went, in police motor vehicle, to a location known as Windmill Area in Hattieville Village. In bushes the appellant searched the area by digging the ground for about two minutes and thereafter he unearthed a black plastic bag. Inside the bag was DS game which Mrs. Castillo recognised to be her property which was missing from her son's room.

[7] The appellant was charged, jointly with one Carlton Wade, with burglary and damaging property. On 7 September 2010 he (Wade) was found with some of the jewellery and cosmetic items. He too was convicted and was sentenced.

[8] The appellant gave a statement under caution to Corporal No. 1060 Donald Gillett. In the statement the appellant confessed that he along with the co-accused broke and entered into Mrs. Castillo's house and that he got a Black Game Boy bag therefrom.

[9] Five witnesses were called by the prosecution, namely Mrs. Wendy Castillo the virtual complainant, Corporal Gillett who recorded the statement under caution from the appellant, justice of the peace Mrs. Rita Coleman who witnessed the recording of the statement dictated by the appellant to Corporal Gillett, Ms. Angela Wiltshire Scenes of Crime Technician and Corporal No. 1163 Elroy Vernon the investigator who was along with the virtual complainant when the appellant unearthed the bag.

[10] During the trial the appellant had no questions to ask any of the five prosecution's witnesses. At the close of the prosecution's case he had nothing to say in his defence; he remained silent.

[11] Appellant filed six grounds of appeal of which three were overlapping. The grounds of appeal were reduced to three and to which the appellant argued are these:

- (i) The evidence is unreasonable and cannot support the conviction;
- (ii) the sentences were harsh; and
- (iii) the convictions and sentences should be quashed.

[12] The appellant's submissions were brief. On the first ground he submitted that he was not found with anything supposedly stolen from Mrs. Castillo's house.

[13] The appellant, on the second ground, argued that the sentences were harsh. He said, "This was the first time I got time – imprisonment."

[14] In terms of the third ground, that is, the convictions and sentences should be quashed, the appellant relied on his short submission on the first ground.

[15] Ms. Kaysha Grant, learned Crown Counsel was equally brief. She contended that there is evidence to support the convictions of the appellant. The statement under caution in which he admitted his participation in both crimes was not challenged by him.

[16] In regards to the harshness of the sentence for burglary, Ms. Grant submitted that section 148(4) of the Criminal Code, Chapter 101 provides for an offender convicted in the magistrate court for burglary to be sentenced to a term of imprisonment for not less than five years but which may extend to ten years.

[17] Burglary is contrary to section 148 (1) of the Criminal Code, Chapter 101 of the Substantive Laws of Belize, Revised Edition 2003. There are two modes in committing the offence which are provided by paragraphs (a) and (b).

Paragraph (a) reads:

*148 (1) A person is guilty of burglary if-*

*(a) he enters any building or part of a building as a trespasser with intent to commit the crime, mentioned in subsection (2).*

The crimes referred to in subsection (1) (a) above are: stealing anything in the building or part of a building in question, of inflicting on any person therein any grievous bodily harm or raping any woman therein, and of doing unlawful damage to the building or anything therein.

The second paragraph states:

*(b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.*

The appellant was arraigned and was convicted of burglary which is contrary to 148 (1) (b).

Subsection (4) provides for punishment for persons found guilty of burglary:

(a) .....

(b) *on summary conviction, to a term of imprisonment which shall not be less than five years but which may extend to ten years.*

Act No. 29 of 2011 has increased the penalties for, inter alia, burglary and for aggravated burglary.

The provision to section 148 (supra) gives a trial magistrate or a judge a discretion to impose other sentence (whether custodial or non custodial) if a convict has no previous conviction of any offence of dishonesty. The proviso does not apply to the appellant; he has previous convictions for crimes of burglary and of theft.

[18] From the evidence adduced by the prosecution the trial magistrate is right in finding the appellant guilty as charged. The sentence of seven years is not excessive or harsh.

[19] The second count of damaging property is contrary to section 132(1) of the Criminal Code. The damage to Mrs. Wendy Castillo's house was done without lawful excuse and with the intention to cause damage to it. Section 135(2) lays down the punishment on summary conviction for a term not exceeding one year.

[20] I was concerned by the fact that the appellant and his co-accused were also tried and convicted of damaging property for damage caused to the door to effect their entry into the house. In **Francis Kenny v R (1930) 21 Cr.App.R. 78** the appellant pleaded guilty to three crimes: pavilion breaking, larceny and malicious damage. In a short judgment the learned Chief Justice commented:

*“The malicious damage in this case was an incident of the breaking in, but nevertheless the appellant was sentenced in respect of each offence as though they were distinct offences..... It is obvious that there should not be concurrent sentences for two aspects of the same matter, and accordingly this Court will quash the conviction for malicious damage.....”*

The learned Crown Counsel humbly contended that although the damage was done to effectuate entry into the virtual complainant’s house, burglary and damaging property are two separate and distinct offences.

[21] Before the passage into legislation the 1968 Theft Act of England, the law pertaining to the crime of burglary was provided by to the 1916 Larceny Act. Section 25 of the Act reads;

*“Larceny Act, 1916, s. 25 – Burglary. Every person who in the night - (1) breaks and enters the dwelling house of another with intent to commit any felony therein; or (2) breaks out of the dwelling-house of another, having- (a) entered the said dwelling-house with intent to commit any felony therein; or (b) committed any felony in the said dwelling-house; shall be guilty of felony called burglary.”*

In the commission of burglary, contrary to the 1916 Larceny Act, there was the requirement of, inter alia, breaking and entering a house. Archbold Criminal Pleading Evidence and Practice, Thirty-Sixth Edition, at paragraph 1801, the author explains:

*“An actual breaking is where the offender for the purpose of getting admission for any part of his body, or for a weapon or other instrument, in order to effect his felonious intention, breaks a hole in the wall of a house, breaks a door or window, kicks the lock of a door, or open it with a key, or even by lifting a latch, or unlooses any other fastening to doors or windows which the owner has provided.”*

[22] Under the 1968 and 1978 Theft Acts of England actual breaking into any building is not an essential element to the crime of burglary. The theft segment in our Criminal Code is similar to those two Acts of England. I have alluded to the crime of burglary at paragraph 17 above. In section 148 (1) (a) of the Criminal Code damaging of property is an ingredient of the crime of burglary where an offender enters any building or part of a building as a trespasser with intent to commit any of the four crimes mentioned in section 2. Unlawful damage to the building or anything therein is one of the four crimes. On the other hand, damaging property is not an element of burglary in relation to section 148 (1) (b) of the Code. Paragraph (b) refers to a trespasser who having entered a building commits either of two offences, or both namely, inflicting or attempting to inflict

grievous harm on any person therein the building or stealing or attempts to steal anything in the building or part of the building.

I concur with the learned Crown Counsel's contention that damaging property is a separate and distinct crime from that of burglary. I reiterate, damaging property is not an element of burglary contrary to section 148 (1) (b). In this case the appellant and his co-accused having entered as trespassers the virtual complainant's house, in the process of entry they caused damage to the building, stole therein various items. The conviction of the appellant for damaging property is legally and evidentially sound.

[23] The sentence of six months imprisonment imposed on the appellant for damaging property to run concurrently with the sentence of seven years for burglary, in the circumstances, is not harsh.

[24] The sentences and convictions are affirmed and therefore the appeal is dismissed.

**DATED: 1<sup>st</sup> November 2013**

**(ADOLPH D. LUCAS)**  
**Justice of the Supreme Court**