

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCR2025/0082

BETWEEN:

THE KING

AND

MARK WILLOCK

Appearances:

Mr. Curtis Cornelius, Crown Counsel for the Prosecution

Mr. Mark Willock, Unrepresented

2026: June 8; 12.

DECISION

Background

- [1] **SPENCER, J.:** Mr. Willock (“the defendant”) has been charged with one count of dwelling house burglary contrary to section 29(a) Larceny Act, Cap 241 of the Revised Act 1992. The particulars allege that on 9th January 2023, in Old Road in the Parish of St Mary, Antigua and Barbuda, he entered the dwelling house of Rosemarie Francis, with intent to commit a felony, to wit, larceny.

- [2] The trial was a judge alone trial (or a bench trial) under the jurisdiction of the Criminal Proceedings (Trial by Judge Alone) Act, 2021. The charge on the indictment was mandated for trial before a single judge. As with all bench trials, the judge is the finder of all facts and the finder of the law. Many of the directions used in a jury trial are also used by the judge in a judge alone trial.

Elements of the Offence

- [3] Section 29 of the Larceny Act states:

“Every person who in the night-

(a) Breaks and enters the dwelling-house of another

with intent to commit any felony therein....

....shall be guilty of felony called burglary, and on conviction thereof liable to imprisonment with hard labour for any term not exceeding fifteen years.”

"Night" means the interval between eight o'clock in the evening and five o'clock in the morning of the next succeeding day;

- [4] The prosecution alleges that Mr. Willock broke and entered into Mrs. Francis' ("the complainant's) house during the night. The felony that Mr. Willock intended to commit, after breaking and entering the house, was larceny.

- [5] It is therefore for the prosecution to prove that Mr. Willock broke and entered into the complainant's house, during the night, with intent to steal.

Burden and Standard of Proof

- [6] The prosecution must prove Mr. Willock is guilty. He does not have to prove anything. He does not have to prove that he is innocent.

[7] The prosecution will only succeed in proving the allegation if I am sure of Mr. Willock's guilt.

[8] If, after considering all of the evidence, I am sure that Mr. Willock is guilty, my verdict must be "guilty."

[9] If I am not sure he is guilty, my verdict must be "not guilty."

Facts that are agreed between the Prosecution and Mr. Willock

[10] It is agreed that a person broke and entered into the complainant's house on the night of 9th January 2023.

Facts that are disputed between the Prosecution and Mr. Willock

[11] Mr. Willock denies that it was him that broke and entered the complainant's house. He states that he was at home at the time. Mr. Willock is unable to comment as to the intention of the person that entered the complainant's house.

Alibi

[12] The defence is one of alibi. Mr. Willock's case is that he was not at the scene when the crime was being committed. He claims to have been at home.

[13] It is for the prosecution to prove that the defendant was inside the complainant's house on the night in question. Mr. Willock does not have to prove that he was at home.

[14] If the prosecution do prove that the defendant's alibi is false, that does not in itself mean that Mr. Willock must be guilty. It is something which I may take into account. However, I should bear in mind that sometimes an innocent person, who fears that the truth will not be believed, may instead invent an alibi.

[15] If I am sure that Mr. Willock was at the complainant's house, I must also be sure that he broke and entered into the property with the intent to steal.

Identification - Turnbull Warning

[16] I remind myself that I must be cautious when considering identification evidence because experience has shown that any witness who has identified a person can be mistaken, even when the witness is honest and sure that they are right. Such a witness may seem convincing but may be wrong.

[17] This is true, even though a witness knows a person well and says that they have recognized that person. The witness could still be mistaken.

[18] I can only rely on the identification evidence if I am sure that it is accurate. I need to consider carefully all the circumstances in which Mr. Willock was identified.

[19] So, I must ask myself:

(a) For how long could the witness see the person that they say was the defendant and, in particular, for how long could the witness see the person's face?

(b) How clear was the witness' view of the person, considering the distance between them, the light, any objects or people getting in the way and any distractions.

- (c) Had the witness ever seen the defendant before the incident? If so, how often and in what circumstances? If only once or occasionally, had the witness any special reason for remembering the defendant?
- (d) How long was it between the time of the incident and the time when the witness identified the defendant to the police?
- (e) Is there any significant difference between the description that the witness gave of the person and the defendant's appearance?
- (f) I should also think about whether there is any evidence which, if I accept it, might support the identification.
- (g) I will also have to look to see if there are any weaknesses in any of the identification evidence, or if there is any evidence which, if I accept it, might undermine the identification evidence. In particular I should consider that this would have been a frightening experience for the complainant and she only had the person's face in her sight for two seconds.

No identification parade

- [20] I must also take into consideration that no identification procedure took place. Such procedures are designed to provide safeguards for a defendant whom a witness says they can identify, and to test the ability of the witness to identify the defendant.
- [21] The failure to hold a formal identification procedure has deprived the defendant of an important safeguard which would have tested the witnesses' ability to make an identification under formal and fair conditions. I must bear this in mind when considering the reliability of Mrs. Francis' identification.

[22] As no identification procedure was carried out in this case, the witnesses' ability to identify a suspect was not tested in this way and the defendant has not had the advantage that he might have had if Mrs. Francis had failed to pick him out, or had picked out another person.

[23] I must take all of this into account when determining whether or not I can be sure that Mrs. Francis' identification of the defendant was reliable, and I should ask myself whether the fact that there was no formal identification procedure puts the identification evidence in doubt.

Identification evidence where the defence is one of alibi

[24] If I decide that Mr. Willock lied about where he was, this does not prove that Mrs. Francis' identification must be right. But if I decide that Mr. Willock had no innocent reason for putting this alibi forward, I may treat his false alibi as some support for Mrs. Francis' identification.

[25] If I am sure that the witnesses' evidence of identification is reliable, it would obviously follow that Mr. Willock's alibi is false.

Summary of evidence

[26] I include a brief summary of the evidence provided by the witnesses. The court transcript should be obtained if a more complete version of the witness' account is required.

[27] The first witness to provide oral evidence was the complainant, Rosemarie Francis. She explained that she is a shop owner from Old Road and that her shop is attached to her house. She testified that she has known the defendant (whom she referred to as Mark) since he was a child and sees him frequently around the village, as he lives there. Although she recently had eye surgery and initially struggled to identify the defendant in court from a distance, she was able to identify him when seated closer. She confirmed that her eyesight was not impaired at the time of the incident on 9th January 2023.

- [28] Mrs. Francis recounted that at around midnight on 9th January 2023 she was in bed when she heard her exterior door shaking. Upon investigating, she encountered Mark inside her home. With the lights on, she observed him for about two seconds at close range and immediately recognized him, stating firmly in court, "It was him." Despite Mr. Willock's later attempt to conceal his face, Mrs. Francis maintained that her identification had already been made. During the encounter, Mr. Willock threatened to kill her if she did not remain quiet and physically pushed her on her left bicep, which caused her to stumble. After he fled, Mrs. Francis reported the incident. During evidence she remained consistent in her identification of Mark as the intruder, even under questioning, asserting she was not mistaken and that she clearly saw him before any disguise was used.
- [29] The second witness was Sherwin Francis, who is Rosemarie Francis' son. He explained that he received a phone call on January 9th 2023, and went to his mother Rosemarie's home, where he found her crying and trembling near a damaged entrance door. The metal exterior door and its louvres were damaged and unable to close. He informed the court that he reported the incident to the police that night.
- [30] The third witness for the prosecution was Police Corporal Ameilia Brown, who stated that on January 14th 2023, she interviewed the accused in relation to the alleged burglary and threat against Rosemarie Francis. He was informed of his rights and cautioned. The record of interview was then exhibited and read out. She explained to the court that no identification parade was conducted as the witness and the defendant were known to one another.
- [31] The fourth and final witness for the prosecution was Police Corporal Richardson who witnessed the interview and cautioned and charged the defendant.
- [32] The defendant provided sworn evidence stating that he was not present at the complainant's house, claiming he was asleep at his mother's two-bedroom home in Old Road Village at the time, sharing a room with her whilst his brother was at work. The

defendant acknowledged knowing the complainant from her shop but denied the allegations against him. He challenged the reliability of her identification, noting she only identified him after he moved closer to her in court, and suggested that she may have been influenced by others or motivated by a conflict that occurred in 2009 when his brother stabbed his cousin, as she drinks in the same bar as people connected to that incident. Whilst admitting he frequented her shop, he alleged that she is lying when she states it was him who was the intruder.

- [33] In cross-examination he accepted that he did not put to the complainant that she was lying when she stated that it was him who she saw in her house. He also accepted that he did not put to her that she would not sell him items when he frequented her shop. He maintained that he was not responsible for burgling or threatening the complainant.

Findings of Fact and Reasons

- [34] I find that the complainant was burgled on the 9th January 2023. The damage to the aluminum section of the exterior door, which was witnessed by her son Sherwin Francis and the police officer who attended at the scene during the early hours of the 9th January 2023, supports the fact that someone broke into and entered her property on the night in question. Indeed, the fact that somebody broke into and entered her home during the early hours (i.e. night) of 9th January 2023 was not disputed by the defendant. I find that the person who broke into and entered the property during the night did so with the intention to steal. I infer that they targeted the complainant's house as her shop was connected to it.
- [35] The main issue in dispute is the identity of the person who burgled the complainant's home on 9th January 2023. The prosecution rely upon Rosemarie Francis's evidence in an attempt to prove this element. The date of the trial was 8th June 2026, which is approximately three and a half years after the date of the offence. Mrs. Francis' eyesight had significantly deteriorated by the date of the trial. She explained that she had recently had cataract surgery on both of her eyes and was still under the treatment of her doctor

in relation to this surgery. I have no reason to doubt her evidence when she states that her eyesight was much better on 9th January 2023.

[36] Upon assessing her evidence, I find that after hearing somebody breaking into her house, she opened the door and turned on the lights. By the time she left her bedroom she had been awake for some time. Upon turning on the lights, she had the person in her sight for two seconds before he concealed his face. Mrs. Francis was standing approximately three feet away from the person that was burgling her house. There were no obstructions between her and the intruder.

[37] Mrs. Francis knows the defendant well. They have lived in the same village since he was a young child. Mrs. Francis owns a small shop in the village, and I find that she would have seen the defendant on numerous occasions throughout his life.

[38] I find that Mrs. Francis identified the defendant to the police very soon after the incident. I heard that the police were called by Sherwin Francis soon after he arrived at the scene. The police indeed attended at the complainant's home as he was fixing the door during the early hours of 9th January 2023. The defendant was arrested and interviewed on the 14th January 2023 and during that interview Mrs. Francis' identification was put to the defendant.

[39] I have no doubt that this must have been an incredibly frightening experience for Mrs. Francis. She was 84 years of age on the night in question. She was alone in her house and unfortunately experienced an altercation with a burglar at approximately 1am. I also take into consideration the fact that Mrs. Francis was only able to see the intruder's face for two seconds before he concealed it and the fact that there was no formal identification parade in this case. I have reminded myself of the legal directions that are explained above in relation to these weaknesses in the identification evidence and the prosecution case.

[40] Despite these weaknesses I find that Mrs. Francis provided credible and reliable evidence. The defence case was put to her by the defendant and by me, however she remained adamant that it was the defendant who she saw in her house. I do not accept in any way that she was lying to the police and/or to the court when she stated it was the defendant that she saw in her house. I find that she is an honest witness. I also find that the prosecution has proved, so that I am sure, that she is not mistaken in her identification. I find that I can rely upon her evidence and therefore find that it was the defendant that broke into and entered her house during the night of the 9th January 2023 and that he did this with an intention to steal.

[41] I find that the identification evidence is not weakened by the fact that there was no identification parade in this case. Mrs. Francis has known the defendant since he was a child. The defendant also accepts that he lives in the same village as the complainant and that he knows her from the shop. I have absolutely no doubt that Mrs. Francis would not have had any issues picking Mr. Willock out, had an identification parade been conducted.

[42] I have carefully considered the defendant's account and have reminded myself that he does not have to prove anything in this case. I accept that he has been consistent in his claim that it was not him that broke into the complainant's house. I also accept that his alibi defence (i.e. that he was at home along with his mother at the time of the incident) was consistent. He stated this to the police in interview and indeed to the court when he was providing sworn evidence. Despite these consistent claims, I find that the prosecution has proved, so that I am sure, that he is not telling the truth as to his whereabouts at the time that the offence was committed. Mrs. Francis' credible and reliable account clearly contradicts his alibi defence. I do not accept that he was at home asleep in the same bedroom as his mother at the time of the burglary.

[43] I also find that his claim that the complainant is lying and that this is probably an attempt to pay him back for a stabbing incident that took place in 2009 between his brother and his cousin is not plausible. The alleged 2009 incident was approximately 14 years

before the date of the burglary offence, and it did not involve the defendant or the complainant. The explanation tendered that the complainant drinks rum in the same bar as someone connected to his cousin and this is most likely the reason why she has lied and stated that it was the defendant who broke into her house is extremely far stretched.

[44] I also find that the defendant provided slightly inconsistent claims. He initially indicated to the court that he knows the complainant by sight and has seen her in her shop. Whilst providing evidence during examination in chief, he did not raise that there were any issues when he was in the shop. However, during cross examination when he was asked, *“Did she always sell you what you wanted?”* he replied, *“Not really – she does not want to sell me nothing when I go to the shop.”* I find that the “not really” section of this answer is slightly vague. It is not a difficult question. The defendant was clearly able to understand such simple questions, and I find that he could have provided a much more definite answer, such as “yes” or “no” or even “sometimes”. I find that the term “not really” does not answer the question.

[45] I also find that the whole comment, *“Not really – she does not want to sell me nothing when I go to the shop,”* is inconsistent with his evidence in chief, which was silent as to any issues when he was in the shop.

[46] The reliable evidence from the complainant contradicts the defendant’s account. As a result of this, I find that I am unable to rely upon the defendant’s evidence. I find that he has fabricated his alibi defence and that he was the person who broke into and entered the complainant’s house. I find that the complainant’s reliable evidence alone proves that I am unable to attach any weight to the defendant’s evidence. I also however find that his slightly vague and inconsistent evidence further damages his credibility.

[47] For the reasons stated above I am sure that Mrs. Franics was not mistaken in her identification of the defendant.

Verdict

[48] I find that it was the defendant that broke into and entered the complainant's house at approximately 1am on 9th January 2023. I find that he did this with an intention to steal, and I therefore find him guilty of the one count on the indictment.

John Spencer

High Court Judge

By the Court

Registrar