

3rd August, 1987

Before the Deputy Bailiff, assisted by Jurats Le Boutillier and Bonn.

POLICE COURT APPEAL:
DUNCAN STEWART BAGAN AND CHRISTOPHER DORAN

APPEAL AGAINST CONVICTION

DEPUTY BAILIFF: Magistrate Mr. Dorey complimented Mr. Dennis Tuckwood on his alertness and skill in keeping these two appellants under observation. We agree, and wish to add our own commendation. We are going to dismiss the appeal against conviction. It is not lighty that this Court will overturn a finding of fact on the part of the Magistrate. He has had the benefit of seeing the witnesses and of studying their demeanour. There was no dispute in this case as to identification or as to the presence of the appellants upon the premises and on the roof. The only question therefore was whether their presence there was merely an act of civil trespass or an illegal entry with intent. The Magistrate was right to admit the evidence of the interviews between the police and the appellants. The irregularities on the part of the police were not sufficient to make the notes inadmissible, although it has to be said that Detective Constables Du Heaume and Grieve were lax in their conduct and recordal of interviews. The Magistrate was entitled positively to disbelieve the explanations given by the appellants at their trial, which explanations were completely different to those given to the police earlier. No reference to money or to overalls on the premises was made to the police. A visit to the premises to urinate could not have necessitated progress to the roof. Doran's answer that he went up onto the roof to see what was there - "but there was nothing so I came back down" - is significant, as was Bagan's offer to plead guilty if he could avoid a revocation of his parole licence. The appellant's initial denials of having been on the roof at all are also significant. For all those reasons we consider the conviction to be safe and satisfactory and we dismiss the appeal. Now Mr. Pallot, you will wish to address us on the question of sentence.

ADVOCATE PALLOT: Yes indeed Sir.

APPEAL AGAINST SENTENCE

The appeal against sentence is allowed, we are going to quash the sentence which was imposed and impose in its place a sentence of three months' imprisonment. As Bagan was in fact first remanded in custody on the 3rd June, 1987, we believe that would mean his release virtually to day, with one month's remission for good behaviour, but obviously he will have to go back to the Prison for the release procedure to be gone through. But I should say this in addition, that not only did the Magistrate make a mistake, or three mistakes, in referring to the offence of breaking and entering, but the Criminal Records Office on the record has recorded the offence as "in complicity with another broke and entered premises with intent to commit a crime". So, we must give an instruction that the record be amended to show that the crime of which Bagan was convicted and indeed Doran as well, was "illegal entry of premises with intent to commit a crime", and that has played a part in our decision. The Greffier will arrange that that be checked and corrected if necessary.

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Authority referred to:

"Evidence" by Sir Rupert Cross, F.B.A., D.C.L.
(5th edition) p. 212 and 213 Chapter IX- Corroboration
- (4) False statements out of Court.