

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 857
CO 34/2021

In the matter between:

THE REPUBLIC
(rep. by Corrine Rose)

Republic

and

HUGHES ESTICO
(rep. by Charles Lucas)

Accused

Neutral Citation: Republic v Estico (CO34/2021) [2022] SCSC 857 (06th October 2022).

Before: Burhan J

Summary: Breaking into Building and Stealing – Breaking into Building with intent to Steal.

Heard: 25th February 2021, 14th March 2021, 25th March 2021 and 7th April 2021.

Delivered: 06 October 2022

ORDER

The accused Hughes Estico is found guilty on Count 2 only and convicted of same.

JUDGMENT

BURHAN J

[1] The accused Hughes Estico stands charged as follows;

Count 1

Breaking into Building and committing a Felony therein namely stealing contrary to Section 291 (a) and punishable under Section 291 of the Penal Code Cap 158.

Hughes Estico of Roche Caiman, Mahe, on a date unknown to the Republic in 2021, at the Vortex Investment storage facility, Providence, Mahe, broke and entered into the said building and stole therein, one grey insulation tap label high-power 19mm x 20mm valued at Sr10 and three (3) hose adaptor which was with the garden set valued at Sr120, being the property of Vortex Investments.

Count 2

Breaking into Building and Committing a Felony therein namely Stealing contrary to Section 291 (a) and punishable under Section 291 of the Penal Code Cap 158.

Hughes Estico of Roche Caiman, Mahe, on a date unknown to the Republic in 2021, at the Vortex Investment storage facility, Providence, Mahe, broke and entered into the said building and stole therein, 300 double socket-heads, 30 switch 1 gang 2 way, 50 switch 2 gang 1 way, 50 switch 3 gang 1 way, 100 single socket 13A, 220 multi adaptor 13A, 220 multi adaptor 13A, 300 top plug 13A, 60 insulated screw driver set, 8 tool box 12 inches, 35 roll grass cutting nylon, 120 garden tap ½ inch, 145 screwdriver star 200mm, 120 assorted paint brush, 10 bolt cutter 30", 8 bolt cutter 18", 48 combination spanner set, 60 garden rack large, 500 insulation tap, 36 claw hammer 8 oz, 72 mortice lock, 86 cylinder lock, 115 energy saver E27, 60 energy saver B22, 24 LED flood light 50 watt, LED flood light 30 watt, 17 LED flood light 20 watt, 6 flood light 70 watt, 56 ball valve c x c 15mm, 120 tester 220v, 66 tyre tube glue valued at Sr 252,300, being the property of Vortex Investments.

Court 3 (alternative to count 2)

Breaking into building with intend to commit a felony therein namely stealing contrary to Section 292 and punishable under the same Section of the Penal Code 158.

Hughes Estico of Roche Caiman, Mahe, on a date unknown to the Republic in 2021, at the Vortex Investment storage facility, Providence, Mahe, broke and entered into the said building with intent to commit a felony namely to steal the property of Vortex Investments.

- [2] The prosecution opened their case by calling witness Mohammed Maribul Isam who stated he was working at Vortex, Providence. On the 19th of April 2021 he had gone to get some material he needed and checked if everything was okay and then locked the door of the storage and proceeded to Pointe Larue. He had taken a Bangladeshi National and gone back again to the Vortex storage facility.
- [3] Witness testified that when he went and opened the door the second time, he had seen a bag fallen and next to the bag there were some materials on the ground. The materials consisted of some tools, spray paints and other materials. The Bangladeshi National had stated that all those things were not there earlier when they left. Witness further testified that before he left earlier, he had checked but nobody was there. He observed that a door was open inside the storage and a man came out from the door and went through the window. Witness testified that he could only say the person was a man but he had not seen his face. He further stated that he did not notice anything about the person nor what kind of clothes he was wearing or if he had anything with him. Witness stated that thereafter he had closed the shutters and locked the place and informed his boss of the incident and thereafter given a statement to the police.
- [4] Under cross examination, witness testified that in the building electrical items are stored. The key to the building is kept in his office or sometimes with the boss. He admitted this was the first time he was given the key and that his boss would give this key to any of the workers to go in and out of this building. He stated neither he nor any workers are permitted to take materials from the building for personal use. He had taken a photo of the fallen materials and sent to his boss to show him. When he came the first time that day, he had not seen anyone it was only the second time when he came that he had noticed the bag and the man. The window he stated was small and one cannot carry a bag through it. The window was broken. Witness testified that he was not there when the police arrived and was working in another site. He had not touched anything after that, locked the place and left the premises. There was no security at the building. The door and windows were locked but one was broken.

- [5] The next witness Officer Johanness Lafortune a police officer stated he had arrested the accused Mr. Hughes Estico for the offence of breaking into buildings. Witness had read to the accused his constitutional rights and brought him to the Mont Fleuri Police Station for further formalities. Witness testified that he did not record any statement from the accused. Under cross examination witness admitted that he told the accused of the reasons for his arrest which was the offence of breaking into building.
- [6] Witness Suzanna Radegonde stated that she worked as a CID Officer at the Mont Fleuri Police Station and that she had photographed the exhibits in this case. She had expertise in forensic photography as she went for a course with the Police Academy in 2018. The Court accepted her expertise in photography. Witness stated that on the 21st April 2021, she received three exhibits from Corporal Francois who was the investigating officer who wanted them photographed. After photographing the exhibits, she downloaded the photographs on her CID computer which only she had access to. Witness testified that she labelled the photographs and placed them into an album. The photographs were produced as P2. She proceeded to describe each photograph taken by her in open court.
- [7] The next witness Detective Corporal Joachim Allisop stated he was presently attached to the SSCR (Scientific Support and Crime Record Bureau) at Bois De Rose. His duties were to attend the scenes of crime take photographs and also lift prints on the scene. He had received local and practical training both locally and overseas. Witness gave evidence that he attended a training course in criminal investigation in Cairo, Egypt, attended a Naval Criminal Investigation course here in Seychelles. He also attended predeployment training course by the UN conducted at the Human Peace Support School in Kenya for one week in 2010. Witness stated that he had certificates for the above mentioned trainings but was not in his possession in court as he was not notified to bring them. Witness Joachim Allisop's expertise was challenged but after he produced his certificates to court on a subsequent date court ruled he had the expertise to photograph and lift the fingerprints from objects.
- [8] Witness Allisop further testified that he was on duty on the 11th April 2021. He was informed about a breaking into building at Providence Mahe Seychelles at the Vortex

Investment Building storage area. He proceeded to the scene and upon arriving, he met the complainant Mr. Aaron Laval who briefed the witness of what happened on the scene and upon ascertaining certain information from the complainant, witness examined the said building and noticed a window facing the sea side with metal burglars bars had been forced open and the suspect had got access through the said window.

- [9] Witness further stated that upon noticing that, he continued with his examination of the scene and found latent print impressions on the wooden window frame from the inside of the said window. Latent print is prints done by the hand or the palm. Witness testified that powder was used to lift the print. After that witness lifted prints on the wooden window he put it in a finger print tape transparency and labelled the scene. Witness testified that he lifted 12 latent prints in different areas on the scene. Later, witness brought the lifting containing the prints to his office whereby he labelled them and produced them in court as exhibit P3a. Witness testified that on Wednesday 14th April 2021 at around 1300 hrs, he received a set of finger print in the name of Hughes Benjamin Estico signed by Corporal Selwyn Francois CID of Mont Fleuri as the officer taking the finger print. The fingerprint form of Mr Hughes Estico was produced as an exhibit and marked as P3b.
- [10] Witness stated that on the same day around 1330 hrs, he handed over to Inspector Robin Omblime the lifted print and the fingerprint form in the name of Hughes Benjamin Estico as Inspector Omblime was the expert in comparing the fingerprints. On the 15th April 2021 at around 1427 hrs, witness had gone to the laboratory, photographed and enlarged the prints and produced enlargements as P3c and P3d.
- [11] Witness further testified that he mounted the enlargements side by side on a chart and on Friday 16th April 2021 at around 8.30 hrs. in the morning he handed over to Inspector Robin Omblime, the chart, the said lifted print and fingerprint form in the name of Hughes Benjamin Estico for marking. At around 12 noon Mr. Omblime returned back the chart after having done the comparison. His report was marked as document P3e.
- [12] Inspector Robin Omblime stated he is a Detective Expert in Fingerprint, Photography and scenes of crime examination. Witness produced his certificates and his expertise was not challenged. Witness stated that on the 14th of April 2021, he was on duty and received some

exhibits in regards to this case from Detective Corporal Allisop. Upon reviewing it, witness testified that Detective Corporal Allisop requested for him to do identification on the same latent print which witness proceeded to do and compared and verified the impression on the said fingerprint lifter with the left four finger impression on the fingerprint form in the name of Hughes Benjamin Estico. He found them to be identical. Witness further testified that he came to this conclusion because of the analysis which he is required to do is to find 10 points of similarities when comparing the finger prints. When he did his analysis, he found more than 10 points and this confirmed the fact that the print lifted from the scene was the same print of Mr. Estico. He described further how he came to his conclusion. Witness in his testimony confirmed that from his analysis the impression on the left side of the chart and the one of the right side of the chart had been made by the same person Hughes Benjamin Estico. Witness testified that it is not from his personal experience but it is the general principle that fingerprint is unique.

[13] Witness Sheila Camille stated she is attached to the Mont Fleuri Police Station as a Police Officer in general duties. She was on duty on the 11th April 2021 at the same police station. During the day she was in charge of the shift and went to the scene at Providence as she was attached together with Constable Nathalie Joubert and Constable Claude Tirant. Witness stated that she received a call about a breaking in at Mr. Laval's in Providence requesting for assistance. This was around 11.30 in the morning. On arriving at the scene she examined the building. After going around the building she could notice that there was a small window which the burglars bar was cut and folded. This was on the part of the building facing the sea side. Witness phoned the SSCRB, spoke to Corporal Allisop and explained to him the situation and he told the witness that he will be attending the scene. After that witness testified that she did nothing but stood and allowed the Corporal Allisop to do his task.

[14] Witness Esther Andre stated she is a Detective Officer based at the Mont Fleuri Police Station. On the 19th April 2021 she was on duty from 8 a.m. onwards. Witness testified that she was the witness for Corporal Francois whilst he was cautioning the suspect. Acting on information from the suspect namely Hughes Estico, they proceeded to his mother's place at Roche Caiman and executed a search warrant. On arriving at the residence he showed

the police how to get access to the house. The mother of the accused was present as well and showed the police where the accused was sleeping. Witness saw Corporal Francois taking some tools; spanner, insulation tape, OS adapters and a piece of wood. The items were seized at the accused person's premises. However, witness stated she did not remember where on the premises the items were seized but it was at the accused mothers' house. Witness was shown exhibit P2 and testified that it is the same item that Corporal Francois seized from the premises. She stated the accused was removed from the cell and accompanied the police to the premises because the police had to have access to the house. It was put to the witness that she should have listed out all the events that occurred in respect of her part in the procedure because the accused was stating that he was not there with them when they were executing the search warrant. Witness maintained that the accused was present and that she was telling the truth.

[15] Witness Ernestine Julianne Biscornet stated she is a Traffic Investigating Officer attached to the BeauVallon Police Station. In the year 2021, she was attached to the Mont Fleuri Police Station. On the 21st April 2021 she had assisted Corporal Francois to interview one Hughes Estico. He was being interviewed for a case of stealing in a building at Providence. Witness testified that Corporal Francois cautioned Mr. Hughes Estico and questioned him. The accused had said that he did not want to give a written statement but informed them verbally and admitted that he has been to the building a few times and he had been sleeping there but did not want to put that in writing. Witness testified that after that she did not do anything more, she was just there as a witness. In cross examination witness testified that at a point in time the accused remained silent and stated he did not want the police to write what he was saying verbally.

[16] Witness Selwyn Francois, the investigating officer in the case stated he is presently working with ACCS (Anti Corruption Commission Seychelles) In the year 2021 he stated he was working with the police force in the CID section and stated that he investigated a case which involved Mr. Hughes Estico concerning breaking into building and stealing. He recorded a statement under caution of Mr. Estico and executed a search warrant. They had met the mother of the accused. Witness introduced himself to the mother and showed her the search warrant and explained to her the purpose of their visit. The mother explained

to the witness that the accused does not sleep inside the house but rather in a shed outside and showed witness the shed. Witness testified that in the presence of the mother of the accused he went to the shed and did the search. A few items were seized; there were insulation tapes, hose adaptor. The items were taken to the Mont Fleuri Police Station. Witness was shown Exhibit P2 and identified an insulation tape and three hose adaptors he seized at the accused's property. The items were shown to the complainant who identified them and it was then photographed by an officer and afterwards handed over. Witness testified that afterwards he recorded the statement of a witness of Indian nationality. The accused was later re-interviewed and he chose to remain silent.

[17] Under cross examination witness Francois stated that the accused was not taken to the premises of his mother. He was in police custody at the police station and witness did not find it necessary to take him when executing the search warrant. Witness testified that he cannot recall if the tapes and connectors that he was shown in the photograph were new. It was put to witness that a colleague had stated that the accused person was present when executing the search warrant. Witness testified that there were several cases in relation to Mr. Estico that were being dealt with and it could be that the officer was mistaken to say that Mr. Estico was brought for the search warrant to his home. Witness admitted that there was one Michel Marie arrested before, but not for this matter. Under cross examination he admitted the accused had stated he had been to the vicinity of building. Witness testified that when he executed the warrant he seized a tape, 3 items described as adaptors relevant to this case and a small wood piece which was not connected to the case.

[18] Thereafter the prosecution called Mr Aaron Ronald Jules Laval who stated he was working for Vortex Investments at Providence for the past 10 years as a Sales Representative and then as a Shop Manager. His duty was to stock up the shop, arrange the space, do inventories and place orders for new goods. Witness testified that almost everything that goes on in the business has to go through him. The company had a building that was under construction; the ground floor was already constructed and the goods were being stocked there. The building that was being built is located in Providence. Witness testified that before he went there on a daily basis but with the pandemic as there was no business, he went there weekly. Witness testified that the company that was constructing the building

was Aarjay construction. They were mostly doing the finishing works, like painting, electrical works and the tiling of some small rooms as the building had not yet been completed. Witness further stated that the company he works for dealt in wholesale with building materials, hardware, tools, plumbing, electrical and other variety of materials used for building a home or business.

[19] Witness further stated that on the 10th April 2021, while he was working he received a call from the workers of Aarjay construction who informed him that while they were doing their work they had seen someone running out of the building. They were surprised and witness had told them to do what is necessary and report to the police. When he arrived at the store, the burglars bar had been tampered with and was broken open and there were a few marks of dirt by a hand on the wall. Witness testified that he went to the store the next day to do an inventory. The construction company informed him that they had repaired the broken burglars bar and he went to check. The witness further testified that when he got there he saw that the gate was partially opened and when he went inside the property, he saw the burglars bar open again. He called the police and notified them, he was present when the police arrived at the property. Witness stated that he proceeded inside the building to check if everything was okay. Inside was in a mess and he noticed that there was a lot of things missing. He did an inventory of the missing items and produced the inventory as P4.

[20] Witness described the 30 items in the list P4 and stated that these items cost SR 250,000/- which was the market price at the time. Witness testified that he came to know that the items were missing in the store in April, the last inventory he did himself was in January. This inventory was produced as exhibit P5. He stated after identifying the pictures P2 at the police station witness had given a statement.

[21] Under cross examination witness stated that prior to the break in, he went to the storage area a week before. The facility was closed throughout 2021, the doors were locked. Witness further stated that the shop he sells the items in and the storage area are not the same; the shop is on another road in Providence and the building that they use as a store is on another road. Witness stated that a construction company had the keys to the perimeter

and could go in and out using the key. On that day he noticed the items were scattered all around. Some items were also scattered outside of the store but and there was a trail to show that items were being carried from the store through the show room and outside. In the show room the window was broken, the person was going through that way. Witness had walked around the building to see if there was another entry point but found nothing. He had asked the construction workers to fix the broken burglars bars but he did not go inside as he did not have the keys with him. The construction workers had the key to the show room as they were doing the ceiling. The show room he stated is the entrance to the store. The goods in the storage area were of different brands. Witness testified that some of the items were only imported by their company. Witness admitted that it is possible that some items they import would be similarly imported by other hardware companies.

[22] Witness looked at the photograph P2 and stated that the insulation on the photograph does not look like something bought from the shop and cannot say if these items are exactly from their store. Witness further stated that the items on the list are an approximation of the items that are missing. He is sure of the list but there are more items missing. Witness was asked if he is able to say whether those items were taken away by the other workers who had the key to the premises or by other third parties, or whether a search has been done on Aarjay's premises. Witness stated their premises was never searched. Witness admitted that the police showed him other items as well but he could not identify the others as they had no markings on them.

[23] After the prosecution closed its case a no case to answer submission was made which was rejected and defence called in respect of the three charges.

[24] The accused in defence made an unsworn statement from the dock. He stated he was homeless at the time and he was picking up bottles and he used to sleep near the Vortex building near a container. He had heard a noise and gone in the direction of the noise and noticed a window which was empty and had only a frame. He had grabbed the side of the frame to pull himself inside and had seen a man inside black in complexion. He had got down from the window and gone away. On his way home from there he had noticed some items on the footpath. He had seen an item which he could make use of and picked it up

and taken it home and kept it in his store which had other thrown away items. He stated when he had grabbed the window to look inside that was the time his fingerprint had gone on the window.

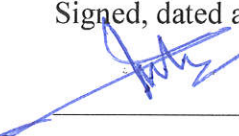
[25] Having thus carefully considered the evidence before court, it is apparent the main evidence relied on by the prosecution to establish the charges against the accused is the evidence of the finger print experts. Whilst Corporal Joachim was able to lift latent prints from the inside of the window, which was broken and had been forced open and burglar bars cut, on a comparison of the prints lifted from the inner side of the window done by Inspector Omblime, the latent print lifted from the scene of crime was identified as that of the accused Hughes Estico. The accused in his unsworn statement explains how his fingerprint got on the window. I am in agreement with the submissions of learned Counsel for the prosecution that the defence counsel did not raise such defence or suggest such explanation while cross examining any of the prosecution witnesses. I am unable to accept his explanation which I am of the view was an explanation concocted at the end of the case for the first time and given as a dock statement. He states he was homeless and stayed in the vicinity of the building and used to sleep there but the evidence reveals that he was staying with his mother at Roche Caiman and when the police had executed the warrant the mother had shown the police the shed where he slept in.

[26] The unsworn statement of the accused was not subject to cross examination and therefore is of lesser weight than the corroborated evidence of the prosecution which withstood the rigors of cross examination and had no material contradictions in respect of the vital finger print evidence. I observe that even though the Officer who lifted the latent print Corporal Joachim Allisop was cross examined at length, this defense was never put to him, clearly indicating it was a last minute fabricated defense by the accused. The fact he told the police he lived in the vicinity of this place does not give him a right to break into the building being used as a storage facility by Vortex. Although another name Michel Marie was suggested by the defence the evidence of Corporal Francois is that he was arrested as a suspect in relation to another case and there is no evidence to indicate his prints were found at this scene,

- [27] I therefore proceed to reject the evidence of the accused and accept the corroborated and uncontradicted evidence of the prosecution in respect of the finger print evidence. In the case of *R v Castleton 3 CR.App. R 74* it was held a person may be identified by finger prints alone. Palm and other prints have been included *Archbold 2008 Criminal Pleading, Evidence and Practice 2008 edition 14-55*.
- [28] It is clear from the evidence of witness Allisop that the burglar bars had been forced open and entry gained. The evidence of the prosecution also indicates that large number of items had been found missing when the inventory was taken. This is supported by the evidence of Mr. Laval who did an inventory and produced an inventory of all the missing items as P4 and P5. He also sets out the value of such items. It is also clear that the break in occurred on more than one occasion as the prosecution evidence indicates that even after repairing the burglar bars there was yet another break in and it was after that was the police called in and finger prints taken.
- [29] For all the aforementioned reasons, I am satisfied beyond reasonable doubt that the prosecution has proved that it was the accused who had broken into the building which was a storage facility belonging to the Company Vortex situated at Providance. I am therefore satisfied that all the elements of the charge contained in Count 2 have been proved beyond reasonable doubt and proceed to find the accused guilty on Count 2.
- [30] As Count 3 is an alternative Count to Count 2, the necessity to make a finding in respect of Count 3 does not arise. In respect of Count 1, I observe that Count 1 is of a similar nature to Count 2. The entire list of stolen items contained in the inventory are set out in Count 2 and therefore would include the stolen items referred to in Count 1. Therefore this Court having found the accused guilty on Count 2 cannot make a finding in respect of Count 1 framed in respect of the same stolen items. I therefore make no order in respect of Count 1.

[31] I proceed to find the accused Hughes Estico guilty on Count 2 only and convict him of same.

Signed, dated and delivered at Ile du Port on 06 October 2022


Burhan J

6-10-2022