

Public Prosecutor

AND

Haji Muhammad Yazid Bin Haji Mohd Yakub

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 14 of 2017)**

Muhammed Faisal Bin PDJLD DSP Haji Kefli, Judge
8th March 2017

Criminal law – Under section 454 Penal Code – Under section 457 Penal Code – Under section 456 Penal Code - Sentencing – Plea of guilty

DPP Muhammad Qamarul Affyian Bin Abdul Rahman for Public Prosecutor.
Defendant In Person.

SENTENCE

Muhammed Faisal, Judge:

The defendant faces 3 charges, under section 454, section 457 and section 456 Penal Code (Cap 22), respectively.

The charges are as follows:

“Amended 1st Charge

That you, on the 22nd day of January 2017, between 0700 hours and 1230 hours, committed housebreaking by entering into a house at No 3, Spg 236-31,-6, Kg Sengkurong B, Jalan Jerudong, in Brunei Darussalam, being the residence of Seri Puspa Bin Hj Abd Hamid, used as a human dwelling in order to the commission of a certain offence punishable with imprisonment, to wit, one offence of theft and you have thereby committed an offence punishable under section 454 of the Penal Code.

Additional 2nd Charge

That you, after the hour of sunset on the 20th day of December 2016 and before the hour of sunrise on the 21st day of December 2016, committed housebreaking by night by entering into a house at No. 22A, Simpang 207, Kampong Katok, Tungku, in Brunei Darussalam, being the residence of Muhammad Khairul Bin Hj Kamis, used as a human dwelling, in order to the commission of a certain offence punishable with imprisonment, to wit, one

offence of theft and you thereby committed an offence punishable under section 457 of the Penal Code.

Additional 3rd Charge

That you, after the hour of sunset on the on the 9th day of December 2016 and before the hour of sunrise on the 10th day of December 2016, committed housebreaking by entering into a house at No 2, Spg 63, Jalan Sg Cerana, Kg Panchor, Mengkubau in Brunei Darussalam, being the residence of Muhammad Nasdrul Khaq Bin Zakaria, used as a human dwelling , with intent to commit an offence, to wit, an offence of theft and that you have thereby committed an offence punishable under section 456 of the Penal Code.”

The defendants have both pleaded guilty to all of the charges and have pleaded for leniency and the court’s consideration, when in imposing his sentences.

The Statement of Facts of the case are laid out as follows:

“The Defendant is a 26 year old Bruneian male. He is currently unemployed.

In relation to the amended 1st charge.

On the 22nd day of January 2017, at about 1100 hours, the Defendant was driving a silver Kia Cerato Koup bearing registration number BAC 1437 on his way to Sengkulong Petrol Station. After buying fuel from the said Sengkulong Petrol Station, he went to Jalan Jerudong heading towards Jerudong Beach and drove around the surrounding area. In the said area, he discovered a house which he believed to be empty. He then drove his car to the vicinity of the said house at No. 3, Spg 236-31-6, Kg Sengkulong B, Jalan Jerudong and parked his car in the garage of the said house. He then went out of his car with the intention to commit theft.

He proceeded to the living room window of the said house and decided to break into the said house through this window. He then pried the said window open with a chisel which he had with and entered the said house. After gaining entry into the living room of the said house, he proceeded to steal one (1) black-blue Quartz wristwatch. He then made his way on to the bedrooms of the said house, and stole the following items:

- *One (1) black 32" Panasonic LED HD TV;*
- *One (1) iPhone 5;*
- *One (1) Samsung J5 phone;*
- *One (1) 'Peneng' power bank; and*
- *One (1) blue makeup bag.*

After exiting the said bedroom, he also took one (1) pair of PUMA shoes from which was placed just outside the bedrooms. He then exited the said house through the kitchen door with all of the stolen items. He made his way on to the garage where he parked his car and placed the stolen items in the said car. He then drove out of the vicinity of the said

house intending to go to Perpindahan Katok. As he was on his way, his said car broke down at the side of the road near the Jalan Jerudong / Katok traffic light junction.

The Defendant put on the said stolen black-blue Quartz wristwatch and proceeded to take the rest of the stolen items out from his car, except for the said stolen PUMA shoes which he still left in his car. He then placed them in a nearby bush in the vicinity of Jerudong Electric station. He then left the said stolen items there and went to seek assistance from another road user to help start his broken-down car. When a Toyota Kijang stopped to help him, the Defendant asked the driver of the said Toyota Kijang to send him to his friend's house in Perpindahan Tungku. At his friend's house in Perpindahan Tungku, he asked his friend for help and his friend then drove him back to where he had left his car in Jalan Jerudong in his friend's car to the Defendant's car where it broke down.

Investigations revealed that the said house is the residence of Seri Puspa Bin Hj Abd Hamid ("Seri Puspa"). Police report was lodged by the Seri Puspa at around 1230 hours on the same day when he returned home and discovered the break-in. Investigation also revealed that Seri Puspa was able to identify the car model driven by the Defendant entering the vicinity of the said house through a CCTV footage. This led to the Defendant's arrest when the Defendant returned to his car which he had left when it broke down. The Defendant was then brought to Sengkurong Police Station for investigation. In his statement to the police, the Defendant admitted to breaking into the said house at No 3, Spg 236-31-6, Kg Sengkurong B, Jalan Jerudong, Brunei Darussalam in order to commit theft and to stealing all of the said items. During police investigation, the stolen pair of PUMA shoes were found in the Defendant's car and he was wearing the stolen black-blue Quartz wristwatch at the time of his arrest. These items were identified by Seri Puspa. However, all of the other items were never recovered.

In relation to the additional 2nd charge:

Sometime between sunset on the 20th day of December 2016 and before sunrise on the 21st day of December 2016, the Defendant was driving a silver Kia Cerato Koup bearing registration number BAC1437 around Kampong Katok with the intention of committing theft in the said area. As he was driving around, he noticed a house at No. 22A, Simpang 207, Kampong Katok, Tungku in Brunei Darussalam which he believed to be empty as there were no cars parked there. He then parked his car just outside the fence of the said house.

He then alighted his car with a chisel which he had with him with the intention of breaking into the said house and committing theft. He then climbed over the fence and walked towards the said house. He then approached one of the windows and proceeded to pry open one of the window panes with the said chisel. He then took the said window pane out of its frame and placed it near the fence of the said house. He then entered the said house through this window opening into a bedroom. In the said bedroom, he stole the following items:

- One (1) Canon 700D with lenses and Ex430 flash; and

- One (1) Canon g11.

He then made his way into the living room of the said house and proceeded to steal the following items:

- One (1) iPhone 5; and
- One (1) iPad.

He then exited the said house through the same window opening with the said stolen items. He then proceeded to go to his car and drove off. Police investigation revealed that the said house is the residence of Muhammad Khairul Bin Hj Kamis. Police report was lodged on the 21st of December. In his statement to the police, the Defendant admitted to breaking into the said house at No. 22A, Simpang 207, Kampong Katok, Tungku in Brunei Darussalam in order to commit theft and to stealing all of the said items. Police investigations revealed that the Defendant has since sold the stolen items at an area in Meragang. The stolen items have not been recovered.

In relation to the additional 3rd charge:

Sometime between sunset on the 9th day of December 2016 and before sunrise on the 10th day of December 2016 the Defendant and his friend were driving around the area of Perumahan Kg Panchor, Mengkubau in Brunei Darussalam in a car driven by his friend. The Defendant was then dropped off the vicinity of a house at No 2, Spg 63, Jalan Sg Cerana, Kg Panchor, Mengkubau in Brunei Darussalam. Police investigation later revealed that the said house is the residence of Muhammad Nasdrul Khaq Bin Zakaria ("Muhammad Nasdrul"). The Defendant then proceeded to go to the back of the said house with the intention of committing theft and had brought a hammer and lug wrench with him for this purpose.

At the back of the said house, he saw a small toilet window and proceeded to pry it open with the intention of breaking into the said house through this window. After successfully opening it, he then entered through the small window into a toilet in the said house. He discovered that the door in the toilet which leads to the other rooms in the said house was locked with a tinsel from the outside. The Defendant then proceeded to ram himself against the said door with the intention to force the tinsel to break. He eventually managed to break the said tinsel and entered the living room on the ground floor. In the house, he made his way to the upper floor where he entered the master bedroom. In the master bedroom, he stole the following items:

- One (1) black PUMA backpack; and
- One [1] Laptop with its pouch.

He then entered another bedroom and stole:

- One (1) large yellow backpack; and
- Two (2) gold rings.

He then wore both of the said stolen gold rings on his fingers and placed the said stolen black PUMA backpack into the stolen large yellow backpack, and proceeded to go downstairs. When he was downstairs, the Defendant heard the sound of a car pulling into the driveway. He panicked and ran back up to the upper floor into the master bedroom together with the stolen items. He then opened the sliding window in the said bedroom and jumped down out of the said house into a grassy area, carrying the bag containing the stolen items with him. He tried to run away from the vicinity with the said bag but was chased by Muhammad Nasdrul, whom happened to just arrive at the said house at the time with his wife.

Muhammad Nasdrul managed to grab the Defendant and a scuffle ensued between them. At that said time Muhammad Nasdrul's wife was screaming for help, and shortly after, a neighbour arrived and assisted Muhammad Nasdrul. They successfully apprehended the Defendant and he was then tied with a rope to prevent him from running away. A police report was then lodged. In his statement to the police, the Defendant admitted to breaking into the said house at No 2, Spg 63, Jalan Sg Cerana, Kg Panchor, Mengkubau in Brunei Darussalam in order to commit theft and to stealing all of the said items. All of the items were recovered and were all identified by Muhammad Nasdrul as his. On record, the Defendant has no previous convictions."

In considering the appropriate sentence for the defendants, I have taken into consideration that the defendant has pleaded guilty, and is a first offender.

Notwithstanding his pleas of guilty, the defendant is charged of serious offences. His actions would have cause distress to the house owners. In particular, in the third charge, the complainant did encounter with the defendant in the midst of committing the offence, they engaged in a struggle in which the complainant came up on top. It is most fortunate that no one was seriously hurt during the struggle.

A custodian sentence is needed in order to deter the defendant from committing the offence again in the future. In particular, due to his action for the 3rd charge a higher starting point is required.

For the 1st charge, my starting point is a sentence of 3 years imprisonment and 3 strokes.

For the 2nd charge, my starting point is a sentence of 6 years and 5 strokes.

For the 3rd charge, 4 years imprisonment and 5 strokes.

For a plea of guilty, the sentence is to be reduced by 1/3.

The defendant sentence is as follows:

1st Charge: 2 years' imprisonment and 2 strokes.

2nd Charge: 4 years' imprisonment and 3 strokes.

3rd Charge: 2 years and 8 months imprisonment and 3 strokes.

Taking into consideration, totality of sentence, all imprisonment sentence and strokes are to run concurrently.

Total Sentence: 4 years imprisonment and 3 strokes.

Sentence to run with effect from 24th January 2017. (Date of institution of proceeding and remand)

MUHAMMED FAISAL BIN PDJLD DSP HAJI KEFLI
Judge, Intermediate Court