

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CRIMINAL DIVISION

INDICTMENT NO. 87/08 - A



REGINA

V

KIRKLAND HENRY

LARRY PRINSTON RICKETTS

IN OPEN COURT

THE 27TH JANUARY 1ST, 9TH AND 12TH FEBRUARY, 2018, 15TH FEBRUARY 2018
BEFORE THE HON. CHIEF JUSTICE

APPEARANCES: Miss Cheryll Richards QC, Director of Public Prosecution and
Mrs. Elisabeth Lees, Senior Crown Counsel for the Crown

Prathna Bodden, Attorney-at-Law of Samson Law Associates, as
Amicus Curiae

Ben Tonner QC instructed by Lee Halliday-Davis, attorney-at-law of
Brady, Attorneys-at-Law for Prinston Ricketts.

Review of mandatory life sentence for murder- setting of minimum term sentence – aggravating circumstances exceptional in nature – planning, premeditation, abduction, rape and robbery – whether offender suffered from personality disorder at time of offence – if so, whether the disorder should be regarded as an extenuating circumstance exceptional in nature.

JUDGMENT

1. Kirkland Henry and Larry Princeton Ricketts were tried and convicted on the present Indictment for the offence of the murder of Estella Scott-Roberts, committed on or about 11 October 2008 in West Bay, Grand Cayman. On 22nd February 2010, they were each sentenced to Life Imprisonment which then meant a mandatory whole life sentence.
2. There were additional related charges of rape, abduction and robbery on Indictment 87/08B, to which Henry pleaded guilty on 1st February 2010 but to which Ricketts pleaded not guilty. Following the sentence of life imprisonment imposed on Ricketts for murder and the exhaustion of his appeals, the decision was taken that it was not in the public interest to have a second trial in relation to the same issues and therefore Ricketts was not proceeded against on Indictment 87/08B. Henry was further sentenced on 8th March 2010, on the basis of his plea, to 20 years for rape, 15 years for abduction and 13 years for robbery.
3. Both offenders appealed to the Court of Appeal. Their appeals were dismissed on 29th November 2010 and all convictions and sentences were affirmed.
4. Leave to appeal finally to the Privy Council was refused on 30th May 2012.
5. Kirkland Henry (date of birth 5th February 1983) is currently 35 years old. He was 25 at the time of his offences.
6. Larry Ricketts (date of birth 13th September 1981) is currently 36 years old and he was 27 at the time of his offence.
7. Neither offender had any previous record of conviction.

8. While their sentence remains that of imprisonment for life for murder, both offenders are now brought before the Court under sections 14 and 23 of the Conditional Release Law, 2014, in order that the Court shall specify the minimum period of incarceration each shall serve before he is eligible to be considered for conditional release on licence.

9. Section 14 subsections(1) and (2) provide as follows:

“(1) Notwithstanding any other Law to the contrary, when sentencing a prisoner to a term of imprisonment for life, the court shall specify the period of incarceration the prisoner shall serve before the prisoner is eligible to be considered for conditional release on licence, the period being such as the court considers appropriate to satisfy requirements of retribution, deterrence and rehabilitation but for murder, the period shall be thirty years before the prisoner is eligible for conditional release unless there are-

(a) extenuating circumstances, exceptional in nature, in which case the court may impose a lower period of incarceration; or

(b) aggravating circumstances, exceptional in nature, in which case the court may impose a longer period of incarceration.

(2) *In making a decision under subsection (1)(a) or (b), the court shall state the extenuating circumstances or the aggravating circumstances, as the case may be.”*

10. Under section 23 of the Law, the DPP is mandated to send to this Court the case records of all prisoners serving life sentences (save those whose applications for release on licence are already being considered) and this Court, in the exercise of the powers contained in section 14, shall pronounce in open court a specified period of incarceration for each such prisoner, and in so doing shall exercise the powers contained in section 14 as if it were sentencing an accused person who has been convicted.
11. This specified period of incarceration or minimum term fixes the earliest date at which an offender may apply for release on licence. Whether or not he shall be released on that date, or at a later date or not at all, becomes a matter for the Conditional Release Board in exercise of other functions and powers under the Law.
12. Schedule 12 to the Conditional Release of Prisoners Regulations, 2016, set out sentencing guidelines. Where a mandatory life sentence for murder is required to be imposed by Law, for the purposes of section 14 of the Law, the aggravating and extenuating circumstances are outlined in this Schedule.
13. Together, the foregoing provisions of the Law and Regulations mandate a scheme for the sentencing of offenders sentenced to Life Imprisonment for the offence of murder which is now the subject of extensive judicial analysis and application. A significant body of judgments of this Court now explains the guiding principles for the application of these provisions. Given the circumstances of this case, there will be no

need extensively to recite those principles here. It will suffice that I note my recognition of them and their applicability to the present case, so far as they may be relevant.¹

14. In essence, by virtue of section 14(1) of the Law, the Legislature has determined that the minimum term of imprisonment for murder “*shall*” be 30 years unless there are aggravating or extenuating circumstances which are exceptional in nature such as may be taken into account respectively, to increase or reduce the minimum term.

- a. It is important to bear in mind that before a circumstance can be regarded as aggravating, the Court must be sure of its existence to the same standard of proof as in a criminal trial. This rule is a salutary one, as it is intended to ensure, by the application of the same standard of proof required for a conviction, that the 30-year minimum is not unjustly increased to the detriment of an offender.

15. Whether a circumstance is extenuating exceptional in nature will be assessed as a matter of the judgment and discretion of the Court, having regard, where appropriate, to how any particular circumstance or set of circumstances would have influenced or affected the behavior of an offender².

16. Events subsequent to the original sentencing are inadmissible, including the behavior of the offender since his incarceration (section 23(4)). However, evidence relating to sentencing, such as medical evidence becoming available since the original

¹ Discussed, for instance in *R v Devon Anglin*, indictment 20/2011, written judgment delivered 9 February 2018; *R v Tareek Ricardo Ricketts*, indictment 114/2012, written judgment delivered 7 February 2017; *R v Chad Anglin*, Indictment 79/2006A, judgment delivered on 9 May 2017; *R v Tamara Butler*, indictment 102/2014, judgment delivered on 6 May 2016.

² As more fully explained in *R. v Devon Anglin* (supra)

sentencing, may be considered if it would have been admissible had it been available at that time.

Narrative of the facts as presented by the Crown - Court of Appeal Judgment

7. “The Court of Appeal Judgment was given on 15th April 2011 following the dismissal of the appeals on 29th November 2010.
8. Estella Scott Roberts celebrated her 33rd birthday with friends on 10th October 2008 at Deckers Restaurant on West Bay Road. They met at 8.30pm and Kathryn Powell brought souvenir birthday confetti, which Estella placed in her handbag. Estella was fashionably dressed wearing her diamond wedding band and designer shoes. In her handbag she had a Cayman National Bank debit card. She carried two Blackberry cell phones, a headset and two earpieces. The celebration ended at about 11.15 pm when they left the restaurant. They chatted outside and went to the adjacent parking lot. They left in separate vehicles. Estella’s vehicle was parked to the rear of the car park. She was last seen walking to the rear of the car park, furthest away from West Bay Road, an area in darkness. Estella reached the car, *‘but from that moment was thrown into a period of obvious terror causing pain and suffering from which she did not survive’*.
9. Estella was forcibly attacked by two men, who were apparently in waiting. She was violently restrained and taken away in her

car, driven by one of these men into the isolated 'beaches' of the north of the island, in the Barkers area. There she was raped by both men, robbed of her possessions, and eventually killed and her body incinerated in her car.

10. After her husband had notified the authorities that Estella had not returned home a search began. On the morning of 11th October her shoes, one scoured with drag marks, were discovered in the parking lot where her car had been parked.
11. Cell site activity was registered in the Barker's area and this area was searched. The burnt shell of Estella's car, containing the charred and shrunken remains of her body was discovered at 12.30 on 11th October. Her body had been burnt beyond recognition but was identified by DNA comparison.
12. Estella's friends returned to the Barkers area on 12th October. They saw confetti of the same type Estella had placed in her hand bag, a set of headphones, a footprint and fresh scratch marks on a post. They returned on 13th October when they also found duct tape, some discarded and some hanging from branches, and a used condom. All items were documented and photographed by Scenes of Crime Officers Codner and Thornley.
13. The burnt shell of the car was secured and searched. The front seats were reclined as far back as they could go. The

deceased's wedding band was recovered. It appeared that the vehicle was set on fire after being splashed with an accelerant such as gasoline. From the downspout of the gas tank a burnt piece of paper was recovered and from within the vehicle the burnt remnants of a plastic gasoline container. The ring cap of a gasoline container was recovered. The forensic fire investigator concluded that all possible accidental causes of the fire were eliminated, accelerant had been spattered on the vehicle before it was lit.

14. On the night of October 10th two men had been seen loitering about the area of the car park of the Deckers Restaurant. One description matched Henry.
15. Telephone evidence revealed that the deceased's Blackberry cell phone was calling Seaford Miller, who was found to be the employer of Henry. Mr. Miller confirmed the number belonged to Henry. On 25th October 2008 Henry was called and his location noted, Ag Chief Supt Marlon Bodden and two other officers drove to the location and asked to see Henry's cell phones. A Blackberry Curve and a Samsung cell phone were produced. When asked at the Central Police Station to account for his possession of the Blackberry phone Henry stated he had bought it less than a month before from a youth whose name he did not know. On 27th October in his caution statement and on

28th October in his interview he retracted this account. The phone was identified by its IMEI number as that issued to Estella Scott Roberts. Henry was arrested on suspicion of theft and handling stolen goods, he said to the Police that he would try to find the other guy *'so you can speak to him too'*.

16. On 25th October Henry's apartment was searched and a Dell laptop computer issued to the deceased was found hidden in a compartment above the door. Other items were seized.
17. On 26th October 2008 Henry submitted to a voluntary interview. He maintained his account of 25th October as to how he had come into possession of the phone. He said he had bought the lap top from the same individual.
18. On 27th October Henry indicated he wished to take Supt Bodden to where the other guy lived. Henry also gave an account. He first apologized for giving a false account about the cell phone and the laptop. He admitted being involved in the abduction and rape of the deceased and to having stolen her laptop and cell phones. He denied being involved in the actual killing. He said this was done by *'the other guy'*. It was his idea, he said he had to get rid of her. They were hanging out by Deckers and he told him to come and he held onto the lady, Henry just cooperated with him. He had sex with her and Henry did too. The other man killed her and lit the vehicle. He

wrapped something around her and put a bag over her head and taped it. He did it til she was dead. He put pieces of paper in the gas tank and lit it. He said that he was willing to show the police where Prinston, the man that killed the lady, lived. Ricketts was later located riding a bicycle in George Town.

19. Ricketts was arrested on suspicion of murder and invited to give a statement in Supt. Bodden's office at the Police Station. The responses were ruled inadmissible in the trial on the *voir dire*. On 28th October Ricketts was interviewed later under caution by Det. Insp. Bailey in the presence of Sgt. Wright. This record of interview was admitted. The responses by Ricketts amounted to an admission of killing the deceased. At the trial Ricketts denied making this admission to the police. Ricketts' apartment was searched. A Blackberry cell phone was located, which was the second of the two belonging to Estella Scott Roberts. The phone contained photographs of the deceased. Clothes were also recovered from Ricketts' closet.
20. Bank records showed that the deceased's debit card was used within a few hours of her death. At 6.19 am on 11th October 2008 the Bank of Butterfield ATM recorded her debit card being inserted in the machine. The transaction was not completed and the card was returned. Between 6.29am and 6.31 am four separate attempts were made to use the card at the

Cayman National Bank ATM. On the first attempt the incorrect pin was used, on the subsequent three attempts the correct pin was used but the transactions were refused due to the amount / account being entered incorrectly. This was captured on CCTV. The card was also tried at the Texaco garage, an invalid pin was entered. The ATM captured and retained the card.

21. The CCTV footage was examined and showed matches between the person at the ATM's clothing and the clothing recovered from Ricketts' home. In cross examination Ricketts admitted that he was the person wearing the clothing shown in the banks' CCTV. He however denied making other admissions. He said he used the card at the instruction of Henry who had told him he had found it.
22. DNA from the condom recovered matched Henry and the deceased. Blood from the deceased and blood and skin cells from a pair of Henry's jeans matched. Phone records showed regular contact between the defendants in the period leading up to 10th October and thereafter. The telephone of Henry had a number of images of a sexual nature, one was taken at 12.43 on 11th October 2008 of a woman's private area.
23. Both men were charged on 29th October 2008 with murder.

24. Henry appealed in relation to the Chief Justice failing to give himself a Lucas direction. The Court of Appeal held that the learned Chief Justice did not rely on the lie in support of his conclusion but came to his finding based on his analysis of the statement in terms of whether he could accept the account given by the appellant. The prosecution did not rely on the lies told by Henry to prove its case or support its case. No Lucas direction was required.
25. Henry also appealed on the basis that no good character direction was given. The Court of Appeal noted that Henry had pleaded guilty on a separate indictment to the offences of abduction, robbery and rape, all violent crimes committed in the same incident which eventually led to the murder which forms the subject of the indictment. The defendant was therefore no longer a person of good character and not entitled to a good character direction. It would have been misleading to direct a jury in those circumstances that the defendant was of good character.
26. In relation to Henry's ground of appeal regarding the issue of joint enterprise, the Court of Appeal reviewed the answers Henry had given to Supt Bodden. The Chief Justice considered whether Henry had withdrawn from the joint enterprise. Henry claimed he had not foreseen killing or doing serious bodily

harm to the deceased. The Court of Appeal noted that Henry related a series of events, which suggest he separated the attack into two incidents. First when the Deceased was raped, then the statement of the accomplice signifying his intention to kill. This part of Henry's account was noted at paragraph 63 of the Judgment. Henry said that Ricketts said they had to get rid of her. Ricketts taped her up and put a bag over her head and put more tape over the bag. She was struggling and her hands were tied. Henry said he walked some distance away. That Princeton (Ricketts) came and picked him up and he got into the vehicle. Henry said he took the laptop and searched her handbag. The Court of Appeal concluded this was one incident, one plan, to commit crimes of violence upon the deceased, that is to say, abduction, rape and robbery, in the course of the commission of which and in furtherance of which, a decision is made to kill the deceased, for the purpose of avoiding being subsequently identified as the persons who committed those crimes.

27. The Court of Appeal noted it was apparent that the learned Chief Justice understood the defence in this light, as he spent some time analyzing the evidence that came from the cautioned statement of the appellant, Henry, in order to determine whether he could conclude that the content indicated a genuine withdrawal by the appellant Henry from the common design, or

as he put it '*the legal issue of countermanding and withdrawal from a joint criminal enterprise.*' This was not a case in which the action of the accomplice was done without the express communication by the accomplice to the appellant of his intention to take the life of the victim. On his own account, the appellant Henry revealed that during the course of the common enterprise the accomplice expressed that he was going to kill the victim. The issue was therefore whether with full knowledge that the plan was to kill he remained a party to the enterprise. The Court of Appeal found that the Chief Justice had correctly looked at Henry's subsequent conduct in order to determine whether he had withdrawn from the plan. Henry acted from the very onslaught in concert with his accomplice. He continued even after he was aware of the presence of the knife and that this accomplice would, if necessary, inflict serious injury, to assist in overpowering and subduing her. Having gagged and tied her up with duct tape, which they must have planned in advance, they acted in concert in the sexual assault upon her. The defendant Henry could hardly have been a more willing participant, he showed no remorse about the fate of his victim, he elicited the PIN for her bank card before she was killed which he used to try to access her account. Henry searched her handbag after she had been killed and took

her cards. He also shared the cash from her bag. He waited while his accomplice set the car on fire with his victim in it and although he claimed to have moved away, he waited until his accomplice caught up with him and remained with him until 5.30 or 6am. He then persistently attempted to access her laptop the next day, he also had photographic reminders which he chose to keep of the terrible ordeal to which he had subjected his victim.

28. The Chief Justice accepted it was Ricketts who actually suffocated the deceased but found that Henry made no attempt to withdraw from the criminal enterprise when his accomplice declared the intention to kill, instead by this presence and behavior gave at least tacit encouragement and continued in the criminal enterprise without any sense of remorse but with the intention to profit from the crime.
29. Ricketts appealed in relation to the sequential locations of the cell phone taken from the Deceased as tracked by cell site activity, to suggest that he could not have been involved. This was found by the Chief Justice and the Court of Appeal to amount to nothing more than speculation. He also challenged the admissibility of his interview. The Court of Appeal found that the learned Chief Justice, who had the opportunity to see and hear the witnesses and assess their demeanor, specifically

rejected the evidence of Ricketts. He gave sound reasons for so doing. Ricketts also complained that no good character direction was given. The Court of Appeal held that the good character direction would not have had any effect on the conviction, which was inevitable in the circumstances.

The Summing Up of the Learned Chief Justice

30. The trial Judge laid out the facts at paragraphs 1 to 33. He noted that the cause of death by Dr. Hyma, pathologist was '*homicide*', the absence of any sign of the products of combustion in the airway of her lungs suggested she was not alive at the time of the burning of the car. The state of her lungs was consistent only with an asphyxial kind of death, being deprived of oxygen to breathe. Dying as a result of a plastic bag being tied over her head would be consistent with what he observed. The police investigation was dealt with at paragraphs 34 to 101 and the relevant extracts are summarized by the Court of Appeal. The Chief Justice noted the calls between the defendants and that there was no dispute they knew each other well. On the night of the murder they exchanged calls on no fewer than eleven occasions. There was also a call from Henry's to Ricketts' cell phone at 2.44am on 11th October, which lasted 7 seconds. It was made when Estella Scott Roberts must have been with her captors in

Barkers. They also called each other on the morning and afternoon of 11th October as well as on the days following the murder.

31. In relation to the image of a woman's genitalia the Chief Justice noted that choosing to keep this image conveys, like so many other things about Henry's admitted behavior on the night of 10th October 2008, none of the sense of withdrawal from, objection to, or regret about, the killing of Estella Scott Roberts. Further in choosing to associate pornography with her cell phone (which he had displayed on the screen whenever it rang) this too revealed anything but a repentant state of mind about the horrible killing of Estella Scott Roberts, that he claimed to have witnessed only as an innocent bystander.
32. The Judge dealt with the location and movement of the deceased cell phones at paragraphs 121 – 128. At 11.39 pm on 10th October in the area of the Pappagallos cell site on the North Eastern area of the Island, Barkers. This confirms that she was taken directly to that area from Deckers Restaurant, a sign of pre planning on the part of her abductors (para 125). The defendant Henry had one of the phones in his possession when he travelled to Jamaica from 17th to 20th October 2008.
33. The Chief Justice noted that the only evidence against the defendant Henry as to his presence and actions or inactions at

the time when the deceased was killed, was that provided by him in his caution statement or interview to the police. That evidence was to the effect that it was his accomplice who asphyxiated the deceased. The Chief Justice noted Henry's answers in interview (28th October 2008) as to how the incident had begun: "*Prinston walked fast to the lady, he held on to her she was struggling, he thought maybe they had a problem.*" The Chief Justice stated that from that account the impression given is that the assault, abduction and events which followed were from Henry's point of view unplanned and spontaneous.

34. Moments later the knife was brandished by Ricketts and Henry described that she received a very big cut. The impression sought to be conveyed is that he was being taken along. When she was crying and said '*you guys don't kill me*' he said '*don't worry yourself*' and this even, while admitting to struggling with her and holding her head in the back seat while she was pinned between the two front seats still restrained by the seat belt of the driver's seat. The Chief Justice concluded that none of this narrative of the events accords with either common sense or with the other proven circumstantial evidence in the case. As a matter of common sense, the other man would not have set about this attack without full confidence his

accomplice would act in full unison with him. It was unbelievable that it could have been undertaken without any planning entirely on the spur of the moment. There was evidence that they were loitering around the car park well away from the road. According to Henry he arrived at Deckers a full hour before the deceased parted from her friends. The telephone evidence showed that the accomplices did not meet by chance. The Chief Justice rejected that Henry's involvement in the criminal enterprise came about without pre-planning.

35. Henry had stated that Princeton drove down into the bush, took the lady out of the vehicle and tied up her hands with a Cable and Wireless T-shirt. Then he tied up her mouth with tape he had in his pocket. Henry said he had to go along with it because he was '*inna it a ready*' (193 – 194). He then said he decided to join in the rape of the lady "...*giving the following chillingly causal explanation*": '*to be honest I just said that I would just like to experience a different nationality*'.

36. The Chief Justice concluded that he entirely rejected Henry's account which suggested Henry was nothing but a compulsive dupe. He found that the defendant Henry acted from the very onslaught in concert with his accomplice. He continued even after he was aware of the presence of the knife and that his accomplice would, if necessary, inflict serious injury upon their

victim, to assist in overpowering and subduing her. Having gagged, and tied her up with duct tape, which they must have planned in advance, they acted in concert in the sexual assault upon her. He found that the defendant Henry had embarked upon a joint criminal enterprise in which he was aware, at the very least, that really serious bodily injury would probably be inflicted upon his victim and continued thereafter nonetheless sexually to assault her, after she had been gagged and bound.

37. The Chief Justice noted that Henry was quite deliberate and collected even under pressure and left the firm impression of having an appreciable level of intelligence. The Chief Justice considered Henry's account as to the other guy's idea to get rid of the lady and that he Henry had walked off when she was begging for her life. He described the final murderous assault upon the victim inside the car which he attributed entirely to his accomplice suffocating her with a bag over her head until she stopped struggling. This terrible scene, he watched passively and safely from outside the car. The Chief Justice therefore found that he had not withdrawn from the criminal enterprise. He rejected the suggestion that by saying to his accomplice that he would not help him and it was up to him whether he killed her, that Henry could have thought he had done sufficient to withdraw from the criminal enterprise.

Rather, the suggestion was that the accomplice may go ahead and kill without Henry's physical assistance and that Henry would be willing to assist in the cover up. In other words, far from countermand or withdrawal, implicit words of encouragement.

38. In the cover up that followed, the defendant Henry could hardly have been a more willing participant. He showed no remorse, he elicited the PIN for her bank card before she was killed and used it shortly thereafter. Henry's persistent attempt to access the laptop during the course of the next day betrayed the absence of any feelings of remorse. *'And, finally and perhaps most telling and damning of all, are the pornographic reminders which he chose to keep of the terrible ordeal to which he had subjected his victim, leading to her cruel death'.*

39. The Chief Justice concluded *'on the overwhelming weight of the evidence, I find that the defendant Henry was a willing participant in the plan to abduct and rape Estella Scott Roberts by the use of force and with the realization that she would in all probability suffer serious bodily harm. While I must accept that it was his accomplice who actually suffocated her, I find that he made no true attempt to countermand or withdraw from the criminal enterprise when his accomplice declared the intention to kill but instead, by his presence and behavior,*

giving at least tacit encouragement, continued thereafter in the criminal enterprise without any sense of remorse but with the intention instead to profit from the crime’.

40. The Chief Justice noted that Ricketts’ account was that the deceased was killed at the second location (the Mangrove Buffer Road). He said in interview that he found a garbage bag in the back of the car which Kirk used to put over her head to suffocate her. *‘We suffocate her by tying the bag over her head until she stop moving’.* He said he lit the vehicle with some paper inside the vehicle and before they left they watched it blaze up. When asked why he had killed her he said that it was because she could recognize or identify them for kidnapping her. The Chief Justice concluded that the defendant had admitted his active participation in the death by suffocation of the deceased at the second location.”

Summary of Facts

18. The foregoing detailed narrative of facts can be summarized for present purposes as follows. On the 10 October 2010, the deceased Estella Scott Roberts celebrated her 33rd birthday with friends at the Deckers Restaurant on West Bay Road. The celebration ended at 11:15 pm when they left the restaurant. They chatted outside and walked to the adjacent parking lot where they separated. Estella’s car was parked at the rear of the lot, in an area in darkness. She was last seen as she walked toward her car.

19. Estella reached and entered her car, *“but from that moment was thrown into a period of obvious terror causing pain and suffering from which she did not survive”*, as both the trial Court and the Court of Appeal found.
20. She was forcibly attacked by the offenders Henry and Ricketts, who had been lying in wait. She was violently restrained by them and taken away in her car, driven by Ricketts, as she was subdued by Henry, her body trapped between the front seats of the car. She was taken into the isolated area of Barkers, at the northern end of the Island. There she was raped by both men and robbed of her possessions. She was later suffocated to death and her body incinerated in her car.
21. There was premeditation, co-ordination and planning on the part of Henry and Ricketts, as revealed respectively from their cautioned interviews and by the forensic evidence. Included in this was the admitted use of duct tape and straps to subdue the deceased and a knife was used to inflict a serious cut when she was first attacked in the car. These were items with which Henry and Ricketts went prepared for their assault upon their victim.
22. Theirs was found to be a coordinated attack which would not have succeeded or even attempted without them acting in unison. Telephonic evidence showed them being in constant contact during the hours before they laid in wait at the Deckers parking lot.
23. The evidence also revealed that robbery was one of their motives. They stole the Deceased’s cell phones, her laptop computer and her ATM card, having elicited from her her card PIN number by promising that they would let her go.
24. Within a few hours of her death, they made concerted but unsuccessful attempts to access her bank account by way of her ATM card.

Aggravating and extenuating circumstances exceptional in nature.

25. Based on the proven facts of the case, the Crown submits that there are a number of aggravating circumstances, exceptional in nature, such as to require a substantial increase in sentence above the statutory 30-year minimum. The Crown also acknowledges that only one circumstance might be considered extenuating, the assistance given by Mr. Henry to the police, leading to the arrest of Ricketts. I will return to address this issue.
26. The Crown submits that there are no extenuating circumstances, within the meaning of the Law, arising on the case of Mr. Ricketts. While this is acknowledged by Mr. Tonner QC, he made other submissions going to the issue of mitigation and in particular as to why some of the circumstances identified by the Crown as aggravating exceptional in nature, should not be so regarded.
27. I will return to further consider these also in the context of the Defence submissions.
28. The Crown invites me to regard the following as aggravating circumstances exceptional in nature.
 - (a) The planning, pre-meditation by the offenders and their laying in wait on the Deceased.
 - (b) The mental and physical suffering they inflicted upon her before her death.
 - (c) The abduction and sexual and sadistic assault upon her.
 - (d) The attempted concealment by destruction or dismemberment of her body.
 - (e) The murder of the deceased for gain, as must be inferred from the premeditated plan to abduct her and the robbery of her possessions.

29. The first four of these proven circumstances come within categories of circumstances specifically identified within Schedule 12 of the Regulations as being potentially aggravating exceptional in nature and the fifth, “*murder for gain*”, falls, in my view in agreement with the Crown, under the catchall provision of “*any other circumstances which may be considered relevant*”³.
30. For the reasons which follow, I find each of the circumstances cited by the Crown to be present in this case within the meaning of Schedule 12 of the Regulations.

1. **Under paragraph 2(2)(a):
A significant degree of planning or premeditation.**

The Court found that the offenders acted in concert from beginning to end. Henry’s account in which it was suggested that he got swept up in the events propelled by Ricketts as the master-mind and driving force and that he acted only as a “*compulsive dupe*”⁴, was rejected by the Court. Henry was found to have acted “*from the very onslaught upon the Deceased*”, in concert with his accomplice Ricketts. Henry continued to assist in overpowering and subduing her, even after he was aware of the presence of the knife and that Ricketts would, if felt necessary, inflict serious injury upon their victim. Having gagged and tied her up with duct tape and straps, with which they must have equipped themselves and planned in advance, they acted in concert in the sexual assault upon her.

2. **Under paragraph 2(2)(a):**

³ See Schedule 12 paragraph 2(2)(j) and so regarded by Henderson J in *R v Bryan Powell* Indictment 39B/2000, written judgment 19 October 2017, although not found on the facts of that case. Also to be so considered by analogy as “*murder for gain*” is expressly regarded as an aggravating circumstance under the equivalent English legislation: the Criminal Justice Act 2003, section 269 as read with Schedule 21, paragraph 5.

⁴ The Court’s characterization of his account of his role.

mental or physical suffering inflicted upon the victim.

It is difficult to imagine more cruel and depraved treatment of a defenceless woman. She was attacked and forcibly abducted by two unknown men in her own vehicle from a dark car park. In the process, she was seriously cut with a knife and taken to a remote area, where if not before, her hands were tied and her mouth was gagged. She was raped and despite her pleas for mercy for the sake of her young children, she was eventually taken to another even more remote location and killed by suffocation with a plastic bag forced over her head, while she struggled with her hands tied. Given the description of the events as narrated by the offenders themselves, she was subjected to this ordeal over the course some hours - a terrifyingly long period of time.

3. **Under paragraph 2(2)(g):
concealment, destruction or dismemberment of the body.**

The offenders had driven to a particularly remote area with the victim in order to conceal the ordeal to which they were subjecting her. They then killed her in order to prevent her identifying them and set the car on fire with her body inside in order to conceal the evidence of their crime. When the body was located, it was unidentifiable except by way of forensic analysis.

4. **Under paragraph 2(2)(i): abduction and sexual or sadistic conduct.**

The victim was subjected to rape whilst tied up by both offenders. The offender Henry had photographs of the victim's genitalia taken at the time of her ordeal, the Court noting that choosing to record and keep this image conveyed, like so many other things about Henry's admitted behavior on the

night of 10 October 2008, nothing of a sense of withdrawal from, objection to, or regret about the killing of the Deceased. Further, that in choosing to associate pornography with her cell phone (set for display on the screen whenever the phone rang), this too revealed anything but a repentant state of mind about the horrible killing that Henry claimed to have witnessed only as an innocent bystander.

Even while Henry was separately sentenced on Indictment 87/08B for the offences of rape, abduction and robbery; those sentences will run concurrently and so these aggravating factors are appropriate for consideration now on the count of murder.

5. **Under paragraph 2(2):
any other circumstances which may be considered relevant.**

Under this heading the Crown invites me to regard the murder of the victim for gain as an aggravating circumstance, exceptional in nature.

It is clear from the admissions made in their cautioned interviews and from their conduct immediately after the murder that both offenders were motivated in their attack upon their victim by their intention to rape and to rob her.

They stole her cell phones and lap top computer and made a number of attempts to access her bank account by means of her ATM card which they had also taken. They had elicited a PIN number by falsely promising her that they would do her no further harm.

In *R v Yousef Bouhaddaou*⁵, the English Court of Appeal regarded murder for gain where the murder was committed in order to facilitate the gain, as requiring the offence to be treated as one of particularly high seriousness⁶.

The present case is clearly of that kind.

It also involved significant planning and premeditation, pointing to the deliberate and predatory behavior of the offenders who chose their victim because she was a woman they could over-power and in the words of the offender Ricketts (from his cautioned interview) *“because he thought they could get some money from her because of the kind of vehicle she had. They went out to try and find money from anyone they could find. Kirk and him had discussed how they could get some money over the phone.”*

Extenuating circumstances exceptional in nature: Henry’s case.

31. As to circumstances which may be regarded as extenuating exceptional in nature, on Mr. Henry’s case, two things are identified by Ms. Bodden.
32. First, as already mentioned, his first admission to the Police. This however, was an admission only to the possession of stolen items, attempting to mislead the police that he had bought them from a fictitious person named “Ricky”. It was in his later interview that he named Ricketts as the ring leader and attempted to portray himself as the compulsive dupe who got swept along by Ricketts’ aggressive conduct.
33. While in naming Ricketts he assisted the police in the investigation of the case, I do not regard this as an extenuating circumstance exceptional in nature as contemplated by the Law, for the purposes of reducing the sentence for the offence of murder.

⁵ [2006] EWCA Crim 3190.

⁶ And so, under the UK legislative scheme, as raising the starting point for sentencing from 15 to 30 years.

34. The context here is different from when Henry was sentenced for the other offences on indictment 87/08B, where an extenuating circumstance need not have been regarded as “*exceptional*”.
35. This assistance, given only after Henry was himself already arrested and clearly implicated, may not, in my view be regarded as exceptional in nature. Henry’s assistance to the police was not prompted by contrition or remorse or out of a wish to assist law enforcement, it was mainly (and misleadingly) aimed at implicating his accomplice in order to exonerate himself.

Medical/Psychiatric evidence

36. In undertaking the review of his sentence, the proceedings had to be conducted in the absence of Mr. Henry who is now diagnosed as suffering from what Dr. Marc Lockhart, the consultant psychiatrist at HMP Northward, describes as an “*Adjustment Disorder*” and as “*Delusional Psychotic Disorder*.”

37. The first of these conditions is described by Dr. Lockhart in these terms:

“An Adjustment Disorder is a group of symptoms, such as subjective feelings of stress, feeling overwhelmed, sad, with increased emotional lability and at times features of hopelessness. Physical symptoms can occur, and include insomnia, reduced appetite and physical complaints. This syndrome is associated with a stressful life event. These symptoms can affect overall functioning, both physical and emotional. These symptoms are usually time limiting, but depending on the external stressors, can become chronic, established, and long lasting. It was determined in 2010 that Mr. Henry’s presentation

satisfied the diagnostic criteria of an Adjustment Disorder with disturbances of conduct. Mr. Henry was acclimating to having received a long sentence at HMP Northward after being convicted of murder. It was noted by the prison nurse and the staff that he was having increasing difficulty coming to terms with the gravity of his sentence, the actions he committed and adjusting to the long periods with minimal interpersonal contact because of his aggressive behaviours.”

38. This Adjustment Disorder, developed since Mr. Henry’s original sentence was imposed, has become of sufficient seriousness as to have led Dr. Lockhart to opine that *“Mr. Henry is very suspicious and paranoid and is unable to fully comprehend the nature of his current legal predicament and is currently unable to participate fully in his legal representation.”*
39. Having been earlier advised that Mr. Henry may be incapable of participating in the proceedings, I directed the appointment of an amicus curiae and Ms. Prathna Bodden was good enough to accept that appointment.
40. With her assistance, information was obtained from HMP Northward about Mr. Henry’s condition and, during an enquiry by the Court, testimony was obtained from the Forensic Psychologist Ms. Nina Welsh⁷ which led to the report being requested and obtained from Dr. Lockhart.

⁷ By video-link with HMP Northward on 31 January 2018, during an enquiry into the state of mental health of Kirkland Henry.

41. Having obtained Dr. Lockhart's report, I determined that it was not only appropriate but also obligatory in light of section 23 of the Law, to proceed with the review of his sentence in the absence of Mr. Henry.
42. Further, given the mandate of section 23 (4) of the Law, evidence of Mr. Henry's behavior in prison since his original sentencing would not be admissible for the present purposes of setting the minimum period of incarceration before consideration for release on licence.
43. In his report Dr. Lockhart had, however, also expressed the opinion that from medical records for the past 10 years Mr. Henry suffered "*an underlying Personality Disorder characterized by antisocial traits with an emerging psychotic disorder that has developed after his incarceration at HMP Northward*" and that this has led to the further current diagnosis of "*Delusional Psychotic Disorder.*"
44. While this troubling diagnosis of Mr. Henry's state of mind also speaks to developments since original sentencing, the reference in Dr. Lockhart's report to the pre-existing medical records "*for the past 10 years*" led to the further enquiry whether or not Mr. Henry might have been suffering a psychotic disorder at the time of his offence such as might have "*lowered his culpability*" within the meaning of Schedule 12 paragraph 2(3)(c) of the Regulations.
45. That provision treats as a potentially extenuating circumstance:
- "...the fact that the offender suffered from any mental disorder or mental disability which (although not falling within section 185(1) of the Penal Code (2013 Revision)⁸, lowered the offender's degree of culpability;"*.

⁸ Now in section 185 of the 2017 Revision, prescribing the defence of diminished responsibility on account of abnormality of mind substantially impairing mental responsibility for one's acts.

46. In his response to the further enquiry from the Court, in his supplemental report⁹ Dr. Lockhart concluded as follows:

“Mr. Henry’s presentation on examinations early in his incarceration did not meet criteria for the diagnosis of an Antisocial Personality Disorder. His interactions and responses when examined in March 2010 did not indicate such an abnormality of mind as to substantially impair his mental responsibility for his acts and omissions in doing or being party to the murder committed.”

47. I accept Dr. Lockhart’s opinion.
48. The upshot then, and my conclusion is that there are no relevant or admissible circumstances involving Mr. Henry’s state of mental health arising for consideration now. His unfortunate symptoms of an Adjustment Disorder or Delusional Psychotic Disorder have developed since his original sentence for this offence and are therefore irrelevant to the exercise at hand. His symptoms are to be addressed by treatment while in prison.
49. In her submissions, Ms. Bodden also pointed out that in Mr. Henry’s cautioned interview, he asserted that it was Mr. Ricketts who placed the plastic bag over the deceased’s head and actually suffocated her and that this might support a view of a lower degree of culpability on the part of Mr. Henry.

Extenuating circumstances exceptional in nature: Mr. Ricketts’ case

50. Mr. Tonner QC, on behalf of Mr. Ricketts, made helpful submissions (which Ms. Bodden also adopted on behalf of Mr. Henry to the extent applicable to him).

⁹ Written by reference to Criteria for Diagnosis published by the American Psychiatric Association in their “DSM-IV-TR Diagnostic Criteria for Antisocial Personality Disorder (301.7)”. However, when , with the assistance of Mdm DPP, it was pointed out to Dr. Lockhart that a more up to date set of criteria had been published in the DMS- 5 Criteria as revised June 2011, Dr. Lockhart confirmed (by email from his office on 12 February 2018) that that made no difference to his opinion.

51. He submits, in effect, that there are here only two truly aggravating circumstances exceptional in nature. He concedes that the mental and physical suffering inflicted upon the victim as well as the concealment and destruction of her body, are circumstances to be so regarded.
52. But he submits that the level of planning does not rise to the necessary level. That the planning was “*simplistic, basic and unsophisticated and does not rise to the level of being significant or exceptional.*” That the killing was spontaneous and impromptu, with the use of the plastic bag found in the victim’s car having been improvised because it obviously had not been planned.
53. I consider that this view of the Guidelines to Sentencing given in the Regulations is wrong. The aim of the Law here is to deter the planning or premeditation however simplistic, basic or unsophisticated, of the unlawful serious injury or killing of any person. The more sophisticated and detailed the planning and premeditation, the more likely the offence will be regarded as aggravated but any planning and premeditation leading to murder must, in my view, be seen as exceptionally aggravating the offence beyond the level of a spontaneous or unpremeditated specific intent required to commit the offence.
54. The words “*significant degree of planning or premeditation*” used by the Regulations in this context, are therefore intended to distinguish between a murder committed with a specific intention to harm or kill and a murder resulting from such an intention but coupled also with effective planning and premeditation, in whatever degree.
55. There was no finding as to the degree of planning or premeditation in this case although the conduct of the offenders as revealed by their respective accounts,

suggests that their planning may have indeed been basic and unsophisticated. But as the tragic circumstances show, even an unsophisticated and basic degree of planning to harm a victim, in particular a vulnerable unwary victim like the deceased, can prove all too readily to be effective.

56. And even if considered as having been decided upon after their abduction and rape of the deceased, this was not a spontaneous killing in a moment of panic over the enormity of the offences Henry and Ricketts had already inflicted upon her. It was very much a deliberate killing, decided upon if not before, then at the time when they determined that she was not to be spared to prevent her identifying them. That would not have been a spontaneous decision but a deliberate and premeditated decision to kill.

57. As regards Mr. Ricketts' involvement in the rape and sadistic treatment of the victim, Mr. Tonner submits that there was no specific finding that he participated. That although Henry pleaded guilty to raping the deceased, Ricketts did not and Ricketts was never tried for that offence. Mr. Tonner did, however, frankly accept that there was Mr. Ricketts' overall involvement with the suffering sustained by the deceased. This fact, when taken with his involvement acting in concert throughout with his accomplice Henry, means that at the very least, Ricketts must be regarded as an accomplice to the offence of rape as well. His cruel treatment of the deceased encouraged and assisted Henry in Henry's admitted sexual and sadistic assaults upon her.

58. Finally, as to what constitutes aggravating circumstances, Mr. Tonner submits that while "*murder for gain*" may be so considered as coming within the catchall

provision of Schedule 12, in this case the evidence suggests that strictly speaking, the offenders were motivated to kill by a desire to evade arrest, not for gain. That in any event, the pertinent point is that whilst the abduction may have been motivated by financial gain, there is nothing exceptional about defendants robbing members of the public at night in the Cayman Islands.

59. As such, submits Mr. Tonner, this feature is not so uncommon or unusual such as to be considered truly “*exceptional*”. Indeed, he submits, this Court’s decisions in *R v Chad Anglin*¹⁰ and *R v Brian Powell*¹¹, tend to support this view.
60. Here too, I am unable to share Mr. Tonner’s views of the Guidelines of the Regulations, either generally or based on the cases cited.
61. In each of those cases, there was specific justification for the finding that the theft may well either have been “*an opportunistic act committed spontaneously after the killing*” (*R v Chad Anglin*) or “*the theft of a small sum of money from a taxi driver while armed with a knife (which in and of itself) was not unusual and does not justify a minimum term beyond the 30-year norm.*” (*R v Brian Powell*).
62. Such conclusions must be regarded as being very different from a judicial determination that the more ordinary, common place, opportunistic or spontaneous killing for gain (or for that matter any other modality of crime such as the unlawful use of firearms) becomes, the less aggravating and exceptional it is to be regarded.
63. Indeed such a view of the Law would be contrary to the objective of deterrence and protection of the public, which is a primary objective of the Law.

¹⁰ Supra.

¹¹ Indictment 39B/2000, judgment delivered on 19 December 2016.

64. It is true that the word “*exceptional*” has been defined in the cases as the antithesis of common place¹² as “*unusual or special or uncommon*” although not “*unique or unprecedented or very rare...not one regularly or routinely or normally encountered*”.
65. However, while the Law stipulates the “*exceptional in nature*” test, a determination whether or not the test is satisfied must turn upon the particular circumstances of the case, not merely by reference to the ordinariness or otherwise of the modality of the crime.
66. Given all the circumstances of this case, murder motivated by financial gain can only be regarded as an exceptional and aggravating circumstance.
67. It follows also, that while it is important to achieve where possible, parity and proportionality of sentencing between comparable cases, each case will be decided ultimately having regard to its particular circumstances.
68. Here, Mr. Tonner urges me to regard the sentence imposed in the case of *R v Chad Anglin*¹³ as setting the parameters. He submits that while the present case attracts a minimum term above the 30-year norm, it requires a term below the 34 year term imposed in that case.
69. His argument is that in the *Chad Anglin* case, the body was, like in this case, destroyed by fire but the defendant Chad Anglin was also on bail at the time of commission of the offence (which is a mandatory aggravating feature pursuant to section 4 of Schedule 12 of the Regulations). Anglin also possessed a long list of relevant previous criminal convictions.

¹² *R v Devon Anglin* applying *R v Tariék Ricketts* (both supra).

¹³ Supra.

70. However, beyond the fact that Chad Anglin's victim Mr. Bise, was brutally killed apparently in his house after he had retired there in the company of Anglin and another man for what appears to have been a homosexual encounter, very little else of the circumstances of that case appear from the sentencing judgment.
71. In my view, the case does not offer much by way of comparables with the present for the purposes of sentencing.

Other potentially extenuating circumstances

72. Whilst Mr. Tonner notes that Larry Ricketts was only 25 years old, and that he had no previous convictions at the time of the offence, it is conceded that these facts do not amount to extenuating circumstances that are exceptional in nature/.
73. The same must be the case in relation to Kirkland Henry.
74. The requirement to consider deterrence and retribution as well as the potential for rehabilitation remains all the same, given the mandate of section 14 of the Law.

Conclusions

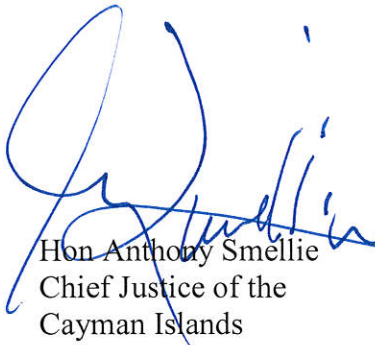
75. My determination of the sentencing in this case is based, as the case law advises¹⁴, upon a holistic assessment of all the relevant circumstances.
76. I find that in this case, each of the circumstances identified by the Crown when taken separately is aggravating exceptional in nature and when taken together, are to be regarded as aggravating to an exceptionally high degree of seriousness.
77. In my view, the normative minimum term of 30 years imprisonment would be arbitrary and disproportionate in this case and would fail to reflect the real gravity of the offence.

¹⁴ *R v Devon Anglin; R v Tareek Ricketts*. (both supra)

78. The ordeal of terror and suffering inflicted upon the deceased by the offenders acting together from beginning to end (as the Courts found), is undescrivable.
79. Their planned, premeditated attack upon the deceased was targeted against her precisely because she was vulnerable and defenceless.
80. Their motivation was robbery for gain and rape and even when they had achieved those terrible ends, they mercilessly killed the deceased despite her hapless condition and pleas for mercy.
81. Their destruction of her body to erase any evidence of their crime and Henry's recording of pornography images as memorabilia of the terrible ordeal inflicted on their victim, are further indications of the sheer inhumanity of their conduct.
82. No other local case to which I have been referred bears any true relationship of parity or proportionality with the present. This case, involving the abduction, rape and murder of a defenceless woman, is unprecedented in these Islands.
83. *In R v Minto*¹⁵ a case before the English Court of Appeal, the offender had lured his 16 year old victim to a hotel where he sexually assaulted and murdered her by repeated stabbing and then attempted to burn her body. The starting point sentence of 35 years imprisonment was found by the Court of Appeal to be "*not a day too long.*" Yet, in that case, there was not the kind of abduction, prolonged terror and abuse of the kind inflicted upon the deceased in this case. Nor was there in that case the motivation of financial gain present in this case.

¹⁵ [2014] EWCA Crim 297

84. In another case dealt with only this week at the Old Bailey in London, the rape and murder of an unsuspecting young woman was punished by a 40-year minimum term of imprisonment.¹⁶
85. The conduct of the offenders in this case is of a kind that calls for deterrent condemnation by the Court in the strongest terms.
86. Having regard to all the circumstances, including the age and history of each offender, the determination is that they will each serve a minimum period of 40 years' incarceration before being eligible for release on licence.
87. The periods of 485 days and 483 days respectively served by Mr. Henry and Mr. Ricketts on remand are to be taken into account.


Hon Anthony Smellie
Chief Justice of the
Cayman Islands



February 15, 2018

¹⁶ *R v Mujahid Arshid*, Case No. T20177285, Central Criminal Court (Old Bailey), per Justice Edis