

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)**

CASE NO: ANUHCR 2022/0083

BETWEEN:

THE KING

and

MARY JOHN

Appearances:

Ms. Rilys Adams, Counsel for the Crown

Mr Justin Simon, KC, Counsel for the Defendant

2024: March 21st
June 17th

SENTENCING REMARKS

Background

- [1] **SMITH, J.:** This case commenced with the defendant facing two counts on indictment. The trial was a Judge Alone trial, tried pursuant to the Criminal Proceedings (Trial by Judge Alone) Act No.8 of 2021 (as amended by the Act No. 5 of 2023).
- [2] The Counts on the Indictment are that Count one:-Mary John on 5th October 2021 in the State of Antigua and Barbuda intentionally and without lawful excuse and justification sent an electronic message for the purpose of causing insult to Britny Jeanbaptise by stating that the said Britny Jeanbaptiste had committed a murder. Count two states that Mary John on 5th October 2021 in the State of Antigua and Barbuda intentionally and without lawful excuse and justification sent an electronic message for the purpose of causing hatred to Britny Jeanbaptise by stating that the said Britny Jeanbaptiste had committed a murder.
- [3] The cases on both sides are closed, and after erudite and helpful closing submissions have been made it is now the Court's duty to render a verdict after careful consideration of all the evidence.

Burden and Standard of Proof - Bench Trials

- [4] In a Judge-Alone Trial, or a 'Bench Trial', a Judge sits without a jury. The Judge is both the Judge of the law and the forum of fact. The burden of proof and the standard of proof remain the same as they were and are in every other criminal case.
- [5] It is the Crown that has the responsibility of satisfying the forum of fact that it was the defendant who committed the offence as alleged; and the Crown can only do so by making the forum of fact feel certain of the defendant's guilt. As the trier of the facts, I have reminded myself that the defendant Mary John does not have to prove anything.

Elements to be Proved

- [6] I directed myself that the Crown must prove each element of the offences by providing me with evidence of such a quality that I can feel sure of the respective elements of the two counts on the Indictment.
- [7] If I am sure of each element and have no reasonable doubt, then I can be certain of the guilt of the defendant and may convict her. If, on the other hand, the Crown fails to make me feel sure and I have reasonable doubt of any of the elements of the offence I will be obliged to acquit her.
- [8] In this case the Crown had to prove that in relation to count one:- that the defendant sent an electronic message and that she intended to cause insult. The evidence clearly showed, and the defendant admitted that the said message was sent from her mobile phone and posted to her Face Book page under the name of "Turks Lee". The Crown's case was that the defendant had the intention to cause insult to the complainant at that time. In relation to count two she also admitted that the said message was sent from her cell phone and posted on the account of "Turks Lee" with the intention to cause hatred to the complainant. It was the duty of the Crown to marshal evidence to prove each and every element of all offences on the Indictment.

Intention

- [9] The Court has reminded itself that the counts on the indictment require the Crown to prove that the defendant had the requisite intention at the time to cause insult and hatred towards the complainant. When considering whether the Crown has done so, the Court can draw such conclusions as it thinks fit from the testimony of the witnesses, the defendant's conduct and or words used before and at the time of the alleged offence. I have reminded myself that I can find that someone had intended what would be the natural consequences of their actions by looking at said actions. I am not able to get into someone's mind, but I am able to know whether there was an intention by drawing inferences from the facts. A person intends to cause a result if he acts in a manner to bring it about.

- [10] In this case the defendant deliberately posted the information on her account and accompanied the post with a photograph of the complainant. It is noted that the provisions of the section frame the offence in that the offence is only created when there is intention, there is an absence of lawful excuse or justification and a message is sent, posted, or published by electronic means.

General Directions/Reminders

- [11] The Court is aware that it is entirely for the Court to decide what evidence it accepts as reliable and what it rejects as unreliable. When a defendant has given evidence, the Judge as the sole arbiter of the facts and the law must apply the same fair and impartial standards when weighing up the evidence of the witnesses for the Crown and the defence.
- [12] The Judge as the sole arbiter of the facts, does not have to resolve every issue that has arisen, only those issues that are necessary for me to reach my verdict. I am reminded of the following:-
- i. I am permitted to draw sensible conclusions from the evidence that I accept as reliable, but I must not engage in speculation or guesswork about matters which have not been covered by the evidence.
 - ii. I am allowed to draw inferences, but these inferences must be grounded in the evidence that has been led.
 - iii. It is important that my verdict is based only on my own independent view of the evidence. No emotional reaction to the case and/or any sympathy for anyone involved in the case and/or by any fixed ideas/ preconceptions/ prejudices that I may have had can be used to colour my verdict.

Discrepancies and Inconsistencies

- [13] As in every criminal case there will be discrepancies and inconsistencies in the evidence. How a trial Judge deals with inconsistencies must depend on the particular facts of the case.
- [14] In the case of **Daken v. R.** (1964) W.I.R. 442 at p. 444F Wooding C. J. stated:-

“No general principle can be enunciated except that it should never be forgotten that in the final analysis questions of fact are to be decided by a jury and not by the presiding judge. The judge may, and in cases such as we are now considering, we think it is his duty to, give such directions as will assist the jury in assessing the credit worthiness of the evidence given by the witness whose credibility has been attacked, but it can be but seldom that the circumstances will warrant his going beyond that...”

- [15] As already pointed out, the case before this Court is a Bench Trial and so as in the case of a magisterial trial, the facts and the law are in the purview of the Magistrate or Judge.
- [16] The Court has considered all the evidence with the intention of reaching a fair and dispassionate assessment of that evidence. The Court notes that in assessing credit and reliability it must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. The Court notes that if there are inconsistencies and discrepancies the Court must look to see if they are material and if they can be resolved on the evidence.
- [17] Unresolved inconsistencies or discrepancies would lead the Court to reject that bit of evidence or all the witness's evidence entirely. The Court must also consider the cumulative effect of those inconsistencies or discrepancies on a witness's credit and reliability. If the Court finds the evidence of a witness implausible it will reject either that witness's evidence entirely or that particular bit. The Court begins firstly with analyzing the discrepancies some of which are set out below:
- There was a discussion about how long the post had been up before it was deleted. The defendant said it was only up for a few seconds while the officer said the time was an hour. I do not consider this to be a material discrepancy as the post went viral as soon as it was posted.
 - Then there was the discrepancy about the time being changed on the post. Again, the Court sees this as being immaterial.
- [18] The Court finds that the inconsistencies in this case were minor and the physical evidence lent credibility to the eyewitness's evidence of the vital issues such as when the offensive post first appeared, how long it was up for, and the harm caused by the contents therein.

Good Character Direction

- [19] There are two limbs of good character--credibility and propensity. Because the defendant did testify under oath, she is entitled to the benefit of the full good character direction which is credibility limb of good character as well as the benefit of the propensity limb which says that the defendant is less likely to have committed the offence because of her previous clean criminal record. Good character is not a defence, but it is a positive feature of the defendant that I should take into account when assessing whether I believe the defendant committed the offence. After considering her good character and taking both the propensity and credibility limbs into account, the good character of the defendant does weigh in her favour. I have reached this conclusion after considering that the conduct by the defendant would have been out of character for her, a person who had not previously been convicted of violating the law. However, with the evidence being overwhelming in this case, the good character plays a very minor role in the Court's determination.

Analysis and Discussion

- [20] It is clear to this Court that when the defendant made the first post it caused hurt, panic and pain to her and her family members. Quite clearly, there was a variation in the spelling of the name, but the members of the public instantly connected the post to the complainant. They called the complainant's mother and family members and took screenshots of the post. The post was shared numerous times and as the saying goes "it went viral." Further, as already noted above, there was a photograph of the complainant accompanying the offending post.
- [21] Counsel and the defendant laid much store on the apology made by the defendant to the aunt of the complainant. The apology was posted on Facebook subsequently. The Court has viewed this apology and has deemed that the damage had already been done by the time this apology had been posted. It appeared to the Court to be self-serving and insincere. The complainant said that when the post was viewed by her mother and family members, they were shocked with the grandmother asking her "*Britney, who you kill?*" The grandmother of the complainant also testified that when she read the post that was sent to her, she fell to her knees in distress. The subsequent exchange with Ms. Eureka Jeremiah also shows that the defendant was not sorry nor sincere (see Exhibit MJ1) so again the defendant is putting herself in the role of victim and not taking any accountability for her actions.

The Crown's Case

- [22] The Crown's case in brief was that the defendant, Mary John posted on her Facebook page posts stating that the complainant had been involved in a murder. The complainant testified to being bombarded with telephone calls from family members expressing alarm and concern about the contents of the post on Mary John's aka Turks Lee's Facebook page. The post included a photo of the complainant and mentioned that she was related to a young man who had committed murder previously. The complainant visited the police station and made a report about the offending posts made by "Turks Lee" "accusing her of committing a murder on 5th October 2021.

The Defendant's Case

- [22] The defendant was given her three options and she opted to give sworn testimony. She testified that she received information of the murder of her friend and also indicated that a name came to her attention, and she posted the name of the person on her Facebook page under the name of "Turks Lee". She said she had been posting under that name since 2019. She told the Court that on the morning of 5th October 2021 she said she read a Facebook post by her friend Ms. Finch who was calling out for help. She said she called the police station and had a conversation with a police officer. Later that morning she woke up and read on Facebook that her friend had been murdered. She said she made some calls and spoke to a police inspector who told her that they had apprehended a

young lady inside of Jane's house and that person was named "Britney Jn Baptiste." She then went to Jane's house in the company of her friend. She said that when she arrived there, she received several messages, and someone sent her an image of a woman. She forwarded the picture to someone else, and that person replied "yes, that is her". It was a picture of the complainant. She then reposted the picture on her "Turks Lee" page 20 minutes after receiving it.

- [23] It was her testimony that the offending post only stayed up for a few seconds and that she then removed it. Her witness also testified that she had advised the defendant to remove the said post.

Decision

- [24] Upon hearing all parties and having weighed up the evidence, the Court finds that the Crown has proved all elements of both counts on the Formal Accusation and finds Mary John guilty of both counts. She admitted to posting that a woman named "Britney Jn Baptiste" had murdered Jane Finch. She accompanied the post with a photograph of the complainant. She added a comment that the complainant's nephew had recently been convicted of murder. The Court was of the view that the intention for both counts had been proved beyond a reasonable doubt and the mens rea of the actual posting was not in dispute. The defendant admitted to doing so. Counsel has requested a probation report, and this matter is therefore adjourned for sentencing . The defendant remains on bail.

Sentencing

- [25] Mary John was found guilty on 21st March, 2024 of one (1) count of sending an electronic message for the purpose of causing insult and one (1) count of sending an electronic message for the purpose of causing hatred after a trial by judge alone.
- [26] The counts carry a maximum sentence of a fine not exceeding \$500 000.00 and a term not exceeding seven (7) years.
- [27] The facts of the case were ventilated during the trial, but in summary the Crown alleged that on the 5th day of October 2021, Ms. John posted statuses to her Facebook page stating that the virtual complainant had murdered Jane Finch.
- [28] The laws under which Ms. John was charged have no sentencing guidelines and as such the regular sentencing protocols must be followed. In passing the sentence, the Court will consider the classical principles of sentencing as laid out in **R v Sargeant** (1974) 60 Cr. Ap. R 74; namely retribution, deterrence, prevention, and rehabilitation. The factors for the Court to take into consideration were laid out in **Desmond Baptiste et al v R SVG** Crim App. No. 8 of 2008 where Byron C.J spoke of factors to include, though not limited to:-
- a) The nature and circumstances of the offence
 - b) The character and antecedents of the offender

c) The mitigating and aggravating features.

- [29] The sentencing scale will slide up and down depending on the peculiar circumstances of each case. **DPP v Shaunlee Fahie** BVI HCRAP 2008/003).
- [30] In determining the nature and the circumstances of the case the Court gave regard to how the electronic message was sent. That is to say, the Court considered where the message was posted and the reach of the post. The Court noted that the offending post was posted to Facebook and that the defendant benefitted from a wide following on social media.
- [31] The Court also gave regard to the content of the messages and here the Court noted that the allegations were profoundly serious causing much distress to the complainant and her family members.
- [32] The Court also had regard to the persistence of the messages whether that relates to the length of time the message remained live or the frequency of the messages. The evidence at the trial was that once the message was posted "it went viral."
- [33] Thus, as it relates to this case the messages were posted to Facebook, a social media platform where there was an audience who could access the post and share same. There was, in fact, sharing which is what led to the complainant and her family becoming aware of what was being said.
- [34] The post accused the complainant of being a murderer, mentally unstable and a drug user while also linking a family tragedy, the comparison which the Crown suggests was meant to show that she was indeed capable of murder. The element of hatred being met (count two) as well as insult to the complainant (count one).
- [35] It is suggested that whether one looks at the length of time the post was up or the frequency of the messages that it cannot be said there was much persistence as the post was not up for days nor was it posted repeatedly. Having considered the nature and circumstances of the offence the Court then considered the aggravating and mitigating factors of the offence. The Crown submitted that an aggravating factor was, as the complainant testified, that attempts were made to let Ms. John know she had the wrong person, but she was resistant to those attempts. The Crown also submitted that a mitigating factor is there was an expression of remorse after the post was removed, however, as already stated the Court found that apology to be self-serving.
- [36] The Court then moved on to the aggravating and mitigating factors in relation to the convict. There were no aggravating factors, however, in mitigation it must be noted that Ms. John is not known to the Court.

[37] The Court is also entitled to take into consideration the impact on the complainant and has had regard to the information provided in the "Victim Impact Statement" as provided by Mr Jarvis, Probation Officer.

[38] Although this legislation has had a fair amount of discourse, there are few examples of sentences passed under it. The Court has considered the **COP v William Emmanuel**, a summary matter (hence the sentence structure was a maximum of \$200, 000 and 3 years) the accused was fined \$1,000.00 for sending threatening messages by means of an electronic system. In this case he was using his cellular phone to record Facebook lives. The accused in that matter pleaded guilty.

Mitigation

[39] The mitigation was conducted by defence Counsel. He drew attention to the probation report as well as the several character witnesses/references. All spoke highly of the convict's charitable deeds in the community, her commitment to helping the less fortunate in society and her work in her own sobriety. Counsel also reiterated the lack of intension to cause hurt, insult or hatred on the part of his client. For her part, the convict issued an apology to the complainant (who was absent) again indicating that she had meant no harm to her family nor to her. The Court considered all that was said on behalf of the convict.

Sentence

[49] The Court has determined that the convict, Mary John, should issue a written apology to the complainant to be sent to Ms. Adams of the prosecution for onward transmission to the complainant. In addition to paying issuing an apology she is to pay compensation in the sum of \$6.000 (\$3,000 for each count). The compensation is to be paid no later than Friday 21st June 2024, in default of 6 months imprisonment to run concurrently. In addition to the compensation order the convict is fined \$2,000.00 (\$1,000) on each count, to be paid not later than 30th October 2024. In default of payment 6 months in prison to run concurrently.

Obiter

This convict, by her own admission, is not a journalist and has no journalistic training. In the day and age of social media, the arbitrary publishing of material without the proper background checks being made cannot be sanctioned nor tolerated by this Court as the result ends in people's lives and good name being disrupted and thrown into confusion as was the case with this complainant. I hope that in the future good sense will prevail.

Ann-Marie Smith
High Court Judge

By the Court

Registrar