

THE EASTERN CARIBBEAN SUPREME COURT
ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO: SVGHCR2023/0006

BETWEEN:

REX

and

JEFFREY CUFFY

Appearances:

Ms. Maria Jackson-Richards, Counsel for the Crown
Mr. Jeffrey Cuffy, Self-Represented Defendant

2024: February 15th, 16th, 19th
March 25th

JUDGMENT ON SENTENCE

- [1] **FLOYD J. [Ag]:** The defendant, Jeffrey Cuffy, was charged with Robbery. He was arraigned, and entered a not guilty plea. A jury trial took place, and the defendant was found guilty on 19th February 2024. A Social Inquiry Report was ordered, and the case was adjourned for sentencing. The Social Inquiry Report was filed on 21st March 2024. Written submissions were filed on 22nd March 2024 by Crown counsel. Oral submissions were received on 25th March 2024. The matter now proceeds to sentencing.

The Facts

- [2] The complainant, Ulan Samuel, is employed at Kendra Aluminum in Campden Park, and was so employed on 4th March 2022. She works Monday to Friday from 8:00 AM to 5:00 PM. She gets to work around 7:00 AM. On that date, she got there minutes after 7:00 AM. She sat down on a wall outside the front gate of the plant. She owned a cell phone, and that day, she was playing a game on her phone. She

saw a man come from out of the gate at Eustace. She put her head down and went back to her game.

[3] When Ms. Samuel looked up, the man was in front of her, holding a knife. She could see the shiny part of it. He had on a mask, which covered his lower face. He had a black complexion. He wore a white jersey, and black short pants, with a bag on his back. He was less than a foot away from her. Ms. Samuel got up and ran, bawling for help. The masked man ran behind her saying "Gimme dis, gimme dis, gimme dis." She realized it was her phone that he wanted. The man caught up to her, and pulled the phone out of her hand. He then turned, ran up the main road, and into a gap. The complainant reported the robbery to police at 7:45 AM the same day.

[4] Keino Delplesche is employed as a security guard. In 2022, he held that position at the Block Plant in Campden Park. He knows the defendant as "Black." In March 2022, he had known the defendant for over 5 years. They grew up in the same community, and interacted over time. On 4th March 2022, he was on duty at the Block Plant. He starts his shift at 6:00 AM, and he patrols the compound. That morning, he heard two people talking in the area of the gap, so he looked over and saw the defendant speaking with a man named "Dan," who worked at a nearby bakery. They were about 10 feet away from him. There was nothing blocking his view. "Dan" left for the Allan Smith Bakery, and the defendant went up the road, to the area of the Printery or newspaper building.

[5] The Kendra Aluminum building was about 100 feet away from Mr. Delplesche, and the Printery was about 50 feet away. He saw the defendant go towards the newspaper building, and stop at the gate. Mr. Delplesche watched the defendant put a black and white kerchief around the lower part of his face. The defendant was wearing a white T-shirt, black short pants, and had a bag on his back. Mr. Delplesche was about 25 feet away from the defendant. There was nothing obstructing his view.

[6] The defendant crossed the road to the Eustace Gate. At that point, a man named "Orcial" came along, and began a conversation with Mr. Delplesche. This took his

attention away from the defendant. Mr. Delplesche then heard a woman cry out for help. He turned, and saw the defendant behind a woman, saying “Gimme dat, gimme dat.” He saw a silver object in the defendant’s hand, but could not say what it was. He saw the defendant pull something away from the woman. It was a black cell phone. The woman stepped back, cried out, hunched forward, and crouched down. Mr. Delplesche knew the woman from passing her on her way to Kendra Aluminum. The defendant then ran down the road towards Mr. Delplesche, but turned and went off in a different direction. The woman was about 20 yards from the Kendra Aluminum gate. It was a sunny day, and the weather was fair. The incident happened around 7:00 AM.

- [7] Danis “Dan” Matthews is from Campden Park, and works in construction. In 2022, he was a driver for the Allan Smith Bakery. At that time, he had known “Black” for about 2 years, from the streets of Campden Park. On 4th March 2022, he walked to work. He was late, so he took a shortcut. He caught up to another man walking. The man hailed him. It was the defendant, “Black.” They walked together to the gap and the main road. It was about a 2-minute walk from there to Kendra Aluminum. He did not see where the defendant went. It was between 6:10 AM and 6:15 AM.
- [8] The defendant did not testify at his trial, as is his right. However, he was interviewed by police under caution, and after rights to counsel were given. In that interview, the defendant said, “I did not have any knife and I do not know Ulan Samuel.” The defendant also said he did not walk in Campden Park on the morning of 4th March 2022 with “Dan.” However, he qualified that by saying he knows more than one “Dan” in Campden Park, so he would need to see the person police referred to as “Dan,” to confirm who they were talking about. The defendant, when asked where he was on the morning of 4th March 2022, said he was in Sion Hill. When asked if there was anyone who could attest to that fact, the defendant said “High Tide” could.
- [9] “High Tide,” also known as Solomon Labourde, gave evidence in this trial. He said that he lives in Sion Hill. He is a carpenter by trade. He has known the defendant for a long time. They grew up together in the same neighbourhood. He was asked if he saw the defendant on the morning of 4th March 2022. He replied that the

defendant came by him many different times. He would pass by and visit. However, there was no schedule kept, and he could not say whether the defendant was or was not at his house on that day.

- [10] The jury, after hearing all of the evidence, chose not to accept the alibi of the defendant, but accepted the evidence presented by the Crown. They found Mr. Cuffy guilty of Robbery.
- [11] The Social Inquiry Report, dated 20th March 2024, was prepared by Case Worker, Angelique Foster. It indicates that the defendant was born on 10th November 1988. He is now 35 years old. His mother resides in the United States of America, and his father resides in St. Lucia. The defendant has four siblings and one child of his own.
- [12] The defendant's overall health is good, although he suffers from asthma. Prior to his incarceration, he attended church. He reported that he smokes marijuana and drinks occasionally. He has held various jobs, including working as an electrician, and a sea operator. The defendant has an extensive criminal record with multiple entries for property offences.
- [13] When interviewed for the purposes of the report, the defendant was calm and cooperative. He advised that both his parents were absent from his childhood growing up.
- [14] When the defendant was asked about this incident, he proclaimed his innocence, stating that he did not commit any crime. He is unhappy in prison, stating that there is nothing good there, and he cannot come and go as he pleases.
- [15] The defendant's aunt advised that he had lived with her for the past five years, and has been very helpful. However, another family member described the defendant as "not a good guy." He does not listen, and smokes marijuana to excess. That person was not at all surprised to learn of the role the defendant played in this crime.

- [16] Prison authorities advised that the defendant was constantly in and out of jail. He is an aggressive, violent, troublemaker. He does not abide by prison rules, and has threatened prison officers, and used indecent language towards them. This has resulted in institutional charges, enforced discipline, and placement into solitary confinement.
- [17] Community members described the defendant as a troublemaker, violent, hostile, a bad guy, always involved in crime, and in and out of prison. He led an unstable, transient lifestyle. Circumstances have shaped him, and he has chosen a life of crime. One person stated that "only God could change him." They were not surprised to learn of this crime. Some stated that the defendant should be locked away for the safety of the community, and it was hoped that, upon his release, he would find somewhere else to live.
- [18] The report's author interviewed the victim. She advised that during the incident, she thought she would be killed. Although she has recovered from the trauma of the incident, she often reflects on what happened. It causes her to be afraid of being alone when on the street.
- [19] The Victim Impact Statement indicates that the victim is age 48. She hopes and prays that she never experiences anything like this incident again, and wishes she could forget it. She feared for her life when it happened. She was so frightened, that when she ran from the defendant, she left her purse behind. She thanks God that she was not harmed physically. The loss of her phone concerned her greatly because it contained photographs of her daughter, and she did not know what the defendant would do with those pictures.
- [20] The victim was not going to report the incident because she was afraid of going to court. Her daughter worried about possible repercussions that might befall her if she went to court. However, she is happy that she did.
- [21] The loss of her phone was significant to the victim. It was the first phone she ever bought for herself. She worked hard to buy that phone, and now it is gone.

- [22] The victim no longer goes to work early. She feels at risk in that area, and worries about her surroundings. However, she no longer takes anything for granted, and considers every day to be a blessing.

The Position of the Parties

- [23] Learned counsel for the Crown, submits that the court should consider the classic principles of sentencing, including retribution, deterrence, prevention, and rehabilitation. Reference was made to the Sentencing Guidelines of the Eastern Caribbean Supreme Court, Offences of Dishonesty - Robbery.
- [24] Some psychological harm was suffered by the victim, as found in the Victim Impact Statement. This places consequence into Category 2 - Medium. The defendant used a weapon, other than a firearm, in committing the offence, placing seriousness into Level B - Medium. This results in a starting point of 40% and a range of 25% - 55%. For a life sentence quantified at 30 years, the starting point becomes 12 years.
- [25] Aggravating factors for the offence include the prevalence of the offence in this jurisdiction, and the fact that it occurred in broad daylight. With regard to prevalence, the Court refers to **Practice Direction 8A No. 1 of 2019**, which holds that judicial notice can be taken of local circumstances, if appropriate. If it affects the sentence, then reasons must be given. Prevalence must, however, be established. The Court can receive evidence from local police, prosecutors, probation officers or other appropriate persons. Therefore, without any such evidence having been tendered in this case, the Court declines to take judicial notice of the prevalence, if any, of this type of offence.
- [26] No mitigating factors are submitted by Crown counsel for the offence.
- [27] Counsel for the Crown submits that aggravating factors for the offender include relevant previous criminal convictions, and the offence being committed while the defendant was serving a suspended sentence. No mitigating factors for the offender are submitted.

- [28] Learned Crown counsel submits that the defendant is entitled to a reduction in sentence, calculated on time spent on remand, of 4 months and 21 days.
- [29] The defendant was unrepresented during this trial, and remained so at his sentencing hearing. This court has previously lamented the lack of legal aid in St. Vincent and the Grenadines for accused persons charged with serious criminal offences. Only those persons charged with capital offences receive the benefit of assistance from the State, in the form of Legal Aid. While the court recognizes the admirable efforts of members of the local bar in providing pro bono legal advice and representation to some indigent accused persons unable to afford to retain counsel, it is disappointing that persons charged with serious offences such as Robbery, and other non-capital crimes, which carry a sentence of life imprisonment upon conviction, are left to their own devices. The potential for significant deprivation of liberty upon conviction is high. Consequently, the lack of more widely available legal aid creates, it must be said, a serious gap in equal access to justice.
- [30] The defendant put forward his own submissions on sentencing. He asked the court for leniency, and stated that he did not want to talk about something that he did not do.

The Law

- [31] Under **s. 216** of the **Criminal Code**¹, upon conviction for Robbery, the penalty is imprisonment for life.
- [32] Sentencing in criminal cases involves many considerations, in order to achieve a fair and equitable result. A sentence must be proportionate to the gravity of the offence, and the degree of responsibility of the offender. It should be increased or reduced, to account for all aggravating and mitigating circumstances relating to the offence and the offender.
- [33] In fashioning a sentence appropriate to the facts of the case and the characteristics of the offender, the court must consider the principles set out in leading cases such

¹ CAP 171

as **R v Sargent**², referred to with approval by our appellate court in **Desmond Baptiste et al v The Queen**³. Sentencing seeks to promote respect for the law and an orderly society. The sanctions imposed by a court, when fashioning the proper penalty, are based upon the classic principles of sentencing. As set out in the **Sargent** case, those principles include:

Retribution: The court must reflect society's abhorrence of particular types of crime, through punishment of such unlawful conduct.

Deterrence: Specific to the offender, and generally to likely offenders or persons who may be minded to commit similar offences.

Prevention: To protect the public from offenders who persist in committing crimes by separating them from society.

Rehabilitation: To engage offenders in activities designed to assist them in their reintegration into society.

[34] The case of **Renaldo Anderson Alleyne v The Queen**⁴ from the Caribbean Court of Justice, refers to the principles of punishment, deterrence, and rehabilitation. A sentencing court must consider the facts of the case, in balance with the circumstances of the offender, including his age and background, whether he has a criminal record, the role he played in the offence, the design and execution of the offence, and his reform and reintegration into society. Sentencing is approached on an individual, case by case basis. The goal is a fair, fit, and principled sanction.

[35] All of that has been considered by this court in formulating an appropriate sentence.

Analysis

[36] Having received and carefully reviewed the written and oral submissions of counsel for the Crown, and the oral submissions of the defendant, as well as the Social Inquiry Report, and the Victim Impact Statement, what follows is the decision on

² 60 Cr. App. R. 74

³ Cr. App. No. 8 of 2003

⁴ [2019] CCJ 06 AJ, 93 WIR 155

sentencing in this case. Although Robbery is classified as an offence of dishonesty in the **Sentencing Guidelines**, this was actually a crime of violence, committed with a weapon, in broad daylight, in a public area. It was bold and brazen. A woman was set upon in the street, while she waited to begin her shift at work. She was quietly and peacefully going about her business, when she was menaced by a masked assailant brandishing a knife. Quite understandably, she reacted by running away in fear. She was pursued, and her property, a cell phone, was violently wrenched from her grasp. A message of deterrence must be sent that such aggressive behaviour in our streets, will not be tolerated, and will result in incarceration. People must feel safe, and free to move about the streets of their community, without fear of property crime and violence.

[37] In crafting this sentence, the Court has relied upon the general provisions of the **Eastern Caribbean Supreme Court Sentencing Guidelines for Offences of Dishonesty, Re-Issue 8th November 2021**. Sentencing for a case of Robbery, requires an assessment of the seriousness of the offence, and its consequences, with reference to the harm caused. The assessment of seriousness includes reference to the culpability of the offender. A starting point for the offence within the relevant range, must be established. **Footnote 5** of the **Sentencing Guidelines** for the offence of Robbery, indicates that where the maximum sentence is life imprisonment, for the purposes of the calculation, it is to be treated as thirty (30) years.

[38] To begin with, the court must first consider the consequence by assessing the harm caused by the offence. The victim is a woman of modest means. She works in a factory setting, fitting, and punching windows on an assembly line. To her, a cell phone was of great personal value. It was the first one she ever purchased. The loss of it was a significant inconvenience. Her reaction to being accosted by the masked and armed defendant, in the manner that she was, clearly showed her emotional distress, fear, and discomfort. It had a psychological impact upon her, and continues to affect her. This is clear from her interview for the Social Inquiry Report, and the Victim Impact Statement. Given the facts and the circumstances, it

could hardly have been otherwise. The appropriate classification is therefore found to be Category 2 - Medium.

[39] The second stage involves the consideration of seriousness by assessing the culpability of the offender. The victim was a vulnerable woman, slight of stature, seated upon a wall outside her place of work. The defendant used a weapon, a knife, produced in order to threaten the victim with violence, and to instill fear within her. All of that places this case into the Category Level B - Medium.

[40] Having determined the consequence and level of seriousness, the starting point is found by using the sentencing guidelines grid. Bearing in mind the 30-year benchmark for life imprisonment, this calculation leads to a starting point of 40%, with a range of 25% - 55%. In this case, the court has determined the appropriate starting point to be 40%, which is 12 years.

[41] Having established a starting point of 12 years, the court must consider the aggravating and mitigating factors of the offence, and adjust the figure upwards or downwards, accordingly. The defendant concealed his identity by covering much of his face with a bandana. In fact, were it not for a nearby eye witness, who not only knew the defendant, but watched him put on the mask, the defendant would have been extremely difficult to identify. The defendant knew exactly what he was doing, and why he was doing it. The offence was clearly motivated by greed, on the part of the defendant. An electronic item that could be either converted for personal use, or quickly disposed of for profit. The property taken by the defendant from the victim was never recovered. It was very valuable to her, as expressed in the Victim Impact Statement. These are aggravating factors. There are no mitigating factors for the court's consideration regarding the offence. These features serve to increase the sentence by 2 years to 14 years.

[42] The next step involves a consideration of the aggravating and mitigating factors pertaining to the offender. In this case, the defendant, at age 35, has a lengthy criminal record, and was serving a suspended sentence when this offence was committed. His record spans a 13-year time period, and consists almost entirely of

relevant, and related, property offences. The last entry, however, is a conviction for manslaughter. The defendant is someone who has seen the inside of His Majesty's Prison on many occasions. His behaviour while incarcerated has been poor. Members of his family and community confirm that his behaviour outside of jail is often equally troubling and frightening, with elements of criminality. This is a significant aggravating factor that increases the sentence by 2 years to 16 years. The court can find no mitigating factors to take into account for the offender.

[43] The defendant exercised his right to a trial with a jury in this case. That is his absolute right. However, as a result of conviction after trial, he cannot receive any credit for a guilty plea, and can receive no related reduction in sentence. The defendant must, however, receive credit for time spent on remand. All offenders are entitled to receive credit for the time they have served in custody, while awaiting trial for the offence as charged. Further custodial time will be added for time spent awaiting sentence, after trial. Mr. Cuffy has been in custody on this matter, both pre-conviction and post-conviction, for a total of 4 months and 21 days. That shall be deducted from his sentence, reducing it to 15 years, 7 months, and 9 days.

[44] Taking all of this into account, and for the reasons noted, for the offence of Robbery, the defendant, Jeffrey Cuffy, is hereby sentenced to 16 years imprisonment. He will receive credit for the time already served in this case. This reduces the sentence to 15 years, 7 months, and 9 days.

[45] The total sentence imposed will take effect as of today's date.

Richard G. Floyd
High Court Judge [Ag]

BY THE COURT

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