

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE FEDERATION OF ST CHRISTOPHER & NEVIS

IN ST CHRISTOPHER CIRCUIT

CASE SKNHCR 2023/0027

REX

V

ABKIM BRYAN

APPEARANCES

Mr Tessaun Vasquez for the Crown.

Mr Craig Tuckett for the defendant.

2024: FEBRUARY 12

SENTENCE

For rape and buggery during group night invasion of family home

- 1 **Morley J:** Abkim Bryan aged 30 (dob 09.06.93) faces sentence on pleas of guilty to rape and buggery of LG¹ on 04.06.19 at her home in St Kitts, where he was with two unidentified others who invaded masked, one armed with a gun, tying up her husband and child in the same room as where she was assaulted. Bryan was linked to the event by a dna finding of his semen on LG.
- 2 Bryan's case has been listed before the High Court on the following ten dates: 16.10, 15, 21, 23, 29.11, 6, 13, 18, 19.12.23 and 05.02.24.

¹ The complainant shall not be identified as being entitled to anonymity.

- 3 Represented by Counsel Craig Tuckett, initially there was some uncertainty what Bryan would do, with there being floated challenge to the dna find and possible alibi by reference to phone records. On 23.11.23, the court was forewarned of a likely *Goodyear* application for indication of sentence on a plea, so victim impact statement was obtained from LG dated 25.11.23, with hearing of the application on 18.12.23 for 2 hours, when the facts were opened, victim impact reviewed, and the sentencing guidelines considered. The court determined an appropriate sentence within the legislation would be 21 years imprisonment, for the reasons which will follow. Counsel Tuckett asked for overnight to consider matters and pleas were entered on 19.12.23, with a burglary count left on the file, though a social inquiry report was then sought by Counsel Tucket in an effort to find something more to possibly reduce the sentence further. The report was offered by probation officer Lauston Percival dated 02.02.24, with sentence due on 05.02.24, when the report was considered, and there was adjournment for remarks to be in writing to today, 12.02.24.
- 4 In this sentencing judgement I will address construction of the sentence, the maximum for buggery, and the importance of experience and judgment in defence counsel.
- 5 The facts are awful.
- a. At 02.00, Bryan with two others entered LG's two-bed home, calling themselves Chief, Sarge and Lieutenant, masked, one with a gun, waking her by putting a hand over her mouth, her husband screamed, at first the intruders pretended to be police looking for drugs and money, her son aged 6 entered the bedroom, and all three were tied up, with cloth and string, with tape put on their mouths, the males being placed on the floor while LG was kept on the bed, with a pillow case over her head.
 - b. While on her stomach with her legs bound, one assailant fingered her vagina ordering her to relax, he then pushed his penis into her vagina, raping her, but did not ejaculate. The second assailant, who was Bryan, then attempted to put his penis into her vagina, slapping his penis on her buttocks, but was flaccid, so he masturbated to an erection and was encouraged to bugger LG's anus, which he did to ejaculation over her lower back. The third attempted intercourse, but was flaccid, then turning her over, untying her legs, rubbing his penis on her inner thigh, while another laughed. A disinfectant wipe was then applied to LG in an attempt to remove dna.

- c. The three remained in the house for an hour, looking for valuables in various places, taking about \$500ec in cash, two mobile phones, toiletries, a tablet, a school satchel, plus the keys to the family car in which they drove away at about 03.45.
- d. Reporting the matter to police, LG was medically examined, and swabs were taken. Being known to police, and from the general descriptions of the assailants, Bryan was arrested on 05.06.19, and gave a buccal swab on 08.06.19. In due course, semen recovered by a swab from LG's lower back created a full dna profile for Bryan.
- e. Bryan denied the offence to police.
- f. He has previous convictions:
 - i. In 2012 for escaping lawful custody;
 - ii. In 2013 for battery on police, resisting arrest and possession of cannabis;
 - iii. In 2014, for escaping lawful custody, throwing missiles and having an offensive weapon; and
 - iv. In 2016 for malicious damage.

6 In the social inquiry report, the following emerged:

- a. Bryan had no meaningful relationship with his father and his mother was a drug addict;
- b. He has no school qualifications, and is self-employed, with experience of car-washing, fridge electrics, and construction labour;
- c. He was described as a '*very dangerous and evil person*' by a member of the Sandy Point community, while others were '*very negative*' about him, saying he is a '*very bad person*';
- d. His father Nigel Powell described how Bryan talks back and has been keeping company with the '*bad boys*' of Sandy Point, suggesting for his behavior '*he got to suffer the consequences*';
- e. And concerning the offence, Bryan expressed no remorse to probation officer Percival, instead saying:

'I was deceived by others and led to believe that we were going to do something I was told we were going to do, and when I saw exactly what was going to happen and where myself and the others were going I told them that I don't feel comfortable doing this and I'm not doing this but I pleaded guilty because out of fear for my life and that of my family members'.

7 Discussing the report, and mitigating the offence on 05.02.24, Counsel Tuckett said the following:

- a. The offending was 'unfortunate';

- b. The previous convictions were a 'cry for help';
- c. The absence of a father figure justifies reducing the sentence further; and
- d. Asked if Bryan was seeking to vacate his plea, he demurred and asserted there was still remorse.

8 In her victim impact statement, LG reported in detail the horror of the attack, and how it led to tension with her husband, saying '*one thing which stood out for me is he mentioning that three guys interfered with me and he still had to love me*'. He told her to move out of their bedroom and in with her son, matters escalated so she obtained a restraining order against him, and is now divorced, with LG squarely blaming what Bryan and the others did as causing the collapse of her marriage and her husband's love for her.

9 Turning to the construction of the sentence as expressed during the *Goodyear* indication, Bryan has pleaded guilty to rape and buggery.

10 Rape carries a maximum of life imprisonment, per **s46 Offences against the Person Act** Cap 4.21, being at Common Law penetration of the vagina without consent, and under the ECSC sentencing guidelines published in November 2021, life is treated as a notional 30 years. The offence is in the highest category, as part of a home invasion, with the severe consequence it collapsed LG's marriage, use of a gun, extreme degradation in tying her up, being akin to abduction, and in the presence of her family, so that it is in category 1A, meriting the maximum within the range of 90%, being 27 years, uplifted further outside the range to 28.5 years as there were three rapists acting together, reduced then to 25 years because Bryan himself did not penetrate LG's vagina, though is culpable as participating in a joint enterprise when the first rapist did. This is reduced further for the remorse said implicit in the plea, by one year to 24 years, while his previous convictions are for relatively minor matters and not for sexual offending, so they do not aggravate, but equally he does not have the mitigation of good character. With full credit for the plea, of one-third, the rape sentence reduces to 16 years.

11 Buggery carries a maximum of 10 years, per **s56 Offences Against the Person Act** Cap 4.21, being at Common Law penetration of the anus irrespective of consent. This was the gravamen of Bryan's offending, alone, but its maximum is paltry. The legislature may wish to increase this maximum, noting elsewhere in the Commonwealth buggery without consent

is treated as the same as rape, with life as the maximum. Though there is no specific guideline, the offence was considered in the highest category, meriting 90%, being 9 years, reduced to 6 years for the plea.

- 12 Though the offending arose out of the same event, nevertheless the buggery was a separate defilement, so the sentences should run consecutively, making 22 years, though adjusted downwards by one year to 21 years owing to the sentencing principle of 'totality', which weighs the propriety and possible unfairness of just adding sentences together, though here making only a modest reduction, constructed by reducing the rape by one year to 15 years, again recalling Bryan did not penetrate the vagina, making 6 years plus 15 years.
- 13 Time on remand shall count, to be definitively calculated by the prison, noting it appears he has been in custody since 05.06.19.
- 14 The sentence of 21 years may seem to some low, though this is precisely why Bryan has pleaded guilty, namely to reduce his sentence as much as possible, while taking advantage of the paltry maximum for the buggery he inflicted; if the buggery had attracted up to life, he might have expected to face at least 90% of 30 years, being 27 years, maybe more, perhaps adjusted downwards for remorse and plea to maybe 18 years, which would then have been consecutive to the 16 years for rape, making 34 years, perhaps adjusted downwards for totality to 30 years, in theory as a possibility if the law was different.
- 15 However, the law on St Kitts & Nevis is 'buggery' is referenced as an 'unnatural act' in the **Offences Against the Person Act** which was first promulgated as long ago as 1873, and whose old language categorizes it collectively as 'sodomy and bestiality', and as an 'unnatural offence', further describing it as 'abominable'.

UNNATURAL OFFENCES

Sodomy and bestiality

56. Any person who is convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour.

- 16 Of note, there was the decision of Ward J as he then was, in **Jamal Jeffers v AG St Kitts & Nevis 2022 SKBHCV 2021/0013** delivered on 29.08.22, in which **ss56 and 57** supra were struck down as in breach of the constitution as they apply to consensual buggery, being in breach of rights as to personal privacy and freedom of expression.

- 17 Some might say buggery without consent as an offence needs to be updated please from 1873 and it is time for the government of St Kitts & Nevis to fix this. It is starkly in contrast a person invading a home, and tying up the family, inflicting non-consensual anal buggery can only face a maximum of 10 years, when if inflicting no-consensual vaginal intercourse faces possibly never being released.
- 18 *Obiter*, the court wishes to address the important work of defence counsel. Counsel Tuckett was called to the Bar in December 2022 and is doing many cases and working very hard. It is the hallmark of an advocate's ability that submissions must be realistic and the language measured. Judgement grows with time and experience. Here, though he achieved the most favorable possible outcome for Bryan, it showed his lack of experience to overtalk, suggesting this offending was merely 'unfortunate', and blithely to assert Bryan's various previous convictions invite sympathy as 'a cry for help', while glibly positing a further reduction in sentence just for having lacked a father figure, against a background where the report he sought described Bryan as evil and dangerous, and in it there had been offered no words of remorse, even begging the plea. Advocates will always be learning, judges too, and it is hoped Counsel Tuckett, who has strong potential, will learn from this case going forward, being only a year in practice, to be careful how he puts things so as not to cause the public listening justified incredulity or upset and always to weigh whether he has the experience to deal with such serious offending. The chief mitigation is the plea, some remorse, lack of vaginal penetration by this defendant on the rape, and no relevant convictions. The offending here was appalling and the advocate's skill is in saying carefully less, so making good points, not talking for its own sake.
- 19 *Abkim Bryan, please stand up*. For the reasons explained, for the offences of rape and buggery on 04.06.19, to which you have pleaded guilty on 19.12.23, the sentence, as discussed during *Goodyear* indication on 18.12.23, shall be 21 years imprisonment, being 6 years on the buggery and 15 years on the rape consecutively. Time on remand shall count and you shall be eligible for remission of one-third of your sentence if of good behaviour, meaning you can expect to serve at least 14 years. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

12 February 2024