

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE FEDERATION OF ST CHRISTOPHER & NEVIS

IN THE ST CHRISTOPHER CIRCUIT

CASE SKNHCR 2023/0016

REX

V

ADRIAN BART

APPEARANCES

Ms Shantrice Dorsett and Ms Azuree Liburd for the Crown.

Mr Craig Tuckett for the defendant.

2023: DECEMBER 12

SENTENCE

For indecent assault on girl aged 11 by lengthy rubbing of her vaginal area

- 1 **Morley J:** Adrian 'Justin' Bart aged 49 (dob 11.07.74) falls to be sentenced following trial during 05-16.10.23 when he was convicted by the jury of indecent assault on DD on 03.07.19.
- 2 At the time of the offence, DD was 11 with a troubled family circumstance, having been at the children's home and through different schools, when in early 2019 she was fostered by SC in Cayon¹. Bart, though married, was SC's boyfriend, living near and who knew DD's background. On 03.07.19, in the evening DD was left with Bart's children of similar age, while

¹ The complainant and her foster-mother shall not be formally identified as they are entitled to anonymity.

his wife was at work, and he went to Salt Plage to a party with SC. Returning later, he dropped SC home and went to fetch DD. Driving her home in a van, while she was on the passenger side, he asked her if she might want to go for a drive, to which she said no, but he drove her to a secluded spot anyway, and there she reported to the court:

After stopping, he started rubbing me down at first and then put his hand up me romper. There was nothing around. It was his left hand. He tried to put his finger inside my vagina, I was wearing a panty. He touched me by the hole. It felt uncomfortable. His finger did not go anywhere else on my vagina. It did not go inside my vagina. I was telling him to stop. He did not stop. I started to push away his hand. I tried opening the car door, but he locked it. It had been open. I kept telling him to stop, but he did not stop. I was there for about 10/15mins. He did not stop touching my vagina. I told him to stop as I have to go to school. It was nighttime. I don't remember the time. He kept touching me still. I told him to stop again and then he stopped.

- 3 DD reported the event to SC next evening, who challenged Bart, and he claimed DD was lying, with the reason he had been delayed returning her home was he had gone looking to pilfer board from a construction site. The defence at trial was DD was not telling the truth as she was upset at not being allowed to stay with his children overnight, nor SC, because she was upset he had ended their relationship. He gave evidence and by his conviction the jury was sure of DD and that he was lying.
- 4 A sad feature of the case was SC later returned DD to the children's home when she feared another boyfriend was showing an interest in her, so the youngster, who had grown very attached, was again living without a mother figure.
- 5 This court is sensitive to the exploitation of children by predatory men, where a child is vulnerable, being without family support, in state or foster care, where some men may think such a child will not be believed if reporting abuse, and who it is thought may be exploited to give sexual favours in exchange for the affection missing in her life: let it be understood, a child in care must be protected from bad older men.
- 6 In her victim impact statement dated 04.11.23, DD, now 15, reports making progress, being happy at the home, though achieving poor school results, yet now being in positive contact with her father, adding:

Although I socialise well with my peers, I am very conscious of what boys can do to me. I am afraid they will do the same thing that Justin did to me...I feel bad that Justin gone to jail. His children are going to miss him, but I am very happy that he is in jail for sexually assaulting me. He will not get another opportunity to do it to anyone else again.

- 7 In a social inquiry report dated 27.11.23 by probation officer Lauston Percival, Bart is described as a devoted family man, and successful businessman in trucking and landscaping, with no previous convictions, much respected, with positive reports from his mother Cynthia, wife Chenelle, and supporters Gary Thompson and Victor Williams. Of the offence, he maintained he is innocent, which will not aggravate his sentence but means there is no remorse to mitigate it, while it was also reported he had been a special constable during 1997-2002.
- 8 Family and friends gave evidence at court on 06.12.23, with sentence adjourned to today 12.12.23 for remarks to be in writing, being from mother Cynthia, wife Chenelle, son Kadeem, Theodore Brown (a father figure, aged 67) and Pastor Bernard Bolan Jr: each impressed upon the court how out of character was Bart's behaviour, describing a kind man with solid family and community values, each asking for leniency, while Chenelle asked he be able to come straight home.
- 9 The thrust of Counsel Tucket's submissions have been for a suspended sentence, noting Bart has been in custody from 01-21.11.19, and since conviction on 16.10.23, making so far about 11 weeks.
- 10 In the ECSC, there are sentencing guidelines for indecent assault published in November 2021. On St Kitts, the maximum is 10 years imprisonment.
- 11 As step 1 of the sentencing process, being assessment of the offence, I consider it falls into category 2A, agreed by defence counsel, as she is under 16, and there has been abuse of trust, a significant age difference, touching of the genitals, and the event was of length rather than being momentary. At 2A, it merits a starting point of 45% the maximum, meaning 4.5 years. It is aggravated by DD being particularly vulnerable, as a girl in state and foster care, known to Bart, so it is increased one year to 5.5 years.

- 12 As step 2, being assessment of the offender, it is clear he is of good character, and more, from reports and evidence from family, his actions were wholly out of character, so there can be a reduction by 2 years to 3.5 years.
- 13 As step 3, there is no credit available for plea.
- 14 Being a sentence of 3.5 years, it is not eligible on St Kitts to be suspended, being longer than 3 years; and obiter, even if eligible, suspension would not be appropriate for indecent assault here on a child, aged 11, by a man aged 45, in abuse of trust rubbing her vaginal area at length.
- 15 As step 4, there are no issues of totality as there is only one offence, nor do issues of dangerousness arise as the behaviour is out of character.
- 16 As step 5, time on remand will count, of about 11 weeks, to be calculated definitively by the prison.
- 17 As to step 6, there are no ancillary orders to make.
- 18 *Adrian Bart, please stand up.* For the reasons I have explained, for the offence of indecent assault on DD aged 11 on 03.07.19, of which you were convicted by a jury of your peers, the sentence will be 3.5 years imprisonment, being 42 months. Time on remand will count. You will be eligible for remission of one-third of the sentence if of good behaviour, meaning you can expect to serve 28 months. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

12 December 2023