

EASTERN CARIBBEAN SUPREME COURT  
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CRIMINAL CASE NO. 7 OF 2022

REX

V

DAYLON SUTTON

Appearances: Ms. Patrice Hickson, Senior Crown Counsel for the Crown  
Mrs. Valarie Gordon, Counsel for the Defendant (amicus curiae)

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2022: December 12

2023: January 20  
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JUDGMENT ON SENTENCING

- [1] **Thomas W.R. Astaphan, K.C.; J:** William Shakespeare, in his wisdom, and upon occasion, touched upon the Human experience that is Life, and left for those that follow, lifelines which, if grasped, should make a more perfect experience. For example, there is this:

“Brutus:

*There is a tide in the affairs of men.*

*Which, taken at the flood, leads on to fortune;*

*Omitted, all the voyage of their life*

*Is bound in shallows and in miseries.*

*On such a full sea are we now afloat,*

*And we must take the current when it serves,*

*Or lose our ventures.*” *William Shakespeare’s Julius Caesar [underlines supplied]*

- [2] In the twenty-fifth year of his life, a young Daylon Sutton (“Suttón”) omitted to take his tide at the flood, wherefore his life may well now be” bound in shallows and in miseries”, and he is apt to “...lose [his] ventures” in life.

- [3] Then, by far greater than the advice of Shakespeare, are the admonitions to be found in The Bible:
- [3.2] ***"Thou Shalt Not Covet ... Anything That Belongs to Your Neighbour": Exodus 20:17; Deuteronomy 5:21***

**THE FACTS [and the Lies]**

- [4.0] Daylon Sutton stole a motor-vehicle belonging to Nevilla Hodge, the owner of J & L Car Rental, which, on Monday, 31<sup>st</sup> May, 2021, she had taken to Shiner's Exclusive, which operated out of the parking lot opposite the Dr. D. Orlando Smith Hospital in Road Town, Tortola, Virgin Islands, to be cleaned – or, as they say in that trade, to be "detailed". Sutton was employed at Shiner's. The vehicle, RT-3870, was one of the eight-car rental fleet of J & L Car Rentals.
- [4.1] Ms. Hodge handed over the key to the vehicle to, and informed Mr. Trishawn Jennings, the owner of Shiner's, and Mr. Sutton, who was present, that that was the only key she had, and they must therefore take care not to lose it.
- [4.2] When the exterior cleaning and detailing was completed, Mr. Jennings handed the key for the vehicle to Mr. Sutton for him to do the interior work.
- [4.3] He was ordered by Mr. Jennings, that, when he had completed the interior work, he was to park the vehicle at the usual location for Ms. Hodge to collect it.
- [4.4] The next day, 1<sup>st</sup> June, 2021, Ms. Hodge observed the vehicle parked in the parking lot about 40 feet away from Shiner's. She checked the doors and confirmed that they were locked. Mr. Sutton was present and could be seen to be observing Ms. Hodge.
- [4.5] The following day, 2<sup>nd</sup> June, 2021, at about 8:52 a.m., Sutton contacted Jennings and reported that Shiner's work van had been broken into. An inspection of the van disclosed that no tools or equipment – which were normally housed in the van - were missing from the broken-into van.
- [4.6] At about 11:15 a.m., on 2<sup>nd</sup> June, Ms. Hodge went to drop a rental for a customer in the vicinity of Shiner's. She asked Sutton for Mr. Jennings and was told that he went to get water. Ms. Hodge then went to where Mr. Jennings was and asked him for the key to her vehicle. He informed her that the key was in the van, and that he would deliver the vehicle to her. Ms. Hodge told him that she will come to collect it, as she had some errands to run.
- [4.7] While at her office, to which she had returned, Jennings called her and asked her if she had collected the vehicle because it was no longer in the parking lot. She reminded him that she only had one key

- for that vehicle. Jennings then told her that someone had broken into the van and took the key for her vehicle. He also said that that someone must have taken the vehicle.
- [4.8] Ms. Hodge had purchased that vehicle in 2017 for US\$ 23,495.00, and at the time of its taking it was valued by Ms. Hodge at US\$18,000.00. Counsel for Mr. Sutton puts the value at US\$14,425.87, without providing any basis for that figure.
- [4.9] Ms. Hodge asked Sutton for the key for her vehicle. He did not give it to her. Mr. Jennings told Ms. Hodge that the key had been left in the work van [by Sutton].
- [4.10] Sutton showed them both where in the van he had left the key. The key was not there.
- [4.11] Sutton then told Ms. Hodge that her vehicle was also missing.
- [4.12] Eighteen days later, on Sunday, 20<sup>th</sup> June, 2021, Mr. Levo Walters observed Sutton driving a vehicle which looked like Ms. Hodge's vehicle. Mr. Walters was Ms. Hodge's Common Law husband.
- [4.13] He approached Sutton who hastily reversed the vehicle away from Walters, made a U-turn, and drove away down Main Street.
- [4.14] Mr. Walters reported what had happened to the Royal Virgin Islands Police. Later on that day, one Constable John received information that Sutton was seen driving a vehicle matching the description of Ms. Hodge's vehicle.
- [4.15] On Wednesday 23<sup>rd</sup> June, Sutton directed Mr. Walters to Brandywine Bay, ostensibly to recover the vehicle, but it was not there. Mr. Walters thereupon took Sutton to the East End Police Station and handed him over to the Police.
- [4.16] The vehicle was found in the Greenland area on 24<sup>th</sup> June. It had on a licence plate other than its correct one. The plate was changed. The Department of Motor-vehicles sticker was missing. There was damage to its muffler and left quarter panel. All of these occurred after it disappeared from Shiner's.
- [4.17] Ms. Hodge attended at the Road Town Police Station where the vehicle was in Police custody. She identified it as being her vehicle.
- [4.18] Sutton was questioned by the Police under caution. He admitted to taking the vehicle, changing the licence plate, and removing the DMV sticker.

- [4.19] He was charged with Theft of that motor-vehicle, contrary to section 209 (b) of the Criminal Code, for which the maximum sentence is ten (10) years in prison, and to which charge, upon Indictment on one Count of Theft, he pleaded Guilty on 12<sup>th</sup> December, 2022, before this Court.
- [5.0] By way of inference on his Plea, I take it as a fact that Mr. Sutton has not read Julius Caesar, and was either unaware of *Exodus 20:15*, *Exodus 20:17* and *Deuteronomy 5:21*, or, if he had so read, or was so aware, he, with deliberation, chose to honour them in the breach.
- [5.1] For that he is now being sentenced by this Court.

### **THE SENTENCE**

- [6.0] I am obliged to apply the **Sentencing Guideline for Offences of Dishonesty issued by the Eastern Caribbean Supreme Court made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019.**
- [6.1] I am also obliged to apply my mind to the Main Objectives of Sentencing as stated in **Desmond Baptiste, et. Al. v. R. Crim. App. No. 8 of 2008 (SVG).**
- [6.2] The main objectives of sentencing an offender are:
- (i) **Retribution** – in recognition that punishment is intended to reflect society's and the Legislature's abhorrence of the offence, and the offender;
  - (ii) **Deterrence** – to deter potential offenders from offending, and the offender himself from recidivism;
  - (iii) **Prevention** – aimed at preventing the offender, through incarceration, from offending against the law; and thusly, to protect society; and,
  - (iv) **Rehabilitation** – aimed at assisting the offender to reform his/her ways so as to become a contributing member of society. (I take this to mean a "positively contributing member of society.")
- [Baptiste, as set out in the Crown's Submissions on Sentencing]**
- In constructing this sentence I shall bear these principles in mind.
- [6.3] **THE SENTENCING GUIDELINES** sets out six steps which are to be engaged in the Court's journey in constructing the sentence. I will now address these steps.
- [6.4] **Step 1:** The establishment of the starting point for the offence. This involves **four stages**.

**The First Stage** is to consider the consequence by assessing the harm caused by the offence. This may be demonstrated by assessing whether, apart from the value of the item stolen, (i) the item stolen was of substantial value to the victim, regardless of its monetary worth; (ii) a high level of inconvenience was caused to the victim; (iii) there was consequential financial harm to the victim; (iv) emotional distress was caused; (v) the theft caused fear, or loss of confidence; (vi) there was risk of injury or damage to property; (vii) there was an impact on the business by the theft; and (viii) there was any damage to heritage assets.

- [6.5] The motor-vehicle stolen by the Convict was of substantial value to Ms. Hodge, it being a vehicle which formed part of her rental fleet. The vehicle was out of the fleet – and therefore unavailable for renting – from 2<sup>nd</sup> June until at least 25<sup>th</sup> June, 2021, when Ms. Hodge identified it at the Police Station. In fact, it is normal that stolen items be kept in Police custody through the investigative, charging and Preliminary Inquiry stages, and then they would go into the custody of the High Court on committal. Thereafter, at the conclusion of the trial of the accused the items would be returned to the victim.
- [6.6] There is no evidence before me, no information provided by either side, as to if and when the vehicle was returned to Ms. Hodge. In any event, the very earliest when Ms. Hodge would have regained custody of the vehicle would have been 25<sup>th</sup> June, 2021, but more likely after the Forensic examination of the vehicle was completed by the Police. Thus, I can infer that, being without it in the rental fleet would have substantially affected Ms. Hodge's business – hence, it would have been of substantial value to her business for whatever period she was without it as a consequence of the theft by Mr. Sutton.
- [6.7] It is clear that the theft of the vehicle would have resulted in a high level of inconvenience for Ms. Hodge and her rental business.
- [6.8] It is also clear, given that the stolen vehicle was a part of the rental fleet, that there would have been consequential financial harm to the victim in this case.
- [6.9] Ms. Hodge does not, in her statement, speak of suffering emotional distress, and no victim impact statement has been filed. I am therefore obliged to find that there is no evidence of this element in the journey of assessing the consequence of the theft.

- [6.10] Where an employee of a business steals from the customers of that business, it is axiomatic that there would be a loss of confidence in that business by that customer – at least. However, this element speaks to the personal effect on the victim, (fear or loss of confidence caused by the crime), and not on her confidence in the business of Mr. Jennings. I have no evidence from Ms. Hodge, or from any other source, that Ms. Hodge was put into a state of fear, or had loss confidence (in herself) as a consequence of the theft.
- [6.11] On the facts of this case, it is easy to find that there was damage to property, and impact on Ms. Hodge's rental business caused by the theft of her rental vehicle by Mr. Sutton.
- [6.12] There is no evidence that the vehicle was a heritage asset.
- [6.13] Having examined the consequence of the theft, I am now obliged to categorize those consequences.
- [6.14] There are four categories in the Guidelines: **category 1 – highest**. Very high value goods (above \$250,000.00 in the High Court), or severe harm to the victim or others; **category 2 - high**. High value goods (\$50,000.00 to \$250,000.00 in the High Court), or substantial harm to the victim or others; **category 3 – medium**. Medium value goods (\$10,000.00 to \$50,000.00 in the High Court), or significant harm to the victim or others; and **category 4 – lesser**. Low value goods (up to \$10,000.00 in the High Court), or little or no harm to the victim or others.
- [6.15] However, I determine the consequence of the theft is category 3 based *solely* on the value of the motor-vehicle.
- [7.0] **The Second Stage** is to consider the seriousness of the offence by assessing the culpability of the offender.
- [7.1] The Guidelines contain three levels of seriousness: **level A – high; level B- medium and level C – lesser**. These levels are demonstrated by certain criteria, the existence of **one or more** of which in a level suffices.
- [7.2] **Level A – high**: There are nine criteria in this level; only two of which may be relevant.
- [7.3] These are whether there was a **breach of a high degree of trust**, and whether the theft involved **breaking and entering**. I will examine the facts to illustrate whether any of these two criteria is engaged.

- [7.4] For completeness, the other seven Level A criteria are: "A leading role where offending is part of a group activity; involvement through coercion, intimidation or exploitation; Sophisticated nature of offence/significant planning; Theft involving intimidation or the use or threat of force; Looting; Targeting of tourists; Deliberately targeting victim on basis of vulnerability." (semi-colons supplied).
- [7.5] **Level B – medium:** There are four criteria in this level, only two of which may be implicated.
- [7.6] These are whether there was a **breach of some degree of trust**, and **all other cases where characteristics for levels A and C are not present**.
- [7.7] The other two Level B criteria are: "A significant role where offending is part of a group activity; Some degree of planning involved." (semi-colons supplied)
- [7.8] The Level C criteria are: "Performed limited function under direction; Involved through coercion, intimidation or exploitation; Little or no planning; Limited awareness or understanding of the offence." (semi – colons supplied)
- [7.9] **Level A Breach of a high degree of trust:** In the application of the Guidelines it is necessary for the Court to perform an interpretation exercise so as to understand what exactly is intended by the framers of these Guidelines.
- [7.10] Before embarking on an interpretation and application of this Breach of a high degree of trust, it is necessary to remember that Level B also speaks to a breach of trust, namely, "**Breach of some degree of trust**", so that it is necessary to distinguish between "high degree" and "some degree" in order to place this offence into its proper level of seriousness.
- [7.11] From the research embarked upon by this Court it appears that the 'degree' of trust – high or some level – is a function, not of the abstract concept of trust itself, but of the person or institution in whom or in which one places one's trust. The research discloses that trust is a composite of different elements, called "levels", which must exist for there to be "trust". Different authors speak to different numbers of levels – three, five and six – but the existence of these elements in harmony are what comprise the abstraction called "trust"<sup>1</sup>.

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<sup>1</sup> <https://leadingwithtrust.com> [www.forbes.com](http://www.forbes.com) [www.alexandrahsu.com](http://www.alexandrahsu.com) [www.pmi.org](http://www.pmi.org) [www2.rivier.edu](http://www2.rivier.edu) and <https://slideplayer.com/slide/12648690/>

- [7.12] By way of illustration: Mr. Joe Blog is a customer of X Bank, and has been a customer for decades. In fact, his parents before him, and their parents before them have, for many decades, all had the same high quality relationship with X Bank. Mr. Blog does all his business at that Bank, and has never had a negative experience there; so much so that he has deposited every valuable asset he owns in the vaults of that Bank. Thus, Mr. Blog can be said to have a high degree of trust *in* X Bank. On the other hand, Mr. John Snow, a recent immigrant from a country with an environment where the average person has little to no faith in Banks because, in his country banks fail like leaves fall in the chilly Autumn winds of Windsor, and frequently bank clerks in that country abscond with barrel – loads of depositors' cash. Little wonder that Mr. Snow has little to no trust *in* X Bank - at this time.
- [7.13] I therefore interpret the expressions "... a high degree of trust" and "...some degree of trust" as not the qualitative nature of the trust itself, but the extent to which the trust is placed in the person/institution – a quantitative measure of an immutable qualitative trust. For example, one may trust another to mind her children for an evening while she is out – trust absolutely – but not trust that same individual with her wallet. The quality of trust in each case is the same; it is the purpose for which the trust is reposed in the other which differs – quantitative differential determined by the task, while the abstract concept of trust reposed remains the same.
- [7.14] Wherefore, for the purposes of determining the level of seriousness of this offence, I shall interpret the expressions "...high degree of trust" and "some degree of trust" to mean the quantitative trust placed in the offender, and for this purpose the said expressions shall be read with the words "reposed in the offender" added after the word "trust".
- [8.0] **Level of Seriousness of the Offence**
- [8.1] Having earlier decided that in Level A there are two possibly engaged elements, I shall now examine the facts to see if they are, in fact, engaged, bearing in mind that the Guidelines only require the existence of "one or more" for the offence to fall within level A.
- [8.2] The relevant facts:
- (i) Ms. Hodge owns a car rental business;
  - (ii) She brought one of her rental vehicles to Shiner's to be cleaned and detailed;
  - (iii) The vehicle's licence plate began with the letters "RT" which clearly identified it as a rental vehicle;
  - (vi) She indicated to Mr. Jennings and Mr. Sutton that she had only one key for the vehicle so that

- they must ensure that it is not lost;
- (v) She then left her vehicle with them; in their care and custody, for the purpose of them cleaning and detailing it, and no other;
- (vi) She did not sit and wait for them to do the work. Nor did she ask them how soon they would be finished so that she could return that same day to collect her vehicle. She did not return the next day to collect the vehicle;
- (vii) She in fact was willing to leave the vehicle in their care and custody at least overnight. She delivered it on 31<sup>st</sup> May, and returned on the afternoon of 2<sup>nd</sup> June to collect it;
- (viii) She fully expected that her vehicle would be cleaned, detailed and in the same condition as when she delivered it on 31<sup>st</sup> May.

[8.3] The foregoing facts lead me to the unavoidable conclusion that Ms. Hodge reposed her trust in Shiner's – and Mr. Sutton as a Shiner's employee – to a high degree. Therefore, I find that the offence is Level A – High, on the Seriousness Stage.

[8.4] Having so found, and because the existence of one element only is necessary to categorize the seriousness of the offence at any level, it may well be unnecessary for me to examine the next element which I stated earlier may be engaged. But, for completeness, I will do so.

[8.5] **Theft involving breaking and entering:**

[8.6] Breaking and entering occurs where a person makes an entry into property of any kind for an unlawful purpose. The unlawful purpose makes the entry "breaking and entering".

[8.7] A person can have a legitimate reason to enter property – such as an employee – but, if that employee enters the property with the intention of committing an unlawful act, that entry loses its legitimacy and becomes an unlawful entry – breaking & entering. It is the *purpose of the entry* that defines the *nature of the entry*. What would ordinarily be legitimate and lawful can be transmuted into an illegitimate and unlawful act by the purpose for which that act was undertaken.

- [8.8] Under section 211 of the Criminal Code of these Virgin Islands, the concept of “breaking & entering” is not to be found. The entry into a building with intent to commit any offence is (a) burglary, and (b), the entry must be by way of trespass.
- [8.9] Breaking and entering is founded in the Common Law, and was later codified in some jurisdictions of the Eastern Caribbean Supreme Court. It is the definition at Common Law which I discern to be used in the application of the element of breaking and entering in Level A. However, there is no fundamental difference between the Common Law and the Code with respect to this.
- [8.10] Where the Code requires that the offender must enter as a trespasser, the offender can, though an employee, enter the property with unlawful intent and, *that entry* would constitute a trespass. It would be otherwise if he was on the property already, and then formed the intent to commit the offence. But where he forms the intention *prior to* entering upon the property, and enters for that unlawful purpose, that entry is a trespass.
- [8.11] **The facts:**
- (i) Mr. Sutton was an employee of Shiner's Exclusive;
  - (ii) Shiner's used the van as its “office”;
  - (iii) Sutton would, during the course of his employment, have lawful and legitimate reason to enter the van, as, for example, when he did so to store Ms. Hodge's vehicle's key in the first place, and when he would go to access the tools etc. which are used for the job.;
  - (iv) If Sutton entered the van *for the unlawful purpose of stealing the key to Ms. Hodge's vehicle*, that entry would be a trespass because the authority vested in him by his employer to enter the van would be for lawful purposes only.
  - (v) How then do we determine the purpose for which Sutton entered the van when he stole the key to Ms. Hodge's vehicle? From the horse's mouth.
  - (vi) On Wednesday, 1<sup>st</sup> June, 2021, Sutton contacted his employer, Jennings, and reported *that Shiner's Exclusive work van was broken into*. Checks were made to see whether tools and equipment was missing, and Sutton confirmed that all items were accounted for. Later, that day when Ms. Hodge came to collect her vehicle, she asked Sutton for her key. He told her that it was left in the van. He showed Ms. Hodge and Mr. Jennings where in the van he had placed the key. It was not there. He indicated that Ms. Hodge's vehicle was also missing.

- (vii) I infer from Sutton's statement that the van was "broken into" that he was aware that an entry into the van for an unlawful purpose was a "breaking and entering"; an unauthorized entry; an illegal entry; a trespass. Given that he admitted to stealing the vehicle, and given that he had to have taken the key from the van in order to do so, the said inference becomes irresistible.

[8.12] As stated before, I assess this offence to be Level A in seriousness on the basis of the high level of trust breached – and, if necessary, on this element as well.

[9.0] **The Third Stage**

[9.1] Having determined the consequence and the seriousness of the offence, I now must find the Starting Point of the sentence.

[9.2] The maximum sentence for the offence of Theft is a term of imprisonment not exceeding 10 years.

[9.3] Having found the consequence to be category 3, I am directed by the Guidelines that the **Starting Point (SP) is 35% of 10 years which is 3.5 years, with a range of 20% to 50% of X (X being the maximum sentence).**

[10.0] **The Fourth Stage**

[10.1] At this stage the Court must now consider the Aggravating Factors and the Mitigating Factors *of the offence*.

**Step 1 Aggravating Factors of the Offence:**

- (i) The offender, Sutton, removed the DMV tag from the vehicle, and changed the Licence Plate. This is clearly an attempt to conceal the evidence of his theft of the vehicle by removing visible identifying items required by law to be displayed on the vehicle. I add 3 months to the SP. The sentence is now at 3 years and 9 months.
- (ii) He attempted to blame some other person or persons for the theft by reporting to Mr. Jennings that the van was broken into, and later the same day showing where he had placed it in the van, clearly implying that whomever broke into the van stole the key for Ms. Hodge's vehicle; I add 3 months. The sentence is now at 4 years.

[10.2] **Mitigating Factors of the Offence:**

The property has been restored to the victim. Three months are deducted from the sentence. The sentence is now at 3 years and 9 months.

[10.3] I have weighed the aggravating and mitigating factors and I find that the aggravating factors far outweighs the mitigating factors.

[10.4] **Step 2 Aggravating factors of the offender:**

There are no aggravating factors of the offender.

[10.5] **Mitigating Factors of the Offender:**

(i) Mr. Sutton is of good character, having had no previous convictions on Record. Nine months are deducted. The sentence now stands at 3 years.

(ii) Mr. Sutton cooperated with the Police. Three months are deducted. The sentence now stands at 2 years and 9 months.

[10.6] **Step 3 Guilty Plea:**

Mr. Sutton pleaded guilty to the offence at the first available opportunity. Minus 33% (33 months, minus 33% = 22 months. The sentence now stands at 1 year and 10 months.

[10.7] **Step 4** is irrelevant to this offender.

[10.8] **Step 5 – Time spent on Remand:**

[10.9] The Convict was arrested on 23<sup>rd</sup>.June, 2021, and was released on bail on 27<sup>th</sup> June, 2021. A total of 4 days. Therefore, 4 days spent in custody are to be deducted from the sentence of 1 year and 10 months.

[11] Having considered the principles set out in **Baptiste**, and having applied the Sentencing Guidelines, the Sentence of this Court is that Daylon Sutton shall be imprisoned for 22 months.

[12] It is so Ordered.

Thomas W. R. Astaphan K.C.  
High Court Judge (Ag.)

By the Court

  
Registrar