

**EASTERN CARIBBEAN SUPREME COURT  
TERRITORY OF THE VIRGIN ISLANDS**

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

**BVIHCR 2020/0032**

**BETWEEN:**

**THE QUEEN**

**and**

**SHADRACH THOMPSON**

**Appearances:** Ms. Patrice Hickson, Counsel for the Crown  
Ms. Ruthilia Maximea, Counsel for the Defendant

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**2021: November 12<sup>th</sup>  
December 10<sup>th</sup>, 13<sup>th</sup>**

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**JUDGMENT**

- [1] **FLOYD J:** The Defendant was charged with Robbery contrary to **s. 210 (1) of the Criminal Code 1997**. On 22<sup>nd</sup> June, 2021 he was arraigned, entered a not guilty plea and a trial commenced. The trial continued with evidence being received up to and including 29<sup>th</sup> June, 2021. On 30<sup>th</sup> June, 2021, the High Court, Registry Office, Office of the Director of Public Prosecutions and other public buildings were closed due to a public health emergency caused by an outbreak of COVID-19 in the Territory of the Virgin Islands. The case was therefore adjourned. The situation was monitored with remote court appearances being made by the Defendant and Counsel on 1<sup>st</sup> July, 8<sup>th</sup> July, and 13<sup>th</sup> July, 2021, all in the absence of the jury. The public health crisis continued and the summer Court Recess arrived. On consent of the parties, the trial was further adjourned and the jury notified. The trial resumed in person on 20<sup>th</sup> September, 2021. On 27<sup>th</sup> September, 2021 the jury returned a verdict of guilty and the matter now proceeds to sentencing.

## THE FACTS

- [2] The E & B Supermarket is a convenience store located in the Palestina neighbourhood of Tortola. The shop is owned by William Winter and at the time, employed Saudia Hassan and Shaquille Lewis as store clerks. On the night of 24<sup>th</sup> March, 2020, at approximately 7:30 p.m., two masked gunmen entered the store. One wore gloves, the other did not. Ms. Hassan was at the front counter and Mr. Lewis was stocking shelves. Mr. Winter was in the store office with his family. The premises were equipped with internal and external video cameras (CCTV). These cameras are monitored from the store office.
- [3] The approach of the gunmen was shown on exterior video cameras and the movement of the gunmen within the store was captured from various angles by interior video cameras. During the trial, the video footage was played for the jury and the witnesses gave evidence. The gunmen entered through the front doors. Ms. Hassan was approached by the barehanded robber. A hand gun was pointed at her and money was demanded. Approximately \$300.00 cash was removed from the till. The second robber, wearing gloves, approached Mr. Lewis, pointed a handgun at his head and pulled off his necklace, which was valued at approximately \$450.00. The robbers then reunited at the front of the store and exited the way they had come in. The police were called. As noted, all of these events were captured on CCTV and viewed live by Mr. Winter on the office monitors.
- [4] Local police responded, including Forensics Officer Morris, who arrived on scene at approximately 8:45 PM. Officer Morris viewed the CCTV recordings. He saw two men wearing dark clothing, long pants and long sleeves, with their faces covered. One wore gloves, the other did not. Each carried a handgun. When entering the store, the male without gloves was seen to push on a locked door. The men then moved to the adjacent door and entered. The man without gloves appeared to touch the front counter and cash register area. The second male then appeared to wipe down the area.
- [5] Officer Morris took photos and processed the scene. D/C Butler extracted the video footage from the store surveillance system. Officer Morris observed and then developed a palm print from the area of the door he had seen the robber touch on the video. Using magnetic powder and other tools, he lifted the print and placed it on to a backing card for examination.

- [6] The investigation continued and on 15<sup>th</sup> April, 2020 the Defendant was arrested. He was interviewed under caution on 16<sup>th</sup> April, 2020 and denied being responsible for the robbery. Although initially he declined to provide his finger prints, he later consented to provide that material to police. Therefore, on 16<sup>th</sup> April, 2020, Forensics Officer Etienne obtained a DNA sample and finger prints from the Defendant.
- [7] D/C Washington was designated as an expert in fingerprint analysis. He has over 20 years' experience in the field and has made over 20,000 fingerprint comparisons. He compared the latent print found at the crime scene with the prints provided by the Defendant, and found them to be a match. He had no doubt that the latent print from the E & B Supermarket was made by the Defendant. He was confident in the results of his examination.
- [8] On the basis of this evidence, the jury returned a verdict of guilty to the Robbery charge.

### **SENTENCING BACKGROUND**

- [9] A sentencing hearing took place on 10<sup>th</sup> December, 2021. A Social Inquiry Report dated 24<sup>th</sup> November, 2021 was filed. Written submissions entitled Sentencing Guidelines filed on 29<sup>th</sup> November, 2021 were received from Counsel for the Crown. Defence Counsel provided no written submissions.
- [10] The Defendant cooperated with the production of a Social Inquiry Report. He was described as being pleasant and forthright during that process. He reported recreational use of marijuana and alcohol. The Report revealed that the Defendant was estranged from his biological father but was close to his godfather, James Taylor. The Defendant resided with his mother, who worked at multiple jobs in order to provide for the family. Sources described the Defendant as generally well behaved and respectful, however, his behaviour changed when Mr. Taylor passed away in 2015. The Defendant had difficulty in school, repeating grade eight and eventually leaving school without completing grade nine. He had difficulty following rules and lacked discipline. He entered the workforce in the field of manual labour. The Defendant's employment history was interrupted by his incarceration for several months in 2016-17. His criminal record indicates four entries for Burglary. He has also been held on Remand for this offence since 15<sup>th</sup> April, 2020. Information from HM Prison, Balsam Ghut,

indicated that while the Defendant had made use of Addictions Studies and Alcoholics Anonymous programs previously, while on Remand, he had not been involved in any behaviour modification or counselling programs. Further, the Defendant was charged with disobeying a lawful order, displayed behavioural issues, and had difficulty following instructions and respecting authority while in custody.

## THE LAW

- [11] Sentencing in criminal cases involves many considerations. 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 as **R v Sargent**<sup>1</sup>, referred to with approval by our appellate court in **Desmond Baptiste et al v The Queen**<sup>2</sup>. 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:
- (a) Retribution, the court must reflect society's abhorrence of particular types of crime through punishment of such unlawful conduct.
  - (b) Deterrence, specific to the offender and generally to likely offenders or persons who may be minded to commit similar offences.
  - (c) Prevention, to protect the public from offenders who persist in committing crimes by separating them from society.
  - (d) Rehabilitation, to engage offenders in activities designed to assist them in their reintegration into society.
- [12] The imposition of a fit sentence requires many considerations. That includes the weighing of the characteristics of the offender with the facts surrounding the offence. The sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The court must consider the conduct and the moral blameworthiness of the offender, the age of the offender and the presence of any criminal record, in order to fit the punishment to the crime.

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<sup>1</sup> 60 Cr. App. R. 74

<sup>2</sup> Cr. App. No. 8 of 2003

- [13] The Court in **R v Parranto**<sup>3</sup> recently confirmed that sentencing is one of the most delicate stages of the criminal justice process. More of an art than a science, sentencing requires judges to consider and balance a multiplicity of factors. While the sentencing process is governed by clearly defined objectives, it remains a discretionary exercise for sentencing courts in balancing all relevant factors to meet the basic objectives of sentencing. The goal in every case is a fair, fit and principled sanction. Sentencing is a highly individualized exercise, approached on a case-by-case basis for this offence, committed by this offender, harming this victim, in this community. The court must determine which objectives of sentencing merit greater weight and evaluate the importance of mitigating or aggravating factors to best reflect the circumstances of each case.
- [14] I bear all of this in mind when approaching sentencing in this case.
- [15] The offence of Robbery carries a maximum penalty of imprisonment for life. That indicates how serious such a crime is considered. Robbery is dealt with in the **Compendium of Sentencing Guidelines for the Eastern Caribbean Supreme Court**. Assistance is provided therein for crafting sentences generally and in particular as it relates to offences of dishonesty.
- [16] Crown Counsel referred the Court to several cases. Those cases revealed a range of sentence for the offence of Robbery in the Eastern Caribbean Region from four (4) years to eighteen (18) years, depending on the facts of the case and of the offender. In the case of **The Queen v Tim Daley**<sup>4</sup>, the Court referred to a range of sentence for the robbery of a convenience store while armed with a gun and with the offender's face masked. A range of seven (7) - nine (9) years on a guilty plea and nine (9) - twelve (12) years after trial was noted. The sentence imposed was seven (7) years less time served in that case. Similarly, in **The Queen v Keno Allen**<sup>5</sup>, a range of eight (8) – ten (10) years after trial was considered for a case of Robbery where a woman was robbed and sexually assaulted on the street. The sentence imposed was twelve (12) years less time served. Finally, in the case of **The Queen v Mickhail Howe**<sup>6</sup>, a sentence starting point of seven (7) years for the Robbery of a business was noted. The final sentence given was six (6) years and two (2) months less time served.

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<sup>3</sup> 2021 SCC 46 at paras. 9, 10 & 113

<sup>4</sup> BVIHCR 2014/005

<sup>5</sup> BVIHCR 2012/0019

<sup>6</sup> BVIHCR 2018/0031

- [17] Counsel for the Defence, in oral submissions, relied upon the cases submitted by the Crown. However, she directed the Court to the lower end of the sentencing guidelines noted.

## THE POSITION OF THE PARTIES

- [18] Learned Counsel for the Crown referred to the **Sentencing Guidelines of the Eastern Caribbean Supreme Court for Offences of Dishonesty – Robbery**. She described the overall offence as being high to medium with an assessed starting point of 60% of the maximum sentence with a range of 45% - 75%. However, no final quantum for sentence was suggested. Crown Counsel emphasised the use of a firearm with a substantial risk of injury or harm, evidence of planning, due to the wearing of a mask and being armed, the general force used and the apparent leading role played by the Defendant.
- [19] Crown Counsel submitted that the Court should consider as aggravating features, the seriousness of the offence, the Defendant's attempt to conceal his identity, the use of a firearm, the Defendant's criminal record, and a lack of remorse. However, regarding the reference to remorse, the Court notes that a Defendant should not be penalised for exercising his or her right to a trial and putting the Crown to the strict proof of its case. In no way is that an aggravating feature. In mitigation, Crown Counsel points to the Social Inquiry Report indicating the Defendant's emotional trauma caused by the loss of his Godfather and a lack of any relationship with his biological father.
- [20] Crown Counsel asked the Court to consider the prevalence of this type of offence as being an aggravating factor. In that regard, 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. In that regard, the alarming escalation in gun crime and the increasing presence of firearms in the Territory of the Virgin Islands has not gone unnoticed by the Court. The media reports of incidents involving firearms and the expanding number of cases relating to guns is a cause for concern. Therefore, the Court is in a position to take judicial notice of the prevalence of this type of offence.

[21] Although not specifically referred to by counsel, the Court received two Victim Impact Statements in this case. The cashier, Saudia Hassan, informs the Court that nearly two years after the Robbery, she continues to be affected by it. She is often scared and on edge while at work. She experiences flashbacks of having a gun pointed at her. She is frequently nervous and frightened even while away from the workplace, especially when she is alone. She is still suffering as a result of the terrible situation she found herself in. Store clerk, Shaquille Lewis, is similarly affected. He describes the incident as being one of the scariest experiences of his life. Although it lasted only a short time, having a masked man point a gun at him became the longest and most daunting moment of his life. Not surprisingly, it has altered the way he views the world. He is often fearful at work and suspicious of customers entering the store. This has been amplified during the time of the COVID-19 pandemic, with everyone wearing masks for health reasons. Face coverings now have a different meaning for Mr. Lewis. He was robbed not only of an item of sentimental value, his necklace, but also of his emotional wellbeing. Both of these victims have indeed been traumatised by this incident.

[22] In oral submissions, Learned Defence Counsel candidly submitted that the offence was very serious. She accepted the aggravating features as described by Crown Counsel. Counsel for the Defence admitted that deterrence will play a role in this sentence. General deterrence is an important consideration. In mitigation, Defence Counsel pointed to the young age of the Defendant, although she realized that it would be balanced by his record, which includes entries for similar property offences of Burglary. The Defendant was cooperative with police, giving a cautioned statement (although it is to be noted that it was exculpatory). He also gave his fingerprints voluntarily. In referring to the Social Inquiry Report, Defence Counsel asked the Court to consider the Defendant's difficult family history and the impact that the loss of his godfather and mentor had upon him. Realizing no doubt, the seriousness of the facts and of the offence, Counsel for the Defence asked the Court to temper justice with mercy.

## **FORMULATION OF SENTENCE**

[23] This is an extremely serious crime. It is an Armed Robbery. Robbing a local convenience store at gunpoint with one's face masked or concealed, must lead to significant consequences. The fear and emotional trauma experienced by the victims was enormous and is ongoing. That is clear from the

Victim Impact Statements. The impact upon the business as it struggles to cope with such an event and carry on its trade, must also be great. Similarly, the concern that such an event engenders within the business community and the wider society is clear. Local businesses must be protected and encouraged to carry on their trade. People must feel safe to move about and to patronize local establishments. A message of deterrence must be sent specifically to this offender and to anyone else who would consider acting in this fashion, that such behaviour will not be tolerated and will be met with severe punishment, including lengthy incarceration.

- [24] Gun crime is a great concern to the Court. The use of firearms in the commission of offences presents a significant danger to this community. People must be free to go about their business without fear and concern caused by the presence of firearms. A message of deterrence must be sent that the commission of offences involving firearms, particularly handguns, will not be tolerated and will result in significant terms of incarceration. Handguns are not designed for hunting. They have one purpose only, to be used against humans. That is why they are highly regulated in our society. Only properly licensed and trained individuals, most often police and military personnel, should have access to such items. They are easily concealed and present significant danger in the wrong hands. This was clearly spelled out in a series of cases from the UK Court of Appeal (Criminal Division), beginning with **R v Wilkinson and Others**<sup>7</sup>:

The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorise and intimidate. That is why criminals want them: that is why they use them... Sentencing courts must address the fact that too many lethal weapons are too readily available: too many are carried: too many are used, always with devastating effect on individual victims and with insidious corrosive impact on the wellbeing of the local community...As a matter of sentencing reality, whenever a gun is made available for use as well as when a gun is used, public protection is the paramount consideration. Deterrent and punitive sentences are required and should be imposed.

- [25] More recently, the Court in **R v Meikel Dixon-Nash**<sup>8</sup> referred with approval to the dicta in the **Wilkinson and Others** case, stating: "This explains why the policy of the law is intended to reflect a need for deterrence; sentences for gun offences will be severe."

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<sup>7</sup> [2009] EWCA Crim 1925 paragraphs 2 & 3

<sup>8</sup> [2019] EWCA Crim 1173 at para 16



[26] In two further cases, **R v Sebastian Alcock**<sup>9</sup> and **R v Matthew MacCallum**<sup>10</sup>, the Court confirmed that, when dealing with gun crime, “deterrent and punitive sentences are required and should be imposed”. To that end, the Court indicated that relevant sentencing considerations should include:

What sort of weapon was involved?

What use has been made of the firearm?

With what intention did the Defendant possess or use the firearm?

What is the Defendant’s record?

[27] In crafting this sentence, the Court has relied upon the general provisions of the **Eastern Caribbean Supreme Court Sentencing Guidelines for Offences of Dishonesty, specifically, Robbery**. In establishing a starting point for sentence, the court has considered several issues. In assessing the harm caused by this offence, although the monetary value of the loss to the business was not high (illustrating the futility of such a senseless crime), there was nonetheless sentimental property loss suffered by one of the store clerk victims. The business was inconvenienced by the Robbery, although somewhat surprisingly, the interruption to trade was short lived with customers being accepted back into the shop in short order. Nonetheless, the overall economic impact remains. The emotional distress caused to the staff members who were present and were traumatized by the incident, has been well established. Although not harmed physically, those on the shop floor and in the office, were impacted by what happened psychologically. I therefore place this matter in Category 2, Medium Consequence.

[28] In terms of the culpability of the offender and the level of seriousness, the brandishing of a handgun, pointing it at a store clerk and therefore threatening to use it if his demands were not complied with, is significant. There was a substantial risk of harm, serious injury, even death to members of the public in this scenario. It was only through sheer good fortune that no one was injured or killed. The Robbery was clearly planned, given the clothing worn by the Defendant, the use of a firearm and the approach to the store as seen in the video recordings. There is a degree of sophistication evident in this case. Consequently, I would assign this to Level A, High Seriousness.

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<sup>9</sup> [2018] EWCA Crim 2940 at paragraphs 15 & 20

<sup>10</sup> [2014] EWCA Crim 60 at para 8

[29] By combining the first and second stages, the starting point is noted as 60% in the **Guidelines** with a range of 45% - 75%. However, the maximum sentence for Robbery is life imprisonment. Therefore, how is the starting point calculated? The Court notes that, according to the **Compendium of Sentencing Guidelines for the Eastern Caribbean Supreme Court, Offences of Dishonesty, Re-Issue, 8<sup>th</sup> November, 2021 – Robbery**, once the consequence and level of seriousness has been determined, the grid is consulted to find the starting point. **Footnote 5** indicates that where the maximum sentence is life imprisonment, for the purposes of the calculation, it is to be treated as thirty (30) years. As the Learned Justice Innocent indicated in a recent case of sentencing for Robbery, **R v Desmond Agard**<sup>11</sup>, unless the Court determines that the application of the guidelines would produce a sentence that was disproportionate to the offending, they should be followed. I agree that the sentence imposed by the Court, after taking into account the aggravating and mitigating factors, including the Defendant's personal mitigation, should result in a sentence that is just and proportionate to the offending conduct. To reach that in this matter, I would place this case at the lower end of the range or 45%. I therefore find the starting point for sentence to be thirteen (13) years and six (6) months.

[30] When examining the factors relating to the offence, it is noted that a Convenience Store, Supermarket or Mini Mart, however one describes such a business, is a prime target for Robbery. It is generally open late hours, has little by way of security and is often sparsely staffed, particularly at night. In this case, the Defendant concealed his identity by covering his face. The offence was motivated by greed and a desire for what may be considered easy money. The offence occurred at night. The Defendant approached the store under cover of darkness. These aggravating features would increase the sentence by a further twelve (12) months or one (1) year to fourteen (14) years and six (6) months.

[31] In considering the factors as they relate to the offender, it is noted that the Defendant has a record for similar property offences, specifically Burglary, for which he received custodial sentences. He is therefore not a man of good character. That is an aggravating feature. Although the Social Inquiry Report indicated a difficult childhood, he has contact with his family and was gainfully employed until he began to be incarcerated. In mitigation, the Defendant is still a young man, being 24 years of

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<sup>11</sup> AXAHCR 2020/0015

age. He obviously lacked maturity at the time of offending. He is therefore a candidate for rehabilitation and the sentence he receives should be crafted so as not to crush him, leaving him without hope of reintegration back into society. These aggravating and mitigating features cancel each other out and the sentence remains at fourteen (14) years and six (6) months.

[32] The Defendant has been incarcerated on this charge since he was arrested on 15<sup>th</sup> April, 2020. Credit must be given for time spent on remand. He has now served 607 days or one (1) year and eight (8) months. The Defendant will therefore receive credit for one (1) year and eight (8) months, thus reducing the sentence to twelve (12) years and ten (10) months for the offence of Robbery.

[33] Taking all of this into account, I therefore impose a sentence of fourteen (14) years and six (6) months imprisonment for the offence of Robbery. However, the Defendant will receive credit for the time already served in this case, reducing the sentence to twelve (12) years and ten (10) months imprisonment.

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

**Richard G. Floyd**  
**High Court Judge**

**By the Court**

**Registrar**