

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

IN THE HIGH COURT OF JUSTICE

Criminal No. BVIHCR 2018/39 and 40

BETWEEN:

THE QUEEN

Applicant

-AND-

**DAREN FAHIE
NYALL GEORGE**

Defendants

Appearances: Ms. Tamara Foster, Senior Crown Counsel for the Crown
Mr. Patrick Thompson, Counsel for the Defendant Fahie
Ms. Reynela Rawlins, Counsel for the Defendant George

2019: 18th March, 21st May, 23rd July
2019: 20th September, 29th November, 12th December
2020: 24th April

JUDGMENT ON SENTENCING

HEADNOTES: Fire arm offence-Goodyear Indication-aggravating and mitigating factors– injury to the defendant – Court exercising discretion to depart from imposing statutory minimum – explosives treated as being ammunition – injuries received by the defendant after the commission of the offence – whether a mitigating factor pertaining to the defendant.

BACKGROUND

- [1] **SMITH J:** In December 2019, the Court gave a Goodyear Indication of five (5) – seven (7) years for the attempted abduction charge and seven (7) – nine (9) years for the possession of a firearm with intent to commit an indictable offence. No indication was given for the possession of

explosives count. The two defendants accepted the Goodyear Indications to those charges on 12th December 2019 and entered guilty pleas accordingly. A third defendant named Alanah Chalwell maintained her not guilty pleas and her matter was placed on the trial list.

- [2] The Crown discontinued the charge of obliterating the serial number of the firearm against all defendants on 4th August 2018.
- [3] The matters were adjourned for sentencing on a date to be set by the Court. These sentencing remarks are in relation to both defendants namely Daren Fahie and Nyall George.

THE FACTS

- [4] On 4th day of August, 2018, Daren Fahie, Nyall George and Alanah Chalwell arrived at the Kenneth Chalwell Marina, East End, on the Island of Tortola, in the Territory of the Virgin Islands and attempted to abduct the complainant Kian Chalwell a professional boat captain, with intent to cause him to be secretly and unlawfully confined within the Territory of the Virgin Islands.
- [5] They had in their possession a firearm namely one (1) Hi-Point model JHP 45 ACP .45 caliber semi-automatic pistol with the serial number obliterated.
- [6] The said firearm had ammunition/explosives in the magazine namely six (6) rounds of (point forty five) .45 caliber ammunition/explosives.
- [7] The complainant at 3:30pm that day had left the Marina in East End on board the Midnight Express to Anegada to deliver general cargo. He was accompanied by his cousin Jaden Chalwell, and Jaden's two little brothers Zead and Kael Chalwell and other crew members.
- [8] The boat and its occupants returned to Tortola at 4:45pm, docked and came to shore with additional passengers namely Ms. Potter and a cousin.

- [9] Upon docking, the complainant walked to his truck along with his cousins. He opened the truck and immediately observed a gunman emerging from under a tarpaulin close to the truck. The gunman pointed at him and said “get in the truck”. The complainant grabbed the gun and they started to wrestle. During the struggle the clip of the gun fell to the ground.
- [10] The complainant managed to relieve the gunman of the firearm however he (the gunman) then held onto him and called out for one “Stocking” who was on the other side of the car to help him. “Stocking” came and hit the complainant to his left jaw three times with his fist. The complainant then retaliated by hitting “Stocking” on top his head with the gun and then running away.
- [11] The defendant Daren Fahie was later identified as being the gunman and Nyall George as “Stocking”.
- [12] The complainant observed his cousins running and saw his father and uncles approaching. The complainant said in his deposition that he observed his father and uncles holding the first gunman who was on the ground and called the police. He gave the gun to one of his uncles and went back out to the dock to rinse his mouth because he was bleeding. He then saw “Stocking” on the wall along with his uncles and other persons.
- [13] Police officer Andy Lawrence in his deposition said that on Saturday 4th August, 2018 at about 4:30pm he was driving his vehicle along the Blackburn Highway in a westerly direction. On approaching the area of the Chalwell Marina in the vicinity of the entrance of the Chalwell Laundromat he said that he observed a male figure who he later learnt was Daren Fahie running from the area of the Laundromat. He was dressed in a navy blue coverall and a black cloth covering his face in the form of a mask. The officer indicated that he stopped his vehicle, got out, drew his service pistol and at that point a white jeep bearing a rental plate pulled across in front of him into the road that leads to the laundry and stopped in front of a small wall.

- [14] Clyde Chalwell the driver of the white jeep got out and Officer Andy Lawrence said that he then observed that the vehicle had pinned the defendant Daren Fahie against the small wall. The defendant Fahie was sitting on the flat part of the wall with his left leg pinned against the wall by the vehicle. The officer said in his deposition that he observed that the defendant's right leg was injured and he observed some injuries to his left leg as well.
- [15] He contacted the ambulance and members of the East End and Road Town Police. Whilst at the scene Clarence Chalwell handed him what appeared to be a dark coloured firearm and a magazine. Upon inspection of the firearm it was apparent that there was ammunition in the magazine. He secured the firearm and magazine and kept them in his possession.
- [16] The police officer also stated in his deposition that he subsequently observed the defendant Nyall George lying on the ground and rolling from side to side. He was wearing navy blue coveralls, a black long sleeve sweater, a pair of black gloves and a pair of black socks. The officer also observed a black cloth resembling a t-shirt and a small white cellular phone on the ground next to the defendant George. He took the cellular phone and kept it in his possession. Shortly thereafter several members of the Royal Virgin Islands Police Force arrived as well an ambulance. Both defendants were taken into the ambulance and were subsequently charged for the offences as outlined in paragraph one (1) of this ruling.

THE LAW

Abduction

- [17] Criminal Code 1997 (No. 1 of 1997) of the Laws of the Virgin Islands – Section 196 states that:-

“Any person who abducts another person with intent to cause that other person to be taken beyond the limits of the Territory or to be secretly and unlawfully confined within the Territory commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.”

- [18] Punishment for attempt to commit an offence is set out in the Criminal Code 1997 (No. 1 of 1997) of the Laws of the Virgin Islands – Section 317:

“(1) Any person who attempts or incites another person to commit an offence, commits an offence and is, unless any other punishment is provided in this Code or any other law, liable on conviction,

(a) if the completed offence is punishable by imprisonment for life, or for ten years or more, to imprisonment for a term not exceeding seven years; and

(b) in any other case, to the same penalty as may be imposed for the completed offence itself.”

- [19] The law in relation to custodial sentences for certain offences involving firearms can be found at the Firearms and Air Guns (Amendment) Act 2015 (No. 11 of 2015) of the Laws of the Virgin Islands – Section 10. This sections states:-

The principal Ordinance is amended by inserting after section 33, the following new section 33A:

(1) Notwithstanding any provision to the contrary in the Criminal Code or in any other enactment relating to sentencing, a person, other than a juvenile, who uses a firearm in the commission of the offence of:

(a) kidnapping or abduction;

(b) robbery;

(c) drug trafficking;

(d) rape or other sexual offence under Part VII of the Criminal Code 1997;

(e) domestic violence under the provisions of the Domestic Violence Act, 2011;

shall on conviction be sentenced to a term of imprisonment for not less than fifteen years.

...

(5) The court may in its discretion, impose a lesser penalty where

(a) it is fair and just in all the circumstances of the case to impose a penalty other than the minimum; or

(b) it is of the opinion that the imposition of the minimum penalty

(i) would be arbitrary and disproportionate; or

(ii) the offender is unfit to serve the minimum sentence or is of advanced years

Possession of a Firearm

- [20] The Firearm Act Chapter 126 of the Laws of the Virgin Islands – Section 27B(1) and (4) states:-

“27B. (1) A person who has with him a firearm with intent to commit an indictable offence, or to resist or prevent the lawful arrest or detention of himself or any other person or with intent to put any other person in fear, commits an offence is liable,

(a) on summary conviction to a fine of not less than a hundred thousand dollars or imprisonment for a term of not less than ten years or both; or

(b) on conviction on indictment to a fine of not less than two hundred thousand dollars or imprisonment for a term of not less than twenty years or both.”

(4) The court may in its discretion, impose a lesser penalty where:

(a) it is fair and just in all the circumstances of the case to impose a penalty other than the minimum; or

(b) it is of the opinion that the imposition of the minimum penalty

i. would be arbitrary and disproportionate

ii. the offender is unfit to serve the minimum sentence or is of advanced years

The Unlawful Possession of Explosives

- [21] The Explosives Ordinance, Chapter 124 of the Revised Edition 1991 of the Laws of the Virgin Islands, section 6 & 26 states:-

“(6) Except as may be otherwise provided by this Ordinance, no person shall acquire, import, manufacture, deal in, store or otherwise have in his possession, or use any explosive unless he holds a valid license or permit in respect thereof issued under this Ordinance...

(26)(2) Except where this Ordinance otherwise provides, any person who commits any offence under this ordinance or any regulations made thereunder shall be liable, upon summary conviction, to a fine of five hundred dollars and to imprisonment for six months.

- [22] The Goodyear Indication was sought and given on 2nd December 2019 for both defendants. On the attempted abduction charge the indication was in a range of five (5) to seven (7) years with the possession of a firearm with intent to commit an indication offence being in the range of seven (7)

to nine (9) years. No Goodyear Indication was given for the possession of explosives count. As already indicated, the Crown withdrew the charge of obliteration of the serial number on the firearm.

[23] The Crown found the following **Aggravating Factors** for the offences in relation to both defendants:-

1. A firearm was used (not fired) during the commission of the offence
2. The firearm was loaded
3. The offence was executed in a busy public place
4. There were minors present at the time of the commission of the offence
5. The offence was premeditated having been thoroughly and meticulously planned
6. The complainant continues to suffer mentally and emotionally as a result of the attack.
7. Possible sinister motive

Mitigating Factors as identified by the Crown:-

[24] The defendants both entered early guilty pleas as soon as the Goodyear Indication was given thus entitling them to the full one third discount.

Pleas in Mitigation

[25] Defence Counsel Thompson in his written submissions for Daren Fahie found only one **Aggravating Factor** being the loaded firearm was carried in a public place. The **Mitigating Factors** relating to the defendant were set out as being:-

- I. He sustained injuries in the commission of the offence, trying to make good his escape
- II. Fahie was a first time offender and
- III. The father of a minor child

[26] In relation to the defendant Nyall George, Counsel Rawlins highlighted the following **Aggravating Factors** common to all of the offences to which her client had entered guilty pleas to:-

- I. There were minors present on the scene at the time of the offences being committed
- II. The offences occurred at a public place
- III. The defendant had an accomplice

Attempted Abduction

- I. The offence was planned

Possession of a Firearm with Intent to Commit an Indictable Offence

- I. The firearm was loaded with ammunition
- II. The loaded firearm was pointed at the complainant

Unlawful possession of explosives

- I. Whilst the defendant George did have explosives in his possession, they were not fired. Given that the explosives were not used, the gravity of the defendant's offending should be reduced.

[27] The **Mitigating Factors** attaching to the defendant George were highlighted as:-

- I. The defendant entered a guilty plea after the Goodyear Indication and saved the Court time.
- II. The defendant has no previous convictions.
- III. The defendant is remorseful.

[28] The Crown helpfully furnished the Court with authorities for its consideration on the attempted abduction count.

Local and Regional Cases

[29] **The Queen vs Emerson Delspesche**¹ is instructive. The complainant was under attack from the defendant, her estranged husband. She ran into her landlady's house to escape from Mr. Delspesche's attack. He pursued her into a bedroom in the house, held her by the hand and

¹ SVGHCR 2016/0002; 2016/0016 (Saint Vincent and the Grenadines) December, 2018

dragged her back into the public road against her will. After trial, the defendant was found guilty and sentenced to two and a half (2 ½) years imprisonment. The Court has noted that in St. Vincent and the Grenadines, the penalty for the complete offence of abduction is five (5) years whereas in the BVI, attempted abduction is seven (7) years.

[30] In **Myron Brazel vs The Queen**² the defendant entered a plea of guilty to abduction and was sentenced to imprisonment for four (4) years and nine (9) months, which on appeal was reduced to four (4) years imprisonment. Myron Brazel was indicted for abducting Itesha Coombs, a girl less than fifteen (15) years from the Ministerial Building in Kingstown, St Vincent to the back of the British American building.

[31] In **Gibson Blake v DPP**³ the appellant had entered a plea of guilty and received a sentence of two (2) years imprisonment which was affirmed on appeal. The appellant had antecedents.

[32] In the case of **Director of Public Prosecutions vs. Jahmana Walters et al**⁴ the defendants were found guilty of two (2) counts of kidnapping and were sentenced to twenty five (25) years imprisonment. The penalty on conviction for kidnapping in that jurisdiction is life imprisonment. They kidnapped a couple in an attempt to steal money from the vault in a bank. Justice Thomas (Ag) referred to the following authority in his judgment:

*“In **Blackstone’s Criminal Practice** at paragraph B2.71 the observations of Lord Lane CJ in **Spence [1983] 5Cr App. R. 413, 416** are reproduced. This is what he said: “There is a wide variation between one instance of a crime and another. At the top of the scale of course, come the carefully planned abductions where the victim is held as a hostage or where ransom money is demanded. Such offences will seldom be met with less than eight years imprisonment or thereabouts. Where violence or firearms are used, or there are other exacerbating features such as detention of the victim over a long period of time, then the proper sentence will vary much longer than that. At the other end of the scale, are those offences which – can perhaps scarcely be classed as kidnapping at all. They very often arise as a sequel to family tiffs or lovers disputes, and they seldom require anything more than 12 months imprisonment and sometimes a great deal less”.*

² SVGHCRA 2008/0016 (Saint Vincent and the Grenadines)

³ SKBHCRA 2011/0015

⁴ SKBHCR2012/0045 (Saint Christopher and Nevis) February, 2013

- [33] In the **State vs Webster Edmond**⁵, at the end of the complainant's testimony, Learned Counsel for the defendant applied to the Court for the indictment to be re-read to the defendant whereupon he entered guilty pleas to Count 1 – kidnapping, Count 4 – unlawful sexual intercourse, Count 5 – possession of ammunition with intent to endanger life and Count 6 – possession of a firearm with intent to endanger life. In respect to the kidnapping charge, the Court sentenced the defendant to four years reduced by 20% for the late guilty plea. The defendant was therefore sentenced to three (3) years and two and a half (2 ½) months.
- [34] The Crown also supplied the Court with authorities from the UK.
- [35] In **R v Brown**⁶, the defendant kidnapped a young lady by forcing her into a car and causing her minor injuries in the ensuing struggle. He was sentenced to five (5) years on the kidnapping charge.
- [36] In **A-G's Reference**⁷, the offender was convicted of kidnapping and indecently assaulting a seven (7) year old girl whom he enticed into his car. After assaulting her, he returned her to the street where he found her. In the Court of Appeal, Rose LJ indicated that a sentence in the order of eight (8) or nine (9) years would have been appropriate.
- [37] In the case of **R v Dzokamshure**⁸, the appellant's relationship with a woman for six (6) months had ended. Months later he went to her home, broke his way in, punched her, dragged her out and forced her into her car. Another man was seated therein. The appellant drove the car on the motorway and prevented her from answering a call on her mobile phone. Eventually, he stopped on a slip road and allowed her to get out. Dzokamshure was of previous good character and entered an early guilty plea. The victim had indicated that that she did not want him to serve a custodial sentence and was unwilling to give evidence. On appeal the sentence of eighteen (18) months' imprisonment was upheld.

⁵ DOM HCR 2012/1013

⁶ (1985) 7 Cr App R (S) 15

⁷ [1999] 2 Cr App R (S) 336

⁸ [2009] Cr App R (S) 112

Possession of a Firearm with Intent to Commit an Indictable Offence

- [38] The Court in considering this count is minded to examine and apply the learning in the case of **R vs Avis**⁹ to the facts of the instant case in order to determine the culpability of both defendants. This requires an assessment of the following questions to the facts of the offence and the defendant.

“The appropriate level of sentence for a firearms offence, as for any other offence, will depend on all the facts and circumstances relevant to the offence and the offender, and it would be wrong for this court to seek to prescribe unduly restrictive sentencing guidelines. It will, however, usually be appropriate for the sentencing court to ask itself a series of questions:

- [1] *What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use. From the agreed facts we know that the firearm in this case was genuine and loaded with ammunition.*
- [2] *What (if any) use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be. It is clear from the case at bar that this offence was the result of planning and premeditation.*
- [3] *With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence. The firearm in the instant case was used to point at the complainant with the intent to commit an indictable offence. The firearm was not fired.*
- [4] *What is the defendant's record? The seriousness of any firearm offence is inevitably increased if the offender has an established record of committing firearms offences or crimes of violence.” Both defendants before the Court are of previous good character. They are also young offenders within the context of CJ Byron as he then was in the case of **Desmond Baptiste vs The Queen**¹⁰. On the issue of the age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders, the Court should take care to consider the prospects of*

⁹ [1998] 1 Cr App R 420

¹⁰ Criminal Appeal (St Vincent) number 8 of 2003

rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is contemplated, these factors must also be taken into consideration.

- [39] Having reviewed and applied the **Avis** questions to the facts of the case at bar, the Court is of the view that the inclusion of the premeditation in the firearm possession count would amount to double counting.

Unlawful Possession of Explosives

- [40] Whilst the defendant George did have explosives in his possession, they were not fired. Given that the explosives were not used, the gravity of the defendant's offending should be reduced.
- [41] The Crown once again helpfully provided cases for the consideration of the Court in its Goodyear Submissions. I will deal with each case under the relevant Count on the indictment. I have already dealt with the attempted abduction in the foregoing paragraph twenty eight (28).

Defence Counsel provided authorities for consideration on the Firearm and Explosives Count

- [42] The case of **Queen vs Matthew Hazel**¹¹ is instructive. An officer was making a night deposit of money at the depository of First Caribbean Bank. Whilst at the depository, the officer was confronted by the defendant Hazel who discharged a gun three (3) times whilst demanding money. The defendant's face was covered. After trial, the defendant was found guilty of all four charges and sentenced to nine (9) years for attempted murder, four (4) years for attempted robbery; He was also sentenced to six (6) years for possession of a firearm with intent to commit an indictable offence and was reprimanded and discharged for the possession of explosives. The case at bar can be distinguished from the Hazel case as that defendant discharged his gun three (3) times in a public place which increased the risk of someone being injured. Also Hazel received these sentences after a full trial.

¹¹ BVIHCR2015/0020

[43] In **R vs Tim Daley**¹² the defendant carried a firearm in his hand whilst conducting a robbery of a small grocery store during opening hours in the evening. Three employees were present and the defendant pointed the gun at one of them and demanded that the cash register be opened. One of the workers swung a cutlass at the defendant. The defendant responded by firing a shot in the direction of that employee but it did not strike her. The defendant pleaded guilty to both robbery and being in possession of a firearm with intent to commit an indictable offence and was sentenced seven (7) years imprisonment for the robbery and four (4) years for the firearm offence.

[44] In **The Director of Public Prosecutions vs. Shaunlee Fahie**¹³, the defendant along with an accomplice arrived at a yachting business armed and masked and demanded the keys to the office from the first employee they met. That employee was then taken to the office, tied up and gagged and the office ransacked. Another employee was accosted and forced back to the office where they demanded that he open the safe. Money and other valuables were stolen from the premise. The defendant entered pleas of guilty to two (2) counts of aggravated burglary and two (2) counts of keeping an unlicensed firearm and was sentenced to three (3) years imprisonment and two (2) years imprisonment respectively to run concurrently. On appeal, the Court of Appeal found the sentence to be manifestly low and decided to substitute a sentence of three (3) years on the firearms offences and of seven (7) years on the aggravated burglary offences to run concurrently with time on remand being taken into consideration. This case is most similar to that which is currently before the Court.

Special Circumstances of the Defendant Fahie

[45] The defendant received serious injuries to both legs in his quest to escape. He was pinned against a wall by a jeep being driven by the complainant's father. Counsel Mr. Patrick Thompson has urged to Court to view these particular injuries as a mitigating factor attaching to the defendant Daren Fahie. He has kindly brought to the Court's attention the article "**The Irrelevance to Sentencing of (Most) Incidental Hardships Suffered by Offenders**"¹⁴. In the article the authors posit that ".....there are no clear principles or approaches that determine whether injuries sustained by an

¹² BVIHCR: 2014/005

¹³ HCRAP 2008/003

¹⁴ [2016] UNSW Law JI 2; (2016) 39(1) UNSW Law Journal 47

offender are mitigating, even if they have some connection to the offence. However, some themes that emerge from the cases are that:

“injuries sustained by an offender during the commission of a crime can mitigate penalty, especially if they are serious. This is so whether they are sustained as a result of the negligence or inadvertence of the offender, or as a result of the response by other people to the criminal activity:

- when the injuries are deliberately self-inflicted, they will generally not mitigate penalty;
- injuries sustained after the commission of an offence can mitigate penalty but are less likely to do so where there is a considerable gap between the commission of the offence and the infliction of the injuries; and
- to the extent that physical harm sustained by an offender mitigates penalty, the key rationales are that (specific) deterrence and retribution are already partly achieved.”

[46] The concept is new to this Court however it does find favour. An application of these principles would suggest that the serious injuries sustained by the defendant Fahie can mitigate his offending particularly since it was in response to his offending and in the course of his attempts to escape. The injuries were not self-inflicted. Under the rubric ***Injuries Caused by Others During or After the Offence*** the authors of the article had this to say:-

‘When the injuries to the offender are caused by the deliberate acts of others, the effect on sentence is less clear. A number of cases exist where offenders have been injured by others who, out of fright, anger or an attempt to stop the offence, have acted violently towards the offender. In **R v Daetz**, a bank robber sustained a fractured skull as a result of being attacked by a group of people. In conferring a discount, the Court simply noted:-

In sentencing the offender the court takes into account what extra-curial punishment the offender has suffered, because the court is required to take into account all material facts and is required to ensure that the punishment the offender receives is what in all the circumstances is an appropriate punishment and not an excessive punishment. How much weight a sentencing judge should give any extra-curial punishment will, of course, depend on all the circumstances of the case.^[36]

Aggravating and Mitigating Factors as found by the Court

- [47] Having considered the submissions of Senior Crown Counsel Foster and the pleas in mitigation from both Counsel the Court finds the following:-

In relation to the defendant Daren Fahie

Aggravating Factors in relation to the offences:-

- I. The firearm was loaded with ammunition
- II. The offences were committed in the presence of the public and children
- III. The commission of the offences was premeditated

Mitigating Factors in relation to the offence.

- [48] The Court found no **Mitigating Factors** in relation to the offence.
- [49] The Court found no **Aggravating Factors** in relation to the defendant.
- [50] **Mitigating Factors** in relation to the defendant
- I. First time offender
 - II. Father of an infant child
 - III. Received serious injuries to his legs while he was trying to escape
 - IV. He has shown remorse

Construction of the Sentence for Fahie

Attempted Abduction

- [51] At the point of sentencing the two defendants there were no Eastern Caribbean Sentencing Guidelines in force for the Counts on the Indictments to which both have entered guilty pleas to. Therefore the Court will be guided by the UK Sentencing Guidelines and work within the Goodyear Indications. Also, the Court was not provided with a Victim Impact Statement from the complainant and so the harm to him has not been assessed. However without speculating the Court can safely say that some level of harm was visited upon the complainant by the two defendants.

[52] For the offence of **Attempted Abduction** the Court will fix the starting point at seven (7) years. The seven (7) years will be adjusted downwards to take into account the defendant's injuries to six (6) years and a further reduction of two (2) years to take into account his remorse, his age at the time of the commission of the offence and the fact that he is the father of a minor child. This will bring the sentence to four (4) years. However the aggravating factors will require that the sentence be adjusted upwards by three (3) years to seven (7) years. The defendant entered a guilty plea as soon as the Goodyear Indication was given and is therefore eligible for the full one third discount bringing the sentence to four (4) years and six (6) months.

[53] The defendant will be reprimanded and discharged for the offence of possession of explosives.

Possession of a Firearm with Intent to Commit an Indictable Offence

[54] The Court has determined that its starting point for this offence will be nine (9) years. The Goodyear Indication was given to be a range of seven (7) to nine (9) years. The mitigating factors are as before and Fahie will be credited for his remorse, his age, the fact that he is the father of a minor child and his injuries bringing the sentence to five (5) years. Once again the full one third discount will be applied to the sentence and the Court has determined that the statutory minimum penalty of twenty years can be departed from. When the one third credit is applied to the five (5) years, the sentence is reduced to three (3) years and four (4) months.

Construction of the sentences for defendant Nyall George

Attempted Abduction

[55] In relation to this defendant, the Court determined the starting point for the offence of **attempted abduction** to be seven (7) years. The seven (7) years will be adjusted downwards to take into account the defendant's remorse and his age at the time of the commission of the offence. This will bring the sentence to five (5) years. However the aggravating factors will require that the sentence be adjusted upwards by two years to seven (7) years. The defendant entered a guilty plea as soon as the Goodyear Indication was given and is therefore eligible for the full one third discount bringing the sentence to four (4) years and six (6) months.

- [56] In relation to the **possession of a firearm** the Court has determined that its starting point for this offence will also be nine (9) years. The Goodyear Indication was given to be a range of seven (7) to nine (9) years. The mitigating factors are as before and George will be credited for his remorse and his age at the time of the commission of the offence bringing the sentence to seven (7) years. The Court will also give credit for the fact that the firearm, though loaded was not used taking off a further year. This will bring the sentence to six (6) years. Once again the full one third discounts will be applied to the sentence and the Court has determined that the statutory minimum penalty of twenty years can be departed from. When the one third credit is applied to the six (6) years, the sentence is reduced to four (4) years.
- [57] As in the case of Mathew Hazel, the defendant in the case at bar will be reprimanded and discharged for the **possession of explosives** offence. The Court notes that the explosives were never used or discharged however the said firearm was pointed at the complainant and this has been taken into account.
- [58] The Court views both defendants as excellent candidates for rehabilitation and reform and it is hoped that their time in custody will be spent reflecting on their conduct and bettering themselves.
- [59] All sentences for both defendants are to run concurrently and are to take effect from 4th August 2018 which is when both defendants were first remanded into custody.

Ann-Marie Smith
High Court Judge

By the Court

Registrar