

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

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

CASE NO: ANUHCR 2020/0001

BETWEEN:

THE QUEEN

vs

ROHAN JARVIS

Before: Her Ladyship Justice Ann-Marie Smith

Appearances:

Mrs. Shannon Jones-Gittens, Counsel for the Crown
Mr. Wendel Robinson, Counsel for the Defendant

Defendant present

2021: June 9th, 10th, 11th, 14th, 15th, 16th, 30th;
July 7th, 29th

DECISION

Background

- [1] **SMITH, J.:** This recently concluded trial is the first to be tried pursuant to the **Criminal Proceedings (Trial by Judge Alone) Act 2021 of Antigua and Barbuda**, in this Court. The case commenced on 9th June and concluded on 14th June 2021 with the decision reserved for 30th June, 2021 and further adjourned to 5th July, 2021.
- [2] The defendant entered a plea of not guilty to one count of receiving on the indictment. At the close of the Crown's case the defence made a **Submission of No Case to Answer** which was not upheld. The defendant was given his three options and he opted to give sworn testimony.

Burden and Standard of Proof

- [3] Sitting as a judge alone, I am both the trier of fact and judge of the law. As such, I direct myself and keep in mind throughout my deliberation of this matter that the Crown has the burden of proof in this case and that the defendant stands before me as an innocent person. The defendant Rohan Jarvis has nothing whatsoever to prove; rather, it is the Crown that has the duty to prove each element of the offence of receiving.
- [4] I further direct myself that the Crown must prove each element of the offence by providing me with evidence of such a quality that I can feel sure of the respective elements. Ultimately, if I am sure of each element and have no reasonable doubt, then I can be certain of the guilt of the accused and may convict him. If, on the other hand, the Crown fails to make me feel sure and consequently I have a reasonable doubt of any of the elements of the offence I will be obliged to acquit the defendant of receiving.
- [5] In order for me to convict the defendant of receiving, the Crown is required to prove these elements so that I feel sure of each, viz,
- That the defendant Rohan Jarvis received the money
 - That he knew the money was stolen

Summary of the Crown's Case

- [6] The Crown's case is that on 22nd August, 2018, Mrs. Gretlyn Thomas' home was broken into and her box money was stolen. The culprit of the larceny was Leon George also known as "Tunki". The Crown's case is also that the defendant received money that Leon George stole and that he knew said money was actually stolen.
- [7] Leon George entered a plea of guilty to stealing the money and was subsequently sentenced. The complainant said that approximately \$80,000 was stolen. Her husband said that he came home and observed that his home had been broken into. He indicated that he saw money on the roadside, collected it and handed this money over to the police. He was not asked to sign any document in relation to this money. He knows the witness Leon George also known as "Tunki" and that he once lived with him and his wife. His wife also testified to her home being broken into and her box money stolen. She said she was distraught. One of her friends Miss. Williams was also called and she corroborated the testimony of the Thomas'
- [8] Kevin Toussaint testified that he gave the defendant a ride on the night in question. It was his evidence that the defendant said to him **"Tunki gone on a move and can't come back yet"**. They subsequently picked up Leon George coming from Samantha Marshall's yard, shirtless with a bundle in his hands. When he entered the car, he showed them the contents of the shirt and that it was **"a lot of money"** and the defendant asked Leon if he **"got through?"** and Leon responded **"yes"**.
- [9] It was also Kevin's evidence that he told Leon George to return the money as his sisters were a part of Mrs. Thomas' box, but that the defendant said **"don't take it back, give it to me"**.

- [10] The Crown's case is that they drove to the defendant's house, packed up the money in a black bag and the defendant gave Kevin \$800.00 from it and said he would give him more the next day after they had counted it. Leon George said he got \$600.00 which he went and spent at a brothel with \$80.00 remaining which he later handed over to the police.
- [11] Kevin also said that he left the defendant and Leon George there and went to Liberta, came down Bolans where he met up upon Leon George's two sisters and their boyfriends.
- [12] One of Leon George's sisters named Ayana Christian stated that on that night she learned that her brother Leon George had broken into Gretlyn's house and had stolen her box money. She testified that her brother came to her and asked her to go with him to the defendant's home. This they did and there she said to him that she had come for the money he had received, the money that her brother had stolen from Mrs. Gretlyn's home, she had come for his share. It was her testimony that the defendant told her that if anything happened to her brother, he, the defendant would take care of him. This witness also said she received \$43.00 US dollars from the defendant and this she subsequently handed over to the police.
- [13] It is the Crown's case also that the defendant said he took \$10,000.00 and that Kevin also took \$10,000.00. Ms. Christian also said that the defendant said to her "if Tunki get lock up just come to me". She also said she also told Kevin to give her the money to return to Gretlyn and he told her that he did not get any money from Jay (as the defendant was also called). However, it was his testimony that he told her to go and tell the police and that he would hand over the money to the police.
- [14] Leon George testified that he went and broke into the complainant's home and stole the money. He described how he smashed the cash pans and indicated that after he stole the money he came to the roadside where he met Kevin and the defendant. He said he entered the backseat of the car with the money wrapped in a shirt. He said that both Kevin and the defendant asked him where he got the money from and he replied "from Gretlyn's house". It was his testimony that he left the money in the car. He also said that they went to the defendant's home and packed the money in a black bag. He took \$600.00 and proceeded to a brothel where he spent most of the \$600.00 with \$80.00 remaining. Later he saw his cousin who picked him up and took him to the police station.
- [15] Under cross examination he said he could not recall telling anyone that he gave someone \$200.00. He reiterated that in his statement and interview he said he gave the money to Rohan Jarvis, the defendant. He said that the only time he came out of the vehicle was when he and Kevin got to the defendant's home with the money.
- [16] He stated that the defendant was the instigator and that he knew about the plan to take the box money. However when his statement was shown to him where the police asked him **"who you told you were going on the move?"** He answered **"nobody"**. It was also put to him that he and Kevin got into an argument inside the car. He denied this but again his police interview was shown to him where he told the police **"me and he (Kevin) get into a little argument and me come out the car and walk off, so he and Jay drive behind me and yell me to come in all this time the money bin throw down on the car back seat"**.

- [17] He further stated in his interview that the defendant drove Kevin's car and dropped him off and he went on his way, leaving the money in the car.

Summary of the Defence Case

- [18] The defence called the defendant and several police officers as witnesses. The thrust of the defence case was that the Crown had not proved that the defendant received the money stolen by Leon George.
- [19] They also posited that the Crown's witnesses such as Kevin Toussaint, Ayana Christian, Leon George and Corporal Angol's evidence had been so discredited that the Court could not be sure of the guilt of the defendant.
- [20] The defence in its cross examination of the Crown's witnesses tried to discredit them and their story. The defence also called evidence to show that the witness Kevin Toussaint had once been a suspect and that a caution statement had been taken from him. Several police officers were called to verify this.
- [21] The defence in relation to Kevin Toussaint, further posited that his evidence was fraught with inconsistencies in relation to his assertion that he only made one statement, the fact that he said that the money was packed up and counted in the defendant's gallery and the fact that he said he only received \$800.00 from the loot.
- [22] The defendant gave sworn testimony. It was his evidence that he and Kevin picked up Leon George on 22nd August, 2018. His exact words were that Leon **"forced himself on the backseat"** and said **"drive, drive"**. When this was put to Leon George it was denied.
- [23] He said that Leon George was looking a bit scared and said that he just **"eat a food"**. He said that he observed a large sum of money on the backseat with Leon George and when he enquired Leon told him he got the money from Gretlyn's home.
- [24] He testified that Kevin and Leon had a heated argument and that Leon told Kevin to stop the car and he exited and walked off. This was also denied by Leon George but was put to him and was shown to have been said to the police in his interview.
- [25] It was the defendant's testimony that he Leon George exited the car with the money. This evidence was contradicted by Kevin Toussaint and Leon George.
- [26] He said he and Kevin drove off and dropped him by his mother's jeep. It was his testimony that the three of them never went to his house and never packed up the money in a bag. He agreed that he heard when Leon said that they packed up the money at his house in his bedroom, but he said he **"can't recall"** that happening. Similarly, when it was put to him that he admitted to Ms. Christian that he received the money he said **"I can't recall"**.
- [27] He characterized the witness Leon George as being a troubled and cursed individual. It was his testimony that when Leon George left the vehicle he had the money with him.

Discrepancies

- [28] In the Court's view this is the nub of the case and the questions to be reconciled. Did the defendant take the money that was wrapped up in Leon's shirt and did he know the money was stolen. Further, did the witness Leon exit Kevin's car with the money or did they go to the defendant's home and pack up the money in a black bag as Leon and Kevin said.
- [29] There were some obvious inconsistencies between Kevin and Leon's evidence regarding whether the money was packed in the defendant's bedroom or on his gallery. I am of the view that this is not a material inconsistency and in my view nothing turns on this. It is a matter of which version the Court believes and this will depend on the credibility of the witnesses.
- [30] The defence pointed out that Kevin was adamant that he made only one statement to the police, while in fact he made two. In actual fact one statement was dated 23rd August and the other dated 25th August was a witness statement. The Court has to reconcile this discrepancy and decide whether it falls into any of the categories listed herein:-
- Was the discrepancy or inconsistency a genuine mistake?
 - Is there a reasonable plausible explanation on the evidence for the inconsistency?
- [31] The Court is of the view that this is not a material discrepancy and that it is one which falls into the category of a genuine mistake and so places very little weight on it.

Credibility Issues

- [32] As already stated this case turns on credibility. There were serious credibility issues in relation to the testimony of Corporal Angol. The Court heard that he made notes in his diary which he had at the scene. He also said that the complainant's husband did not hand over any money to him.
- [33] This is a finding of fact as the Court prefers the testimony of Mr. Thomas. Mr. Thomas came across as an honest witness. The Court views the testimony of Corporal Angol with suspicion also in relation to his making of notes. He indicated to Counsel that he had made notes in his diary; however when the matter was adjourned in order for him to produce said notes he returned to Court and said that he could not find the diary. The Court's view is that he made no notes and he did receive the money from Mr. Thomas and made no note of it.
- [34] In observing the defendant, the Court paid keen attention to his demeanour, body language and the answers he gave when being cross examined. When he said he did not recall that they went to his bedroom and packed up the money as alleged by Leon George the Court did not believe him. He did not deny this happening, he said he **did not recall**. When one contrasts the evidence of the defendant to that of Leon George as stated before, the main issue to be resolved is who the Court believes in relation to who had the money and when. I am pointing out to myself the implausibility's and inconsistencies in Mr. Jarvis' and Mr. George's evidence.

Poor Police Investigation

- [35] Counsel for the Defence helpfully pointed me to the Caribbean Court of Justice case of **Carlton Hall vs. The Queen**¹, a 2021 Appeal from the Court of Appeal of Barbados. Counsel quoted from it extensively and I feel duty bound to repeat the comments of Justice Winston Anderson. Also in the case at bar, the poor investigation did not result in a fatal blow to the Crown's case however it must be said. **"Although it was not fatal to the outcome of this case, the minimalist nature of the investigation and prosecution cannot escape criticism. We would note that barebones investigations and prosecutions appear to have become almost routine, not just in relation to this appeal, but in respect of several criminal cases coming before us from several of the jurisdictions subscribing to the appellate jurisdiction of this Court. Without suggesting that investigating officers in any of our police services in the region must magically be transformed into a Colombo or arelation to this appeal, but in respect of several criminal cases coming before us from several of the jurisdictions subscribing to the appellate jurisdiction of this Court. Without suggesting that investigating officers in any of our police services in the region must magically be transformed into a Colombo or a Hercule Poirot, it does not take much imagination to suggest that there could be far more searching investigations in this and several other cases that have come before us. Criminal cases, especially capital cases, require and deserve fulsome investigation and presentation of the relevant evidence. As a rule, witnesses are not only competent to testify but also compellable to do so. Citizens unwilling to do their civic duty may have to be compelled to do the right thing. In any event, greater effort must be made to acquire more, and more diverse, forensic evidence. The acquisition of facilities and expertise to acquire, process and present DNA evidence, and thus reduce reliance on witnesses, is the holy grail to which our jurisdictions must strive"**. (My emphasis)
- [36] Although nothing turns on this, the statement of Zedekiah Thomas was taken 6 months after the incident in February 2019. Also, the station orderly was called by the defence and she testified that neither Corporal Angol nor Constable Goodwin turned over any money to her.

The Evidence of Mr. Leon George

- [37] The defense has asked me to view his evidence with suspicion and indeed caution. I am of the view that his evidence has to be treated as that of an accomplice and I will warn myself to view his evidence with caution.
- [38] The Crown has pointed out that Mr. George has already been convicted and sentenced and so he has no interest to serve. However, one must view his evidence with some caution as set out in the case of **The Queen v Andrew Milton, Dennis Campbell and George O'Connor**² which was a case from the BVI where the Court of Appeal held that an adequate accomplice warning must be

¹ BBCR2019/001

² BVICR2007/0018

given to the jury. In the absence of a jury I am duty bound to warn myself in the same terms as set out in **Davies vs. Director of Public Prosecutions**³ Lord Simmonds said:

“In a criminal trial where a person who is an accomplice gives evidence on behalf of the prosecution, it is the duty of the judge to warn the jury that, although they may convict upon his evidence, it is dangerous to do so unless it is corroborated.” (My emphasis)

- [39] I must consider and ask myself in this case if Leon has an interest of his own to serve? In the **Davies** case an accomplice is defined widely as including **“...anyone criminally implicated in the transaction out of which the charges arise--a person who assists in the crime whether he is guilty or not of it. It is not necessary to prove the witness is an accomplice, it is enough if the witness is suspected of being an accomplice.”** Defence Counsel in his address to the Court put the Court on notice that he viewed the witness Leon George as a witness with a purpose to serve.
- [40] Further in **Davies**, the House of Lords said, **“Where a person who is an accomplice gives evidence for the prosecution, it is the duty of the judge to warn the jury that although they may convict on this evidence, it is dangerous to do so without corroboration.”** (My emphasis)
- [41] Corroboration is independent supporting evidence. In **R vs Rainford et al** (1967) the Court of Appeal of Jamaica said that the judge need not use any specific language but minimally should say that corroboration is **“...some independent evidence of some material fact which implicates the accused person and tends to confirm that he is guilty of the offence.”** (My emphasis)
- [42] In plain language, a person with an interest to serve is trying to help himself—he is concerned with himself, his own interest -and as a result may not tell the truth to the police and the court about the involvement of the accused in the offence. It is dangerous to take the word of a person who may have a reason to lie, that is to protect him or another reason, and so great care must be taken in accepting evidence from this type of witness where there is no corroboration of the witness' evidence. As trier of fact, I warn myself of this particular danger and take great care before deciding to accept the evidence of Leon George and then relying on it to convict the defendant.
- [43] I further warn myself that I must treat his evidence with exceptional care. This is so because when Leon George testified in Court he labeled the defendant as the instigator of the whole operation. He insisted that Rohan Jarvis knew that he was going to burglarize and steal from Ms. Gretlyn.
- [44] I have further directed myself that corroboration is **“...independent evidence of some material fact which implicates the accused person and tends to confirm that he is guilty of the offence”** and I remind myself that in the case before me I consider the evidence of Kevin to be corroborative. Kevin said the money was packed up at the defendant's house. He was forthright in admitting that he took \$800.00. I place very little weight on the evidence from the defendant and the suggestions from his Counsel that Kevin was to get a gun from an individual named “Killa” as

³ 1954 AC 378

the Crown's case does not turn of this. What the Court is concerned with is corroborating evidence for Leon George's evidence and it was found in Kevin's testimony when:-

- i) Kevin and Leon both said that he (Leon) was encouraged to take the money back to the complainant
- ii) Kevin also said that the money was packed into a black bag,
- iii) Kevin and Leon said that Rohan Jarvis would count the money and give them more the next day

Good Character Evidence

- [45] The Court has observed that no evidence of good character was led from either side in relation to this defendant. The Court however recognizes the importance of warning itself as to the good character of the defendant and the weight to be attached thereon. As is well known, the good character direction contains two limbs: the credibility direction, that a person of good character is more likely to be truthful than one of bad character; and the propensity direction, that a person of good character is less likely to commit a crime, especially one of the nature with which he is charged, than a person of bad character.
- [46] The Caribbean Court of Justice delved into this in an appeal from Belize, **August and Gabb v R⁴** where Justice Wit had this to say **"As far as the "good character" defence is concerned, it is unnecessary for me to deal with it as I have already on substantive and genuine grounds concluded that the conviction of August is unsafe. More fundamentally, however, I am of the view that this defence is quite artificial and, frankly speaking, grossly overrated. To start with, it is a misnomer. The fact that a defendant has a clean criminal record does not say much, if anything at all, about his "character" (although this might be different with a "bad" criminal record). Surely, a clean criminal record alone does not mean that the defendant is credible. At best, it might be a minor indication in combination with more relevant and weighty factors. But that is as far as it goes. A clean record may be a somewhat stronger indication that the defendant does not seem to have a propensity to commit crimes or certain crimes but, depending on other more important aspects of the case, it could just mean that he was smart enough to stay out the hands of the police. I would assume that it is only in a very rare and very close case, that the defendant's clean record would make any impact on the final decision of guilt or innocence.** (My emphasis) I adopt this learning wholeheartedly and apply it to the case at bar.
- [47] On the credibility limb, the weight I give to the defendant's good character is very little. Notwithstanding his good character I disbelieved his evidence. I found his account to be implausible and unbelievable. I believe he knew what Leon George was up to that night because he asked him if he **"got through?"** It begs the question, got through with what? The inference the Court is entitled to draw from the circumstances is **"got through"** with the burglary of Gretlyn's home. He also said to Kevin that **"Tunki gone on a move and can't come back yet."** This is

⁴ CCJ Appeal Nos. BZCR2015/001 and BZCR2015/002

evidence which shows me that he was part and parcel of the plan. I also give very little weight to the propensity limb. I give this because the quality and cogency of the evidence against the defendant. The case **Balson vs. The State (Dominica)**⁵ is instructive as in that case the Privy Council found that the evidence was so overwhelming against the defendant that the little weight to be attached to his previous good character was justified. In that case the appellant was the only adult in the house the night his girlfriend was murdered. The evidence against him was overwhelming.

Demeanour

- [48] The Court has observed the demeanor of all of the witnesses. The Crown witnesses have come across as honest and forthright and I have had no difficulty in believing their testimonies. In particular Ms. Christian when recalled by defence Counsel and the allegation was put to her that she taunted the defendant on the steps of the court she admitted to saying “**who is crying now**” however she denied saying “**mi say we go ketch you**”. Even Leon George faced up to the fact that he had stolen from Mrs. Thomas and that he did it because he was broke at the time. He was adamant and forthright that he left the money with the defendant and did not waver under cross examination.
- [49] In relation to the defendant, when asked certain questions he appeared evasive and said he could not recall. Significantly he said he could not recall that they went to his bedroom and packed up the money as alleged by Leon George. He did not deny this happening, he said he **did not recall**.
- [50] Having said all of the above I am satisfied and sure that the Crown has discharged its burden and has proved its case. I find, Rohan Jarvis **guilty** of receiving contrary to **Section 37 (1) (a)** of the **Larceny Act Cap 241**.
- [51] I will provide the full decision when sentencing has been concluded. The defendant shall be remanded until 29th July 2021.
- [52] The Court is also making an order for restitution of the money in police custody to the complainant.

Sentencing

- [53] This matter was adjourned on 7th July, 2021 to facilitate the preparation of a pre-sentence report. The said report was received by the Court on 29th July, 2021. The report was prepared by personnel at the probation department.

Mitigation

- [54] In mitigation the convict’s Counsel set forth the personal circumstances of Rohan Jarvis. He urged the Court to note that the report was quite favourable to the convict. Counsel pointed out that both

⁵ [2005] UKPC 2 (02 February 2005)

of Jarvis' parents indicated to the writer of the report that he had been warned to disassociate himself with certain friends and that they both viewed these friends as having a bad influence on him. The convict maintained his innocence, has shown no remorse and declined to apologize to the complainant.

The Law and Sentencing

- [55] The offence of receiving is governed by section 37 (1) (a) of the **Larceny Act, Cap. 241 of the Revised Edition (1992) of the Laws of Antigua and Barbuda**. That section provides for a maximum sentence of ten (10) years imprisonment. On the issue of sentencing, the Court is now guided by the **Sentencing Guideline of the Eastern Caribbean for Offences of Dishonesty reissued on 30th July, 2020**. The Guidelines are to be applied as follows and as set out in the paragraphs below:-

First Stage

- [56] The first stage involves considering consequence by assessing the harm caused by the offence. This consequence may be demonstrated by a number of factors. In the instant case, several of the factors contained in the guidelines are present and they include:

- i) the emotional distress caused to the complainant;
- ii) the high level of inconvenience to the complainant as she was/is obligated the persons involved in the box. Consequently, the large number of persons who were involved in the box would have also been inconvenienced;
- iii) the impact on the complainant's savings venture which she had been conducting for many years; and
- iv) the money stolen was of significant value to the complainant and this related not just to the amount but the fact that persons had entrusted her with their savings

- [57] Based on the aforementioned factors in addition to fact that the stolen money received by the convict amounted to approximately \$74,000.00, this offence may easily be classed in **category 1-high** in this first stage.

Second Stage

- [58] This stage addresses the seriousness of the offence by assessing the culpability of the offender. In this case, the convict, Mr. Rohan Jarvis played a significant role in the offending as he was the person who held and secured the majority of the stolen money. Consequently, the appropriate category may be **level B – medium**.

Third Stage

[59] At this stage the relevant calculation will be done using the grid provided. For an offence which is category 1, level B, the starting point is 60% of the maximum term of imprisonment. This would mean that for this offence, the starting point would be around 6 years imprisonment. The general range of the sentences for this category identified in the first and second stage would be between 4.5 years and 7 years imprisonment.

[60] The Court finds that the following are the aggravating and mitigating factors in relation to the offence:

Aggravating Factors

- i) The convict made the decision that the money should be kept when Kevin Toussaint was attempting to persuade Leon George to return the money to the complainant;
- ii) the offence appears to have been motivated by greed or a desire for wants when one looks at the fact that the convict held on to the money with the promise that it would be counted and then shared and refused to hand it over when Leon George and his sister tried to recover it that night; and
- iii) a large sum of the money stolen has not been recovered.

Mitigating Factors

There are no mitigating factors in relation to this offence.

[61] The Court further finds that the following are the aggravating and mitigating factors in relation to the offender:

Aggravating Factors

There are no aggravating factors in relation to this offender.

Mitigating Factors

- i) The convict is not previously known to the court and is therefore of previous good character

[62] The Court having made the relevant calculations for the aggravating and mitigating factors, the Court will then arrive at an appropriate sentence in the matter. However, the Court is aware that it

may dispense with the guidelines and impose a non-custodial sentence if restitution is made in the matter.

- [63] The Court views the conduct of the convict as quite unfavourable and I am reminded of the testimony of Kevin Toussaint and Leon George who both said that when Kevin told Leon to return the money it was Jarvis who said “**no, do not return it**”. This shows that the money was kept out of greed and avarice. The pre-sentence report noted that prior to the offence the convict owned and ran a car wash business. Both parents were gainfully employed. He had a wife who resided in the United States. He was not in need.
- [64] The convict in my view is a good candidate for rehabilitation. I have noted from the pre-sentence report what the members of the community have said about him.
- [65] I have also heard what the complainant has had to say and how this egregious offence against her has affected her life. She is a woman of a certain age and has had to borrow from friends, family and the Credit Union to repay the box.
- [66] I have heard what Mr. Robinson has had to say in relation to the behaviour of the police but that should not in my view reflect on the amount of compensation to be awarded.
- [67] I am awarding compensation to the complainant in the sum of \$10,000.00. The sum of \$5,000.00 to be paid forthwith if in default, 6 months in prison. The balance is to be repaid at the rate of \$1,500.00 on the last working day of every month. In default of any payment, 6 months in prison. Mr. Rohan Jarvis is to report back to the Court on 31st January, 2022.

Ann-Marie Smith
High Court Judge

By the Court

Registrar