

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE ANUHCR 2020/0018 & 0058

REGINA

V

STEFFAN SYLVESTER

APPEARANCES

Mr Pete-Semaj McKnight for the defendant.

Ms Rashida Jonas for the Crown.

2020: OCTOBER 30

SENTENCE

For unlawful sexual intercourse when 18 with two girls, one 13, and the other 14

- 1 **Morley J:** Steffan Sylvester (dob 04.05.00) falls to be sentenced for two counts of unlawful sexual intercourse (usi), aged 18 at the time, on separate indictments, to which he pleaded guilty on 02.07.20 at the earliest practical opportunity. The first count (case 18), concerns AS when 13 in September 2018 (being therefore aggravated usi as she was below 14), and the second (case 58) concerns GB when 14 in January 2019. Concerning each girl¹ the plea has been offered on a full facts basis, so that each count is a specimen to embrace a wider context, meaning the whole history of his sexual interaction with both is before the court,

¹ The girls will not be identified as they are entitled to anonymity.

including that with AS there was also intercourse in June 2018 when 13 and in January 2019 when perhaps 14, and with GB also when 14 twice in March 2019 and once in April 2019.

2 The history of events is as follows:

- a. AS was in form 4 and GB in form 4 at the same School, where in September 2018 Sylvester had a job as an assistant volleyball coach.
- b. In June 2018 Sylvester befriended AS on Facebook, later visiting her home, where her father saw her talking to him and warned her off boys. Over time the two continued conversation via phones and AS asked Sylvester to be her boyfriend. A week later he asked to see her at the DNA building, where he persuaded her to have sex with a condom with her reclining on a concrete slab, it being her first occasion, and he did not ejaculate. In September 2018, he met her again at the DNA building, where again they had sex on the slab, ejaculating with a condom.
- c. Also in September 2018, Sylvester befriended GB on Facebook. Sylvester was now at their school as a volleyball coach, where GB and AS saw each other talking with Sylvester, and it became clear to each he had an interest in both. It seems GB's mother saw him talking with GB at a superette in Cedar Grove and warned him off her, saying she was only 14. Both girls became upset with the situation, and in October 2018 AS was observed by a member of staff, to whom it seems she reported she was romantically involved with Sylvester, GB too, (though sex was not mentioned), that he was choosing between them, which then led to both girls' parents being summoned to the Principal's office and Sylvester lost his job. AS's father further with Sgt Hector went to Sylvester's home where he was told she was only 13 and also warned off.
- d. In light of his losing his job and the police visit, Sylvester broke off his interest in AS, which led to GB asking if he was her boyfriend and he agreed, the date being 12.10.18. However sometime in January 2019 he arranged to meet AS once more at the DNA building where again he had sex, which was their last encounter. From it seems later in January, he began sex with GB, into whose bedroom he had been invited, hiding under her bed,

waiting for the family to retire to their rooms, and she asked for sex, which at first he refused as she was too young, but she persisted and intercourse occurred, without a condom, though there was no ejaculation, this being GB's first occasion. Thereafter he would sleep with her, sneaking in and being gone by 5am, so none in the house but the two knew, in March he gave her a phone for ease of contact, and there was sex with ejaculation into a condom twice in March, and again in April but without a condom.

- e. On 12.04.19, GB posted on Facebook her being in a relationship for six months with Sylvester, which came to her father's attention, and so under questioning she revealed the sexual contact, which led to a police report on 15.04.19 with a witness statement on 17.04.19. At interview on 25.05.19, with a lawyer, as is his right he did not answer questions, investigation led to police enquiry of AS, Sylvester contacted her in June but she did not reply, she made a statement on 01.07.19, and in further interview on 02.07.19 once again Sylvester said nought.
- 3 Relations with each girl were separately charged, so that the two files made their way at different times to the High Court, with AS's case first listed on 06.03.20 and GB's case on 19.06.20.
 - 4 On 02.07.20, at defence request there was a Goodyear indication of sentence, on a full facts basis, if Sylvester was to plead to one count concerning each girl (being count 2 of 3 for AS and count 1 of 3 for GB, all other counts to lie on the file), which meant the facts were fully opened by the prosecution, with then assessment of the sentence. There is a full recording of the hearing and indication. The sentences were assessed to be 18 months for the count concerning AS (which was contrary to **s5 Sexual Offences Act 1995**, 'SOA'), with 12 months concurrent for the count concerning GB (which was contrary to **s6 SOA** supra), to which I will return later. Sylvester pleaded, and Counsel McKnight then asked for a pre-sentence report and victim impact assessment with a view possibly to bringing the sentence down.
 - 5 A thorough pre-sentence report with victim impact was prepared by Probation Officer Alvin Jarvis dated 12.10.20, with in support an assessment by GB's counsellor Jo-Nelle Walsh. PO Jarvis reported Sylvester said he had not known there is an age of consent, having 7 CXCs,

and being generally a good student, talented at volleyball. AS has animosity toward him and trust issues owing to the experience, where she was rejected in favour of GB. GB experienced a more traumatic assault from another, leading to depression, which is a separate proceeding, and according to her counsellor her actions specifically with Sylvester did not impact her emotional well-being, but gossip and rumour had upset her. Both girls' parents were upset when speaking to PO Jarvis, being appalled with Sylvester particularly as he had been warned off.

- 6 During sentencing hearing on 27.10.20, the court heard from AS's father, who with dignity modestly emphasised the warning of Sgt Hector, and how her grades had dipped, though now recovered. Evidence was also given by Sylvester's mother, Uline, pointing out he had lost his stepfather on 01.02.20, who had raised him, her son was her 'right hand', she apologised to the Simmons parents who were both in court, and she said she believed her son did indeed know there was an age of consent. Sylvester also gave evidence, offering apology to the families, how he had felt 'love' for each girl, he has no convictions, he has kept out of trouble, and he is working as a labourer. Of importance, he accepted he had behaved irresponsibly having been warned off, and he was aware the girls were about 14, so resiling from a pretence he did not know there was an age of consent as reported to PO Jarvis.
- 7 Sentencing for us is always difficult. Since September 2019 there are sentencing guidelines within the ECSC, to which I will turn shortly. On the one hand young people are curious about sex, which is only natural; on the other, there is an understandable rule there should be no sexual relations if under 16 to protect girls from pregnancy and both sexes when still children, and immature, from the emotional chaos which can follow, which even adults find hard to navigate, when instead children should be settled at school and home, achieving their best possible circumstance as they progress toward the vicissitudes of adulthood. In this context the dip in AS's grades and her animosity to Sylvester on being replaced are depressingly predictable. This court has made frequent statements in recent cases the guidelines expect underage sex will likely lead to jail, which I repeat here, in the hope the public can be better informed.

- 8 Argument was advanced by the Crown the court is *functus* as to what sentence must be passed following a Goodyear indication, so that Sylvester should not be able to argue his sentence down at a further hearing. Reliance was placed on para 61 in **R v Goodyear 2005** EWCA Crim 888, which says '*once an indication has been given it is binding and remains binding on the judge who has given it and it also binds any other judge*'. However, the context of the Goodyear case was that a judge had indicated a non-custodial penalty, there was then a plea, and later he upped the sentence to six months prison. In the absence of any authority having been offered to the contrary, noting submissions from the Crown and defence, in my judgement it may be possible to bring down an indication, but Goodyear will not allow it pushed up. However to bring it down, there would have to be exceptional new mitigation, or a fashion among defence counsel would arise where every indication would result in a further mitigating hearing, which is to be discouraged.
- 9 In this case, there has been no exceptional further mitigation. An uttered apology from the defendant is not enough, nor a description of how he helps his mother, who understandably is in anguish her son faces jail. It might, possibly, have made a difference if the girls and their families specifically invited the court to reduce or change the sentence, with reasoning, but this has not occurred, this court recalling for example there was a case in 2017² where exceptionally the jury asked for leniency on learning a likely disposal after convicting a young man of aggravated usi.
- 10 In conducting the indication of sentence on 02.07.20, 12.38-13.07hrs, the court approached the case as follows:
- a. The more serious offence was assessed first, concerning AS, for aggravated usi, being 13, and therefore an offence contrary to **s5 SOA**, where the maximum sentence is life imprisonment (treated under the sentencing guidelines as a notional 30 years). Under step 1, concerning the offence, it was assessed as being in category 3B, being the lowest, attracting 5% of the maximum, being 18 months, but aggravating features, being ejaculation and in particular having been warned off but persisting in sexual contact, the sentence was increased to 3 years, being 36 months. Under step 2, concerning the

² R v Jamie Knowles 2017 ANUHCR 2016/0122.

offender, his good character and being only 18 reduced the sentence to 27 months. Under step 3, being credit for plea, it attracted the maximum one-third, reducing the sentence to 18 months.

b. The second offence, concerning GB, for *usi*, being 14, and therefore an offence contrary to **s6 SOA**, where the maximum is 10 years, was assessed under step 1 again at category 3B, attracting a non-custodial penalty according to the guidelines. However lying alongside the assessment concerning AS, where custody has been found appropriate, the correct approach was assessed for GB as a concurrent sentence of 12 months, which has the effect of not adding time, bearing in mind non-custody would have followed if dealing only with GB.

c. Time on remand counts, being so far approximately 9 days.

11 Counsel McKnight urged a probation order, as arose on 22.07.20 in **R v Theodore Horsford**³, bearing in mind suspended sentences have on 03.07.20 on Antigua been ruled ultra vires by the Court of Appeal in **DPP v Shane Williams**⁴. However, his approach missed the point in *Horsford* there was only one incident of intercourse, in an unusual background pertaining to the complainant, about which the probation officer gave evidence in support of the defendant, also supported by the complainant's father, whereas here the warning off of Sylvester, three times (being by each girl's parents and by the school where he lost his job), in combination with his persistence, there being two girls, makes a custodial sentence inevitable, so that suspension if permitted would not arise, and probation is simply too lenient.

12 In sum, there is no reason to alter the indication of 02.07.20.

13 *Steffan Sylvester, please stand up.* For the reasons explained on 02.07.20, and again today, the sentence on a full facts basis, concerning firstly AS, being one specimen count of aggravated *usi* under **s5 SOA**, is 18 months imprisonment, and secondly GB, being one specimen count of *usi* under **s6 SOA** is 12 months imprisonment, concurrently, meaning a total

³ Case ANUHCR 2020/0024 as reported.

⁴ Case ANUHCRA 2018/0011 as reported.

of 18 months imprisonment. Time on remand shall count, and you shall be eligible for automatic remission of one-third of the sentence if of good behaviour. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

30 October 2020