

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

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

Claim Number: **NEVHCR2018/003**

Between **Director of Public Prosecution**

and

**Monthana Mathias
Royston Browne**

Appearances:

Ms. Lanein Blanchette with Mr. Teshawn Vasquez of counsel for the crown
Dr. Henry Browne Q.C. of counsel for the defendants

**2019: May, 10th
June, 18th**

JUDGMENT on Sentencing

[1] **MOISE, J (A.g):** On 28th November, 2018 the defendants were found guilty of the offence of rape. The trial judge ordered that a Social Inquiry Report be obtained from the Department of Social Services prior to sentencing. The reports were duly presented to the court and on 10th May, 2019 counsel for the crown and defence presented submissions on the appropriate sentence to be handed down to both defendants.

The facts

[2] On 3rd November, 2016, sometime in the evening, the Virtual Complainant attended a house party in Newcastle along with a friend. Sometime during the evening the defendants arrived at the party. They were members of the Royal Saint Christopher and Nevis Police Force and Defence Force, respectively. They arrived at this party in a white pick-up registration number PA5900. This was described as a police vehicle. The Virtual Complainant states that she had known the 1st defendant

for some time; although she did not know him by his name. She states that she had only met the 2nd defendant on the night in question.

[3] It was her evidence that she became uncomfortable at the party and decided to leave. Whilst standing outside, the defendants drove down and offered her a lift, which she accepted. The vehicle was being driven by Mr. Mathias. She states that she was heading to Camps. Mr. Mathias however drove passed this location and headed towards Butlers. It was her evidence that he then asked Mr. Browne which beach was closer to them. Upon being informed that he had in fact passed the beach he turned back and headed in that direction. The Virtual Complainant stated that she was fearful and asked the 1st defendant to drop her home and he refused. He informed her that he had a gun although, as she puts it, she never saw the gun in question. She states that the 1st defendant drove to the gas station at the bottom of the road where she lived and told her “jump out if you bad”. She was fearful and therefore did not jump out of the vehicle.

[4] According to the Virtual Complainant, the 1st defendant then drove to the beach and parked. The 2nd defendant got out of the vehicle and walked away. The 1st defendant then went to the back of the vehicle and asked if she was not “giving him a piece”. She states that she felt fearful and therefore got out of the vehicle, unzipped her pants and pulled down her panty. At that point the 1st defendant had sex with her. When he was done he called out to the 2nd defendant and demanded of the Virtual Complainant that she also have sex with him. After the 2nd defendant was done the 1st defendant had sex with the virtual complainant for a second time. After this she was driven to an area near her home where she got off.

The Law

[5] In accordance with section 46 of the **Offences Against The Person Act**¹, rape, in this Federation, is punishable by a term of imprisonment for life. In determining the sentence which the defendants should serve I am guided by the four principles highlighted by Byron CJ in the case of **Desmond Baptiste v. The Queen**². These are retribution, deterrence, prevention and rehabilitation. To begin with, I wish to associate myself with the words of Taylor Alexander J in the case of **The Queen v**

¹ CAP 4.21 of the Laws of Saint Christopher and Nevis

² SVGCRAP2003/2008

*Jumanie Lionel et al*³ where she describes the offence of rape as “**a morally and physically reprehensible crime in any society, it is an assault on the body, mind and privacy of the victim. It defiles the soul of a female and offends her esteem and her dignity for which there should be no tolerance in a civilized society. It continues nevertheless as a prevalent crime in our society.**” There can be no doubt that in cases of rape a custodial sentence is appropriate, unless there are exceptional reasons for finding otherwise.

[6] In the case of *Winston Joseph et al v. The Queen*⁴, Byron CJ noted that “[w]here the rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where the victim is living or by a person who abducts the victim and holds her captive the starting point should be 10 years.” In this instance the complainant was raped by two individuals and was taken to the beach without her consent. I am satisfied that the starting point of 10 years is an appropriate one in the circumstances of this case.

[7] Byron CJ then went on to state that the actual sentence imposed must depend on the existence and evaluation of aggravating and mitigating factors. This is an evaluative exercise to determine whether the aggravating factors outweigh the mitigation factors, or perhaps the other way around. This will determine whether the mark of 10 years is sufficient or should be increased or reduced accordingly. I turn therefore to consider in more detail, the content of the social inquiry reports in order to carry out this exercise for each defendant.

Monthana Mathias

[8] This defendant is currently 32 years old and was 30 years old at the time of the commission of the offence. He is originally a native of Saint Vincent and the Grenadines but has resided in the Federation from 2008. He is the father of two children, ages 9 and 4 and was at the time of the offence a member of the Federation’s police force. He has no previous convictions and no history of involvement with the department of social services.

[9] Mr. Mathias has continued to maintain his innocence. Although he states that he feels bad about the incident, that is only insofar as he claims to have lost everything, including his job, home and

³ SLUCRD2015/1860, 1899, 1900, 1989, 1990, 1991

⁴ CRIMINAL APPEAL NO. 4 OF 2000

family. His regret is that he wishes he had never spoken to the complainant on that evening. He expressed to the social worker that he feels depressed and is not inclined to allow his family to see him in his current position. He states that he feels there is no hope.

[10] The report provides testimony from Mr. Mathias' mother who describes him as the best child she has and that he is a good father to his children. Evidence was also presented from the mother of his children. Although they are no longer in a relationship, she describes Mr. Mathias as an excellent father and a good person. Similar sentiments were expressed by at least one friend whose testimony was obtained from the department of social services during their investigations.

Royston Browne

[11] This defendant is 33 years old. At the time of the commission of the offence he was 30 years old. He is a native of the Federation and is the father of three children. He has no prior history with the Department of Social Services and no previous convictions. He became a member of the Saint Christopher and Nevis Defence Force in 2005 and was so engaged at the time of the offence.

[12] Mr. Browne also continues to proclaim his innocence and has not accepted responsibility for the crime for which he has been convicted. His regret is that he even got into the vehicle in the first place and having what he described as consensual sex with the complainant.

[13] Mr. Browne's mother spoke with the Social Services Department during their inquiry and described him as a good person and that the accusations made against him are out of character. She described the challenges which are now experienced by his three children; the oldest of whom is now in preschool. His absence, according to her, has had an impact on them.

Victim Impact

[14] The author of the social inquiry report noted that the complainant avoided direct questions about how she felt after the incident. The evidence presented, even at the trial, speaks to the fear and intimidation she felt during the incident. She had known Mr. Mathias before and he had propositioned her sexually prior to that date. She informed him that she was married and they had not been in touch with each other for some time. She states that after the incident some persons,

including her own uncle, did not believe her version of events. The friend with whom she attended the party on that evening no longer speaks to her. She states that she does not want the defendants to rot in prison but wants them to feel the consequences of their actions.

Aggravating and Mitigating Factors

[15] From the information presented I have found the aggravating factors in this case to be as follows:

- (a) That there were two defendants involved in this incident and one female;
- (b) That both defendants were law enforcement officers charged with a duty to protect and serve persons within the Federation from the very offence for which they were convicted;
- (c) The complainant was taken to the location against her will and despite her protests;
- (d) That in the case of Mr. Mathias in particular it was more than one instance of rape;
- (e) That a public vehicle was used in the commission of this offence; and
- (f) That one of the defendants had a firearm.

[16] As it relates to mitigating factors, the only one I can discern is that both defendants had previous good character and no previous convictions. Dr. Browne Q.C., on behalf of the defendants urged the court to consider that both defendants are fathers of young children and that the court should consider the impact the sentence would have on these children. I do not find this to be a mitigating factor. It is certainly unfortunate that these young children will have to spend some of the coming years without their fathers. However, one would expect that a father, who is himself a law enforcement officer, would consider the impact his actions would have on his own children before committing such offences. Persons cannot commit such crimes and expect the court to be lenient merely because they are parents when they themselves should know better.

The Appropriate Sentence

[17] Taking all of these into account, I am of the view that the aggravating factors outweigh the mitigating facts in this case. The crown referred the court to the case of ***Jamal Phillip and Charles Bowry v. The Queen***⁵ in which the Court of appeal sentenced two offenders to 12 years imprisonment for the offence of rape against a 16 year old girl. In that that case there appeared to be a higher level of force used in abducting this young lady and forcefully engaging in intercourse with her over a period of approximately two hours. Although the initial sentence was 16 years, the court of appeal reduced it to 12 years on account of the previous good character of the defendants, who were both members of the Federation's Defence Force.

[18] Reference was also made to the case of ***David Morton v. The Queen***⁶, where the defendant was sentenced to 15 years in prison. However, in that case I note that the offence was committed with a higher level of violence than the circumstances of the present case.

[19] I have considered these authorities and assessed the aggravating and mitigating factors in this case. I am also of the view that Mr. Mathias is certainly more culpable in the circumstances of the case and that his sentence should reflect this. He knew the complainant prior to that date. He drove the vehicle and made the decision to take her to the beach instead of her home, despite her protests. He engaged in two instances of sexual assault of the complainant and invited her to engage in that manner with Mr. Browne. This does not absolve Mr. Browne from his own culpability but the sentences imposed should reflect these considerations.

[20] I would sentence the defendants as follows:

- (a) Monthana Mathias is sentenced to a term of imprisonment of 10 years;
- (b) Royston Browne is sentenced to a term of imprisonment of 8 years.

⁵ SKBHCR2011/0037A

⁶ SKBHCRAP2011/0011

[21] I understand that the defendants would have been on remand since 29th November, 2018. It is unclear as to whether there would have been any pre-trial detention. In any event, the total time spent in pre-sentence detention is to be credited towards their sentences.

**Ermin Moise
High Court Judge**

By the Court

Registrar