

BRITISH VIRGIN ISLANDS

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO. 17 OF 2006

BETWEEN:

THE QUEEN

and

CURTIS BRUCE

Appearances:

Ms. Tamia Richards, Senior Crown Counsel and Ms. Christilyn Benjamin, Crown Counsel
for the Crown

The Defendant in person

2007: May 25

2007: May 29, June 04

JUDGMENT ON SENTENCING

(Criminal law – Evidence and Procedure – Offences against the Person – Sexual Offences - Rape - Kidnapping – Sentence - Matters to be considered—Lack of mitigating factors)

[1] **HARIPRASHAD-CHARLES J:** The Defendant, Curtis Bruce was charged on an indictment containing 3 counts. Count 1 charges him with indecent assault; count 2 with rape and count 3 with kidnapping of a female with intent to have sexual intercourse.

[2] On his arraignment, Mr. Bruce pleaded not guilty to all 3 counts. A Jury was duly empanelled to inquire whether he was guilty or not of the offences charged. Nine witnesses had already testified when, in the absence of the Jury, Mr. Bruce indicated that he would like to change his pleas in light of the DNA evidence which was about to

be presented. The indictment was put again to Mr. Bruce whereupon he pleaded not guilty to the count of indecent assault and guilty to rape and kidnapping.

- [3] In accordance with established practice and procedure, the Jury was directed to return a not guilty verdict for indecent assault and guilty verdicts for rape and kidnapping. A sentencing hearing was subsequently held and Mr. Bruce is now before the court for sentencing.

The Facts

- [4] The virtual complainant (whom I shall refer to as "N") was 11 years and 1 month old at the time of the offence having been born on 1st October 1994. She attends the Eselyn Henley Richez Centre in John's Hole. This is a centre for children with special needs.
- [5] On the evening of 5 November 2005, N and her family were at home eating pizza. She was jumping on her mother's bed when her mother asked her to go and watch television. At some point in time, N went outside in the yard. Around 9.15 p.m., her mother looked outside and did not see anyone in the yard. She inquired of two of her sons as to N's whereabouts but neither of them had seen her since earlier in the evening. The boys were sent in search of their sister.
- [6] They went to their aunt's apartment next door, to the nearby gas station, to a detached bathroom on the property but they did not find N. Their aunt joined the search. She had seen N on the property earlier in the evening in the vicinity of a water pipe on the property collecting two gallons of water. She had told her to go home.
- [7] As the night progressed, the neighbours joined in the search. Earlier in the evening, one of N's brother had gone to Mr. Bruce's apartment in search of her. He reported that he had heard music inside the house but he did not get any response to his callings. N's other brother, Deyling went 3 times to Mr. Bruce's apartment banging on the door and calling N's name but it was in vain as he had gotten no response from inside although he had heard music within. He saw the two gallons of water downstairs

in the area of the water pipe. Deyling went to Mr. Bruce's house on a third occasion and banged on the door. He saw the curtains inside the door moved and he saw N behind it. He told his mother that N was inside. He told her to open the door but she could not as the door was locked. He tried to open the door but he could not either. Her mother came from downstairs and she tried to open the door but could not. She started banging on the door and after a while, Mr. Bruce came pulling up his pants.

[8] He unlocked the door and asked N's mother "what happened?" N's mother told him that he should tell her what happen and why he has her daughter locked up in his house. Mr. Bruce told the mother that he did not know her daughter was in the house since he was in the bathroom. N's mother asked Mr. Bruce how come he did not know N was in the house when she (the mother) had been looking for N for more than one hour.

[9] Mr. Bruce told N's mother not to call the police as he had not touched her daughter. At this time, N's mother had not accused him of touching her daughter. N's mother told Mr. Bruce that she was taking her daughter home to examine her and if he had not touched her, she would not call the police.

[10] The mother took her daughter home and found her clothing filthy and soiled with a substance which appeared to be semen. The substance was all over N's genitals and between her legs. She took her daughter to her sister's apartment and her sister also thought the substance to be semen. The sister then took N to the hospital and stayed with her until her parents arrived.

[11] At the hospital, Dr. Ibrahim took from N samples for the purposes of a victim sexual assault kit. N's panty was also collected.

[12] Mr. Bruce was taken into police custody and he gave Dr. Ibrahim permission to take samples from him for the purpose of a suspect sexual assault kit.

- [13] Mr. Bruce gave a statement under caution to the Police denying the offences.
- [14] On 22 December 2005, the victim's and the suspect sexual assault kit as well as their clothing were taken to the Bexar County Criminal Investigation Laboratory in San Antonio Texas. Ms. Kimberly Lander performed the DNA analysis and Ms. Erica Graham reviewed her findings.
- [15] The DNA report stated that semen was found on the vaginal swabs as well as on N's underwear. These items were examined microscopically and actual sperm cells were identified. A DNA profile of N was obtained.
- [16] A DNA profile of the contributor was obtained. A DNA profile of Mr. Bruce was also obtained. The Forensic Scientist then compared the DNA profile of the contributor of the semen with Mr. Bruce's profile and found that they were consistent. She opined that the said profile would occur randomly in the population of people of African descent once in every 139 trillion persons.
- [17] Dr. Ibrahim stated that the vaginal swabs of N had been taken from within the vaginal canal itself. He opined that if sperm cells were found on those swabs, they could only have gotten there if, in the least, the glands penis of the contributor of that sperm had come into contact with the introitus of N.

Plea in mitigation

- [18] Mr. Bruce publicly apologized to N and her parents. He said that he was sorry for his actions on the night in question but he cannot say what lured him to do such a dreadful thing. He knows that it is against the law to have sexual intercourse with a girl of tender age and knew N to be about 12 years of age. He stated that he has since changed his life and is now living an earnestly religious life. Last but not least, he seeks compassion of the Court.

The victim

- [19] Given her mental capacity, N was unable to testify but her mother, aunt and two siblings gave evidence under oath. N's mother explained that her daughter is a special needs child and although she is well-developed, she acts like a 2 year old girl. Her daughter likes to dance and she appreciates music although she does not understand the lyrics. She just follows the melody. N cannot express herself properly. If something happens, she would like to express herself but she does not have the capability. Thus, she would just start yelling, throw herself on floor, bite or scratch herself. N's speech is limited to asking for water, food and such things. She is unable to hold a conversation.
- [20] N's teacher, Mrs. Phyllis George gave a statement to WPC Carolyn Berry to the same effect.

Dr. Simmons' assessment evaluation

- [21] On 8 November 2005, N was assessed Dr. Sylvia Simmons who based her assessment solely on observation. She stated that N appears to be mentally retarded (challenge) and while she is chronologically 11 years old, she appears to function as a 2 year old child. Dr. Simmons opined that "it is very clear based on observation that her IQ is significantly below average of a child within her same aged peers. She had difficulty participating in the process which compromised the overall assessment. She appears to be confused with the information concerning the alleged abuse."

Antecedents of Defendant

- [22] Mr. Bruce is a citizen of Saint Vincent & the Grenadines. He is 45 years old. Mr. Bruce has a previous conviction in his native Saint Vincent. On 6 June 1989, Mr. Bruce was sentenced to 10 years imprisonment for manslaughter for striking the deceased with a piece of iron on his head. He was sentenced to 10 years imprisonment. On appeal, the Court of Appeal reduced the sentence to 7 years.

[23] On 25 November 2005, he was fined \$1,000 and sentenced to 12 months imprisonment for overstaying in this Territory.

Submissions by the Crown

[24] Ms. Tamia Richards, Senior Crown Counsel helpfully provided some authorities from this jurisdiction, the region and England to assist the Court with sentencing. Some local cases on rape are:

- **R v Winston Harrigan**¹ - the Defendant pleaded guilty to rape and was sentenced to 5 years imprisonment.
- **R. v Claudius Frett** ² - the Defendant was convicted by a unanimous jury and sentenced to 12 years.
- **R v Robert Thomas**³ - the Defendant was sentenced to 10 years imprisonment for rape where the rape was not repeated. He has had previous convictions but only one of which involved violence. The victim was intimidated during the ordeal by the presence of a cutlass.
- **R v Malcolm Spencer** ⁴ - the Defendant pleaded guilty to the rape of a 15 year old girl of low intellect. He was sentenced to 7 years imprisonment. He had an unblemished criminal record.

[25] In the Dominican case of **James (Stephen Trevor Kurt) v The State**⁵, the Defendant was convicted of rape and was sentenced to 12 years. On appeal, his sentence was reduced to 7 years in light of the lack of aggravating factors.

¹ BVI Criminal Case No. 5 of 1996 [unreported]

² BVI Criminal Case No. 7 of 2000 [unreported]

³ BVI Criminal Case No. 17 of 2001 [unreported]

⁴ BVI Criminal Case No. 3 of 2007 [unreported]

⁵ Criminal Appeal No. 2 of 2003 [unreported] [Commonwealth of Dominica].

[26] In **Julien (Dion) v The State**⁶, the Defendant was sentenced to 10 years imprisonment for rape where the rape was not repeated and there were no aggravating factors. He had no previous convictions.

The law

Rape

[27] Section 117 of the Criminal Code, 1997 of the Laws of the Virgin Islands (“the Criminal Code”) states that “a man who rapes a woman commits an offence and is liable on conviction to imprisonment for life.”

Kidnapping of a female with intent to have sexual intercourse

[28] Section 197 of the Criminal Code makes kidnapping of a female with intent to have sexual intercourse an offence; punishable by imprisonment for a term not exceeding 14 years.

Court’s consideration

[29] In the consolidated criminal cases of **Winston Joseph v The Queen**⁷, **Benedict Charles v The Queen**⁸ and **Glenroy Sean Victor v The Queen**⁹, our Court of Appeal established guidelines for sentencing in sexual offences cases. At paragraph 17, Byron CJ (as he then was) stated as follows:

“The actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors...It is not enough for the court merely to identify the presence of aggravating and mitigating factors when sentencing. A sentencing court must embark upon an evaluative process. It must weigh the mitigating and aggravating factors. If the aggravating factors are outweighed by the mitigating factors then the tendency must be toward a lower sentence. If however the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher.”

⁶ [1996] 50 WIR 481.

⁷ Criminal Appeal No. 4 of 2000 (Saint Lucia) unreported

⁸ Criminal Appeal No. 8 of 2000 (Saint Lucia) unreported

⁹ Criminal Appeal No. 7 of 2000 (Saint Lucia) unreported

[30] Byron CJ went on to list the more common aggravating and mitigating factors. The aggravating factors are:

- i. If the girl has suffered physically or psychologically from the sexual assault.
- ii. If it has been accompanied by abhorrent perversions e.g. buggery or fellatio.
- iii. Violence is used over and above the force necessary to commit the offence.
- iv. The offence has been frequently repeated.
- v. The defendant has previous convictions for serious offences of a violent or sexual kind.
- vi. The victim has become pregnant as a result of the crime.
- vii. The victim is either very young or very old.

[31] The mitigating factors are identified as follows:

- i. A plea of guilty should be met by an appropriate discount, depending on the usual considerations, that is to say how promptly he confessed and the degree of contrition and other relevant factors.
- ii. Where incest was consensual, in the case of a girl at least 16 years of age if it seems that there was a genuine affection on the part of the defendant rather than the intention to use the girl simply as an outlet for sexual inclinations.
- iii. Where the girl of at least 16 years of age made deliberate attempts at seduction.

iv. Where the defendant is a first offender and/or a youth.

[32] I turn now to the aggravating factors in the present case. Mr. Bruce kidnapped this young mentally challenged girl and locked her in his apartment. He knew her to be about 12 years old and must have known her to be mentally retarded as they are neighbours. He raped her and deprived her of her liberty for several hours. There were no signs of any physical injuries. From all indications, she was not a virgin and has had sexual intercourse many times before that night. She was unable to impart whether the incident has psychologically affected her but there is evidence that her eyes were red (indicating that she was crying) when she was taken from his home. She did not give evidence at all at the Magistrate Court or at the High Court. Other aggravating factors are that she was very young – 11 years 1 month at the date of the incident and he has a previous conviction - for the offence of manslaughter. N was also extremely vulnerable.

[33] The only mitigating feature in this case is the plea of guilty although it was not entered at the earliest opportunity. In fact, when he was arrested, he denied his involvement with the rape and kidnapping of N. He maintained his innocence until the Prosecution was about to call their DNA witness. In short, he pleaded guilty almost at the close of the Prosecution's case. But having pleaded guilty albeit belatedly, he is entitled to a reduction of the sentence. The Crown has helpfully provided some guidelines with respect to the application of the reduction principle at different stages of the proceedings. Applying the guidelines, it seems that the maximum reduction in the present case will be one-tenth.¹⁰

[34] At page 8 of the judgment in **Winston Joseph et al**, Sir Dennis Byron, C.J. suggested that for rape committed on an **adult** [emphasis added] without aggravating or mitigating features, the starting point should be 8 years in a contested case and 3 years on a plea of guilty ¹¹ and where the rape is committed by a man who has broken

¹⁰ Sentencing Guidelines Council –Reduction in sentence for a guilty plea –December 2004.

¹¹ See paragraph 16 of the judgment.

into or otherwise gained access to a place where the victim is living or by a person who abducts and holds her captive the starting point should be 10 years. It is patently obvious that for a rape committed on **a girl of tender years** [emphasis added] followed by her abduction as in the present case, the starting point must be higher than 10 years.

[35] Undeniably, rape is always an abomination. It is highly culpable, both in the moral sense and in its almost total contempt for the personal integrity and autonomy of the female. Short of homicide, it is the “ultimate violation of self.” It is a violent crime because it normally involves force, or the threat of force or intimidation to overcome the will and the capacity of the victim to resist. Along with other forms of sexual assault, it belongs to that class of indignities against the person that cannot ever be fully righted and that diminishes all humanity. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence; the maximum penalty being life imprisonment. Lord Lane CJ in **R v Roberts**¹² stated that “a custodial sentence is necessary for a variety of reasons. First of all, to mark the gravity of the offence. Second, to emphasise public disapproval. Third, to serve as a warning to others. Fourth, to punish the offender, and last but not least, to protect women.”

[36] All things considered, I hereby sentence you, Curtis Bruce to 14 years imprisonment for rape and 5 years imprisonment for kidnapping. The sentences will run concurrently.

Indra Hariprashad-Charles
High Court Judge

¹² [1982] 1 All ER 609 at page 610.