

IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
(CRIMINAL JURISDICTION)

CRIMINAL CASE NO. 14 of 2006

THE QUEEN
and
CLIFTON STOUTT

Appearances: Ms. Charmaine Rosan-Bunbury Crown Counsel for the Prosecution
The Defendant in person

2006: June 28th, July 4th

Judgment on Sentencing

(Criminal Law – Sentencing – conviction – Robbery – 3 counts – section 210 of the Criminal Code 1997)

- [1] **Joseph-Olivetti, J:** The Prisoner, Clifton Stoutt was tried and found guilty of three counts of robbery contrary to section 210 of the Criminal Code 1997, ("the Code") on 27th June after a two day trial. A sentencing hearing was held on the 28th June and on 4th July the Prisoner was sentenced to fifteen years imprisonment on each count to run concurrently. I now give my full reasons.

The Crown's Case

- [2] The Crown's case which was accepted by the jury is that the Defendant and another man were engaged in a series of armed robberies, three to be precise, on the evening of 24th March, 2004. Both men wore masks and were armed with hand guns. Of the three victims, only Mr. Adelbert Maduro recognized one of the robbers as Mr. Stoutt, someone with whom he was well acquainted. He named him to the Police on the night of the robbery and then he picked him out at an identification parade the next day.

- [3] The Crown relied on similar fact evidence to link the other two robberies, namely the modus operandus that is the striking similarity in the manner in which all the crimes were committed and the general description of the robbers. The Police did not find any forensic evidence connecting the Defendant to the crimes, either at the scenes of the crimes, in the vehicle allegedly stolen from the first victim, which was allegedly used in the other robberies or at his home. In short, the case rested solely on the identification evidence.
- [4] The first victim, Mrs. Maynard, was alone at her home at East End, Tortola watching television at about 8 p.m. She was waiting to go to meet her husband at the Beef Island Airport shortly and her jeep, a green and silver Mitsubishi was standing outside her home with the keys in the ignition. Two armed men entered her home. One was stocky in build (this fits the general build of the Defendant) and the other, tall and slim. Both wore stocking masks and held hand guns. The stocky robber held his gun to the back of Mrs. Maynard's neck and demanded money and threatened to shoot her if she did not keep quiet. Mrs. Maynard was forced to plead for her life and to take them to her bedroom to get her purse. The robbers eventually recovered \$25.00 from her and when the stocky robber expressed surprise at the measly amount the unhappy woman had to explain that this was the third time that her home had been robbed. The robbers eventually left after about ten minutes and when they did so they drove off in her jeep.
- [5] The next robbery took place at Big Ben's Superette at West End about 10:00 p.m. just around closing time. Mr. Maduro had just cleared the cash register leaving \$82.50 in it, doubtless as the float for the next day. He gave the money to another person to take to his home which was in the immediate vicinity. As that person was making his exit a green and silver Mitsubishi jeep drove up, two men alighted and entered the supermarket. They were both masked (stocking masks) and carried hand guns. Mr. Maduro said that they also wore black gloves. One was stocky and the other, tall and slim. The stocky one went towards Mr. Maduro, held the gun against his shoulder and demanded money. Mr. Maduro said he was about a foot away from him and he could see his face and recognized the robber as the Defendant whom he had known for over twenty years. This robber demanded money whilst the other one emptied the till and took the money which was there. The stocky robber asked where the rest of the money was and Mr. Maduro told him

it was at home and the robber indicated that they should go to his home for it. Just about that time, another vehicle drove up to the front of the supermarket, and left immediately. The robbers departed shortly after in the jeep.

[6] There were two employees in the Superette one of whom gave evidence but she did not recognize any of the robbers.

[7] That same night Mr. Maduro gave a statement to the Police at the supermarket then he went by the Police Station about midnight and he testified that he heard the voice of the robber there although he did not see him. There is evidence that the Defendant came to the station around that time as he had heard that the Police had come to his home in search of him.

[8] The next day Mr. Maduro identified the Defendant at the identification parade. However, he at first told the officer in charge, Inspector Graham, that he did not recognize anyone as the robber. However, he picked out the Defendant just after Inspector Graham gave instructions out loud to dismiss the parade. Mr. Maduro explained that the Defendant had his head lowered and when he raised his head at that point he was able to recognize him as one of his assailants.

[9] The final robbery took place on Windy Hill. Ms. Alevira Stevens, a kitchen helper, had just finished work at the Banana Keet Restaurant and was standing on the side of the road awaiting her lift home. A jeep drove up, (she said it was either a Mitsubishi or a Pathfinder) parked near the office for a little while and then two men came out. One was tall and the other stocky. They both wore stocking masks and had guns. She said that they also had stockings on their hands. They waved the guns at her and demanded that she give them her bag. In doing so the bag fell on the ground. The stocky robber grabbed the bag then they both fled back to the jeep and drove off. Ms. Stevens lost about \$1,370.00; part of that was her rent money.

[10] At the police station the next day, an officer showed Ms. Stevens a green and silver Mitsubishi and she said that it was the same vehicle that she had seen the night before. She admitted that in her statement to the Police she said that the jeep was blue but

explained that it looked blue in the night. She also said that she was too scared to note the registration number and that the Police had told her the number which was recorded in her statement.

[11] The Police recovered Mrs. Maynard's jeep at Johnson's Gut which is about a mile from where the Defendant lived at Baughers Bay and returned it to Mrs. Maynard. It was not damaged.

[12] On his arrest early the following day the Defendant gave a signed caution statement which was admitted into evidence although the Defendant claimed that there were things in the statement which he had not told the Police. In the statement he said that he spent the evening in the company of Mr. Natraj Frett.

[13] The statement of Mr. Prince Alfred Reginald Martin taken by the Police was read into evidence as he was out of the jurisdiction and unable to return to attend at the trial. In it Mr. Martin said that Mr. Natraj Frett was with him all the evening of the 24th March and that he dropped him off at his home after 10:30 p.m.

[14] The Defendant did not give evidence neither did he call any witnesses at trial.

Mitigation

[15] The Defendant called one character witness, Pastor Chalwell, the Prison Chaplain. Pastor Chalwell testified that he knew the Defendant from his ministry at the prison but that prior to that he was a customer of his many years ago when he operated a car business and he always found him to be a friendly person and he knew nothing bad about him. He said that the Defendant is the scion of a respectable church-going family. He advocated restorative justice as practised by the very progressive Canadian courts. He indicated that he had serious doubts about the efficacy of long prison terms and thought that the Defendant would benefit from a lenient sentence.

- [16] The Defendant also spoke on his own behalf. He felt that the jury's verdict was unfair in the light of the evidence especially that of Mr. Maduro's claim to having recognized him. However, such a grievance falls to be determined by another and higher tribunal – this court has no jurisdiction to question a jury's verdict. He maintained his innocence but asked the court for clemency especially having regard to his family situation. He is married and his spouse is not a native of these islands, has no family support here, is unemployed, speaks little English and they have an infant child. He also has four other children who all live with their mothers, some here and others abroad. Prior to this he was employed as a driver.

Crown's Submissions

- [17] The Crown helpfully alluded to several authorities from this jurisdiction¹ the region² and from England³ and in particular the sentencing guidelines for robbery laid down by **R. v. Turner** and adopted by the Court of Appeal in **R. v. Allan Wilson**. In **Turner** the English Court of Appeal ruled that the normal sentence for a single offence of armed robbery is fifteen years and that the maximum for those who committed more than one robbery is eighteen years. That case was a bank robbery and the court regarded the following as serious features – detailed planning, use of loaded firearms or ammonia, where a number of men execute a planned attack on a bank or similar target hoping to steal substantial sums of money, where the participants are masked and armed whether with firearms or with ammonia.
- [18] The **Turner** guidelines were updated in **R. v. Adams and Harding**⁴. In that case the court indicated that **Turner** provided a starting point and the guidelines had to be revised upwards to today's sentencing climate. Therefore, for a person guilty of more than one offence of armed robbery a sentence of twenty-five years may be appropriate and for a

¹No. 4 of 2006 – *The Queen v Stanley Bertie*

No. 11 of 2005 – *The Queen v Keno Allen*

No. 13 of 2001 – *The Queen v Damian Hodge*

²*Allan Wilson v The Queen* No. 10 of 2003 – Saint Vincent and the Grenadines

³*R v Grant and another* [2005] EWCA Crim 757

R v Herman [2004] EWCA Crim 3363

R v Manning [2004] All ER (D) 428 (Oct)

⁴*R v Adams and Harding* [2000] 2 Cr.App.R (s) 274

person guilty of one count of armed robbery a sentence of more than 15 years may be appropriate.

- [19] The Crown submitted that based on these authorities a lengthy custodial sentence was warranted.

Court's Considerations

- [20] The maximum sentence for armed robbery is life imprisonment (see section 210 (2) of the Code). However, the court has a wide discretion in sentencing in this instance, both at common law and under the Code (see in particular sections 22 and 23) to enable the court to do justice having regard to the particular facts of each case. However, the type of sentences that the court can hand down is prescribed by the Code. Pastor Chalwell referred to the concept of restorative justice. This concept merits serious consideration as the world is exploring methods alternative to traditional ones as these are proving more and more ineffective to stem the tide of rising crime. I think Canada is in the forefront of these reforms. However, I cannot adopt this progressive method here, even if I were minded to, until such time as it is embraced by the legislature. In passing, I note that Jamaica recently passed such legislation

- [21] The paramount considerations in sentencing are well known, being to protect the public, to deter the offender and others who might be tempted to commit similar crimes, to punish the offender and to aid in his or her rehabilitation.

- [22] In sentencing I must embark on an evaluative exercise and consider both the mitigating factors and the aggravating factors and determine which outweigh the other. Here, the aggravating factors were properly identified by the Crown and they are overwhelming. They are:

- (1) the use of firearms
- (2) a home was broken into
- (3) a planned crime spree

(4) threats to shoot

(5) criminal record for like offences

[23] In addition, a stolen vehicle was used to assist in this crime spree. And, I also take into account the psychological trauma inflicted on the victims. Mrs. Maynard has not yet recovered from her ordeal as was apparent when she testified. And, it must not be overlooked that she was subjected to this horrific experience in her own home. Everyone is entitled to regard his or her home as his castle so to speak, a refuge from the hazards on the outside. The Defendant violated that almost sacred concept.

[24] I note too that Ms. Stevens who was robbed at gunpoint on the public highway described how terrified she was. These are not matters to be taken lightly.

[25] Likewise Mr. Maduro, has a small business and he and his employees are entitled to the full protection of the law. This is so especially as such small businesses are particularly vulnerable as they seldom have any sophisticated alarm systems in place or security guards.

[26] I come now to consider the Defendant's criminal record. He is aged thirty six and has fifty-nine previous convictions, fifteen of which are for similar offences as the Crown pointed out. From the record, the Defendant's first encounter with the law took place in 1984, at the tender age of fourteen. He has experienced almost the full gamut of punishments – fines, flogging, and imprisonment - with, it would appear, little effect as each time he has been involved in more serious crimes.

[27] The number, fifty-nine appears daunting at first sight but on closer consideration approximately thirty-four of these are for traffic offences which I will not take into account having regard to their nature, being relatively minor offences. This leaves twenty-five other offences of which twenty-one took place prior to 1996. (It is noted in passing that the bulk of these occurred between 1984 and 1991, when the Defendant was between 14 and 21 years old, and, faced with this, one questions the efficacy of traditional punishments on a young offender which is undoubtedly what he was at that time). I will treat these twenty-

one offences as having been spent although they include the fifteen or sixteen similar offences identified by the Crown.

- [28] What are we left with? Since 1996 the Defendant has six convictions, beginning from 1999. Three are for traffic offences, which I will not consider as already stated, one is for assault on a prison officer, one for being found in enclosed premises with intent and the last is for escaping lawful custody for which he was convicted on 16th June and is now serving an eighteen month term. These I will consider in so far as they indicate that the Defendant seems to have learnt little from his encounters with the law.
- [29] I do not consider that there are any mitigating factors save his family situation and the fact that no one was injured physically.
- [30] With respect to the authorities cited, I have given them due consideration bearing in mind that they are guidelines only. However, it is plain that the court views what one may term a crime spree, especially one of this nature, as extremely serious. I have also taken into account that crimes involving the use of guns seem to be on the increase in this jurisdiction, and a robust sentencing policy is called for to act as a deterrent to those who might be tempted to seek to enrich themselves in this manner. In all the circumstances a lengthy custodial sentence is warranted as undoubtedly the Defendant poses a grave danger to the public. I hereby sentence him to fifteen years imprisonment on each of the three counts. The sentences are to run concurrently, and time spent in custody awaiting trial is to be taken into account in computing the sentences. For avoidance of doubt these sentences are to run concurrently with the current sentence that the Defendant is now serving.

Rita Joseph-Olivetti
High Court Judge
British Virgin Islands