

BRITISH VIRGIN ISLANDS

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

CASE NO. 26 OF 2006

BETWEEN:

THE QUEEN

and

PHILIMON MILLER
MIRUTS MILTON

Appearances:

Mr. Terrence F. Williams, Director of Public Prosecutions with him Mrs. Charmaine Rosan-Bunbury, Crown Counsel for the Prosecution

Both Accused in person

2006: November 27
December 01

JUDGMENT ON SENTENCING

- [1] **HARIPRASHAD-CHARLES J:** After a trial which lasted for six days, the accused Philimon Miller was convicted of one count of robbery and one count of conspiracy to rob. His nephew, Miruts Milton was found not guilty of robbery but guilty of conspiracy to rob. A sentencing hearing was deferred to 27 November 2006 at the request of both accused so as to give them adequate time to prepare their plea in mitigation.

The salient facts

- [2] In a nutshell, the case for the Prosecution as accepted by the Jury can be succinctly summarized as follows. The two accused were part and parcel of a conspiracy to rob Cable & Wireless. Mr. Miller, who was the mastermind behind the robbery, was at the time, the Security Guard at Cable & Wireless. He knew the inside running of the

Company. He knew that at the end of the month, lots of people go there to pay their telephone and other related bills and that there would be a fairly large amount of money in the deposit bag. He conspired with Mr. Milton and told him how easy it is to rob the lady who normally takes the money to the Bank. He and Mr. Milton spoke and they decided to bring in someone "new" who had never set foot on Tortola soil to do the robbery so that no-one would recognize the perpetrator. As a result, Mr. Milton brought down one of his pals, Sanjay Briscoe who hails from the same area in Jamaica as him. Mr. Briscoe arrived on 22 February 2006. Six days later, on 28 February 2006 at about 5.15 p.m. as Mrs. Janice Fahie was being escorted by Mr. Miller to First Bank to deposit Cable & Wireless lodgment for that day, she was robbed of the bag containing \$27,507.79 in cash and a quantity of cheques in the aggregate sum of \$60,971.82, property of Cable & Wireless. This robbery took place in broad daylight in a busy area of the city. The evidence which palpably, the jury accepted, was that Mr. Miller, the mastermind, even suggested to the robber, Mr. Briscoe that he must hit him on his head instead of tripping him (which was what Mr. Briscoe suggested that he wanted to do) because he has a piece of steel rod in his leg. Mr. Miller told Mr. Briscoe that when he would have gotten the blow, he would play act as though he is seriously injured. It was therefore no wonder that the two doctors who subsequently examined Mr. Miller found nothing wrong with him. Both doctors hinted that they thought there was something strange about Mr. Miller's reaction after the incident. Dr. Vincent Scatliffe, the first doctor to arrive at the scene, said that he got an instinctive feeling that he may be malingering, as the clinical findings were not synchronizing with the alleged reactive severity of the injury. However, he gave Mr. Miller the benefit of the doubt and treated him accordingly. Mr. Miller was taken to Peebles Hospital. Dr. Craig Stoutt treated him and made somewhat similar findings to that of Dr. Scatliffe. Mr. Miller was discharged later that same night.

- [3] The Prosecution's case is that the many coincidences in this case are striking in that these men are from the same area in Jamaica; that Mr. Milton is the nephew of Mr. Miller who was the Security Guard at Cable & Wireless and that Mr. Briscoe is the Mr.

Milton's buddy from Jamaica that he brought into the Territory. The Prosecution's case is that Mr. Miller planned and masterminded the robbery and Mr. Milton was his helper.

- [4] A number of witnesses testified on behalf of the Prosecution but the star witness was Mr. Briscoe who had already pleaded guilty to theft and was accordingly sentenced by the Magistrate. He testified that Mr. Miller planned the robbery with one Chris. On two previous occasions, Chris took him to the *locus in quo* and explained to him what to do and where to go after the robbery. The plan did not materialize as intended and Mr. Briscoe was caught *flagrante delicto* with the bag of money in his hand. The entire amount was subsequently handed back to Cable & Wireless. Mr. Briscoe testified that Mr. Milton was not part of the conspiracy to rob. Indeed, the evidence revealed that Mr. Milton was not present at the time of the robbery.
- [5] On 6 March 2006, Mr. Milton was voluntarily taken to the Road Town Police Station for questioning. At the police station, he made two statements. In the second statement, he implicated Mr. Miller as being the mastermind behind the robbery. Chris also featured in the robbery but he had sufficient time to flee the Territory. At the trial, Mr. Milton fought hard to exclude from the evidence, the two statements which he made to the police because of their purportedly damaging effect. He alleged that he was beaten at the police station by Chief Inspector Alexis Charles to make those statements and he did not make them of his own free will. A *voir dire* (trial within a trial) was held and both statements were subsequently admitted into evidence.
- [6] In his defence, Mr. Miller said that he does not know anything about any robbery but on Sunday, 26 February 2006 (two days before the robbery), his nephew, Milton came to his house at Sea Cows Bay with some other friends including Chris. Chris started a conversation about the Western Union robbery and asked if he, Mr. Miller was not scared to escort so much money from Cable & Wireless. Mr. Miller said that he felt uncomfortable about that conversation and left to go back to sleep.

- [7] Mr. Miller insisted that the police have arrested the wrong man. He felt that they have made a terrible mistake; that they did a sloppy piece of investigation because if they were vigilant, they would not have allowed Chris to flee. He said that the police have arrested and charged an innocent man who nearly lost his life at the hands of a man whom he does not even know. He admitted that the robbery does appear suspicious but he maintained that he was not involved. Mr. Miller emphasized that he is a man of good character who has lived in Jamaica, Canada and Aruba prior to living in Tortola and that he has a clean criminal record.
- [8] He even brought two fellow inmates from Her Majesty's Prisons to give evidence on his behalf. Essentially, their evidence is that Mr. Briscoe concocted his story to the police and that Mr. Miller is innocent.
- [9] In his defence, Mr. Milton testified that he was not there when the robbery was committed and he too, knows nothing about its commission although he admitted that he brought Mr. Briscoe down from Jamaica and received him upon his arrival at the airport on the night of 22 February 2006. He took him to his home where he spent the night but after his sister began quarrelling, he brought him to Road Town the following day and showed him a guesthouse at MacNamara where Mr. Briscoe stayed until he finally moved to a friend's house at West End. During that time, he met up with Mr. Briscoe almost everyday and they hang out together. After all, they are friends. Mr. Milton even purchased Mr. Briscoe's air-ticket to come to Tortola.
- [10] In addition, Mr. Milton emphasized that the statements to the police were not given voluntarily and that he was beaten by Chief Inspector Charles to sign them which he reluctantly did.
- [11] After approximately three hours of deliberation, an unanimous jury found Mr. Miller guilty of robbery and conspiracy to rob. Mr. Milton was found guilty of conspiracy to rob.

Plea in mitigation

The accused, Philimon Miller

- [12] Both accused were unrepresented. In mitigation, he said that he is innocent and felt that the jury's verdict was unfair. Be that as it may, he beseeched the Court for leniency and mercy.
- [13] He is a 48 years old Jamaican with an unblemished record. In addition, he produced a letter from one Patricia and Marlon Thomas to support his good character. They apparently knew Mr. Miller for about 28 years and considered him to be honourable, honest, well-mannered, hardworking, generous and helpful. Unfortunately, for medical reasons, they were unavailable to come to court.
- [14] Before coming to live and work in the peaceful British Virgin Islands, Mr. Miller had previously lived in Jamaica, Canada and Aruba. Prior to this incident, he had been in gainful employment with Mr. Joseph Emmanuel Williams, the Managing Director of Williams & Associates Security Limited as a Security Guard. He is married and has seven children, ages 12 to 23 years.

The accused, Miruts Milton

- [15] Mr. Milton is a young man in his twenties and hails from Jamaica. He has no previous criminal convictions. He recently came to live and work in this Territory. His girlfriend recently gave birth to his child whilst he was on remand at Her Majesty's Prison at Balsam Ghut. Presumably, he has not yet seen his newborn. Like his uncle, he has implored the Court for leniency and mercy.

The law

- [16] Section 210 (1) of the Criminal Code, 1997(Act No. 1 of 1997) of the Laws of the Virgin Islands provides as follows:

"A person is guilty of robbery if he steals and, immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force."

[17] The maximum penalty that the Court can impose for the offence of robbery is life imprisonment.¹ Section 210 is on par with Section 8 of the Theft Act 1968 (UK).

[18] Section 311 of the said Code makes it an indictable offence to conspire to rob somebody. Section 311 (1) states:

“Subject to the provisions of this Part, a person who agrees with any other person that a course of conduct should be pursued which will necessarily amount to or involve the commission of an offence by one or more of the parties to the agreement if the agreement is carried out in accordance with their intention, is guilty of conspiracy to commit the offence in question.”

[19] Section 312 prescribes the penalty to be life imprisonment.

Sentencing guidelines

[20] Most offenders convicted of robbery whether in the United Kingdom or in the Commonwealth Caribbean receive custodial sentences. The guideline cases in the UK are **R. v. Turner (B.J.)**², **R. v. Daly**³, **R. v. Gould**⁴ and **R v Adams and Harding**⁵. In **Turner**, a bank robbery case, Lawton LJ said that the normal starting-point for sentence for anyone taking part in a bank robbery or in a hold-up of a security should be 15 years, if firearms were carried and no serious injury done. The lack of a previous criminal record is not to be regarded as a powerful mitigating factor.

[21] In **Daly**, Lord Lane CJ indicated that in a bank robbery type of case, the most serious features calling for heavy sentences are:

“...detailed planning; use of loaded firearms or ammonia; where a number of men execute a planned attack on a bank or a similar target in the hope of stealing substantial sums of money; where the participants are masked and armed either with guns, handguns or sawn-off shotguns, or sometimes with ammonia, and squirt ammonia into the faces of clients or staff of the bank in order to overpower a resistance. In such cases, as Lawton LJ in **Turner** has rightly said that a starting

¹ See section 210 (2) of the Criminal Code, 1997 (Act No. 1 of 1997).

² [1975] 61 Cr. App. R. 67, CA at p.91

³ [1981] 3 Cr. App. R (S). 340, CA.

⁴ [1983] 5 Cr. App. R. (S) 72, CA.

⁵ [2000] 2 Cr. App. R. 274.

point of 15 years is correct. It may be, and no doubt will in nearly every case where there has been a plea of guilty, possible to reduce that term in the light of the plea and in the light of the assistance given to the police and other mitigating factors. It may be necessary on the other hand in some cases to increase the starting number of years because of the number of offences which the particular defendant has committed during the course of his depredation.”

[22] In **Gould**, Lord Lane CJ confirmed that the **Turner** guidelines remained the basis for sentencing in armed robbery offences. He also added that some of the features likely to mitigate an offence are:

- a plea of guilty;
- the youth of the offender;
- a previously clean record;
- the fact that the defendant had no companion when committing the offence;
- the fact that no-one was injured.

[23] Lord Lane CJ also opined that the following were matters which the court must put into the balance on the other side of the scale when determining the correct sentence for any particular offender:

- the fact that a real rather than an imitation weapon was used;
- that it was discharged;
- that violence was used upon the victim;
- that a number of men took part in the attack;
- that careful reconnaissance and planning were involved;
- that there was more than one offence committed by the offender.

[24] More recently, in **Adams and Harding**, it was said that **Turner** only provided a starting point and that in today’s sentencing climate the guidelines should be revised upwards.

[25] In **Allan Wilson v The Queen** ⁶, Sir Dennis Byron, CJ opined that “robbery is an offence that should always warrant a custodial sentence. He declared that the sentencer should however reserve the right to go beyond or below this range in

⁶ Criminal Appeal No. 10 of 2003 (St. Vincent & the Grenadines) [unreported].

appropriate circumstances. In that case, Mr. Wilson pleaded guilty to robbing a bus conductor of EC\$220.00 and was sentenced to ten years imprisonment. The facts were on the early evening of 12 September 2002, Mr. Wilson boarded a bus at Little Tokyo. A police constable boarded the bus at the same time as Mr. Wilson. The bus then proceeded to Vermont where Mr. Wilson disembarked at the Chauncey Cemetery gap. As he disembarked the bus he placed a gun at the conductor's head and ordered him to hand over the black purse slung over the conductor's shoulder in which the passengers' fares were kept. He then fled with the purse. The police constable aboard the bus gave chase but to no avail. Mr. Wilson was later arrested and charged. A firearm and two rounds of ammunition were retrieved from his home and EC\$124. 00 was found on his person. He gave the police a caution statement in which he confessed to having robbed the bus conductor. On appeal against sentence, the Court of Appeal reduced the sentence to five (5) years. The Court of Appeal found that there were substantial mitigating factors namely that Mr. Wilson was a young man of 18 years old, and a first offender. He cooperated fully with the police and pleaded guilty at the first available opportunity. The Court opined that the early guilty plea would account for a one third reduction of the sentence and the other strong mitigating circumstances should account for at least a deduction of a few additional years.

[26] In **The Queen v Keno Allen**⁷, the accused pleaded guilty to one count of aggravated burglary and one count of robbery. He had entered the dwelling house of the virtual complainant. He used a knife from her home to intimidate her and tie her up. Thereafter, he robbed her of an undetermined amount of cash. He was sentenced to 8 years imprisonment on both counts; sentences to run concurrently.

[27] In **The Queen v Damian Hodge**⁸, the accused was found guilty of one count of aggravated burglary, one count of robbery and one count of assault occasioning actual bodily harm. The accused and another man armed with a gun shouted "armed robbery, armed robbery" before they kicked down the door of the hotel/restaurant

⁷ Criminal Case No. 11 of 2005 (British Virgin Islands) [unreported].

⁸ Criminal Case No. 13 of 2001 (British Virgin Islands) [unreported].

around 10.00 p.m. The owner and a patron were the only persons inside at the time. The accused robbed the owner of his wrist watch, hand bracelet and \$92.00 cash from his pockets and the cash pan. Before leaving, he assaulted the patron with the gun. The accused was sentenced to 10 years imprisonment for the robbery.

- [28] In **The Queen v Stanley Bertie Jr**,⁹ the accused was charged with one count of robbery. He along with another robber met the complainant on the road in the early hours of the morning. They knew that he had in his possession the payroll for employees at Guana Island as the accused had worked there before. The accused along with the other robber who had a gun came upon the complainant and fought with him for the money. The accused was knocked down by the complainant and held until the police came. The other robber fled the scene with the money. The accused pleaded guilty and was sentenced to 7 years imprisonment. He had no previous convictions.

Court's considerations

- [29] The maximum sentence for robbery as well as conspiracy to rob is life imprisonment. However, the court has a wide discretion in sentencing both at common law and under the laws of this Territory (see sections 22 and 23 of the Criminal Code) to enable it to do justice having regard to the particular facts of each case.
- [30] It is also widely recognized that the aims of sentencing are that of retribution, deterrence, prevention and rehabilitation.
- [31] It is plain that Parliament considered the offences of robbery and conspiracy to rob as extremely serious offences hence the penalty of life imprisonment. But, the decision whether a custodial sentence is required, and if so, the length of such sentence, is heavily dependent on the aggravating and mitigating features and, usually to a lesser

⁹ Criminal Case No. 4 of 2006 (British Virgin Islands) – unreported – Judgment on sentencing delivered on 21 February 2006.

extent, the personal circumstances of the offender. The Courts also do take into consideration, the abhorrence with which the public regard those who rob.

[32] In the instant case, the aggravating factors as helpfully distilled by the learned Director of Public Prosecutions are:

- Planned robbery
- Joint Enterprise/ Group plan
- Breach of Trust
- Large sum of money
- Daylight robbery

[33] The mitigating factors are identified as:

- In respect of the accused Milton, his age
- Both accused do not have previous convictions
- No violence was involved

[34] There is no doubt that robbery is a serious crime that warrants custodial sentence. In the present case, I have given due consideration to all that was said by both accused in mitigation.

[35] However, the accused have committed serious offences. They fall in the same category as manslaughter, attempted murder, rape and wounding with intent to name a few. To add, this robbery was committed in broad daylight in a fairly hectic area of Road Town. The man who was the mastermind behind the robbery has not only breached the trust of his employer but has ruined irreparably the minds of two young adults in the commission of this intolerable crime. A large amount of money was the target. True, it was all recovered due to the good work of private citizens.

The sentence

[36] In determining the appropriateness of sentence, I bear in mind the four classical principles of retribution, deterrence, prevention and rehabilitation. As I said in **The**

Queen v Stanley Bertie Jr. "Society has shown its abhorrence of this particular type of crime which has been on the upsurge. The people of this Territory have lived peaceful lives in the past and wish to see that tranquility returned."

[37] I think that the only way the courts can show this is by the sentences they pass which are aimed at ensuring that the wrongdoer does not repeat the offence and that potential criminals get the message that society will not condone or tolerate such criminality. There appears to be a recent trend whereby non-nationals are brought into the Territory to commit serious crimes. This particular case has clearly demonstrated such trend and it has been a cause for concern particularly since it was committed in broad daylight.

[38] Having regard to all the facts and circumstances, I hereby sentence you, Phillimon Miller to 14 years imprisonment for robbery and 14 years for conspiracy to rob; the sentences to run concurrently from today's date.

[39] Miruts Milton is sentenced to 7 years imprisonment from today's date.

[40] Time spent on remand awaiting trial has been taken into consideration in computing the sentence of the Court.

Indra Hariprashad-Charles
High Court Judge

