

BRITISH VIRGIN ISLANDS

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

Criminal Case No. 11 of 2007

BETWEEN:

THE QUEEN

and

KEENAN KENDELL BETHELMY

Appearances:

Ms. Tamia Richards, Senior Crown Counsel and Ms. Tiffany Scatliffe, Crown Counsel for the Crown
The Defendant in person

2007: May 25
May 29

JUDGMENT ON SENTENCING

(Criminal Law –burglary - sentencing –guilty pleas – section 211 of the Criminal Code 1997 of the Virgin Islands)

1. **HARI PRASHAD-CHARLES J:** The British Virgin Islands was known for its very low crime rate. It was therefore common for the citizens to leave their doors unlocked and go to work. Not so anymore. Over the past few years, there has been an upsurge in the level of criminal activities; some of which are committed by foreign nationals who it appears, come to the BVI solely for that purpose. In an effort to curb the spate of criminal activities, Government as well as the Royal Virgin Islands Police Force have implemented certain measures. Nonetheless, serious and violent crimes continue to plague the Territory.

2. One person who has been a victim to the growing criminal activities in this Territory is no other than the Honourable Chief Minister himself. Little did he expect that arriving at his home one evening in the month of December 2006, he would encounter a person dashing across his

master bedroom from the door that exits unto the balcony. Dr. Smith described the person to be a man about 5 feet 6 inches to 5 feet 8 inches tall, slim and dark in complexion. A little over an hour later, another burglary in the near vicinity was reported.

3. Some nine days later, the Defendant, Keenan Kendell Bethelmy was arrested and charged with the burglary at the Chief Minister's Residence and the residence of Ms. Lisa Scatliffe Simmonds.
4. On 25 May 2007, Mr. Bethelmy pleaded guilty to the two counts of burglary. A sentencing hearing followed and the decision on sentencing was reserved.

The salient facts

5. The facts of this case are not disputed. As indicated earlier, the complainant, Dr. the Honourable D. Orlando Smith is the Chief Minister of the British Virgin Islands. On 20 December 2006, he left his home at MacNamara for work at 8.30 a.m. and returned home at around 5.10 p.m. When he entered his house on his way up the stairs in the direction of the study, he saw a man clothed in a white sleeveless shirt and dark shorts ran across the master bedroom and exited from the door in the said master bedroom leading unto the balcony. He called his security officer who later telephoned the police. Inspector (Ag) Howe responded to the call. The Chief Minister found his bedroom ransacked. A pair of size 8 ½ Jordan sneakers was found at the door of his residence. Sgt. 116 George Mason of the Forensic Department later went to the residence and took finger prints.
6. That said evening at about 6.15 p.m., Mrs. Lisa Scatliffe-Simmonds, also of MacNamara made a report to the Road Town Police Station that someone had unlawfully entered her home. Her son Kaleem Scatliffe, her nephew Keon Simmonds and their friend Reavaun Garraway saw the man through Kaleem's bedroom window. They described him as wearing a white vest and black short jeans pants. They said that the man was short and muscular. Sgt. Mason went to Mrs. Simmonds' residence and took finger prints. Nothing was stolen from her residence.

7. Mrs. Lorna Smith, wife of Dr. Smith made a report that a number of her jewelry including her yellow gold wedding band had been missing. The total value of the missing jewelry is estimated at \$2,900. None of these items were insured. None was recovered.
8. At the preliminary inquiry, Sgt Mason gave sworn testimony that he took finger print impressions of Mr. Bethelmy when he was taken into custody and that when he compared them with the finger prints he took from the residences of the Chief Minister and Mrs. Simmonds, he found that they match.
9. Acting Inspector Howe also gave sworn evidence at the preliminary inquiry that in an interview under caution, Mr. Bethelmy told him that he was influenced by a brown-skinned man to go into the Chief Minister's residence. Mr. Bethelmy did not give the name of the man to the police. About the missing jewelry, he told the police that he gave them to an exotic Jamaican dancer at the Happy Tappy in Josiah's Bay. The police interrogated the young lady who claimed neither to know Mr. Bethelmy nor received any items from him.

The antecedents of Keenan Bethelmy

10. The Defendant, Keenan Bethelmy hails from the twin Republic of Trinidad & Tobago. To be more specific, he is from Tobago. He is 24 years old. He entered the BVI about 3 days before the commission of these burglaries. He has recently been convicted at the Magistrate Court in the BVI for the unlawful possession of cannabis.¹
11. The information supplied to the Royal Virgin Islands Police Force by the Trinidad & Tobago Police Force confirmed that Mr. Bethelmy has a criminal record in that country. The record indicates that on 11 June 2006, Mr. Bethelmy was convicted of larceny in a dwelling house. He was fined \$10,000 or in default, two years imprisonment by Magistrate Annette Mackenzie sitting at the Scarborough Magistrate Court on 13 September 2006.

¹ On 29 December 2006, Magistrate Dawson fined Mr. Bethelmy \$300.00 or 6 weeks imprisonment for unlawful possession of cannabis.

12. The Report also confirmed that there are a number of pending charges against Mr. Bethelmy for:

- 1) Assault occasioning actual bodily harm on 2 February 2000.
- 2) Shop Breaking and Larceny on 18 March 2006.
- 3) Shop Breaking and Larceny on 18 March 2006.
- 4) Shop Breaking and Larceny on 18 March 2006.
- 5) Burglary on 18 March 2006.

13. Checks were also being made to verify whether Mr. Bethelmy is wanted by the police for these offences and whether there is a warrant out for his arrest. At the present time, no such information was available. The Police also confirmed that Mr. Bethelmy was also arrested in Grenada on 23 October 2005 for the offence of causing harm to Aloma Redhead, his common law wife. The result of this case is still not known.

14. The Trinidadian Police confirmed that Mr. Bethelmy has many sobriquets including Kahlid F/N Abdul. Mr. Bethelmy did say to this Court that he is a Muslim. In fact, in one of the letters that he recorded to the Court, he commenced with the words "In the name of Allah Most Gracious Most Merciful".

Plea in mitigation

15. Mr. Bethelmy was not represented by Counsel. He spoke briefly but saw it fit to document his thoughts in two letters. From the letters, one gets the impression that Mr. Bethelmy is extremely intelligent and coherent. He is also very artistic and imaginative judging from the images appearing on the face of the letters. In those letters, he seeks clemency of the Court and apologized both to the Court and to the Smith's family. He implored the Court to spare him a prison sentence so that he could return to his homeland to reconcile with his family and young children, ages 7, 6 and 1. Mr. Bethelmy appears very remorseful for what he termed his sinful actions.

Sentencing guidelines

16. The Crown helpfully provided several judicial authorities from this jurisdiction, the Eastern Caribbean and England to assist the Court with the appropriateness of sentence to be imposed.
17. In England, the maximum penalty for burglary of a building or part of a building which is a dwelling is 14 years imprisonment. The penalty likely to be imposed in a particular case varies according to whether the burglary is in respect of a dwelling or in respect of premises other than a dwelling. In respect of burglaries from dwellings, in **Brewster**² Lord Bingham, CJ issued the following sentencing guidelines:

"Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even where it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have.

The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity....Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled...."

18. In the Vincentian case of **Desmond Baptiste v The Queen**³, Mr. Baptiste, aged 25 years was sentenced to 8 years for burglary. He had a long record of previous convictions spanning a period of 10 years involving theft, entering dwelling houses as a trespasser and stealing, unlawful possession and possession of controlled drugs. He had pleaded guilty at the first available opportunity. On appeal to the Court of Appeal, that Court was handicapped because the record before them did not reflect the precise circumstances of the burglary for which Mr. Baptiste was convicted. What they did know is that he readily pleaded guilty at the first available opportunity and the stolen items were recovered. But Mr. Baptiste had an extended

² [1998] 1 Cr. App. R. 220.

³ Criminal Appeal No. 8 of 2003 (St. Vincent & the Grenadines) [unreported].

criminal record involving many offences of a similar nature. The Court of Appeal did not interfere with the sentence imposed by the trial judge.

19. The Crown also alluded to a few cases originating from this jurisdiction. These are:

- 1) **R v Ambrose & Rosario**⁴ – the Defendants pleaded guilty to burglary of the Magistrate Court. Ambrose was sentenced to 2 ½ years and Rosario to 3 years.
- 2) **R. v Akim Donsatorg**⁵ – the Defendant pleaded guilty to burglary of Little Denmark Jewelry Store from which a quantity of jewelry was stolen. He was sentenced to 3 years imprisonment.
- 3) **R v William Penn**⁶ – the Defendant was convicted on 3 counts of burglary in relation to villas at Virgin Gorda. He was sentenced to 8 years imprisonment on each count; sentences to run concurrently. These sentences are under appeal.
- 4) **R v Albert Smith**⁷ – the Defendant pleaded guilty to 2 counts of burglary. He was sentenced to 3 years on both counts to run concurrently.

Court's considerations

20. A good starting point is section 211 (1) (4) of the Criminal Code 1997 of the Virgin Islands which states that 'any person who is convicted of burglary is liable on conviction to imprisonment for a term not exceeding 14 years. This section is identical to section 217 of the Criminal Code of Saint Vincent and the Grenadines, the maximum penalty being imprisonment for 14 years.

21. There is no doubt that the offence of burglary as an extremely serious offence. This is reflected in the penalty which the law prescribes. But, the decision whether a custodial sentence is

⁴ BVI Criminal Case No. 4 of 2007- judgment delivered on 13 March 2007 –per Joseph-Olivetti J.

⁵ BVI Criminal Case No. 13 of 2006 –judgment delivered on 29 June 2006 –per Joseph-Olivetti J.

⁶ BVI Criminal Case No. 1 of 2006 –judgment delivered on 21 March 2006 –per Hariprashad-Charles J.

⁷ BVI Criminal Cases 12, 13 and 14 of 2004.

required, and if so, the length of such sentence, is heavily dependent on the aggravating and mitigating features in the case and, usually to a lesser extent, the personal circumstances of the offender.

22. In the instant case, the aggravating factors are:

- 1) Previous conviction of a similar offence; that is, larceny of a dwelling house. It appears also that Mr. Bethelmy might be fleeing from justice in Trinidad & Tobago as well as Grenada. He has 4 similar charges pending in Trinidad & Tobago and one unrelated charge pending in Grenada.
- 2) Commission of the offence late in the evening; particularly in the case of the burglary at the residence of Mrs. Simmonds.
- 3) The premises being occupied. In Dr. Smith's case, he returned from work to find Mr. Bethelmy rushing from his master bedroom to an exit unto the balcony. In the case of Mrs. Simmonds, three young children were at home when it was burgled. Mrs. Simmonds has confirmed that this unfortunate experience has troubled her son.
- 4) Stolen items belonging to Mrs. Smith have not been recovered. Mrs. Smith opined that her jewelry particularly, her wedding band is of sentimental value to her and the Honourable Chief Minister and it is irreplaceable.

23. The mitigating factors are identified as (i) Mr. Bethelmy's young age; (ii) his contrition and (iii) his guilty plea at the first available opportunity.

24. I bear in mind the fact that Mr. Bethelmy indicated his willingness to plead guilty even before the deposition was ready. In England, a plea of guilty attracts a one-third reduction of the sentence.⁸ Lord Taylor CJ in **Buffrey** however emphasised that "it would be quite wrong ...to suggest that there was an absolute rule as to what the discount should be. Each case must be

⁸ R v Paul Edward Buffrey (1993) 14 Cr. App. R. (S).

assessed by the trial judge on its own facts and there will be considerable variance between one case and another." Byron CJ in **Desmond Baptiste** opined that "our Courts should adopt a similar approach."

25. In the instant case, the fact that Mr. Bethelmy has pleaded guilty at the first available opportunity will attract a one-third reduction in sentence.
26. In my opinion, the instant case bears close affinity to the case of **Desmond Baptiste**. In that case, the Court of Appeal did not interfere with the 8-year sentence handed down by the trial judge even though he had pleaded guilty at the first available opportunity, he was a young man of 25 and all of the items were recovered. In this case, none of the missing jewelry has been recovered. Mrs. Smith has lost possession of her wedding band that was of over-sentimental value to her and her husband. No money could buy back that wedding band. The notion of a financial compensation was not even contemplated by Mr. Bethelmy although that cannot replace what is lost. To my mind, the fact that the jewelry has not been recovered and some were so dear and schmaltzy warrants a longer sentence.
27. With respect to the burglary at the Simmonds' residence, a factor that the Court ought to consider is that the incident has affected one of Mrs. Simmonds' son.

Conclusion

28. Burglary is a serious offence which more often than not, attracts a custodial sentence. A custodial sentence is necessary for a variety of reasons. First of all, to mark the gravity of the offence. Secondly, to emphasise the abhorrence with which the public regard those who burgle the houses of others. Thirdly, to serve as a deterrent to others and fourthly, to punish the offender.
29. The Court is also concerned with the growing number of burglaries and other violent crimes which seemed to plague the BVI with alarming regularity. Many of these crimes are committed by foreigners like Mr. Bethelmy who, it appears, come to this Territory strictly for the purpose of committing burglary, robbery and similar crimes.

30. Unquestionably, the time has come for the Court to look to a scaling up of its sentences to meet the needs of today's sentencing climate. In fact, in a recent joint United Nations-World Bank Report on drugs and crimes ⁹, the Report stated that "high rates of crime and violence in the Caribbean are undermining growth, threatening human welfare and impeding social development" in the tourist-dependent Caribbean. Whilst the Report did not specifically address crime in the BVI, the increasing number of burglaries and similar serious offences has become a major concern to this Territory. The Court must now send out an even stronger signal to potential criminals that criminal activities will not be tolerated. As I said in **R v William Penn** [supra] "burglary leaves people feeling distraught and unsafe within the confines of their own dwellings." Categorically, it can destroy the tourist industry which is a substantial contributor to the economic prosperity of these islands.

The sentence

31. Having considered all matters including the relatively young age of Mr. Bethelmy, the fact that he has young children, his plea of guilty at the first available opportunity and his remorse, the sentence of this Court is that you, Keenan Bethelmy is sentenced to 10 years for the burglary of the Chief Minister's Residence and 5 years for the burglary at the Residence of Mrs. Scatliffe-Simmonds. The sentences will run concurrently. Time spent on remand awaiting sentence was also taken into consideration.

Indra Hariprashad-Charles
High Court Judge

⁹ See World Bank Report: Crime in the Caribbean circulated to Judges by the Eastern Caribbean Supreme Court.