

BRITISH VIRGIN ISLANDS

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

BVIHCR2010/0020

BETWEEN:

THE QUEEN

-v-

VERNON ANTHONY PADDY

Appearances:

Ms. Jude Indra Hanley, Crown Counsel for the Crown
Mr. Patrick Thompson of W. McTodman & Co. for the Defendant

2011: March 04
2011: April 01, April 27

JUDGMENT ON SENTENCING

(Criminal Law – Unlawfully and maliciously causing grievous bodily harm with intent - Aggravating factors outweigh mitigating factors – Defendant raised provocation – Upsurge in crimes of domestic violence)

Introduction

[1] **HARIPRASHAD-CHARLES J:** This is a case of domestic violence, a crime of moral turpitude that causes far more pain than the visible marks of bruises and scars. The defendant, Vernon Anthony Paddy, is before the court for unlawfully and maliciously causing grievous bodily harm to his wife, (for anonymity, "the VC") with intent to do so.¹

[2] Mr. Paddy pleaded guilty and is now before the Court for sentencing. A sentencing hearing was held on 4 March 2011. I reserved my decision.

¹Section 163 of the Criminal Code, (No. 1 of 1997) of the Laws of the Virgin Islands.

The salient facts

- [3] The unchallenged facts as outlined by the prosecution are as follows: Mr. Paddy is a native of Guyana. He and wife have been married for approximately 9 years. At the time of the incident, they were residing in an apartment at Towers, West End.
- [4] On 25 May 2010 at about 22:15 hrs, Inspector Dennis Jones, who occupies an apartment adjacent to Mr. Paddy and the VC, made a report to the West End Police Station. He requested police assistance at the couple's premises.
- [5] According to the VC, she and Mr. Paddy arrived home at about 21:45 hrs after stopping briefly at Pusser's, Road Town where she met him. She had a fruit punch and Mr. Paddy a beer.
- [6] Shortly after their arrival home, an argument ensued between them concerning the nature of the VC's relationship with a male who allegedly called her cellular telephone that morning while she was in the shower. The argument got more heated. Mr. Paddy enquired of the VC her commitment to the marriage. The VC expressed frustration with Mr. Paddy's continued violent behaviour towards her. She expressed a desire to end the marriage.
- [7] Mr. Paddy then left the bedroom. He returned shortly after with his hands behind his back. At that time, the VC was seated on the bed clad only in her underwear. Upon entering the room, Mr. Paddy walked towards her. He removed his hand from his back revealing a black and yellow hammer. He started to hit the VC on her head with the hammer. The VC tried to ward him off but was unsuccessful. Mr. Paddy then pushed her on the bed. He jumped on top of her and continued to hit her in the face with the hammer. She fought with him; at the same time, screaming for assistance. She ended up on the floor. He continued to hit her with the hammer on her head and face.
- [8] She managed to run out of the bedroom to the back door. The door was locked. As she tried to open it, Mr. Paddy pulled her back and continued striking her about her body with the hammer. This included a heaving blow to her head. She saw blood running down her body. As luck would have it, she managed to open the door. She ran out. Mr. Paddy

pursued her, still firing blows at her. She managed to reach to the adjacent apartment where Inspector Jones and his wife live. Mrs. Jones gave the VC a towel to cover herself.

[9] Inspector Jones arrested Mr. Paddy. Shortly thereafter, the police arrived. Police Officer Fraser questioned Mr. Paddy. Under caution, he replied, "Fraser, you know what is frustration."

[10] Officer Fraser then approached the VC. He observed what appeared to be blood running down her face, right hand and legs. There was also a swelling to her right jaw, forehead and right leg. She was also crying out in pain. A short while later, the ambulance arrived. The VC was transported to Peebles Hospital. She was examined by a doctor and admitted to the surgical ward for observation. She remained there for 8 days. She was discharged on 2 June 2010.

[11] A black and yellow hammer approximately 14 inches long with what appeared to be blood was recovered outside Mr. Paddy's apartment.

[12] Mr. Paddy was formally charged for attempted murder. He has been on remand for that offence since 26 May 2010. On 8 December 2010, he was indicted for causing grievous bodily harm with intent.

Plea in mitigation

[13] Learned Counsel, Mr. Thompson made a passionate plea in mitigation. He implored the Court to be lenient on Mr. Paddy who made a serious mistake. He submitted that Mr. Paddy, now 48, had an unblemished criminal record. He had been residing in the Territory for the past 13 years and had worked with the BVI Airport Authority for many years. At the time of the commission of the offence, his contract had not been renewed.

[14] Learned Counsel also urged the Court to take into consideration the early plea of guilty by Mr. Paddy.

[15] Mr. Paddy spoke. He displayed a lot of remorse for his actions. He apologised to his wife and family for putting them through this ordeal. He said that he was provoked and anger

took the better part of him. Just before he attacked her, the VC had indicated to him that she wanted an end to the marriage.

- [16] He implored the court to temper justice with mercy on him as he has four sons and if he is given an opportunity, he will ensure that they do not walk in his footsteps.

Section 163 of the Criminal Code²

- [17] Section 163 of the Criminal Code provides:

“Any person who unlawfully and maliciously, by any means whatsoever, wounds or causes any grievous bodily harm to any person with intent so to do or with intent to resist or prevent the lawful apprehension or detainer of any person, commits an offence and is liable on conviction to imprisonment for life.”

Submissions by the Crown

- [18] Learned Crown Counsel, Ms. Hanley assisted the Court by providing many local and UK authorities on grievous bodily harm. She also identified the aggravating and mitigating factors. I am grateful for her assistance.

- [19] The local authorities referred to are **R. v. Franklyn Smith & Travis Smith**,³ **R. v. Alexander Wheatley**,⁴ **R v Evans Joseph**,⁵ **Elton Beazer & Denroy Stevens v. The Queen**,⁶ **R. v Ovel Matthew**,⁷ **R. v. Wayne Fahie**⁸ and **R. v. Kevin Frett**.⁹ The first three cases have nothing to do with domestic violence and as such, are not too helpful. The cases of **R. v. Wayne Fahie**, **R. v. Kevin Frett**, **R. v Ovel Matthew** and **Elton Beazer & Denroy Stevens v. The Queen** are more relevant since they deal with violence against women.

² Act No. 1 of 1997 of the Laws of the Virgin Islands.

³ BVI Case No. 06 of 2008 –[unreported] –Judgment on sentencing delivered on 6 May 2008 – wounding with intent. The VC received wounds to his buttocks and left hand.

⁴ BVI Case No. 17 of 2001 [unreported] – Sentenced to 2 years for wounding with intent.

⁵ BVI Criminal Case No. 10 of 2005 [unreported] – Joseph along with other prisoners were charged with attempted murder and wounding with intent of a prison officer. Joseph was found guilty and sentenced to 6 years imprisonment.

⁶ BVI Criminal Appeal No. 1 of 2001 – Both men attacked and assaulted two bar maids with sticks and beat them repeatedly. Both men pleaded guilty. They were sentenced to 7 years for causing grievous harm. On appeal, Beazer’s sentence was reduced to 5 years but the Court of Appeal upheld that of Stevens.

⁷ BVI Criminal Case No. 28 of 2009 [unreported].

⁸ BVI Criminal Case No. 8 of 1998 [unreported].

⁹ BVI Criminal Case No. 12 of 2002 [unreported].

- [20] In **Wayne Fahie**, Mr. Fahie was charged with wounding with intent and unlawful wounding of his girlfriend of 11 years. He attacked her with a machete causing her serious injuries. He amputated her left hand, inflicted a 1.5 inches laceration to her forehead, a 1 inch laceration to the scalp and multiple lacerations to the left arm. He pleaded guilty. He was sentenced to 4 years imprisonment and he had to pay her US\$25,000 in compensation. The maximum penalty that could have been imposed for the offences was 5 years imprisonment.
- [21] **Kevin Frett** was charged with causing grievous bodily harm with intent and unlawful and malicious wounding. He threw hot oil on the victim who suffered burns. He was convicted by a jury. He was sentenced to 3 years imprisonment.
- [22] In **R. v Ovel Matthew**, Mr. Matthew was charged with unlawful and malicious wounding with intent¹⁰ and criminal damage.¹¹ The attack arose out of a dispute he had with the virtual complainant (who was his girlfriend) with reference to her ex-boyfriend being in and repairing her jeep. Mr. Matthew punched the virtual complainant on her face and head, tried to run her over with her vehicle, choked and kicked her. This happened on a public road. She spent 3 days in hospital. He pleaded guilty at the first available opportunity. He was sentenced to 5 years imprisonment. He was also ordered to pay compensation for her injuries.
- [23] In **Elton Beazer & Denroy Stevens**, the appellants were both charged with two counts of causing grievous bodily harm with intent. Both men attacked two bar maids at a bar in Virgin Gorda. The men used sticks and their fists to repeatedly beat the barmaids, beginning in the bar and ending in an adjacent marina. Both men pleaded guilty and were sentenced to seven (7) years on each count to run concurrently. Both men appealed their sentences. On appeal, the sentence of Beazer was reduced to 5 years imprisonment. The Court of Appeal upheld the 7-year sentence of Stevens.

¹⁰ Contrary to section 163 of the Criminal Code, 1997.

¹¹ Contrary to section 265 of the Criminal Code, 1997.

United Kingdom Authorities

[24] **Blackstone's Criminal Practice 2010/Supplemental Material 2010 Sentencing Guidelines Council Sentencing Guidelines Part 7 Overreaching principles: Domestic Violence** states that there is no specific offence of domestic violence. But, for the purposes of the guideline, domestic violence is defined as:

"Any incident of threatening behaviour, violence or abuse [psychological, physical, sexual, financial or emotional] between adults who are or have been intimate partners or family members, regardless of gender or sexuality."

[25] The sentencing guidelines make clear that offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context. Thus, the starting point for sentencing should be the same irrespective of whether the offender and victim are known to each other (whether by virtue of being current or former intimate partners, family members, friends or acquaintances) or unknown to each other.

[26] The guidelines also provide that since domestic violence takes place within the context of a current or past relationship, the history of the relationship will often be relevant in assessing the gravity of the offence. Therefore, a court is entitled to take into account anything occurring within the relationship as a whole, which may reveal aggravating or mitigating factors. In the present case, the VC revealed that Mr. Paddy threatened her life and prior to this incident, he had assaulted her. She wanted to get out of the marriage.¹²

[27] Several UK cases were also cited. In **R v Brian Dunning**,¹³ a sentence of 3 years imprisonment was upheld by the Court of Appeal on a man who stabbed his wife with a kitchen knife, after she had left him and obtained an order under the Domestic Violence (Matrimonial Proceedings) Act. The appellant pleaded guilty to wounding with intent to do grievous bodily harm. The Court held that this kind of behaviour, involving the use of a weapon, particularly a knife, must attract a sentence of imprisonment, however much provocation there was and however unsettled or unbalanced the attacker might be.

¹² See Witness Statement Form taken by the police on 26 May 2010.

¹³ (1984) 6 Cr. App. R. (S) 337.

- [28] In **R v Fletcher**,¹⁴ the defendant was sentenced to 10 years imprisonment for wounding with intent. The Court of Appeal reduced it to 6 years. He had attacked his wife with a knife and wounded her. He pleaded guilty to the offence.
- [29] In **R v Brogan**,¹⁵ the appellant (B) appealed against his sentence of 8 years imprisonment imposed following his plea of guilty to causing grievous bodily harm with intent. During an altercation between two groups of people in a public house, B had struck the victim (V) with a pool cue. After V fell to the ground, B picked up a bar stool and hit him on his head. He then stamped on his head with a lot of force. V did not move and bled heavily. He sustained many injuries, including multiple fractures to his facial bones and he lost most of the vision in his right eye. The pre-sentence report stated that B accepted full responsibility for the injuries sustained by V, who was completely innocent, and that his actions were impulsive and responsive to the situation. He had a number of previous convictions. The sentencing judge noted that for the purposes of determining the seriousness of the offence the facts of the case were difficult to slot into the relevant section of the sentencing guidelines on causing grievous bodily harm with intent. The judge gave full credit for B's plea of guilty.
- [30] Since the sentencing judge had given full credit for B's guilty plea, the notional term imposed had to have been 12 years, which was within the highest sentencing bracket in the guidelines for the offence of causing grievous bodily harm with intent. That bracket was reserved for the most serious offence, where the victim suffered life-threatening injury from a premeditated assault. The second bracket, which specified a sentencing range of 7 to 10 years, contemplated the facts of the instant case. Although V had suffered a particularly grave injury, B's offence was not premeditated. He did not go away to fetch a weapon but lost control of his temper in the midst of the argument. In the circumstances, having regard to the plea of guilty, the appropriate sentence was 7 years.¹⁶

¹⁴ [2004] All E.R. (D) 244.

¹⁵ [2009] EWCA Crim. 2683.

¹⁶ Case Digest of case from www.Westlaw.co.uk

Mitigating factors

[31] According to the Crown, there are two mitigating factors:

1. Mr. Paddy has no previous convictions and
2. He pleaded guilty at the first available opportunity.

Aggravating factors

[32] The Crown has identified (6) aggravating factors namely:

1. Use of weapon (hammer);
2. Seriousness of Offence;
3. It was a built up, premeditated attack, a result of an incident that took place on or about 19 May 2010. (Mr. Paddy threatened the VC after she indicated that she wanted to get out of the marriage);
4. The attack was deliberate (Mr. Paddy left the bedroom and came back with the hammer behind his back, before attacking the VC);
5. The VC has expressed that she is fearful for her life and
6. Mr. Paddy is fully cognizant that the VC suffers from multiple sclerosis and diabetes mellitus. Despite that, he proceeded to cause her serious injuries.

[33] Although the Crown has identified six aggravating factors, I am mindful that care needs to be taken to ensure that there is no double counting where an essential element of the offence charged might, in other circumstances, be an aggravating factor, for example, the seriousness of the offence. I will therefore discount the seriousness of the offence as it is already reflected in the offence for which Mr. Paddy is before the Court. In addition, (3) and (4) ought to be consolidated to reflect one aggravating factor. As such, I find that there are 4 aggravating factors.

Court's considerations

[34] It is a serious offence to cause grievous bodily harm with intent. Its gravity is reflected by the maximum penalty of life imprisonment which it carries. However, the Court has a wide

discretion on sentencing both at common law and under the laws of this Territory to enable it to do justice having regard to the particular facts of each case.¹⁷

- [35] The facts and surrounding circumstances of this case are unfortunate. The VC had enough of their 9-year marriage. She wanted to get out of it. She was fearful for her life. The VC did not only want to get out of the marriage, but she wanted to move on with her life; she being a fairly young woman. So, she began communicating with other men; giving one of them her phone number. Mr. Paddy found out about this and confronted her. She retorted "I give him [the phone number], what happened to that." This response must have troubled Mr. Paddy. It was difficult for him to handle so he resorted to violence. As he himself put it, he was provoked and anger took the better part of him.
- [36] It may be asserted, as in the instant case, that the offence, at least in part, has been provoked by the conduct of the victim. Such assertions need to be treated with great care, both in determining whether they have a factual basis and in considering whether in the circumstances the alleged conduct amounts to provocation sufficient to mitigate the seriousness of the offence.
- [37] Therefore, for provocation to be a mitigating factor, it will usually involve actual or anticipated violence. Provocation is likely to have more of an effect as mitigation if it has taken place over a significant period of time.
- [38] In the present case, I agree with the Crown that the facts do not suggest that there was such provocation. On the contrary, the facts suggest that the VC was fed up with Mr. Paddy's abusive behaviour and she wanted to get out of the marriage. In these circumstances, he should have sought counseling and if that did not assist, then he simply had to petition for divorce. Recourse to violence cannot be justified. Moreover, Mr. Paddy was well aware that the VC suffers from multiple sclerosis and diabetes mellitus.
- [39] Now, sentencing involves a two-stage process that requires consideration of both aggravating and mitigating factors. The Court must seek to determine what sentence the

¹⁷ Part II of the Criminal Code and the Criminal Justice (Alternative Sentencing) Act, No. 10 of 2005.

seriousness of the offence itself merits. Further, can that sentence be reduced in light of the mitigation relating to the offender? Although the injuries were not permanent, the incident was particularly violent, terrifying and embarrassing. She ran out of the apartment clad in her underwear. The assault was reckless and unwarranted. Additionally, there was also the abuse of trust and abuse of power.

[40] Two mitigating factors were identified by the Crown. Mr. Paddy's plea of guilty at the first available opportunity. This entitles him to a one-third discount. Also, the antecedents of Mr. Paddy show that he was a man with an unblemished record – a member of the Guyana Defence Force but at the same time, a man who should have exercised more restraint for his actions. As a general principle of sentencing, a court will take account of an offender's positive good character. However, it is recognized that one of the factors that can allow domestic violence to continue unnoticed for lengthy periods is the ability of the perpetrator to have two personae. Positive good character is of greater relevance in the rare case where the court is satisfied that the offence was an isolated incident. Here, apparently, there have been previous incidents of domestic abuse.

[41] Also, in determining the appropriateness of sentence, the court bears in mind the four cardinal principles of sentencing namely retribution, deterrence, prevention and rehabilitation. These principles are well-established and require no further elucidation.

[42] Next, I come to sentencing guidelines. They provide useful assistance to the court but they are not determinative of the sentence. In **R v Murdock**,¹⁸ the Court of Appeal of Northern Ireland observed that:

"Guidelines are of use in maintaining a degree of consistency in sentencing, but they are not to be slavishly followed, since the sentencer in any given case has to determine what is appropriate for the individual case before the court. Mitigating and aggravating factors in the particular case will have to be taken into account in determining the final disposition. Reported previous decisions may provide a benchmark, but it should be observed that in some reported cases there may be unstated factors, e.g. co-operation with the police, which have influenced the length of sentence. It should also be borne in mind that levels of sentence may

¹⁸ [2003] NICA 21.

move upwards, or downwards, depending on the prevalence and danger to the public of any type of offence.¹⁹

[43] Thus, guidelines are there to merely assist the judge in sentencing. They are not to be blindly followed as they do not lay down the correct sentence.

[44] For Offences against the Person, except for manslaughter, we do not have guidelines. Manslaughter carries a maximum penalty of life imprisonment. So does the offence of causing grievous bodily harm with intent. In cases of manslaughter due to extenuating circumstances such as provocation, the benchmark is 15 years: see: **Hilary Patrick Tench v. The Queen**,²⁰ **James Jn Baptiste v. The Queen**,²¹ **Denis Alphonse v. The Queen**,²² **Bertram Abraham v. The Queen**²³ and **Sherwin Fahie v. The Queen**.²⁴

[45] But, I consider manslaughter to be more serious than causing grievous harm since the former involves the taking away of a life. All things considered, I opine that a good starting point for causing bodily harm with intent should be 10 years.

[46] In the present case, the aggravating factors outweigh the mitigating factors. Particularly aggravating is the abuse of trust/ the abuse of power. It becomes even more lethal when a partner (and more often the female) expresses a desire to leave. And why should not a wife leave a marriage if she had enough? Why must she be abused?

[47] Violence against women is an appalling human rights violation. In the broadest sense, it is the violation of a woman's personhood, mental or physical integrity, or freedom of movement through individual acts and societal oppression. It is so woven into the fabric of society to such an extent that many women who are victimized feel that they are at fault. Many of those who perpetuate violence feel justified by strong societal messages that these violence against women, be it sexual harassment, rape, child abuse are acceptable.

¹⁹ Murdock, R v [2003] NICA 21.

²⁰ Criminal Appeal No. 1 of 1991 [Saint Lucia] (unreported).

²¹ Criminal Appeal No. 10 of 1994 [Saint Lucia] (unreported).

²² Criminal Appeal No. 1 of 1995 [Saint Lucia] (unreported).

²³ Criminal Appeal No. 12 of 1995 [Saint Vincent & The Grenadines] (unreported).

²⁴ Criminal Appeal No. 2 of 2002 [British Virgin Islands] (unreported).

[48] In **Elton Beazer & Denroy Stevens** [supra], Byron CJ had this to say at paragraph 11:

“The incidence of violence against women in our communities has become a serious problem and the court must attempt to curtail this by its sentencing policies. Unless it does so, the perpetrators of violence against women may very well believe that they have a licence to do so unimpeded. Our sentencing policy must necessarily be directed at changing behavior, especially those abhorrent to human decency.”

[49] Here, in this Territory as well as across the globe, women confront manifold violations of their human rights. The key international agreement on women’s human rights is the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), which is described as an international bill of rights for women. Under CEDAW, states are required to eliminate the many different forms of gender-based discrimination women confront, not only by making sure that there are no existing laws that directly discriminate against women, but also by ensuring that all necessary arrangements are put in place that will allow women to actually experience equality in their lives.

[50] The Domestic Violence (Summary Proceedings) Act, 1996 was enacted to provide assistance to victims of domestic violence. This was in keeping with the objectives enshrined in CEDAW. Assistance for victims of domestic violence is also available from the Family Support Network, The Family & Juvenile Division of the Royal Virgin Islands Police Force, the Social Development Department, the Office of Mental Health and the Office of Gender Affairs.

[51] It is now the duty of the courts to send out a strong message that domestic violence in any form will not be tolerated and that men do not have an unfettered licence to batter women. The only way the courts can effectively show this is by the sentences that are passed which are aimed at ensuring that the wrongdoer does not repeat the offence and that potential offenders get the message that society will not condone such behaviour.

[52] All things considered, I sentence you, **VERNON ANTHONY PADDY** to 8 years imprisonment. The sentence is to commence from 26 May 2010, the date when Mr. Paddy was remanded to prison. I will also order compensation to the VC in the sum of \$5,161.68

representing medical expenses incurred by the VC, to be paid within 6 months; in default 12 months imprisonment. Should Mr. Paddy not pay the compensation, the default provision of 12 months imprisonment will kick in and will run consecutively with the sentence of 8 years.

Indra Hariprashad-Charles

High Court Judge