

IN THE EASTERN CARIBBEAN SUPREME COURT

MONTSERRAT

IN THE HIGH COURT OF JUSTICE

Case MNIHCR2016/0014&0017

REGINA

V

D'VAUNTE HENRY

Appearances:

Mr. Kenroy Hyman, for the Crown.

Mr. Hogarth Sergeant, for the defence.

2017: July 19

SENTENCE

- 1 **Morley J:** The defendant D'Vaunte Henry falls to be sentenced for two offences of rape of elderly women in the dead of night, breaking into their homes, while they were in bed alone – the first on 21.05.16 on HP, aged 79, and the second on 04.07.16 on DF, aged 70.

- 2 He pleaded guilty at the first opportunity on 22.11.16 during Michaelmas assizes. He should have been sentenced during Hilary assizes in March. Delay until Trinity assizes in his sentence has been due to the court not receiving a psychiatric assessment until 28.04.17 and a pre-sentence report until 27.06.17. In addition, his counsel David Brandt has been recently ill, so that sentence required a change of counsel, to Hogarth Sergeant, and could not proceed on the first day of Trinity assizes, being 27.06.17.

- 3 In considering the crimes, while assisted by the prosecution opening, I have also studied the papers carefully, and partially watched the video interviews of each survivor.
- 4 Concerning the rape of HP, she is a US national who until 2016 had spent 29 years on Montserrat. On 21.05.16, she was in bed after midnight, reading, and heard the breaking of glass on her front door. She could then hear a man walking in her home. She was terrified, believing she would be killed, severely hurt or raped, perhaps all three. Her bedroom door was locked, and she tried to keep her bedroom door closed by placing her weight against it. Henry forced the door open, by forcing the door off its hinges. He made her wash, and then forced sexual intercourse on her on a couch. Through great presence of mind, she tried to remain calm, even asking questions about him after, while giving him a drink in order to find out how to identify him. Interviewed later, Henry said he had wanted money, she had none, and that sexual intercourse was her idea, which by his plea he accepts was completely untrue.
- 5 In a victim impact statement, filed on 08.03.17, HP said as follows.

'The impact was very severe, ultimately causing me to leave my home and friends of twenty-nine years and return to the US. First, imagine how terrifying it was for me that night, an older woman living alone, to hear the sound of breaking glass (clearly the front door) as I lay in my bed reading. The door to my bedroom had a lock on it and there was no other way out, except into the hallway where I could hear the intruder now walking. I couldn't get my phone to function, saw no escape, and had to accept the realisation, which no one should have to, that it was inevitable in just a couple of minutes I was either going to be dead, badly hurt, or raped. At 5ft2, in my seventies I knew I'd be no match for anyone intent on harming me. Pushing back against the door as the intruder pushed against it was all I could do, and it did no good at all, since he pulled the door completely off its hinges. I was in absolute terror and afraid I was going to have a heart attack. I am now in the US, in a 55-plus community where I am surrounded by other people. Though I can now sleep most nights, I very definitely have night fears and usually leave a light on, something I never did before. Understand that at my age moving

and starting over alone in another place is extraordinarily difficult as well as very costly. While I am managing, it is nothing I would normally have chosen for myself.'

6 Concerning the rape of DF, she is a UK national, who has had a home on Montserrat for 36 years. Around midnight of 3-4.07.16, and she was fast asleep, and Henry entered through a faulty kitchen door, got under her mosquito net, and she woke with him on top of her in the pitch dark. She was bewildered and terrified, and started screaming. Henry then pushed a pillow over her face, so she could not breathe, ordering her to stop screaming, and she thought she was going to die. She could feel a terrible vulnerability as her lower body was exposed. She managed to get her mouth and nose from under the pillow, and she said, *'please don't, I am 70 years old, and arthritic'*. He took no notice, and forced her legs open, attempting to lift her legs over his shoulders. He masturbated to get an erection, began to enter her vagina, and then entered her anus, which she says was an *'indescribable horror'*. When intercourse stopped, with great presence of mind, DF said she had to put on the lights. Henry would not let her as he wished to remain unidentifiable in the darkness. So she suggested they get a drink of water, from the kitchen, which allowed her at the fridge to press a dispenser which caused a light to go on, allowing her to see some of his features. In conversation he admitted to being the person who had raped HP, saying, *'she asked for it, she wanted it, and she said she will pay me'*. Later interviewed, he admitted breaking in, placing the pillow over her head to stop her screaming, and he suggested he had not had intercourse as she was fighting him and so he stopped, though by his plea he accepts this was not true.

7 In a victim impact statement, dated 08.03.17, DF said as follows:

'The first I knew of his presence was waking from sleep to feel him holding my arms and kneeling on my legs. In split seconds, I realised I was not experiencing a nightmare but a very real danger. I must have started screaming almost immediately as I felt a pillow thrust over my head and a dreadful exposed sensation between my legs which I was powerless to combat. I felt myself suffocating. It was so dark that even when I managed to get my mouth and nose free of the pillow I could only see a dark shape with what felt like numerous

hands. At one stage I felt his hands around my neck while he shouted over and over, 'don't scream, stop screaming'. My life on Montserrat came to an end much sooner than planned because for the first time in my life I felt truly vulnerable. As a result, my family feel that holidaying on Montserrat is no longer an attraction and after 30 years our house is for sale. This memory haunts me and wakes me from sleep. The attack by its ferocity without pity of any kind illustrates a completely impassive person unable to feel anything but his own gratification.'

8 D'Vaunte Henry was born on 03.05.96, is now 21, and was 20 without previous convictions at the time of the rapes.

9 I have heard evidence from Dr Erica Gibbs and Mr John Wilson that the defendant's behaviour was '*strange*', '*surprising*', and '*out of character*' for the person they think they know. They ask for rehabilitation to be at the forefront of the sentence, in particular hoping that custody may involve counselling and further education opportunities.

10 In a psychiatric assessment by Dr Griffin Benjamin of 28.04.17, he was diagnosed as having a substance abuse disorder, meaning he uses too much marijuana and alcohol. Dr Benjamin added:

'He presented with a clinical history of a disturbed pattern of behaviour, aggression, and sexual disinhibition. His continuous drug use had resulted in poor self-control, craving for more drugs, stealing, and difficulty with managing his life. He displayed no features of psychosis and continued to be in touch with the reality of his life situation. His cognitive functions are not impaired and he was able to give a clear account of the incidents related to his incarceration. He does not appear to enjoy good family support as he was able to abandon his mother's house while a minor to pursue an intimate relationship with a woman above fifty years. He does not seem to appreciate the significance of his misconduct and criminal action.'

- 11 In the pre-sentence report of 27.06.17, prepared by Stanford Kelly, there are the following observations:
- a. At para 3.1, the defendant is disappointed in himself and does not remember most of what happened during the rapes.
 - b. At para 6.1, while on remand, he is suffering with an anxiety disorder and seeing the clinical psychologist for treatment.
 - c. At para 11, according to the defendant, the first rape was while under the influence of alcohol and marijuana, and the second rape was while sober.
 - d. At para 12, Mr Kelly says: *'It is very concerning that Mr Henry would target women in their 70s... In my opinion, these were premeditated attacks... These were two violent frightening and humiliating attacks on two vulnerable women living alone. Mr Henry admitted to knowing the grounds of both properties from work in the area. He knew that both women lived alone. I question whether or not money was the original object as no money was taken.'*
- 12 I agree with the observations of Mr Kelly. I am sure that these were planned rapes targeting elderly women alone in bed at night. I make this finding because there were two such rapes within 6 weeks, with the same *modus operandi*, namely breaking in the dead of night, into the homes of persons the defendant knew were alone and elderly, no money was taken, while in his background as a minor he had a sexual relationship with a woman over 50. His substance abuse disorder may help to explain (though not excuse) the first rape, but it seems the second was while unintoxicated. There was nothing accidental or opportunistic in either. He chose the homes, made a decision to break in, chose the time, and broke down one bedroom door to attack HP, and crept onto the sleeping body of DF. He suffers no psychosis, and his cognitive function is normal. His anxiety disorder has nothing to do with the rapes, and I am sure arises because he is in custody awaiting a significant sentence.
- 13 I sense the first rape while intoxicated emboldened him so that the second was particularly planned, whether or not intoxicated. He got a taste for it, having had a relationship with a person over 50 before, and it appears was likely embarking on a spree. If he had not been caught within hours of the second rape, I am of the view on balance he would have raped

again. His counsel has suggested he was naïve, in that he sought a drink and talked, but I am of the view this reinforces that he did not appreciate the appalling nature of his acts, so that he is more likely to repeat them.

- 14 In these circumstances, I find the defendant is dangerous, and presents a continuing threat to elderly women.
- 15 As to mitigation, he is of good character, 20 at the time, and pleaded guilty at the first opportunity. In addition, he volunteered his involvement while at the police station on 04.07.16, on an unrelated matter, though minimising his culpability, saying at 11.45, '*me no know what get into me*'.

Constructing the sentence

- 16 Turning to how to approach sentence, I have chosen to be guided by UK sentencing guidelines on rape, found in *Blackstones Criminal Practice 2016*, third supplement, at SG-60 on page 458. The maximum sentence is life imprisonment, both in the UK and on Montserrat. The structure of the sentence will be to assess:
- a. harm,
 - b. culpability,
 - c. the starting point,
 - d. aggravating features,
 - e. mitigating features,
 - f. credit for plea,
 - g. dangerousness,
 - h. and totality.
- 17 For each offence, I assess *harm* to be at category 1. This is because I find there was violence and the threat of violence (beyond that inherent in the offence), forced and uninvited entry into the victim's home, each victim was particularly vulnerable given her age, and severe psychological harm was inflicted, which in combination and given the extreme impact of these features elevate each offence to category 1.

- 18 For each offence, I assess *culpability* to be in category A, because there was a significant degree of planning, and each was committed in the course of a burglary, in that I find he entered as a trespasser with intent to rape.
- 19 I therefore assess the *starting point* for each offence, each being at the higher though not highest end of rape offending, to be in category 1A, and bearing in mind the victims were in their seventies, therefore to be 18 years.
- 20 Turning to the *aggravating* features: generally, each victim was targeted, the timing of the offence was in the dead of night, the location was as a stranger trespasser in each victim's home; as regards HP specifically, he broke down the door and was intoxicated; as regards DF specifically, he smothered her to stop her screaming, and he penetrated her anus. These aggravating features increase the sentence for each offence by seven years to 25 years.
- 21 Turning to the *mitigating* features, the defendant was of good character, and young (though no longer in his teens), being at the time aged 20. I do not accept that a substance abuse disorder is mitigation. I see it instead as explanatory, rather than exculpatory, describing self-induced intoxication as occurring more often than in others. I am not persuaded there has been remorse, as I note the defendant says he does not remember much, and Dr Benjamin says, '*He does not seem to appreciate the significance of his misconduct and criminal action*'.
- 22 I assess that what mitigation there is reduces the sentence by three years to 22 years.
- 23 Turning to his *plea*, as he entered his plea at the first practicable opportunity, he will receive, as the court indicated at the time, full credit of approximately one-third. This reduces his sentence to 15 years for each rape.
- 24 The court turns now in combination to the effect of the defendant being adjudged *dangerous*, to whether the sentences should be concurrent or consecutive, and to consideration of *totality*, in particular assessing whether the overall length of a sentence for these two offences, by adding the sentences together, would be greater than is just.

- a. Though the sentences could be consecutive, I am mindful that the second rape was not while on bail for the first, or having absconded the jurisdiction between both, which are often good reasons for making sentences consecutive.
- b. I am not persuaded that there should be a consecutive sentence simply because of the age of each victim, as such a principle is vague and will lead to inconsistencies; instead the offending can be characterised as a spree and therefore more serious, in that its overall character reflects dangerousness.
- c. In a sense the question is, what should be the effect of dangerousness on his overall sentence?
- d. If consecutive, the overall sentence would be 30 years.
- e. If concurrent, the overall sentence would be 15 years, though this would not reflect dangerousness, which has not been accounted for yet.

25 I am of the view it would offend the principle of totality to make the sentences consecutive. A sentence of 30 years following plea would be too much.

26 However, to my mind the public must be protected from this defendant. It is well known that a sentence should, in addition to weighing retribution, rehabilitation, and deterrence, weigh adding to the sentence for the protection of the public. Prevention of further offending is articulated as a sentencing aim in the leading judgment of Byron CJ in ***Desmond Baptiste et al. v. Regina 2003, Criminal Appeal No.8 of 2003 (St. Vincent and the Grenadines)*** where at paras 20e and 24 there is contemplation that for some defendants a protracted sentence may be appropriate *'to keep them away from society'*.

- a. To reflect that I have found that the defendant is dangerous, I will add three years. Specifically, I will add the three years to the sentence concerning the second rape, which most clearly shows the dangerousness, by virtue of it coming second and showing a pattern, his not being so intoxicated, and sneaking into the bedroom onto DF, then smothering her. In relation therefore to the sentence for the second rape, the sentence increases by three years from 15 years to 18 years.
- b. In the alternative, I find that the rape of DF should, quite simply, attract a longer sentence, being 18 years, as it is a second offence within a spree.

- c. In sum then, the sentence will be 15 years for the rape of HP and 18 years for the rape of DF, to run concurrently, making a total of 18 years.
- d. Time spent on remand awaiting sentence will count toward the sentence.

27 *D'Vaunte Henry*, please stand up. For the offence on 21.05.16 of raping HP, aged 79, in her home in the dead of night, while intoxicated, and breaking down her bedroom door, to which you have pleaded guilty, the sentence is 15 years imprisonment. Within six weeks you committed a second rape on an elderly woman, being a spree, which means I find that you are dangerous, warranting either a protracted or longer second sentence. For the offence on 04.07.16 of raping DF, aged 70, in her home in the dead of night, while not so intoxicated, sneaking onto her sleeping body and smothering her to keep her quiet, to which you pleaded guilty, the sentence is 18 years imprisonment. Both sentences are to run concurrently, meaning that the overall sentence is 18 years imprisonment. You will be eligible for remission of sentence if of good behaviour after serving two-thirds. Time spent on remand awaiting sentence will count. You may go down.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

19 July 2017