

THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE
SAINT CHRISTOPHER CIRCUIT

(Criminal)

SKBHCR2012/0027

DIRECTOR OF PUBLIC PROSECUTIONS

V

[1] JAHMARI LAKE

[2] LEON JEDERON

Appearances: Ms Rhonda Nisbett-Browne, Dr. Dennis Merchant and Ms Greatess Gordon for the Director of Public Prosecutions
Mr John Cato for convict Jahmari Lake
Leon Jederon unrepresented

2013: February 20

2013: March 28

JUDGMENT ON SENTENCE

- [1] **Thomas J. (Ag)** Jahmari Lake and Leon Jederon are before the Court for sentencing with two sets of counts. Two counts of robbery and one count of rape.
- [2] Jahmari Lake was found guilty on the two counts of robbery and one of rape and Leon Jederon pleaded guilty to the counts of robbery and rape. This is a big difference.
- [3] In the usual manner Social Inquiry Reports were ordered on the two prisoners.
- [4] With respect to Jahmari Lake the Social Inquiry Report was prepared by Mr Gerald Connor and this is his assessment of the prisoner:

"Jahmari Lake grew up in a very loving and caring environment, where he had a mother and father who provided all of his needs, plus he was surrounded with a loving grandmother who tried her best to keep him on the straight and narrow by making sure he found humility within his life by taking him to church.

Jahmari, from the first impression, seems to be an individual of great talent, learning to play the drums at a tender age, prove that he can become someone of a positive standing. Among his co-workers he was admired as a young man who was always early for work and was an exceptional that he was the handyman for the owner.

Jahmari unfortunately showed his weakness which seems to be his poor choice of friends. As outlined by the pastor his choice of company seems to be his downfall, and having been shot in the past he have chosen a different path.

It is very sad that such a young man who showed much talent, in spite of his academic short comings, have found himself on the wrong side of the law, after all the hard work which his family has put in to try to keep him on the straight and narrow.

Jahmari have had many examples to follow; his mother who has worked hard all her life to provide for him; his father who have always shown him the need to work hard and his grandmother, who have shown him what faith can provide".

[5] And with respect to Leon Jederon the creator of the report was Probation Officer Khisma Huggins. This is what she had to say in terms of assessment:-

"Leon's criminal behaviour is a result of his environment and lack of positive individuals in his life. Without a father figure in his life and his mother's lack of proper parenting, Mr Jederon had no disciplinarian to adequately deal with his short comings; thus, he continued along his path of self destruction.

Nonetheless, it can be presumed as Mr. Jederon grew older he understood right from wrong, however, it was his choice to steer toward delinquency and later criminality. His mother blames the influence of his friends for his bad behaviour but it was her duty to ensure that he chose more positive friends and did the right thing. It is not enough to distribute blame when the object of parenting is to guide and influence positively.

The charges that Leon has pleaded guilty to are not simple; they are very disturbing and serious crimes. The feeling of security and safety in the community has been jeopardized and has been taken away from individuals. According to Maslow's Hierarchy of Needs, security of body and property is amongst the needs in the second tier. This is an

achievement that is important to one if they are to maintain sanity and self-esteem”.

[6] The Court is presented with two contrasting individuals – one, Lake, who had close family ties and who interacted with his father. The other Jederon never knew his father and was one of nine children. But they ended up committing two serious offences together. Further, during the trial Jederon showed common sense by his plea while the other Lake remained defiant even after his conviction.

[7] The matters that are to be considered in imposing the sentence must now be considered:

1. The nature of the crimes - robbery and rape.
2. The manner of execution. This fits the classical illustration of a crime on the spur of the moment in terms of joint unlawful enterprise or common design.
3. The victims - two unarmed females.
4. Items which were the subject of the robbery - a host of expensive jewellery.
5. The maximum penalty for the offences - robbery is 20 years; rape is life imprisonment.
6. Previous convictions
 - a. Jederon – Possession of firearm and ammunition – 4 years imprisonment
 - b. Lake – None
7. Ages of the prisoners
 - a. Lake – 21 years (22 in October)
 - b. Jederon 25 (26 on 9th April)
8. Principles of sentencing - deterrence, prevention, retribution and rehabilitation.
9. The aggravating and mitigating factors.

[8] This case has two important and negative aspects. The first is two youngsters exerting the utmost violence and disrespect against two entire innocent women.

This is the age of women's rights when we are supposed to pay greater respect to women by virtue of the basic but fundamental role they perform in society and family – the mothers of our children.

- [9] The other aspect is the use of two firearms in the commission of the two offences. Just imagine that two youths have access to two guns apparently with consummate ease.
- [10] The evidence is that the two ladies were on a veranda having an evening chat being friends for many years. This too is now unsafe.
- [11] As noted before, Jederon pleaded guilty at an early stage so that this mandates a difference in the appropriate sentence.
- [12] The court will deal with the offences of robbery and rape in the order.
- [13] It is now common ground that in **Desmond Baptiste** out of the Court of Appeal that the sentence for armed robbery must be at least fifteen (15) years. As such the sentence can reach close to the maximum sentence depending on the circumstances in each case.
- [14] The evidence accepted by the jury was that one lady was robbed of jewellery valued at \$41,063.00 and the other at a value of \$48,200.00
- [15] Both of the prisoners were armed and the hands of both ladies were tied – one to the front and the other behind her back.
- [16] The prosecution relied on the doctrine of common design which the jury accepted so it matters not who did what. But the tying of the hand would be an aggravating factor.
- [17] The paradox of the crime situation is that two young men with guns were a afraid of two unarmed ladies who they met smoking cigarettes on the veranda.

The crime of Rape

- [18] Rape is always an act of extreme violation of a woman. It is not something she wants and hence it is demoralising and leaves a stigma perhaps for her life. This was not just rape – it was a brutal rape. In the course of the rape one of the prisoners put his penis in one of the lady's mouth and then made movements in that position until he had a climax and ordered the lady to swallow it with a gun to her head. She said she did not but the very act is revolting, aggravating and shameful. Again, it matters not who did what because of the doctrine of common design or joint unlawful enterprise.
- [19] At the trial Jahmari Lake opted to give evidence in which he denied the offences and sought to cast allegations at the police. Lake claimed to have gone to work on that day and then went home and stayed home. He claimed to have gone home on his father's vehicle at a certain time by a certain route. Lake's father gave evidence on his behalf and contradicted his son in material particulars in terms of the time they reached home and the route taken in the same vehicle.
- [20] In terms of Jahmari Lake, it is important to reflect on part of the evidence of Inspector Smithen who gave evidence of what he heard when Lake was being interviewed by WPC Tross. This is what he said:
- "They interviewed him and at first he denied any knowledge then I asked him if what I heard he did to the two ladies if he would like anyone to do it to his mother or sister. He hung his head and said nothing for 30 seconds and then he said he grew up in a church and he wanted to go back".
- [21] Inspector Smithen's evidence continued relating what Lake said:
- "When we went by Paradise were see the two ladies and we went in the house and the other person (being Jederon) check to see if anyone else was in the house.
- So we put the lady on the bed and the other person went on top her. I had to laugh as the other guy bud could not stand up and mines was standing so I went over her chest and put me bud in her mouth".
- [22] That aspect of the evidence vividly illustrates the intent, malice and the aggravation involved in both crimes: laughing in the midst of a heinous crime.

Aims of Sentencing

[23] Before passing sentence it is important to highlight what is said in **Halsbury Laws Vol 11(2)** at paragraph 1188 on the aims of sentencing:

"The aims of sentencing are now considered to be retribution, deterrence and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion of the offence and to punish the offender for his wrong conduct. Deterrent sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation. However, the protection of society is often the overriding consideration. In addition, reparation is becoming an important objective in sentencing".

[24] The Court sees no reasons to depart from the principle that the protection of society is paramount. And while the age of the prisoners is relevant consideration it is overwhelmed by the nature of the crimes and the involvement of firearms. One of the victims said in her evidence that it was the closest she had ever come to a firearm. The prevalence of gun crimes is no longer a secret.

Sentences: Robbery

[25] As noted above, the maximum sentence for robbery under section 31 of the **Larceny Act** is twenty (20) years.

[26] It has already been noted that our Court of Appeal in **Desmond Baptiste** has ruled that armed robbery must be met with a sentence of at least 15 years. Here the women's hands were tied by two coward armed men and robbed of valuables. This is aggravation of high order.

[27] Your sentence is **18 years imprisonment on both counts**.

[28] In view of a guilty plea made by you though not at the earliest opportunity yet the Court will still allow it to stand. The nominal sentence of the Court is 12 years is fixed and reduced by 1/3 your sentence is **8 years on each count**.

[29] In both cases time on remand must be deducted from the total sentence.

Rape

[30] In England where the maximum sentence is life imprisonment, the following learning in **Blackstone's Criminal Practice** at para. B.3.5.

"Sentencing Guidelines

B3.5 The maximum penalty for rape is life imprisonment (Sexual Offences Act 1956, s. 37 and sch. 2.)

The maximum penalty for attempted rape is life imprisonment (Sexual Offences Act 1956, s.37 and sch.2, as amended by the Sexual Offences Act 1985).

The guideline case on this offence is *Billam* [1986] 1 WLR 349. Lord Lane CJ said (at pp. 350-52)

This court emphasised in *Roberts* [1982] 1 WLR 133, that rape is always a serious crime which calls for an immediate custodial sentence other than in wholly exceptional circumstances...

The variable factors in cases of rape are so numerous that it is difficult to lay down guidelines as to the proper length of sentence in terms of years. That aspect of the problem was not considered in *Roberts*. There are however many reports decisions of the court which give an indication of what current practice ought to be and it may be useful to summarize their general effect.

For rape committed by an adult without any aggravating or mitigating features, a figure of five years should be taken as the starting point in a contested case. Where a rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive, the starting-point should be eight years.

At the top of the scale comes the defendant who has carried out what might be described as a campaign of rape, committing the crime upon a number of different women or girls. He represents a more than ordinary danger and a sentence of 15 years or more may be appropriate.

Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to

remain a danger to women for an indefinite time, a life sentence will not be inappropriate.

The crime should in any event be treated as aggravated by any of the following factors: (1) violence is used and above the force necessary to commit the rape; (2) a weapon is used to frighten or wound a victim; (3) the rape has been carefully planned; (5) the defendant has previous convictions for rape or other serious offences of a violent or sexual kind; (6) the victim is subjected to further sexual indignities or perversions; (7) the victim is either very old or very young; (8) the effect upon the victim, whether physical or mental, is of special seriousness. Where anyone or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.

The extra distress which giving evidence can cause to a victim means that a plea of guilty, perhaps more so than in other cases, should normally result in some reduction from what would otherwise be the appropriate sentence. The amount of such reduction will of course depend on all the circumstances been contested".

- [31] The Parliament of Saint Christopher and Nevis has made it clear that it does not want rape to be taken lightly. It has therefore imposed a maximum sentence of life imprisonment for this offence. It has been ruled that an amount of years must be fixed by the court.
- [32] The actions of the prisoners fulfil at least four (4) of the aggravating factors identified in the foregoing guidelines. They are as follows: first, the victims' hands were tied; second both prisoners had guns; third, the victims' were subjected to further sexual indignity in that one of the prisoners inserted his penis in her mouth and after bodily contortions he discharged therein and she was told to swallow it with a gun held against her head; and fourth, the victim testified that it was the closest she had ever come to a gun which implies fear of some degree given all the circumstances.

Lake

- [33] Quite apart from the aggravating factors you boasted of the event in the presence of police officers and then you came and lied and wasted the Court's time. The sentence of the Court is **21 years** imprisonment.

Jederon

- [34] Again, the guilty plea serves you well as you will serve 1/3 less of the nominal sentence determined by the Court. The nominal sentence is 15 years reduced by 1/3 is **10 years** imprisonment.
- [35] In both cases time on remand must be deducted and in both cases the sentences will run concurrently. So that **Lake will serve 21 years and Jederon will serve 10 years.**
- [36] Let it be clear that the difference in the sentences lies in the guilty plea by Leon Jederon.

Errol L Thomas
High Court Judge (Ag)