

COMMONWEALTH OF THE BAHAMAS

Cri/vbi/73/3/2021

IN THE SUPREME COURT

Criminal Division

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

vs

CHEGUVERA MOXEY

Before: The Honourable Mr. Justice Franklyn K M Williams, KC

Appearances: Tabitha Frazer for the Director of Public Prosecutions

Stanley Rolle for the convict

On the papers

JUDGEMENT ON SENTENCING

WILLIAMS, J

[2.] The convict was charged with the attempted kidnap of Chinique Joseph at 2pm on Friday 20 November 2020 at Father Calnan Road, New Providence. He was charged with causing damage to a Town and Country van, a fence and a wall at Father Calnan Road, New Providence on 23 November 2020, having returned thereto. The convict was unanimously convicted of damage. He was acquitted of the attempted kidnap; notwithstanding, I refer to the latter here as the two offences are for the purposes of trial and sentencing inextricably linked. Having been identified as the suspect in the attempted kidnap, having been given a lawful order to exit his vehicle by officers of the Royal Bahamas Police Force (“the police”) in an attempt to detain him preliminary to enquiry into the allegation, the convict refused, and whilst attempting to make good his getaway, the convict unlawfully and intentionally damaged the vehicle, the wall and fence.

[3.] The convict claims that the damage was caused, whilst he in fear for his life from a mob, attempted to get away from that mob. Further, he likens the circumstances to the recurring scenario of “hit men” emerging from silver colored vehicles to carry out assassinations. In the same breath he says that the men, presumably the mob he describes, alleged that he had raped their cousin or family member. The two claims are contradictory:

“THE WITNESS: I saw four guys jump out, they cut me off, in front of my car, saying that I just rape their lil cousin or something.

And I say, who, me? I done see them feeling for something, and they coming at me. I jump in my car. I put it in reverse. I’ne (sic) see nothing. I’ne see nothing. I just trying to get off the scene. Then when I hit all the other stuff, I look up through my windshield, all I see is a group of guys running after me.

“A. My life was in jeopardy. I feared for my life. I have heard numerous reports of the occupants of a silver Honda; that was all the information the police have. They say something about a Honda, and now a person is dead. That is what

I thought was going to happen. And I jump in my car, try to get away from these guys, because I don't know what they going to do to me. They done tell me I rape somebody, and I don't know about nothing. So I was scared."

[4.] That evidence is wholly contradicted and refuted by the evidence of Sgt. D'Avorous Newman, and the stipulated evidences of W/PC Black and Dorene Renae

[5.] The evidence of W/PC Black:

"While en route to Force Garage the driver at the time PC 3964 Smith took Market Street route and turned onto Father Calnan Road to head to the Garage. At this time while on Father Calnan Road this unit was beckoned by a group of males just at the rear of John Chea Food Store. Upon seeing this we came to a complete stop where I observed from the back seat of the vehicle Cpl. 3897 Newman scrolled down his window on the right passenger side and interacted with these males asking them their reason for beckoning the patrol car. At this time one of the males said, "This bey just rape my lil cousin." Acting on information received Cpl 3987 Newman exited the marked patrol car with revolving lights on and went to further enquire on this matter. While doing same a male clad in a white shirt and dark colored sweat pants jumped into a red colored vehicle that was parked at the rear of John Chea Food Store. On doing same this male with forced then reversed this vehicle into the patrol car that was already at a stop causing damages to the right rear side of the patrol car. While still seated at the back of the patrol car I observed when this male went forward in this vehicle and his vehicle for a second time in the direction of the patrol car/ However, this unit already move the patrol car. **During this time Cpl. 3897 Newman was still on the outside of the vehicle ordering the driver of this red vehicle to come to a stop** with negative result. This male then reverse his vehicle down the middle of Fr. Calnan Rood with both unit and Cpl 3897 Newman giving chase behind same to get him to come to a stop again with negative results. It was at this time the vehicle collided into a wall situated at the northern side of Fr. Calnan Road and then into a white van that was parked on the southern side before coming to a complete stop after colliding into a fence."

[6.] The evidence of Doreno Renae:

“While my brother and his friend were exiting their vehicle I saw a marked police Ford Taurus vehicle driving west along Father Calnan Lane toward us. I ran into the road and flagged the police vehicle down saying “stop, stop”. When the vehicle stopped, I said to the officers, “this man tried to kidnap my niece and I pointed to the male who was standing by the red Cadillac. At the same time the male shouted “not me, not me”. Then got into his vehicle and reversed into the police car hitting the right rear end of the police in attempts to get away. After hitting the vehicle the car stopped for a few seconds and the officer that was in the front passenger seat exited the vehicle with his firearm withdrawn and demanded the male out of his vehicle. This man then drove forward and then stopped and reversed again hitting the neighbor’s fence on the southern side of the street. Then continued reversing where he struck a white van that was parked on the southern side of the street. Then veered right where he collided into a wall on the northern side of the street.”

I shall return to this.

[7.] When considering punishment, a court must have regard to the particular circumstances of the case, and that of the convict. In *Prince Hepburn v R* SCCrApp No.79 of 2013, Adderley JA discussed the function of sentencing and the factors to be considered:

“In exercising his sentencing function judicially the sentencing judge must individualize the crime to the particular perpetrator and the particular victim so that he can, in accordance with his legal mandate, identify and take into consideration the aggravating as well as the mitigating factors applicable to the particular perpetrator in the particular case. This includes but is not limited to considering the nature of the crime and the manner and circumstances in which it was carried out, the age of the convict, whether or not he pleaded guilty at the first opportunity, whether he had past convictions of a similar nature and his conduct before and after the crime was committed. He must ensure that having regard to the objects of sentencing: retribution, deterrence, prevention and rehabilitation that the tariff is reasonable and the sentence is fair and proportionate to the crime.”

[8.] The defence has identified what it says are mitigating factors:

- i.) The convict has no criminal convictions, thus he is a man of good character.

- ii.) The convict is employed as he was prior to arrest and charge
- iii.) Whilst on remand, the convict did not breach rules of BDOCS
- iv.) The convict is coach of basketball with Urban Renewal
- v.) The convict has compensated complainant; and

aggravating factors:

- i.) The use of a vehicle in the commission of the offence
- ii.) The attempt to leave the scene notwithstanding police presence.

[9.] The Director of Public Prosecutions (“the DPP”) has identified what it says are mitigating factor

- i.) The convict has no previous convictions
- ii.) The convict compensated the complainant; and

aggravating factors:

- i.) The convict has shown no remorse
- ii.) Notwithstanding compensation of complainant, the convict pleaded not guilty and put the allegations to trial
- iii.) Blatant disregard and disrespect for a police officer in the legitimate performance of his duties
- iv.) The actions of convict placed police officers in imminent danger

[10.] The convict had, as an incident of case management i.e. discovery, the statements of WPC 3853 Black and Doreno Renae, which statements were stipulated at trial and which pelucidly detail the circumstances extant on the evening of 23 November 2020. Contrary to the convict’s assertion during record of interview and under oath at trial that he was in fear of his life from a mob, by which assertion he sought to justify the commission of the offence, there was no mob, he was not being chased, and it could not be reasonably said that he was in fear of his life.

[11.] Rather, it is plainly seen that the convict’s acts were deliberate, he attempting to evade the lawful detention, and in defiance of a lawful order of a police officer investigating the allegation of the commission of a crime. The acts for which the convict has been convicted occurred subsequent to the order given to the convict by Sgt. Newman to vacate his vehicle.

[12.] Notwithstanding, the convict persists in this dishonesty in his submissions on sentencing:

“20. Referring to section 124 of the Code, we submit that the charge is a crime punishable with a term of imprisonment. Further, having regard to the character of the Offender and the extenuating circumstances under which

**the crime was committed, inclusive of the evidence of Renae pursuing
the Offender, be it rightly or wrongly conceived by the Offender, ...”**

The evidence clearly shows that Renae joined in the pursuit of the convict, **only** after it became clear that a lone officer (Newman) was in pursuit, and not before.

[13.] I consider this persistence in dishonesty to be an aggravating factor, and to militate against any rehabilitation of the offender.

[14.] I am of the view, in the particular circumstances of this case, and being guided by the core principles of sentencing, that a custodial sentence is warranted to:

- Reflect the society’s disapproval of the calculated, willful, unlawful acts and of the offender himself
- Deter potential offenders and the offender himself

It seems to me, in the particular circumstances of this case, that the three factors I have adverted to predominate when determining the appropriate sentence.

[15.] In my view, the aggravating factors outweigh the mitigating factors. Taking all factors into account, the convict is sentenced to a term of imprisonment of two years.

Dated the 1st day of November 2024


Franklyn K M Williams, MB KC

Justice

