

**COMMONWEALTH OF THE BAHAMAS**

**2019**

**IN THE SUPREME COURT**

**CRI/VBI/150/7**

**Criminal Division**

**BETWEEN:**

**BERNARD KNOWLES**

**Convict**

**And**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondents**

**Before: The Honourable Madam Justice Mrs. Cheryl Grant-Thompson**

**Appearances: Mr. Terry Archer, Chief Counsel along with Ms. Destiny McKinney, Counsel for the Director of Public Prosecutions**

**Mr. Bjorn Ferguson Counsel for the Convict Bernard Knowles**

**Hearing Dates: 10<sup>th</sup> December, 2020; 28<sup>th</sup> April, 2021; 22<sup>nd</sup> June, 2021,  
Delivered on the 20<sup>th</sup> July, 2021.**

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**SENTENCING JUDGMENT**

*Section 339(2) Penal Code, Ch. 85; Section 358 Penal Code, Ch. 85; Convicted of Alternative Count of Receiving; R v Newry; Indrick Tilme v DPP; Section 91 Evidence Act, Ch. 65*

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## **GRANT-THOMPSON, J**

### **Introduction**

1. The Convict, Mr. Bernard Knowles was charged with one (1) count of Armed Robbery contrary to section 339(2) of the Penal Code, Chapter 84 and in the alternative one (1) count of Receiving contrary to Section 358 of the Penal Code, Chapter 84. The trial against the Convict commenced on the 30<sup>th</sup> November, 2020 when the jury was empaneled and sworn.

### **Factual Matrix**

2. On the 1<sup>st</sup> December, 2020, the Crown opened its case and called three (3) witnesses, namely, the scenes of crime officer D/C 923 Belle, the Virtual Complainant, Pamela Rolle, and the officer who was present for the arrest and found the stolen vehicle with the Defendant, Cpl. 3357 Farrington.

3. On the 2<sup>nd</sup> December, 2020 the Crown called two (2) witnesses, namely, W/Sgt. 2918 McPhee who downloaded the Record of Interview and D/Cpl. 3216 Patton who was the investigating officer. The Crown then sought leave to close its case without calling the witness D/Cpl. 3478 Rolle who had been listed on the back of the Indictment. I granted the leave requested and the Crown closed its case without calling this witness.

### **No Case Submission**

4. On the 3<sup>rd</sup> December, 2020, Counsel for the Defendant Mr. B’jorn Ferguson made a Submission of No Case to Answer and on the 4<sup>th</sup> December, 2020 I delivered my Ruling and found that the Convict did have a Case To Answer on both counts and I dismissed the No Case Submission. The Defense called two (2) witnesses,

firstly the Convict took the witness stand and was cross-examined and the second witness was Ms. Dorothea Francis, the mother of the Convict also took the stand and was cross-examined. The Defense closed its case on the 4<sup>th</sup> December, 2020 and the matter was adjourned to Monday 7<sup>th</sup>, December 2020 for the closing addresses to the jury.

5. Mr. B’jorn Ferguson, Counsel for the Convict discovered that one of the jurors was employed by the Royal Bahamas Police Force and worked in the Criminal Records Office after the completion of Court on Friday the 4<sup>th</sup> December, 2020. He alerted the Court and the Prosecution to this discovery on Monday the 7<sup>th</sup> December, 2020. The Court heard Submissions on this point and Ruled that the offending juror be excused from the panel after Voir Dire and delivered Judgment in this regard. The matter proceeded with eight (8) jurors.

6. On the 10<sup>th</sup> December, 2020 I delivered my summation and the Court was adjourned for the jury to deliberate. The jury returned and informed the Court of a verdict of 8-0 Not Guilty was reached regarding the First Count of Armed Robbery and a verdict of 7-1 Guilty was reached in relation to the Second Count of Receiving.

7. Ms. Pamela Rolle the Virtual Complainant testified that she visited her mother to take groceries in her brand new black Honda 2018 CRV vehicle valued at Forty Six Thousand Dollars (\$46,000), near dark. Her guard was down, unexpectedly an armed assailant approached her wearing a grey hoodie over his head, he was dark-skinned and he said to her, “gimme the key, gimme the key”, with a handgun pressed in her side. Her mother was nearby inside her house. The complainant was a senior bank executive. She shed tears in the witness stand as it was apparent the events left her traumatized. I note the comments of the Senior Probation Officer, Mrs. Jennis McKenzie that, “ *the victim in this case Ms. Pamela Rolle, stated although the Concerned was convicted of Receiving and not of Armed Robbery, the entire ordeal*

*has left her and her family scarred, as the incident has been life changing and traumatic. She revealed that even though the incident occurred two (2) years ago she and her family get very anxious about traveling after the sunset. Not only has this impact been emotional but financial as well because her family has had to invest in fortifying their security system, which included surveillance cameras.”*

There is an old adage that the “receiver is just as bad as the thief” which I find to be a well coined phrase. Off times if there was nowhere for a thief to take the goods stolen, the original crime may not have been committed. Certainly, in this case the complainant suffered from enduring the ordeal. Her vehicle was discovered parked at the home of the accused and received by him. I considered his behaviour egregious and callous in that he and his friend were inconsiderate of the harm they caused to the complainant by the emotional stress and initial loss. The jury obviously did not accept the Convicts explanation that his friend Sharone Thompson asked him to keep the vehicle, which belonged to a friend. That he (Thompson) would subsequently collect the vehicle- that he never saw the friend again and made no real efforts to locate him. He claimed to be unaware that the vehicle had been obtained by unlawful means. The jury did not accept that explanation. I accept their verdict and having seen the witnesses including the Convict and his mother and having observed their demeanor in my view the jury made the correct decision.

### **The Law**

8. The Convict was convicted of Receiving contrary to Section 358 of the Penal Code, Chapter 84 and which states:

***“Whoever dishonestly received any property which he knows to have been obtained or appropriated by any offence punishable under this Title shall, if the offence was a felony, be guilty of felony, or shall, if***

*the offence was a misdemeanor, be liable to the same punishment as if he had committed the offence.”*

9. Notwithstanding the Convict was found Not Guilty as it relates to the offence of Armed Robbery, the conviction of Receiving, stemmed from Armed Robbery which is punishable to a maximum sentence of imprisonment for life. Section 339(2) of the Penal Code, Chapter 84 provides:

*“Whoever commits robbery, being armed with any offensive instrument, or having made any preparation for using force or causing harm, shall be liable to imprisonment for twenty years: Provided that whoever commits robbery, being armed with any offensive instrument shall, where the offensive instrument is a firearm, be liable to imprisonment for life”*

10. Section 116 of the Penal Code is also relevant:-

*“116. (1) Where a crime is declared by this Code, or by any other statute, to be felony, and the punishment for it is not specified, a person convicted thereof shall be liable to imprisonment for seven years.”*

### **Submissions by the Crown**

11. The Crown submitted that each case must depend upon its own circumstances and various factors must be considered by the court in deciding which principle of sentencing should predominate.

12. The Crown further averred that in present case, the predominant objects that ought to be applied by the Court are retribution *vis a vis* deterrence. The Crown asserted that notwithstanding the serious nature of the offence and its prevalence in

our society they accepted that the Convict is a young man who can be rehabilitated and thereafter return to society. A sentiment with which I agree

13. Having regard to the circumstances of this case and applying the principles of sentencing along with balancing the mitigating and aggravating factors, the Crown recommended as appropriate a custodial sentence in the range of five (5) to seven (7) years.

### **Submissions by the Defense**

14. Learned Counsel Mr. B’jorn Ferguson submitted to the Court that sentencing must always be proportionate to the gravity of the offence and seek to promote a sense of responsibility in the offender for the offence. He further stated that the object of sentencing is to promote respect for the law, maintain order, maintain a peaceful and safe society, and discourage the act of crime by the imposition of sanctions.

15. Mr. Ferguson further submitted to the Court that the Convict should receive a sentence of three (3) months’ probation. He based this position on the Convict’s alleged lack of knowledge, in the circumstances of the Armed Robbery in the case. The Convict is a first time offender, and was of good character previously. I acknowledge that the Convict is a first time offender as he has no prior convictions. I also accept that the Convict prior to this conviction would be considered to be an individual of impeccable character. The Court however cannot accept the assertion of Defense Counsel that the Convict was not aware that the vehicle was unlawfully obtained. The Convict was found guilty for the offence of Receiving by a jury of his peers. This would obviously mean that after hearing the evidence presented by both the Crown and the Defense, the members of the jury accepted that the Convict was guilty of the offence of Receiving as defined by section 62(1) of the Penal Code which states as follows:

***“A person is guilty of receiving any property which he knows to have been obtained or appropriated by any crime or offence, if he receives, buys, or in any manner assists in the disposal of the property otherwise than with a purpose to restore it to the owner.”***

Having observed the demeanor of all the witnesses as they gave evidence, the inconsistencies in their account provided by the Convict and his witnesses, the decision of the jurors was supported on the evidence before the Court in that:

- The vehicle was parked at the residence of the Convict behind a gate, not visible from the road, and in broad daylight;
- His mother claimed not have seen the vehicle parked in her own yard;
- That the reason she gave was that she got home late from work and studies and was tired;
- The accused man received a car-nearly new with no documentation on it- no license plates and had no real name or address for his friend and yet allowed him to leave the vehicle at his residence on behalf of a “friend of a friend”;
- That Leon put the vehicle in his yard as a surprise for his wife;
- That he does not know where Leon lives and that Leon is a boat captain and he is not sure what boat he drives;
- That he had no contact for ‘Leon’
- That he made no attempts to locate him;
- That police intelligence revealed that the accused man was taking steps to sell the vehicle immediately prior to the arrest; and

- That the jury did not find the explanation proffered satisfactory in order to displace the doctrine of recent possession of stolen goods.

### **Purpose of Sentencing**

16. Counsel for the Crown and Defense correctly submitted that sentencing must always be proportionate to the gravity of the offence and should promote a sense of responsibility in the offender for the offence committed. The object of sentencing is to promote a respect for the law, maintain order, maintain a peaceful and safe society, and discourage criminal activity by the imposition of sanctions. Sentencing should also be aimed at rehabilitating the offender so that he may reform his ways to become a contributing member of society. Such sanctions for breach of the law are provided by law by means of sentencing. This is my intention here.

### **Probation Report- Bernard Knowles Sr.**

17. The Report of Probation Officer Mrs. Jennis McKenzie (dated February 10<sup>th</sup>, 2021) revealed the following:-

*“The Concerned was born to unwed parents who by all accounts afforded him a stable upbringing. During his formative years, they provided discipline, which is a vital element for child development and also facilitated his spiritual awareness via regular church attendance. As an adult, he seemingly shares a healthy relationship with them as evident by their mutually expressed fondness toward each other.*

*The Concerned’s performance in school was average; however, after graduation, he seemed determined to learn a skill, having worked as an apprentice on construction sites. Later, he gained employment as a Food Runner at the Baha Mar Resort where he was lauded for his outstanding*



*performance. His Manager indicated he was scheduled for a promotion around the time he was arrested in the present matter.*

*Individuals who provided insight into the Concerned's character described him positively with recurring terms such as, easy-going, mannerly, hardworking, family-oriented and helpful. They expressed being shocked by his arrest in this matter and doubt that he knowingly committed an offence, but believe he was merely being helpful by agreeing to keep the vehicle, not knowing that it was stolen.*

*The Concerned echoed that he was unaware of the origin of the vehicle and thought he was just doing a favor by holding it. He noted that he regrets his actions and has learned to not be so trusting.*

*In giving a victim impact statement, Ms. Pamela Rolle acknowledged that the Concerned has not been convicted of Armed Robbery, but revealed that she and her family have been impacted both emotionally and financially by the entire ordeal. She reported that they now limit their travel to day-light and have had to invest in an enhanced home security system.*

*It is unfortunate that the Concerned finds himself at the mercy of the Court, given that he appeared to have been on such a promising course. It is noted, according to the attached Criminal Records Antecedent Form, he has no previous convictions.”*

18. I believe that the Convict is capable of rehabilitation. He could have been liable to life imprisonment (358 & 339 (2) Penal Code Chapter 84). However my sentence will reflect my view that he can be rehabilitated.

## **Mitigation Factors**

19. The mitigating factors in favor of this Convict, are as follows:

- (a) **Youthfulness** – The Convict is presently twenty-three (**23**) years of age which is relatively young and he is still in a position to make a positive contribution to society;
- (b) **Previous Good Character** – The Convict has had no previous convictions as evidenced by the Criminal Records Antecedent Form for Bernard Knowles Sr. attached to the Probation Report; and
- (c) The Convict was gainfully employed prior to his arrest for the commission of this offence. Additionally, according to the Probation Report he was scheduled for a promotion around the time of his arrest.

## **Aggravating Factors**

20. The aggravating factors against this Convict are as follows:

- a. The item the Convict is accused of Receiving was taken in the commission of an Armed Robbery; and
- b. A firearm was used in the commission of the Armed Robbery.

## **Decision of the Court**

21. As the Convict was charged with the offences of Armed Robbery and Receiving. The jury unanimously found the Convict Not Guilty relative to the charge of Armed Robbery and guilty of Receiving with a majority vote (7 to 1). The allegations accepted by the jury was that the Convict received property which he knew to have been obtained or appropriated by any crime, or in any manner assisted in the disposal of the property otherwise than with a purpose to restore it to the owner.

22. Applying the principles above to the facts of this case, taking the lack of criminal history of the Convict into account, his age and the facts of this case. I have thoroughly reviewed the recommendations by both Counsel. I have concluded that the recommendation of Defense Counsel of Probation for a period of three (3) years is not a sufficient penalty for the offence of Receiving in this case.

### **Common Law**

23. In the Bahamian Court of Appeal decision of **R v Newry [2002] BHS J. No. 25** which was relied on by the Crown in their submissions, the Appellant was convicted of receiving a motor car and sentenced to ten (10) years imprisonment. This sentence was affirmed by the Court of Appeal. In this case the Appellant was found in the driver's seat of the stolen vehicle about a month after the virtual complainant had been robbed at gunpoint for her motor vehicle.

24. Moreover, in the Bahamian Court of Appeal decision of **Indrick Tilme v DPP SCCrApp. No. 50 of 2015**, the sentence of 9 years given by the trial judge was substituted for a sentence of 4 years. The Court at paragraph 31 stated as follows:

*“In our view had the learned trial judge been operating with a proper appreciation of Section 358 the sentence in this case would not have exceeded four years having regard to his age, his lack of antecedents and the fact that the maximum sentence pursuant to section 116 is seven years. In these circumstances we set aside the sentence of nine years and substitute a sentence of four years imprisonment.”*

25. I am of the view that the Convict before me is similar to the Appellant in the case of **Indrick Tilme**. Here, the Convict is a young man presently twenty-three (23) years of age with an unblemished criminal record prior to his present conviction.

Additionally, according to the Probation Officer's Report, according to the Convict's file at The Bahamas Department of Correctional Services, he has not contravened any of the institution's rules. These factors impressed me. I balance this against the trauma the complainant suffered with this incident and the fact that the Convict provided a place for the armed robber to take the stolen goods to complete this crime.

26. Under these circumstances, I find that a sentence of imprisonment for Four (4) years followed by a period of probation for One (1) year is reasonable and appropriate. I am of the belief that once the Convict is released he will be a productive citizen and contribute in a positive way to our society.

27. Mr. Bernard Knowles Sr., I hereby sentence you to serve a term of imprisonment at The Bahamas Department of Correctional Services for Four (4) years and a period of probation for One (1) year upon release. This sentence is to commence from the date of conviction.

**Dated the 20<sup>th</sup> day of July A.D., 2021.**

**The Honourable Madam Justice Mrs. Cheryl Grant-Thompson**