

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE

5 INDICTMENT NO: 0082/2015

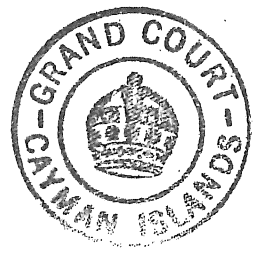
8 THE QUEEN

10 V

11 BRANDON SHAQUILLE BROWNING

14 &

16 JAMIE DARNEL McLEAN



19 **Appearances:**

Ms. Nicole Petit for the Crown

Ms. Alice Carver of Samson & McGrath for
the Defendant

24 **Before:**

Mr. Justice Robin McMillan

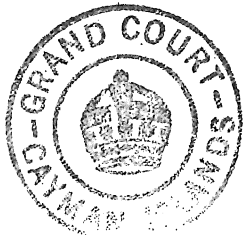
25 **Submissions heard:**

2nd February 2016

27 **SENTENCE RULING**

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30 1. The Defendants are jointly charged on this Indictment with a single Count of
31 Aggravated Burglary contrary to s. 244(1) of the Penal Code (2013 Revision) and the
32 particulars of the offence are that the Defendants, on the 7th day of November 2015, in
33 Grand Cayman, Cayman Islands, entered Apartment #7 Cayman Reef Resort, West
34 Bay Road, the residence of Olivia Shank and Matthew Reeves as trespassers with
35 intent to steal, and, at the same time, when entering, had with them an offensive
36 weapon namely a flick knife.

- 1 vi. At the door of the flat they knocked, [and] at this point Brandon Browning
2 took the knife out;
- 3 vii. A man opened the door and they both entered the flat;
- 4 viii. Once in the flat Brandon Browning said “cough up cough up.”;
- 5 ix. A man started coming down stairs and Brandon Browning dropped the
6 knife;
- 7 x. At this point the other male grabbed Brandon Browning;
- 8 xi. Jamie McLean tried to pull that male off of Brandon Browning;
- 9 xii. The man on the stairs shouted and Brandon and the male both let go of
10 each other;
- 11 xiii. Jamie McLean picked up the knife and they both ran away;
- 12 xiv. Brandon Browning did not have the knife on him for the purpose of
13 committing any offences, he had it with him for personal protection if he
14 was attacked.”



15 4. Culpability: Having been referred to the Cayman Sentencing Guidelines the Court
16 accepts, upon the facts, that this offence is of medium culpability involving the
17 production of a weapon to threaten the victims.

18 5. Harm: The Harm is Category 2 on the basis that the offence caused some
19 psychological harm to the victims.

1 6. Accordingly, the Court accepts the corresponding sentencing range as 2 to 6 years
2 imprisonment, with a starting point of 4 years' custody.

3 7. Upon the basis of this indication both Defendants pleaded guilty and the case was
4 adjourned to the 2nd February 2016 for submissions on sentencing by counsel for the
5 prosecution and the defence.

6 8. It is necessary to point out that an agreed document between the Crown and the
7 Defence was also submitted for the Goodyear Hearing, and it is as follows:

8 i. *The Cayman Islands Sentencing Guidelines, published October 2015 and effective*
9 *from the 4th November 2015, are applicable to both defendants in this case.*
10 *Specific guidelines have been published within that document for burglary in a*
11 *dwelling which can be found at page 38. Both parties agree that this offence would*
12 *fall into the medium level for culpability (identified on the guideline as "B") and*
13 *category 2 for harm resulting from there being some psychological harm to the*
14 *victims. This gives a starting point of four years' custody with a range of two to six*
15 *years.*

16 ii. *On page 44 of the Sentencing Guidelines general mitigating and aggravating*
17 *factors are identified. These are not exhaustive and it is accepted that the court*
18 *may find additional mitigating or aggravating factors which are unique to this*
19 *particular offence. Mitigating factors which have been identified by the parties*
20 *are:*

- 21 i. *The youth or age of the defendants;*
- 22 ii. *Show of remorse;*
- 23 iii. *The offence was not premeditated; and*
- 24 iv. *Brandon Browning is of good character.*

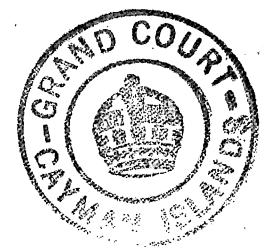
25 iii. *Personal mitigation will not be advanced at the Goodyear hearing but will be*
26 *reserved for the Sentencing Hearing if applicable. The aggravating factors*
27 *identified by the parties are:*

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1 13. An SIR was prepared for Jamie McLean also. Jamie McLean's parents never shared a
2 marital union and separated when he was very young. He was then adopted when only
3 a few months old. He does not have a close relationship with his biological parents but
4 it is fortunate to hear of a very close relationship with his adoptive mother. As stated
5 previously, Jamie McLean is a ganja user, and it is agreed that he was under the
6 influence of alcohol and ganja at the time the offence occurred. In addition, as with
7 Brandon Browning, Jamie Mclean is said to recognize the need to address his problem
8 with these substances as well.

9 14. Character references from Marquiss McLaughlin, Louis Sully and Mrs. Marge
10 Quinland have been provided. The Court's general impression is that Jamie McLean,
11 although a somewhat older than Brandon Browning, is relatively immature for his
12 particular age. Nonetheless, Ms. Quinland states that Jamie McLean "*is much more*
13 *capable of being a productive person than being a problem on society.*"



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1 *SUBMISSIONS OF COUNSEL*

2 15. The Court has considered a Sentencing Note provided by Crown counsel as well as
3 defence submissions – all of which have been very helpful.

4 *SENTENCING*

5 16. Having determined that the appropriate starting point is 4 years’ custody, the Court
6 must first consider aggravating factors. In this regard I accept the Crown’s submission
7 that the most relevant aggravating factor is that the Defendants were operating in a
8 group.

9 17. Defence counsel objected to the Crown’s further submission on prevalence as an
10 aggravating factor and the Court invited written submissions on the point. The defence
11 submitted the following points and presented authorities to support these submissions:

- 12 i. As the current Sentencing Guidelines became effective in November 2015,
13 prevalence of the offence would have been taken into account at the time of their
14 drafting.
- 15 ii. The Crown did not seek to suggest that burglary was more prevalent at the date of
16 sentence compared with the date of the introduction of the Guidelines in November
17 2015;
- 18 iii. The Crown has not provided supporting evidence that burglary was/is a prevalent
19 offence.

20 18. In response to the submissions from defence counsel, the Crown began its written
21 submissions by stating that the issue of prevalence “*is one which a Court is entitled to*
22 *take into account in any sentencing exercise.*” The Crown submitted further:



1 *“The first Sentencing Advisory Committee in this jurisdiction, which was*
2 *established in 1998 presented a report to Cabinet and its recommendations led to*
3 *the introduction of the Alternative Sentencing Law. Section 4 of that Law speaks of*
4 *the purpose of punishment and says: Section 4:*

5 *A court shall, in imposing a punishment under this Law, take into account*
6 *the following principles-*

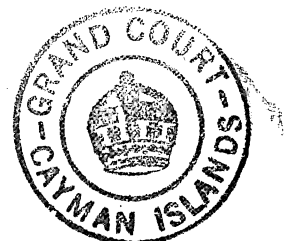
7 (i) *that a sentence should be increased or reduced to account*
8 *for any relevant aggravating or mitigating circumstances*
9 *relating to the offence of the convicted person, and,*
10 *without limiting the generality of the foregoing, the*
11 *following shall be considered to be aggravating*
12 *circumstances-*

13 (iii) *evidence that the offence committed is a prevalent*
14 *offence in society.”*

15 19. Despite these submissions from the Crown, the Crown held the following view:

16 *“However, the Crown has considered this matter in the round and do not believe*
17 *with all of the aggravating factors already outlined that this single factor would*
18 *impact any sentence which is likely to be passed by the Honourable Court. For*
19 *that reason, we will not seek to persuade the Court any further that it is imperative*
20 *that this factor be taken into account.”*

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22 20. Therefore, the fact that the Defendants were operating in a group is the single
23 aggravating factor which I will take into account – increasing the level of sentencing
24 by an additional 6 months up to 4 years and 6 months’ imprisonment.



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21. I now turn to mitigating factors. Brandon Browning is extremely young and the age of the offender is of relevance in this regard. Brandon Browning is also, as the Crown has indicated, of previous good character. I also accept that he is contrite and, therefore, in Mr. Browning's case, the sentence aggregation is reduced by 1 year and 6 months to 3 years' imprisonment.

22. In the case of Jamie McLean the Court takes into account the personal factors relating to his background as alluded to above, and the fact that the offence itself was out of character, despite his having some criminal antecedent history. I also accept that he is contrite. In the circumstances of Mr. McLean's case the sentence aggregation is also reduced by 1 year and 6 months to 3 years' imprisonment.

23. Finally, in light of the fact that both Defendants have pleaded guilty at the first reasonable opportunity, the Court further reduces the sentences of each Defendant with the full discount for a guilty plea, that is, 33 1/3%.

24. Therefore Defendant Brandon Browning's sentence is reduced to 2 years' imprisonment and Defendant Jamie McLean's sentence is reduced to 2 years' imprisonment – with time spent in custody to be deducted from the terms of imprisonment herein imposed.

25. This offence was extremely serious and this is confirmed by the Victim Impact Report which the Court has considered in the context of the issues relating to Harm and Culpability.



1 26. At the same time, both these young men show some promise, in that, if they can deal
2 with the problems of their alcohol and ganja use, they may yet lead productive lives.
3 For this reason, these respective sentences are no longer than are necessary in the
4 public interest in all the circumstances of this case.

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6 **Dated this the 21st March 2016**

Robin McMillan

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**Mr. Justice Robin McMillan
Judge of the Grand Court**

