

4-Dec-2009  
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IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CRIMINAL SIDE  
HOLDEN AT GEORGE TOWN

Indictment No: 37/08

REGINA

V.

TYRONE ROSWELL EBANKS

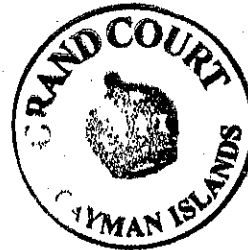
Appearances:

Candia James for the Crown

John Furniss for the Defendant

Before: Hon. Justice Quin

Heard: 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> of November 2009



SENTENCE RULING

1. The Defendant, Tyrone Roswell Ebanks, ("the Defendant") was convicted on the 18<sup>th</sup> of November 2009 of attempted robbery, contrary to Section 242 of the Penal Code after a three-day trial in the Grand Court.
  
2. The particulars of the offence were that the Defendant, on the 19<sup>th</sup> day of April 2008, on West Bay Road, Grand Cayman, attempted to steal a handbag from Agata Kalicki, the Complainant, and used force in order to do so.

3. The facts of the case are that early on the morning of Saturday the 19<sup>th</sup> of April 2008 the Complainant was walking home alone on the pavement from West Bay into George Town. At the exit of the Caribbean Club complex the Defendant, who was slightly hidden in the bushes, called out to the Complainant who, not unnaturally, ignored him. The Defendant proceeded to follow the Complainant, and then, some 30 or 40 yards later, accosted the Complainant at the entrance to the Caribbean Club. The Defendant demanded to know from the Complainant why she ignored him and the Complainant tried, on a couple of occasions, to placate the Defendant. Without any provocation whatsoever the Defendant punched the Complainant on her nose and on her head and attempted to rob the Complainant of her handbag. One of these punches broke the Complainant's nose. The Complainant tried to protect herself and then screamed for help. Fortunately, an alert security guard from the Caribbean Club rushed to the Complainant's aid. This caused the Defendant to fail in his attempt to rob the Defendant and flee the scene. The police were called and the Defendant was found with bleeding from her nose and bruising around her eyes and nose, and was taken to George Town Hospital for treatment.
4. After receiving treatment from George Town Hospital the Complainant went to George Town police station with the police to make a statement. At the police station she had an accidental encounter with the Defendant and she unhesitatingly identified him as the man who had attempted to rob her, a couple of hours earlier.
5. The Defendant's counsel, Mr. Furniss, made a number of submissions on behalf of his client. First, he submitted that Defendant should not lose all credit for challenging the Complainant's identification evidence, which was obtained during the accidental encounter with the Defendant at George Town Police Station.

6. Mr Furniss points out that the normal identification parade was not held, and asked the Court not to deny the Defendant all credit for making that submission.
  
7. It is this Court's view that the identity of the Defendant, in relation to Count 1 on the Indictment, for which the Defendant has been found guilty, has been clearly established during the course of the trial. The Court found the Complainant's identification of the Defendant to be accurate and reliable. Accordingly, the relevance of the fact that there was no normal identification parade for this defendant, whilst regrettable, stands for credit only in so far as an identification parade should, if possible, be afforded to all defendants in such circumstances. In this case, events happened too quickly to allow for the normal ID parade procedure to be carried out.
  
8. In addition Mr Furniss maintains that although self-induced intoxication is not a defence, it is clear that the Defendant is both a cocaine addict and an alcoholic. Indeed, defence counsel points out that when the Defendant was apprehended outside Ritz Carlton he was in a physical mess and mental mess – both of which were attested to by Officer Andrew Grevitt. The Court accepts that the Defendant has some serious drug addiction problems and is in need of appropriate treatment.
  
9. In addition, Mr Furniss argues that this was not a planned robbery. Mr Furniss submits that the Defendant had been drinking heavily and taking drugs, and had, shortly before the attack, come out of Peppers Night Club when the Complainant, a young lady, had the misfortune of walking past the Defendant. The Defendant spoke to the Complainant from a dark spot along the road, and, as I said earlier, she, not unnaturally, ignored him. The Defendant then attempted to rob the Complainant of her handbag and punched her on the head and on the nose.

10. Defence counsel maintains that it was an unplanned, spontaneous attack.
11. Furthermore, defence counsel submits that there was no weapon involved. Additionally, the attack was not of a sustained nature.
12. The Defendant relies on the *Attorney General's Reference, Number 22 of 2008 (Jordan Wilson)* 2009 1 Cr. App. R. (S) 54 and a decision of the Court of Appeal in the United Kingdom. The Court of Appeal referred to the Sentencing Guidelines Council's recommendations and considered in that case that the right sentence following a plea of guilty would have been three year's detention. The Sentencing Guidelines Council's guidelines for robbery indicated that the appropriate starting point for sentences for adult offenders was four years detention, with a range of 2 to 7 years.
13. Crown counsel in reply points out that the maximum for this offence is life imprisonment. Furthermore, Crown counsel describes the Defendant's previous conviction record as being one of a repeat offender – although, for offences other than the one for which he has been convicted. Crown counsel also points out that there are aggravating features. The Complainant is a vulnerable victim, being a young lady alone, late at night. The Crown Counsel also points out the fact that the Complainant suffered a broken nose, as well as being punched repeatedly in the face and head. This has resulted in the Complainant suffering considerable trauma, which continues today.
14. The Complainant is to be commended for her courage and for the manner in which she gave her evidence to the police and to this Court. It is clear that the Complainant suffered a serious assault as the Defendant attempted to rob her of her handbag. As a

result of this attempted robbery the Complainant is naturally scared to go out at night and never goes out alone.

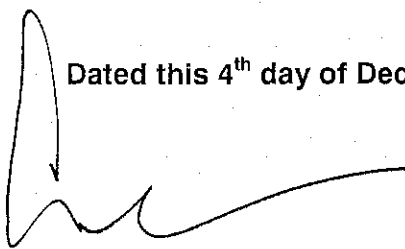
15. This was a wholly unnecessary and unprovoked attack on a defenceless young woman who was going home along the West Bay Road.

16. I accept that the Defendant did not necessarily plan this attack, nor did he use a weapon. However, this Court must take into account that the Complainant, not only experienced severe pain and suffering, but the degree of fear inflicted by the Defendant on the Complainant at that time of night must have been extreme.

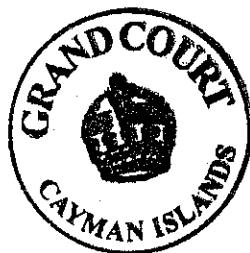
17. This Court must impose a sentence commensurate with the seriousness of this offence. This sentence must contain a severe deterrent element so that people will understand that offences of this nature will not be tolerated, and, further, a significant period of imprisonment will inevitably be imposed.

18. Accordingly, in all the circumstances I impose a sentence of four years imprisonment.

Dated this 4<sup>th</sup> day of December 2009



**Quin J**  
**Judge of the Grand Court**



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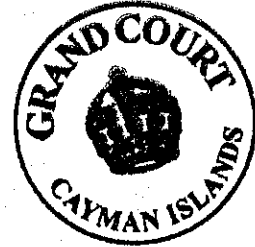
IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CRIMINAL SIDE  
HOLDEN AT GEORGE TOWN

Indictment No: 27/09

REGINA

V.

RANDY MARTIN



Appearances:

Defence/Applicants: David Evans Q.C. and Adam King of Samson and McGrath

Crown/Respondent: Cheryl Richards Q.C., Solicitor General, and Kirsty Gunn  
Crown Counsel

Before: Hon. Justice Quin

Heard: 25<sup>th</sup> November to 9<sup>th</sup> December 2009

**RULING**

**DEFENCE'S SUBMISSION TO ADDUCE ADDITIONAL EVIDENCE**

1. Leading counsel for the Defendant has applied for leave to elicit three separate pieces of evidence which he entitles as the Lance Myles evidence.
2. Broadly there are three separate portions of evidence.
3. The first portion of evidence is:
  - i. The voice message from Lance Myles, which was purportedly left on the telephone of the deceased - #3399 - at 13:10 on the 1<sup>st</sup> of March 2009, from the phone purportedly belonging to Lance Myles.

- ii. The voice message from Lee Anne Lemay Ebanks, left on the telephone of the deceased - #3399 - at 9:19 on the 10<sup>th</sup> of March from the phone purportedly belonging to Lee Anne Lemay Ebanks.

These two voice messages contained threats of violence against the deceased, and, on one view, the second message could be interpreted as a threat to the life of the deceased.

4. The second portion of evidence, as described by the Defence, includes:
  - i. The statement of Lance Myles dated the 25<sup>th</sup> of March 2009
  - ii. The statement of Lee Anne Lemay Ebanks, dated the 8<sup>th</sup> of April 2009.
  
5. The third portion of evidence is the schedule of telephone evidence produced by the Defence. The Defence says that the telephone evidence calls into question the truthfulness of the statements of Lance Myles and Lee Anne Lemay Ebanks, and, in particular, the whereabouts of Lance Myles on the morning of the 11<sup>th</sup> of March 2009.
  
6. Defence says that this evidence is both relevant and probative. The Defence says that the phone records produce a more accurate picture of what happened, and in particular in relation to the communications between:
  - a. the deceased and Lance Myles;
  - b. the deceased and the Defendant Randy Martin; and
  - c. Lance Myles and the Defendant Randy Martin.

7. Furthermore, on the phone evidence, it could possibly be interpreted that Lance Myles was not where he told the police he was in his statement, but, in fact, he was somewhere else.
8. Furthermore, the Defence submits that the lack of activity on Lance Myles' phone between the hours of 10:39 and 12:50 on the 11<sup>th</sup> of March 2009, would suggest that there is an inference that there was a clear opportunity for Lance Myles to be with the deceased during that time.
9. In summary, the Defence submits that the Defendant is not guilty. The Defence further submits that there is a person who threatened the deceased, and whose girlfriend also threatened the deceased. This person, according to the Defence, gives the police a false alibi. Additionally, during the time that the Defence says he told the police he was in West Bay, on the phone records of his telephone, there was no activity, and, according to the Defence, this was a period of time when there is evidence that the deceased was killed.
10. The Defence submits that the evidence is highly relevant and probative, and therefore distinguishable from the facts of the case of **R v. Roberts** (1985) 80 Cr. App. R. 89, which the Crown relies upon.
11. Furthermore the Defence submits that the Defendant is not guilty and the Defence wishes to adduce this evidence, which the Defence says shows that a third party may have committed the crime for which the Defendant is charged.

12. The Defence also submits that this position is supported by the notes of Officer Burton, which suggest that Lance Myles may have committed a crime, which was witnessed by the deceased, and therefore, he Lance Myles would wish to kill the deceased, Sabrina Schirn, so that she would no longer be a danger to him as a witness to the crime.
13. Furthermore, the Defence relies on the evidence of the brother of the deceased, Kevin Jennings.
14. His evidence is that he went to check with the boyfriends of the deceased to see if they knew anything of her whereabouts. Mr. Jennings' evidence is that when he asked Lance Myles about the deceased, Lance Myles began to stammer. According to Mr. Jennings, Lance Myles said he had not seen the deceased in weeks. Lance Myles said he had not threatened the deceased and he had not been near the deceased's workplace. According to Mr Jennings, the more Lance Myles went on, the stammering became worse.

#### **Crown's position**

15. The statements of Lance Myles and Lee Anne Lemay Ebanks were served as unused material on the Defence.
16. The statements of Kevin Jennings and the notes of Detective Sgt Burton relating to Lance Myles, were also served on the Defence.
17. The phone records from which the Defence prepared their schedule were served on the Defence.

18. Although, of necessity, the Crown was unable to serve some of this material, i.e., the phone records, on the Defence until recently, no complaint was made against the Crown.
19. This Court finds that the Crown had made every effort to discharge their duty to provide the Defence with any material which might strengthen the case for the Defence, or, indeed, undermine the Crown's case.
20. The Crown submits that whilst there is no difficulty with the telephone records, the Crown submits that, given the purpose for which the Defence seeks to have the records produced, the records are inadmissible.
21. The Crown submits that the statements of Lance Myles and Lee Anne Lemay Ebanks are inadmissible, not only by the reason that they are hearsay and do not fall within any of the exceptions of the hearsay rule, but also, the statements are inadmissible by reason that they are irrelevant to these proceedings.
22. The Crown further submits that any possible inference that Lance Myles had a motive and, an opportunity, to commit the murder, cannot be the yardstick by which the relevance of the statements is determined.
23. The Crown submits that the evidence of the inconsistencies and alibi evidence of Lance Myles and Lee Anne Lemay Ebanks do not go to the issue in this case, and that this evidence is not relevant to the question of whether or not the Defendant committed this murder.

24. The Crown relies on the case of ***R v. John Marcus Roberts*** 1985 80 Cr. App. R. 89, ***R v. Blastland*** (1985) 81 Cr. App. R. 266, and, ***Subramaniam v. Public Prosecutor*** [1956] 1 W.L.R. 965.
25. The Crown submits that the evidence which the Defence would like to be admitted, does not fall within any of the exceptions contained in ***R v. Blastland***, nor do they fall within any of the accepted categories set out in ***Subramaniam v. Public Prosecutor***.
26. Furthermore, the Crown submits that the Defence is seeking to get this evidence in, in order to invite speculation, and the evidence is therefore inadmissible for that purpose.
27. The Crown accepts that the evidence of the telephone records could only be relevant after evidence is led from Lance Myles and Lee Anne Lemay Ebanks, including any explanation for their inconsistencies.
28. The presence of another does not mean the absence of the Defendant and cannot remove the Defendant from the scene.
29. Thirdly the Crown submits that the communications between Lance Myles and Randy Martin are unsurprising, as they are uncle and nephew, and there could be, quite probably, an innocent explanation for the communication.
30. The Crown contends that It is not a question of: If Randy Martin did not kill her, who did kill her. The question, only, is whether, on the evidence adduced, a jury, or the Tribunal of Fact, has to decide whether this Defendant, Randy Martin, committed the offence of murder.

## Conclusion

31. There is an overriding duty on the judge with a jury, or, in the case of a judge alone, to ensure that the Defendant has a fair trial. I have reviewed the submissions of both counsel.
32. The evidence of the phone record of conversations between the deceased and the Defendant, the deceased and Lance Myles, and the Defendant and Lance Myles, are admissible.
33. The evidence from Mr Jennings, which had been heard by this Court, is that when Lance Myles was asked about Sabrina Schirn, he started to stammer and behave strangely. There is the evidence in the unused material of Detective Sgt Burton's notes, which suggest that Lance Myles wanted to kill the deceased to stop her implicating him in relation to another crime.
34. Lance Myles tells the police he is with Lee Anne Lemay Ebanks in West Bay on the morning of the 11<sup>th</sup> of March 2009, and there are phone records which could, and do, on the face of them, contradict this story.
35. There is evidence before the Court that Lance Myles threatened the deceased, and further, that Lance Myles' girlfriend threatened the deceased.
36. And then, there is the evidence of no activity on Lance Myles' phone at the time when the murder could have been committed.

37. The Defence says that the Defendant did not commit the murder, and that another person did it. The Defence's suggestion is that Lance Myles is suspect, and, therefore, the evidence against Lance Myles should be heard by the Tribunal of fact.
38. In light of the overriding principle that the Defendant is entitled to a fair trial I am decided to admit this material.
39. There are three ways in which the evidence can be adduced. First, the Crown can call Lance Myles and Lee Anne Lemay Ebanks. However, I am minded of the fact that their statements did not form part of the case at the committal stage, nor were their names on the back of the Indictment.
40. A second way would be that, as the statements had served as unused material by the Defence, it would be open for the Defence to interview both Lance Myles and Lee Anne Lemay Ebanks and to call them. But, as leading counsel for the Defence has indicated, he does not want to be constrained by being forced to cross examine his own witness.
41. This leaves a third option, and one to be used very sparingly: that is, for the judge to call the witnesses. Of course, it is for the judge in this case to also decide what weight is to be attached to their evidence.
42. Certain authorities would suggest that the judge has the power to order the Prosecution to call a witness. This I find to be a very undesirable practice.
43. The Solicitor General has called all the witnesses on the back of the Indictment or the witnesses who were used for the purposes of committal proceedings.

44. I find the distinction between ordering the Crown to call a witness, and inviting the Crown to call a witness, to be extremely thin. I don't believe the Court should interfere with the Crown's discretion to call or tender the witnesses. The Court should be very slow to interfere with how the Crown presents its case.

45. As matters stand in these proceedings, the Solicitor General has discharged her obligation properly and fairly.

46. I come now to the case of *R v. Brown & Brown* (1997) 1 Cr. App. R. and the judgment of Lord Justice Schiemann where he states:

"The Law does not insist that the prosecution are obliged to call a witness for no purpose other than to assist the defence in its endeavours to destroy the Crown's own case. Such a course would only serve to confuse a jury."

However, in a judge alone case, I think that any such confusion is largely eradicated.

47. So in the interest of justice, so as to promote and ensure that the Defendant has a fair trial, I will accede to the Defence's application to allow the telephone evidence in, and call Lance Myles and Lee Anne Lemay Ebanks. This will allow the Defence to adduce the evidence they seek and present their client's case.

48. I would propose to call these witnesses after the Solicitor General has called all the witnesses she intends to call, unless she would prefer them to be called at a different time.

Dated this 10<sup>th</sup> day of December 2009

  
Quin J  
Judge of the Grand Court

