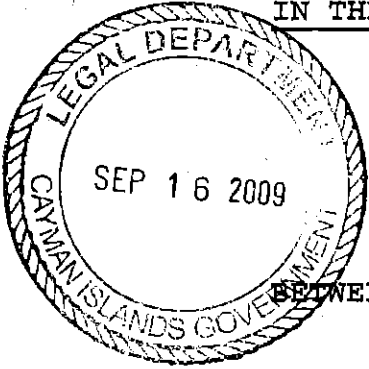


L503

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS



APPEAL NO. 7 OF 2009
SCA NO. 32/08
C#02163/08

**CAYMAN ISLANDS
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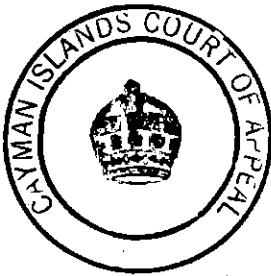
27/8/09

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

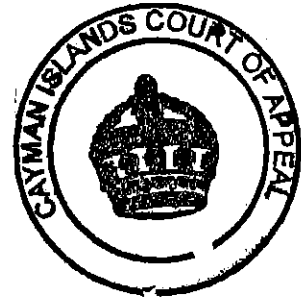
and



LUIS DUQUESNE-EDEN

Respondent

**BEFORE: THE RT. HON. SIR JOHN CHADWICK P.
THE HON. MR. JUSTICE MOTTLEY J.A.
THE HON. MR. JUSTICE VOS J.A.**



Reasons for Judgment delivered orally on 27 August, 2009.

APPEARANCES:

Ms. N. Moore
Mr. A. King

For the Appellant
For the Respondent

1 Thursday, August 27, 2009

2

3 CHADWICK, President: I've asked Vos, J.A.
4 to give the judgment of the Court in this
5 matter. It is a judgment in which we are all
6 agreed.

7

8 REASONS FOR JUDGMENT

9

10 VOS, J.A.

11 Introduction

12 Luis Manuel Duquesne-Eden (whom I shall
13 call "Duquesne") was a friend of Mr. Jermaine
14 Jackson. On the 18th of February, 2008,
15 Duquesne telephoned his ex-girlfriend,
16 Ms. Martha Quintero, on several occasions but
17 she refused to speak to him. In addition, he
18 called Mr. Jackson and he had been told by
19 Mr. Jackson that Ms. Quintero was not with him
20 at his house. Duquesne suspected that this was
21 a lie and that Ms. Quintero was with
22 Mr. Jackson.

23 As a result, he armed himself with a
24 baseball bat and went to Mr. Jackson's house in
25 what is described by the Crown as a 'jealous

1 rage', suspecting that his ex-girlfriend was
2 romantically linked with Mr. Jackson and that
3 Mr. Jackson had lied to him about their
4 relationship and her whereabouts.

5 Duquesne broke the glass in the rear door
6 to Mr. Jackson's house with his baseball bat
7 and entered the house flailing the bat around.
8 Mr. Jackson came down a corridor into the room
9 which Duquesne had entered, and Duquesne then
10 brought the baseball bat down towards
11 Mr. Jackson's head. Mr. Jackson put up his
12 hand to deflect the blow and was struck on the
13 arm, causing a displaced fracture, requiring
14 surgery and fixing with metal plates and screws
15 and physiotherapy for nearly a year.

16 Duquesne then went to the bedroom of
17 Mr. Jackson's house looking for Ms. Quintero
18 and broke down the door of the cupboard in
19 which she was hiding and smashed Mr. Jackson's
20 computer and hi-fi equipment with his baseball
21 bat. At that point, Mr. Jackson managed to
22 disarm Mr. Duquesne, but Duquesne picked up a
23 knife and started wielding that. Mr. Jackson
24 again managed to disarm him but was caused a
25 cut to the hand in the course of so doing.

1 Duquesne was charged with the following
2 three offences: (i) aggravated burglary; (ii)
3 causing grievous bodily harm with intent; and
4 (iii) damage to property.

5 Duquesne pleaded guilty to the third
6 charge but not guilty to the first two charges.
7 He was duly convicted after a trial before
8 Madam Justice Mangatal, lasting between the 4th
9 and the 10th of February, 2009, of both
10 aggravated burglary and of the lesser offence
11 of inflicting grievous bodily harm.

12 The social inquiry report dated the 17th
13 March, 2009, which was produced before Duquesne
14 was sentenced provided the following
15 information:

16 I) Duquesne was born on the 14th of
17 September, 1982, so that he was then 26 years
18 old;

19 Ii) Duquesne was single with one child
20 whose custody he shared;

21 Iii) Duquesne owned a property in Cayman
22 but lived with his caring parents, Mrs. Dora
23 Eden and Mr. Roberto Duquesne;

24 Iv) Duquesne had achieved well in
25 tertiary education in the Cayman Islands and

1 had been employed as a licensed electrician by
2 Corporate Electrical since February 2002;

3 V) Duquesne reported no mental or
4 physical health problems and no history of
5 substance misuse;

6 Vi) Duquesne had no previous convictions
7 and these offences constituted his first
8 involvement with the criminal justice system;

9 Vii) Duquesne continued to deny the
10 offences of which he had been convicted and
11 claimed that on entering Mr. Jackson's house he
12 tried to talk to him but was attacked by
13 Mr. Jackson with a knife which led him to
14 retaliate with the baseball bat, an account
15 which the jury seems to have rejected.

16 Duquesne did not appear to show remorse
17 but was willing to accept the penalty imposed
18 by the Court.

19 In his plea in mitigation, Mr. Edward
20 Renvoize, who then appeared for Mr. Duquesne,
21 submitted that: "It would be disingenuous of
22 me to suggest for one moment that this offence
23 does not cross the custody threshold. It is,
24 of course, an extremely serious offence and one
25 which must attract a custodial sentence." And

1 he sought a suspended sentence and community
2 service on the basis that such sentences "must
3 be deemed exceptional leniency".

4 Madam Justice Mangatal acceded to Mr.
5 Renvoize's submissions saying expressly that:
6 "When I look at everything, it seems to me that
7 the Court should take your case as one to
8 exercise great leniency. It does appear that
9 it was an aberration."

10 On the 20th of March, 2009, Madam Justice
11 Mangatal sentenced Duquesne as follows:

12 I) for aggravated burglary two years
13 imprisonment suspended for two years;

14 Ii) for inflicting grievous bodily harm a
15 three-year probation order with conditions
16 involving living at home with his parents and
17 completing an anger management course and
18 performing 240 hours community service within
19 one year;

20 Iii) for damage to property a probation
21 order to run concurrently and compensation of
22 \$1,201 to be paid to Mr. Jackson.

23

24 The Appeal

25 Against that background, this is the

1 Crown's appeal against the sentences imposed by
2 Madam Justice Mangatal on the grounds that they
3 were unduly lenient in all the circumstances
4 under s. 30(1)(a) of the Court of Appeal Law
5 (2006 Revision). Ms. Nicola Moore, who
6 appeared for the Crown, has submitted that
7 anything but an immediate custodial sentence
8 would be unduly lenient and that although there
9 are no specific guidelines or tariffs in the
10 Cayman Islands for sentences of either
11 aggravated burglary or inflicting grievous
12 bodily harm, the English and local cases show
13 that anything but an immediate custodial
14 sentence for these offences would be
15 inappropriate.

16
17 Submissions on Behalf of Duquesne
18 Mr. King has argued on Mr. Duquesne's
19 behalf, in addition to the matters mentioned
20 above and recorded in the social inquiry
21 report, that a custodial sentence would have a
22 devastating effect on his child and on his
23 career. He has placed before us two documents
24 upon which the Court places some weight.
25 First, a letter from Corporate Electric Limited

1 dated the 28th of January, 2008, which we are
2 informed was placed before the trial judge,
3 giving what I think would be appropriately
4 described as a glowing report on his employment
5 history. Secondly, Mr. King has placed before
6 us a recent letter from Ms. Quintero asking the
7 Court to exercise leniency on Duquesne and
8 saying that she has forgiven herself and
9 forgiven him for what he did, and giving a
10 clear account of his support, both financial
11 and emotional, for their child.

12 Mr. King has sought to distinguish the
13 cases relied upon by the Crown and he has, as I
14 say, supported the arguments advanced in the
15 social inquiry report.

16
17 Discussion

18 It is undoubted that the offence of
19 aggravated burglary is a very serious offence.
20 There can be no justification for such an
21 offence which involved in this case
22 premeditatedly breaking into Mr. Jackson's
23 house with the intention of committing grievous
24 bodily harm. We might interpose that it is
25 anomalous that the jury reduced count 2 from

1 causing grievous bodily harm with intent to
2 causing grievous bodily harm when they had
3 found Duquesne guilty of aggravated burglary.
4 It is possible to justify this anomaly,
5 although it is not easy to do so. But this
6 anomaly does not seem to us to affect the fact
7 that Duquesne ought to receive the proper
8 sentence for the offences for which he has been
9 convicted.

10 The question for this Court is whether the
11 sentences passed by Madam Justice Mangatal were
12 in the result unduly lenient bearing in mind
13 the considerable mitigation available to
14 Duquesne, much of which we have set out above.

15 The cases which have been cited to us make
16 clear that an offence of aggravated burglary of
17 the kind with which we are concerned would
18 almost inevitably attract a custodial sentence.

19 In the AG's Reference No. 1 of 1995 David
20 James Henry, [1996] 1 Cr App R(S) 11, a
21 sentence of 15 months for burglary with intent
22 to inflict grievous bodily harm was increased
23 to five years. Lord Taylor, CJ said:

24 "We wish to stress that anyone
25 who breaks into somebody else's

1 home in the middle of the night
2 with the intention of inflicting
3 grievous bodily harm
4 particularly if he takes others
5 with him and has weapons, can
6 expect to receive a substantial
7 sentence. An offence of that
8 kind is outrageous."

9 In the AG's Reference No 47 of 1997
10 Kenneth Anthony Oldsworth [1998] 2 Cr App R(S)
11 68, a sentence of nine months for burglary with
12 intent to inflict grievous bodily harm was
13 increased to two and a half years after a plea
14 of not guilty taking double jeopardy into
15 account. The offender forced his way into the
16 home of his ex-girlfriend in the early hours of
17 the morning, armed with a baseball bat, wrongly
18 believing that she had stolen his current
19 girlfriend's handbag. He headbutted and beat
20 her around the face and stole some of her
21 possessions, terrifying her in the process for
22 a period of some 45 minutes. Rose L.J. said
23 that an offence of this kind even if committed
24 by a man of good character would inevitably
25 following a trial attract a sentence measurable

1 in years rather than months. A concurrent
2 sentence of one year was imposed for assault
3 occasioning actual bodily harm.

4 In the Cayman case of Andy James Myles
5 reported only in the Cayman Compass for the
6 17th of September, 2006, the defendant was
7 given five years for two aggravated burglaries
8 after pleading not guilty, with no previous
9 offences except those involving ganja. Both
10 cases involved breaking in with weapons - a
11 knife and machete respectively - in the first
12 case injuring the lady householder's face with
13 the knife.

14 In the light of these cases, which are the
15 ones cited to us which we consider most
16 relevant, and giving full weight to the
17 mitigation urged upon Madam Justice Mangatal
18 and upon us, we have formed the clear view that
19 the sentences passed on Duquesne were unduly
20 lenient.

21
22 The Appropriate Sentence

23 We have therefore to consider, first, what
24 the appropriate sentence would have been to
25 impose at the trial and, second, what the

1 appropriate sentence is to impose now. We have
2 in mind the power of the Court under s.30
3 (1)(d) of the Court of Appeal Law (2006
4 Revision). That section provides as follows:

5 (1) If it appears to the Attorney General

6 -

7 (a) that the sentencing of a person in a
8 proceedings in Grand Court has been unduly
9 lenient or is wrong in law; and

10 (b) the case is a case in which sentence
11 is passed on a person for an offence triable on
12 indictment, he may, with with leave of the
13 Court, refer the case to it to review the
14 sentencing of that person; and on such
15 reference the Court may -

16 (c) quash any sentence passed on the
17 person in the proceedings; and

18 (d) in place of it pass such sentence as
19 they think appropriate for the case and that
20 the Court below had power to pass when dealing
21 with the accused.

22 The aggravating factors here were the
23 premeditated nature of the attack; the fact
24 that Dusquene went to Mr. Jackson's home with a
25 weapon; the serious injuries caused to

1 Mr. Jackson; and the potentially very serious
2 injuries that would have resulted had he hit
3 Mr. Jackson's head to which the bat was
4 apparently directed.

5 The mitigating factors are those we have
6 set out above from the social inquiry report
7 including, in particular, Mr. Duquesne's good
8 character; the emotional upset which seems to
9 have led to his misconduct, including the fact
10 that Mr. Jackson admitted that he had lied to
11 the defendant about the whereabouts of
12 Ms. Quintero; his good employment record; his
13 supportive family; and the support both
14 emotional and financial which he offers to his
15 child.

16 Giving, as we have said, full weight to
17 these mitigating factors, we take the view that
18 the appropriate sentences to be passed at trial
19 would have been: (i) three years' imprisonment
20 on count 1; (ii) twelve months' imprisonment on
21 count 2 to run concurrently to count 1; (iii)
22 six months' imprisonment on count 3 to run
23 concurrently to both counts 1 and 2.

24

25

1 Double Jeopardy and the Appropriate
2 Sentence Now

3 It is axiomatic that we should consider at
4 this stage whether Duquesne's sentence should
5 nonetheless be reduced because he would have
6 been subjected to some unwarranted additional
7 anxiety as a result of having been given a very
8 lenient sentence in March of this year before
9 being now sent to prison. We have in mind
10 paragraphs 57 to 61 of the judgment of a
11 five-member English Court of Appeal in the AG's
12 Reference Nos 14 and 15 of 2006 Tania French
13 and Alan Robert Webster [2007] 1 Cr App R(S)
14 40, indicating that where anxiety has been
15 created by this kind of situation, a discount
16 of between 12 and 30 per cent in the ultimate
17 sentence is appropriate.

18 In addition, we need to bear in mind and
19 take account of the fact that Duquesne has
20 already completed his 240 hours community
21 service order. He has also completed his anger
22 management course; we are told that that was
23 finally undertaken last Tuesday, the 25th of
24 August, 2009.

25 In addition, we have to consider the

1 position as it is now, some five months after
2 the sentencing by Madam Justice Mangatal took
3 place. We take particular note of the fact
4 that Duquesne has made, as it seems to us,
5 appropriate efforts to rebuild his life
6 following the sentence which was imposed on
7 him. We take the view that the Court should
8 have specific regard to the fact that he has
9 done precisely as the Court asked him to do.
10 He has performed his community service order in
11 what can only be regarded as an extremely short
12 period of time, and he has undertaken the
13 course and complied, as far as we are aware,
14 with his probation conditions. We would not
15 want to put Duquesne in the position of being
16 punished for doing what the Court told him to
17 do.

18 We also take the view that the appropriate
19 sentence to impose now should also recognise
20 that he has already substantially served the
21 sentences for both counts 2 and 3 that were
22 imposed upon him at the trial. It would
23 therefore, in our judgment, be unjust to make
24 him now serve the term of one year imprisonment
25 and the term of six months' imprisonment that

1 we take the view should have been imposed upon
2 him five months ago.

3 That leaves the term of three years which
4 ought to have been imposed upon him for the
5 offence of aggravated burglary. If we deduct
6 from that the one year which, effectively, he
7 has already served by complying with the
8 (non-custodial) sentences that were in fact
9 passed for counts 2 and 3, it would leave him
10 with two years left to serve.

11 In our judgment, the factors that we have
12 referred to that have occurred since he was
13 actually sentenced and the double jeopardy in
14 which he has been placed leave us exceptionally
15 to consider that the remaining two years of the
16 three-year sentence for aggravated burglary
17 should be, in this most exceptional case,
18 suspended. We take the view that s.30(1)(d) of
19 the Court of Appeal Law (2006 Revision) set out
20 above provides power for this Court to pass
21 such sentence as we think appropriate for the
22 case, taking into account the matters we have
23 mentioned.

24

25

1 Conclusion

2 For the reasons that we have set out
3 above, the Crown's appeal will be allowed, and
4 we will re-impose the following sentences:

5
6 (i) For aggravated burglary, two years'
7 imprisonment suspended for two years from 20th
8 March, 2009;

9 (ii) For inflicting grievous bodily harm,
10 a three-year probation order with conditions
11 involving living at home with his parents and
12 completing an anger management course and
13 performing 240 hours community service within
14 one year;

15 (iii) For damage of property, a probation
16 order to run concurrently and compensation of
17 \$1,201 payable to Mr. Jackson.

18 We should make clear that though we are,
19 in the result, re-imposing the sentences
20 ordered by the judge, Duquesne is not expected
21 either to pay the compensation again, to
22 perform the community service again, or to
23 complete another anger management course. He
24 will, however, have to serve the remainder of
25 the three-year probation order subject to the

1 conditions imposed by the trial judge.

2 CHADWICK, President: The appeal is
3 allowed. We quash the sentence imposed under
4 the power conferred by s. 30(1)(c) of the Court
5 of Appeal Law. In place of that sentence, we
6 pass the sentences indicated in the judgment
7 just delivered, those being the sentences which
8 pursuant to paragraph (d) of that subsection,
9 we think appropriate for this case in the
10 circumstances as they now are. We impose a
11 sentence on count 1 of two years, suspended for
12 two years from the 20th of March, 2009; on
13 count 2, a probation order for three years from
14 the 20th of March, 2009, with the conditions as
15 to residence and the completion of the anger
16 management course which are in the original
17 order, and a community sentence of 240 years,
18 but we record (i) that the community service
19 order has been performed, and no further
20 community service is required under the
21 sentence we now pass, and (ii) that we are told
22 that the anger management programme has been
23 completed and therefore need not be undertaken
24 again; and on count 3, a probation order in the
25 same terms, with the compensation order in the

1 sum of \$1,201, but we record that we are told
2 that that sum has been paid and need not be
3 paid again.

4 Mr. Duquesne, you should stand up. You
5 will, I hope, have understood what we have
6 said. But I can tell you that you have been
7 fortunate in this case. If the appropriate
8 sentence had been passed at the time when you
9 were sentenced in March 2009, you would have
10 gone to prison for a period of three years.

11 This was a serious offence. It is simply
12 not acceptable to break into a dwelling house
13 by smashing the door, armed with a baseball
14 bat; notwithstanding that, as you say, you were
15 motivated by jealousy. It was very fortunate
16 that the injuries to Mr. Jackson - which were
17 in themselves serious enough - were not much
18 more serious, causing permanent damage and
19 disability and even perhaps threatening his
20 life.

21 But you have responded to the confidence
22 which the judge placed in you in March 2009,
23 and you will have the benefit of that positive
24 response.

25 So you will not go to prison if you

1 continue to behave yourself. The sentence of
2 imprisonment which we have passed will remain
3 suspended for two years from March 2009. If,
4 during that period, you are convicted of
5 another offence, you can expect that that
6 sentence will be activated so that you will
7 serve it in prison together with any further
8 sentence that might be passed on you.

9 I hope you understand that; and that you
10 will now be able to get on with your life. The
11 testimonials that we have seen provide grounds
12 for confidence that you have the prospect of a
13 bright future. You should seize that prospect.

14 You may stand down.

15
16
17 COURT REPORTER'S CERTIFICATE

18
19 Certified correct to the best of my skill and ability, dated
20 the 4th day of September 2009.

21
22
23 

24 Kerri Francella

25

