

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

3
4 **INDICTMENT NO: 0087/2011-B**

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6
7 **THE QUEEN**

8
9 **V**

10
11 **JEFFREY ALEXANDER BARNES**

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14 **Appearances:**

**Mme DPP, Cheryl Richards, Q.C., and
Crown counsel Jenesha Bhoorasingh-
Simpson for the Crown**

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18 **Mr. John Furniss for the Defendant**

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20 **Before:**

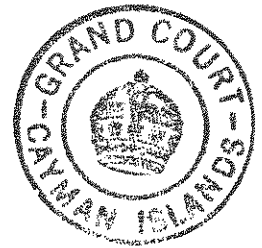
The Hon. Mr. Justice Charles Quin

21 **Trial:**

25th March to the 8th April 2013

22 **Submissions heard:**

5th September 2013



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24 **SENTENCE RULING**
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- 26 1. On the 8th April 2013 a Grand Court Jury convicted the Defendant of one count of
27 Aggravated Burglary with Intent to Rape and two counts of Rape.

28 ***SUMMARY OF FACTS***

- 29 2. The Defendant Jeffrey Alexander Barnes was charged with three offences which
30 occurred on the 20th October 2011:

- 31 (a) Aggravated Burglary with Intent to Rape;
32 (b) Rape (per vagina);
33 (c) Rape (per anus)

1 3. Count 1 of the indictment charges Jeffrey Barnes with the offence of Aggravated
2 Burglary with Intent to Rape contrary to section 244 of the Penal Code (2010
3 Revision). The particulars are that he on the 20th day of October 2011 at Seymour
4 Drive, apartment 56 entered the dwelling house of Cleopatra Jamieson as a
5 trespasser with intent to rape her and at the same time had with him an offensive
6 weapon, namely a knife.

7 4. Count 2 charges Jeffrey Barnes with the offence of Rape contrary to section 127 of
8 the Penal Code (2010 Revision), that he on the said day at the said location had
9 unlawful sexual intercourse per vagina with Ms. Jamieson without her consent.

10 5. Count 3 also charges the Defendant with Rape. The particulars are that he on the
11 said day at the said location had unlawful sexual intercourse per anus with Ms.
12 Jamieson without her consent.

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FACTUAL CIRCUMSTANCES

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6. In the early afternoon of Wednesday the 19th October 2011, the Complainant Cleopatra Jamieson, left her home at apartment # 56 Seymour Road to go to her workplace at Camana Bay to arrive in time for work at 5:30pm. The apartment is on the upper floor of a two story block of apartments.

7. Ms. Jamieson left her window at the front of the apartment open for the place to be cool – with the glass window portion up and screen in place, and locked the only door which is at the front of the apartment.

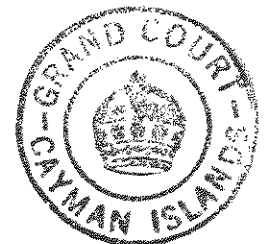
8. Ms. Jamieson had one key to the apartment and the only other key was held by the landlord Mr. Kenny.

9. Ms. Jamieson left work later on that same day sometime after 9 p.m. that night. Taking public transportation she arrived home sometime after 11pm. Whilst walking home she was talking to her fiancé on Facebook.

10. On arrival at her apartment she opened the door with her key, entered and relocked the door behind her.

11. The window was still open with the glass window up and the curtain pulled across. She did not close the window, leaving it open instead of turning on the air conditioning.

12. Once inside she placed the door key on her chest of drawers and took off her capri pants before lying down on the bed. The lights were off.



1 13. When she lay on the bed she had on her panties, a white t-shirt, an under shirt and
2 her bra. She then began exchanging BBM messages with a friend in Saint Martin
3 and Ms. Jamieson recalls sending the last message at 11:18pm before falling asleep.

4 14. Ms. Jamieson's next recollection is at about 3am in the early morning hours of
5 Thursday the 20th October 2011, while sleeping on her back, she felt as if she could
6 not breathe properly and awoke to find a male person on top of her.

7 15. The male person on top of her had one hand on her throat and a knife against her
8 windpipe. The light was off in her apartment at the time. She began to fight. The
9 person started to squeeze her throat a little tighter and told her to stop fighting. She
10 knew it was a man because she heard his voice. She said she told the man that she
11 could not breathe.

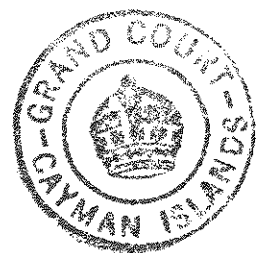
12 16. Ms. Jamieson said she had realized by then that he was going to rape her and she
13 begged him not to, as she was having her period. In response he said he did not
14 care.

15 17. The male used the knife he had to cut off her clothes.

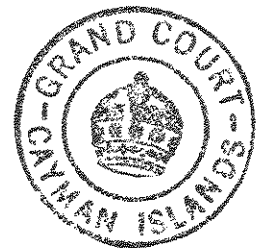
16 18. Ms. Jamieson was crying and begged him not to rape her. He told her it could have
17 been six men and she should stop crying, it could be worst.

18 19. The man took his clothes off and put on a condom. He lay on top of her and began
19 kissing her, she closed her mouth and he told her to act like she was enjoying it. He
20 had the knife at her neck.

21 20. He had sexual intercourse with her per vagina.



- 1 21. After he had sex with her he lay down on the bed and took one of the pillows that
2 were on the bed and placed it under his head. He told her to lie down on his arm
3 and proceeded to ask her, her name, where she was from and where she worked.
- 4 22. Ms. Jamieson said she said she told him that the thing you fear most always
5 happens to you and he asked what was that and she told him that her fear was being
6 raped.
- 7 23. The man started touching her again and placed his penis in her vagina, he then told
8 her to turn over on her hands and knees.
- 9 24. Ms. Jamieson said she told him she could not do as he asked because her stomach
10 was hurting. He said he did not care.
- 11 25. Ms. Jamieson then turned over and she noted that she had been lying on her phone.
12 She tried to hide the phone but the light came on and he saw it.
- 13 26. The male then placed the knife between her vagina and anus and told her that if she
14 tried anything stupid he would cut it out.
- 15 27. He then placed his penis into her anus and had anal sex with her.
- 16 28. He next placed his penis in her vagina and eventually ejaculated.
- 17 29. The man then said he wanted water and went to the refrigerator and then to the
18 cupboard to get water.
- 19 30. The man came back to the bed fell asleep for about 15 minutes.
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1 31. Ms. Jamieson tried to get up as it was almost time to go to work and the man woke
2 up. She estimates that it was some minutes to six in the morning.

3 32. When Ms. Jamieson explained that she needed to leave for work he told her to go
4 and act normal and not to tell anyone. He said that when she returned he would be
5 waiting for her. In the course of preparations for work, the light was on in the
6 apartment and she was able to see him and to note that he had a tattoo marked
7 GANSTA on his chest, a black spot on his left leg and she noted his general
8 description. She had seen him on occasion outside her complex. She also saw the
9 knife which he had and was able to describe it as a red Swiss army knife. It was not
10 a knife that belonged to her.

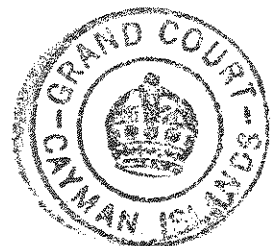
11 33. Ms. Jamieson said that whilst she was ironing her shirt on the bed the man asked
12 her if she was thinking of burning him with the iron and she replied no, why would
13 she.

14 34. He said she had every right to as he had broken into her place and raped her but that
15 if she did burn him he would “out” the iron on her.

16 35. Ms. Jamieson left the apartment at about 6:48 am locking the door behind her and
17 leaving him in the apartment. He had asked her if she would be coming back and
18 she said yes. She agreed to come back because she was still afraid that he would kill
19 her as he had told her he had a gun and that it makes no sense to report it to the
20 police because Cayman Police don’t solve crimes.

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1 36. On her way to work Ms. Jamieson called and told her friend in Jamaica, Orrell
2 Williams, what had happened to her and on arrival at work she telephoned her boss'
3 husband, Mitchell Ebanks ("Mr. Ebanks") and asked him to meet her at the store.
4 He did so and she told him what had happened to her.

5 37. Mr. Ebanks noted a cut on her neck that looked fresh and the blood was just drying.
6 He then telephoned DC Adrian Neblett at about 7:45 am and reported the matter to
7 him. DC Neblett advised them to go to the George Town Police Station and to
8 formally report the matter.

9 38. Ms. Jamieson was in fear and did not want to report it to the Police.

10 39. Ms. Jamieson worked that day and stayed overnight at her boss' house before
11 leaving the next morning for Jamaica. Ms. Jamieson left behind her key to the
12 apartment and her things in the apartment. She did not want to return to the
13 apartment.

14 40. On arrival in Jamaica she was met by Mr. Williams, her fiancé, to whom she
15 described the male.

16 41. Mr. Williams noticed scrapes on her neck like knife marks and went with her to the
17 Doctor.

18 42. While in Jamaica Ms. Jamieson remained in contact with her boss until eventually
19 she decided to report the matter to the Police.

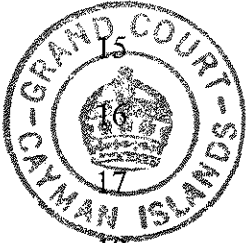
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1 43. In the interim, two days after hearing of the incident, Mr. Ebanks and his wife
2 decided to check the Complainant's apartment. They entered using the key which
3 she had left with them. On entering Mr. Ebanks noticed that the screen to the
4 window had been pulled half way back and that the place was in disarray. There
5 were red stains on the sheet and a torn empty condom wrapper next to the bin on
6 the floor of the apartment. Mr. Ebanks left things as he found them only removing
7 some cook books. He indicated that he and he wife had showered before they left
8 home to visit Ms. Jamieson's apartment and had not come into contact with anyone
9 prior to arriving at the apartment.

10 44. On Tuesday the 1st November after speaking again to Ms. Jamieson and confirming
11 that she was now willing to report the matter, Mr. Ebanks made contact with the
12 Police. DI Joseph Wright took the report and he and Officer Cowan contacted Ms.
13 Jamieson on the 2nd November 2011. Thereafter they went to the Apartment and
14 entered using a key from the Landlord. SOCO Neil Harris was with them. All three
15 wore protective clothing and gloves. SOCO Harris took pictures of the apartment
16 and recovered a number of items including the condom wrapper, three pillow cases
17 from the bed, the bra of the complainant which had been cut off her, as well as her
18 T-shirt and undershirt.



19 45. Those items were forensically examined by Tiffany Roy of DNA Labs
20 International, together with a buccal sample taken from the Defendant by SOCO
21 Tommy Taylor. Semen was found on one of the pillows and the DNA of the
22 Defendant to a match ratio of 1 in every 88 quintillion individuals. The
23 Defendant's DNA was also found on the condom wrapper to a match ratio of 1 in
24 every 4.7 million individuals. On the exterior of the bra of the Complainant - to a
25 match ratio of 1 in every 55,000 individuals.

1 46. Having been arrested by the Police the Defendant was interviewed on the 11th
2 November 2011, where he presented a prepared statement.

3 47. On being asked questions, the Defendant exercised his legal right to remain silent.

4 48. Photographs were taken of the Defendant and it was noted that there was a tattoo
5 across his stomach which read GANSTA and a black mark on his right leg.

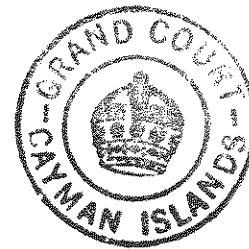
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ANALYSIS

SOCIAL INQUIRY REPORT (SIR)



49. On the 9th April 2013 the Court ordered a SIR and a psychological report. The SIR was received by the Court on the 17th May 2013 and it confirms that the Defendant had stable and good childhood until his parents separated when he was 10 years of age and they eventually divorced. The report confirms that after the divorce the Defendant reportedly demonstrated numerous behavioural problems and had his first breach with the law at 13 years of age.

50. During his teenage years the Defendant was introduced to guns, ganja and women. As a teenager he was responsible for offloading drug boats – hence his introduction into the illegal drug trade. He was sent to Bonaventure Boys’ Home and then to an approved school in Philadelphia. The Defendant described the experience at the approved school as harder than prison.

51. The Defendant was employed in 2001 and, again, intermittently, in 2009.

52. The Defendant has 19 previous convictions which commence with Carrying an Offensive Weapon and Assault in 1998 and continue through the ensuing years to include Indecent Assault in 2010. Twelve convictions are for offences of violence.

53. The SIR reveals that, in prison, the Defendant committed a total of eleven infractions and, over the 2-year period from 2000 and 2002 he committed nine infractions – which included acts of aggression towards prison personnel and damage to prison property.

1 54. In 2008 the Defendant commenced a sex offenders' treatment programme and a
2 time-to-change programme but did not complete either of them.

3 55. It is noteworthy that the Defendant still claims he is innocent of the charges on this
4 Indictment and continues to blame the police for placing incriminating evidence
5 against him at the scene of the crime.

6 56. The Defendant maintains he is not a drug pusher but he is a drug supplier.

7 57. The Department of Community Rehabilitation (DCR) conducted an LS/CMI¹ test to
8 predict the Defendant's risk of committing a general criminal offence within a year.
9 The Defendant was assessed at being at a very high risk of recidivism in relation to
10 general criminal offences.

11 58. In conclusion the SIR states that the Defendant is deemed a chronic offender and
12 has a long history of committing serious crimes against persons – irrespective of
13 their gender and status.

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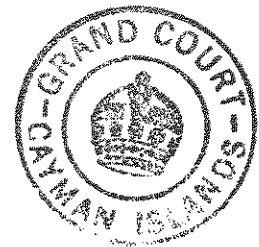
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¹ Level of Service Case Management Inventory

PSYCHOLOGICAL EVALUATION

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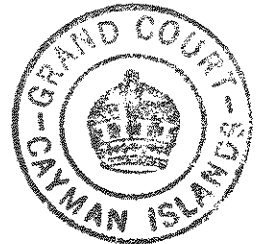
59. On the 5th September 2013 the Court received a psychological evaluation dated the 27th August 2013, prepared by Dr. Elma Whittaker-Augustine. Much of this evaluation confirms that the Defendant has a chronic history of convictions and sentences, including sexual and non-sexual offences – such as drugs, weapon charges and threatening violence.

60. In this report the Defendant admitted that he is capable of raping women but only women he knew. In this evaluation the Defendant illustrates a tendency to be impulsive, impatient, irritable, hostile and aggressive, with a very low frustration level. The Defendant views himself as an outcast who avoids his family and who “got a raw deal from life.”

61. The Defendant scored high on paranoia, but he did not evince psychotic features – only saying he was misunderstood, mistreated and persecuted. Further, the Defendant scored high on hypomania – demonstrating a high energy level – and he scored high on the depression and schizophrenia scales. The evaluation states that the Defendant has developed anti-social personality traits, which are confirmed by his anti-social behaviour, and he feels unloved, lonely, empty, mistreated and misunderstood.

62. Dr. Augustine recommends that the Defendant be monitored in therapy to determine the need for medication to manage symptoms such as impulsivity, aggression, underlying depression and anxiety. Further monitoring is required to rule out bi-polar disorder and adult ADHD².

² Attention Deficit Hyperactivity Disorder.

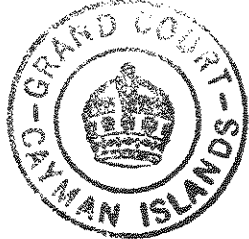


VICTIM IMPACT REPORT (VIR)

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63. On the 9th April 2013 Cleopatra Jamieson gave a statement to the police in which she stated:

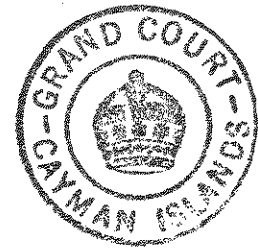
“Additional to my previous statements I wish to state that I have been seriously impacted by the incident. Since the incident happened to me I am afraid to be alone. I cannot sleep at night alone and I am still having nightmares about the incident. I wake up during the night checking the windows and the doors because I am afraid. I am very cautious and overly sensitive of where I go now since the incident. I am not able to fully speak about the incident to anyone because I am embarrassed. I was not able to work for a year because I could not focus or was [in]capable of dealing with others around me. I feel that my personal space was totally violated and I have trouble trusting people. Each time I think about the incident I break down and cry. It was very difficult to do the trial because I was ashamed to say out loud to anyone what he actually did to me. I came to the Cayman Islands to make my life better and in coming here my life was ruined. I am forever changed since the incident and I will not ever be the same.”



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DEFENCE SUBMISSIONS

64. Counsel for the Defendant pointed to the fact that the Defendant is 33 years of age with 19 previous convictions and would pose a moderate risk of recidivism. Counsel submits that, unfortunately, because the Defendant maintains his innocence, it is very difficult to present anything on the Defendant's behalf.



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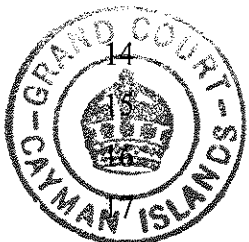
THE LAW

65. Section 244 of the Penal Code (2010 Revision) provides the maximum sentence for the offence of Aggravated Burglary to be imprisonment for life.

66. Section 128 of the Penal Code (2010 Revision) provides the maximum sentence for the offence of Rape to be imprisonment for life.

67. This is the Defendant’s second conviction for the offence of Rape. He was sentenced in 2001 to ten years imprisonment for that offence. Section 23 of the Penal Code provides that upon a second conviction for a category A offence, the Court may in its discretion sentence that person to imprisonment for life for that second offence.

68. In the statement of Tariffs and Guidelines 2002, the Chief Justice stated that for aggravated offences of burglary, a first offence will attract a tariff of 4-6 years upon a not guilty plea. He further stated:-



“It should be emphasised however that we consider home invasions whether by night or by day very serious offences and any such offence is likely to be discouraged by appropriate prison sentences.”

69. In the UK Sentencing Council guidelines for Aggravated Burglary a number of factors are identified which may indicate greater harm and higher culpability. These include, threatening violence against the victim, a weapon present on entry, victim at home and on the premises while offender is present. An aggravating feature is that the offence is committed at night. For such category 1 offences, the starting point is 10 years imprisonment with a range of 9 to 13 years.

1 70. In the statement of Tariffs and Guidelines 2002, the Chief Justice stated the tariff
2 for offences of Rape, a first offence will attract a tariff of 10-12 years upon a not
3 guilty plea.

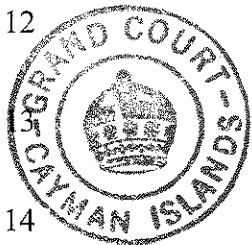
4 71. The victim in the instant case was subjected to a serious and sustained sexual
5 assault which she described as terrifying. The Crown submits that given the
6 antecedent history of the Defendant, the nature of the offence and the totality of the
7 circumstances of this case a sentence is required which if not the maximum of life
8 imprisonment, should be at the highest end of the scale. Reference is made to
9 guideline principles enunciated in the following:

10 (a) *R.v. James O'Driscoll* [1986] 8 Cr. App. R. (S) 121(Tab 4)

11 (b) *R.v. Anthony Gabbidon* and Keith Bramble [1997] 2 Cr. App. R. (S)
12 (Tab 5)

13 (c) *R. v. Millberry* et al [2003] 1 W.L.R. 546(Tab 7)

14 (d) *R. v. Billam* [1986] 1 W.L. R. 349(Tab 8)



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16 72. In the UK decisions of Millberry and Billam and in the UK Sentencing Guidelines
17 a three tiered approach is used with a starting level of eight years where aggravating
18 features are present and 15 years where there were repeated rapes of the same
19 victim over a period of time or rape involving multiple victims. In the instant case,
20 possible aggravating features would include:

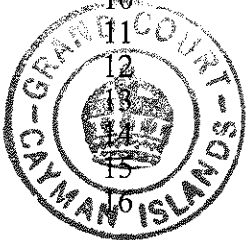
- 21 a. Use of a weapon
22 b. The act of breaking into the home of the victim
23 c. Threats to the Victim

1 73. In the case of *AG's Reference (Nos. 73, 75, of 2010 and 03 of 2011) Michael*
2 *Anigbugu*, [2011] 2 Crim App R. (S) 100 the Court stated:

3 "to be burgled and then subjected to the dreadful indignity of a violent sexual
4 offence was to become the victim of a pitiless wicked crime. These were life –
5 scarring, deliberately committed crimes..."
6

7 74. The Court concluded that:

8 "Given that culpability will be at its highest and the harm done to the victim at
9 its most grave, such offences should be approached as if they are among the
10 most serious of offences of their kind; further that while they are not dealt with
11 directly in the current sentencing guideline, it would for example be wrong in
12 principle for an offence of rape in such circumstances to be treated as a "single
13 offence of rape by a single offender... the starting point should rarely be less
14 than 12 years imprisonment;" (Excerpt from *Supplement to Archbold 2013*,
15 *paragraph K-424*).



17 75. The local case of *Dave Kennedy Whittaker*, bears some resemblance to the present
18 circumstances. The Court of Appeal considered the UK cases and took note of the
19 antecedent history of the Defendant. The Court imposed a sentence of
20 imprisonment of 20 years.

21 76. In *C. Dilbert v. R and C. Samuels v. R* [2010] (1) CILR 10 the Cayman Islands
22 Court of Appeal (CICA) reviewed the previous Cayman case law and the well-
23 known cases from the United Kingdom of *R v. Roberts* (H.), [1982] 1 W.L.R 133;
24 *R v. Billam* [1986] 1 W.L.R. 349; and, *R v. Millberry et al* [2003] 1 W.L.R. 546.

25 77. The Appellant Dilbert was convicted in 2008 after a trial before a jury on a charge
26 of rape and sentenced to a term of 15 years. The second Appellant, Samuels,
27 pleaded guilty to a charge of rape in 2009 and was sentenced to a term of
28 imprisonment for 12 years. In the course of his sentencing remarks Henderson J.
29 said, had the accused not pleaded guilty and been found guilty, the appropriate
30 sentence would have been 15 years' imprisonment.

1 78. The CICA repeated the observations of Lord Lane C.J. in *R v. Roberts* where he
2 stated at 134 135:

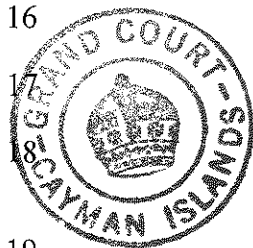
3 *“Rape is always a serious crime. Other than in wholly exceptional*
4 *circumstances, it calls for an immediate custodial sentenceA custodial*
5 *sentence is necessary for a variety of reasons. First of all, to mark the gravity*
6 *of the offence. Second, to emphasise public disapproval. Thirdly, to serve as a*
7 *warning to others. Fourthly, to punish the offender, and last, but by no means*
8 *least, to protect women.”*

9

10 79. The CICA referred to the UK Sentencing Advisory Panel Guidelines which were
11 referred to in *Millberry*. The UK panel recommended a starting point of eight (8)
12 years where any of the following features were present:

- 13 (a) Where the rape is committed by two or more offenders acting together;
- 14 (b) The offender is in a position of responsibility towards the victim (e.g.
15 in the relationship of medical practitioner and patient, teacher and
16 pupil); or the offender is a person in whom the victim has placed his or
17 trust by virtue of his office or employment e.g. a clergyman, an
18 emergency service patrol man, taxi driver, police officer);
- 19 (c) The offender abducts the victim and holds her captive;
- 20 (d) Rape of a child, or of a victim who is especially vulnerable because of
21 physical frailty, mental impairment or disorder or learning disability;
- 22 (e) Racially aggravated rape, and other cases where the victim has been
23 targeted because of his or her membership in a vulnerable minority;

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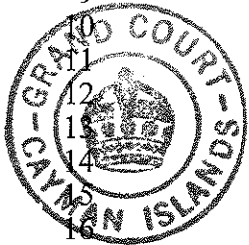


1 (f) Repeated rape in the course of one attack (including cases where the
2 same victim has been vaginally and anally raped);

3 (g) Rape by a man who is knowingly suffering from a life threatening
4 sexually transmissible disease;

5 80. In *C. Dilbert v. R and C. Samuels v. R* the President Sir John Chadwick stated at
6 paragraph 11:

7 *“As the court observed in R. v. Millberry (4) ([2003] 1 W.L.R. 546, at para.*
8 *20), the first three of those features had been identified in R. v. Billam (1) as*
9 *attracting the eight-year starting point. The court did not comment on the*
10 *absence from the Panel’s list of features of the other factor identified in R. v.*
11 *Billam—rape committed by a man who has broken into or otherwise gained*
12 *access to a place where the victim is living. It pointed out (ibid., at para. 21)*
13 *that the Panel had emphasized that the presence of any of the features which it*
14 *had identified (described by the court as “aggravating factors”) would attract*
15 *the eight-year starting point. The eight-year starting point had been*
16 *recommended “either because of the impact of the offence upon the victim or*
17 *the level of the offender’s culpability . . .”*



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19 81. The President stated at paragraph 13:

20 *“The court in R. v. Millberry (4) accepted the advice of the Sentencing Advisory*
21 *Panel as to starting points (ibid., at para. 26). The court expressed the view*
22 *that it involved “no substantial departure from the general approach laid down*
23 *in R. v. Billam.” It may be said that it leaves open the question whether, in*
24 *England and Wales, the appropriate starting point is eight years (as had been*
25 *indicated in R. v. Billam (1)) in a case in which the rape is committed by a man*
26 *who has broken into or otherwise gained access to a place where the victim is*
27 *living but where none of the features identified by the Panel is present. That is*
28 *not a question which we need to decide.”*

29 82. The President went on to state at paragraph 14:

30 *“In R. v. Billam, Lord Lane, C.J. had identified ([1986] 1 W.L.R. at 351) eight*
31 *aggravating factors, the presence of any one or more of which would lead to*
32 *the result that the sentence should be substantially higher than the figure*
33 *which, earlier in his judgment, he had suggested as the appropriate starting*
34 *point. Those factors were:*

1 “(1) violence is used over and above the force necessary to commit the
2 rape; (2) a weapon is used to frighten or wound the victim; (3) the rape
3 is repeated; (4) the rape has been carefully planned; (5) the defendant
4 has previous convictions for rape or other serious offences of a violent
5 or sexual kind; (6) the victim is subjected to further sexual indignities
6 or perversions; (7) the victim is either very old or very young; (8) the
7 effect upon the victim, whether physical or mental, is of special
8 seriousness.”

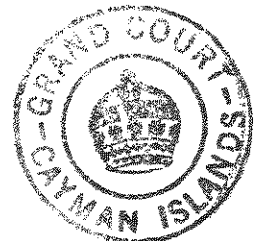
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10 83. At paragraph 20 the President stated under the heading “**The Application of the**
11 **Millberry principles to cases in this Jurisdiction**”:

12 *“We have no doubt that the appropriate starting points of five and eight years—*
13 *identified in R. v. Billam (1), recommended by the Sentencing Advisory Panel*
14 *in 2002 and endorsed in R. v. Millberry (4)—have no direct application in the*
15 *Cayman Islands. We think it important to keep in mind that the 1998 Guidelines*
16 *post-dated R. v. Billam and that the 2002 Statement post-dated R. v.*
17 *Millberry.”*

18 84. The learned President went on to state at paragraph 24:

19 *“Notwithstanding that the starting points of five and eight years adopted in R.*
20 *v. Millberry (4) have no direct application in the Cayman Islands, there is,*
21 *nevertheless, assistance to be gained from the principles which we derive from*
22 *that case. First, we think that the two lists of aggravating factors ([2003]—1*
23 *W.L.R. 546, at paras. 20 and 32) of the judgment in that case and set out,*
24 *respectively, in paras. 10 and 15 of this judgment) provide a useful (but not*
25 *exclusive) reference for the identification of aggravating factors in cases which*
26 *come before these courts. Secondly, we find it significant that the presence of*
27 *any one of the factors in the first list is treated, in England and Wales, as*
28 *sufficient to warrant an uplift of the appropriate starting point from five to*
29 *eight years: that is to say, an uplift of some 60%. Applied to the tariff in these*
30 *Islands, the presence of any one of those factors could properly be seen as*
31 *sufficient to warrant a sentence of imprisonment of 15 years or more, with a*
32 *further uplift from that level if there were other aggravating factors. Thirdly,*
33 *we find assistance in the observations of the court in R. v. Millberry in relation*
34 *to mitigation and guilty pleas.”*

35 85. Towards the end of paragraph 25 the learned President stated:

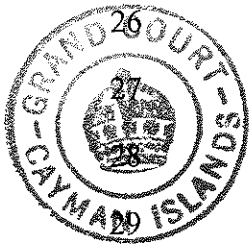


1 "... we think it important to make it clear that, whatever the position in England
2 and Wales, the fact that an offender has broken into or otherwise gained access
3 to the victim's dwelling is a significant aggravating factor; and that in our
4 view, as indicated in *R. v. Billam*, it is no less significant a factor than the other
5 factors which would lead (or would have led), in England and Wales to the
6 substantial uplift in the appropriate starting point. It is a feature which is
7 alarmingly prevalent in rape cases in these Islands. It is particularly serious in
8 a case where the offender has broken into the victim's dwelling at night. It
9 should be treated in the Cayman Islands as an aggravating factor warranting a
10 sentence which is substantially in excess of the 10 to 12-year tariff."

11
12 86. Finally at paragraph 36 Sir John Chadwick stated:

13 "*Women in the Cayman Islands must be protected from such vicious assaults at*
14 *night in their homes. They are entitled to go to sleep knowing that they are safe*
15 *in their homes. Having regard to the observations made by Lord Lane, C.J. in*
16 *R. v. Roberts (H.) (6), and endorsed by Lord Woolf, C.J. in R. v. Millberry (4),*
17 *the court does not consider that the sentence of 15 years' imprisonment is*
18 *manifestly excessive having regard to the circumstances of this particular*
19 *case.*"

20
21 87. The DPP has referred the Court to the English Court of Appeal decision in *R v.*
22 *James Michael Donoghue* [2011] 1 Crim. App. R. (S) 46 which was heard some
23 six months after the CICA case of *Dilbert and Samuels*. The Donoghue case has
24 similarities to this case. The English Court of Appeal noted that the Appellant had
25 an appalling record for offences including aggravated burglary, robbery and causing
26 grievous bodily harm with intent. A psychiatric report indicated that he had a
27 personality disorder with brief psychotic episodes which occurred at times of high
28 stress and anxiety. However, Donoghue did not suffer from a mental disorder. Like
29 this case, the offence was committed in the victim's own home; the Appellant was
30 armed with a knife which he repeatedly held to the victim's throat. In the Court's
31 judgment the life sentence was entirely justified.



1 *ANALYSIS AND CONCLUSION*

2 88. The Defendant continues to deny his guilt and therefore this Court is unable to find
3 any mitigating factors.

4 89. However, the Court does find that there are several very serious aggravating
5 factors:

6 i. The Defendant broke into the victim's dwelling place at approximately 3 a.m.
7 on the 20th October 2011;

8 ii. The victim awoke to find the Defendant on top of her, with one hand on her
9 throat and a knife against her windpipe;

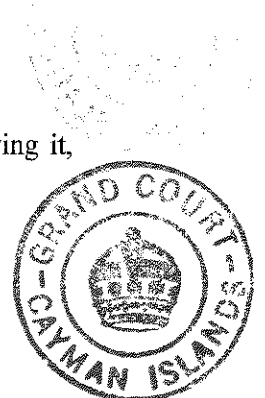
10 iii. The apartment was dark and the victim began to fight and the Defendant
11 squeezed her throat a little tighter and told her stop fighting. The victim begged
12 the Defendant to stop and said she was having her period and the Defendant
13 responded that he did not care.

14 iv. The Defendant used his knife to cut off the victim's clothes;

15 v. The victim was crying and begged the Defendant not to rape her. The
16 Defendant's response was that it could have been "six men" and she should
17 stop crying because it could be worse.

18 vi. The Defendant continued and told the victim to act like she was enjoying it,
19 whilst keeping the knife to her neck.

20 vii. The Defendant raped her per vagina.
21



- 1 viii. The victim told the Defendant that this was the worst fear she ever had.
- 2 ix. The Defendant placed the knife between the victim's vagina and anus and told
- 3 her that if she tried anything stupid he would cut it out.
- 4 x. The Defendant placed his penis into the victim's anus and had anal sex with
- 5 her.
- 6 xi. The Defendant then placed his penis in the victim's vagina and eventually
- 7 ejaculated.
- 8 xii. Before she left her apartment the Defendant told the victim to act normal and
- 9 not tell anyone.

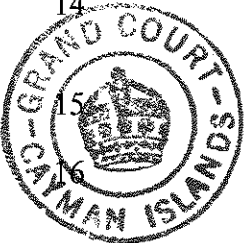
10 90. The victim had just come to the Cayman Islands to use her skills as a baker to work

11 in a local bakery, in order to improve her standard of living. She worked long hours

12 – travelling by public transport in the early mornings to reach to work at 5:30 a.m.

13 and working a second shift, which made her arrival time home close to midnight.

14 The victim's words resound through this Court and reflect sadly on these islands:



15 *"I came to the Cayman Islands to make my life better and in coming here my*

16 *life was ruined"*

17 Therefore, this Court records its sincere gratitude to this victim, Ms. Jamieson, who,

18 despite the physical and mental humiliation, reported the crime to the police and

19 then, after that, was courageous enough to return to a place that held frightening

20 memories for her, enter the witness box and give her sworn evidence before a jury,

21 to ensure that justice would be done.

1 91. The Defendant comes before the Court with 19 previous convictions of which 10
2 are for violence.

3 92. The Defendant was convicted of rape on the 26th February 2001 for which he
4 received a sentence of 10 years imprisonment.

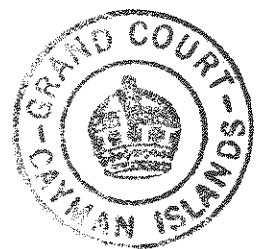
5 93. The Defendant was convicted of Indecent Assault on the 14th December 2010 for
6 which he was sentenced to 18 months' imprisonment.

7 94. On the 31st March 2011 the Defendant was released from prison. The Defendant
8 was charged with another offence of rape in October 2011. The Defendant pleaded
9 guilty to that offence of rape and, on the 31st May 2013 was sentenced by
10 Henderson J. to 15 years' imprisonment (reflecting a reduction for his guilty plea).
11 The Court notes that these offences took place in October 2011, just over six
12 months after his release from custody on the indecent assault charge.

13 95. The majority of the aggravating factors re-stated by our Court of Appeal in *Dilbert*
14 *and Samuels* appear in this case. The Defendant entered the victim's home at night
15 and, by his actions has caused severe physical and psychological injury to the
16 victim. It was, the victim said, her very worst nightmare. The Defendant not only
17 ignored her pleas and protests but increased the level of fear she must have
18 experienced to an unimaginable level.

19 96. The evidence before this Court demonstrates that the Defendant Jeffrey Barnes is
20 violent, dangerous and likely to offend again if not imprisoned for a very long time.

21



1 97. In this Court's view, the proper and appropriate sentence for Jeffery Barnes is life
2 imprisonment. He has committed a repeated rape, with most, if not all, of the
3 aggravating factors listed above. The Defendant is viewed by this Court as a serious
4 risk to women in the Cayman Islands, and, accordingly, the sentence of
5 imprisonment for life is commensurate punishment, and for the protection of the
6 public.

7 98. The Court also orders that the Defendant participates in the sex offenders' treatment
8 programme and the anger management programme in Northward prison.

9

10

11

12 **Dated this the 23rd day of September 2013**



13

14

15

16

17 **Honourable Mr. Justice Charles Quin**
18 **Judge of the Grand Court**