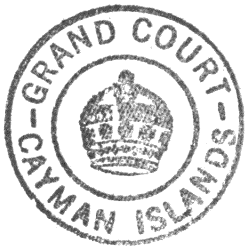
IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0105/2014

THE QUEEN

V

JAMES ROMANO WHITTAKER



Appearances:	**For the Crown:** **Mrs. Tanya Lobban-Jackson, Senior Crown Counsel, on behalf of the DPP**
	Defence Counsel: **Mr. Crister Brady of BRADY, Attorneys at law, on behalf of the Defendant**
Before:	**Honourable Mr. Justice Charles Quin Q.C.**
Heard:	**31st August 2015**

SENTENCE JUDGMENT

1. On the 8th June 2015 the Defendant pleaded Not Guilty to the charge of Robbery contrary to s.242(1) of the Penal Code (2013 Revision). The particulars of the Indictment dated the 17th December 2014 were that the Defendant on Saturday the 22nd November 2014 in North Church Street, Georgetown, Grand Cayman stole a leather handbag and its contents and an iPhone 5S the property of MP and JA respectively, and at the time of so doing and in order to do so used force on the said JA.

2. Following a trial by Judge Alone – heard on the 8th, 9th, 10th and 16th June – the Defendant, on the 30th June 2015 was found guilty of Robbery as charged.

3. In summary, in the early hours of Saturday the 22nd November 2014 the male and female Complainants, JA and MP, were sitting on the seawall at the front of the Charles Building on North Church Street enjoying the quiet scenery overlooking the sea.

4. The Defendant approached the Complainants and demanded money. The Complainants told the Defendant they did not have any money. The Defendant then produced a knife and threatened the male Complainant, JA. The Defendant placed the knife on JA's neck. The Defendant was wearing a hoodie in an attempt to conceal his face and his identity.

5. The Defendant proceeded to enter JA's car and took MP's handbag and JA's iPhone. While the Defendant was searching MP's handbag, the hoodie fell from his head and both JA and MP got a good look at the Defendant's face.

6. MP was extremely afraid and persuaded JA to leave the scene. JA drove directly to the George Town Police Station where they reported the robbery.

7. On the 23rd November 2014, the following day, the police attended the home of the Defendant and, upon arriving there, they saw the Defendant removing aluminum foil from the Electronic Monitoring Device Tag (EMDT) he was assigned as a condition of his bail. The Defendant was then arrested and taken into custody.

8. On the 24th November 2014 the Complainant was shown a photo spread of twelve photographs and the Complainant, JA, identified Photo #12 as the person who robbed him and MP two days earlier.

GRAND CAYMAN ISLANDS

9. Also on the 24th November 2014, at a different time of the day, MP was shown a different set of photographs and she identified photo Number 8 as the robber. Both Complainants identified the Defendant James Romano Whittaker as the man who robbed them at the Charles Building in the early hours of the 22nd November 2014.

10. On the 26th November 2014 the RCIPS held an ID parade for the Complainant JA to try to identify the robber. The Defendant objected at the commencement of the ID parade to the procedure. The Complainant, JA, however identified the Defendant as the robber in a group ID exercise carried out at the George Town Police Station.

11. In an interview with the RCIPS the Defendant denied committing the robbery. He said he was not at the Charles Building he was somewhere in Rock Hole at the time the offence was committed.

12. In court the Defendant gave evidence that he was at home at the time the offence was committed and not in Rock Hole and not at the Charles Building.

13. On the 30th June 2015 the Defendant was found guilty of Robbery contrary to s.242(1) of the Penal Code.

14. Crown counsel described this offence as an unsophisticated street robbery and referred to the ***(UK) Sentencing Guidelines Council (SGC): Robbery: Definitive Guideline ("SGC's Definitive Guideline for Robbery***") These guidelines have been adapted and applied by the Cayman Islands Court of Appeal and the Grand Court of the Cayman Islands.

GRAND COURT - CAYMAN ISLANDS

15. Crown counsel submits that the most aggravating factor is the use of the knife – even though it was not actually used to inflict an injury – because this indicates an element of planning. Crown counsel also highlighted that the victims were vulnerable – that is, they were just enjoying a quiet social chat in the open before being set upon by the robber with his knife.

16. The starting point in the ***SGC's Definitive Guideline for Robbery*** is based upon a first-time offender who pleaded not guilty[1]. Accordingly, Crown counsel submits that this is a level II offence where a weapon is produced and used to threaten. The Sentencing Guidelines Council for such a case recommends a starting point of 4 years' imprisonment, with a sentencing range of 2 to 7 years imprisonment.

[1] See para. G(3) at page 10 of the (***UK) Sentencing Guidelines Council (SGC): Robbery: Definitive Guideline*** i

DEFENCE

17. Defence counsel made significant submissions in what he described as "difficult circumstances." Defence counsel told the court: "*I am in the unenviable position of negotiating against a background of 37 and now 38 previous convictions*."

18. Defence counsel continued: "*To his benefit, this is the first offence [involving] the threat of violence with a weapon*"

19. Defence counsel continued further: "*Mr. Whittaker has made no secret of his dependence on cocaine and the SIR speaks to a difficult upbringing with early exposure to drugs and the consistent use of cocaine since he was a minor, and it continues up to now that he is in the 35th year of his life. His motivation for the offence was to obtain money to purchase cocaine*."

GRAND COURT - CAYMAN ISLANDS

20. Defence counsel further addressed the Defendant's dependency on cocaine and said that on the night in question the defendant needed to purchase cocaine and his sole motivation for the offence of robbery was to steal in order to purchase his drugs.

21. Defence counsel concedes that the Defendant may have caused irreparable harm to the victims, or at least, to the female victim.

22. Defence counsel submits that the defendant had a very difficult and unhappy upbringing – involving an early introduction to illegal drugs and, importantly, the death of his mother when he was only 9 years of age. He was then introduced to his father but he was abandoned at only 13 years of age. By 14 years of age the Defendant was arrested for offences and he was first convicted of criminal offences at 16 years of age.

23. Defence counsel asks the court to accept that the defendant is not beyond redemption.

ANALYSIS AND CONCLUSION

24. Section 242 of the Penal Code reads:

> *"242. (1) A person commits robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.*
>
> *(2) A person who commits robbery is liable to imprisonment for life."*

25. The Court notes from the detailed SIR dated the 30th July 2015 that the Defendant met his father when he was 9 years of age – shortly after his mother died. His siblings were placed with their respective fathers and he remained under the care of his stepfather. The SIR records that one day, after returning home from school, the defendant found that his stepfather had left and abandoned him. The landlord kept him for 3 nights and then he fell under the care of the Department of Children and Family Services. The Defendant then started using ganja and then cocaine. He says he finances his habit by hustling from dealers, stealing and committing burglary.

26. In relation to the offence the Defendant says "*I didn't feel good about what I did but I was not in my right state of mind.*"

27. Asked about his victims the Defendant said, "*I don't know how they feel but I guess they would have been angry or scared, that's how I would feel.*"

GRAND COURT - CAYMAN ISLANDS

28. It is the use of the knife at the neck of one of the victims that is the most serious part of the robbery. The ***SGC's Definitive Guideline for Robbery*** states that the degree of force is important in determining the seriousness of the offence and the degree of fear which is experienced by the female victim is a relevant consideration.

29. The Defendant wore a hoodie in an attempt to conceal his identity and that, along with the knife, discloses the element of planning for this violent robbery in which the knife was used to threaten.

30. The victim MP records that the loss of her property, which she has had to replace is significant for her. She was also particularly concerned about the theft of her drivers' licence and her house keys and for the first few days she was unable to eat due to fear and shock. This victim is still concerned when she hears a knock on her door. She is concerned about leaving work at night and gets the security officer to walk her to her car when leaving work. She said,

> "I *don't go anywhere now, that is quiet, especially at night, or when it is dark. It really frustrates me as I enjoy going to quiet and secluded locations on the island but now I feel that it isn't safe due to what feels like an increase in crime now that I have been a victim. I feel the biggest and lasting result of being a victim of a knifepoint robbery is that I now stay in much more and I won't go out or do anything on my own.*"

31. It is quite evident that the degree of fear is much greater if the robbery is committed at night or in the early hours of the morning, as in this case.

GRAND COURT - CAYMAN ISLANDS

32. There are few, if any, mitigating factors in this case. The Court notes that the Defendant raised two different alibis and pleaded not guilty.

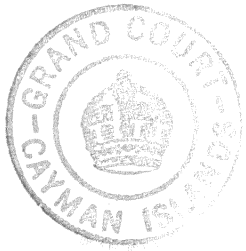
33. The Court also notes that there has been no recovery of the victims' stolen property and there has been no offer to compensate the victims.

34. The Defendant has 37 previous convictions – 21 for burglary, 2 for attempted burglary, and further convictions for damage to property and criminal trespass, for taking and driving away a vehicle and for handling stolen property.

35. This robbery was committed whilst the defendant was on bail for other offences and whilst he was wearing an EMDT and this is another aggravating factor.

36. As the DCR officer states: "*The defendant has time and time again aborted the opportunities provided for him by the Court to be a law-abiding citizen in his community. He has breached court orders and there is a record of non- compliance to conditions attached to those court orders.*"

37. The UK Sentencing Guidelines are promulgated to provide guidance for the Courts of England and Wales for Sentencing in all criminal cases. As has often been stated "Guidelines are not tramlines." We must remember that England and Wales have a population of some 58 million with many cities of populations of over ¼ million. The Cayman Islands has a population of approximately 58,000 and a land area of approximately 123 sq. miles.



38. A robbery at knifepoint on the waterfront of George Town, Grand Cayman, Cayman Islands, not only terrifies the immediate victims but also shocks the residents and has a negative effect on businesses in George Town. It creates a climate of fear and it has the potential to deter tourists from visiting the Cayman Islands. If these violent robberies are not stopped they will have a damaging effect on our economy and employment.

39. Crown counsel has also drawn to my attention the CICA case of ***Barrett v. R***[2]. In that case the CICA reduced a sentence of 12 years' imprisonment – where the Appellant had been found guilty of robbery after a trial – to 9 years' imprisonment. In ***Barrett*** the defendant had robbed a petrol station using an imitation firearm. The CICA reduced the sentence because the Appellate Court held that the Grand Court had given insufficient weight to the fact that no violence was actually used, the amount stolen was small, and the duration of the robbery was short. In ***Barrett*** the weapon used to commit the robbery was an imitation firearm however in this case, the weapon used was a knife. Whether it is an imitation firearm pointed at the victim, or, as in this case, a knife pushed against the victim's neck, the terror and fear instilled can only be described as terrifying and traumatic.

40. Both Barrett and this Defendant, James Whittaker, used their weapons to strike fear into the hearts of their victims whilst they committed their respective robberies. In ***Barrett***, the defendant had no previous convictions. In this case, Mr. Whittaker has over thirty (30) convictions.

GRAND COURT – CAYMAN ISLANDS

[2] 2012 (2) CILR Note 16

41. Persons who commit robberies and who perpetrate robberies with weapons must realize that they will go to prison for a significant period of time. We are in a sad and depressing time when robberies and burglaries are committed too often. When two young people cannot even sit in a quiet, yet public place, such as North Church Street, without being violently robbed, there is cause for very serious concern.

42. I take into account all that has been submitted on behalf of the defendant by Defence counsel and on behalf of the DPP by Crown counsel. I have read the detailed SIR and the VIR and find that for all the aforesaid reasons, a sentence of ten (10) years' imprisonment is appropriate. I order that time spent in custody be deducted.

43. The Defendant has expressed a wish to be a law abiding citizen. I would urge him to use his time in custody well.

> You can rid yourself of the dreadful cocaine habit you have had for 20 years. You can start to learn a trade and undergo further education. This will make you employable so that when you are released you can earn a living. There is no reason why you cannot put crime behind you and become a law abiding citizen but you must stay away from illegal drugs.

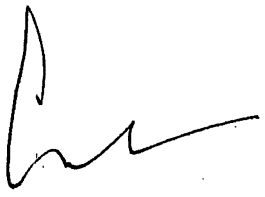
44. I offer the country's gratitude and appreciation to the two victims in this case. After the terrible ordeal of the robbery they went directly to the RCIPS and gave full and detailed accounts of the robbery. They attended RCIPS ID parades. They gave clear and frank evidence in court and were subjected to rigorous but proper cross examination. If witnesses come forward promptly to assist the RCIPS in the battle against crime, more criminals will be apprehended and convicted.

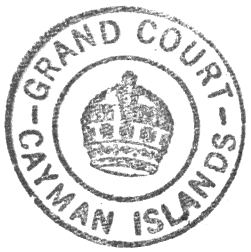
GRAND COURT - CAYMAN ISLANDS

45. There has been considerable comment regarding adjournments. It is important that the media and those commenting on the criminal justice system apprise themselves of all the facts. In this case the robbery was committed on the 22nd November 2014. The case came before the Grand Court on the 17th December 2014. On the 19th December 2014 an application for bail was rejected. On the 8th June 2015 the defendant was arraigned and pleaded Not Guilty. The trial was heard on the 8th, 9th, 10th and 16th of June 2015 and the Guilty verdict was handed down on the 30th June 2015.

46. There is a period of just over seven (7) months between the date the offence was committed and the date of the guilty verdict. This is one of several cases that have been concluded (subject to appeal) in a timely fashion. This is a case for which the RCIPS conducted a quick and thorough investigation and provided the necessary disclosure to the DPP and the defence. I also commend the DPP, Defence counsel and the Judicial Administration staff in concluding this case without undue delay.

Dated this the 10th September 2015





Honourable Mr. Justice Charles Quin Q.C.
Judge of the Grand Court