In The Supreme Court of Bermuda

CRIMINAL JURISDICTION

Case No. 18 of 2023

BETWEEN:

THE KING

-and-

ALEXTA GILL

Before: **The Hon. Mr. Justice Juan P. Wolffe, Puisne Judge**

Appearances: Ms. Khadija Beddeau for the Prosecution
Ms. Nicole Smith for the Defendant

Date(s) of Hearing: 25th September 2025 & 29th October 2025
Date of Sentence: 1st December 2025
Date of Reasons: 16th January 2026

SENTENCE

Importation of Controlled Drugs (Cocaine & Cannabis) – Commentary on the manner in which defendant conducted his defence

WOLFFE J.

1. On the 29th July 2025 a Jury unanimously found the Defendant guilty of two (2) counts of Importation of Controlled Drugs, contrary to section 4(3) of the Misuse of Drugs Act 1972 (the "MDA"). Count 1 on the Indictment involved the importation of 955 milliliters of liquid Cocaine with a street value of $203,100 (when converted to 802.4 grams of powder) and

Count 2 involved the importation of 20.86 lbs. of Cannabis with a street value of $473,630. The total street value of both drugs is $676,730.

2. On the 1st December 2025 I sentenced the Defendant to 18 years imprisonment in respect of Count 1 (the cocaine offence) and 12 years imprisonment in respect of Count 2 (the cannabis offence). Both sentences are to run concurrently. Set out below are my reasons for doing so.

3. Usually, it is unnecessary in a sentencing decision to recount in detail the evidence which was heard at trial, however I do find that it is necessary to do so in the case-at-bar. Of course, a recitation of the evidence will undoubtedly provide the factual foundation for the sentences which I delivered, but I find that the circumstances of this case are so unique from other cases that I deem that it is necessary to comment on the manner in which the Defendant advanced multiple defences over the course of two (2) trials. Defences which were ultimately shown to be shams. To be clear, the fact that the Defendant demonstrably and admittedly told multiple lies while under oath in the witness box during this trial and while under caution in two (2) police interviews, and that he did so because he well knew that the truth would implicate him in the commission of the offences, did <u>not</u> factor into my sentencing decision.

4. It should also be noted that this trial was the Defendant's second trial in respect of the offences charged. The first trial commenced on the 24th June 2024 but due to a Covid outbreak among jurors the Jury was discharged on the 8th July 2024 (the "first trial"). By the time the Jury was discharged a *voir dire* had been held into the admissibility of two (2) caution interviews conducted of the Defendant (pursuant to section 93 of the Police and Criminal Evidence Act 2006), and the Prosecution had closed its case. The Defendant elected not to give evidence in his own defence. I will more about what transpired in the first trial later.

The Prosecution's case

5. The Prosecution's case, which the Jury would have thoroughly accepted in reaching their unanimous guilty verdicts, was that on Saturday, 4th March 2023 customs officers were on duty at the L.F. Wade International Airport (the "airport") when they searched several bags which came off an Air Canada flight. The bags were initially supposed to have been on a Westjet flight which left from Canada to Bermuda on Thursday, 2nd March 2023 and so they were considered to be "lost" or "late" bags. One of those bags had the name "Jhordan Georgehors" on it and when it was searched the customs officers discovered six (6) block-shaped items wrapped in black plastic paper (containing the cannabis) and a "Johnny Walker" bottle with liquid inside (the liquid cocaine). The bag also had clothing and other non-offending items in it.

6. The address on the bag was that of the hotel/restaurant "Fourways Inn" ("Fourways") and this caused the police to attend the Warwick Parish establishment with a warrant on the 4th March 2023. The Defendant was not present at the time, but the police were let into their hotel room by the manager. Thereupon they seized various items such as travel documents and a SIM card. The next day on the 5th March 2023 the police returned to Fourways where they eventually saw the Defendant and his companion Ms. Jhordan George-Horsford ("Jhordan"). When the police asked the Defendant his name the Defendant initially did not say his real name of "Alexta Gill". But when he gave the police his license it said "Alexta Gill". The Defendant and Jhordan were cautioned, arrested, and taken to Hamilton Police Station for suspicion of importation of a controlled drug. Police interviews with the Defendant were conducted on the 6th and 7th March 2023 in the presence of his attorney Mr. Bruce Swan. The entire interview of the 6th March 2023 (the "first interview") was exculpatory, and so was the first half of the interview on the 7th March 2023 (the "second interview"). It was the Prosecution's case that the second half of the interview on the 7th March 2023 amounted to a confession by the Defendant to the commission of the offences charged.

7. The thrust of the Prosecution's response to the Defendant's case (the Defendant elected to give evidence in his own defence) was that the Defendant told lies in the first and second interviews, and that he told additional lies when he took the stand at trial. The Prosecution asserted to the jurors that when the Defendant put forth his defence to them that he told them at least four (4) completely different versions of what occurred. Specifically, that in the first interview, which the Prosecution called the Defendant's "first version", he said that:

- He and Jhordan came to Bermuda for "birthday shenanigans" and that the ticket to Bermuda was paid for by someone named "Ran" or "Run". He added that Fourways was booked by his cousin "Sean Seloa" because he [the Defendant] did not have a credit card. He said that after they arrived at Fourways on the 2nd March 2023 they were chilling at the restaurant and that when they left the restaurant "kind of intoxicated" to go back to their room Jhordan's suitcase broke on the stairs to their room. Further, that the "taxi guy" who had brought them from the airport to Fourways offered to get them another suitcase and so he left and came back with one. At 12.30am/1.00am (i.e. the 3rd March 2023) the taxi guy took them to get some food.

- On the 5th March 2023 at about 12.00pm he and Jhordan left Fourways and spent the day shopping and buying groceries. When they arrived back at the hotel that is when the police approached them. He thought that they were going to rob him and that is why he gave them the wrong name.

- Every night that he and Jhordan were in Bermuda they slept at Fourways except for one night when they were trying to get a taxi. They were unable to and so they just stayed on the road walking around getting to know Bermuda. They ended up going to the hotel at 11.00am the next day.

- It was puzzling to him that drugs were found in his luggage.

8. In the second interview, which the Prosecution called his "second version", the Defendant said that:

- When he and Jhordan arrived in Bermuda there were three (3) or four (4) taxis in the airport taxi rank and as they were going to get in one of them they were told by the taxi driver that he was not going that way (to Fourways). As a result, he and Jhordan got into another taxi. He said that he knew that the second car was a taxi because the driver heard him talking to the first taxi driver, and, because the driver said that he was a working taxi. He said that the vehicle which the driver had did not have the word "taxi" written on it and that it was parked right on the side of the road.

- On the day of their arrival in Bermuda on the 2nd March 2023 they went to Fourways but that they did not check in until the following day on the 3rd March 2023 because they were walking around and touring Bermuda. He added that he left his luggage at the front desk of Fourways and went to a well-known fast-food establishment called "Ice Queen" (which is located in Paget Parish and not too far from Fourways). He said that he was taken to Ice Queen by the taxi driver who had ferried them from the airport on the 2nd March 2023. After that, they found a waterfront beach and sat there all-night smoking marijuana. Someone had showed them a "guy", and they bought weed off him.

9. After about twenty (20) minutes into the second interview the Defendant asked for a break to speak to Mr. Swan. The break lasted for about nineteen (19) minutes and when the second interview resumed the Defendant said that he wished to say something and without any prompting from the police he said that he just wants "to get this over and done with". He then almost immediately said that he thinks that someone who he worked with named "Andre" (he did not know his last name) was trying to set him up. He repeatedly said that he was not going to save Andre anymore and that he was telling the 100% truth. He also said that he did not say anything about Andre before because he was scared and he needed to talk to a lawyer to find out if he would be protected if he brought Andre's name to the forefront. He then went on and said what the Prosecution submitted was the "third version" from the Defendant. In particular, that:

- He had borrowed $8,000 Canadian dollars from Andre for a car loan and that after awhile he and Andre were arguing about him paying the loan back. This also involved him getting phone calls from people saying that they are going to kill him. The last time he received threats was two (2) or three (3) nights before he travelled to Bermuda on the 2nd March 2023.

- On one occasion Andre asked him to import marijuana into Guyana and that as payment for that deed the $8,000 debt would be written off, but that he told him "no". He initially said that Andre never asked him to bring drugs into Bermuda and that one of Andre's people probably saw his flight booked and told Andre about his bag. But then later in the second interview he said that on the 31st October 2022 that Andre asked him to bring drugs into Bermuda and that Andre contacted him again about this on the 10th February 2023 (i.e. less than one (1) month before he travelled to Bermuda on the 2nd March 2023). On this occasion Andre came to his house and told him that he had a way that he could write off the debt and that he [Andre] knew where he lived. Andre asked him to bring a suitcase for him to Bermuda. He told Andre to "do what he has to do" and he hopped out of Andre's car. Two days later though he agreed to have the debt written off.

  The Prosecution also brought to the Jury's attention a section of the second interview where the Defendant did say that he thought that the debt would be paid off by him coming to Bermuda, and also another part where the Defendant stated that Andre did ask him to bring drugs to Bermuda and that Andre said that if he did not that he [Andre] was going to kill him and his family.

- He thinks that Andre paid for the airline tickets and that Andre's cousin paid for the hotel. Andre gave him a black suitcase the day before the flight, but Andre did not tell him what was inside. When he asked Andre where the "stuff" was and "isn't the stuff supposed to be in" the suitcase Andre told him "don't worry about that". So, he just put his clothes in the suitcase. He was to call Andre once he arrived in Bermuda, but he did not call Andre because he had a feeling that something was wrong. He did not

know who he was supposed to meet in Bermuda or what to do with the suitcase. He also did not know anybody in Bermuda.

10. As far as the Prosecution was concerned the Defendant had admitted to importing into Bermuda the cocaine and cannabis in the second interview. However, the Defendant's oral evidence at trial told a different story which the Prosecution said was a "fourth version" from the Defendant. I will now set out what that fourth version was.

The Defendant's case at trial (when he gave oral evidence)

11. The Defendant elected to give evidence in his own defence and by their unanimous guilty verdicts on both counts on the Indictment it was obvious that the Jury comprehensively rejected almost every word which he uttered from the witness box while under an oath to tell the truth.

12. In examination-in-chief he told the Jury that:

- He came to Bermuda to celebrate Jhordan's birthday and that he gave Jhordan $1,500 for the airline tickets and that she put some money on top of it. Jhordan was responsible for paying for Fourways.

- The taxi driver outside the airport told them that he was not going as far as Fourways and so they went with a "guy" who was standing next to a Kia Sportage motorcar in the airport parking lot and who said that he would take them to Fourways. He assumed that the guy overheard the conversation between himself and the taxi driver. He did not know this guy and he could not remember the guy's name (the Defendant supposedly encountered other unnamed persons and so to avoid confusion I will refer to this person as the "first guy" and thereafter other persons in numerical order).

13. In her questioning of the Prosecution witnesses Ms. Nicole Smith (on behalf of the Defendant) sought to establish, or at least put into the Jury's mind, that this first guy who

supposedly overheard the conversation between the Defendant and the taxi driver was some sort of "gypsy driver". In Bermuda, it is well-known that gypsy drivers are unregistered and unlicensed persons who park outside of grocery stores and take persons from place to place for a fee. They are not sanctioned by the relevant government taxi registry and Ms. Smith provided no evidence whatsoever that at the material time, or at all, gypsy drivers operated within the boundaries of the airport.

14. The Defendant went on to say in evidence that:

- They told the first guy that they were hungry, and he took them to "Ice Queen" where they stayed for about 45 to 50 minutes. After they ate, they then went to Fourways (which again is not too far from Ice Queen). At Fourways, Jhordan went to the reception desk to sort out the booking and as she did so he took their other bags out of the car. As he was going up the steps with the bag it got caught on the metal railing which caused the bag to tear open and the clothes to fall out. The first guy told him that he would get them another suitcase and the first guy left. After 20 minutes the first guy returned with a blue suitcase and eventually took the torn suitcase away for disposal.

- Jhordan could not finalize the booking and so they left Fourways and walked out onto Middle Road (a main road in Warwick Parish) for a walk. They saw another guy (the "second guy") and asked him where they could buy marijuana from and the second guy directed them to Warwick Workmen's Club (the Defendant said that in Canada marijuana is legal). They walked to the club and once there they saw a guy (the "third guy") standing outside of the club and when he asked the third guy where he could buy marijuana the third guy said *"You have come to the right person"*. He eventually purchased marijuana from the third guy who also gave them a tray, scissors, and a grinder. He gave the third guy $200 Bermudian dollars. This was around 7.00pm.

- At about 8.00pm (an hour later) they walked back onto Middle Road where they caught a taxi which took them to a beach near a place called "Elbow Motorcycle Rentals".

They went skinny dipping for about 45 minutes, smoked marijuana, drank, lit a bonfire, had intercourse, went on their phones, and then fell asleep. When they awoke it was morning and they went back into the water and then walked to the main road. This would have been around 12.00pm the next day on Friday, 3rd March 2023. They got into another taxi and went to a restaurant in Devil's Hole in Harrington Sound, Hamilton Parish to get something to eat (he said that the restaurant was recommended by the first guy). They also went to a bulk grocery store in Devil's Hole to buy toiletries and other sundry items.

- They then got into another taxi and went to the City of Hamilton where they did sight-seeing and around 3.00pm they went to Fourways. They checked in and "chilled" in the room and around the pool. He also received a message from Westjet saying that they would deliver their lost luggage to the hotel.

- They left the hotel and went out to the main road where they took a taxi to the Dockyard area. They stayed in Dockyard and then went to the City of Hamilton. From there they went back to Devil's Hole to a club. This was around 10.30pm/11.00pm and they stayed there until about 2.30am on Saturday, 4th March 2023. They then took a taxi to the hotel.

- They woke up about 7.00am and around 12.00pm they went back to the same grocery store in Devil's Hole to buy some cereal, milk and candies. They then went back to the hotel where they chilled.

- At night they went to Front Street in the City of Hamilton and after walking around and going to a restaurant they went back to the Devil's Hole club. They partied there from about 10.00pm to 2.30am on Sunday, 5th March 2023. They then went back to the hotel.

- After they awoke, they ate breakfast and chilled in the room. At about 7.00pm they went back to the grocery store in Devil's Hole to get cereal, milk and chocolates. They

then went back to the hotel where they saw two guys who he did not know. When one of them asked him his name he said "Stulla" which is his nickname. After he gave them his license he was arrested and taken to the police station.

- On the 6th March 2023 he was told by a police officer that he had to choose a lawyer. He said that he saw a chart of lawyers' names in the custody area of the police station and he chose a lawyer named Susan Moore- Williams whose name was one of the ones at the top of the list. He was placed back in his cell. A while later he was taken to a room where he met Mr. Swan. He told Mr. Swan his name and why he was arrested. However, he said Mr. Swan did not give him any guidance. He was then placed in his cell where he remained for a few hours. The police then came back and took him for the first interview.

- He said that he did not understand what the police said to him at the beginning of the first interview when they said to him *"You are not obliged to say anything unless you wish to do so, anything you do say is being audio and video recorded and may be and may be submitted in evidence. What do you understand by that"*. He further said that he did not understand what "submitted in evidence" meant.

- He asked for a break in the interview to ask Mr. Swan what controlled drugs were.

- In the interview he was "scared", "shocked" and "shaky" and did not know what would become of him.

- After the interview he was placed back in his cell without speaking further to Mr. Swan.

- On 7th March 2023 he was taken from his cell for the second interview, and this was without speaking to anyone prior.

- Mr. Swan did not tell him that what he said in the interview would be written down and used against him, and, that he was not told by the police officers or Mr. Swan that he could say "no comment" to the questions asked.

- He said that he was scared and did not know what would become of him at the end of the interview.

- During the nineteen (19) minute break in the second interview he asked Mr. Swan what he [Mr. Swan] thought about the police not believing him. He said that Mr. Swan did not give him legal advice, but he understood from Mr. Swan that he had to say something that the police wanted to hear.

- That what he said in the first interview was his "truth" and that in the second interview he thought that if he made up something then he would get bail.

15. The Defendant then said that everything which he said prior to the break in the second interview, that is everything that he said in the first interview and prior to telling the police about Andre, was the truth. And, that everything he said after the nineteen (19) minute break in the second interview was a lie, i.e. everything about Andre getting him to bring drugs into Bermuda to pay off an $8,000 debt.

16. By the time the Defendant concluded his examination-in-chief he had, according to the Prosecution, given "four versions" of what had happened. But it did not end there. Through rigorous and piecing cross-examination by Ms. Khadijah Beddeau (for the Prosecution), additional and different versions emerged. During cross-examination by Ms. Beddeau the Defendant said that:

- He lied about Andre because he wanted to get out of police custody.

- He could not account for the considerable number of discrepancies, inconsistencies and impossibilities of the timeline of what he said he and Jhordan did from the time

they left the airport on the 2nd March 2023 to when he was arrested on the 5th March 2023.

Including but not limited to: who booked and/or paid for his flight to Bermuda and his room at Fourways; going to Fourways from the airport; getting food at Ice Queen; the "taxi" ride costing only $50 although the entire journey (which would have included stopping at Ice Queen) lasting about two (2) hours; his luggage ripping at Fourways; spending the night of the 2nd March 2023 to the morning of the 3rd March 2023 at Elbow Beach and not checking into Fourways; asking a stranger on Middle Road for marijuana; going to Warwick Workmen's to buy marijuana, a grinder, scissors, and a tray from another stranger; going to an unknown beach where they skinning dipped, smoked marijuana, and inexplicably lit a bon-fire, etc. in the month of March (the Defendant said that the water was not cold but he accepted that in the interview by the police that he had a blanket around him because it was cold in the police station); on multiple occasions going to Devil's Hole to a restaurant and to get items from a bulk grocery store even though there was a grocery store within walking distance from Fourways); visiting places such as Dockyard and the City of Hamilton; being informed of his rights at the police station; meeting with Mr. Swan before and after the interviews; the advice which Mr. Swan gave to him; and never hearing marijuana or cocaine being referred to a drug.

17. The most blatant lie which the Prosecution sought to establish, and which the Jury may have concluded that it was successful in doing so, was about catching a taxi at the airport. Through the use of CCTV footage taken at the airport when the Defendant and Jhordan arrived in Bermuda the Prosecution showed the Jury that as the Defendant and Jhordan were arranging to get into the taxi that a person in dark clothing quickly walked quite a distance from the airport carpark and as he did so the Defendant left from the taxi and walked over to this person. The Defendant and this person came within close proximity of each other and then the Defendant went back to the taxi, retrieved his luggage, and then went over to the car park from where the person came from.

18. The Prosecution also established that during his cross-examination the Defendant gave evidence for the very first time. Evidence which: he did not advance during the *voir dire* or the trial proceedings in the first trial; his attorneys did not put to the Prosecution witnesses in the first trial or this trial (he had two separated attorneys for both trials); and, he did not say in his examination-in-chief in this trial. Such as:

- In the first trial the Defendant's basis for having a *voir dire* was <u>not</u> that: the police interviews were obtained through any coercion, threat, oppression, or inducement on the part of the police or anyone; the police interviews were not voluntary; or, he did not have access to or was denied any opportunity to consult with a lawyer at any time whatsoever. His complaint was solely that Mr. Swan did not properly or at all advise him before, during and after the interviews, and that Mr. Swan did not protect him from self-incrimination. To support his complaint, the Defendant called Mr. Swan and the custody officer of the police station to give evidence.

  At this trial there was no *voir dire* requested by the Prosecution or the Defence. During his oral evidence the Defendant alluded to not being properly represented by Mr. Swan but he went a lot further and introduced new evidence about his interviews being obtained by threats from the police, and concerningly that Mr. Swan told him to lie to the police.

- There was miscommunication between himself and Ms. Susan Mulligan (his lawyer in the first trial) and that she did not represent his case properly.

19. As I said earlier, the proven fact that the Defendant lied when he gave evidence at trial and during his police interviews are not factors which I took in reaching the sentences which I gave. However, I will refer to them in my later commentary.

Sentencing Decision

20. Section 27 of the Misuse of Drugs Act 1972 provides that:

> "***Prosecution and punishment of offenders***
>
> *27 (1) Where a person commits an offence under section 4, 5, 6(3), 7, 8, 9, 10, 11, 13, 16(6), 17(3) or 22:*
>
> *(a) punishment on conviction on indictment: imprisonment for life or a fine of one million dollars or three times the street value of the controlled drug, whichever is greater or both such fine and imprisonment;*
>
> *(b) punishment on summary conviction: imprisonment for ten years or a fine of five hundred thousand dollars or three times the street value of the controlled drug, whichever is greater or both such fine and imprisonment."*

21. In the factual context of this case section 27(1)(a) of the MDA should be read with section 27B of the MDA which stipulates the following:

> *"**Controlled drugs and increased penalty***
>
> *27B In sentencing a person convicted for an offence involving a controlled drug prescribed under Schedule 5, the court shall have regard to—*
>
> *(a) the street value of the controlled drug; and*
>
> *(b) the destructive effect on society of the controlled drugs prescribed under Schedule 5;*
>
> *and add an increased sentence of fifty per cent to the basic sentence."*

22. With cocaine being a controlled drug listed under Schedule 5 of the MDA (it is the first drug listed in Schedule 5) any sentence received by the Defendant for the importation of cocaine is subject to an uplift of fifty (50) percent of whatever basic sentence he is warranted to receive.

23. It should take little or no effort to conclude that Parliament took a dim view on the importation of controlled drugs in Bermuda. The maximum sentences of life imprisonment and a whopping $1,000,000 fine registers the legislature's intent to have those who dare to imported drugs into Bermuda be treated by the Courts with the utmost harshness and severity. No doubt, the genesis behind Parliament's intention was the realization that controlled drugs have ripped apart the social fabric of Bermuda and that future generations will be negatively impacted if an unequivocal message is not sent to offenders and would-be offenders that the full extent of the law will be visited upon them if they import drugs into Bermuda.

24. Having regard to sections 27B(a) and 27B(b) of the MDA there should be no contention whatsoever that $203,100 worth of cocaine is quite substantial. There is therefore no need for me to trouble my mind any further about the high street value of the cocaine in this case. It should also be indisputable that the destructive effect that cocaine has had on the residents of Bermuda has been absolutely devastating. Had the amount of cocaine in this case reached Bermuda's roads, streets, households, sports clubs or schools it would have done untold damage to residents. Cocaine is a pervasive and menacing drug which has destroyed many lives, families, communities, careers, and personal relationships. Uncaring people like the Defendant have profited from the despair and devastation that cocaine has left in its wake, and unfortunately with the entrenched prevalence of the importation and distribution of cocaine over the years it is unlikely that in the near future that such offences will abate unless a strong message is sent to offenders and would-be offenders. It is therefore unsurprising that not only did Parliament fix the maximum sentence for the importation of controlled drugs at life imprisonment and/or a maximum sentence of $1,000,000, but that they also saw fit to apply an additional 50% uplift from the basic sentence when cocaine is imported. Any sentence meted out by the Courts must therefore reflect Parliament's clear intentions to deal with people who peddle in drugs, particularly hard drugs such as cocaine, with the utmost harshness.

25. In support of her sentencing submissions Ms. Beddeau referred to the authorities of *R v. Chandra Kota, Case No. 28 of 2024*, *R v. Radcliff Brown, Case No. 15 of 2023*, *R v. Dwayne*

Watson, Cr. App No. 2 of 2018, *R v. Zico Pearman, Case No. 17 of 2015*, and *Arorash v. R, Criminal Appeal No. 34 of 1991*. Ms. Smith referred to the authorities of *Andre Richardson, Case No. 4 of 2017*, *Curtis Swan v R. (2018) Bda LR 64*, and *R v. Joshua Joell, case No. 35 of 2024*.

26. However, of those authorities it is the one of ***Watson*** which has the most applicability to the facts and circumstances of the case-at-bar, and in particular to the importation of cocaine offence (Count 1). The Appellant in ***Watson*** pleaded guilty to possession with intent to supply 1,090.96 grams of cocaine hydrochloride with a street value of $200,634. It does not appear that he pleaded to any importation offences, but the facts of the case reveal that he secreted the cocaine in a carry-on suitcase which he brought through the customs area of the airport. The Appellant was sentenced by the first instance judge to 6 years imprisonment, but the Court of Appeal determined that this sentence was manifestly inadequate, and it was substituted for a sentence of 9 years imprisonment.

27. Smellie JA authored the decision in ***Watson*** and in it he provided useful guidance as to what the Court should take into consideration when sentencing offenders for cocaine-related offences. He helpfully stated the following from paragraphs 20 to 24 of the decision:

> *"20. In the line of recent cases, an important starting point is the judgment of this Court in Cox (supra) where it was declared (per Mantell JA) to have been already "well recognized that in cases of commercial importation of crack cocaine the starting point following a trial is unlikely to be less than twelve years" and that "Zambari v The Queen Criminal Appeal 5 of 1995 is a case in point".*
>
> *21. This dictum was more recently reaffirmed by this Court in Brown (supra) and applied such that the sentence in that case of fifteen years' imprisonment for importation of 894.6 grams of cocaine, was upheld (with the Court noting that a sentence of eighteen years' imprisonment would not have been criticized).*
>
> *22. In Brown the proper procedure for arriving at the appropriate sentence in cases of this kind (first set out in R v Tucker and Simmons), was also reaffirmed:*
>
> > *"The proper procedure would be for the trial judge to fix the basic sentence. We understand this to mean the appropriate sentence for the offence charged after considering all the circumstances of the case including discounts if any. Having*

fixed that sentence the section provides that fifty percent of that figure should be added to the basic sentence."

23. Here it is apparent from the transcript of sentencing as set out above, that the learned Judge fell into error first by not accepting and applying the starting point (basic sentence) settled in Cox (and reaffirmed in Brown). He then further erred by failing to follow the proper procedure reaffirmed above.

24. Had he applied the principle from Cox, the starting point would have led him to a basic sentence of twelve years' imprisonment, given that this was clearly a case involving the commercial importation of cocaine. Without discounts to the basic sentence, the result would have been a sentence of eighteen years after the application of the mandatory section 27B uplift.

28. A distillation of Smellie JA's words is that when sentencing for importation of cocaine offences the Court should:

(1) Accept and apply a starting point of 12 years imprisonment; and then,

(2) Fix the basic sentence after taking into consideration the circumstances of the case, and any mitigating and/or aggravating factors (which could result in an upwards or downwards movement from the starting point); and then,

(3) Add a 50% uplift to that basic sentence.

29. In respect of the cannabis offence (Count 2) the cited authorities can be summarized as follows:

<u>*Kota*</u>: The defendant pleaded guilty to the importation of 110.9 grams of cannabis and 1,531.2 grams of cannabis resin worth $11,000 and $306,210 respectively (total street value of both drugs being $317,210). He was sentenced to three (3) years imprisonment and sentencing judge Richards J. noted that had the matter gone to trial a sentence of six (6) years imprisonment would have been appropriate.

Brown: The defendant pleaded guilty to the importation of 19.5 kilograms of cannabis with a street value of $1.9 million. He was given a sentence of 8½ years imprisonment.

Pearman: After trial, the defendant was sentenced to 4 years imprisonment for importing $268,360 worth of cannabis.

Richardson: This case involved the importation of cannabis with a street value of $267,925 and after trial the Defendant was sentenced to 4 years imprisonment.

Joell: The Defendant pleaded guilty to importation of cannabis and cannabis resin with a street value of $598,800 and he received 5 years imprisonment.

30. Viewing all those authorities together it would appear that recently offenders who have pleaded guilty to importing large amounts of cannabis i.e. in the region of $250,000 to $300,000 worth, received about 3 years imprisonment. And for those who have been found guilty by a jury for the same approximate amounts they have received or should have expected to receive anywhere between 4 to 6 years imprisonment. In consideration of the maximum sentences of life imprisonment and a $1,000,000 fine (as set out in section 27 of the MDA) and the prevalence of the offence of importation of considerable amounts of cannabis over the past 10 years, I find that the recent sentences meted out to convicted offenders have been on the low side. It appears to me that given the prevalence of the offence of importation of controlled drugs, particularly by foreign nationals, that the message that is being conveyed throughout Bermuda and other jurisdictions is that Bermuda hands out low sentences for the importation of controlled drugs and therefore the risk of committing the offence is worth taking. In saying this, I cast no criticism on the Judges who imposed those sentences (I am one of them) as they (we) were only following sentencing guidelines theretofore set. However, I find that we have reached a point where there should be an upwards adjustment in sentencing tariffs for the importation of large amounts of cannabis.

This would not only be in accordance with the legislature's desire to have these offences dealt with seriously, but it would also meet the objectives set out in section 53 of the Criminal Code, *to wit*: to protect the community; to reinforce community-held values by denouncing unlawful conduct; and, to deter the Defendant and other persons from importing drugs into Bermuda. It would also reflect the nature and seriousness of importing drugs into Bermuda and the already stated prevalence of the offence.

31. I therefore find that the starting point for the importation of large amounts of cannabis i.e. amounts that have a street value of over $200,000, should be 12 years imprisonment. For clarification, I recognize that this is the same starting point which was set in ***Watson*** for the more serious drug of cocaine. However, the difference in the manner in which cannabis and cocaine are dealt with for the purposes of sentencing is that the increased seriousness of cocaine over cannabis is reflected in the application of the 50% uplift in sentencing prescribed by section 27B of the MDA. No such uplift can be applied to cannabis.

32. In the circumstances, and following Smellie JA's guidance in ***Watson***, when sentencing for importation of cannabis offences the following route should be adopted:

    (1) Apply a starting point of 12 years imprisonment; and then,

    (2) Fix the basic sentence after taking into consideration the circumstances of the case, and any mitigating and/or aggravating factors (which could result in an upwards or downwards movement from the starting point).

33. With this in mind, I will now focus on the circumstances of this case, and any mitigating and/or aggravating factors which may exist.

Circumstances of the case

34. There is no doubt in my mind that the Defendant was an integral cog in a sophisticated drug operation designed to flood Bermuda with destructive drugs (the cocaine and the cannabis).

He was not simply a duped mule who imported drugs into this Island under duress. What he did would have involved an intricate network of nefarious operators and he likely would have had enough knowledge of the full journey of the drugs from Canada to Bermuda. In particular, a reasonable inference can be drawn that: he or someone he knew or suspected obtained the liquid cocaine and cannabis from somewhere and/or from someone; he or someone he knew or suspected put the liquid cocaine into the Johnny Walker bottle and the cannabis into the block-like packaging; he or someone he knew or suspected placed the cocaine and the cannabis into his suitcase; he or someone he knew or suspected purchased his and Jhordan's airline tickets to Bermuda and/or paid for the room at Fourways; someone involved in the importation of drugs into Bermuda would be waiting for him at the airport in Bermuda and would take him to Fourways; he would give the cocaine and the cannabis to someone involved in the importation of drugs into Bermuda and that person would take the drugs somewhere and possibly to someone else. To be clear, I am in no way suggesting that the Defendant was the kingpin of the drug operation (although he could have been) but he was definitely no stooge either.

35. I have already spoken about the destructive effects which cocaine has on a society. While cannabis is not set out in Schedule 5 of the MDA, and while public debate persists as to whether its properties have a deleterious effect on users, the fact remains that importation and possession of large amounts of cannabis is still illegal. The Defendant well-knew this fact and his importation of over 20lbs of cannabis into Bermuda was not for his personal use but instead was rank exploitation of the people of Bermuda for pure financial gain for himself and for others.

Mitigating features

36. I have taken into consideration section 55(g) of the Criminal Code and I find that there are no mitigating circumstances other than the Defendant having no previous convictions in Bermuda. Having no previous convictions affords the Defendant only a small discount in any sentence which he may receive but given the history and circumstances of this matter any discount which he may have received for having a previous good character is completed

obliterated. In instances where an offender has pleaded guilty to an offence the Court routinely takes into consideration that by doing so that the offender has not only saved the Court the time and costs of court proceedings but also the guilty plea avoided the inconvenience of witnesses having to attend Court to give oral evidence. The benefit of pleading guilty is often a discount in sentence of up to 30%. The other side of this though is that where an accused has pleaded not guilty but is eventually found guilty by a jury then no such discount is enjoyed. Not only did the Defendant not plead guilty at the earliest opportunity, from the 4th March 2023 he deliberately put the taxpayers of Bermuda through exorbitant expenditures of time and money. Costs which invariably were incurred for the investigation of his offences, the conduct of two (2) trials, multiple applications (in and outside of the actual trial process), and countless Court appearances.

37. Basically, everything which transpired from the 4th March 2023 when the customs officers discovered the drugs in the Defendant's suitcase to when he was unanimously found guilty by the Jury on 29th July 2025, amounted to a monumental waste of human and financial resources. Equally disturbing, is that in his calculated efforts to deceive the police authorities, the Court, the Jury, and ultimately the people of Bermuda, the Defendant connivingly thought it necessary to impugn the erstwhile good character of the police officers involved in the investigation of his offences, and most concerningly, the erstwhile good reputation Mr. Swan and Ms. Mulligan (less so) who were practicing members in good standing of the Bermuda Bar. I should add though that there was no evidence before me which supported the notion that Mr. Swan or Ms. Mulligan's respective practices were negatively impacted by the slurs made about them by the Defendant (the letter from Bruce Swan and Associates dated 23rd October 2025 did not satisfy that any prejudice was caused to Mr. Swan's law practice).

38. The above comments are not hyperbole when one considers that in his Social Inquiry Report dated the 19th September 2025 (the "SIR") the Defendant unequivocally confessed to committing the offences charged. On page 3 of the SIR and under the heading "Attitude Towards Offence" the report writer wrote:

"Mr. Gill readily accepted culpability for his offending behaviours when he was interviewed for this report. He reported that he and his girlfriend were aware that they were bringing illicit drugs to Bermuda. After initially declining to make any further comments, Mr Gill adamantly expressed remorse for his offending behaviours and offered assurances that he was not at risk of reoffending similarly. He added, "I feel like I failed my kids, I failed my parents and I failed myself". He explained that the offences were committed because "Me and my girlfriend were going through a financial strain" which became more problematic when the Covid-19 pandemic negatively impacted their finances."

39. Surprisingly, Ms. Nicole Smith (who acted for the Defendant at the second trial and for this sentencing) robustly submitted that the above report did not amount to a confession by the Defendant. Not only did it amount to an unequivocal confession, but it was a clear attempt by the Defendant to try and manipulate the processes of the Courts to his benefit. The Defendant's contrived *mea culpa* in the SIR and in his allocutus in Court was not out of some deep and genuine expression of regret and remorse (there was none) but it was an obvious attempt by him to curry favour with the Court in the hopes of receiving a sentence lower than that which he should justifiably receive. That attempt was transparent and futile.

40. I also do not give much currency to the character reference from Pastor Charmaine Burgess. I have no doubt that she gave a truthful account of her perceptions about the feelings of the Defendant from when she met him in March 2023. However, whatever remorse she may have observed from the Defendant prior to both of his trials did not manifest itself into any ownership by the Defendant of any offending behaviour. Clearly, the Defendant's conveyance of remorse-tinged words to Pastor Burgess did not translate into any action by the Defendant to have this matter resolved at the earliest opportunity. He, as he was entitled to do, took the Prosecution to task and compelled it to prove its case on two occasions.

41. Also surprising is that Ms. Smith would submit that the Defendant was not wholly to blame for the offence. I ask rhetorically: "Who else was there to legitimately and justifiably blame other than the Defendant?" The Defendant stated that Jhordan had nothing to do with the offences and no names other than that of Andre surfaced during the trial as to the commission of any offences. And it was the Defendant who said that Andre was a fictitious name given to the police so that he may be granted bail. For Ms. Smith, without any sustainable

evidence, to draw other persons such as customs officers and airport workers into the Defendant's vortex of criminality was inappropriate.

42. In respect of other potential mitigating factors advanced by Ms. Smith and in the SIR I find that they do not persuade me that any discount in sentence should be given. Specifically:

(i) The Defendant having a twelve-year old girl and eight year old fraternal twins and that he has not seen his mother (who lives in Guyana) for ten years.

When sentencing the Court should "steal itself away" from taking into consideration that an offender has children or loved ones. It is rather contradictory that an offender would not think about any consequences which any criminal conduct may have on their children (or loved ones) prior to committing any offence but then seek to rely on having children after being caught and found guilty of the offence.

(ii) The Defendant always going to the Red Cross to feed children and being a volunteer in Guyana and Canada.

The Defendant had absolutely no regard for the welfare of the children of Bermuda when he caused to brought into Bermuda a drug which has resulted in untold damage being done to families over the years.

(iii) The Defendant suffering from depression, visual hallucinations, and having suicidal ideations after being arrested.

I place no stock in this especially since the Defendant, for the entire period of the two years that he was in the community on bail, did not engage with treatment services. Further, it was noted by the SIR author that the Defendant did not appear to be suffering from any mental health related issues when he was interviewed. If anything, the Defendant may be suffering from a stark realization that his attempt

at manipulating the Court system did not work and that he will now be facing a lengthy period of incarceration. This is a feeling which is not strange to persons who have been convicted of serious offences.

(iv) The drugs did not reach the streets of Bermuda as they were intercepted at the airport.

This is a consideration, but only a small one, and it is definitely not a mitigating factor. It cannot be that a drug importer could expect a significant reduction in sentence because the drugs did not make their way past the port of entry. The fact that the drugs did not make their way to the streets of Bermuda had nothing whatsoever to do with any change of mind of the Defendant and he should get little or no discount for their detection.

43. I partially agree with Ms. Smith that the value of the drugs should not be seen strictly as an aggravating feature. In respect of the cannabis, while not being treated as an aggravating feature the level of sentence should be commensurate with the street value of the cannabis. In other words, the higher the street value then the higher the sentence must be. In respect of the cocaine, while not couched in terms of being an aggravating feature, the application of 50% uplift under section 27B of the MDA is tantamount to treating the street value of the cocaine as an aggravating factor.

Sentence

44. Guided by the principles set out in *Watson*, I sentence the Defendant as follows:

In respect of the Count 1 – the Cocaine offence

(i) A basic sentence of 12 years imprisonment – having considered the circumstances of this case and the mitigating features I find that there should be no upward or downward adjustment from the starting point of 12 years imprisonment.

(ii) A 50% uplift of 6 years imprisonment should be applied.

The total sentence is therefore one of 18 years imprisonment.

In respect of the Count 2 – the Cannabis offence

(i) A basic sentence of 12 years imprisonment - having considered the circumstances of this case and the mitigating features I find that there should be no upward or downward adjustment from the starting point of 12 years imprisonment.

The total sentence is therefore one of 12 years imprisonment.

The sentences for Counts 1 and 2 shall be served concurrently and therefore the total sentence is one of <u>18 years imprisonment</u>.

45. I should say I agree with Ms. Smith that any sentence imposed on the Defendant must be subject to the totality principle. However, I find that in the circumstances of this case that consideration of totality would only arise if I were to decide that the term of imprisonments for Counts 1 and 2 should be served consecutively for Count 2. That is, that the sentence would be 30 years imprisonment. This obviously would be a disproportionate sentence. I have instead ordered that the sentences are to be served concurrently and with that I find that the total sentence of 18 years imprisonment is proportionate to the gravity of the offence.

<u>Commentary</u>

46. It is a fundamental and unshakeable constitutional right that an accused person is to be presumed innocent until they are proven guilty. It is therefore entirely consistent with the proper administration of justice for an accused person facing trial to just sit back and compel the Prosecution to meet its high standard of proving its case beyond a reasonable doubt, and, to advance any applications which are founded in law and in fact. No accused person should

be faulted for steadfastly and persistently exercising these legal and constitution rights and no adverse inference should be drawn from them doing so. This is even in situations where it may be patently obvious that an accused person may have told blatant lies to the police in a police interview or even when they elected to give oral evidence at trial.

47. However, the circumstances of the case-at-bar are rare indeed and therefore require a comment. If ever there could be an abuse of the court processes by an accused person, this probably was it. As the second trial process unfolded it became increasingly obvious that the Defendant was determined to employ and deploy every possible means of distraction, evasiveness, and obfuscation to "get off" of the offences charged. Specifically: his story constantly changed within and between the first and second interviews; his allegations against Mr. Swan were materially different in the *voir dire* in the first trial from those made in the second trial (they were even more serious in the second trial); his allegations regarding the police officers who conducted the interviews were different in the *voir dire* in the first trial from those made in the second trial (they too were even more serious in the second trial); his oral evidence in the second trial was different from the contents of his first and second interviews; and, he gave new and significant accounts of his defence in cross-examination which he did not say when questioned by his attorney in examination-in-chief.

48. Essentially, the more that the Defendant spoke the more he trod down the path of absurdity. Even when it was pellucidly clear that he was building a poorly constructed tower of non-sensical lies, rather than retreat the Defendant continuously doubled down. Figuratively, the Defendant was throwing virtually everything at the wall and was hoping that something stuck.

49. As I stated earlier, I am not being hyperbolic. In his SIR the Defendant admitted to committing the offences, just as he did in the second half of the second police interview. The end result is that copious amounts of time and money was spent for someone who knew that he was guilty of the offences. There is no way of knowing the total costs incurred by the police to investigate this case, for the Prosecution to prosecute the Defendant, for the Legal Aid Office to represent the Defendant (he was legally aided), or for the Court to hear

the matter which included pre-trial applications, case management hearings and trials since March 2023. I would venture to say however that it must have been a considerable expenditure for the public purse. This was time and money which could have been used on the investigation of other criminal offences, for other accused persons who actually had/have legitimate defences and quite rightly were/are entitled to call upon the Prosecution to prove their case beyond a reasonable doubt, and, for the Courts to hear other matters. For an already stretched criminal justice system it is regrettable that the Defendant saw fit to exploit processes which are put into place and executed to ensure that accused persons have access to justice, are investigated in accordance with proper police procedures, and ultimately receive a fair trial in a reasonable period of time.

50. The Defendant's entire defence was farcical, but fortunately this case was an aberration. The overwhelming vast majority of accused persons who appear before the Courts do not, unlike the Defendant, put forth multiple sham defences and have only taken points which are rooted in law and facts. In fact, in all my years of hearing cases in the Magistrates' Court and in the Supreme Court I have never seen any accused person conduct themselves like the Defendant did. I am therefore comforted in the sincere belief and knowledge that accused persons who have already been before the Court, are currently before the Courts, and will in the future be before the Courts, have not and will not conduct themselves in the way the Defendant did.

Dated the 16th day of January 2026

THE SEAL OF THE SUPREME COURT OF BERMUDA
SIGNED

The Hon. Justice Juan P. Wolffe
Judge of the Supreme Court of Bermuda