In The Supreme Court of Bermuda

APPELLATE JURISDICTION
2021: 15

JAMEL SIMONS

Appellant

-v-

FIONA MILLER
(POLICE SERGEANT)

Respondent

JUDGMENT

Appeal against conviction in the Magistrates' Court
Sexual Assault on a Person under the Age of 16 years –
Section 323 of the Criminal Code – The Law on Consent

Date of Hearing:	1 November 2021
Date of Judgment:	20 January 2022
Appellant	Mr. Paul Wilson (Westwater Hill & Co.)
Respondent	Ms. Karen King for the Director of Public Prosecutions

JUDGMENT delivered by Shade Subair Williams J

Introduction

1. This is an appeal against Magistrate Mr. Khamisi Tokunbo's finding of guilt against the Appellant on Information 19CR00392 to a charge of sexual assault, contrary to section 323 of the Criminal Code. On the facts underlying the conviction, In April 2002 when Mr. Simons was 19 years of age, he used physical force to have sexual intercourse with the Complainant, who was then herself only 15 years of age.

2. The Appellant complained before this Court that he was wrongly convicted by the learned magistrate and that his conviction should be quashed on the grounds of appeal set out in his Notice of Appeal filed 10 March 2021.

3. Having heard Counsel for both sides on their oral and written submissions, I reserved judgment which I now provide with my reasons.

The Crown's Evidence

4. In April 2002 the Complainant was a high school student at the Bermuda Institute. On one particular day that month, together with her female friend, she absented from school and met the Appellant and one of his male friends at a location from where she and her girlfriend travelled to the Appellant's home as pillion passengers on the Appellant and his friend's bikes.

5. Having arrived at the Appellant's residence, there came a point when the Appellant and the Complainant were alone with one another in his bedroom while the others were in the living room where music was playing loudly.

6. While alone in the Appellant's bedroom, the Appellant and the Complainant started kissing. From that point the Appellant started to fondle the Complainant's breast and attempted to remove her below-the-knee length denim skirt. The Appellant's evidence is that she urged him to stop to which the Appellant replied; "…*this is what you came up here for*". She explained that the Appellant positioned her skirt in such a way that she was unable to further move her legs and that her hands were pinned down over her head. Helplessly positioned, she screamed and continued to tell him to stop. However, using his free hand, the Appellant was able to slide the Appellant's underwear to one side and force his penis into her vagina whereupon he had sexual intercourse with her. Once he finished, the Complainant got up and left the residence through the living room from where her girlfriend followed.

7. The magistrate noted the Complainant's evidence as follows:

"*I was trying to fix my shirt- because it was unbuttoned. I have no idea where I went.* [The Complainant's girlfriend] *was somewhere behind me. Don't know where I ended up. I was frantic, full of different emotions- because I was raped. I was mad at myself for skipping school, not fighting back. Mad at* [the Complainant's girlfriend] because *she didn't hear me. I never saw or spoke to defendant again intentionally*."

8. During cross examination, the Appellant said that her recollection of the day in question is vivid and that the events of that day have replayed in her mind throughout the past 17 years. She admitted to having been physically attracted to the Appellant as the reason for her visit to his house. She said that she did not go the Appellant's home for the purpose of having sex but accepted that sex was a '*potential*'. She agreed that she was sending inviting sexual signals to the Appellant and that she allowed him to position himself between her legs.

9. Taken from an agreed transcript of the trial, the cross-examination of the Appellant on this area of the evidence was transcribed as follows:

51. Then after 5 minutes of small talk, you're making out with him on his bed?
[Answer] *Yes*
52. He's fondling you?
[Answer] *Yes*
53. He's rubbing your thighs; eventually he starts fingering your vagina?
[Answer] *Yes he puts his fingers in my vagina*
54. You gave him easy access by wearing a skirt, didn't you?
[Answer] *Yes*
55. This was someone you who moments before you say you had never met face to face?
[Answer] *Yes*
56. You remember telling police you had a button up shirt on, correct?
[Answer] *Yes*
57. And you told police he unbuttoned your shirt?
[Answer] *Yes*
58. You didn't tell him not to unbutton your shirt?
[Answer] *No*
59. You told police you allowed him to unbutton your shirt?

[Answer] *Yes*

60. To the point your bra was showing?

[Answer] *Yes*

…

…

61. You told police you allowed him to unbutton your shirt?

[Answer] *Yes*

64. I'm sure you'll disagree – just to be contrary – but you were sending sexual signals…

[Answer] *Yes*

59. The signals you were sending were saying you want to be engaged sexually?

[Answer] *Yes*

…

…

102. So, again, according to you, you allowed him to kiss you (with tongue)?

[Answer] *Yes*

103. You allowed him to fondle you?

[Answer] *Yes*

104. You allowed him to unbutton your shirt?

[Answer] *Yes*

105. You allowed him to see your bra?

[Answer] *Yes*

106. You allowed him to hike up your skirt?

[Answer] *Yes*

107. You allowed him to position himself in between your legs?

[Answer] *Yes*

108. Your telling us you didn't intend to have sex, but you can see how he may have thought something different?

[Answer] *He can think what he wants*

109. When the two of you were kissing; what are you saying [?] *your hands were down by your sides- no of course not* [.] [Y]*ou were caressing his face?*

[Answer] *I don't know* [-] *pretty sure they may have been on him*"

10. When challenged about whether she suffered any vaginal bruising or tearing, the Complainant stated that her vagina was intact save that she experienced a burning sensation during urination. When it was put to her that the Appellant used a condom, she said that she would not have seen when he put on a condom as she was lain on her back. She maintained that the Appellant had a tight grip on her and injured her wrists leaving bruising which remained for about a week thereafter, notwithstanding that she later told the police that she did not sustain any injury or bruising.

11. The Complainant provided various examples of subsequent incidents in the passing years where she crossed paths with the Appellant to her dismay. On each of those occasions, she avoided interacting with him and described her distress to see him again. On one occasion, she was so upset that it onset her vomiting. On another occasion, she attended Warwick gas station where he approached her car as a gas attendant but she insisted that someone else service her vehicle. Recounting a further example of her attendance to the same gas station, the Complainant told the Court that in the course of her business endeavours to deliver incenses to that location, she found herself at the register counter when the Appellant came inside and tried to include her in dialogue with the cashier. In response to his gesture towards her she told him '*not to fucking touch*' her.

12. Prior to her encounter with the Appellant at the cash register, the Complainant stated that she went to Oleander Cycles with her current boyfriend and life partner. The Complainant went insider to the sales floor where the Appellant was employed. Her boyfriend was outside and the Appellant walked out towards him and to their car, engaging her boyfriend in brief conversation. The Complainant said she swiftly proceeded towards the Appellant with the intention of '*making off*' but the Appellant walked off from her car without further incident.

13. The Complainant's evidence was corroborated by her girlfriend who attended the Appellant's residence with her in April 2002. I shall hereinafter refer to that witness as 'MCJ' or 'the Complainant's girlfriend'. MCJ was also a 15 year old student at the material time.

14. MCJ stated that she and the Complainant were collected by the Appellant and his friend 'Red' from the bus layby near Warwick Gas station on South Shore. From there the four of them travelled on the motorbikes to a residence she assumed to be that of the Appellant. MCJ said that she also recalled the presence of a third male at the residence. She said that she sat on the living room couch as music was playing.

15. On MCJ's evidence there came a point when the Complainant and the Appellant left the living room and went into another room for 20-30 minutes. She remained in the living room with 'Red'. Magistrate Tokunbo's note of MCJ's evidence of the Complainant's return from the other room is as follows:

"*Complainant was upset when she came back. It was visible. I believe she was crying or had been crying. She was fixing her clothes- her skirt. It was a triangle denim skirt- it was not straight - so she was fixing it.*

She wanted to leave and was heading/walking out the door. The TV/music in the living room was still playing when the complainant came out. I remember there being vibrations from the base. At some point the music got louder or the base intensified- meaning it was harder to have a conversation. I struggled to have conversation.

I asked complainant what's wrong. She basically replied "I'm leaving" so I got up and left. We started walking to the bus stop on Ord Road. We were there for a while. She was very upset. So we started walking. She was angry- couldn't keep still- she was fidgety.

We walked eastward. I believe we walked to Cobb's Hill junction and went down south shore road where we caught the bus. I believe when [the] *Complainant came back in* [the] *living room she was alone. I believe Jamel came out as well but I don't think they came out/back together.*

We went on bus to Hamilton. [The] *Complainant was on the bus shaking – upset. I tried to talk to her- ask what was wrong. She wasn't ready to talk. While we were walking after getting off the bus, I asked her again why she was upset. Her demeanour was angry, frustrated.*

I think she was angry at me at that moment. She was like I should know why she was angry and like why am I asking her. I felt terrible – I felt powerless She blurted out what happened. I believe we then went back home…"

16. At trial the Court also heard evidence from the Complainant's spouse of 13 years. This was the Complainant's same boyfriend who accompanied her when she saw the Appellant at Oleander Cycles. Describing that occasion, he said, as noted by the magistrate:

"[The] *Complainant came out and got in* [the] *car and was different- wasn't the same when she went inside. She is loud and boisterous half the time. I thought something must have happened with her father's bike. She was like a shell of a person- like everything was gone. Never seen her like that. On occasions when we go to take incense to Rubis, she would look out for him (defendant). As long (as) he wasn't around, she was her same old same old."*

The Defence Case at Trial

17. The Appellant gave oral evidence in his own defence. In his evidence he accepted that the Complainant and her girlfriend visited his home in April 2002, although he claimed that they had caught the bus and walked to his house. According to the Complainant, there were several more of his friends present at his house than what was described by the Crown witnesses.

18. The Appellant's evidence was that music was playing pretty loudly from his living room. He agreed that he was alone with the Complainant in his bedroom and that he had sexual intercourse with her. The magistrate's note of the Appellant's description of this on the stand was as follows:

"*When she was in my bedroom, she was comfortable, relaxed, happy to be there. Yes we were kissing in mouth and tongue- kissing each other's necks. Correct we were fondling each other. Correct she fondled me. Don't recall if she touched or grabbed my penis. I think she was touching my face when we were kissing. I touched or felt her vagina when we were fondling. I used my hands/fingers. Her vagina was wet, real*

wet/moist. I inserted my fingers all the way in to her vagina. I was experienced enough to be familiar with a woman's vagina when she was aroused. While all the fondling was happening, I was thinking we were gonna have sex…"

19. The above note is an abstract portion of all the explicit detail noted by the learned magistrate in recording the Appellant's evidence about his sexual interaction with the Complainant. In short, the Appellant denied using any force and claimed that it would have been impossible for him to pin down the Complainant on account of nerve damage he had in his left hand from the age of 15-16 years. On his evidence, the Complainant moaned rather than screamed during sex and that he interpreted that moaning sound to be a sign of her enjoyment.

20. The Appellant said that the Complainant was fully clothed during the sexual act and that he used a condom. He said he was partially clothed in that he still had his shirt on but his pants was down to his knees.

21. When asked in examination in chief about what happened immediately thereafter, he volunteered:

"*After sex I got up and went to [the] bathroom to dispose of [the] condom. The bathroom to left of my room exit. Don't recall saying anything to complainant. She said nothing to me. I then went in living room to check my friends that were in there and on the porch. Music was up loud, could not hear it in [the] bedroom, not with the door closed. I told one or two of my friends to go in my room- to see if you can get some basically. See if she would give it up to them as well; give up sex. I was talking to Anthony and Kyle. They went in there- one at a time. It was very brief- each in the room 15 seconds. They didn't stay in the room. One of them said it's cool. Not too sure when [the] Complainant left [the] house – not too soon. Didn't see when she left. Didn't tell me she was leaving…*"

22. During re-examination the Appellant described the Complainant as a stranger to him since the extent of their previous contact or knowledge of one another was limited to their telephone interaction on 3 or 4 occasions prior to that day at his house. When asked about his perception of their lack of communication after sex he said:

"*I didn't care that I hadn't spoke to her again. All I wanted was sex. There have been times women have had sex with me and no communication afterwards and have just left. I felt no way about it.*"

23. The Appellant did not address the incidents of open hostility described by the Complainant in the years which followed.

24. Speaking to the question of his knowledge of the Complainant's minor age, the Appellant said in during cross-examination that he had just turned 18 and that insofar as he knew, she was 16 years old going on 17. He denied ever being told that she was a virgin and said that he knew from someone else from Bermuda Institute that she was not a virgin. At the appeal hearing, the Appellant's Counsel informed this Court that it was also accepted that the Appellant knew on the day in question that the Complainant was a high school student at Bermuda Institute.

25. No other witnesses were called by the Defence at trial.

The Grounds of Appeal

26. The Appellant appealed on two grounds of appeal:

"*1. The Learned Magistrate erred in law insofar as he did not properly direct himself on a matter of law;*

2. The Learned Magistrate did not properly consider a defence which arose on the evidence and was thereafter available to the Appellant; and

3. The evidence adduced by both the Crown and [the] *Appellant does not support the findings of the learned Magistrate.*"

The Relevant Law

<u>The Statutory Framework related to the offence of Sexual Assault:</u>

27. Section 323 of the Criminal Code provides:

"***Sexual Assault***

323 A person who commits a sexual assault is guilty of a felony and is liable—
(a) on conviction on indictment to imprisonment for twenty years;
(b) on summary conviction to imprisonment for five years.

28. Corroboration is not required in cases involving sexual offences:

Corroboration not required

327 The rules requiring corroboration in sexual offences are abrogated and, accordingly, where an accused is charged with a sexual offence— corroboration is not required for a conviction; and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

[Section 327 replaced by 1993: 2 effective 1 June 1993]

Rules about recent complaint abrogated

328 The rules relating to evidence of recent complaint are abrogated with respect to sexual offences.

[Section 328 replaced by 1993: 2 effective 1 June 1993]

<u>The Law on Consent</u>

29. In Division III (Offences against the Person) Part XV (Provisions of Law Relating to Violence to the Person and to the Preservation of Human Life) of the Criminal Code the term "assault" is defined as follows under section 233(1):

"***Interpretation of Part XV***
233 (1) A person who—

(a) strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without that other's consent; or

(b) by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without that other's consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose,

is said to assault that other, and the act is called an assault."

30. Section 233(3)(b)(ii) provides that there is no consent where "*the complainant, having consented to engage in the activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity*…"

31. Equally, consent is negated under section 233(3)(b)(v) where "*the complainant is incapable of consenting to the activity*."

32. However, subsection (5) creates a defence of honest belief. By virtue of subsection (6) the below defence also applies to sexual assault cases:

    "…
    (5) In relation to an assault, where an accused alleges that he believed that the complainant consented to the conduct alleged to be the assault, the judge, if satisfied—

    (a) that there is sufficient evidence; and

    (b) that the evidence, if believed by the jury, would constitute a defence,

    shall instruct the jury that they must, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, consider the presence or absence of reasonable grounds for that belief."

33. Mr. Wilson forcefully and properly submitted that an honest belief in consent need not be a reasonable one. Plainly correct as he was, this did not initially strike me as an obvious point. However, in his reliance on the reasoning outlined in *DPP v Morgan* [1976] AC 182 (1975) Mr. Wilson swiftly made good his submission. The offence of sexual assault is not an absolute or strict liability offence. The Crown must prove a guilty intention as an essential element of the offence. An intention cannot be said to be guilty if there was an honest belief of consent, whether that honest belief was reasonably formed or not.

34. In *DPP v Morgan* the question before their Lordships, as certified by the Court of Appeal as a matter of general public importance, was "*whether, in rape, the defendant can properly be convicted notwithstanding that he in fact believed that the woman consented, if such belief was not based on reasonable grounds*". This traced back to whether the trial judge was right in directing the jury that the defendants should nevertheless be convicted of rape even if they were satisfied that there was an honest belief in consent, so long as that honest belief was unreasonably formed. So, questions of law arose on the quality of an accused's belief in consent and the evidential burden of proof.

35. Effectively, Counsel for the DPP submitted that the *actus reus* is having intercourse without consent and that the *mens rea* is formed simply by having an intention to have the intercourse. Counsel in that case cited *R v Tolson* 23 Q.B.D. 168 in an attempt to

compare this approach to that said to be applicable to the offence of bigamy where a person unreasonably believes that the earlier marriage no longer subsisted. On the question of burden of proof, the Crown submitted that the evidential burden of proof is on the accused who raises the defence of an honest belief and that where such a defence is sufficient so to justify it being put to the jury, the onus would revert to the Crown to prove that the defendant had no such belief or reasonable grounds for so believing.

36. The Defence, on the other hand, argued before their Lordships that an honest belief in consent is enough and that it matters not whether it be also reasonable. The submission made by the Defence was that any evidence intending show a reasonable belief could only be relevant towards and supportive of its honesty. Conversely, evidence showing the unreasonableness of the belief could only be relied on by the Crown to undermine the accused's contention that the belief in consent was honest. So the complaint made by the Defence was the trial judge erred in making reasonableness as well as honesty an ingredient of the defence of honest belief.

37. In the opening speech of the judgment, Lord Cross of Chelsea distinguished rape from the offence of bigamy, stating [8]:

"…*But, as I have said, section 1 of the 1956 Act does not say that a man who has sexual intercourse with a woman who does not consent to it commits an offence; it says that a man who rapes a woman commits an offence. Rape is not a word in the use of which lawyers have a monopoly and the question to be answered in this case, as I see it, is whether according to the ordinary use of the English language a man can be said to have committed rape if he believed that the woman was consenting to the intercourse and would not have attempted to have it but for his belief, whatever his grounds for so believing. I do not think that he can. Rape, to my mind, imports at least indifference as to the woman's consent*..."

38. Looking at the fuller scope of "intent" Lord Hailsham of St Marylebone said [27]:

"…*if the intention of the accused is to have intercourse nolens volens, that is recklessly and not caring whether the victim be a consenting party or not, that is equivalent on ordinary principles to an intent to do the prohibited act without the consent of the victim*."

39. Lord Hailsham recognised that an honest belief in consent cannot be said to apply to an accused that is careless or reckless as to whether the victim has actually consented to the sexual act. Otherwise put, the guilty intention required is an intent to commit a sexual assault. A guilty intent to a commit a sexual assault includes a state of mind which is careless or reckless about the presence of the victim's consent at the outset and/or throughout the sexual act.

40. Lord Hailsham cited the decision of the Court of Criminal Appeal of New South Wales in *Sperotto & Salvietti* [1970] 1 N.S.W.R. 502 where the Court illustrated the mental ingredients of a sexual assault as follows [504]:

"*In all crimes at common law a guilty intention is a necessary element and with the crime of rape this intention is to have carnal knowledge of the woman without her consent. In order to convict the accused of the crime of rape and, subject to what is hereinafter said, to establish this intention on his part the Crown must prove beyond reasonable doubt that when the accused had intercourse with the woman either (i) he was aware that she had not consented, or (ii) he realized that she might not be consenting and was determined to have intercourse with her whether she was consenting or not. The intent and the act must both concur to constitute the crime*."

41. The above second example of intent constitutes the reckless component of the *mens rea* and is inconsistent with an honest belief in consent.

42. I now turn to the question of whether there is an evidential burden on an accused to raise a defence of 'honest belief in consent'. On my assessment of the law, the Defence cannot properly be charged with any such evidential burden. A guilty intent is an essential element of the offence of sexual assault and the Crown bears the burden of proving beyond all reasonable doubt that the accused was possessed of a guilty intent whether or not the Defence asserts an honest belief in consent. Support of this proposition was the basis of Lord Hailsham's approval of Lord Goddard's below statement in *Steane* [1947] K.B. 997 [1004] which provides:

"…*if on the totality of the evidence there is room for more than one view as to the intent of the prisoner, the jury should be directed that it is for the prosecution to prove the intent to the jury's satisfaction, and if, on review of the whole evidence, they either think the intent did not exist or they are left in doubt as to the intent, the prisoner is entitled to be acquitted*."

The Law on Consent in respect of Age

43. Where an accused is charged with sexual assault on a person under the age of 16 years, an honest belief in consent to the sexual act is not a defence. However, an honest and reasonable belief that the victim was 16 years of age or older at the time the offence is a defence to a charge of sexual assault under section 190(4) of the Criminal Code, so long as the accused has not previously relied on such a defence and the accused has not yet attained the age of 21 years and the victim is not under the age of 14 years.

Analysis and Decision

44. There are two principal points which underlie the Appellant's grounds of appeal. Firstly, Mr. Wilson argues that reasonable doubt arose on the evidence that physical force was used by the Appellant to carry out the sexual act. The second element of the grounds of appeal, taken collectively, is that the Crown failed to prove a guilty intent on the part of the Accused. From this stems two further limbs for consideration: (i) whether the Crown proved that the Appellant knew that the Complainant did not agree to partake in the sexual intercourse and (ii) whether the Crown proved the Appellant's intent to have sexual intercourse with a minor.

The *Actus Reus*:

45. In this case there is no controversy on the fact that the Complainant was 15 years of age when the sexual act between her and the Appellant occurred in April 2002. Mr. Wilson did not advance any argument which would challenge the Court's acceptance of the law that a person of minor age is not capable of consenting to the sexual act which occurred. Thus, the Appellant would necessarily concede that the *actus reus* of sexual assault was formed.

Whether force was used to further the sexual act

46. The Complainant's evidence was that she agreed and willingly partook in the initial fondling and sexual interaction between her and the Complainant. She accepted that she found the Appellant physically attractive and that there was 'potential' for sexual intercourse between them. However, as explained on her evidence at trial, when the level of sexual activity progressed, the Complainant urged the Appellant to stop. Her evidence is that he refused and instead replied; "…*this is what you came up here for*". The Crown's evidence was that the Appellant moved the Complainant's skirt in a way which restricted her leg movement and that her hands were pinned down over her head. The complainant said she believe she screamed and continued to tell him to stop. If that evidence is accepted, then the Crown's case that force was used to achieve sexual intercourse is proven.

47. Mr. Wilson, during his oral submissions to this Court, made much of the earlier stage where the Complainant showed herself to be a willing participant. However, the Crown's case was that the force used by the Appellant occurred after the Complainant's initial sexual cooperation. This Complainant's evidence of force is consistent with her evidence that she frantically stormed out of the Appellant's residence after the intercourse occurred. The Appellant's evidence was that she was upset because she had just been raped. She was also angry at her girlfriend for not having come to her rescue.

48. While section 327 of the Criminal Code abrogates the previous rules requiring corroboration in sexual offences, the Complainant's evidence of the agony and anger she experienced immediately after the sexual act was corroborated by the evidence of MCJ who spoke about the Complainant crying and being so upset to the point of shaking while they were on the bus.

49. This aspect of the Crown's case is supported by the Complainant's unchallenged evidence of her open hostility against the Appellant in the years which proceeded, to the point of refusing to allow the Appellant to service her vehicle at the gas station and telling him not to '*fucking*' touch her when she was at the cash register. The Complainant's evidence was that sight of the Appellant was so upsetting to her that she even vomited on one occasion when she saw him years later. That continuing pain and anger was corroborated by the evidence of the Complainant's current spouse who was with her at Oleander Cycles and on other occasions when she attended Warwick Gas Station (Rubis) on guard for the Appellant's presence.

50. In my judgment, the Crown's case that the Appellant used physical force to commit the sexual act was strong and I see no reason why the learned magistrate ought to have formed any other conclusion from these facts.

The *Mens Rea*

51. The evidence of physical force is central to the evidence from which guilty intent is to be drawn. In this case, guilty intent arises as an irresistible inference of fact leaving no room for any contrary inference to be reasonably drawn. Clearly, the Appellant knew that the Complainant was unwilling to follow through with the sexual intercourse and but he callously persisted by force.

52. The final question for settlement is on whether the Crown proved the Appellant's knowledge of the Complainant's minor age at the time of the offence. Mr. Wilson accepted that the evidence showed that the Appellant knew that the Complainant was a student at Bermuda Institute at the material time. However, this is not probative of the Appellant's minor age. Once the Appellant stated in his evidence that he thought the Appellant was 16 going on 17, it was for the Crown to prove that the Appellant knew otherwise. Having considered the provisions of law under section 190 of the Criminal Code, I find that the Crown fell short of doing so on the evidence. I am thus bound to find that the evidence of guilty intent in respect of the fact that the Complainant was under 16 years of age was not sufficiently established. However, in light of my findings of guilty intent by reason of the use of force, the appeal must fail.

Conclusion

53. The conviction is safe and the appeal shall be dismissed on all grounds.

54. Accordingly, I remit this matter to the Magistrates' Court for sentencing and remand the Appellant into custody for a report to be prepared under section 329E of the Criminal Code.

55. A copy of this Judgment shall accordingly be served on the Commissioner of Prisons forthwith.

Dated this 20th day of January 2022

THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE