In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
Case No. 36 of 2019

BETWEEN:

THE QUEEN

-and-

JOHN DEXTER SEAMAN

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

Appearances: Ms. Nicole Smith for the Prosecution
The Defendant appears unrepresented[1]

Dates of Hearing: 2nd & 3rd October 2023
Date of Sentence: 30th November 2023

SENTENCE

Unlawful Carnal Knowledge - Attempted Unlawful Carnal Knowledge – Sexual Exploitation

WOLFFE J:

1. On the 16th May 2023 a Jury, by majority verdicts on eight (8) counts on the Indictment, found the Defendant guilty of two (2) counts of Attempted Unlawful Carnal Knowledge ("UCK") contrary to section 180(2) of the Criminal Code Act 1907 (the "Criminal Code")(Counts 1 and 6); two (2) counts of UCK contrary to section 180(1) of the Criminal

[1] At trial the Defendant was represented by Mr. Charles Richardson.

Code; three (3) counts of Sexual Exploitation contrary to section 182A(1)(a) of the Criminal Code)(Counts 3, 7 & 8); and one (1) count of Sexual Exploitation by a person in the position of trust contrary to section 182B(1) of the Criminal Code (Count 5).

2. I directed the Jury to find the Defendant not guilty of a further count of sexual exploitation which was Count 9 on the Indictment.

Summary of the Evidence at Trial

3. The Jury heard and accepted by way of their guilty verdicts cogent evidence of historical incidents of UCK, attempted UCK and sexual exploitation committed by the Defendant on two victims who at all material times were children and were sisters. In order to maintain their anonymity I will not name the child victims and I will simply refer to them as Victim A and Victim B. Victim A was the eldest of the two.

4. I should forewarn any reader of this Sentence that the details of the sexual acts performed on the victims by the Defendant are quite graphic and troubling.

The offences committed in respect of Victim A

5. Victim A told the Jury that in 1992 when she was 11 years old[2] the Defendant came to live in her home where she stayed with her mother, father, two sisters and her brother. At some point in time the Defendant, who was then about 30 years old, was invited to move into her home where he slept in Victim A's brother's room. At first the Defendant was nice to Victim A and would take her to restaurants and fishing off the rocks near her home. The Defendant ingratiated himself to Victim A's family to the extent that he was considered to be a family friend and someone whom Victim A trusted. Unfortunately, there came a time when the way in which the Defendant treated Victim A changed for the worse and his interaction with her became to be of a sexual nature.

[2] At the time of trial Victim A was 42 years old.

6. On the first occasion, and in respect of Count 1 on the Indictment which is the attempted UCK offence, the Defendant had taken Victim A to see a late movie in his white van and when they returned home about 1.00am the Defendant parked the van outside of the home. Victim A was 11 years old at the time. They both ended up in the back of the van where the Defendant put his hands up Victim A's shirt and began touching her breasts. He then did the following: put his hands in her underwear and took off her underwear; proceeded to have oral sex on her (meaning that he placed his mouth on her vagina); and then pulled his penis out of his pants and tried to insert it into her vagina. Victim A said that it was too painful for her when the Defendant tried to do this and therefore the Defendant did not have intercourse with her. She also stated that the Defendant did not have a condom on and that the Defendant's attempt to have intercourse with her did not take place over a long period of time.

7. In respect of Count 2 which is the first UCK offence, Victim A recounted for the Jury that when she was still 11 years old she was at the Defendant's business place located in the City of Hamilton after doing gymnastics at her school. The Defendant had a mattress in a back office where he caused Victim A to lay on her back. He then proceeded to do oral sex on her (meaning that he put his mouth on her vagina). He then put his penis inside of her which lasted for about 10 minutes and he stopped after he ejaculated into a cloth. The Defendant then took Victim A home and told her not to tell anybody about what happened because he would get into trouble and be incarcerated. Victim A added that prior to the Defendant having sexual intercourse with her that she was a virgin.

8. In respect of Count 3 which is the first sexual exploitation offence, Victim A stated that when she was 13 years old she was again at the Defendant's place of business when the Defendant waited until the business premises were cleared of people and then took her to the same back room where the mattress was located. Once there she engaged in oral sex with the Defendant by putting her mouth on his penis and by the Defendant putting his mouth on her vagina.

9. In respect of Count 4 which is the second UCK offence, Victim A said that at the same place and time that the offence in Count 3 occurred the Defendant had sexual intercourse with her which lasted for about 10 minutes. As was done on a previous occasion the Defendant pulled his penis out of her vagina before he ejaculated. The Defendant then took Victim A back home where they both were still living, and once again the Defendant told her not to tell anybody what had occurred.

10. In respect of Count 5 which is the sexual exploitation whilst in a position of trust offence, Victim A detailed that she was 14 or 15 years old when the Defendant came into her bedroom where she was sleeping on the top bunk of her bunk bed. It was nighttime and the Defendant woke her up and when she moved to the edge of the bed he performed oral sex on her by putting his mouth on her vagina. She said that the door of her bedroom opened and then door closed back and that the Defendant told her that it was her father who opened and closed the door. The Defendant then continued to have oral sex with her and when he finished she went back to bed and the Defendant went back to his room. As he had said on previous occasions the Defendant told her not to tell anybody. Victim A said that at this time she saw the Defendant as her "boyfriend" and she knew that he was "30 something" years old.

11. It is important to highlight that Victim A's credibility was fully tested by Mr. Charles Richardson, the Defendant's then lawyer at trial, who sought to persuade the Jury that she could not be believed and that therefore her evidence should be outright rejected. The basis for Mr. Richardson's attempt to discredit Victim A was that when she was 15 years old she made false allegations against three boys who were her neighborhood friends. She told police that the three boys had raped her but after a short while she admitted to police that she lied. She explained that she made up the allegations in an attempt not to get into trouble with her mother for staying out all night with another boy from her school and whom she had an intimate relationship with.

12. Another quiver in Mr. Richardson's bow in his attempt to characterize Victim A as a bull-faced liar was that Victim A then made further untrue allegations that her father had

inappropriately touched her for a sexual purpose. Victim A admitted that this too was a lie and she explained that she lied because she was mad with her father for getting her older sister impregnated (Victim A and her older sister do not share the same father but do have the same mother). Victim A said that her entire family was devastated by this revelation and that mentally she was "not in a good space" meaning that from the ages of 11 to 15, and during the course of the acts committed by the Defendant, that she was suffering from depression and anxiety and that was prescribed anti-depressant medication.

13. Through Mr. Richardson the Defendant also criticized Victim A for waiting until 2018 to report the matter to police. This, Mr. Richardson argued before the Jury, went to show that Victim A fabricated her evidence. Explaining this delay, Victim A said that she waited so long to report the incidents because what the Defendant put her through during her childhood resulted in her using crack cocaine to cope with her trauma. She said that she was a drug addict for 13 years of her life and after being clean and sober she was able in 2018 (when she was 39 years old) to report the matter to police.

14. Of course, one can only speculate what was in the minds of the Jury when assessing the evidence of Victim A as to her victimization at the hands of the Defendant. However, it would not be a stretch to say that the Jury could have concluded that even though Victim A may have lied about the three boys raping her and about her father committing sexual offences on her they could still, after considering the totality of the evidence heard at trial, go on to accept Victim A's evidence that the Defendant committed the sexual offences on her. Particularly if the Jury also accepted Victim A's explanation for lying about the three boys and her father. Moreover, the Jury could have also accepted and understood her explanation for the delay in reporting the matter to the police.

The offences committed in respect of Victim B

15. Victim B said that she was 5 years old when the Defendant came to live in her home. She said that at some point her interactions with the Defendant involved him inappropriately

touching her on numerous occasions as well as the Defendant performing sexual acts on her and her performing sexual acts on him.

16. In respect of Count 8 which is a sexual exploitation offence[3], Victim B gave evidence that at a time before she was 7 or 8 years old she was getting ready for school in the morning when the Defendant came into her room and wanted to perform a sexual act on her. She could not remember if Victim A was there or how the act initiated but she could remember that the Defendant put his penis in her mouth. She did not tell anybody that this had happened.

17. In respect of Count 7 which is another sexual exploitation offence, Victim B stated that when she was about 8 years old the Defendant took her to a derelict hotel in the same Parish as her home and once there they ended up in the back seat of the Defendant's car. Once in the back seat the Defendant put his mouth on her genitalia and she remembered that this was during the daytime. She did not tell anybody that this had happened.

18. In respect of Count 6 which is an attempted UCK offence, Victim B told the Jury that she was 9 or 10 years old when the Defendant came into her room during the nighttime and when her mother was not at home. He tried to put his penis in her vagina. She remembered being on the ground right next to her bedroom door and that she was making noise because it was hurting her. The Defendant put his hand over her mouth but he was not able to insert his penis. Victim B could not recall how long this had lasted. She said that when the Accused performed the acts on her that she was scared and that as on previous occasions she did not tell anyone what had happened.

19. Victim B further stated that most times when any of the acts would occur the Defendant would entice her with candy or he would touch her vagina to get her stimulated. For each individual act she could not say what happened at the beginning but that the Defendant giving her candy or touching her vagina would usually be the start of the sexual act. She

[3] In order to maintain coherency I will deal with the offences in chronological order which is in accordance with the age of Victim B although this is not reflected in the order of the Counts on the Indictment.

added that when she was between the ages of 4 or 5 and 10 or 11 she really liked candy and so it was an easy way for the Defendant to get what he wanted from her.

20. As to the delay in reporting the matter to police she said that when she was about 11 or 12 years old she ran away from home and up to when she was 16 or 17 years old she was in and out of different foster homes. Then, whilst she was in high school, she moved to England. It was in October 2019 that she spoke to police for the first time about what the Defendant did to her and this was after she was asked by police whether she could assist with their investigation into Victim A's complaint against the Defendant.

Sentencing Guidelines

21. I should start by setting out the principles by which a sentencing judge should strictly consider when sentencing any offender for any offence. I primarily speak of those principles distinctly pronounced under the heading "Purpose and Principles of Sentencing" in sections 53 to 55 of Part IV of the Criminal Code. Indeed, I would not be the least bit surprised that it was these types of offences against our most vulnerable members of society, our children, which the legislature had in mind when it drafted sections 53 to 55 of the Criminal Code in October 2001. It is for this reason that in the context of this case that it would be entirely *apropos* to replicate the fullness of sections 53 to 55 which stipulate the following:

> ***"PART IV***
> ***PURPOSE AND PRINCIPLES OF SENTENCING***
>
> ***Purpose***
> *53 The fundamental purpose of sentencing is to promote respect for the law and to maintain a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives—*
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> *(a) to protect the community;*
> *(b) to reinforce community-held values by denouncing unlawful conduct;*
> *(c) to deter the offender and other persons from committing offences;*

(d) to separate offenders from society, where necessary;
(e) to assist in rehabilitating offenders;
(f) to provide reparation for harm done to victims;
(g) to promote a sense of responsibility in offenders by acknowledgement of the harm done to victims and to the community.

Fundamental principle
54 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Imprisonment to be imposed only after consideration of alternatives
55 (1) A court shall apply the principle that a sentence of imprisonment should only be imposed after consideration of all sanctions other than imprisonment that are authorized by law.

(2) In sentencing an offender the court shall have regard to—

(a) the nature and seriousness of the offence, including any physical or emotional harm done to a victim;
(b) the extent to which the offender is to blame for the offence;
(c) any damage, injury or loss caused by the offender;
(d) the need for the community to be protected from the offender;
(e) the prevalence of the offence and the importance of imposing a sentence that will deter others from committing the same or a similar offence;
(f) the presence of any aggravating circumstances relating to the offence or the offender, including—
(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factors;
(ii) evidence that the offender, in committing an offence, abused a position of trust or authority in relation to the victim;
(fa) the presence of any aggravating circumstances relating to a serious personal injury offence as defined in section 329D, or an offender where the victim is a child, including—
(i) evidence that the offender seriously wounded, maimed or disfigured another person or endangered the complainant's life;
(ii) evidence that the offender preceded or accompanied the offence with acts of torture or serious violence;
(iii) evidence that the offence was committed against a particularly vulnerable victim;

(iv) evidence that the offence was committed against a member of the family, against a child cohabiting with the offender or while abusing his position of trust; 10

(v) evidence that there were one of two or more persons jointly committing the offence; (vi) evidence that the offender was acting within the framework of unlawful gang activity as defined under section 70JA;

(vii) evidence that the offender has previously been convicted of offences of the same nature;

(g) the presence of any mitigating circumstances relating to the offence or the offender including—

(i) an offender's good character, including the absence of a criminal record;

(ii) the youth of the offender;

(iii) a diminished responsibility of the offender that may be associated with age or mental or intellectual capacity;

(iv) a plea of guilty and, in particular, the time at which the offender pleaded guilty or informed the police, the prosecutor or the court of his intention so to plead;

(v) any assistance the offender gave to the police in the investigation of the offence or other offences;

(vi) an undertaking given by the offender to co-operate with any public authority in a proceeding about an offence, including a confiscation proceeding;

(vii) a voluntary apology or reparation provided to a victim by the offender."

22. It is the spirit and intent of sections 53 to 55 of the Criminal Code which is woven through the authorities which predate and postdate the enactment of sections 53 to 55. I will shortly comment on some of those authorities but in consideration of the fact that this case involves historical incidents of sexual abuse committed by the Defendant between 1992 and 1997 it would be necessary to highlight what was the sentencing regime in place at that time. Specifically, the sentencing tariffs applicable to the Defendant would be those which predate amendments to sections 180, 182A and 182B of the Criminal Code in 2006 and which effectively increased the maximum sentences for UCK, attempted UCK and sexual exploitation offences.

23. Prior to 2006, the sentences for the offences charged in this matter on indictment were as follows: section 180(1) of the Criminal Code (pre-amendment) provided that a person who is guilty of the offence of UCK is liable to imprisonment for 20 years (currently the

maximum sentence is 25 years imprisonment); section 180(2) of the Criminal Code (pre-amendment) stated that a person guilty of attempted UCK is liable to imprisonment for 15 years (surprisingly, there is no difference with the current maximum sentence); section 182A(1)(aa) of the Criminal Code (pre-amendment) stated that the maximum sentence for sexual exploitation is one of 15 years imprisonment (currently the maximum sentence is 20 years imprisonment); and finally, section 182B(1)(aa) of the Criminal Code (pre-amendment) stated that the maximum sentence for sexual exploitation by a person in the position of trust is one of 20 years imprisonment (currently the maximum sentence is 25 years imprisonment).

24. Whether pre- or post- amendment of sections 180, 182A and 182B of the Criminal Code it should be obvious to any objective observer that by virtue of the said harsh sentences that the legislature's abhorrence for such offences matches the broader society's deep disgust for such offences.

25. I will now turn to the cited authorities. To assist the Court in arriving at the appropriate sentence Ms. Nicole Smith, for the Prosecution, cited several authorities which have traversed through the courts over the years. Such as: *R v. Andrew David Fletcher [2002] EWCA Crim 834*; *R v. Melvin Martin [2010] Bda LR 54*; *R v. Callender & Callender [2010] EWCA Crim 2990*; *R v. Shuja Muhammad Case No. 5 of 2014*; *Pernell Brangman v. R BM 2019 CA 14*; *R v. Chez Rogers [2020] Bda LR 68*; and. Other than *Fletcher* all of these authorities post-date the 2006 sentencing amendments spoken of earlier and so this is a factor which I should take into consideration.[4] Having said this the sentencing principles set out in those cases are still applicable and in my view the Bermuda Court of Appeal decision of *Brangman* attracts the most applicability. I will therefore now cover *Brangman* in some detail.

[4] In *Brangman* Clarke P. commented that although the sentencing judge had a misunderstanding and had regard to cases which arose after the 2006 amendment (even though the offences took place prior to the 2006 amendment), the fact that there was only a 5 year difference between the pre and post amendment tariffs this misunderstanding was not significant. Nor did the Court of Appeal consider the post amendment cases that were put before the sentencing judge as being irrelevant.

26. In ***Brangman*** the appellant was unanimously found guilty by a jury for the two counts of sexual exploitation of a young person whilst in a position of trust and one count of UCK. The trial judge sentenced him to 12 years imprisonment for the UCK offence, 10 years for the sexual exploitation whilst in a position of trust offence, and 11 years imprisonment for a separate sexual exploitation offence. The appellant appealed these sentences but the Court of Appeal concluded that the sentences were not manifestly excessive and according the appeal was dismissed.

27. The facts of ***Brangman*** as told by the president of the Court of Appeal Sir Christopher Clarke in paragraphs 5 to 9 were as follows:

> *"5. The case presented by the Crown, which the jury must have accepted, was this. The victim – AB - was the applicant's step daughter, he being married to her mother. During the summers of 1998 and 1999 when AB was 10 to 11 years old, and alone at her home, the Applicant would come there on his lunch hour. During these visits he would perform oral sex on her (the subject of Count 1) and get her to perform oral sex on him (the subject of Count 2). AB said that this would occur at least twice a week.*
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> *6. On one occasion during the summer of 1998 the Applicant had full sexual intercourse with the victim. That was the subject of Count 3. The victim told the Applicant that she did not want him to have sex with her as it would hurt. The applicant continued to have sex with her nonetheless even though she told him to stop and that he was hurting her. AB said that after a few minutes the Applicant did stop.*
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> *7. The Applicant would tell the victim that if she allowed him to perform these sex acts on her that he would buy her lunch.*
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> *8. AB did not tell anyone what had happened until 2011 when her best friend noticed peepholes in her bedroom door. AB told her mother about the holes and 3 her mother confronted the Applicant. He initially denied, but later admitted, cutting the holes there. AB then disclosed the full events and the Applicant moved out of the house.*
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> *9. No reports were made to the police at the time. It was only in September 2017 that AB reported the incidents after she had received counselling."*

28. From this factual backdrop Clarke P. extracted "a number of seriously aggravating features" and said:

> *"The first was the age of the child – she was only 10 years old at the beginning. The second is the fact that the applicant was in a position of trust. The victim was his step daughter. The third is that these crimes took place in her home, which should have been, for the victim, a place of safety. The fourth is the difference in age between the victim and the Applicant - over 20 years. The fifth is that the unlawful carnal knowledge occurred despite the victim's resistance. The effect of all this was that the victim bore the burden of what she had suffered for over a decade before she revealed it to anyone; and it was only after counselling that she felt it possible to reveal it to the police."*[5]

29. Clarke P. went on to say that the effect of the matter going to trial was that *"the victim had to give evidence in public of that which she had undergone years before"*[6]. I take this to mean that when sentencing a person convicted of sexual offences that it would be proper for the Court to take into consider the indignity and public embarrassment that the victim had to endure when compelled to give oral evidence at trial. Indeed, I see no reason why this should not amount to an aggravating factor when sentencing the Defendant.

30. The Court of Appeal also thought it helpful to pass comment that the sentencing judge in ***Brangman*** was right to pass sentences in respect of three (3) distinct offences on the basis that the prosecution's case was that the three offences were part of a continuous course of conduct. I see no reason why I should not adopt the same approach and sentence the Defendant for the offences on the Indictment as if they were a continuous course of conduct carried out over a lengthy period of time. Indeed, I will consider this to be yet another aggravating feature in this case to be added to those listed as existing in ***Brangman***.

31. ***Brangman*** also recited the facts and sentences of several pre and post amendment cases which had varying degrees of applicability to the issues which the Court of Appeal had to consider, and quite frankly they have varying degrees of applicability to the issues which are now before me in the case-at-bar. However, there are two cases cited in ***Brangman*** which draw my attention and that would be ***White v. R [2005] Bda LR 59*** and ***R v. Clevaland Rogers [2015] CA (BDA) 21 Crim***.

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5 Paragraph 10 of ***Brangman***.
6 Paragraph 11 of ***Brangman.***

32. I have more than just a familiarity with ***White*** as I prosecuted this matter in my capacity as Principal Crown Counsel in the Department of Public Prosecutions. So I can say with a great deal of comfort that that case in many respects mirrors the circumstances of the case-at-bar. Clarke P. summarized ***White*** in this way:

> *"41. In White v R [2005] Bda LR 59 a sentence of 25 years' imprisonment was reduced to 16 years in respect of an Appellant who had committed a series of sexual acts with 3 male victims over a period of 2 years. Complainant A was aged between 10 years and 12 years. Complainant B was 12 years and his complaint was in relation to one incident. Complainant C was 11 years and his complaint was in relation to all of the counts, save one. This Court looked at the totality of the matter, and recognized that these offences were not part of a continuous 11 course of conduct (as is the case with which we are concerned). This Court held the Judge to have been in error in passing maximum sentences for offences of sexual assault and sexual exploitation, and that the sentence of 25 years passed on one count was excessive for a single offence. The total sentence overall was reduced to 18 years.*
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> *42. The circumstances of that case were considerably worse than in the case before us, but comparison of the facts in the two cases and the respective sentences do not cause us to think that the sentences with which we are concerned are excessive."*

33. I can add that at the time of the offences the appellant in ***White*** was a serving police officer who, because he was a police officer, gained the trust of the mothers of the young male victims and who were seeking positive male role models because their children did not have active fathers in their lives. The appellant managed to maneuver into the lives of his victims by giving them gifts (which included trips to Disneyland and 1998 World Cup tickets in Paris, Francis), and having done so he committed serious sexual acts on the three boys including serious sexual assault, buggery, and sexual exploitation. It was the sexual assault offence which the Court of Appeal, in considering the totality of the sentences, reduced the sentence of 25 years imprisonment to 16 years imprisonment.

34. ***Rogers*** is of interest because of its similarity with the case-at-bar in relation to the factual scenario but also the aggravating features identified by the Court of Appeal. In this regard, paragraphs 24 to 25 of ***Brangman*** states the following:

> *"24. In R v Cleveland Rogers [2015] CA (BDA) 21 Crim, the Respondent had pleaded guilty to one offence of unlawful carnal knowledge contrary to section 181 of the Criminal Code and three offences of Sexual Exploitation of a Young Person contrary to the section 182A(1)(a) of the Code. All the offences occurred over the course of one night. This Court increased the sentence of 5 years' imprisonment for the Offence of Unlawful Carnal knowledge imposed at first instance to one of 7.5 years. That sentence was a sentence imposed following a plea of guilty. The victim was a few days short of her 14th birthday and the respondent was 46 years. He had a relationship with the victim's mother. In that case this court was referred to a number of authorities but was not persuaded that any of them were of great assistance with regard to the appropriate sentence.*
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> *25. The Court of Appeal identified several aggravating circumstances, namely (a) that the offences occurred at night whilst the victim was asleep in her own bed in her own house; (b) the age disparity between under 14 years and 46 years; (c) the breach of trust given that the Respondent was in the house due to his relationship with the victim's mother; and (d) the Respondent's return to the victim's bed after being disturbed by the mother after which he committed the offence of rape. The Respondent had a number of previous convictions mostly in the last century and none of a sexual nature. The only mitigation was the late pleas of guilty for which the Judge and the Court of Appeal were content to give a 15% discount. The Court thought that "in the particular circumstances of this case, and we emphasize those words" the total sentence should be 7.5 years."*

35. So by applying the principles enunciated in sections 53 to 55 and in the authorities such as ***Brangman***, ***White***, ***Rogers*** and others, I will now focus my efforts on determining what should be the appropriate sentence in the case-at-bar.

Decision

36. No words can adequately convey the horrendous nature of the offences committed by the Defendant. Surely, the family of Victim A and Victim B would never have contemplated or feared that someone whom they so generously welcomed into their home and assisted would over a significant period of time, and with predatory depravity, victimize the most vulnerable members of their household, their 5 year old and 11 year old girls. He abused the trust that they placed in him in the most morally wicked and monstrous way and in

doing so he violently stamped on just about every value and notion of decency held by our community.

37. Moreover, it should be obvious to any right thinking member of society that the offences committed by the Defendant were of the utmost seriousness. Sexual offences against our children run a very close second to the most serious offence of murder and some may justifiably argue that they are even more reprehensible. This is because sexual offence victims will most likely carry the wounds and scars of what happened to them for the rest of their lives. In many instances those wounds never heal and they are often manifested through the victims engaging in self-destructive and highly risky behavior. For many child and adult victims of sexual abuse what they went through, and may still be going through, is a fate worse than death and no conviction or sentence of their perpetrator may ever completely provide them with solace, comfort, or closure. This observation will be reinforced when I later cast my mind to the victim impact statements of Victim A and Victim B.

38. This matter is even more disturbing when one comes to the realization that the prevalence of sexual offences against children in Bermuda do not show any encouraging signs of abating. In 2023 alone the Courts have dealt with a number of such cases. For example, those involving these convicted defendants: Ismaila Darrell, Shuja Muhammad (mentioned earlier in another previous matter), Locksley Cummings, and Maleke Martin. What is of more concern is that the Courts, and society, are only aware of these matters because the complainants were brave and courageous enough to report the offences to police and that in some of the cases the victims then admirably took the stand at trial to relive their traumatic experiences.

39. It is for these reasons that the Defendant should be treated as harsh as the facts and the law of this case will permit. There is no other option of dealing with him other than by way of an immediate period of incarceration. Given the serious nature of the offences the community needs to be protected from the Defendant and a crystal clear message needs to be sent to him and others who may even think about committing such offences that they

should expect to receive little leniency when convicted and then sentenced. Therefore, the only issue really for me to consider is what period of incarceration the Defendant should receive after having regard to any pertinent mitigating and aggravating factors.

Mitigating Features

40. I need not trouble my mind too much as to any mitigating features as there simply are little to none. Not only did the Defendant plead not guilty thereby requiring Victim A and Victim B to give evidence at trial, but he did so on two occasions. In April 2022 the Defendant's first trial commenced but midway through I ordered that the jury be discharged pursuant to section 535 of the Criminal Code. This was due to what I deemed to be a highly prejudicial but unintentional comment made by Victim A whilst giving her oral evidence (the Defendant nor his lawyer should be faulted for this). By the time Victim A made the comment Victim B and other witnesses had already given their evidence. So by the end of this second trial Victim A and Victim B were made to suffer twice through the turmoil and embarrassment of retelling their respective stories in open court. Essentially, this was tantamount to the Defendant victimizing them again and again.

41. To be clear, it was the Defendant's constitutional right to call upon the Prosecution to prove its case against him at both the first and second trials, and, at all material times he was presumed innocent. However, now that he has been convicted of eight counts on the Indictment the Defendant can no longer adorn himself with the cloak of innocence. Therefore, the fact that he compelled Victim A and Victim B to give evidence on two separate occasions and that the Court was required to expend time and resources to conduct the two trials are factors which I will certainly take into consideration even more so than if there was only one trial.

42. The Defendant is also no stranger to the Courts and so he cannot avail himself of being a person of good character. Back in 1988, only four (4) years before he commenced terrorizing Victim A and Victim B, the Defendant was convicted for offences of a similar nature. I will venture more into detail about this when I deal with the aggravating features

of this case as I am of the view that his previous convictions are aggravating. Suffice it to say though, that unlike in the case-at-bar in 1988 the Defendant pleaded guilty to the offences and there should be no doubt that his plea of guilt this was taken into consideration when he was sentenced to a total of 12 months imprisonment by the Magistrate. However, like in the case-at-bar, the Defendant offered no apology or expressions of regret or remorse for victimizing the two young girls who in 1988 had their respective worlds torn apart by the Defendant. It is therefore of no surprise that the Defendant has made no apology to Victim A and Victim B in the case-at-bar and nor has he expressed any regret or remorse for putting them through so much turmoil. This is even though he had ample opportunity to do so inside and outside of Court.

43. In a report produced pursuant to section 329E of the Criminal Code (the "329E Report")[7] the Defendant "vehemently denied" that he sexually abused Victim A and Victim B. To compound matters Dr. Emcee Chekwas (who authored the 329E Report) wrote that it was "especially difficult" to get the Defendant to *"respond directly to questions that addressed sexual offending or to apply reliably sexual behaviour assessment tools"*. However, what Dr. Chekwas was able to discern from the Defendant's psychological profile is that there are a range of challenges and traits which the Defendant exhibits. Such as his: confusion about appropriate sexual attitudes and orientation; sexual intimacy difficulties and promiscuity; sexual dysfunction; and his distorted sexual scripts, beliefs and attitudes.[8]

44. Clearly, the Defendant did not glean or learn anything from his 1988 conviction and neither did his conviction deter him from the committing offences on Victim A and Victim B from 1992 to 1997. Nor did he do anything to positively address his warped sexual proclivities. From this, it is obvious to me that the Defendant has no desire whatsoever to own up to his despicable behavior and that unless he does so he will continue to be a threat to the safety of others, particularly young girls.

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[7] Pursuant to section 329E(2) of the Criminal Code the Commissioner of Prisons shall cause an assessment to be conducted by a qualified professional to determine if the offence constitutes a threat to life, safety or physical or mental well-being of any other person on the basis of establishing that a sex offender (i) has shown a failure to control his sexual impulses and (ii) there is a likelihood of him causing pain or other evil to other persons through failure to control such impulses.

[8] Pages 6 and 7 of the 329E Report.

45. It therefore goes without saying that these are all factors which I will most assuredly take into consider in sentencing the Defendant.

Aggravating Features

46. Sadly, the aggravating circumstances in this case are aplenty. Following the instructive guidance of sections 55(f) and 55(g) of the Criminal Code as well as the ***Brangman***, ***White***, and ***Rogers*** they are as follows:

The ages of the victims: When the Defendant commenced his evil offending Victim A and Victim B were respectively 11 and 5 years old, and his conduct continued until they were respectively about 15 and 9 years old. The Defendant took advantage of their youthful vulnerabilities during a time when their thoughts should have only been of happy memories of playing with friends and family. But because of his total disregard for humanity the Defendant shattered whatever feelings of happiness which they had or were to have in their formative and adult years.

The difference in age between the victims and the Defendant: As said above, Victim A was 11 years old when the offences started and Victim B was 5 years old. At about 30 years old this would equate to a 19 year difference between Victim A and the Defendant, and a 25 year difference between Victim B and the Defendant. Both of these differences in ages are substantial and they highlight the huge degree of influence and persuasion which the Defendant must have had over both victims. So much so that Victim A considered the Defendant to be her "boyfriend".

The crimes took place in the victims' home: As I said earlier, the family of Victim A and Victim B could never have fathomed that someone who they opened up their home to would come to use their home as a den of sexual exploitation against their two little impressionable girls. Their home was supposed to be a place of happiness, safety and peace but the Defendant transformed it into a place of darkness.

The Defendant was in a position of trust: Whilst the Defendant was only charged with one count of sexual exploitation whilst in a position of trust (Count 5 on the Indictment), at all material times he was a full grown adult who exercised care over the young victims. By all accounts it would appear that the family of Victim A and Victim B treated him as an older member of the family and that they entrusted him to have them in his care inside and outside of the home. Therefore, I find that in reality the Defendant was in a position of trust at all material times when all of the offences were committed and that he abused that trust.

The offences occurred over a significant period of time: What the Defendant did to Victim A and Victim B could not characterized as one-off incidents. Instead he embarked upon a sustained and persistent course of conduct stretching from about 1992 to 1997 i.e. a considerable period of 5 years.

Further, none of the incidents with either Victim A or Victim B were momentary lapses of judgment by the Defendant. It is clear cut to me that the Defendant patiently used grooming and luring tactics on the victims as precursors to his sexual acts and to also keep them from revealing what he was doing to them. In respect of Victim A, it was taking her to a horror movie which he well knew he she liked, giving her whatever she wanted, and, getting her to think that he was her boyfriend. In respect of Victim B, it was giving her candy which he knew that she liked. These tactics were just as deplorable as the sexual acts themselves.

Evidence that the Defendant put guilt into the minds of the victims: After each act of sexual abuse detailed by the victims in Court the Defendant told the victims not to tell anybody. On at least one occasion the Defendant told Victim A that he would get into trouble if she told anybody what happened. The obvious *modus operandi* for the Defendant doing this was to consciously place into the minds of the malleable young victims that they would be doing something wrong if they told anybody what he did to them. It was likely that it were these psychological manipulations of the victims which allowed the Defendant to sexually abuse them for five years between 1992 and 1997.

Evidence that the Defendant did not use a condom: On each occasion that the Defendant had UCK or attempted UCK with the victims he did not use a condom. This obviously exposed them to the possible transmission of any sexually transmitted deceases which the Defendant may have had, but it also subjected them to possible pregnancies, particularly in relation to Victim A who was likely going through puberty at the relevant times. What the Defendant did to the victims was reprehensible enough but to carry out his illicit acts with such recklessness and disregard for their health should be seen as unforgivable to any objective person.

Evidence that the Defendant had previously been convicted of offences of a similar nature: During the sentencing hearing the Defendant raised vigorous objections to the Prosecution's presentation of his past convictions which demonstrated that in September 1988, which was approximately four years before he commenced committing the offences in the case-at-bar in 1992, he was convicted of committing three (3) counts of indecent acts in the presence of children and two (2) counts of inducing a child to commit an indecent act. He received 12 months imprisonment on each count (it appeared that the sentences ran concurrently). The Defendant was vehement that the offences were not of a sexual nature and this caused the Prosecution to call sworn oral evidence from a police officer in order to prove the said convictions and the circumstances surrounding those convictions. It was only after the police officer entered into evidence the summary of evidence in that 1988 matter, as well as a letter which the Defendant himself penned for the purposes of the sentencing in that matter, that the Defendant relented and accepted that those offences were indeed of a sexual nature.

The Defendant should have left well enough alone. It appeared that the Prosecution were initially satisfied with only putting before me the fact of the conviction for the indecent act offences without actually setting out any factual matrices of the offences. However, due to the Defendant's dogged refusal to accept that those offences were of a sexual nature I became aware of details of offences that were as despicable as the offences which are currently before me. It is with some reluctance that I recount the details of the 1988 offences but I am drawn to do so because those offences reinforce my earlier comment that

the community needs to be protected from the Defendant. Moreover, it heightens the severity of the offences which are presently before me and which were committed a mere 4 years after the Defendant was convicted of similar offences.

In short, when the Defendant was 25 years old two girls aged 7 and 8 went to his residence looking for another young girl who lived with the Defendant. However, the Defendant was there alone and he was only wearing a robe. He told the two victims that the girl was not home but he invited them inside. Once they were inside the Defendant locked the door. He then showed the victims pornographic magazines, took his robe off exposing his naked body, and then sat on the couch. The victims sat on the couch with the Defendant and he pulled one of them towards him. He then commenced the act of masturbation in front of them. He ejaculated in their presence and then told them to touch his penis and commit other indecent acts. It does not appear that they did so. The Defendant's then girlfriend was heard to return home in her car and that is when the Defendant let the victims leave the house. The incident lasted for about an hour. A short time later a family member overheard the young victims talking about what had happened and the matter was reported to the police.

The harm and injury caused by the Defendant: In her Victim Impact Statement ("VIS") Victim A stated that: her innocence was taken forever by the Defendant; at 17 years of age she ran away from home and was homeless because she felt that her parents did not protect her from the Defendant; her relationship with both of her sisters was estranged and to this day her and Victim B do not communicate with each other; she suffers from incontinence as a result of having sexual intercourse at such a young age; in order to escape reality and numb her feelings she was addicted to crack cocaine for 13 years and this led her to criminal committing offences to support her drug addict and then being incarcerated; she solicited her body in order to acquire drugs and this was as a direct result of being groomed and taught by the Defendant as to how to use her body to get what she wanted; as a result of her drug addiction she continuously lost employment; she has shame and guilt for her own actions; she suffers from depression and anxiety and has been administered daily medication; she suffers from Post-Traumatic Stress Disorder (PTSD), abandonment, anger

and distrust of others[9]; she lost custody of a child to adoption because she was not able to care for the child; and, that it has taken her 14 years to educate, understand, and overcome the trauma that she endured.

In her VIS Victim B said that: the Defendant stole her childhood and innocence; when she was being sexually abused by the Defendant she felt that she did not have anyone to turn to; she became angry and rebellious as a child which caused her to get into a lot of trouble with others; she finds it difficult to trust people and so she distances herself from others; she cannot have a relationship with Victim A (her sister); and, she only begun to heal after the Defendant's conviction but she is still not healed completely.

The VISs of both Victim A and Victim B are self-explanatory and require no further elucidation, other than to say that the Defendant is completely to blame for the inner turmoil which both victims felt when they were children, when they became adults, still feel, and may continue to feel to some degree for the rest of their lives. By his abject refusal to apologize to the victims or to express not even a modicum of regret or remorse it is pellucid that the Defendant does not care what he done to Victim A or Victim B.

47. I am obliged and I will take each of these aggravating features into consideration when sentencing the Defendant. In fact, I find that each one of them on their own far outweigh any collective set of mitigation factors which may be afforded to the Defendant.

Conclusion

48. In consideration of the above paragraphs I sentence the Defendant as follows:

Count 1:	Attempted Unlawful Carnal Knowledge	**13 years imprisonment**
Count 2:	Unlawful Carnal Knowledge	**18 years imprisonment**
Count 3:	Sexual Exploitation	**13 years imprisonment**
Count 4:	Unlawful Carnal Knowledge	**18 years imprisonment**

[9] Victim A attached a Psychologist Report dated 27th June 2023 to her VIS.

Count 5:	Sexual Exploitation (Position of Trust)	**15 years imprisonment**
Count 6:	Attempted Unlawful Carnal Knowledge	**13 years imprisonment**
Count 7:	Sexual Exploitation	**13 years imprisonment**
Count 8:	Sexual Exploitation	**13 years imprisonment**

ALL SENTENCES ARE TO RUN CONCURRENTLY

49. In consideration of the circumstances of the offences committed by the Defendant, his previous convictions for offences of a similar nature, and as a reflection of society's denunciation of the offences committed and the objective of deterring the Defendant and others who may commit such offences, I will order pursuant to section 70P of the Criminal Code that the Defendant serve at least 10 years of the said sentences before he may be released on license.

50. Further, pursuant to sections 329E(4)(d), 329E(4A)(a) and 329F of the Criminal Code, I hereby order that upon release from custody that the Defendant be supervised in the community for a period of 10 years.

51. Finally, pursuant to section 329FA(2) of the Criminal Code I hereby order that the Commissioner of Police enter into the Sex Offender Register the Defendant's name, photograph and any intended home address he may have upon his release from custody.

Dated the 30th day of November, 2023

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