



**In The Supreme Court of Bermuda**  
**CRIMINAL JURISDICTION**  
**Case No. 20 of 2023**

**BETWEEN:**

**THE KING**

**-and-**

**KEVIN GOATER**

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**Sentencing Before:** **The Hon. Acting Justice Maxanne J. Anderson**

**Appearances:** Mr. Kitson-Walters for the Prosecution  
Ms. Elizabeth Christopher for the Defendant

**Date of Hearing:** 14<sup>th</sup> May 2024

**Date of Sentence:** 22<sup>nd</sup> May 2024

**SENTENCE**

*Unlawful Carnal Knowledge – Delay in bringing complaint*

**ANDERSON AJ:**

1. On the 29<sup>th</sup> February 2024 the Defendant, Kevin Goater, plead guilty to Count 1 on the Indictment, of one (1) count of Unlawful Carnal Knowledge (“UCK”) contrary to Section 180(1) of the Criminal Code Act 1907 (The “Criminal Code”).

2. The Defendant entered a not guilty plea to Count 2 of Intruding on the Privacy of a Person contrary to Section 199(2) of the Criminal Code on the Indictment. The Crown requested Count 2 lay on the file.

### **Summary of the Evidence**

3. The complainant was 13 years old at the time of the reported incident. She is the niece of the Defendant. The Defendant is the husband of the Complainant's aunt and was the Complainant's primary caregiver along with her aunt at the time of the incident. During the summer when the complainant was 13 years old, she was at home where she resided with the Defendant, her aunt, and her nana. At that time, she was downstairs with her nana when the Defendant called her nana and asked her to send the complainant upstairs to see him. Therefore, the complainant went upstairs where she met the Defendant.
4. The complainant and the Defendant were sitting on a couch when the Defendant told the complainant to stand up. He then grabbed her hand and place it on his genital area. The Defendant then removed the complainant's clothes, laid her down on the couch and got on top of her. He then lifted her legs, placed his penis inside of her vagina and told her that "it's just gonna hurt a little". The complainant recalled being in pain from the sexual encounter as it was her first sexual experience. She recalled it feeling like someone forcing an object into something. Therefore, she jumped up from the couch, put her clothes on and ran out of the room.

### **Sentencing Guidelines**

5. Sections 53 to 55 of Part IV of the Criminal Code set out the principles intended to serve as a guideline when sentencing any offender for any offence. Those are:

**“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—*

- (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;*
  - (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.”*

6. The spirit and intent of Sections 53-55 of the Criminal Code are woven through authorities. Specifically, the sentencing tariffs applicable to the Defendant.

7. Section 180(1) of the Criminal Code provides that a person who is guilty of the offence of UCK is liable to imprisonment for a maximum sentence of 25 years. It should be obvious that the harsh penalty prescribed by the legislature for such offence indicates society's strong feelings of abhorrence for these offences.
8. To assist the Court in arriving at the appropriate sentence Mr. Kitson-Walters, for the Prosecution, cited a few authorities; the most useful to the Court being the authority of *R -vs- Cleveland Rogers [2015] CA (Bda) 21 Crim.* In *Rogers* the respondent was charged with the same offence as the Defendant as well as three (3) counts of Sexual Exploitation of a Young Person contrary to Section 182A(1)(a) of the Criminal Code. The respondent plead guilty to all four (4) counts. The victim in *Rogers* was also 13 years old, just short of her 14<sup>th</sup> birthday, at the time of the incident and the respondent was in a relationship with the victim's mother. The Crown appealed on the grounds that the sentence imposed was manifestly inadequate.
9. The facts of *Rogers* as told by the Court of Appeal president in paragraphs 4 to 6 were as follows:

*“4. On the evening of Tuesday the 3<sup>rd</sup> of December 2013, the Respondent was at the home of the victim which is in Pembroke Parish. He was there to socialize with the victim's mother. At some point during that evening the Respondent and the victim's mother engaged in sexual intercourse. In the early hours of the following morning, that is the 4<sup>th</sup> of December, the Respondent entered the bedroom of the sleeping victim. He proceeded to touch her breast and then pulled down her pants and inserted his penis into her vagina and eventually performed oral sex on her. The victim's mother entered the room during these events but did not realise that the Respondent was in the victim's bed as he was concealed under the sheets. After the mother departed, the Respondent then left the room. The victim's mother entered the room during these events but did not realise that the Respondent was in the victim's bed as he was concealed under the sheets. After the mother departed, the Respondent then left the room. The victim at time was asleep, thought she was dreaming. She did not fully realise what had occurred. A short time later the Respondent again entered the victim's bedroom and this time he placed his penis into her vagina and proceeded to have sex with her. It was at this time that the victim was fully awake and realized what was happening. Though the bedroom was dark she realized that the man having sex with her was the Respondent because she could*

*hear the sound of beads and at the time the Respondent wore his hair in braids with beads at the end.*

*5. The victim was frightened and ran to her mother's bedroom to report what had occurred. She was a virgin at the time of the offence. She was immediately taken to King Edward VII Memorial Hospital and examined. The results of the examination revealed that penetration had taken place and there was a graze on the right side of the introitus which was consistent with penetration having occurred. The Respondent was arrested later in the day and maintained silence when questioned. Subsequent DNA tests reveal that a positive DNA mixture originating from the Respondent, the victim and her mother, was found in the crutch of the underwear that the Respondent had been wearing that night.*

*6. We have read carefully a victim statement written by the girl and it is plain that these offences have had a very serious adverse effect on her and it will take her a considerable period of time to make a recovery which one can only hope will be a complete one."*

10. From this factual backdrop Baker P. noted:

*"7. The offence of Unlawful Carnal Knowledge can in reality only be described as the rape of a 13 year old child. Not only was she in no position by virtue of her age to consent but as a matter of fact, plainly she did not consent. The Crown charged the earlier three events as Sexual Exploitation. It seems to us that what is relevant in these circumstances is not so much the label of the offence or offense that were committed as the facts that actually occurred.*

*8. Furthermore we note, and this is not disputed, that the maximum penalty for Sexual Exploitation is 20 years imprisonment and for Unlawful Carnal Knowledge, likewise, 20 years imprisonment. The Crown submits that the sentence imposed by the Judge was manifestly inadequate. The appeal was originally advanced upon the basis that the sentence of 3 ½ years imprisonment for the three offences of Sexual Exploitation should have been consecutive rather than concurrent thus making a total of 8 ½ years rather than 5 years. Furthermore, there was no submission in the original grounds of appeal by the Respondent that there ought to have been an order under section 70(P) of the Criminal Code Act as amended. That it appears may have been an oversight because counsel in advancing the appeal submits that this court should impose such an order and that the Judge should have done so.*

*9. Furthermore, as Ms. Karen King or the Appellant advanced her appeal, it became clear that no doubt partly at the suggestion of the Court, she moved her position to arguing that the Court should concentrate not so much on whether*

*it was appropriate to impose consecutive sentences but to look at the overall criminality that occurred on that night and the appropriate sentence for it.”*

11. In paragraph 12 Baker P. highlighted “a number of aggravating circumstances” and said:

*“12. Ms. King submitted that as far as count 1 was concerned, the appropriate range of sentence, that is for Unlawful Carnal Knowledge was 7-9 years in the circumstances of the present case and counts 2, 3 and 4, 5 – 7 years. We think that the correct approach is to start by looking at the totality of what happened on the night in question. We think that there are a number of aggravating circumstances in relation to what occurred:*

- I. First of all the offences occurred at night whilst the victim was asleep in her own bed in her own house.*
- II. Secondly, there is the age disparity. She was under 14 and he was 46.*
- III. Thirdly, there was breach of trust in that the Respondent was in the house due to his relationship with the victim’s mother.*
- IV. And fourthly, the Respondent returned to the Appellant’s bed after being disturbed by her mother and then committed the offence of rape.”*

12. In **Rogers** the Court of Appeal concluded UCK in that particular case was one of 7 ½ years’ imprisonment, that the sentences in that case should be concurrent, and that an order should be made under Section 70(P) of the Criminal Code that the Defendant must serve at least half his sentence or 10 years, whichever is less.

13. The Prosecution has also drawn attention to two other cases. In **William Franklyn Smith vs R**, Criminal Appeal No. 5 of 2019, the Defendant lost his appeal his conviction. The Defendant was sentenced to 10 years for UCK, attempted UCK and sexual exploitation of a young person. The victim being 10 or 11 years old at the time of the offences. The sentence in this case was imposed after a full trial.

14. The case of **Pernell Brangman vs R**, Criminal Appeal No. 7 of 2019, was also brought to the Court’s attention. The Defendant was the victim’s stepfather. During her summer holidays, when the victim was 10-11 years old, at least twice a week, the Defendant would come home and perform oral sex on her during his lunch hours and get her to perform oral

sex on him. On one occasion in 1998 the Defendant had full sexual intercourse with the victim. The victim did not tell anyone until 13 years later, and only told the police 19 years after the incidents. The Defendant was sentenced to 12 years total as all 3 sentences were ordered to run concurrently. The Defendant was sentenced to 12 years imprisonment for the UCK. The COA held that the sentence was not manifestly excessive and refused leave to appeal.

15. So by applying the principles expressed in Sections 53 to 55 and in the authorities presented to the Court, I will now focus on determining what should be the appropriate sentence in the present case.

### **Decision**

16. Sexual offences where the activity is coercive, non-consensual or exploitative are very serious and result in harm. Harm is also inherent where victims ostensibly consent but where their capacity to give informed consent is affected by their mental incapacity or youth. The harm maybe physical and/or psychological which may be equally or even more serious, but not seen. It should be obvious to any person of sound mind that sexual offences against our children are among the most reprehensible of offences as the victims will most likely carry the burden of what happened for the rest of their lives. Equally disturbing is the number of sexual offences against children in Bermuda. Given the serious nature of these offences a clear message must always be sent that the Courts will not tolerate this type of behaviour.

### **Mitigating Factors**

17. The mitigating factors in this case are as follows:
  - i. The Defendant has no previous convictions;



- ii. The Defendant entered his guilty plea at the first reasonable opportunity which saved the Complainant from having to give evidence before a jury; and
- iii. The Defendant's expressions of remorse for his wrong doing.

### **Aggravating Factors**

18. The aggravating factors in this case, following the guidance of sections 55(f) & 55(g) of the Criminal Code, are as follows:

- i. **Age of Victim:**  
The Complainant was only 13 years old when this offence occurred.
- ii. **The difference in age between the victim and the Defendant:**  
The Defendant was 53 years old, therefore 40 years older than the Complainant. This is a substantial age difference.
- iii. **The Defendant was in a position of trust:**  
The Defendant was in a position of trust when this offence was committed as he was the husband of the Complainant's aunt. The Complainant resided with her aunt & the Defendant as they were her primary caregivers. The Defendant abused the position of trust.
- iv. **The Offence took place in the victim's home:**  
One's home is supposed to be a place of safety, a place of peace and of happy memories with family but the Defendant changed that forever for the Complainant.
- v. **Harm & Injury caused by the Defendant:**  
In her Victim Impact Statement dated 3<sup>rd</sup> May 2024 ("VIS"), the Complainant stated that she can never forget what her uncle did to her for

his sexual pleasure. It changed her life forever and he made her feel uncomfortable to be around alone especially in the house. The Complainant was at times reminded of the offence by the Defendant. She used to be scared and was always uncomfortable. She as a result of this offence committed by the Defendant against her has been estranged from her family for doing the right thing by telling the truth and speaking up.

19. I will take each of these mitigating and aggravating features into consideration when sentencing the Defendant. I have also taken into consideration all authorities placed before me, the Social Inquiry Report dated 1<sup>st</sup> May 2024, character references, the Crown's Submissions on Sentence filed 7<sup>th</sup> May 2024 and the Defence's oral submissions on sentence made on the 14<sup>th</sup> May 2024.
20. Having considered the authorities, I conclude that the case at bar is more in line with the facts of the **Rogers** case in that the similarities are:
- it involved an offence of UCK
  - the victim was 13 years old and a virgin
  - the respondent was in a position of trust
  - the victim was undressed by the respondent
  - the offence occurred in the victim's home
  - there was a similar age disparity between the respondent and the victim

The respondent in **Rogers** received 7.5 years. The distinguishing features between **Rogers** and the case at bar is that the circumstances of **Rogers** were marginally more serious. In particular, in **Rogers** the respondent: had engaged in sexual intercourse with the victim's mother earlier that evening (the victim did not witness this); and prior to the penetration the respondent engaged in other sexual acts - such as touching the victim's breast, inserting his finger into the victim's vagina and he performed oral sex on the victim. Therefore, any sentence received by the Defendant in this case should properly be less than the 7.5 years received by **Rogers**. The cases of **William Franklyn Smith** and **Pernell Brangman** are not of assistance as they are far more serious than the case at bar. In particular, the victims were younger and there were multiple offences over a period of time.

## **Conclusion**

21. In consideration of the above paragraphs, taking into consideration the mitigating factors in this case in which the Defendant entered into a guilty plea at the earliest opportunity, I sentence the Defendant as follows:

### **Count 1: Unlawful Carnal Knowledge - 6 Years Imprisonment**

22. Ms. Christopher drew the Court's attention to the case of *R vs Cahlii Smith [2024] SC (Bda) 3 Cri. 31 January 2024*. She argued that it is common for the Court, when there is a delay in proceedings being brought, to take account of the delay in some way. She suggested a reduction of the 6 years imprisonment by 2 years for the delay. However, I do not think that this case is relevant at all as the delay in *Cahlii Smith* was due to a delay in bringing the charges 3 years after the complaints were made and eventually the trial did not begin until 8 years after the initial complaint. I therefore will not reduce the sentence as there was no delay in the Defendant being charged and no delay in the prosecution of this case.
23. 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.
24. Regarding Ms. Christopher's request to impose a publication ban in this case, I am not satisfied to impose any additional publication ban due to the fact that the Defendant's name must be placed on the Sex Offender's Register and as a result will be released.

**Dated the 22<sup>nd</sup> day of May, 2024**



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**The Hon. Acting Justice Maxanne J. Anderson**  
**Acting Puisne Judge of the Supreme Court of Bermuda**