

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CRIMINAL CASE NO: 2008/0010

BETWEEN

THE QUEEN

Crown

V

THEODORE HORSFORD

Defendant

Appearances:

Mr. Anthony Armstrong, Director of Public Prosecutions, Crown Counsel II Mr. Adlai Smith, and Mr. Kayode Omarde, Crown Counsel II for the Crown
Mr. Kendrickson Kentish, Mr. George Lake and Mr. Craig Christopher for the Defendant

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2008: June 27
July 09
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JUDGMENT ON SENTENCING

[1] **Blenman, J:** Mr. Theodore Horsford was indicted by the Learned Director of Public Prosecutions, Mr. Anthony Armstrong, for the offence of murder. He was tried by a mixed jury who found him guilty of the lesser offence of manslaughter. He is now before the Court for sentencing.

[2] **Facts**

Mr. Theodore Horsford and two friends, Mr. Owen Bailey and Mr. Kendal Joseph, were at Jam Dung Night Club partying. The club also has girls stripping and dancing. Mr. Maurice

Charles was also at the club, so too was his friend Mr. Jervorny Richards. There was an altercation between Mr. Bailey and Mr. Charles in the club. The argument ended, and while Mr. Charles and Mr. Richards were still in the club, Mr. Horsford went over to them and immersed himself into an argument with Mr. Charles.

[3] Mr. Horsford went downstairs. He returned upstairs, in the night club, with his hand under his shirt and was approaching Mr. Charles. On seeing this, Mr. Richards, in order to avert any problems, told Mr. Charles to leave the night club while he stayed behind trying to placate Mr. Horsford. This was not to be since Mr. Horsford pushed him aside and went downstairs behind Mr. Charles. Mr. Richards followed Mr. Horsford and on reaching downstairs, on the road, he saw the two men “face to face”. At that time, Mr. Horsford had a gun in his hand and the men were “exchanging words”; he used the gun to hit Mr. Charles on the head and Mr. Charles retaliated by punching Mr. Horsford in the face. Mr. Horsford, who still had the gun in his hand, fired three shots in the air. At this point, Mr. Charles was advancing towards Mr. Horsford and the latter fired three shots at Mr. Charles, two of which hit him in the chest, fatally injuring him, and the other entered and exited his left forearm.

[4] Dr. Leslie Simon, the renowned pathologist who performed the post mortem on the deceased stated that his examination revealed that the deceased had a gun shot wound to the left upper chest and one to the left lower chest. Both were entry wounds and the bullets were removed from his body. There was a pair of gun shot wounds to the left forearm. The cause of death was due to massive hemorrhage associated with penetrating injuries to the lung, the liver and the kidney, consequent on gun shot injuries.

[5] **Law**

The relevant statutory provision is Section 5 of the Offences Against the Persons Act Cap 300 Laws of Antigua and Barbuda. Section 5 of the Act empowers the Court to impose a sentence for the maximum period of 35 years for the offence of manslaughter.

[6] **Plea in mitigation**

Learned Counsel Mr. Kendrickson Kentish, in an emotive and impassioned plea, urged the Court to impose a sentence that is one the lower end of the scale. He expressed regrets and remorse on behalf of the defendant and said that his client wished to ask the deceased's family forgiveness. Counsel said that he is aware that our Court of Appeal has imposed sentences of 10 years or more. Quite properly, Learned Counsel Mr. Kentish conceded the fact that a firearm was used and that three (3) shots were inflicted on the deceased and that he has previous convictions are aggravating factors in the matter.

[7] **Court's consideration**

In determining the appropriate sentence to impose on Mr. Horsford, I must take into account the facts of the case, the gravity of the offence, the applicable principles of sentencing, the mitigating and aggravating factors, the applicable law, and the characteristics of the offence. No two cases are alike. While our Court of Appeal has very helpfully set guidelines that should be utilised in sentencing an offender for the offence of manslaughter, the Court recognises that cases vary and the Judge is therefore clothed with the discretion to impose an appropriate sentence based on the totality of the circumstances. To do otherwise can result in unfairness if different cases are treated as though they are alike. A recent review of the decisions of our Court of Appeal indicates that for the offence of manslaughter, the bench mark is set at 15 years and it is scaled up or down depending on the circumstances of the cases. There are several decisions from our Court in which the Court has imposed sentences of 15 years for the offence of manslaughter. See **Hillary Patrick Tench v The Queen, Criminal Appeal No.1 of 1991 and James Jn Baptiste v The Queen, Criminal Appeal No.10 of 1994**. This bench mark can be scaled up or down. In several cases depending on the circumstances, the court has increased the sentence from 15 years.

[8] As stated earlier, in determining the appropriate sentence, I have a duty to consider the individual circumstances of the offence and the character offender. Mr. Horsford has a criminal record which includes convictions for house breaking and larceny, wounding, possession of cocaine with intention to transfer; these offences stretch from 1992 – 2001.

There is no conviction for an offence of a like kind but he definitely has a criminal career. Also, I am concerned with the seeming upsurge of gun related crimes in Antigua and Barbuda. I have no doubt that the entire incident demonstrates a form of senseless criminal behaviour. Of note is the fact that, Mr. Horsford was not originally involved in the quarrel with Mr. Charles, but as stated earlier, took over his friend's quarrel.

[9] Also, I am required to apply the well known legal principles of sentencing. The general principles that the Court should apply in sentencing were dealt with in **R v Sergeant 60 Cr App R 74 at 77**. Lawton LJ identified the classical principles of sentencing as being retribution, deterrence, prevention and rehabilitation. These principles were judicially recognised by Byron CJ, as he then was, in **Desmond Baptiste et al v The Queen, Criminal Appeal No.8 of 2003, Saint Vincent and the Grenadines**. In **Desmond Baptiste v The Queen** *ibid*, Byron CJ stated as follows:

[10] **Retribution**

This limb should reflect the society's intolerance to criminal conduct. The court must show its abhorrence to particular types of crimes by the sentence I pass.

[11] **Deterrence**

Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour. Of what value however are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time.

[12] **Prevention**

The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a different effect. Some however never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

[13] **Rehabilitation**

Here the objective is to engage the prisoner in activities that would assist him in reintegration into society after prison. However the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past borne mixed results. Of course sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform.

[14] I turn now to the case at bar.

Retribution - The Court must send Mr. Horsford a strong message for the senseless killing of the deceased and deal condignly with the defendant for taking Mr. Charles' life. The gravity of the offence is also of concern. The deceased received three gun shot wounds; the violence used was excessive and the sentence must reflect this.

[15] **Prevention** - Though Mr. Horsford has not committed offences of a like kind, he was incarcerated for a different type of offence. I also pay significance to the fact that he has a conviction for violence even though this occurred several years ago. I am of the view that my sentence should reflect the need to prevent him from committing other offences of violence. In addition, with the seeming upsurge of gun related crimes in Antigua, the sentence I impose should prevent Mr. Horsford, if he is so inclined, from committing criminal offences.

[16] **Rehabilitation** – I am of the view, that anyone who can find it so easy to use a gun in those circumstances needs to be rehabilitated. I trust that the period that the defendant will

spend in prison will assist him by providing him with counseling and the necessary life skills for reintegration into the society. It is disconcerting that he was so quick to take a gun and shoot the deceased, who was unarmed, in cold blood.

[17] **Deterrence** – In this Assizes alone, the defendant is one of seven persons to be convicted for an offence of violence against a person in which a gun was used. This must be a cause for concern to any tribunal. I have to deter other like minded persons from committing similar offences.

[18] The Court will not turn a blind eye to the prevalence of gun related crimes in Antigua and Barbuda and note in passing, that during this assizes alone, there have been two cases in which persons have been killed and the weapons used by the defendant was a gun. This number is far too high for our society. The Court has a duty to deter other persons from committing similar offences. There are too many gun related crimes in Antigua and Barbuda, as stated earlier. I hasten to add that in most of the circumstances, the gun used was unlicensed.

[19] Further, the matter of rehabilitation was considered by the learned authors Andrew Von Hirsh and Andrew Ashworth, in their treatise *Principled Sentencing Readings on Theory and Policy* at page 1, where they state as follows:

“Rehabilitation is the idea of “curing” an offender of his or her criminal tendencies. It consists, more precisely, of changing an offender’s personality, outlook, habits or opportunities. Often, rehabilitation is said to involve “helping” the offender, but a benefit to the offender is not necessarily presupposed: those who benefits are other persons, ourselves, who become less likely to be victimised by the offender”.

[20] Andrew Von Hirsh and Andrew Ashworth in *Principled Sentencing* *ibid* at page 53 state under the caption “Punishment and Deterrence” that :

“Where an unlawful act has been committed which is followed, or threatens to be followed two wishes naturally suggest themselves to a sentencer’s mind: First, to obviate the danger of the like mischief in future: secondly to compensate the

mischief that has already been done. The mischief likely to ensue from acts of the like kind may arise from either of two sources – either the conduct of the party himself who has been the author of the mischief already done, or the conduct of such other persons as may have adequate motives and sufficient opportunities to do the like”.

[21] In relation to “Prevention”, Andrew Von Hirsh and Ashworth *ibid* state also at page 54 as follows:

“General prevention is effected by the denunciation of punishment, and by its application, which, according to the common expression, serves for an example. The punishment suffered by the offender presents to every one an example of what he himself will have to suffer, if he is guilty of the same offence. General prevention ought to be the chief end of punishment, as it is its real justification, if we could consider an offence which has been committed as an isolated fact, the like of which would never recur, punishment would be useless. It would be only adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent, but also all upon it, we perceive that the punishment inflicted on the individual becomes a source of security to all”.

[22] Andrew Von Hirsh and Andrew Ashworth *ibid* say as follows at page 30:

“Sentence is usually based on the seriousness of the offender’s crime or on his need for treatment; it will imply something about the impropriety of the behaviour. Conduct that is more blameworthy – in the sense of involving greater harm and culpability – is to be and thereby condemned more severely; conduct that is less reprehensible is to be punished and hence censured, more mildly”.

[23] **Mitigating and Aggravating factors**

I have listened to the impassioned plea of learned Defence Counsel. Through mitigating factors, the offender’s culpability is enhanced. While I note that Mr. Horsford is a family man and seems to have had no previous convictions since 2001, there are very few other

mitigating factors in his favour. I note that he has shown remorse and gives the impression of genuinely wishing to mend his ways. He seemed to have had a difficult social background. He regrets the killing and through his counsel has apologised to the deceased's family. There is no evidence that the defendant premeditated to kill the deceased. He is 39 years old. He has three children and a girlfriend. I have no doubt however that the defendant is an intelligent man and he ought to have shown more restraint.

[24] **Aggravating factors**

The aggravating factors include gratuitous or excessive violence. I note the amount or excessive nature of the violence that the defendant used on the deceased – three (3) gun shots, two (2) of which were to the chest. Mr. Horsford has a very chequered past and is known to the law, albeit, not for similar offences. Also of interest is the gratuitous nature of Mr. Horsford's violence. He used a gun to inflict several injuries on the deceased; he had no personal difficulty with the deceased but felt confident to get involved in his friend's (Mr. Bailey) fight.

[25] I have weighed the mitigating factors against the aggravating factors and the latter outweigh the former. Further, having heard the evidence, it is clear to me that the defendant was the aggressor and was culpable in bringing about the situation in the first place. The means used to kill the victim was a lethal weapon – a gun, and the killing was senseless and unnecessary.

[26] In addition, it is clear that an offender who has a criminal record will not get as much of a reduction from the sentence as one who has no criminal record and is also a good and caring person. To a large extent, the facts of the case will determine the sentence the Court will impose. An offender who for example delivers one injury will deserve a lesser sentence as oppose to one who delivers multiple injuries.

[27] The Court must also pay regard, in my sentencing, to the fact that a weapon- a gun used and how likely it was to be lethal, in determining the degree of culpability and therefore the

severity of punishment. In considering the appropriate sentence, I must have regard to the culpability of the defendant and take into consideration the seriousness of the offence and the character of the defendant. Also, I pay particular regard to the sentencing range imposed by our Court of Appeal and the very emotive plea in mitigation so ably made by learned Defence Counsel Mr. Kendrickson Kentish.

[28] I am of the view that this was a serious case of manslaughter. I am however not of the view that the maximum sentence should be imposed since I do not consider it to be appropriate. I will utilise the sentencing guideline, of 15 years, set by our Court of Appeal and determine the appropriate sentence to impose on Mr. Horsford, in view of the totality of the circumstances. In imposing the sentence, I have also taken into consideration the fact that he has been in custody for 21 months. I pay particular regard to the mitigating and aggravating factors and weigh heavily the fact that a gun was used to inflict the fatal injuries.

[29] **Conclusion**

The Court must deal condignly with Mr. Horsford and reflect its concern over the prevalence of the gun related crimes in Antigua and Barbuda. I am of the view that the violence used in this matter was excessive and the fact that a gun was used; to inflict several injuries is a major aggravating factor. In conclusion, taking into account the totality of circumstances, I am of the view that the appropriate sentence to impose on Mr. Horsford is to sentence him to 18 years in prison, to take effect from today's date. The sentence takes into account that he has spent 21 months on remand.

[30] I thank learned Director of Public Prosecutions and all learned Defence Counsel for their assistance.

Louise Esther Blenman,
Resident High Court Judge.