

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
CRIMINAL DIVISION**

CRIMINAL CASE NO: ANUHCR2011/0031

BETWEEN:

**THE QUEEN
AND
JAY MARIE CHIN**

Appearances:

Mr. Adlai Smith and Ms. Shannon Jones for the Crown

Mr. Cosbert Cumberbatch, Mr. John Fuller and Mr. Charlesworth Brown for the Defendant

**2012: January 13
2012: February 17
2012: February 23**

JUDGMENT ON SENTENCING

1. **FLOYD, J:** The defendant, Jay Marie Chin, was convicted by a jury on November 11, 2011 of murder, contrary to common law. This concluded a trial that began on October 25, 2011. The defendant was convicted of the murder of Raymond Chin, her former husband. The incident occurred on November 28, 2009 in the parish of Saint John.

2. At the time of conviction, Mr. Smith, learned counsel for the Office of the Director of Public Prosecutions (ODPP), gave verbal notice of his intention to seek the death penalty. This was followed by the filing of a formal notice on November 21, 2011. This court therefore ordered the production of a social investigation report and a psychiatric report to assist in the sentencing of the defendant.
3. On January 18, 2012, the ODPP filed notice formally withdrawing the application to seek the death penalty. As a result, the order for a psychiatric report was rescinded by this court. Notwithstanding that, a psychiatric report was produced by Dr. James A. King and submitted on February 16, 2012. The report was not, however, referred to at the sentencing hearing and Dr. King was not called as a witness.
4. A social investigation report dated January 12, 2012 prepared by Probation Officer (P/O) Irvin Henry was received by this court and copies were distributed to the ODPP and defence counsel.
5. At the sentencing hearing of February 17, 2012, the Crown called P/O Henry to present his social investigation report. The Crown also called Ms. Melvena Watson, the mother of the deceased. No witnesses were called on behalf of the defendant.

FACTS

6. Jay Marie Chin was born in Antigua and Barbuda but moved to the USA at an early age. She met Raymond Chin in 2001 while they both were living in the USA. They were married in 2004.

7. In 2002, the defendant started a business in St. John's, Antigua selling small household and personal items. The couple resided in Miami, Florida and when they travelled from the USA to Antigua, they would bring stock for the store with them. The defendant would often remain working in the shop in St. John's while Raymond Chin returned to Florida. From time to time, Mr. Chin would purchase and send items to the defendant for sale in the shop.
8. The couple divorced in June or July of 2009 but they continued to operate the store in Antigua which was known as Jay Chin's Top Notch Variety Store.
9. On November 28, 2009 at 5:13 PM, a 911 emergency operator received a call from a hysterical female saying that someone had just shot her husband. She said her name was Jay Chin and she gave her location.
10. Emergency medical personnel received a call between 5:00 PM and 5:30 PM to attend the Jay Chin Top Notch Variety Store on Upper Church Street. Upon arrival, they were directed by police into the building where they discovered a male on the floor bleeding. Due to the severity of his injuries, he was rapidly transported to hospital, where he was handed over to medical staff.
11. Dr. Terri-Ann Joseph treated Raymond Chin upon his arrival at hospital. He was suffering from multiple gunshot wounds to his chest and abdomen. He was bleeding profusely and was unconscious. He went into cardiac arrest and died shortly after arriving at the hospital.
12. An autopsy was performed on the deceased by pathologist Dr. Petra Miller-Nanton on December 2, 2009. She described a total of 13 gunshot entry wounds to the body. Most of the wounds

indicated a trajectory of back to front and were on the right side of the body. Three wounds to the right forearm were described as defensive in nature. All of the wounds indicated the gun was 6 inches to 3 feet away from the victim when fired, placing it in the "intermediate to close range."

13. Dr. Miller-Nanton gave the cause of death as "multiple penetrating lung injuries and liver laceration consequent on multiple gunshot wounds." Forensic police officers examined the scene of the shooting and discovered many spent shell casings, bullet holes in the floor and bullet holes in the window shutters. Bullets were actually recovered from the floor and the shutters. The scene was analysed for fingerprints but none were found. Nothing appeared out of the ordinary in the shop and no signs of a struggle were present. A plastic container holding coins and small change was found behind the counter as was a knapsack bag which contained a camera, cell phone and keys. At the hospital, police found the victim's wallet and two rolls of cash in his pockets.
14. Forensic firearm examiner Graham Husbands identified 11 cartridge cases which were found at the scene as being .40 calibre Smith and Wesson type. They had all been fired from the same gun. He was also able to identify 6 pieces of metal recovered from the scene as deformed fired .40 calibre Smith and Wesson bullets.
15. A number of civilian and police witnesses testified to being in and around the vicinity of the Jay Chin shop, hearing what appeared to be gunshots and immediately looking in the direction of the sounds. There was sufficient light for the witnesses to clearly see the area. No one saw any person, other than the defendant, come out of the shop after the shots were fired.

16. The gun used to inflict the fatal wounds was never found by police. The Crown's case was essentially based on circumstantial evidence.
17. The defendant called 911 when the incident happened. She spoke to police shortly afterwards. She told police she and the deceased were working in the store that day. Before closing time, she went to the bathroom, which was in a separate building behind the shop. When she returned, she saw a man in a dark hooded shirt running away. She found Mr. Chin shot and lying on the shop floor. The motivation for the shooting appeared to be robbery, although police witnesses testified that the store was essentially undisturbed when they attended and the deceased had money in his pockets.
18. The defendant was subsequently interviewed again by police on more than one occasion and gave somewhat different versions of the events that day. She also spoke to friends and family and again her story differed. The differences centred around the reason she left the store to attend the bathroom building, what she heard there and what she saw after re-entering the shop.
19. Did she go to the bathroom building to use the toilet and lock it up, to use her cell phone or to get wipes for Mr. Chin's shoes? Did she hear the gunshots while in the bathroom building or not? Where and at what point did she see the man in the dark hooded shirt? These inconsistencies proved to be significant.
20. Prosecution witnesses testified that the relationship between the deceased and the defendant was over. Several witnesses testified that the couple had divorced but maintained an amicable relationship and had kept up the business in Antigua. However, the deceased had established a

relationship with another woman, Dione Bucknor, and it appeared as though things were coming to an end between the defendant and the deceased prior to his violent death.

REPORT

21. A social investigation report was prepared and presented by P/O Irvin Henry. It described the defendant as a 34 year old woman born in Antigua but who immigrated to the USA at age 9 in 1986. The defendant was married to the deceased for 5 years but they divorced a few months before his death. She described the relationship to P/O Henry in positive terms although trust and lifestyle issues led to the divorce. However, they remained in business together with the deceased assisting the defendant financially. The defendant has no children.
22. The defendant began working as a street vendor in St. John's in 2000. In 2008 she opened a shop on Church St. known as Jay Chin's Top Notch Variety Store. She had one employee. The business was her main source of income. The defendant continued to reside in the USA but attended her store four times per year staying at least a month on each visit. She was sometimes accompanied by Raymond Chin. On the date of the incident, her employee was away on vacation.
23. There is no criminal record or any antecedents for the defendant.
24. Members of the defendant's family and of the deceased's family were interviewed. The deceased was described by those who knew him as quiet and easy going. The defendant, on the other hand, was described as generous, affectionate and spirited but also determined, quick tempered and excitable. This changeable disposition was observed by P/O Henry during the two interviews he

conducted with Ms. Chin. She presented as jovial and relaxed at one point, stern and dismissive at another. She demonstrated attitudinal highs and lows during the interviews.

25. It was apparent that although the defendant and the deceased continued to work together after their divorce, the defendant was reluctant to accept the end of the relationship. She failed to appear at the first and second divorce hearings, seeking to have the deceased reconsider his position. Ultimately, the divorce was processed and finalized at the third attempt.
26. In speaking of this offence, the defendant advised P/O Henry that she regrets the loss of life and is prepared to accept the court's decision. She has lost her husband and everything she has worked for.
27. At the sentencing hearing, the defendant spoke from the prisoner's dock and reiterated for the court her regret at the loss of the life of Raymond Chin. She said that it had been very hard for her.

ADDITIONAL EVIDENCE

28. The Crown also called Melvena Watson, the mother of the deceased. Ms. Watson spoke of the great loss she had suffered. Her son was everything to her. He took care of her and supported her. This evidence was called by way of victim impact. Although learned defence counsel took issue with it, such evidence is not unheard of in the Eastern Caribbean Supreme Court. For example, victim impact statements or victim impact assessments are commonly used in the High Court of the British Virgin Islands. In the case of **The Queen v. Clyde Conrad Linton**, British Virgin Islands Criminal Case No. 21 of 2007 at paragraph 9, J. Joseph-Olivetti stated:

The court, being mindful that it ought not to speculate on the effect of the crime on a victim, requested a victim impact statement and a statement from the victim's mother.

29. Similarly, in the case of The Queen v. Akeem Sebastain, British Virgin Islands Criminal Case No. 11 of 2006, at paragraph 15, J. Joseph-Olivetti stated:

The court, being mindful that it ought not to speculate on the effect of the crime on the victim (see Lord Wolf C.J. Practice Direction [2001] 4 All E R 640) requested a victim impact statement which was provided by the victim with the assistance of the Crown.

30. The issue of hearing from the family of the victim at the time of sentencing was also addressed by J. Benjamin in the case of The Queen v. Mitchel Joseph AKA "Bage", St. Lucia Criminal Case No. SLUCR 2008/0818. In that case, two witnesses were called, one the employment supervisor of the deceased and the other the aunt of the deceased. They spoke of the service record of the deceased as well as his positive family contributions.

31. The court took into account the criminal code provisions unique to St. Lucia and the fact that the evidence of the family had to relate to "any matter connecting with the offence". J. Benjamin held at paragraph 8:

Any construction of that phrase would, of necessity, attract the interpretation most favourable to the defendant, which is that evidence as to the impact of the offence on the family of the victim is not referable to the offence in a direct way. In the premises, I rule that the evidence of neither witness would be taken into account.

32. There can be no doubt that the public expression of how a particular offence has impacted immediate family members of a victim of crime is a cathartic experience for those so affected. At a sentencing hearing it can be helpful for a court to be apprised of the harm done to or the loss suffered by a victim or a victim's family. However, when the offence involves a death, the court can assume that a significant loss has been suffered by that person's family, friends, and even the community itself. It is important, however, that fairness in the sentencing process be maintained and that nothing inappropriate, such as recommendations as to sentence, be included in such evidence or reports.

33. In the case at bar, the effect of the loss of Mr. Chin on his family was referred to in the social investigation report. This was expanded upon by Ms. Watson in her evidence. Undoubtedly, the tragic and senseless taking of the life of Raymond Chin was a great loss to his friends and to his family. Nothing that this court does or says can ever alleviate that. While this court takes careful note of this impact upon these people, the focus of the court for the purposes of sentencing, at law, remains with the mitigating and aggravating factors that I will enunciate in this decision.

SUBMISSIONS

34. Learned counsel for the ODPP, Mr. Smith, highlighted for the court the serious nature of the offence and the extreme violence displayed. There were 13 gunshot wounds to the victim. The incident occurred in an enclosed space. The store was not large and the deceased had nowhere to go. Mr. Smith submitted that the use of a firearm was significant and that there was no reason for this killing. The couple were divorced in June and the murder occurred in November. It was not

a crime of passion as suggested by learned defence counsel. There was no immediate trigger or causation for the killing at the time of the event.

35. Learned counsel asked this court to differentiate the case at bar from the cases of The Queen v. Sylvester Lindsay, Antigua and Barbuda Criminal Case No. ANUHCR2011/0049 and The Queen v. Brian Frederick Soerwidjo, another case from this jurisdiction heard during the January 2011 Criminal Assizes. Those cases involved murders in the course of robberies and guilty pleas were entered.
36. Mr. Smith asked this court to consider imposing a lengthy term of imprisonment, even life imprisonment and referred to the cases of Kamal Liburd and Jamal Liburd v. the Queen, St. Christopher and Nevis Criminal Appeals Nos. 9 and 10 of 2003 and Nardis Maynard v. the Queen, St. Christopher and Nevis Criminal Appeal No 12 of 2004, as examples of sentences of life imprisonment even where the accused had no previous convictions and were of young ages. The point he sought to make was that the court should balance the serious nature of the offence with the lack of criminal record and young age of the offender in this case.
37. Learned counsel for the defendant, Mr. Cumberbatch, made a strong submission for leniency to be shown to the defendant by this court. He emphasized the lack of any criminal record and antecedents for the defendant, her young age (34 years), and her good character. Ms. Chin was an entrepreneur, successfully contributing to this community for a number of years before this incident.

38. Learned counsel portrayed the event as a crime of passion borne out of the "tripartite relationship" involving the defendant, the deceased, and Dione Bucknor. He submitted that this situation was characterized by "deception and betrayal" which eventually prompted the defendant to kill Mr. Chin. It was not, however, a planned event.
39. Although Mr. Cumberbatch acknowledged the serious nature of the offence and the aggravating factor of the use of a firearm, he did not characterize the offence as an episode of domestic violence. He described the case as "simply a murder". Learned counsel submitted that domestic violence involves incidents of abuse in a relationship, whereas in the case at bar, there was no history of violence between the defendant and the deceased. Mr. Cumberbatch acknowledged that although the defendant and the deceased had been married and were recently divorced, they continued to function as "man and wife" and also operated a business together.
40. Mr. Cumberbatch referred to the recent cases from this jurisdiction of The Queen v. Sylvester Lindsay and The Queen v. Brian Frederick Soerwidjo, *ibid*. In those murder cases, this court imposed sentences of 22 years (plus 3 years' time served) and 16 years respectively. Learned counsel submitted the case at bar merits a sentence substantially less than that. He maintained that there are different species of homicides and the court must closely examine the circumstances in each case. The defendant in this case is an educated woman, a successful business person and is unlikely to ever commit another crime. It is out of character for her to have behaved in this fashion. She has clearly stated that she regrets the loss of life in this case. No lengthy term of imprisonment is necessary to rehabilitate this offender. She is not a threat to society. The court was asked to impose the minimum sentence possible. The defendant is despondent. She has lost

her ex-husband and all that she has worked for. It is a tragedy for the families of both the defendant and the deceased.

41. Mr. Cumberbatch acknowledged that the defendant cannot receive the benefit derived from a guilty plea, however, he asked this court not to penalize the defendant nor hold against her the fact that she chose to exercise her right to a trial and to take her case before a jury.

42. I pause at this point to reiterate comments that have been previously made by this court on that point. The presumption of innocence, proof of guilt beyond a reasonable doubt and an accused person's right to a fair trial are fundamental legal tenets. It is the right of every accused person who comes before this court to have a trial and to test the prosecution's evidence. Such rights are enshrined at common law and in the constitution of Antigua and Barbuda. They are fundamental to our legal traditions. No accused person will ever be penalized by this court at sentencing for electing trial by jury and there is absolutely no need to remind this court of its duties and obligations in that regard.

THE LAW

43. **The Offences Against The Person Act**, CAP 300 of the Laws of Antigua and Barbuda provides at section 2:

Whomsoever is convicted of murder shall suffer death as a felon.

The legislation has, however, been modified by case law. The death penalty is no longer a mandatory sentence for the crime of murder.

44. In the combined case of **Newton Spence v. The Queen**, Saint Vincent and the Grenadines Criminal Appeal No. 20 of 1998 and **Peter Hughes v. The Queen**, Saint Lucia Criminal Appeal No. 14 of 1997, the court held at paragraph 44:

In order to be exercised in a rational and non-arbitrary manner, the sentencing discretion should be guided by legislative or judicially prescribed principles and standards, and should be subject to effective judicial review... There should be a requirement for individualized sentencing.

45. This individual approach to sentencing in cases of murder was examined in the cases of **The Queen v. Rudy Monelle**, Antigua and Barbuda Criminal Case No 0015 of 2007 and **Harry Wilson v. The Queen**, Saint Vincent and the Grenadines Criminal Appeal No. 30 of 2004. Those cases referred to a balanced approach to sentencing. The court should take into account the character, record and personal and individual circumstances of the defendant, as well as the facts and circumstances surrounding the commission of the offence, the nature and gravity of the offence, the design and execution of the offence and the possibility of reform and social re-adaptation of the defendant.
46. The sentencing process seeks to promote a respect for the law and an orderly society. A sentencing court must consider many things. In fashioning a sentence appropriate to the facts of the case and the characteristics of the offender, the court must consider the principles set out in the case of **R. v. Sargent** 60 Cr. App. R. 74 and referred to with approval by our appellate court in the case of **Desmond Baptiste v. The Queen** Saint Vincent and the Grenadines Criminal Appeal No. 8 of 2003. Those principles are:

- a) **Retribution**, the court must reflect society's abhorrence of particular types of crime through punishment of such unlawful conduct.
- b) **Deterrence**, specific to the offender and generally to likely offenders or persons who may be minded to commit similar offences.
- c) **Prevention**, to protect the public from offenders who persist in committing crimes by separating them from society.
- d) **Rehabilitation**, to engage offenders in activities designed to assist them in their reintegration into society.

47. A sentencing court must take into account the aggravating and the mitigating factors that pertain to the offender and that relate to the offence. In the case of Harry Wilson v. The Queen, *ibid* at paragraph 18, the court held:

In summary, the sentencing judge is required to consider, fully, two fundamental factors. On the one hand, the judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the judge must consider the character and record of the convicted person. The judge may accord greater importance to the circumstances which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case.

ANALYSIS

48. It has been submitted to this court and referred to in other cases that sentencing is the most difficult task that a criminal court has to deal with. Such is the case here. Jay Marie Chin is a woman of 34 years. She has much of her life still ahead of her. Yet she comes before this court for sentencing, having been convicted by a jury of her peers of the brutal, violent and senseless killing of her ex-husband. The victim was a man who was her companion, her business associate and at one time, the object of her affections. They had been a married couple. However, on November 28, 2009 the defendant shot Raymond Chin down in their business premises.

49. Although the case for the prosecution was circumstantial in nature, the evidence thoroughly supported the conviction. There was no man in a hooded sweater. There was no robbery. Jay Marie Chin fired a .40 calibre handgun many, many times at her victim. Thirteen entry wounds and eleven shell casings confirmed that. Forensic evidence of the entry and exit wounds, the trajectory of the bullets and discharged bullets lodged in the floor, revealed the ferocity of the attack. Some of the bullets had to be dug out of the floor by police, indicating that once Raymond Chin fell mortally wounded, Jay Marie Chin continued to fire down upon him. The bullets apparently went right through him as he lay on the shop floor. This frenzied attack is also sadly reflected in the wounds Mr. Chin suffered to his arms. According to the pathologist, these were defensive wounds. It is likely, therefore, that he had sought to protect himself in vain from the point blank shots.

50. There can be no doubt that the defendant was determined to kill Raymond Chin and unfortunately she succeeded. We shall never know exactly why this appalling slaughter occurred. However, it

appears as though the defendant could not come to terms with the loss of her husband. It seems he was moving on and perhaps Ms. Chin simply could not accept that.

51. This offence was violent and brutal. I find there are two significantly aggravating factors in this case: One is the use of a high calibre handgun and the other is the fact that this was a crime of domestic violence. As a result, this court considers deterrence and retribution to be important issues in this case. A message must be sent to the community that the use of handguns in the commission of criminal offences will not be tolerated. As this court has previously observed, the proliferation of handguns is an alarming problem in Antigua and Barbuda. Society's abhorrence of gun crime and the taking of human life through the use of guns must be clearly demonstrated.

52. The behaviour of the defendant was deplorable. She was apparently unable to cope with the fact that her former husband was moving on with his life. He had found someone else and he was now divorced from the defendant. However, they continued to operate a business together and remained in close contact. For whatever reason this killing was carried out, the domestic element to this crime is significant.

53. Learned defence counsel sought to characterize this offence as a crime of passion committed by the defendant against her ex-husband. He asked this court to consider her actions as being triggered by the love triangle she found herself in. He submitted that she was deceived and betrayed by the deceased.

54. At law, crimes of passion have been traditionally linked with the issue of provocation. The concept has been used to reduce the crime of murder to one of manslaughter. It was described in the case of Holmes v. DPP (1946) 2 All E R 126 as:

A reasonable person so provoked could be driven through transport of passion and loss of self-control to the degree and method and continuance of violence which produces death.

55. The issue was further explored in the case of Lee Chun-Chuen v. Reginam (1963) 1 All E R 79 where the court held:

Provocation in law consists mainly of three elements – the act of provocation, the loss of self-control, both actual and reasonable, and the retaliation proportionate to the provocation...Their relationship to each other – particularly in point of time, whether there was time for passion to cool – is of the first importance.

56. The concept of what role the arousal of passion or emotion plays in the offence must be considered in relation to the severity of the offence and the degree of violence. In the case of Sylvester Gaston v. The Queen, Territory of the Virgin Islands Criminal Appeal No. 1 of 1977, the court held at page 22:

In our view the savage attack made on the deceased by the appellant in the instant case was totally disproportionate to the provocative words alleged by the appellant.

57. Similarly, in the case of Berthill Fox v. The Queen, St. Christopher and Nevis Criminal Appeal No. 4 of 1998, the court held at paragraph 5, when speaking to the issue of provocation:

There should be some evidence to show that the appellant must have been gripped by some overmastering passion to account for such savagery in retaliation. There must be evidence to justify a sudden explosion of temper.

58. I consider this case law in light of the facts in evidence in the case at bar. I can find nothing that would support the submission that sentencing in this case should somehow be mitigated by the characterization of this offence as a crime of passion. Provocation was never advanced as an issue in this trial. The defence was based upon the theory that a robbery by a third party had taken place and during the course of that robbery the third party had killed Raymond Chin. In fact, learned defence counsel emphasized the amicable and loving relationship between the defendant and the deceased. Although the burden of proof was not on the defence, there was still no evidence capable of supporting a finding that the defendant was provoked. There was nothing to suggest a basis for a sudden and temporary loss of self-control on the part of the defendant.

59. Clearly, there were problems in the relationship between the defendant and the deceased. It led to their divorce months before this incident. However, there was nothing that occurred at the time of or in close proximity to the killing that could be described as triggering a total loss of control by the defendant and resulting in the ferocious attack on the deceased. The court recognizes, however, that these two people would not have found themselves in the situation they did, were it not for the fact that they were involved in an intimate relationship – a domestic relationship. I therefore return to the consideration of the domestic element of this offence.

60. Domestic violence is an increasing problem within our society. It is a recognized social issue in many jurisdictions. Consequently, in the case at bar, deterrence is upper most in the mind of the court. In intimate relationships, domestic violence is more commonly perpetrated by males toward female victims. Hence the term gender based violence which is also used to describe the phenomenon. However, as in this case, there are also male victims of domestic violence and they must be recognized. Whether the violence is directed towards a male or a female, sentencing policy needs to make it very clear that crimes of violence in a domestic setting are serious and will not be tolerated.
61. The use of a weapon, especially a handgun, compounds the severity of domestic violence. It carries with it implicit intimidation and an implicit threat to cause harm. It commands compliance and non-resistance. It can lead to serious injury and death, as in the case at bar. It therefore demands an effective response from the judiciary.
62. In the case of Roger George v. The State, Commonwealth of Dominica Criminal Appeal No. 4 of 1999, the appellant had stabbed his girlfriend to death. In imposing a life sentence the court held at paragraph 12:

On the question of sentence, we were asked to exercise leniency and to impose a fixed term of years on a young man of 26 years who could be rehabilitated after serving a custodial sentence. This crime, however, falls within the category of domestic violence. This is a man who killed his woman because she said she was going to leave him and because she had been having an affair with another man for a long time. The community is paying more attention to these crimes which are on the increase. They are particularly horrible and undermine the equal status of women in our

society. We have concluded the maximum sentence allowed by law should be imposed and we order the appellant to serve life imprisonment.

63. That case emphasized the vulnerability of women in crimes of domestic violence. However, as time has passed, courts have recognized that victims of domestic violence can be either male or female. Both sexes are equally deserving of the court's protection.

64. The issue of domestic violence was extensively explored in a recent decision of J. Hariprashad-Charles in the High Court of the British Virgin Islands. In that case, **The Queen v. Vernon Anthony Paddy**, BVIHCR 2010/0020 at paragraph 24, the court referred with approval to the definition of domestic violence found in Blackstone's Criminal Practice 2010/Supplemental Material 2010 Sentencing Guidelines Council Sentencing Guidelines Part 7 Overarching Principles: Domestic Violence. Domestic violence is defined there as:

Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.

65. The guidelines go on to indicate that the domestic context includes relationships involving intimate partners who are living together, intimate partners who do not live together and former intimate partners. Domestic violence is recognized as taking place within the context of a current or past relationship. Consequently, as J. Hariprashad-Charles indicated at paragraph 26, "the history of the relationship will often be relevant in assessing the gravity of the offence." In the case at bar, I note

that although the relationship appears to have had moments of tension and disagreement, there is no evidence of prior assaultive behaviour. I take that into account.

66. J. Hariprashad-Charles referred at paragraph 27 to the U.K. case of R. v. Brian Dunning (1984) 6 Cr. App. R. (S) 337. That case involved a man who had stabbed his wife after she had left him. "The court held that this kind of behaviour, involving the use of a weapon, particularly a knife, must attract a sentence of imprisonment, however much provocation there was, and however unsettled or unbalanced the attacker might be". Clearly, the use of a gun which results in the death of a victim, as in the case at bar, will therefore attract a significant custodial disposition.

67. Although in the The Queen v. Vernon Anthony Paddy case, the court was dealing with a situation involving a male battering a female, the issues remain the same for either sex. As J. Hariprashad-Charles stated at paragraph 51:

It is now the duty of the courts to send out a strong message that domestic violence in any form will not be tolerated...The only way the courts can effectively show this is by the sentences that are passed which are aimed at ensuring that the wrongdoer does not repeat the offence and that the potential offenders get the message that society will not condone such behaviour.

68. I concur with those comments. There are, however, mitigating factors in the case at bar that are deserving of consideration. The defendant was a successful business woman, contributing to society. She has no prior criminal record and comes before this court as a first offender. She is a relatively young person. On the other hand, her crime is a very serious one and although courts are reluctant to incarcerate young, first time offenders for long periods of time, the serious nature of the

crime counterbalances that. These considerations were addressed in the Desmond Baptiste v. The Queen case *ibid*, at paragraphs 29 and 30:

As to the fact that the offender was committing crime for the first time, it seems to us that the importance of this circumstance should be left to the discretion of the sentencer as a matter that is to be taken into account with all other mitigating circumstances of the offence. It must be stressed though that the more serious the offence, the less relevant will be this circumstance... On the issue of the age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders... Where imprisonment is required, the duration of incarceration should also take such factors into account. In the same vein, in cases where the offender is a mature individual with no apparent propensity for commission of the offence, the sentencer may also take this circumstance into account in weighing the desirability and duration of a prison sentence. As with first time offenders, the more serious the offence, the less relevant will be these circumstances.

69. This court has carefully considered all of the facts and issues in this case. I have taken into account the mitigating and aggravating factors in light of the principles of sentencing. I have carefully reviewed the submissions of learned counsel. I note that Jay Marie Chin brutally and callously took away the life of her partner and ex-husband in an extremely violent manner. The deceased, Raymond Chin, was described as a gentle and quiet man. The loss of his life was a tragedy.

70. I am satisfied that the features of this case are so serious as to warrant a significant sentence of incarceration. The defendant's personality is changeable and she is headstrong. Although she has

indicated her regret at the loss of life, she has a positive good character and there is no evidence of previous domestic violence, she shot & killed her former spouse. The use of a firearm to wantonly take a life in the context of a domestic relationship calls for a clear message of deterrence and a reflection of society's abhorrence of this crime. The murder of an intimate partner is the most extreme form of domestic violence. It is a terrible offence that justifies a significant term of imprisonment.

71. The defendant has already served 2 years and 3 months for this offence and she will receive credit for that. The record will therefore reflect 2 years and 3 months' time served.

SENTENCE

72. For all of the reasons noted and in addition to the time served, this court hereby sentences the defendant as follows:

For the murder of Raymond Chin, Jay Marie Chin is sentenced to life imprisonment.



**Richard G. Floyd
High Court Judge**