

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

SAINT LUCIA

CRIMINAL CASE NOS. SLUCRD 2010/0403, 0404

BETWEEN:

THE QUEEN

Claimant

AND

SHODEUS CLEMENT

SEVERUS BUTCHER

Defendants

Appearances:

**Mr. Leslie Mondesir, Counsel for the Defendant #1
Mr. Huggins Nicholas, Counsel for the Defendant #2
Ms. Stephen Brette, Crown Counsel for the Crown**

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2013: April 15
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JUDGMENT ON SENTENCING

[1]. **CUMBERBATCH, J. :** On Saturday December 25, 2010, Waynell O'Neil ('the deceased') was in the company of his girlfriend at Baron's Drive, Soufriere. Whilst there, the defendants arrived on the scene. Shodeus Clement was armed with a knife which was swinging from his right hand. On observing the defendants the deceased said loudly whilst pointing to Shodeus Clement "that man owes me money". He went on to say to Shodeus Clement "you owe me money, you not giving me

my money man". At that stage Shodeus Clement shoved the deceased and Severus Butcher pelted at him with a beer bottle which struck him on his chest and burst on impact.

[2]. The deceased attempted to run away from the defendants but he was pursued by Shodeus Clement who caught up with him and a struggle ensued between them. During the scuffle it was observed that both the deceased and Shodeus Clement were armed with knives. The deceased was stabbed by Shodeus Clement and was hit on the head by Severus Butcher with a piece of wooden post. The deceased held on to his chest and went to rest against a large stone at which time Shodeus Clement stabbed him a few more times and dealt him a few kicks whilst Severus Butcher dealt him another blow with the wooden post which broke on impact with the deceased's head.

[3]. The deceased was taken to the Soufriere hospital where the findings of the attending physician were as follows:

- Puncture wound to the left chest at the 10th intercostal space, 2 cm lateral to the mid clavicular line;
- Puncture wound to the mid-aspect of the left supra clavicular area;
- Puncture wound to the posterior lateral aspect of the left arm.

The attending physician opined that the aforesaid injuries were likely to have been caused by sharp penetrating trauma with a severe degree of force. The deceased later succumbed to his injuries and was pronounced dead.

[4]. On the 28th December, 2010, Dr. Stephen King performed a post mortem examination on the body of the deceased and found the cause of death to be cardiac tamponade secondary to stab wounds and blunt trauma to the head.

[5]. On December 29, 2010, the defendants were charged with the offence of murder contrary to section 85 of the Criminal Code and on the 24th October, 2011, were indicted by the Director of Public Prosecutions for the offence of murder contrary to section 85(a) of the Criminal Code. At their arrangements on the 21st November 2011 they both pleaded not guilty; however, on the 2nd October, 2012, the crown accepted guilty pleas by both defendants to the lesser offence of manslaughter. The court ordered pre-sentence reports be produced in respect of each defendant and set a date for a sentencing hearing.

[6]. **THE HEARING**

At the hearing the pre-sentence reports were accepted by counsel on both sides without query. The pre-sentence report for Shodeus Clement revealed that he was raised in a single parent household with a low socio-economic situation. Shodeus Clement describes his father as someone who was constantly in and out of prison hence he never developed a relationship with him. Community residents describe this defendant as troublesome yet friendly.

[7]. Shodeus Clement attended the Soufriere Comprehensive secondary School from which he dropped out in the fourth form in 2004. His teachers describe him as being troublesome, rude and disrespectful. He was suspended for defiance, threatening teachers and skipping classes. He was also involved in gambling and smoking marijuana on school grounds. Shodeus Clement confirms that he was part of a crew at school and that he was troublesome. However, he attributes

his low socio-economic status as a factor which contributed to his early departure from school. He contends that the deceased was his friend with whom he used to socialize but problems arose between them over a transaction involving the trafficking of marijuana. The defendant states that on the day in question he was provoked by the deceased who attacked him and that during a struggle he inflicted injuries to him with a pair of scissors which he often kept on his person. He said the deceased was a violent person who had been incarcerated for some seven (7) years for the death of a warden. He expressed remorse for the whole incident.

- [8]. Mr. Mondesir for Shodeus Clement in his written submissions on which he relied submitted the following as the mitigating and aggravating factors:

MITIGATING FACTORS

1. The defendant has pleaded guilty to manslaughter and has saved time, state resources and the rigours of a full trial;
2. The defendant is genuinely remorseful;
3. The defendant has no previous convictions;
4. This is not one of the worst cases of manslaughter;
5. Spontaneity and lack of pre-meditation;
6. The deceased was the aggressor;
7. The conclusion of the probation officer. The defendant has displayed certain risk factors which predisposes him to offending. The defendant has a history of problematic behaviour, unstable home environment, low socio-economic status, minimal academic/vocational skills, drug use, negative environmental influences and peer influence. The defendant needs to undergo social, behavioural and psychological intervention.

8. The defendant has spent one (1) year and eleven (11) months on remand at the Bordelais Correctional Facility.

AGGRAVATING FACTORS

1. The use of a weapon was involved.

Counsel submitted that in his view the mitigating factors prevail over the aggravating ones. He further submitted that as this was not one of the worst cases of manslaughter that a sentence should be imposed downwards from the benchmark. I will again refer to Mr. Mondesir's submissions later in this judgment.

- [9]. The pre-sentence report for Severus Butcher discloses that he was brought up in a stable home environment with both parents and had a good upbringing. Family members describe him as a person who is likely to retaliate when provoked and is known to be hyperactive when under the influence of alcohol. He is said to have frequented an area in Soufriere called the 'Ghetto' notorious for criminal activity but that he's known to be non-violent.

- [10]. This defendant attended the same secondary school as his co-defendant but he obtained six (6) passes at the CXC examinations. He did not present any major disciplinary problems at school. Severus Butcher stated to the probation officer that on the day in question he intervened in an issue between the deceased and his co-defendant who were involved in a scuffle. He admitted striking the deceased on his head with a piece of stick and expressed his remorse for the loss of life.

[11]. Mr. Nicholas for Severus Butcher considered the following to be the mitigating factors herein:

1. Plea of guilty entered at the first available opportunity;
2. The defendant has spent a period of incarceration in the state prison;
3. No evidence that the defendant left his home armed with a dangerous weapon with intent to endanger life;
4. No evidence on the facts that the defendant set out with the intent to seek revenge;
5. No evidence that the defendant was the aggressor who struck the first blow or was engaged in any act of violence or rage which was the spark that ignited the flames;
6. There is no evidence that the defendant encouraged, aided or abetted the confederate who struck the fatal blow.

Counsel for this defendant made no submission on what were the aggravating factors herein. However, Mr. Nicholas rather astonishingly submitted that his client was not identified as the person who inflicted the fatal blows to the body of the deceased. He further contended that this defendant was not part of a plan to kill or inflict grievous harm to the deceased and that there is no evidence of joint enterprise at work between the defendants herein. It is against this background that counsel contends at a later stage in his submissions that the court should treat his client's guilty plea as an indication of remorse, contrition and acceptance of wrongdoing. Moreover, Mr. Nicholas in an earlier part of his written submissions accepted that the cause of death was cardiac tamponade secondary to stab wounds and blunt trauma to the head (underscoring mine).

[12]. Crown counsel, Ms. Mensah in her written submissions contends the following to be the aggravating and mitigating factors in respect of the defendants:

SHODEUS CLEMENT**AGGRAVATING FACTORS**

1. The seriousness of the offence – the taking of a life;
2. The defendant was armed with a weapon which he was carrying on his person;
3. A weapon was used to inflict fatal injuries on the deceased;
4. The prevalence of the offence in this jurisdiction;
5. The defendant continued to stab and kick the deceased whilst he lay helpless on the ground;
6. The defendant and co-defendant outnumbered the deceased as nobody came to the deceased's assistance;
7. The deceased tried to flee the scene and he was pursued;
8. The extent of the injuries received by the deceased.

MITIGATING FACTORS

1. Defendant has pleaded guilty;
2. No previous convictions.

SEVERUS BUTCHER**AGGRAVATING FACTORS**

1. The seriousness of the offence – the taking of a life;
2. The prevalence of the offence in this jurisdiction;
3. The defendant continued to lash the deceased with the post whilst the deceased was helpless on the ground;

4. The defendant and the co-defendant outnumbered the deceased as nobody came to the deceased's assistance;
5. The deceased tried to flee the scene and he was pursued;
6. The defendant armed himself with a piece of post;
7. The extent of the injuries received by the deceased.

MITIGATING FACTORS

1. Defendant has pleaded guilty;
2. No previous convictions.

[13]. Crown counsel took issue with Mr. Mondesir's contention for Shodeus Clement that this was not the worst case of manslaughter. She submits that Shodeus Clement continued to attack and stab the deceased even after he was on the ground and posed no threat to him. Ms. Mensah further contends that though the words spoken by the deceased to Shodeus Clement may have precipitated the incident and amounted to provocation she does not accept that the deceased was the aggressor. Crown counsel further contends that Shodeus Clement was at the time of the incident walking around with a knife which he was clearly prepared to use.

[14]. Ms. Mensah also disagrees with Mr. Nicholas for Severus Butcher that his client did not inflict the fatal blow. She referred to the opinion of Dr. King as to the cause of death submitting that the blunt trauma to the head of the deceased was caused by the blows inflicted by his client to the head of the deceased. She goes on to disagree with the assertion by Mr. Nicholas that there was no plan or intention to kill the deceased or to cause him grievous bodily injury contending that the

deceased and Shodeus Clement were involved in an altercation in which Severus Butcher involved himself.

[15]. The court finds the following to be the aggravating and mitigating factors herein in respect of the defendants:

AGGRAVATING FACTORS

1. The seriousness of the offence which involved the taking of human life;
2. The use of weapons by both defendants to inflict injuries to the deceased which resulted in his death;
3. The number of injuries inflicted on the deceased by the defendants especially at a time when he appeared to be helpless;
4. The defendants pursued and beat the deceased with fatal consequences;
5. The increasing prevalence of homicide offences within the jurisdiction.

MITIGATING FACTORS

1. The early guilty pleas by both defendants;
2. The hitherto clean criminal records of both defendants;
3. The genuine remorse expressed by both defendants.

[16]. **THE LAW**

Crown counsel and counsel for the defendants have provided the court in their written submissions with statements of what they considered to be the relevant law to be applied herein. Counsel has also provided the court with authorities on which they rely in support of their legal submissions.

- [17]. The court will apply the classical principles of sentencing, namely retribution, deterrence, prevention and rehabilitation to the facts and circumstances herein. In the celebrated decision of *Sergeant v Regina Lawson* LJ stated thus:

'any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing'

RETRIBUTION

Retribution at first glance tends to reflect to the Old Testament biblical concept of an eye for an eye, which is no tenable in the law. It is rather a reflection of society's intolerance for criminal conduct. Lawton LJ stated at page 77 that:

“... society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass.”

The facts of this case disclose that the deceased and Shodeus Clement had an altercation during which the deceased though himself armed with a knife sought to flee from the fight. Had he been allowed to run away he would have lived to face another day. Regrettably however, he was pursued by the defendants who whilst armed with a sharp instrument and a piece of wooden post inflicted injuries to him which caused his demise. What makes the actions of the defendants more egregious is that at the time when the deceased appeared to be helpless and leaned against a rock they stabbed, kicked and hit him on his head. All of this occurred in public view during the daytime.

The court accepts that the whole incident was sparked by the words said to Shodeus Clement by the deceased and that the attack was neither planned nor premeditated. However the viciousness

and severity of the attack launched on the deceased by the defendants, Shodeus Clement being his friend is indeed cause for concern. Clearly Severus Butcher was not content to stand idly by whilst his friend Shodeus Clement was stabbing the deceased but felt obligated to join into the affray and inflict his share of injuries to the deceased all with devastating effects.

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.

The defendants are both first offenders and at first blush it would appear that this ground is not applicable to them. However, the court is aware that Shodeus Clement has a history of the use of and trafficking in marijuana. Indeed he admitted to the probation officer that the reason for the coldness between the deceased and him was over a drug trafficking deal gone sour. Severus Butcher is known for becoming 'hyperactive' when under the influence of alcohol and is also a user of cannabis.

The drug use of the defendants is a cause for concern if left unattended as this may trigger recidivism. The court is also concerned at the alarming rise in commission of offences of homicide. Thus the court must impose an appropriate sentence to ensure that the defendants are deterred from re-offending in like manner and to deter the wider populace from indulging in unrestrained acts of violence which could result in the loss of human life.

PREVENTION

Both defendants are first offenders. The history of drug trafficking admitted to by Shodeus Clement in the pre-sentence report has been addressed under the ground of deterrence. There is no evidence before me that the defendants are known to be prone to commit acts of violence or are considered to be dangers to the society, and hence are likely to continue in the same vein if not incarcerated for lengthy periods of time.

REHABILITATION

The court is encouraged by the genuine remorse expressed by both defendants for their conduct which resulted in the loss of a human life. The probation officer has identified the history of problematic behavior, drug use, minimal academic/vocational skills, negative environmental influences and peer influence as risk factors which may cause Shodeus Clement to re-offend. As a consequence this defendant must undergo a suitable period of social, behavioural and psychological counseling to prepare him for re-integration into the society. The court is also concerned that he needs to acquire a skill to enable him to earn a legitimate living on his release from Bordelais Correctional Facility.

The risk factors of Severus Butcher have been identified as his drug and alcohol use, his tendency to violent conduct when under the influence and his unstable employment. It stands to reason therefore that both defendants are required to have their risk factors addressed by appropriate counseling to ensure their re-integration to the society equipped to avoid the temptation to re-offend.

The court is encouraged by the fact that both defendants have good family ties and stable accommodation and in the case of Severus Butcher a solid educational background. Thus they will both need to go through a satisfactory period of rehabilitation to deal with and exorcise their unsavory predilections.

SENTENCE

I have considered the aggravating and mitigating factors submitted by counsel for the defendants and Crown counsel herein. I do not accept the submissions by Mr. Nicholas for Severus Butcher that his client did not encourage, aid or abet Shodeus Clement who struck the fatal blow as a mitigating factor or at all. The unchallenged and accepted facts indicate that Severus Butcher joined the affray firstly by pelting a bottle at the deceased and later whilst armed with a wooden post which he used to hit the deceased on his head with fatal results according to Dr. King's findings. It is for that same reason that I reject counsel's assertion that his client was not part of a plan to kill or inflict grievous harm on the deceased. It is trite law that an intention can be formed at any time of the incident and I find that when his client threw a beer bottle at the deceased which struck him on the chest and burst on impact he signaled his intention to be part of the attack on the deceased albeit launched by his co-defendant.

I have weighed and evaluated what I have found to be the aggravating and mitigating factors herein and find that the aggravating factors outweigh the mitigating ones. This vicious and violent taking of a human life for what I consider to be mere annoyance makes this offence such a heinous one. The fact that they were in a public place in public view in daylight hours did not deter the defendants for launching and carrying out their attack on the deceased. Notwithstanding this

however, I accept the submission of Mr. Mondesir that this should not be considered to be the worst case of manslaughter.

The offence of manslaughter carries a maximum sentence of life imprisonment. In arriving at a benchmark, I have considered the facts and aggravating and mitigating factors of this case. I have also taken into account to particular circumstances of the defendants as it relates to their need for rehabilitation. I have also considered the level of culpability of the defendants and find them to be equally culpable for this heinous offence.

I find a benchmark of fifteen (15) years imprisonment to be appropriate in the circumstances. Though the defendants did not plead guilty at the first possible opportunity, the court appreciates that there would be a period of negotiations before the parties would agree on a plea to the lesser offence. As such I will accord the defendants the full one third deductions in sentence for their guilty pleas. I will also deduct a further two (2) years for their hitherto clean criminal records and remorse.

Accordingly, the defendants are both sentenced to eight (8) years imprisonment each. They will both receive counseling for their drug addictions. Shodeus Clement shall be enrolled in an appropriate program at the Bordelais Correctional Facility to equip him with a skill to enable him to earn legitimate employment upon his release. Both defendants shall be credited for all time spent on remand whilst awaiting trial.


FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE