

SAINT LUCIA

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

CASE NO.SLUCRD2016/0476

BETWEEN:

PC 83 CALIOUS DANTES

Claimant

and

GLENROY NERIUS

Defendant

Appearances:

Mrs. Jenin Samuel-Kisna for the Claimant
Mr. Horace Fraser for the Defendant

2016: November 7.

DECISION

- [1] **TAYLOR-ALEXANDER J (Ag),:** This matter comes on for decision on the question of whether the Crown at the Sufficiency hearing, established a prima facie case against the Defendant for him to be committed to stand trial for aiding and abetting a murder contrary to Section 62 of the Criminal Code Cap 3.01 of the Revised Laws of Saint Lucia (Criminal Code).
- [2] The Defendant is charged with aiding and abetting Melissa Joseph to commit the Murder of the deceased, Herman Joseph. Melissa Joseph has since been committed to stand trial for the offence of Murder.
- [3] At the close of the Crown's submissions, The Defendant's counsel challenged, whether on the evidence adduced, the Crown has met the threshold requirement as provided for under rule 10.3 (4) and (5) of the Criminal Procedure Rules and under Section 62 of the Criminal Code.

[4] The Crown in their submissions relied on (a) the statement Jacky Roberts, (b) the statement of Lyndon Aimable, (c) The identification parade, (d) The interview under caution of Glenroy Nerius, (e) The Post Mortem report, and the entire case file, to satisfy the court of a prima facie case on the documentary evidence.

THE BRIEF FACTS

[5] The case as alleged by the Crown is fully detailed in the case file, and I do not propose to repeat it. In summary however, the Crown alleges that Herman Joseph the deceased, who died at Victoria Hospital on the 31st of December 2015, of respiratory failure secondary to stab wounds, was murdered by Melissa Joseph, aided and abetted by the Defendant and others.

THE DOCUMENTARY EVIDENCE OF THE CROWN

[6] Both Jackie Roberts and Lyndon Aimable alleged that they saw the Defendant, participate in an attack on the deceased. They later identified him at an identification parade. Jacky Roberts said that the Defendant together with other guys chased the deceased to the back of the CDC building and he was seen beating the deceased. Lyndon Aimable said that he saw the Defendant beating the deceased together with other persons.

[7] The Crown also relied upon the interview under caution, of the Defendant. In the relevant part of his evidence, the Defendant says that when the altercation between the co-accused Melissa Joseph and the deceased started, he was in a nearby bar called Captain n' Joyce. He saw other persons fighting with the deceased. These persons he identified as "Predition of Trou Rouge", and "a fella whom he thinks is Predition's cousin or brother."

[8] The Defendant said that he had seen the co accused take a "bright" bottle and pelt it at the Defendant. The deceased he said, fell off balance and moved toward him, at which time he kicked him and pushed him away. At that time, Predition, rushed on the deceased and started beating him. He, the Defendant, gave chase after the deceased together with other persons. He admitted to beating the deceased, and stated that he saw two of the persons who were also beating the deceased, armed with an ice pick and a knife. One of them he says always carries the ice pick on him. When he, the Defendant caught up with the deceased, he began beating on him.

[9] The post mortem report relied on, gives the cause of death as respiratory failure secondary to stab wounds.

[10] The Crown's success at the sufficiency hearing depends on whether the documentary evidence contained in the case file discloses prima facie evidence that the Defendant's actions in law, aided and abetted the Murder of the deceased. If the Crown is successful in convincing the court, the Defendant is committed to stand trial. If they are not, the Defendant is discharged.

THE DEFENDANT'S SUBMISSIONS

[11] Counsel Mr. Horace Fraser for the Defendant, submits simply, that the Crown has not established a case for aiding and abetting for the following reasons:—

- a) The stabbing of the Defendant by the co-accused which allegedly resulted in his death took place at a time earlier than when the Defendant beat the deceased;
- b) The evidence reveals that the Defendant only beat the deceased, and the cause of death is reported to be respiratory failure secondary to stabbing.

THE LEGAL PRINCIPLES

[12] Aiding and Abetting is comprehensively dealt with under sections 62 to 71 of the Criminal Code. In Particular Sections 62 and 64 provide as follows:—

“ 62. AIDING AND ABETTING A CRIME

Any person who—

- (a) directly or indirectly instigates, commands, counsels, procures or solicits;*
- (b) in any manner intentionally aids, facilitates, encourages or promotes; or*
- (c) does any act for the purpose of aiding, facilitating, encouraging or promoting,*

the commission of a crime by any other person commits the offence of aiding and abetting that crime and of aiding and abetting the other person in respect of that crime and shall be deemed an accomplice.”

“ 64. AIDING AND ABETTING CRIME COMMITTED

An accomplice who aids and abets a crime commits the crime if the crime is actually committed as aided and abetted by him or her.”

[13] The mental element is established in relation to a secondary party in this case, where the secondary party has lent himself to an enterprise and, by doing so, he has given assistance and

encouragement to the principal in carrying out an enterprise which the secondary party realizes may involve murder. See: **Chan Wing-Sui v R** [1985] A.C 168.

[14] In **Ferguson v Weaving** (1951)Q.B it was held that the words “aid and abet” are best suited for describing the actions of a person who is not only present at the time of the commission of the offence, but who also takes some part in it. The statutory construction of Section 61 of the Criminal Code provides for a range of actions each of which conduct, can constitute an actus reus for the offence. In the **Attorney General’s Reference No. 1 of 1975** (1975) The Court of Appeal of England held that the words used to describe the actions of aiding and abetting should bear their ordinary meaning. Each of the words used in Section 61 describe different and particular behavior. Lord Widgery in **Attorney General’s Reference No. 1 of 1975** (1975) opined that, *“if there was to be no difference in the words used parliament would be wasting time in using four words when two or three would do.”* I adopt this reasoning and accept that each or the words referenced in Section 62, prescribe a different conduct.

[16] In the context of criminal proceedings, the Blacks Law Dictionary defines the following words thus: — “**procure**” induces or prevails upon another to do something; “**counsel**” is advice or assistance; “**aid**”: is support, help, or assist. This word is distinguished from its synonym “**encourage**,” with the difference being that the former connotes active support and assistance, while the latter does not; and also from “**abet**,” which last word imports necessary criminality in the act furthered, while “**aid**,” standing alone, does not. To “**facilitate**” is to make the commission of a crime easier; “**promote**” means to encourage, urge or incite.

REASONING

[17] The evidence adduced by the Crown places the Defendant at the scene and as a participant in the altercation that resulted in the eventual death of the accused. He saw the initial altercation and saw the co-accused attack the deceased. He joined in shortly thereafter, and as it continued to a different location.

[18] In my view, and given the circumstances that unfolded, it is of no moment the allegation of the Defendant, that he only participated by beating the Defendant, and that it was after the deceased

had been stabbed by the co accused. The Defendant attacked the deceased, together with other persons, with full knowledge that at least two other persons were using weapons that, by their nature, were capable of causing grievous bodily harm. He knew that immediately before, the co-accused had stabbed the deceased with a bottle and he and others as part of that same enterprise, chased down the deceased and the continued with the onslaught. It would have been apparent to the Defendant that his actions and the actions of the others including the co-accused, would, in the very least, have occasioned grievous bodily harm or assisted in causing grievous bodily harm.

[19] Applying the reasoning of the case law to which I earlier alluded, it is my considered view that the documentary evidence submitted by the Crown discloses prima facie evidence against the Defendant of aiding and abetting a murder.

[20] In the circumstances I order: -

[1] The Defendant be and is hereby committed to stand trial for the offence of aiding and abetting a murder.

[2] The Director of Public Prosecutions to prefer an indictment within three weeks or give notice of decline within a similar period.

[3] Omnibus Conference is now fixed for the 20th of February, 2017.

[4] Defendant to be arraigned on 20th of March 2017.

[5] The Defendant is to continue on remand at the Bordelais Correctional Facility.

V. GEORGIS TAYLOR –ALEXANDER
HIGH COURT JUDGE (AG)