

SAINT LUCIA

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

CRIMINAL CASE NO. SLUCRD2012/2012

BETWEEN:

THE QUEEN

*Claimant*

and

RYAN JULES

*Defendant*

**Appearances:**

Mr. Leon France for the Claimant

Mr. Alberton Richelleu for the Defendant

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2016: December 20.

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**JUDGMENT ON SENTENCING**

- [1] **CUMBERBATCH, J.:** The Defendant was indicted by the Director of Public Prosecution for the offence of Murder contrary to section 85(b) of the Criminal Code 2008 for that he on the 16<sup>th</sup> October 2012 at Ti-Chemin whilst intending to cause grievous bodily injury caused the death of Kitson Hippolyte (the Deceased). On 13<sup>th</sup> September 2016 he entered a plea of guilty to the lesser offence of manslaughter by virtue of provocation which was accepted by the Crown. The court ordered a Pre-Sentenced Report to assist it in sentencing process.

**THE FACTS**

- [2] On the 6<sup>th</sup> October 2012 at around 9:45pm the Defendant and others were seated on a wooden bench opposite Jimmy's Place at Ti-Chemin. Whilst there the Defendant was complaining to the others that the Deceased was constantly troubling him and he was fed up with it.

- [3] The Deceased arrived at the scene and began telling the Defendant to move. The Defendant did not respond and the Deceased said "you don't want to move, you will see". The Deceased then left the area. However some fifteen minutes later the Deceased returned and started poking his fingers in the Defendant's face telling him to move. At this stage the Defendant got to his feet and the Deceased continued poking him in the face saying "Show me what you got!"
- [4] A physical altercation commenced during which the Defendant inflicted stab wounds to the neck and back of the Deceased. The Deceased later succumbed to his injuries. Dr. Stephen King performed a post mortem examination on the body of the Deceased and found the cause of death to be hemorrhagic shock as a result of the two stab wounds to the neck and one to the back of the body.

#### **THE PRE-SENTENCE REPORT**

- [5] The Defendant is an issue of the marriage between his parents. He had a comfortable upbringing and had all moral values instilled in him by his parents. Community residents generally spoke highly of the Defendant though some state he can be vociferous in his manner of expression but is not known to be violent.
- [6] The general consensus is that he poses no threat to the community and is a resourceful person. He has been lawfully employed since leaving school in various forms of legitimate employment. However there have been recommendations for him to attend counseling on anger management and dispute resolution.

#### **THE LAW**

- [7] I find the following to be the aggravating and mitigating factors herein:

##### **AGGRAVATING FACTORS**

1. The seriousness of the offence;
2. The use of a weapon on the Deceased who was unarmed;
3. The prevalence of the offence.

### **MITIGATING FACTORS**

1. The defendant's guilty plea,
2. The remorse expressed.

[8] I find that having carried out a balancing exercise with the aggravating and mitigating factors that the aggravating factors outweigh the mitigating ones. I will now consider and apply the classical principles of sentencing to the case at bar.

### **RETRIBUTION**

[9] The Defendant inflicted stab wounds to the neck and back of the Deceased after they were involved in an oral altercation. There is no doubt that during the altercation the Deceased was initiator and aggressor and seemed bent on evoking a response from the Defendant.

[10] The Deceased was unarmed and his role in the altercation was that of mere posturing with no physical violence. The court finds that the Defendant's resort to violence was unnecessary. There was always the option to walk away which option the Defendant apparently never considered and certainly did not implement. The court must show its abhorrence at these cases of unwarranted violence with the use of a weapon with fatal consequences.

### **DETERRENCE**

[11] It is common ground that offences of homicide are on the rise within this jurisdiction. The court is aware of several cases of homicide occurring for trivial and at times inexplicable reasons.

[12] Though the Defendant is a first offender and from all accounts is not known to be a violent person the court must by the sentence it imposes seek to deter others from continuing this upward trend of extreme violence.

### **PREVENTION**

[13] The Defendant is a first offender and is not generally known to be a violent person. I have no doubt that he will benefit from the sound of life shutting of the iron cell door and not reoffend in like manner. Thus I do not consider this principle to be applicable to him.

## REHABILITATION

- [14] The Defendant has expressed his remorse for what he has done. He has also expressed the intention to offer his apologies to the family of the deceased. He maintains that it was never his intention to kill the Deceased.
- [15] The Defendant states in the Pre-Sentence Report that he intends to establish a pig and poultry farm when released from prison as a means to support his family.
- [16] In Blackstone's Criminal Practice 2009 at Appendix 8 Sentencing Guidelines Counsel Guidelines under the heading **Manslaughter By Reason of Provocation** it is suggested that the following factors are to be taken into consideration by the sentencing court.
1. The sentences of public protection must be considered in all cases of manslaughter,
  2. The presence of any of the generally aggravating factors identified in the Council's **Guideline Overarching Principles; seriousness** or any of the additional factors identified in this guideline will indicate a sentence above the normal starting point,
  3. This offence will not be an initial charge but will arise following an initial charge of Murder. The council Guideline **Reduction in sentence for a guilty plea** will need to be applied with this in mind. In particular consideration will need to be given to the time at which it was indicated that the Defendant will plead guilty by reason of provocation,
  4. An assessment of the degree of provocation as shown by its nature and duration is the critical factor in the sentencing decision,
  5. The intensity, extent and nature of the loss of control must be assessed in the context of the provocation that preceded it,
  6. Although there will usually be less culpability when the retaliation to provocation is sudden, it is not always the case that greater culpability will be found where there has been a significant lapse in time between the provocation and killing,
  7. It is for the sentencer to consider the impact on an offender of provocation behavior that has built up over a period of time,
  8. The use of a weapon should not necessarily move a case into another sentencing bracket,

9. The use of a weapon may reflect the imbalance in strength between the offender and the victim how that weapon came to hand is likely to be far more important than the use of the weapon itself.
10. It will be an aggravating factor where the weapon is brought to the scene in contemplation of use before the loss of self-control (which may occur sometime before the fatal incident)
11. Post offence behavior is relevant to the sentence. It may be an aggravating or mitigating factor. When sentencing the judge should consider the motivation behind the offender's actions.

[17] In A.G's reference Nos. 74, 95 and 118 of 2002 in the English C/A decision of **Regina v Suratan et al** the court set out assumptions which a sentencer must make in favour of an offender found guilty of manslaughter by virtue of provocation. These are:

*First, he must assume that the offender had, at the time of the killing, lost his self-control. Mere loss of temper or jealous rage is not sufficient.*

*Second, he must assume that the offender was caused to lose his self-control by things said or done, normally and as in the cases with which we are concerned, by the person whom he has killed.*

*Third, he must assume that the defendant's loss of control was reasonable in all the circumstances, even bearing in mind that people are expected to exercise reasonable control over their emotions, and that as society advances it ought to call for a higher measure of self-control.*

*Fourth, he must assume that the circumstances were such as to make the loss of self-control sufficiently excusable to reduce the gravity of the defendant's offence from murder to manslaughter.*

*Moreover, the sentencing judge must make these assumptions whether the offender has been found not guilty of murder but guilty of manslaughter by reason of provocation by a jury after a contested trial, or the Crown has accepted a plea of not guilty of murder but guilty of manslaughter by reason of provocation.*

[18] The court however went on to refer to the dictum of Shaw LJ in the decision of **R v Bancroft (1981) 3 CAR (S) 119, 120**:

*Theoretically and logically, though in a sense remote from human affairs, if there is a successful defense of provocation, and it is recognized by the jury that the accused whom they are trying was not in possession of his self-control because of conduct of his victim, one could argue that the sentence should be virtually a nominal one. However, it has to be recognized in human affairs, notwithstanding that a man's reason might be unseated on*

*the basis that the reasonable man would have found himself out of control, that there is still in every human being a residual capacity of self-control. Which the exigencies of a given situation may call for. That must be the justification for passing a sentence of imprisonment, to recognize that there is still some degree of culpability, notwithstanding that the jury have found provocation."*

- [19] Mr. Richelleu for the Defendant contends that the Deceased was the aggressor and that his client exercised restraint and patience before he reacted on that day. He further submits that the Defendant faced extreme provocation to cause him to react as he did. However counsel later concedes that this situation arose out of an unfortunate dispute originating from the Deceased's provocative act which could have been handled differently.
- [20] Crown counsel submits that the offence at bar is very serious but admits that there was some degree of provocation. He urges the court to balance the positive aspects of the Pre-Sentence Report with the factors of provocation. He contends that a starting point of 15 years imprisonment is appropriate.
- [21] The court must at all-times bear it in mind that this is a case of manslaughter not murder hence the assumptions aforesaid must be applied. However the court is also required to strike a balance between the Defendant's conduct under provocation and his residual degree of culpability. The sentencing guidelines aforesaid are of equal importance to the sentencer.
- [22] I have considered the Defendant's personal circumstances and find that he was well brought up and is generally considered to be an asset to his community. However I must reiterate that the provocation complained of was more a case of posturing by an unarmed man from which the Defendant could have simply walked away. Instead however he stabbed the Deceased in the neck. He pursued him stabbing him again this time on his back as he the Deceased ran away. The post mortem results show that the Deceased died from hemorrhagic shock as a result of the stab wounds to the neck and back.
- [23] In **Bancroft v Regina** aforesaid the court opined 'that there exists in every human a residual capacity for self-control, which the exigencies of any given situation may call for'. I find that this Defendant failed to apply that residual capacity for self control and instead violently attacked and killed the unarmed Deceased.

## SENTENCE

- [24] The Defendant must be made to expiate his offence and the punishment must be commensurate with the seriousness of the crime. This is not the most heinous of offences of manslaughter and the Defendant is a good candidate for rehabilitation. Thus I will adopt the established starting point of 15 years imprisonment from which I shall deduct 5 years for the guilty plea. I find the degree of provocation to be low. This was a case of the Defendant using a knife in response to what was essentially trash talk.
- [25] The Defendant had evinced the intention to adopt the course he did as is evidenced in his defense statement where he stated he will be raising issues of self defence and provocation at his trial. Inherent therein is an admission of his involvement in the death of the Deceased.
- [26] The court is also aware that since the month of October 2014 the Defendant's counsel was making overtures to the crown of his intention to adopt the course he took in September 2016. There can be no doubt that the Defendant was provoked to act as he did, hence for the delay in bringing this matter to a stage of finality the court will deduct a further 2 years.
- [27] Accordingly the Defendant is sentenced to 8 years imprisonment. He shall be credited for all time spent on remand whilst awaiting his trial. He shall receive counselling on anger management and dispute resolution.

  
FRANCIS M. CUMBERBATCH  
HIGH COURT JUDGE

