

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCR 2017/0013

REGINA

V

ANSEN TUITT

APPEARANCES

Mr Kenroy Hyman and Ms Korah Galloway for the Crown.

Mr Jean Kelsick for the defendant.

2018: MARCH 14

SENTENCE

Concerning causing grievous bodily harm with intent on ex-partner

- 1 **Morley J:** Ansen Tuitt, born 06.08.61, now 56, falls to be sentenced for causing grievous bodily harm with intent on his former partner Marjorie Sylvia Ashby by stabbing her in the chest near her market stall with a 12-inch carving knife on 17.06.17, to which he pleaded guilty at the first practicable opportunity on 22.11.17.
- 2 His first appearance at the High Court was swiftly on 17.07.17, but he then had no legal representation. I wish to commend and thank the president of the Montserrat Bar Association, Counsel Kelsick, for stepping forward, *pro bono*, to represent Tuitt at then next assizes in November 2017, who otherwise, being without funds, and there being no legal aid for this

serious offence, would have been without the assistance of counsel, which has been not only valuable to him, but also to the court in assessing this sentence.

- 3 Tuitt and Sylvia had a volatile relationship for 7/8months in 2015. They had lived together briefly. She helped him acquire ownership of the home of his late aunt. She broke up with him after he had said he loved her but would kill her, which he said was a joke, but she took it seriously. After, he would let himself into her home and move her belongings, which she reported to police and took out a restraining order in 2016. In my judgment, he was stalking her, deliberately reminding her of him, and calculating to raise fear in her. On 17.03.17, during the St Patrick's parade, he came up to her and brushed her breast, saying he still loved her but could kill her. He was charged with indecent assault, and was kept in custody for a time as the authorities were alarmed by his obsessive behaviour and threats. Bailed, he was under a condition not to have any contact with Sylvia, but on 17.06.17 stabbed her.
- 4 That day, at 08.30 in passing he had seen Sylvia with her new partner Mack, and had called out to her he still loved her. He was later in the morning drinking rum and coconut water, with others owing to a funeral and said in his police interview the next day that he went to Carrs Bay with his kitchen carving knife to buy more coconuts. Sylvia has a vegetable stall there by Murphys store. He saw her, the knife was in his waistband, he crossed the road with the knife in his hand, he told her he loved her but had come to kill her, and at midday he stabbed her with his right hand. The knife was thrust upwards, and went through her skin and muscle and struck the left side of the sternum breast bone, causing a 5cm laceration, and profuse bleeding, but going no further, and not into the thoracic cavity: if it had, she would probably have died. She was rushed to hospital, where she stayed for 6 days, and three days after release felt weak and returned for a further six days. Tuitt placed the knife in his waistband again, and calmly waked away. He was found two hours later on a bus, with the knife still on him. Though in interview he admitted the stabbing, he offered no explanation.
- 5 I have had to consider whether I accept his version that he was coincidentally at Carrs Bay with the knife to open coconuts or I conclude he had gone with it to stab, knowing Sylvia would be there. I am highly suspicious that the latter is true, which if so would noticeably lengthen the sentence, but I cannot be sure, and so will sentence on his version, which nevertheless

- discloses a premeditation in crossing the road with the knife in hand, then announcing he intended to kill her.
- 6 As to his personal circumstances, he is Montserratian, has three adult daughters off island, lived much of his life elsewhere, though intermittently returning, and settled eight years ago, working as needed as a labourer. He is an epileptic and in January 2018, though in custody, was hospitalised for a seizure. He has previous convictions on Montserrat, dating back to 1996, which disclose 8 offences for violent or threatening behaviour, with 6 resulting in short prison sentences, totalling 17 months. I was urged to ignore any sentence prior to 2014, but do not, as to do so would mean I would fail to see that this defendant has an aggressive character.
- 7 In the presentence report prepared by probation officer Stanford Kelly, filed on 06.03.18, while some folk speak well of Tuitt when sober, it is remarked he is 'very aggressive and threatening' in drink, which fits with this offence. To the officer in the report, he also denied intending to hurt Sylvia, and said he did not know she had been harmed, but through his counsel wholly withdraws these remarks, accepting he had intended to stab her as described above and as he admitted to the police. Counsel goes further, and asks for counselling in custody as to anger management and drink/drug abuse, suggested in the report, saying Tuitt will readily cooperate, inviting that if so, his violent nature might not aggravate the sentence if jailed as it can be addressed, perhaps by island psychologist Carrington, to rehabilitate him for release to the community in due course.
- 8 Concerning Sylvia, in her victim impact statement, though she is expected to make a full recovery, she describes how the attack has left her weakened, so she cannot do as much domestic cleaning work as before, meaning she is financially worse off. She still feels pain in her chest where stabbed. She has become fearful, less sociable, and even began to distrust her current partner, as no longer feeling secure.

Constructing the sentence

- 9 To construct the sentence, I have chosen to be assisted by the UK sentencing guidelines for causing grievous bodily harm with intent¹, which is the like offence, with the same maximum as on Montserrat, namely life imprisonment.
- 10 I assess the starting point to be in category 1, being 12 years with a range of 9-16 years. This is because there was deliberate targeting of a vulnerable person, who had taken out a restraining order, and who was physically weaker, the stabbing was premeditated, and in the context of a previous relationship, and the injury was serious, these features in combination reflecting greater harm and greater culpability.
- 11 Considering the aggravating features, he said he intended to kill her, not just seriously hurt her, he was obsessed and jealous, and it is particularly aggravating that the offence was on bail for indecently assaulting her. These increase the sentence by 3.5 years to 15.5 years.
- 12 I have considered whether Tuitt is dangerous and should receive a longer sentence for public protection. There is a strong argument he is, but I note the previous violent offending, though regular, has been much more minor, and I take the point offered by Counsel Kelsick that counselling in jail will lead to better hope of rehabilitation and less likelihood of such offending in the future, when in any event he will be elderly on release. In these circumstances I will not add to the sentence for dangerousness.
- 13 Turning to the mitigating features, though not of good character, I note a certificate of good behaviour from the jail, where he has been in custody since 17.06.17, which I acknowledge and so reduce the sentence by 6 months, to 15 years.
- 14 His plea of guilty at the first practicable opportunity following representation by Counsel Kelsick attracts a discount of one-third, meaning of 5 years, so that the final sentence is 10 years.
- 15 Time spent already in custody for the stabbing since 17.06.17 shall count, but not any time spent in custody for the indecent assault, as it was a separate proceeding, (though in the end not separately pursued).

¹ See UK sentencing guidelines, at para SG206, in Blackstones 2016 supplement at page p539.

- 16 As to compensation, I have considered whether he should release funds from the house he owns, or even if any rental income can be ascribed to Sylvia. I am told the roof is leaking and he wants me to direct the government to repair it. This is not my function, nor for the government. Tuitt will have to write to a friend, if he has any, and ask a favour. Reflecting on what is realistic it is impractical to order compensation which may mean a man in jail having to engage in complicated financial arrangements concerning land. However, I do note that he does have a house and Sylvia might wish to launch a civil action for damages for the injury she received, compelling its sale, with a proportion of the sale monies to be awarded to her.
- 17 *Ansen Tuitt, please stand up.* For the offence of causing grievous bodily harm with intent on Marjorie Sylvia Ashby, to which you pleaded guilty, for the reasons I have explained, the sentence shall be 10 years imprisonment, and I direct (insofar as I am able) that in jail you shall receive counselling for anger management and drink/drug abuse, about which I will want in due course a report as to your progress. Time spent in custody since 17.06.17 shall count.

The Hon. Mr Justice Iain Morley QC

High Court Judge

14 March 2018