

SAINT LUCIA

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

SLUCRD2015/1762

BETWEEN:

THE QUEEN

V

CATHY JULES

APPEARANCES:

Mr. Stephen Brette, Deputy Director of Public Prosecutions for the Crown

Mr. Alberton Richelieu for the Defendant

2018: 19th July
9th October
2019: 6th January

JUDGMENT ON SENTENCING

Criminal Law – Sentencing-Manslaughter by reason of provocation - Plea accepted by the Crown – Documented history of abuse-Consideration of the Battered Wife Syndrome as a Mitigating Factor – Starting point Sentence- Sentencing Guidelines.

Introduction

[1] TAYLOR-ALEXANDER, J.: The defendant Cathy Jules, was indicted by the Learned Director of Public Prosecutions for the offence of Non-Capital Murder, of her Common Law spouse, Dave Monroe, contrary to Section 85 (a) of the Criminal Code of St. Lucia 2013. The defendant entered a plea of not guilty to Murder and pleaded guilty to the lesser offence of Manslaughter by reason of provocation, which the Crown accepted. She is today to be sentenced in relation to her Plea.

The Agreed Facts

- [2] The facts as summarized by the crown are not disputed, and are that on Saturday the 24th day of October 2015; the defendant, in a fit of jealous rage fatally attacked the unarmed deceased whilst he was attending a Jounen Creole festival party at his neighbours' **house**.
- [3] When the defendant first appeared at the location where the deceased was, she threatened a female neighbor, Anista Emmanuel with a knife. Anista was in the company of the deceased and the defendant had insinuated to the deceased that he was having affair with her. The defendant was taken away from the location at the time by another female neighbor, with the aim of de-escalating the situation, as Anista Emmanuel had armed herself with a cutlass.
- [4] The defendant returned to the location, between thirty minutes to an hour later and pelted a bottle at Anista Emmanuel, which hit Anista on her leg. At the time the deceased and Anista were seated **on the steps to Anista's house** close to each other. The defendant accosted the deceased and hit him to the face twice with a bottle. On the second strike the bottle broke **in the deceased's face**. The deceased started bleeding. The defendant then proceeded to stab the deceased with the same knife she had threatened Anista with earlier. At first, the stabbing appeared to be punching motions to the persons present. The deceased was assisted to Victoria Hospital by a friend. He succumbed to his injuries during surgery that evening. The post mortem revealed that the deceased suffered stab wounds to the left side of his chest causing hemorrhagic shock. The **defendant was found hiding in the room of her cousin's house**, in the aftermath, when a search warrant was issued for these premises.
- [5] The defendant had been in a Common Law relationship with the deceased for over 12 years, which had borne three children now aged 14, 8, and 5 years old respectively. The defendant was 17 years old at the time of her first pregnancy.

Allocution and Plea in Mitigation

- [6] The defendant was ably assisted in her allocution and plea in mitigation by Mr. Alberton Richelieu. Mr. Richelieu submitted that the defendant's actions on the day of the incident were predicated by

a backdrop of consistent physical assault perpetrated by the deceased on the defendant, which led to this unfortunate and tragic incident. Mr. Richelieu submitted that the **defendant's exclamations when told of the deceased's death following her arrest**, was an indication of her state of mind at the time of the commission of the offence and immediately afterwards. When told **of the deceased's demise** the defendant exclaimed **"Dave doe die, Dave doe die!"**

Mr. Richelieu submitted that the defendant was a victim of a documented abusive relationship **which spanned the course of the defendant's relationship with the deceased. He submitted that the court is obliged to focus not only on rage and jealousy that impelled the defendant's actions on the fatal day but must also consider the violent history between the parties which had become an accepted way of communicating and settling differences. The defendant's actions he stated is a symptom of her being a battered person.**

[7] Ahead of the hearing, Mr. Richelieu undertook abundant preparation by securing the history of reports and order of restraint taken out by the defendant against the deceased over the course of their relationship, which revealed a volatile relationship punctuated by frequent incidence of abuse. These included:–

- 1) Interim Occupation Order dated 23rd April 2012
- 2) Interim Protection Order dated 23rd April 2012
- 3) Interim Occupation Order dated 7th May, 2012
- 4) Interim Protection Order dated 7th May 2012
- 5) Interim Occupation Order dated 14th May 2012
- 6) Interim Protection Order dated 5th June 2015

[8] He also referred to the Pre-Sentence Report and the statement echoed by the mother of the deceased, who resided in the upstairs part of a house which was occupied by the defendant and **deceased, on the lower level. The deceased's mother stated that the deceased and the defendant were always involved in altercations that often led to fights. Residents had noticed and commented on bruising on the defendant's body, and the physical assault of the defendant.**

[9] Additionally, he relied on a report of Ginelle Nelson, clinical psychologist, which documented the

defendant's current level of psychological functioning. Her report documents that the defendant herself grew up in a household exposed to domestic violence by her step father to her mother which endured for 18 years, with some altercations ending in chop wounds.

- [10] According to the report of Ginelle Nelson the defendant is ranked as having; extremely low cognitive functioning (better than only 2% of her peers); a poor self-concept and regard for self together with repressed aggression, but also indicating conscious efforts to maintain self-control, and apparent symptoms of depression and anxiety. Ms. Nelson concluded that the defendant suffered with conduct disorder during her adolescent years and suffered and continues to **experience a psychological condition commonly referred to as "Battered Person Syndrome and so** classified by International Classification of Disease (ICD). Furthermore, Ginelle Nelson concluded that the defendant endured domestic abuse which precipitated and continues to perpetuate a number of psychological conditions, which impact her overall functioning inclusive of Stockholm syndrome, Learned helplessness, Post-Traumatic Stress Disorder and Depression.
- [11] According to Ms. Nelson, victims so diagnosed usually suffer from low self-esteem, misplaced feelings of loyalty or fear of retaliation from their abuser, such a person is often led to believe that the abuse they suffer is their fault that they deserve it and due to that, may be unwilling to press charges against their abuser. This may also account for their inability to permanently leave the relationship.
- [12] These documents and reports submitted Mr. Richelieu, is evidence that the relationship shared by the deceased and the defendant was fraught with violence and severe physical and physiological abuse. Her behavior at the time of the incident was in reaction to a moment of psychological distress which fueled in the defendant a desire for revenge and resulted in a temporary loss of self-control.

Submissions by the Crown

- [13] Learned Deputy Director of Public Prosecutions Mr. Stephen Brette, furnished the Court with written submissions. He relied on the General Judicial Guidelines and judicial authorities of our OECS court, and on the UK sentencing guidelines promulgated under the Criminal Justice Act 2003.
- [14] The Crown accepted the evidence that documented the history of abuse, but challenged the **defence's conclusion that it was the** operating factor that caused the defendant to repeatedly stab her common law spouse. The Crown submits that while the Court must regard the history of abuse, suggestive of some level of provocation the Court must also be guided by the severity of the attack and the need to consider prevention and retribution, when considering the aims of sentencing.
- [15] Mr. Brette submitted that although the common law cases of the Eastern Caribbean endorse a benchmark of fifteen (15) years for manslaughter, and this takes precedence over the UK sentencing guidelines, the Court is empowered to consider the guidelines in arriving at an appropriate sentence.¹ The Crown submitted three alternatives for sentencing that could be used either disjunctively or conjunctively:–
- (i) The fifteen (15) year benchmark and formula postulated by Benjamin J in the Queen v Samuel to wit:-
“...To this benchmark must be applied any discount for a guilty plea and the weighing of the mitigating circumstances against the aggravating factors. The net result may be an **increase over or a decrease under the stated benchmark peculiar to the individual case.**”
 - (ii) The precedent case of Queen v Dornaline Lesmond SLUHCR2008/0768, where although there was no written judgment on sentence, the sentence range given by the court on indication was of between 7 to 12 years.

¹ The Crown relied on Section 1083 (2) of the Criminal Code of St. Lucia, which submission I reject as CC 1083(2) is limited to incorporating UK procedure where our procedure is silent. The UK guidelines are not procedural. I am however satisfied that they are of persuasive import.

(iii) The UK sentencing guidelines on manslaughter by reason of provocation.

Pre-Sentence Report

- [16] The Pre-Sentence Report was helpfully prepared by Mr. Trevor Constantine of Probation Services. It revealed that the defendant, a High School dropout emerged from a fairly stable single parent home. She was raised by her mother, and had known her father to be a drug addict who roamed the streets prior to his death. She became pregnant at age 17, and moved in with her boyfriend (the deceased). **They resided in a small apartment beneath his mother's house.**
- [17] The **defendant's union with the deceased produced three (3) minor children now aged 14, 8 and 5.** These children now reside with their paternal grandmother. The community and the family of the deceased confirm that the relationship between the defendant and the deceased was fraught with altercation. Family members of the deceased it appears regularly cautioned the deceased about physically assaulting the defendant. The community also reiterated the physical assault of the defendant by the deceased.
- [18] The report also noted the risk factors of marijuana smoking and alcohol drinking by the defendant, which are likely to contribute to recidivism.

Victim Impact

- [19] The victims of this crime are the mother of the deceased and the children of the deceased and the defendant. Both the deceased's mother and his eldest son admitted the frequent physical assaults but emphasized that the deceased was a source of support, emotional and financial and both emphasized that he will be missed.

The General Principles of Sentence

- [20] In *Desmond Baptiste et al V R Criminal Appeal No. 8/2003* our Court of Appeal accepted as the correct statement of the principles of sentencing to be the statement of Lawton LJ in *R v Sargeant*, [3] 60 Cr. App. R. 74 at page 77 that the aim of a sentencing court when imposing a sentence to be Retribution, Deterrence, Prevention and Rehabilitation. 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/she is dealing .

[21] In *Mervyn Moise v The Queen*² Rawlins CJ (Ag) [as then was] in delivering the judgment of the Court offered guidance on which principles should prevail. He said this:-

*“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.**”*

[22] I am of the view that Retribution, General Deterrence, and Rehabilitation predominate in the circumstances of this case and for the following reasons:-

Retribution: Retributive justice gives victims or society a feeling of avengement. It is always present and forefront in sentencing. It is nevertheless necessary to keep a sense of proportion in ensuring proper retribution. The attack of the deceased took place in full view of the **deceased's friends and neighbours and the victim's** family has expressed a sense of loss.

General Deterrence: Although the defendant has no previous convictions, the incidence of causing death has been on increase in Saint Lucia, evident by the states crime statistics. The public have been outspoken in decrying these crimes. The statutory penalty imposed by parliament **is also reflective of society's abhorrence.** The sentence imposed must therefore act as a deterrent to prospective offenders.

Rehabilitation: The Defence, Crown, Presentence report and Psychological report have spoken all in one voice for the need of continuing psychological intervention and counseling for the defendant, to break the cycle of violence and to assist her with what are pervasive issues resulting from exposure to gross abuse in her childhood and in her relationship with the deceased.

² Criminal appeal No.8 of 2003

Factors Surrounding the Commission of the Offence

[23] I have accepted the following as the aggravating and mitigating factors relevant to the commission of the offence:–

Aggravating

- a. The offence was committed with weapons – a knife and a bottle.
- b. The deceased was unarmed.
- c. The deceased offered no form of retaliation on either of the two occasions that the defendant accosted him.
- d. **The defendant's reaction to the perceived provocation was disproportionate.**
- e. The prevalence of the offences grievous bodily harm and murder in this jurisdiction

Mitigating

- a. An Early Guilty plea.
- b. **The Crown's submission is** that previous character is of little consequence when dealing with a crime of this severity. The Crown relied on the dictum of Byron CJ (as he then was) in *Desmond Baptiste v The Queen*.³

*“As to the fact that the offender was committing a 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. In *Turner v The Queen* (1975) 61 Crim. App. Rep. 67 at page 91, a case of armed robbery, Lord Lane, CJ **stated that “ the fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into consideration when Court is dealing with cases of this gravity. Conversely, the lack of a criminal record would be a powerful mitigating factor where the offence is of an insubstantial nature.”***

Despite this submission, **I am inclined to consider the defendant's previous good character** as a relevant mitigating factor, as the psychologist report was instructive in indicating that **despite the defendant's history of witnessing and being abused she had prior to the incident demonstrated remarkable self-control.**

- c. The defendant history of abuse resulting in her being diagnosed with Battered Women's Syndrome, accepted by the Crown as a mitigating factor.
- d. The **defendant's remorse.**

³ Consolidated Criminal Appeals Nos. 8, 10, 16, 22, 25,29 etc. of 2003, at paragraph [29].

The Starting Point

- [24] It is implicit in the offer and acceptance of the plea of Manslaughter by reasons of provocation that the killing of the deceased was as a result of the loss of self-control because of things said and /or **done. It is for this reason I have rejected the defence's submission that I am to further consider** provocation and diminished responsibility as circumstances of mitigation. What this sentencing court is required to assess is the factors which influence an appropriate sentence in these circumstances.
- [25] In R v Mako C.A. 446 of 1999 it was said that the starting point for a sentence is *"the true point of comparison with other offending, before individual aggravating and mitigating factors are taken into account. Fixing the starting point is the mechanism for seeking consistency in sentencing."*
- [26] The UK sentencing guidelines, which I find persuasive, posit that where there is loss of life caused by manslaughter by reason of provocation, the starting point for sentencing should be a custodial sentence. Only in a very small number of cases involving exceptional mitigating factors should a judge consider that a non-custodial sentence is justified. Counsel Mr. Brette suggests that in this jurisdiction the court has fixed benchmarks of fifteen (15) years.
- [27] I have considered the seriousness of the offence, the aggravating factors relevant to the offence namely, the prevalence of this type of offence, the use of weapon, the fact that this was a largely unprovoked attack, I have also considered the range of sentence ordinarily imposed for similar type offences, see for example Hilary Patrick Tench v The Queen Criminal Appeal No 1 of 1991, Kenneth Samuel v R Criminal Appeal No. 7 of 2005 and Alexander Deterville v The Queen Criminal Appeal No. 5 of 2003 and find no reason to disturb that benchmark. I therefore fix a starting point sentence of fifteen (15) years.

Deductions

- [28] I have discount the sentence by four (4) years for the Early Guilty Plea recognizing that Practice Direction No. 1 of 2015 offers the Defendant a full one third (1/3) discount for a plea at the first available opportunity. It is to be noted that the **defendant's plea offer was** not made at the first available opportunity.

[29] For her previous good character, she benefits from a further discount of one (1) year.

[30] For the defendant's genuine remorse she benefits from a further discount of one (1) year.

[31] Cognitive impairment– The jurisprudence of the OECS affords only sparse guidance on the application of battered persons (BPS) syndrome in criminal sentencing. In the instance of this case a plea agreement was arrive at, based on the documented and reported history of domestic abuse which this defendant endured from the deceased. The history of domestic violence may be relevant not only to explain the disproportionate reaction of the defendant on that fatal night, but also as a mitigating factor in sentencing to demonstrate the level of control she has over the situation, or lack thereof. I found the report of Ginelle Nelson to be compelling at explaining how Intimate Partner Violence (IPV) was associated with mental health issues such as Depression, Post-traumatic Stress Disorder and anxiety all of which were reportedly symptoms suffered by the defendant. I have considered the events experienced throughout her life that contributed to a diagnosis of Post-Traumatic Stress Disorder) PTSD. PTSD explained by Ms. Nelson is an anxiety disorder which when excessive, may be crippling, since the person who has experienced trauma is either consistently ready for perceived aggression (fight) or may avoid or dissociate from the upsetting situations (flight). At the time of the incident, the defendant **reacted with a “fight” response**. Both PTSD and BPS are associated with distorted cognitions, altered judgments and perceptions and impaired emotional and behavioral control. I am satisfied that the cognitive impairment explains, though not justifies the action of the Defendant. This cognitive impairment is as a result of her extended exposure to abuse, and but for that, the defendant has, under the most trying of situations, exercised self-control. I am prepared to discount the sentence even further by an additional three (3) years, for the **defendant's** impaired cognitive functioning, caused by her exposure to these traumatic events.

Sentence

1. The defendant is sentenced to six (6) years imprisonment at Bordelais Correctional Facility.
2. She is to be credited with time spent on remand.

3. The defendant is to undergo continuing psychological therapy to be undertaken by Ms. Ginelle Nelson at Bordelais Correctional Facility for the next twelve (12) months. The costs thereof are to be borne by the state.
4. Probation Services are directed to make counseling services available to the family members of the deceased especially the children.

V. GEORGIS TAYLOR-ALEXANDER
HIGH COURT JUDGE

BY THE COURT

REGISTRAR