

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE FEDERATION OF ST CHRISTOPHER & NEVIS

IN ST CHRISTOPHER CIRCUIT

CASE SKBHCR 2023/0025

REX

V

SHAQUIEL LIBURD

APPEARANCES

DPP Mr Adlai Smith, Ms Althea Campbell, Ms Shantrice Dorset, and Ms Azuree Liburd for the Crown.

Mr Chesley Hamilton for the defendant.

2024: AUGUST 02

SENTENCE

For murder by multiple stabbing of elderly lady aged 77 in her home

by male neighbour aged 23

- 1 **Morley J:** Shaquiel ('Shaq') Liburd aged 28 (dob 22.03.96) of Conaree faces sentence for the murder on 29.04.19, when aged 23, of Constance ('Consie') Thompson aged 77, following conviction by jury after a trial during 04-22.12.23. The sentencing hearing was much delayed awaiting a psychiatric report to 29.07.24, with these remarks in writing delivered today, 02.08.24.
- 2 Consie lived in Conaree in a small home with verandah where she would sell passing children snacks and sometimes sold items of clothing. She knew Liburd, living nearby up

the road, as she knew his mother, Tasha, who had been in a relationship with her son Ormiston. In the background, there is suggestion Liburd's family owed Consie some money for items purchased. Further, on 25.04.19 Consie reported to her daughter Colleen she was fearful of Liburd who thought she had told on him to others, when there is no record she reported anything, though which may tie to an allegation of robbery by Bertram Fahie on 17.01.19 who told police of being robbed at about 21.30 in the dark near Consie's home by a short man with long locks, which is a description which would then have fitted Liburd.

- 3 On 29.04.19, at about 17.00, Andrew McDonald aged 11 found Consie's body behind her locked front door; she had been stabbed 26 times in the neck and upper back by her killer from behind, with no defensive wounds, and her home appeared ransacked. Liburd had been seen talking to Consie earlier in the day. A footprint in the blood later tied to Liburd's precise footwear sole pattern, including minutely where damaged, recovered in his home, along with a knife which had flecks of Consie's blood on it, suggesting the murder weapon brought to the scene and back, while cctv showed Liburd returning earlier from the direction of her home in a hurry and then changing clothes. The evidence was compelling, he denied being the killer on arrest by police, and did not give evidence.
- 4 Liburd has a relevant previous conviction where for shooting with intent to do grievous bodily harm contrary to **s17 Offences Against the Person Act** cap 4.21, he received 2 years detention on 29.02.12 after conviction by jury. On 19.01.11, when 14, he had been with Xavier Philip then aged 21 (dob 31.05.89), when together they had been on a stolen motorcycle, each later claiming to be the driver, where the pillion shot three times at chasing police officers with a 9mm pistol, who had fired back with Glock pistols and a G3 rifle, wounding both.
- 5 Liburd continues to deny the murder, so no remorse arises. Nor is there any explanation from him for what happened. In his social inquiry report (SIR) dated 08.02.24, by probation officer Nekeisha O'Loughlin, he said to her:

I am so sorry that this incident happened. The community and I know that the lady was a great help around, she was a great woman, and I am not ashamed to say so. I used to be there by her time to time helping with water because of the relationship she and my mother had. I am very sorry it happened, she was kind and helpful in the village. She even helped me and my kids. I want her family to find some peace and take the stigma off of me because I am an innocent man. It hurts my heart that the lady died

and had to go through all of that, but it hurts me even more that I am the one convicted of such crime.

6 He has two children aged 9 and 6 and has been supported in court by his mother Tasha and grandmother Sylvia, who in the SIR spoke well of him, describing him as quiet and reliable, as did his father Roy.

7 There was a psychiatric report ordered by the court on 22.12.23 in a search for some possible explanation for the offence, assessing his mind, and possible dangerousness, resulting finally in a report by Dr Isben Williams on 04.07.24. Nothing of note was found, recording in particular on examination:

Appearance and Behaviour: During assessment interviews he was always tidily clad and appropriately postured, alert, unassuming, cooperative and respectful in manner. His engagement was unassuming, he made good eye contact and answered relevantly. He was attentive and betrayed no discomfort with the interview process nor did his facial expression betray any untoward emotion.

Speech: His speech was normal in rate, rhythm, and volume and his articulation spontaneous and clear.

Mood/Affect: His affect was appropriate to his circumstance and stable, though not of full range. His mood was, as reported by him, down.

Thought (content and process): His thoughts were coherent, and his stream of thought was not divergent or ramblings. The level of comprehension, logic insightfulness he displayed was commensurate with 3rd Form school-leaving level he attained. He admitted to harbouring no suicidal thoughts, nor perceptual abnormalities.

Cognition (awareness and understanding): Liburd, during the time that I have been seeing him manifested no evidence of cognitive impairment. He has enjoyed a clear sensorium and a sufficient ability for abstract thought.

8 Family of Consie attended in court during the formal sentencing hearing on 29.07.24, where in attendance from the US were son Emborrah, and daughters Sandra and Karen, from the UK uncle George, and from St Kitts nephew Troy.

a. There was an impact note offered signed by daughters Karen, Colleen and Sharon and grandchildren Lester, Kiana and Mykah, describing:

...an unbearable emotional burden plunging us into a relentless state of despair and anguish. Coping with the sudden loss of someone so dear has stolen our sense of security and safety, causing haunting nightmares and insurmountable fear. The impact transcends emotional devastation... The loss of her companionship and support has left a gaping hole in our lives...The callousness of the crime has robbed

us not only of a beloved family member, but also of the ability to trust in the basic sanctity of our own homes, neighbours, village and country. The once secure space is now tainted with the horrifying memories of her tragic end, leaving us with constant fear and paranoia...The impact of this unfathomable loss is immeasurable, permeating every facet of our lives and casting a long, dark shadow over our future.

- b. Emborrah wrote to the court on 20.04.24, asking for the harshest sentence, saying:

The loss of my mother is beyond words. There will be no more birthday parties, backyard gatherings, holiday celebrations or other family activities to share. The laughter, hugs, guidance/advice, sense of security and those opportunities to say, "I love you" are forever gone. My mom never got the opportunity to hold her newest grandchildren, great-grandchildren, attend the wedding of her granddaughter and so much more. Our family is forever saddened and broken. Words cannot express the pain, anguish, nightmares, sorrow, frustration and emptiness I have endured since my mother was murdered. The defendant's decision to take the life of a human being with no regard for the effects it may have on others is unimaginable....This man gets to sit, eat, breathe, laugh, touch, feel, have visits from friends and family and still breathe the precious gift of life and our mom is gone, all through his senseless, selfish calculated action of violence against an innocent, defenceless senior citizen who could be his grandmother. Someone like him should never be able to breathe the air that we breathe.

- c. Further in court on 29.07.24, Emborrah and Sandra addressed the court in person, and specifically addressed Liburd:

- i. Emborrah said –

'You are selfish, having taken the life of a great lady, I cannot hug my mum, and you could be seen today at court hugging your mum, something I cannot do, my mum was a kindness, you said this in the probation report to court, you and your family knew her, and took advantage of her, taking clothes and food, you have created a rift in my family that cannot be healed, I hope you are never let out, that you rot in hell, you took a life and you smile in court and show your teeth, but you cannot hide from God';

- ii. And Sandra said –

'You took a very special person, I don't understand why, our family has not been the same since, we have become distant with each other, we do not do family things anymore, we are not how we were, where you have your mother, and grandmother, and your people, we are not how we were',

Constructing the sentence

- 9 There are six steps to sentencing set out in **Practice Direction 8B of 2019**, requiring consideration of:

1. The offence;

2. The offender;
3. Credit for plea;
4. Totality and dangerousness;
5. Time on remand;
6. Ancillary orders.

10 There are sentencing guidelines on murder within the Eastern Caribbean Supreme Court, published in November 2021 as **Practice Direction 3 of 2021** (PD3/21). Under para 2:

Sentence of an adult for murder

- 2 A conviction of an adult for the offence of murder may result in one of the following sentences:
 - a. Sentence of death;
 - b. A whole life sentence;
 - c. A determinate sentence; or
 - d. Detention at the court's pleasure where an offender has been found to be insane or suffering relevant mental illness.

9 The Crown are not seeking the death penalty, and detention does not arise as Liburd is neither insane nor suffering mental illness. The choice is between a whole life term or a determinate sentence.

10 The relevant sections of the **PD3/21** are:

Whole life sentence

- 4 If:
 - a. the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and
 - b. the offender was an adult when he committed the offence; the appropriate starting point is a whole life sentence.
- 5 Cases where the seriousness of the offence could be considered exceptionally high include:
 - a. the murder of two or more persons;
 - b. the murder is associated with a series of serious criminal acts;
 - c. a substantial degree of premeditation or planning;
 - d. the abduction of the victim;
 - e. a murder involving sexual or sadistic conduct;
 - f. a murder involving prolonged suffering or torture;
 - g. the murder of a police officer, emergency service worker, prison officer, judicial officer, prosecutor, health worker, teacher, community worker or any other public official exercising public or community functions or as a

- political activist, or the offence arose because of the victim's occupation or voluntary work;
- h. a murder relating to membership of a criminal gang;
- i. a murder which is an act of terrorism;
- j. a murder motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (eg people of a particular religion, race, or ethnic origin, language, or sexual orientation or age or having a particular disability);
- k. a murder involving the actual or threatened use of explosives or chemical or biological agent;
- l. a deliberate killing for payment or gain (eg a contract killing, or for inheritance, or insurance payout);
- m. where the offender is assessed as likely to commit further offences of serious violence and is therefore a substantial danger to the community;
- n. a murder by an offender previously convicted of murder; or
- o. a murder by an offender who has a record for multiple previous convictions for serious offences of violence.

Determinate sentence

- 6
 - (1) In cases not falling in paragraph 3 or 4; or
 - (2) Where a case falls within paragraph 4,
 - a. but the court considers that the offence (or the combination of the offence and one or more offences associated with it), does not warrant a whole life sentence, and
 - b. the offender was an adult when he committed the offence; the appropriate starting point is a determinate sentence of 40 years, within a range of 30-50 years.
- 7 Cases that could fall within paragraph 6 include:
 - a. where the offender has pleaded guilty and would otherwise face a whole life term¹;
 - b. a murder involving the use of a firearm;
 - c. a murder arising unplanned in the course of a felony (eg in a robbery or burglary);
 - d. a murder intended to obstruct or interfere with the course of justice;
 - e. a murder involving a lesser degree of sexual or sadistic conduct than referred to above; or
 - f. a murder in the context of a significant history of domestic violence.
- 8 If:
 - a. the offender was an adult at the time of the offence;
 - b. the case does not fall within paragraph 4 or 6; and
 - c. the offence falls within paragraph 9 below; the offence is normally to be regarded as sufficiently serious for the appropriate starting point to be a determinate sentence of 30 years, within a range of 20-40 years.

¹ In such a circumstance, there would usually be no further discount on account of the guilty plea.

- 9 Cases that would normally fall within paragraph 8 are where the offender took a bladed weapon or blunt instrument to the scene intending to:
- a. commit any offence; or
 - b. have it available to use as a weapon; and
 - c. used that weapon in committing the murder.

Aggravating & mitigating factors

- 11 Having chosen a starting point, the court should take into account any further aggravating or mitigating factors pertaining to the offence, and then as a second step to the offender, to the extent that it has not allowed for them in its choice of starting point. Care must be taken not to double-count.
- 12 Aggravating factors pertaining to the offence (separate from those mentioned in paragraphs 5, 7, and 9) that may be relevant include:
- a. a significant degree of planning or premeditation;
 - b. the victim was vulnerable because young or elderly or had a disability or because geographically isolated;
 - c. mental or physical suffering inflicted on the victim before death;
 - d. abuse of a position of trust or authority over the victim;
 - e. where the offence involved a great risk of death to another person or persons;
 - f. where the offence was an organized criminal activity;
 - g. where the offence occurred at the home of the victim or any other person;
 - h. where the offence was committed to conceal another offence;
 - i. the use of duress or threats against another person to facilitate the commission of the offence;
 - j. where the victim was providing a public service or performing a public duty;
 - k. where the offence is committed in the presence of children;
 - l. where the offence is committed at or near a religious or educational institution;
 - m. where the offence is committed in view of the public;
 - n. where the offence is unprovoked; or
 - o. concealment, disposal, desecration, destruction or dismemberment of the body.
- 13 Mitigating factors pertaining to the offence that may be relevant include:
- a. an intention to cause serious bodily harm rather than to kill;
 - b. where the offender was acting under duress;
 - c. where the offender offered assistance to the authorities;
 - d. where the offender was provoked;
 - e. where the victim was the aggressor; or
 - f. a belief by the offender that the murder was an act of mercy.
- 14 Aggravating factors pertaining to the offender that may be relevant include:
- a. Previous convictions for violence offences;

- b. Relevant convictions for other offences; or
- c. Offence committed whilst on bail.

- 15 Mitigating factors pertaining to the offender that may be relevant include:
- a. Good character;
 - b. Genuine remorse;
 - c. Physical or mental disability or ill-health;
 - d. Youth and/or lack of maturity where it explains offending; or
 - e. Good prospects for rehabilitation.

Credit for plea

- 16 Where the offender has pleaded guilty at the first practicable opportunity, he may receive a discount of up to one-third of any determinate sentence...

11 Counsel Hamilton defending has conceded no mitigating factors arise under **paras 13 and 15 PD3/21**, there being no formal mitigation offered in this case, including no credit for plea at **para 16 PD3/21**.

12 The first step in sentencing is to consider the features of the offence.

- a. Being a murder with a knife, with a knife brought to the scene, the defence have argued the sentence falls within **para 8 PD3/21**, meriting starting point of 30 years.
- b. However, in my judgment this murder falls within a higher category, namely **para 6 PD3/21**. This is because it was with notable 'brutality', which was a word used by the pathologist Dr Valery Alexandrov, in that it appears was a sudden attack from behind, in surprise, there being no time to turn for defence wounds, showing no confrontation, implying no provocation, in the sanctity of her own home, by a young man aged 23, known to her, on a vulnerable far weaker lady aged 77, stabbing her 26 times, in the same area, being the upper back and neck, cutting through arteries, where, in what appears a sustained frenzy to have inflicted so very many blows, there can only have been an intention to kill. The motive to commit such a determined killing can only have been either to silence Consie as a perceived witness or as part of a robbery or burglary of her small store of cash, so it was either to obstruct justice or arose in the course of a felony, possibly both reasons present in tandem, which would qualify the offence as being within **para 7c** and **para 7d PD3/21** concerning respectively obstruction of justice or felony murder, with therefore a starting point of 40 years.

- c. Considering the aggravating features under **para 12b, 12g, and 12n PD3/21**, being it was unprovoked, she was vulnerable, and in her home, the offence goes to the top of the range, being 50 years.
- d. The Crown have gone further and argued the offence merits a 'whole life' term, which would mean without possibility of ever release, under **para 4 PD3/21** as there is at **para 5m PD3/21** possible justification for a whole life term where *'the offender is assessed as likely to commit further offences of serious violence and is therefore a substantial danger to the community'*. The reason Liburd might be said likely to commit further offences of serious violence is, in addition to the instant murder, as above he has a previous conviction in 2012 for being in a joint enterprise shooting thrice at pursuing police officers while on a stolen motorcycle. On careful reflection, if an adult at the time, this argument may well carry persuasive weight, but as he was 14, I will not use the previous conviction to justify he can never be released, and apart from cannabis possession in 2016, for which he was fined and I ignore, there are no other convictions on which to assess likelihood of further serious offending. Moreover, there is nothing in his psychiatric report which points to dangerousness beyond what is inherent in the attack shown on the facts. As such, I will not make a finding of such dangerousness as to warrant a whole life term under **para 4 PD3/21**, though dangerousness will be further considered at step 4.
- e. *Obiter*, it may be noted in St Kitts & Nevis, unlike in the UK, there is no automatic sentence of 'life imprisonment' for murder with a minimum term to serve before consideration of possible release by a parole board, and there is no parole board, (as for example there is on Montserrat). However, on St Kitts & Nevis there is the mercy committee under **ss66-68 Constitution**, but which allows under **s66(1)** 'pardon', 'respite', 'substitution' or 'remission' of sentence under the Crown prerogative of mercy, though in indistinct undefined circumstances, and not specifically release under parole licence with recall to jail if in breach. In my judgement it is not therefore an appropriate sentencing approach on St Kitts & Nevis to pass a so-called 'life sentence with a minimum term', leaving possible release to the uncertainties of the mercy committee, which this court is further aware in practice often contemplates interceding after serving 15 years, but which this judgment does not encourage. Moreover, the

sentencing guidelines under the practice direction contemplate sentencing for murder, as in **para 2 PD3/21** above, which expect in this case either a determinate term or imprisonment for the whole of life, not the unlegislated middle-ground of 'life with a minimum term', and so for the reasons in para 12d of these remarks above, Liburd will receive not a whole life term but a determinate term.

- 13 The second step in sentencing is to consider the offender. He is not of good character. Under **para 14a PD3/21**, the shooting is a relevant previous conviction. Although it has not been applied it to justify a whole life term, it cannot be ignored. It was a serious offence of violence, meriting significant detention of a juvenile of merely age 14. As an aggravating factor, it merits an increase in the sentence from 50 years of 5 years to 55 years.
- 14 The third step in sentencing is to consider credit for plea, which does not arise.
- 15 The fourth step in sentencing is to consider totality and dangerousness.
 - a. There being only one count, namely murder, no totality issues arise.
 - b. However, dangerousness does require consideration, namely whether Liburd presents '*a significant ongoing risk of serious harm to any member of the public by the commission of future similar offences*', per **para 13 of Practice Direction 8A of 2019**. While there is no psychiatric finding, nevertheless the court cannot ignore the facts show this was a sustained attack on a vulnerable elderly weaker person, in her own home, by a person of apparently calm demeanour on psychiatrist examination, who has previously been in a joint enterprise shooting at police officers, such that I do consider Liburd exhibits features of dangerousness, short of meriting a whole life term under **para 5m PD3/21**, but meriting a further uplift to the sentence from 55 years by 5 years to 60 years.
- 16 The fifth step in sentencing is to consider time on remand, which will count, since Liburd's charge on 26.06.19, at the time in custody for another offence, now more than five years, to be calculated with precision by the prison.
- 17 The sixth step in sentencing is to consider ancillary orders, and in this case there are none.
- 18 *Shaquiel Liburd, please stand up.* For the offence on 29.04.19 of murdering Consie Thompson aged 77 in her own home, who you knew as a kindly elderly lady, by stabbing

her from behind in her upper back and neck 26 times, showing determination to kill her in an act of ferocious violence, will be 60 years imprisonment. Time on remand will count, to be settled by the prison. You will be eligible for remission of one-third of your sentence if of good behaviour. I have not passed a whole life sentence, which should have meant you would never be released, though I considered it carefully, and it is important for you and the authorities to know in passing this determinate sentence I expect you to serve at least 40 years in jail.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

2 August 2024

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