

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE FEDERATION OF ST CHRISTOPHER & NEVIS

IN ST CHRISTOPHER CIRCUIT

CASE SKNHCR 2023/0003

REX

V

CUTHBERT WILKES

APPEARANCES

DPP Adlai Smith and Ms Althea Campbell for the Crown.

Mr Jason Hamilton for the defendant.

2023: DECEMBER 22

SENTENCE

For drawing a licensed firearm during an argument

- 1 **Morley J:** Cuthbert Wilkes aged 52 (dob 13.10.71) falls to be sentenced following conviction by the jury, after trial during 30.10-03.11.23, for the offence of possession of a firearm with intent to endanger life on 17.05.19.
- 2 The offence occurred outside Raquel's shop around 6pm, where many had gathered for Friday lime. Wilkes drove past at speed which caused folk to shout at him as there were children present. He stopped, remonstrated, and then drove off. However, critically, he then came back, and waded back into the group to remonstrate more, shouting '*who fucking dead, who wants to kill me, who wants to die*', pushing his hand into the face of Joseph 'Bounty' Lee, then pulling his gun, a licensed Bersa 0.38 pistol since 17.06.16, pointing it at Lee, was

said seen by Lee to be trying to shoot, but there was no round in the chamber, though six in the magazine, and then others wrestled the gun from him. Bounty ran off with the gun, and next day police arrested him, beating him, and he gave back the gun. Wilkes had told police Lee and others were the aggressors, and he never drew his gun, which instead was pulled out of his pocket and stolen, which at trial was broadly his defence. By his conviction, the jury was sure he was lying.

- 3 In his victim impact statement dated 08.11.23, Lee describes thinking he was about to be shot dead, and is particularly aggrieved he was beaten by police, who used a rifle butt to his face, and assaulted him further in their car, requiring he go under arrest to hospital for pain medication. When asked who had beaten him, OIC Anita Norford explained to the court she had asked but none would say and she could not investigate further.
- 4 Wilkes has no previous convictions and is an upstanding member of the community. He began work as a gardener at 11, then was a car washer, as a boy learned electrics at St Kitts Refrigeration, set up Spectrum Electrical, offering electrical services at Paradise Beach, and for 30 years has been the projects manager at St Christopher Club, while also a farmer of two farms with 130 pigs and 10 farmhands.
 - a. During mitigation on 14.12.23, there were supporters, being:
 - i. Eugene Hamilton, former member of parliament, knowing Wilkes for 20 years, who praised his discipline and good work with youth and schools;
 - ii. Rafiq Ghosh, a developer, knowing Wilkes for 25 years, who praised his leadership, family life, and how Wilkes is so trustworthy he has the Ghosh family house keys;
 - iii. Calvin Amory, retired police officer, knowing Wilkes since school days, describing him as very helpful and respectable, supplying paint gratis to police projects for road markings; and
 - iv. Lennox Warner, president of the Building Association, describing Wilkes as a skilled, knowledgeable electrician, showing loyalty and commitment, expressing shock and hurt the man he knows would have acted as he did on 17.05.19.
 - b. In the social inquiry report of 12 pages dated 12.12.23 by probation officer Nekeisha O'Loughlin, there were further supporters, being:

- i. Kristal Osbourne, his adopted daughter, listing 14 others he has adopted, describing him as the father she 'chooses' for his stability, dedication, and support;
- ii. Leslie Conner, former police officer, describing Wilkes as easygoing and how he is surprised by the incident;
- iii. Roline Taylor, principal of Washington Archibald school, knowing him as his children have gone through the school, while he annually hosts a CSEC electrical prize of \$500ec, also giving budding electricians a starting toolkit;
- iv. Verol Marshall, owner of Marshalls restaurant, describing Wilkes as humble, doing exceptional work at the restaurant, never showing negativity;
- v. Vincent Berkley, a close friend, describing how Wilkes keeps 1500 birds of over 12 species, taking primary school children to see them, while giving work opportunities to 12 'gangster boys' from troubled homes, and also doing a monthly care package for the elderly; and
- vi. Perline Rawlins, mother of Joseph Lee, and sister of two others at the scene, asking Wilkes does not go to prison, this coming from her heart, as he is a '*good fella*', always keeping to himself and spending money on his animals, giving her bananas to sell, buying apples from her for his animals, and helping her with construction of her stall.

c. Further in the report, Wilkes is reported as saying:

It is with deep regret that I stand here today...The repercussions from that single action have impacted the reputation I've worked diligently to build. I feel I have broken the trusted relationships I held with my family and community. I bear no ill will towards Bounty and his family...I am sorry for the negative impact it has had on his life and the lives of his family.

Considering the charge for which I was found guilty, I want to humbly apologize to my community, to my professional colleagues, all of whom looked up or had faith in me...I pray you can forgive me and allow me the chance to redeem myself in your eyes. To my 16 employees, most of whom were considered at-risk youths, I offer my most heartfelt apology for the disappointment you must feel. I have lost not only your respect but the freedom to keep you gainfully employed and enabling you to make a living within the boundaries of the law.

To my family I can never apologize enough for the trouble and hurt I have caused you. I will never relent in my pursuit of your forgiveness. I have the utmost respect for the jurors who worked assiduously over the course of the trial. Although I do not agree, I will respect the jury's verdict, I will not demean their efforts. I now place myself at the mercy of this honourable court.

- 5 On the one hand, it is clear Wilkes pointing the gun to endanger Lee was wholly out of character, while many depend on him and speak well of him; yet on the other, he went back to an altercation, armed, where he was outnumbered, and it can only be he expected to draw his gun or he would not have placed himself surrounded, putting his behaviour beyond sudden stupidity and possibly into the category of momentary egotistical dangerousness.

Constructing the sentence

- 6 It was said in court by Counsel Hamilton there are at least 2500 licensed firearms in St Kitts & Nevis where there is a population of about 50000. To the mind of the court, the highest standard is expected of licensees, especially as there is so much gun violence, with recently the 30th murder this year 2023, meaning there appears here currently the highest murder rate in the world, statistically 60 per 100000.

- 7 The offence is contrary to **s24 Firearms Act** cap 19.05, which states:

Penalty for possessing firearm or ammunition with intent to injure.

24. Every person who has in his or her possession any firearm or ammunition with intent by means thereof to endanger life or cause serious injury to property, or to enable any other person to endanger life or cause serious injury to property shall, whether any injury to person or property has been caused or not, be guilty of felony and shall be liable, on conviction on indictment before the High Court, to imprisonment with or without hard labour for a term not less than fourteen years.

- 8 This legislation is flawed and requires amendment. The offence has no maximum and mandates a minimum sentence of 14 years, when minimum sentences have been abolished by the **Abolition of Minimum Punishments Act** cap 4.01. Between Counsel it has been agreed and urged the fairest approach would be to treat the minimum as the maximum rather than as at large, and so the maximum here will be treated as 14 years.

- 9 Within the ECSC, there are sentencing guidelines for firearms offences published in November 2021 which broadly can apply to this offence.
- 10 As to step 1 of sentencing practice, assessing the offence, it was a licenced firearm, though brandished impermissibly as an aggressor, intending endangerment, causing Lee to fear he would die, yet there was no shot fired and no harm arose. It may therefore be assessed categories 1 and 2 of consequence do not apply, so the appropriate category would be 3; and while there was an intent to endanger, this may be lesser than to injure, while there was at least brandishing, meaning level of seriousness as B. This analysis suggests the appropriate equivalence starting point can be 3B, being 40%, meaning 5 years.
- 11 Turning to step 2, considering the offender, Wilkes is of good character which merits a reduction here only of 6 months as he had to be such to have the licence. However, the court has been impressed by the level of support for Wilkes shown, noting in particular his care for the elderly, support for troubled youths, and at the school, while described as loyal, a leader, and reliable, among 14 who have adopted him as their father, according to his daughter Kristal, meriting unusually a further reduction of 18 months in the sentence to 3 years.
- 12 Turning to step 3, there is no credit available for plea.
- 13 The sentence sitting at 3 years, I have been asked to consider suspending the sentence. The test is at **Practice Direction 8C of 2019**, which reads:

IMPOSING A SUSPENDED SENTENCE

- 1 In certain circumstances, a sentence of imprisonment may be suspended.
- 2 A suspended sentence remains a prison sentence and should not be passed unless a term of imprisonment is warranted. It should not be considered another form of non-custodial penalty like probation or community service.
- 3 Subject to local legislation making it permissible, it should be considered rare to suspend a sentence of more than two years' imprisonment, and rare to suspend for more than two years.
- 4 The court may consider the following non-exhaustive list of factors in exercising its discretion whether to suspend a sentence:
 - a. Can appropriate punishment only be achieved by immediate custody?

- b. Does the offender present a risk or danger to the public or to the victim?
- c. Has there been a history of poor compliance with court orders?
- d. Is there a realistic prospect of rehabilitation?
- e. If sentencing a person under 21, is there a realistic prospect that incarceration will so affect an offender as to turn that person more towards criminality and less toward rehabilitation?
- f. Is there strong personal mitigation?
- g. What will be the impact of an immediate custodial sentence on dependent relatives, employees, and the community?

14 It is clear this is a case where there is strong personal mitigation, immediate prison arguably may have disproportionate impact on relatives, employees, and the community, there is no history of poor compliance with court orders, and from the words of contrition, though qualified, there is a realistic prospect of rehabilitation.

15 However the tension in this case lies in whether Wilkes presents a risk to the public, and whether in brandishing a gun to settle an argument to which he drove back that appropriate punishment can only be immediate custody.

16 Reflecting on it, I am satisfied the risk to the public of his seeming egotistical threatening behaviour can be reduced if his firearms licence is permanently revoked.

17 This leaves whether only immediate custody is appropriate in a country with so much gun crime. I have considered this very deeply. Counsel Hamilton argues he is better out than in, in the sense he will be of greater benefit to the community if at liberty, whereas the community will suffer if incarcerated. I am not persuaded this is correct, nor the correct approach. In my judgment immediate custody should in principle follow this behaviour.

18 Moreover, regionally it is usual a sentence of more than two years, being here three years, should not be suspended.

19 Yet on St Kitts, there is **s6 Alternative Sentencing Powers Act** cap 3.20, which states:

6. (1) A court which passes a sentence of imprisonment on an offender for a term of not exceeding three years for an offence may suspend the sentence by ordering that the sentence shall not take effect unless—

(a) during a period specified in the order, being of not less than 12 months and not more than 3 years from the date of the order... the offender commits in the Federation another offence punishable with imprisonment for a period exceeding 6 months...

- 20 It follows, unusually in the region, this court in St Kitts can consider suspension of the 3 years, though as stated in principle ought not.
- 21 However, there is a feature I find wholly exceptional, namely the support of Perline Rawlins, who is Joseph Lee's mother, and sister of two involved, being a lady in modest circumstances, and who has said Wilkes is a 'good fella', asking from her heart he is not jailed. This is what will make the difference. In this circumstance, because Lee's mum has spoken up, and not because others of weight spoke for him, I can narrowly find justification to suspend the sentence, which I will do for two years.
- 22 *Obiter*, it should be understood by Wilkes and the wider public, a suspended sentence is a prison sentence, it reflects the behaviour passed the custody threshold, it is not in the arsenal of punishment available to the court merely a minor disposal, but instead is a serious consequence of criminal behaviour, where he can expect the 3-year sentence likely automatically activated if he commits any further offence.
- 23 And if not going immediately to prison, compensation must be paid to Lee for the fright Wilkes caused, and by telling lies to police for how this led to Lee being treated roughly as a criminal. Having a successful business, the least he should pay is \$20000ec, which I will expect paid by 31.03.24, or he shall immediately and separately serve 12 months in default.
- 24 Further, turning to step 6 in sentencing practice (steps 4 and 5 not arising), as an ancillary order, as discussed I order his firearms licence revoked and not re-issued, and the Bersa 0.38 with ammunition confiscated to the police.
- 25 *Cuthbert Wilkes, please stand up.* For the reasons I have explained, for the offence of possessing a firearm with intent to endanger life, where on 17.05.19 you returned to an altercation outnumbered, drawing your gun and pointing it at Joseph Lee, being said to try to shoot, frightening him so he thought he would die, then telling lies about him so he was treated roughly by police, you will pay compensation of \$20000ec by 31.03.24 or serve 12 months in default, your firearms licence is ordered permanently revoked, and you are sentenced to three years in prison, which on careful reflection, exceptionally, because Perline Rawlins spoke up for you, I will suspend for two years.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

22 December 2023