

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN MONTSERRAT

CASE MNIHCR 2020/0005

REX

V

RAJAE THOMAS

RASCHIEF GRIFFITHS

KASCHIEF GRIFFITHS

TAJRAE THOMAS

APPEARANCES

DPP Oris Sullivan and Ms Kadian McNeil for the Crown.

Ms Korah Galloway for the defendants.

2023: NOVEMBER 20

SENTENCE

For unlawful wounding acting as a pack having cornered a member of a rival group

- 1 **Morley J:** Following trial during 04-28.07.23, the four defendants together face sentence for unlawful wounding of Murray Edwards aka Peso arising on 26.12.19 when hiding from them in Toyota Vitz M497. In addition, three face criminal damage to M497 to a value of \$12000ec and two to Toyota Starlet M413 to a value of \$7000ec, to which there were late pleas on 10.07.23.
- 2 The defendants are (and using nicknames):

- a. Rajae Thomas aka Skilla, 27 (dob 13.12.95) who stabbed Peso five times with a machete, and pleaded to damaging M413;
- b. Raschief Griffiths aka Baba, 27 (dob 13.10.96), who stabbed Peso five times with a knife, and pleaded to damaging M497 and M413;
- c. Kaschief Griffiths aka Kas, 28 (dob 20.04.95), who was present encouraging, and pleaded to damaging M497 and M413; and
- d. Tajrae Griffiths, aka Boma, 30 (dob 05.10.93), who was present encouraging.

3 What happened was, as became clear from the trial:

- a. The Thomases are brothers, as are the Griffiths, and cousins to each other, living together in Lower Friths, having about six years earlier joined the Montserrat community from Jamaica.
- b. The four used to play football with others, also from Jamaica, namely:
 - i. Akeem Robinson aka Chargeie;
 - ii. Murray Edwards aka Peso;
 - iii. Denoy Campbell aka Nigi;
 - iv. Quarry Allison aka Shortboss; and
 - v. Miguel McPherson aka Wingie.
- c. For the sentence for ease of reading, nicknames will be used, noting there were two camps, neutrally here named 'Camp Skilla' (being the four defendants) and 'Camp Chargeie' (being the others).
- d. There was 'jump up' in Salem on 26.12.19, Boxing Day, where water was thrown generally, and at Wilsons shop Chargeie threw water on Skilla, which upset him, so he threw rum in a cup into the face of Chargeie, leading to scuffling between the two, and others. Camp Skilla withdrew on foot through Salem and went home. Camp Chargeie gathered and set off in cars M497 and M413 to the home of Camp Skilla, driven respectively by Chargeie and Nigi.
- e. Camp Chargeie went up the road toward the home of Camp Skilla, to an extent armed with sticks and machetes, which led to Camp Skilla emerging from their home, also armed, each with a machete, and rocks were mutually thrown, leading to Camp Skilla running away.
- f. Having arrived in M413, Peso was intoxicated and had not been much part of going up the road, and seeing Camp Chargeie running down the road away into the bushes, he tried to hide in M497 locking the doors.

- g. Camp Skilla surrounded M497 and wholly smashed up the windows, with rocks and machetes, stabbing at Peso, who then climbed out a window to escape, while being assaulted, describing specifically being stabbed five times each by Skilla with a machete and by Baba with a knife, mostly to his left side.
- h. Camp Skilla also smashed up the windows of M413 parked nearby.
- i. Peso was later taken to hospital and underwent surgery as his intestine was protruding. Three photos of his injuries were taken, Exs 6.2-4, showing:
 - i. In 6.2, from right to left, 7 stab wounds (wounds 1-7), 6 down Peso's left side and 1 on his left wrist, including the protruding omentum and a deep wound into the left buttock (wounds 4 and 6 respectively);
 - ii. In 6.3, from right to left, 2 stab wounds over the left forearm (wounds 8 and 9);
 - iii. In 6.4, a stab wound to the top left arm at the shoulder (wound 10).
- j. The defence was none realised Peso in the car, so his injuries must have arisen inadvertently by accident as they smashed it, or as he emerged through broken car glass, cutting himself on shards, though both scenarios were rejected by the verdict.

4 Regarding evidence specifically per defendant -

- a. As to Skilla:
 - i. Peso said Skilla stabbed him 5 times, with a cutlass, while in and then trying to get out of the car – in Exs 6.2-4, injuries 4, 7, 8, 9, and 10;
 - ii. Shortboss said Skilla had a cutlass or knife;
 - iii. Wingie said Skilla had a cutlass and was flinging rum and stones;
 - iv. Skilla told OIC Keniel Murrain he had a cutlass, being Ex 7 during trial;
 - v. In his caution statement, Skilla said he had a cutlass which he showed to OIC Murrain, adding he used it to break the back window of M413, and used a stone to break the side glass;
 - vi. A defence witness named St Clair Harney said Skilla was throwing stones; and
 - vii. Skilla pleaded guilty to damaging M413.
- b. As to Baba:
 - i. Peso said Baba stabbed him 5 times with a knife as he tried to get out of the car – in Exs 6.2-4, injuries 1, 2, 3, 5, and 6,;
 - ii. Wingie said Baba had a cutlass and hit the car with it;

- iii. Officer Julian Wade said Baba reported a cut to his index finger when breaking a bottle out of anger;
 - iv. OIC Murrain said Baba pointed to a cutlass saying he had had it at the scene;
 - v. Boma said to police Baba had a stone;
 - vi. In his caution statement, Baba said he had been flinging stones, seeing stones break the M497 windows, and admitted to having a cut on his finger;
 - vii. St Clair Harney said Baba had a cutlass; and
 - viii. Baba pleaded guilty to damaging both M497 and M413.
- c. As to Kas:
- i. Of note, prior to events at the home of Camp Skilla:
 - 1. Though Peso said he did not see Kas do anything or with anything at the M497, he said at Migas bar during the jump up scuffling Kas held him by the throat and threatened him with a knife; and
 - 2. A prosecution witness named Max said Kas broke a Heineken bottle for fighting during the jump up scuffling at Wilsons; and
 - ii. At the home of Camp Skilla:
 - 1. Nigi said Kas came at him swinging the cutlass at his head from 8ft;
 - 2. Chargie said Kas was chopping with a cutlass after Nigi;
 - 3. Shortboss said Kas held him and slapped him with a cutlass on his left thigh;
 - 4. Wingie said Kas was at M497 with a cutlass;
 - 5. St Clair Harney said Kas had a cutlass; and
 - iii. Kas pleaded guilty to damaging M497 and M413.
- d. As to Boma:
- i. Peso said Boma threw a big stone to break the M497 back window while Skilla was attacking him through the rear side window;
 - ii. Wingie said Boma had a knife and was flinging stones;
 - iii. OIC Murrain said Boma told him he had a cutlass;
 - iv. In his caution statement, Boma said he had a cutlass and used stones to break the front, side and back windows of M497; and
 - v. St Clair Harney said Boma was throwing stones.

5 The issue at trial was, if the initial confrontation was defence by Camp Skilla of their home, how were the injuries to Peso caused in M497 down the road away from the home, and

whether the four were acting still in self-defence at the time of smashing up the cars and stabbing Peso (if so found). Initially all four faced attempted murder (count 1), on which there was no case to answer, and an affray was abandoned (count 3), so the case proceeded to the jury on wounding with intent (count 2) with unlawful wounding as an implicit lesser alternative, of which the four were convicted on 28.07.23.

Mitigation

- 6 Sentence was adjourned in custody to 13.11.23 for social enquiry reports, with mitigation heard, including from nine character witnesses, during 2.5hrs, and then further adjourned to today 20.11.23 for remarks in writing.
- 7 A victim impact statement from Peso dated 06.11.23 reported his left hand remains damaged, so it feels useless, he no longer feels much able to play football, he has remained fearful of the four when bailed, he had had no personal animosity to them and feels aggrieved he almost lost his life, while also upset there has been no expression to him of regret or apology by any family member.
- 8 Only Boma has a previous conviction, for a minor matter in 2017, which I consider here is not relevant, and so all will be treated as being of good character.
- 9 Detailed helpful reports on the four dated 10.11.23 were prepared by Probation Officer Lyndon Neptune. All intimated they feel aggrieved by the conviction as they were defending their home, echoed by other family members and supporters in the community. Of note:
 - a. The father of Baba and Kas was sadly murdered in Jamaica in 2010;
 - b. Skilla suffers substance induced psychosis; and
 - c. Nigi expressed support for the four, intimating he did not want the matter pursued.
- 10 During the mitigation, with evidence received from nine, all asked for leniency and a disposal other than immediate custody:
 - a. Idris Wade, a retired assistant social worker, said she had known the four, many years, as hard working, kind, respectful, polite, caring, often at a pedicure shop, doing odd jobs, believing *'here was a case of young men too full of testosterone, getting carried away'*.
 - b. Teresina Bodkin, a retired public servant, said she knew Baba and Kas, through their mother Etta, who provided for her 'adoptive mother' when in her 90s, suffering dementia,

Etta was very caring, while the sons helped with property maintenance, being respectful, hardworking, doing masonry work, their incarceration has been hard on Etta, adding *'I do not condone or trivialize what happened, but remember they are young men, it was in the heat of the moment, and since then I have observed remorse, regret, empathy for what was suffered by Peso, while these young men have expressed they would now respond differently, with no reason to doubt their sincerity'*.

- c. Warwick Constable, a cosmetologist, running 'Warwick's Nails and Barber Shop', spoke for Skilla and Boma, explaining they came from the same parishes in Jamaica, from being aged 14 and 15, becoming very upset in court when recalling it was Boma who brought him to Montserrat, offering a job, making arrangements for his travel, putting him up, sending money to Jamaica, changing his life, while Skilla is introverted and quiet, neither being able he feels to think clearly after losing their father, becoming the breadwinners at too early an age, asking the court *'to give them a chance'*.
- d. Evelyn Searles, the manager of Chitchat snackette, spoke for Baba, they met a few years ago at the pedicure shop, Baba later working at her bakery, and snackette, also doing construction, his being humble, on time, orderly, and while among three women staff he did the heavy lifting, got on well, they all went to church together, he was, dependable, with good customer interaction, not putting on an act, being natural, adding *'there is remorse, I know he will not get involved again, give him a chance'*.
- e. Steffan Buffonge, in an architectural post at the Public Works Department, said he knew Kas, through football, and at PWD, who self-taught three software programs 'Autocart, Sketchup, and Rivet', for doing 2D and 3D housing drawings with features of mechanical engineering, while humble, quiet, conducting deep conversations of a philosophical and revolutionary outlook, asking *'look to Kas with a forgiving eye, he is respectful, very calm, and easy to talk to'*.
- f. Amelia Daley of Crown Counsel provided a letter dated 12.11.23, asking for a suspended sentence for Boma, saying he is very pleasant, humble and polite, a former prison officer, smiling, soft-spoken, a hard worker, doing small scale farming, enjoying football, often exchanging pleasantries on the way to church.
- g. Etta Smickle, mother of Baba and Kas, and caregiver, described the impact on her of their incarceration, as a single mother, of three, with them being the eldest, when in 2010, their father was murdered in Jamaica, she had said to Kas he was now the man of the house at age 14, she came in 2014 to Montserrat from Jamaica, sending for her young daughter J'hlee aged 5, and her teenage boys later, their sharing the rent, and

care for their sister, while the stress of the case put her in hospital for 12 days, asking, *'be lenient, bring them back home, so that I can be happy again, they are sorry for what they did, they would walk away next time'*.

- h. Carmen Thomas, mother of Skilla and Boma, a janitor and seamstress, said they used to help by her shop, and would team up with money, they cannot help now as they are in prison, while there is rent to pay, asking for *'leniency on them all four, please don't give them a custodial sentence'*.
- i. J'hlee Bryan aged 14 and sister of Kas and Baba, at the Montserrat Secondary School, described tearfully how during the incident she was very scared and had a panic attack, Kas looks out for her, is the head of the family, and with her brothers in prison it is harder for the family, while her mother has been in hospital, and she misses their cooking; and also knowing Boma and Skilla, Boma would teach her important life lessons, while Skilla is quiet, *'very quiet, sometimes folk not knowing he is there'*.

11 Baba also wrote to the court, in neat handwriting dated 23.10.23, being the youngest at 26, saying how his mother has struggled, following the death of their father when he and Kas were 13 and 14, he worries about her finances, and whether his sister J'hlee may have to drop out of school to earn, explaining he has been on Montserrat for six years and never in trouble, reminding the court his group left Salem after the initial scuffle to avoid more, adding he has been in custody 15 months, and placing his trust in the court's judgment as he reports the judge appears fair, asking for a suspended sentence.

12 What has been striking about the mitigation is how so many have come forward in support and in emotion at the predicament of the four, in a context they were attacked at their home having sought to avoid further conflict. The strong impression has emerged these are four good young men who overreacted to provocation when in a group, acting intuitively as a pack in a heated situation, not created by them, they then wantonly inflicted injury on Peso during a counter-attack arising on the spur, but none as individuals acting alone would have ever done so.

Constructing the sentence

- 13 On Montserrat, the maximum sentence for unlawful wounding is 5 years and for criminal damage is 10 years. Within the ECSC, there are sentencing guidelines for the former, though not the latter.
- 14 Concerning unlawful wounding, considering step 1 of sentencing procedure, being assessing the circumstances of the offence, recalling this a group attack by four on one where 10 pictured stab wounds were inflicted, I consider the offence falls within category 1A, being '1' owing to 10 wounds amounting to severe physical harm, and 'A' owing to use of weapons and it being a sustained attack, meriting a starting point of 75%, but adjusted upwards in the range to 90%, to 4.5 years, or 54 months, because aggravated as motivated by revenge at their home being attacked, in association with frenzy and wanton destruction of the cars, so that overall it is difficult to imagine a more serious example of a group inflicting unlawful wounding.
- a. I then adjust downwards because their home was attacked first, reducing by 12 months to 42 months; and
 - b. Further, I reduce downwards by 12 months for Kas and Boma because neither did any injury to Peso, to 30 months.
- 15 Considering step 2, assessing the circumstances of the offenders, their good character reduces each sentence by 6 months, so that Skilla and Baba face 36 months and Kas and Boma 24 months.
- 16 Considering step 3, there is no credit available for plea.
- 17 Concerning the deliberate and extensive criminal damage, per car, respectively valued at \$12000ec and \$7000ec, I consider the starting point to be 3 years, or 36 months, reduced to 30 months for good character, and by 9 months for late plea, almost attracting full credit, to 21 months. Where a defendant has pleaded to two counts of criminal damage, the sentences per car should be concurrent, as arising out of the same event, but uplifted for totality, step 4, by 3 months to 24 months, to reflect a greater criminality than if admitting damaging only one car.
- 18 At this point, the sentences lie as follows:

- a. Skilla: 36 months for the unlawful wounding, and 21 months for criminal damage on M413;
 - b. Baba: 36 months on the unlawful wounding, and 24 months for criminal damage on M497 and M413;
 - c. Kas: 24 months on the unlawful wounding and 24 months for criminal damage on M497 and M413; and
 - d. Boma: 24 months on the unlawful wounding.
- 19 Because the general criminal damage to the cars was part of the frenzy which placed the unlawful wounding into the highest range of category 1A, and is therefore part of the same facts, the damage being part of the assault, the sentences for the criminal damage shall not be consecutive, nor shall there be uplift for totality, as again step 4, so that the sentences remain respectively as 36 months, 36 months, 24 months, and 24 months.
- 20 Kas and Boma, facing 24 months, are eligible for consideration their sentences might be suspended, where two years is the maximum permissible to suspend. The court is struck as follows:
- a. Kas has been described by his sister as the head of the family, and his mother is finding it hard to cope without her sons, being hospitalised for stress, while he is said to be resourceful and highly intelligent by Steffan Buffonge, and well-mannered and hard working by others; and
 - b. Warwick Constable moved the court by his tearful eulogy to Boma for bringing him out of Jamaica to a better life in Montserrat, also said to be a hard worker and well-mannered.
- 21 In these circumstances, I will suspend the sentence for each Kas and Boma for 2 years, as in my judgment, not being stabbers, their punishment does not require immediate custody. However, being at liberty, and as an incentive for suspension, each will pay compensation for the damage to the cars, being \$12000ec by Kas and \$7000ec by Boma, notionally though not specifically compensating for M497 and M413 respectively, but being a generalised apportionment, at \$1200ec and \$700ec on the first of each month from 2024 for ten months, or will each face 9 or 6 months imprisonment in default respectively, which will not come off the suspended sentence and the money will remain owing.

- 22 The reason Boma must pay compensation for a car when he did not plead guilty to damaging one is because he was present encouraging the frenzy which led to the damage, and so is party to it, the damage being part of the facts of the unlawful wounding of which he was convicted.
- 23 The reason Skilla and Baba must receive immediate custody is 3 years on Montserrat is legally too long to suspend, the maximum term suspendable being up to 2 years per **s24(4) Penal Code** cap 4.02, and further, realistically 3 years immediate custody is the least passable for so many stab wounds, each stabbing 5 times.
- 24 Concerning compensation for Peso's injuries, which might be a substantial sum, the effect of an order as part of a sentence would be to bar civil suit, at a time the court is placing two of the four, being the stabbers, into custody, unable to earn, so that a compensation order would be redundant against them, or fixed too low, or realistically to be paid only by the two not in custody which may be unfair on them knowing they did not stab. The court will therefore preserve Peso's ability to sue, to time the suit so as to be actionable against all four, at a time when they are all at liberty, known from the mitigation to be hardworking, and therefore could all earn collectively to meet a suitable quantum, in principle liability already being established by reason of their conviction.
- 25 Concerning time served on remand, step 5, this shall count toward the sentences to be served by Skilla and Baba, and will count toward any activation of the suspended sentence of Kas and Boma. Though definitively to be settled by the prison, currently as at today it has been reported time on remand lies as follows:
- a. Skilla – 177 days;
 - b. Baba – 464 days
 - c. Kas – 135 days
 - d. Boma – 199 days.
- 26 As to ancillary orders, step 6, the cars are to be returned to their owners; and the cutlasses seized from the home of Camp Skilla are to be destroyed.
- 27 Formally, the unlawful wounding was count 2, damaging M497 count 4, and damaging M413 count 5.

- 28 *All four defendants, please stand up.* For the reasons I have explained, for offences on 26.12.19 of unlawful wounding and of criminal damage, the sentences are as follows:
- a. For Skilla – being Rajae Thomas – 3 years imprisonment on count 2 (unlawful wounding of Murray Edwards), and concurrently 21 months imprisonment on count 5 (criminal damage to M413);
 - b. For Baba – being Raschief Griffiths – 3 years imprisonment on count 2 (unlawful wounding of Murray Edwards), and concurrently 24 months on count 4 (criminal damage to M497) and 24 months on count 5 (criminal damage to M413).
 - c. For Kas – being Kaschief Griffiths – 2 years imprisonment on count 2 (unlawful wounding of Murray Edwards), and concurrently 24 months on count 4 (criminal damage to M497) and 24 months on count 5 (criminal damage to M413), all suspended for 2 years, with an order to pay \$12000ec in compensation for car damage of \$1200ec on the first of each month for ten months from 01.01.24 or face 9 months imprisonment in default.
 - d. For Boma, being Tajrae Thomas - 2 years imprisonment on count 2 (unlawful wounding of Murray Edwards), suspended for 2 years, with an order to pay \$7000ec in compensation for car damage of \$700ec on the first of each month for ten months from 01.01.24 or face 6 months imprisonment in default.
 - e. Time on remand will count, to be calculated definitively by the prison, and if serving you shall be eligible for one-third remission of sentence if of good behaviour.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

20 November 2023