

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL JURISDICTION)**

CASE NO. ANUHCR 2021/0061

BETWEEN:

THE KING

and

KENWORTH CHARLES

Appearances:

Mrs. Shannon Jones-Gittens, Counsel for the Crown

Mr. Wendell Alexander, Counsel for the Defendant

2023: March 22nd,
April 17th,
May 5th, 12th,
July 18th, 24th

JUDGMENT ON SENTENCING

- [1] **WILLIAMS, J.:** On the 22nd February, 2023 Mr. Kenworth Charles was found to be guilty of the murder of Mr. Fitzroy Robins Jr.
- [2] Mr. Charles' conviction stems from an incident on the night of 24th July, 2020 at Villa in the Parish of Saint Johns, in Antigua and Barbuda when Mr. Robins was fatally wounded.
- [3] According to the pathologist, Mr. Robins' death was due to: "Exsanguination, due to multiple stab wounds." The pathologist identified wounds to the head and thorax of the deceased.
- [4] The wound to Mr. Robins' head fractured the skull, with no damage to the brain or meninges. There were two wounds listed to the thorax. One wound entered the right chest cavity and contained the blade of a knife. That wound punctured the right lung upper lobe and upper pericardium. The other wound to the thorax entered the left chest cavity and incised the upper lobe of the left lung. The wounds to the chest cavity were respectively associated with 450 ml of blood in the right cavity and 100 ml of blood in the left cavity.
- [5] There was no damage to the aorta and heart.

Background

- [6] The Crown's narrative in this case commenced months before the actual incident of the 24th July, 2020 when Mr. Charles stabbed Mr. Robins, who was also known as 'Echo'.
- [7] Mr. Charles, also known as 'Billy' or 'Ken' used to frequent the premises of Mr. Roderick Williams, also known as 'Spokes' or 'Cripple' in Bottom Town, Villa, in Saint Johns. The place was known as 'Pig City' and patrons would gather to socialize, drink and eat.
- [8] Sometime in May 2020, Miss Shakira O'Garro who is Spokes' daughter went by her father in Villa. Shakira and her father did not get along well. However, on that day, she decided to take a cooler to her father's premises and sell drinks. That day in May is the only time that she ever did so.
- [9] Billy was there that day. He bought some beers elsewhere and went by Spokes and placed them by the cooler. During the course of the evening, Billy took drinks from the cooler. As Billy was leaving for the night, a dispute arose between himself and Shakira over payment for the drinks. During the course of the exchange, Echo accosted Billy. Echo also had a bladed weapon and demanded that Billy pays Shakira for the drinks. Billy paid Shakira and left.
- [10] During the fracas, Billy's chain was busted off his neck; he also lost his cap.
- [11] Shakira said that as Billy left, he said: "Ah go show ah yo summen. Me ah go kill he."
- [12] Billy stayed away from Pig City for several weeks. He never went back to Pig City until the night of the 24th July, 2020.

The Incident

- [13] On the night of 24th July, 2020 Billy was at the home of his girlfriend Miss Shani Mapp, in Villa. It was during the curfew that was imposed as a result of the Covid 19 pandemic. Shani was inside the house and fell asleep at about 10:00 pm. She knew that Billy was outside listening to music.
- [14] Billy went to Pig City to buy something to drink. On his way in, he was greeted by one of the regulars and a comment was made to him about having stayed away. Billy reminded Uncle that the last time he, Billy, was there, how he was "robbed". Billy also showed Uncle a knife in a case which he said was for the person who had ill-treated him.
- [15] Echo was seated when Billy arrived at Pig City. Things quickly escalated and at the end of it, Billy drove off in his Toyota Tiida motor car and Echo lay dead on the ground.

- [16] Mr. Charles was arrested and charged for causing the death of Mr. Fitzroy Robins Jr. At trial, the issue of self-defence was canvassed before the jury on Mr. Charles' behalf. Mr. Charles was convicted of murder.

Social Inquiry Report

- [17] At the Sentencing Hearing, the Probation Officer at the Family and Social Services Division, Mr. Irvin Henry, presented the Social Inquiry Report that he prepared for the Court to assist in the sentencing process.
- [18] Mr. Henry's assessment at the conclusion of the Social Inquiry Report on Mr. Charles, at pages 12 and 13, appropriately summed up his findings:

"A common pattern of behavior that was reported throughout this investigation is that Mr. Kenworth Charles appears capable to function within Civil Society until he become[s] intoxicated. This pattern of behavior appears to be the 'mood altering' basis which ended in the loss of life in the present matter. The information provided by his parents, sister, his girlfriend and some members of the Villa community are examples of how his personality appears to change from being nonaggressive to violently aggressive.

"There is little doubt that the defendant is an intelligent, friendly, hardworking individual because these words were used to describe his personality from person[s] with whom he shared various types of relationships. However, it would appear that his true personality was tainted by his alcohol consumption.

"Mr. Charles appears to be remorseful for the loss of life. This was glean[ed] through his explanation that he has asked God through prayers for forgiveness, and that he has used his time on remand to some self-introspections (sic). He also stated that he intends to makes (sic) amends and have admitted to the negative impacts [of] excessive alcohol consumption has on his life.

"It is further noted, that in spite of the defendant's apparent struggle with alcohol abuse, except [for] the present matter, he is not known to the court according to the Criminal Records Office (CRO). Therefore, [the] undersigned is of the opinion that social intervention, such as a rehabilitation programme would be necessary, after the decision of the court to keep Mr. Charles from reoffending."

- [19] Mr. Henry, in response to questions from Counsel for the Defendant, said that his [Mr. Henry's] inquiries at Mr. Charles' workplace, revealed that Mr. Charles was known as a hard worker who went beyond the call of duty and was one who volunteered for duty. Mr. Charles's workmates did not

indicate that he was violent in any way. Interviews with some persons in the community said Mr. Charles was loving but “switched to aggressive” once he used alcohol.

- [20] In the probation officer’s view, any failure to address the issue of Mr. Charles’ alcoholism rendered him vulnerable to re-offending.
- [21] Mr. Henry noted that while he knew of one existing rehabilitation centre in Antigua and Barbuda that operated a 90-day programme, the facility would not accept someone as a participant in the programme who is serving a custodial sentence.

Character Witness

- [22] The IT Manager at the Sir Lester Bird Medical Center, Mr. Osbert Josiah, testified as a character witness. He has known Mr. Charles since 2009, when on the eve of the opening of the SLBMC Mr. Charles who was then in the Accounts Department volunteered to help with the IT.
- [23] Mr. Josiah disclosed that there was a petition signed by 150 members of the SLBMC, including the directors, doctors, nurses and staff, asking for leniency. He said that the petition gives an indication of Mr. Charles’s character and the esteem with which Mr. Charles is held in the organisation. Mr. Josiah said: “When the Director of Operations signs a petition asking for mercy, you know it is not ordinary.”
- [24] In cross examination, Mr. Josiah said that he only heard of Mr. Charles’ use of alcohol, but he never experienced it.

Charles’ Statement

- [25] Mr. Charles expressed his sorrow to the relatives of the deceased. He said that he was truly sorry. He noted that while on remand at the prison, a sister of his died and he was not able to go to the funeral because of his situation. His sister’s death, Mr. Charles said, meant that he knows what it is like to lose someone to death.
- [26] Mr. Charles noted that he did not know Mr. Robins; neither did Mr. Robins know him. He said that had the deceased known him, (Mr. Charles), “he would know I am not that sort of person.”
- [27] Mr. Charles noted that the night of the incident, he went to ‘Pig City’ late in the night, after curfew hours. He had no intention when he went there to murder anyone.

Prison Facilities

- [28] The Crown adduced evidence from the Superintendent of Prisons, Retired Antigua and Barbuda Defence Force Lieutenant Colonel, Trevor Pennyfeather, regarding the prospects of providing the required rehabilitation services to Mr. Charles.
- [29] The Superintendent was appointed to the prisons on the 20th February, 2023.
- [30] It is apparent from his testimony that the Prison is not staffed nor equipped to provide counseling and rehabilitation to Mr. Charles. The Superintendent acknowledged that while he was aware that the offence for which Mr. Charles was convicted involved alcohol, he was unaware of the extent of the matter with Mr. Charles or that specific intervention may be necessary.
- [31] The Lieutenant Colonel said that with regard to being able to provide Mr. Charles with support to deal with addiction, as Superintendent he had not “gone through the process myself” but he asked a contact in the Ministry of Social Transformation about how they may be able to access assistance for alcohol and narcotics addiction.
- [32] In response to Counsel Mr. Alexander, the Superintendent of Prisons described Mr. Charles as a “model prisoner” and said that the Prisons recently had cause to utilize the knowledge and skills of Mr. Charles to address a matter. Lieutenant Colonel Pennyfeather said that there was an academic programme at the Prison ongoing with The University of the West Indies which six to eight inmates are able to access online.

Sentencing Considerations

- [33] The four principles of sentencing as detailed in the consolidated judgment of **Desmond Baptiste v The Queen** are:
- Retribution.
 - Deterrence (specific and general).
 - Prevention.
 - Rehabilitation.
- [34] I have:
- i. Paid close attention to the Social Inquiry Report and the testimony of the maker of the report, Probation Officer, Mr. Irvin Henry as well as the evidence from the Superintendent of Prisons, Lieutenant Colonel Trevor Pennyfeather;
 - ii. Listened what Mr. Charles had to say from the dock;

- iii. Heard the submissions by both Mr. Alexander on behalf of the defendant and Mrs. Jones-Gittens for the Crown.
- iv. Kept in mind the evidence adduced at trial which informed the jury's decision;
- v. Kept in mind the principles of sentencing and applied the Sentencing Guidelines of the Eastern Caribbean Supreme Court.

[35] Mr. Charles is now 39 years old. (His date of birth given is 3rd October, 1983). He is the biological father of two children, both of whom reside with their respective mothers outside of the jurisdiction. Mr. Charles' formal education was at the Princess Margaret Secondary School, Antigua State College and the Antigua and Barbuda Institute of Continuing Studies. In July 2020, at the time of this incident, Mr. Charles was employed at the Sir Lester Bird Medical Centre as a technician in the IT Department.

[36] Mr. Charles, according to the Social Inquiry Report, was "raised in a stable home environment... their home-life could be described as closely-knit with Christian tutelage."

[37] It is apparent that the two principles of sentencing most applicable to Mr Charles are rehabilitation and retribution. However, the unfortunate fact is, even though the preponderance of the evidence points to the need for substance abuse counseling, as well as some help with anger management, there is apparently the absence of any viable programme at the prison that could in fact promote the rehabilitation Mr. Charles. As a consequence, sentencing of the defendant would have to be on the basis of retribution – where the "punishment must fit the crime." In doing so, the Court will also be demonstrating society's distaste for certain kinds of conduct and serve as an example to other would be offenders that they face substantial punishment if they transgress.

[38] The Eastern Caribbean Supreme Court Sentencing Guideline for homicide offences was reissued on the 26th November, 2021. The Practice Direction No: 3 of 2021 which governs the sentencing for the offence of murder, "generally mirrors the six steps approach of other guidelines." (A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court page 4).

[39] An adult who is convicted for the offence of murder may be sentenced to:

- a. Death.
- b. A whole of life.
- c. A determinate sentence.

[40] This was not a death penalty case. It cannot be considered to be "the rarest of the rare" or "the worst of the worst." Neither has the Crown served a 'Death Penalty Notice' or complied with any of the requirements for the ultimate punishment to be considered.

[41] Neither does this case fall into the category where the seriousness of the offence could be considered exceptionally high so that a whole of life sentence is imposed. The Practice Direction lists fifteen factors which may trigger a whole of life sentence; none of those are present in this case.

[42] Mr. Charles therefore falls into the category where a determinate sentence is imposed.

Determinate Sentence

- [43] Rule 9 (b) of the Practice Direction provides that “where the offender took a bladed weapon... to the scene intending to have it available to use as a weapon,” then the offender is to receive a determinate sentence. When Mr. Charles went to ‘Pig City’ on the night of 24th July, 2020 he carried with him the knife that was used in committing the offence. That knife was in a sheath stuffed in the waist of his pants.
- [44] The “appropriate starting point” is stated in the Compendium Sentencing Guidelines to be “30 years, within a range of 20-40 years.”
- [45] Recently, reference was made to **Rudolph Lewis v The Queen** SVG-HCRAP 2009/016, a decision of Eastern Caribbean Court of Appeal. Even though that matter was a domestic dispute matter, like Mr. Charles, it involved a bladed weapon. Rudolph Lewis successfully appealed against his sentence of life imprisonment. The Appellant lured the deceased to the locus, where he inflicted 21 stabs to her body in the presence of their children. The Crown served a death penalty notice and Mr. Lewis sought to enter a guilty plea. The Court of Appeal noted: “There was a significant degree of deliberation as would justify a sentence at the upper end. Bearing in mind that the bench mark or upper limits for the cases where murder is reduced to manslaughter is 15 years, a sentence of 25 years imprisonment would reflect the Appellant’s culpability for this heinous crime of murder.”
- [46] In this matter, Mr. Charles’s contention of self-defence understandably failed. The jury no doubt took into consideration the number of stabs and concluded that three stabs in response to an attack by someone with a stick amounted to excessive use of force in self-defence; that Mr. Charles went beyond what was reasonably necessary. The number of wounds did not approach that in the **Rudolph Lewis** matter.
- [47] The evidence showed that Mr. Charles did not even know that it was the deceased who ill-treated him (Mr. Charles) weeks earlier, on the previous occasion in May 2020. On the night of the incident, the deceased pulled a stick with a fire from the grilling area and swung it at Mr. Charles. The evidence at trial of the eye witness, Mr. Wayne Kelly, was that when Mr. Charles arrived at the scene, “he had a black pouch with a knife in it. He say this is for the guy that try to stick me up the other night. Echo was like 2 feet behind me sitting when Billy said this. Echo jump up from where he was sitting, pull a piece of stick from out the firewood. Billy fire a stab at him. I tried to block the knife. The knife hit me on my hand. Billy stand back. Echo try to hit Billy with the fire stick. Billy dodge[d] the stick and just walk towards him and stab him.”
- [48] This matter falls at the lower end or lowest end of the scale. A starting point of 20 years is considered to be appropriate.

Weighing Aggravating and Mitigating Factors

- [49] There are no identifiable aggravating factors in relation to the offence.
- [50] There are a number of mitigating factors with regard to the offence. These include that there was some provocation on the part of the deceased and that even though Mr. Charles did take a knife to the scene, it would appear in some way that Mr. Robins may well have been the initiator of the conflict that night in pulling the fire stick and swinging it Mr. Charles.
- [51] Mr. Charles' inebriated state must have impacted on his conduct that evening. There is no suggestion on the Crown's case that Mr. Charles consumed alcohol to give him what is commonly referred to as Dutch courage. The level of alcohol consumption was inferentially demonstrated by the fact that when the police detained Mr. Charles several hours after the incident he appeared intoxicated and the Crown declined to even tender the statement taken from him in that condition.
- [52] Mr. Charles has no previous convictions for violence offences, nor any relevant convictions for other offences. He did not commit the offence whilst on bail. Accordingly there are no aggravating factors pertaining to the offender.
- [53] There are mitigating factors pertaining to the offender. Mr. Charles is of previous good character. At the sentencing hearing, it was noted that more than one hundred and fifty co-workers from the Sir Lester Bird Medical Center subscribed to a document attesting to his good character and his positive attributes.
- [54] Mr. Charles also spoke with emotion and what appeared to be sincerity at his sentencing hearing. The Probation Officer also noted that: "It was not difficult to probe the circumstances of the Defendant's actions because the Defendant spoke openly about the offence and the remorse he is feeling."
- [55] Given the fact that the mitigating factors far outweigh any possible aggravating factors both with regard to the offence itself and to the offender, the sentence ought to be accordingly and appropriately reduced.
- [56] Collectively, credit of four years even though not generous, is considered to be reasonable.
- [57] The time spent in custody on remand has to be accounted for. Mr. Charles was first detained by the police on the 25th July, 2020. That was three years ago. Mr. Charles was convicted of murder on the 22nd February, 2023. The process of sentencing was protracted for several reasons and the sentence is only now being imposed on the 24th July, 2023. Mr. Charles spent roughly 31 months in custody before conviction and five months awaiting sentence. That time has to be accounted for.

The Sentence

- [58] Mr. Charles, for the offence of murder of Mr. Fitzroy Robins Jr. for which you have been convicted, the appropriate notional sentence is 20 years in prison. From that figure, four years is deducted for the mitigating facts in relation to the offence and mitigating factors in relation to the offender. That leaves a balance of sixteen years.
- [59] Time is to commence from the date you were first detained for this offence, since the time you spent on remand must be accounted for.

Colin Williams
High Court Judge

By the Court

Registrar