

IN THE EASTERN CARIBBEAN SUPREME COURT

SAINT CHRISTOPHER & NEVIS

SAINT CHRISTOPHER CIRCUIT

IN THE HIGH COURT OF JUSTICE

CASE SKBHCR 2022/0005

REX

V

KIMBA WHATTLEY

APPEARANCES

Ms Greatess Gordon-Hazel, acting DPP, and Mr Tashaun Vasquez for the Crown.

Mr Vaughan Henderson for the defendant.

2023: FEBRUARY 24

SENTENCE

For murder, after lying in wait at home of love rival

- 1 **Morley J:** On 19.10.22, Kimba Whattley (dob 20.02.85) was convicted by the jury after trial during 29.09-19.10.22 of the murder when aged 33 in Basseterre on 20.08.18 of Kassim Buchanan aged 36. Victim impact and mitigation were heard on 21.02.23, with sentence adjourned to today 24.02.23 for remarks in writing.
- 2 The broader facts are these.
 - a. Whattley had had a partner named Nordia Drew, living together in St Pauls. They split up. Drew moved eventually in early 2018 to a home on an alley off Nevis St in Basseterre, and began a relationship with Buchanan, who moved in with her.
 - b. Whattley had kept in contact with Drew and had visited her home.

- c. On 20.08.18, cctv showed after 08.00 Drew and Buchanan went to their work and at 12.12 Buchanan came home alone for lunch.
- d. At 12.50, on cctv Whattley was seen on foot leaving the alley in a clean white t-shirt carrying a bag, making his way to the bus station downtown.
- e. Returning home after work, Drew discovered Buchanan dead inside the bedroom/living area. Her kitchen knife was missing.
- f. Buchanan had been stabbed 13 times: twice fatally in the neck among 5 neck wounds, 6 times to the face, and had been slashed superficially to the chest and lower right leg. He also had two blunt trauma head injuries, being a broken nose, and depressed pond skull fracture above his left eye. There were no defensive wounds. Beside the body was a heavy transformer whose corner fitted the pond fracture, and near was half a black knife-handle on which Whattley's dna was later recovered, being from the missing knife. Blood was everywhere and the cause of death was exsanguination.
- g. On the wall using the blood had been written '*You dead now, your brother next, we coming for your brother*'. Moreover, during the trial, the defence drew out evidence inter alia Buchanan had been shot at by others in earlier months, including that his mother on 01.03.17 had been shot in the arm. Initially, viewing the scene, police thought it a gangland killing.
- h. Drew then resumed her relationship with Whatlley after, who had deceitfully offered emotional support.
- i. However, in early 2019, during a row, Whatlley confessed the killing to Drew, saying he had picked her lock and waited, which eventually she reported on 30.12.19, his motive being he had wanted her to have his child and had felt she had betrayed him with Buchanan.

- 3 The evidence during trial presented a startling picture of a deliberate planned killing.
 - a. The pathologist gave the opinion Buchanan had been knocked out entering his home, using the transformer to inflict two heavy blows to the head, and while unconscious and defenceless had been repeatedly stabbed, viciously about the face, and fatally deeply into the neck.
 - b. The writing on the wall had been calculated to make it look a gangland killing to throw police off, initially being successful.

- c. Whattley must have taken time to clean himself of blood, and to use clean clothes, to appear without stain on the cctv, remembering to take the knife and his soiled clothing, and to clear up traces of his presence.
 - d. He had broken in to Drew's home and lain in wait, having taken, not either entry to the alley, but a route over the back wall not under cctv surveillance.
 - e. The motive was without doubt jealousy and a hatred of Buchanan who had replaced him.
- 4 Buchanan's mother Jacqueline and brother Floyd each made moving victim impact statements. Both attended court on 21.02.23 during mitigation, with aunt Yvette Lloyd.
- a. Jacqueline on 21.10.22 reported ill health had followed, with high blood pressure, the strain meant she lost her job with the port authority, she misses her son very much, with whom she had good relations, and she asks for the death penalty on the principle there should be a life for a life.
 - b. Floyd on 21.10.22, as eldest brother, reported how distraught his mother had been, the trauma of seeing the body so damaged by the knife wounds, and how he became paranoid he saw the killer everywhere, asking for punishment to the full extent of the law.
- 5 Probation officer Tanya Bell-James prepared a 10-page social inquiry report, dated 14.02.23. Of note:
- a. Whattley accepts no responsibility for the killing, offering no remorse, saying he was elsewhere, notwithstanding the dna evidence, the cctv, and the confession to his girlfriend Drew.
 - b. He has no previous convictions.
 - c. He grew up in a loving home, the third of five children; was rebellious towards his mother, and would spend time with his father; he attended three high schools, leaving without qualification; he had been variously employed at the public works department, the racetrack, Kittitian Hill, and the Carib brewery; he smokes marijuana often, at least every four hours; and he was well-regarded in the community as energetic, helpful and confident.

- 6 Given Whattley faces sentence for murder, an unconnected allegation of wounding with intent on 24.07.19 on Razim Greene was discontinued on 20.01.23, and I make it plain these sentencing remarks ignores it.
- 7 Further, on 16.01.23, Kendreisha Whattley, the defendant's sister, was brought to court for possible contempt for interfering with a juror on about 21.10.22 at Rams supermarket. She had complained about the verdict. The juror had said in a statement dated 12.01.23 he had not been unduly alarmed. She was admonished by the court. I make it plain the sentence will not be affected as the incident is unconnected to the defendant.

Constructing the sentence

- 8 In November 2021, the ECSC published guidelines on how to sentence for murder, supported by **Practice Direction No.2 of 2021**.
- 9 The Crown are not seeking the death penalty.
- 10 In constructing the sentence, following six steps, as step 1 concerning the offence, in my judgment it falls within paragraph 8, agreed by both counsel, because the murder involved a knife and a blunt instrument. While neither was brought into the house, instead each was brought to the 'scene' within the house by Whattley, who was lying in wait, meaning he assembled his weapons awaiting his victim. The starting point is 30 years. However, the offence is severely aggravated by the astonishing planning. Whattley broke in and waited, intending to kill. More, it was in the sanctity of Buchanan's home which is the one place he should be able to feel safe. This brings the sentence to the maximum within the range to 40 years.
- 11 Further, in my judgment the sentence continues higher beyond the usual range owing to the viciousness and coldness of the killing. Here, Buchanan was knocked out, and while defenceless was stabbed six times in his face, and then twice deeply into the neck, fatally, severing the carotid artery. Whattley then proceeded with chilling presence of mind to write in the blood on the wall to lay a false trail, and to wash, and clear away his soiled clothes, and the knife (not appreciating half the handle had fallen off), being seen moments later on

cctv leaving the alley to walk at apparent ease down the road to the bus station. These features increase the sentence outside the range by 8 years to 48 years, recalling the range is a guideline, not mandatory.

- 12 In an alternative analysis, this offence could be said to qualify under para 5c for a whole life term, as being of 'exceptionally high seriousness', owing to the 'substantial degree of premeditation', but then under para 6, can be revaluated as justifying a determinate sentence, there not being two or more murders, or other justifying feature, with therefore a starting point of 40 years and range up to 50 years; if so, the sentence at step 1 attracting 48 years, as determined here, would be within that range.
- 13 Turning to step 2, concerning the offender, it is not mitigation he was in love with Drew and in some way lost his critical reason. This was not a crime of passion; it was cold blooded, and he has shown no remorse as he does not accept he did the act. However he does have the mitigation of no previous convictions, while there was nothing in his background to suggest he may kill, so the offence was out of character, given how he was perceived in the community, and so I will reduce the sentence by 3 years to 45 years.
- 14 I wish to mention cannabis, jealousy, and temper. During mitigation, Counsel Henderson carefully posited, though not admitting the offence, Whattley at 33 was addicted to cannabis, and being just outside his 20s his jealousy was perhaps within expectation of his age group, while the untidy scene suggested Whattley had been in a desperate struggle and lost his temper.
 - a. It needs to be understood by the public cannabis abuse is not an excuse where its consumption is voluntary. The fact it may mess with the mind so it leads to criminal activity does not mitigate; indeed, knowing its effect is precisely to affect the mind, which is why folk take it, could be said to aggravate. There needs to be a public information campaign warning strong cannabis can lead to paranoia, violence and sociopathy, noting strength has grown hugely in labs and genetically modified crops during the past 30 years, now widely available. It is no excuse to hint the cannabis caused the offence; not so, the exact reverse is true, namely the offence is caused by the person smoking it.

- b. It further needs to be understood in this case it was not a 'crime of passion', if ever there is such a thing. After teen years, adults are expected to control their feelings. It is no excuse to suggest Whattley jealous, if aged 33. And more, here he was not in a jealous rage, but behaved with calculation. He had a hatred of Buchanan for replacing him, evidenced by the vicious six disfiguring stab wounds to the face while unconscious. In this case the jealousy was cold, not hot.
 - c. Moreover, there is no persuasive evidence there was a desperate struggle between the two men, leading to Whattley losing his temper, nor was it advanced at trial. While the room where Buchanan was found was untidy, there were not the hallmarks of a protracted fight, only instead perhaps indicia of Buchanan being surprised, and being engaged briefly before being brought to the floor. Nothing in this case shows Whattley became enraged in a protracted brawl, only that he ambushed.
- 15 Turning to step 3, there is no reduction in sentence available for plea.
- 16 Turning to step 4, there are no considerations for totality. Further, while I consider it is possible Whattley is dangerous, showing no insight into his cold-blooded jealous behaviour, as he offers no remorse, I am not sure of this, where being sure is the correct test, not what is possible, and so do not extend the sentence for dangerousness; more, to do so for lack of remorse would be to treat its lack as aggravating, when instead remorse is mitigating and its absence is better treated as neutral in step 2.
- 17 Turning to step 5, time on remand and after conviction up to sentence will count, and he will be eligible for remission of one-third of his sentence if of good behaviour, meaning after he has served 30 years.
- 18 Turning to ancillary orders under step 6, I order the knife handle seized by police indefinitely, in their discretion, who may wish to use it for training in forensics, or retain it for appeal, or destroy it as they choose. I also order the chain from around Buchanan's neck returned to his grieving mother.
- 19 *Kimba Whattley, please stand up.* For the reasons I have explained, for the murder of Kassim Buchanan on 20.08.18, where, jealous, you lay in wait for him at his home, deliberately killing him with the kitchen knife to his neck, while he was defenceless unconscious, his skull having

been fractured by you, ambushing him as he entered, and you then in cold-blood lay a false trail for police and cleaned yourself up, after to walk casually to the bus station, as seen on cctv, the sentence will be 45 years. Time in custody will count. You will be eligible for remission of one-third of your sentence if of good behaviour. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

24 February 2023