

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT

CASE SKBHCR 2021/0008

REGINA

V

ALSTON GREENE

APPEARANCES

Mr Tessaun Vasquez for the Crown.

Mr Jason Hamilton for the defendant.

2022: JULY 08

SENTENCE

**For provocation manslaughter where aged 17 shooting a police officer
who had arranged to pay for sexual activity then reneged after**

- 1 **Morley J:** Alston 'Mad' Greene now 21 (dob 19.04.01) faces sentence for the provocation manslaughter when 17 on 02.05.18 of Dwight 'Jerry' Davis (aka 'Noomsy', dob 09.08.80), then 37, a police sergeant stationed at Sandy Point.

- 2 Greene had been approached by Davis¹ via phone text and had agreed to be paid \$500ec for sexual activity sometime after 20.00hrs in a quiet spot by the Horsetrack near Dieppe Bay after Davis had finished his duties and was in civilian clothing. He picked Greene up in his white pickup P3525. Undressing, Davis put his police issue Glock 17 pistol inside the cab. After interaction, Greene lost his self-control when Davis reneged on paying, while insisting on further activity, Greene reached for the Glock, there was a struggle, Greene fired the gun, the bullet struck Davis in the chest, he staggered around the vehicle and Greene pursued him in the opposite direction; at this point it is an agreed fact between counsel Greene confronted Davis deliberately shooting him again in the chest. Greene fled the scene taking the Glock, and also hiding a rifle from the pickup a distance from it. On 03.05.18 at 06.05 next morning, Davis was found dead behind his truck, shot through both lungs and left heart ventricle, and the rifle was recovered. Greene made admissions at about 07.00 to his friend Ron Francis he had shot Davis, had destroyed Davis' phone, still had the Glock, and suggested Francis recover the rifle. He also made admissions to his sister Devisca Rogers, and on 09.05.18 to Lorenzo Hendrickson. Arrested, Greene made no admissions to police, and was charged with murder on 19.05.18. On 20.05.18, the Glock and four rounds of ammunition were recovered on a road near Kittian Hill.
- 3 Greene pleaded on 02.12.21 at what is accepted as the first practicable opportunity, though there had been many earlier appearances pre-plea enquiring into what was on Greene's phone seized in police custody. Sentence with social enquiry report was to be on 25.02.22 but Counsel Hamilton was not ready, adjourned to 05.05.22, but then delayed owing to a complicated trial taking place in court, to 31.05.22 when the case was opened, victim impact offered, mitigation explored, sentencing guidelines assessed, and there was then raised by the defence a need for a psychological report as to whether Greene was in a special category of vulnerability owing to being of particularly low IQ, so that a report was prepared from Psychologist Zahra Jacobs for discussion on 06.07.22, with sentence being reduced to writing to be passed today, 08.07.22.
- 4 Considerable care was taken by the Crown before it accepted the manslaughter plea. On the one hand a police officer had been shot twice with his own weapon in questionable private circumstances; on the other, Greene was a minor, encouraged into a sexual

¹ The defendant and others will be referred to by their surnames for ease of reading and no disrespect is intended by not writing out full names, and titles, and the legalese of whether defendant or victim or witness.

transaction by a person carrying public authority, he was impoverished, of below average intelligence, and it was accepted Davis had reneged, and tried to force further activity. Weighing matters, the Crown accepted, and the Court separately so, it could not be gainsaid Greene had been provoked and as a minor had wholly lost his self-control in shooting Davis; but it was further noted particularly the second shot had been deliberate in temper and there had been some measure of later calculation in destroying Davis' phone, taking the Glock, and hiding the rifle suggesting another collect it later.

- 5 In moving victim family impact statements, Shelreen Davis (mother) and Samantha Davis (sister, and fellow police officer) described their deep sense of loss, Davis being third of eight siblings, while having three children, then aged 18, 13 and 7, and a reliable breadwinner for the wider family.
- 6 Concerning the social inquiry report dated 21.02.22 by probation officer Tivanna Wharton, Greene is the second of five siblings, not much connected to his father, and was largely raised by his maternal grandmother. At school he was in the bottom sets, though after arrest, while in juvenile detention he has successfully completed CSEC exams. He has no previous convictions.
 - a. Of the offence, he said: *'There was an agreement with me and the officer for us to meet up and have sex, so we did meet and did our thing. He short paid me, then he asked to do it again, I said no, I can't go through that again, and he started feeling and roughing me up and we got into a fight. I saw his gun on the floor in the truck, I got to it, shot him and ran around the other side of the truck... I shot him again and ran home and told my sister what I did. My deepest condolences go out to his family and loved ones. I never intended to kill anyone knowing the consequences it can carry. I am crushed...and I am truly and sincerely sorry for what I did.'*
 - b. Greene's younger brother Naheem described him as determined, highly motivated, did not give up easily, and he had never seen him aggressive.
 - c. Curtis French, his former teacher and guidance counsellor, described Greene as a very respectable young man at school, cool and calm, to whom he would help supply lunch when Greene could not afford it.

- d. During the interview, she wrote Greene was *'...calm and collected. He was fully cooperative, but at times required further explanation of basic questions, showing some level of delay in his responses, while speaking slowly, there being some degree of challenge with the interview, although generally he displayed a fair level of understanding. He has accepted responsibility for the crime and shown remorse.'*

7 Concerning the psychologist report dated 04.07.22 from Zahra Jacobs, she interreacted with Greene while in detention at the New Horizon Rehabilitation Centre (NHRC), between 16.05.18 and 20.01.20 (when at then 18 he was placed in custody at the adult prison). She notes he got frequently into fights during his first two years of High School, academically his performance was below average, though he was considered a helpful student. At NHRC, he completed four CSECs – English, social studies, maths, and office administration. He is normal for anxiety, and depression, with no history of self-harm. Measuring his general intelligence via the CTONI-2 scheme, with a score of 85, he was found 'below average', (being below 'average' and above 'poor' and 'very poor'). He demonstrated no difficulty controlling expressions of anger and has an age-appropriate capacity for remorse and empathy, with no difficulties as to ADHD, is generally compliant with authority figures, and has shown a high interest in school.

- a. In her conclusion, Jacobs wrote, *'Though his IQ level is below average he does not meet the criteria of an intellectual disability. His performance in CSEC examinations highlighted an ability to meet academic standards when coached in a smaller classroom setting. His general behaviour in the community and when institutionalized, demonstrates average reasoning, problem-solving, planning and judgement skills, as evidenced by general positive reports about his behaviour and positive influence on other residents and inmates.'*
- b. However, she added he *'is challenged by absolute thought patterns that make it difficult for him to appreciate nuances in situations which may put him at risk of being manipulated by others. In moments of crisis where the 'right' choice is not immediately clear he is likely unable to follow a pattern of thinking or appreciate the perspective of others as quickly as someone else in his situation. This may be attributable to his below average IQ, but the lack of parental guidance he received likely contributes heavily as well.'*

- c. Her report was explored in evidence on 06.07.22, this judge and both counsel enquiring. She opined Greene vulnerable by virtue of his weak home and socio-economic situation, considering this probably led to his trading sex for money. He has strong reactions to whether something is right or wrong, takes people too much at their word, lacks ability to predict how a situation might go wrong, and would have been confused by Davis as an authority figure reneging on the transaction. His reaction was within the range of what might be expected of any 17yr old, though at the more extreme end, adding she thought Greene would think there should be some sort of punishment for Davis for reneging.
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- 8 Before constructing the sentence, it needs to be remembered Greene was a minor at the time of the killing, and under the **Child Justice Act** Cap 4.15 at **s2** is defined at 17 as a 'child', being under 18, and where under **s56**, it reads:

Purposes of sentencing [a child].
56. The purposes of sentencing pursuant to this Act are to—
 - (a) encourage the child to understand the implications of and be accountable for the harm caused;
 - (b) promote an individualised response which is appropriate to the circumstances of the child and proportionate to the circumstances surrounding the offence;
 - (c) promote the reintegration of the child into the family and community; and
 - (d) ensure that any necessary supervision, guidance, treatment or services which form part of the sentence, assist the child in the process of reintegration.
 - 9 In helpful submissions offered in writing by Counsel Hamilton on 08.10.21, he suggests here there is a need for a different approach to sentencing than identified for adults in the seminal judgment of Byron JA, as he then was, in **Desmond Baptiste et al v Regina ECSC appeal 8 of 2003**, where the point of sentencing is punishment, deterrence, prevention, and rehabilitation.
 - 10 Moreover, there are now sentencing guidelines within the ECSC, published on 08.11.21, for provocation manslaughter, along with **Practice Direction 8D no.4 of 2019** concerning sentencing of persons under 18.
 - 11 Finally, Greene falls to be sentenced now as an adult, no longer a minor. It follows that while features of the **Child Justice Act** remain of relevance, he is not being sentenced as a child, so that its strict letter does not apply.

Constructing the sentence

- 12 Broadly, consistent with the sentencing guidelines, the approach will be to assess the sentence for an adult, adjust for his having been 17, and his character, and then adjust for plea.
- 13 I consider only a custodial sentence can be justified for this offence, per **para 4 Practice Direction 8D**, notwithstanding Greene was under 18, as it concerns homicide, by deliberate shooting.
- 14 I am reminded provocation is a partial defence to murder, meaning the plea to provocation manslaughter concedes but for provocation Greene would be guilty of murder. This is a very serious offence, which should not be diminished by nomenclature, meaning considered greatly less serious because labelled 'manslaughter'; it is very close to murder, requiring careful assessment of the level of provocation.
- 15 Under the sentencing guidelines, as the first step, considering the circumstances of the offence, assessing the level of provocation, I assess this provocation manslaughter falls within level B, agreed by both counsel. There had been some thought whether Greene was in a special category of vulnerability owing to low intelligence, attracting level C, but on assessment with Psychologist Jacobs, it has been conceded not, that he is within average range, though at the upper end, of behavioural expectation for any 17 yr old, with to an extent over-rigid thought structures, while co-relatively vulnerable as to his socio-economic circumstance. The reason for level B is there was spontaneous use of a weapon to hand, and there was physical abuse of Greene by Davis, though falling short of extreme violence. Level B accepts the provocation was 'significant' rather than low, or high, and has a starting point for an adult of 20 years imprisonment.
- 16 However, for an adult I would adjust the sentence upwards within the range available to 27 years because there were two shots, where the second was quite deliberate and is at the very cusp of loss of self-control, while the Glock was taken, and the rifle hidden to be recovered later, also Davis' phone destroyed, all strongly suggesting Greene quickly recovered himself and began calculating further criminality. For clarity, I do not accept he

took the Glock and hid the rifle in case Davis came after him, as he could have thrown both away in the dark, but instead I conclude he harboured thoughts of keeping these for himself.

17 I turn now to step two, being consideration of the circumstances of the offender.

a. I must first consider adjustment of the sentence because Greene was a minor. He was 17 and 2 weeks. Though a 'child' under the **Child Justice Act**, within the broad meaning of that term he was more a young person, or 'juvenile', beginning to exercise independence in life, rather than a 'boy' largely tied to parental control. Under **Practice Direction 8D**, at paras 1-3, there is a distinction made between a child and young person, where as policy there should be consideration given to reducing a sentence by one-third for a young person and one half for a child. In the context of the Practice Direction, I consider Greene to be a young person, not a child, and so will contemplate one-third. I have considered his being so close to 18 might militate against a full one-third, but I counter-consider his low IQ, causing him to misjudge the possible outcome of the transaction agreed, with socio-economic vulnerabilities having led him to the transaction in the first place, being exploited by Davis, much older than him and in authority, warrants the full discount. This reduces the sentence from 27 to 18 years.

b. I now consider his character as a minor and subsequent reaction to the offence. He was of good character, acting out of character, and I accept has expressed remorse. These twin features merit a further reduction of 18 months to 16.5 years.

18 I turn to step three, being credit for plea. Greene merits the maximum credit of one-third as his plea was at the first practicable opportunity. This reduces the sentence from 16.5 years to 11 years, or 132 months.

19 Time on remand, including at the NHRC since 16.05.18 will count toward the sentence and he shall be eligible for remission of one-third of his sentence if of good behaviour. In theory therefore he will serve 88 months, having served 50 months so far, there being 38 more, the precise figures to be calculated by the prison, so that I would expect his earliest date of release will be some time in late 2025. I would hope within that time he would continue to advance his education.

- 20 Reflecting on **s56 Child Justice Act** above, I consider this sentence ought to encourage Greene to understand the implications of and be accountable for the harm he has caused, is appropriate to his circumstances and proportionate to the circumstances surrounding the offence, and is calculated in the not so very distant future to promote his reintegration into his family and community.
- 21 Finally, I consider Alston Greene should be named in reports of these proceedings, if any. Under **s53 Child Justice Act**, there can be prohibition of reporting, unless under **s53(5)** the court considers it in the interests of justice to the contrary. Here I consider it is in the interests of justice to lift any prohibition as he is now an adult, aged 21, and will be several years more in adult jail, while the offence is very serious, involving a second deliberate shot, there was a plan to retain two firearms, he was almost an adult, and to my mind the public have a legitimate interest in knowing among them who he is and what happened.
- 22 *Alston Greene, please stand up.* For killing Dwight Davis on 02.05.18, by shooting him with his police pistol, in the context of a sexual transaction, where he reneged on paying, wanted further activity, there was scuffle, and you shot him not once, but deliberately a second time, now 21, though then 17, impoverished, and with low IQ, having pleaded guilty to provocation manslaughter on 02.12.21 at the first practicable opportunity, for the reasons I have explained the sentence will be 11 years imprisonment, where time on remand and since 16.05.18 at the NHRC will count, and you will be eligible for remission of one-third if of good behaviour. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

8 July 2022