

SAINT LUCIA

**EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
(CRIMINAL)**

**CASE NO. SLUCRD2020/0001**

**BETWEEN**

**THE CROWN**

**vs**

**SHANNAN JAMES**

Defendant

**Appearances:** Mr. Stephen Brette Deputy Director of Public Prosecutions and Ms. Stacey-Anne St. Ville  
Counsel for the Crown  
Mr. David Francis Counsel for the Defendant  
The Defendant present

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2021: November 18;  
2021: December 20  
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**DECISION AT SUFFICIENCY**

1. **TAYLOR-ALEXANDER J;** At the sufficiency hearing in these proceedings the Defendant submitted that the facts presented by the Crown fell short of proof of the constituent elements of the offence of Murder, and as such the Crown has failed to establish a prima facie case on the evidence that the offence of Murder was committed by the Defendant with the requisite intention.
2. The Defendant is charged with the Murder of Moses De Gonzague of Hospital Road Castries St. Lucia.

**The Relevant Facts**

3. The Defendant is the daughter of Juliana Laurina James. Juliana was in a romantic relationship with deceased.

4. On the 27<sup>th</sup> of December 2020 Juliana James heard Moserina De Gouzague her daughter whom she shared with the deceased, screaming. She observed the deceased striking Moserina about her face with his hand. She pleaded with her common law spouse to stop the physical assault of their daughter and she used a post to hit his hand. The deceased returned the assault, hitting her with the post on the left side of her waist.
5. Juliana left the fraca and went a short distance to her home to retrieve a knife with which she returned. She was disarmed by one "Frere".
6. The Defendant who was standing nearby at the bridge with her children advised Juliana, her mother, to seek assistance from the police a short distance away, which she did. The police informed that they were without a vehicle and could not return with her. They promised to come later.
7. Back at the scene, the deceased remained argumentative and belligerent. On her return, Juliana went to the bridge to await the police's arrival and was speaking with her nephew and a few persons about the incident. The deceased walked up to her, grabbed her by the neck of her dress and slapped her on her face bursting her lip, the deceased walked away but still held on to Juliana by her dress while persons around urged him to let her go. With someone's assistance the deceased let her go.
8. Juliana walked away and went to sit at the bridge, the deceased came to sit next to her, she got up and walked away from the deceased. The Defendant, Shannan came to her, reminding her that she had told her over and over to leave that relationship.
9. The deceased approached them calling Shannan "Old dog", bitch and mother dog. The Defendant responded telling the deceased that if she was a dog, he is one too and that if she was a bitch, he is a male dog. Thereafter the deceased struck the Defendant chest with his hand, pushed her and spat in her face. The Defendant hit the deceased about his face where after blood was seen pouring from the side of his neck. The deceased sat then lay down with the Defendant looking on

in apparent shock. The deceased succumbed to the injuries he received that evening, which was later revealed to be a fatal stab wound to his neck.

### **The obligation of the Crown at Sufficiency**

10. Rule 10 (4) and (5) provide

4) The documentary evidence submitted by the prosecution must disclose prima facie evidence that an indictable offence has been committed and that the Defendant committed it.

5) The probative value of the documentary evidence submitted by the prosecution must be sufficient for the Court to find as a matter of law that a jury taking the evidence in the light most favorable to the prosecution could return a verdict of guilty against the Defendant.

11. The Defendant was charged under Section 85 (b) of the Criminal Code of St. Lucia, that she caused the death of the deceased, intending to cause grievous bodily harm. It has been established from the evidence led that it was the Defendant's actions that resulted in the death of the deceased, and that is not disputed. The challenge to the Crown's case, is whether Mens Rea or malice aforethought against the Defendant has been established.

### **Mens Rea**

12. Under the Criminal Code of Saint Lucia, a person who voluntarily commits an act is presumed to intend the consequence of the act, if she believes in the probability of the consequence occurring or commits the act with the purpose of achieving the consequence.

13. Section 56 (2) of the Criminal Code provides that in determining whether a person has committed an offence with the requisite intent, the Court may infer the requisite intent from the act committed by the person and the relevant surrounding circumstances taking into account the following factors-

a) The emotional motive which prompted the person to commit the act;

- b) The person's reasons or purposive motive for committing the act or the ultimate purpose which the person sought to achieve by committing the act;
- c) The person's desire for the consequence of the act;
- d) The person's subjective foresight or belief in the degree of probability of the consequence of the act; and
- e) The person's subjective honest or actual belief in the existence of certain circumstances which motivated the commission of the act.

14. **Blackstones 2015 A 1.6 and A 1.7** on Contemporaneity of Actus Reus and Mens Rea restates the general rule to be that: - to be guilty of a criminal offence requiring *mens rea*, an accused must possess that *mens rea* when performing the act or omission in question, and it must relate to that particular act or omission.
15. A judge at a sufficiency hearing exercises a function synonymous with a paper committal by considering on documents before it, whether and presuming the prosecution's evidence is credible and reliable, a reasonable jury could convict.
16. Under our system of jury trials, a judicial officer can only properly examine the evidence as an arbiter of the law to ascertain whether the evidence supports the legal elements that are required for conviction. Even under section 10(5) of the Criminal Procedure Rules where the court is required to scrutinize the probative value of the evidence it must do so to determine whether as a matter of law a jury could convict the accused based on the Prosecution's evidence.
17. I find no fundamental distinction between the two functions ascribed by 10(4) and 10 (5) of the Criminal Procedure Rules. It would be wrong to assume that rule 10(5) ascribes to a judicial officer the function of examining whether it could convict the accused based on the Prosecution's evidence. This would be to ascribe for itself the role specifically assigned to the jury under the Criminal Code. The obligation of the judicial officer at sufficiency is a legal one, dispassionate and free from speculation and conjecture.

18. Having reviewed the evidence with that guidance, I am satisfied that the Mens Rea of the offence has been made out by the Crown for the following reasons: -

- (i) I have considered the factors of the case, the particular circumstances that unfolded before the invention of the Defendant, followed by the Defendant's intervention and action.
- (ii) The Defendant's actions when she became involved in the ongoing fraca, was to deliberately taunt the deceased, recognizing that the deceased was already belligerent.
- (iii) When she "slapped" the deceased as she says, it was not an action in self-defence but to her assert her strength to the deceased in an already volatile situation.
- (iv) When the Defendant struck the deceased with a knife in her hand the only logical conclusion was that she intended to seriously injure the Defendant or that she possessed an intention greater than causing injury, given the weapon in her hand given and the location at which the blow was struck, the neck of the deceased.
- (v) In the circumstances I find the Crown's has shown the purposive motive for the act and has satisfied the requisite intention under Section 56(2) of the Criminal Code.

19. **Sinanan and others v The State** (No. 2) (1992) 44 WLR 383 provides common law guidance on how the court is to consider intent where a defence of self defence arises. The Court of Appeal of Trinidad and Tobago in a decision delivered by Bernard J, directed that an intention to kill is not inconsistent with self defence. As such where there was a finding of an intention to kill, and the facts and mental element support a defence of lawful self defence, a jury must be directed as such.

20. The Defendant has not yet indicated her defence, however the Defendant in her submissions at sufficiency and in her statement under caution to the police has stated that she acted in self defence in the death of the deceased. It is therefore important at this stage of the proceedings, that I consider the availability of this defence and whether this can challenge the Crown's case taken at its highest at the sufficiency hearing.

### **The Availability of Self Defence**

21. Is it the Defendant's submission that factual evidence submitted by the Crown support a defence of self-defence. The Defendant submits that it is trite law that where in the Crown's case self-defense arises in the prosecution's can only succeed in their prosecution if the defense of self-defense is negative. The Defendant relies on the cases of **Marlon Brashaw v the state** HAC 291/98 and **Fabian LaRoche V the state** CR APP number 52 of 2009.
22. I accept the submission that's where self-defense arises in the prosecution's evidence the obligation is on the prosecution to negate that defence. The question for me is whether self-defense arises on the evidence presented at the sufficiency hearing.
23. The evidence of Moserina with regard to the immediate altercation that took place with the deceased and Defendant is that the deceased walked up to the Defendant and said to her, "I slapping you", the Defendant replied and in my view taunting the deceased "if you are big man slap me" following which an argument ensued. The deceased then spat in the Defendant's face she swung her hand at him the hand in which she held a knife in the case presented by the Crown.
24. I cannot find that the evidence submitted by the Crown supports the defence's submission that whether using her hand to slap or stop the deceased, the Defendant did so to protect herself or another person from injury to protect herself or another person from trespass to themselves or to prevent a crime. In fact the statement given by Shannan under caution to the police and recorded in the station diary is that the Defendant spat on her, and she intended to return the Defendant's actions with a slap. I am more minded to conclude that despite the prevailing circumstances that took place immediately before or even sometime before, what ensued finally between the deceased and the Defendant that resulted in the deceased untimely death, was as a result of an unlawful fight between the Defendant and the deceased, which under Section 40 of the Criminal Code is not justified.
25. I cannot conclude that the Defendant when approached by the deceased who threatened to slap her apprehended any fair or immediate danger. Her responses suggested that she was not afraid of the deceased and was ready, should he attempt to do anything to respond with equal force which her subsequent action proved.

26. The evidence from Juliana Laurina James satisfies me that my conclusions are not incorrect. Her evidence is that when the Defendant was approached by the deceased and the deceased began calling her names, the Defendant returned the disrespectful insults with her own equal barrage which the witness Juliana James suggests made the deceased more angry than he already was. The actions of the Defendant were designed to fuel the deceased's already angry demeanor. When the deceased spat in the face of the Defendant she returned his aggression with equal and if not greater degree of aggression.
27. In the circumstances I cannot conclude that the prosecution's evidence reveals a case of self-defense which they are under an obligation to negate.
28. I further considered whether duress of circumstance under Section 48 could apply at the stage of sufficiency as the defense of duress of circumstance seems a more likely defense based on the facts and circumstances presented by the prosecution. Section 48 (4) however requires that's for a successful defence under that provision, the Defendant must show that she did not knowingly or without reasonable excuse expose herself to the danger believed to exist.
29. In fact, when reviewing the entirety of the circumstances of the case the Defendant together with the persons with whom she went to the police station choose wisely to remove themselves from the situation to go to the police station to make a report but deliberately and foolishly chose to return to the scene where the deceased was acting out being belligerent and aggressive.
30. In the circumstances I deny the Defendant's application and commit the Defendant to stand trial for the offence of Murder as charged.

**V. GEORGIS TAYLOR-ALEXANDER**  
HIGH COURT JUDGE

**BY THE COURT**

## REGISTRAR