

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE ANUHCR 2008/0049

REGINA

V

CRAIG JARVIS

APPEARANCES

Mr Curtis Cornelius for the Crown.

Mr Cosbert Cumberbatch for the defendant.

2019: NOVEMBER 20

SENTENCE

For manslaughter by reason of provocation

- 1 **Morley J:** Craig Jarvis, now aged 32 (dob 05.07.87), falls to be sentenced for the provocation manslaughter of Teshon Hughes on 04.11.06, to which he pleaded guilty at the first practicable opportunity on 07.11.19. The background to this case is unusual in that from 27.03.09 to today Jarvis has been held in Clarevue psychiatric hospital, was supposed to be the subject of a psychiatric evaluation for 27.03.10, but none was filed until 30.07.19, nine years late, and in which he was found to be fit to plead.
- 2 On 04.11.06, Hughes, then aged 26 (dob 22.01.80) was drinking Beehive rum with friends at the vendors mall in St Johns. He had an argument with 'Susu' and was told to calm down by

'Chimney'. About 15 mins later, Jarvis, then 19, came on the scene, and Hughes picked an argument with him for on an earlier date hitting his cousin 'Roy', there was an exchange of words, and Jarvis crossed the road away, muttering rude words about Hughes' mother. Hughes crossed the road, and pushed Jarvis from behind in the head, swung a punch which Jarvis ducked, and then both men fought, swinging blows at each other. However, in the right hand of Jarvis was a flick knife he had in his right pants pocket, and in trading blows, he caused four wounds to Hughes: two lacerations to his right arm, and a stab wound each to his left chest and back. One pierced his left ventricle and tragically he later died. Running off, Jarvis was briefly pursued by Hughes, while Hughes' friends were throwing bottles at Jarvis. Jarvis in interview later admitted having the knife and to the stabbing, expressing remorse, and describing how Hughes had been the aggressor. Against these facts, the Crown have accepted Jarvis' plea to manslaughter by reason of provocation.

- 3 Jarvis surrendered to police and went into custody on 06.11.06 to await trial for murder. He had no previous convictions, and on remand suffered mental health problems. He was arraigned for murder on 16.09.08, pleading not guilty, and his trial began before Harris J on 13.10.08, though the jury was discharged for his fitness to stand trial to be assessed. It appears his fitness was tried before Thomas J on 26-27.03.09, psychiatrist Dr James King gave an assessment, and Jarvis was found to be 'insane and unfit to stand trial', ordered to be detained at Clarevue, with a requirement there be a report on his condition to the High Court in twelve months, for 27.03.10. No explanation is available for the absence of any report then or after.
- 4 In February 2019, Morley J, this judge, with his orderly PC Joseph visited Clarevue to see a female patient KJ. In December 2017, during an annual visit to the prison, this judge had found her on remand with the adult women for minor criminal damage from March 2017, when aged 14, having been then living in the Salvation Army hostel and who after had nowhere to live. With grateful assistance from various offices, in January 2018 she was placed with health problems in Clarevue in what had been hoped would be a temporary situation, but as no one would take her in, she remained there indefinitely; the visit in February 2019 had been to see

what further progress might be made¹. Jarvis made himself known to the judge through a grill, calling out, asking coherently what was happening to his case. Enquiries were made of the High Court Registry, by this judge, and the file found. A report on his fitness was sought and provided by Dr Griffin Benjamin on 30.07.19, saying Jarvis *'presented with no gross features of psychosis and exhibited a positive attitude...as he was responsive and cooperative. He was able to give a clear account of the incident related to his hospital order over ten years ago. A mini-mental state examination indicated no significant cognitive impairment....He does not suffer any chronic medical or cognitive impairment. He seemed capable of caring for his personal hygiene and environment and over his extended period of inpatient hospital care his clinical stability has been maintained on a relatively low amount of antipsychotic medications (olanzapine 5mg daily)...it is my opinion Jarvis is mentally competent and fit to stand trial. After ten years of inpatient psychiatric care, he does not have any significant feature of psychosis that could impact on his mental competence to respond to the charges against him'*.

- 5 Being now formally fit to plead, Jarvis has done so on 07.11.19, and on 19.11.19, at the formal sentencing hearing, he gave coherent and compelling evidence to the court about his remorse over the death of Hughes, the difficult conditions at the hospital, and his physical ailments, asking he not be returned to the hospital.
- 6 Further on 19.11.19, the court heard movingly from Hughes' mother Sonia Thomas, who explained he had been brought up by her mother while she lived in New York (until shortly after her son's death, returning then to Antigua). Her mother had died in 2009, while his father Ira Hughes had died in 2016. Hughes has two brothers, and three sisters who all miss him, and two daughters, Michaela 14 and Keira 19, who were one and six when they lost their father. Moreover, Jarvis' mother Hazel Duncan gave evidence, with his father in court, telling of his three brothers and five sisters, about how she had been visiting Jarvis monthly, and that she had never learned his prognosis, expressing remorse over Hughes death and personal apology to his mother still in court. Passing sentence has been delayed overnight for it to be reduced to writing, with Jarvis remanded out of the hospital into the prison.

¹ Happily, she was released in August 2019, by now aged 16.

- 7 It is clear the death of Teshon Hughes was an utterly avoidable tragedy had Jarvis not been carrying a flick knife when set upon, about which all parties in court expressed regret.
- 8 Counsel Cumberbatch defending spoke of incredulity Jarvis had been kept in Clarevue for a decade without report. He showed the court copies at earlier hearings of unanswered letters he had sent on 15.03.13 to Clarevue, to the Ministry of Health, and to the Chief Magistrate, and again to the Ministry on 15.09.14.

Constructing the sentence

- 9 Constructing the sentence, the maximum for manslaughter is life imprisonment. While manslaughter can take many forms, provocation manslaughter is its most serious, as it contains all the ingredients for murder, including an intention to cause really serious harm, but reduces culpability fractionally for loss of self-control accepted by the Crown to be brought on here by the actions of the deceased. On the facts, bearing in mind Jarvis was carrying a deadly weapon and used it on someone unarmed, albeit aggressive, it might be said he was lucky not to face a murder trial, where it might be argued he had not lost his self-control, as he had had the presence of mind to wound Hughes four times, with two stabs aimed into the chest, and in this context his actions in self-defence had been unreasonable. It follows a sentence for provocation manslaughter here will be substantial.
- 10 Reflecting on features of the offence, I have chosen to be guided by the UK sentencing guidelines, on manslaughter by reason of loss of self-control, which is slightly different. Doing so, as a first step, I place this offence in the highest category, A, because it was 'loss of self-control in circumstances which only just meet the criteria', for which the starting point in the UK is 14 years, with a range of 10-20 years, but which I will adjust upwards for local expectations to deal firmly with public fighting to a starting point of 18 years, with a range of 10-25 years. The offence is aggravated by the use of specifically a flick knife, being carried for no good purpose, such items being well-known to be tools of gangs and street violence, meriting a deterrent approach, which lifts the sentence to the maximum in the range to 25 years.

- 11 As a second step, reflecting on features of the offender, I consider Jarvis' good character and remorse reduce the sentence by one year to 24 years. I do not consider that his retreating from Hughes and acting defensively to be further mitigation in this case as his response was to use a deadly weapon, in a manner out of all proportion to the threat he faced.
- 12 As a third step, reflecting on the plea at the first practicable opportunity, being when he was before the court on 07.11.19 and finally fit to plead, this attracts the usual discount of one-third, in reducing the sentence to 16 years.
- 13 As a fourth step, reflecting on dangerousness, as he has no previous convictions I find he is not such a danger to the public of further offending he merits a protracted sentence beyond the 16 years the offence requires.
- 14 As a fifth step, time on remand shall count. It appears he spent approximately 2 years and 4 months on remand in the prison and then from 27.03.09 10 years and 8 months confined to the hospital. However the criminal registrar Kayode O'Marde helpfully has reported to the court by email dated 18.11.19 the superintendent of the prison will not consider time in the hospital to be time on remand, as the hospital is not a prison, so that following any prison sentence, the 10 years and 8 months at the hospital in theory might have to be served again, which would be most unfair, meaning there needs to be a practical adjustment of the sentence.
- 15 The Prison Rules mean usually a prisoner will serve two-thirds before automatic remission if of good behaviour. On a sentence of 16 years, a prisoner would therefore usually serve 10 years and 8 months. However, as can be seen, Jarvis has already been confined for 13 years, being November 2006 to November 2019, of which only 2 years 4 months has been in the prison. If the time in the hospital does not count, if sentenced to 16 years he would have another 8 years and 4 months to serve; and conversely, if it does count, he would have served 2 years and 4 months more than he should.
- 16 How should the time at the hospital be approached? On the one hand it is incarceration. On the other, the conditions are better than in the prison. To my mind the time in the hospital should not be treated as automatically and exactly the same as time in prison. Moreover, time in hospital has been about helping Jarvis to return to mental health, which has been

successful, and not a punishment. Balancing matters, I am of the view the combination of the 10 years 8 months in the hospital and the 2 years 4 months in the prison, being 13 years of incarceration, should be treated collectively as being equivalent to a sentence of 16 years expecting he serve 10 years and 8 months, which in having being confined for 13 years he can be deemed already to have done.

- 17 The way to give effect to such a sentence is to declare it 'time served'. This will mean, that though the prison will record his having served only 2 years and 4 months, in declaring his sentence to be 'time served' he should be released from the prison immediately, back into the care of his father, who has said in court on 19.11.19 his son can come home.
- 18 Before closing these remarks, I wish to express the court's deep dissatisfaction that it appears no public body – the Ministry of Health, the High Court Registry, and the Office of the DPP – paid proper attention to the circumstance of Craig Jarvis, facing murder, when a medical report was due to the High Court on 27.03.10, and yet no one sought to monitor this in almost a decade. Were it not for a haphazard meeting by Jarvis with this judge, it very much appears his case may never have progressed, and it is possible he may have spent his whole remaining life in the hospital though coherent and fit to plead. There ought to be an enquiry convened by the Health Minister, leading to a report to the Attorney General, at least to establish no others are in a similar predicament. I direct please that a copy of these remarks be sent to the Attorney General for his kind attention.
- 19 *Craig Jarvis, please stand up.* For the reasons I have explained, for the provocation manslaughter of Teshon Hughes on 04.11.06, to which you have pleaded guilty at the first practicable opportunity, the sentence I have calculated this offence requires is 16 years imprisonment, and recognising you have been confined for 13 years, to give effect to this calculation, I declare your sentence to be 'time served'. I expect you to be released today.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

20 November 2019

