

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE ANUHCR 2017/0055

REGINA

V

AUNDREY JOSEPH

APPEARANCES

Ms Rilys Adams and Mr Curtis Cornelius for the Crown.

Mr Lawrence Daniel for the defendant.

2019: JUNE 3

SENTENCE

For manslaughter after giving evidence against a co-defendant convicted of murder

- 1 **Morley J:** Aundrey Joseph (dob 08.08.95), now 23, falls to be sentenced for manslaughter, arising from his role in the murder by Meryl 'Tula' Chiddick of Conroy 'Laro' Andrew on 10.11.14 at about 3.15pm on a farm in Patterson, near Liberta, of which Chiddick was convicted by a jury on 18.12.18 following a trial in which Joseph gave evidence against him.
- 2 Sentence on Chiddick was passed on 15.04.19 and he received 42 years imprisonment. Sentence of Joseph should have been passed on 27.02.19, but has been delayed owing to a late pre-sentence report, received on 20.05.19, and then further delayed as his lawyer did not attend court on 23.05.19.

- 3 On 10.11.14, Chiddick, then 58, shot Laro, described as a 'rastaman' farmer, through the left side of his head with an old 0.25 pistol from 19ft, killing him instantly, when Chiddick was looking to steal cannabis from Laro's farm and had been confronted by him.
- 4 Chiddick had recruited Joseph, then 18, with learning difficulty, to look among farms to steal cannabis that day. They had taken a bus from St Johns to Swetes, alighted by the Wesleyan church, and set off on foot, at first on a dirt road, then across country, south. During their long walk in the bush, Chiddick took the pistol from his pocket and loaded it in Joseph's presence. Their progress toward Laro's farm was observed by a farmer, 'Moses', recognising Chiddick (who has a distinctive long beard), noting he was with a younger man unknown to him, and through another's phone, belonging to 'Cheeks', raised the alarm with Laro by phone, who was warned specifically that Chiddick was coming. On entering onto Laro's farm area, being on a steep slope, Joseph said (as recorded in his police Q&A interview on 12.02.16):

Q When you saw the rastaman what did Tula do?

A Me see Tula pull the gun and the rastaman come at us with a long cutlass. The rastaman was at his little bush house on the hill and the rastaman say 'who that', and then me see Tula tie a wash rag around his beard and one around his face from his nose down. Tula walk up to the man, tell the man to back off, and Tula bust ah shot in the air, and the man keep coming, and Tula fire ah shot again, and then me see the man drop ah ground and start to roll. Me ask he if he kill the man and he say yea, yea, come, come.

- 5 Both made their way to another farm near Liberta, though nothing was taken as Chiddick told Joseph he had no more ammunition if confronted, and so both walked through the bush back to Swetes, caught the bus back to St Johns, where they went to their homes near each other in George St, Green Bay.
- 6 Chiddick was known to Laro's family, and had threatened verbally to shoot Laro in about March 2014 when confronted on a previous occasion. Being immediately a prime suspect, he was

arrested early on 11.11.14, made no admissions, and was released owing to lack of evidence. He then threatened Joseph to say nothing, and the case went cold.

- 7 In about September 2015, Chiddick's neighbour, Tevin Willock, chased a chicken under a house in Green Bay previously owned by Chiddick and found wrapped in cloth the 0.25 pistol with ammunition. He was confronted by Chiddick to return it but pretended not to have it. However, on a later date he discharged, it, drawing police attention and was arrested in possession of it in late 2015. Ballistic analysis showed the bullet recovered from Laro's body had come from the gun, and so Willock confessed to who owned it, pointing to Chiddick. This meant that the case was re-opened, and Chiddick was arrested on 10.02.16. So too was Aundrey Joseph, as a result of intelligent police analysis of who among those who knew Chiddick might fit the description of the young man seen in his company on 10.11.14. At first, Joseph told many lies, pretending to know nothing of the murder, but on 12.02.16 at Longfords police station was identified by the bus driver who had taken him to Swetes with Chiddick that morning. Thereafter, encouraged by his mother, Joseph explained at length to police what had happened.
- 8 Though Chiddick continued to deny knowledge of the event, both were charged with murder, remanded in custody, and on 23.02.18, a plea to manslaughter was provisionally accepted by the Crown from Joseph, who was bailed, in exchange for testimony against Chiddick, which was provided in a signed written statement dated 23.02.18, consistent with his police interviews.
- 9 Joseph then gave evidence against Chiddick, in October 2018 on 8, 9, 10, 15, 25 (at the loci), and on 29.10.18 (on being recalled).
- 10 From all accounts, Laro was an easy-going personality, much loved by his wife Denise, and children Laresha, Denisha, Damien, and Laron. It was his sons who found him in the dark, lifeless on his farm, while his wife then collapsed when she heard the news on the phone. On 15.04.19, Mrs Andrew gave moving evidence as a victim impact statement, describing the family's loss; how an elderly cousin passed on learning of the murder; Laro's mother passed soon after; Larisha still cries daily, and this stress is said to be the cause of a tragic recent miscarriage; grandchildren have been born without their grandfather to welcome them; it has been hard for

their close-knit family, in a community which has not a bad word about Laro. They were married 18 years, and she greatly misses her husband.

- 11 It was clear from the lengthy interaction the court has had with Joseph that, without being unkind, he has limited intelligence, being unable to read and write beyond a pre-10 age group, with attendant obvious learning difficulties, failing even his primary school certificate. His plea to manslaughter was premised on his lacking the intelligence to realise Chiddick might use the gun to shoot someone, so that he only ever contemplated it might be used somehow to threaten and so to raise fear. The court accepts he is easily led. In his presentence report, by probation officer Merve Joseph, dated 20.05.19, during interview he was visibly remorseful, uttering *'Meryl shot the man for no reason'*.
- 12 Concerning his giving Queen's evidence against Chiddick, Joseph was notably consistent as to what Chiddick did. However, to his discredit, he minimised his own role, by saying through much of his testimony he had only ever thought he was going to do some work, probably of a construction nature. This had been at the root of his plea to manslaughter on 23.02.18, and was partly why the prosecution accepted it, in combination with his limited intelligence. It was only on 15.10.18¹, in response to questions from the judge and jury, after completing his evidence in chief and cross-examination, when he finally admitted he realised in the bushes when he saw the gun being loaded that Tula had brought him to help steal cannabis. That he only ever thought he would be doing work was an important minimisation, because it pointed away from his possible culpability for murder under the doctrine of joint criminal enterprise.
- 13 As to manslaughter, which is an offence contrary to Common Law, the maximum sentence is life imprisonment.
- 14 In constructing the sentence, I have chosen to be guided by principles in the UK sentencing guidelines², where the maximum is the same. In my judgment the offence falls into category A, meaning it attracts *'very high culpability'*, owing to the extreme nature of category B factors: in

¹ See Judge's notebook 11, p48.

² See <https://www.sentencingcouncil.org.uk/wp-content/uploads/Manslaughter-definitive-guideline-Web.pdf>

particular, that here *'death was caused in the course of an unlawful act which carried a high risk of death or grievous bodily harm which was or ought to have been obvious to the offender'*; and *'death was caused in the course of committing a serious offence, (namely praedial larceny of an illegal crop), in which the offender played more than a minor role'*. At its simplest, Joseph went to steal cannabis knowing his elder was armed, knowing this would help in their offending, but not appreciating owing to his limited foresight, because of his limited intelligence, the gun might be fired by Chiddick at the farmer. He was lucky not to be jointly prosecuted for murder, and in this context the manslaughter is at the highest end of the scale.

- 15 As such, it has a starting point of 18 years. There are no further identifiable aggravating or mitigating features of the offence.
- 16 Turning to aggravating and mitigating features pertaining to the offender, on balance nothing arises: he has lived in poverty, but this does not relieve his culpability as the purpose of the theft was not for bread to feed a family, but for an illegal substance; it is true he is impressionable, though this is undercut by how he was also loyal and lying for so long in support of Chiddick; he was not of good character (though for minor matters) so there is no discount arising; his limited intelligence has already been considered in reducing his culpability for murder; in tandem, though he is easily led, I do not consider him dangerous meriting an extended sentence; and as to his evident remorse, this is offset by how he kept quiet for two years and was a fluent liar when first confronted by police.
- 17 However, it is considerable mitigation that he gave Queen's evidence. It is well established in sentencing practice that assistance to the Crown can attract a discount. In the UK this principle is enshrined in **s73 Serious Organised Crime and Police Act 2005**. The extent of the discount is discussed in **Blackstones 2017** at **E1.13**, noting:

The decision in **R v Sinfield 1981 3CrAppR(S) 258**, establishes that where an offender has given significant assistance to the police or prosecuting authorities especially where it leads to the apprehension of other offenders, he may expect a discount, possibly a substantial one. The level of discount will depend on the quality, quantity, accuracy, and timeliness of the information given, the offender's

willingness to testify, and the extent to which his cooperation has put himself or his family at risk of reprisal. In general the greater the level of criminality revealed, the greater the consequent risks to the offender and family. This discount should be set a level appropriate to show offenders it was worthwhile to provide such assistance.

- 18 On the one hand, it is fair to say that the evidence Joseph gave was important in securing a conviction against Chiddick. It was of quantity, quality, accurate, and not incidental or merely additional, but lay at the heart of what had happened on the farm where there were no witnesses. Moreover, he has placed himself at risk of reprisal from Chiddick or his supporters, not least because, surprisingly, and worryingly, there is little policy or provision for separating them in the only jail, (though I note they spent many months on remand without incident notwithstanding Chiddick was aware Joseph planned to testify against him). Insofar as I can influence what is otherwise a prison decision, I offer the opinion they should be kept apart, with Joseph kept safe from other inmates too, perhaps in maximum security, as sought by Counsel Daniel.
- 19 On the other hand, it was strongly disappointing Joseph minimised for so long his knowledge that in the bushes on the seeing Chiddick loading the gun he realised he was with Chiddick to steal cannabis.
- 20 In assessing the quality of any Queen's evidence, irrespective of whether there is a conviction, I have to ask myself if I am sure the testimony was wholly or to any extent dishonest or mischievous, giving the witness the benefit of the doubt if not. Unhappily, while it is plain Joseph's evidence of what Chiddick did was thoroughly reliable, I am of the view Joseph's minimisation of his own frame of mind was dishonest, though understandable, mitigated further by his weak intelligence, and by the fact in the end he admitted it. Nevertheless it has the effect of diminishing the discount I can properly allow for his important Queen's evidence. There may be cases where the discount might be as high as one-third (which would here be six years). In this case, the discount will be half that, namely three years. This has the effect of reducing the sentence from 18 years to 15 years.

- 21 I turn now to the fact Joseph pleaded guilty. This was on 23.02.18, when manslaughter was first offered as a possible plea, and therefore was at the first practicable opportunity. As such, the plea attracts a standard discount of one-third, which is a further reduction of five years, from 15 years to ten years.
- 22 Time spent on remand shall count, to be calculated by the prison.
- 23 Concerning ancillary orders, there are none to make as I have already ordered the pistol destroyed.
- 24 *Aundrey Joseph, please stand up.* For the reasons I have explained, taking into account your limited intelligence and that you gave evidence against Meryl Chiddick, whom you significantly helped to convict of murder, the sentence of this court for the manslaughter on 10.11.14 of Conroy 'Laro' Andrew is 10 years imprisonment. Time served on remand will count. You will be eligible for remission if of good behaviour after serving two-thirds of your sentence. You may go down.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

3 June 2019