

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA

CASE ANUHCR 2018/0061

REGINA

V

ANTHONY JOSEPH

APPEARANCES

Ms Rilys Adams for the Crown.

Mr Peyton Knight for the defendant.

2019: APRIL 12

SENTENCE

**For manslaughter where violence was begun by the deceased
owing to perceived sexuality of the defendant**

- 1 **Morley J:** Anthony Joseph, aged 23, (dob 25.07.95) was first charged with murder, but falls to be sentenced following an early plea on 14.12.18 to manslaughter for causing the death on 12.06.17, when then aged 21, of Gavin Edwards, then aged 25 (dob 27.12.91), by stabbing him in the stomach, it is said with scissors though the weapon was not recovered, leading tragically despite medical assistance to exsanguination and fatal haemorrhagic shock, following a row, where each called the other names, and Edwards broke a bottle on the head of Joseph, causing a laceration (leaving glass in the wound), then grabbing him in a headlock.

- 2 As Joseph broke away, he is described by the witness MJ as firing a single stab, and then running off in the opposite direction to Edwards. It is plain he knew full well he had stabbed Edwards, saying on arrest, *'officer he busted my head with a bottle and I stabbed him'*, adding in interview later *'me tek up the scissors...and dig in one time'*.
- 3 As such, I approach the stabbing as retaliation, and not as overreaction in self-defence, and further that its intention was to cause harm just short of grievous bodily harm.
- 4 In more detail, Edwards and Joseph were cousins. The row began around 10pm in Booby Alley, at Point in St Johns, when Edwards called Joseph an 'antiman', who then called Edwards a 'punk', and it persisted after, with neither backing off, so that neighbours were listening and MJ even tried to intervene, noting neither would pay attention to him. Edwards was described by the witness LS as *'a loud person who loves to start a drama that can lead to problems'*, and Joseph as *'a person that doesn't love trouble, but he thief and handfast whenever he ready'*. Moreover, concerning Edwards, the probation officer Denfield Phillip reported to the court via Defence Counsel Knight he was a well-known member of the 'Red Shirt' gang in Point. However, notwithstanding the material showing Edwards was the more violent, and I accept he started the altercation by name calling and the violence which followed, I am satisfied Joseph was happy to engage in confrontation rather than walk away.
- 5 This case is not the first occasion the court has dealt with serious violence following young men calling each other names. For them to call each other gay or a punk is a ludicrous reason for a bottle broken on someone's head, and then a stabbing. Such behaviour is intolerable. When an exchange gets heated, young men should walk away; the bigger man is the one who keeps the peace by letting name calling go.
- 6 Sadly, no one from Edwards family wished to come to court or contribute to a victim statement, including his mother and aunt, and so no information was made available about the impact of his loss on their lives.
- 7 There are three features to this case which considerably mitigate Joseph's behaviour.

- a. First, Joseph claims he found the scissors on the ground while in the headlock, and thus they had not been carried by him into the confrontation. He believed they had come from Edwards, whose reputation may indeed make this a possibility, and as the Crown have no evidence to the contrary and therefore they do not gainsay Joseph found the scissors, I will approach the sentence that they had not been his.
- b. Second, Joseph reports through Counsel Knight, and the Crown has not sought to offer specific contradiction, that he had three years of trouble with Edwards, from when he was about 18, because Edwards believed him to be a homosexual, always bullying him when seen, on well over twenty occasions. Two weeks earlier, it was said, (and echoed by an aunt in the pre-sentence report dated 28.02.19 at page 4), that Edwards had caused Joseph's left hand to be damaged, when chasing him with a gun, with another named 'Smokey' (now deceased, being shot in a gangland feud), so that Joseph hurriedly climbed out a window causing a deep laceration. In support, the bandage was noted by witnesses on 12.06.17.
- c. Third, Joseph has expressed convincing remorse over Edwards' death, both to the police and to the probation officer, notably saying in police interview on 14.06.17:

'Me feel bad because he supposed to be my family and me never do anything out of the way fu harm he...I am sorry for the whole drama...cause if ah one thing about Point people ah we will cuss today, tomorrow fight, and so maybe a month or so after we talk back, the baker bar, that does bring us back together, we share, cause if somebody want a raw or a lighter we just ask one another and we just party and forget about the whole drama. Me would love to apologise for the whole drama, is not suppose to happen like how it happen'.

- 8 As part of his submissions, Counsel Knight suddenly produced 13 pages from **Blackstones Criminal Practice** on manslaughter, and the case of **R v Alberto Rosa de la Rosa 2013** from

the British Virgin Islands¹, which was a review of manslaughter sentences conducted by Ellis J. While these materials are helpful, every manslaughter case is different, and it must be noted in practice the offence has famously the widest sentencing range.

- 9 Moreover, the court wishes to add authorities should always be distributed in advance, handed to opposing counsel and to the court early enough to be read fully, rather than dropped on everyone as counsel rises. The Bar must understand it is bad practice to hold on to authorities until the last moment, as this can amount to ambush, and will usually mean the materials are not properly considered during argument, being referred to patchily and often lacking context.
- 10 Concerning the **Blackstones** extract, it is further important to note the UK sentencing council in November 2018 published manslaughter guidelines, after much deliberation, and these now supersede the old authorities.

Constructing the sentence

- 11 This manslaughter arises from an unlawful act, namely a retaliatory stab in a fight freely engaged, and then after a bottle was broken on Joseph's head, where there was a lesser intent than for murder, meaning the intent during the single stabbing action was to cause harm, not in self-defence, just short of grievous bodily harm.
- 12 Reflecting on the new UK guidelines, which being from a sister jurisdiction find resonance here, I assess the offence falls into category B, meaning a starting point of 12 years, with a range of 8-16 years, the maximum sentence available being life imprisonment.
- 13 Concerning features pertaining to the offence, on the proposition not gainsaid by the Crown that Joseph found the scissors at the scene, and the fact Edwards started the argument, the sentence can reduce a further 2 years to 10 years.
- 14 Further, and importantly, this court accepts that Joseph was being persecuted by Edwards for 3 years, and who had two weeks earlier chased him with a gun, all because Edwards believed

¹ Criminal case 22 of 2014.

- Joseph to be gay. Let this be clear: attack on the grounds of perceived sexual orientation is completely unacceptable. A strong message must be sent to the public. Edwards' persecution of Joseph as background to how this offence occurred means the sentence will be reduced a further 2 years, to 8 years.
- 15 Turning to features pertaining to the offender, reflecting on the fact Joseph is of good character, and has expressed convincing remorse, the sentence can be reduced a further six months, to 7.5 years.
- 16 Turning to the plea, it attracts a discount of one-third, meaning the sentence will be reduced a further 2.5 years, to 5 years.
- 17 Time spent on remand will count, to be assessed by the prison.
- 18 *Anthony Joseph, please stand up.* For the manslaughter of your cousin, Gavin Edwards, on 12.06.17, following a three year campaign of persecution of you by him because he thought you to be gay, where you stabbed him once with scissors you found at the scene on release from a headlock, not intending grievous bodily harm, having first had a bottle broken on your head by Edwards, in light of your plea, good character and remorse, will be 5 years imprisonment. Time on remand will count. You will be liable to serve two-thirds of the sentence before being eligible for remission if of good behaviour. Willingly engaging in confrontation and fighting over name calling is intolerable. You may reflect you should have walked away when MJ intervened. You may go down.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

11 April 2019