

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE ANUHCR 2015/0079

REGINA

V

SHELTON HUNTE and TREVORN FRANCIS

APPEARANCES

Mr Adlai Smith for the Crown.

Mr Ralph Francis for Hunte.

Mr Lawrence Daniels for Francis.

2018: MAY 11

SENTENCE

For wounding with intent to murder, of a bystander, during a gangland shootout

- 1 **Morley J:** Shelton Hunte aged 31 (dob 20.10.86) and Trevorn Francis aged 27 (dob 17.10.90) fall to be sentenced for the consequences of a gangland shootout at about 8pm on 06.08.13 among public crowds during carnival festivities at the East Bus Station in St Johns on Antigua. They were tried over 13 days between 29.01.18 and 01.03.18 and convicted by the jury each with possession of a firearm with intent to injure, jointly of wounding Judith Wynter with intent

to murder, then aged 62 (dob 29.06.51), an innocent bystander caught in the crossfire¹, and of shooting with intent to murder each other².

- 2 During carnival the East Bus Station becomes a festival of shacks and bars serving food and drink, called 'Shantytown', heavily populated with families enjoying Antigua's famous annual August street parties. It is a time for celebration, as children mix with adults of all ages. Moving through the crowds, Francis, then aged 22, insulted Hunte, then aged 26, calling him a 'punk' or 'pussyhole'. Hunte responded to being merely called a name by drawing a 9mm Glock pistol, whereupon Francis in retaliation drew a 0.38 pistol. Both shot at each other at close range, Hunte firing four bullets and Francis firing two bullets. Hunte hit Francis in the leg, and it is sure from the evidence shot through the spine of Judith who was sitting with friends at a nearby bar behind Francis. Francis hid behind a Nissan Toyota pickup and two bullets from Hunte went through the cab in which a lady was cowering in the well by the pedals, miraculously emerging unscathed. Francis hit Hunte superficially through a fleshy part of his upper right chest, and also the right hand of Hunte's friend Takuma Forde. Both Hunte and Francis ran off. Hunte made his way to hospital, while Francis and his friend Mika were pursued by another, who emptied an entire 13 round magazine from a different Glock pistol at them on a dirt alley near Country Pond, hitting Francis in the other leg and superficially in his neck, also shooting a round through the entire back seat area of a passing Suburu Legacy, mercifully then unoccupied (but often was by a little girl), and at least three rounds through an unoccupied parked Toyota Noah. Francis also made his way to hospital. Both defendants were arrested undergoing medical care. They have been in custody ever since. On 23.08.13, the two Glocks were recovered in the possession of Cadaphey Evanson and Maximillian Roberts, friends of Hunte, in whose company Hunte had been that night, and who later received prison terms for possession of firearms. The 0.38 pistol was never recovered.

¹ Culpability of both defendants arising on the doctrine of transferred malice and joint criminal enterprise, irrespective of proving who shot Judith Wynter.

² On the 13 count trial indictment, Hunte was unanimously convicted of counts 1, 3 and 11, (respectively, wounding with intent to murder Judith Wynter jointly with Francis, shooting with intent to murder Francis, and possession of a firearm with intent to injure), while Francis was convicted unanimously of count 1, and by a majority of 11:1 on counts 5, and 12, (respectively, wounding with intent to murder Judith Wynter jointly with Hunte, shooting with intent to murder Hunte, and possession of a firearm with intent to injure).

- 3 There was a third defendant, Adrian Shand, who was alleged to be the person who shot at Francis at Country Pond, but was acquitted on the sparse evidence before the jury.
- 4 No defendant gave evidence in the trial, and no evidence was called on their behalf.
- 5 This was gang-related violence. The evidence strongly suggests that Hunte was in a gang that night at least with Forde, Evanson, and Roberts, while Francis was in a gang at least with Mika. It was a disgraceful shootout of six rounds between rivals among family crowds, with an armed pursuit of Francis and a further discharge in a public place of 13 rounds.
- 6 In his pre-sentence report by Nakitia Williams dated 18.04.18, Hunte maintains his innocence, as without a gun, intervening to stop the violence, which flies in the face of the overwhelming evidence, *inter alia* having been identified by three witnesses specifically as the man shooting at Francis. He was described as having good family relations and a religious upbringing. He is the father of a daughter aged 5 who he has hardly seen since remanded, to an extent now supported by his brother. A member of his community described him as a 'gunman', firing off rounds in his own yard, which I ignore for this sentencing exercise. Previous convictions include on 19.06.09 wounding with intent, by means of a firearm, on 03.04.08, for which he got 4 years.
- 7 In his pre-sentence report by Lenroy Skepple dated 18.04.18, Francis maintains his innocence, as without a gun, caught up in the shooting, bewildered as to why, which flies in the face of the overwhelming evidence, *inter alia* having been identified by one witness specifically as the man shooting at Hunte, and who was pursued for this by another, who shot further at him in revenge, wounding him twice more. He is the father of a daughter aged 11. He lacks communication skills and cannot read or write. Previous convictions include on 11.10.11 possession of a 0.32 pistol and 9 rounds of ammunition on 30.07.07 for which was fined or ordered to serve a year, and on 13.05.13 possession of a firearm with intent to endanger life on 31.08.11 for which he got 4 years.
- 8 Concerning Francis, in his pre-sentence report he complains that the person who shot him at Country Pond has not been convicted, which at trial was said by the prosecution to be Shand, and said to be so during mitigation by Counsel Daniels. It should be pointed out that Francis

was given the opportunity to give evidence against Shand, and also Hunte, and if he had done so the prosecution would have accepted a plea from him simply to possession of a firearm with intent to injure, as one who may have responded defensively to Hunte pulling a gun first. He thought about it over an adjournment of several days during the trial, declined to cooperate, and said nought in his defence. And now the jury have decided they are quite sure he was not acting defensively, but in retaliation, convicting him of co-equal culpability with Hunte. If he laments that the person who shot him at Country Pond is free, while he today faces a significant sentence for two offences with intent to murder, he has only himself to blame.

- 9 Concerning victim impact, I visited Judith's home for an hour on 20.04.18, in company with court staff and counsel to see for myself her pitiful situation. Her heart stopped twice during medical intervention, and she is paralyzed from below her breast. Her legs have withered, and she lies all day, suffering bedsores on her back, on a bed in a small room, with open windows to catch the breeze. She leaves the room about once a month. Neighbors visit and she is daily cared for in shifts by her son and daughter. She has little money and insufficient financial support from government, though has nursing help during several days weekly. She is a remarkable woman, being in seeming good spirits, who told me sincerely that she forgives her wrongdoers, in keeping with her strong Christian faith. She impressed me deeply and I consider her wretched condition a significantly aggravating feature in this terrible crime. It would bring a tear to the eye of many to witness her radiant smiles set against her deplorable frailty.
- 10 At court, for the sentencing hearing on 11.05.18 she has appeared by skype, as she is unable to be here owing to her bed-bound condition. She has seen the defendants and spoken clearly of her hardships.

Constructing the sentence

- 11 On Antigua & Barbuda, the maximum sentence is 35 years for wounding with intent to murder, contrary to **s13 Offences against the Person Act cap 300**, 35 years for shooting with intent to murder, contrary to **s16 of the same supra**, and 10 years for possession of a firearm with intent to injure, contrary to **s12 Firearms Act cap 171**.

- 12 In assessing the starting point for the most serious offence in this case, namely on Judith Wynter, I make two observations.
- a. On Antigua & Barbuda, for robbery with a firearm, the legislation requires a minimum term of 25 years³, (though this has been struck down as unconstitutional by the Court of Appeal of the Eastern Caribbean Supreme Court⁴), suggesting how very seriously local gun violence is taken.
 - b. I have chosen to be assisted by the UK sentencing guidelines for the equivalent of attempted murder, where the maximum is life imprisonment, and assess the offending in this case to be at the most serious, namely 'level 1'⁵. This is because there has been long term and serious physical damage to a person, namely Judith, and had she died, the murder would have been by a firearm, which would mean in the UK a sentence of life imprisonment with a minimum term starting point of 30 years. In consequence, the starting point for a level 1 attempted murder there in such circumstances is a determinate sentence of 30 years. However the maximum there is life, whereas here it is 35 years, so that I must adjust the starting point here downwards, I assess to 25 years.
- 13 As to aggravation, as regards each defendant, there are three significant features.
- a. Each fired more than one round, among family crowds: Hunte fired four and hit two people, and Francis fired two and hit two people.
 - b. Each has highly relevant previous convictions.
 - c. This was gang-related violence, involving young men toting guns in public, drawing them and firing for no reason other than gangland rivalry with perceived disrespect following name calling.
- 14 I do not consider the continuing protestations of innocence in the pre-sentence reports to be aggravation, and instead just ignore them.

³ See **s6 Law Revision (miscellaneous provisions) Act no.2 of no. 9 of 2000**.

⁴ See the sentencing appeal decision of Gordon JA and Rawlins JA in **Thelbert Edwards v Regina Criminal Appeal no. 3 of 2006**, at paras 16-37 and 75, and the sentencing decision of Morley J in **Deandre Henry et al 2018** ANUHCRCR 2016/0063, paras 18-20.

⁵ See SG 475 at page 581 of **Blackstones 2017** first supplement.

- 15 Weighing therefore the aggravating circumstances, I increase the sentence by 8 years from 25 years to 33 years.
- 16 As to mitigation for Hunte, there is none. His personal circumstances are unremarkable, as conceded by Counsel Francis, is not of good character, he had a good upbringing, and there is no credit available for plea. His sentence will be 33 years.
- 17 As to mitigation for Francis, while there is no credit available for plea, nor good character, I do take into account that he is poorly educated, inarticulate, and unable to read and write. Moreover, he only drew his gun in response to Hunte, and the evidence shows did not fire the bullet which so grievously wounded Judith. In addition, he was hunted by another, and shot at multiple further times, being wounded twice more, such that there is still a bullet in his leg. He did not start this, was out-gunned, and came off worst. As such, combining these features, I can reduce his sentence by 9 years to 24 years.
- 18 Concerning the other offences:
- a. For shooting at each other with intent to murder, respectively hitting each other, superficially (and therefore not causing lasting serious harm, so that the starting point must be lower), I assess the final sentence, adjusted for aggravation and mitigation, including the gangland context, to be 27 years for Hunte, and 24 years for Francis (as he only drew in response), to run concurrently, as arising from the same event.
 - b. For possession of a firearm with intent to injure, in the context of carrying it in public in the context of gang violence, I assess the sentence for each to be the maximum, namely 10 years, as it cannot be imagined a worse example of the offence, being gangland public swaggering, to run concurrently, as arising from the same event.

Finally

- 19 *Shelton Hunte, please stand up.* For the reasons I have explained, for the offence of wounding Judith Wynter with intent to murder, the sentence is 33 years imprisonment, for shooting at Trevorn Francis with intent to murder, 27 years, and for possession of a firearm with intent to injure, 10 years, all to run concurrently, so that the overall sentence is 33 years. Time spent on

remand will count, as calculated by the prison. You may be eligible for remission after serving two-thirds. You may go down.

- 20 *Trevorn Francis, please stand up.* For the reasons I have explained, for the offence of wounding Judith Wynter with intent to murder, the sentence is 24 years imprisonment, for shooting at Shelton Hunte with intent to murder, 24 years, and for possession of a firearm with intent to injure, 10 years, all to run concurrently, so that the overall sentence is 24 years. Time spent on remand will count, as calculated by the prison. You may be eligible for remission after serving two-thirds. You may go down.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

11 May 2018