

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE NO. ANUHCR 2017/0079

REGINA

V

GRANVILLE GORDON

APPEARANCES

Mr Adlai Smith for the Crown.

Mr Sherfield Bowen for the defendant.

2018: APRIL 23

SENTENCE

For 'lesser intent' manslaughter

- 1 **Morley J:** Granville Gordon, aged 34 (dob 22.05.83), falls to be sentenced for '*lesser intent*' manslaughter, following a plea on 18.04.18, two days into his trial for the alleged murder on 05.01.08 of Tyrell Brann (dob 14.10.89), then aged 18.
- 2 As the evidence grew at trial that he had killed Tyrell, though he had denied it, he had then asked through his counsel for a *Goodyear* indication of sentence on a plea to involuntary act manslaughter, supported by the prosecution, to which I acceded; he then pleaded, the prosecution accepted the plea as settling the criminality of events, proceeded no further on the

murder, and the jury was discharged from continuing, so that the allegation of murder is to lie on the file not to be proceeded with, if ever, without leave from the Court of Appeal.

3 These remarks in writing record the *Goodyear* indication and therefore the construction of the sentence, which will be formally passed today.

4 Tyrell, with his friends Tishon, Julian and Brandon, all around the same age, went to a farm near Five-Islands village during the afternoon of Saturday 05.01.08 in search of cannabis they had heard was growing there. It is common ground that Gordon, then aged 24, farmed the land, was in a shack sleeping, his dogs barked at the intrusion, he woke and called out for the trespassers to leave, firing a warning shot out the window. He then over a significant distance chased Tyrell, who had separated from his friends, firing again. Tyrell's three friends, who had run the other way, did not see what happened to him.

5 Tyrell's body was found by police two days later deep into undergrowth at least a half mile from where he had last been seen, shot dead through the back of the head.

6 By his plea, Gordon accepted he killed Tyrell, with a 9mm pistol, while guarding with dogs a small cannabis field, and then moved his body far into hiding, having lied to police he had only chased him, firing at him with a shotgun, and did not know what had become of him.

7 In assessing this sentence, the court has proceeded on the following basis, (on the grounds that these features are put forward by the defence, not gainsaid by the prosecution, and I cannot be sure they are untrue):

- a. At least one of the intruders was armed, with a 0.22 firearm, which was discharged to threaten Gordon at the scene (as evidenced by a recovered cartridge near the shack, photographed as exhibit 2.3, and by how next day, Sunday 06.01.08, the remaining three intruders returned to look for Tyrell, with a posse of many other men, who had at least seven revolvers between them, directly threatening to kill Gordon and his fellow farmer Anson Farrell if harm had come to Tyrell).

- b. Gordon only ever intended to frighten off Tyrell, by shooting the 9mm pistol toward him above his head to scare him, and therefore had only an intention or recklessness as to causing some harm, namely fear, but no intention to kill or cause really serious harm, so that the bullet striking Tyrell in the back of the head as he was running off, killing him instantly, was strictly unintended, and in a non-legal sense therefore unlucky and an accident. For this reason, the offence can be characterised as 'lesser intent' manslaughter, being an intent falling short of the *mens rea* for murder, in that here the *mens rea* is accepted as being contemplation not of serious harm or worse, but of some harm, being to frighten by an unlawful act, per **R v Ball 1989** Crim LR 730, in this case by the discharge of an illegal firearm.
- 8 Gordon fled Antigua immediately after his encounter with the posse on the Sunday, at first to Montserrat, and was not seen again in Antigua until March 2016, to where he was deported by St Vincent owing to immigration troubles. He has been in custody since his return.

Constructing the sentence

- 9 A sentence for manslaughter is often difficult to assess as circumstances can vary so very widely. On careful reflection, reviewing various other sentences of myriad lengths and facts, I assess the starting point for this manslaughter to be at least 15 years imprisonment, which is a substantial sentence. This is because there is high culpability in that he was chasing Tyrell over a distance and he used an illegal firearm, (even though the fatality was an accident, while specifically not intending that a bullet should strike Tyrell, being only to scare).
- 10 However, I do consider it to be a substantial feature in mitigation there was an intrusion onto Gordon's property by four men, intending to steal from him, at least one of whom was armed and who discharged his weapon, and as such in my judgment this striking feature means the sentence should be reduced by a third to ten years.
- 11 The fact that Gordon is of good character would ordinarily attract a further discount, but this is cancelled out by his having fled responsibility for his actions for eight years.

- 12 I allow credit for the plea at 20%, which might be said to be generous, as the trial had started. However in my discretion, I allow 1/5th in recognition of how very difficult it has been for the defendant to accept his criminal culpability to shooting someone who to his mind had come with others armed as he thought 'to rob' him. What he has no doubt found hard to grasp is that if chasing a man, and firing at him to scare him, he cannot have been acting in self-defence as the man was running away. It has been as the trial has unfolded that he has been able finally to appreciate his situation, and though lesser intent manslaughter had been offered by the prosecution long before, it has taken seeing a jury begin its assessment that has finally woken him to the legal reality that he is criminally culpable.
- 13 Such a discount for plea brings the sentence to eight years.
- 14 As an overview, it is plain that all parties were engaged in criminality: the intruders in coming to steal, and the defendant in growing a modest crop of cannabis. Both parties were armed. The loss of Tyrell was an entirely avoidable tragedy if there would be fewer firearms on Antigua.
- 15 *Granville Gordon, please stand up.* For the reasons I have explained the sentence I pass for your plea to the manslaughter of Tyrell Brann, shooting him in a sense 'by accident', with an illegal 9mm pistol, intending only to scare him, while chasing him off your farm, his having come with others armed to steal marijuana plants from you, is eight years imprisonment. Time spent on remand shall count. You may go down.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

23 April 2018