

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCR2017/0018

BETWEEN:

REGINA

V

JOYLYN JAMES

Appearances:

Ms. Crisan Greenidge for the Prosecution

Ms. Dennies Burris and Ms. Rena Banfield for the Accused

2017: September 28.

SENTENCING REMARKS

Introduction

- [1] **AZIZ, J.:** The Accused Joylyn James pleaded guilty on the 10th May 2017 to the offence of manslaughter by negligence. The accused was the aunt of the two year old deceased who would be referred to as 'JS'. The accused also knew Julie Stewart, the mother of JS as she was in a long relationship with the accused brother Devon James. They all shared a good relationship and there was never any misunderstanding between the family, including the accused' boyfriend.

Facts

- [2] The accused's boyfriend was the owner of a pellet gun, which had been given to him and which he had last used in or about January 2016 for hunting. He could not remember if he had checked the gun to ensure that there was no pellet loaded in the gun. The pellet gun was normally kept on a ply board separating the room from the kitchen.

- [3] At about 9.30 a.m. on the 5th March 2016, the accused left her home and went into town to conduct some business, and returned home about two hours later. When she had arrived back at her home, her nieces Devonna and Jenelle together with the deceased JS came over to her. JS stood close to the bedroom door when the accused remarked "Mannish (her pet name for JS) you maco". JS ran and the pellet gun fell to the ground.
- [4] The accused picked up the gun and was pointing it in the direction of Devonna and JS when she again remarked "Mannish ah go shoot you in yuh cocoa". A gun shot was heard and it transpired that JS was shot in the forehead and was bleeding. The accused dropped the gun and ran to JS and held onto him whilst Devonna and Jenelle ran to get their parents.
- [5] JS was rushed to the hospital and seen by Dr. Jessica Miller who assessed the patient. Dr. Miller had been informed by JS's mother that he had been accidentally shot in the forehead with a pellet gun. A presumptive diagnosis was brain trauma, and brain injury secondary to a gunshot wound.
- [6] A decision was taken to perform surgery by Dr. La Rose to give JS a fighting chance as he was an infant. A craniotomy was performed and JS remained stable but his condition worsened on the 7th March 2016, and he succumbed to his injuries on the 9th March 2016.
- [7] An autopsy was performed by Dr. Mabel Alvarez and the causes of death were noted as being severe cerebral edema, extensive damage to the brain and gunshot injury to the brain.
- [8] I have heard the agreed facts and seen the documents agreed by counsel comprising two pages of the pertinent factual matrix. It really is extremely unfortunate that a very young person has lost their life at the hands of a weapon

such as a pellet gun which seems to be something used regularly in the community for shooting animals.

Early Guilty Plea and Convictions

- [9] It is also very clear to this Court, that the accused has been traumatized by these events, and has accepted responsibility for this offending at the earliest possible opportunity. Apart from pleading guilty to this offence the accused has no other convictions and therefore is a person of previous good character.

Negligence

- [10] I am satisfied that there was negligence on the part of the accused which caused JS to lose his life. There was a pellet gun in the house which fell and the accused picked it up and used words which clearly demonstrated that although she did not intend to kill JS she was negligent in her handling of the pellet gun. There were other young persons in the vicinity of where JS had stood, and the gun would have been held within a close proximity to other persons in the house. It is clear that the pellet gun was fired accidentally and also very fortunate that others were not injured. It is accepted that the accused did not intend to cause harm or injury to her nephew. It's even more unfortunate that the pellet gun was placed somewhere that it fell between the bedroom and kitchen. Any type of gun can cause lethal injury if not handled properly, carefully and by persons who have been trained to handle them.

Social Inquiry Report and Victim Impact

- [11] A Social Inquiry Report was prepared and it is clear that there is a close relationship between the accused and the family of JS. The accused has been in a relationship with Mr. Ross for nine years. The accused also looked after her stepson aged 11. It is clear that many believe and accept that this act was not

willful and deliberate and furthermore, the accused has been described as 'reliable, honest and caring'. It is also clear that the accused is kind and a lover of children. Quite rightly, this day as the accused has described is a day that she will never forget, and neither will other members of JS's family. The accused described within the report the hurt and real pain caused to her brother and his family and continues to pray for the family's forgiveness.

[12] Ms. Julie Stewart (the victim's mother), understandably has found life hard and with many challenges. She has referred to the pain and suffering within her heart and how filled she is with a void in her life. It is also further clearly evident that Ms. Stewart does not think that JS was hurt intentionally but her son was lost due to acts of carelessness. Mr. Devon James (the victim's father) described the whole situation as hurtful and states that there is a lot of tension and pressure in the family.

[13] All parties will suffer from emotional pain but it is hoped that although there will be a void, memory of JS will live on forever and bring innumerable smiles and joy through such memory. It is the Court's hope that no matter what happens today all parties involved will receive the necessary and appropriate counselling and therapy to allow the family to rebuild and heal.

Counsel Submissions

[14] I have listened to all that counsel, Ms. Greenidge, for the prosecution and Ms. Burris for the defendant have ably said and considered all the relevant principles of sentencing¹ as deterrence, rehabilitation, retribution and prevention.

[15] Ms. Greenidge provided a table of cases, found within this jurisdiction which highlighted the sentences passed for murder, manslaughter by negligence and death by dangerous driving from 2009 onwards. The sentences ranged from time

¹ St Vincent Criminal Appeal No. 8 of 2003, Desmond Baptiste v The Queen.

served, probation service and compensation and with a requirement to undergo counselling.

[16] Ms. Burris referred the Court to the case of **R v Hendricksen**² which was not factually similar but dealt with the issue of gross negligence. In that case the defendant was said to have driven his power boat negligently at an excessive speed and also had chosen a bad course as he was not in a position to see swimmers, snorkelers or other dinghies. The jury convicted the defendant of manslaughter. The sentence was a fine in sum of \$30,000.00 on each count or in default 3 years imprisonment and disqualification from operating a vessel for 3 years. This case was submitted, in my view, to illustrate that a sentencing judge must look at all of the facts and circumstances before imposing the appropriate sentence including the character of the accused.

[17] Reference was also made by Ms. Burris to the case of **Martie**³, in which Mr. Martie was indicted for the murder of the deceased by plunging a knife in the region of the deceased head. Mr. Martie was convicted of manslaughter and Saunders, J. (as he then was) ordered that the accused do 40 hours of community service. Again this case was not helpful factually but demonstrated that the judge must consider all of the circumstances of the offence and offender. The case of **Kenneth Samuel v The Queen** was also cited and this was to reiterate the principles of sentencing⁴. In this particular case, as I have indicated, there seems to be no need to prevent or deter this accused, as it is clear that this accused will be extremely low to reoffend. This was uncontrollable and an accident.

[18] As stated in **Kenneth Samuel**⁵, although there is the element of retribution, to show that society does not tolerate this offending:

² BVIHCR0017/2015.

³ High Court Criminal Case No. 9 of 2002 (unreported) – St Lucia.

⁴ See R v Sargeant 60 Cr.App. R. 74 at 77: Desmond Baptiste v The Queen Criminal Appeal No.8 of 2003.

⁵ Kenneth Samuel v The Queen Criminal Appeal no.7 of 2005 Pg 7 at [17].

“The community must be given credit for being fair minded and therefore for appreciating that there are degrees of culpability in criminal wrong doings. The community’s abhorrence for a killing will necessarily be greater or lesser according to the surrounding circumstances. It is for this reason that there are circumstances where a non-custodial sentence is handed down for manslaughter: the clear example is manslaughter by negligence, which will generally not attract a sentence of imprisonment”.

I take into account the following:

Aggravating factors:

1. The level of negligence in how the weapon came to be used.
2. The loss of life.
3. The nature of the weapon that was used.
4. Psychological harm to all.

Mitigating Factors:

5. Plea of guilty.
6. Cooperation with the police/authorities.
7. Genuine remorse.
8. Injury/harm not intentional/willful/deliberate.
9. Offender is of previous good character.

Credit for Guilty Plea

[19] The accused had the good sense to enter a plea of guilty at the earliest opportunity⁶, and therefore save the Court’s time and also the stress and anguish of the family of JS having to come to court to give evidence or listen to the trial.

⁶ Attorney General’s Reference (No. 1 of 2006) (McDonald and Maternaghan) [2006] NICA 4 [19].

For this I have decided that she should receive full discount of one third⁷ from a starting point of 3 years imprisonment.

Balancing Exercise

[20] I have considered the circumstances of the offence and considered the aggravating and mitigating circumstances of the offence only to arrive at my starting point of 3 years imprisonment. The most aggravating feature is the loss of life, and there are others factors taken into consideration such as the use of a weapon. I have then considered any aggravating and mitigating factors of the offender which allow for upscaling or down scaling the sentence and in my judgment, these factors balance out. I also, as stated above, allow the full discount of one third, as the plea was entered at the earliest opportunity.

[21] Sentencing, in these cases, may vary widely as there will be a wide variety of situations in which the offence can be committed. It may well be the shared view that great importance should be focused on the consequences of the offence. It is also well established in many jurisdictions that this type of offence, may well be committed by an individual or an organization.

Time spent on remand

[22] The accused has not spent any time on remand and has complied with her bail conditions throughout the proceedings

Suspended Sentence

[23] In this particular case and in these individual circumstances the custody threshold has been just surpassed. Although that may be the case, I find that there are exceptional circumstances which will allow this Court to suspend any custodial

⁷ Kenneth Samuel v The Queen, (Supra).

sentence having already given an indication of a maximum of 2 years and which was accepted shortly thereafter. This is not a case in which a specific deterrent sentence is required. This is a case which calls out for reformative justice albeit a serious offence resulting in loss of life. It is important to note that each case must be considered on its own merits.

Victim's view on sentence

[24] It has been stated and I would also reiterate that:

“... the opinions of the victim, or surviving members of the family⁸, about the appropriate level of sentence do not provide any sound basis for re-assessing a sentence.”

[25] If the victim or victim's family feels utterly sympathetic towards an accused, and there are cases in which this will happen, the crime has still been committed and must receive just and appropriate punishment. Again if there is a mind of or for vengeance, which can only be achieved by a long sentence, as will also happen from time to time, the Court cannot simply impose such a sentence other than one which is appropriate in all the circumstances, because it may lead to cases with similar features being lead to unfairness, disparity and lack of uniformity in approach.

Public Comment

[26] As stated by the Court of Appeal⁹, and rightly so is the fact that public comment on the performance of the Court is desirable and the criticism of judicial decisions is healthy. But criticism must be fair. For criticism to be fair it must be informed. Any criticism of a sentence that is based on supposed facts that were never stated

⁸ R v Nunn [1996] 2. Cr. App. R (S) 136; Attorney General's Reference (No. 3 of 2000)(Rogan) [2001] NI 366 Carswell LCJ.

⁹ Kenneth Samuel v The Queen, Criminal Appeal No. 7 of 2005, Pg 5 [12].

to the Court is unfair. So is criticism that ignores the facts that were placed before the Court. A judge can sentence only on the basis of evidence placed before him in court. What commentators may 'know' or think they know cannot be used to criticize a sentence that a judge has imposed based on what was stated in court.

Conclusion

1. I commence the conclusion with the earlier stated observations that this offence resulted in a fatal consequence.
2. In this particular case, a specific deterrent sentence is not required but there will be cases in which death is caused by negligence which will require deterrent sentences especially where there is gross negligence. There will also be cases where the consequences could have been foreseen but either action taken or an omission to act causing loss of life, as in corporate manslaughter cases and includes directors of companies according to the laws of the land.
3. Further a deterrent sentence may be warranted to prevent others from taking unnecessary risks or behaving in a similar manner but also to ensure that attention is brought to users and handlers of guns and pellet guns. It is becoming clear that pellet guns are being widely used without the need for users' license. In other words deterrence draws attention to the serious consequences, haphazard and inadequate knowledge of handling any firearm including pellet guns.
4. There was extreme remorse shown in relation to the death of this young boy. The accused was a loving aunt and his death caused and continues to cause immense stress and pain. The accused is of hitherto good character and has never attempted to shift or avoid blame. Members within the community spoke well of the accused and this matter has been hanging over the accused head for 1½ years. There is no pattern of

offending and the risk of committing any further offences is likely to be low after this experience.

[27] In determining the sentence, I have followed the overall sentencing methodology as set out in the case of **Lauren Aguilera**¹⁰:

- a) In determining the starting point this Court has considered the aggravating and mitigating factors of the offence only. These are the objective circumstances which relate to the gravity of the offence itself and which assist in gauging its seriousness, that is, the degree of harmfulness of the offence. The starting point in this case would therefore be 3 years imprisonment.; and
- b) Upward or downward adjustment of the starting point (or dependent on the circumstances and if there is in effect, a cancelling out, no adjustment at all), which takes into account the aggravating and mitigating factors relative to the offender. In this case there will be no adjustment based on the character of the accused and balanced against the negligence and;
- c) (Where appropriate) a discount for a guilty plea. Any deviation from the usual discount, requires particularly careful justification and an explanation which is carefully expressed; In this case the credit is 1/3 as plea indicated at earliest opportunity therefore amounting to 24 months; and
- d) Credit for the period spent in pre-trial custody. There has been no time spent on remand to be counted.

¹⁰ Court of Appeal of Trinidad and Tobago, Crim App. Nos: 5,6,7 & 8 of 2015, joint judgment delivered by Weeks J.A., Soo Hon J.A. and Mohammed J.A., on the 9th June 2016. See Page 19 at [24].

Sentence

[28] Having evaluated the entirety of the circumstances of the offence and offender in this case, the sentence is as follows:

1. Two (2) years imprisonment suspended for a period of 2 years;
2. Keep the peace for 2 years;
3. Two hundred (200) hours unpaid work in the community, assisting as a volunteer at the school for children requiring special assistance namely the Dorothy Hopkin Home and the Queen Elizabeth Home both located in Tempe;
4. Undergo therapy and counselling in programmes designed to enhance consequential thinking skills such as “think first” for a period 12 months.
5. If there is any breach of any of the requirements on at least three occasions without good reason the matter is to be brought back to court for consideration of activating the suspended sentences.

[29] I wish to thank counsel for their helpful authorities and submissions in this matter.

Shiraz Aziz
High Court Judge

By the Court

Registrar