

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

Case NO: ANUHCR 2015/0132

REGINA

V

ERROL BARNES

Appearances:

Mr. Adlai Smith, for the Crown.

Mr Lawrence Daniels, for the Defence.

SENTENCE

[1] **MORLEY, J.:** Errol Barnes falls to be sentenced for murder, having been convicted by the jury on 11.05.17.

[2] On Wednesday 05.09.12, at 10.30pm, in John Hughes village, he murdered Melissa Rose, with whom he had had a relationship, and who was the mother of his infant child. The murder was committed outside her home by creeping up through undergrowth to a vehicle on her drive belonging to his former boss and friend, Damon 'Chuka' Lewis, in which she was seated in the passenger seat. He saw them together, and he shot her through the heart through the glass of the passenger window.

- [3] Melissa was only 19, while Barnes who says he was born on 01.10.76 was aged 35. He was a well-known footballer, with children by 2 other women. He and Melissa had begun a relationship while she was about 16 and for a time had lived together. However, he was controlling and on occasion violent. He was reported in August 2012 to police for bruising her forearms, it seems by holding her forcefully, and scratching her neck, in what may have been by seizing her neck. Her family was unhappy about the relationship. Melissa moved back home with her mother and family in around May 2012. She began a job at Sandals.
- [4] Barnes could not let her go. He stalked her. He would watch where she went and who she was with. One day, in around July 2012, he saw her with Chuka, getting into his vehicle, a pickup. He immediately complained to Chuka's girlfriend, Janella Evanson, ringing her and then coming to her work, where he was angry and obsessive. He then confronted Chuka at his yard, who was then his boss, in front of family and friends. He was agitated, 'very serious', and would not listen. He lost his job. He continued to spy on her, being seen by Chuka in later weeks outside her work at Sandals.
- [5] On Sunday 02.09.12, he confronted Melissa with Chuka at her home, finding her in the pickup. She was frightened. He was shouting and pulling on the locked door. He threatened to chop them up. He threatened '*time longer than rope*' meaning he was going to end their affair abruptly. All this was brazen and observed by Melissa's family who told him to leave. At the scene, he again rang Janella to complain what Chuka was doing, as had become his habit whenever he saw the couple together.

- [6] On Tuesday 04.09.12, he saw her with the baby on the gallery of her friend Sacha James. He was angry. From a truck he was driving, he berated her for about 30 mins. He said he prayed someone killed her. Sacha reported the event to police, and that afternoon Melissa attended a domestic violence unit to prepare to get a restraining order. The order was to be sought from court on the Friday. But before she could get it, Melissa was murdered.
- [7] Barnes owned a white sentra. However, on Tuesday 04.09.12, he hired a silver almera.
- [8] On that Tuesday night, at around 10pm, Barnes was then seen alone in the almera by Ricky Joseph patrolling near Melissa's home.
- [9] On the Wednesday, the night of the murder, Barnes was seen by Melissa's brother Raheem patrolling in the almera again near Melissa's home at around 8pm. Around 9.30pm, in the Nut Grove area, he showed a pistol to Nikisha Theophile and Shimmea Welsh, and to some men at a football field. He then drove the girls home in his sentra for about 10pm. He changed cars. Now back in the almera, he picked up his friend Kiron Phillip, complaining '*some man a messing with me youth*' and went back to Melissa's home. He parked a little down the road and crept through the front garden of Linda Hogan, with the gun, found Melissa with Chuka, and without saying a word, shot her dead.
- [10] He then ran off, driving quickly home, and left the almera to be returned by Kiron to the hire company.

[11] When news broke on social media of Melissa's murder, he was telephoned by Janella and his friend Eric Jacobs, to whom he said he had been at home, sounding calm. He was arrested later, in the early hours of 06.09.12.

[12] He lied to police he had nothing to do with her murder, saying he had been home all along, and argued through his counsel in court that the murder had been committed by Kiron.

[13] For the purposes of sentence, having heard the evidence, I find the following facts:

- a. Barnes was jealous and controlling of Melissa, stalking her.
- b. It was he who shot Melissa, and there is no question that it might have been Kiron Phillip who had accompanied him.
- c. On the night of 05.09.12, he planned to shoot her if he saw her with Chuka.
- d. To carry out this plan, he acquired a pistol, and brought it deliberately to where he hoped to find her.
- e. In addition, he hired the almera so as not to be traced if seen, lending it to various friends, and in particular to Kiron, so as to create confusion as to who may have been driving it if seen near Melissa's home.
- f. In short, the murder of Melissa was premeditated and carefully planned.

[14] I have given thought to whether he deliberately set up Kiron to be blamed, and have decided I cannot be sure. If I had been sure, it would have substantially aggravated the offence.

- [15] I have heard in evidence in considering victim impact, from Melissa's mother Patrice, that Melissa is much missed, as a big sister to four siblings, who loved life. Patrice describes how she needs sleeping pills to sleep, her son Raheem has undergone counselling, and how as she puts it, *'Errie took a part of me... he took everything from us'*.
- [16] I have read the pre-sentence report of Alvin Jarvis dated 07.06.17. I note in it that Barnes *'remains resolute in his view he is innocent'* (p2), and the author is *'firmly of the view the defendant continues to be in denial of anything that reflects adversely on his character'* (p7).
- [17] I agree with the author's view. I recall in evidence how Barnes described himself as a 'nice guy', taking pride in the number of women he said were attracted to him, and telling the court, in what must be a fantasy in his head, that he was having an affair with Melissa behind Chuka's back, to get back at him.
- [18] Reflecting on the type of man he is, I find he is vain, sexually overconfident, and very selfish. In his exaggerated pride, that Melissa had left him and was with another caused him outrage. He has shown no understanding at any time before conviction of the hurt the loss of Melissa has caused her family, whoever had shot her, nor any for the scale of the loss his daughter has suffered in losing her mother while so young.
- [19] It should be clearly understood that Melissa's murder was not what is sometimes called 'a crime of passion'. It was in cold blood. It was not in hot blood. He had not lost his self-control. Instead, he calculated shooting

her. Though there was jealousy in the background, the killing was an act of control. Barnes was asserting power over her. He was denying her the right to live her own life. The offence is not mitigated by there having been a previous relationship. Melissa is in no way to blame for what Barnes did.

[20] Adults know that relationships can break down. When one does, though sad, no one owns another. We are each expected perhaps to grieve for a time for the loss of the relationship, but to let the other go. Barnes refused to let her go, and deliberately took her life, as if he owned her. He will now face the consequences.

[21] Turning to the appropriate sentence, I should first say that this is a case for which the Office of the DPP does not seek capital punishment. I will not sentence Barnes to death, though Melissa's mother Patrice, perhaps understandably, in the presentence report and in court today has asked that I do.

[22] As to the correct period to serve in prison, which on Antigua allows a maximum of life imprisonment, I have chosen to be assisted by the UK sentencing guideline for murder created by schedule 21 of the *Criminal Justice Act 2003*. In the UK, for murder the sentence is termed 'life imprisonment', though the judge must set a *minimum term* to be served before a defendant might begin to be considered for possible parole. However, there is no parole mechanism on Antigua, so that life imprisonment could be expected to mean a whole life term with no prospect of release. For determinate sentences, (ie sentences calculated as a number of years), there is automatic remission of one-third for good behavior. I consider that, if I am to be assisted by the CJA 2003, I should

take account of automatic remission, so as properly to calculate the equivalent of a minimum term.

[23] Reflecting on para 4(2)¹ of the schedule, because Barnes has not been convicted of multiple murder, but of one murder, despite the level of premeditation, in my judgement a whole life term is not appropriate.

[24] Under para 5.2(b)², the starting point for the minimum term to be served for a single murder with '*the use of a firearm*' is '*30 years*'.

[25] I turn then to the aggravating features. Under para 10(a)³, '*a significant degree of planning or premeditation*' is identified as aggravating. However, I find in parallel that the acquisition of the firearm was in fact part of the planning and premeditation, and is already reflected in the high starting point. This diminishes the extent of the aggravation, but not completely, as conceptually there are many cases where the use of a firearm does not disclose such premeditation as here. In this case, the minimum term should therefore increase, firmly though not dramatically, so that a further eight years is appropriate, bringing the minimum term to 38 years.

[26] I turn then to the mitigating features as they appear under para 11⁴. None are relevant. However, I do find that the previous good character of the defendant provides modest mitigation, to the extent that it reduces the minimum term by three years to 35 years.

¹ See Blackstones Criminal Practice 2017 para E3.4.

² Ibid.

³ Ibid.

⁴ Ibid.

[27] Barnes pleaded not guilty, and was convicted after trial by jury, so there is no credit available for a plea.

[28] The calculated minimum term of 35 years is what would be served in the UK. However, jail conditions are different there.

[29] On Antigua, I visited the prison for two hours on 22 December 2016. The prison staff do excellent work in very difficult circumstances. The prison is called '1735', as that is when it was ground first used for custody. The facilities appear to date back to the 19th Century, more in keeping with 1867, 150 years ago, rather than 2017. Facilities are rudimentary. The prison is overcrowded. Convicted prisoners were in small cells and allowed out only during daylight hours. There is potential for the spread of disease. There is an outside bank of toilets into a pit under corrugated iron, about 30m from the kitchens. During lockdown, urination and defecation are into plastic buckets, lacking any privacy and requiring morning slopping out. I consider these conditions to be far more difficult than in a UK prison, and consequently there should be a further reduction in the minimum term to allow for the fact it is to be served in harsher conditions.

[30] I assess these harsher conditions merit a reduction from a UK sentence of about one-quarter. This means that the minimum term, to be served in '1735', is to be reduced by nine years to 26 years.

[31] Turning then to how to effect a minimum term of 26 years on Antigua, I take account of automatic remission, meaning that 26 years should be considered two-thirds of the sentence. This means that the correct

sentence, to effect a minimum term of 26 years, is 39 years' imprisonment.

[32] Errol Barnes, stand up please. For the premeditated, planned murder by firearm of Melissa Rose on 05.09.12, travelling to the scene in a hire car to confuse investigation, the sentence of this court is 39 years' imprisonment. You will receive automatic remission of one-third of your sentence for good behavior, meaning that you can expect to serve a minimum term of 26 years. Time spent in custody already shall count toward your sentence. You may go down.

The Hon. Mr. Justice Iain Morley QC

8 June 2017