

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2009/0031

BETWEEN:

THE QUEEN

Claimant

AND

HERMUS FREDERICK

Defendant

Appearances:

**Mr. Lorne Theophilus, Mr. Alberton Richelieu Counsel for the Defendant
Mr. Stephen Brette Crown Counsel for the Crown**

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2012: April 18
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** The defendant was on the 9th March 2010 indicted for the offence of murder contrary to section 85 (b) of the Criminal Code 2004. That indictment alleged that on the 30th October 2005 the defendant whilst intending to cause grievous bodily injury to Narcisse Danzie ('the deceased') did cause his death. At a trial before a jury the defendant was on the 25th October 2011 convicted of the lesser count of manslaughter.

[2] **THE FACTS**

The crown's case was that on the night of the 30th October 2005 at around 11.30 pm the defendant and the brother of the deceased, one Emroy Danzie were engaged in an incident which involved bottle pelting. At some time during this incident the deceased intervened and accosted the defendant to ascertain what the incident was all about. The evidence was that the deceased was unarmed whilst the defendant was armed with a knife which he used to inflict an injury to the neck of the deceased. The deceased was taken to the Victoria Hospital by the police and on the following day succumbed to his injuries.

[3] The case for the defence was that the defendant was attacked by a gang which included the deceased and during that attack was subjected to kicks and other acts of violence as a result of which he fell to the ground. The defence further contended that whilst on the ground the defendant acquired a piece of broken bottle which he swung from side to side in an effort to ward off his attackers. The defendant eventually succeeded in scaring away his attackers and then went to the police station and made a report of the incident.

[4] A post mortem examination was performed on the body of the deceased by Dr. Josiah Rambally who findings were as follows:

"The cause of death as shown by the examination appeared to be hemorrhagic shock, secondary to wound in the neck. I would classify the injury to the neck as severe, on a scale of mild, moderate, severe. In my expert opinion a sharp hard object would have caused the injury to the neck, like a knife. On a scale of mild moderate or severe, I would say severe force would have caused that injury to the neck."

[5] **THE HEARING**

The court upon receiving the jury's verdict ordered that a pre-sentence report be prepared and fixed a date for a sentencing hearing. At the hearing the court learnt from the pre-sentence report the contents whereof were unchallenged that the defendant who is 33 years old was held in high esteem by his immediate family and those in the community in which he resided. It was also disclosed that the defendant was harassed on several occasions by the deceased and his gang and it was only a matter of time before he would take steps to defend himself. I would make reference to this report again later in this decision. The court also benefitted from written submissions by counsel for the defendant and crown counsel together with the authorities on which they relied.

[6] Counsel for the defendant has urged the court to consider that this was an unfortunate incident which arose out of a feud and/ or bad blood between the parties. Mr. Richelieu submitted that though this was a contested matter rather than an early plea to the lesser offence of manslaughter, this should not in the circumstances be held against the defendant who may have genuinely and reasonably believed that he had a good defence in self defence.

[7] He further contended that the seriousness of the offence should be viewed in light of the following:

1. The level of the defendant's culpability;
2. The historical context of the dispute between the parties;
3. The cumulative effect of the deceased and his brother's acts over a period of time which caused the defendant to lose his self-control.

[8] Counsel also urged the court to consider the following factors:

- (1) The fact that there are no previous convictions;
- (2) The fact that the matter, though contested should be looked at within the context of the factual matrix within which it occurred;
- (3) The glowing revelations in the Probation Report about the defendant;
- (4) The fact that a knife was used, by itself, could be sufficient, but the Court should view the historical and factual context which caused the incident;
- (5) The Defendant has expressed remorse, in the most categorical terms.

[9] Mr. Richelieu relies on the dictum of Barrow JA in the decision of *Kenneth Samuel v The Queen* Criminal appeal No.7 of 2005; more particularly paragraphs 14 to 17 thereof.

[10] Mr. Stephen Brette for the crown has identified the following to be the aggravating and mitigating factors to be considered by the court in arriving at an appropriate sentence.

[11] **AGGRAVATING FACTORS**

The Crown submits that subject to the Court's ruling the aggravating factors of this case are:

- (a) The seriousness of the offence – Manslaughter (the taking of a life);
- (b) The offence was caused with the use of a weapon (knife) on the deceased forcefully and with severe force to cause the fatal injury;
- (c) The weapon (knife) came to hand by the defendant being armed with it at a social event;

- (d) The extent and location of the injury;
- (e) The deceased was unarmed at the time the defendant inflicted the injury;
- (f) The degree of provocation was minimal if any
 - i.e.: (i) One bottle pelted at the defendant, not by the deceased but his brother which missed anyway.
 - (ii) The deceased was unarmed when he accosted the defendant inquiring what was the problem between the defendant and his (deceased) brother;
- (g) The intensity, extent and nature of loss of control was out of proportion with the degree of provocation.

[12] **MITIGATING FACTORS**

- (a) There was only a short lapse of time between the provocation and the act which manifested the loss of control;
- (b) The defendant has expressed remorse.

[13] Crown counsel also urged the court to find that this was a contested case which involved a low degree of provocation and that the aggravating factors outweigh the mitigating ones.

[14] **THE LAW**

It is trite law that the classical principles of sentencing namely, retribution, prevention, deterrence and rehabilitation are considered to be the usual guidelines to be applied by the court in the sentencing process. In the decision of **Desmond Baptiste v R** No. 8 of 2003, Sir Dennis Byron, CJ adopted and approved the aforesaid classical principles of sentencing, as enunciated by Lawson, LJ in **R v Sergeant** 60 Cr. App. R. 74 at page 77. I will now apply those principles to the case at bar.

[15] **RETRIBUTION**

The facts of this case reveal a history of bad blood between the parties. Indeed on that fateful night the acts causing the death of the deceased were premised on a bottle throwing incident involving the defendant and the brother of the deceased. There is also evidence from the police that the defendant had made several reports to them of incidents involving him and the deceased's family members. Indeed it is not disputed that following the fracas which occurred that night the defendant made a report to the police.

- [16] The crown's case was that the defendant injured the deceased with a knife whilst the defendant in his statement to the police states that the only weapon he had was a piece of broken bottle. I am reminded that in his evidence Dr. Rambally stated that:

"Most definitely a broken bottle could also have caused that injury"

- [17] I find the dictum of Barrow JA in *Samuels v The Queen* supra to be most instructive in these circumstances, to wit:

"Retribution, in the sense of showing society's abhorrence of this killing, seems to be the only meaningful element that can go into punishing the appellant. How much community abhorrence is it reasonable to ascribe to a killing of this type if the community is treated, as it must be treated, as basing its reaction on the facts that were before the Court? The community must be given credit for being fair-minded and therefore for appreciating that there are degrees of culpability in criminal wrongs. 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 instances 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. The community's shock at this killing must be separated from its desire for retribution once the facts are known."

[18] **PREVENTION**

It's common ground that the defendant is a first offender. Moreover the pre-sentence report states that the defendant is considered by persons in his community to be productive and hardworking. He was not considered to be a trouble maker and would separate fights in the village. From time to time he would provide employment for young men 'on the block'. Thus the court would discount this ground as one for consideration in the sentencing process.

[19] **DETERRENCE**

Deterrence is general as well as specific in nature. The former is intended to be a restraint against the particular criminal relapsing into recidivist behavior. For reasons stated aforesaid this ground is not applicable to the case at bar. There is no evidence that the usual triggers to recidivist behavior, such as drug and alcohol addiction are live issues herein. The court must of necessity however impose a suitable sentence to unequivocally indicate to the public at large that the loss of a human life by an act of homicide is not to be trivialized.

[20] **REHABILITATION**

There is no doubt in my mind that the defendant is a prime candidate for rehabilitation. I am comforted in that view by the remarks of the probation officer in the pre-sentence report which states thus:

"Mr. Frederick has been on remand from 9th November 2005 to 11th May 2007. The Unit Manager at the Bordelais Correctional Facility described him as a humble, well behaved young man. Reports from the community indicated that Subject is respected and viewed as an industrious young contractor. Subject has also provided numerous employment opportunities for young men in the community. There seemed to be close family ties between Subject and his family and a great dependence on him to assist financially at home, especially since his father is unable to work. Community residents, family members all indicated that Subject is an excellent father who love and support his children."

[21] **THE FINDINGS**

In my review of the evidence, counsel's submissions and the pre-sentence report I find the following to be the aggravating and mitigating factors.

[22] **AGGRAVATING FACTORS**

1. The loss of the life of the deceased;
2. The degree of force used in the commission of the offence, which was in the opinion of Dr. Rambally to be severe force;
3. The location and extent of the injury causing death, namely a laceration 14 cm long and 4 cm deep to the left face from below the ear lobe;
4. The deceased was unarmed.

[23] **MITIGATING FACTORS**

1. The acts of provocation to the defendant by the brother of the deceased;
2. The remorse expressed by the defendant;
3. The hitherto clean criminal record of the defendant;
4. The defendant's co-operation with the police during their investigation.

[24] I have carefully considered the aggravating and mitigating factors herein together with all the circumstances of this case and find that though the aggravating factors outweigh the mitigating ones the difference is not substantial.

[25] Mr. Richelieu has urged the court to consider the cumulative effects of provocation over a period of time. Whilst there is no direct evidence of the nature and extent thereof either by way of evidence at the trial or during the sentencing hearing the court can deduce from the pre-sentence report which states that the defendant was the victim of 'harassment' by the deceased and his gang; and the evidence that he made many reports to the police that there was an on-going feud between the defendant, and the deceased and his brother. I have also considered the fact that the defendant was medically examined the day after this incident together with the fact that he also made a report to the police.

[26] I make no finding as to the nature of instrument used to inflict the fatal injury on the deceased. The crown's case was that the defendant was armed with a knife. The defence case was that the defendant armed himself with a piece of broken bottle during an attack on him. As herein before stated Dr. Rambally has accepted that a broken bottle could have caused the fatal injury.

[27] **SENTENCE**

This was a contested matter and in the usual course of events the defendant cannot benefit from the one thirds deduction for an early guilty plea. I have been urged however by Mr. Alberton Richelieu that this fact should not be detrimental to the defendant's plea of mitigation.

[28] I have examined the statement given to the police by the defendant at a time when he was unaware that the deceased had died and it is clear that the defence of self defence was relied on from the inception. I find however that provocation was a live issue in both the crown's case and the case for the defence. Nevertheless I do not consider the defendant's reliance on self defence as a means of obtaining a complete acquittal to be unreasonable in all the circumstances of this case.

[29] I have considered the following passage in the pre-sentence report, to wit:

"Members of Subject's community described him as hardworking and productive. Several persons indicated that he would provide employment for young men "on the block". Community residents did not expressed shock at what transpired because, as they claimed Subject was harassed on several occasions by the deceased and his "gang" and it was only a matter of time before Subject defended himself. Writer spoke with the Officer in Charge of Anse La Raye Police Station who verified that Subject had made several reports about the deceased and his brother."

[30] I have also taken into account the victim impact statements of the parents of the deceased as stated in the pre-sentence report. The father of the deceased Mr. John stated that he knew the defendant and viewed him as a good person and hold no ill feelings towards him, while the mother

similarly stated that she too considered the defendant to be a good person and had no dislike for him.

- [31] I have also considered the aggravating and mitigating factors in this matter together with the applicable law and all the circumstances of this case. I have also considered that part of the dictum of Barrow JA in *Kenneth Samuels v The Queen* supra to wit:

“The community’s reaction to the killing must be ascribed based on the facts that were before the court and on that basis I am satisfied that the court must vindicate the community’s abhorrence for this killing by imposing a deserved rather than an extreme sentence.”

- [32] The maximum sentence for the offence for which the defendant has been convicted is life imprisonment. In the circumstances I find that a benchmark of fifteen (15) years to be appropriate. I will deduct a period of five (5) years for the cumulative effect of the provocation to which the defendant was subjected. I will also deduct three (3) years for his co-operation with the police and three (3) years for his hitherto clean criminal record in light of the provocation to which he was exposed.

- [33] I find in the final analysis that a sentence of four (4) years to be appropriate. The defendant was incarcerated on remand from the 9th November 2005 to the 11th May 2007 and from October 25 2011 to date. He will be credited for that time spent on remand.


FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE