

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCR 2007/ 0014

BETWEEN:

CPL. 443 MONTOUTE

And

DELVIN GEORGE

Appearances:

**Mr. Alfred Alcide for the Defendant
Mr. Robert Innocent for the Crown**

2009: July 24, 29 and 30

RULING ON SUFFICIENCY HEARING

- [1] **BENJAMIN, J:** The defendant was charged on July 23, 2008 for the offence of aiding and abetting Christopher Edward to commit the crime of murder of Marlon Boxhill on Monday 14th July, 2008 at about 10 p.m. at the Derek Walcott Square in the city of Castries. The main alleged participant, Christopher Edward, has been committed to stand trial in the High Court for the offence of murder.

- [2] At the sufficiency hearing, Counsel for the defendant requested the attendance of three witnesses and the Court acceded to this request pursuant to Rule 9.4 (4) of the Criminal Procedure Rules, 2008. These witnesses were called and cross-examined by Counsel for the Defendant.
- [3] The witness, Keisha Narcisse, said that she saw and spoke to the deceased on the day in question. She had gone to school with him. He left her and went inside the Dereck Walcott Square. Later, she became aware of a “big commotion” and saw Marlon running around trying to get away from two persons running after him. She saw Marlon run outside and later saw him lying on the ground. She did not see the incident and was unable to describe the two men as she did not see them properly.
- [4] Shana Clifford did not know the deceased well as she had only met him while he was a casual worker at her place of employment. She saw the deceased in a “fight” with two to three persons whom she said would be unable to identify. By her own admission, she did not see the actual incident that led to the demise of the deceased.
- [5] The former girlfriend of the defendant, Vernessa Wells, related a telephone conversation which she had with the defendant who called her on July 14, 2008 after 10 p.m. She stated that the defendant told her that the co-defendant, “Coolie Chris,” invited him to go with him to attack a man he had trouble with. The defendant recounted to her what transpired telling her he walked behind the co-defendant. He told her he saw Coolie Chris stab the man with a screw driver on the chest. The

witness said she advised him to go to the Police and tell them that it was not him. This witness was not at the Square at the time of the incident.

- [6] The Prosecution also relied upon the statement made under caution by the defendant on July 16, 2008. He explained that he was a friend of his co-defendant and that they were together on July 14, 2008 at the Square. From the statement it can be gleaned that he was aware that the co-defendant was in possession of a screw-driver and had pointed out someone who had stabbed him. Christopher Edward called out to the deceased by name. The deceased walked out of the Square and Christopher Edward followed him. The defendant followed Christopher Edward. Later, outside the square by Boogles, Christopher Edward gave the defendant his bag to hold and told him:

“Garcon, I going behind that man. I go kill mate tonight. That is the first time I see mate after he stab me.”

With that, Edward went into the Square through the gate. The defendant did not follow at once, but when Edward told him “Let’s go” he followed. The two defendants went around and around the Square following the deceased. This was borne out by the witness, Keisha Narcisse. The co-defendant told the defendant: “Look him! Look him! Let’s roll!” At that point the defendant admitted to having a guiness bottle and a short knife while the co-defendant was holding a screw-driver. He then saw the co-defendant rush towards the deceased and attack from six to seven feet away where he was standing.

- [7] There is evidence of the deceased being followed and indeed being chased by two persons who could not be identified. A jury may conclude by way of reference that

these two persons were two defendant and Christopher Edward. There is also evidence as to what appeared to be a fight involving the deceased and two to three persons. However, this witness did not see what happened in the Square.

[8] The Court must therefore turn to what the defendant told Vernessa Wells and the Police in his statement. The defendant admitted to walking behind his co-defendant following him. Although, he was aware of his co-defendant's intention and of the fact that his co-defendant was armed with a screw-driver, there is no evidence as to him, the defendant, doing anything more than follow the co-defendant and witnessing the stabbing at close-quarters.

[9] The words 'aid and abet' are best suited for describing the action of a person who is not only present at the time of the commission of the offence but who also takes some part in it (see Ferguson v. Weaving [1951] QB. 814). This definition has been expanded by case law to include acts committed before the penetration of the actus reus. The aiding and abetting of a crime is helpfully defined in Section 62 of the Criminal Code of St. Lucia, 2004 which provides:

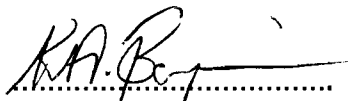
"62. Any person who –

- (a) directly or indirectly instigates, commands, counsels, procures or solicits;*
- (b) in any manner intentionally aids, facilitates, encourages or promotes or;*
- (c) does any act for the purpose of aiding, facilitating, encouraging or promoting;*

the commission of a crime by any other person commits the offence of aiding and abetting that crime and of aiding and abetting the other person in respect of that crime and shall be deemed an accomplice."

[10] On the evidence presented by the Crown, it was the co-defendant who was encouraging the defendant to come with him and the defendant followed him as he pursued the deceased in the square. Apart from that he did not aid, encourage, facilitate or instigate the co-defendant to do what he did. But rather, he stood by and did nothing except hold the co-defendant's bag with his shirt.

[11] In my considered view, there is no evidence to support aiding and abetting and accordingly the Crown has failed to meet the criterion set out in Rule 9.3. Accordingly, the defendant must be discharged.


KENNETH A. BENJAMIN
HIGH COURT JUDGE