

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SUIT NO.: 43 of 2003

BETWEEN

THE QUEEN

and

ALEXANDER DETERVILLE
AKA Tony St. Prix

Appearances:

Ms. Victoria Charles Ag. Director of Public Prosecution for Crown
Mr. Ferguson John for the Accused

ORAL JUDGMENT ON SENTENCING
THURSDAY, 27TH NOVEMBER, 2003

DECISION

- [1] The accused was on the 17th of October, 2003 convicted for the murder of Linus Pamphille in October 2000. I heard submissions from counsel on Monday, 17th November 2003 and I now deliver my Judgment on Sentencing. The guidelines for Judges who are sentencing an accused convicted for murder were recently defined by his Lordship, Chief Justice Sir Denis Byron in three (3) Criminal Appeal Cases from St. Christophe and Nevis. The cases are Evanson Mitchum, Vincent Ford, Matrice Mathew and the Director of

Public Prosecutions Criminal Appeals NO's. 10, 11 and 12 of 2002, delivered on the 3rd November 2003. These guidelines are as follows:

1. If the prosecution intends to submit that the death penalty is appropriate where the accused is convicted of murder, then notice to that effect should be given no later than the day upon which the accused is convicted. The notice may be given immediately upon conviction in which case, it may be given orally. In any event, the notice should contain the ground on which the Death Penalty is considered appropriate.
2. The trial Judge upon being given such notice should, at the time of the Allocutus specify the date for the Sentencing hearing which provides reasonable time for preparation.
3. When fixing the date of a Sentencing Hearing, the trial Judge should direct that social welfare and psychiatric reports be prepared in relation to the accused.
4. Where the prosecution and the trial Judge consider that the Death Penalty is not appropriate, a separate sentencing hearing may be dispensed with if the accused so consents, and the offender may be sentenced right away in the normal fashion.
5. The burden of proof at the sentencing hearing lies on the prosecution and the standard of proof shall be proved beyond a reasonable doubt.
6. The trial Judge should give written reasons for his or her decision at the sentencing hearing.

So based in these cases we now have our guidelines which will govern this present kind of hearing. Applying the Spence and Hughes principles, I am required to consider any mitigating factors obvious from the evidence and the pre-sentence reports or otherwise adduced by the accused. I must also take into account the character and record of the accused, the nature and gravity of the offence, the design and manner of the execution of the offence, the subjective manner which may have influenced the accused's conduct, the degree of the accused's culpability and the possibility of his reform, and those principles have been established as I said in Spence and Hughes; Criminal Appeal NO's. 20 of 1998 and 14 of 1997 and it was the Chief Justice, Sir Denis Byron who gave these principles at paragraph's 41, 47 and 57 of his Judgment. So I now deal with the facts in this case.

THE FACTS

The direct and circumstantial evidence adduced by the prosecution disclosed that the accused and another man broke into the shop of the deceased during the night. While they were in the shop the deceased who resided in a nearby house on the premises made an alarm and proceeded to the door of his shop to defend his property. The accused and his accomplice were apparently trying to flee from the shop through this door. The deceased chopped several times at the hands of one of the burglars who was holding unto the door while attempting to escape. One of them escaped and the deceased armed with his cutlass then entered his unlit very dark shop, after which there was a rumbling and tumbling heard by onlookers outside. The burglar who was the accused emerged from the shop through the same door and escaped with the cutlass of the deceased in his hand. The deceased was found sitting on the floor in his shop with his 2 kneecaps seriously

injured, broken. He was taken to the St. Jude's Hospital where he was admitted for 5 days, and he received medical treatment. He underwent surgery on his two (2) legs which were placed in casts. He was discharged on the 7th October 2000 and subsequently re-admitted on the 10th October 2000. He died shortly after his readmission. The cause of death was pulmonary embolism and aspiration pneumonia caused by blunt trauma to the front of both legs. The blunt trauma to his knees rendered him immobile and during the period of his immobility, he developed septacemia, all of which resulted in his death.

The accused was arrested by the police at St. Jude's Hospital on the 1st of October 2000, after he was pointed out by an eye witness, who is the brother of the deceased, as the burglar who broke into the deceased shop. The accused arrived at the hospital shortly after the deceased to be treated for cuts to both hands. On the way to the hospital with the deceased, this eye witness Mr. George Phampille saw and recognized the accused walking down the road in the direction of the hospital in the area of a rubbish dump. After the accused received medical treatment he was taken into custody by the police. The accused insisted throughout that he was not the burglar. His alibi and explanation as to how he had received his injuries were disproved by the prosecution and obviously rejected by the Jury implicit in the verdict. So I now have to look at the character and record of the accused and also the subjective factors which influenced the accused.

CHARACTER, RECORD, SUBJECTIVE FACTORS

Contrary to the now existing guidelines, the Court did not request a psychiatrist's report on the 17th October 2003, the guidelines had not yet been delivered. Counsel for the accused did not think it is necessary in light of the accused defence and the evidence. The Court

agreed with Counsel's view. The criminal record and pre-sentence report from the probation officer, disclosed that the accused is now 45 years old having been born on the 25th October 1958 and he is the father of eight (8) children. His family regard him as the most industrious child of his mother's fourteen (14) children. He is described by his family as what you would call "a loner", likes to be by himself, and as being always obedient and a caring child. His father left his family home during his early years, leaving his mother to raise the fourteen (14) children on her own. Though the accused resented his father for the neglectful treatment to his mother, at age 15 years he left school and joined his father in Vieux-Fort as a fisherman. He remained in Vieux-fort for 10 years, had intimate relationships with different partners, and fathered children. He has admitted to serious domestic violence on his partners and using marijuana and crack-cocaine. The fishermen in the Bannans area, the report's states, where he lived for sometime, regard him as a violent man who continuously threatened them, and even set fire to one of the houses on the seashore. They are afraid of him for possible reprisals. Fishermen in the Castries Fisheries Complex also described him as a violent person. His family admitted that he had a history of drug abuse and domestic violence but blames this on his relationship with questionable friends who encouraged his drug abuse and violent behaviour. His siblings describe him as being the best brother when he is sober. They regard him as a good father who has maintained his eight (8) children, and vacations with them during their school holidays. Some of his children and his mother were present in Court on the 17th November 2003 and this evidences their support for him.

The 8 spent convictions between 5th November 1985 and the 23rd Mach 1993, confirmed the accused's history of drug abuse and violence. The 2 relevant convictions are for the

offences of disembarking without consent, he was convicted on the 9th July 1995 and he was imprisoned for 6 months for that offence; the other offence is for trafficking cannabis, convicted on the 9th November 1995 and he was fined \$20,000.00 or 2 years in prison.

Now on looking at the aggravating factors in this case, I regard the following as aggravating.

1. The age of the deceased. He was an elderly man in his 60'S.
2. The accused history of domestic violence and drug abuse.
3. The nature and gravity of the offence and the manner of execution. The murder was committed impulsively during the course of housebreaking. The accused was obviously motivated to steal. Personal violence was used by the accused on the deceased. I am not persuaded to accept the learned Director of Public Prosecution's inference that the crowbar recovered from the shop was the weapon used to inflict the injury on the deceased. A broken stool was also recovered from the shop and with equal reasoning this could have been what the accused used to inflict the injury.
4. Concerning the degree of culpability, the breaking into the shop was a joint enterprise, but the deceased was injured after the other man had escaped. The evidence disclosed that the accused was the burglar who came out of the shop after the rumbling, and with the deceased's cutlass. So it was the accused who inflicted the injury which caused the deceased's death.

MITIGATING FACTORS

[2] Now on looking at the mitigating factors, the following I regard as mitigating factors, though the learning DPP submitted that there were no mitigating factors; and these factors I should point out, some of these factors were identified by Counsel Mr. John and put forward for the consideration of the Court.

1. The nature of the injury inflicted on the deceased.
2. The accused did not use the cutlass to inflict any injury on the deceased, he used a blunt object which may have been the stool.
3. The evidence does not disclose that the murder was premeditated, it was not carried out in cold blood. It shows that the breaking of the shop may have been planned not the murder. The deceased came to his shop to protect his property and it was in the course of surprising the burglar and trying to prevent the accused from escaping that he received the injury.
4. The accused's relevant previous convictions do not relate to violence or housebreaking.
5. The accused has eight (8) children and has actively participated in his children's lives.

The accumulative effect of the aggravating factors in my opinion, is not of such as to make this a heinous crime which clamours for the death penalty. Though this type of murder is classified as Capital Murder in the Draft Criminal Code of St. Lucia, I do not find it to be in the category of "the worst of the worst" cases of murder which merit the death penalty. However, the accused's lack of remorse is obvious. This may be explained by the nature of his defence and his insistence after conviction that his identification by the witnesses as

being the burglar was a mistake. However, his attitude and aggression displayed to the probation officer who prepared the report shows that the members of the communities where he has lived are justified in their of fear reprisals from the accused, for participating in the interview. This explains their fear of him, because he is known to be a violent person. I do not consider therefore that the accused is a good candidate for reform or rehabilitation. I have considered the objects of punishment namely deterrence, prevention, retribution and rehabilitation, and I have concluded that justice will be better served in my opinion if this accused is subjected to severe punishment of a long-term imprisonment. This will have a deterrent effect and also express moral outrage at the crime which is now prevalent in this society.

SENTENCE

[3] Alexander Deterville, Mr. Deterville please stand up. The sentence of the Court is that you will be imprisoned for life and the Court recommends that you serve a minimum of 20 years imprisonment before consideration for review.

OLA MAE EDWARDS
High Court Judge