In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
Case No. 13 of 2021

BETWEEN:

THE KING

-and-

KAMAL WORRELL

Before: **The Hon. Justice Juan P. Wolffe**

Appearances: Ms. Cindy Clarke and Mr. Daniel Kitson-Walters for the Prosecution
The Defendant unrepresented

Dates of Hearing: 13th March 2024
Date of Sentence: 13th March 2024
Date of Reasons: 27th May 2024

SENTENCE
(Reasons)

Murder – Sentence of life imprisonment pursuant to section 288(1) of the Criminal Code Act 1907(the "Criminal Code") – Sentencing range for murder offences - Starting point for mandatory life sentences – Portion of life sentence that must be served before release on license (pursuant to section 288(1A) of the Criminal Code)

WOLFFE J.:

1. On the 10th January 2024 the Defendant was:

    (i) Found guilty by way of a majority jury verdict for the offence of Murder contrary to section 287(1) of the Criminal Code (Count 1 on the Indictment);

    (ii) Found guilty by way of a unanimous jury verdict for six (6) counts of Common Assault contrary to section 314(1) of the Criminal Code (Counts 3 to 8**)**; and,

    (iii) Found guilty by way of a majority jury verdict for the offence of Common Assault contrary to section 314(1) of the Criminal Code (Count 9).

2. By way of a unanimous jury verdict the Defendant was found not guilty for the offence of Unlawful Wounding (under section 306(b) of the Criminal Code and Count 2 on the Indictment).

3. On the 13th March 2024 a sentencing hearing was conducted and after taking into consideration the submissions of Ms. Cindy Clarke (the Director of Public Prosecutions) and the Defendant (who was unrepresented), the cited authorities, victim impact statements, and sections 53 to 55 of the Criminal Code, I sentenced the Defendant as follows:

Murder (Count 1)

Life imprisonment with 27 years to be served before the Defendant is eligible for parole.

Common Assault (Counts 3 to 9)

6 months imprisonment for each count to run concurrent with the sentence for Count 1.

4. Set out herein are my reasons for the stated sentences.

Decision

5. This was undoubtedly one of the most morally corrupt crimes which has come before the Courts in historical memory. A young mother who appeared to have an infectious *joie de vivre* and a deeply profound love for her son had her precious life brutally taken away at the callous hands of the Defendant. The dark depths of the Defendant's depravity in killing Chavelle Dillon-Burgess (hereinafter referred to as "Chavelle") and then disposing of her body is only matched by his stubborn reluctance to provide his son and the family of Chavelle with some semblance of needed closure by disclosing the whereabouts of her remains. One can only hope that one day soon that the Defendant will come to his humanistic senses and do right by his son.

6. It was with this and the following sentencing guidelines that I sentenced the Defendant as I did.

Sentencing Guidelines for the Murder Offence (Count 1)

7. Pursuant to section 288(1) of the Criminal Code the mandatory sentence for murder is imprisonment for life. Therefore, the only issue for determination was what period of imprisonment should the Defendant serve before he becomes eligible for release on license (i.e. parole). In this regard, section 288(1A) stipulates that:

> *"288 (1A) Where a person is sentenced under this section, the court shall, having regard—*
> *(a) to the circumstances of the commission of the offence; and*
> *(b) the character and circumstances of the offender,*
>
> *order the portion of the sentence that must be served before any application for release on licence may be entertained or granted by the Parole Board (established under the Parole Board Act 2001)."*

8. Section 288(1A) therefore provides that in arriving at what, if any, portion of a life sentence that must be served before the granting of parole to the offender by the Parole Board that the Court must have regard to (i) the circumstances of the commission of the offence and (ii) the character and circumstances of the offender. Both of these limbs essentially encapsulate what the Court shall in any event have regard to under sections 53 to 55 of the Criminal Code. Such as the seriousness of the offence, the level of culpability of the offender, and mitigating and aggravating features of the matter. In the following paragraphs I will cover each of these factors.

9. However, before I direct a discerning eye to sections 53, 55 or 288(1A) of the Criminal Code the recent Bermuda Court of Appeal authority of *Anthony Davis v. R, Criminal Appeal No. 4 of 2023* and the older English case of *R v. Sullivan et [2004] All ER (D) 133* (which is cited in *Davis*) demand my attention. They both provide helpful guidance as to the thought processes which the Court should engage when deciding what portion of a life sentence a convicted murderer must serve before being eligible for parole.

10. In *Davis* the appellant pleaded guilty to a charge of murder. The circumstances of the offence were particularly gruesome in that the appellant chased his victim throughout the house when armed with two knives and he then repeatedly stabbed her as she tried to escape. Trails of blood were found in at least two rooms. He was sentenced to a life sentence with a minimum term of imprisonment of 23 years before he was eligible for parole. In arriving at this sentence the sentencing judge took into consideration a previous conviction of the appellant whereby he had either thrown or dropped an infant child out of a second story window. At the sentencing hearing the Prosecution proffered a range of 23 to 30 years imprisonment and the defence countered by submitting that the period should not exceed 20 years imprisonment.

11. Agreeing with the sentencing judge, Bell JA in *Davis* found the circumstances of that case to be "vicious and ferocious" and he agreed with the Prosecution's suggested sentencing range for murder offences involving a knife i.e. 23 to 30 years imprisonment. From this Bell JA did not disturb the 23 year sentence imposed by the sentencing judge. Accordingly,

the appeal was dismissed. The only criticism Bell JA had of the sentencing judge, and it appears to have been only slight criticism, was that the sentencing judge did not fix a starting point and then identify the factors *"which required movement from that starting point"*.[1]

12. *Sullivan* involved three conjoined appeals in which:

(a) Appellant Sullivan was convicted of murder by a jury for stabbing his neighbour with a sword-like weapon during a heated argument over excessive noise supposedly being made by the neighbour. Due to there being an element of provocation (but not so much that it constituted an excuse for the offence), and taking into consideration aggravating factors, the starting point was set at 14 years imprisonment. The Court then went on to move downwards from the starting point and uphold the sentencing judge's sentence of just over 13 years imprisonment.

(b) Appellant Gibbs was convicted of murder for stabbing his victim after a verbal altercation on a bus. It appeared that Gibbs had instigated the confrontation and it was he who aggressively followed the victim as the victim alighted from the bus. In sentencing Gibbs to 17 years imprisonment the trial judge noted that he attacked *"a perfectly innocent member of the public without any justification at all"*.[2]

Taking into account the requirements of retribution and deterrence, the appellant's previous record, his habit of carrying knives and his penchant for using them, the premeditated nature of the offence, and the mitigating features of the case, Lord Woolf CJ stated that a starting point of 17 years imprisonment would be appropriate.[3] However, Lord Woolf CJ further stated that a substantial discount should be given to allow for the appellant's mental condition which

1 Paragraph 24 of *Davis*.
2 Paragraph 69 of *Sullivan*.
3 Paragraph 69 of *Sullivan*.

played a part in the offence. The sentence was accordingly reduced to a minimum term of 14 years imprisonment.

(c) Appellants Derek and Barry Elener (father and son respectively) were convicted of murder and other violent offences committed over an eight year period. The offences involved 12 armed attacks on security guards and on one occasion they were pursued by a member of the public. As the member of the public alighted from their car and approached the appellants he was shot in the chest and he died as a result. Using a starting point of 25 years imprisonment the trial judge sentenced the father (who was 65 years old, had no previous convictions and was the getaway driver) to serve 25 years imprisonment of a mandatory life sentence. The son, who too was of previous good character but was the one who shot the fatal bullet received 27 years imprisonment.

Lord Woolf CJ stated that the appellants displayed *"a total disregard for human life"* and upheld the sentences. However, in respect of the son, it was deemed that 30 years imprisonment was the appropriate starting point.

13. The statutory center piece of ***Sullivan*** was the United Kingdom's Criminal Justice Act 2003 (the "CJA") which codifies the guiding principles to be applied by sentencing judges when considering the minimum tariff periods which a person who has been convicted of murder must serve before being released on parole. Specifically, section 269 of the CJA deals with minimum terms in relation to mandatory life sentences and Schedule 21 of the CJA outlines the approach to be adopted in the setting of starting points. It was stressed in ***Sullivan*** that neither section 269 of the CJA nor its Schedule 21 removes the discretion of the sentencing judge to determine the appropriateness of any sentence.

14. Bermuda does not have equivalent statutory provisions to the CJA when it comes to the fixing of starting points for the minimum period of incarceration that a murderer must serve before being released on license. However, the utility of ***Sullivan*** to the case-at-bar is its enunciation of the purpose and objectives of sentencing and the factors which a sentencing

judge should have regard to when deciding minimum tariff periods for murder (including any mitigating and aggravating factors). Many of the objectives and factors of the CJA mirror Part IV of the Criminal Code and which are ensconced under the title "Purpose and Principles of Sentencing" (particularly sections 53 to 55 of the Criminal Code). So valuable help can be gleaned from ***Sullivan*** in this jurisdiction when establishing the starting point and the portion of sentence which the Defendant must serve before being eligible for release on license.

15. Further, and probably most importantly, ***Davis*** and ***Sullivan*** collectively provide a defined route that the sentencer should take when sentencing an offender convicted of murder. In particular and in the following order the sentencer should:

    (i) Indicate the appropriate sentencing range; and then,
    (ii) Fix the appropriate starting point within that range; and then,
    (iii) Determine the final sentence by deciding to what extent the starting point should be adjusted upwards or downwards. In doing so the Court should have regard to all mitigating and aggravating features of the case.

16. Therefore, following ***Davis*** and ***Sullivan***, I will in due course cast my focus on what should be the appropriate sentencing range and starting point for the case-at-bar, and then move to establishing what should be the final sentence after having taken into consideration the pertinent mitigating and aggravating factors in this matter.

Sentencing Guidelines for the Common Assault Offences (Counts 3 to 9)

17. Sentencing for the common assault offences is far more straightforward. Section 314(1) of the Criminal Code provides that a person convicted of such offences is liable to serve a maximum period of 12 months imprisonment.

18. Of course, sections 53 to 55 of the Criminal Code apply to the common assault offences as they apply to the murder offence, albeit through less severe and less complex lenses.

19. Having said the above, before justifying the sentences which I gave for the murder offence and the common assault offences it will be necessary, for contextual purposes, to summarize the evidence which the Jury considered in reaching their guilty verdicts (and not guilty verdict). In part because section 288(1A) of the Criminal Code calls for the Court to have regard to circumstances of the commission of the offence when considering the sentence for the murder offence. So in the next few pages I will embark upon just that.

Evidence at Trial

20. I will first deal with the evidence which supported the murder offence (Count 1).

21. The Prosecution's case was entirely a circumstantial one which focused heavily on the toxic and often physically violent relationship which existed between the Defendant and Chavelle from 2017 and up to the time of her being reported missing on or about the 30th April 2020. The Prosecution asserted that it was this volatile relationship which culminated in the death of Chavelle by the murderous actions of the Defendant. The Indictment dated the 23rd March 2021 particularized a date range of the 10th April 2020 and the 11th June 2020 during which the Prosecution alleged that the Defendant could have killed Chavelle and disposed of her body, but as the evidence unfolded at trial it became clearer that it was likely that Chavelle met her death on a date between the 11th April 2020 and the 30th April 2020. To date, despite several searches and all reasonable inquiries being carried out by police authorities and concerned members of the public in Bermuda and in overseas jurisdictions, Chavelle has not been seen anywhere, her body has not been recovered, and, no credible information has been received by the police as to her whereabouts.

22. At trial, it was incontrovertible that: throughout the Defendant's and Chavelle's relationship that there were verbal and physically violent episodes between them (it was the Defendant's position that it was Chavelle who instigated the physicality between them and that at no time whatsoever did he hit or strike Chavelle); over the course of their relationship the Defendant and Chavelle resided together in a residence located at #38

Hillview Road in Warwick Parish ("Hillview"); at the time of Chavelle going missing in April 2020 they were residing together at Hillview with their son who was born in October 2018; and, that when Chavelle went missing in April 2020 that it was at a time when the movements or travel of members of the public around, into and out of Bermuda were restricted due to the implementation of shelter-in-place regulations prompted by the COVID-19 world-wide pandemic (these regulations initially went into force from the 4th April 2020 to the 20th April 2020 but were repeatedly extended thereafter).

23. Against this backdrop of undisputed evidence it was the Prosecution's case, which the Jury must have accepted in reaching their guilty verdict for the murder offence, that:

(i) The Defendant and Chavelle had a toxic and volatile relationship and on several occasions at Hillview the Defendant physically abused Chavelle. This would have included multiple instances of the Defendant choking, sitting on or kneeling on Chavelle to the point that she could not breathe (some of these incidents make up the particulars of Counts 3 to 9).

(ii) On the 11th April 2020 the Defendant and Chavelle had a very heated and expletive filled verbal argument which turned physical (this argument was captured in a voice note which was recorded by Chavelle as it occurred). The Prosecution put to the Jury that at some point during this exchange or soon thereafter the Defendant carried out an act which caused the death of Chavelle and that this act was possibly the Defendant either choking Chavelle, or sitting on her, or kneeling on her thereby causing her to lose her breath. That is, as the Defendant had done on past occasions when he assaulted Chavelle.

(iii) From the 11th April 2020 (the day when the above-stated physical encounter took place between the Defendant and Chavelle) Chavelle's close friend TEW (for the sake of anonymity I will only use her initials), to whom Chavelle communicated with on a daily basis, called and sent WhatsApp messages to Chavelle but that Chavelle never responded to them.

(iv) When police officers did a welfare check on Chavelle at Hillview on the 30th April 2020 Chavelle was not there and the Defendant was vague and uncooperative regarding Chavelle's whereabouts. Further, after a missing person's report was made by Chavelle's grandmother on the 30th April 2020 and in the ensuing days, months and years thereafter (including at trial and at the sentencing hearing) the Defendant has been steadfast in his unhelpfulness as to when Chavelle left Hillview, where she went to, and whether she returned to Hillview any time prior to or after she was reported missing. I will say more about this later.

(v) The Defendant lied to police officers on the 30th April 2020 when he told them that he saw Chavelle leave with TEW on the 11th April 2020, especially since on the 21st April 2020 (i.e. nine days before speaking to the police officers) the Defendant was informed by TEW that Chavelle was not with her.

It is likely that the Prosecution persuaded the Jury that the Defendant lied to the police officers because he well knew that Chavelle was dead and that he had murdered her, and, that by lying he attempted to divert the police officers' attention away from him as being the person who murdered Chavelle.

(vi) The Defendant was heard on a 37 minute audio recording from his cellphone taken on the 11th April 2020 engaged in activity which suggested that he was extensively cleaning, wrapping, and zipping up something. This recording was the same day as and at a time after the aforementioned very heated argument between the Defendant and Chavelle. The Prosecution sought to and presumably did convince the Jury that this recording was inadvertently made by the Defendant and that from it they could reasonably infer that it was of the Defendant (a) cleaning up the premises after killing Chavelle so as to get rid of any forensic evidence which may have linked him to the crime, and (b) of him preparing Chavelle's body for disposal at a location away from Hillview.

The Prosecution coupled the evidence of the recording with further evidence from a neighbour who stated that on the 11th April 2020 that she saw thick and dark smoke billowing from the Defendant's chimney (which she found to be abnormal since it was a hot and humid day).

(vii) Chavelle would have never voluntarily left Hillview without any intention of returning and in doing so abandon her son whom she dearly loved and/or without taking her bank card and her $3,757 dollars cash which were left in the residence.

(viii) On the 12th April 2020, the day after the heated argument between the Defendant and Chavelle, the Defendant used Chavelle's HSBC bank card to make an ATM withdrawal of $250.

(ix) At no time, either after TEW told the Defendant on the 21st April 2020 that Chavelle was not with her or after police officers did a welfare check for Chavelle on the 30th April 2020, did the Defendant make any efforts or attempts to report Chavelle, the mother of his son, missing.

The Prosecution asserted that this was because the Defendant had murdered Chavelle and that he well knew of the location of her body.

(x) The Defendant, as any reasonable person would have expected the father of their son's missing mother would have done, did not participate in any of the searches for Chavelle and neither did he participate in any vigils which were held for Chavelle.

(xi) The last person to have seen Chavelle alive was the Defendant.

24. As to Chavelle's cause of death, it obviously could not be medically determined by a forensic pathologist as her body still has not been found. However, relying on the circumstantial evidence presented (some of which is mentioned above) and the violent history of the Defendant's and Chavelle's relationship, it was the Prosecution's case that the Defendant killed Chavelle by either choking her, or sitting on her, or by putting his knee on her with such force that Chavelle could not breathe and that she died as a result. Further, that he then disposed of her body in such an unknown way and in such an unknown place that her remains could not and still cannot be discovered.

25. I will now set out the evidence which supported the common assault offences (Counts 3 to 9).

26. The underpinning evidence of the common assault offences was extracted from witness statements done by Chavelle on the 15th November 2018 and two on the 12th June 2019 in which it was said that:

(a) On the 14th November 2018 when Chavelle returned home to Hillview after seeing her doctor regarding a scar which she had from a C-section from having her and the Defendant's son (their son was born on the 31st October 2018) that the Defendant starting criticizing her about how to feed the baby. This argument escalated into several separate physical altercations over the ensuing periods of time whereby the Defendant repeatedly: grabbed Chavelle by her right arm and dragged her throughout the residence; shoved her in her chest; hit her about her face and head; pushed her to the ground and sat on top of her; squeezed her throat/choked her; and, sat on her and put her hands behind her back to point that she could not breath. As a result, Chavelle sustained injuries to her head, lip, teeth, and arms.

(b) On the 1st June 2019 Chavelle went to Hillview and eventually she and the Defendant started to argue about what she was going to feed the child. The Defendant called her a dead beat mom and a "dumb bitch" and he then started

to tell her to get out of his house. As she was about to leave she tried to kiss the baby but when she leaned over to do so the Defendant kept pushing her away. She pushed him back and told him not to push her. She said that that is when the physical fight started and with the baby in his arms the Defendant hit her and pushed her to the ground. He then kneeled on her chest and she told him that she could not breathe. The Defendant then got up off of her.

27. The Defendant elected to give evidence in his own defence which by virtue of its guilty verdict the Jury must have roundly rejected. I do not propose to set out in much detail the Defendant's defence but it would be useful to contextually highlight the lengths to which the Defendant was prepared to put forth an unbelievable defence which obviously the Jury were not prepared to countenance. The Defendant said that:

- While he accepts that he and Chavelle had a volatile relationship that it was Chavelle who was always the aggressor and that he never hit or struck out at her. The Defendant said that evidence of this are the several 911 calls that he had made to the police over the years concerning Chavelle's conduct.

- On the 11th April 2020 that it was Chavelle who was the aggressor and that it was he who told her to leave the residence. Further, that while it is correct that on the 11th April 2020 that there was a verbal argument between him and Chavelle which turned physical, that by physical he meant that Chavelle was throwing dishes and burning up linens in the fireplace. He stated that at no time did he punch or hit out at Chavelle.

  Moreover, the Defendant said, Chavelle left the residence but she then came back to the residence a little while later that day to pick up some belongings. She left again and he "assumed" that she went to TEW's house. Therefore, he said, he was not concerned about her whereabouts because Chavelle had on previous occasions left and stayed away from the residence for a few days.

- He never told the police officers that he saw Chavelle leave with TEW, and that what he actually told them was that he "assumed" that Chavelle left with TEW.

- The recording on the 11th April 2020 was of him cleaning the house after he came inside dirty from gardening; of him cooking and wrapping food (in particular chicken); and, of him zipping up a suitcase which contained Chavelle's linens. Further, that the smoke from the fireplace which the neighbour saw was from Chavelle burning linen in the fireplace on two (2) occasions and of him burning old files from his work as a lawyer.

  He said that he deliberately put the recording on just in case Chavelle came back to the residence and caused a disturbance and so he wanted to protect himself.

- It was not unusual for him to have used Chavelle's bank card on the 12th April 2020 as he, with Chavelle's knowledge, had used her bank card to purchase necessities for the household.

- He was not vague or uncooperative with the police and that he gave them sufficient details to assist them with ascertaining where Chavelle was. Further, that because of past history with the police he was reluctant to speak to them.

- Chavelle came back to the residence again on the 16th April 2020 to pick up her phone and some more belongings.

- He did not participate in the searches or the vigils because a lot of negative things were being said about him on social media and he was fearful for his and his son's safety.

- There was no forensic evidence whatsoever in or around Hillview linking him with causing the death of Chavelle.

- The Prosecution had not proven that Chavelle was/is not in Bermuda, or in Jamaica, or somewhere else overseas and that the police did not follow pertinent lines of inquiry as to Chavelle's whereabouts. Such as: the possibility that Chavelle went to another person's residence, and, the possible forensic value of some tights that were found in a bag by one of the searchers when they carried out a search in a certain area.

- Chavelle lied a lot and that she was known to be secretive to her friends and family, such as when she went to New York and got married without telling them.

28. In respect of the common assault offences the Defendant made considerable hay out of the fact that on the 13th December 2018 that Chavelle gave a statement to the police effectively withdrawing the complaint she made on the 15th November 2018 in respect of what she said occurred on the 14th November 2018. The Defendant said that this was indicative of Chavelle accepting that what she said happened was fabricated. However, the content of Chavelle's statement on the 13th December 2018 does not reflect what the Defendant said that it did. It was no doubt clear to the Jury, upon seeing the audio/visual record of Chavelle's withdrawal statement, that Chavelle not once accepted that what she said was untrue and that her only impetus for withdrawing her complaint was so that she and the Defendant could work things out for the betterment of their child (she was even seeking counselling).

29. To reinforce this, in her first statement on the 12th June 2019 (there were two statements on this date) Chavelle indicated that she wished to reinstate the complaint that she had made on the 15th November 2018. No doubt this was because whatever hopes she had of working things out with the Defendant disintegrated once he again assaulted her on the 1st June 2019.

30. The Defendant also sought to gain some mileage out of (i) letters written by Chavelle to the Court stating her desire not to give evidence at the Defendant's trial for the November 2018 and June 2019 complaints, and (ii) a 42 minute audio recording which he clandestinely did on the 21st December 2019 and in which Chavelle is heard talking with him about withdrawing all of the charges that she made against him in respect of the 2018 and 2019 complaints. It is correct that in those letters and in the recording that Chavelle is unambiguously stating that she wishes to withdraw her complaints against the Defendant. Indeed, in the recording Chavelle is using rather strong words and I would say unfair words about the Department of Public Prosecutions' understandable reluctance to enter a *nolle prosequi* in favour of the Defendant.

31. However, of course, there was more to the story. In particular, that:

(a) TEW gave evidence that in the summertime of 2019 that Chavelle had shown her two or three letters that the Defendant had written for Chavelle and they were drafted to tell Chavelle what she should say when she went to Court and for Chavelle to say that her complaints were lies.

In fact, the Defendant admitted in his oral testimony that he assisted Chavelle in writing the letters to the Court.

(b) The letters and the recording were done by the Defendant at times when the Defendant was on bail from the Court for the 2018 and 2019 offences and when there was a condition of his bail that he was to have no contact whatsoever with Chavelle.

Bizarrely, the Defendant attempted to persuade the Jury that somehow it was Chavelle who was breaching <u>his</u> bail conditions because it was she who was coming to Hillview at the time.

32. It was useful to have set out the Defendant's defence as I did because the way and manner in which the Defendant marshalled his defence is a factor that I took into consideration in sentencing him. I will also speak on this later.

33. With this, I will now turn to the focal point of this document which is: What should be the appropriate sentencing range, starting point, and final sentence for the murder offence (as suggested by ***Davis*** and ***Sullivan***) and what should be the proper sentence for the common assault offences.

Sentence for the Murder Offence (Count 1)

34. In arriving at the sentence that I did my thought pattern was shaped by the realization that the brutal nature of the offences committed by the Defendant cried out for the need to ensure that any sentence which he received fully promoted "respect for the law" and maintained "a just, peaceful and safe society" which are both envisioned by section 53 of the Criminal Code. Further, the sentence which I gave hopefully achieved the following objectives of: protection of the community from the Defendant; reinforcement of community-held values by denouncing the unlawful conduct of the Defendant; deterring the Defendant and other persons from committing offences as serious as that which was committed by the Defendant; separating the Defendant from society; assisting in rehabilitating the Defendant; and, promoting a sense of responsibility in the Defendant by acknowledgement of the harm done to Chavelle, her family and to the community.

Appropriate Sentencing Range

35. The Prosecution proposed that in the circumstances of this case that the appropriate sentencing range should be between 18 and 30 years imprisonment. I would not quarrel too much with this suggested range but I would adjust the lower end of that range upwards to 20 years imprisonment. I therefore land on a sentencing range of 20 to 30 years imprisonment and I do so because murder is one of the most horrific offences than can be perpetrated against humanity and a very strong message must be sent to those who are

convicted of taking a life that they will be treated harshly. This is especially since over the past 15 to 20 years in Bermuda there has been a surge in violent murder offences, and it would appear that the murder is done by persons who were bolstered by an overwhelming sense of impunity due in part to the reluctance of witnesses to come forward and give information about the crime.

36. Moreover, in this jurisdiction manslaughter offences where an unintentional killing occurs as a result of an act of violence, and where the offender pleads guilty, would usually attract a sentence of anywhere between 10 to 15 years imprisonment (often near the upper end of this range). It therefore cannot be that in the circumstances of this case where Chavelle must have died an extremely violent and possibly tortuous death, where the Defendant has disposed of her body in such a way that to this day it has not been discovered, and where the Defendant has had a lengthy contested trial, that the appropriate sentencing range would begin with any number less than 20 years imprisonment.

Appropriate Starting Point

37. While murder offences involving a gun or knife often capture the headlines because of the often graphic nature of the circumstances, we must start to conceptualize offences involving the killing of a partner or spouse by abject domestic violence just as seriously. I would say even more seriously because in many of those instances the victim had endured years of physical and psychological abuse inflicted on them by the person who ended up killing them. This was evident with Chavelle who from 2017 to the time of her death was on a rollercoaster of emotions often vacillating between love and fear of the Defendant who purposefully exploited and manipulated Chavelle's feelings for him. Unfortunately, it was Chavelle's love for the Defendant, and her deep desire to have a family for her son, which led to her eventual death by the Defendant.

38. I find that what happened in the case-at-bar is more serious than what occurred in ***Davis*** and only marginally less serious than what the Eleners did in ***Sullivan***. I therefore fix the appropriate starting point in this case at 23 years imprisonment.

Sentence

39. The sentence of 27 years imprisonment represents an uplift of 4 years from my starting point of 23 years imprisonment and my reason for this is that this case is short on mitigating features and long on aggravating ones.

40. Dealing with the mitigating features, there is only one. That is, the Defendant's lack of previous convictions. Without sounding blunt, there is not much more to say about this other than he will be given some, but not much, credit for this. For the avoidance of doubt, I comprehensively reject any argument that because the Defendant was a criminal defence lawyer and may have successfully helped accused persons navigate through the criminal justice system that he should in some way be imbued with good character. In fact, and as I alluded to earlier, it was probably because of his knowledge and experience as a defence lawyer that the Defendant was able to manipulate Chavelle and induce her to withdraw the 2018 and 2019 charges against him.

41. Without doubt the Defendant cannot expect to receive any discount which is normally attributed to a guilty plea. As he was entitled, he had his day in Court and since the burden of proof always rests with the Prosecution he was equally entitled to just sit back and compel the Prosecution to meet that burden. However, having done that and having been convicted of a slew of serious offences then he should now be expected to receive a sentence which is commensurate with not only the manner in which he advanced his defence but also the level of mendacity in his defence. Firstly, the Defendant had absolutely no compunction in requiring the Prosecution to call several emotionally distraught civilian witnesses to give evidence and the Defendant showed absolutely no restraint in his repetitive attempts to discredit them through often unnecessary and ultimately futile cross-examination. Secondly, and as said earlier, the Jury must have accepted that the Defendant lied to them on a number of occasions. Such as, *inter alia*, about: Chavelle being the aggressor in each of the physical altercations that they had over the course of their relationship and that he never hit or struck Chavelle; not having a

physical fight with Chavelle on the 11th April 2020 (the day Chavelle was last seen or heard from by anyone); the recording of him on the 11th April 2020 was of him doing bulk food preparation; he told the police officers on the 30th April 2020 that he "assumed" that Chavelle was with TEW; and of course, not killing Chavelle and disposing of her body. Thirdly, and probably most despicable, was the Defendant's repeated attempts to disparage Chavelle and try to make the Jury believe that it was she who was of loose morals. Further, that it was she who was the perpetrator of domestic violence and that it was he who was the victim.

42. This to a significant degree speaks to the character of the Defendant as referred to by section 288(1A) of the Criminal Code. As an experienced defence attorney he was very conscious and deliberate in his attempts to sully Chavelle's good name, protract the trial and to ultimately obfuscate the truth about what he did to Chavelle, not just in April 2020 but also in 2018 and 2019. In fact, it is obvious to me that the Defendant's choice to be unrepresented at trial was cunningly calculated because he well knew that as a litigant-in-person he would be afforded far more latitude by the Court than that which would have been granted to a practicing lawyer whose behavior would have been strictly constrained by the Barristers' Codes of Professional Conduct 1981.

43. Moreover, the Defendant has not shown, and probably will never show, any modicum of genuine regret or remorse for killing Chavelle. One could say that he has shown no genuine regret or remorse because for appeal points to be advanced in a higher place at a later date that he has to maintain that he did not kill Chavelle. But at the very least he could have shown some regret or remorse for being involved in an unhealthy relationship with Chavelle in front of his impressionable son, or for even not being as forthright as he could have been with the police or Chavelle's family as to when Chavelle would have left Hillview on the 11th April 2020 or some time thereafter. So he could have expressed such regret or remorse without incriminating himself or jeopardizing any appeal strategies which he may later employ. Far be it for me to tell the Defendant or those advising him what to do but by him not expressing any semblance of genuine regret or remorse is something that I took into consideration in sentencing him.

44. As for the aggravating features, they are significant and they, along with the woeful lack of mitigating features, form the foundation for a considerable uplift from the earlier stated starting point of 23 years imprisonment.

45. Firstly, the killing of Chavelle was not a one-off, isolated, or momentary lapse of reason event by the Defendant. The death of Chavelle was the culmination of years of psychological and physical abuse perpetrated by the Defendant in which he, on at least two occasions, brought Chavelle to the brink of permanently losing her breath. To exacerbate matters, and as part of his seeming campaign of controlling the love which Chavelle had for him, the Defendant manipulated her into withdrawing her 2018 and 2019 complaints. Sadly, had Chavelle not acceded to the Defendant's orchestrated shenanigans to absolve himself of any criminality she probably would be here with us today. This sordid picture of domestic violence painted by the Defendant elevates the circumstances of this case to the highest of realms and is a factor which I am compelled to take into consideration when sentencing the Defendant (*R v. Bristol [2013] 1 Cr.App.R. (S) 81*)[4].

46. Secondly, the Defendant's conduct after killing Chavelle was nothing short of inhumane. The Jury must have accepted the Prosecution's case that the eerie sounds on the recording of the 11th April 2020 was of the Defendant cleaning up forensic evidence which would have linked him to the crime and of him preparing Chavelle's body for disposal at a location away from Hillview. If this was not despicable enough the sounds of the Defendant's and Chavelle's son crying in the background and with classical music playing leads one to wonder whether the Defendant did all of this in the presence of his son. If so, this takes the Defendant's depravity to an even lower immoral level.

47. This is of course compounded by the fact that the Defendant somehow and somewhere disposed of Chavelle's body, and as part of his diabolical plan he coldly watched members of the public sympathetically search for Chavelle's body. He must have heard the pain in Chavelle's family members' voices when they were pleading for the return of Chavelle in

[4] Cited in *Davis*.

April 2020 and the following months. He must have also heard and seen their pain when Chavelle's loved ones gave evidence in Court and when they expressed themselves in their Victim Impact Statements (which I take into consideration). And yet, the Defendant still defiantly and unremorsefully refuses to give closure to his son, to Chavelle's family and friends, and to the wider community by saying where he concealed Chavelle's body.

48. Guided by ***R v. Ekareib [2015] EWCA Crim 1936*** I see the Defendant's conduct of successfully concealing and disposing of Chavelle's body as a considerable aggravating feature in this matter. I am also guided by the several overseas case authorities which were listed by the Prosecution and show various minimum sentences which must be served by offenders before being granted parole in circumstances where they disposed of the bodies of their victims after killing them. These sentences ranged from 18 years imprisonment to 32 years imprisonment for trials heard in the Courts of Scotland, England, Canada, and Jamaica.

Sentence for the Common Assault Offences (Counts 3 to 9)

49. Section 314 common assault offences usually occupy the lower rungs of the seriousness ladder and are usually characterized by circumstances involving a push or a shove or a grab and they often do not result in injuries. Accordingly, sentences for these offences routinely range from a conditional discharge to a fine or to a minimal period of incarceration. The common assault offences in the case-at-bar however are distinguishable from those other garden variety type common assault offences.

50. Firstly, it is surprising that the Defendant was not charged with committing the more serious offence of unlawful wounding in relation to the offences that occurred on the 14th November 2018 when he grabbed Chavelle and dragged her through Hillview, choked her, and sat on her to the point that she could not breathe. All of which lead to Chavelle sustaining personal injury to her head, lip, teeth, and arms. The Defendant was fortunate that he was charged with the lesser offence of common assault.

51. Secondly, the common assault offences were the precursors to the murder of Chavelle. It is sad to say but had Chavelle had the strength and courage to follow through with her police complaints against the Defendant for the common assault charges then she would likely still be alive. Chavelle withdrawing the 2018 and 2019 complaints at the doorstep of the Court, because she so desperately wanted her son to have a family unit, did not have the desirable effect of the Defendant ceasing to assault her anymore. Instead, it would appear that it only fortified the Defendant's apparent perverse thoughts that he could get away with assaulting her and this may have been his prevailing subconscious thought when he assaulted and killed her sometime between the 11th and 30th April 2020.

52. It was therefore with reluctance that I was only sentenced the Defendant to the 6 months imprisonment that I did. I took into consideration sections 53 to 55 of the Criminal Code and the fact that the Defendant, at the time of the commission of the offences in 2018 and 2019 (which of course were before the murder offence), had no previous convictions. Therefore, although there was virtually no possibility whatsoever that the Defendant would have received any sentence less than a term of imprisonment it would not have been in accordance with basic sentencing principles to have imposed the maximum sentence of 12 months imprisonment which the Defendant was liable to under section 314(1) of the Criminal Code.

53. I will say this however. Concerted attention should be given by the legislature to increasing the maximum sentencing tariffs for common assault offences. Often in domestic abuse cases there are multiple incidents of assault which involve varying forces of pushing, shoving, grabbing, and dragging but they often fall short of the person sustaining identifiable physical injuries (most assuredly they would have suffered grave psychological injury). It should be that where the Prosecution are able to prove beyond a reasonable doubt that the common assaults inflicted by an accused person on their victim constituted a history of domestic violence then a sentence higher than 12 months could be meted out. Until such legislative changes are made then perpetrators of domestic violence will continue to victimize with impunity.

Conclusion

54. In the circumstances, I hereby confirm the following sentences for the Defendant:

(a) Life imprisonment for the Murder offence (Count 1) with 27 years to be served before he is released on license.

(b) 6 months imprisonment for each of the Common Assault offences (Counts 3 to 9) with the sentences to run concurrent with the sentence for Count 1.

Dated the 27th day of May 2024

The Hon. Mr. Justice Juan P. Wolffe
Judge of the Supreme Court of Bermuda