



**IN THE CAYMAN ISLANDS COURT OF APPEAL**

**CRIMINAL APPEAL 2/2022**

IND.0060/2020

SC#02117/2020

BETWEEN:

**COURTNEY MASON BRYAN**

**Appellant**

- and -

His Majesty the King

**Respondent**

BEFORE: **The Rt. Hon Sir John Goldring, President**  
**The Hon. Sir Richard Field, Justice of Appeal**  
**The Hon. Sir Michael Birt, Justice of Appeal**

Date of Hearing: 11 May 2023

Appearances: Mr Jonathon Hughes of Samson Law for Appellant  
Mr Scott Wainwright of office of the DPP for Respondent

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**JUDGMENT**

Transcript of oral judgment dated 11 May 2023 and Approved for Release 28 June 2023

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GOLDRING, PRES.

1. On the 22nd of January 2021, the Applicant, to whom we grant leave, pleaded guilty at the Grand Court, at what the judge found was the first reasonable opportunity, to manslaughter on the grounds of provocation. He had been charged with murder. On the 17th of December 2021, Justice Chapple (Acting) sentenced him to 10 years' imprisonment. We have indicated to the Appellant that we allow the appeal and will substitute a sentence of 8 years for that imposed by the judge. These are the reasons.



2. There was a basis of plea. It was in these terms:

*"Whilst at Lily's nightclub on the morning of 29th August of 2020, I was attacked from behind by [a person]. This attack began when [that person] punched me to the ground.*

*Thereafter, [his] brother ... joined the attack and they both kicked and punched me whilst I was curled up on the ground. I received numerous injuries, which have been documented by police.*

*I saw a knife lying on the ground and I picked it up. When I got to my feet, I held up the knife to try and get them to back off, but they did not. At that time I had no intention of using the knife to harm anyone.*

*After this, both [the person] and his brother followed me between two cars and boxed me in. I felt trapped with nowhere to go and feared for my life. I used the knife on one of them and I accept that in doing so I intended to cause really serious harm.*

*At the time I thought I was defending myself, but now I accept that in fact I lost my self-control and went too far, and that using the knife to stab the person went further than was necessary to defend myself.*

*This loss of self-control was provoked by [those two].*

*I did not mean to kill.... I did not even know which brother it was at the time, or how many people I was being ganged by."*

3. There was a Newton hearing. The primary issue was whether the Appellant had brought the knife used in the fatal attack to the scene, or he had been picked up when being attacked, as suggested in the basis of plea. The judge accepted the Appellant's account as to how he came by the knife.
4. In his sentencing remarks, the judge set out his understanding of the facts. Having heard from the Appellant, he was well able to do so. He said this:



*"The trouble started, it seems, when you intervened in a dispute in which [one person] was concerned. Matters soon escalated when [another] became involved. By the time of the video footage you are involved with both brothers. It is clear that there came a time when you were being attacked by both brothers. From video footage and other evidence, [one of the attackers] then appears to be the more aggressive and enthusiastic attacker. Such was the nature of that attack that the prosecution accept, as do I, that you were entitled to use reasonable force to defend yourself. But what you did could not possibly amount to reasonable force or any reason at all to take a life. You armed yourself with a knife and you stabbed ... twice; once to the thigh, once to the lower left chest. That latter being the fatal blow. The prosecution accept that when doing so you were acting under provocation. The degree of provocation is an important question in this sentencing exercise."*

5. The judge's attention was drawn to the Cayman Islands Sentencing Guidelines for Violent Offences. They had been promulgated in June of 2021. At paragraph 5 of the Introduction to the Guidelines, under the general heading '*Greater degree of provocation than normally expected*', they say this:

*"In many offences, it is possible that the issue of provocation will arise. The law generally expects a person to be able to resist provocation but accepts that there will be circumstances where the level of provocation justifies a reduction in sentence. In assessing the degree of provocation where the guideline provides for a greater degree of provocation than normally expected to be a mitigating factor, account should be taken of the following factors:*

- (a). *If the provocation (which does not have to be a wrongful act) involves gross and extreme conduct on the part of the victim, it is a more significant mitigating factor than conduct which, although significant, is not as extreme..."*

6. At page 20 of the Guidelines, there is set out the Guideline in respect of 'Manslaughter by reason of provocation'. As to "Higher Culpability," it states:

*"Planning of criminal activity (including the carrying of a weapon) before the provocation took place;*



Offence committed in context of other serious criminal activity;  
Use of firearm;  
Low degree of provocation;  
Concealment, destruction, defilement or dismemberment of body.

7. As to "Medium Culpability", it states:  
"Cases falling between higher and lower because factors in both higher and lower are present but balance themselves out and/or offender's culpability falls between the higher and lower levels.
8. "Lower Culpability" is described in terms of "very high degree of provocation". By a footnote, reference is made to paragraph 5 of the Introduction.
9. Culpability having been established, the second step under the Guideline is said to be the starting point and category range. Under Category 1, Higher Culpability, the starting point is 24 years' custody, the range 20 to 30 years. Under Category 2, Medium Culpability, the starting point is 16 years' custody, the range 12 to 20 years and under Category 3, Lower Culpability, the starting point is 8 years' custody, the range 5 to 12 years.
10. An additional aggravating factor (in other words, a factor not specified as such generally in the cases of criminal offending), is the use of a weapon. An additional mitigating factor is said to be violence initiated by the victim.
11. The submission of the Appellant below, and repeated to us, was that this was an offence of lower culpability which fell within the 5 to 12 year range, with a starting point of 8 years' custody. The judge had said this about the Guidelines:

*"Those guidelines provide three levels of culpability; higher, medium and lower. Into what category this case fits depends primarily upon my assessment of the degree of provocation varying from low to very high. Taking everything into account, the provocation in this case falls between those two descriptions of low and very high. This is, in my judgment, the case of medium culpability within the meaning of the guidelines.*



*I also bear in mind when assessing the gravity of this offence generally that a knife was used but I approach this case on the basis that, following the Newton hearing, you did not bring the knife to the scene. That said, you were prepared to, and did, use that knife unlawfully to kill."*

12. He had also said a little earlier in his observations that:

*"Overall, I am not sure you intended to kill your victim and thus I approach sentence on the basis that you intended not to kill but to cause really serious harm with that knife."*

13. The judge also observed that the Appellant was no stranger to violence, he having previously been sentenced to four years' imprisonment for robbery and possession of an imitation firearm. The judge took 15 years' imprisonment as the appropriate notional sentence after a trial and reduced it by one third to reflect the plea of guilty.

14. Mr Hughes, in helpful submissions on behalf of the Appellant, submitted that the judge, although aware of the extreme nature of the provocation, failed or failed sufficiently to take it into account when assessing culpability and therefore in the ultimate sentence. To underline that point, Mr Hughes, set out in his grounds of appeal extracts from two of the witness statements.

15. One witness described the actions of the deceased in these terms:

*"He came flying in and punched the appellant to the ground and the appellant's shoes came flying off. While the appellant was on the ground, on the corridor another of the assailants and the guy in the red shirt was punching and kicking the appellant. They were kicking and punching the appellant for about two minutes.*

*The appellant then began to pull away from them and they moved from the corridor to the parking lot. They were grabbing onto the appellant and [illegible] attacked him. Until the fight reached to when the cars were parked in the middle of the parking lot."*

16. The witness described another person trying to pull one of the assailants off the Appellant while the other assailant continued the attack. The witness said everything happened very fast.



17. Another witness spoke of seeing the Appellant curled up on his side on the ground with his knee up to his chest area. “And some guys were kicking him in the head area. I also saw one of the assailants kicking the appellant while he was on the ground. They were kicking him mostly in the head area.”
18. Mr Hughes submitted that this was one of those cases which fell within paragraph 5(a) of the Introduction to the Guideline, to which we have just referred. The provocation, he submitted, was extreme. A starting point of 8 years with a range of 5 to 12 years was the appropriate sentencing bracket.
19. We cannot accept, as Mr Hughes in part submitted, the judge was not aware of the contents of paragraph 5(a), nor that he did not apply his mind to the issue of the degree of provocation. We note that in terms the defence skeleton argument made reference to it. The extent of provocation is an integral part of any assessment of culpability. It is clear the judge had regard to the fact that violence was initiated by the victim, the subsequent behaviour of the victim and his brother and the overall degree of violence occasioned to the Appellant during the course of these events. It is clear, while he was of the view that the events preceding the Appellant's use of the knife amounted to significant provocation, he did not assess it as so significant as to fall within the description gross and extreme. We agree. Moreover, as we observed in argument, while the degree of provocation is of course relevant, so too is the response. We do not understand the Guideline to mean that there must come a point at which the provocation is so great that whatever the response, the offence is bound to be one of lower culpability.
20. All that said, we were persuaded that in the particular circumstances of this case, it would have been open to the judge to impose a sentence somewhat less than the notional 15 year sentence after a trial. The provocation was substantial. The Appellant's response by way of his conduct, as Mr Hughes put it, was not extreme. The attack lasted minutes. The response was much shorter and, by definition, in the heat of the moment. There was no intention to kill. Reflecting all these features, it does seem to us that a notional sentence after trial of 12 years would have been sufficient to reflect the Appellant's criminality. That translates into a sentence of 8 years following the early plea of guilty. Such a sentence would recognise the extent of provocation and that in the heat of the moment the Appellant, having picked up the knife, made use of it not intending in doing so to kill.



21. Those are the reasons we substituted a sentence of 8 years' imprisonment for the 10 years imposed by the judge.