

MONTSERRAT

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 2 of 1985

BETWEEN:

JAMES NATHANIEL BROWNE - Appellant

and

THE QUEEN

Before: The Honourable Mr. Justice Robotham - Chief Justice
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Mitchell (Acting)

Appearances: J.S. Weeks for the Appellant
Odel Adams, Attorney General and Kurt DeFrias for the Crown

1986: Apr. 7, 9.

JUDGMENT

ROBOTHAM, C.J. delivered the Judgment of the Court:

The appellant a former member of the Montserrat Constabulary Force between February 1978 and August 1980 was on November 28, 1985, convicted for the murder of Lillian Puckey and sentenced to death. From this conviction he has appealed.

The deceased was an expatriate, 74 years of age, who made her home in Montserrat since the year 1974. She involved herself in community and religious work, and had assumed the role of a mother towards the appellant.

Mrs. Puckey made frequent trips abroad to visit her family in the United States and Australia, and on March 20, 1985 she attended on Edith Margetson at the Runaway Travel Agency and purchased for the price of \$8,214.50, a ticket with which to travel to Australia. She paid for this ticket with a cheque drawn on the Royal Bank of Canada and on March 21, she returned and collected the ticket,

/On Friday.....

On Friday, March 22, 1985, Norrill Gumbs, a Minister of Religion saw the deceased in Parliament Street and spoke with her. Gumbs testified that he knew the deceased was leaving the Island on Sunday, March 24 because of as a result of a conversation with her on March 14, he was charged with the responsibility of taking care of her house during her absence.

On Saturday, March 23, Gumbs in passing the deceased's home at around 6.30 p.m., observed that the outer door was closed with a cement block, and the inner one was secured with a padlock, which he had never seen before. There was a note written on a white card and pinned to the door which read "Emergency phone 2281. I am very sorry off Island". The telephone number was that of Revd. Gumbs. Seeing this, he came to the conclusion that deceased had left the Island ahead of schedule.

In view of the fact that he was to have been the caretaker of the deceased's home in her absence, he searched for the key but without success. He made enquiries at the Public Library, the Royal Bank, the Immigration Department, and Grove Agricultural Station. On Monday, March 25, he spoke to his wife, and later that same afternoon made a telephone call to the United States. On Sunday, March 31, Joyce Massick, the daughter of the deceased telephoned Gumbs from the United States with the result that on Monday, April 1, 1985, accompanied by the Police, he went to the home of the deceased. Their approach was heralded by a very bad odour emanating from the house. Upon entering, the body of Mrs. Puckey was found forced into a travelling trunk. He later identified this body to the Pathologist.

Dr. Sree Ramulu, a Pathologist from Barbados, performed a post mortem examination on April 3, 1985, when the body was in an advanced state of decomposition. He found abrasions over the hands, chest wall, and face of the deceased. The breast bone was fractured horizontally between the third and fourth ribs, and ribs one to seven both on the right and on the left side were fractured. The fractures of the breast bone and
/the ribs,.....

the ribs, could have resulted from several blows, or from pressure being applied, the degree of pressure required varying with the age of the victim. The older the person he said, the easier it would be to create the fractures.

The hyoid bone on the front of the neck was fractured, and in his opinion this could have been caused by a human hand applying pressure which process is called by throttling or manual strangulation.

There was also a laceration of the upper lobe of the left lung which could have been caused by the fractured ribs.

All the above-mentioned injuries to the breast bone, ribs, hyoid bone, and lung, were caused prior to the death of the deceased and his conclusion was that death was caused by strangulation and traumatic asphyxia.

The Pathologist then went on to speak of some post mortem injuries. In particular he found there was a fracture of the cervical spine. This he testified could have been caused by some one, after death had already ensued, forcefully bending the neck. It could happen also if some one forced the body into a container which was smaller than the body as for example, if it were forced into the travelling trunk shown to him in Court. The evidence led at the trial was that the body was found crammed into a closed trunk, and that clothing was covering it.

Kathie Allen testified that she was accustomed to assist the deceased in cleaning her home, and at one stage actually lived in the house with her. She agreed with the suggestion from Counsel for the appellant that the relationship between the deceased and the appellant was "one like mother and son". She herself enjoyed a good relationship with the appellant, and was a frequent visitor to the deceased's home.

On March 22, Allen said whilst she was assisting the deceased to pack, the appellant arrived at the house. This was about 6.45 p.m., and she
/heard.....

heard him speaking to deceased. She spoke in an intelligible manner. She left shortly after leaving them both alone.

Before she left however, she assisted the deceased in moving a trunk downstairs from upstairs.

It was the same trunk in Court, which was shown to the Pathologist.

On Saturday, March 23, she passed the deceased's home and saw the padlock securing the door. She did not recognize the padlock. She saw the note on the door with the telephone number of Revd. Gunbs. She searched for the key but did not find it and on April 1, she saw the dead body of Mrs. Puckey at the Hospital. On April 5, 1985, she went to the Police Station where she was shown a number of articles which she identified as items which were in the deceased's home up to the time of her demise. These included a refrigerator, a stove, a television set and an air mattress.

She was cross-examined and she admitted having heard the appellant speak of his health in conversation with Mrs. Puckey. This witness also said in evidence that the deceased operated accounts at the Royal Bank and Barclays Bank and the cheque books were usually kept in her pocket books.

Clifford Allen, a taxi driver testified that as arranged previously with the deceased he arrived at her home at 5.35 a.m. on Sunday, March 24, to take her to the Airport. On blowing his horn and getting no response he investigated and saw the note and lock on the door. He left on seeing this.

The accused's movements on March 22-25

The movements of the accused between March 22 and 25 are most important as there being no eyewitness to the killing of Mrs. Puckey, they all formed part of the chain of circumstantial evidence which the Crown presented against the appellant at his trial. They are also of
/great.....

great importance in view of the projected defences at the trial of Insanity and automatism.

The starting point is 3.30 p.m. on March 22 when the appellant went to the office of Carib World Travel to purchase a ticket to travel to Antigua, and the culminating point is March 25, when according to Immigration records he left the Island. I shall endeavour to catalogue them in chronological sequence.

Friday March 22:

3.30 p.m.: The appellant purchased from Yvonne Piper an employee of Carib World Travel a ticket to travel to Antigua on Monday, March 25. He tendered a cheque drawn on the deceased account at the Royal Bank for \$300 U.S. and asked for change. There was no ready cash to give him change so he was told to return on Saturday, March 23. This evidence emanates from Pamela Arthurton, the Manager.

6.45 p.m.: The appellant arrives at Mrs. Puckey's home. There he sees her and the witness Kathie Allen packing. Allen leaves them both at about 6.55 p.m. They were alone together. Allen says appellant spoke to her in an intelligent manner, and witness, he understood her.

9.00 p.m.: Steadroy Samuel, a taxi driver known personally to the appellant is engaged by him to pick up some things at the waterlane Street address of the deceased. Samuel observed that the appellant's clothes appeared to be rumpled. Appellant directs him to Mrs. Puckey's house, which is entered by the appellant, using a key.

After an interval, the appellant loads into his taxi a television set and six chairs taken from deceased's house, then closes the door and further directs the taxi to his (appellant's) house where the goods are unloaded and he receives his fare of \$10.

Saturday, March 23:

10.00 a.m.: According to Pamela Arthurton the appellant returns to her /travel.....

travel agency for his change from Mrs. Puckey's cheque of the previous day. He is told to return at noon at which time, he is further asked to return on Monday.

12.00 Noon and shortly after: John Harper who was getting reading lessons from the deceased arrives at her home as arranged the previous day for his lessons. There he meets the appellant and a Rastaman (George Isles). He asks for the deceased and is told by the appellant that she is gone away. The appellant gave him some clothes and told him the deceased left them for him. Thereafter he assists the Rastaman and the appellant to put articles taken from deceased's house into the pick-up of Joe French who was summoned for the purpose. Appellant locks the door and writes a note which he attaches to the said door. The pick-up then takes the articles to the appellant's home.

Amongst the articles he assisted in loading were a refrigerator, a stove and some chairs.

Joe French whose correct name is Joseph Piper, substantiates the account given by Harper of the removal, and said that the appellant paid him \$40 for two trips.

Monday, March 25:

10.30 a.m.: Appellant engages James Welch to take him in his taxi to the Airport at 1.00 p.m. Welch arrives as arranged and appellant loads the suitcase and nine other pieces of luggage into the car. Appellant asks Welch to stop at Carib World Travel Agency where he had to pick up change from a cheque.

1.00 p.m.: Appellant stops at the travel agency for his change. He was unable to get it. It was then discovered that the cheque was irregular. It had no year written on and he was told the cheque would need verification by Mrs. Puckey whose purported signature appeared thereon. Appellant gave the witness Pamela Arthurton two telephone numbers from memory, one /being.....

being he said, deceased's home number and the other her business place. There was of course, no answer from her home number and she told the appellant that her business place reported that she was away on vacation. He did not get the change, but the ticket was delivered to him in view of the fact that he had stated that he was going to Antigua for medical attention.

This cheque was deposited and subsequently Barclays Bank debited the travel agency's account with the \$300. It was a forged cheque.

The appellant arrived at the Airport at 1.30 p.m. and ^{paid} Welch \$30 as his fare. On the way Welch said the appellant told him he was going to St. Martin to look for work. He arrived in Antigua and on April 12, 1935 he was apprehended by the Police there and returned to Montserrat where he was arrested.

It is not necessary to go any further into the evidence presented by the Crown other than to say that the appellant went on a spending spree with cheques drawn on Mrs. Puckey's accounts, between Saturday, March 23 and Monday, March 25. The signatures of Mrs. Puckey on all these cheques including the one with which the appellant paid for his ticket were forged and it was the opinion of the handwriting expert Lionel Belle, that the forgeries were perpetrated by the appellant. The articles removed from deceased's house were recovered from the appellant's home, and were identified in Court.

As a part of the Crown's case, a cautioned statement given to the Police by the appellant was put in evidence. The voluntariness of this statement was not challenged. I will summarize this statement in parts, and quote verbatim from other parts.

It commences by his admitting going to deceased's home on the evening in question and seeing the witness Kathy Allen there. After Allen left, he started talking to "Mother Puckey" about going back to /Antigua....

Antigua, and she told him not to worry because the medical expenses would be taken care of. She also told him she would be going away to St. John and Seattle to see her daughter. After a while he went to the refrigerator.

The statement goes on:-

"After returning from the refrigerator, I felt dizzy and high and when I look I saw a man before me with a sword and he told me that he is going to cut off my head. I put up my hand to block the sword but he kept on coming and I try to hold him but then I felt two hands hold me and I started to wrestle trying to get away. I could not get away because my hands were tied.

After a while I got away Mother Puckey told me she had to stop me from going through the window and I need to see a Doctor so I told her alright. After a while I told her I am going home and she said no, she would not run the risk so she ask me to cool out or sit down. We were there talking again. After a while I took up a book and I started to read and the spell came back on me and I saw three little men standing before me and provoking me and I started to fight them, and I felt the same hand hold me and I try to get away but I could not get away, so I started to fight. Both of us fell to the floor. When I catch myself I saw Mother Puckey lying on the floor not saying anything, only her hands and her feet was moving."

He then told of rendering first aid to her and she revived and told him he would have to see a Doctor. Efforts to contact Dr. Cooper by telephone failed. The statement continues:

"I sat down in the chair while I was there I felt high just as if I was flying. I saw the three little men came back, and when they came back they started to fight me and Mother Puckey put some oil on top my head and some ice on my forehead for a while, afterwards the men came back I felt the hands hold me again and I started to wrestle trying to get away but I could not get away. After a while we fell to the floor whoever was holding me. After a while I catch myself and to my surprise, I saw Mother Puckey stretch out on the floor. This time she was not saying anything. She was not moving. I took her up from the floor and put her on the couch to sit down but she could not hold up. I sat beside her with my arms around her shoulder. I started to scream and cry and say "Mother you can't die." Afterwards I left the house. I run out of the house and went by the fisherman shed. I stayed there for a while. I was crying. I came back up by the house and I put her in the bed, I open all the windows for her to get fresh

/air.....

air. I saw little blood marks on her neck. I was frighten. I went to the phone with the intention to call the Police, but then I was too nervous. Anyway I made several attempts to call the Police, but what was driving in my mind they would say I crazy. So I left there the night with two pairs of chairs and went home. I use Steady a taxi-driver to home."

The statement then went on to admit giving John "Ryan" (Harper) the clothes on Saturday and using him along with George Isles to move Mrs. Puckey's furniture from the house.

Then the statement continues:-

"....., while they were moving the furniture, I put the body of Mother Puckey in the trunk. The trunk was in the bedroom and George Isles and John Ryan were down in the kitchen. When I put Mother Puckey into the trunk there was some clothes on top of the trunk so I took up the clothes and put them on top of Mother Puckey in the trunk then I move out some of the furniture from the house and carried them at my home in Webbs."

He then sent on to say that he remembered seeing the note on the door but he did not write it. He admitted going back to the house on Sunday, March 25 and taking her cheque books. He issued on Mrs. Puckey's account 6 cheques in all and even asked his brother Glenville White to cash one for him. White gave evidence confirming this.

He then went on to say that he travelled to Antigua on Monday, March 25, and on March 26 he went to see Dr. Mathurin a psychiatrist there.

The appellant at the trial made an unsworn statement from the dock in which he spoke of images in the form of three men appearing before him when he was at Mother Puckey's home, and that he fought with them. They tried to call the Doctor without success.

He then added a new dimension to his statement to the Police by saying:

".....After the fight I lay in the chair exhausted. While I was there I saw a man. He came through the back door. He told me I am looking sick. I told him yes I am sick but right now I am out of medication. He took something from his pocket which appeared to be a cigarette. I have never smoke in my life but he asked me to take a few draw from the /cigarette....."

cigarette. I did not know what it is but I took it..... while at the house..... after smoking this man said (it) would make me feel better but I felt worse. This time I was flying. Only then I start feeling the pressure. I have been suffering from this disease for nearly two years. I have been to Dr. Cooper. I have been to Dr. Mathurin in Antigua in December. I have been to Dr. Meade in January. Through that illness I lost my job at Public Works as a Security Officer..... While at Police Headquarters Police asked no questions. He told me that mother's body was found in a trunk.....'

He then went on to say:-

"I do not know, I just don't know. I can't understand how the death occurred.....I would not and did not kill her. I love her too much for that....."

The defence called Dr. Ronnie Cooper, a registered medical practitioner and the Prison Doctor. He first saw the appellant in December, 1980 when he admitted him to hospital for back pain. Whilst there he developed a complication which led to bleeding from the stomach. He complained of dizziness, headache and itching of the skin and was given treatment. He saw him on 5 occasions between March, 1980 and February 1983. The Doctor said:

"During all these times I saw him about his gastric problem. I treated him with antacids and anxiety drugs. It was my opinion that there is anxiety component to his illness and that is why I treated him with anxiety drugs."

He next says the appellant on April 17, 1985, on remand at the Prison, when he again complained of his gastric problems. Appellant told him he was seeing Dr. Mathurin in Antigua, and showed him the medication he was taking. Dr. Cooper said he added some antacids to it.

He again saw him on June 26, along with Dr. George Mayhew a visiting psychiatrist from Barbados. In consultation with Dr. Mayhew, the appellant was put on a mild tranquilizer. He kept complaining about his stomach upsets. He again saw him on August 28 when the antacids and tranquilizers were repeated.

Dr. Cooper on September 24, saw accused and noted from his record

/that.....

that Dr. Lewis had seen him during his absence. ~~The~~ complaint to Dr. Lewis as recorded was that he was unable to sleep properly and was seeing strange people at night. Dr. Cooper said he changed the mild tranquilizer to a major one Haloperidol, which drug is also used in the treatment of insanity.

In cross-examination the Doctor said Haloperidol can in small doses be used for the treatment of anxiety. He did not he said, treat the accused for insanity.

I pause here to comment on the fact that when Sergeant Douglas cautioned the appellant on April 12, 1985 after he was brought back from Antigua, the appellant said:- "Three little men began to provoke me and I fight them; when I finish fighting them I realise it was Mother Puckney I was fighting. This spell came upon me twice and to every time I fight them it was Mother Puckey. The last time I fight them, I realise Mother Puckey was dead."

The appellant never mentioned to Dr. Cooper when he saw him in the remand section on April 17, anything about seeing strange people, neither did he mention it when Dr. Cooper and the psychiatrist from Barbados Dr. Mayhew, saw him on June 26.

Dr. Sonia Meade another registered medical practitioner in Montserrat was also called. She first saw the appellant on November 30, 1985 and again on 5, 27 and 29 November 1984. His complaint was headache, insomnia and giddiness. She diagnosed his case as being one of anxiety neurosis. She suggested that he travel to Antigua to see Dr. Mathurin a consultant psychiatrist. At the time when she saw the appellant his job was that of a security guard.

Dr. Albertine Mathurin Jergenson a consultant psychiatrist holding a D.M. in psychiatry was next called. She saw the appellant on December 7, 1984, (i.e. shortly after Dr. Meade saw him on November 29). He complained of headache, inability to sleep and nervousness. He was in
/her opinion....

her opinion suffering from anxiety with depression and she treated him with a tranquilizer - Ativan.

She saw him again on November 18, 1985 whilst he was on remand for this offence. His condition then was distressed and anxious. In her opinion this state was due to the stress of being on trial. She was not she said, in a position to say what was the state of his mind in March 1985. The appellant did not visit her surgery in Antigua nor did she see him on March 26, 1985.

At this stage Counsel for the Crown indicated to the trial Judge that the Consultant Psychiatrist, Dr. Mayhew, was present and available to the defence as he had seen the appellant. The Judge's note on this response of Mr. Weeks, Counsel for the defence is:-

"Mr. Weeks states the defence is grateful but does not wish to call Dr. Mayhew."

The case for the defence was then closed.

The trial Judge directed the jury on Insanity within the ambit of the M'Naughten rules. When he came to deal with the section of the appellant's statement from the dock about a man giving him a cigarette to smoke which made him feel worse, the Judge said:

"If you accept that part of the statement and you come to the conclusion that a man was in the house and the man had given him something to smoke which had some hallucinatory effect on him and that while he was in that state he did not know what he was doing and if you come to the conclusion that he killed Mother Puckey while he was in that state - in other words - that cigarette or whatever was given to him had such an effect on his mind that he did not know what he was doing then he would not be guilty of Murder. He would not be guilty of anything..... it is different if he knew it was a harmful thing and he took it and he went and did what he did but once he did not know.... he would not be responsible for his action, so he will be not guilty.If you are in doubt about that equally he will be not guilty. Only if you reject this then you will consider whether the accused is guilty of the offence of Murder or not guilty by reason of insanity."

/This....

This was a direction on automatism although the word was not used and the Judge was giving them also a direction on the burden of proof where the defence of automatism is raised. The pattern of the summing up was that the Judge was inviting the jury to first consider whether the accused was guilty or not guilty of Murder on the basis of the effect of the drug or cigarette upon his actions which would have been involuntary in these circumstances and therefore exculpatory.

The Judge also went further and told the Jury that in the statement from the dock the appellant was saying that another man was present in the house of the deceased and that he was thereby asking them, since he said he did not kill the deceased, to draw the inference that the other man killed her. This was being mentioned by the appellant at that point for the first time and it did not appear in his cautioned statement to the Police. He directed the Jury that if they accepted the fact that this other man killed Mrs. Puckey or they were in doubt about it, that he would be not guilty. He then told them that only if they have rejected these two possible situations either of which could bring about a straight verdict of not guilty would they go back and consider whether he is guilty of Murder, or not guilty by reason of insanity. He had previously given them a clear direction that the burden of proof where the defence of insanity is raised rests on the accused, but that it was discharged only on a balance of probabilities.

The first ground of appeal argued by Counsel for the appellant was that the Judge misdirected the Jury on malice aforethought, and more particularly mens rea in Murder.

The trial in his directions said that to amount to Murder the killing must be committed with malice aforethought which does not necessarily mean premeditation but it implies foresight that death would or might be caused. Malice he said, may be express or implied. Express malice may mean any of the following states of mind.....(1) an intention

/to cause....

to cause death or grievous bodily harm, (2) knowledge that the act which causes death or grievous bodily harm is caused to the deceased, or (3) indifference whether death or serious bodily harm is caused or not. Counsel for the appellant submitted that (3) was a misdirection. If read in isolation, there might be some cause for complaint but the Judge immediately went on to say:

"What is intention? The prosecution must prove to you so that you feel sure that the accused had the intention to cause the death of the deceased or to do him grievous bodily harm. Intention is not capable of positive proof. You will therefore infer the intention from what a person says or does, viewed in the light of the circumstances."

Counsel contended that the Judge dealt with malice aforethought and intention at once and the same time. The confusion in Counsel's mind no doubt has been brought about by the continued use of Lord Coke's definition of Murder. The "malice aforethought express or implied" of which Lord Coke spoke is nothing more than the specific intent required for the crime of Murder and in Archbalds (40th edition) para 2465 (f) it is stated that in a great majority of cases it is unnecessary and confusing to give any further direction than that the accused at the time of the act must have intended to kill or cause grievous bodily harm. Judges today still have the choice of using Lord Coke's definition if they so wish, but as a preferable alternative, they may well define Murder to a jury as being an intentional and deliberate killing of one person by another, done without lawful justification or excuse. We see nothing wrong with the manner in which the Judge directed the Jury on malice aforethought or intention whichever label is applied.

The second ground of appeal was that the Judge in directing the Jury on insanity in the terms of the M^{Naughten} rules, gave no direction on what is meant by disease of mind. There was no other complaint about the Judge's direction on insanity. He pointed out to the Jury that if the voluntary act of the accused which caused the death of the deceased proceeded from a disease of mind, it gives rise to the defence of insanity.

/He followed.....

He followed on by telling them that it was a matter for them to decide whether the accused was insane, and not for medical men however eminent. He further pointed out to them that Doctors were called as expert witnesses but that whilst they should have due regard to their expertise, in the final analysis they should treat and assess their evidence in the same way as they would any other witness in the case. He then proceeded to go meticulously through the evidence of the three doctors whose evidence I have already reviewed. None of these three doctors gave any evidence to suggest that the accused was suffering from any disease of mind as adumbrated by the answer to question 3 of the M'Naughten rules but the Judge nevertheless in each case after reviewing the evidence of each doctor, told the Jury that even if they should find that any of the three doctors was saying that the accused was insane, it was still a matter of fact for them to decide.

Again we see no merit in this ground of appeal. The Jury by their verdict clearly rejected the defence of insanity a fact which this Court in the light of the medical and other evidence does not find surprising.

The final ground of appeal was that the Judge nullified the directions on automatism (quoted above) when he told the Jury at the end of the summing up:

"If someone gives it (the cigarette) to him and he takes it innocently not knowing, and he got into a state which he was not aware of being in - an unconscious state - and he did an act, then he would not be guilty of anything."

It was not quite clear what cause for complaint Counsel had in the use of the word "innocently". In the case of *Bratly v Attorney General for Northern Ireland* (1961) 46 Cr. App. R. 1 medical evidence was placed before the Jury to the effect that the appellant suffered from epilepsy and so lacked the necessary mens rea to commit the offence with which he was charged. The trial Judge ruled that this was a defence of insanity and that there was no evidence to go to the Jury on the issue of automatism, which must arise from some cause other than a disease of mind.

/In short....

In short, medical evidence adduced and rejected by the Jury where insanity is raised, cannot be prayed on and for an alternative verdict of automatism. There must be some other evidence of a malfunctioning of the mind of transitory effect, brought about by the application of some external factor such as a blow to the head, or injection of drugs or alcohol. Involuntary acts performed whilst in this state have come to be known as automatism.

R v Quick (1973) 53 Cr. App. R. 722. A self-induced incapacity will not suffice.

In this case, the appellant alleged that he took the cigarette innocently and it had a disastrous effect on him. All this was before the Jury and they rejected it. At the other end of the line, the Jury also rejected that the appellant was suffering from a disease of mind amounting to insanity.

We are quite satisfied that the trial Judge fairly and accurately directed the Jury on the issues which were raised before them and that the appeal fails in every respect. The appeal is accordingly dismissed and the conviction and sentence affirmed.

L.L. ROBOTHAM,
Chief Justice

G.C.R. MOE,
Justice of Appeal

H.L. MITCHELL,
Justice of Appeal (Acting).