

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE  
(CRIMINAL)

CRIMINAL NO 2005/0036

BETWEEN

THE QUEEN

v.

ESTON JAMES

**Appearances:**

Mr Anthony Armstrong Director of Public Prosecutions and  
Mr Gene Pestaina Senior Crown Counsel, Mrs Joanne Walsh Crown Counsel I  
and Mr Adalai Smith Crown Counsel II for the Crown  
Mr Steadroy Benjamin with Mr Damien Benjamin for the accused

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2006: March 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup>  
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**RULING ON NO CASE SUBMISSION**

- [1] Blenman, J: This is my ruling on a No Case Submission based on the defence's contention that the prosecution has failed to establish that any act of the accused caused the death of the deceased.
- [2] The Director of Public Prosecution indicted Mr Eston James (the accused) for the offence of murder contrary to the common law. The accused is known as Amin.
- [3] The particulars of the offence are that between 11<sup>th</sup> and 12<sup>th</sup> day of March 2004, at Upper Fort Road in the parish of St John's Antigua and Barbuda he murdered Conroy Burton known as Yatta (the deceased).
- [4] He was tried by a mixed jury for the offence.

- [5] The prosecution relied on the evidence of several witnesses in support of its case. The majority of the witnesses testified that the accused and the deceased had an argument on the night of 9<sup>th</sup> March 2004 at Fort Road St John's Antigua.
- [6] The main witnesses for prosecution were as follows: Mr Junior James, Mr Roger Miller, Mr Devon Joseph, Mr Leslie Gomes, Mr Dola Reynolds, Constable Edwards and Dr Patricia Stranahan.
- [7] The eyewitness is Mr Junior James. He said that he was a friend of both the deceased and the accused. He knew the accused about 12 years. He remembered the night of the 9<sup>th</sup> March 2004, at about 7.30pm. He was with a group of friends and recalled that the deceased was asking the accused for money and liquor and the accused told the deceased "leave me alone me nah ga nothing fu give you." The deceased persisted in begging the accused for money and liquor. At that time, the accused was fixing a car engine. Mr James saw when the accused took a wheel hub for a Nissan van vehicle and threw it at the deceased, the hub hit the deceased on right side of his head and he fell to the ground. Persons tried to help the deceased by throwing water on him. He next saw the deceased on the day of the funeral when his body lay in the coffin.
- [8] During cross-examination he said the deceased was asking the accused for cigarettes and rum. The accused and the deceased were friends. On the night in question the deceased was drinking. Mr James said that on the said night the "deceased had liquor in his head and was troubling everybody." The deceased was "provoking" the accused that night and was asking him repeatedly for money and liquor just before the accused threw the wheel hub and hit the deceased on the head.
- [9] Mr Roger Miller said that he was present on the 9<sup>th</sup> March 2004 around 7pm at Fort Road St John's. He saw the deceased who was drunk and was "making noise". An argument started between the deceased and the accused. The deceased had a bottle in his hand. Mr Miller tried to part the two men but left after the bottle which the deceased had came very close to his (Miller's) face. He was in the process of leaving and turned around only

to see persons "scrambling" and "Yatta was on the ground." Mr Miller ran back and went over to Yatta and lifted him from the ground. The deceased was not responding. He gave the deceased water and called 911. While he was attending to the deceased, the accused was present and kept saying, "he did not hit him".

[10] Mr Devon Joseph who is a medex attached to Emergency Medical Services told the court that on the 9<sup>th</sup> March 2004 he responded to a 911 call. He went to Upper Fort Road St John's Antigua where he saw a rasta man who had a wound to his head. He called the man's name "Yatta" and attempted to dress the wound but that he was unsuccessful since the man ran away. He was however able to bandage the man's head later that night at Upper Fort Road. He was sure that on that night he was called 3 times for the same individual.

[11] Mr Leslie Gomes said on the night of the 9<sup>th</sup> March 2004 he was present during the argument. He saw Yatta had a bottle in his hand and Amin too had something. He next saw the deceased on the ground. The accused then picked up the deceased and asked persons to take him to the hospital.

[12] Mr Dola Reynolds said that he too was present and saw Mr Burton with a bottle approaching the accused, the latter who that moved away from the deceased several times. Later, the accused picked up something and the deceased was still approaching the accused. Shortly after the accused picked up something he saw the deceased lying on the ground. At this time, the accused was 3 feet away from the deceased. He did not see the accused hit the deceased. He said that on that night, the deceased stepped on something and fell to the ground. The witness demonstrated this for the benefit of the court.

[13] Constable Edwards gave evidence to the effect that he took a statement from the accused. The accused stated that the deceased came after him several times with a bottle and that the deceased fell down 3 times. In his statement, the accused (Mr James) maintained that the deceased fell down on 3 occasions and that on the last occasion when he fell he did

not get up. The accused maintained that he knew nothing about the wheel hub and insisted that he did not hit the deceased on his head. He denied knocking the deceased or killing him. Constable Edwards told the court that he carried out further investigations and charged the accused with the murder of Conroy Burton.

[14] Mr Errol James, who is the deceased's friend, said that on the 11<sup>th</sup> March 2004, he spoke to a friend by the name of Kambui. Later they left and went to deceased house where they saw him lying on a bed. He appeared sick and was groaning. Later the deceased's son arrived and himself and the son dressed the deceased and took him to the Causality Department of Holberton Hospital.

[15] The crown led evidence that the deceased died on 12<sup>th</sup> March 2004.

[16] The only medical the prosecution relied on was that of the pathologist Dr Patricia Stranahan.

[17] I proposed to examine Dr Stranahan's evidence in some detail. Dr Patricia Stranahan is the pathologist, who performed the post mortem examination on the deceased on 30<sup>th</sup> March 2004. The doctor told the court that the body was identified by the sister of deceased Ms Pricilla Williams. Sgt Pemberton was present. Dr Stranahan said that on inspecting the external part of the body of the deceased, **she did not find any evidence of any recent trauma**. She saw no open cuts, no recent bleeding. She made an incision at the base of the head and internally examined the deceased head. There she saw brown, blue to black blood overlying the bones of skull. The blood was old – it was about 2 – 3 weeks old. The bones of the skull were all in tact. The doctor said that she went in to the cranial cavity and was able to evaluate the old blood that was between the bone and the material that is usually attached to it. She found approximately 75 cc of blood compressing the left cerebral cortex and medulla, this she said recent blood. This blood on the left side was dark red and indicated recent bleeding over a period of 2 – 3 days.

- [18] In Dr Stranahan's opinion, the **cause of death was subdural bleeding secondary to blunt trauma to the right side of the head**. This the doctor says is referred to as a coup and counter coup injury. Dr Stranahan opined that the first injury caused by blunt force trauma caused the brain to shake up back and forth thereby causing the blood vessels on the opposite side of the brain to break and shake.
- [19] These injuries, which she saw on the deceased, were consistent with severe blunt force on the right side of the head.
- [20] It was during very intense and skilful cross-examination by learned counsel, Mr Steadroy Benjamin that the doctor said the blood on the left side had leaked over a period of 2 – 3 weeks.
- [21] Further the doctor was sure that the accused died from subdural bleeding. In this type of bleeding there is low pressure of blood and blood vessels ooze and keep building up. Finally the blood compresses the brain and the person eventually dies. She said classically this takes about 2 – 3 weeks. The doctor said if someone was struck on right side of head with an instrument it would take 10 days, 3 weeks, 4 weeks a very long slow process before that person would die from subdural bleeding. Dr Stranahan said further that this is the classic injury seen when someone who is very drunk falls down and hits his head, the person is then picked up and 2 – 3 weeks after dies.
- [22] **In the doctor's opinion the injury that caused Mr Burton's death would have been occasioned 10 days to 3 weeks prior to his death.**
- [23] The doctor said further that blunt force injury is consistent with a fall. In fact in a person who drink a lot of alcohol, this causes the brain to shrink and should such a person fall unto concrete and hit his or her head it is likely to tear the blood vessels in brain. She was sure that based on her experience as pathologist, alcoholics who stumble and fall on concrete and hit their heads could be dead within 3 weeks in those circumstances.

[24] Dr Stranahan clarified further that the deceased's death was occasioned by injury caused by severe blunt force to the right side of his head. This injury would have been occasioned 10 days – 3 weeks before he died but definitely not 2 days. She was aware that Mr Burton died on the 12<sup>th</sup> March 2004.

[25] The issue of the cause of death is critical in cases of murder.

[26] The prosecution has the duty to prove that the accused's act caused the death of the deceased.

### **Submissions**

[27] At the close of the prosecution's case, learned defence counsel, Mr Steadroy Benjamin submitted that the accused had no case to answer since the prosecution had failed to establish that the accused caused the deceased's death. Counsel submitted that the evidence led by the prosecution is weak and tenuous. Anything that happened on the 9<sup>th</sup> March 2004 did not cause the death of the deceased.

[28] The learned Director of Public Prosecution, Mr Anthony Armstrong asked the court to find that the crown had established a prima facie case against the accused.

[29] The DPP submitted that the issue for the court to determine is whether or not the prosecution has connected the cause of Mr Burton's death with any act of the accused? He urged the court to find that the acts of the accused contributed to the death of the deceased. The injury occasioned by the accused need not be the principle cause for causation to be established. He advocated that the court should look at all of the evidence led by the prosecution in its entirety and determine whether the act of the accused was a substantial or operating cause in the death of Mr Conroy Burton.

### **Court's Findings and Analysis**

[30] While the prosecution has proved that, on evening of 9<sup>th</sup> March 2004, the accused hit the deceased on the head with a wheel hub and there is evidence that he was injured as a

consequence, the clear medical evidence of Dr Stranahan (the pathologist) on whom the prosecution relied is inconsistent with the other evidence adduced by the prosecution.

[31] Dr Stranahan very clear opinion is that the injury that caused (the deceased) Mr Burton's death was occasioned 10 days – 3 weeks before he died. The evidence as stated earlier is that Mr Burton died on 12<sup>th</sup> March 2004 having been hit by the accused on the 9<sup>th</sup> March 2004.

[32] I am of the firm opinion that due to the inconsistency between medical evidence and the other evidence led by the crown, the case for the crown is weak and tenuous. There is no evidence adduced by the crown creating a nexus between the death of the deceased and any act of the accused.

[33] As stated earlier, the question of causation is critical and there is a void in this case.

[34] By way of emphasis, the medical evidence led by the pathologist, Dr Stranahan shows clearly that the injury that caused Mr Burton's death would have occurred at a time and date well preceding the 9<sup>th</sup> March 2004, that is the date on which the accused is said to have injured the deceased.

[35] In reviewing the submissions urged on the court, I am of the opinion that **R v. Galbraith [1981] 2 ALL ER 1060** is applicable to the case at Bar. The second limb is particularly relevant namely:

"If there is some evidence, but it is of a tenuous character, either because of inherent weakness or vagueness or because it is inconsistent with other evidence. Where the judge comes to the conclusion that the prosecution evidence taken at its highest, is such that a jury properly directed could not properly convict on it, it is the duty, upon a submission being made to stop the case."

### **Conclusion**

[36] In view of the above circumstances and for the above reasons, I am of the opinion that the prosecution has failed to adduce cogent evidence on the issue of causation.

[37] I have no doubt that based on the evidence that the prosecution has led a jury properly directed could not convict on the evidence. To put another way, I am satisfied that a prima facie case has not been established by the evidence adduced by the prosecution.

[38] The no case submission is therefore upheld. I shall send for the jury and direct them to return a verdict of Not Guilty against the accused Mr Eston James.

Louise Esther Blenman  
**Resident High Court Judge**