

SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.5 OF 2004

BETWEEN:

DAVID RAMSEY

Appellant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:

The Hon. Brian Alleyne, SC
The Hon. Michael Gordon QC
The Hon. Denys Barrow, SC

Chief Justice [Ag.]
Justice of Appeal
Justice of Appeal

Appearances:

Dr. Henry Browne and Mr. Anthony Johnson for the Appellant
Mr. Dennis Merchant and Ms. Janine Harris for the Respondent

2006: March 21;
May 22.

JUDGMENT

- [1] **BARROW, J.A.:** A jury convicted the appellant of incest with his daughter, aged eleven years and eight months, and he was sentenced to serve a term of imprisonment for 7 years. The sole ground of appeal that was argued was that the trial judge erred in law in refusing the appellant the opportunity to properly cross-examine a police officer on matters on which he had given additional evidence during the course of the trial.
- [2] The girl, who lived with her mother, testified that while visiting her father on a Saturday afternoon in the month of July 2001 the father forced himself upon her. Under cross-examination the girl testified that she had also made a report to the police that her half brother, Sean, had committed incest with her.

- [3] Information supplied by other witnesses, including the police officers to whom the girl made the two reports, established that the girl had made the report against Sean first. She alleged that the incest with Sean occurred on 31st July and she made the report to police constable James Francis on 1st August 2001. The girl's mother testified that on 10th September 2001 the girl told her that the father had 'troubled' her. The mother reported that matter to the police on 13th September 2001.
- [4] Counsel for the appellant told the court that he had been proposing, in the court below, to cross-examine constable Francis in relation to the fact that the original report that the girl made was against Sean and not the appellant. The transcript shows that counsel did cross-examine the constable and elicited from him that he was in charge of the investigation concerning Sean, that he received a report in relation to an allegation made by the girl against Sean on 1st August 2001 and that the report was specifically against Sean. At that point the trial judge stopped that line of questioning by stating that he would not allow "any excursus in respect of Sean Diaz. The person charged here is David Ramsey. I would not allow it." Counsel did not indicate to this court what more he had been proposing to ask constable Francis concerning the report about Sean that the constable had received.
- [5] However, counsel told this court that he had intended to rely on the fact that the girl had first complained of the alleged incest by Sean to impeach the credibility of a witness, Michelle Williams, who had testified that the girl had spoken to her about a sexual matter and that the girl had spoken in this conversation about the appellant. After counsel cross-examined constable Francis counsel applied to recall Michelle Williams to challenge her about her failure to tell the court that the girl had told her about the allegation against Sean. Counsel told this court that he would have put it to Michelle Williams that the girl had complained to Ms. Williams about one sexual occurrence, not two, and that that one complaint had been about the son and not the father. Counsel said that he would have used that opportunity

to advance the case for the appellant that the complaint was only against Sean and that the complaint against the father was an afterthought.

[6] Although the appellant had included as a ground of appeal a contention that the judge was wrong to refuse to allow Michelle Williams to be recalled counsel did not argue this ground. Therefore, there is no need to consider if anything could have come out of such a challenge and I dismiss as immaterial to this appeal any complaint about the evidence of Michelle Williams.

[7] All that is before this court is the ground of appeal that complains that the judge excluded further cross-examination about the report the girl made to constable Francis that Sean had committed incest with her. I must confess that I still do not see the relevance of the report that was made to constable Francis concerning Sean to the case against the appellant. Neither do I see the connection between this report to constable Francis and the tack that counsel would have taken had counsel succeeded in having Michelle Williams recalled for further cross-examination. With respect, it seems to me the judge is not only to be upheld in his decision to stop the excursion into irrelevant matters but is to be commended for properly controlling the course of the trial because it is all too easy for a judge, concerned to avoid criticism or reversal on appeal for being unfair to an accused, to err in the amount of latitude allowed to counsel in a criminal trial.

[8] I see no merit in the contentions of counsel and would dismiss the appeal and confirm the conviction and sentence.

Denys Barrow, SC
Justice of Appeal

I concur.

Brian Alleyne, SC
Chief Justice [Ag.]

I concur.

Michael Gordon, QC
Justice of Appeal