SAINT LUCIA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.4 OF 2005

BETWEEN:

PETER SOLOMON

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Michael Gordon, QC	Justice of Appeal
The Hon Denys Barrow, SC	Justice of Appeal
The Hon. Hugh Rawlins	Justice of Appeal

Appearances:

Ms. Wauneen Louis-Harris for the Appellant
Mrs. Victoria Charles-Clarke, Director of Public Prosecutions with Ms. Vanessa JnBaptiste for the Crown

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2007: February 26;
June 4;
June 18.

JUDGMENT

[1] GORDON, J.A.: The appellant was indicted for that he, between 11.30 am on Wednesday 11th December 2002 and 12.45 pm on Saturday 14th December 2002 at Ti Rocher in the Quarter of Castries did commit Murder by intentionally causing the death of Cyril Laurency by unlawful harm. The appellant was tried, convicted and sentenced to twenty-five years imprisonment at the Bordelais Correctional Facility.

[2] Cyril Laurency (hereafter 'the deceased') seems to have been seen alive for the last time some time on Wednesday December 11, 2002. On Saturday December 14, 2002 after concern had been expressed that the deceased had not been seen

in places his neighbours would have expected to see him, Paul Laurency, brother of the deceased, accompanied by others went to the residence of the deceased and, while there, noticed that a portion of earth proximate to the house of the deceased appeared to have been recently disturbed.

[3] The evidence was that the brother of the deceased went to where the earth had been disturbed and removed a stone and then a piece of plywood. Underneath the stone was a hat which the brother recognised as one often worn by the deceased. The brother began to dig in the area. He first came upon a shoe and then later realized that there was a foot in the shoe. At that point the brother stopped digging and called the police. On their arrival, the police caused further digging to be done and it was realized that the foot in the shoe belonged to the deceased, the remainder of whose body was unearthed. The body was identified as that of his brother by Paul Laurency.

[4] A post mortem was carried out on the body of the deceased by Dr. Stephen King at the mortuary of the Victoria Hospital. Dr. King had been present at the disinterment of the body of the deceased on December 14, 2002. He found that the body was decomposed to an extent consistent, in his opinion, with three days of decomposition. He found that there were two lacerations to the back of the head, the larger of which was 't' shaped. Dr. King said: "one limb of the't' was eight centimeters and this was in the midline of the occipital area of the skull, it's at the back of the head." The second laceration was found by Dr. King below the 't' shaped laceration measuring 3 centimeters. He said that the skull was fractured at the left parietal bone along the parieto-occipital junctions where the two bones of the skull meet. He also found a fracture along the temporo-occipital junction. The doctor also found mud and dirt in the mouth of the deceased.

[5] Dr. King stated that in his opinion the wounds to the head could have been caused by blunt force trauma. When asked what could cause such a blunt force trauma the doctor replied that while there are many things that could be causative, a

[6] When asked to classify the injuries he found, the doctor replied that these were significant injuries, but that they could have been survived with appropriate medical attention, and that clearly the earlier such attention was received, the more likely it was to be successful. The doctor was asked specifically: "if the victim were buried after receiving these injuries, what would the chances of survival be?" to which the doctor replied: "Well My Lord, after being buried the chance of survival is nil." The doctor went on to say in his evidence that the mud and dirt that he found in the mouth of the deceased raised the possibility that the deceased may have been buried unconscious, but alive.

[7] On Wednesday December 18, 2002, police, acting on information received, went to Dennery Village. On arrival at High Street, the police came upon a group of men assembled by an area known as 'the laundry'. When the vehicle in which the police were traveling came to a stop, one of the men in the group ran away. The police gave chase and the runner was held. It was the appellant Peter Solomon. The appellant was taken to the Dennery police station and there he was cautioned and informed of his rights to a solicitor. A form to that effect was signed by the appellant.

[8] On Friday, December 20, 2002, at Police Headquarters in Castries in the presence of the mother of the appellant and a justice of the peace the appellant was advised by the police that they had reasonable grounds to believe that he had committed the offence of murder and he was cautioned. He elected to make a statement. That statement was tendered and read out in court, counsel for the defence stating that he had no objection. In that statement the appellant denied all knowledge of

the crime and placed himself well away from the area of his uncle's house at the time of the uncle's death[1].

[9] Subsequent to the statement referred to at paragraph 8 above, the appellant was invited to participate in a question and answer interview with the police. He agreed; his mother and the justice of the peace were still present. The record of that interview was introduced into evidence at the trial, again without objection of counsel for the defence. Again, the appellant denied any involvement with the death of the deceased. He admitted that he had lived with the deceased for about a year and three months. He was asked "Did you ever have any problems with Cyril Laurency?" to which he replied "The only problem I had with him was for loud music and staying on the telephone too long." The appellant was also asked "Why did you leave the house of Cyril Laurency?" to which he replied "For the same loud music and staying on the phone long and for smoking weed too". The appellant denied that he had been anywhere near the premises of the deceased between the 10th and 18th December 2002.[2]

[10] On December 21, 2002 at about 10.35 am the appellant was released in respect of that crime pending further investigations. He was transferred to Gros Islet police station in respect of an unconnected matter. Later that same day, between 4 and 5 pm the appellant was again interviewed by the police. The appellant requested the presence of his mother and she was brought to the police station. In the presence of Corporal Caezar, P.C. 586 Thomas and the appellant's mother the appellant "confessed… to killing his uncle Cyril Laurency."[3]

[11] The police asked the appellant whether he would be prepared to repeat his statement so that a written record might be made. The appellant agreed to do so. He was further cautioned and made a further statement. Present during the making of this latter statement were his mother and the same Justice of the

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[1] Page E81 of record
[2] Pages E84-85 of record
[3] Page E91 of Record

Peace. Before this statement was introduced into evidence counsel for the defence was asked whether he had any objection and again replied "No objection". In this statement the appellant recounted the story of the killing in the following words:

> "On the Wednesday night last week I went to my uncle home, Cyril Lawrency. I went there to sleep in the balcony. When I got up next morning I felt like somebody throw water on me. When I open my eye it was my uncle, he ask me what did I come and do there and I tell him I just come to sleep. He tell me to leave his property, so I tell him before I leave uncle give me some tea to drink He came back with the same reply, leave my property. So, I told him well, uncle, give me some tea, then I would leave, and then I see he went inside with a rage. He came back outside with a cutlass in his hand, he came on me like is chop he wanted to chop me. So, then I was a little frightened and then I saw a piece of wood and then I stroke him. I didn't meant, I didn't mean to kill him and he fell on the ground. The whole place was in blood and I was frightened. I didn't know what to do at the time and then I saw it had a whole [sic] at the bottom of the place by the garden, so, then I carry him down there and then I place him in the hole, then I took the fork and a shovel and I covered the body. When I covered the body I was frightened still because the whole place was in blood, then I say to myself what am I going to do. Then the house was open, they had some breeze there, a packet of breeze that was not open yet. Then I wash out the blood from the concrete and then I went inside again and make some tea and when I make the tea I drank the tea and I was still frightened, and the I lock the place when I finish drank the tea. Then I walk down the road, then I took a bus, then I went to Dennery. I was still frightened when I reached in Dennery. I told no one about it, I kept it to my self. I go and check my partner and we smoke some weed, then drink some rum. I then get a little tense. I start to walk about thinking about what I would do. The partner tell me what happen to me, I told him nothing wasn't wrong with me. Then we cool out and went to the sea and bathe after that.

[12] The appellant gave sworn testimony at his trial. He alleged that he went to live in the home of his uncle in the year 2001. At first, he said, things were pretty good. After about six or seven months the appellant stated that he woke up one night with the uncle touching his private parts. He asked the uncle what he was doing, to which the uncle replied if the appellant wished to continue living in his, the uncle's, house then the appellant must let the uncle do what he wished, or else the appellant would have to leave the house. It was the appellant's evidence that as he had nowhere else to go he allowed the uncle to do what he wished. As a result,

the appellant said a sexual relationship developed between the appellant and his uncle. It was a relationship, the appellant implied, which was not to his liking.

[13] The appellant's evidence continued that on a Sunday night or early Monday morning whilst he was still living with his uncle he went to the house. Although he had a key, he chose to sleep in the verandah, said the appellant, because if he went inside his uncle would come after him. In the morning he awoke when his uncle "send some water on me to wake me up." On waking up, the appellant said, his uncle started to touch his private parts and to ask him to go and have sex with the uncle. He, the appellant, said that he had stopped that kind of behaviour at which point the uncle said either you have sex with me or leave the premises. The appellant told the uncle that he had nowhere else to go. At that point the appellant stated that he saw the uncle rush inside and come back outside with a cutlass in his hand "and when he reach by me he end up swinging the cutlass".

[14] The appellant said that he dodged the first swing of the cutlass and in his words: "So, when he come to swing a next time I just – they had a piece of wood, I just grab on to it and hit him." When asked by his counsel what happened then, the appellant said the uncle fell to the ground and hit his head on the edge of the wall, of the gutter. The appellant said that in spite of being shaken and having water to wet his face, the uncle did not move. The appellant said he was then sorely afraid. He walked around for a bit. He said there was a hole in the bottom of the garden which the uncle had paid someone to dig for him as a coal pit. He continued: "So I carried the body there, placed it in the hole and covered it. When I covered down the body, I went back up to the house still afraid."

[15] After a trial of some six days, the appellant was found guilty of murder by the jury and, as stated at the commencement of this judgment, sentenced to 25 years in prison. He has appealed against both conviction and sentence.

[16] The first ground argued on behalf of the appellant was that the trial judge failed to address the jury on the effect of section 171 (b) of the Criminal Code, 1992. That section reads:

> "171. Whoever intentionally causes the death of another person by unlawful harm shall be deemed guilty only of manslaughter and not of murder or attempt to murder, if either of the following matters of extenuation is proved, namely,
> (a) …
> (b) That he was justified in causing some harm to the other person, and that, in causing harm in excess of the harm which he was justified in causing, he acted in such terror of immediate death or grievous harm as in fact deprived him for the time being of the power of self control;"

[17] The learned trial judge did deal extensively with the subject of self-defence, but as far as I can discover, he dealt with self defence only as a complete defence which if proved would result in an acquittal. I was unable to find anywhere in the summing up that the trial judge treated with self defence as a partial defence leading, in the case of excessive force, to a verdict of guilty of manslaughter. The trial judge did deal with provocation and, it could be argued, peripherally, with self-defence in the context of reducing the crime from murder to manslaughter. He said:

> "So you – what the accused man is saying Peter Solomon is saying that the uncle threw water on him, but you find that he, the uncle, threw water on him and or rushed at him with a cutlass, you have to consider and was in a way demanding sexual intercourse from him, were these things enough to make him, if you find him not guilty of murder, were these things enough, if you find these things happened, were these things enough to make him lose self control and act in the way he did. You will decide, determine that. Yeah, because provocation is some act or a series of acts done by the deceased, which causes in the Accused the swelling and temporary loss of self control and which would cause a reasonable person and actually causes the Accused a sudden - - to lose his self control and behave as the Accused did. I repeat, provocation is some act, a series of acts done by the deceased to the Accused, which caused the Accused a sudden and temporary lost of self control and which would cause a reasonable person and actually cause the Accused a sudden loss of self control to behave as the Accused did and so, subjecting the Accused to retaliate in the manner he did.

[18] I would agree with learned counsel for the appellant to the extent that there might be said to be a technical misdirection in regard to section 171 (b) of the Criminal Code. In the circumstances of this case and the overall tenor of the Learned judge's summing up, I am of the view that no injustice was done to the appellant in that the jury clearly rejected provocation in arriving at the verdict of guilty of murder which, in the context of the portion of the summing up quoted above was inextricably linked with self-defence. To put it another way, I am of the view that the proviso to section 35 (1) of the East Caribbean Supreme Court (Saint Lucia) Act is apposite in this circumstance.

[19] The next ground of appeal is that the learned trial judge allowed inadmissible evidence to be admitted before the jury. Complaint is made of the evidence of George Anatole in which he recounted a conversation he had with the deceased. It was the evidence of Anatole that in October 2002 (some two months before the death of the deceased) whilst he was selling with his cousin by Lera's supermarket the deceased came up to him and was talking to him. Anatole stated that whilst the deceased and he were talking the appellant was "throwing remarks for Cyril" (the deceased). When asked what was the appellant saying to the deceased Anatole replied "Well he was getting on, cursing him". At this point in the evidence of Anatole, the judge decided to hear argument in the absence of the jury as to whether the evidence about to be given by Anatole was admissible. The trial judge ruled that he would allow further evidence by Anatole on the assurance by the DPP that the appellant could hear what the deceased was saying to him, Anatole. Once the jury returned and Anatole continued giving evidence. He stated that the deceased continued to speak to him and that the appellant was in a position to hear what the deceased was saying. This latter fact was challenged on cross examination though the witness did not resile from his statement of sufficient proximity in the appellant to hear[4]. Anatole stated that the deceased told him that the appellant was always threatening him. Counsel for the appellant at the trial

[4] R v Christie [1914] 545 provided the authority for the reception of evidence in the circumstance of the statement being made in the hearing of the accused person.

sought to exclude the evidence on the basis that its prejudicial nature far outweighed its probative value. The same point was sought to be taken for the appellant at this appeal.

[20] Blackstone's Criminal Practice, 2000 at paragraph F1.11 reproduces the following quotation from Ball v R[5]:

> "Surely in an ordinary prosecution for murder you can prove previous acts or words of the accused to show he entertained feelings of enmity towards the deceased, and this is evidence not merely of the malicious mind with which he killed the deceased, but of the fact that he killed him…. It is more probable that men are killed by those who have some motive for killing them that by those who have not."

With great respect to counsel for the appellant, the evidence of threat goes directly to the issue of motive and intent which in the circumstance of the defence of provocation or self-defence is in my view highly relevant. I see no merit in this ground of appeal.

[21] Further complaint is made of the admission of evidence of the question and answer interview by the police and the interview during the walk-through exercise. The basis of the complaint is that both the question and answer and the walk-through were conducted in breach of the principle underlying r III(b) of the Judges' Rules the material part of which reads as follows:

> "It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimizing harm or loss to some other person or to the public or for clearing up an ambiguity in a previous statement."

[22] In respect of the Question and answer interview the results of which were read verbatim to the jury that interview was held on December 20, 2002, it follows immediately after a caution statement. The appellant had not yet been charged or informed that he might be prosecuted. Further, prior to the introduction of evidence

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[5] [1911] AC 47

of the question and answer interview, counsel for the appellant at the trial (different from counsel at the hearing of this appeal) was specifically asked if he had any objection. His reply: "No objections my Lord". The interview was conducted in the presence of the appellant's mother and a Justice of the Peace. Absolutely no issue was raised as to its voluntariness. I am of the view that the objection to the introduction of evidence of the question and answer interview has no merit.

[23] The evidence surrounding the "walk-through exercise" establishes that it took place on December 24, 2002. There was no challenge by counsel for the appellant at the trial to the evidence deriving from the exercise. Again, the accused asked that his mother be present, and the police accommodated that request. At no point did counsel for the appellant at the trial object to evidence of the walk-through exercise. Perhaps, more telling against the argument of learned counsel for the appellant is the chronological sequence. It was only after the walk-through exercise that the appellant was charged with the murder of the deceased.[6]

[24] In Peart (Shabadine) v R[7] Lord Carswell said the following:

> "In their Lordships' opinion the overarching criterion is that of the fairness of the trial, the most important facet of which is the principle that a statement made by the accused must be voluntary in order to be admitted in evidence…
>
> "From the foregoing discussion it is possible to distill four brief propositions:-
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> (i) The Judges' Rules are administrative directions, not rules of law, but possess considerable importance as embodying the standard of fairness which ought to be observed.
>
> (ii) The judicial power is not limited or circumscribed by the Judges' Rules. A court may allow a prisoner's statement to be admitted, notwithstanding a breach of the Judges's Rules; conversely, the court may refuse to admit it even if the terms of the Judges Rules have been followed.

[6] Page E 100 line 18
[7] (2006) 68 WIR 372 at paragraph 23

(iii) If a prisoner has been charged, the Judges' Rule require that he should not be questioned in the absence of exceptional circumstances. The court may nevertheless admit a statement made in response to such questioning, even if there are no exceptional circumstances, if regards it as right to do so, but would need to be satisfied that it was fair to admit it. The increased vulnerability of the prisoner's position after being charged and the pressure to speak, with the risk of self-incrimination or causing prejudice to his case, militate against admitting such a statement.

(iv) The criterion for admission of a statement is fairness. The voluntary nature of the statement is the major factor in determining fairness. If it is not voluntary, it will not be admitted. If it is voluntary, that constitutes a strong reason in favour of admitting it, notwithstanding a breach of the Judges' Rules; but the court may rule that it would be unfair to do so even if the statement was voluntary"

In this case before evidence of the question and answer interview or the walk-through exercise was led, learned counsel for the defence was asked whether he objected to such evidence, and in each case he indicated that there was no objection. Neither at the trial of the appellant, nor before us was there any suggestion that either the question and answer interview or the walk through exercise were anything but entirely voluntary. I find no merit in this ground of appeal.

[25] The final ground of appeal was against the sentence imposed after conviction for murder of the appellant. At the time of the murder, the appellant was 16 years old. Section 179 of the 1992 Criminal Code, the applicable Code to the trial of the appellant, states as follows:

> "Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of 18 years; but in lieu of death thereof the court shall sentence him to be detained during Her Majesty's pleasure; and if so sentenced shall be liable to be detained in such place and under such conditions as the Governor General may direct."

Clearly this was written in the context of the existence of the mandatory death sentence on conviction for murder. Ever since the consolidated cases of Hughes and Spence sentence of death is no longer mandatory. In the circumstances this court should give further guidance to trial courts on the appropriate criteria to be used in sentencing in this circumstance.

[26] On the authority of Elvon Barry et al v The Queen[8] and to maintain a consistency of practice within the jurisdiction I would sentence the appellant who was, as was stated above aged 16 at the time of the commission of the crime to detention at the pleasure of the court for a period not exceeding 15 years with the condition that the appellant be brought before the court at the end of five years from the date of his conviction for review and thereafter after each period of three years.

Michael Gordon, QC
Justice of Appeal

I concur.

Denys Barrow, SC
Justice of Appeal

I concur.

Hugh A. Rawlins
Justice of Appeal

[8] Criminal Appeals Nos 5, 9 and 10 of 2004, Grenada