IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT

(CRIMINAL)

SKBHCR2005/0016

DIRECTOR OF PUBLIC PROSECUTIONS

V

ROMEO CANNONIER

Appearances:

Mrs. Pauline Hendrickson Director of Public Prosecutions for the prosecution
Mr. Hesketh Benjamin for the Defence

2008: 24th January

JUDGMENT ON SENTENCING

[1] On 25th July 2004 Delvin Nisbett was walking to his girlfriend's house in Dieppe Bay when Romeo Cannonier confronted him in that area and shot him to death. This can be gleaned from the evidence given at trial based on eyewitness account and on inferences to be drawn there-from. Delvin Nisbett was shot at least 4 times. It is logical to presume based on the evidence that the shots were fired from the same gun. Cannonier's defense was that he was not the person who shot the deceased. Indeed no one was able to identify the assailant even though one bus driver claimed to be a witness to what appeared to be the shooting at around 10 pm on the night of 25th July 2004. .

[2] The evidence linking Cannonier to the crime included a statement to his girlfriend MaKenya Lucas in which Cannonier confessed to killing a policeman in Parson Ground on the night in question and taking some money off of him. Part of the evidence of MaKenya

Lucas was that Cannonier had asked her to get another boyfriend Michael Powel's gun for him and the fact that the said gun which was later stolen from Powell's house was found to be the murder weapon which had been hidden on Cannonier's instructions. Cannonier told the deceased witness Gavin Gilbert that he hated policemen and that this particular policeman had beaten him in prison. He insisted in this conversation that he would be killing police because he did not like police. The prisoner had told Gilbert on giving him instructions to hide the gun that he should not get caught with the gun because it was the same gun he used to kill the police

[3] Forensic evidence was used to link the gun that Cannonier ordered hidden to the crime, and to identify it as the same gun stolen from Michael Powell. DNA evidence linked certain money found on Cannonier with the deceased thus linking Cannonier with the crime. Cannonier gave no evidence on his own behalf and called no witnesses even though he appeared to claim that there were persons who could say that he was at his home with them at the time of the murder. But this supposed alibi evidence was not allowed because Cannonier had failed to give the required notice to the Magistrate or the DPP even though years had passed since his committal for murder in this case.

[4] The pathologist Dr. Jones stated in his report that death was due to gunshot injury to the head neck chest and abdomen with haemorrhage and shock. In his sworn evidence from the witness stand Dr. Jones expressed the opinion that death was caused by the combined effect of the gunshot wounds.

[5] On the delivery of the "guilty" verdict by the jury the DPP gave notice that she would be seeking the death penalty. It is not surprising that the DPP made this announcement since this was not just a shockingly brutal killing but also because the deceased was a police officer and the apparent reason for the murder was the fact that the deceased was a member of the police force who on some previous occasion had beaten the prisoner. It could therefore be said that this was a premeditated revenge killing. In the past the court has indicated that such killings would be treated harshly not only because they offended against the law generally but they also had the added dimension of undermining the efforts

of law enforcement to do what they were paid to do. This was particularly so not only because it was a revenge killing but also because the victim was a police officer.

The Sentencing Guidelines

[6] The authority **The Queen v Peter Hughes** Privy Council Appeal No. 91 of 2001 points to the requirement that the court consider mitigating factors in sentencing in murder cases. There is no automatic death penalty. In that case in the decision of the Eastern Caribbean Supreme Court Court of Appeal the Honourable Sir Dennis Byron CJ in explaining the approach to individuation of the sentence for murder stated at paragraph 42 of the Judgment.

> *"A person convicted of murder could have committed the crime with varying degrees of culpability. The mandatory death penalty precludes the court from considering whether the penalty is appropriate to the particular offence and offender and there is no possibility of review from a higher court. The mandatory imposition of death deprives the person of their right to life solely upon the category of crime for which the offender is found guilty thereby eliminating a reasoned basis for sentencing a peculiar individual to death and failing to allow a rational and proportionate connection between individual offenders their offences and the punishment imposed upon them."*

[7] In accordance with the law laid down in that case by the Court of Appeal and approved by the Privy Council who later issued certain guidelines which are now established practice, this court ordered that there should be a psychiatric report and Social Inquiry Report prepared as part of the mandated sentencing hearing. Counsel Mr. Benjamin was advised that he could bring anyone who knew Cannonier and wished to speak on his behalf to do so. He was not able to bring anyone. I will therefore summarize the points arising from these reports and evidence given in mitigation and add that information to any matters arising on the facts of the case which could be considered mitigating factors. After this the court would look at the aggravating factors referred to by the DPP which must be proved beyond reasonable doubt if they are to prevail and must negative such mitigating factors as may appear if the mitigating factors are not to prevail. The case of **Mervyn Moise v The Queen** Criminal Appeal No.8 of 2003 lays down these rules authoritatively and they are now well settled in this jurisdiction.

[8] It has been stated that in spite of everything arising on the evidence, the death penalty is to be reserved for extreme cases and those in which there appeared to be no realistic hope of reform. Indeed these were the words of Rawlins JA in **Moise.** However Rawlins JA had also said that two considerations governed the decision to sentence to death or otherwise, these are firstly the circumstances of the case and secondly the mitigating factors. He argued that in the Eastern Caribbean the court is guided by the Indian jurisprudence. In India the guidelines are laid down in a number of cases and in those cases where the crimes are heinous and have the features of this case the death penalty is applied.

[9] In the decision of the Court of Appeal **Newton Spence v The Queen** and **Peter Hughes v The Queen ,** Criminal Appeal No. 20 of 1998 the Court considered the decision of the Supreme Court of India **Bachan v The State of Punjab** (1980) 2 SCC 476. In the words of Saunders JA (Ag) as he then was, the decision revealed that in India the sentencing discretion relating to the death penalty is affected by the propositions that the normal rule is that the offense of murder is punishable with a sentence of life imprisonment, but that the court can impose a sentence of death but only if there are special reasons for doing so which must be recorded in writing. The Learned Justice of Appeal went on,

"While considering the question of sentence for the offense of murder the court must have regard to every relevant circumstance relating to the offense as well as to the offender. It is only if the offense is of an exceptionally depraved and heinous character and constitutes on account of its design and the manner of its execution a source of grave danger to the society at large the court may impose the death penalty."

[10] In the case **State of Rajasthan v Kheraj Ram** [2003] 3 LRI 692 the Supreme Court of India (Criminal Appeal Division) stated at paragraph [39]

"In rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability of retaining death penalty, death sentence can be awarded.

Aggravating and Mitigating Factors

[11] I have already spoken to the aggravating circumstances in this case which are firstly that this was a planned revenge killing. Secondly, the murdered man was a representative of law enforcement in the society. The evidence also revealed that the prisoner was determined to ensure that he was not successfully prosecuted for the crime. He formed the intent and actually embarked on eliminating vital witnesses. The prisoner not only hated law enforcement he was determined to subvert the course of justice. Add to this the fact that the killing was brutal and one cannot discern any mitigating factors in the circumstances, since revenge for a beating inflicted by law enforcement cannot be considered such a factor.

[12] The psychiatric report of Dr. Sharon Halliday revealed no mental abnormalities and the Social Enquiry Report revealed the fact that Romeo Cannonier may have changed after his father's death by hanging. He also began to mix with bad company after finishing school. While there may be some connection between these events and the growth in criminal behaviour this has not been proven scientifically even on a balance of probabilities and it has not negatived the aggravating factors in the case. Anger is not considered a mental illness and that is all that could be said about Cannonier's state of mind at the time of the murder and subsequently. There was some mention of Cannonier reporting hearing voices but this has not been linked to a mental illness.

[13] As far as the psychiatric report was concerned Dr. Halliday was of the view that a more thorough examination was needed to establish or rule out clinical personality or behavioural problems. The doctor was not able to find any mental illness and thought that the prisoner was mentally normal and responded normally to questions. She regretted not being able to provide a risk analysis of the propensity of the prisoner for reform or repeated criminal behaviour.

[14] Having followed the guidelines of the higher courts in providing the appropriate sentencing hearing and having considered the further guidelines concerning the assessment of the

aggravating factors and any possible mitigating factors I must conclude that this seems to be a case fit for the application of the death penalty. But before I proceed to this conclusion I wish to rebut a false comparison raised by Counsel Mr. Benjamin for the convicted prisoner. Mr. Benjamin's argument seems to have been that person convicted of more heinous murders have not been sentenced to death. He appeared to be referring to the sentencing of certain persons in Grenada for the murder of Maurice Bishop and others. What he did not say is that in that case there were mitigating factors in relation to the circumstances of that murder and further that the sentencing was taking place 23 years after the prisoners had been initially sentenced to death. The Court of Appeal in that case took an extended period of time to hear the matter and make a decision in relation to the imposition of the death penalty. The death penalty was thereafter commuted to life imprisonment by the state. He did not say that after 23 years there were many signs that these persons had grown spiritually and socially and had therefore made great progress along the road of fitting back into society. It could not be said at this juncture that there was no hope of reform. Cannonier does not have similar factors weighing in his favour.

[15] In the local case of **Berthill Fox v R** Appeal N0.40 of 1998 the sentence of life imprisonment was substituted for the death penalty after a re-sentencing hearing in which the effect of Mr. Fox's diminished responsibility was raised as a mitigating factor which was not rebutted by the prosecution. Fox's life sentences were confirmed by the Court of Appeal. There is no evidence of such a mitigating factor in this case. Indeed the DPP was right when she said that the essence of this procedure on which we have embarked is based on a finding by the Court of Appeal confirmed by the Privy Council that circumstances of murder cases differ from case to case.

[16] Whether the death penalty is an appropriate deterrent to those who would contemplate any kind of murder is not a matter for this court. But the issue of a just response to this particular murder is. I am therefore guided by the law already referred to in **Moise** and the Indian cases, which formed earlier inspiration for the direction, which the law took in **Hughes and Spence** (above)**.** The rule is that in the absence of mitigating factors or where weighing them against the aggravating factors the aggravating factors prevail and

where there is no hope of reform of the offender the death penalty may become appropriate.

[17] Having dealt with those issues I now conclude by saying that this was one of the most brutal slayings to be seen in this country even in a sea of violent crime. The fact that it was committed against a police officer as an act of revenge is an affront to the law abiding citizens and a threat to the social fabric which is required to maintain law and order and peace in this island. In the context of St Kitts it is a case in which the collective conscience of the society is shocked and persons would expect that the courts would respond by imposing the penalty of death. I therefore do not hesitate to do so at this time.

[18] Romeo Cannonier is therefore sentenced to death by hanging for the murder of Denville Nesbitt on 25th July 2004 for which he was convicted by a jury on October 23rd 2007.

Francis H V Belle
High Court Judge