JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 117/99

BEFORE: THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A.
THE HON. MR. JUSTICE PANTON, J.A.

LAMBERT WATSON V. REGINA

Jack Hines for the applicant

Miss Laurel Gregg for the Crown

December 11 and 12, 2000 and March 5, 2001

PANTON, J.A.

The applicant was convicted on two counts of murder in the Hanover Circuit Court on the 15th June, 1999, before Ellis, J. and a jury. He was, as required by law, sentenced to suffer the penalty of death. After a trial that had lasted seven days, the record of appeal shows that the jury retired at 12. 54 p.m. and returned at 1.00 p.m. with a verdict that was unmistakably unanimous. In sentencing the applicant, the learned Senior Puisne Judge expressed agreement with the verdict and indicated that in his nineteen years on the Bench, this case, so far as the offence of murder was concerned, was one of the most brutal and callous he had seen. There is no basis for disagreement with the learned Judge's view of the nature of the crime.

The applicant filed grounds of appeal on the 25th June, 1999. These grounds alleged in the standard manner we have become accustomed to see:

1. Unfair trial
2. Miscarriage of justice
3. Insufficient evidence to warrant a conviction and sentence.

In the usual manner, "supplemental grounds of appeal" were duly filed. These grounds which we gave leave to the applicant to argue read:

> "1. The learned trial judge erred in allowing into evidence the Questions and Answers directed at the Applicant by Deputy Superintendent Hart in that the said Questions breached Rule 111 (B) of the Judges Rules which states that it is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been informed that he may be prosecuted. No exceptional circumstance arose in this case.
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> 2. The learned trial judge erred in that he did not tell the jury that an honest but mistaken witness can be a convincing one when in particular the circumstances surrounding the purported identification of the Applicant by the witness Lenford Johnson warranted such a warning. (See Regina v. Turnbull 3 AER pages 551-552)."

A " Further supplemental ground of appeal" was filed on the said date of the filing of the supplemental grounds , that is, the 8th December, 2000. That ground reads thus:

> "The learned trial judge erred when he directed the Jury that they may consider whether the motive for the murder was that there was evidence to support the fact that the accused man was sued by the deceased woman for baby maintenance- when such evidence, without more, was incapable of being considered motive and or inadmissible. (See Regina v. Wilson 1829, 1 Law CC 112)."

THE EVIDENCE

The victims, Eugenie Samuels aged 24 years and Georgina Watson, aged 9 months, were mother and daughter, and the latter was the child of the applicant. On the

date of the murders, that is, the 18th September, 1997, both victims and the applicant were seen by Det. Cpl. Lenford Johnson at about 9.45 a.m. walking on the main road at Mt. Carey in the parish of St. James; the adult female was carrying the child in her arms. They were walking in a direction that leads to the parish of Hanover which borders St. James. Det. Cpl. Johnson had known the applicant and Eugenie Samuels before this date. The applicant was then living about ten chains from the Anchovy Police Station where the Corporal was then stationed. Eugenie Samuels had on at least two occasions in the presence of Corporal Johnson sought the assistance of the police at the Anchovy Police Station to obtain maintenance for the child from the applicant.

At about midday on the said date, the bodies of the two deceased were found in bushes at Knockalva, Hanover. The scene of this discovery was about five to six chains from the house of one Winsome Graham where the applicant sometimes stayed and, indeed, to which he went early that very afternoon. In the case of Eugenie Samuels, the cause of death was haemorrhagic shock resulting from severe blood loss from multiple incised wounds which had been inflicted by a very sharp and heavy instrument whereas Georgina Watson died from severe haemorrhage secondary to laceration of the neck which had caused extensive damage to nervous vascular tissues.

Both deceased persons had obviously been the victims of a most ferocious and intense attack. Eugenie received many injuries to the face, neck and right upper limb. It is not necessary to itemize all the injuries but as a pointer to the nature of the attack, it may be stated that the anterior aspect of her neck revealed an incised wound measuring 7.5 x 2 x 2.5 centimeters whereas the posterior aspect of the neck had a diagonal incision 11 x 4 x 2.5 centimeters extending from the region adjacent to the right ear down to the nape of

the neck. There was also an incised wound 8 x 1 x 1 centimeters parallel to this wound. There were also multiple "defence wounds" to the right upper limb. Georgina had an horizontal laceration across the neck at the level of two and a half centimeters below the chin. This laceration extended cleanly through the oesophagus, the trachea, the cervical vertibrae, the spinal cord and the adjacent muscles and blood vessels. Only the posterior neck muscles remained partially intact. The head was attached to the neck only by the skin and tissues of the back of the neck.

Winsome Graham, near whose house the bodies were found, lives with her 86 year old mother Doris Samuels. Both gave evidence that the applicant, a church brother of Winsome, would spend time at their house on a regular basis. On the 18th September, 1997, at about midday, the applicant came to the house while Doris Samuels was alone there. He approached the house from the direction of the bushes in which the bodies were found. He told the octogenarian that he had been in the process of bringing a woman and a baby to look for them, meaning Doris Samuels and Winsome Graham, but the woman had turned back saying she could not go any further. Later, when Miss Samuels had learnt of the deaths, she said to the applicant that it looked funny and she was wondering whether the woman and the baby whom he had spoken of were the ones who had been killed. The applicant replied that it was politics time and one could expect anything to happen. Incidentally, Winsome Graham, who was not at her home when the applicant arrived there, seemed to have reached home prior to his arrival but had left and gone to where the bodies were, she having been alerted of the find by one O'Neil Atkins. She remained at the scene of the gruesome find for several hours as she returned home at about 5 p.m. On her return she saw the applicant and her mother seated talking. When she

mentioned the murders to the applicant he said it was politics time and anything can happen. The applicant was wearing a striped shirt when Winsome Graham saw him. According to Doris Samuels, he had changed from a blue shirt to a striped shirt shortly after he came there. An important aspect of the evidence of Miss Samuels is that she claimed to have observed the applicant visit the latrine or the vicinity of the latrine more than once. The importance stems from the fact that on the 23rd September, 1997, several items of clothing belonging to the applicant as well as a woman's shoe and a baby's shoe were retrieved from the latrine. A few days later, a knife that Miss Graham claimed to have seen the applicant carrying in his waist on several occasions was found between two boards in the room occupied by the applicant at Miss Graham's house. The Government Analyst found human blood on the hilt of this knife.

There was evidence from one Scothrine Lewin, a brother of the deceased Eugenie Samuels. They and Georgina Watson lived at the same address. The applicant used to visit the deceased persons at the said address on a regular basis. There were frequent quarrels between the applicant and Eugenie Samuels, and sometimes the former would beat the latter. On one occasion, the applicant said that it seemed as if he would have to get rid of Eugenie.

In a question and answer session with the police, the applicant acknowledged that he was aware of a summons for maintenance having been taken out by the deceased Eugenie Samuels, and stated that they both had slept together on the night prior to the murder and they had left home at about 11 a.m. Thereupon the deceased went into a taxi with the intention of visiting a relative in Grange Hill, Westmoreland. They were due back on the 21st September, 1997. Notwithstanding the claims of the ladies at whose

house the applicant had slept on the night of the 18th September, the applicant informed the police that the first time that he was learning of the deaths was the 19th September at about 9 a.m.

THE DEFENCE

The applicant did not give evidence. Nor did he call any witness. He made a statement from the dock. In it, he said that he had known Eugenie Samuels for two years and that she had a boyfriend who used to threaten her often. On the 17th September, 1997, he said, she came to spend time with him until his return to the United States of America. On the morning of the 18th he had advised her to go to her sister in Grange Hill, and this she decided to do. They went to the bus stop with the deceased infant. Eventually, the applicant and the deceased went their separate ways as the deceased left in a Lada car for Grange Hill whereas the applicant went to Cambridge and Anchovy on that day, then to Chester Castle and Knockalva on the next day. It was not until the next morning that he had learnt of the deaths. He denied any knowledge of the circumstances of the deaths of Miss Samuels and their daughter. A false case, he said, had been made out against him. He did not recall what he had signed to in the presence of Superintendent Hart and Mr. Lloyd Johnson, Justice of the Peace.

SUPPLEMENTAL GROUND 1 alleges a breach of Rule 111 of the Judges' Rules in that it is said that questions were asked of the applicant after he had been informed that he may be prosecuted. Mr. Hines for the applicant informed us that he would not have sought to argue this ground of appeal, had it not been for questions 67 and 68 as recorded at page 302 of the record. These are the questions:

Ques. 67. Did your girlfriend Eugenie take out a summons against you for child maintenance?

Ans. Yes

Ques. 68 Have you received the summons as yet?

Ans. No, sir.

These answers, said Mr. Hines, were significant answers on the question of motive. He said that the judge ascribed motive, and left it for the consideration of the jury. It was with this in mind that Mr. Hines filed the **"further supplemental ground of appeal"** which asserts that the judge was in error in inviting the jury to consider whether the question of maintenance provided a motive for the crime.

The **Judges' Rules** to which Mr. Hines referred read thus:

> "III (a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:
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> > 'Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.'
>
> (b) 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 minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.
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> Before any such questions are put the accused should be cautioned in these terms:-
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> > 'I wish to put some questions to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if

> you do the questions and answers will be taken down in writing and may be given in evidence'.
>
> Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.
>
> (c) When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present."

No harm will be done by re-stating the effect of the Judges' Rules. This is how Lord Goddard, C.J., stated it in **R. v. May** (1952) 36 Cr. App. Rep. 91 at 93:

> "The test of the admissibility of a statement is whether it is a voluntary statement. There are certain rules known as the Judges' Rules which are not rules of law but rules of practice drawn up for the guidance of police officers; and if a statement has been made in circumstances not in accordance with the Rules, in law that statement is not made inadmissible if it is a voluntary statement, although in its discretion the court can always refuse to admit it if the court thinks there has been a breach of the Rules."

In **Conway v. Hotten** [1976] 2 All ER 213, the Divisional Court emphasized that even where there has been a breach of one or more of the Judges' Rules, it does not follow as a matter of course that the evidence obtained thereby must be excluded from the Court's consideration.

On the question of motive, it is well settled that there is no duty or burden on the prosecution to prove same. However, evidence of motive is always admissible to show the likelihood of an accused person committing the offence charged. In **R. v. Ball** [1911] A.C. 47, at page 68, Lord Atkinson said:

> "Surely in an ordinary prosecution for murder you can prove previous acts or words of the accused to show that 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. You can give in evidence the enmity of the accused towards the deceased to prove that the accused took the deceased's life. Evidence of motive necessarily goes to prove the fact of the homicide by the accused, as well as his malice aforethought, in as much as it is more probable that men are killed by those that have some motive for killing them than by those who have not."

Considering the facts of the instant case, there are certain points that ought to be noted. Firstly, we were not referred to any evidence, and we ourselves have not found any, which suggests that the applicant had been informed that he was to be prosecuted. He certainly had not been charged up to then as the questions and answers were recorded on the 21st September and he was charged on the 26th. Secondly, there was other evidence that the matter of maintenance of the child was a sore point between the parents as the assistance of the police had been sought by Miss Samuels on more than one occasion in this respect. Thirdly, the evidence of Scothrine Lewin, brother of Miss Samuels, indicates that she and the applicant had frequent quarrels and that he had threatened to get rid of her. Fourthly, the learned trial judge merely said to the jury that they may consider and ask themselves whether that was the motive. The learned judge was definitely not ascribing motive. In the circumstances, the questions and answers that Mr. Hines finds objectionable ought to be viewed with the other evidence in the case. When that is done, it will be seen that it was perfectly in order for the police, while investigating, as indeed they were, to make some inquiry of the applicant as to the situation with respect to the maintenance of the child. Further, the relationship between the applicant and the deceased adult was relevant so far as ascertaining whether the applicant had anything to do with the

deaths. The learned trial judge was therefore obliged to leave this aspect of the case for the consideration of the jury . Accordingly, both grounds fail.

SUPPLEMENTAL GROUND 2 –IDENTIFICATION

It will be recalled that Det. Cpl. Lenford Johnson gave evidence of having seen the applicant and the deceased on the road on the morning of the murders. In directing the jury, the learned trial judge instructed them as to how they should consider evidence of identification. It is his treatment of the topic that has led to the filing of this ground. In our view, even if the learned judge had not dealt with the matter as it should have been dealt with ,this ground is misconceived. There are two main reasons for so saying. Firstly, the applicant himself confirmed from the dock that he was on the road that morning with both deceased, and had assisted them in securing transportation to their destination in Grange Hill. It follows therefore that identification was not an issue in the case. Secondly, the case presented by the prosecution did not rest on evidence of identification. It was a case of circumstantial evidence. With that it mind, the learned judge gave appropriate and adequate directions which cannot be faulted. That being the situation, this ground also fails.

The circumstantial evidence in the case clearly pointed to the murders having been committed by the applicant. He was the last person seen with the deceased. He told Miss Doris Samuels that he was taking a woman and child to see her but the woman could not come any further. This conversation was shortly before the bodies were found. He was seen visiting the latrine from which items of clothing belonging to him as well as a woman's shoe and a child's shoe had been retrieved. He changed his clothes upon

arrival at the house of Miss Samuels. His knife was found with human blood on the hilt a few days later. Added to this were the threats to get rid of the deceased adult as well as the problems in respect of maintenance payments for the deceased child. The jury must also have taken into consideration the applicant's strange lack of interest in the fact that not more than six chains from Miss Graham's residence, two bodies- a woman and a child- had been found.

In all the circumstances, there was abundant evidence on which the jury properly acted. Accordingly, the application for leave to appeal is refused. The conviction and sentence are affirmed.