

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCRAP 2009/019

BETWEEN:

FLAVIA RICHARDSON

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mde. Ola Mae Edwards

Justice of Appeal

The Hon. Mde. Janice George-Creque

Justice of Appeal

The Hon. Mr. Davidson Kelvin Baptiste

Justice of Appeal

Appearances:

Ms. Nicole Sylvester, Ms. Patina Knights and Ms. Peronia Browne for the
appellant

Mr. Colin Williams, Director of Public Prosecutions with Mr. Carl Williams and
Ms. Sejilla McDowell for the Respondent

2010: May 31;
June 3.

Re-issued with Corrections: September 1

ORAL JUDGMENT

- [1] EDWARDS, J.A.: The appellant Ms. Flavia Richardson appeals against her conviction on 16th February 2009, and sentence on 22nd July 2009, for manslaughter. The indictment charged that on 19th March 2007, at Ratho Mill in St. Vincent and the Grenadines, by an unlawful act, she caused the death of Winston Williams. The appellant was sentenced to 13 years imprisonment to commence from the date of her conviction with the time served on remand to be taken into account in the computation of her sentence.

[2] Ground 1 of the Amended Grounds of appeal alleges:

“A material irregularity occurred in the course of the Appellant’s trial when the Learned Trial Judge at page 255 lines 11 – page 256 lines 1-2 of the Record, directed the Jury that, “it is important that you reach if you can a unanimous verdict. Unanimous mean[s] a verdict of which all of you are in agreement. That is all of you are saying the same thing, either not guilty or guilty. Now if you are unanimous, that is, if you all agree on same verdict, you may return at any time. However, if you cannot all agree and you are in agreement 8:1 or 7:2, meaning eight (8) saying one thing and one (1) saying another, then you can only return after you have considered the matter for two full hours. If you are divided 6:5 or 5:4, you have not arrived at a verdict. If after three hours you cannot agree on a verdict, I may recall you, I may give further directions if that is necessary or I may discharge you from this case. Remember if you are unanimous, you can return at any time. If you are divided 7:2 or 8:1, then you must consider the matter for at least two full hours before you can return to deliver your verdict.”

[3] Learned counsel, Ms. Sylvester submitted that these directions did not communicate to the jury that they were entitled to disagree during the course of their deliberations. She referred to section 13 of the Jury Act Cap. 21 which states:

“13. A jury in a criminal trial, other than a capital offence, shall consist of nine persons to be selected by ballot whose verdict shall be unanimous if delivered within two hours of its consideration, but if delivered more than two hours after its consideration the verdict of seven jurors shall be received as the verdict in the cause.

Provided that when a count for a non-capital offence is joined in an indictment with a count for a non-capital offence the jury shall consist of 12 persons ... whose verdict shall be unanimous if delivered within two hours of its consideration but if delivered more than two hours after its consideration the verdict of 10 persons shall be received as the verdict in the cause case.”

[4] Ms. Sylvester argued further that the direction relating to what may happen after 3 hours had no local statutory basis, and by stating the time frames of 2 hours for a unanimous verdict, after 2 hours for a majority verdict, and what may happen after 3 hours, before the jury retired to deliberate: this had the effect of pressuring the jury to arrive at a verdict. Thus warned, the record surprisingly does not disclose

what time the jury retired or what time they returned and delivered their unanimous verdict.

[5] The overriding principle is that no pressure must be exerted on a jury to return a verdict and they should be free to deliberate uninfluenced by any promise and intimidated by any threat. It has long been recognized that where the judge issues an ultimatum or stipulates a deadline, the conviction is liable to be set aside.¹ The jury must be free to deliberate without any form of pressure, whether by way of promise or threat or otherwise. They must not be made to feel that it is incumbent on them to concur with a view they do not truly hold simply because it might be inconvenient or tiresome or expensive for the prosecution, the defendant, the victim or the public in general if they do not do so: *R v Watson*, 87 Cr. App. R. 1, CA, and see *Archbold Criminal Practice* 2008 §4-415.

[6] Ms. Sylvester relied on the authority from Trinidad and Tobago: *Raffick Mohammed, Imran Ali, Roger Higgins and Allie Mohammed v The State*.² She sought to equate the impugned summation in *Raffick Mohammed* with the summation in question. In *Raffick Mohammed* the trial judge during the appellants' murder trial directed the jury in the following mandatory terms: "...your verdict must be unanimous. The twelve of you must agree one way or the other with respect to each accused. ...it is either the accused is guilty as charged or not guilty.... The meaning of unanimous must mean twelve of you must agree." This direction was held to be a misdirection given to the jury which along with the other grave irregularities which occurred during the trial, and having regard to the justice of the case, resulted in the conviction and sentence for murder being quashed and a retrial ordered.

[7] We do not agree that the questioned direction before us was couched in mandatory or compelling terms. We agree with counsel that it cannot be deduced

¹ See *R v Baker* [1997] EWCA Crim 2966 Per Lord Mantell citing *R v McKenna* at Fn41

² Unreported Judgment Appeal Nos. 42, 27, 68 and 49 of 1989

from this direction that the learned judge made it clear to the jury that they were entitled to disagree.

- [8] We approve the observations of Ibrahim JA writing for the court in *Raffick Mohammed* at pages 2 to 3 where he stated that:

“Jurors have the right to agree upon a verdict of guilty or not guilty and such an agreement is one that necessarily requires consensus. They also have the right to disagree in which event they have arrived at no verdict. Those are the rights and options that are available to a jury when they consider their verdict. The judge has the power to advise the jury by directions that it is their duty to agree if they can honestly and conscientiously do so and if it is possible to do so and he can explain to the jury what unanimous means. But that direction is given at the expiration of the three hour period allowed for consideration of their verdict. ... It will be observed that the direction given to the jury on the desirability of arriving at a consensus must leave them in no doubt whatever that they have the right to disagree and the right to say so. ... The test to be applied in determining whether the direction given is satisfactory is if one of the jurors could have reasonably understood that there was an obligation to agree upon a verdict then the direction would be bad in law.”

- [9] While specimen directions have no binding force, and it is the content of the direction concerning the particular legal issue expressed in the judge's individual words, style and judgment that matters and must be assessed by the appellate court, the standard direction given in *R v Walhein*³ which was approved by Ibrahim JA may not be quite acceptable today in light of *R v Watson*. The *Walhein* direction was as follows:

“You are a body of ... [9 or 12] men. Each of you has taken an oath to return a true verdict according to the evidence; but of course, you have a duty not only as individuals but collectively. No one must be false to that oath; but in order to return a collective verdict, the verdict of you all, there must necessarily be argument and a certain amount of give and take in adjustment of views within the scope of the oath you have taken; and it makes for great public inconvenience and expense if jurors cannot agree owing to the unwillingness of one of their number to listen to the arguments of the rest. Having said that I can say no more. If you disagree in your verdict ...you must say so.”

³ (1952) 36 Cr. App. R. 167

[10] However in *Watson* Lord Lane CJ formulated a different direction which might be given as follows:

“Each of you has taken an oath to return a true verdict according to the evidence. No one must be false to that oath, but you have a duty not only as individuals but also collectively. That is the strength of the jury system. Each of you takes into the jury-box with you your individual experience and wisdom. Your task is to pool that experience and wisdom. You do that by giving your views and listening to the views of others. There must necessarily be discussion, argument and give and take within the scope of your oath. That is the way in which agreement is reached. If, unhappily [ten of] you cannot reach agreement, you must say so.”

[11] The *Watson* direction seems more acceptable where it is pointed out in *Archbold* at paragraph 4-445 that the jury must not be made to feel that it is incumbent on them to concur with a view they do not truly hold simply because it might be inconvenient or tiresome or expensive for the prosecution, the defendant, the victim or the public in general if they do not do so.

[12] In the absence of any provision in the Jury Act Cap. 21 or the Criminal Procedure Act Cap. 125⁴ regulating jury management and the time when a majority verdict direction must be given to a jury, section 3(2) of the Criminal Procedure Act Cap. 125 stipulates that the procedure and practice observed by and before the Crown Court in England must be applied. In England, the statutory provision comparable to the relevant portion of section 13 of the St. Vincent Jury Act is section 17(4) which states:

“(4) No court shall accept a verdict by virtue of subsection (1) or (2) above unless it appears to the court that the jury have had such period of time for deliberation as the court thinks reasonable having regard to the nature and complexity of the case; and the Crown Court shall in any event not accept such a verdict unless it appears to the court that the jury have had at least two hours for deliberation.”

[13] The current practice and procedure before the Crown Court in England relating to majority verdicts is to be found in Practice Direction (Criminal Proceedings:

⁴ The Laws of St. Vincent and the Grenadines Revised edition (1990)

Consolidation) [2002] 1WLR 2870 at paragraph IV. 46. The direction as to Unanimity is at IV. 46.1 captioned "Majority Verdicts" which states:

46.1 It is important that all those trying indictable offences should so far as possible adopt a uniform practice when complying with section 17 of the Juries Act 1974, both in directing the jury in summing-up and also in receiving the verdict or giving further directions after retirement. So far as the summing-up is concerned, it is inadvisable for the judge and indeed for advocates, to attempt an explanation of the section for fear that the jury will be confused. Before the jury retire, however, the judge should direct the jury in some such words as the following:

"As you may know, the law permits me in certain circumstances to accept a verdict which is not the verdict of you all. Those circumstances have not as yet arisen so that when you retire I must ask you to reach a verdict upon which each one of you is agreed. Should, however, the time come when it is possible for me to accept a majority verdict, I will give you a further direction."

Further guidance is given at paragraph IV.46 as follows:

"IV. 46.2 Thereafter the practice should be as follows. Should the jury return before two hours and ten minutes since the last member of the jury left the jury box to go to the jury room (or such longer time as the judge thinks reasonable) has elapsed (see section 17(4)), they should be asked:

- (a) "Have you reached a verdict upon which you are all agreed? Please answer Yes or No";
- (b)
 - (i) if unanimous, "What is your verdict?";
 - (ii) if not unanimous, the jury should be sent out again for further deliberation with a further direction to arrive if possible at an unanimous verdict.

IV.46.3 Should the jury return (whether for the first time or subsequently) or be sent for after the two hours and ten minutes (or the longer period) has elapsed, questions (a) and (b)(i) in paragraph 46.2 should be put to them and, if it appears that they are not unanimous, they should be asked to retire once more and told that they should continue to endeavour to reach an unanimous verdict but that, if

they cannot, the judge will accept a majority verdict as in section 17(i) [i.e. section 13 of St. Vincent Jury Act]

IV.46.4 When the jury finally return they should be asked:

- (a) “Have at least ten [7 in the case of St. Vincent for non-capital offence or 10 for a capital offence] (or nine as the case may be) [of you agreed upon your verdict?”;
- (b) if “Yes”, “What is your verdict? Please answer only Guilty or Not Guilty”;
- (c) (i) if “Not Guilty”, accept the verdict without more ado;
(ii) if “Guilty”, “Is that the verdict of you all or by a majority?”;
- (d) if “Guilty” by a majority, “How many of you agreed to the verdict and how many dissented?”⁵

IV.46.5 At whatever stage the jury return, before question (a) is asked, the senior officer of the court present shall state in open court, for each period when the jury was out of court for the purpose of considering their verdicts(s), the time at which the last member of the jury left the jury box to go to the jury room and the time of their return to the jury box and will additionally stated in open court the total of such periods. [Our emphasis]

- [14] Once a jury has deliberated for over two hours the question whether to, and when to, give a majority direction is entirely one for the judge’s discretion.⁶ The Practice Direction clearly advocates the undesirability of telling the jury before they retire how much time they have to reach a unanimous verdict, or a majority verdict. Archbold at paragraph 4-414 in pointing out that it is undesirable to specify to the

⁵ In the case of St. Vincent and the Grenadines pursuant to section 13 of the Jury Act [See paragraph 3 of this Judgment], a majority verdict with at least 7 of the jury agreeing may be accepted by the court after there has been more than 2 hours of deliberation by the jury in a criminal trial for an offence other than a capital offence. Section 14 of the Jury Act states: “A jury in a criminal trial for a capital offence shall consist of twelve persons ...whose verdict shall be unanimous: Provided that in trials for murder, after two hours of its consideration, a verdict of ten jurors convicting the accused of any offences less than murder of which they are entitled by law to convict him, shall be received as the verdict in the cause.”

⁶ Archbold Criminal Practice 2009 paragraph

jury how long it is likely to be before a majority direction will be given cites the authorities *R v Thomas* (I.J.), *The Times*, 4th August 1983, CA; *R v Guthrie* (*Times*, 23rd February 1994), as the basis for this proposition.⁷ However, while it is conventional not to mention to the jury the time at which a majority direction might be given, it is not necessarily wrong to do so if the effect is to alleviate any anxiety or uncertainty that the jury might entertain: *R v Guthrie*. In *R v Court* (Richard Thomas), *the Times*, 25th May 1994, CA, it was said that whilst the jury should be kept fully informed of the proposed timetable, a judge was entitled to expect that if a juror had a personal difficulty he would raise it.

[15] The Practice Direction states further:

“IV.46.7 Where there are several counts (or alternative verdicts) left to the jury the above practice will, of course, need to be adapted to the circumstances. The procedure will have to be repeated in respect of each count (or alternative verdict), the verdict being accepted in those cases where the jury are unanimous and the further direction in paragraph 46.3 being given in cases in which they are not unanimous. Should the jury in the end be unable to agree on a verdict by the required majority (i.e. if the answer to the question in paragraph 46.4(a) be in the negative) the judge in his direction will either ask them to deliberate further or discharge them. IV.46.8 Section 17 will, of course, apply also to verdicts other than “Guilty” or “Not Guilty”, e.g. to special verdicts under the Criminal Procedure (Insanity) Act 1964, verdicts under that Act as to fitness to be tried, and special verdicts on findings of fact. Accordingly in such cases the questions to jurors will have to be suitably adjusted.”

[16] It seems therefore that the directions of the learned trial judge did not comport with the required practice and procedure applicable to jury trials in criminal cases in *St. Vincent and the Grenadines*; and her direction had the effect of placing improper pressure on the jury to arrive at their verdict. In addition to this there was no compliance with the requirement for the time when the jury leaves the Court room

⁷ See Archbold para 4-435:

“As to the importance of complying with this practice direction, see *R v Georgiou*, 53 Cr. App. R. 428, CA; *R v Barry*, 61 Cr. App. R. 172, CA; and *R v Paley*, 63 Cr. App. R 172, CA. Where there is more than one count or defendant, unless the judge has clear reasons for acting differently, the jury should be asked whether they have reached a unanimous verdict in respect of any count or defendant, and if so any such verdict should be taken, before the majority direction is given; the general rule is that verdicts should be taken as and when the jury are known to be ready to deliver them: *R v Nash* (Paul Brian) [2005] Crim.L.R. 232, CA.

and the time when the jury return to the jury box to be recorded and stated publicly. This error in practice is a serious error which must necessarily result in the conviction and sentence being quashed.

[17] Consequently, there is no need to address the other 2 grounds which were: (2) that the verdict is unsafe and unsatisfactory; and (3) that the sentence of 13 years was manifestly excessive.

[18] The result is that the appeal is allowed, the conviction and sentence is quashed, and the case is remitted to the court below for a new trial.

Ola Mae Edwards
Justice of Appeal

I concur.

Janice George-Creque
Justice of Appeal

I concur.

Davidson Kelvin Baptiste
Justice of Appeal