

SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.17 OF 2002

BETWEEN:

CAMPBELL HUGHES

Appellant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:

The Hon. Michael Gordon, QC

Justice of Appeal

The Hon. Denys Barrow, SC

Justice of Appeal

The Hon. Hugh A. Rawlins

Justice of Appeal

Appearances:

Dr. Henry L. Browne, Mr. Anthony Johnson and Mrs. Patricia Dublin-Lewis for the Appellant

Mr. Dennis Merchant (the Director of Public Prosecutions) and Ms. Simone Bullen for the Respondent

2006: March 23;
July 3.

JUDGMENT

- [1] BARROW J.A.: Counsel for the appellant submitted that two main issues should engage the attention of this court on this appeal against the conviction for murder. These are that (i) the evidence of the DNA expert was inadmissible in that it failed to satisfy the pre-conditions for admissibility imposed by the Evidence Act¹ and (ii) the judge's direction to the jury on how to approach the evidence of blood found in the trunk of the appellant's motor car was so flawed as to constitute a material irregularity sufficient to vitiate the conviction.

¹ Cap 25, as amended by The Law Reform (Miscellaneous Provisions) Act, 1998

The prosecution's case

- [2] The appellant was charged with the murder of Lorraine Dorsette. The deceased had been the appellant's fiancée but the deceased had ended the relationship. A mutual friend, Steadroy Clarke, testified that the deceased had said that the appellant used to beat her up and she was going to finish with him. The evidence is that she did so.

- [3] The deceased and the appellant both worked at the same place. This was a research facility located at Lower Bourryeau, also known as Mills Estate, at which samples were collected from monkeys. The appellant was a laboratory technician and was the boss of the deceased, who also worked in the laboratory. Among the things that the appellant and his assistants would do was to put the monkeys "to sleep" and remove the brain and other organs.

- [4] On 1st March 1999 the deceased reported for work in the morning. She was last seen alive, at work, at about 1:35pm by a co-worker. Her family, including her children, missed her when she did not come home that evening. On the following day a sister of the deceased telephoned the appellant to inquire if the appellant had seen the deceased. The appellant responded that the deceased had finished working at 3 o'clock and he did not know where she was.

- [5] However, the previous day – the day that the deceased was missed - at about 4:10 p.m., the mutual friend, Steadroy Clarke, went to Mills Estate after he had finished working. He waited until 5:00 p.m. after which the appellant arrived. They talked for a while. Clarke asked the appellant if the deceased had come to work that day and the appellant said he had not seen her. The witness explained that he knew the deceased had been on sick leave the week before, hence his inquiry.

- [6] On 2nd March another sister of the deceased went to the Tabernacle Police Station intending to make a report that her sister was missing. When she got there the

sister saw the appellant sitting on a bench, in the presence of a police officer, and the sister challenged the appellant as follows: "Campbell where is my sister? My sister done tell me you going to kill her and you going bury her so far nobody will find her. If you kill my sister I going kill you back." The police officer warned the sister that she was making a threat. The appellant's sole response was to say to the police officer that he hoped she would write it down. The appellant did not deny the accusation.

- [7] On March 3rd 1999, the body of an adult woman later identified to be Lorraine Dorsette was recovered from a hole on Bourryeau Estate. The pathologist testified that the upper part of the head had been amputated at the nose bridge. The surface of the amputation was flat. It was a straight cut. The pathologist concluded that such an injury would have been caused with a single action, such as can occur with the use of a mechanical or motorized saw or knife. The instrument would have to be motorized, he stated. Death was a result of haemorrhage and shock due to amputation of the upper head.
- [8] The Federal Bureau of Investigations (FBI) of the United States of America assisted local police with the investigation. Samples were taken from the body of the deceased and a DNA profile was obtained from the calf tissue from the deceased. The police seized a motor vehicle that was owned by the appellant. The FBI agents found a spot of blood on a rubber strip taken from the inside of the trunk of that vehicle. A DNA expert analysed the blood spot. He testified that the DNA taken from the calf tissue and the DNA taken from the blood spot matched.
- [9] The appellant did not testify. Neither did he make a statement from the dock.

The evidence of DNA testing

- [10] There were two aspects to the appellant's arguments in relation to the evidence on DNA. The first was that the expert who testified as to the DNA profile of the blood

spot from the trunk did not test the calf tissue. Indeed, counsel submitted that there was no evidence that anyone tested the calf tissue to determine the DNA. In the skeleton argument for the appellant counsel also argued that the expert who testified did not carry out the DNA test on the blood spot.

- [11] The second aspect of the argument in relation to DNA was that the evidence of the expert in relation to the DNA of the calf tissue was inadmissible and in breach of section 33 (8) of the Evidence Act. That section states that the results of a DNA test shall not be admissible in evidence unless the scientist who carried out the DNA test adduces evidence of DNA comparisons together with calculations of the random occurrence ratio.
- [12] The expert in this case was a forensic examiner in the DNA analysis unit of the FBI lab in Washington, DC. He testified that he received the calf tissue and the rubber trim. In cross-examination he testified, "We performed DNA testing on the calf tissue. I did not carry out the chemistry test personally. The calf tissue was received as a known sample from Lorraine Dorsette. I directed that that tissue had DNA typing done upon it. That chemistry was carried out by scientists that work for me. I was given the results to conclude the case notes and I analysed the data and wrote the report." He also testified "We tested areas on that rubber trim. The chemistry was done by someone who worked with me."
- [13] In examination in chief the expert had stated "The calf muscle of Lorraine Dorsette was relevant in this case because this piece of calf tissue had been identified to us as having been taken from Lorraine Dorsette. This was going to serve as the known sample for Lorraine Dorsette for DNA typing purposes. ... I did get a DNA type from the calf tissue. It was adequate for that purpose." The expert had also stated in examination in chief "We were able to do DNA typing on the blood stain from the rubber. We were able to develop answers for all the tests from that sample. The sex typing test and the 13 STR tests. When I compared the answer for the DNA test for the blood on this rubber strip those answers matched the

answers from the calf tissue from Lorraine Dorsette. Based on that match Lorraine Dorsette is the source of the DNA from that blood stain to a reasonable degree of scientific certainty. I base that judgment on the set of fractions that I calculated for this sample for the match.”

- [14] When the expert stated that “I did get a DNA type from the calf tissue” that seems to me a sufficiently clear and specific statement that he carried out the DNA testing. I do not know what is the significance of the information that counsel elicited in cross-examination that it was not the expert himself who carried out the chemistry test personally but persons who worked for him. Counsel did not address this statement and neither will I. It seems clear enough that the expert was in charge of the carrying out of the testing, that he along with others did the testing (“We were able to do DNA typing ...”; “We were able to develop answers to all the tests from [the rubber strip]), and that he did the comparisons of the results and made the matching. Accordingly, I find no substance in the contention that there was no evidence that anyone tested the calf tissue or the blood spot on the rubber trim. Similarly, there is no merit in the argument that the expert who testified did not carry out the tests.

Other aspects of the evidence

- [15] Counsel also argued in the skeleton argument that “there are several unsavoury features of the Prosecution case. This may best be illustrated by way of questions to which the Prosecution has no answers.” Counsel then set out five questions asking how did the blood spot get in the trunk of the appellant’s vehicle, what happened to two vials of blood that a witness said was taken from the deceased, how is it that soil samples taken from the scene did not match soil samples taken from the appellant’s vehicle, whose hair was removed from the hand of the deceased and whose hair was found at the grave side. The short response to this argument is that (with the exception of the soil sample) those were all questions that counsel put to the jury and the jury returned the verdict they did after less than

two hours of deliberation. It must be taken from the verdict that the jury were able to resolve any doubt that these questions may have raised. Counsel did not suggest that the absence of answers by way of direct testimony rendered the verdict perverse or unsafe and unsatisfactory. Therefore, I see no point in the argument.

[16] Before this court counsel argued that there was some confusion about the identification numbering given to the rubber trim taken from the appellant's vehicle and that given to the calf tissue. In his testimony the expert referred to the identification number of the rubber trim as Q 32. In the list of items that were sent to the FBI laboratory the rubber trim is identified as Item #16 / EC #27. In that same list the calf tissue is identified as item #32. Counsel argued that this casts doubts on what was really tested and with what it was compared. I can see no significance to this alleged discrepancy.

[17] A number of different persons dealt with in excess of 100 items and gave, for different purposes, different numbers to the same object. Clear evidence was given as to the collection of the items, their labelling, the chain of custody and the safe keeping of the items. Counsel did not challenge any of these aspects. Neither did counsel ask the expert about the alleged discrepancy. To my mind it puts the matter beyond doubt that the expert said that he tested stated items and he identified specifically the calf tissue and the rubber trim. He did not say I tested an object that was Q32 and an object that was 32. He said he tested the calf tissue and he tested the rubber trim. He did not test two calf tissues or two rubber trims and compare two like things to each other, which may have then required identification marks to distinguish like from like. It seems to me that human tissue and a strip of rubber are sufficiently distinct from each other as to make it perfectly possible to distinguish them by their nature and not need to rely on numbering to distinguish and identify them. It was not suggested to the expert that he did not test the items that he said he tested. I see no merit in the argument.

[18] Counsel contended in the skeleton argument that the prosecution needed some cogent evidence along with the DNA evidence to lead a properly directed jury to a sure conclusion of guilt. Counsel argued that “it is surely a quantum leap to argue that because there was blood in the booth of the car that proves the appellant a murderer.” In making that contention it seems counsel simply ignored the other evidence on which the jury could have relied to conclude that the appellant was the murderer. That evidence included that the appellant had the motive of a spurned lover to destroy what he could no longer have, the opportunity that the appellant had to commit the murder since the deceased was last seen alive in the company of the appellant, the lie told by the appellant that he had not seen the deceased on the day she disappeared, the history of violence and the appellant’s failure to deny the accusation of the sister of the deceased that he had carried out a threat to kill the deceased and bury her so no one would find her. It took no quantum leap for the jury to conclude that the appellant was the murderer and I would also dismiss this contention.

Conclusion

[19] The appellant filed nine grounds of appeal but counsel reduced them to the issues identified and threw into his oral presentation a number of other arguments. I have considered the grounds in full as well as reduced form. Whichever way I look at the appeal I find no substance in it. I would, therefore, dismiss the appeal.

Denys Barrow, SC
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal

I concur.

Hugh A. Rawlins
Justice of Appeal