

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.15 OF 2002

BETWEEN:

HARRY WILSON

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mr. Albert Redhead
The Hon. Mr. Adrian Saunders
The Hon. Mr. Ephraim Georges

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Ms. N. Sylvester for the Appellant
Mr. R. Gaspard – Director of Public Prosecutions

2003: May 14;
September 22.

JUDGMENT

- [1] **SAUNDERS, J.A. [AG.]:** Harry Wilson was convicted on 6th November, 2002 of the murder of Ariel Williams and the attempted murder of both Grace Williams and Shantel Williams. Wilson was subsequently sentenced to death for the crime of murder and to life imprisonment for each conviction of attempted murder.
- [2] All three offences occurred within minutes of each other on the 18th February, 2001. Grace Williams had been Wilson's common law spouse. Ariel and Shantel were children of that union. At the time of these horrible events Shantel was five years old. Ariel was just a toddler of two years.

- [3] The relationship between Wilson and the children's mother deteriorated sharply after Wilson went to Barbados to take up employment for a period of about eight months in 2000. The reason for the breakdown may have been the fact that Williams had taken another lover while Wilson was working in Barbados. Upon his return from Barbados however, Wilson resumed residence in the house occupied by Williams at Campden Park. But the relationship did not improve. Instead, the couple quarreled and fought with each other.
- [4] On the 17th February, 2001, the two young daughters were at their maternal grandmother's home at Gomea. Wilson, unexpectedly, collected them there and brought them to the Campden Park home some time in the evening. Ms. Williams was getting ready to go out when they arrived. Wilson said he wanted to talk with her. He was still very unhappy about the souring of the relationship. He was concerned about having his kids. A dispute arose between the couple. Williams claimed that Wilson struck her in the face, produced a knife and that they wrestled over the knife. The struggle subsided after the knife fell to the ground. Williams then went to bed.
- [5] The Prosecution's case is that early the following morning Wilson attacked Williams as soon as the latter awoke. He pushed her down on the bed. He pressed his hand to her face. She felt a sharp object going through her throat and then she saw blood running down her body. She managed to struggle with him, held his hand and pulled it. A knife fell from his hand and she kicked him. She then jumped through a window and fled. After she was gone, the prosecution contend, Wilson cut the throats and wrists of both girls. He then took the older one, Shantel, and threw her out of the window. Then he went outside, picked up Shantel and threw her back inside the house via the same window.
- [6] In the mean time Williams was at the neighbour's house. While she was there, Wilson ran through that home, called Williams' mother on the phone and told the mother that "Grace [i.e. Williams] kill herself and the two children and put the

blame on me". Wilson also said the same thing to the startled villagers who had gathered on the scene.

- [7] Little Ariel died on the spot from a knife wound to her throat and one to her wrist. Shantel suffered the same injuries. She and her mother survived after a period of hospitalisation. They both gave evidence at the trial. Grace Williams testified that after her throat was cut by Wilson, she fled the house. Shantel testified that it was her father who had cut her throat and wrist. She also said that she had seen her father inflicting the wounds on her mother and also on her young sister after her mother had run out of the house. Wilson's defence was that it was Grace Williams who had inflicted all the injuries. Wilson has appealed his conviction of murder and attempted murder. He has also appealed the sentence of death imposed upon him.

Failure of the Judge to direct the Jury to Consider the Counts Separately

- [8] Counsel for the appellant submitted that the learned trial Judge had failed to direct the jury that they should consider the case for and against the defendant on each count separately. Early in the summing-up, the Judge had directed the jury in the following terms:

“...you have to look at the evidence and relate the evidence to each individual, each complainant in each of the three counts. You can say he is guilty of all three, you can say he is not guilty of all three, or you can say, “Look, the evidence does not relate more to this one so maybe he is not guilty on this one, so he is not guilty here; but he is guilty of this one or that one”. You are free to say if he is guilty of any of the three counts, or if he is not guilty on any of the three counts; but the evidence is one set of evidence that relates to the three. So you have to look at the evidence in relation to all three counts”.

- [9] The gist of counsel's submission was that the Judge had neglected to direct the jury that in considering each count they should focus only on the body of evidence that was relevant to that count. Counsel cited **R v Lovesey et al**¹. The case of

¹ (1969) Cr. App. Rep. 461

Lovesey concerned the robbery of a jeweler in the course of which fatal injuries were inflicted on the jeweler. The appellants were convicted of murder. The prosecution's case was that several persons had taken part in the robbery. The Judge directed the jury that the two offences (robbery and murder) stood or fell together. It was held that this was a fatal misdirection because neither appellant's part in the matter could be identified. There was clearly a common design to rob but it was still questionable as to whether or not one or more of the co-adventurers had gone beyond the common design and inflicted the really serious injuries. In those circumstances, it could not be said that the offences of robbery and murder stood or fell together.

- [10] The present case is very different. The Judge sought to convey to the jury here that these three offences formed part of a single transaction and that the jury should have regard to all the evidence in determining the guilt or otherwise of the accused in respect of each count. The language used by the Judge may have been somewhat inelegant but in my view it was sufficient to bring home to the jury the need to consider each count separately.

Failure of the Judge to put the Appellant's Case Fairly

- [11] It was also submitted that the Judge had not fairly put the defence of the appellant. Some specific examples were highlighted. The Judge repeatedly referred to throats being "slashed". Counsel complains that this verb is nowhere to be found in the testimony of any witness. At the trial there were discrepancies between Williams' evidence and that of Shantel. Where this occurred the Judge in his summing-up qualified them as "little, little differences".
- [12] I see no merit in this submission. A Judge is entitled to comment on the evidence provided that those comments are reasonable and that at the end of the day the role of the jury is not usurped. The Judge here properly explained the role and function of the Judge and of the jury. He urged the jury to disregard any of his comments on the facts with which they disagreed and he also made it clear that it

was for the jurors themselves to resolve any differences and discrepancies in the evidence.

- [13] Since Wilson's defence at the trial was that it was the children's mother who had inflicted these severe injuries upon the children and on herself, the task of the jury was, in light of all the surrounding circumstances, whether to believe Shantel and her mother, or whether to believe Wilson. In my view the learned Judge properly left it to the jury to decide this issue and it cannot be said that the summing-up was heavily weighted in favour of the prosecution.

The Failure of Counsel to alert the Court to Wilson's Good Character

- [14] Following Wilson's conviction of murder, a sentencing hearing was conducted. A probation officer reported on Wilson's character and reputation. It turned out that Wilson had no previous criminal convictions. Moreover, he was described as being of calm, cool and quiet disposition and it was said that respectable senior citizens in his community regarded him as a role model for the youths.
- [15] At the trial, he gave evidence on oath on his own behalf. Yet, strangely, his good character was never at all alluded to. Fresh counsel represented him before this court. No reason was cited for the failure of the trial lawyer to raise his good character at the trial. In all probability it must have been sheer inadvertence because Wilson was represented at the trial by very experienced counsel. The record reveals that defence counsel at the trial had previously participated in well over 100 murder cases. The issue now is what is the consequence of this lapse on the part of counsel.
- [16] This very question came before the Judicial Committee of the Privy Council in **Sealey et al v The State**². Their Lordships were divided 3-2 on that occasion. The differences are of little significance for our purposes here however. Even if one

² [2002] UKPC 52

accepts the view of the minority, I believe the consequences for the present case would be the same. The majority judgment was delivered by Lord Hutton. In the course of that judgment the learned Lord Justice stated, inter alia:

28. “.....it is clear that had the good characters of the appellants been established the judge would have been under a duty to give the jury a direction as to the relevance of the good character of each appellant to his credibility and a further direction as to the relevance of his good character to the likelihood of his having committed the offence charged: see **R v Vye** [1993] 1 WLR 471. In **R v Aziz** [1996] AC 41, 50 and 51 Lord Steyn stated:

“It has long been recognized that the good character of a defendant is logically relevant to his credibility and the likelihood that he would commit the offence in question..... Fairness requires that the judge should direct the jury about good character because it is evidence of probative significance”.

29. In the present case the fact that the appellants did not have the advantage of a good character direction was not due to the fault of the trial judge; it was due to the fault of defence counsel. There is no duty on the trial judge to give a direction on good character when the issue of good character has not been raised in evidence by the defence: see **Thompson v The Queen** [1998] AC 811, 844 and **Barrow v The State** [1998] AC 846, 852.

30. Whilst it is only in exceptional cases that the conduct of defence counsel can afford a basis for a successful appeal against conviction, there are some circumstances in which the failure of defence counsel to discharge a duty, such as the duty to raise the issue of good character, which lies on counsel (**Thompson v The Queen** [1998] AC 811, 844H) can lead to the conclusion that a conviction is unsafe and that there has been a miscarriage of justice: see **R v Clinton** [1993] 1 WLR 1181.”

[17] **Sealey** was a case from Trinidad and Tobago. The appellants had been convicted of murder. The crucial evidence for the prosecution came from a police officer who had seen the appellants. The officer testified that he had easily recognized the appellants on the morning of the murder. He had held them under observation for a long period of time in good lighting conditions. There was no reason suggested as to why he might have been lying and the appellants conceded that the officer knew them both extremely well. The defence in each case was an alibi. The alibi evidence was unconvincing. The Trinidad & Tobago Court of Appeal held that the

jury had clearly accepted the police officer's testimony and that it was inconceivable that a different verdict would have been given if an appropriate good character direction had been given.

[18] In allowing the appeal, the majority in the Privy Council reasoned in this way:

“...the case against the two appellants was a very strong one and, from a reading of the transcript, the alibi evidence appears unimpressive. But the omission of a good character direction is a defect in the conduct of the trial. Whilst recognising that there may be some cases in which the omission of a good character direction does not render a conviction unsafe, their Lordships take account of the observation of Kennedy LJ in **Fulcher**³, at page 260, that

“a proper direction as to character has some value, and therefore is capable of having some effect in every case in which it is appropriate for such a direction to be given”

and of the observation of Henry LJ in **Kamar** The Times, 14 May 1999 that a good character direction:

“was a protection necessary to preserve the fairness of this trial. In our judgment it was imperative that such a direction was given to the jury. It would not be right to conclude that that direction could have no effect in this case.”

[19] The minority in **Sealey** agreed with the general principles of law advanced by the majority and in particular with the fact that it did not matter whether the failure to give a good character direction was the fault of the Judge or of Counsel. The minority was however concerned with the application of the rules to the particular facts of the case before them. Their Lordships in the minority felt that a failure to comply with the practice did not automatically and inevitably result in the appeal being allowed in every case. The critical question was whether it could be said that the jury would necessarily have reached the same verdict if they had had the good character direction. The minority was of the view that not merely was the Trinidad & Tobago Court of Appeal in the best position to answer this question, but also, in light of the undoubted strength of the prosecution's case, they too would have arrived at the conclusion that the absence of a good character direction in **Sealey's** case would not have altered the jury's verdict.

³ [1995] 2 Cr App App 251

[20] In the present case, the appellant has maintained his innocence all along and has suggested that Ms. Williams slit her own throat and those of her daughters. This was a case of his word as against that of Ms. Williams and five year old Shantel. In these circumstances the good character direction would have been particularly valuable to the appellant's case. It is impossible to tell the extent to which such a direction might have influenced the verdict of the jury. I would therefore allow the appeal on each of the three counts, set aside the sentence and order that the appellant be retried.

[21] Counsel for the appellant had also lodged an appeal against the imposition of the death sentence. In light of the order made above, it is unnecessary to address this issue save to say that care must be taken to ensure that at sentencing hearings in capital cases a report on the mental state of the prisoner should be placed before the sentencing Judge.

Adrian Saunders
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]