

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

SAINT LUCIA

CASE NO. SLUHCR2009/0007

BETWEEN:

EUGENE ST. ROMAINE

Applicant/Defendant

and

THE KING

Respondent/ Crown

Before:

Her Ladyship Justice Taylor-Alexander

Appearances:

Ms. Kellyann Thomson together with Mr. Linton Robinson for the Crown

Mr. Alberton Richelieu, Counsel for the Defendant

The Defendant present

2023: April 29
2024: January 5.

- [1] **TAYLOR-ALEXANDER, J.:** Eugene St. Romaine is a Defendant under an indictment for the death by unlawful harm of Verlinda Joseph whose lifeless body was discovered on the 2nd of December 2002 at Calise Laborie, over 20 years ago. The Defendant was indicted on the 29th of December 2009, and he entered a plea of not guilty on the 15th of March 2010. He was arrested on the 2nd of April 2004, and was on bail from the 30th of May 2012. This case has had a long history before the Court, and this application is the fourth application challenging the constitutionality of the continuing proceedings. The case remains unresolved.
- [2] After a constitutional motion filed by the Defendant was struck out on the 27th of May 2021, the matter was scheduled before the Criminal Court for pre trial case

managed and in April 2022, a fixture for trial was given with directions for the continuing management of the case. The instant application was filed by the Defendant on the 12th of May 2022. The application is again pursuant section 8(1) of the St. Lucia Constitution Order alleging that the Defendant's fundamental right to a fair trial within a reasonable time has been violated.

Grounds of the Application

- [3] The Defendant submits that the trial should be permanently stayed for the following reasons (1) the delay between the commencement of the proceedings and his trial has been unreasonable; (2) Since the indictment was filed, important witnesses have died, particularly Yvonne Cruickshank, who determined that material recovered from the genitalia of the victim was sperm and the unavailability of Christine Ann Kimber, a forensic scientist who cannot be found and who undertook the testing that determined that the sperm found within the body of the victim, to a high degree of probability, belonged to the Defendant. The protracted delay and unavailability of these witnesses significantly affects the fairness of the trial. It would require another expert to interpret the reports and results of the unavailable experts; (3) In the case of Christine Ann Kimber, her unavailability is compounded by the fact that the laboratory notes made at the time cannot be found. These were stored at Trident Court, the laboratory where Christine Ann Kimber worked. The laboratory has since closed, and her notes cannot be obtained. These factors, the Defendant submits, compromise his defence of the proceedings and compromises the fair trial of the case.

Background

- [4] 13-year-old Verlinda Joseph was found murdered 21 years ago, on the 2nd of December 2002, yards away from her home. She had left her home at 7:30 am that day to take her uniform to a nearby seamstress for alteration. The Defendant was arrested on the 2nd of April 2004, 19 years ago. He was committed to stand trial on the 16th of February, 2007, following a prolonged Preliminary Inquiry in the Magistrate Court, and was indicted on 29th December, 2009 by way of a single count indictment alleging that on 2nd December, 2002, at Saltibus in the quarter

of Laborie, he did intentionally cause the death of Verlinda Joseph by unlawful harm contrary to section 170 of the Criminal Code 1992.

Procedural History

- [5] Since the matter was filed at the High Court, three (3) constitutional motions have been filed and determined.
- [6] The first motion was filed in **SLUHCV2009/0890** on the 27th of October 2009, five years after the Defendant had been arrested and charged. The Defendant challenged his continued detention without trial and submitted that his continued detention was unconstitutional and was tantamount to torture, inhumane and degrading treatment. The application was not granted but the Director of Public Prosecutions was directed to take all necessary action to ensure that the case was set down at the next sitting of the assizes.
- [7] The second motion was filed in **SLUHCV2010/1100** on the 11th of February 2011, just under seven years after the Defendant had been arrested and charged and one year and two months after the first motion concluded. The Declarations sought were pursuant to section 8 (1) of the Constitution. The motion and declarations were denied and the matter was referred to the Criminal Division for case management in preparation for trial.
- [8] The third motion was filed in **SLUHCV2019/0070** on the 19th of February 2019 just under fifteen years after the Defendant had been arrested and charged, and 7 years after the conclusion of the second motion. The motion was struck out, and despite an acknowledgement that the state was tardy in prosecuting the claim, the court found that the claim was not unmeritorious or unreasonable.
- [9] The fourth application is the present application. The relief sought in the new application filed is similar in many respects to the relief in the earlier applications.
- [10] It is important at this juncture to note two relevant developments since the determination of the third constitutional motion. (1) the decision of the Court of

Appeal in in **Urban St. Brice v The Attorney General of St. Lucia** SLUHCVAP2018/0036 where a similar motion was determined of a man charged with Murder in 2002, whose charge by 2018 had not been disposed of and (2) St. Lucia's accession to the Caribbean Court of Justice as its final appellate court, which makes decisions of that court on similar questions binding as opposed to persuasive authority. Both the dicta in *St. Brice* and the decision from the CCJ¹ establish that even where an accused person causes or contributes to delay, a time could eventually be reached where a court may be obliged to conclude that notwithstanding the conduct of the accused, the overall delay has been too great to resist a finding that there has been a breach of the guarantee of trial within a reasonable time.

The Crown's Response

- [11] The Crown submits in response to the Defendant's application that their evidence establishes that Defendant was connected to the Murder of Verlinda after forensic testing revealed that his sperm was detected on the cervical swabs that had been taken from Verlinda at the time of her death. The Crown acknowledges that the case is one of circumstantial evidence, and its case relies heavily on the evidence of the Crown's experts.
- [12] The Crown submits that there is no compelling evidence to demonstrate that it is impossible to have a fair trial. They assert that the Defendant is largely responsible for the delay of over 18 years, but notwithstanding, they accept that there is a prima facie breach of the Applicants right to a fair trial within a reasonable time, whether he has been prejudiced by the delay or not. The dicta of Baptiste JA in **Urban St. Brice v The Attorney General** SLUHCVAP2018/0036 was relied on.
- [13] The Crown nevertheless submits that the right to a trial without undue delay is not a right not to be tried after undue delay. They submit that the reasonable time guarantee under Section 8 (1) of the St. Lucia Constitution Order is not to permit the accused person to escape trial but to prevent him from remaining in limbo for

¹ Gibson v The Attorney General of Barbados [2010] CCJ 3 (AJ)

a protracted period and to ensure that there is efficient disposition of pending charges. The Crown therefore submits that a permanent stay should not be granted based on delay alone, unless in all the circumstances it is unfair to try the Defendant.

[14] The Crown submits that a fair trial is still possible despite the absence of Yvonne Cruickshank and Christine Anne Kimber, who are the forensic scientists who analyzed the DNA recovered from the body of the deceased. Price Findlay J as she then was, on the 25th of July 2015, ordered the prosecution to file its application to have the depositions tendered during the trial. She further ordered Jonathan Whitaker who had worked alongside Christine Anne Kimber to be called to explain Christine Anne Kimber's report. Further orders were made for the Defendant to secure his own forensic expert in the person of Monte Millar and all forensic reports and data relied on by the Crown was ordered to be disclosed on him. A report should have been prepared which would have assisted the Defence in formulating questions for the experts on the collection, transmission and testing of the DNA and to point out any weakness to the jury that there might be in the evidence.

[15] The Crown submits that unavailability of the witnesses notwithstanding, the right to cross examine a witness at trial is not an absolute right, and there will be a forensic expert who worked alongside the expert, albeit not the expert herself, to whom questions can be put on any technical issue on which knowledge is not common. They submit that as the Defence will be calling their own expert, any weaknesses in the DNA evidence could be addressed by their expert.

[16] The Crown submits that a permanent stay of the proceedings is a remedy of last resort and a more appropriate remedy in this case for the inordinate delay is a direction for the speedy trial of the matter.

The Law

[17] The guarantee of a right to a trial within a reasonable time is found in Section 8 of the St. Lucia Constitution Order. The Constitutions of most Commonwealth jurisdictions contain similar provisions. The importance of the provision is to

ensure that a person does not remain too long in a state of uncertainty about his fate before the courts. It is directed primarily toward excessive procedural delays in the conduct of a prosecution, recognising the stigmatization, loss of privacy, stress and anxiety created on a Defendant by the cloud of suspicion that accompanies criminal proceedings. There are other potential violations of other rights such as freedom of movement, caused by restrictive bail conditions. The right to a fair trial is protected by ensuring that proceedings take place while evidence is available, as delay can prejudice the ability of the Defendant to lead evidence, cross-examine witnesses or otherwise raise a defence.

[17] Section 8(1) of the St. Lucia Constitutional order provides:—

If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

[18] Additionally Section 8(2) provides that every person who is charged with a criminal offence—

- a) shall be presumed to be innocent until he or she is proved or has pleaded guilty;
- b) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution;

[19] In **Frank Errol Gibson v The Attorney General** 2010 CCJ 3 (AJ), Mr. Justice de la Bastide interpreting Section 18(1) of the Barbados Constitution a provision identical to Section 8(1) of the St. Lucia Constitution explained that that provision gives three different and free-standing rights to any person charged with a criminal offence. They correspond to separate obligations imposed by the Constitutions on the States. That is a hearing that is (a) fair (b) before an

independent and impartial tribunal established by law and (c) held within a reasonable time. He said: —

“The fulfillment by the State of each of these obligations is fundamental to the criminal justice system and the obligations referred to at (a) and (b) are irreducible. Thus, if a trial is not likely to be or has not been fair, then, as stated earlier, the breach vitiates the trial process. Similarly, a court will not sanction a trial before a tribunal whose characteristics threaten to or actually fall short of basic requirements of independence and impartiality. Redress for an infringement of either of these rights cannot be limited by any overriding public interest in part because, unless the charge is altogether withdrawn or dismissed, it will normally be possible to convene a new trial on conditions that are fair or to hold one before a proper tribunal as the case may be. It is possible, so to speak, to re-set the clock so as to grant the accused the full measure of the right in question.

This is not the case when the reasonable time guarantee has been breached. Once there has been excessive delay in trying an accused, a court may issue orders aimed at expediting the trial or provide some form of relief to the accused but there is nothing that the court can do to remedy the breach that has occurred in a way that will undo the past delay and its effects on the accused and the society. It is not possible to wipe the slate clean and revert to the status quo ante.

...A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case by case basis. It cannot be reached by applying a mathematical formula although the mere lapse of an inordinate time will raise a presumption, rebuttable by the State, that there has been undue delay. Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the State.”

- [20] In **Urban St. Brice v The Attorney General** SLUHCVAP 2018/0036, the Eastern Caribbean Court of Appeal went further in assessing culpability for delay. Baptiste JA delivering the decision of the court said:—

“A finding that a defendant is largely responsible for the delay in the completion of his criminal trial is not decisive of whether the right to a fair hearing within a reasonable time has been breached, as the time may come where the overall delay is so great, irrespective of who caused it, that the court is impelled to conclude that the right has been breached.”

- [21] The Defendant’s application addresses (a) the fairness of the trial and (c) the reasonable time guarantee. I propose to assess the Defendant’s grounds relying on the guidance of these two authorities.

The Reasonable Time Guarantee

- [22] The total period between the Defendant being charged and this current hearing is 19 years and three months. The Crown concedes that there has been protracted delay of the proceedings but alleges that this largely ascribed to the Defendant.
- [23] Under a reasonable time guarantee the period whose reasonableness falls to be reviewed must take in the entirety of the proceedings in issue. Not just applications filed, but every hearing and the actions of every party in the management of the case. I have reviewed the case history and case events extracted from the JEMS court management software and I cannot readily reach the same conclusion as the Crown. Admittedly, the progress of this trial was often stalled to allow the Defendant's constitutional motions to be ventilated. A closer look at the event history records that there have been at least 2 changes to the Defendants' Counsel, and many adjournments due to the absence of Defence Counsels. It also records changes to the installed Director of Public Prosecutions, and a significant period when the state was without a Director of Public Prosecution. The event record also reflects different Crown Counsels assigned to this case over the years, causing delays in the compliance with court orders. It also records no less than 7 judicial officers who have had custody of the management of this case over its lifetime. This too has contributed to the delay in the movement of the case to trial. There were administrative delays caused by a transition from a system of preliminary enquiries to committals after sufficiency hearings, extended court closures resulting from challenges with the building in which the court was located, security threats, a pandemic, and the overwhelming backlog that burdens the Criminal Jurisdiction of the High Court of St. Lucia. Assessing the events record, I can more readily conclude that the delays that occurred were systemic rather than manipulated or caused by the Defendant.
- [24] Notwithstanding, based on the dicta of Baptiste JA in **Urban St. Brice**, the question of who is responsible for the delay in trying a Defendant is not decisive

of whether the right to a fair trial within a reasonable time has been breached. The Court referenced **Prakash Boolell v The State** [2008] UKPC 46 where the delay between arrest and the motion hearing was 12 years, and **Urban St. Brice** itself the delay was 18 years. The Court said this:—

“The delay in St. Brice is significantly longer than in Boolell. Indubitably, the extraordinary time period which has elapsed from the time of St. Brice’s arrest and charge in November 2002 to the present, without the murder charge having been finally heard and determined, leads to the insuppressible conclusion that the overall delay is so great that the reasonable time guarantee ordained by section 8(1) of the St. Lucia Constitution has been violated.”

- [25] Relying on the insight provided by **Urban St. Brice**, the Crown has rightly conceded that with a delay of over 19 years between charge and trial, there is a prima facie breach of the Defendant’s right to be tried within a reasonable time.

What is an appropriate remedy?

- [26] The courts have acknowledged a permanent stay to be an exceptional remedy because of its finality. In **Connelly v The DPP** [1964] AC 1254 and in **DPP v Humphreys** [1977] AC 1, HL it was stated that such a remedy should be invoked sparingly where (i) a fair trial for the Defendant is no longer possible and (ii) where a stay is necessary to protect the integrity of the criminal justice system.
- [27] The Court’s obligation is always weighted in favour of a trial. It is the duty of the Court to try a person who is charged before it with an offence which the court has the power to try. ²Baptiste J in the **Urban St. Brice** case reinforced the view that there is a strong public interest in the prosecution of a crime and in ensuring that those charged with serious offences are tried, and even more importantly in every case there is a victim. Verlinda Joseph was only thirteen (13) years old at the time. She was raped and strangled struck down in the infancy of her life and left callously in the bushes while she was about an ordinary day returning from the seamstress as she prepared for a school day. Her brutal death remains unresolved. There has been an outcry in her community and in the wider society for justice for her. These are strong and compelling reasons to not order a stay. The **Attorney General Reference** (No.2 of 2001) of the UK, confirms that the public interest in the final

²R v Horseferry Road Magistrates Court, ex.p Bennett

determination of criminal charges require that a charge should not be stayed or dismissed if any lesser remedy would be appropriate. Where a stay is not granted, other remedies that are appropriate would depend on the circumstances of each case. These can include (1) a public acknowledgment of the breach, (2) action to expedite the hearing (3) a reduction in sentence to a Defendant found guilty and the payment of compensation to a Defendant found not guilty.

[28] The Crown submits that a fair trial is still possible. It concedes that this is a case based on circumstantial evidence and that its case impinges on the findings in the report of Christine Ann Kimber, which report the Crown says can be tendered by her previous associate. They submit that any questions that may arise from the findings of Christine Ann Kimber's report can adequately be put by the Defendant's expert to the associate of Ms. Kimber. He can address questions and concerns arising from the report of Christine Anne Kimber. The Crown submits that in the circumstances of this case an order to expedite the hearing is an appropriate remedy.

[29] On reviewing the file in this case. I note a multiplicity of orders that had been issued by various judges, both in the Civil and in the Criminal Division, whose orders were designed to prioritize the hearing in this matter to avoid a breach of the human rights of the Defendant. These orders began as early as the order of Wilkinson J following a constitutional motion unsuccessfully argued in the Civil Court. She ordered that all necessary action is taken to ensure that this matter be set down for trial at the next sitting of the assizes. In May 2012, Belle J as he then was directed the case management of the proceedings in preparation for trial; Ramdhani J issued unless orders in 2015. None of these seemed potent enough to force the trial of this matter.

[30] Despite these orders, every time the matter was fixed for trial there came a plethora of requests for evidence to be taken via video link and for new witnesses to be added to the indictment; to read the evidence of witnesses who had died, relocated, or disappeared.

- [31] In 2008, the Chief Justice, in the exercise of powers conferred under section 570A of the Criminal Code Cap 3.01 promulgated Criminal Procedure Rules, with the overriding objective being the timely and efficient disposal of cases in the Criminal Division, it enjoined every person involved in the dispensation of justice to be active participants in preparing and conducting cases in keeping with the overriding objective. The rules also established court driven Case Management, all to ensure that cases requiring priority due to its age, nature of offence, vulnerability etcetera to be prioritized and that the parties to the proceedings make the most efficient use of court resources.
- [32] Reviewing the court events in this case and the various orders issued by both the Civil and Criminal Court, I am struck by the failure to acknowledge the sacrosanctity of court orders, and the disregard to prioritizing the trial of this matter by all parties, even after multiple motions were filed alerting of possible constitutional infringements. If I am to accede to the Crown's submission and give yet another order for an expedited trial, I fear that order will be visited with the same indifference.
- [33] I remind myself however that my decision is not to act punitively of the systemic failures but to determine in so far as a fair trial is still possible, what other remedies may be available.

Is a fair trial still possible?

- [34] There is a plethora of authorities from the European Convention on Human Rights that offers guidance on what is meant under Article 6(1) of that convention, the article that guarantees the general right to a fair trial. The principle encompasses wide ranging obligations, including:- the presumption of innocence; equality of arms, that is ensuring that the Defendant in the criminal proceedings have a reasonable opportunity of presenting his case to the Court; a fair and balanced case being presented by the judicial officer to the Jury; the exclusion of improperly obtained evidence; hearings in public and not in camera; ensuring an independent judiciary and efficient timeliness of trials, all of which when considered aim to achieve a fair process for the Defendant to prove his innocence of the charges levied.

[35] The Crown states that this is a case which impinges on the jury's acceptance of the forensic evidence of the analysis of DNA retrieved from the body of the deceased. This is recorded as PSE36 and was cervical, introital, near the vagina, anal, bottom and perianal swabs of the Deceased Verlinda Joseph. This analysis was conducted by Christine Ann Kimber, a Forensic Scientist, with a specialty in the analysis of samples with DNA profile. Her mandate in this case was to attempt to obtain a DNA profile from sperm cells identified on the cervical swabs in PSE36 and to advise in her professional opinion whether or not any DNA profile obtained provided scientific support that the sperm cells originated from one of four suspects, including Eugene St. Romaine the Defendant. The sperm cells had already been retrieved by a different Laboratory and had been subjected to a process known as preferential lysis extraction designed to remove epithelial cells but leave sperm cells intact. According to her evidence the samples were received suitable for analysis. She conducted a form of DNA profiling known as LCN (low copy number STR analysis) and laser micro-dissection. She explained that this is a very sensitive technique particularly suitable where very little cellular material is available for analysis. She used this technique because few cells were available for analysis. She used the technique of laser dissection enabling several individual sperm cells present on the microscope slides to be targeted, removed and combined for DNA analysis. Her finding was that the profile obtained came from a single profile and this profile matched the DNA profile obtained from Eugene St. Romaine the Defendant.

[36] This is powerful evidence if all the assumptions made to arrive at the conclusion, line-up. There were several assumptions made in her testing, including that the sperm cells originated from the cervical swabs were properly retrieved and that the retrieval and testing of the samples taken from the male suspects were also properly retrieved. The forensic evidence was not all tested at the same Laboratories. The Crown's case therefore hinges on the accuracy of the testing and assumptions she made.

[37] The evidence presented by the Crown reveals that the Defendant was known to the deceased, resided in the same household with her, and both regularly

traversed the area near her home where she was found. The question of the accuracy of the findings, and ruling out other possibilities for the findings is a real issue to be examined. In **R v Doheny** [1997] 1Cr APP R 369, at page 373-374 Phillips LJ stated that the cogency of DNA evidence makes it particularly important that DNA testing is rigorously conducted to obviate the risk of contamination in the laboratory, and that the basis of the statistical calculation should be transparent to the Defence as far as possible. It is just as important that the true import of the conclusion that results from this exercise is explained to the jury as accurately and as fairly as possible and a jury is likely to need careful direction about the approach which they should take to this evidence in the summing up.

[38] The Defendant's concern about the evidence goes directly to the issue of the transparency of the process. Many of the witnesses on the indictment are not available in person. Of the civilian witnesses who can put context to the case; some have died, some have relocated and are unable to be found. Their depositions are to be read into evidence. Of the expert witnesses, I am advised that Yvonne Cruickshank who conducted some of the earlier testing on the samples relied on by Christine Anne Kimber is dead and Christine Anne Kimber whose evidence is critical to the Crown's case cannot be located. The file reveals that she retired over seven (7) years ago and has made it abundantly clear that she no longer wishes to be contacted about this case.

[39] The Crown in 2017, revised the indictment identifying witnesses who they could produce. The Crown has applied and have been granted leave for the Forensic scientist who assisted Christine Ann Kimber in the assessment of this evidence to elucidate and answer any questions on her report. A similar application has been granted for Yvonne Cruickshank's evidence.

[40] I am satisfied that questions on the transparency of the process, on contamination and methodology of the testing can adequately be put to the current roster of experts without a compromise to the Defendant's rights. These are questions that can also be addressed by the Defence expert. The concerns that the Defence have raised are issues that can be dealt with within

the trial and perhaps on a no case submission after the Close of the Crown's case but are not a basis at this stage and given what evidence is available to invoke a permanent stay under Section 8(1) of the St. Lucia Constitution order. A fair trial is still possible. It is however essential to preserve the integrity of the Judicial process that this matter is fixed for trial during the next term.

[41] I had previously case managed this matter for trial. A trial bundle has been prepared. I therefore fix this matter for a jury to be empaneled within the next court term, that is between September 2023 to December 2023. Witness are to be available in person for the empaneling. Witnesses unavailable in person are to be presented by the use of electronic photographs.

Vivian Georgis Taylor-Alexander
High Court Judge

BY THE COURT



Dp. REGISTRAR