

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT IN THE HIGH COURT OF JUSTICE (Criminal)

CASE NO. 13/2004

BETWEEN

THE QUEEN

Claimant

VS

HILARY AUGUSTIN PAUL
FOR MURDER

Defendant

Appearances:

Mrs. Victoria Charles-Clarke
Ag. Director of Public Prosecution for the Crown
Mr. Ramon Raveneau for Accused

2004: June 22, 23, 24, 25
28, 29

RULING ON NO CASE SUBMISSION

- [1] **EDWARDS J:** In all cases of Murder and Manslaughter it is incumbent on the prosecution to connect the cause of death with the act of the accused.
- [2] This is my ruling relating to a No Case Submission on the issue of causation.

- [3] A necessary ingredient of the crime of Murder and Manslaughter is that the accused has by his actions caused the deceased's death.
- [4] How Lucy Paul came to her death is in dispute in this case. So the specific issue of causation has to be dealt with not in the general, laconic and simple terms recommended for causation directions, or merely by reading Article 164 of the Criminal Code.
- [5] The Prosecution has relied primarily on the evidence of Dr. Stephen King, and David Felix, the son of the deceased, to prove that the accused caused the death of the deceased.
- [6] To a somewhat lesser extent, the prosecution has also relied on the evidence of the deceased's personal doctor, Dr. Martin Didier, and Dr. Jenevieve Lee who treated the deceased on the morning she received certain injuries allegedly inflicted by the accused.

The Evidence

- [7] The prosecution has proven that on the early morning of the 26th December 2002 the accused gave the deceased a slap on her face, causing her lips to burst and bleed, and also pushed her, causing her to fall and hit her head on the end of a table in her sitting room.
- [8] Further, that while she was on the floor, he kicked at her several times causing injury to her right groin.
- [9] There is ample evidence pertaining to the deceased's medical history at the time the accused did these acts.
- [10] Her medical history is of extreme importance, because it impacts on the issue of causation.
- [11] She was epileptic, suffering from grand mal uncontrolled seizures from a child. She was taking medication for this condition which Dr. Didier diagnosed as a seizure disorder epilepsy in 1984
- [12] She had uncontrolled hypertension diagnosed from 1996 and she was receiving ongoing treatment for it.
- [13] She began having deterioration in her kidney function in 1996/97 and she received medical treatment for this until May 2002 when she had chronic renal failure. She began undergoing dialysis at the Victoria Hospital 3 times weekly from May 2002.
- [14] On 25th December 2002 when she visited the dialysis unit she had blood pressure 170/105. Dr. Didier regarded this as very high. In the process of administering the dialysis there was Vascular Access Failure caused by a Thrombosis clot in the artificially created connection between the artery and the vein.

- [15] She was advised to be admitted to hospital for further management and she refused admission, opting for anticoagulant outpatient treatment to thin her blood. Subcutaneous heparin and oral Warfarin was used as standard treatment for thinning her blood.
- [16] She returned home apparently on 25th December 2002.
- [17] On 25th December 2002 during the day, the accused was at the home of Mary La Feuille the lady with whom he had an intimate relationship. He also spent the night with her and he left her home at 4:00 a.m. on 26th December 2002.
- [18] On 26th December 2002 around 4:00 a.m. David puts the time, he said he heard his mother arguing with accused in their bedroom. He heard his mother telling accused to leave the house. Accused said he was not going anywhere and they argued from their bedroom into the living room. From the alley way, David witnessed accused slap his mother, heard his mother say you burst my mouth, saw his mother wiping blood from her mouth. He next saw accused push his mother and she fell, hitting her head on the end of the table in the living room.
- [19] Lucy Paul was kicked by the accused several times while she was on the floor. Accused then left the house.
- [20] David helped his mother up from the floor, called the ambulance, and helped her change her clothes. Before the ambulance arrived, Lucy Paul was sitting on the floor vomiting, then she collapsed, then she revived 5 minutes later. David then helped her in the living room and she lay on the sofas until the ambulance arrived. She was sweating, appeared very sick and David says he had never seen her look like this before.
- [21] David's testimony was that accused had always shoved his mother around, knocking her out, throwing stones at her, shoving her around the place.
- [22] The evidence of the deceased's sister is that deceased was a thin/small bodied person.
- [23] David's testimony was that in 2002 after accused and his mother had an argument, the deceased had left the home and accused followed her and broke a food plate on her head. She bled through her ear then, and her ear was patched up and she was released from hospital that same day.
- [24] It is significant that on none of these occasions where there was severe trauma did subdural haemorrhage occur. But we also do not know whether she was taking anticoagulants then, or the state of her hypertension.
- [25] On 26th December 2002 when she was taken to Victoria Hospital by the Ambulance she remained there until Friday morning, 27th December 2002, when she and her son David went by bus from the Hospital to Balata, there she collected clothes and returned to the Hospital in the accused's jeep, where she was admitted.

- [26] Dr. Didier's evidence was that when he saw the deceased on the 27th December 2002, she was alert, well oriented and her neurological examination was normal and she was ambulant. She had no signs of trauma except for a small bruise on the right upper and lower lip.
- [27] She was showing no signs of fluid retention given her chronic renal failure condition, and her respiratory examination was normal.
- [28] On 27th December 2002 when she was seen at the Dialysis Unit and admitted to Hospital her blood pressure was 180/140 and her pulse was 80 per minute. She was receiving anticoagulants which were subcutaneous heparin and Oral Warfarin.
- [29] Since she was on anticoagulants, her clotting mechanism was being monitored to see how much her blood was thinning. He said that with the Clexane anticoagulant, there is no need to monitor the clotting mechanism, but in the case of Warfarin it must be monitored.
- [30] Lucy Paul was on anticoagulants up to the time of her death.
- [31] Dr. Didier said that a side effect of anticoagulants is that she could bleed anywhere, so bleeding could occur in her brain.
- [32] If Lucy Paul had been admitted on the 23rd December 2002, Dr. Didier could not say definitely that given her state of health she may still have died.
- [33] Dr. Didier said that his clinical diagnosis was that because she had high blood pressure and was on blood thinners, this by itself could have caused bleeding in the brain.
- [34] Given the medication which she was on and given her state of health its possible that by themselves without the application of any trauma Lucy Paul could still have bled in her brain.
- [35] Dr. Didier said that generally speaking, subdural haemorrhage is controversial. The commonest cause is trauma in a patient who has a tendency to bleed. Trauma is generally considered the commonest cause.
- [36] Dr. Didier said you can get spontaneous subdural bleeding possibly without trauma in persons who have bleeding tendencies such as a person on anticoagulants.
- If such a person has elevated high blood pressure and is on anticoagulant, subdural haemorrhage is possible.
- [37] Dr. Didier said that although Lucy Paul was being monitored in hospital, for patients who are on anticoagulants, their bleeding status can change from day to day, hour to hour, it can change suddenly.

- [38] For Lucy Paul, Dr. Didier said they were dealing with a patient with multiple medical problems all inter related.
- [39] She remained stable in hospital until 28th December 2002 when at 7:00 a.m. she complained of a pounding headache, and a deteriorating level of consciousness.
- [40] She subsequently lost consciousness and began sweating excessively with cold and clammy extremities.
- [41] Her vital signs then were showing blood pressure 180/110 and pulse of 80 per minute. She had normal oxygen saturation in the blood registering 98%.
- [42] Dr. Didier said he saw her at 10:00 am, but then she was given oxygen therapy and her respirations were shallow and very depressed registering 16 per minute
- [43] Her blood pressure was 206/180 with pulse of 56 per minute. This was consistent with intra cranial pressure. She was in a coma. She was receiving anticoagulants. Dr. Didier assessed her as having acute cerebral haemorrhage. Dr. Didier and his team managed her deteriorating condition, but despite this she died at 1:00 p.m.
- [44] Dr. Didier says he had up to then received no information that she had suffered trauma, so he was not focusing on trauma. The reason why she was admitted to hospital on 27th December 2002 was to treat the blocking of the access to her lifeline relevant to Dialysis. There was no evidence or information from any of the medical persons managing her condition, that she had had epileptic seizures.
- [45] Dr. Didier's testimony was that trauma to the head could have caused intra cranial bleeding.
- [46] On 30th December 2002 Dr. King performed a postmortem. Dr. King's testified that he found a haematoma collection of blood in the right groin measuring 100ccs.
- [47] He saw no evidence of contusion to the scalp. Dr. Jenevieve Lee who first saw the deceased on the 26th December 2002 also saw no evidence of contusion to her scalp or head. In my opinion one would have expected to see this, since David's evidence was that she had hit her head on the end of the table.
- [48] There was a contusion bruise to her right and lower lips more so to the inner surface and the bruise was larger on the right upper lip and there was a small tear to the right of her inner upper lip.
- [49] He saw a right subdural haemorrhage measuring 200ccs which was acute and fresh, and he assessed it to be 3 days old or 72hrs with a latitude of 2-5 days from date of death 28th December 2002. Dr. King performed a postmortem on 30th December 2002.

- [50] There was right mid brain compression and a dilated left lateral ventricle of the brain.
- [51] Dr. King concluded that cause of death was brain compression, in particular mid brain compression as a result of subdural haemorrhage.
- [52] He saw evidence of acute trauma to right side of mouth and right groin, evidence of renal failure and hypertension.
- [53] He concluded the subdural haemorrhage was caused by trauma, because of statistics showing that the vast majority of subdurals are traumatic - *i.e.* 95% to 99%.
- [54] He admitted that hypertension and the history of Lucy Paul's medical condition raises the possibility that the haemorrhage could have been caused by hypertension.
- [55] Dr. King admitted that things are not always what they seem. He accepted that the subdural haemorrhage in the deceased could not have been due to trauma. He said it was a matter of probabilities. Given her medical condition and the state of her body, it would not have required major trauma, minor trauma could have caused subdural haemorrhage.
- [56] Dr. King admitted that a stumble and a fall, simply sitting down too hard, like missing a chair, that kind of minor trauma has been associated with subdurals in persons who are susceptible.
- [57] He said that the trauma could have occurred between the 23rd and 26th December 2002, it was not less than 2 days and not more than 5 days before her death.
- [58] If she threw herself on a chair, this could cause it. If she had gone to hospital between the 23rd and 26th and on boarding a vehicle, accidentally hit her head on the motor vehicle while entering it, once it is too hard, that could cause the subdural.
- [59] If she bumped into someone, that could cause the subdural if the bump was hard enough. Everyday activity and accidents which we normally take for granted, could actually cause Lucy Paul her life.
- [60] Assuming that she had bumped her head on the 23rd and also sat down too hard on a chair, then she accidentally fell on the 25th, and also bumped her head on a mini van, then on the 26th she got into the altercation, Dr. King admitted that he would not be able to say in such circumstances which of these things would have caused her subdural.

- [61] Dr. King said that in his opinion hypertension may not have caused the subdural, he could not exclude it, he could not rule it out. It was probable that trauma caused it because of the statistics being very high that subdurals were related to trauma as opposed to non traumatic subdural. It was more probable that trauma in Lucy Paul's case, would have been sustained from trauma to the head rather than from her doing household chores. If the trauma was to the other parts of the body, if such trauma caused a shifting of the brain, this would cause the subdural.
- [62] Dr. King said that if Lucy Paul had fallen, striking her head on a table, that could have resulted in the subdural. The more severe the trauma, the more likely the haemorrhage.
- [63] He said that the subdural would have started from the time of the trauma, and the signs and symptoms would progress as the blood collects and squeezes the brain.

Submissions

- [64] Learned Counsel Mr. Raveneau through his masterful and effective cross examination has elicited evidence which discloses among other things that there are 2 competing causes of the cause of death, and one is more probable.
- [65] This has fuelled his No Case Submission. Relying on the well known principles in **R -vs- Galbraith** [1981] 2 ALL E.R. 1060 and **R -vs- Shippey** [1988] Crim L.R. 767, Mr. Raveneau has submitted that the Court has a residual duty to consider if the evidence of the prosecution is inherently weak or tenuous. If no Jury properly directed could properly convict on it, the Court has a duty to stop the case.
- [66] Mr. Raveneau has rightly submitted that the case turns solely on the medical evidence, assuming David Felix's evidence is true.
- [67] Mr. Raveneau has pointed to the obvious dichotomy on the prosecution's case regarding the cause of death. Counsel has boldly submitted that the evidence at its highest goes in 2 separate directions, and there are 2 possibilities that cannot escape. That as long as there are 2 possibilities, the accused should be acquitted.
- [68] The Learned Director of Public Prosecution has countered, that the evidence has to be taken in its entirety. That since Dr. King's evidence puts the subdural haemorrhage within the time range the Crown is saying trauma was inflicted, and bearing in mind that it is more probable that it was due to trauma according to the statistic, there is sufficient evidence proven by the Crown for the accused to answer.

- [69] The Learned Director of Public Prosecution has placed complete repose in the opinion of Dr. King, that it is more probable that Lucy Paul died because of subdural haemorrhage caused by trauma.

Findings

- [70] In my opinion my focus depends on the second limb of the **Galbraith** guidelines. The Question for me is whether the prosecution's case taken at its highest is such that a Jury properly directed could not properly convict on it. If it is, then my duty is to withdraw this case from the Jury.
- [71] I am enjoined by **R -vs- Shippey** to assess the evidence as I have already done. If I find that the evidence of the witnesses upon whom the prosecution depends is self contradictory, then such evidence is tenuous, and is suffering from inherent weakness.
- [72] In Criminal Cases, the prosecution does not discharge its burden of proof by sufficient probability. It's burden is to prove the case beyond a reasonable doubt.
- [73] The prosecution has a duty to prove that the accused caused the death of the deceased by his act.
- [74] Dr. King is a renown pathologist and reputable expert witness . Dr. Didier is a Consultant.
- [75] The function and purpose of their testimony is to provide the Court with information which is outside the experience and knowledge of the Judge and Jury.
- [76] Dr. King has given his opinion upon the cause of death, which is an issue in this case.
- [77] Since causation is a question of fact for the Jury, and questions as to the weight of the evidence are for the Jury to determine, Dr. King's opinion can not decide the guilt of the accused, it assists the Jury to do so.
- [78] The Jury should be allowed to decide what weight to give to Dr. King's evidence. If there is nothing to contradict Dr. King's opinion, then the Jury should accept it.
- [79] Lord Goddard C.J. in **Matheson** pronounced that where there are facts which would entitle a Jury to reject or differ from the opinion of medical men, the Court of Appeal will not disturb their verdict. But if the doctor's evidence is unchallenged and there is no other evidence on the issue, a verdict contrary to the doctor's opinion would not be a true verdict in accordance with the evidence: ([1958] 1 W.L.R. 474).

- [80] In this case Dr. King's opinion has been challenged by his own testimony. Under cross examination he has admitted that it is possible that the deceased died from subdural haemorrhage caused by hypertension.
- [81] The evidence is therefore not clear and the Jury quite properly would be entitled to reject Dr. King's opinion that it is probable that the subdural bleeding was caused by trauma from the injury the accused allegedly inflicted on her.
- [82] There is no suggestion that the medical treatment administered, or lack of adequate medical treatment, contributed to or was the cause of her death. There is therefore no scope for other applicable legal considerations on causation in such cases.
- [83] This is not a case where there is other circumstantial evidence from which the jury can feel sure without a reasonable doubt, and conclude that accused murdered the deceased.
- [84] The Jury could only convict if they are satisfied beyond a reasonable doubt that they should accept Dr. King's opinion that subdural trauma caused her death.
- [85] The Jury has 2 competing causes on Dr. King's testimony, and Dr. Didier's testimony. They cannot in my view, be allowed to decide on the prosecution's case whether the cause was subdural hypertension or subdural trauma on a balance of probability.
- [86] Dr. Didier has stated that subdural bleeding is generally controversial. Dr. King's evidence shows that it cannot be said with any certainty, or without a lingering doubt, what caused the subdural haemorrhage in Lucy Paul.
- [87] It is a medical possibility that hypertension could have caused her death.
- [88] It is a medical possibility and probability that trauma caused her death.

Conclusion

- [89] It is a medical possibility and probability that accused's acts may have caused the death of his wife. But a Jury properly directed could not in my opinion reasonably conclude that there is proof beyond a reasonable doubt that the accused caused the death of his wife.
- [90] In my opinion the evidence is insufficient to warrant a finding of guilt. Though the circumstances give rise to grave suspicion, there has not been cogent evidence to prove causation.

- [91] To leave this case to the Jury is to require then to evaluate competing causes on Dr. King's evidence in circumstances where they ought not to. In my opinion the medical evidence to ground causation is tenuous and inherently weak. It is not safe to leave this case to the Jury.
- [92] The No Case Submission is therefore upheld and I shall direct the Jury upon their return to return a Verdict of Not Guilty to Murder or Manslaughter, or any other offence having regard to Article 985 of the Criminal Code.

Dated this 29th day of June, 2004

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OLA MAE EDWARDS
High Court Judge