

16 of 1977

IN THE PRIVY COUNCIL

No.33 of 1976

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O N A P P E A L

FROM THE COURT OF APPEAL OF BARBADOS

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B E T W E E N :-

DAVID ADOLPHUS WALTON

Appellant

- and -

THE QUEEN

Respondent

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CASE FOR THE RESPONDENT

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RECORD

- 10 1. This is an appeal by special leave in forma pauperis from a Judgment dated the 12th day of March 1976 of the Court of Appeal of the Barbados Supreme Court (Douglas, C.J. Worrell and Johnson, J.J.), which had dismissed the Appellant's appeal against his conviction in the Barbados High Court (Williams J., and a Jury) on the 18th day of October, 1974, on a charge of murder upon which the Appellant had been sentenced to death. pp. 64-71
- 20 2. The Appellant was presented on the charge that he, in the parish of St. Michael on the 2nd day of February 1974, murdered Cynthis Allder. pp. 60-63  
p. 38
3. The trial took place in the Barbados High Court (Williams J., and a Jury) between the 16th and 18th October, 1974. The prosecution called material evidence to the following effect:- pp. 1-59
- 30 (a) Stephen Catlyn said that at about 5.30 p.m. on 2nd February, 1974 he was driving along when he saw the deceased waiting at a bus-stop. He gave the deceased a lift and she got into the front seat. As he approached Waterford Bottom, he saw a parked car with two women by the side of it. The younger woman signalled for him to stop and he did. After talking to him both women got into the back seat of his pp. 6-8

RECORD

car. The Appellant, who was the driver of the other car, registration number S.134, walked up to Stephen Catlyn's car, reaching the rear left door just before it closed. The Appellant asked Mr. Catlyn where he was going and he replied "to town". The Appellant asked for a lift. The older woman asked him why he wanted a lift and what he would do with his car, to which the Appellant did not reply. Mr. Catlyn asked the Appellant to close the door and let him go on his way. Then he said he saw the Appellant make a sudden movement from his right shoulder; he saw his hand pointing towards him and realised that there was a gun pointing at him. Then there was an explosion and he felt a burning at the side of his neck. He got out of the car and ran back up the road. As he ran he heard a second explosion. A minute or two afterwards he flagged down a car and was given a lift. As he was driven past his own car, he saw the Appellant and the two women struggling.

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pp. 8-10

(b) Randolph Welch said that on the 2nd February he was passenger in a car driven by Ronald Branch. As they drove past Waterford Bottom they saw two women and a man by two cars, and the Appellant had his arm round the younger woman's throat. The older woman appealed to them for help which, after a pause, they gave. The Appellant and the younger woman had fallen to the ground. Mr. Welch and Mr. Branch removed the Appellant's arm from the younger woman's neck and led the Appellant back to his car. Mr. Welch asked the Appellant whether that was his car and the Appellant did not reply. The Appellant got into the car and immediately drove off. Then Mr. Welch saw the deceased in the front of the other car; he saw blood coming from her head. He lifted her out and put her in his own car, and drove her to hospital.

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pp. 10-11

(c) Ronald Branch gave a similar account to that of Randolph Welch.

pp. 11-15

(d) Anita Bradshaw said that her daughter Margareta Watson had been the Appellant's girl-friend for about three years. She said that on 2nd February, as they turned onto the cart track which led to Waterford

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Bottom, Margareta Watson told the Appellant to stop since he was going too fast. Anita Bradshaw asked the Appellant why he had given her a lift if he was 'having noise' (an argument) with her daughter, but the Appellant denied he was having noise. The Appellant stopped the car. Her daughter flagged down a car driven by Stephen Catlyn, and she and her daughter got into it. She said she heard two explosions. She did not see the gun at that stage but did see it "in one of four hands" when the Appellant and Margareta Watson were struggling. She took the gun and threw it into the canes. Later she returned to the scene and found the gun lying in the canes in the same direction in which she had thrown it. She said the Appellant was calm at the time of the explosion and "kind of calm" when he was trying to take Margareta Watson to his car.

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(e) Margareta Watson, daughter of Anita Bradshaw, described how she went to the races and left with her mother in the Appellant's car, how the Appellant stopped the car and how she flagged down Mr. Catlyn's car and got into the rear seat of it with her mother. She heard two explosions when the Appellant was standing outside the car. She described a struggle with the Appellant, during which he had his hands round her neck. She became unconscious. She said that there was no argument or jealousy between her and the Appellant. He was "acting funny" and said he could not remember the road. Under cross-examination, she said that the Appellant had beaten her on occasions in the past and that afterwards he had said that he did not know what had happened. He suffered from black outs. He had complained of insomnia and severe headaches some time ago. In re-examination, she said that the Appellant had suffered two black outs in her experience but never after he had beaten her: he complained of his eyes getting cloudy and then fell down. She did not remember how long he had remained down.

pp. 15-18

(f) George Phillips, a police constable, said that he followed the vehicle S.134 at about 7.16 p.m. on 2nd February, 1974.

pp. 21-22

RECORD

The Appellant stopped outside the Superintendent's office and said to him that he had heard that the police were looking for him. When he asked the Appellant why the police were looking for him, the Appellant made the following statement:

p. 21  
l. 19-35

"All I know is I went on to the Garrison with my girl friend and her mother. While there I drank about three or four Guinness Stouts. After drinking these stouts I started to fell badly and I told my girl I was going into the car and lay down. While walking across the pasture I kicked something in the grass and on turning round and searching in the grass I saw it was a gun. I took it up, carry it to the car and place it under the driver's seat where I sit. About half an hour afterwards my girl friend and her mother came and got into the car. I drove off and decide I was going for a drive before I go home. When I got in Waterford I stopped the car. My girl friend and her mother thought I was going to do something funny. And they got out of the car. I don't know what happened after that."

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pp. 22-24  
p. 22  
l. 25-32

(g) Oswald Taitt, a police sergeant, said that after cautioning the Appellant at about 8.35 p.m. on the 2nd February, 1974, the Appellant made the following statement:

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"I found a gun at the Garrison this evening when I went for my girl friend Maggie and her mother. And when I got to Waterford Bottom bringing them down I stopped and Maggie and her mother got out and stopped a car with a man and a woman in it and got in. I went to the car and fire off some shots in it and I ain't know who get shoot". He told the Appellant that it was intended to make a written record of what he had just said. That was done and the written statement (Exhibit C) was signed by the Appellant. Under cross-examination, he denied that he had put words into the Appellant's mouth.

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p. 32  
l. 5-22

4. The Appellant elected to make an unsworn statement as follows: "I told Sergeant Taitt that what happened was cloudy in my mind and I did not remember what happened after my girl friend and her mother left the car. I did not tell Sergeant Taitt that I went to the

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10 car and fire off some shots and I don't know who get shoot. The statement Sergeant Taitt said I signed is not exactly what I told him. I told him the same as I told Phillips. I did not describe things happening after Maggie and her mother left the car. I am now taking tablets prescribed by the doctor. Before this incident occurred my girl friend accused me of beating her which I didn't recall doing. I suffered in the past from severe headaches, black outs, sleeplessness and loss of memory. My mother told me she caught me burning her new curtains last December. She showed me the remains of them. I do not recall burning them. That is all I have to say."

5. Three medical witnesses gave evidence on the Appellant's behalf as follows:-

20 (a) Patricia Bannister, a psychiatrist, said that she saw the Appellant on eight occasions but not before 9th April, 1974. She said that she found the Appellant to be extremely anxious and not to tolerate well frustration or stress. He showed paranoia and some loss of memory for certain events. Her conclusion was that he suffered from an extremely immature personality. She thought he was not wholly responsible. She said there was no damage or injury to his brain but referred to his condition as an abnormality of the mind. In her opinion, this would substantially impair his responsibility for his acts. She felt that his emotions were at the level of a three year old. Since he had been in prison he had had quite a severe psychotic breakdown. He was not a violent person, in her opinion, but reacted in a primitive fashion to real or imagined provocation in an attempt to protect what he thought was threatened. He was liable to build up an enormous rage where he would not be responsible for his actions and later he would not be likely to remember those actions.

pp. 82-85

50 She said that she thought the Appellant was suffering from a personality disorder which was a form of mental disorder. He was suffering, she thought, from a disease of the mind.

RECORD

p. 34  
l. 9-38

He had given her this account of the incident in question as follows: he had left for the Garrison after taking tablets for headache. He went to collect his girl friend and her mother from races. They were not ready and as he felt badly he sat in the car. He drank about 4 guinness. After which he went to call his girl friend and her mother. On returning to car his foot kicked an object which he thought was a gun. He picked it up and put it in his pocket. Before setting out he put the gun under the seat. This was to prevent his girl friend seeing it as it would frighten her and cause an argument. They went via a roundabout route to Waterford. This was because his head was turned. During the drive he had on one or two occasions to push the gun under the seat. The girl friend asked what he had there and he said nothing. He drove slower and slower and finally stopped the car to urinate. Thereupon his girl friend switched the car keys and she and her mother left the car and flagged down a passing car. He took the gun from under the seat and held it in the palm of his hand and went to the car to show the girl friend what he had been hiding. His girl friend grabbed his hand and the gun went off. He didn't remember anything else until he heard somebody shouting "why you don't let go the girl you going let this girl put you in trouble". He found two men holding his hands. He found he had a bad headache. He got up went to his car and drove away. His child's mother advised him to go to the police.

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She ended by saying that it was very difficult to tell whether a person was malingering but her conclusion was that he was not malingering.

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pp. 35-36

(b) Lawrence Blair Bannister, a medical practitioner, said that he saw the Appellant on six occasions, the earliest being the 7th February, 1974, when he treated him for pains around the waist and vomiting. On 21st February, the Appellant complained of a headache. On that occasion and subsequently, Dr. Bannister treated him for anxiety, depression and a psychosis. On 5th September, the last occasion, Dr. Bannister recommended that the Appellant should see a psychiatrist.

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10 (c) Richard Browne, a clinical psychologist,  
first saw the Appellant on 19th June, 1974  
and twice subsequently. He found no  
features of confusion or disorientation.  
The Appellant showed average intellectual  
ability and tests showed good observational  
ability and clear thinking. He described  
his personability as inadequate and this  
was evidenced by emotional immaturity and  
a low tolerance level. Under cross-  
examination he explained that he meant by  
low tolerance level that the Appellant  
"got vexed quick"; he would get vexed  
more easily than the average person. He  
would react in an extraordinary way and  
would react to less provocation than  
would the average person. Mr. Browne  
referred to an emotional disorder which  
20 would affect the Appellant's thinking to  
the extent that he had described, but not  
the Appellant's intelligence.

6. Williams, J., in the course of his summing-  
up, directed the jury on the burden and  
standard of proof and the functions of the  
judge and jury.

pp. 38-59  
p. 38 l. 23 -  
p. 39 l. 12  
p. 39 l. 13 -  
p. 40 l. 17  
p. 40 l. 18-40  
p. 41 l. 15-47  
p. 42-45

the defined murder;

he dealt with the issue of insanity;

he gave a summary of the prosecution evidence

p. 47 l. 13 -  
p. 51 l. 32  
p. 51 l. 33 -  
p. 54 l. 18  
p. 51 l. 37 -  
p. 52 l. 10  
p. 52 l. 11-17

30 He dealt fully with the meaning of diminished  
responsibility and gave a summary of the  
evidence called on the Appellant's behalf.

40 After reading out the unsworn statement of  
the Appellant, the learned judge said that  
one of the things which the jury would have  
to decide was whether the symptoms of which  
the Appellant complained indicated that  
something was wrong with his mind or were  
being feigned. At the end of the review of  
the evidence of the Appellant's witnesses,  
the learned judge said that the jury had to  
decide whether the Appellant was malingering  
or whether his illness was genuine.

p. 54  
l. 24-35

He said that the "first question" which the  
jury had to consider was whether the Appellant  
had a disease of the mind. After reviewing all  
the statements of the Appellant, he said that  
the jury had to decide whether the Appellant's

p. 54  
l. 15-17  
p. 54 l. 36 -  
p. 57 l. 30

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p. 57 l. 31-38  
p. 57 l. 46-49  
p. 57 l. 49 -  
p. 58 l. 17  
and  
p. 58 l. 29 -  
p. 59 l. 4

loss of memory was real or feigned. He repeated that the jury had to determine whether the Appellant was malingering, and went on to pose the question for the jury to answer whether the symptoms complained of amounted to mental illness.

p. 38  
l. 1-7

7. The jury returned a unanimous verdict of guilty of murder and the Appellant was sentenced to death.

p. 61  
l. 29-36

8. The Appellant appealed to the Court of Appeal of the Barbados Supreme Court on the following grounds: 10

(1) Under all the circumstances of the case the verdict is unsatisfactory.

(2) The Learned Trial Judge erred in that he

(a) misdirected the jury; and

(b) omitted to give necessary directions to the jury during the course of his summing-up.

pp. 64-71  
p. 67  
l. 40-47

9. Judgment was delivered on the 12th day of March 1976, by the Court of Appeal (Douglas, C.J., Worrell and Johnson, J.J.) dismissing the Appeal. Save for one instance the Court of Appeal found that there was no merit in the ground that various passages in the summation of the learned trial judge amounted to a misdirection. The one instance - where the learned trial judge had said that Dr. Patricia Bannister was unable to support the Appellant's contention that he suffered from black outs - was not a misdirection in the light of the summation as a whole. 20 30

p. 57  
l. 43-45

p. 71  
l. 5-22

The ground that the verdict was unreasonable or that it could not be supported having regard to the evidence, on the basis that the evidence as to diminished responsibility was unchallenged, was rejected by the Court of Appeal for the following reasons:

p. 68  
l. 32-46

(a) the case of R v Matheson (1958) 2 ALL E.R. 87, on which the Appellant's submission was based, had to be read in the light of a later passage from the same case, which stated that evidence of the conduct of the Appellant was a relevant consideration for the jury to take into account. 40

pp. 69  
l. 1-49

(b) the evidence of Dr. Patricia Bannister



was challenged by extensive cross-examination by learned counsel for the Crown, whereas the opinions of the medical witnesses in Matheson's case went unchallenged.

- 10 (c) The medical evidence when tested established that the Appellant was of average intelligence but of inadequate personality, emotional immaturity and with a low tolerance level, whereas in Matheson's case the medical witnesses were satisfied that his mental responsibility was impaired. p. 69  
l. 49-  
p. 70  
l. 4
- (i) This state of the evidence required a direction to be given to the jury as to how to approach the medical evidence and other evidence on the question of the Appellant's mental condition and this direction was properly given by the learned trial judge. p. 70  
l. 4-39
- 20 (ii) Two of the factors to be taken into account by the jury on the issue of diminished responsibility were the conduct and the conflicting statements of the Appellant. p. 70  
l. 39-47

30 In the Court of Appeal's view the trial judge properly directed the jury on the main issue on the evidence whether there was a substantial impairment of the Appellant's mental responsibility for his acts. On this issue it was, in the Court of Appeal's view, open to the jury on the basis of the Appellant's conduct and his conflicting statements to the police and to Dr. Patricia Bannister to conclude that whatever abnormality of mind he may have been labouring under, it did not substantially impair his mental responsibility.

40 10. The Respondent respectfully submits that this Appeal should be dismissed. It is respectfully submitted that the Court of Appeal was right in concluding that there was an issue fit to be left to the jury concerning the defence of diminished responsibility and that the trial judge properly directed the jury in relation thereto.

11. The Petition for special leave to appeal relied upon a point not raised before the trial judge or the Court of Appeal that the defence of automatism properly arose upon the evidence

RECORD

and should have been left to the jury. It is respectfully submitted that there is no substance in this new point and that no foundation was laid at the trial giving rise to any issue as to automatism.

12. The Respondent respectfully submits that this appeal should be dismissed and the judgment and order of the Court of Appeal of the Barbados Supreme Court affirmed for the following, among other

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R E A S O N S

1. BECAUSE it was right to leave the defence of diminished responsibility to the jury.
2. BECAUSE no issue as to automatism was raised on the evidence.
3. BECAUSE of the other reasons in the Judgment of the Court of Appeal.

STUART N. MCKINNON

No. 33 of 1976

IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE COURT OF APPEAL OF BARBADOS

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B E T W E E N :-

DAVID ADOLPHUS WALTON            Appellant

- and -

THE QUEEN                            Respondent

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CASE FOR THE RESPONDENT

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