

CRIMINAL LAW - Murder - Appellant's (accused) history of mental illness - medical evidence by defence of diminished responsibility not seriously challenged by crown - (Court of appeal finding jury could not have borne in mind the clear directions on diminished responsibility given by judge) - Conviction for murder quashed - Verdict of manslaughter due JAMAICA to diminished responsibility substituted - Sentence life imprisonment.

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 103/86

BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)
The Hon. Mr. Justice Bingham, J.A. (Ag.)

R. v. PETER FINDLAY

M. Clarke for Applicant

W. Douglas for Crown

July 29, 1987

CAMPBELL J.A.

The applicant was convicted in the St. Elizabeth Circuit Court on November 27, 1986 for the murder of Mrs. Elorine Thomas on 2nd July, 1986. The prosecution's case is that the applicant at about 3.00 p.m. on that day approached one Ernon Rowe while the latter was at the front of his yard tending his flower pots. The applicant attacked Mr. Rowe with a cutlass inflicting serious injuries on him. Mr. Rowe in the course of his encounter with the applicant took up a bottle with which to defend himself. His wife at the same time threw a stone at the applicant who thereupon left Mr. Rowe and ran towards the home of Mrs. Elorine Thomas the deceased who was at home nearby. The applicant menaced her with his cutlass. The deceased ran and was chased by the applicant. She fell into a marl hole near Mr. Rowe's toilet. The applicant caught up with her and started chopping her with his cutlass. Injuries were inflicted to her face, neck and head. The carotid artery at the right side of the neck was severed. She died of haemorrhage.

The doctor's evidence highlights the savagery of the applicant's attack. The evidence discloses that the deceased suffered the following injuries namely:

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- (a) 4 inch long horizontal deep incised wound on the right of the forehead, extending to the temple;
- (b) 5 inch oblique incised wound from the right jaw to the angle of the mouth;
- (c) 5 inch long deep incised wound to the right side of the neck;
- (d) 2½ inch deep incised wound to the right side of the head;
- (e) 2 inch long incised wound to the back of the neck;
- (f) 2 inch long oblique superficial wound to the centre of the lower back;
- (g) 5 inch long deep wound which fractured the bones of her forehead.

The defence called Dr. Keith Goffe a psychiatrist who gave evidence that from medical reports made available to him, the applicant had been under treatment from one Dr. Francis at various periods since January 1979. Specifically the report showed that he was treated in October, 1981, July 1983, August, 1983 and the last occasion was in April 1986 when he was hospitalized at the Black River Hospital. He was diagnosed by Dr. Francis as suffering from schizophrenia, which in Dr. Goffe's opinion, is one of the more serious mental disorders, where very often, the subject might be out of touch with reality and be unable to control many of his impulses. He said that such an affliction could make a person do something without realizing what he was doing. Dr. Francis had prescribed Stelocine which Dr. Goffe stated is specifically for the treatment of schizophrenia. The applicant had steadfastly refused and or neglected to take his medication because a bottle of Stelocine prescribe and secured in 1983 was still intact without even one tablet thereof having been taken. This fact in Dr. Goffe's opinion is indicative of the applicant's failure to understand or appreciate that he was ill which is a common phenomenon among "madmen."

The medical report revealed that in April 1986 when the applicant had been hospitalized he was in an extremely agitated condition and had to be restrained in a bed and given strong medication to subdue him.

Dr. Goffe concluded that given the fact that he was undoubtedly ill in April and that he had neglected to complete his medical treatment, it is possible that in July, 1986 he might have been in a poor state of mental health. He was of the opinion, from speaking to the applicant, that he was a person whose mentality would come and go and for the applicant to maintain mental balance he would have to take the Stelocine year after year for life.

This medical evidence was not seriously challenged by the crown. Its cogency was emphasized by the learned trial judge in her summation to the jury. She directed them fully and correctly on the defence of diminished responsibility which was raised by the defence and which in our view was clearly established on a balance of probability by the medical evidence adduced.

The jury in our view, could not have seriously pondered the cogency of the uncontroverted evidence, given by Dr. Goffe. They could not have borne in mind the clear directions on the law of diminished responsibility given by the learned trial judge. Nor could they have soberly reflected the lightning suddenness and savagery of the unprovoked attacks on Mr. Rowe and the deceased. Had they done so they in our view would have necessarily concluded that the applicant was suffering a mental imbalance at the time of this lamentable incident.

We are of the opinion that the defence of diminished responsibility succeeds. For this reason the application for leave to appeal is treated as the appeal. The conviction for murder is quashed and the sentence of death set aside. A verdict of manslaughter due to diminished responsibility is hereby substituted and a sentence of imprisonment for life imposed and it is recommended that psychiatric treatment be afforded the prisoner during his imprisonment.