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No report

IN THE COURT OF APPEAL

R.M.C.A. No. 51/65

BEFORE: The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Moody (Ag.)

REGINA vs. RONALD HALL

Mr. R. C. Rattray appeared on behalf of the Appellant.
Mr. F. G. Smith appeared for the Crown.

30th September, 1965

WADDINGTON, J:

The applicant was convicted in the Saint James Circuit Court on the 4th of March this year, of the offence of murdering Sheryl Gaynair, and sentenced to death accordingly, and from this conviction he now applies for leave to appeal. The case arose out of the brutal slaying on the evening of the 25th of December, 1964, of an entire family - the Gaynair family - who resided at Albion District, Montego Bay. The family consisted of Ronald Gaynair, his wife Leonie Gaynair, and their seven year old child, Sheryl Gaynair.

The Crown proceeded on an indictment charging the applicant with the murder of Sheryl Gaynair. The Gaynairs were last seen alive shortly after 5.00 p.m. on the 25th of December, when they drove home Alice Ransome, a maid who had been employed to them for about fourteen years. Earlier that day, Reginald Perrin, a neighbour of the Gaynairs, and who lived some three chains from their home, had lunch with them; that was about 12.30 to 3.00 o'clock in the afternoon. Whilst Perrin was lunching with the Gaynairs he requested Mr. Gaynair to cash a cheque for him, and he said that Gaynair took a bag out of a drawer and cashed the cheque for him, putting the cheque into the bag; he thought that there was some twenty to thirty pounds in the bag and certainly at least saw two five pound notes and some one pound, ten shilling and five shilling notes. The Gaynairs were to have dined with Perrin later that evening, and Perrin said that at

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five o'clock he saw the Gaynairs drive past his house, Mr. Gaynair driving his station wagon and in it was his wife Leonie and Sheryl. That was presumably, according to Alice Ransome's evidence, the time when the Gaynairs were driving her home.

The Gaynairs did not turn up for supper later that evening and so Perrin telephoned the house, but he said he got a busy signal. It is significant that the following morning when the police arrived on the scene, Sergeant Graham said that he saw the telephone with the receiver off. Alice Ransome, the maid, said that the Gaynairs drove her home that evening at about five o'clock; the whole family went along - Mrs. Gaynair and Sheryl - and she said that Sheryl was bare footed, none of her shoes were in the station wagon. She said that the following morning when she returned to work at about seven o'clock, she noticed that the back door was locked, a door which Mr. Gaynair usually opened for her. She knocked on the door, received no answer and so she went around to the front door, which she saw partly open. She pushed it open and went in and was met with the horrible sight of Mr. Gaynair lying in a pool of blood, Mrs. Gaynair lying in the passageway also in a pool of blood, and Sheryl Gaynair lying on a bed with terrible injuries to her head. All three were dead. She made an alarm and the police arrived. They went through the house and found that the place had been ransacked, clothes had been taken out of the drawers, things were broken up and chairs overturned. Alice Ransome said that a watch was missing from the house - a watch in respect of which evidence was given that it had been presented to Mr. Gaynair by his employers some time in October, as a token of appreciation for twenty-five years of service with them.

Sergeant Graham said that when he arrived on the premises after the report was made to him, he went into the maid's bathroom and in there he saw a pair of trousers, which were admitted in evidence as exhibit 15, and a pair of shoes, exhibit 9, and also a machete, exhibit 5, the handle of which was wrapped with a piece of cloth and a pantry towel. Ransome said that when she left the premises the evening before those things were not in the bathroom. These items,

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the trousers and the shoes, were subsequently identified by Olive Warburton, the girlfriend of the applicant, as belonging to the applicant, and she said that she had last seen the trousers on the Wednesday before, and on that occasion it had no blood on it, and that the shoes had been worn by the applicant when he left the premises at which they lived some time during that day, the 25th.

The next important evidence was given by Olive Warburton to whom I have already referred. She said that she lived with the applicant from sometime in February, 1964. The applicant lived at Glendevon and she used to visit him there - she apparently lived somewhere in Cedar Grove, but in September she went to visit him and remained at his home until Christmas. She had planned to go to Cedar Grove at Christmas time. She said the applicant was not at home on the 24th but he came in on Christmas morning and left shortly after. At that time, she said, there were no marks or bruises on him, and he came back at about 6 to 6.30 in the afternoon and said that he was ready to go to the country. He asked her if she had any soap, she told him no, and he gave her some money to go and buy soap, which she did, and then he washed his hands over a window and wiped them with a bit of towel, which was subsequently identified by Alice Ransome as being a towel that had been on the Gaynairs' premises, belonging to the Gaynairs, but Warburton said that that towel had been at the applicant's home for some time previously. She said that when he returned he was wearing a black shirt and a bluish pair of pants, he had on black shoes, and she asked him where he got those shoes, ~~because,~~ because they were not the shoes which he had been wearing when he left earlier. Those shoes - exhibit 8 - were the shoes which Alice Ransome subsequently identified as belonging to Mr. Gaynair. When Warburton saw him with these shoes they were not yet cut, they were quite sound, but later when they were taken in custody by the police they were seen to have cuts where the toes were, and the explanation given by Warburton was that the applicant had taken a knife and cut holes in the shoes because he suffered with corns and had to cut them to ease his corns.

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Warburton then went on to say that she noticed when the applicant came in that he had a cut on his hand and that later on she saw him at Mr. Gardner's shop putting a band-aid plaster on his hand, and she asked him what had happened to his hand, and he told her that he had been doing something to a car and it flew up and cut his hand. She noticed that he had a cut on his thumb and that was where he was placing the band-aid plaster. They then went in a car which was parked a little above Dunstan's shop, and that car was subsequently identified, and indeed according to the evidence, admitted by the applicant, to be Mr. Gaynair's car. They picked up some other women and went in that car to Cedar Grove; they stopped at Mr. Gardner's shop and that was where the knife was used to cut the shoes. The applicant want to Bethel Town with her and returned to Cedar Grove at about 11 o'clock. Shortly after, the applicant drove the car off, and a few minutes later she heard a noise and when she went to the spot, a few chains from the shop, she saw that the car had overturned and the applicant was complaining that he had lost ten pounds. They returned to the shop and then to her home where they stayed the night, and she said that she asked the applicant whose car it was, and he said it was Mr. Gaynair's car. The following morning after the bodies of the Gaynairs had been discovered, the police arrived and took him in custody.

The trousers, to which I have previously referred, namely, the trousers found in the bathroom on the Gaynairs' premises, was subsequently shown to Olive Warburton by the police and she said it then had drops of blood on it and that when she had last seen those trousers, namely, the Wednesday, they had no blood on them. She also made reference to a watch which she had seen the applicant wearing that night, and she identified that watch subsequently, as being a watch resembling the watch which was missing from Mr. Gaynair's house. Subsequently, she also handed over to the police a merino which the applicant had worn that day and other clothing which were in the house at Bethel Town. Another important bit of evidence was given by Philip Johnson, who said that he saw the applicant at about

10.30 that night, shortly after the car had overturned; he asked him whose car it was and the applicant said that it was the boss's car; he asked him what he was going to tell his boss now, having overturned the car, and the applicant said "dead men tell no tales".

Evidence was also given by Dr. Nolan who examined the applicant after he was arrested. He said that he found the applicant suffering from an incised wound on the palmar aspect of the phalanx of the right thumb, half an inch long, a half inch wound on the palm of the right hand at the base of the index finger and middle finger, and a half inch long incised wound on the palmar aspect of the tip of the little finger on the right hand. They were all on the right hand, and there was also a bruise inside the left elbow. He said that between the toes of both feet he saw what appeared to be blood clots or clotted blood, which he said was consistent with stepping into a pool of blood, and he could find no injuries on the feet to account for the blood. I have already referred to Sergeant Graham's testimony, but I will just mention here that Graham said that, with the permission of the applicant, his finger nails were trimmed and samples and clippings from his fingers were subsequently analysed along with other exhibits in the case, by Dr. Arnold, the Government Pathologist. There is just one other bit of evidence that I should refer to at this stage, and that is, the evidence of Clifford Clarke, who said that at about 3.30 p.m. on the 25th the applicant came to his house bringing his father, who was then the worse for drink, and after he had set his father down, the applicant asked Clifford Clarke if his father had a machete. He told him no, he hadn't, and then the applicant asked him if he could try and borrow one from his neighbour. Clifford then told him that his neighbour would not lend him a machete unless he could see him, Clifford,using it. The applicant left shortly after - about 4 o'clock - went through the gate and down the main road leading to Albion, and he said that the Gaynairs' house was a matter of some seven chains from his house.

I pass now to the evidence of Dr. March, the Assistant Pathologist, who performed the post morten examination on the body of Sheryl Gaynair. The doctor found seven terrible wounds on this child's head, and I don't think I need describe the seven wounds in detail,

suffice it to say that the doctor said that in his opinion death would have occured within minutes of the injuries, and they were consistent with having been inflicted by a dull edged instrument such as the machete - exhibit 5. The cause of death, he said, was due to shock following severe head and brain damage, and haemorrhage from multiple lacerated wounds. In his opinion there were seven distinct inflictions all on one side of the head, and these injuries, he said, could have caused the spurting of blood.

I pass now to the evidence of Dr. Arnold, the Government Pathologist, who had examined all the exhibits in the case. The doctor tested the blood of the victims and he found that Ronald Gaynair and Leonie Gaynair possessed blood of Group 'A', whilst Sheryl was of group 'O'. He examined the trousers - exhibit 15 - which had been found in the bathroom - to which I have already referred - and he said that blood was present on these trousers in red-brown stains and drops and droplets on the front and back, on the lining of the waist and the right side pocket, and left back pocket. It was human blood of group 'O'. Dr. Arnold was of the opinion that the drops and droplets could be caused mostly from spurting vessels and that if one were near enough to a person who was chopped he would have expected to find the pattern which he saw. Dr. Arnold was present in court when Dr. March gave his evidence and, asked whether if the accused was the person who inflicted the injuries on the girl, if he would expect to get that pattern of drops and droplets as found on the trousers, the answer was 'yes', he would expect that pattern. He also examined the shoes - exhibit 9 - that is to say, the applicant's shoes which were also found in the bathroom, and he said that they also had blood stains on them, human blood, present in red-brown stains and smudges on the inner and outer aspects of both shoes. He also examined the machete - exhibit 5 - and found that that also had blood stains on both sides of the blade and handle, also on the pieces of cloth with which the handle had been wrapped, and that was human blood of group 'O'. He also examined the black banlon shirt - exhibit 19 - which Warburton had identified as being the shirt that the applicant was wearing when he left her on the 25th and later

when he returned, and found that there was blood present on that shirt in red-brown stains and pale-brown stains and smudges on the front, back, sleeve and collar, and that it was human blood, but in this case the group was group 'A', that is to say, the same group to which Mr. and Mrs. Gaynair belonged. The merino, exhibit 30, which Olive Warburton also identified as having been worn by the applicant on the 25th, was also examined by Dr. Arnold and he found on it blood, brown and pale-brown drops and smudges on the front of it. The blood, however, was not grouped, apparently it was not sufficient for grouping, but the drops, Dr. Arnold said, indicated that they could either have been caused by spurting vessels or a person stepping in a pool of blood and stamping in it. Dr. Arnold also examined the nail clippings from the applicant, to which I have previously referred. He said that traces of blood were found in all these clippings but it was insufficient for grouping. The clothing which the applicant was wearing at Bethel Town that night, namely, the shirt, merino, the pair of trousers and underpants were also examined by Dr. Arnold. I will not refer in any detail to his findings here, except to say that he did find blood on all, except the underpants. I do not think the finding of blood on these articles can have much significance as it was clear that the applicant had received an injury to his hand. He had also been involved in a motorcar accident, and it was quite possible that blood could have got on those garments innocently.

The defence put forward in this case was an alibi. The applicant did not give sworn evidence nor did he call any witnesses, but he made an unsworn statement in which he endeavoured to explain the presence of his clothing - his trousers and shoes - on the Gaynairs' premises and his possession of Mr. Gaynair's car, watch, and shoes. This is what he said: that he had been working with the Gaynairs, but at the time of this incident he was no longer working with them; another man named Cecil, also called 'Giant' was working with the Gaynairs. He said he met Cecil in Montego Bay on the 23rd of December and Cecil had told him that he had to do some work on an asphalt road belonging to the Gaynairs, and as he knew that work on

asphalt was liable to damage his trousers and as the applicant had previously worked on asphalt and had trousers which had become damaged, the applicant suggested that he would lend his damaged trousers to Cecil so that he could work in them. They arranged to meet later for the applicant to give these trousers to Cecil and he said that on the morning of the 24th he got these trousers and was on his way to give them to Cecil when he met him in Mr. Gaynair's van, being driven by Mr. Gaynair, on the road, he stopped him, spoke to Cecil and handed him the pair of trousers, that is to say, the trousers which were subsequently found in the bathroom. They arranged to meet later that day and in pursuance of that arrangement they met in Montego Bay and there the applicant told Cecil that he was going to Cedar Grove for the holidays and that he had contemplated hiring a car. Cecil said that it would be an expensive business to hire a car, have it wait on him and bring him back, and suggested that he, Cecil, would borrow a car and place it at his disposal and they would all go to Cedar Valley with the girls and have a good time. They arranged to meet later that day in pursuance of that arrangement. Later on, after having related a series of drinking bouts from bar to bar in which the applicant had taken part, they met later that day on William Street. Cecil, the applicant said, had brought along a car which was parked just around the corner and he saw that it was Mr. Gaynair's car. He asked Cecil about it and Cecil said he had borrowed it, and he didn't think anything unusual about that because he said when he worked with the Gaynairs he used to borrow the Company's van - the Company with which Mr. Gaynair worked - and so he said in the same way that he could borrow the van, Cecil could borrow the car. He said that on the front seat of the car at that time he saw a pair of black shoes and he asked Cecil whose shoes they were and Cecil said he got them as a present, that they did not fit him and so he was selling them, and offered them for sale to the applicant. The applicant said he had no money to buy them then, but if they could fit him he would pay for them later when he got money, and they decided that the cost would be arranged afterwards. He said he put on the shoes, which fitted easily, and that he took a bit of paper from the back seat of the car and gave it to Cecil or 'Giant' as he

was called, and asked him to wrap up his, the applicant's, shoes for him, and then he, the applicant, walked off to where some people were waiting on a bus, to look for a friend. When he returned to the car, Cecil was then going off and Cecil made some excuse for not going along with him to Cedar Grove, and so he, the applicant, drove off to go to Cedar Grove with his girlfriend. He said that he drove up Union Street, he put the car in second gear and the gear stuck and he had to come out and fix the gear, and in doing so something jumped up and struck his right thumb and injured it, and that accounted for the injury to his right hand. It started to bleed, he said, and when he got to Glendevon with the shoes he had on, that is to say, the shoes that Cecil had sold him, they were squeezing him and when he looked in the car for his other shoes he discovered that they were not there; in other words, the suggestion being that Cecil had taken the old shoes and gone off with them. He then related his going to Cedar Grove with his girlfriend and two other girls and he related when having got there he wanted to smoke a cigarette and he discovered that there were some matches in the car, in a sink on the dashboard of the car. When he took the matches up he saw a watch in the same compartment and that he removed the watch from the car and put it on because he feared that if it was left in the car someone might have stolen it and he would have been held responsible for it. So that is how he accounted for being found in possession of Mr.Gaynair's watch. He related a subsequent movement, going to Bethel Town and then returning to Cedar Grove. He said he then decided that he would go hometo sleep at his girlfriend's yard, that is to say, at Cedar Grove, and whilst turning the car, the car unfortunately overturned. Then the rest of the case, of course, he relates, the police came the next morning taking him to the Montego Bay lock-up and subsequently charging him with the murder of the Gaynairs. So in that manner the applicant sought to explain how it was that his clothing was found in the Gaynairs' bathroom, and how it was he came to have been found in possession of Mr. Gaynair's car, Mr. Gaynair's shoes and Mr. Gaynair's watch.

Before us, learned counsel for the applicant has urged two grounds as to why leave to appeal should be granted. The first

ground is that the learned trial judge was wrong in admitting various pieces of evidence tending to show the commission of other crimes by the accused, and the nature of which were prejudicial rather than probative. Counsel, in arguing this ground, complained that pieces of evidence to which counsel referred, namely, various bits of evidence by various witnesses relating to the finding of the dead bodies of Mr. and Mrs. Gaynair and also the evidence by Dr. Arnold as to the blood group to which Ronald Gaynair belonged, were not strictly relevant to the indictment which was being enquired into, namely, the murder of Sheryl Gaynair. He conceded, however, that the evidence was admissible as being part of the res gestae, but he submitted nonetheless that that evidence was highly prejudicial to the applicant; that the prejudicial effect exceeded the probative value and that the learned trial judge should have excluded this evidence in the exercise of his discretion.

It is clear to us from the evidence that Mr. and Mrs.Gaynair and their daughter were killed within a very short time of each other. The three killings formed a part of the same transaction and it appears that the obvious inference to be drawn on the evidence as presented by the Crown was that it was the same assailant who had killed all three persons. It appears to us that it would have been virtually impossible in relating a proper narrative of the events which had transpired to have excluded the evidence as to the killing of Mr. and Mrs. Gaynair. In addition to this, whatever motive the killer may have had, the evidence was clear that the house had been ransacked, that Mr. Gaynair's money, watch and shoes and possibly the shoes of Sheryl Gaynair, had been stolen. I say possibly the shoes of Sheryl Gaynair, because the evidence was not conclusive that her shoes may not have been in the car before the crimes were committed. Sheryl had been seen in the car barefooted and it may have been possible that her shoes were in the car. It seems to us, therefore, that the evidence as to these matters was directly relevant to connect the applicant with the killing, and to show that, shortly after the killing he was found in possession of these articles. It does not, of course, necessarily follow that because he was found in possession

of the articles, that he was the killer; but when this is coupled with the finding of the applicant's trousers and shoes on the Gaynairs' premises with blood on them, and with thefact that on a shirt which the applicant was proved to have been wearing a short time before the killing and presumably a short time after the killing, blood was found of the same group as that to which Mr. and Mrs. Gaynair belonged, and also, for what it is worth, the remark which had been made by the applicant to Philip Johnson, namely, that "dead men tell no tales", to which I have already referred, then it seems to us that it became a matter of the highest relevance to tender evidence of the stealing of the articles from the Gaynairs' house, and of the fact that both Mr. and Mrs. Gaynair were also killed in circumstances indicating that it was all part of the same transaction, and in these circumstances, the probative value of the evidence, in our view, far outweighed any prejudicial effect which it may have had on the applicant. We do not think, that there is any merit in this ground of appeal and it therefore fails.

The second ground was, that the directions of the learned trial judge on the nature of the circumstantial evidence in the case were inadequate in that the learned trial judge should have pointed out that whilst the evidence may have established the accused's presence in the house of the deceased and the larceny of various articles, it did not necessarily establish the offence of murder. Learned counsel referred us to the directions of the learned trial judge to the jury on the law as to circumstantial evidence. He submitted that the learned trial judge had put forward circumstantial evidence in its best possible light, and he cited the case of R. v. Tepper (1952) A.C. 489, urging on that decision that circumstantial evidence should be most narrowly looked at and carefully examined. We have referred to the directions of the learned trial judge on this aspect of the case and it seems to us that he gave the jury the well known and established directions laid down on circumstantial evidence. At the end of his direction, the learned trial judge said this:

> "If the circumstantial evidence is such as to fall short of that standard, if it does not satisfy that test, if it leaves gaps, then it is of no use at all. Lastly,

circumstances may point to one conclusion, but if one circumstance is not consistent with guilt it breaks the whole thing down. You may have all the circumstances consistent with guilt but consistent with something else too. That does not prove it. What you want is an array of circumstances which point only to one conclusion and to all reasonable minds to that conclusion only. So, Mr. Foreman and Members of the Jury, circumstantial evidence is something which points in one direction only, to the guilt of the accused, and unless it points in that direction and that direction only there are two or more conclusions that you can draw from it, then guilt has not been proved, has not been established. It must be the one conclusion."

Later on, at the end of his summing-up, he said this to the jury:

"As I pointed out to you and as was pointed out to you in the addresses by learned counsel, the evidence is circimstantial evidence or I should say counsel for the Crown calls it circumstantial evidence, counsel for the defence refers to it as suspicion. Nobody has come here and said that he or she saw the accused commit any act, do any injury to Sheryl Gaynair. The case for the Crown rests purely upon these bits and pieces of evidence which you will consider, consider them, see whether they form a chain, regard them as bits of a puzzle and unless they can complete the pattern, satisfy you that they are a complete chain or a complete pattern before you, indicating the guilt of the accused, then you cannot convict him for this offence."

In our view, the directions of the learned trial judge on the question of circumstantial evidence were adequate and complete in every respect and the jury could have been left in no doubt whatever as to the manner in which they should consider and treat this evidence. It is our opinion, therefore, that there is also no merit in this ground of appeal and it also fails. It appears to us in this case that the evidence presented by the Crown, albeit evidence based entirely on circumstantial evidence, was overwhelming and we do not think that any reasonable jury could have reached any other finding than the one given - that of guilt. For these reasons the application is refused.