REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Cr. App. No. T31 of 2015

BETWEEN

URIAH WOODS

Appellant

AND

THE STATE

Respondent

PANEL:

A. Yorke-Soo-Hon, J.A.
R. Narine, J.A.
M. Mohammed, J.A

APPEARANCES:

Mr. D. Khan instructed by Ms. U. Nathai-Lutchman for the appellant
Mr. G. Busby and Ms. Joseph for the Respondent

Date Delivered: 14th December, 2017

JUDGMENT

Delivered by R. Narine, J.A.

BACKGROUND

1. The appellant was convicted on 9th July 2015 for the murder of Sandra Miller and sentenced to death by hanging. It is against this conviction and sentence that he now appeals.

THE CASE FOR THE PROSECUTION

2. On the night of 14th July 2005 the appellant entered an apartment at Leeward Croft, Parlatuvier, Tobago at which Sandra Miller (the deceased) lived with one Lawrence Stewart, to whom she was recently engaged, and her children Ryan, Jerevon and Darion. Darion and Ryan are the children of the appellant. The appellant was armed with a cutlass with which he inflicted twenty-two wounds on the deceased, who died as a result of her injuries. He also severed part of the left foot of Darion Woods, who was six years old at the time.

3. The prosecution led evidence that the appellant and the deceased had a fifteen year relationship, which ended in February 2005, when the deceased moved to Leeward Croft with her children Ossae Murray, Darion Woods and Ryan Woods. The deceased had suffered years of domestic abuse at the hands of the appellant. The appellant had occasionally threatened to kill the deceased if she ever left him. At the time that the appellant inflicted the chop wounds on the deceased he uttered words to the effect that he would kill the deceased.

4. On the morning of 14th July 2005, the appellant met Lawrence Stewart, told him to leave his girlfriend alone, and threw two bottles at him.

5. On the morning of 15th July 2005, the police attempted to find the appellant without success. At about 2:55 a.m. on 16th July 2005, the police found him at a house on Northside Road. However, he ran through a door and escaped. Shots were fired by the police in the appellant's direction. On 27th July 2005, the appellant was arrested at an abandoned house. The officers identified themselves to the appellant and he responded *"I know what all yuh come for meh for"*. Cpl. Taylor observed what appeared to be an open wound on the appellant's left arm which gave off a foul scent. The appellant was taken to the Tobago Regional Hospital, where he was found to have gunshot wounds to his left upper arm, left calf and right arm. The wound to his left upper arm was infected. The appellant was warded under police guard.

THE CASE FOR THE DEFENCE

6. The appellant gave evidence on his own behalf. He called no witnesses. It was his evidence that he left his home at Parrot Hall at about 8:30 to 9:00 p.m. on 14th July 2005, and went to Leeward Croft to visit the deceased and his children. The door to the apartment was open. He heard his son Ryan shouting *"Look Daddy coming, Mad Dog"*. He looked inside, and he saw a man lying on the bed in boxer shorts, and the deceased next to him in a vest and underwear. On seeing this he said that he *"trip just so"*. He did not know what happened after that. He did not remember fighting with Lawrence Stewart, or chopping off Darion's foot. He did not remember leaving the apartment that night or coming into contact with the police some days after.

GROUNDS OF APPEAL

7. The appellant filed four grounds of appeal, namely:

(i) The trial judge misdirected the jury on the law with respect to provocation in that he directed them to examine the reasonableness of the appellant's reaction, and to consider the powers of self-control of an ordinary person;

(ii) The trial judge admitted evidence that was more prejudicial than probative, when he permitted the jury to see the severed leg of the witness Darion Woods, and when he took the jury to view the locus in quo;

(iii) The trial judge erred in admitting evidence of post offence conduct, and failing to give the jury sufficient guidance on how they should treat with it; and

(iv) The trial judge failed to provide guidance to the jury as to how they should treat with the previous violent history of the appellant.

At the hearing of the appeal the appellant indicated that ground four of the appeal was no longer being pursued.

GROUND 1- PROVOCATION

8. The relevant excerpts of the judge's summing up on the law of provocation are to be found at pages 57 to 60 of the summation:

> *"A person is provoked if he is caused by things that have been said and/or done by the deceased, or by another person, to suddenly and temporarily lose his self-control. If you are sure the accused was not provoked in that sense, that it was not caused by something or things said or done by the deceased, Sandra Miller, and her fiancé Lawrence Stewart, or by any other person, then the defence of provocation does not arise and Uriah Woods is guilty of murder.*
>
> *But if you conclude so that you are sure that Uriah Woods was, or might have been provoked in the sense that I have explained, and that as a result of provoking words and/or conduct he suddenly lost his self-control, you must then weigh how serious the provocation was for this accused.*

Now, the final part of your consideration would be, is there anything you have heard or anything you have been told about the accused which may have made what was said or done affect him more than it might any other man? Having regard to the actual provocation, and to your view as to how serious that provocation was for the accused, you must ask yourselves whether a person with the powers of self-control which are to be expected of an ordinary, sober, reasonable or normal person of the accused's age and sex, would have been provoked to lose his control and do exactly as Uriah Woods did on the night of the 14th July.

. . . . . .

Therefore, the ordinary, sober, reasonable or normal person in this context is a person who is not exceptionally excitable or eager or quick to argue or quarrel or fight. The ordinary sober, reasonable or normal person is possessed of such powers of self-control as everyone is expected to have from their fellow citizens. The powers of self-control each of you is expected to have is what we are dealing with.

If you are sure that such a person, as I have described to you, would not have done as Uriah Woods did in the given circumstances, then the Prosecution would have disproved or negatived provocation, and the accused is guilty of murder.

If, however, you conclude that an ordinary, sober, reasonable or normal person of the accused's age and sex would or might have been provoked to lose his self-control in similar circumstances, and that such a person would or might have gone on to do exactly as the accused did, then in such a case your verdict would be one of not guilty of murder, but guilty of manslaughter by reason of provocation."

. . . . . .

Were the actions of the accused of chopping Sandra Miller 22 times, and chopping off the foot of his son, were these actions what are to be expected of a reasonable man placed in those circumstances? That is the question you must ask yourself.

. . . . . .

Now, this is what the accused has placed before you for consideration, that he suffered a sudden and temporary loss of self-control. He has asked you to accept the evidence he has given and find him not guilty of murder, but guilty of manslaughter. You must consider whether a person with the normal powers of self-control which are to be expected of the ordinary person, sober, reasonable or normal person of the accused's age and sex would have done exactly as he did?"

9. The appellant's complaint is substantially directed at the judge's direction to the jury to consider whether the appellant's reaction was reasonable in the circumstances. He submits that since provocation requires a loss of self-control, the reaction will inevitably be unreasonable. Therefore, the application of a test of reasonableness to a person who has lost his self-control, will in the appellant's submission "completely negate every, and all considerations the jury are required to examine".

10. The statutory definition of provocation is to be found in **section 4B** of the **Offences Against the Person Act Chapter 11:08** (the OAPA) which provides:

> *"**4B.** Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough*

to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man."

11. **Section 4B** of the **OAPA**, is identical to **section 3** of the **Homicide Act 1957** in the U.K. In **R v. Acott** [1997] 1 All ER 706 at 710, Lord Steyn noted that the section can be divided into three parts, namely:
    (1) the provoking conduct;
    (2) causatively relevant loss of self-control; and
    (3) the objective criterion whether the provocation was enough to make a reasonable man to do as the defendant did.

12. The provoking conduct can be actions or words of the deceased, or both. The second criterion is a matter of causation that is, whether the conduct of the deceased caused the defendant to lose his self-control. This is usually referred to as the subjective criterion.

13. The objective criterion involves the question as to whether the provocation was enough to make a reasonable man do as he did. This is a question of fact to be determined by the jury. In making this determination the jury must take into account everything said and done according to the effect which, in their opinion, it would have on a reasonable man.

14. The concept of the "reasonable man", was considered by Lord Diplock in **DPP v. Camplin** [1978] AC 705 at page 716, in which he described the "reasonable man" as:

    "an ordinary person of either sex, not exceptionally excitable or pugnacious, but possessed of such powers of self-control as everyone is entitled to expect that his fellow citizens will exercise in society as it is today".

15. In **Camplin** (supra) Lord Diplock considered the public policy considerations that underlie the reasonable man test, and the apparent contradiction which is contained in the inclusion of both a subjective and an objective criterion within the law of provocation, at page 716:

> *"The public policy that underlay the adoption of the "reasonable man" test in the common law doctrine of provocation was to reduce the incidence of fatal violence by preventing a person relying upon his own exceptional pugnacity or excitability as an excuse for loss of self-control. The rationale of the test may not be easy to reconcile in logic with more universal propositions as to the mental element in crime. Nevertheless it has been preserved by the Act of 1957 but falls to be applied now in the context of a law of provocation that is significantly different from what it was before the Act was passed.*
>
> *Although it is now for the jury to apply the "reasonable man" test, it still remains for the judge to direct them what, in the new context of the section, is the meaning of this apparently inapt expression, since powers of ratiocination bear no obvious relationship to powers of self-control….."*

16. The appellant has submitted that the trial judge erred in directing the jury to consider whether the reaction of the appellant was reasonable in the circumstances. However, the clear wording of **section 4B** of the **OAPA** expressly leaves for the jury's determination "the question whether the provocation was enough to make a reasonable man do as he did" (emphasis mine). It is clear that the actions of the appellant are to be considered in the context as to whether a reasonable man (as defined by Lord Diplock in **Camplin**) would have reacted as the appellant did. In directing the jury to consider whether the reaction was reasonable in the circumstances, the judge was obviously directing the jury to

consider whether the provocation was enough to make a reasonable man do as the appellant did.

17. However, it may be that the appellant wishes to make a distinction between a "reasonable reaction" and "the reaction of a reasonable man". If this is the case, the distinction does not appear to be a useful one. What would be the purpose of introducing the objective criterion of the reaction of the "reasonable man", if one did not expect that his reaction would be "reasonable"?

18. The appellant further submitted in essence, that to apply a test of reasonableness to a person who has lost his self-control, in effect, negates the defence of provocation. This submission is predicated solely on the subjective element of provocation and completely ignores the objective criterion, which requires the jury to consider whether the provocation was enough to make a reasonable man do as he did and the requirement for the jury to determine this question according to the effect the provocative acts and/or words would have had on the reasonable man. In other words, the appellant, by his submission seeks to rewrite **section 4B** of the **OAPA**.

19. As I have noted in paragraph 15 above, the courts have recognized the apparent contradiction in including both a subjective element in the law, as well as an objective requirement requiring the reaction of the person provoked to be viewed by reference to what is expected of the reasonable man. The appellant's submission boils down to simply this: how do you expect an ordinary person who has been provoked to lose his self-control, to act reasonably? Clearly, as a matter of public policy, the law seeks, through the standard of conduct to be expected of the reasonable man, to introduce a standard of self-control that is acceptable by contemporary society. To do otherwise would be to provide justification for wholly unwarranted acts of aggression regardless of the circumstances and the gravity of the provocation.

20. The appellant further complains that the trial judge misdirected the jury when he directed them (at page 58 of the summing up):

> *"Therefore, the ordinary, sober, reasonable or normal person in this context is a person who is not exceptionally excitable or eager or quick to argue or quarrel or fight. The ordinary sober, reasonable or normal person is possessed of such powers of self-control as everyone is expected to have from their fellow citizens. The powers of self-control each of you is expected to have is what we are dealing with."*

21. The appellant submits that jurors ought not to be directed to place themselves in the shoes of the accused in order to determine the possible effect that the provoking conduct would have on the ordinary person's power of self-control. In the appellant's submission, such a direction creates a risk that the jurors may substitute their own subjective standards for the objective standard of the reasonable man.

22. In support of this submission the appellant relied on the case of **Stingel v. The Queen** (1990) 171 CLR 312, a decision of the High Court of Australia, in which Mason CJ stated:

> *"22. It has been suggested that, under a provision such as s.160(2), the jury should "be instructed to put themselves, as the embodiment of the ordinary person, in the accused's shoes" for the purpose of determining the possible effect of the wrongful act or insult upon the power of self-control of the ordinary person (see, e.g., Reg. v. Hill, at p 347; p 348 of CCC). While such an instruction may not involve any misdirection or error when read in the context of a particular summing up, it seems to us that it should be avoided. True it is that the jury, viewed collectively, can be seen as representing the*

ordinary or average member of the public. To instruct the jury to put themselves in the shoes of the accused for the purpose of determining whether the wrongful act or insult was of such a nature as to deprive an ordinary person of the power of self-control could, however, involve the danger that it might be construed by an individual juror as an invitation to substitute himself or herself, with his or her individual strengths and weaknesses, for the hypothetical ordinary person. The result could be to displace the objective standard by the particular juror's subjective view of his or her personal power of self-control regardless of whether it be greater or less than that which should be attributed to a hypothetical ordinary person. If that occurred, it would be but a short step to the position where a defence of provocation would be sustained by a particular juror only if that juror was prepared to concede that he or she would have been guilty of the crime of manslaughter if placed in the situation of the accused. That would involve a mistaken and unduly harsh operation of s. 160(2)'s objective test."

23. We agree that jurors should not be directed to place themselves in the position of an accused person for the purpose of determining the effect that the provocative conduct may have on an ordinary person. To do so may encourage the jury to introduce their own individual idiosyncrasies into the decision, thereby applying a subjective rather than an objective approach.

24. However, in our view the direction of the trial judge did not go as far as the direction referred to in the dictum of Mason CJ in **Stingel** (supra). In the direction set out in paragraph 20 above, the trial judge repeated the definition of the reasonable man stating, that the ordinary, sober, reasonable or normal person is possessed of such powers of self-control as everyone is expected to have from his fellow citizens. Then he adds "the powers of self-control each of you is expected to have is what we are dealing with".

25. By adding this last sentence to his direction the trial judge was simply saying that the jurors themselves as members of the society are examples of the ordinary person who are expected to possess such powers of self-control. The judge did not direct the jurors to place themselves in the shoes of the accused faced with the provocative conduct of the deceased. Accordingly, there was no misdirection. However, the last sentence of the direction added nothing. For the avoidance of doubt we suggest that trial judges should be careful not to give any direction that may be construed as an invitation to the jurors to substitute themselves for the ordinary, reasonable man.

26. Accordingly, we find no merit in this ground.

GROUND 2 - PREJUDICIAL EVIDENCE

27. The appellant submitted that the trial judge admitted evidence that was more prejudicial than probative, in allowing the State witness Darion Woods to show his left foot which was partially severed, and in taking the jury to view the locus in quo.

28. With respect to the witness showing his partially severed foot, while it is true that this bit of real evidence may well evoke sympathy for the witness in the minds of the jury, it does possess some probative value. It gives the jury visual corroboration of the oral evidence of the infliction of the injury, and in fact may well have given support for the appellant's case, in that it may provide some evidence of loss of self-control. It is inevitable that in matters of this kind, the visual impact of such evidence may have some emotional impact on the jury. However, we do not agree, that there was a risk of a miscarriage of justice by reason of the visual impact of this evidence, particularly in the context of this case in which a total of twenty-two wounds were inflicted on the deceased with a cutlass.

29. With respect to the site visit, the appellant has not attempted to demonstrate how the appellant was prejudiced by the jury being shown the locus in quo. The trial judge clearly held the view that the jury would have a better understanding of the evidence by going to the scene, and having certain areas pointed out to them by the witnesses. Clearly, this was a matter for the discretion of the trial judge. We have not been provided with any cogent grounds so as to persuade us that the trial judge exercised his discretion erroneously.

30. Accordingly, we find no merit in this ground.

GROUND 3 - POST OFFENCE CONDUCT

31. The appellant submits that the trial judge erred in admitting evidence of post offence conduct of the appellant, and further that the judge failed to give the jury sufficient guidance as to how they should treat with this evidence.

32. What the appellant refers to as "post conduct evidence", is the evidence of the police officers as to the circumstances leading up to the arrest of the appellant as set out in paragraph 5 of this judgment. Essentially, the evidence was that on the morning of 15th July 2005 (the morning after the killing) the police attempted to locate the appellant, without success. On 16th July 2005, the police found the appellant at a house on Northside Road. The appellant managed to escape after shots were fired in his direction. The appellant was eventually arrested in a shack at Castara on 27th July 2005. He was taken to hospital, where he was found to be suffering from gunshot wounds. Upon his arrest, he told the police *"I know what all yuh come for meh for"*. When asked how he had come by the gunshot injuries, he replied *"Police shoot meh"*.

33. The post offence conduct that the appellant seems to be targeting is the evidence of the police that on 16th July 2005, the appellant ran off when confronted by the police. The complaint of the appellant is that the trial judge should have directed

the jury in clear terms that an act of flight may be subject to competing interpretations and must be weighed [by the jury] in light of all the evidence to determine whether it is consistent with guilt and inconsistent with any other rational conclusion and that the jury must not infer guilt from the act of flight unless they are satisfied that it is consistent with guilt and is inconsistent with any other reasonable conclusion.

34. The trial judge did not give that direction. He did however, direct the jury generally that where there are competing inferences of equal weight, they should draw the inference that is in favour of the appellant.

35. It is now well recognised that post offence conduct may constitute evidence of guilt. An inference of guilt may be drawn from the fact, for example, that an accused fled the scene of the crime, changed his appearance to avoid apprehension or as in this case, escaped when confronted by the police: See **R v. White** [2011] 1 SCR 433; **R v. Peavoy** (1997) Can LII 3028.

36. Evidence of post offence conduct can be highly incriminating. It may also be subject to competing interpretations, which may be consistent with guilt or innocence. There is a risk that the jury may mistakenly draw an inference of guilt from the evidence, having failed to take into account alternative explanations for the accused's conduct. It is therefore important for the jury to be directed that they must consider the evidence of post offence conduct in the light of all the other evidence in the case to determine whether it is consistent with guilt and inconsistent with any other conclusion.

37. The Canadian cases of **White** and **Peavoy** (supra) have been considered and followed in this jurisdiction: see **Anderson Mapp a/c "Weisle" and Darryl Charles Bissoon a/c "Pipey" v. The State** Cr. App. Nos. 13 & 14 of 2012. In **Mapp**, this court warned judges of the need for extreme care and caution in the admission of evidence of post offence conduct and the need to be careful in crafting appropriate directions on this issue (at paragraph 151).

38. In a situation where there is a risk that the jury may infer guilt from the flight of an accused, the trial judge should give a specific direction to the effect that the jury should consider whether the act is consistent with guilt and inconsistent with any other reasonable conclusion. In making this determination, they should consider all of the evidence in the case.

39. However, in light of the particular circumstances of this case, the failure to give the specific direction did not cause a miscarriage of justice. It must be borne in mind, that the appellant did not deny that he inflicted the fatal injuries on the deceased. His case is that he does not remember what happened from the time he saw Lawrence Stewart on the bed with the deceased, to when he woke up at hospital. However, having regard to the evidence of the state witnesses who witnessed the killing, there could have been no reasonable doubt in the minds of the jury that the appellant inflicted the fatal injuries on the deceased.

40. The issue for the jury was not whether the appellant killed the deceased but whether the appellant could rely on the defence of provocation. In this regard, the flight of the appellant was not inconsistent with the killing or his defence. If there was prejudice to him, it was not so much the evidence of his flight, but the oral statement he made to the effect that he knew why the police had come for him. This statement was not inconsistent with his defence. However, it flew in the face of his evidence that he could not remember what transpired from the time he saw the deceased on the bed with Lawrence Stewart. The jury was entitled, if they accepted that the statement was made, to consider it in assessing the credibility of the appellant.

41. It follows that we find no merit in this ground.

DISPOSITION

42. It follows that this appeal is dismissed. The conviction and sentence are affirmed.

Dated the 14th day of December, 2017.

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A. Yorke-Soo-Hon
Justice of Appeal

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R. Narine
Justice of Appeal

_____
M. Mohammed
Justice of Appeal