

*Privy Council Appeal No. 4 of 1998*

**Cardinal Williams** *Appellant*

v.

**The Queen** *Respondent*

FROM

**THE EASTERN CARIBBEAN COURT OF  
APPEAL (ST. VINCENT AND THE  
GRENADINES)**

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JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 23rd November 1998

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*Present at the hearing:-*

Lord Browne-Wilkinson

Lord Steyn

Lord Hoffmann

Lord Hobhouse of Woodborough

Lord Millett

*[Delivered by Lord Hoffmann]*

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1. On 16th November 1994, at about 8.00 in the morning, Cardinal Williams, a farmer of Evesham in St. Vincent, killed his common law wife Caroline in the road outside their house by cutting her throat and stabbing her repeatedly with a knife. Almost immediately afterwards their two children, Hazell Ann, who was nearly 5 and Brenton, who was 2, were found dead with their throats cut in separate rooms in the house. At midday the appellant made a statement under caution at Mesopotamia Police Station.

2. In his statement, the appellant said that in recent times Caroline had on several occasions gone off with other men. His cuckoldry was well known in the area and his friends made jokes about it. On one occasion she lived with another man for six months and then returned. He took her back. A few days earlier she had stayed out all night with another man and the next day the police had relayed to him her request to remove her possessions from the house. When he returned he found that almost everything in the house had been taken. He did not see her again until that morning, when she passed the house carrying water. He went out and asked her for the return of a pot in which to prepare the children's lunch. She refused and he went back into his house. From there he saw her walk away holding the hand of a neighbour, Kenmore Robertson, known as Fleggie. At this he picked up a knife, ran out into the road, threw her to the ground and cut her throat. He then went back into his house and told Hazell Ann that she was not going to school because he had just killed her Mummy. He said that he would be hanged and they would be left without a Mummy or Daddy. So that they should not suffer, he was going to kill them. The little girl said that someone would take care of them but he proceeded to cut their throats with the same knife, killing them in separate rooms so that one should not witness the death of the other. He then set fire to the house, walked to Mesopotamia Police Station and gave himself up.

3. The appellant was indicted only for the murder of Caroline. But the depositions also included references to the killing of the children. Thus Lexcina Williams, an Evesham resident, deposed to seeing their bodies. Julia Williams, a nurse, said that she had been with Caroline in the road, trying to feel her pulse, when the appellant looked out of his window, asked whether she was dead and said that he was going to kill the children. Fleggie and his sister Desiree Plough gave similar evidence and Fleggie said that he saw the dead children in the house. So did the policeman who came upon the scene shortly after the tragedy.

4. At the trial it was agreed between counsel and the judge that the introduction of evidence tending to show that the appellant had killed his children would be prejudicial to his defence. Accordingly, the prosecution witnesses tried in their evidence in chief to skirt round the subject of the children's deaths and there was no cross-examination on the subject. The effect on the general narrative was untidy: thus evidence was given of the appellant's statement that he intended to kill the children but nothing was said about what had happened to them. More than one witness described the children in the present tense, which may have given the jury the impression that they were still alive. The appellant's statement under caution was read without objection to its admissibility but edited, at the request of defence counsel, by the removal of the account of the children's deaths. It included, however, his telling the children that he had killed their mother.

5. This well-meaning conspiracy of silence between prosecution and defence was thrown into confusion when the appellant came to give evidence. At first it followed the lines of his statement, enlarging somewhat upon Caroline's infidelities and other failings but adhering substantially to his account of their meeting in the road up to the point at which she refused his request for the return of a cooking pot. But then he said that Caroline had asked for the return of her children, which he had in turn refused. She replied saying that if she could not have the children, he would not have them either. He said that when he went back into the house he did not see the children and went out again and ran after Caroline, saying "Why you kill my children?". A fight ensued in which he killed her. This account in chief was somewhat incoherent, containing as it did no mention of any discovery that the children were dead. But the appellant repaired this gap in cross-examination by saying that he had found the children in the house with their throats cut before going after Caroline in the road.

6. It may be questioned whether counsel could have known the nature of her client's defence before he gave evidence. He had been pretending to have lost all memory of what happened, which must have made it difficult to take instructions. No cross-examination had been directed to the killing of the children, which, from having been, in the suppressed part of the statement, a tragic epilogue to Caroline's death, had now been promoted to being its precipitating cause. It would not be surprising if the jury were puzzled. Until that moment they had been left with the impression that the children were alive.

7. The defence called one witness in addition to the appellant himself. This was Dr. Debnath, a psychiatrist employed by the Government of St. Vincent and the Grenadines who also had some private practice. He is, their Lordships were informed, the only psychiatrist on the Island. According to an affidavit which he subsequently swore and which has been tendered by the appellant, he was asked by defence counsel to examine

the appellant only for the purpose of discovering whether he was unfit to plead by reason of the amnesia which he claimed to have. He was not asked to investigate his mental condition at the time of the offence and did not do so. His conclusion on amnesia was that the appellant was shamming.

8. In the event, no issue was taken on the appellant's fitness to plead but Dr. Debnath was nevertheless pressed into service by defence counsel in the hope that his evidence might support a defence of diminished responsibility. The result was pretty much a failure. The defence of diminished responsibility requires the accused to establish, in the words of section 160(1) of the Criminal Code of St. Vincent and the Grenadines, that he was at the time of the killing:—

“... suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or other inherent cause [or] induced by disease or injury) as substantially impaired his mental responsibility for his acts in doing, or being a party to, the killing.”

9. Dr. Debnath said that he had been requested to look into two things: the appellant's mental condition a fortnight before the trial, when the examination took place, and his amnesia. He said that the appellant was mildly depressed but that the amnesia was faked. He might also have been depressed at the time of the killing seven months earlier but Dr. Debnath was not in a position to say. After an adjournment, defence counsel tried again on the following day. Dr. Debnath was recalled and gave evidence dealing more broadly with the nature of depression in its various degrees. He said that the appellant probably had “passive aggressive personality disorder”, which, their Lordships learn from another psychiatrist's report to which they will later return, means passivity or inertia used as a form of aggression. At no time did Dr. Debnath address the questions of whether the appellant was suffering from an “abnormality of mind”, whether its aetiology was one of those mentioned in section 160(1), or whether it would have substantially impaired the appellant's mental responsibility for his acts.

10. In summing up, the judge withdrew the issue of diminished responsibility from the jury. He said there was no evidence upon which they could find that the statutory requirements had been made out. The only defence which he left to the jury was provocation, on which the law is codified in sections 161 and 162 of the Criminal Code:—

“161. Any person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, who does the act which causes death in the heat of passion caused by sudden provocation, as hereinafter defined, and before there is time for his passion to cool, is guilty of manslaughter only.

162.(1) The term “provocation” means and includes any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, to whom he stands in a conjugal, parental, filial or fraternal relation, to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered.

(2) 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 things said or both) to lose his self-control, in determining the question whether the provocation was enough to make an ordinary person do as he did the jury shall take into account everything, both said and done, according to the effect which, in its opinion, it would have on an ordinary person.

(3) For the purposes of this section, the expression an ‘ordinary person’ shall mean an ordinary person of the community to which the accused belongs.

(4) Notwithstanding the foregoing, it shall be open to an accused person to establish provocation by proving that the person alleged to have done or said the things relied upon by the accused to establish provocation actually knew of certain circumstances touching and concerning the accused and that an ordinary person who knew of those circumstances would have reasonably believed that the accused would have been provoked by the things done or said to or concerning the accused.”

11. In his summing up the judge quoted from sections 161 and 162 and emphasised that the provocation had to be sudden and followed immediately by the killing. He went on to say that the only matter capable of amounting to provocation was the appellant’s discovery, according to his evidence, of the dead children and his belief that Caroline had killed them. There was no evidence that Caroline had done any wrongful act or used insulting words in respect of the appellant. No question of provocation therefore arose out of the evidence of the prosecution or the confession statement. The history of Caroline’s marital infidelities had nothing to do with the issue. It depended entirely upon

the credibility of the appellant's evidence about the deaths of the children. Finally he summarised the point succinctly for the jury:-

“He is asking you to find ... that ... when he looked he saw his two children dead and so he lost his self-control. So, this act he said which Caroline did by cutting his children's throats – he was provoked by this act when he saw it ... Well, Members of the Jury, this is the only evidence on which the issue of provocation arises in this case and it is a question of what you accept, whom do you believe.”

12. The verdict shows that the jury rejected the appellant's evidence.

13. Mr. Guthrie Q.C., who appeared *pro bono* for the appellant and to whom their Lordships are greatly indebted, criticised the terms of the summing up as founded upon too literal a reading of sections 161 and 162. In particular, he said that the judge ought not to have excluded earlier events from consideration. The history of the relationship between the appellant and Caroline could properly be taken into account in deciding whether the final provocation was enough to make the statutory ordinary person act as he did: see *Reg. v. Thornton* (No. 2) [1996] 1 WLR 1174. He should also have instructed the jury to consider whether even if they rejected his evidence that Caroline had killed the children (which was inconsistent with his caution statement, even in its edited form, saying that he told them he had killed their mother and with the evidence of witnesses who said that after attacking Caroline he had said he would kill the children) they might still believe that Caroline had asked for the children and that this might have been an ultimate provocative act. Finally, he should have told the jury that the savage and multiple stabbings inflicted, according to the medical and eye-witness evidence, on Caroline's body after he had cut her throat, were evidence of loss of self-control.

14. Their Lordships are willing to accept that these matters should ideally have been left to the jury. Although section 162(2) is plainly a re-enactment (with immaterial verbal variations) of section 3 of the Homicide Act 1957 (U.K.), the Criminal Code does not present the same problems of construction as the Codes of Belize and The Bahamas which were considered by the Board in *Logan v. The Queen* [1996] A.C. 871 and *Culmer v. The Queen* [1997] 1 WLR 1296 respectively. This is because section 162(2) has not, as in those cases, been inserted as a foreign body into a group of provisions which reflect an earlier and inconsistent state of the common law. Until the adoption of the Code in 1988, the law of provocation in St. Vincent and the Grenadines was the pre-1957 English common law: see *Hamilton v. The Queen* (1984) 33 W.I.R. 122, in which the Court of Appeal noted that section 3 of the Homicide Act 1957 had been adopted in most of the

Caribbean states and urged that it should be enacted in St. Vincent and the Grenadines as well. It seems likely, therefore, that the opportunity was taken to introduce this reform when the Code was adopted in 1988 and that the other provisions of sections 161 and 162 are intended to flesh out the law of provocation consistently with section 162(2). Their Lordships therefore think that there is substance in Mr. Guthrie's submission that sections 161 and 162(1) should not be given a literal and free-standing construction which would impose arbitrary limits upon the material ("everything, both said and done") which section 162(2) says that the jury must be allowed to take into account in deciding whether whatever it was that actually did provoke the person charged to lose his self-control was "enough to make an ordinary person do as he did". To construe the Code more narrowly would be to diminish the effect of the reform and produce inconsistency with the laws of other Caribbean states which have adopted section 3 of the Homicide Act 1957 (U.K.).

15. Their Lordships do not however find it necessary to express any concluded view on these questions and did not invite submissions on the construction of sections 161 and 162 from Sir Godfray Le Quesne Q.C., who appeared for the Crown. This is because they are satisfied that even if a direction had been given in the most generous terms for which Mr. Guthrie contends, the defence of provocation was bound to fail. The nature of the assault was certainly evidence from which the jury could have inferred that the appellant had lost his self-control, but once they had rejected, as they must have done, the appellant's evidence that Caroline had killed the children, there was nothing left which could have provoked the ordinary man to act as he did. Her saying, according to his evidence "I want my children", even taken against the background of her desertion and the removal of the cooking pot and other possessions, does not in the opinion of the Board come anywhere near the required threshold. This ground of appeal therefore fails.

16. The second ground of appeal is that the judge was wrong to withdraw the issue of diminished responsibility from the jury. Their Lordships have set out the exiguous medical evidence on the question of whether he was suffering from an abnormality of mind. This could be regarded as supplemented by the evidence of the multiple injuries which he inflicted upon Caroline after the fatal wound and certain other bizarre behaviour of which the eye-witnesses had spoken: he had announced that he would kill the children, asked an onlooker to shoot him and set fire to the house. It would have been strengthened if there had also been evidence of the actual killing the children, of whom he appears to have been very fond. But for the reasons which their Lordships have explained, no such evidence was tendered by prosecution or defence. In the circumstances, and bearing in mind that the onus of proof of diminished responsibility is upon the accused, their Lordships do not think that the judge was wrong to withdraw the issue from the jury. Counsel who represented the appellant at the trial and in the Court of Appeal took the same view: although the point was taken in the notice of appeal, she abandoned it at the hearing in the Court of Appeal.

17. Before the Board, however, Mr. Guthrie made an application for leave to tender new evidence in the form of a report by Dr. N.L.G. Eastman, a distinguished English forensic psychiatrist, who went to St Vincent and interviewed the appellant in prison for over 5 hours on 19th February 1998. Dr. Eastman was asked, unlike Dr. Debnath, to express an opinion on the appellant's mental condition at the time of the killing. It is unnecessary for their Lordships to say more than that the report, if accepted, would be material upon which a jury could have found that the appellant was suffering from diminished responsibility.

18. The admission of new evidence in the Court of Appeal is governed by section 45 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, c. 18. This provides that unless satisfied that the evidence, if received, would not afford any ground for allowing the appeal, the court shall exercise the power to receive it if:–

“(a)it appears to it that the evidence is likely to be credible and would have been admissible at the trial on an issue which is the subject of the appeal; and

(b)it is satisfied that it was not adduced at the trial, but that there is a reasonable explanation for the failure so to adduce it.”

19. Their Lordships consider that Dr. Eastman's evidence is “likely to be credible” in the sense that it satisfies the test of being “apparently credible, though it need not be incontrovertible” (per Denning L.J. in *Ladd v. Marshall* [1954] 1 W.L.R. 1489 at page 1491. It may be that after cross-examination or the consideration of evidence in rebuttal, Dr. Eastman's evidence would be controverted and rejected. This is a matter going to weight; their Lordships consider that it passes the threshold test for admissibility under section 45(a). As for (b), their Lordships consider that if one has regard to the realities of the position of a relatively indigent defendant on a capital charge in St. Vincent and the Grenadines, a reasonable explanation for the appellant's failure to adduce such evidence earlier readily suggests itself.

20. Their Lordships would therefore on this ground remit the appeal to the Court of Appeal to decide how best to deal with Dr. Eastman's evidence. The Court may consider it expedient to order a new trial, so that the evidence can be given subject to cross-examination and any rebutting evidence before a jury. Or it may decide in the first instance to hear such cross-examination and rebutting evidence itself. Their Lordships

consider that the procedure to be followed must be a matter for the Court of Appeal to decide.

21. Finally their Lordships must mention a submission of Mr. Guthrie that the decision to charge only the murder of Caroline and the exclusion of all reference to the killing of the children produced a trial on assumed facts which were so far from reality as to be incapable of producing a fair verdict. Their Lordships do not accept that the prosecution were wrong to charge only one murder. This was the normal practice in England when murder was a capital offence. It would not, and did not, preclude the introduction of evidence of other offences by the defence or, in cases in which it would be admissible under the similar fact rule, by the prosecution. Thus it would have been open to defence counsel to elicit evidence of the deaths of the children in cross-examination of the prosecution witnesses if she thought it advantageous to do so.

22. It is true that in the event, when the appellant came to give his evidence, the absence of any previous reference to the deaths of the children may have been damaging to his credibility. On the other hand, his case may have suffered even greater prejudice if the evidence of the killing of the children had been introduced by the prosecution. The decision faced by defence counsel in agreeing to the exclusion of the evidence was a difficult one and their Lordships think it is impossible to say that she (or the prosecution or the judge) were wrong in taking the course they did. They would therefore reject this ground of complaint.

23. Their Lordships will therefore humbly advise Her Majesty that the matter should be remitted to the Court of Appeal of the Eastern Caribbean for further hearing in accordance with the opinion of the Board.