IN THE COURT OF APPEAL

THE TURKS AND CAICOS ISLANDS

CR-AP 40/2016

BETWEEN

DARLINE ST. LOUIS **APPELLANT**

AND

REGINA **RESPONDENT**

BEFORE:-
SIR ELLIOTT MOTTLEY, PRESIDENT
MR. JUSTICE ADDERLEY, JA
MR. JUSTICE HAMEL-SMITH, JA

APPEARANCES:-
MESSRS. TIM PRUDHOE AND WILLIN BELLIARD **APPELLANT**
MS. LATISHA WILLIAMS **RESPONDENT**

HEARD: **14, 20 AUGUST 2018; 15 NOVEMBER 2018; 6 SEPTEMBER 2019; 16 JANUARY 2020**
DELIVERED: **31 DECEMBER 2020**
REASONS DELIVERED: **29 JANUARY 2021**

JUDGMENT

MOTTLEY, P.

1. Following a trial before Mr. Justice Shuster and a jury, the appellant Darline St. Louis was, on 8 December 2016, convicted of manslaughter, and, on the same date was sentenced to a term of life imprisonment. The Information against the appellant alleged that on 29 September 2015, she had caused the death of Joas St. Louis, her son, by unlawful means.

2. The prosecution's case was that Joas, her infant son, who was 5 years old, died at the home of his parents Jean Renaud St. Louis and the appellant on the Island of North Caicos. Joas last attended school on 29 September 2015. Around 2:00pm the father and the mother picked the children up from school and took them home. The father left the children with the appellant and returned to work. On that day, his teacher, Ms. Narissa Forbes stated that apart from his eyes appearing red as if he had been crying, Joas showed no signs of discomfort.

3. Around 6:00 pm the father returned home from work. He found his wife lying down on "something" which his wife had placed on the floor. Both of the children, Joas and Regino were lying down and appeared to be sleeping. Around 7:00pm, the appellant left home to go to church which was nearby. Around 8:00pm, the father stated he called Joas because he usually helped him with his homework. Joas did not respond, and he called him again and he still did not answer. The father then went to Joas, who appeared not to be breathing. The father touched Joas but his body did not feel normal. Joas was not breathing and his father did not feel any pulse. The father then went to the church where his wife had gone earlier in the

evening and spoke to the pastor and requested him to pray because he could not understand what had happened. The father then called the doctor.

4. Dr. David Bernardo went to the house and examined Joas; the doctor pronounced Joas dead. Dr. Bernardo formed the opinion that Joas had been electrocuted because of the redness of his torso. He said that when Joas's body was lifted he heard a cracking sound from his neck which suggested to him that his neck was broken.

5. Dr. Katherine Kenerson who at the date of the trial was employed in Miami Dade Medical Faculty as a Miami-Dade Associate Medical Examiner, for two and a half years, conducted a post-mortem on the body. The doctor stated that the cause of death based on the autopsy finding was due to multiple blunt injury evidenced by haemorrhaging in both buttocks, cutaneous abrasions, contusions as well as underlined diffuse confluent soft tissue bleeding of the buttocks, lower back, on both sides and hands of face till this bleeding led to acute blood loss which subsequently led to his death. The doctor went on to state that Joas was beaten to death.

6. It is important to appreciate that no direct evidence was led by the prosecution showing who inflicted the injuries on Joas. The prosecution's case was based on circumstantial evidence. The evidence showed that the father drove the appellant to the school where they collected the children around 2:00pm. The father took the mother and the children home. After spending a short time at the house, he returned to work. At 6:00pm, the father returned home from work when he saw the mother lying down on the floor with the children. At that time, the children were

sleeping. The mother left home around 7:00pm prior to going to church, leaving the children with the father.

7. The prosecution was asking the jury to infer that the mother inflicted the injuries on Joas sometime between his returning home from school at 2:00pm and 6:00pm when the father returned home. Around 8:00pm the father discovered that Joas was not breathing and had no pulse. While the prosecution's case was that the mother inflected the injuries on Joas sometime between 2:00pm and 6:00pm, in the absence of any direct evidence of who inflicted the injuries, it was necessary for the prosecution to rule out the father as the person who inflicted the injuries.

8. Detective Sgt. Ensa Wilson stated that on 29 September 2015, a report was received concerning the death of a six-year-old boy in Bottle Creek, North Caicos. On 30 September 2015, she travelled to North Caicos. The Sergeant conducted investigation into the death of Joas and on 9 October 2015, she arrested Darline St. Louis on suspicion of murder of Joas and cautioned her which she did with the aid of an interpreter. The appellant made no response. Jean St. Louis, the father was also arrested by the Sgt. Wilson on suspicion of murder of Joas. The father was also cautioned in creole and made no response. While the appellant refused to give a caution statement, her husband, who speaks English, on 12 October 2015, gave a statement to the police having been cautioned.

9. After a very careful analysis of the summation of Shuster J, the Court *propio motu*, raised several issues on which it invited submissions by both counsel for the appellant and respondent. We will deal with these issues seriatim as the Court considers that they are dispositive of the appeal.

10. Sgt. Wilson gave evidence of conducting an interview with the appellant in which she posed over a hundred questions to her. The appellant only responded to a few of the questions. Many of the questions asked by Sgt. Wilson contained prejudicial and unfounded assertions which were not based on any evidence led in the trial.

11. The judge, in the opinion of the Court, ought not to have allowed evidence relating to the interview conducted by Sgt. Wilson to be admitted into evidence as it had no probative value and was highly prejudicial to the appellant. However, having admitted the interview into evidence it was incumbent on the judge to direct the jury that the truth of the assertion contained in the questions should be ignored and should not be used to establish the truth of the assertions contained in the questions.

12. Sgt. Wilson conducted what she described as a "caution interview" with the appellant on 15 October 2015, 6 days after the appellant had been arrested on suspicion of murder of Joas. This "caution interview" was admitted into evidence as a matter of course. The Record of Appeal shows the circumstances under which the "caution interview" was conducted. The Record does not show that any application was made to the judge by prosecuting counsel for permission to introduce the "caution interview" into evidence. The Record of Appeal shows that Sgt. Wilson was asked "If you were able to see the caution interview that you held with the defendant again, would you be able to identify it." Without more, the "caution interview" was admitted into evidence.

13. In the opinion of the Court, the evidence relating to the "caution interview" of the appellant conducted by Sgt. Wilson ought not to have been admitted into evidence

by the trial judge in the circumstances in which it was admitted. The answers to the questions posed could only have probative value if the allegations and/or assertions were accepted by the appellant. On the other hand, the contents of the questions put by Sgt. Wilson were extremely prejudicial to the appellant. Some questions contained allegations and/or assertions of fact which allegations and/or assertions were completely unfounded and were not based on any evidence led during the trial.

14. The Court will set out some of the questions asked by Sgt. Wilson. Sgt. Wilson asked the following questions:

> "I am putting it to you that the school principal called you on two different times and questioned you about the marks and abrasions that were on Joas body and you told her that Joas fell down because you didn't want her to know that you beat and abused Joas. What do you have to say about that?"

15. Sgt. Wilson asked the appellant:

> "I am putting it to you that you never told your husband what the teacher told you because you didn't want him to know that you used to beat and abuse Joas while he was at work. What do you have to say about that? No response. Why did you tell the police that Joas was retarded? Yes. Why did you tell the police that Joas was paranoid?"

16. No evidence was led to show that Joas had not fallen. Further, absolutely no evidence was led that the appellant had beaten and/or abused Joas. Putting the question in this way based on unfounded allegations and/or assertions could have caused the jury to speculate that the police would not have put those allegations

and/or assertions to the appellant unless Sgt. Wilson had evidence that the appellant had beaten and abused Joas. It was wrong for the judge to allow this question to be read into evidence but, having done so, it became imperative for the judge to warn the jury that they could not rely on the assertions in the questions to prove the truth of the allegations and/or assertions. Further, the way in which the questions were framed was open to the interpretation that the appellant was not speaking the truth when she told his teacher that Joas was injured when he fell. Such an interpretation by the jury would have been prejudicial to the appellant whose credibility was at stake.

17. Sgt. Wilson again repeats the unfounded allegations and assertions that the appellant "use to beat and abuse Joas while her husband (Joas' father) was at work." At no stage did the prosecution seek to lead any evidence to this effect. Indeed, there was no evidence to support this assertion. Repetition of this unfounded assertion could only have had a greater impact on the jury that the mother not only beat Joas but used to do it while her husband was at work. Sgt. Wilson was associating that with the mother's deliberate and wilful conduct of abusing Joas and suggesting she did so while the husband was at work because she knew what she was doing was wrong and wanted to hide it from her husband.

18. Sgt. Wilson also asked the appellant:

> "I am putting it to you that you only said Joas is retarded because you used to abuse him. What do you have to say about that?"

19. The prosecution did not lead any evidence that the appellant told the police that Joas was retarded. Nonetheless, Sgt. Wilson was allowed to give evidence of this

statement without any proper foundation being had. Although motive is not required to prove a criminal charge of manslaughter to a layperson on the jury, the allegation that the appellant had told the police that Joas was retarded could have unwittingly provided the jury with a motive as to why the appellant had abused Joas and subsequently killed him.

20. The following questions were asked as questions numbered 83, 84, 85, 86 and 87. These questions are set out verbatim and start from question 83:

> Sgt. Wilson asked: "I am putting it to you that you hated Joas. What do you have to say about that?" No response. Question number 84, "I am putting it to you that on Tuesday 29 September 2015 after Joas reached home from school you beat him, you killed him and you lay down his body for his father to know that he was sleeping when he returned from work. What do you have to say about that?" No response. Question number 85, "How long have you been beating Joas?" No response. Question number 86, "I am putting it to you that you had Joas wear long pants to school because you did not want anyone to see the marks on his feet and upper thigh. What do you have the say about that?" No response. 87, "I am putting it you that you are the only person who bathe and dressed Joas for school. What do you have to say about that?"

21. It was most improper and highly prejudicial for Sgt. Wilson to put to the appellant that she hated Joas when absolutely no evidence led by the prosecution to that effect or of circumstances from which such hatred could be inferred. The suggestion of hating Joas could also have been used by the jury as a motive to infer that she abused and killed Joas. It was also most improper and highly

prejudicial for Sgt. Wilson to put to the appellant that she beat Joas and killed him. The judge had conduct of the trial and would have appreciated that absolutely no evidence was led that the appellant had abused Joas or that she had killed him. Further, the judge should also have appreciated that the prosecution's case against the appellant was based on circumstantial evidence and that there was no direct evidence that the appellant had beaten Joas or that she had killed him. The prosecution was inviting the jury to come to the conclusion based on circumstantial evidence not direct evidence that the appellant was responsible for her son's death. It is impossible to say what the impact this unfounded assertion would have had on the jury. To ask the appellant "how long have you been beating Joas" suggests that the police had evidence to this effect. The prosecution led no evidence of this beating.

22. Sgt. Wilson also suggested to the appellant:

> "I am putting it to you that you were very nervous when you took a ride from Kenneth. What do you have to say about that? Whom did you try to call while you were in Kenneth's truck?"

23. On what basis was the suggestion put to the appellant by Sgt. Wilson that she was very nervous when she took a ride from Kenneth. The judge failed to appreciate that the Sgt. was not present, and therefore the question would have been based on what some third party had repeated to him; in short, it was hearsay. The suggestion by itself may not be considered material. However, it has to be considered along with the other prejudicial assertions.

24. At question 110 Sgt. Wilson asked:

"on Thursday the 8 October 2015, an autopsy was performed on the body of your son Joas St. Louis and the cause of his death was due to his spinal column that was dislocated with blunt force trauma about his body. Your son was in your care on Tuesday the 29 September 2015 and you are the person who caused his death what do you have to say about that?" No response. "I am putting it to you that you left Whitby and returned home because you knew your husband would return home soon. You knew what you did Joas, you fixed his body like he was sleeping, and you were making plans to go to church while his father stayed with the dead body that you say was sleeping. What do you have to say about that?"

25. In this question, Sgt. Wilson was again asserting without any evidence that the appellant was "the person who caused" the death of her son. To suggest to the appellant that her son was in her care was contrary to the evidence led by the prosecution. Her husband returned home from work at 6:00 pm, the mother left for church at 7:00 pm leaving the children at home with the father. It was during this period that the father discovered that Joas was dead. Further there was no evidence that the appellant fixed Joas body as if he was sleeping.

26. In his summation dealing with the interview which Sgt. Wilson had conducted, the judge told the jury:

"I turn now to the record of interview. In a police interview recorded on the 15 October 2015 from 15:00 to 18:40 hours sixteen days after his death police put to the defendant 111 questions after the defendant had been cautioned and her rights had been explained to her by the police Wilson in Creole. The defendant answered five of those 111 questions. That interview members of the jury is an exhibit EW

> 12. Members of the jury I direct you it is trite law that a defendant does not have to answer any questions put to her by the police in a criminal investigation. That is her legal right, and it is a right enshrined in law."

27. This direction was wholly inadequate having regard to the fact that the assertions put by Sgt. Wilson were not supported by any evidence led in the case. The assertions where wholly unfounded and without the appropriate warning by the judge could have been used by the jury as evidence to convict the appellant. It was, in the opinion of the Court, necessary for the judge to give the jury a clear warning that the contents of the questions put by the Sgt. were not evidence upon which they could act to convict the appellant.

28. The only allegations and/or assertions of the appellant beating and/or abusing Joas is that contained in the unfounded assertion of Sgt. Wilson in the question set out above. It was imperative that the judge direct the jury that the assertion contained in the questions was not evidence of the contents of the question and therefore could not be used by the jury as evidence to convict the appellant. The failure of the judge to give such a direction was a material irregularity which in the opinion of the Court was sufficient to allow the appeal.

29. Any one of these unfounded allegations and/or assertions by Sgt. Wilson in the opinion of the Court would have been sufficient to require the judge to have warned the jury that what was alleged and/or asserted by Sgt. Wilson was not evidence on which the jury could act to find the appellant guilty.

30. Sgt. Wilson was allowed to give evidence of what he found from his investigations that the appellant "appeared to be trying to leave the North Caicos Community." She was allowed to repeat this statement. Later, Sgt. Wilson stated:

> "As I said earlier My Lord, she asked for a ride to Sandy Point. She was persistent in getting a ride to Sandy Point. I know what it is in Sandy Point because of the incident and the allegation of what happened I look at the possibility that the defendant may have been trying to leave the North Caicos Community. That is why I said appeared. She appeared to be trying to leave and when she was unsuccessful in getting a ride she returned home."

31. This was clearly opinion evidence and was not admissible. However, the suggestion that she wanted to leave the North Caicos Community could have been interpreted by the jury that she was seeking to do so because she was guilty of the offence and wanted to get away from the scene of the crime. The officer should have stated the facts and counsel could have invited the jury to come to that conclusion. But it was improper for the Sgt. to express an opinion to that effect. This was yet another example where the judge failed to give the appropriate direction to the jury. This was a non-direction which could undeniably cause prejudice to the appellant.

32. The prosecution did not establish by direct evidence that the mother at any stage beat or abused Joas. The prosecution did not establish by any evidence that the father at any stage beat or abused Joas.

33. The jury was being asked to infer that sometime after 2:00pm and before 6:00pm on Tuesday 29 September 2015 the mother beat and caused the death of Joas.

That would have been a logical inference had the time of death been established as occurring during that period of time. However, no evidence was led to that effect. On the other hand, no evidence was led to show that the death occurred between 7:00 pm and 8:00 pm when the children were left with their father. The most that the prosecution could prove were that (i) the death of Joas could have occurred during the period 2:00 pm to 6:00 pm while in custody of the mother and (ii) during the period of 6:00 pm and 7:00 pm while both parents were at home; or (iii) during the period 7:00 pm and 8:00 pm. The judge should have informed the jury that there was no evidence that the death occurred in either one of the three time phases mentioned above.

34. The judge told the jury:

> "Before convicting a person solely on circumstantial evidence, you should consider whether the evidence reveals any other circumstances which may be of sufficient weight, strength and reliability to weaken or to destroy the prosecution's case. What conclusions you reach you form the evidence of the case you're considering today members of the jury is entirely a matter for you. When you're considering what inferences, you should draw or what conclusions you should reach it is important to remember that I said that speculation is no part of that process. Drawing inferences and reaching conclusions is not the same as fitting the facts to a particular theory. That requires much greater care."

35. The judge later told the jury that:

> "I give you a direction now which you must follow members of the jury. Because this case is largely a circumstantial case it is necessary for me as the trial judge to

> give you the following specific direction. Firstly, to find an accused person guilty in a circumstantial only case her guilt must not only be a reasonable inference it must be the only inference which can be drawn from all the circumstances established by the evidence. And secondly, if the jury considers that there is any reasonable explanation of those circumstances consistent with the innocence of the accused then you must find her not guilty."

36. It should be noted that, while the judge told the jury that the prosecution's case was based on circumstantial evidence, at no stage did the judge explain what is meant by the term, "circumstantial evidence". The judge did not explain to the jury that the prosecution was relying on different "pieces of evidence relating to different circumstances, none of which on their own directly prove the appellant's guilt, but which taken together leave no doubt that the appellant was guilty". The judge did not assist the jury by directing them on what was the various pieces of evidence on which the prosecution was relying.

37. In the opinion of the Court, the judge was under a duty to explain the circumstances on which the prosecution was relying to prove the guilt of the appellant. The judge should have reminded the jury that the evidence showed that both parents, mother and father collected the children from school about 2:00 pm and took them home. The mother remained at home with the children while the father returned to his work. The evidence showed that around 6:00 pm, the mother left the home.

38. Confronted as they were with that problem the judge was required to inform the jury in clear and simple terms that if they were left in any reasonable doubt it was their duty to return a verdict of not guilty. This the judge failed to do.

39. Had the judge reviewed the circumstantial evidence as set out above, together with the fact that both the father and mother were arrested by the police on suspicion of murdering Joas, the judge would have appreciated that it was necessary to approach the father's evidence with caution as he was the only person who said that it was around 8:00 pm that he found Joas was dead. This was important in the circumstances where no evidence was led as to the time of death.

40. In these circumstances, it was imperative that the jury be given a clear direction that if having considered the evidence, they are left in reasonable doubt, the defendant must be given the benefit of that doubt. Such a directive was necessary where from the evidence the injuries could have been inflicted by either the mother or the father or both.

41. Ms. Forbes, a teacher of Adelaide Ohlmer Primary School in Bottle Creek taught the Kindergarten Class in which Joas was a pupil. She said that, sometime during the second week of the school term which began on 5 September, she had noticed a mark on Joas's arm "like he was beaten with a belt or to me a cord." As a result, Ms. Forbes took Joas to the principal and spoke with her. Ms. Forbes state that she formed the impression that Joas was being abused at home. Through an interpreter, Joas stated that he had fallen. Ms. Forbes went on to state in her evidence without objection by counsel for the defendant, "I turned to the principal and I said to her that there is no way he could fall and obtain marks to his neck and his arm". Ms. Forbes said that the principal spoke to the mother who said that Joas had fallen. In response to a question from Crown Counsel, Mrs. Forbes said she

did not say anything to the appellant when she said that Joas had fallen. Counsel for the prosecution was allowed to ask Ms. Forbes, without objection from counsel for the defendant, whether she formed a view on what the mother had said. Ms. Forbes responded, "Yes, I thought to myself that she had coached him into saying that he had fell and it was her story as well."

42. In the Court's view, Ms. Forbes ought not to have been allowed to give evidence of what her feeling or conclusion were, especially in circumstances when the basis of that feeling or conclusion was not made known to the jury. The prejudicial value of this statement far outweighs any probative value. By this statement it was open to the jury to place an interpretation that the appellant had coached Joas to say he had fallen because she wanted to cover up her abuse of Joas.

43. Again, having allowed the statement into evidence, it was incumbent on the judge, in the circumstances, to warn the jury that they should ignore what Ms. Forbes had said about the mother coaching her son and, above all, they could not draw any inference that she had coached Joas to mislead his teacher to hide her abuse of the son. Not having warned the jury to ignore the evidence was in the opinion of the Court, a miscarriage of justice.

44. The right of a criminal defendant to a fair trial is absolute. In Randal [Barry] v R (2002) 60 WIR 103 29 Lord Bingham of Cornhill observed:

> "There will come a point when the departure from good practice is so gross, or so persistent, or so prejudicial, or so irremediable that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty. The right to a fair trial

is one to be enjoyed by the guilty as well as the innocent, for a defendant is presumed to be innocent until proved to be otherwise in a fairly conducted trial."

45. It is the responsibility of a trial judge to ensure that an accused person who appears before him charged with a criminal offence has a fair trial. In the context of this case, a fair trial meant that the evidence produced by the prosecution was probative of the guilt of the appellant. It included the responsibility on the part of the judge to ensure that evidence which was prejudicial to her should not be admitted into evidence. In our opinion, the judge failed to accord the appellant the protection granted to her as enshrined in the constitution and did not ensure that the appellant had a fair trial when he allowed and/or permitted the "caution interview" to be admitted into evidence and without giving the required caution to the jury.

46. For the reasons set out above the verdict that the appellant was guilty of manslaughter of her infant son, was in the view of the Court a gross miscarriage of justice. The appeal is allowed, and the conviction and sentence set aside and a verdict of not guilty is entered in her favour.

/s/ SIR ELLIOTT MOTTLEY, PRESIDENT

/s/ MR. JUSTICE ADDERLEY, JA

/s/ MR. JUSTICE HAMEL-SMITH, JA