

IN THE CAYMAN ISLANDS COURT OF APPEAL
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CICA NO. 40 OF 1992 (BUSH)

CICA NO. 42 OF 1992 (EBANKS)

BEFORE: THE RT. HON. MR. JUSTICE EDWARD ZACCA, PC., OJ. PRESIDENT
THE RT. HON MR. JUSTICE P. TELFORD GEORGES, JA.
THE HON. MR. JUSTICE KENNETH C. HENRY, JA.

REGINA v. TONY THARON EBANKS & TONY ELFORD BUSH

Mr. Archie and Mr. Robert for the Crown
Mr. Harrison, Mr. Levy with him for appellant Bush
Mr. Lamontagne QC. for appellant Ebanks
On 30th March, 7th April, and 11th August, 1994.

JUDGMENT

The appellants were charged with two counts of murder. The particulars alleged that on a day between the 2nd day of October, 1987 and the 5th day of October, 1987 they murdered Bernie Crafton Anglin and that on or about the 15th day of December 1990 they murdered Charles Steven Scott-Bodden.

They were both acquitted of having murdered Charles Steven Scott-Bodden. The appellant Bush was convicted of the murder of Bernie Crafton Anglin and the appellant Ebanks of being an accessory after the fact to the murder of Anglin. The appellants had both exercised the right to be tried by a judge alone as provided by law. The reasons for the convictions are set out in the judgment of the trial judge.

The appellant Bush, the appellant Ebanks and the deceased Anglin all appeared to be friends and were frequently in each other's company. There was no evidence of ill-will between the deceased and either of the appellants.

On the evidence it would appear that the last person to see the deceased Anglin alive was the appellant Bush. At about noon on Saturday, October 3, 1987, Kent Ebanks, a cousin of the appellant Ebanks, saw the deceased Anglin and the appellant Ebanks in the yard of his aunt's house drinking beer. The appellant Ebanks was in the house. Appellant Bush asked the deceased Anglin whether he wanted a draw, meaning a smoke of marijuana. The deceased said he did and they walked away towards the back of the house. There were tacks to the back of the house leading to an undeveloped area of bush and fruit trees. Some time later - estimated at 1 1/2 hours at the trial - the appellant Bush returned from the back of the house alone. He enquired of Kent Ebanks whether he had seen the deceased Anglin. Kent Ebanks did not reply. He had not in fact seen the deceased Anglin and has not seen him since. In cross-examination he agreed that he had estimated the time between the departure for the back and the return of the appellant Bush as being half an hour. He assumed that the appellant Ebanks was still in the house because he had not seen him and as far as he was aware appellant Ebanks had gone nowhere that night. He agreed that there were two doors and that the appellant Ebanks could have left the house without passing him.

The appellant Bush gave evidence. He confirmed having been in the yard with the deceased Anglin. He places the time as between 4.00 pm. and 5:00 p.m. The deceased Anglin had, at his request, bought him a beer. he had offered a spliff of Ganja. They had left and gone behind the house where they smoked. The deceased Anglin talked of his father who had recently died. After the smoke, the deceased left heading further into the bushes in a direction which could lead to his house. He, the appellant, remained sitting for a while finishing the beer, then returned to the yard, he saw Kent Ebanks and enquired whether he had seen the deceased Anglin. Kent Ebanks did not reply. He continued to his home and did not go anywhere thereafter. He had not seen the deceased Anglin after that day.

Cutelin Anglin, mother of the deceased Anglin, reported him missing on October 4, 1987. The appellant Bush was picked up by the

police on October 5, 1987 and questioned under caution on October 6, 1987. He outlined his movements as stated above. The investigator was clearly puzzled by the fact that on his return from the back the appellant Bush had asked Kent Ebanks whether he had seen the deceased Anglin but he insisted that there were many tracks through the bush area and the deceased Anglin could have returned to the yard without passing the point where he was sitting. There is evidence that this could be so.

The appellant was released after the interview. He was picked up and interviewed on October 14, 1987. He was released on October 16, 1987.

Chief Inspector Reginald Branch testified that the full scale search for Bernie Anglin began on the Sunday - which would have been October 5, 1987. There was a search of the bushes and the ironshore but apparently nothing was observed which merited being given in evidence.

Thus matters stood until Charles Steven Scott-Bodden was reported missing on December 15, 1990. Investigations into that report led the police to interview Denise Mavis Ebanks. She had admittedly been a girl friend of the appellant Bush who had had sex with her when she was 12. Her evidence was that the relationship had ceased when she was 13 but his evidence was that it had continued until the time of the disappearance of Scott.

She stated that one night after she had had sexual intercourse with appellant Bush he had told her that he had killed the deceased Anglin. That would have been when she was 13 which would be in 1988. She had given four statements to police on December 18, 20, 21 and 24, 1987. The confession from the accused Bush was mentioned in the fourth. There were no details as to where the killings had taken place or how it had been done.

Some time in March 1992 the police obtained a statement from Ivon

Clint Ebanks. His evidence at the trial was that in the latter part of 1988 he shared a cell in prison for 5 months with the appellant Bush who had been a classmate from Primary through to High School. Bush told him of many things including a murder.

Appellant Bush told him that a Jamaican had approached him (Bush) complaining that the deceased Anglin had stolen his drugs. He wanted his drugs back or Anglin killed. The Jamaican wanted to know whether appellant Bush knew someone who would do the job and after a discussion about price appellant Bush agreed to do the job. The price was an ounce of cocaine and about \$400.00 or \$500.00. The Jamaican gave him the drugs and the money.

Later that evening the appellant Bush saw the deceased Anglin and invited him to smoke a spliff. They went into the grape bush near to Tony Ebanks' house. When they got there they discovered they had no rolling paper. Appellant Bush set off to get some but having walked some way, before reaching Ebanks' house, he returned and met deceased Anglin smoking a spliff. Appellant Bush pulled out the gun and asked deceased Anglin if he knew anything about the drugs from the Jamaican guy. Deceased Anglin said he did not. Thereupon appellant Bush put the gun to the head of the deceased Anglin, told him that he had stolen the Jamaican's drugs and had to die. Deceased Anglin dropped and was fluttering. Since he did not appear to be dead, the appellant picked up a piece of grapewood and beat him across the head three times with it. Still he did not seem dead so he picked up a big rock and threw that across his head three times as well. Anglin was then dead. Appellant Bush dragged the body from the spot, covered it up with grape leaves and went to Tony Ebanks' yard. He told someone there that he had done the job. The person looked at him as if he couldn't believe it. He told the person that he was going home to change and on his way back he wanted that person to help him move the body.

The appellant Bush had then gone home, burnt his clothes and his shoes, had a bath and then returned to Tony Ebanks' yard. He had

there met the person to whom he had spoken and together they had returned to the scene. On seeing the state of the body the other person had become sick and had started to vomit but had recovered. They had picked up the body and taken it to the ironshore down the Turtle Farm. When they got the edge of the ironshore they threw the body over. The shirt of the deceased hooked up on the ironshore. The appellant Bush cleared it and the body went under the ironshore. Having heard the story he did nothing about it. It was not any of his business.

There was evidence from Sydney Parchment that on the Friday, the day before the deceased Anglin was last seen he had seen the appellant Bush at about 10.00 p.m. at the home of Denward McLaughlin. The appellant Bush was talking but not particularly to Parchment. He seemed intoxicated or under the influence of drugs. His eyes had a drowsy look. The appellant Bush said he felt he could kill someone that night. He produced a knife and made a gesture to his throat. He said he would cut their throat and tie a block to their feet and drop them in the sea. He gave his statement to the police about 2 weeks after the deceased Anglin went missing.

In cross-examination he said he did not exactly feel threatened by what the appellant Bush had said. He did not take it seriously.

The trial judge found that Ivon Clint Ebanks and Denise Mavis Ebanks were honest and reliable witnesses who reported what the appellant Bush told them. The trial judge saw and heard these witnesses and his findings on their credibility must be accepted.

He did note correctly that the account seemed "exaggerated". This was an evaluation of the evidence with which we agree. It is not enough merely to determine that the confession was made. There must also be a determination as to whether it can be considered reliable enough that there can be no reasonable doubt as to its truthfulness. Accused persons have been known to confess to crimes which they have not committed and a proper investigation should always seek to produce

some independent evidence tending to show the truth of the confession.

As has been indicated the confession to Denis Mavis Ebanks is bare. It was made after sexual intercourse - a situation in which a display of bravado cannot be said to be entirely unexpected. Rumours of the appellant Bush's involvement in the crime were in any event rife. It would seem inconceivable that had this stood alone a conviction could ever have been considered.

The confession to Ivon Clint Ebanks is, as the trial judge commented, "exaggerated". While there are undeveloped patches in the area, it is one in which many people live. It seems unlikely that the sound of three gun shots would have gone completely unnoticed. Investigations into the disappearance began after the on October 5, a mere two days after it had been reported.

The manner of the killing would have caused significant disturbance of the area. A rock was used to hit the face and a piece of grape wood. There should have been signs of blood. Leaves were gathered to cover the body. Early on the investigators would have been aware of the area to which the deceased Anglin and the appellant Bush had gone to smoke the spliff. A reasonably careful search of the area should have revealed signs of the attack.

The account also raises the likelihood that there would have been some tell-tale marks on the appellant Bush as he returned to the yard from the bush. He spoke to Kent Ebanks who gives no evidence of anything unusual in his demeanour or dress. This may well be due to lack of curiosity. The confession, however, indicates that appellant Bush spoke to someone in Ebanks' before leaving the yard. The account given by Kent Ebanks does not support this. His account is that appellant Bush asked him a question to which he did not reply and then moved on.

The investigators early on had the account given by the appellant Bush of his movements after he left the Ebanks' yard. He said he had

stayed home. The confession involved his having returned that afternoon to the Ebanks' yard and having met someone whom he asked to help him in disposing of the body. It seems strange that some evidence of the return was not obtained. This is against the background of the appellant Bush being an early suspect who had been picked up twice for questioning under caution by Inspector Branch.

A shirt identified as that of the deceased Anglin was found. Lincoln Linsey Ebanks testified that on October 11, 1988 while looking for the deceased found a shirt which looked like the type of shirt the deceased wore on the Turtle Farm ironshore. The shirt had no tears on it. Ivon Clint Ebanks stated the appellant Bush told him that "The shirt of the dead person hooked up on the ironshore Tony Bush cleared it and the body went under the ironshore." If, as stated, the shirt had "hooked up" on the ironshore the likelihood would be that there should have been a tear.

The trial judge gave some weight to the evidence of Sydney Parchment that the appellant Bush had told him that he felt he could kill somebody. He stated that it showed

"that Bush was expressing a certain state of mind shortly before Bernie's disappearance and that his words tie in with what he later said he did to Bernie."

Apart from the fact that acknowledgedly the appellant Bush appeared to be under the influence of drugs when he spoke to them and that Parchment did not feel threatened, the killing to which he is said to have confessed was quite different. It was a cold-blooded killing for pay. The confession as related by Ivon Clint Ebanks indicated that appellant Bush would have received the gun and money on the very day of the killing. The statement to Parchment had been made the night before.

Now as regards the appellant Bush and the deceased Anglin having been in the bush for the purpose of smoking a spliff, the confession is not supported by any of the facts proved at the trial and indeed seems unlikely in the light of the facts proved. Unless some good

reason can be shown for discounting these matters, the mere admission of the killing by itself cannot be isolated to form the basis of the conviction.

In arriving at this decision we apply the approach defined by Viscount Simonds in Benmax v. Austin Motor Co. Ltd. After referring to the law which provides that all appeals to the Court of Appeal shall be by way of rehearing continued -

"This does not mean that an appellate court should lightly differ from the finding of a trial judge on a question of fact and I would say that it would be difficult for it to do so where the finding turns solely on the credibility of a witness. But I cannot help thinking that some confusion may have arisen from failure to distinguish between the finding of a specific fact and a finding of fact which is really an inference from facts specifically found, or, as it has sometimes been said between the perception and evaluation of facts."

While the witness giving evidence of the confession may well have been credible, there remained the need to evaluate the confessions and decide whether they were such as to lead to an irresistible conclusion that the appellant Bush was guilty. As has been indicated one was altogether too bare and the other was "exaggerated". In area in which it could have been supported by independent facts it either lacked such support or was not consistent with the evidence led.

On that ground the appeal of the appellant Bush succeeds.

Mr. Harrison advanced another argument based on the fact that a witness for the prosecution, Andrea McCoy, testified that the appellant Ebanks had told her that he had killed the deceased Anglin because Anglin knew who had killed his (the appellant Ebanks') father and would not disclose the name of the killer. Relying on Abbot (1955) 39 Cr. App. R. 141 he submitted that there is evidence that one of two accused persons had committed an offence but it could not be established which of them had in fact been the perpetrator both persons should be acquitted. The proposition is indisputable but has no application to the circumstances of the case. As has been

indicated above the issue is the sufficiency of the evidence to establish the offence charged.

The case against the appellant Ebanks rested entirely on reported confessions. There was no independent evidence establishing that he had accompanied the deceased Anglin and the appellant Bush to the bush at the back of the Ebanks' house.

There were three confessions and a statement to Inspector Mark. The trial judge described the statement to Inspector Mark as "inherently improbable". This is an accurate evaluation.

Two of the confessions were to his sister Andrea Yvette McCoy. On the first occasion in 1988 the appellant Ebanks told her that he and another person had agreed to beat the deceased Anglin because he was a "scumbag". He and that person had taken deceased Anglin to the bush, where exactly was not mentioned - to beat him. The appellant Ebanks had wandered off to get something to beat him with. When he got back he saw the deceased Anglin on the ground frothing. The other person had broken deceased Anglin's neck but he was not yet dead. The other person had then put the deceased Anglin's head on a rock and crushed his head with another rock. They had then done away with the body. They had thrown it in the sea.

In 1990, on the second occasion the appellant Ebanks had told her that he had killed the deceased Anglin. Mrs. McCoy had asked why and the reply had been that the deceased Anglin knew who had killed the appellant Ebanks' father and would not tell him who it was, so he killed him. There was no indication as to how the killing had taken place or where.

The third confession was to another sister, Paula Nolela Ebanks. She had gone to visit the appellant Ebanks in prison. He said he had been having bad dreams and was seeing things. He and another person had killed the deceased Anglin. Both of them had gone behind the Ebanks' house and the other person had sent him for something. When

he returned he saw the deceased Anglin frothing from the mouth. He asked the other person what had happened and the other person replied that he had broken his neck but he was not dead. Thereupon the other person had picked up a big rock and dropped it across the deceased Anglin's head. He and the other person had disposed of the body by throwing it in the sea.

Accepting the credibility of the witnesses as the trial judge did there would seem, to be no objective reason for discarding the confession to being the actual killer and accepting that of helping to dispose of the body. One of the two must be false. The trial judge failed adequately to evaluate the implications of the appellant Ebanks' confession to having actually killed the deceased Anglin.

Mr. Lamontagne submission is correct that in the circumstances of this case the appeal of the appellant Ebanks must be allowed if the appeal of the appellant Bush was allowed.

Accordingly the appeals of both appellants are allowed.