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IN THE GRAND COURT OF THE CAYMAN ISLANDS (Criminal)
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. MR. JUSTICE HULL
INDICTMENT NO: 42/86

REGINA V. EUGENIE GORDON

Mr. Smellie and **Miss Russell** for the Crown.
Mr. Collins for the defendant.

JUDGMENT

Eugenie Gordon is alleged to have murdered Mr. Erskine Connolly at East End between 29th and 30th November 1985.

On the day when the case came on for trial, she elected under section 12A of the Criminal Procedure Code to be tried by a judge alone.

Ordinarily on this charge, which in the event of a conviction for murder carries a mandatory sentence of death, she would have been tried by a judge and 12 jurors. A conviction for murder would not be possible except by the unanimous verdict of those 12 jurors, representing a cross-section of the Cayman community and exercising their collective good judgment.

Because of her election, I am required to try the case alone, combining the functions of judge and jury, in accordance with the procedure laid down for the trial of summary charges, ie. criminal charges of a lesser nature.

It is now clear from the evidence that on the night of 29th November in 1985, the defendant stabbed Connolly several times with a knife, thereby killing him. She then hid his body and returned some days later to her home in Jamaica. She was subsequently brought back here for trial.

There are other matters which are not in dispute in this case. In summarising these facts, I want to say that in a criminal trial the Court is concerned to decide whether the Crown has proved beyond reasonable doubt that an offence has been committed by the defendant. The benefit of any reasonable doubt must be given to the defendant. Erskine Connolly is not here to speak for himself, of course, and it should be understood that the

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finding in the context of this trial is one in relation to the defendant, in accordance with the standard of proof I have described.

The defendant who is 26 year old came to the Cayman Islands from Jamaica in October 1985. She came here to look for a job. About three weeks before his death, she was introduced to Connolly who offered her a job as his housekeeper.

He lived at East End, on his uncle's land, in a small two-roomed building very close to his uncle's house. The building did not have its own washing or cooking facilities. The two rooms were separated by a doorway covered by a hanging curtain. There was a bed in each room.

The Crown does not seek to dispute that Connolly, who was in his seventies, was a man who drank heavily, that he had had a succession of housekeepers from Jamaica, who had only stayed with him for short periods, and that whether or not he also wanted a housekeeper, one of his motives in engaging such women, and the defendant in particular, was to obtain a sexual companion.

Mr. Collins relied on the evidence from the defendant herself, and from certain prosecution witnesses, ie. a Mrs. Dawes, and Mr. Connolly, the deceased man's uncle, as showing respectively that Erskine Connolly had agreed to pay the defendant CI$50 per week as a housekeeper, that on two occasions before 29th November, he had made sexual advances to the defendant who rejected them, that he had previously made sexual advances to Miss Dawes, and that he was a man who displayed aggressive tendencies on occasion.

The defendant also said in evidence that she did not have a work permit, that when she took the job, Connolly took her passport saying that he would arrange an extension of her entry permit and a work permit, that he did not do so, and that he only paid her $34 out of the $150 due to her.

Some of this evidence, as already indicated, came from witnesses called for the Crown, and as I understood Mr. Smellie he did not seek to disprove that the other matters I have referred to, coming from the defendant herself, were at least reasonable possibilities.

My own findings are that for the purposes of this trial, I should proceed on the basis that they are true.

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On a charge of murder the Crown is not obliged to establish a motive on the part of the defendant. It often does so, because a proven motive may go towards making out its case. In this case, the Crown has not established a motive. Mr. Smellie, properly in my view, has said that he does not allege a motive of robbery on the evidence. He also acknowledges that on the evidence it falls to the Crown to negative the possibilities of self defence and provocation as answers to the charge, although he does not concede that either is a reasonable possibility.

The Crown's case as to how Connolly came to be stabbed to death depends principally on the evidence of Dr. March, a pathologist, admissions made by the defendant to Crown witnesses, and the evidence of the defendant herself.

Dr. March, who is an experienced pathologist, conducted a post mortem in December 1985, after the body had been discovered.

He testified that on examination he observed twelve stab wounds of the anterior chest wall (ie. about the chest). They formed a circle lopsided on the right side, though some of the wounds were within the circle. Their widths varied from 1/3" to 1". The body, which had been discovered on 6th December 1985, had began to decompose and had dried out, so his estimate in the following respect was therefore a very rough one but he thought the width of the wounds would be roughly the width of the widest part of the stabbing instrument to penetrate.

He said that because the internal organs had shrivelled, it was very difficult to measure the depths of the wounds. He could not give an accurate assessment because of the changes that had taken place in the tissues. They appeared to have been delivered from above, downwards, and most of them from the right side.

He also said that some of the wounds penetrated the lungs and the heart, and that the lowest one had penetrated the liver.

The cause of death in his opinion was haemorrhaging from stab wounds to the chest and in particular those to the lungs and the heart.

He was, as I understood him, saying that there was one wound to the heart. In his opinion, most of the heavy bleeding would have resulted from this wound and he would have expected the recipient to be dead within three and a half to four minutes. Later in re-examination he revised this to an estimate of three to five minutes.

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Dr. March also described an injury observed by him to the suture line between the the bone plates in the frontal-temporal region of the skull, internally.

He expressed his opinion that Connolly had been knocked out by this injury before the stab wounds had been inflicted on him. He based this opinion on three factors, which I took to be interrelating.

The first was that the suture line had been somewhat separated by the head injury, that the interlocking bone showed signs of fracture and that he observed bleeding in that area of the suture line.

Secondly, although the body was infested with maggots and some of the tissue on the stab wounds had subsequently been destroyed, from the clear nature and regularity of those stab wounds, and their locations on the chest, he did not think Connolly had been resisting, or at least not resisting vigorously, when he was being stabbed.

Finally, there were no defensive wounds, ie. the kind of wounds that a person might suffer to his limbs when resisting a stabbing attack.

The kind of force necessary to produce the head injury, in Dr. March's opinion, would be likely to concuss Connolly and to cause him to lose consciousness within a few seconds, and the combination of the factors I have mentioned led the pathologist to the opinion that he had been unconscious when stabbed.

The defence in turn called a pathologist, Dr. Fatteh, from Miami, who testified that he was also a practitioner of substantial experience in the field.

Dr. Fatteh's opinion was based on his observation of the photographs relating to the post mortem, the facts as given to him (including Dr. March's description of the body and the defendant's account of what happened), the inferences Dr. Fatteh drew from them and his own knowledge and experience of the kinds of injury in question.

To the extent that Dr. Fatteh's description of the wounds depends on his own perception of them from the photographs, where it differs from that of Dr. March and Dr. March has himself testified ~~on~~ that in describing the appearance of these injuries, he is describing what he actually observed when undertaking his post-mortem examination, I accept the evidence of Dr. March instead of that of Dr. Fatteh.

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However, as the trial progressed, the Crown withdrew from its contention that Connolly was unconscious when he was stabbed. Dr. Fatteh had said that the head injury could have occurred after death, for reasons he gave. Mr. Smellie did not concede that it was a post mortem injury and he did not concede that/the nature of the stab wounds and the lack of defensive wounds did not indicate that Connolly was not resisting when he was stabbed. The basis on which he abandoned his position that the head injury had occurred before the stabbing was that on the evidence, given the possible time limits within which the stab wound to the heart/could have led to death, there was at least a reasonable possibility that the head injury had come later. Dr. March had said that he had observed blood in the suture, indicating that the heart was still pumping when the head was injured, but this was not necessarily inconsistent with a prior stab wound.

Dr. Fatteh also testified that in his opinion, because of the way in which the defendant described how she came to inflict the stab wounds on Connolly, he would not have had any defensive wounds on him, and that in his experience and that of many other pathologists, defensive injuries occurred in fewer than fifty percent of stabbing cases.

In relation to the stab wounds, he identified some, from the photographs, that were or appeared to him to be round, irregular, and not of a clean cut nature.

He said that from the photograph shown to him (Exhibit 5(2)) he was not able to express a view as to the depths of the wounds and he was not able to say if they had entered the pleural cavities.

They appeared to him to be superficial although he then qualified this statement by saying that he could not make an opinion but they appeared to him to be likely to be superficial.

Shown Exhibit 3, a photograph of the exposed sternum, he said that it appeared from this that there was only one stab wound that had gone through it.

He said that the wounds inflicted would nevertheless cause pain producing a flow of adrenalin which would make the recipient react strongly and defensively.

I find as facts that one of the stab wounds penetrated Connolly's heart, at least one other one penetrated the pleural cavities, and that one penetrated the liver. From Dr. March's own evidence, I also find

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however, that at least some of the other stab wounds were superficial, because of the small width of the entry point and also because of his evidence as to the difficulties in identifying the depths of penetration. Although for the reasons given, I prefer Dr. March's evidence to Dr. Fatteh's in this respect, and accept the former's evidence that he observed penetration of the organs (including the lungs) that I have specifically described, I consider that the proper way to look at the evidence in this respect is to find first that the defendant inflicted three wounds that penetrated the heart, lungs and liver and secondly that none of the other stab wounds were more than superficial.

So far as the medical evidence itself goes, I also find that the injuries described are not proved to be inconsistent with Connolly's being conscious and resisting while they were being inflicted.

The defendant's own account of the incident was that Connolly had been out that evening and that when he came home, she was in her bed. He went into his room, took off his clothes, and then came back and told her she must come into his room. She didn't agree and an argument developed. He kicked and "boxed" her and took up a machette and came after her with it. She ran into his room, dodged him there and then came back to the front room where she picked up a knife and stabbed him in the chest. She went on to say in her evidence in chief "He did have the cutlass in his hand. I don't know whether the cutlass dropped here or there after I stabbed him."

She said that she still had the knife in her hand and that he was struggling after she stabbed him and that they went on to the bed struggling together. When he fell on the bed he started calling out for his brother. She put her left hand over his mouth. He bit her left thumb and put his other hand around her neck. She didn't have a chance at that time to get away and she said "I kept jukking him with the knife", indicating a motion at an angle into his chest from his left side.

She said that while she was stabbing him, she was trying to make him let go of her neck and she thought to herself he was going to kill her, because she didn't know what he was going to do.

She then said "In succession I kept jukking him and I felt his hand release from around my neck. I observed blood on him and blood on me."

She realised something had happened to him and got off, starting to cry. She said she then started "to read the Psalms" and that she then wrapped him in the sheets and carried him out to the place where she hid his body.

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Her evidence was that as she carried him out the door, she dropped his body and he fell on to the ground, which is stony there.

She then cleaned up inside the building. The next day she left for George Town and the following week she returned to Jamaica.

Whether or not the cutlass was brandished by Connolly obviously has a bearing on this case.

Mr. Smellie's case was that it was not.

On 30th November, before she went to George Town, the defendant had spoken to Mrs. Dawes. According to that witness, what she said was "Carmen come here, I have something to tell you" and then "Me and Mr. Erskine had a fight last night and he boxed me and I hit him in the head" (The defendant denied that she said she hit him in the head).

On returning to Jamaica, the defendant had told two friends, Misses Penny Cooke and Wright, that she had killed Connolly. Miss Wright said that she had told her he had made an indecent proposition to her, she had refused, he had boxed her, she had then pushed him, he fell down, she flung a knife at him, it hit him in his stomach, and then they had fought on the bed.

She also gave a fairly similar account to Miss Penny Cooke.

Mr. Smellie submitted that the purpose of all of these accounts was clearly to exculpate herself. To none of these witnesses had she mentioned being attacked with a machette. The obvious inference was that she hadn't been. Moreover she had been careful in tidying up the building and her explanation for not being able to account for it was not credible. The building had been searched on 6th December but no machette had then been found.

Furthermore, Mr. Smellie argued that the fact that she had taken various steps to conceal the incident went to show that whether or not she had been provoked into stabbing Connolly, she herself clearly did not believe she was innocent of any wrongdoing. He was saying that her subsequent actions show that she did not believe she was an innocent person acting in self defence.

On the issue of possible provocation, the Crown in effect left this to the Court but Mr. Smellie did submit that by her own account she was aware when she took up the job that Connolly might have sexual intentions, and she nevertheless chose to go there. He also invited me to find from

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her conduct after the incident that she is a person clearly capable of calculation and self-control and that it is apparent (in his words) that "she is not a fool".

There is no doubt in this case that the defendant fatally stabbed Connolly. I am satisfied beyond reasonable doubt, but subject to the consideration of the issues of self defence and provocation, that she inflicted the stab wounds intentionally and that the irresistible inference to be drawn from the evidence is that in so stabbing him she intended at least to cause him grievous bodily harm and also that she knew that she would probably kill him or cause him grievous bodily harm but was at the least indifferent as to whether she would do so.

There is evidence that raises the issue of self-defence for consideration. The Crown must therefore negative the reasonable possibility of self-defence.

Mr. Collins, percipiently in my view, warns me of the dangers in this case of inclining towards the middle ground of provocation. I acknowledge that the first question I must ask myself is whether I am satisfied beyond all reasonable doubt that this could not have been self-defence. If there is any reasonable possibility that it was self defence, the defendant is entitled to an absolute acquittal.

Mr. Collins submits that this defence should succeed whether or not Connolly threatened the defendant with a machette, but a fortiori of course if I think it is reasonably possible that he did. In relying on this defence, he refers to all the circumstances, including the defendant's circumstances, and Connolly's known disposition and propensities.

This question, as well as the issue of provocation, are ones which in my view - I may say in my very strong view - matters which are, and to adopt the expression that is sometimes used, eminently suitable for trial by a jury, and even more so by a jury of twelve. I do not wish to be taken as reflecting on my own powers of judgment or readiness to reach a decision when I say that a jury, with the ~~breath~~ breadth of its collective experience, common sense, appreciation of human nature and judgment, is better equipped than a single judge, even a professional judge, to decide, especially in a matter of this nature.

Having said that, I reject the defence of self defence. The defendant is a woman but she is 26 and strongly built. The evidence is that Connolly was a small, lightly built man in his seventies. Despite Mr. Smellie's

careful analysis, I am not satisfied beyond reasonable doubt that he did not threaten the defendant with a machette. He had a machette. He had waved it at Mrs. Dawes on a previous occasion. The Crown has not negated the possibility to my mind that it was retrieved from the room.

But I do not believe that the defendant thought she was in danger of bodily injury from Connolly.

Mrs. Dawes had obviously not taken the old man's earlier threat at herself seriously and she is a slighter and older woman than the defendant.

I believe the defendant's account that Connolly started the fight and I think it is reasonably possible that he had and gestured with his cutlass but in fact she was quickly able by her own account to disarm him. After that, she persisted in her attack to an extent that in my view cannot be explained away as a failure in the stress of the moment to judge to a nicety the exact measure of her defensive action. It was clearly a very fierce attack, in itself going well beyond the boundaries of any legitimate self-defence but in my judgment, in taking the knife to Connolly the defendant was in any case acting in anger, but not out of self-preservation.

In reaching this finding, I do not rely on the Crown's submission that her subsequent conduct is inconsistent with innocence. My own assessment is that while on the one hand, she did not believe that Connolly was a threat to her, on the other it is at least a reasonable possibility that after the event, in order to protect herself as she saw best, she would have tried to hide what had happened until she got home.

There is also in this case evidence which raises the issue of provocation for determination as a matter of fact.

The defendant appears to me to be a person of average intelligence, at the lower end of that category however. Bearing in mind the situation in which she finds herself, she did not strike me in the witness box as a patently obvious liar nor as an obviously calculating and callous person. The manner in which she stabbed Connolly does show however that when aroused, she was, on this occasion at least, capable of violent action.

She had come from Jamaica looking for work to another country, leaving two children behind her. Clearly she was of no means financially. The fact that she may have realised that Connolly was looking for more

than a housekeeper does not mean that she was willing to become his sexual partner. She needed a job.

As I say I accept for the purposes of this trial that once there, Connolly had her passport but did not get the necessary permits, that he drank heavily and had a propensity to become abusive when he did so, that he did make sexual advances to her, and that he did not pay her her agreed wages.

It is clear that she was in a vulnerable position in another country. I think that must have caused her frustration, resentment and anger.

Observing her giving evidence, I tend to believe that the truth of this matter was probably not very far removed at all from her own account, that Connolly did tell her to come to his room and become abusive when she refused, and that because of her pent-up feelings the situation then became explosive. It is significant that the fight took place in her bedroom, and ended on her bed.

Trying to put myself in her position, as best I can, I think that it is reasonably possible in all the circumstances that she lost her self-control, ie. that she was provoked.

I therefore find her not guilty of murder but guilty of manslaughter and enter a conviction accordingly.

I will hear counsel in mitigation.

D. Hull

David Hull
Puisne Judge

29 June 1987.