IN THE COURT OF APPEAL OF BELIZE, A.D. 2009

CRIMINAL APPEAL NO. 8 of 2008

BETWEEN:

STEVEN MANZANERO	**Appellant**
AND	
THE QUEEN	**Respondent**

BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

Hubert Elrington and Ms. Alifa Elrington for the appellant.
Ms. Cheryl-Lynn Branker-Taitt, Director of Public Prosecution (Ag.) for the respondent.

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4 June, 30 October 2009.

MOTTLEY P

[1] At the conclusion of the hearing of this appeal, we allowed the appeal, quashed the conviction, set aside the sentence and ordered a new trial. At that time, we promised our reasons for so doing. We now deliver those reasons. In as much as we ordered a new trial, we do not propose to deal with the facts except in so far as they are relevant for this judgment.

[2] The appellant was charged with the murder of Levy Quewell which occurred on 27 March 2005. Following a trial before Lord J and a jury, he was acquitted of murder and convicted of manslaughter and sentenced to 15 years imprisonment.

[3] While other grounds were argued, this judgment relates to ground 2 only which dealt with the causation of death. In so doing, we mean no disrespect to counsel. The issue in the appeal relates to the causation of death. Counsel for the appellant submitted that the appellant had raised the issue of supervening cause or break in the chain of causation of death. He further submitted that in the circumstances the judge ought to have directed the jury properly on causation of death, His failure to do so counsel argued, made the trial unfair.

[4] In his evidence-in-chief, Dr. Mario Estradabran, who conducted the post mortem examination of the deceased, stated:

> "Arriving to an opinion that the direct cause of death was neurogenic shock due to multiple organ failure due to acute peritonitis as a direct consequence of stab wound to the abdomen, meaning the stab wound penetrates the abdomen which is internally invested by a membrane anatomically known as peritoneum. The injury passing through the peritoneum which is highly sensitive to pain is called peritonitis. This peritonitis caused suffering of the multiple organs, consequently the organ failed. Then the organ failure produces a compromise of the vital organs basically lungs, heart, brain, medically known as neurogenic shock."

[5] The doctor had earlier said that he found that there was a supra infra pubic laparoscopy indicating that a surgical procedure had been performed on the deceased. This surgical procedure was to explore the abdomen and pelvic areas in relation to a 2 cm external stab wound on the left upper part of the

abdomen. He indicated that the wound punctured the small intestine and made a superficial injury to the surface of the spleen. To cause this injury, the stab wound would have had to pass in and out the intestine. Externally, the doctor found a single stab wound which was four inches deep and caused injury to the "12 costal cartilage" and loops of the small intestine and which made an impression on the spleen area. He explained that the peritonitis could arise from seepage from the gut into the body cavity as a result of the internal injury. However, this can be remedied by medical and surgical intervention which would result in the recovery of an injured person. In response to a question as to what extent did the surgical intervention assist the deceased, the doctor replied that in this case such intervention did not help.

[6] In cross examination, Dr. Estradabran agreed with the suggestion that the injury sustained by the deceased was not such that would normally result in death. He stated that neurogenic shock meant "in layman terms" that the nerves were screaming out in pain and that the deceased died from unbearable pain. The doctor ought to have looked to see what caused the pain. He accepted that, if the intestinal fluid or feces had leaked from the intestine into the peritoneum cavity, it would cause massive infection in the abdomen, i.e. peritonitis. The doctor rejected the suggestion that the 1 cm cut in the intestine could have been made by the doctor during the surgical intervention. He reiterated that it was the knife which passed through the intestine, (in and out) and which made the impression on the spleen.

[7] Counsel for the appellant in cross-examination concentrated his attack on the conduct of the laparotomy performed by the doctor. The relevant portion of the cross examination is set out in detail:

Q. Did you find any sewing on the gut?

A. No.

Q. The cut wound was opened?

A. That's correct.

Q. And therefore filth and fluids were coming out of that?

A. Yes, I agree.

Q. The doctor should have sewed up the cut on the gut, wash out the abdomen, disinfected it and to make sure that everything is alright, he should have taken the gut and squeeze it so that nothing was coming out?

A. Yes, that is correct.

Q. Did the doctor attend to him prior to death do any of that?

A. No.

Q. And a result the man died from terrible pain, brutal pain?

A. Yes.

Q. Because when you have a case like a stab wound every hour you get the temperature of the person and the temperature begins to rise that tells you something so you know what something is wrong and you have to go back in, isn't that so?

A. It is so.

Q. The doctor took no steps to go back in and help the patient before he died, isn't that so?

A. Yes.

[8] At this stage, Crown counsel intervened and objected to the question concerning negligence being asked. Mr. Elrington appeared to agree with the objection taken by crown counsel. Nonetheless, he was able to obtain from the doctor the concession that if the doctor who performed the laparotomy was a

student doing an examination the doctor would not have passed. This answer, in view of the Court, suggested that Dr. Estradabran was implying that the operation was not performed in a competent manner with the skill associated with a doctor who was qualified.

[9] In his summing-up to the jury, the judge read out the evidence-in-chief from his note book. It is significant that, at that stage, the judge did not deal with the evidence given by Dr. Estradabran on cross-examination. Neither did he at that stage, deal with the issue of causation of death other than to remind the jury what the doctor said in evidence-in-chief.

[10] Later in his summing up, the judge returned to the matter. The judge told the jury:

> "Now members of the jury I will now go into something that was raise (sic) yesterday, causation and there are certain specific provisions in the Criminal Code of our laws which deals with causation and you notice I go into all the different elements and things so that you may understand specifically what we are speaking of, in the Criminal Code it says "death shall be held to have been caused by harm, if the death be caused by medical or surgical treatment etc.. and I will go into the whole thing for you "death shall be held (sic) have been caused by harm, if death be cause (sic) by medical or surgical treatment of the harm" you're harm and the medical and surgical treatment you still die, "death shall be held to have been caused by the harm, unless such treatment by itself amounts to murder or manslaughter" so the treatment has to be so extraneous that it breaks the first cause and then the person dies and that's the person who caused it could be charged for murder or manslaughter, a man is stabbed in his chest and somebody comes and shoots him in his head, he dies from this one the first stab wound would not count because of what occurred

and that is just an example am giving you. It says also death of a person shall be held to have been caused by harm if by reason of the harm death has happened otherwise or sooner by however short a time than it probably would have happened but for the harm, that means you die shortly, sooner or later and it would not have happened if the harm would not have been involved and you die from it, death shall be held to have been from the harm, the cause would have been the same causation. You remember Dr. Mario Estradabran gave his evidence, you remember certain questions were put to him, remember the answers that he gave to counsel, you have to look at those answers, you have to decide what he said and you have to understand that he said in his evidence and what he answered to, the answers he gave to counsel but his final word was that and I read it to you several times death was due to neurogenic shock due to organ failure due to peritonitis due to a stab wound inflicted to the abdomen, I leave it to you to decide. The fact whether you accept the prosecutions evidence on the causation example Levy Quewell was stabbed by Steven Manzanero at about 9:00 p.m. Saturday the 26th March, 2005 at the fair. Levy Quewell died about midday on the 27th March 2005 at the San Ignacio Medical Hospital or Belmopan we are not sure which one while he was undergoing treatment for the knife wound he received. Dr. Mario Estradabran's conclusion his answers to questions from the defence counsel and the complete cross examination, defence counsel asked him certain questions he answered them bear that in mind, bear in mind what I have just told you what our law says to causation and that is what we call causation, cause continues and it is causation if you accept on that he died as a result of the stab wound and I gave doctor's answer on that and I leave it for you to decide if you'll accept it or you'll accept that the original cause the stab wound to the abdomen when the

doctor treated him was broken. The doctor treated him for the original injury, defence is saying the original injury was not treated properly, the prosecution is saying the original treatment whether it worked or not, the cause was the stab wound which caused the treatment to be there, which caused the dead. I leave it to you to decide, I hope I've explained it so that you now understand it."

[11] Later the judge told the jury:

"Now members of the jury, the case and evidence as a whole is what you are required to make a decision on, I ask you to remember the submissions of the defence counsel, especially on causation which I explained to you a few minutes ago, they raised the facts that the doctor was so negligent his actions caused the death of the deceased. You heard the reply by counsel for the crown that the cause was the wound originally caused by the defendant, I leave both to you to decide whom you will believe, however, in leaving this to you I ask you to recall the evidence and explanation as I explained to you under the Laws of Belize on causation. Having done that if you decide one way or the other then as judges of the facts it is your decision for you to make having drawn the inferences from the facts of the case before you."

[1w] At the invitation of the judge, crown counsel requested the judge to again direct the jury on the issue of causation in the light of the provisions of section 124(d) of the Criminal Code, Cap. 101 (the Code). The judge in so doing told the jury inter alia:

"And I go finally to the last one (d) death shall be held to have been caused by harm if the death be caused by medical or surgical treatment of the harm, unless and that unless is what breaks it the treatment itself amount to murder or manslaughter, so if the doctor was negligent to that extent that it would it have amounted to

murder or manslaughter, was he negligent but still the harm was the first thing which cause the person to seek his treatment to stop the harm but nevertheless despite the treatment he still died, but if the treatment is such that it leads over to such an extent that that person would have caused murder or manslaughter then it would have broken the harm, but if he did not despite and if it is despite the treatment the harm is still there …"

[13] Section 124 of the Code contains special provisions relating to the causing of death. It provides inter alia:-

"The general provisions of Title 11 with respect to causing an event are in their application with respect to the causing of death by harm subject to the following explanations and modifications, namely:

(a) ……..

(b) ……..

(c) ……..

(d) Death shall be held to have been caused by harm if death be caused by the medical or surgical treatment of the harm, unless such treatment itself amounts to murder or manslaughter."

[14] In **Bill Hughes v The Queen** Criminal Appeal No. 26 of 2001, this Court referred to the judgment of Beldam LJ in David Williams Cheshire (1991) 93 Cr. App. R. 251, in particular where the Lord Justice said:

"In a case in which the jury have to consider whether negligence in the treatment of injuries inflicted by the accused was the cause of death we think it is sufficient for the judge to tell the jury that they must be satisfied that the Crown have proved that the acts of the accused caused the death of the deceased adding that the accused's acts need not be the sole cause or even the main cause

> of death it being sufficient that the acts contributed significantly to that result. Even though negligence in the treatment of the victim was the immediate cause of his death, the jury should not regard it as excluding the responsibility of the accused unless the negligent treatment was so independent of his acts, and in itself so potent in causing death, that they regard the contribution made by his acts as insignificant."

This is the position as set out at common law. However in Belize the position is covered by section 124 of the Code. This Court went on to refer to the relevant provision.

[15] In paragraph 21 of its judgment this Court concluded:

> "Section 124(d) clearly states that death shall be held to have been caused by the injury if the death is caused by the medical or surgical treatment of the injury unless the treatment itself amounted to murder or manslaughter. This provision may be compared to what was said by Goff, L.J. (as he then was) in Pagett's case that "the intervention of a third person may be regarded as the sole cause of the victim's death thereby relieving the accused of criminal responsibilities." Negligence would have been relevant if the treatment had been so grossly negligence as to amount to manslaughter."

[16] The requirement of section 124(d) of the Code is to be compared with the requirements at common law as indicated in **Smith** (1959) Cr. App R 121, **Jordan** (1956) 40 Cr. App R 152 and **David William Cheshire** (1991) 93 Cr. App. R. 251. These cases show that:

> "….though negligence in treatment of the victim was the immediate cause of his death, the jury should not regard it as excluding the responsibility of the accused unless the negligent treatment was so

independent of his acts, and in itself so potent in causing death, that they regard the contribution made by his acts as insignificant."

[17] Under section 124(d) it is provided that, if the death is caused by the medical or surgical treatment which the victim undergoes as a result of the harm sustained, then the death is taken to have been caused by the harm. However, if the medical or surgical treatment is such as it would amount to murder or manslaughter, then the death cannot be said to have resulted from harm.

[18] The judge told the jury that Dr. Estradabran gave evidence and that they should remember that certain questions were put to him and they should remember the answers. He told them that they had to decide and understand what he said. This is unacceptable. It was an abdication by the judge of his responsibility. It was his duty to remind the jury of what the doctor said in evidence, particularly when he was being cross-examined. As stated earlier, at no stage did the judge do this. It was not enough to tell the jury that he was leaving it to them to decide. In order for them to do this, the judge should have reminded the jury of what the doctor actually said in cross-examination.

[19] Once the issue of negligence was raised, it was the duty of the judge to have informed the jury what was meant by negligence in these circumstances. He was also required to tell the jury what was the degree of negligence required in order to establish manslaughter. The judge should have further informed the jury that it was for them to decide whether the surgical intervention after the deceased was stabbed gave rise to negligent conduct on the part of the doctor who performed the surgery. Further, that if they determined that the operation was negligently performed that it was for them to decide whether the degree of negligence was such that, having regard to his directions, the conduct of the operation could give rise to a charge of manslaughter. He should have gone on to tell them that if they came to this conclusion or if they were not sure that it gave rise to manslaughter, they had to find the defendant not guilty.

[20] In order to do this, the judge was required to go through the evidence by Dr. Estradabran, pointing out to the jury such evidence which was capable of amounting to negligence. The failure of the judge to so direct the jury was a serious non-direction which in the context of this case amounted to a grave misdirection.

[21] This was an issue for the jury to decide. By not leaving this issue to the jury for their consideration the appellant was denied an opportunity of the jury returning a verdict of not guilty of manslaughter. In the opinion of the court, it cannot be said that the trial was fair.

MOTTLEY P

SOSA JA

MORRISON JA