Case No: 97/0393/X2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Date: Thursday 22nd October 1998

B E F O R E :

THE VICE PRESIDENT OF THE CRIMINAL DIVISION
(LORD JUSTICE ROSE)

MR JUSTICE SCOTT BAKER

and

MR JUSTICE HUGHES

- - - - - - - - - - - -

R E G I N A

- v -

RUSSELL CAUSLEY

- - - - - - - - - - - -

Computer Aided Transcript of the Stenograph Notes of
Smith Bernal Reporting Limited
180 Fleet Street, London EC4A 2HG
Tel No: 0171 421 4040 Fax No: 0171 831 8838
(Official Shorthand Writers to the Court)

- - - - - - - - - - - -

MR J GOLDBERG QC and MR W McCORMICK appeared on behalf of the Appellant
MR A DONNE QC appeared on behalf of the Crown

- - - - - - - - - - - -

JUDGMENT (As Approved by the Court)

THE VICE PRESIDENT: On 18th December 1996 at Winchester Crown Court this appellant was convicted of murder and sentenced to life imprisonment. Following refusal of leave to appeal against conviction by the single judge, he was granted leave by a differently constituted division of this court.

The victim was the appellant's wife. The appellant was alleged to have killed her in June 1985. The body was never discovered. There had been matrimonial problems including the fact that the appellant had brought his mistress to live in the matrimonial home. The appellant's wife was never seen, or heard from, by anyone after June 1985. The evidence against the appellant fell into three categories. First, the fact that she had, as it was said "disappeared from the face of the earth" and no relation, friend, acquaintance, solicitor or employer ever heard from her after June 1985. Secondly, there was evidence that the appellant had told lies and inconsistent stories to different witnesses during the years which followed as to where his wife was and as to whether she was alive and living abroad or elsewhere. Thirdly, there were admissions said to have been made on three separate occasions to fellow prisoners in jail while the appellant had been in jail in 1994, 1995 and 1996. There was no suggestion in this case of any contact or connection between the three persons to whom it was said some sort of confession had been made. Those three categories of evidence in some respects overlapped and to the detail of the evidence we shall in a moment come.

The appellant was born in April 1943 and so in 1985 he was 42. His wife, Carole, in June of 1985 was 40. They had a single child called Samantha born in October 1968. She had not apparently been a wanted child and she was placed with foster parents. She gave evidence for the prosecution. There was evidence that the appellant and his wife had been employed as draughtsmen in the aviation industry and that both were extremely competent in that respect. It was common ground during the trial that the appellant was a clever man. So far as his wife was concerned, she too was highly competent in areas other than draughtsmanship and there was evidence that she could readily have obtained employment in other fields of work.

The family came back to England from Canada in 1982. The appellant at that time went into an insurance brokerage partnership in Bournemouth. He met and formed a relationship with Patricia Causley, whose name in due course he took. She was known as "Trish".

In March 1984 the appellant and his wife bought in their joint names a house in Bournemouth. The marriage, as

we have indicated, was not happy and some time before June 1985 Trish moved into the matrimonial home where the wife and daughter of the appellant's marriage were still living.

Samantha, who was plainly wrong as to date, thought that her mother had gone missing between 11th and 15th June. On 14th June Carole saw both her doctor and her solicitor for advice - so far as the latter was concerned about divorce and the position if there were divorce in relation to the house. On 18th June the appellant wrote to his solicitor supplying the name of his wife's solicitor. A Mrs Steadman described seeing Carole some time between the 7th and 21st June. Carole told her that the appellant was having an affair with Trish. Mrs Steadman asked why she did not leave. She said she was out on a limb and had nowhere to go; her money was all tied up in the jointly owned house and she would sooner burn it down than let Trish have her share. The equity in the house was £40,000. Carole's share was £20,000.

At about the middle of June there was an occasion when Carole telephoned her parents but when they called back the appellant told them not to call again.

There was evidence from a man called Brendan Thornton about a call in June from Carole in which she had said that she was going abroad to work and "life begins at 40".

Samantha gave evidence about a day trip to London in June when, together with the appellant, they met Trish for lunch. When they returned home there was a note in the kitchen with her mother's wedding ring; the wardrobe doors were open; a recently bought red evening dress was lying torn on the floor. Her mother was missing but none of her clothing or jewellery, including her Rolex watch, had gone, nor had her suitcases. Indeed, nothing of a personal nature relating to her appeared to have gone from the house. Samantha was challenged in cross-examination about her convictions for dishonesty and drugs offences and the unsatisfactory nature of her lifestyle. She was also challenged as to whether things had gone missing.

In late June 1985, according to a Mr Driscoll, the appellant told him that Carole had left him, taking money, and had gone to Canada. In a letter dated 27th June the appellant wrote that there had been an argument with Carole on 16th June. He had said he was going to buy out her share of the house; she was not amused and had walked out soon after. He referred to the day trip to London as having been later that week.

On 7th August the appellant told a Mr Warne of Lloyds Bank that he had separated from Carole and she had gone to work abroad. On the very same day he went to Bournemouth Police Station, and on the evidence of a very senior police officer, uncontradicted as will emerge, he told the police that Carole had gone missing on 21st June - that is to say some six or seven weeks before. That date was of some importance, because it appeared in an advertisement in Flight International Magazine which sought information as to where Carole might be. According to the evidence, that advertisement was placed at the suggestion of the police. It was suggested in cross-examination, although there was no evidence to support that cross-examination, that the date of 21st June was a mistake due to faulty transcription or something of the sort and indeed that it was the appellant's idea to put an advertisement in that magazine. It was the prosecution's case that the 21st June date could only have come from the appellant. On 11th August 1985 the appellant told a Mr Phelan that Carole had gone off with a German to Germany. In January 1986 Mr and Mrs Phelan were told by the appellant that Carole was in Malta. Mrs Whittamore had a conversation with the appellant in the first week of September 1985. He told her that Carole had left home and gone to Switzerland. Later in 1985 the appellant's partner in the insurance broker business, Mr Green, was told over dinner by the appellant that he had last seen Carole when she went off with a chap in a Porsche. Basically, the picture was that, in the second half of 1985 and early 1986, the appellant was seeking to create the impression that his wife was alive and well. As to where she was, that he variously described as Canada, Israel, South Africa, Italy, France, Germany and Switzerland.

In late 1986 the appellant and Trish Causley went to Canada. To the appellant's knowledge she used his wife's name in order to obtain a work permit. That might be thought a surprising event if the appellant believed his wife was alive and might be living in Canada.

There was evidence from a Mr Camp that Carole's CV was impressive and that she had worked in a variety of industries not limited to aviation.

At Christmas 1987 Samantha spoke on the telephone to the appellant and told him she was thinking of looking for her mother. He said if she did he would never speak to her again. He told her he had received a letter from a solicitor saying her mother had gone into Bournemouth Police Station. He said that her mother had claimed that she did not want to have anything to do with them.

As we have said, the appellant and his girlfriend went to Canada in late 1986. In 1989 they returned to this country. The appellant told the Dorset Area Health Authority his wife had been abroad for five years.

It was admitted that, in July 1990 the former matrimonial home was transferred into the joint names of the appellant and Patricia Causley. The instructions came from the appellant, who falsely represented that his wife was living and working in west Germany. The signatures necessary for that transaction, purporting to be the wife's, were forged. For the purposes of the transaction Patricia Causley pretended that she was the appellant's wife Carole. Two insurance policies were surrendered by the use of purported signatures of Carole which were forged.

On 1st June 1994 the appellant secretly taped a conversation at his home in Kent with police officers. Subsequently that tape was seized by the police and transcribed. In the course of that conversation he said that Carole had telephoned him from Canada in 1987 and he had last heard from her in Germany in 1989 or 1990 - that was an occasion when he had had a telephone conversation and a letter from her which he had not kept. He claimed, in that interview, to have reached a financial settlement with her and paid her out in cash over 18 months. There was no evidence that he had ever paid such sums.

We come to the third category of evidence, that which the appellant was said to have said to three convicts, a man called Lamonde, a man called Murphy and a man called Briggs.

In early 1994 Lamonde was serving three years for a multiplicity of offences of obtaining property by deception. For some four to six weeks he shared a cell with the appellant. According to Lamonde the appellant told him how he had faked his death after jumping off a yacht but he had been arrested after going to meet Trish in a public house. That, we interpose, related to an insurance fraud in relation to which the appellant was then in custody. According to Lamonde the appellant said to him: "Thank God it was for fraud and not something else." He did not explain what he meant by 'something else' but according to Lamonde he came to understand that the appellant's ex-wife was dead; her death had not been natural and she had been taken to a cemetery by two people. Lamonde said that, having in April 1995 seen something in a newspaper, he decided to contact the police. He was cross-examined on the basis that he was giving evidence pursuant to a deal; he insisted he was telling the truth; he also said he had been beaten up for talking to police officers and he had gained nothing at all from his evidence.

By reason of what Lamonde told the police, the appellant was arrested in Dorchester Prison on 8th August 1995. He was interviewed the following day. He made no comment but he supplied a written statement in which he agreed that he had had cell conversations with Lamonde but he had never, he said, told Lamonde anything about two people taking his ex-wife to a cemetery, or indeed anything which might be construed as indicating responsibility on his part for her death.

In March 1995 at Southwark Crown Court the appellant pleaded guilty to fraud in relation to the matters which we have briefly outlined and he was sentenced to two years' imprisonment. In relation to those matters Patricia Causley received a suspended sentence.

The second man, Murphy, was in Ford Open Prison from March to May 1995 serving a sentence for driving while disqualified. He was a professional con man. He had very many convictions for dishonesty. According to him he had a number of conversations in Ford with the appellant. The appellant was serving his sentence for the insurance fraud in Ford Prison in April/May 1995. According to Murphy the appellant wanted to know what effect acid had on plastic and also asked about its effect on human bones. Murphy apparently had some City and Guilds qualification and he claimed some expertise in relation to these matters. He told the appellant, so he said, that he did not think acid would be strong enough to have any effect on human bones, to which the appellant's response was: "What I used was fucking strong enough to get rid of Carole." The appellant also told Murphy, so he said, that Carole "went peacefully", he had given her a shot of gas and put a plastic bag over her head. He claimed not to have left any clues and the police would not find anything and he could not be convicted without a body. Murphy described a number of matters about the insurance fraud which it appears could only have come from the appellant, namely the fact that Patricia was in Bermuda; that the house had been sold; and that his co-accused Hackett had been sentenced to three years. According to Murphy, the appellant said that he could trust Trish with his life; he had not left even any hairs from his wife. After he was released from Ford, Murphy said he wrote down a record of what the appellant had told him. He had in prison been in the habit of making notes and he had taken those home on his release. After learning of the appellant's arrest he had contacted the police and made statements using some of his notes but destroying them afterwards. He claimed, but police witnesses denied, that the police had seen some of these notes. According to Murphy, the

appellant, referring to 21st June, said that was "the day he got rid of his fucking bitch of a wife forever. It was the best day of his life. No one would find her and nobody could do anything to him. What he had done himself was better than Agatha Christie." The prosecution claimed that the date of 21st June could only have come to Murphy from the appellant.

Murphy was cross-examined to some effect. His cross-examination occupied some 75 pages of transcript. He was challenged on the basis that he was a storyteller and many inconsistencies in his evidence were drawn attention to. The appellant, when he was interviewed, denied knowing Murphy. The cross-examination conducted on his behalf was on the basis that he had had some contact with Murphy but it was limited and the conversations upon which the prosecution relied as to what had happened to the appellant's wife had, it was put in cross-examination, never taken place.

There was evidence from a Mr Boot, a former solicitor, who was also in Ford Prison at the same time. He said that he had seen the appellant and Murphy walking around the perimeter of the prison, but he went on in cross-examination to describe Murphy as a liar and that he had himself never heard the appellant speak of Carole.

There was evidence from a Mr Sheffield, who was also in Ford at the time, that he had spent many days in the appellant's company talking to him and playing games, but he never recalled seeing the appellant walking the perimeter with Murphy.

The third of the convicted persons was Briggs. The prosecution, by the end of the trial, disavowed any reliance on the truth of the confessions said to have been made to Briggs. In early 1996 the appellant was in Exeter Prison with Briggs, while on remand for murder. The approach which the prosecution invited the jury to take in relation to Briggs' evidence was that in what he said to Briggs the appellant was merely attempting a smoke screen in order to undermine what might otherwise be the damaging effect of what he was said to have said to Murphy. The appellant's case, as put in cross-examination, was that he had never spoken to Briggs at all. According to Briggs the appellant told him he was on remand for the murder of his wife, but he was blase about it and said he would walk free from court. There had been a row in the bedroom and a chair or stool had been thrown leaving a permanent mark on the wall and a bathroom window had been broken. Two men, one Irish, had made statements against him. He told Briggs and Briggs said that

he had gone to Scotland or Yorkshire to borrow a gun, his wife's body would never be found because it was down a mineshaft in Burleigh in the New Forest and he had killed her with a hatchet and chopped up the body, his motive being his affair with Trish. He had taken the body to the New Forest with a man called 'Archie'. The appellant had also told Briggs, so Briggs said, about getting insurance money and selling the house. He also described Archie's wife going to the police station pretending to be the appellant's wife. Briggs had very many convictions for dishonesty. He was severely damaged in cross-examination.

Neither the appellant nor his girlfriend gave evidence before the jury. In consequence the many admitted lies were unexplained and the evidence in relation to what he was said to have said, in particular to Murphy, went uncontradicted. There was called on behalf of the defence a distinguished Professor of Forensic Medicine, Professor Busuttil who said that it was not an easy task to dissolve a body in acid, indeed that was a fairly improbable way of getting rid of a body, but it could be disposed of over a period of time.

The written grounds of appeal fall into two categories. First, it is said that the judge was wrong to reject the submission made at the close of the prosecution case that there was no evidence fit for the jury to consider. Before this court today Mr Goldberg QC on behalf of the appellant, now and at trial, has not sought to pursue that ground.

The grounds he has advanced are critical of the summing-up in essentially five respects. Before itemising these it is first convenient to rehearse the material parts of the summing-up about which complaint is made. The principal passage is at 51E and is in these terms:

> "Mr Goldberg submits that the three so-called confessions cannot live in the same world. They are inconsistent between themselves, and as a matter of logic, even if made by the defendant - that is supposing the answer to the first question is yes - at least two to a very large extent must be untrue, as a matter of logic. And you may think that is certainly correct at least so far as the method of killing is concerned as between Murphy and Briggs, and as to disposal of the body as between all three.
>
> Mr Donne is entitled to point to what may be called the common denominator. The fact that each so-called confession if made includes admission to the killing either express or implied. But whether it would be right to pick and choose among the content of a particular confession is for you to say.
>
> Lamonde's evidence, if accepted, does not take you very far, and Mr Donne has expressly disavowed Briggs, or rather the truth of any confession made to Briggs. And it does seem, does it not, that Mr Donne has pinned the prosecution's colours to Murphy.
>
> Not one of those three is what could be termed an accomplice. There is evidence that Briggs may have had a motive for inventing a confession. There is no such evidence in the case of Murphy and Lamonde, though

suggestions have been made as to why they might. Lamonde it is suggested in the hope of favours unspecified in the future; Murphy as part of an ego trip.

However, they are each of them a man with convictions for dishonesty, and I warn you to exercise caution before acting on the unsupported evidence of any one of them. If it be the case that any one of them recounts matters which could only have come from the defendant then that would be some evidence capable of supporting what that witness says. Hence the importance which has been attached to '21st June 1985'.

Whether such a circumstance does or does not support the witness is entirely a matter for you. Remember what Mr Goldberg has told you and has put to various witnesses about the sort of gossip that goes on in a prison, about the opportunities there may have been for particularly Murphy, and also Briggs, to hear such gossip or get information from other sources, possibly from the police, possibly from the newspapers..."

At page 67G by reference to the evidence of Murphy the learned judge said this:

"He was asked about the reference to the fact that Trish had got no criminal record, which he had spoken of, whereas by that time of course she had. She had been, as I have told you, given a suspended sentence for her part in the insurance fraud. But that really goes, you may think, not so much to whether or not these things were said by the defendant to Murphy but whether what the defendant said to Murphy was true."

At page 76 the learned judge refers to the evidence of Murphy in relation to acid and said this:

"Although the coating on an ordinary domestic bath might be all right you have got the problem of the plughole. What would work, if you were not to dismember the body first, would be one of those little, I suppose if they are not plastic some other similar substance, which are used to make little paddling pools or ponds in gardens. There would be some which would withstand the effect of the acid. But all in all the suggestion is - and it is for you to consider - a fairly improbable way of getting rid of a body. Certainly not easy."

In that latter passage the learned judge was rehearsing the evidence which we have already referred of Professor

Busuttil. The learned judge went on in these terms:

"Of course that really goes not to the question of whether Murphy is telling the truth but whether or not, if the confession attributed to the defendant was made, whether it was a true confession. You follow the distinction, do you not? It could go to both but it is a matter... Again I am expressing an opinion, am I not, when I am suggesting what it goes to? You decide what it goes to, members of the jury."

At 80C, by reference to what Briggs said the appellant had said, the judge said this:

"He said he had got this top barrister to represent him, Mr Thwaites. Well there is a Mr Thwaites. Not a patch on Mr Goldberg. But he was told, so he said, inaccurately as some of us know, that Mr Thwaites had represented the Maxwells.

This does not go, of course, that particular piece, as to whether or not Briggs is telling the truth it goes to the accuracy of what he was being told, does it not, chiefly, but again for you to say."

The criticisms which Mr Goldberg advances are these. First, the learned judge in part of the passage which we have read at 52C when saying: "I warn you to exercise caution" did not give as strong a warning as he should have done as to the dangers of the evidence from the three witnesses from prison and indeed he should have specifically warned the jury not to pick and choose among the content of the evidence of those witnesses. Secondly, in elaboration of that submission, the warning to exercise caution was not sufficient because the jury should have been warned of something which judges know but they might not that confessions to convicts are notoriously unreliable. Mr Goldberg accepted that that was a matter which he had canvassed in his final speech, but that he said was no substitute for a warning from the judge. Thirdly, the judge should have specifically told the jury that one of these three witnesses could not support the other. Fourthly, the judge failed sufficiently to remind the jury of the factual respects in which Murphy had come over as, in Mr Goldberg's words "an inane and incredible witness." Fifthly, by reference to the three subsequent separate passages to which we have referred, the judge in suggesting to the jury that the cross-examination went more to whether or not the statement was true than if it had been made, the judge misdirected the jury in such a way as to undermine the defence, not only in relation to those pieces of evidence but more generally in relation to many other aspects of, in particular, Murphy's evidence, to the unsatisfactory nature of which Mr Goldberg drew our attention.

Mr Goldberg submitted, in support of his general complaints as to the inadequacy of the judge's warning, that the decision of this court in Makanjuola (1995) 2 Cr App R 469 was reached per incuriam because the House of Lords' earlier decision in Spencer (1987) 1 AC 128 was not brought to the attention of the court. True it is, submitted Mr Goldberg, that by virtue of the abolition by section 32 of the Criminal Justice and Public Order Act 1994 of a requirement for a corroboration warning in relation to accomplices and others, the statutory position has changed since Spencer was decided. But, he submitted, the principles enunciated in Spencer in relation to other categories of witness, including, as in that case, those with mental handicap and, as in the present case, those with criminal convictions, remained good. Mr Goldberg drew the court's attention to an as yet unreported decision of this court, in a judgment given by Buxton LJ in Muncaster on 30th January 1998. In that case Spencer was cited to the court and is referred to in the course of the judgment. Furthermore, the terms of Lord Taylor's judgment in Makanjuola are referred to at page 3 of the judgment and in particular the passage at 473C which is in these terms:

> "Whether, as a matter of discretion, a judge should give any warning and if so its strength and terms must depend upon the content and manner of the witness's evidence, the circumstances of the case and the issues raised. The judge will often consider that no special warning is required at all. Where, however, the witness has been shown to be unreliable, he or she may consider it necessary to urge caution."

Mr Goldberg submits that Muncaster was wrongly decided and that, in due course, if this appeal goes against the appellant it would be appropriate for him to invite this court to certify a question for the House of Lords.

So far as that aspect of Mr Goldberg's submission is concerned, we for our part see no inconsistency between either Makanjuola or Muncaster and Spencer. The question which arises in the present case, essentially, is whether or not the warning which the judge gave to the jury in relation to the three witnesses from prison was, in all the circumstances, appropriate. Mr Goldberg complains that the learned judge did not rehearse the detail of the respects in which Murphy's evidence was inaccurate. In our judgment it cannot be too strongly emphasised that it is not incumbent upon a judge to rehearse all the evidence which he and the jury have heard. This case proceeds an excellent example. It would be absurd to suggest that, when Murphy had been cross-examined to powerful effect over a period which occupied 75 pages of transcript, the judge should rehearse the many and varied respects in which Murphy's evidence proved itself vulnerable. What is required of a summing-up was clearly set out in the speech of Lord Morris of Borth-y-gest in McGreevy v DPP 57 Cr App R 424. At page 430 he rehearses a passage in the judgment of the Lord Chief Justice of Northern Ireland, Lord Lowry, with approval. It is in these terms:

> "It is not essential that the trial judge should make every point that can be made for the defence. If he were to do so and were also to follow each such point with the Crown's rebutting argument, he would run the risk of breaking up the defence case in such a way as to destroy its effect. There is no set formula for doing justice to the defence in the course of the charge: the fundamental requirements are correct directions in points of law, an accurate review of the main facts and alleged facts, and a general impression of fairness."

Returning to Mr Goldberg's submissions, we do not accept that the judge ought to have rehearsed in his summing-up the details of the cross-examination of Murphy. It is inconceivable that that lengthy and effective cross-examination would not have been in the forefront of the jury's mind when they were considering this matter. Indeed some three pages of transcript were devoted by the learned judge to the cross-examination of Murphy.

As to the terms of his directions, in our judgment the summing-up, when read as a whole, was appropriate to the circumstances of this case. It stressed, in the passage which we have already read, that the accounts of the three

witnesses could not live in the same world and at least two, to a very large extent, must be untrue: indeed there was obvious divergence, so that all could not be true, in relation to the disposal of the body. The learned judge warned the jury to exercise caution in relation to these witnesses. It must have been apparent to the jury, from the evidence of these witnesses and the cross-examination of them, that they were witnesses whose evidence they should approach with caution.

So far as the three subsequent separate passages in the summing-up are concerned, it is to be noted that, although the judge in each of those passages did suggest that they went not so much to the matter of whether or not the things had been said but to whether or not what was said was true, the alternative interpretation was expressly left by the judge to the jury; and the judge told the jury that it was a matter for them and not him as to how they should interpret that material. That being so, we are not persuaded that there was in those passages any misdirection.

In any event, the evidence against this appellant in the first two categories which we identified at the outset was, as it seems to us, bearing in mind that it went unanswered by any evidence from him, overwhelming. There is, as it seems to us, no possible ground for saying that the verdict of this jury was other than safe. Accordingly, this appeal is dismissed.