

210. The question of motive was well canvassed before the jury and it was explained that the prosecution has a duty to prove intent in a criminal case, but not motive. Mr Karam still thinks there was an obligation on the prosecution to show a convincing reason for the killings before David should have been charged or convicted. In his closing address to the jury, Mr Wright, the Crown Solicitor, said "...you've heard evidence from the Crown indicating that the accused is a disturbed young man. In the weeks prior to 20th of June his behaviour was bizarre. It is not my job to speculate on this. The accused's reasons, his motivation, are irrelevant."³⁷³ In his summing up, Justice Williamson said that the Crown had told the jury "*...that these events were so bizarre and abnormal that it was impossible for the human mind to conceive of any logical or reasonable explanation*".³⁷⁴
211. We have examined the evidence looking for any indication of Police impropriety or unfairness which may have emerged from this stand but none was found. It may never be known with complete certainty why the deceased were killed. Blaming Robin might be seen by some as a convenient way of resolving the unknown and unexplainable but we cannot ignore evidence which points to David simply to avoid issues which are difficult to fathom or accept.
212. We agree with Mr Wright in that it was a bizarre act of horrendous slaughter for which a "conventional" motive could not be found. The arrest and prosecution were perfectly justified even though there was no clear motive for the killings and that much inquiry work still had to be done at the time David was taken into custody.

Related Comment

213. In his book, Mr Karam³⁷⁵ criticises a New Zealand Police publication issued in December 1994 in which are listed 35 murder cases and David Bain is cited as an offender. Given the fact that he had not been convicted at that stage, Karam contends it was an unfair disclosure. The publication is an internal Police document not for public dissemination. However, its contents were published in the Sunday News shortly after the trial. In view of the fact general publication did not occur until after David was convicted, there was no prospect of interference with a fair trial and the matter need be taken no further.
214. Mr Karam alludes in his book to a visit to New Zealand by the ex FBI criminal profile expert, John Douglas, in July 1996.³⁷⁶ Karam made contact with him at that time and part of an interview was recorded by the 60 Minutes TV programme. According to Mr Karam, that programme assisted to bring the issues of the Bain case even further under public scrutiny.³⁷⁷ Mr Douglas said in the interview that in his experience it was usually the father of the family that was responsible for this type of crime. Mr Karam also states in his book that

³⁷³ Wright – Closing Address

³⁷⁴ Williamson J – Summing-up

³⁷⁵ p185

³⁷⁶ p98

³⁷⁷ p98

Douglas, while looking at photographs of the killings, reputedly said to him when talking about Laniet "Whoever had the most reason to hate this girl is your likely killer."³⁷⁸ Mr Douglas later spoke to various Police meetings around New Zealand. Officers at these meetings recall that Mr Douglas explained that he was approached on his arrival at the airport, made his comments and responded to questions based on information given to him and without having further information about the case or a detailed understanding of the investigation. Comments which qualified his answers [explaining how he was speaking generally as he had not read the file] were not published.

Failure to Give Weight to Ambulance Officer's View

215. Mr Karam contends that one of the ambulance officers reported David had been unconscious for about three minutes³⁷⁹ [which could account for memory loss] and he is critical this point was not checked out by the Police during the original investigation. The failure to properly explore this issue, he claims, operated to the disadvantage of David Bain and again demonstrates the disinclination of the Police to pursue matters which did not support their theory.

216. In fact, the reference to three minutes unconsciousness was made in a report³⁸⁰ created by Ambulance Officer Jan Scott who arrived at the scene at 0750 hours to take over from the night shift ambulance officers caring for David. In subsequently reporting her involvement in the case she filled out a pro forma report which invited information about the patient being unconscious. Because she believed a Police officer at the scene had told her David was unconscious for about three minutes she noted this detail in the space provided on the form.³⁸¹

217. Constable Andrew, the officer with David at the relevant time has been interviewed. He is adamant David was not unconscious at any stage. Ambulance Officer Anderson believed that at one stage David feigned he was having a fit and Chief Ambulance Officer Wombwell described him as being "light" at some point.³⁸² This is international medical emergency terminology referring to a person who is virtually awake and who responds to voice but who has his eyes closed. The question of whether David was conscious or unconscious while being attended by the police and ambulance officers before removal from the house was thoroughly examined by defence counsel at the trial. Ambulance Officer Anderson tested David's consciousness by touching his eyelashes, which caused David to move his eyes - this reaction only happens with a conscious patient and is quite involuntary.³⁸³ In Anderson's statement to the review team he said, "...That is standard practice we use for checking those patients who are foxing us or just choosing not to speak to us or

³⁷⁸ p215

³⁷⁹ p208

³⁸⁰ Ambulance Report Form Doc.10045

³⁸¹ Scott Review Stmt Ref.21008

³⁸² Wombwell Review Stmt Ref.21004WOM p8

³⁸³ Anderson Trial p48 L38

react to us".³⁸⁴ Mr Anderson also noted that David responded to the dog when it barked.

218. In short, no one saw David unconscious. The only suggestion of it comes from a report where details have been recorded by one person on the basis of what she thought she was told by another.
219. Mr Withnall criticises the Police for calling evidence that David was feigning shock when they had expert medical evidence to the contrary.³⁸⁵ During the original investigation the Police consulted Dr Ramsay, Director of the Intensive Care Unit, Dunedin, about David's condition as observed in the house by the attending Police Officers and Ambulance staff. His written statement was provided to the defence and was used to cross examine Crown witnesses.³⁸⁶ It is therefore not correct to imply the Police had this evidence and suppressed it.
220. As a matter of interest, it has been determined that David was sent for a medical examination [by the defence] while awaiting trial and tests did not disclose any evidence of epilepsy or like disorder.
221. Mr Karam has placed considerable emphasis on the claim David suffered memory loss because of the shock of finding his family dead. This extended to his belief David's severely distorted memory should not be relied on or carry weight when it came to whether his mother's eyes were open or not, and whether he heard Laniet gurgling or not.³⁸⁷ Mr Karam also alludes to this memory loss to explain David's failure to recall going into Stephen's, Laniet's and Arawa's rooms when interviewed³⁸⁸ [and thereby getting blood on himself]; failure to recall how he got his injuries [which he said he did not have on the paper run or on entering the house];³⁸⁹ or touching the rifle [resulting in his fingerprints getting on them].³⁹⁰ Mr Karam states in his book that David has "...perfect recollection up to finding and realising his mother was dead. He virtually has no recall of the rest of that morning."³⁹¹ The Crown case was he could remember these things and chose not to. This issue of memory loss was canvassed at trial and defence witness Professor Mullens in cross examination agreed recovered memory may be genuine or self serving.³⁹²

Failure to Follow up Cottle's Assertions

222. This is another matter where Mr Karam says there was a lack of Police interest in issues which did not support their view that David shot and killed the other members of his family.

³⁸⁴ Anderson Review Stmt Ref.21001

³⁸⁵ Withnall letter 3.10.97

³⁸⁶ Andrew Trial p38 L12 and Wombwell Trial p46 L17

³⁸⁷ p158, p159, p161

³⁸⁸ David Stmt Doc.10155 p12

³⁸⁹ David Trial p436 L32

³⁹⁰ p149, p150

³⁹¹ p86

³⁹² Mullens Trial p447 L6

223. Three days after the killings, a Dunedin resident, Dean Cottle, volunteered information to the Police to the effect that Laniet confided in him she and her father were having an incestuous relationship and she intended to tell her family everything and make a clean start.³⁹³ It is the general thrust of Mr Karam's complaint that the Police did not give proper credence to Cottle because his information did not fit with their view of events. By not following up on the allegations, Mr Karam contends, an opportunity was lost to discover Robin was the killer.³⁹⁴
224. Mr Karam writes that Cottle said Laniet told him that she "*had been having sex, incest, with her father and that this had been going on for years.*"³⁹⁵ He expands on this by asserting Robin was having sex with his daughter "*since she was a child*"³⁹⁶ Mr Karam also quotes information from "*a long time acquaintance of the Bains*" (whose identity is unknown to us) that while the family was living in PNG Laniet was raped at 11 years of age and had a baby from "*the incestuous relationship her father forced on her*".³⁹⁷ Inquiries by the Police in PNG could find no record of Laniet giving birth or being raped.³⁹⁸ It was established that a child in a photograph she told friends was hers [resulting from the alleged rape] appears to be a child of different ethnic origin born to a neighbour in PNG. The autopsy performed by Dr Dempster did not reveal anything to suggest Laniet had previously given birth.³⁹⁹ We have been unable to substantiate that an incestuous relationship ever existed, that Laniet had a child, was raped, or had been otherwise abused while in PNG. Family members disbelieve those claims.
225. Mr Karam said Laniet rarely spent any time at or even visited the family residence in Every Street.⁴⁰⁰ He says the June visit was the first time in almost a year Laniet had stayed overnight at the home.⁴⁰¹ The original investigation established Laniet had been flatting with friends in Russell Street before moving in with her father, and later Kyle Cunningham, at Taieri about a month before the murders.⁴⁰² This was her idea and was done partly in an attempt to break away from some of her bad habits and clear her head.⁴⁰³ However she still occasionally spent time in Every Street and according to David stayed there two weeks earlier.⁴⁰⁴ David also said Laniet was staying at Every Street that weekend because she was working on Sunday and Monday mornings and her mother offered her a bed and a ride.⁴⁰⁵ A number of her friends, including Kyle

³⁹³ Cottle Stmt Doc.10320

³⁹⁴ p194 & Mtg 25.07.97

³⁹⁵ p43

³⁹⁶ p68

³⁹⁷ p201

³⁹⁸ Interpol Doc.10643

³⁹⁹ Dempster js Review Ref.24002B

⁴⁰⁰ p67

⁴⁰¹ p9

⁴⁰² Hunter Stmt Doc.10211, McGregor Stmt Doc.10188

⁴⁰³ Hunter Stmt Doc.10211, McGregor Stmt Doc.10188, Wicken Stmt Doc.10177, Witness C Review Stmt Ref.33005 and Witness A Review Stmt Ref.33006.D, Witness B Review Stmt Ref.33007

⁴⁰⁴ David Stmt Doc.10155, p13

⁴⁰⁵ David Stmt Doc.10155, p13

Cunningham knew she was going to Every Street that weekend.⁴⁰⁶

226. It is not known what happened at the Bain home that evening because all those present, except David, are dead. There is no way of corroborating Laniet's comments to Cottle about incestuous behaviour but it seems curious she did not confide the information to trusted friends. Those who knew her well believe she would have been more likely to divulge details of sexual abuse to them than to persons of less intimate acquaintance.⁴⁰⁷ Our inquiries suggest that at the time Laniet disliked Cottle and felt pressured by him.⁴⁰⁸
227. Mr Karam contends that knowledge of Cottle's information did not become available to the defence until close to the trial.⁴⁰⁹ In reality, Cottle's statement was part of the first disclosure documents provided by the Police to Mr Guest prior to the preliminary hearing, about seven or eight months before trial. Mr Karam says it was included among piles of discovery documents. In fact it was with paper contained in a relatively small box. His claim that the information came "*out of the blue*" and was "*an ace*" could also be misleading.⁴¹⁰ Mr Guest desired to have Cottle testify as to Laniet's disclosures but he could not be located when the trial was in progress and Mr Karam suggests that the Police made no serious effort to locate him.⁴¹¹ Mr Karam infers investigating officers were anxious that he not be available to give evidence.⁴¹² When Cottle eventually did appear evidence had been concluded and the Crown Prosecutor had completed his final address. Cottle was called before the trial Judge who questioned him in the absence of the jury to form an opinion on whether to allow him to give evidence. Cottle said that he would not have made an untrue statement to the Police but that he could not then remember the details of what Laniet Bain had said to him – a lack of memory that the Judge conceded may have been due to confusion over his then position. However the Judge decided that Cottle's evidence would not be reasonably safe or reliable and concluded that the dangers guarded against by the hearsay rule could not be put to one side. He directed that Cottle not give evidence, a decision subsequently upheld on appeal.⁴¹³
228. Another point to note in respect of this matter is the fact that in 1995 Mr Cottle complained to the Police Complaints Authority about treatment allegedly received from the Dunedin Police over his involvement in the Bain case.⁴¹⁴ The PCA eventually determined the allegations were not upheld and duly advised Mr Cottle. In his book, Mr Karam is critical of that finding. He says it demonstrates the PCA is ineffective in holding police officers accountable. He contends Dean Cottle had been subjected to harassment, had been unceremoniously arrested,

⁴⁰⁶ Cunningham Stmt Doc.10200

⁴⁰⁷ Witness A Review Stmt Ref.33006.D, Witness B Review Stmt Ref.33007,

⁴⁰⁸ Witness A Review Stmt Ref.33006.D, Witness B Review Stmt Ref.33007, Witness C Review Stmt Ref.33005

⁴⁰⁹ p69

⁴¹⁰ *ibid*

⁴¹¹ p73-74

⁴¹² p71

⁴¹³ Grills Review Stmt Ref.7007

⁴¹⁴ Cottle [Original Complaint File]

arms severely damaged when he was, according to him, quite brutally arrested, had his house broken into, had his telephone tapped, was followed around and was continually in trouble with the law. He alleged Police had attempted to discredit, frighten and intimidate him in order to dissuade him from cooperating in David Bain's defence. He further alleged Mr Cottle's allegations were assigned for investigation to one of the very officers complained about.⁴¹⁵

229. We have revisited the 1995/96 PCA investigation of the Cottle allegations and we are satisfied the case received capable attention. Mr Karam is mistaken when he says the investigation was handled by one of the officers who allegedly assaulted Cottle. In fact, the case was handled by an officer who had absolutely no prior dealing with the complainant and who was totally independent of the Bain investigation. The officer's report was considered by the Deputy Police Complaints Authority who gave the matters all proper consideration and we concur with the conclusions he reached. Especially we find:-

- Police were not uninterested in trying to locate Cottle. He knew he was wanted as a witness and he deliberately took steps to avoid being found.
- Police did not put pressure on him to influence his evidence. In fact, it was in the interests of the Police to have him testify for the defence so he could be cross-examined. [There was a suggestion that if he could not be found his statement might be simply put before the jury without his appearance.]
- An injury to his arm was not due to any excessive use of force when he was arrested in a matter unrelated to the Bain case.

230. Mr Karam is also critical of a comment made by a detective in a draft brief of evidence provided to the Crown Prosecutor [not an affidavit as alleged] where he said Dean Cottle may be in need of psychiatric assistance.⁴¹⁶ This document was prepared by the detective in anticipation that Cottle would testify and was for the purpose of providing the prosecutor with background information for use in cross examination. The officer's assessment was based on the fact that he has a manic depressive brother whose symptoms he believed were similar to those exhibited by Cottle. As a matter of courtesy the Crown Prosecutor supplied a copy of the brief to Mr Guest but because Cottle did not give evidence there was no opportunity for cross examination and consequently the information was not used by the prosecution either at the trial or otherwise. The document was apparently passed on to Cottle by Mr Guest.

231. On 7 November 1995 the Otago Daily Times published a report of the Court of Appeal hearing and referred to Cottle's psychiatric history. This was not with reference to the Detective's brief of evidence but rather to a psychiatric report on Cottle prepared in September 1994, the psychiatrist having first seen Cottle on 9

⁴¹⁵ p77-78

⁴¹⁶ p75

June 1994.⁴¹⁷

232. We are satisfied the detective's comments were proper and pertinent to the Crown case and we find no justification in the suggestion that they were somehow intended to mislead the court. Mr Cottle was regarded by Police as an unreliable person almost from the outset and we believe the Police acted properly in their dealings with and about him. We consider the decision of the Crown not to use him as a witness was appropriate to the circumstances. Any evidence he could give was at best hearsay and he was considered of more value to the defence than the prosecution. He had little credibility and there was no practical avenue for corroborating his assertions. The true nature of his relationship with Laniet was quickly established and her move from Russell Street to live with her father at Taieri seemed inconsistent with the [forced] incest claims. Accordingly, a copy of his statement was given early to defence counsel and [contrary to other assertions] Police assisted in getting him to the court. The Court of Appeal upheld the decision of Justice Williamson in excluding him as a witness.
233. It was open to the defence to make more of Cottle but he refused to [or could not] come up to expectations.
234. We find the time and effort devoted to this man and the information he supplied was proper, adequate and appropriate to the circumstances.

Failure to Explore Laniet's Background

235. This is yet another matter where Mr Karam alleges there was a failure by the Police to properly explore an issue which could have produced results favourable to David Bain.
236. Connected with Cottle's assertions, Mr Karam claims that there was scope to find clues to the deaths in Laniet's background and suggests that the Police were remiss in not actively pursuing enquiries in that direction. He lists several points about Laniet which he feels justified specific attention. They are examined below:

a) Alleged Child In PNG

[This matter is also discussed in paragraph 224 referring to Dean Cottle.] Laniet told several of her flatmates at Russell Street that when she was living in PNG and at about the age of 11 she was raped by a native person and as a result gave birth to a baby named Tailei.⁴¹⁸ [In Mr Karam's book the baby was said to be fathered by Robin.] She said the baby was later adopted out. Laniet kept a photograph of this baby clipped to the mirror in the

⁴¹⁷ 1995/1996 PCA Complaint File re. Cottle

⁴¹⁸ McGregor Stmt Doc.10566, Hunter Stmt Doc.10211, Williams Stmt Doc.10499, Stewart Stmt Doc.10567, Witness C Review Stmt Ref.33005

*bedroom of the flat at Russell Street.*⁴¹⁹

In Mr Karam's book he says "I also have mind-blowing information from an old friend of Robin's whose family is well acquainted with the members of Robin's family". He goes on to say this informant said "that this baby was a result of 'the incestuous relationship that her father forced on her' and that this information was provided to our informant by a member of the Bain family." - something Mr Karam says he "strongly suspected for a long time".⁴²⁰

At the request of the Bain homicide team inquiries were made in Papua New Guinea by the Royal PNG Constabulary and they could find no record in the Police information system of the report of a rape by a Laniet Margaret Bain.⁴²¹ Nor was there any record of Laniet Margaret Bain giving birth in Papua New Guinea.⁴²²

b) General Mode Of Life

The homicide investigation established that in February 1994, Laniet was living in a flat at 56 Russell Street, Dunedin, with a number of other persons. At the time she was working as a prostitute and that fact was no secret to those living with her although her family might not have known. She advertised in the *Otago Daily Times* using the name 'Page". Her clients contacted her on a cellphone lent to her by Dean Cottle.⁴²³ The reasons she gave for resorting to prostitution were that she could not get employment and was too young to receive the dole.⁴²⁴ At about the time of her 18th birthday [19 March 1994] she ceased this type of work and applied for and subsequently received the unemployment benefit.⁴²⁵ At the time of the murders Laniet no longer had the cellphone.⁴²⁶ It was disconnected by Telecom on 7 March 1994.⁴²⁷

Mr Karam has criticised the original investigation for not pursuing this line of inquiry to establish Laniet's use of the cellphone up until the time of the murders.⁴²⁸ It was not pursued because Telecom had no record of the phone being used in recent months and Laniet was not using it up until the murders.

⁴¹⁹ js Doc.10291

⁴²⁰ p200-201

⁴²¹ Interpol Request Doc.10560

⁴²² Interpol Response Doc.10643

⁴²³ p65, Witness A Review Stmt. Ref.33006, Witness B Review Stmt Ref.33007. Witness C Review Stmt. Ref.33005, Williams Stmt Doc.10499

⁴²⁴ Witness B Review Stmt Ref.33007

⁴²⁵ Ross js Doc.10140

⁴²⁶ Wicken Stmt Doc.10177, Witness B Review Stmt Ref.33007

⁴²⁷ Telecom Document Review Ref.33008

⁴²⁸ P67