

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

SAINT LUCIA

CRIMINAL CASES NOS. SLUCRD 2008/1216 & 1217

BETWEEN:

THE QUEEN

AND

ELIAN PHILLIP

Defendant

Appearances:

Mr. George Charlemagne, Counsel for the Defendant
Mrs. Victoria Charles-Clarke, Director of Public Prosecutions, for the Prosecution

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2010: March 11 & 30, June 22, October 7 & 10, December 20 & 21

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RULING

[1]. **BENJAMIN, J. :** The Defendant is charged on an Indictment with four (4) counts for the offences of murder, attempted murder and robbery upon two (2) complainants. Pleas of not guilty to all counts have been entered at arraignment.

[2]. Pursuant to a scheduling order made at a case management hearing subsequent to the arraignment of the Defendant, Defence Counsel challenged the admissibility of the statement under caution alleged to have been made by the Defendant to the Police on July 1, 2008. The Court ruled that a voir dire be conducted to determine the admissibility of the said statement.

[3]. The stated ground of the application is that the statement was obtained by violent, oppressive, inhuman and degrading conduct in that:

- (a) The Defendant was not informed of his rights in custody;
- (b) The Defendant was not given the opportunity to consult an attorney;
- (c) The Defendant was savagely beaten and verbally and physically abused prior to the making of the statement.

The application was stated to be made on the basis of Sections 70, 71 and 72 of the Evidence Act No. 5 of 2002. In addition, the Court was asked to exercise its general discretion under sections 114 and 115 of the Evidence Act to exclude the statement on the basis that its probative value outweighed by the danger of unfair prejudice to the defendant.

[4]. The Crown's case was presented through the testimonies of five (5) police officers inclusive of the investigating officers. The sole witness in support of the defendant's case was the defendant himself.

[5]. Woman Police Constable 590 Heather Emmanuel was stationed at the Gros Islet Police Station and was on duty when the Defendant was at the Station from 9:00 a.m. on Monday

June 30, 2008. She remained on duty for two (2) days as the officer in charge of the Criminal Investigations Department. Although she agreed that she was not responsible for the Defendant in that she was not entrusted to guard, feed or attend to his needs, she did see the Defendant at the station.

[6]. Woman Police Constable Emmanuel told the Court that on Tuesday, July 1, 2008, at the request of the investigator, Corporal 479 Charlemagne, she went to an office in the Police Station where, together with the Justice of the Peace, James Prudent, she witnessed the Defendant being told of his rights by Corporal Charlemagne who used a printed form. The said form was signed by the Defendant and the Justice of the Peace. Thereafter Corporal Charlemagne reminded the Defendant of the caution. The Defendant then elected to give a statement which was recorded in writing by Corporal Charlemagne who read it over to the Defendant from the printed form on which it was written and invited the Defendant to sign it. Both Woman Police Constable Emmanuel and the Justice of the Peace signed as witnesses. The statement taken under caution was identified by this witness.

[7]. In her examination-in-chief, Woman Police Constable Emmanuel said that while the statement was being taken, the Defendant was calm and appeared to be compliant. Further, she added that he appeared to be in normal physical health and he made no complaint or request. At the close of the examination by the Director of Public Prosecutions, Woman Police Constable Emmanuel asserted that during her tour of duty she did not see anyone beat or threaten violence upon the Defendant.

- [8]. In cross-examination, Woman Police Constable Emmanuel responded that she did not physically examine the Defendant. She also insisted that she was not present throughout the taking of the statement of the statement and insisted that the Defendant dictated a story to Corporal Charlemagne who wrote down what was said without asking any question of the Defendant.
- [9]. The testimony of Police Constable 614 Julian Lansiquot was confined to his role in escorting the Defendant as a prisoner in custody from the Anse La Raye Police Station to the Canaries Police Station at about 9:00 p.m. on Tuesday July 1, 2008. This Constable said he sat beside the Defendant in the police vehicle behind the driver during the fifteen (15) minutes of the journey. Nothing was observed about the fully clothed Defendant who made no request of him up to the time he was handed over to Special Police Constable 167 Goolaman.
- [10]. Special Police Constable Goolaman gave evidence in support of the Crown's case acknowledging that the Defendant was escorted to the Canaries Police Station between 8:00 and 9:00 p.m. on July 1, 2008 by Police Constable Lansiquot. At the time, Special Police Constable Goolaman was the Station Orderly and took the Defendant into his custody before placing him in the cell. This Officer recalled that the Defendant appeared to be in good health and he observed no bruises or marks on him although he did not carry out a physical examination or cause him to remove his shirt.

[11]. Special Police Constable Goolaman recalled that the Defendant did not make any complaint to him but he requested a telephone call which was granted and a glass of water which was furnished. In response to Counsel for the Defendant, the witness said that he checked on the Defendant periodically while he was in the cell through the night and he observed him sleeping after midnight. He was unable to say in what position the Defendant was sleeping.

[12]. The Defendant was handed over at or around 8:00 a.m. to Police Constable Magloire Charles who took over duties as Station Orderly from Special Police Constable Goolaman at the Canaries Police Station. Indeed, Special Police Constable Goolaman told Defence Counsel that Police Constable Charles was on the same shift and was upstairs when the Defendant was at the station. Police Constable Charles stated that when he took over the Defendant as a prisoner in custody he inquired of him whether he had any medical problems and the reply was in the negative. The Officer's observations were that the Defendant appeared to be alert, in good health and without injuries to his person without removing his shirt. He was kept in the cell and made no complaints. He recalled giving food to the Defendant twice that day.

[13]. Police Constable Charles said that no one telephoned or came to visit the Defendant throughout the day until his shift came to an end at 3:40 p.m. Upon his return to work two (2) days, he could not recall if the Defendant was still at the station.

14]. The evidence of Special Police Constable Goolaman and Police Constable Lansiquot to the effect that the Defendant was escorted to the Canaries Police Station on the night of

July 1, 2008 was in conflict with what Corporal Charlemagne said to the Court. The Corporal said that he accompanied the Defendant to the Canaries Police Station along with two other officers at about 5:30 p.m. that day. This aspect of the evidence of Corporal Charlemagne I find to be erroneous. Indeed, this is the only aspect of the Crown's case where there was any variance.

[15]. Corporal Charlemagne stated that he arrived at the Gros Islet Police Station on June 30, 2008 at 9:00 a.m. and was assigned to investigate the matter for which the Defendant was in custody. He left the Station and upon his return later in the day he said he spoke to the Defendant who was in custody. Prior to that he had seen him when he arrived at the Station. He identified himself to the Defendant, told him of the report being investigated and cautioned the Defendant who said he had nothing to say. The Corporal left the station at 7:00 p.m. and returned at 9:00 a.m. the next day, July 1, 2008. Later that day at 3:00 p.m. at the request of the Defendant, he took him back to his house at Bois d'Orange. There the Defendant retrieved a knife which he handed over to Corporal Charlemagne saying to him that he would speak to him on his return to the Police Station. The Defendant was accompanied by his cousin, Sabina Celestine, to and from the house.

[16]. Back at the station, Corporal Charlemagne cautioned the Defendant who told him something which was recorded in the Station Diary signed by the Defendant and witnessed by Woman Police Constable Emmanuel. The Defendant then said he was going to tell Corporal Charlemagne what had happened. The Defendant was taken to the Inspector's Office and seated. The room was described as being air-conditioned, furnished with a desk, chair, a filing cabinet and a small television set and properly lit.

The Defendant was introduced to Woman Police Constable Emmanuel and the Justice of the Peace, Mr. James Prudent, who sat next to him while he faced Corporal Charlemagne for the taking of the statement. The Defendant was told of his rights utilizing the prescribed form and he signed it and said he understood those rights. Subsequently, a written statement was taken, at the dictation of the Defendant after the caution was read out from the statement-under-caution form. There was no suggestion to the witness that there was any violence or oppressive conduct attending the taking of the statement. The Corporal said that at the time the statement was taken he did not enquire as to the health of the Defendant. He merely looked at him and asked him if he okay and if he was being fed on time. In addition, when cross-examined, the Corporal did not recall the Defendant making any complaint about being beaten with a hose or being beaten at all or about being unable to lie down and sleep.

[17]. Corporal Charlemagne asserted that he never observed any beating on the Defendant or the Defendant to be in any pain or injured or bruised. He also insisted that he was aware that the Defendant was given a meal at 6:00 in the evening on Monday June 30, 2008 and at lunch time on Tuesday, July 1, 2008. He also recalled meeting the Defendant's cousin but he did not recollect receiving any complaint from her as to the Defendant's condition.

[18]. The Corporal said that Mr. Marius Wilson, Counsel, visited the Police Station during the day on June 30, 2008 and spoke with him. He went on to say in cross-examination that the Defendant elected to give the statement without his lawyer being present saying that he had waited long enough for him.

- [19]. In response to Defence Counsel during cross-examination, Corporal Charlemagne accepted that he did not ascertain the Defendant's level of education nor did he give the Defendant the statement to read for himself but he insisted that he was satisfied that the defendant understood the rights read to him from the form.
- [20] The Corporal was unable to say if the Defendant had slept while in the cell at the Gros Islet Police Station. He however was adamant that the Defendant did not complain to him about being unable to sleep and that from his observation the Defendant appeared to be healthy with no signs of being beaten.
- [21] The Defendant recounted in his sworn testimony how he was taken to the back of the Police Station upon his arrival there and beaten with a hose by a Police Officer on his back while lying on his stomach with his hands shackled behind his back. He was then made to do push-ups during which he got a kick in his ribs and more blows with the hose to his back. He was then put in the cell but he was unable to lie down on his back or stomach.
- [22] He said that on the next day, July 1, 2008, his sister brought him food in the morning and he ate it. His cousin came to see him that day. She went with him back to his house where he recovered a knife, gave it to the officer and told him he would speak to him when his lawyer came. Back at the station he spoke to his cousin for a while until she left and he was returned to the cell.
- [23] The Defendant then related a second beating at the same spot at the hands of officers - a tall black one, a next slim one and a short brown skin one – none of whom were sufficiently

described for any of them to be identified. He spoke of being threatened with being shot, being held at his neck and being beaten before being returned to his cell. He remained there for a while before Corporal Charlemagne came and asked him if he was ready to give a statement. To this he said he replied: 'yes' and he was taken to a room. He said he ask for something to eat but Corporal Charlemagne told him he would eat after he finished giving the statement. At that stage, the Justice of the Peace came. The Defendant admitted giving the statement which was written on paper by Corporal Charlemagne and that he signed it along with the Justice of the Peace and the female officer.

[24] It was worthy to note that it was never put to Corporal Charlemagne that the Defendant had asked for something to eat before the statement was taken nor that the Corporal had told him he would eat after the statement was given.

[25] The Defendant went on to tell the Court that his parents and other family members came and he told them he was hungry. He also said his father touched his back and when he felt pain he told his father he had been beaten by the police officers. His father lifted his shirt and looked at his back. Then his mother began to cry and asked Corporal Charlemagne if she could buy something to rub his back. Again, this specific detail was not put to Corporal Charlemagne so the Court cannot say whether the Corporal recalled such a question being asked of him.

[26] The Defendant confirmed that he was taken later that day to the Anse-La-Raye Police Station then onwards to the Canaries Police Station. It was confirmed that the lone officer at the latter station called his family for him before he was put in the cell.

[27] The Defendant spoke of being formally charged by Corporal Charlemagne in the presence of the Justice of the Peace on the next day, July 2, 2008. At about 2:00 p.m. he was photographed by an officer whom he had seen at the Gros Islet Police Station. The Defendant said that the officer asked him what happened to his back and when he told him he was beaten by the officers at the Gros Islet Police Station he refused to believe the Defendant. It is to be noted that no effort was made by either side to present this person in Court to accept or refute the Defendant's allegation. Equally, the Defendant freely admitted during cross-examination that he was unable to identify any of the officers who perpetrated the alleged beatings as described by the Defendant.

[28] In the course of his testimony, the Defendant related several instances where he came into contact with family members including his parents, sister and cousins and with his lawyer – Mr. Marius Wilson who was accompanied by his cousin on the morning following the first alleged beating, the Justice of the Peace and various Police Officers. Save and except when he was being photographed and when he said his father lifted up his shirt, he did not make any complaint about being beaten. Curiously, his parents did not offer any protestation on his behalf and of equal significance is their absence as Defence Witnesses. Indeed the Defendant told the Court that he did not complain about being beaten nor did he ask at any stage to be given medical attention. He stated in response to the Director of Public Prosecutions that he first formally complained in the affidavit in support of the present application. In this regard, the Court was left with no choice but to disbelieve the Defendant's account of being twice beaten at the hands of Police Officers.

[29] Turning to the Crown's case, save for the discrepancy previously highlighted, the police witnesses were consistent and complemented each other. Corporal Charlemagne was frank enough to admit that in his absence from the station the Defendant could have been beaten. However, Woman Police Constable Emmanuel was present throughout and in a Police Station the size of the courtroom she was unaware of any beating taking place. In the premises, I am persuaded that on the evidence, it is more likely than not that the Crown's witnesses are to be believed.

[30] Section 70 of the Evidence Act provides the threshold for the admissibility of admissions which term means 'confessions' as defined by section 2 of the Act. The section provides as follows:

"70. Evidence of an admission where the issues of admissibility is raised by the Defendant is not admissible unless the court is satisfied that the admission, and the making of the admission, were not influenced by violent, oppressive, inhuman or degrading conduct, whether towards the person who made the admission, towards some other person, or by a treat of conduct of that kind, or by any promise made to the person who made the admission to any other person."

This section obviates the prior common law requirement of voluntariness as the basis for admissibility. It is also to be noted that the issue as to exclusion must be raised by the Defendant for the Court's ruling to be invoked.

[31] The operative words "oppressive, inhuman or degrading conduct" are not defined in the Act. However, the Court can resort to the meaning ascribed to the word "oppression" at

common law as expressed by Sachs, J. in R. v Prestley (1967) 51 Cr. Rpp. R. 1 as follows:

"... something which tend to sap and has sapped the freewill which must exist before a confession is voluntary." The Oxford Dictionary defines 'oppression' inter alia as meaning "exercise of power in a tyrannical manner, cruel treatment of subjects, inferiors etc."

This definition was adopted by the Court of Appeal of England in R. v Fulling [1987] Q. B. 426. It is to be noted that the terms 'inhuman' and degrading conduct' feature in Article 3 of the European Convention on Human Rights. Also, section 5 of the Constitution of Saint Lucia enacts that "no person shall be subjected to torture or to inhuman or degrading punishment or other treatment." All in all, the Court must assess the degree of impropriety in the treatment of the suspect to determine whether there has been the exercise of authority or power in a manner that is cruel, burdensome or unjust in the circumstances of the questioning.

[32] The provisions of section 71 specifically apply to criminal matters where the admissibility of evidence as to a confession is challenged by the Defendant. Subsection (2) operates to place the burden on the Crown to prove that the circumstances in which the confession was made were such that it was unlikely that the truth of the admission was adversely affected. Subsection (3) goes on to provide that evidence as to the truth or untruth of the confession is not relevant. In its consideration of the circumstances in which the confession was made, the court must consider certain matters set out in subsection (4) of the said section 71.

[33] The statutory standard of proof for the admissibility of evidence is to be found in section 134 which enacts:

"134. (1) Subject to this Act, in any proceeding the Court shall find that the facts necessary for determining –

(a) a question whether evidence should be admitted or not admitted, whether in the exercise of a discretion or not; or

(b) any other question arising under this Act, have been proved if it is satisfied that they have been proved on the balance of probabilities

(2) In determining whether it is satisfied as mentioned in subsection (1), the Court shall take into account, inter alia, the importance of the evidence in the proceedings."

[34] For the reasons earlier set out in this ruling, the Crown's case has met the requisite standard and accordingly, the Court rules that the statement under caution dated July 1, 2008 shall be admitted into evidence at trial.

KENNETH BENJAMIN
HIGH COURT JUDGE