

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

SAINT LUCIA

CRIMINAL CASES NOS. SLUCRD 2007/0653, 0669 & 0670

BETWEEN:

THE QUEEN

Claimant

AND

SHAM SANGANOO

Defendant

Appearances:

Mr. A. Alcide for the Defendant

Mr. S. Cenac, Crown Counsel, for the Prosecution

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2010: July 29, October 7;

2011: February 10 and 17, March 22 and 31

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RULING

- [1]. **BENJAMIN, J. :** The defendant, Sham Sangano, has been indicted for the offences of robbery, being in possession of a 12 mm shot gun without a valid licence and being in possession of one round of 12 mm ammunition without a valid licence. The offences are alleged to have occurred on Friday the 25th day of May 2007 at about 8:25 p.m. at Beanfield situate near the town of Vieux-Fort. Upon arraignment, the defendant pleaded not guilty and case management commenced with a scheduling order.

- [2]. By a notice filed on April 22, 2010, the defendant sought the exclusion of two statements under caution alleged to have been made by the defendant to the Police on May 27, 2007 at 3:06 p.m. and on May 30, 2007 at 8:58 p.m. The notice stated that the ground relied upon was that the said statements were admissions and were influenced by violence and oppressive conduct. Further, in relation to the statement under caution dated May 30, 2007, it was contended that the said statement bore the name 'Leslie Sealy' although it is purported to have been signed by the defendant. At the hearing, Counsel for the defendant further contended that an oral statement attributed to the defendant by Police Constable Ed James and Police Constable Curtis Roberts on May 29, 2007 when he was shown certain items, to wit, one double-barrelled shotgun, one round of ammunition, a brown tam and a pair of brown timberland boots, ought to be excluded. Both Officers told the Court that when shown the items the defendant replied: "Officer, that's mine."
- [3]. The Court ruled that a voir dire be conducted to determine the admissibility of the two written statements and the oral statement ahead of trial. In this regard, the Court is guided in its approach by way of pre-trial hearing by the provisions of Rules 10.1 and 11.1 (3) (d) of the Criminal Procedure Rules 2008.
- [4]. The Prosecution led three witnesses in support of its case for the admissibility of the said statements and the defendant gave evidence on his own behalf. All witnesses were crossed-examined by the opposite Counsel.

- [5]. Both written statements were taken by Police Constable Ed James, the investigator into the matters in respect of which the defendant is indicted. At the time he was attached to the Criminal Investigations Department at the Vieux-Fort Police Station. Police Constable James told the Court that on May 25, 2007, after receiving a report, he attended the scene at Beanfield where he met, interviewed and took a statement from the virtual complainant. In the course of a search of the scene, he found a 12mm double-barrelled shotgun, one live round of ammunition, a pair of Timberland shoes and a brown tam. These items were handed over to Police Constable Roberts at the scene.
- [6]. Police Constable James said that on the same date he met the defendant at the Emergency Room of the Vieux-Fort Hospital nursing injuries to his head. The defendant was told of the report being investigated and he was cautioned and arrested for the offences of robbery and possession of a firearm and of ammunition. The investigator told the Court that he returned to the said hospital on May 27, 2007 at about 2:45 p.m. and at Room 24 of the surgical ward where the defendant was admitted as a patient, the defendant elected to make a statement which was recorded on a prescribed form in the presence of Justice of the Peace, Mr. Michael Lubin. At the time, the defendant's head was bandaged and he was lying on a bed. During his cross-examination, Police Constable James informed the Court that the defendant was a prisoner in custody at the time. He further said that when he went to the hospital he first spoke to the doctor and sought and obtained his permission to interview the defendant. Thereafter he summoned the Justice of the Peace and proceeded to take the statement. In his evidence, Police Constable James said that after the statement was taken, it was read over to the defendant, who was

told he could make corrections or additions and then the defendant signed the statement, as did Mr. Lubin, who was standing next to him at the foot of the bed.

[7]. In his testimony at the voir dire, the Justice of the Peace, whom Police Constable James stated to have signed the statement, testified in his examination-in-chief that Police Constable James took a prescribed form, collected a statement and read it over to the defendant. This witness said he was introduced to the defendant by Police Constable James and that the statement was recorded at the Vieux-Fort Police Station. He went on to describe the defendant's demeanour while sitting down. He even added the gratuitous detail that the defendant was already there when he entered the interview room. When cross-examined, the Justice of the Peace could not recall having met the defendant at the St. Jude's Hospital and insisted that the statement of May 27, 2007 was taken in his presence at the station. During his testimony, the gentleman showed clear signs of being unable to recollect although he displayed fulminations of speaking the truth.

[8]. The defendant swore that he was in the Hospital from May 23, 2007 after receiving a chop to the back of his head on the said date at the old runway at the base of Vieux-Fort. He stated that Police Constable James and other Officers came to the Hospital on the same date on two occasions but the doctor refused permission to question him. He further spoke of Police Constable James attending at the Hospital on May 24 and 25, 2007 when the Officer wrote down what he told him. On those occasions, the defendant said that Police Constable James was alone. He denied signing anything at the Hospital and he insisted that Mr. Lubin was never at the Hospital. He at first said he met the Justice of the Peace at the station then he spoke of both the Justice of the Peace and Ed James being present on the last day – the 28th day of May, 2007 – at the Hospital. However, during

cross-examination, the defendant eventually accepted that the incident for which he was indicted occurred on May 25, 2007. He said that he gave two statements at the Hospital one of which was taken by Police Constable James on the 27th day of May 2007. In addition, he said that he could not recall that the statement of May 27, 2007 was taken in the presence of the Justice of the Peace.

[9]. The Evidence Act No. 5 of 2002 makes provision for the admissibility of admissions and confessions whether oral or in writing by a defendant. Section 71 (1) as amended requires that the issue of admissibility must be raised by the defendant. Section 71 (2) provides that evidence of a confession is not admissible unless it was made in such circumstances as to make it unlikely that the truth of the confession was adversely affected. A non-exhaustive list of the matters to be taken into account by the Court in determining admissibility is set out in section 71(4).

[10]. It is worthy to note, having regard to the defendant's initial position with regard to the statement of May 27, 2007 that the said statement was influenced by violence and oppressive conduct, that section 70 provides for the exclusion of statements influenced by external factors visited upon the defendant. The said section 70 reads:

“Evidence of an admission where the issue 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 threat of conduct of that kind, or by any other promise made to the person who made the admission to any other person.”

Coupled with section 71, section 70 replaces the common law requirement of voluntariness. Accordingly, the Courts in Saint Lucia are now guided by sections 70 and 71 as to the requirements to be met for the admissibility of admissions and confessions.

[11]. Admissions by the defendants in criminal proceedings are governed by section 72 which prescribes certain pre-conditions for admissibility. The said section applies to criminal proceedings and to admissions made in the course of official questioning of a defendant reasonably suspected by an investigating official, whose term includes by statutory definition a Police Officer, of having committed an offence.

[12]. The requirements of section 72 (2) are that, where the admission is not recorded, the questioning must be conducted, and the admission made, in the presence of an Attorney-at-Law acting for the defendant or a Justice of the Peace. Such admission must be recorded in a document by the investigating officer, signed by the maker of the admission and countersigned by the Attorney-at-Law or the Justice of the Peace attesting to the document being a true record.

[13]. In his submissions, Counsel for the Defendant did not pursue his objection to the statement of May 27, 2007 on the basis of section 70, but instead it was contended that the statement did not satisfy the requirements of section 72 (2) (b) as amended. It was submitted that the admission was not conducted in the presence of the Justice of the Peace, Mr. Michael Lubin.

[14] Although the evidence of Police Constable James was clear as to the statement being taken at the St. Jude's Hospital on May 27, 2007 commencing from 3:06 p.m. in the presence of Mr. Michael Lubin, Justice of the Peace, the supporting evidence is far from convincing. As previously iterated, Mr. Lubin seemed unable to recall being at the Hospital. This is of some significance as the taking of a statement in a hospital is by its very nature an unusual occurrence. This state of lack of recollection emerged in cross-examination after the witness had categorically asserted that the statement was taken at the interview room of the Vieux-Fort Police Station. Further, no help can be derived from the statement itself as it does not reflect where the statement was recorded. The defendant did admit being questioned by Police Constable Ed James at the Hospital although clearly mistaken as to the dates. However, he at first insisted that the Justice of the Peace was not there and he did not sign anything at the Hospital, but in cross-examination he said he gave two statements at the Hospital.

[15]. The regime for the admissibility of admissions as set out in section 72 provides safeguards and these must be strictly adhered to subject to the discretion of the Court by virtue of subsections (5) and (6). Under section 134, findings of fact on questions of admissibility must be established on a balance of probabilities.

[16]. The evidence led by the Prosecution in support of the admissibility of the alleged confession of May 27, 2007 is fraught with contradiction. The Court is left in doubt as to whether the Justice of the Peace was present at the Hospital as the gentleman himself is equally uncertain. Accordingly, the said statement of May 27, 2007 ought not to be

admitted into evidence at trial. The Court can discern no basis to invoke subsections (5) or (6) of section 72.

[17]. The defendant also objected to the admissibility of the statement under caution alleged to have been recorded by Police Constable James from the defendant on May 30, 2007 in the presence of the Justice of the Peace, Mr. Michael Lubin. The ground for objection was that the said statement, which amounted to a confession, was influenced by threats of violence and oppression. More specifically, it was contended that the statement was influenced by a threat from Police Constable Geran Sealy, the brother of one of the persons arrested for the offences along with the defendant and others.

[18]. Both sides proceeded on the basis that the alleged statement amounted to an admission made by the defendant in the presence of the Justice of the Peace. The sole complaint was founded upon the allegation by the defendant in relation to Police Constable Sealy. Here again, the relevant witnesses from the Crown were Police Constable James, the investigator, and Mr. Michael Lubin, the Justice of the Peace. Neither witness could shed any direct light on the truth or falsity of the allegation. In anticipation of the challenge, questions were put to Police Constable James about Constable Sealy. He revealed that this person had recently resigned from the Royal Saint Lucia Police Force but on that date – May 30, 2007, - he was a mere Police recruit and had no involvement with the investigation. Police Constable James informed the Court that Police Constable Sealy had no contact with the defendant and given his job training assignment he was not permitted to visit the custody area without being supervised by the Corporal in charge of the shift.

Further, it was stated that the defendant had made no complaints of any threats or other conduct towards him by Police Constable Sealy.

[19]. In response to questions put in cross-examination, Police Constable James informed the Court that although arrested and charged in the matter, Leslie Sealy was discharged in the Magistrate's Court. It is to be noted that according to the chronology given by Police Constable James, the defendant was charged for the offences on May 29, 2007, that is to say, the day before the statement was recorded under caution on May 30, 2007.

[20] The case for the Prosecution denied the defendant's allegation but presented no evidence save for the assertion by Police Constable James that Police Constable Sealy had no contact with the defendant in his capacity as a recruit being given on-the-job training.

[21] The defendant's sworn testimony was that while at the station he was there with three other persons concerned with the matters including one Leslie Sealy whom he described as the owner of the firearm. He spoke of interacting with Geran Sealy, the brother of Leslie Sealy. He told the Court that Geran Sealy threatened him by saying he must take the blame for the firearm or he would kill the defendant when he came out of custody. In cross-examination he denied that he had volunteered to give the statement of May 30, 2007 after being charged on the previous day. The defendant disputed that Police Constable Sealy was a recruit at the time and added that Police Constable Sealy was involved in the matter.

[22] As previously alluded to, the defendant appeared to be confused as to the dates and sequence of the events. He accepted that he made the second Statement under Caution on May 30, 2007 but he could not remember that he volunteered to make that statement. It would seem to me that if he is asserting that he was threatened he must have been equally saying that he offered the second statement to avert the threat. In addition, having heard the testimony of Police Constable James, the defendant was eager to assert that Police Constable Sealy was not a recruit and was involved in the investigation; these assertions I reject as absolutely untruthful. Further, the name 'Leslie Sealy' appearing on pages 2 and 3 of the statement was clearly an error as a reading of the statement coupled with the signatures of the defendant and the Justice of the Peace so indicate.

[23] Given the state of the evidence, I am disinclined to believe the defendant. The net result is that there is no credible evidence of a threat or any conduct within the ambit of that comprised in section 70. Accordingly, the objection is overruled, and the ruling will be that the statement of May 30, 2007 be admitted into evidence.

[24] The third complaint at the voir dire surrounded an oral statement alleged to have been made by the defendant in the presence of Police Constable James and Police Constable Roberts on May 29, 2007 at the Vieux-Fort Police Station. The said statement was asserted by both Prosecution witnesses to have been made by the defendant upon being shown the four articles mentioned. Police Constable James said he requested the articles from Police Constable Roberts and showed them to the defendant after reminding him of the caution at the interview room. The Officer said that the defendant, when shown the items replied: "Officer, that's mine!" Police Constable James admitted that he did not

record that statement. During cross-examination, Police Constable James said that the response was given in respect of all the items. Police Constable Roberts testified to hearing the same response when Police Constable James reminded the defendant of the caution and then, Police Constable Roberts, showed him the four items. This Officer also made no notes of the reply and his explanation was that he observed Police Constable James, who was the investigator, taking notes. He insisted that Police Constable James did not say anything to the defendant other than to caution him.

[25] In response to the Defence Counsel, Police Constable Roberts said that he understood the reply to be a reference to all the items and he did not ask the defendant whether each item belonged to him.

[26] The reply being made in the singular was the subject of some debate on both sides. The defence argued that the answer was ambiguous in that it was unclear as to whether the reference was to one or more of the items. The Crown responded that words, though uttered in singular form, could be construed as claiming ownership of the articles collectively. This exchange is of no moment to the resolution of the Court's task, as the meaning to be attached to the words goes to the weight of the evidence rather than to the question of admissibility.

[27] The statement 'Officer, that's mine' has been accepted by both Counsel as amounting to an oral admission, although the defendant denies having uttered those words. No written record was made of those words by either Officer. This is curious given their presence in the interview room.

[28] Record of oral questioning is the subject of section 73 of the Evidence Act. It enacts:-

“(1) Where an oral admission was made by a defendant to an investigating official in response to a question put or a representation made by the official, a document prepared by or on behalf of the official is not admissible in criminal proceedings to prove the contents of the question of the question, representation or response unless the defendant has, by signing, initially or otherwise marking the document, acknowledged that the document is a true record of the question, representation or response.”

Section 2 of the Act defines a representation as including an implied oral representation as well as a representation inferred from conduct.

[29] By the very reference to the caution coupled with the showing of the items, even assuming that no question was put to the defendant by either Officer, there is enough to constitute a representation by conduct. In the premises, the provisions of section 73 (1) are attracted. The Crown cannot circumvent the provisions of section 72 (2) by relying on section 73. This was a case of an investigating Officer. In the premises, the oral statement must be excluded.

[30] I hereby rule that the statement made under caution dated May 27, 2007 and the oral statement allegedly made on May 29, 2007, are not admissible. It further ruled that the statement under caution dated May 30, 2007 in the name of the defendant, Sham Sangano, is admissible in evidence.


KENNETH BENJAMIN
HIGH COURT JUDGE