

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE FEDERATION OF ST CHRISTOPHER & NEVIS

IN ST CHRISTOPHER CIRCUIT

CASE SKNHCR 2025/0067

REX

V

JL

APPEARANCES

Ms Althea Campbell for the Crown.

Mr Chesley Hamilton and Mr Kamau Grant for the defendant.

2025: NOVEMBER 21

RULING

On child competence

- 1 **Morley J:** JL in late middle age, is charged with indecent assault during 04-07.12.22 KP¹, then aged 12, the allegation as reported by defence Counsel Grant being:

The victim KL was 12 years old at the time of the offence when the Defendant JL..., indecently assaulted the victim. JL is married to S, who is the victim's godmother. The victim's aunt, P, with whom the victim lives, had to travel overseas and left the victim in the care of her godmother. While in her care, on one night, between 4th December 2022 and 7th December 2022, the victim fell asleep in her room and was awakened by the sensation of something pulling on her right breast. When she opened her eyes, she saw the Defendant sucking on her right breast with his mouth. The victim told H the following morning. H told

¹ This ruling when published will not reveal the identity the complainant and her family as she is entitled to anonymity, and also, being a ruling prior to trial, where the defendant has not been convicted of any offence, he is also entitled to anonymity.

the victim's godmother who later spoke with the victim and told her not to tell her aunt about the matter. On 14th January 2023, the victim told her aunt about the incident involving the Defendant. They both went to the Sandy Point Police Station to report the incident. On 30th January 2023, Constable Amos Tittle recorded statements from both the victim and the complainant.

- 2 Argument is raised the committal of the defendant to the High Court under the **Voluntary Bill of Indictment Act 2024 (VBI)**, act 19 of 2024, is flawed, and so the proceedings should stop.
- 3 The voluntary bill procedure was introduced in 2024 to take indictable cases bound for the High Court out of the magistrates court, or for them to avoid the magistrates court altogether, where there have been many examples of cases being delayed there far too long, for sometimes up to 5 years.
 - a. In the past, there had been a procedure where the magistrate would conduct a 'preliminary inquiry', which would mean the slow process of hearing oral evidence and reducing it to writing as a 'deposition' from each witness, often handwritten, in order to determine if there was a prima facie case, meaning there might be a case to answer to commit to the High Court, being assessment as to if there is admissible evidence which taking it at its highest might mean a properly directed jury could in theory convict of a criminal offence.
 - b. However this process took too long and so was replaced by act 33 of 2011 by a paper procedure, called 'committal proceedings' where under the amended **Part IV Magistrates Code of Procedure Act (MCP)**, cap 3.17, the magistrate could now receive witness statements, read them without need for slow receipt of oral testimony, and decide whether there was a prima facie case on what was in them.
 - c. Such witness statements, for voluntary bill or committal proceeding, had to be admissible on their face, meaning not riddled with improper evidence, like hearsay or opinion or supposition, or if lacking competence like a child not knowing what truth is, which is why each statement had to have the quality of being a deposition about it, where if receiving oral evidence to create a deposition the process would naturally weed out inadmissible material.
 - d. This means, if dealing with a person under 16, as required routinely by **s13 Evidence Act** cap 3.12, it is expected that to establish competence during an oral deposition there would be questions if a child understood good from bad, right from wrong, and lies from truth.

- e. It would follow therefore in a statement being offered for voluntary bill or committal proceeding, there would have to be some words in it to show understanding of truth and lies.
- 4 Considering this background, the central point concerns whether the statement of KP should have a certification on it she knows the difference between truth and lies; absent this, Counsel Grant submits the statement is inadmissible on its face and therefore cannot be received for the purposes of the voluntary bill procedure as offering evidence of offence.
- 5 KP's statement of 30.01.23, with further information given on 04.02.23, contains these words, under the declaration of truth signed by her, made when she had just turned 13:
- I know the difference between good and bad. Good is when I share with my friends. Bad is when I buse people.
- 6 I am satisfied these words mean she is trying to communicate she is competent to understand the difference between being good or bad, and that lying would be bad, though the words could have been clearer. I can conclude this from the fact she was 13 and it can usually be reasonably expected a person so aged to know what lying is, absent any indication she might not, for reasons of weakness of intellect or any mental disorder, which here do not arise. Moreover, there is positive evidence she is competent as she was assessed on 28.09.23 and so certified on 30.09.23 by Michelle de la Coudray Blake, Director of the National Counselling Centre in the Ministry of Social Development and Gender Affairs, and I am satisfied from my experience of life and children an understanding of lying has likely not arisen in KP only in the previous 9 months from the date of KP's statement.
- 7 It follows it is a fact in these proceedings the statement on its face can be received under the voluntary bill procedure.
- 8 Counsel Grant counters s9 VBI treats a statement offered for the purposes of a voluntary bill as to be deemed a deposition.

9. Witness statements deemed to be deposition.

Every statement purporting to be evidence of witnesses submitted under section 4 shall be deemed a deposition for the purposes of the Evidence Act, Cap. 3.12, the Larceny Act Cap. 4.16, the Perjury Act, Cap. 4.23, Child Justice Act, Cap. 4.15, Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act, Cap. 3.11 and the Criminal Procedure Act, Cap. 4.06.

- 9 He next points to **s47 MCP**, which says a statement offered in committal proceedings is deemed a deposition:

Definitions of “committal proceedings” and “deposition”

47. (1) In this Act, “committal proceedings” means proceedings under this Part for the committal of persons accused of indictable offences for trial by jury.

(2) For the purposes of this Act and any other law, a reference to a deposition in relation to committal proceedings shall be construed as a reference to any statement admitted in any evidence in committal proceedings under this Act.

- 10 Concerning the statement being deemed a deposition, under committal proceedings or the voluntary bill procedure, he next points to **s56 Criminal Procedure Act (CPA)** as revised cap 4.06.

Admissibility of statements in documents.

56. (1) Subject to subsection (4) of this section, a statement made by a person in a document may be admissible in any criminal proceedings as evidence of any fact which direct oral evidence by him or her would be admissible if—

(a) the requirements of one of the paragraphs of subsection (2) of this section are satisfied; or

(b) the requirements of subsection (3) of this section are satisfied, except that such statement shall not be used in a case if it is the only evidence in that case.

(2) The requirements referred to in paragraph (a) of subsection (1) of this section are—

(a) that the person who made the statement is dead or by reason of his or her bodily or mental condition unfit to attend as a witness;

(b) that the person who made the statement is outside the Federation and it is not reasonably practicable to secure his or her attendance; or

(c) that all reasonable steps have been taken to find the person who made the statement, but that he or she cannot be found.

(3) The requirements referred to in paragraph (b) of subsection (1) of this section are—

(a) that the statement was made to a police officer or some other person charged with the duty of investigating offences; and

(b) that the person who made it cannot give oral evidence through fear or because he or she is kept out of the way.

(4) The provisions of subsection (1) of this section shall not render admissible a confession made by an accused person that would not be admissible under any law or practice.

(5) The Court may, where a witness while giving oral evidence in the proceedings through fear does not continue to give evidence at all or does not continue to give evidence in connection with the subject matter of the statement, admit in evidence a statement made

by that person in a document as evidence of any fact of which direct oral evidence by him or her would be admissible if—

(a) the requirements of one of the paragraphs of subsection (2) of this section are satisfied; or

(b) the requirements of subsection (3) of this section are satisfied.

(6) A statement referred to in this section shall be made on oath before a person who is empowered to administer oaths, and shall be in the form set out in the Second Schedule to this Act.

(7) A statement referred to in this section if it is made by a child of tender age, then the person before whom the statement is made shall certify on the form that in his or her opinion the child understood the difference between right and wrong and the nature and effect of an oath or if the child did not understand the nature and effect of the oath that the child possessed sufficient intelligence to justify the reception of the evidence.

(8) Counsel in the proceedings, after a statement referred to in this section has been tendered in evidence, shall be given an opportunity by the court, if he or she so wishes so to do, to inform the court including the jury as to what parts of the evidence tendered he or she would have challenged if the witness had attended court, and he or she shall inform the court what his or her case is in respect of those parts of the evidence he or she is challenging

(9) For the purposes of this section, “fear” shall be widely construed, except that the fear shall have connection with the accused or the case being heard by the court.

[Underlining added]

- 11 Counsel Grant argues under **s56(7) CPA**, for KP’s statement as ‘a child of tender years’ to be admissible, it must have certification by PC Tittle who took it that KP knows the difference between right and wrong, and absent this, it is not admissible, noting there is only the declaration of Director Blake, who is not PC Tittle, and is 9 months later.
- 12 However, in my judgment, this argument misconceives the point of **s56(7) CPA**, as countered by Counsel Campbell for the Crown. The section is designed to allow in careful circumstances during trial for a statement to be read in the absence of the child if dead, or in fear, or otherwise unavailable, and only if not the only evidence. The subsection points to how to be read as evidence at trial there would have to be a certification by the person recording the statement, which in this case there is not, so this statement currently could not be the subject of a Crown application to be read to a jury.
- 13 However, I express no views on whether PC Tittle could now offer an additional statement to certify that at the time the statements of KP were taken on 30.01.23 and 04.02.23, the officer would certify KP understood truth from lies, which might yet cure this technical failing.

14 Further, I express no view as to whether a child 'of tender years' must mean the same as a person under 18, who is deemed a child under **s2 Child Justice Act 2013**, or a person under 16 as in **s13 Evidence Act**, or some younger age to distinguish a 'child' from a 'child of tender years', where the meaning of 'tender years', implying possible inability to know right from wrong, may yet be a question of fact on a case by case basis.

15 *Obiter*, I will set out **s13 Evidence Act**:

Competence of children under sixteen years of age.

13. (1) Where a child who is under sixteen years is presented as a witness, the court shall conduct an inquiry to determine if the child is possessed of sufficient intelligence to justify the reception of the child's evidence, and to determine if the child is competent to know the nature and consequences of giving false evidence and to know that it is wrong to give false evidence, and if the court so finds, it shall permit the child to give evidence upon taking the affirmation or oath.

(2) Where a child who is under sixteen years is presented as a witness and does not qualify as a witness under subsection (1), the court shall conduct an inquiry to determine if the child is possessed of sufficient intelligence to justify the reception of the child's unsworn evidence, and if the child understands that he or she should tell the truth, and where the court so finds, it shall permit the child to give unsworn evidence upon the child stating that:

"I promise to tell the truth."

(3) A person charged with an offence may be convicted upon evidence admitted under subsection (2) but in a trial by jury of a person so charged, the court shall warn the jury of the danger of acting on such evidence unless they find that the evidence is corroborated in some material particular by other evidence implicating that person.

(4) The evidence of a child who is under sixteen years, though not given upon oath, but otherwise taken and reduced in writing as a deposition, shall be deemed to be a deposition for all intents and purposes.

(5) Nothing in this section limits or affects any rule of law that prevents a person from being convicted of an offence upon uncorroborated evidence.

(6) Subject to subsection (9), a child who is under sixteen years may give evidence as provided in section 28(3) in respect of any case, whether or not the child is a victim in the case.

(7) Evidence given pursuant to subsection (6) shall be admissible as the child's evidence.

(8) A court may refuse to admit evidence given pursuant to subsection (6) where—

- (a) the child is not available for cross-examination, either physically or through live video links or television links;
- (b) rules governing disclosure of the circumstances in which the recording was made have not been complied with; or
- (c) the court is satisfied that it is not in the interests of justice to admit the evidence.

(9) Subject to subsection (10), a child giving evidence pursuant to this section in respect of a sexual offence shall be cross-examined via video or television links or other technological means and the court may utilise whatever means it considers necessary, including technological means, to minimise the trauma that may be caused to the child in the circumstances.

(10) On the application of the prosecution, a video or television link or other technological means shall not be used when the court is satisfied that a child who is under sixteen years of age is able and wishes to give evidence in the presence of the accused, and the court thinks it is desirable to do so.

(11) Notwithstanding subsection (10), the court may on its own motion revert to video or television.

[Underlining added]

- 16 The section sets out the requirement if receiving evidence before a court to establish if a person under 16 will understand the oath, and truth, whether evidence will be on oath or unsworn under promise, the need for a special warning if unsworn evidence is uncorroborated, and in particular the provision of aids to assist a child giving evidence like video link, which this court very much encourages.
- 17 Concerning paper committal or the voluntary bill procedure, any statement by a person under 16, following **s13 Evidence Act**, ought to have, to be equivalent to a deposition, as here, reference in it to understanding good from bad, right from wrong, and truth from lies, failing which it may not be admissible for such proceedings. Further it is recommended every such statement as a matter of routine, to make it possibly admissible during trial if the child is absent, has on it at its end and in addition a certification by the person taking the statement, as contemplated by **s56(7) and Sch 2 CPA** to this effect:

I _____ before whom this statement has been made certify that the child who made the statement understood the difference between right and wrong and the nature and effect of an oath/did not understand the nature of an oath but was possessed of sufficient intelligence to justify the reception of the evidence (delete what is not applicable).

Signature of person before whom the statement is made by the child.”

- 18 In sum, it follows I am not in agreement with the submissions of Counsel Grant but do commend him for his learning and succinctness of argument offered, and Counsel Campbell for her prompt and intelligent reply. The statement of KP is receivable under the voluntary bill procedure, in which it is admissible for evaluation, and here does disclose a case to answer on indecent assault, and on which there will at a later date follow a jury trial in the High Court.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

21 November 2025