

SAINT LUCIA

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

CASE NO. SLUCRD2022/0057D,0058D,0059A,0060A,0061A,0062A,0063A,0064A,0065A,0066A,0067A

THE KING

vs.

VERNEL JOSEPH

Defendant

Before:

The Hon. Mde. V. Georgis Taylor-Alexander

High Court Judge

Appearances:

Mr. Colin Foster for the Defendant
Mr. Linton Robinson for the Crown
The Defendant present

2025: September 19;

JUDGMENT

- [1] **TAYLOR-ALEXANDER J:** By application filed on the 11th of November 2024. The Applicant, who has been charged with multiple acts of sexual misconduct against Rebecca Railton and others, challenges the admissibility of a number of pieces of evidence on which the Crown intends to rely in the forthcoming trial.

[2] Having considered the application and supporting affidavit filed by the Defendant/Applicant, and having heard oral submissions from both parties, I reserved my ruling on the admissibility of the challenged evidence. I now deliver the ruling.

[3] The evidence challenged by the Defendant/Applicant comprises: (i) the identification evidence, including the procedure employed in the conduct of the identification parade; (ii) the propriety of the non-intimate samples taken from the Defendant/Applicant; and (iii) the chain of custody in relation to the intimate samples obtained from the complainant, Rebecca Railton. The Applicant contends that this material is inadmissible on the grounds that the identification parade was conducted in breach of established procedure; that the samples taken from the Defendant/Applicant were improperly obtained; and that the samples taken from the complainant were improperly stored and inadequately documented. It is further argued that, in these circumstances, the evidence is prejudicial rather than probative. The Crown, for its part, maintains that the evidence was lawfully obtained, properly preserved, and is both relevant and admissible.

[4] The Defendant/Applicant's challenges can be summarised as follows:-

1. The Visual Identification Evidence:

- (i) A Voir Dire ought to have been held at or before the Sufficiency Hearing to determine the admissibility of the identification evidence, pursuant to section 100 of the Evidence Act Cap 4.15 of the Revised Laws of St. Lucia (Evidence Act).
- (ii) The conduct of the identification parade fell below the requirements of Standing Order 47 making the evidence on the parade a nullity.
- (iii) The inconsistent evidence of what transpired at the identification procedure, makes the evidence inherently unreliable and unsafe.

2. DNA Evidence:-

- (i) The failure to disclose the results of the DNA evidence at the Sufficiency Hearing is a material irregularity and makes the DNA evidence inadmissible.
- (ii) The Crown is incapable of satisfying chain of custody in relation to the DNA evidence, and the DNA having been tested by an expert who has not been gazetted constitutes a material irregularity.

- (iii) There is no evidence to disprove that the sexual assault kit in the custody of PC Holder from the 7th March 2022 to the 7th of June 2022 was not tampered with.
- (iv) The Evidence Submission Form of the forensic laboratory does not state that when it was received, the package containing the sexual assault kit, had the signature of the doctor and the signature of the victim.
- (v) The Evidence Submission Form was altered on the 6th of November 2024, interfering with evidence of the original chain of custody.

3. Disclosure as Regards Germarley Emanus

The Defendant/Applicant seeks the witness statement, report or notes of Steven Edward, Social Worker and Police Officer who were present during the taking of the evidence of Germarley Emanus, a co accused, now witness for the Crown. He also requests that the Crown disclose why Germarley was arrested. He also requests the witness statement of Shervin Longville, and any other evidence of persons arrested in connection with these offences, and any pocket book notes or station diary entries in relation to such, including where such was held identification procedures conducted.

Visual Identification Evidence Holding a Voir Dire at the Sufficiency Hearing

- [5] The Defendant/Applicant further contends that a Voir Dire ought to have been conducted at or before the Sufficiency Hearing to determine the admissibility of the identification evidence pursuant to section 100 of the Evidence Act. It is submitted that the failure to do so rendered the committal of the Defendant defective, particularly given that the Crown's case rests inextricably upon the identification evidence. The Applicant argues that such evidence can only be relied upon where it satisfies the admissibility criteria set out in section 100(1) and (2) of the Act.
- [6] The Defendant/Applicant submits that there is no evidence that a Voir Dire was conducted, or that any special consideration was given to the identification evidence at the Sufficiency Hearing, prior to a determination of its admissibility. On this basis, he contends that the identification evidence of Rebecca Railton is a nullity, it not having been assessed pursuant to the litmus test of section 100 of the Evidence Act.

- [7] The Crown in opposition submits that the function of the Court at the Sufficiency Hearing is limited. Its purpose is to examine the evidence upon which the Crown intends to rely, in order to determine whether such evidence discloses a prima facie case. It is not the role of the Sufficiency Hearing court to adjudicate upon admissibility questions through a Voir Dire. The Crown submits that it would be both unprecedented and impractical for the Court to embark upon a Voir Dire at that stage, particularly in circumstances where the evidence is prima facie admissible under section 100(1)(a)(i) of the Act. In any event, no application was made before the Court at the Sufficiency Hearing for such an enquiry.

Analysis

- [8] At paragraph F1.46 of Blackstone's Criminal Practice 2022, the authors observe that a hearing on a voir dire is not normally required to determine the admissibility of evidence arising from an identification parade, or, it is submitted, any other identification procedure. This position finds support in the decision of the Court of Appeal in *In **Walsh***¹ Boreham J giving the judgment of the Court of Appeal at [87] expressed similar sentiments:

"Those representing the applicant drew some close analogy between the admissibility of evidence of an identification parade and the admissibility of a voluntary statement. But those are very different matters. As soon as a statement is challenged, the law places on the Crown the burden of showing that it is admissible by proving that it was voluntarily made. That is a separate and different matter. Here there was no burden on the Crown to prove the admissibility of the evidence relating to the identification parade and what flowed from it. It was clearly admissible evidence and should have been admitted. Its quality is, of course, another matter to be considered by the jury."

- [9] In ***Fleming***², concerning the law of the UK prior to 1987, an appellant had argued that identification evidence was inadmissible on the ground inter alia that the identification at the police station was obtained in circumstances which contravened Home Office circular No 109 of 1978. It was submitted that the result was that the probative value of the evidence was minimal compared to its prejudicial effect so that it would be unfair for the evidence to be admitted. The Court of Appeal disagreed. It held that it was unnecessary to hold a trial within a trial for this purpose. Lord Woolf LJ, at pages 36–

¹ [1980] 74 Cr App R 85

² (1987) 86 Cr App R 32

37, stated that, in the normal course, the trial judge will determine whether to take the action referred to by the Lord Chief Justice in *Turnbull*³ either at the close of the prosecution's case or after all the evidence has been presented. There may, exceptionally, be cases where the position is sufficiently clear on the depositions to permit an earlier ruling. However, the trial judge should not resolve the matter by holding a preliminary trial before the evidence has been placed before the jury. It was further observed that, while the trial judge retains a residual discretion to exclude evidence which is strictly admissible if its probative value is outweighed by its prejudicial effect, this residual discretion does not justify holding trials within trials. Issues of this nature can be satisfactorily addressed by the judge reviewing the depositions together with any facts that are common ground between the prosecution and the defence.

[10] The authors of *Blackstone's Criminal Practice* commend the following matters as appropriate for a voir dire: the competence of a witness; the admissibility of a confession; the admissibility of a recording; the admissibility of a statement contained in a document produced by a computer; and the admissibility of a plea of guilty where the accused subsequently changes plea to not guilty.

[11] The Sufficiency Hearing is not the proper stage for determining the admissibility of identification evidence. Rather, the Sufficiency Hearing constitutes a preliminary inquiry into whether there is sufficient evidence to put the accused on trial. The function of the court at the Sufficiency Hearing is to assess the merits of the Crown's case. In *Kiam Sexius V The Attorney General of St. Lucia*⁴ the Privy Council explained the obligation placed on a court conducting a Sufficiency Hearing:

"9. Since 2008 Preliminary Inquiries and Committal Proceedings in St Lucia have been replaced by Initial Hearings and Sufficiency Hearings. In the case of an indictable offence a Magistrate conducts the Initial Hearing and makes a Scheduling Order fixing dates for the Sufficiency Hearing and the engagement of counsel. The Judge conducts the Sufficiency Hearing and in the presence of the defendant and counsel and prosecuting counsel, reviews and evaluates the witness statements of the prosecution and the defence and hears submissions. If the Judge considers that there is a prima facie case the Judge commits the defendant for trial."

[12] The statutory framework under section 100 of the Evidence Act provides that identification evidence adduced by the Crown is admissible, provided it satisfies the requirements set out in section 100(1).

³ [1977] QB 224 at 229

⁴ [2017] UKPC 26 at [9]

In the present case, the evidence meets those requirements. Questions regarding the ultimate reliability of the evidence are matters for the tribunal of fact at trial, and any challenges to admissibility on the grounds of procedural irregularity are likewise to be determined at trial. Accordingly, I reject the Defendant/Applicant's submission. The identification evidence stands as part of the Crown's case, subject to any proper challenge at trial.

Conduct of Identification Parade

- [13] The Defendant/Applicant further contends that the identification parade was conducted in breach of Standing Order 47 and is therefore a nullity. He argues that the wording employed by Inspector Morgan, who conducted the parade, was calculated to draw the witness's attention specifically to the Defendant/Applicant rather than to the parade as a whole. Counsel submits that Standing Order 47 prescribes safeguards intended:

- “(a) *to exclude any suspicion of unfairness or risk of mistaken identification by ensuring that the witness's attention is not directed to the suspect in particular, but instead is directed impartially to all persons in the parade; and*
- (b) to ensure that the witness's ability to recognize the accused is tested fairly and adequately “*

- [14] Inspector Morgan in his witness statement explaining the instructions he gave to Rebecca Railton, stated:-

“I explained the process to her and the presence and hearing of the Justice of the Peace, Mr. Michael Lubin. I told her that I will escort her to a room where she will observe 9 persons on a lineup and that the person of which she made mention in a witness statement may or may not be on the lineup. And should she recognize the person she saw on Tuesday the 7th of March 2022 being midnight and 2:00 AM at Hummingbird Beach who was involved in the rape and robbery, she should only indicate by pointing to the person. And say the number under which the suspect. is standing. I further told her that if she does not see the person, she should also indicate so. I told her that she can walk the line up and down at least twice and look at each person.”

- [15] To properly assess the Defendant/Applicant's contention regarding the wording employed by Inspector Morgan, it is necessary to consider the statement of the identifying witness, Rebecca Railton. In her statement, she recounted as follows:

“Inspector Morgan said I would be taking part in an identification parade. He said the suspect may or may not be in the lineup. Inspector Morgan, Justice of the Peace, and I walked into the ID room. The room was long and dark with a tinted glass. Behind the glass I could see nine men

standing there wearing the same bandana and face covering. The bandana was black and the face covering was black and white. All of the nine men were about 5 feet 10 inches tall and wore dark three quarter length trousers and a dark shirt. All of the men were dark in complexion. I walked up and down the room and kept carefully looking at each man straight away. Could identify the suspect. I asked Inspector Morgan to ask #3 to step forward and lower his mask to his chin, and he did. I asked Inspector Morgan to ask #3 to step back and kneel on both knees, and he did. I was able to distinctly identify the suspect. And that position as I recall him kneeling like that when my friends and I spoke to him on the beach over a long period of time. I also recognized him because I have had several interactions with him since I arrived in Saint Lucia. I asked Inspector Morgan to ask the suspect to walk forward close to the glass again. I looked him in the eyes for around 10 seconds. I was satisfied that the suspect was the person that I knew as Joseph or Cats. I informed the Inspector Morgan that the suspect was #3 and we left the room."

- [16] The Defendant/Applicant relies on PACE Code D, Annex B, as setting out the best practice for the conduct of identification parades. However, he did not identify the specific provisions upon which he relies or explain how they were allegedly breached. In my considered view, the governing procedure for identification parades in this jurisdiction is Standing Order 47, not PACE. Nevertheless, I have had regard to the provisions of PACE Code D as a useful guide to best practice, though not binding in this Court.
- [17] Paragraph 1.2 explains that the purpose of an identification parade is twofold: (i) to test the eye-witness's ability to identify the suspect as the person they claim to have seen on a previous occasion, and (ii) to provide safeguards against mistaken identification. Paragraph 3.2(b) emphasises that care must be taken not to direct the witness's attention to any particular individual, except where unavoidable, to ensure a fair comparison is made among those present. Annex B further prescribes that, after the witness has properly viewed each member of the parade, they should be asked whether the person they observed earlier is present, and if so, to identify that person by number. Additional safeguards are provided where the witness requests to hear a participant speak, move, or assume a posture, with the reminder that the line-up is based on physical appearance only.
- [18] Having considered these principles alongside the requirements of Standing Order 47, I find no irregularity in the conduct of the parade in this case. Nor do I accept that the words used or the manner adopted by Inspector Morgan fell short of the best practice invoked by the Defendant/Applicant. There is no evidence to suggest that the instructions or the conduct of the parade were calculated to focus her attention unfairly on the Defendant/Applicant, nor that the process compromised the fairness or reliability of the identification.

- [19] In her statement, Rebecca Railton gave a detailed description of the man who held a gun to her head. She described him as approximately five feet eight inches (5 ft. 8") tall, with poor posture, a slouched gait, a chubby build with a large stomach and visible 'love handles.'" She stated that she could recognise this individual not only from his physical build and complexion but also by the sound of his voice.
- [20] At the identification parade, Ms. Railton stated that, after viewing the line, she immediately recognized the suspect at position number 3. She then requested that the suspect step forward and assume a particular posture resembling the stance she had seen at Hummingbird Beach. She looked into his eyes and confirmed that he was the same man who had assaulted her. She further identified him as a man known to her as "Joseph" or "Cats."
- [21] In my judgement, Ms. Railton's identification was the product of her independent recollection and assessment, made on the basis of the physical characteristics she had earlier described. It was not the result of suggestion, prompting, or any irregularity in the conduct of the parade.
- [22] Accordingly, I am satisfied that the identification procedure complied with the requirements of Standing Order 47 and did not fall short of the best practices outlined in PACE Code D. There was no unfairness or irregularity sufficient to render the identification evidence inadmissible, nor is there any basis for excluding it from the consideration of the jury.

Inconsistencies in the Evidence of the Identification Procedure

- [23] The Defendant/Applicant submits, and I accept, that there are inconsistencies in the evidence presented by the Crown as to what transpired at the identification parade conducted by Inspector Morgan, at which Rebecca Railton identified the Defendant/Applicant, Vernel Joseph, as the person present at Hummingbird Beach who sexually assaulted her. The parade was witnessed by Justice of the Peace, Michael Lubin, and photographed by the Crime Scene Officer.
- [24] In her witness statement dated 11th March 2022, Ms. Railton stated that she immediately identified the Defendant/Applicant in position number 3. She confirmed her identification after requesting that the Defendant step forward and stoop, noting that his stooping was identical to the posture she had observed when she previously encountered him at the beach. The Crime Scene Officer, who photographed the line-up, recorded in his photographs that the Defendant/Applicant was indeed located at position number 3.

- [25] However, in his witness statement dated 23rd March 2023, Justice of the Peace Michael Lubin stated that the Defendant/Applicant, when asking to select his position on the line-up, chose to stand at position number 6. Inspector Morgan, who conducted the parade and prepared all accompanying documentation, also recorded the Defendant/Applicant as occupying position number 6. His evidence is that Ms. Railton identified the Defendant/Applicant while he stood at the position.
- [26] It is therefore apparent that the evidence is inconsistent as to whether the Defendant/Applicant stood at position number 3 or position number 6 on the line-up. These discrepancies between the accounts of Ms. Railton, the Crime Scene Officer, and the Justice of the Peace raise a conflict as to the precise position occupied by the Defendant/Applicant during the procedure. What is consistent across all accounts, however, is that Rebecca Railton positively identified the Defendant/Applicant, Vernel Joseph, as the person who committed the criminal acts against her. The inconsistencies relate solely to the position number he occupied and do not affect the substance or validity of the identification itself.
- [27] The court's general discretion to exclude otherwise admissible evidence may be exercised where in criminal proceedings, the probative value of evidence adduced by the prosecutor is outweighed by the danger of unfair prejudice to the Defendant/Applicant, the court may in such circumstances refuse to admit the evidence⁵ In my judgment, the inconsistencies as to the Defendant/Applicant's position on the line-up do not undermine the admissibility of the identification evidence. They are matters that properly go to the weight of the evidence and the assessment of reliability of the witnesses who give evidence of the parade, which are issues for the jury. The central and uncontested fact remains that Ms. Railton identified the Defendant/Applicant during a formal identification procedure. Whether her recollection of his position on the parade, or the supporting documentation of the officers, is accurate or mistaken is an issue for the fact-finder to resolve at trial. Further, I am satisfied that any potential prejudice arising from the inconsistencies can be adequately addressed by appropriate directions to the jury. In particular, a direction on how to approach inconsistent evidence, together with a specific instruction pursuant to section 102 of the Evidence Act, that will ensure that the jury considers the identification evidence with the necessary caution. I find no justification to withdraw this evidence from the jury. Accordingly, this ground of challenge fails.

⁵ Section 116 of the Evidence Act of St. Lucia Cap 4.15 of the Revised Laws of St. Lucia.

DNA Evidence

Failure to disclose at the Sufficiency Hearing

- [28] The Defendant/Applicant argues that non-disclosure of DNA report in the possession of the Crown from the 27th of October 2022, at the Sufficiency Hearing is a material irregularity and the Crown ought not to be allowed to adduce such evidence, it not having gone through the prima facie case test at the Sufficiency Hearing.
- [29] The Defendant relies on **Solomon v The State**⁶, where de la Bastide CJ, writing for the court, emphasised that material in the possession of any governmental authority closely connected with the prosecution must be treated as being in the possession of the Crown for disclosure purposes.

He stated:

*“I do not think that in the circumstances of this case, the State can claim to be excused on the ground that the material in question was not in the possession of those in charge of the prosecution. In **Blackledge**⁷, it was held that for the purposes of disclosure, material in the possession of any of a number of Government departments ... should be regarded as in the possession of the Crown as ‘an undivisible entity’... But where, as here, the persons in whose possession the material is, know of the pendency of the prosecution and appreciate, or should appreciate, the relevance of the material in their possession, then non-disclosure to the defence does amount to a material irregularity of which the appellant is entitled to complain if it has caused him prejudice.”*

- [30] The court in **Solomon** also relied on **Blackledge**, where the Court of Appeal allowed an appeal against conviction despite the appellants having pleaded guilty, on the basis that the effect of non-disclosure was to deprive them of material which would “have enabled them to make properly informed decisions as to what course they should take” (at p. 338). Similarly, in **R v Ward**⁸, the Court of Appeal held that non-disclosure of evidence, whether in the possession of the police, scientific experts, or the DPP, constituted “material irregularities at the trial.”
- [31] These authorities are, however, distinguishable from the present case. In **Solomon**, the issue arose in the context of disclosure of fresh evidence at the appeal stage. **Blackledge** concerned the failure to disclose material evidence prior to the entry of a guilty plea, thereby depriving the defendants of

⁶ (1999) 57 WIR 432,

⁷ (1996) 1 Cr. App. R. 326

⁸ 1993) 96 Cr. App. R. 1

the ability to make an informed decision as to plea. **Ward** concerned a wholesale failure to disclose relevant evidence at all, which directly undermined the fairness of the trial process.

[32] By contrast, in the present case, the proceedings have not yet gone to trial, no jury has been empaneled, and the matter remains in the preparatory stage. The DNA report has now been disclosed well in advance of trial. Any prejudice that may have arisen from its absence at the Sufficiency Hearing is mitigated by the fact of its disclosure prior to trial, which allows the defence full opportunity to examine and, if so advised, challenge its contents.

[33] While I reiterate that timely disclosure is a duty to be strictly observed, I do not accept that non-disclosure at the sufficiency stage renders the evidence inadmissible at trial. The function of the Sufficiency Hearing is limited: it is to determine whether there exists a prima facie case on the material then before the court. Late disclosure, though regrettable, does not affect the admissibility of relevant evidence at trial. The proper judicial response to failures of disclosure is through case management directions to safeguard fairness, or in extreme circumstances where prejudice cannot be cured, exclusion. On the facts before me, the threshold of prejudice has not been met. Accordingly, I find that the DNA evidence remains admissible at trial, subject to any challenge as to its reliability or weight.

Chain of Custody / Expert Not Gazetted

[34] Under this ground, the Defendant/Applicant makes two submissions. First, he contends that the Crown is required to prove that the non-intimate samples taken from him were in fact tested by a scientist whose qualifications and expertise had been advertised by notice in the Gazette. Second, he contends that it must be proven that it was indeed the samples taken from the Defendant that were tested.

[35] I must confess to some difficulty with these submissions. The Defendant/Applicant has not referred the court to any statutory provision, rule of evidence, or authority which imposes a requirement that a forensic scientist must be gazetted in order to carry out DNA testing or to give evidence of the results. In the absence of such authority, I do not accept that the admissibility of a DNA report is conditional upon prior gazettal of the analyst. The admissibility of expert testimony depends upon whether the witness possesses the requisite training, knowledge, or experience to assist the Court; gazettal is not a legal precondition.

[36] Secondly, the Defendant/Applicant challenges the proof that the testing itself was conducted. In my judgment, the report issued by the forensic scientist, confirming that the Defendant/Applicant's non-intimate samples were analysed against DNA recovered from the Virtual Complainant, constitutes prima facie evidence that the testing was carried out on these samples. The report identifies the laboratory where the testing was conducted, and at trial it is expected that certification of the laboratory's accreditation and the qualifications of the scientist will be produced. These matters go to the weight and reliability of the evidence, not its admissibility. Accordingly I am not persuaded by the Defendant/Applicant's submissions under this ground, which consequently is dismissed.

Challenge to Chain of Custody and Integrity of DNA Samples

[37] The Defendant/Applicant further challenges the manner in which the non-intimate samples were taken, stored, and transmitted to the forensic laboratory. He contends that the Crown's failure to strictly establish these matters is fatal to its case, as it cannot be said with certainty that the evidence ultimately tested for the presence of the Defendant's DNA was the same material originally collected.

[38] In essence, the Defendant/Applicant raises three concerns: (i) whether the samples were properly stored; (ii) whether valid consent was obtained from the Defendant for the taking of the non-intimate samples; and (iii) whether the samples collected were in fact the same as those later received and tested at the forensic laboratory.

[39] In my view, the Defendant/Applicant's arguments invite the Court to engage in speculation about the retrieval, storage, and transmission of the evidence. On the material before me, no reasonable doubt has been raised as to the integrity of the testing process, nor does any apparent irregularity arise on the face of the Crown's case.

[40] The Crown has placed before the Court the statement of Ranny Harris, dated 22nd March 2022. He records that on 11th March 2022, armed with the written authorisation of Inspector Gibson Chitolie, he proceeded to the police station where the Defendant/Applicant, Vernel Joseph, was being held. Mr. Harris states that he informed the Defendant/Applicant of his intention to obtain non-intimate samples, and that the Defendant voluntarily consented to the procedure. Harris then obtained buccal swabs using sterilised, single-tip applicator swabs. Upon completion, the swabs were placed in a white evidence box, sealed in the presence of the Defendant/Applicant, packaged, and labelled as RH01. Harris further states that the package remained in his custody and was duly stored.

[41] The Defendant/Applicant now invites the Court to speculate: whether the sample was stored appropriately; whether, in transit, it may have been co-mingled with samples taken from another individual, one Danzie Isaac; and whether the condition of storage or transmission might somehow have undermined its integrity by the time it was received at the laboratory. These submissions, without evidence to support contamination or tampering, are wholly speculative. The chain of custody is presumed intact unless credible evidence suggests otherwise. Such challenges may properly be pursued at trial through cross-examination of the relevant witnesses, but they do not, at this stage, undermine the admissibility of the forensic report or its relevance to the issues before the Court.

[42] This principle that defects or gaps in the chain of custody ordinarily affect the weight of the evidence and not its admissibility is well settled. In **Damien Hodge v The Queen**⁹ the Court of Appeal confirmed that continuity of exhibits need not be proved with “absolute perfection” for the evidence to be admitted; any alleged weaknesses are for the tribunal of fact to evaluate in determining reliability. Baptiste JA said this:-

“Proof of continuity is not a legal requirement and gaps in continuity are not fatal to the prosecution’s case unless they raise a reasonable doubt about the exhibit’s integrity. In the absence of a specific requirement or necessity to call as witnesses all persons who may have had possession of an item during the chain of custody, it is a question of fact for the jury whether or not to doubt the accuracy of DNA results because of the possibility that security or continuity of items was not maintained. Further, the swab box bore sufficient information including the appellant’s name and initials of witnesses which assisted them in making the identification. Also, it is not fatal to the admissibility of the evidence that the judge did not ask the unrepresented defendant whether he objected to it. Thus, the swab box was properly admitted into evidence”

[43] Baptist JA also cited with approval the dicta in **Cameron v Police HCWN**¹⁰, in which Mackenzie J stated:

“... It is not necessary that every person involved in the chain of communication be called

to give evidence of the handling of the sample while it was in their possession. There must be evidence from the officer administering the procedures to establish that he caused it to be conveyed by adopting a system which is sufficient to satisfy the judge dealing with the

⁹ HCRAP2009/001

¹⁰ CR1 2005-485-187, 14 March 2006

particular case that any opportunity for interfering with the sample is eliminated so far as that can humanly be done.”

- [44] The court therefore emphasised that breaks or imperfections in the chain of custody may give rise to legitimate grounds for challenge on cross-examination, but they do not automatically require exclusion of the evidence. Applying those principles, I am satisfied that the issues raised by the Defendant/Applicant are best addressed at trial through cross-examination and judicial directions, and do not provide a basis at this stage for excluding the DNA. The Crown has produced documentation sufficient to establish continuity of custody of the samples, subject to cross-examination at trial.

Possibility of Tampering of Evidence while in the Custody of the Investigating Officer

- [45] The Defendant/Applicant further relies on the three-month period during which the sexual assault kit remained in the custody of PC Holder. However, for the reasons I have already outlined, this Court ought not to engage in speculation. The evidence before me discloses no affirmative indication of tampering or mishandling during that period. The mere possibility of interference, absent any evidential foundation, is insufficient to warrant exclusion. In the absence of concrete evidence raising a reasonable doubt as to the integrity of the exhibits, continuity is preserved and the evidence remains admissible.

Evidence Submission Form / Missing Signatures / Alteration of Evidence Submission Form

- [46] The absence of signatures from the Doctor and Complainant on the packaging and the alteration of the Evidence Submission Form too are issues of procedural irregularity, individually and collectively; however, none of which is determinative of inadmissibility; it is a factor going to weight and credibility, not admissibility. The alteration corrected an administrative error and has not been shown to undermine the integrity of the chain of custody. Again, this is properly a matter for cross-examination and assessment at trial, rather than exclusion at this stage.

Disclosure as Regards Germarley Emanus

- [47] The Defendant/Applicant seeks disclosure of a range of materials said to be relevant to the defence. Specifically, he requests the witness statement, report, or notes of Steven Edward, Social Worker,

and of the Police Officer present during the taking of the evidence of Germarley Emanus. He further seeks disclosure of the reasons for Germarley's arrest, the witness statement of Shervin Longville, and any other evidence relating to persons arrested in connection with these offences. In addition, the Defendant/Applicant seeks disclosure of any contemporaneous records, including pocketbook notes or station diary entries, particularly in relation to the conduct of identification procedures. In **Omar Anderson v R**¹¹ the Court of Appeal of Jamaica said this: -

"[51] Having heard oral submissions on the application, we agreed that the duty of disclosure by the Crown was an ongoing one. However, we concluded that the contents of a station diary would not ordinarily be disclosed unless it was relevant to the prosecution's case or the defence's case. We also agreed that the entry in the station diary of the appellant's arrest was not relevant to the case advanced by the prosecution against the appellant, and that he had not demonstrated to us how it had been, or would have been, relevant to his case. The same with regard to the storekeeper's log, as the evidence of what was logged there was in regard to items taken from the appellant, which was not a matter of dispute in the case."

- [48] Following the guidance provided by the Court of Appeal in **Omar Anderson**, I rule as follows: in so far as the Defendant/Applicant can establish the relevance of any requested material to his case, and provided that such material exists and is in the custody of the Crown or its agents, I direct the Crown to make inquiries of the relevant agencies and disclose any such material in their possession that satisfies the statutory test for relevance. Should the Crown take the position that any of the requested material does not exist or is not disclosable, it shall file and serve a certificate to that effect, so that the defence may consider its case consequently.

Disposition

- [49] For the foregoing reasons, I find that none of the challenges raised by the Defendant/Applicant warrant exclusion of the identification or DNA evidence at this stage. The objections, though not without substance, largely concern issues of weight, reliability, and credibility, which are matters for the tribunal of fact. Accordingly, the application to exclude these pieces of evidence is dismissed.
- [50] Pursuant to the guidance in *Omar Anderson v R*, the Court directs that, to the extent the Defendant/Applicant can establish the relevance of any requested material, and provided that such

¹¹ [2023] JMCA Crim 11

material exists in the custody of the Crown or its agents, the Crown shall make inquiries of the relevant agencies and disclose any such material that satisfies the statutory test for relevance.

- [51] If the Crown contends that any requested material does not exist or is not disclosable, it shall file and serve a certificate to that effect, so that the Defendant/Applicant may consider its position.

Justice V. Georgis Taylor-Alexander
High Court Judge



BY THE COURT

REGISTRAR