

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCR2023/0051

BETWEEN:

THE KING

AND

HAROLD MICKLE

Appearances:

Mrs. Shannon Jones-Gittens for the Crown

Mr. Wendel Alexander for the defendant

2025: July 9th

RULING

Facts

[1] **SMITH, J.:** This application was made by the defence at the commencement of a trial concerning sexual intercourse with a young girl. It came to light that a young man had given a statement stating that he had had sexual intercourse with the complainant and this was denied by her. The statement by the young man was taken in 2022 and yet was not disclosed until 2025. Counsel made an application under section 27 of the sexual offences Act of Antigua and Barbuda for permission to cross examine the complainant on her previous sexual history.

[2] The thinking behind section 27 of the Sexual offences Act:-

Section 27. (1) of the Sexual Offences Act says:- In proceedings in respect of an offence under this Act no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person other than the accused unless the Court, on an application made by or on behalf of the accused in the absence of the jury, thinks such evidence necessary for the fair trial of the accused. (2) Save as provided in subsection (1), no evidence of sexual reputation is admissible for the purpose of challenging or supporting the credibility of the complainant.

It is clear that parliament's intention when drafting this section was to:-

- protect the privacy of the complainant
- prevent defendants from gratuitously "smearing" a complainant; and,
- prevent the defence from relying on the "twin myths" that a woman's previous sexual reputation made it more likely that she consented and less likely that she was a credible witness.

[3] The Court notes that this is a sexual offences court and so the Court MUST employ all measures to prevent the re victimization of the complainant. This is found in the Revised Model Guidelines for Sexual Offence Cases, which have been adopted by Antigua and Barbuda. However, I am acutely aware that the defendant

must be afforded a free and fair trial and so it is a balancing of the protection of the victim's privacy versus the constitutional right to a fair trial of the defendant.

The Authorities

- [4] The authorities that I have read all state that generally judicial permission is required, and it must be shown that it is necessary for fairness and must meet a high relevance threshold. **The State vs Solomon Pena**¹ was also helpful as it also set out the requirements of relevance and whether the cross examination was necessary for a fair trial.
- [5] In the **Ched Evans**² case, which was a retrial, the defense introduced testimony from two men about the complainant's prior sexual behavior which the Court allowed undermining the prosecutions consent argument and leading to an acquittal. In that case in 2016 the Criminal Cases Review Commission referred Evans' case back to the court of appeal based upon new evidence. The new evidence included testimonies from other men who said that the woman had behaved in similar ways during consensual sex. The court of appeal quashed his conviction and ordered a re-trial. Evans was acquitted at the retrial. The decision to allow the questioning was regarded in some legal circles as a dangerous precedent, while others argued that it was legally justified in the fairness of the trial and that Evans' defence had the right to present evidence that could raise a reasonable doubt.

The case at bar

- [6] The statement from Jaydon Joseph cannot be ignored, and while this encounter happened after the incident with the defendant, it throws a shadow on the complainant's credibility. She said the sex with the young man never happened and this assertion was found in her second statement. Both incidents occurred in close proximity, and it can be said that the mother hit the complainant when she suspected a relationship with Jalon and that is when she told her mother about the defendant. And so, in my view the cross examination about Jaylon is relevant.
- [7] Also, once again the police are deciding what is to be contained in a file. Did they consult with the DPP's Chambers before this decision to leave the statement out was made? This is not the first time either and I cannot understand how a statement taken in 2022 was not disclosed until 2025. This issue also goes to fairness as all unused material is to be disclosed to the defence in a timely manner.
- [8] In the interest of fairness, the Court is going to allow the defence to question the complainant about the incident with Jaydon. However, this Court will not allow the complainant to be re-victimized and as said in the case of **Pena** from Trinidad and Tobago the cross examination will be allowed within the strict parameters of eliciting basic factual details.

Ann-Marie Smith
High Court Judge

By the Court

Registrar



¹ HC C.R. 66/2019

² [2017] 1 Cr App R 13