

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CASE NUMBER: ANUHCR2023/0007

BETWEEN:

THE KING

V

DIONDRE SAMUEL

Appearances:

Mr. Paulo Williams for the Crown
Mr. Wendell Alexander for the Defendant.

2025: June 13th,
16th

**RULING ON ADMISSIBILITY OF A POLICE INTERVIEW IN BREACH OF THE
CONSTITUTION**

- [1] **BAKRE, J.:** In the course of trial on the 13th day of June 2025, the prosecution counsel while leading a police witness who had taken the defendant through a question and answer session and recorded same sought to tender the interview as recorded.
- [2] Counsel to the defendant raised an objection to the admissibility of the interview on the ground that there was a breach of the fundamental rights of the defendant in the course of the interview. Counsel stated further that there was no voluntariness. He requested that a *voir dire* be conducted to determine voluntariness.
- [3] Counsel to the defendant stated by virtue of Section 5(2) and section 15 (2) of the Constitution of Antigua and Barbuda, the interview conducted with the defendant is inadmissible. The section reads:-

5 (2) “Any person who is arrested or detained shall be informed orally and in writing as soon as reasonably practicable, in language that he understands, of the reason for his arrest or detention.”

15 (2) every person who is charged with a criminal offence-

(a).....

(b) Shall be informed orally and in writing as soon as practicable, in language that he understands, of the nature of the offence with which he is charged. “

- [4] In the **voir dire**, the prosecution called the two police officers that were present at the interview. The substance of their testimony is that they conducted the interview with the judge's rules.
- [5] Officer Kendal Shillingford is the officer that conducted the interview while officer Alves witnessed the interview. It was the testimony of both officers that the accused's father (who incidentally is a retired police officer) was present and he witnessed on behalf of the accused.
- [6] The officers both gave similar testimony of the event. They stated that the accused was invited and he voluntarily came to the police station for the interview on the 21st day of January 2022 the day after the incident.
- [7] They stated that on arrival, the officers identified themselves to him. Officer Shillingford went ahead to tell the accused that he was investigating the incident that occurred of Friars hill road on 20th January 2022. He went on to tell the accused that he is of the belief that he could help with the investigation or that he actually committed the offence.
- [8] According to the officer, he said he told the accused that he has a right to an attorney as he would be asking him some questions and he would be recording both the question and answer given. He said the accused decided to go on without an attorney but with his dad present.
- [9] The other officer corroborated this process in his testimony and both officers stated that the accused was not promised anything, neither was he threatened before granting the interview.
- [10] Under cross examination, the officers stated that the accused was not given any written notice on the offence even though he was verbally told the incident being investigated. The officers however stated that the accused was allowed to go after the interview and was not charged until February 2025, about a month later.

- [11] The defendant did not call any evidence in the **voir dire**, counsel proceeded to address the court with respect to his application.
- [12] It is important that I mention that the defense counsel making this application, Mr. Wendell Alexander is a retired Commissioner of Police in Antigua and Barbuda.
- [13] The counsel in the course of the application stated that he is relying mostly on Section 5(2) and not section 15 (2). The position of counsel to the defendant is that by virtue of this provision of the constitution, the defendant ought to have been presented with a written statement of the reason for his arrest and/or detention. Counsel concludes that in view of this breach, the interview is inadmissible.

RESOLUTION

- [14] Let me state as a preliminary point that this court had raised the issue that the objection to the admissibility of an interview would ordinarily be based on voluntariness and not an alleged breach of a constitutional right but defense counsel thought otherwise.
- [15] It is my understanding that a **voir dire** should have been in regard to the voluntariness of the interview or otherwise. The applicant had mentioned voluntariness in the introduction of his application but the court observed that the crux of the application was the alleged breach of right.
- [16] It is the understanding of this court that this does not directly affect the admissibility of a police interview to have necessitated a **voir dire**.
- [17] This notwithstanding and peradventure this position is wrong, I will endeavor to consider the gravamen of the application.
- [18] The position as canvassed by the applicant is that the invitation and subsequent interview of the accused is tantamount to an arrest and that having not been presented with a written statement of the case against him, the right of the defendant was breached.
- [19] Counsel stated further that the incident happened on 21st of January 2022 and the invitation for an interview was extended on the next day, it was stated that the defendant was not given adequate time to contact his counsel. Counsel argued that the police was unnecessarily in haste for the interview and thus denied the accused the right to get an attorney of his choice.

[20] In the resolution of this case, this court deferred to the experience of the defense counsel and requested to be properly addressed on what amounts to an arrest or detention. The court specifically adjourned the matter from Friday 13th June to Monday 16th June 2025 for the counsel to provide adequate authority to substantiate the argument that an invitation by the police in the process of investigating of an offence is tantamount to an arrest, especially where the judges rule was fully complied with and the accused opted to oblige the police with the interview without any duress and decided to go on despite the fact that he was informed of his right to an attorney.

[21] On the morning of 16th day of June 2025, counsel to the Defendant submitted to the court the case of **R v. INWOOD (1973) 2 All England Report page 645**, a decision of the Criminal appeal division made on the 23rd February 1973. In the case, the court delved into what constitutes an arrest. The court held;-

“In order to establish that the police were entitled to use force to restrain the appellant from leaving the police station, it is necessary to show that it had been made clear to the appellant that he was under arrest”

[22] It is my view that the case of **R v. INWOOD** (supra) more or less confirms that there must be have been a firm and specific information to the applicant that he is under arrest before he can be said to be under arrest or in custody. The case further shows that notwithstanding that the accused was told that he could help in investigation or he may have committed the offence, he was not arrested or detained. In the case referred, the police actually stated that he would be charged for an offence. This notwithstanding, the court still stated that he would still need to be told he was under arrest.

[23] It is clear that the defendant was not charged until February 2022 and thus the provision of section 15 (2) is totally irrelevant. It is also the testimony before the court that upon his invitation on 21st January 2022, the defendant voluntarily agreed to the interview with the police having been cautioned and informed of his right to an attorney.

[24] There is nothing on record before this court apart from what has been shown above to show that the accused was told at any time that he was arrested before or even immediately after the interview. He was not put in custody but was allowed to go home after.

- [25] The submission that an ordinary invitation for an interview with the police authority amounts to an arrest or detention as envisaged by the constitution is not tenable.

CONCLUSION

- [26] It is the view of this court that the issue raised on the allegation of a breach is unfounded. Even if founded (which I have stated that I do not agree), it is most irrelevant to the admissibility of the interview in the course of this trial and at best it's a fundamental issue that goes to the root of the entire case.
- [27] The accused was never specifically told that he was under arrest; he thus was not arrested nor put in custody as envisaged by the Constitution in Section 5(2). It is the view of the court that his right in this regard was not breached.
- [28] The objection is thus overruled and the said police interview is admitted in evidence.

Tunde A. Bakre
High Court Judge



By the Court

Registrar