

SAINT LUCIA

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

CASE NO. SLUCRD2023/0118A

THE KING

vs.

PETERSON CHARLERY

Defendant

Before:

The Hon. Mde. V. Georgis Taylor-Alexander

High Court Judge

Appearances:

Mr. Al Elliot for the Defendant

Mr. Linton Robinson for the Crown

The Defendant present via zoom from the Bordelais Correctional Facility

2025: May 26;
June 12;

JUDGMENT

[1] **TAYLOR-ALEXANDER J:** This matter arises for determination on an application dated 10th March 2025, brought by the Defendant on the eve of trial, challenging:

- (1) The admissibility of the statement of the Virtual Complainant, which the Crown seeks to rely upon as evidence at trial which the Defendant contends that the

statement is inadmissible under Section 55 of the Evidence Act, which sets out exceptions to the hearsay rule. Specifically, the Defendant submits that the Crown's application is inconsistent with the requirements of Sections 55(4) and 55(5) of the Act.

- (2) The forensic evidence relied upon by the Crown, specifically the material identified as Item No. 2023-0073-04, which he submits is both inadmissible and unreliable. The objection is grounded in the absence of any information regarding the origin of the sample, as well as a complete lack of evidence establishing the chain of custody. In these circumstances, the Defendant submits that the evidentiary integrity of the item is fundamentally compromised.
- (3) The identification parade relied upon by the Crown, which he submits is rendered unreliable due to significant errors in the documentation forming part of the case file. Specifically, the Identification Parade Report records the date of the parade as 11th December 2021, well before the alleged offence was committed and more than a year prior to the Defendant's arrest on 4th April 2023. Furthermore, the report identifies the suspect as "Daniel St Omer," rather than the Defendant, Peterson Charlery. These discrepancies, the Defendant contends, undermine the reliability and probative value of the identification evidence.

Relevant Background

- [2] The Defendant stands accused of the rape of the Virtual Complainant. The matter was scheduled for trial in April 2025. The Virtual Complainant was fatally shot two (2) months prior to the commencement of the trial. In light of her death, the prosecution applied successfully pursuant to Sections 55(1) and 55(2) of the Evidence Act, in conjunction with Sections 6 and 153 of the same Act, to rely on the unsworn statement of the deceased Virtual Complainant as evidence at trial.

Inadmissibility of the Witness Statement of the Virtual Complainant

The Defence's Submissions

- [3] The Defendant submits that, insofar as the Crown relied on Sections 55(1) and (2) of the Evidence Act, a proper interpretation of those provisions necessitates a holistic assessment of the purpose and mischief addressed by Section 55 in its entirety, as enacted under the Evidence Act of Saint Lucia.
- [4] The Defendant accepts that Section 55 (1) of the Evidence Act of Saint Lucia (The Act) provides an exception to the hearsay rule, allowing for documentary evidence to be admissible and read in at a criminal trial, if:
- (a) “the document is or forms part of a record compiled by a person acting under a duty, from information supplied by another person, whether the other person was acting under a duty or not, who had, or may reasonably supposed to have had, personal knowledge of the matters dealt with in that information; and
 - (b) any condition set out in subsection (2) is satisfied.
- (2) The conditions mentioned in subsection (1)(b) are -
- (a) that the person who supplied the information –
 - (i) is dead or by reason of his or her bodily or mental condition unfit to attend as a witness,”
- [5] He submits that Section 55 (3) explains that this exception (the admissibility of a statement as ‘evidence of the truth of its content in proceedings, upon the production of the document’) refers to oral evidence in respect of a matter that would be admissible in proceedings, where it is found in a statement that is made in a document that was created or received by a person in the usual or ordinary course of business. He submits that Section 55 (4) further explains that:
- “Nothing in this section renders admissible in evidence in any legal proceeding—

(a) such part of any record as is proved to be—

(i) a record made in the course of an investigation or inquiry”

and that Section 55 (5) goes further to provide that:

“Subsection (3) shall not apply to—

(i) an out of court statement made to a person in authority by a suspect or accused in the course of a criminal investigation,

(ii) materials created or received in the course of a criminal investigation”

[6] He submits that Section 56 (9) makes the application of Section 55 clear, when it provides that:

“Any reference in section 55 or this Part to a person acting under a duty includes a reference to a person acting in the course of any trade, business, profession or other occupation in which he or she is engaged or employed or for the purposes of any paid or unpaid office held by him or her.”

[7] He submits that what Section 55 of the Evidence Act contemplates is that, where a witness is unable to give evidence at a criminal proceeding because of his/her death, that evidence may still be admissible (with leave of the court) if it were previously documented out of an objective responsibility by its maker. Examples would be, documentary evidence of a shop steward that accounts for the stock in a shop, or documentary evidence of a banker that accounts for bank records duly kept.

[8] The Defendant further submits that the Act clearly distinguishes between admissible documentary evidence and statements obtained in contemplation of, or during the course of, a criminal investigation. Such investigative material does not fall within the exceptions to the hearsay rule under the Act and is therefore inadmissible. This distinction serves a critical purpose: to safeguard against the inherent unfairness of admitting hearsay evidence that cannot be tested through cross-examination or otherwise subjected to proper challenge.

- [9] He submits that the Witness Statement of the Virtual Complainant is inadmissible as hearsay evidence, as it was documented and created in the course of criminal proceedings, and its maker is unavailable to the court and to the Defendant, to be challenged on the contents of the statement.

The Crown's Submissions

- [10] The Crown submits that a proper reading of Section 55 of the Evidence Act makes it clear that it creates two (2) distinct exceptions to the hearsay rule under the rubric "*Exception: documentary records*". That view is confirmed by the dictum of Justice of Appeal, The Hon. Mr. Gerard St. C. Farara QC in ***R.G. Investments Inc. and Comptroller of Customs and Excise***.¹ where he provided at paragraph 80 that Section 55 (3) of the Act, creates its own exception to the hearsay rule.
- [11] The Crown submits that Section 55(1) is a stand-alone exception and the document is admissible as long as the conditions in subsections (1) and (2) are satisfied. There is nothing in the Act itself or the dictum of the Hon. Mr. Gerard St. C. Farara QC to lend credence to the view that Section 55 (1) is in any way reliant on or connected to Section 55 (3) and its relevant sub-sections (55 (4), 55 (5) and 55 (6)).
- [12] The Crown submits that the first exception under the heading "*documentary records*" is stated at Section 55 (1). It permits a statement in a document to be admissible in any proceedings as evidence of any fact stated therein 'of which direct oral evidence would be admissible' if the two conditions specified in sub-paragraphs (a) and (b) have been satisfied. The Crown submits that in this case, the conditions in the sub paragraphs were met. The documents which were prepared for the purposes of pending or contemplated criminal proceedings, or for a criminal investigation. That would include a witness statement. And secondly, the supplier of the information is deceased.

¹ SLUHCVP2020/0001

[13] The Crown submits that the second exception under “*documentary records*” is set out at Section 55 (3). It permits a statement made in a document that was created or received by a person in the usual or ordinary course of business to be admissible as the truth of its contents where oral evidence of a matter would be admissible. The Crown submits that Section 55 (3) relates to business documents in their pure sense; documents which are compiled by people in the usual or ordinary course of business and who are disinterested in the criminal proceedings and its outcome.

[14] As a result, the Crown submits the exception in Section 55 (1) is in no way qualified by Section 55 (4) (a) (i) which refrains from rendering admissible a record which is made in the course of an investigation or inquiry, or Section 55 (5) which states that subsection (3) shall not apply to materials created or received in the course of a criminal investigation. The Crown also relies on the dicta of Ramdhani J. (Ag.) in the case of ***The Queen vs. Ann Marie Benoit***². He was of the view that the purpose of Section 55 (4) (a) (i) was:

“to ensure that the fact finding nature of a criminal trial is not compromised by other civil bodies which might be involved in investigations or inquiries but may fail to apply the safeguards of a criminal trial especially those rules relating to the reception of sworn testimony and unreliable hearsay evidence”.

[15] The Crown further submits that Section 56 of the Evidence Act provides critical guidance on the proper application of Section 55. Specifically, Section 56(4) requires that, where a document is prepared for the purpose of pending or contemplated legal proceedings, such a document, falling within Section 55(1), may only be admitted with the leave of the Court. The Crown argues that this provision clearly contemplates that such statements *can* be admitted into evidence as a statutory exception to the hearsay rule, which runs directly contrary to the Defendant’s submission that statements made in anticipation of legal proceedings are per se inadmissible.

² SLUCHRD2013/1094

[16] Section 56(5) goes on to establish the statutory test to be applied in considering such applications. The Court must be satisfied that the interests of justice require the admission of the document, having regard to the circumstances in which leave is sought and the potential prejudice to the Defendant should the statement be admitted. This provision, the Crown argues, confirms that documents prepared in contemplation of legal proceedings may indeed be admissible, provided that the balancing exercise favours admission in the overall interest of justice.

[17] The Crown submits that to accept the Defendant's interpretation would lead to an untenable result namely, that any witness statement or document created for the purpose of criminal proceedings would be categorically inadmissible, even in circumstances where the witness is deceased or otherwise unavailable. Such an outcome, it is argued, could not reasonably have been intended by the Legislature. Rather, the Act provides a structured and principled basis upon which such documents may be considered for admission, particularly in serious cases and where the exclusion of the evidence would defeat the ends of justice.

Discussion

[18] Hearsay evidence, as understood at common law, is traditionally described as follows: if a person appears in court and, under oath, gives direct testimony of a fact within their personal knowledge, such evidence is considered first-hand. However, if a witness testifies that another person told them a certain fact, or if a written statement by someone else asserting a fact is produced, such evidence is considered second-hand and constitutes hearsay evidence.³

[19] The reason for the hearsay rule is succinctly stated by the court in ***Lee v The Queen***: The common law of evidence has long focused upon the quality of the evidence that is given at trial and has required that the evidence that is given at trial is given orally, not

³ Indermaur & Thwaites, *Principles of The Common Law*, Stevens & Haynes, London, 1904, 483.

least so that it might be subject to cross-examination. That is why the exclusionary rules of the common law have been concerned with the quality of the evidence tendered, by prohibiting hearsay, by permitting the giving of opinions about matters requiring expertise by experts only, by the "best evidence rule" and so on. And the concern of the common law is not limited to the quality of evidence, it is a concern about the manner of trial. One very important reason why the common law set its face against hearsay evidence was because otherwise the party against whom the evidence was led could not cross-examine the maker of the statement. Confrontation and the opportunity for cross examination is of central significance to the common law adversarial system of trial.⁴

- [20] This however is not an inflexible rule. In the Australian case of ***Walton v The Queen***⁵ Mason CJ stated:

"The hearsay rule should not be applied inflexibly. When the dangers which the rule seeks to prevent are not present or are negligible in the circumstances of a given case there is no basis for a strict application of the rule. Equally, where in the view of the trial judge those dangers are outweighed by other aspects of the case lending reliability and probative value to the impugned evidence, the judge should not then exclude the evidence by a rigid and technical application of the rule against hearsay."

- [21] Over time, exceptions to the general rule of inadmissibility of hearsay have developed, both through judicial interpretation and legislative intervention. Many of these exceptions have been codified and, in some cases, expanded by statute to reflect evolving evidentiary standards and practical realities of modern litigation. In Saint Lucia, such exceptions are set out in Sections 49 to 63 of the Evidence Act. Section 48 articulates the general hearsay rule, stating that a previous representation made by a person is inadmissible as evidence to prove the existence of a fact that the person intended to assert through that representation.

- [22] Section 55 of the Evidence Act is one such exception to the hearsay rule pertaining to documentary records. It is under this exception that the Crown filed its application to

⁴ [1998] HCA 60, 32

⁵ [1989] HCA 9; (1989) 166 CLR 283,293.

admit the evidence of the deceased Virtual Complainant Alana Barnard. The relevant provisions supporting the application are contained in subsections 55(1) and (2).

[23] Section 55(1)(a) creates an exception to the hearsay rule in Section 48. It permits a statement in a document to be admissible in any proceedings as evidence of any fact stated therein 'of which direct oral evidence would be admissible' if the two conditions specified in sub-paragraphs (a) and (b) have been satisfied. The first is that, the document is or forms part of a record compiled by a person acting under a duty, from information supplied by another person who had or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the information; and, secondly, any of the conditions in sub-section (2) is satisfied. In this case the Crown has relied on sub section 2(i) that the supplier of the information dead.

[24] The interpretation of Section 55(1), (2), and (3) of the *Evidence Act* recently came under scrutiny by the Court of Appeal in ***R.G. Investments Inc. v Comptroller Of Customs And Excise***⁶ a case brought to the Court's attention by the Crown. In a unanimous decision delivered by Farara JA, the Court offered helpful guidance at paragraph 80 regarding the application of Section 55(3). The Court stated:

"It is clear that section 55(3), which creates its own exception to the hearsay rule where a document was created or received by a person in the usual or ordinary course of business, applies to a situation where 'oral evidence in respect of a matter would be admissible in proceedings'. This exception in section 55(3) is therefore not a stand-alone one, but is qualified by the provisions of sub-sections (1) and (2)."

[25] The Court concluded that Section 55(3) of the Act creates its own exception; however, it is not a standalone provision. Rather, it is qualified by the provisions of subsections (1) and (2). The effect of this finding is that the inverse does not apply: Sections 55(1) and (2) are not qualified or limited by Section 55(3). In other words, subsections (1) and (2) operate independently and maintain their full effect regardless of the existence of

⁶ SLUHCVP2020/0001

subsection (3), which must be interpreted within the framework set by the preceding subsections.

[26] More recently in the High Court in the *King v Alwin Dariah*⁷, which decision was rendered on November 10, 2022, and January 19, 2023 (unreported), the High Court addressed a similar issue as presents in this case on the interpretation of Section 55 (1) and (2), specifically, the admissibility under Section 55 of a witness statement made by a deceased witness during a police investigation into an attempted murder. At paragraphs [34] and [35], the Court stated:

“A useful starting point for this discussion is the Court of Appeal’s confirmation in the RG Investments case that section 55 of the Act establishes two exceptions to the hearsay rule—sections 55(1) and (2), and section 55(3). The Act expressly subjects the section 55(3) exception to subsections 55(4), (5), and (6). Still, those subsections are not expressed to apply to the exceptions in sections 55(1) and (2). This suggests that the legislature did not intend them to do so, because it could and would have done so expressly if it had intended otherwise.”

Moreover, section 56 of the Act specifically addresses the application of the section 55(1) exception. It provides in section 56(4) that in circumstances where the statement was prepared for pending or contemplated proceedings, it may be admitted only with leave of the court. Hence, the exceptions in section 55(1) and section 55(3) are unrelated. A document prepared for pending or contemplated proceedings is admissible in the former case with leave of the court, once the conditions of the subsection are satisfied.”

[27] These rulings confirm the soundness of the conclusion I have reached in the present matter—namely, that the witness statement of Alana Barnard is admissible under the exception created by Sections 55(1) and (2), and Sections 56(4) and (5) of the Act and is not subject to the exceptions provided for in Section 55 (3),(4) and (5).

[28] When the application to admit the said Witness Statement was made by the Crown, I considered the circumstances under which the statement was taken, including that:

- The statement was recorded within four days of the alleged incident,

⁷ SLUCRD2020/0488

- It was taken in the presence of WPC 503 Clovis,
- The deceased witness affirmed in the statement that if she willfully included anything she knew to be false or did not believe to be true, she would be liable to prosecution, and
- The witness is now dead.

[29] In admitting the witness statement, I further considered the provisions of Section 56(4) and (5), which provide for the admissibility of statements prepared for pending or contemplated legal proceedings, subject to the leave of the Court. I was satisfied that the necessary statutory conditions had been met and that it was appropriate to grant such leave in this case. I have also considered the provisions of Section 153 of the Evidence Act, any potential prejudice to the Defendant, including his inability to cross-examine the witness, and the overall interests of justice. Although the Defendant is unable to cross-examine Ms. Bernard. He may if he so wishes put his version of events to the witness who are presented by the Crown. He may call his own witnesses and can even take the stand and give his own evidence. He, therefore, has the ability to make his own impression on the jury which can have a far greater impact than a witness statement read into the record. This in my view, outweighs any prejudicial effect that allowing the statement to be read can have an admission that is fair and just in the circumstances.

[30] Accordingly, the application by the Defendant on this ground is dismissed and the decision to admit the Witness Statement of Alana Barnard as evidence in the trial stands.

UNRELIABILITY OF FORENSIC REPORT

The Defence's Submissions

[31] The Defendant submits that the forensic report dated 5th September 2024 concerns the analysis of a Sexual Assault Evidence Collection Kit (SAECK), which was, on 27th March

2023, handed over by WPC 745 Paul to Dr. Jean. Dr. Jean performed the relevant forensic tests and returned the sealed kit back to WPC Paul, who in turn transferred it to WPC 503 Clovis.

The report also references:

- A DNA sample collected from the Defendant on 5th April 2023, via two buccal swabs administered by Cpl 101 Leonce;
- Items obtained on 6th April 2023, including clothing retrieved during the execution of a search warrant at the Defendant's premises by WPC Clovis and Sgt 246 Fontenelle.

The 2024 report indicates:

- Sampling was conducted on 23rd November 2023 and 3rd April 2024;
- Analysis of questioned samples (those from the Virtual Complainant) occurred between 17th July 2024 to 19th July 2024;
- Analysis of the reference samples (including the Defendant's) occurred between 24th November 2023 and 28th June 2024.

The Defendant notes that the DNA evidence does not link him to the samples obtained from the Complainant, and that no male DNA was detected in several of the items, including those which would be expected to contain male DNA if the allegations were accurate.

[32] The forensic report dated 5th September 2024 concludes, inter alia:

- Item 2023-0073-01C (Underpants):
 - Epithelial fraction: Only female DNA detected.
 - Sperm fraction: Female DNA with traces of male DNA. No further DNA testing was conducted.

- Item 2023-0073-01D (Victim's Right Hand Swabs):
 - Epithelial and sperm fractions contain female DNA with traces of male DNA. No further testing.
- Item 2023-0073-01E (Oral Swabs):
 - Epithelial fraction: Female DNA with traces of male DNA.
 - Sperm fraction: Mixture of male and female DNA; the major contributor is male, and the minor contributor is female.
 - The Defendant, Peterson Matthew Charlery, could not be included or excluded due to insufficient DNA for comparison.
 - Akim Berlass is excluded as a contributor.
- Item 2023-0073-01F (Vulvar Swabs) and Items 01G/01H (Anal/Vaginal Swabs):
 - Either only female DNA or no human DNA was detected.
- Item No 2023-0073-01A (Virtual Complainant's Buccal Swab):
 - Full female DNA profile obtained.
- Item No 2023-0073-02A (Peterson Charlery):
 - Partial, degraded male DNA profile with missing loci data; deemed insufficient for comparison.
- Item No 2023-0073-03 (Akim Berlass):
 - Full male DNA profile obtained.

[33] The Defence raises concerns regarding the forensic report dated 21st November 2024, which purports to be a supplementary report to the one dated 5th September 2024. This second report introduces a new sample, Item 2023-0073-04, identified as a buccal swab from Peterson Charlery which had not previously been disclosed by the Prosecution.

Key points include:

- Sampling of this item was reportedly done on 17th October 2024.

- Analysis of the questioned samples (VC's oral swabs) again occurred on 17th July 2024 to 19th July 2024, consistent with the first report.
- Analysis of this newly introduced reference sample occurred between 17th to 18th October 2024.

The second report concludes that:

- The sperm fraction from the oral swab (Item 01E) contains a mixture of male and female DNA, with the major component attributed to a male.
- Alana Bernard and Akim Berlass are excluded as contributors.
- Peterson Charlery cannot be excluded as a contributor to the major component.
- A statistical evaluation concluded it is over 8 billion times more likely that the DNA originated from Peterson Charlery than from an unrelated male individual. However, the Defence highlights that this second report raises serious procedural and evidentiary concerns.

[34] The Defence argues that there is no disclosure in the prosecution's prior filings or disclosures of any buccal sample labelled Item 2023-0073-04 having been collected from the Defendant; the origin, method of collection, and chain of custody for this newly introduced DNA sample are completely unaccounted for; there is no documented basis or judicial order presented to justify the obtaining of a second reference sample from the Defendant after the first was deemed insufficient.

[35] The Defence therefore submits that the inclusion of Item No. 2023-0073-04, which appears for the first time in the supplementary report, lacks evidentiary integrity. The probative value of any analysis based on this sample is substantially outweighed by its prejudicial effect, particularly where the sample's collection, origin, and custody remain unexplained. The procedural irregularity of introducing a new DNA sample in the absence of disclosure or an accompanying evidentiary trail undermines the reliability and admissibility of the DNA findings in the supplementary report.

[36] The Defendant submits that the Virtual Complainant reported, that she engaged in consensual sexual intercourse with her boyfriend, Akim Berlass, on 25th March 2023. However, none of the forensic reports detect his DNA on any of the tested items, despite his proximity to the date and nature of the alleged assault. He further submits that several key samples analyzed in the forensic report dated 5th September 2024 reveal only female DNA, and in some cases, no male DNA at all. This includes swabs from the vulvar, anal, and vaginal areas.

[37] Both the 5th September 2024 and 21st November 2024 forensic reports purport to analyze the same evidence items, specifically, Item No. 2023-0073-01 - "SAECK for Alana Bernard", and Subitem No. 2023-0073-01E – "Oral Swabs". However, the results differ significantly, raising concerns about the reliability and consistency of the forensic analysis. The second report, issued as a supplementary report, introduces a new reference sample identified as Item No. 2023-0073-04 – "Buccal swab from Peterson Charlery", which it attributes to the Defendant.

[38] The Defence raises the following concerns regarding Item No. 2023-0073-04:

- There is no disclosure in the prosecution's case file or any accompanying material that a second DNA sample was taken from the Defendant.
- There is no documentation indicating how, when, where, or by whom this buccal swab was collected.
- There is no established chain of custody, nor any evidence of controlled storage or handling of this item.
- Its appearance only after the initial report declared that the first reference sample (2023-0073-02A) was insufficient for comparison, raises legitimate concern as to its legitimacy and admissibility.

[39] In those circumstances, the Defence submits that the prejudicial effect of the analysis based on Item No. 2023-0073-04 grossly outweighs any probative value it may have. Not only does the conclusion that "a new reference profile will have to be obtained" appear subjective and uncorroborated, but the subsequent absence of evidentiary

support for the origin, custody, and integrity of the newly introduced sample casts serious doubt on its reliability. The Prosecution ought not to be permitted to rely on DNA evidence that was not previously disclosed; has no identifiable or traceable origin; and lacks a documented chain of custody. To admit such evidence would undermine the fairness of the proceedings and contravene the Defendant's right to a fair trial. The integrity of forensic evidence must rest not only on scientific accuracy but also on transparent, traceable, and lawful collection and handling. In the absence of such foundations, Item No. 2023-0073-04 must be excluded.

- [40] Of the issues raised by the Defendant, it is only the failure of the Crown to establish a chain of custody with regards to Item No. 2023-0073-04 - "Buccal swab from Peterson Charlery, that raises any issue for pre trial determination. On this issue, the Defendant submits the findings in the Supplemental Forensic Report dated 21st November 2024, introduces a new sample purporting to belong to the Defendant (Item No. 2023-0073-04 – "Buccal swab from Peterson Charlery") for which there is no record of it being taken from the Defendant neither is there any information on the origin or chain of custody of that sample item. Consequently, the Defendant submits that the prejudicial value of the analysis of the new reference sample disturbingly outweighs its probative value and the Crown ought not to be allowed to rely on it.

The Crown's Submissions on this Issue

- [41] As regards the September 2024 report, a DNA sample (buccal swabs) was taken from the Defendant by Cpl. 101 Leonce on the 5th day of April 2023. That DNA sample was submitted to the Forensic Lab as Item No. 2023-0073-02. The Forensic Scientist concluded that a partial degraded male DNA profile was obtained for the Defendant from this sample. There was no DNA information present from seven (7) different loci.
- [42] An analysis of the oral swabs of the Virtual Complainant was done (Item No. 2023-0073-01E). Preliminary DNA testing showed that the sperm fraction of this item appeared to contain male DNA. There was a mixture of two individuals with a major and minor

component. The major contributor was male and the minor was female. The minor component was attributable to the Virtual Complainant. The Virtual Complainant and Akim Berlass were excluded as the contributors to the major component. The DNA profile obtained from the reference sample for the Defendant was insufficient for comparison purposes. The Forensic Analyst was of the view that a new reference profile for the Defendant would have to be obtained.

- [43] As regards the forensic report dated 21st November 2024 (the supplemental report). This report introduces a new DNA sample (buccal swab) for the Defendant (Item No. 2023-0073-04). A full male DNA profile was obtained for the Defendant from this sample. When that profile was compared to the DNA profile obtained from the major component of the DNA found in the sperm fraction of the oral swabs of the Virtual Complainant (Item No. 2023-0073-01E), the Forensic Analyst concluded that the Defendant could not be excluded as a contributor to the major component. It was opined that it was more than 8 billion times more likely that the DNA information obtained from the major component of this mixture was from the Defendant than from an unknown, unrelated individual.
- [44] The DNA sample for the Defendant (Item No. 2023-0073-04) is captured on a General Evidence Submission Form from the Forensic Laboratory. It shows that the sample was submitted to the Forensic Laboratory by WPC 199 Gilda Charles on the 19th day of September 2024. The item was received by Lewen Joseph. The description of the item reads *“one sealed and intact brown evidence paper bag in part marked buccal swab from Peterson Charlery”*. The laboratory assigned item number reads *“2023-0073-04”*. Under the section headed Case Details/Remarks reads *“Re Submission of Exhibit”*. That General Evidence Submission Form was disclosed on the Defendant’s previous Attorney on the 20th day of February 2025.
- [45] The DNA sample for the Defendant captured as (Item No. 2023-0073-04) was obtained from him by PC 786 Kenan Daniel on the 15th day of August 2024 at the Bordelais Correctional Facility. The Crown concedes that at the time the Defendant’s submissions

were filed, PC 786 Daniel's witness statement had not been disclosed to him and therefore no information had been provided on the origin of the DNA sample for him.

[46] However, as part of the Crown's continuing duty of disclosure, the witness statement of PC 786 Daniel has been received and will be disclosed on the Defendant in short order. The said statement shows the origin of the Defendant's DNA sample. There is also some information on the chain of custody of that sample as the General Evidence Submission Form clearly shows that it was submitted to the Forensic Laboratory on the 19th day of September 2024 by the exhibit custodian at the Vieux Fort Police Station, WPC 199 Charles. As part of its continuing duty of disclosure, the Crown undertakes to disclose her witness statement in short order.

[47] It is submitted that upon disclosure of these witness statements, the Defendant will no longer be able to maintain the argument that there is no information on the origin or chain of custody of that sample. The Crown submits that upon disclosure of the witness statements of the officers mentioned above, there would be no legal impediments to the forensic reports being admitted into evidence and no prejudice would be caused to the Defendant.

Discussion

[48] The effect of the Criminal Procedure Rules is to minimise instances of trial by ambush, which frequently resulted in the past from late or "at-the-door" disclosure, often prejudicing one party, typically the Defence, by hindering timely trial preparation. The Rules emphasize the importance of robust case management by the Court, with the express aim of ensuring fairness and procedural efficiency. The Court strongly disapproves of such late disclosure, which not only compromises the principles of a fair trial but also undermines the orderly and efficient administration of justice.

[49] However, in the present case, there is no basis upon which to exclude the forensic evidence or accompanying forensic reports from the jury's consideration. The Crown has acknowledged the delay in disclosing the evidence establishing the chain of custody of the supplemental forensic report and has indicated that the omission was not

deliberate, but rather an oversight. The Crown further advises that a witness statement establishing the chain of custody for the supplemental report does exist.

- [50] The trial has not yet commenced: a jury has not been empaneled, no evidence has been led, and we remain at least three (3) weeks away from the scheduled trial date. While the late disclosure is undoubtedly regrettable and inconvenient, it has not, in my assessment, resulted in any irreparable prejudice to the Defendant's ability to prepare his case. Any potential prejudice can be adequately remedied through appropriate case management directions ahead of trial. Consequently, the Defendant's application to exclude the forensic evidence is denied.

RELIABILITY OF THE IDENTIFICATION PARADE

- [51] This issue can be disposed of in short order. The Defence submits that the Identification Parade is rendered unreliable as a result of errors in its reporting:

- i. The Identification Parade Report refers to the date 11th December 2021 (see *Form C, at page 1 - ID Parade Report*). The Defendant was arrested on 4th April 2023.
- ii. The Identification Parade Report names the "Suspect on Report" as Daniel St. Omer aka "Sweety" (see *Form C at page 1 - ID Parade Report*). The Defendant is not known by that name or alias.

- [52] The Crown concedes that the date recorded on Form C (11th December 2021) precedes the date of the incident and the date the Defendant was arrested. The Crown also concedes that the name "*Daniel St. Omer aka Sweety*" which is documented on Form C is not the name of the Defendant in the present proceedings.

- [53] The Crown submits that the errors identified on Form C, namely, the incorrect date of 11th December 2021 and the reference to "Daniel St. Omer aka Sweety" do not render the identification parade unreliable. According to the Crown, a holistic review of the case file demonstrates that these errors are minor, isolated, and plainly inadvertent, and that

they do not undermine the overall integrity or fairness of the identification procedure. Firstly, in his witness statement dated 10th April 2023, the identification parade officer, Inspector Eldric Bernard, affirms that he conducted an identification parade on 7th April 2023, involving the Defendant, Peterson Charlery, and the identifying witness, Alana Bernard. The Defendant's then legal representative was also present during the procedure. Secondly, a Notice of Description was prepared in the correct name of the Defendant and dated 7th April 2023, by Inspector Bernard. This Notice was served on the Defendant on the same day, further confirming the procedural timeline and the proper identification of the subject. Thirdly, the Crown highlights that all other identification parade documents, including Form A (Part II), Form B, and Form D, consistently reflect the correct name—Peterson Charlery and the correct date 7th April 2023.

- [54] The Crown argues that the discrepancy on Form C amounts to a genuine administrative error, and in light of the consistency across all other materials, it cannot reasonably be said to undermine the reliability or validity of the entire identification parade. I agree, and find no basis to exclude these documents as evidence under consideration in the trial of the Defendant Peterson Charlery.

Disposition

- [55] The Application of the Defendant filed on 11th March 2025 is dismissed. A jury is to be empaneled for the trial of this case on the 5th of June 2025.
- [56] The Defendant is to continue on remand.

Justice V. Georgis Taylor-Alexander
High Court Judge

BY THE COURT



REGISTRAR