

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

COMMONWEALTH OF DOMINICA
CASE NO: DOMHCR: 2024/0027

BETWEEN:

THE STATE
V
ALJAI LIVERPOOL

APPEARANCES:

Ms Daina Matthew, with Ms Marie Louise Pierre-Louis, Mr Kevin Julien and Ms Elizianne Wilkins,
State Counsel, for the State
Mr Wayne Norde and Mr Ronald Charles for the Defendant

2025: January 27th, 28th, 29th

RULING

1. **COLIN WILLIAMS J:** This decision concerns the admissibility of statements made to the police and things done by the Defendant, Mr Aljai Liverpool, on the 18th of September 2020, while Mr Liverpool was in police custody.
2. Those statements were made in relation to the offence of murder for which Mr Liverpool has been indicted. The statements may be labeled as “admissions or confessions.” They are the foundation of the State’s case against the Defendant.
3. Counsel for the Defendant, Mr Wayne Norde, contended that the things said or done by the Defendant on the 18th of September 2020 ought to be excluded from the trial.
4. According to Counsel Norde, the various statements made by the defendant to the police are inadmissible, as the statements were obtained from the Defendant:
 - 1) in breach of the Defendant’s constitutional right to counsel; and
 - 2) in breach of the **Criminal Law and Procedure Act**.¹

¹ Chapter 12:01 of the Laws of the Commonwealth of Dominica

Background

5. The Defendant, Mr Liverpool, was indicted by the learned Director of Public Prosecutions on the 6th day of January 2025 for the offence of “Murder: Contrary to Law.” The ‘Particulars of Offence’ stated:

“Aljai Liverpool, between the 15th and 18th day[s] of September, 2020, at Canefield, in the Parish of St George, in the Commonwealth of Dominica, in the district aforesaid did murder Glensworth Frank.”

6. The Defendant pleaded ‘not guilty’ at his arraignment on the 15th of January 2025. The matter proceeded to a Case Management Conference, (CMC), on the 23rd of January 2025.
7. At the CMC, it was noted that: “The disclosed evidence in the deposition rest[s] exclusively on the admissions of the Accused.”² It was ordered that:

“The empanelling of the Jury to occur on Monday the 27th of January 2025 and the *voire dire* on Tuesday the 28th of January 2025.”

Voire dire

8. At the *voire dire*, the State led evidence from two witnesses:
 - (i) the Investigating Officer, Acting Sergeant Bartholomew Nichols, and
 - (ii) the arresting officer, Constable Jonel Lawrence.
9. Both police officers were cross-examined by the Defendant’s counsel.
10. The Defendant did not testify, neither did anyone testify on his behalf.
11. State Attorney, Ms Daina Matthew, made oral submissions on behalf of the Prosecution.
12. Mr Norde made oral submissions on behalf of the Defendant.
13. At the *voire dire*, the Investigating Officer, Sergeant (ag) Nichols, testified as to what transpired between himself and the Defendant on Saturday the 18th of September 2020.
14. According to Officer Nichols, just after 10:00 a.m. on the 18th of September 2020, he went to the cell at the Roseau Police Station and had the Defendant removed from the cell. He took the Defendant to the office of Mr Cuffy at the Criminal Investigations Department, CID.
15. The witness said that at the office, Mr Cuffy cautioned the Defendant, informing Mr Liverpool of his right to silence. Officer Nichols testified that:

² At 4. of the CMC Order dated the 23rd of January 2025

“Mr Cuffy informed him (Mr Liverpool) of his legal rights and the Accused replied: ‘I cannot afford a lawyer at this time, but if need be, my mother will get one for me.’ Mr Cuffy made a cellular telephone call and stepped out of the office. Soon thereafter he returned with the mother of the Accused. He introduced me to her and she stated her name was Allyson Liverpool. Mr Cuffy informed the Accused that Allyson Liverpool was present to conduct a confrontation between him and her and that I will be taking notes of that confrontation.”

16. According to the Investigating Officer, he then cautioned Mr Liverpool and reminded the accused of his legal rights. Mr Liverpool stated that he could not afford a lawyer at this time. This was about five minutes after the Investigation Officer heard the Defendant say to Mr Cuffy that he (the Defendant) could not “afford a lawyer at this time, but if need be,” his mother will get one for him.
17. Officer Nichols said that around 10:45 a.m. that same day, Saturday the 18th of September 2020, Mr Cuffy informed the Defendant that he would like to conduct a written interview in relation to the matter under investigation. This was after the confrontation required by Mr Cuffy between the Defendant and the Defendant’s mother took place. Officer Nichols testified that Mr Cuffy again cautioned the Defendant and informed the Defendant of his legal rights:

“He [the Defendant] responded by saying ‘I am willing to cooperate without a lawyer because I have no money to pay for representation’.”

18. The police interrogation of Mr Liverpool continued that day, Saturday the 18th of September 2020. There was a confrontation at about 12:25 p.m. conducted by Mr Cuffy involving a Saint Lucian national, Mr Martinus Charles. The witness said that when Mr Cuffy reminded Mr Liverpool of his legal rights, “he [the Defendant] replied, ‘it’s okay, you can continue’.”
19. The State’s other witness, Constable Lawrence, testified that he was attached to the CID in September 2020. At about 7:00 p.m. on the 17th of September 2020, he left the Police Headquarters for Canefield to get the Defendant. Based on the description he was given, he approached Mr Liverpool, identified himself as a police officer and informed the Defendant that he was assisting Officer Nichols who was investigating a report of the murder of Glensworth Frank:

“I further informed him that I was arresting him on suspicion of committing that murder.”

20. Constable Lawrence informed the Defendant that he had a right to legal representation and “to hold private communication with his attorney at any stage during the course of the investigation.”
21. The arresting officer then took Mr Liverpool to the Roseau Police Station, where the Defendant was placed in the cell.

State's submissions

22. Ms Matthew contended that:

- 1) There was no breach of Mr Liverpool's right to legal representation; and
- 2) All confessions Mr Liverpool made were done voluntarily.

23. Ms Matthew submitted that the key factors were to determine:

- 1) Whether the confessions were obtained voluntarily; and
- 2) Whether the police acted with fairness.

24. State Counsel noted that a lack of legal representation does not by itself render a confession inadmissible.

25. Ms Matthew stated that the duty of the police to the Defendant was to inform him of his rights and once they had done so, the Defendant had a choice: he could remain silent or he could answer the police.

26. In Counsel's view, the police acted fairly. Ms Matthew contended that the Defendant was not coerced, beaten, threatened, or induced to make any statement.

27. State Counsel noted the different instances when Mr Liverpool was told of his right to legal representation. She submitted that Mr Liverpool knew that he had a right to legal representation at his own expense, but voluntarily decided to cooperate with the police as he could not afford a lawyer at that time. Ms Matthew reiterated that the Defendant waived his right to legal representation so any admissions were voluntary.

28. Ms Matthew further submitted that even if the evidence was improperly obtained, that a court may allow illegally obtained evidence to be adduced if that evidence was relevant.

29. State Counsel submitted that the rights of an accused person must be balanced against other interests. Counsel referred to procedural fairness. Counsel noted that even where there were breaches of an individual's rights or of procedures, the more serious the offence, the more it favours the admission of evidence which may have been improperly obtained.

30. Ms Matthew submitted that the admissions made by the Defendant could be corroborated by other evidence in the case and that the "confession reliability could outweigh the method of obtaining it."

Defence submissions

31. Mr Norde on behalf of the Defendant noted the position in law that the burden of proving the fairness of the confession rested on the prosecution.

32. Mr Norde submitted that a confession even if voluntary, could have been obtained in circumstances that were unfair.
33. Counsel for the Defendant said what had to be determined were:
- 1) Was there a breach of the Defendant's rights? And
 - 2) If there was a breach, what are the consequences?
34. Mr Norde submitted that the case law drew a distinction between illegally obtained evidence and circumstances where there was a breach of a constitutional right.
35. Mr Norde pointed to what was said by the Defendant and what the police did or did not do after they heard Mr Liverpool's responses
36. Counsel said that it was not just a breach of the Defendant's constitution rights that amounted to instances of improper conduct, but the manner in which the police acted towards the Defendant.
37. The Defendant's Counsel submitted that in relation to the written interview between Mr Cuffy and the Defendant, that it was prohibited by Statute, as all custodial interviews in serious offences are required to be video recorded.³
38. According to statute,
- “...a law enforcement officer may conduct a custodial interview when a suspect is arrested for any serious crime and the interview must be electronically recorded.”⁴
39. The **Criminal Law and Procedure Act** goes on to state:
- “...a statement by a suspect during a custodial interview that is not electronically recorded under section 14A is presumed inadmissible as evidence against the suspect in any proceeding brought against the suspect.”⁵

Judges' Rules

40. The State's evidence at the *voire dire* was aimed at demonstrating that what was done by the police was in compliance with the **Judges' Rules**.⁶

³ See the **Criminal Law and Procedure Act** at 14A and 14D

⁴ At 14A (1)

⁵ At 14D

⁶ See **Practice Note (Judges' Rules)** [1964] 1 WLR 152 (CCA). Per Lord Parker, CJ: “The origin of the Judges' Rules is probably to be found in a letter dated October 26, 1906, which the then Lord Chief Justice, Lord Alverstone, wrote to the Chief Constable of Birmingham.”

“[I]t is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer or of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.”⁷

41. Both Sergeant (Ag) Nicols and Constable Lawrence detailed the caution that was administered to the Defendant either by them, or by someone else in their presence. That caution was in keeping with Rule II of the **Judges’ Rules**:

“As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting any questions, or further questions relating to that offence.”⁸

42. The Rule II caution differs from the Rule III caution.
43. The Rule III caution is administered either when a person is charged with an offence or informed that he may be prosecuted for an offence.
44. The difference between the two cautions is that while the Rule II caution commences with the words: “You are not obliged to say anything.” The Rule III caution has the words: “Do you wish to say anything?” preceding the “you are not obliged.”
45. There was no issue regarding the caution. Neither was there any suggestion that at the time Constable Lawrence arrested the Defendant that the police had already concluded that Mr Liverpool committed the offence, or that the nature of the information provided by the arresting officer communicated to Mr Liverpool that he may be prosecuted for the offence, which would require a Rule III caution.
46. Rule IV of the **Judges’ Rules** goes on to state that:

“All written statements made after caution shall be taken in the following manner:

- (a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him.”

⁷ As above, page 153 at (e)

⁸ At above, page 153

47. In the Commonwealth of Dominica, in relation to serious offences, such as murder, there is a statutory provision with respect to what is contemplated by Rule IV of the **Judges' Rules** and the definition of 'custodial interviews'⁹ in the **Criminal Law and Procedure Act**.

Right to an attorney

48. The right of a person to an attorney and to be informed of that right was affirmed by the Privy Council in **Thornhill v AG**.¹⁰ It was pointed out in **Commonwealth Caribbean Criminal Practice and Procedure**¹¹ that:

“In **Thornhill**, the Privy Council recognised that it was a right enjoyed *de facto* by private citizens before the Constitution which arose from settled practice in English Law.”¹²

49. Notably, the authors of **Commonwealth Caribbean Criminal Practice and Procedure** refer to **AG v Whiteman**,¹³ another case from Trinidad and Tobago that was decided by the Law Lords. That case highlights that the police must adequately inform an arrested person of his right to an attorney.
50. The duty of informing a person in police custody of their rights, including the right to an attorney, is not discharged by an officer merely reciting the words of the caution and stating that the individual has a right to an attorney. It requires the police officer to properly inform the arrested person in a manner that the arrested person fully understands what his rights are. The use of appropriate language is desirable. Further, to inform the person of a right to an attorney without making any effort to facilitate and accommodate the detained person's request could amount to a denial of the individual's right.
51. The Law Lords in **Whiteman** made it clear that the right to legal representation was not a privilege, rather, it was a fundamental constitutional safeguard. The Law Lords pointed out that the right extended beyond a suspect being explicitly informed of the right when detained or arrested, but the individual must be given an opportunity to consult with a lawyer before being questioned.
52. In **R v Kumarasamy**¹⁴ the court in Canada held that the obligation of the police to facilitate a detainee's efforts in contacting counsel, once the detainee has expressed such a desire, includes facilitating contact with counsel of choice, where a request is made to speak to a specific counsel.

⁹ Referred to above at note 3. The interpretation section states that a “‘custodial interview’ means an interview which occurs while a person is under arrest in a place of detention, involving a law enforcement officer’s questioning under caution that is reasonably likely to elicit incriminating responses.”

¹⁰ (1976) 31 WIR 498 (PC)

¹¹ Fifth Edition, Dana S. Seetahal with updates by Roger Ramlogan

¹² At page 44

¹³ (1992) 39 WIR 397 (PC)

¹⁴ (2002) 22MVR (4th) 234, [2002] O.J. No. 303 (QL) (Ont. SCJ), [2002] OTC 83 (SupCt)

Submitted cases

53. Counsel for the State cited paragraph 20 of **Shivnarine and another v The State**¹⁵ where Cummings-Edwards, JA, of the Guyana Court of Appeal said:

“In looking at the issue of admissibility of the confession statements, the starting point is a consideration of the principle in **Ibrahim v R** [1914] AC 599 that a confession statement is not admissible in evidence against an accused person unless it is proved by the prosecution beyond a reasonable doubt to have been voluntarily obtained. If the trial judge is satisfied that the confession was not obtained by any of the prohibited means, the matter does not end there. He has to take it further and consider the issue of fairness: whether it is unfair in the circumstances of the case and in the interest of justice to admit that statement into evidence. The judge may in the exercise of his discretion admit the statement if he finds that it was voluntarily given and it is fair to admit it. Or he may refuse to admit the statement if he finds it is voluntarily given but it is unfair in the circumstances to admit it.”

54. What the referenced extract from **Shivnarine** does is to highlight a two-step approach to determining the admissibility of confession statements. The first stage is for the prosecution to prove the voluntariness of the confession. If that first hurdle is crossed, there is then a second stage, which involves a consideration of the fairness in admitting the statement by looking at a totality of the circumstances.
55. Mr Norde referred to the Privy Council case of **Simmons (Ronald) and Greene (Robert) v R**.¹⁶ Counsel referred to page 47 letter b of that judgment where the Law Lords referred to their earlier judgment in **Allie Mohammed v The State**¹⁷ where they said:

“On the other hand, it is important to bear in mind the nature of the particular constitutional guarantee and the nature of the particular breach. For example, a breach of a defendant’s constitutional right to a fair trial must inevitably result in the conviction being quashed. By contrast, the constitutional provision requiring a suspect to be informed of his right to consult a lawyer, although of great importance, is a somewhat lesser right and potential breaches can vary greatly in gravity. In such a case not every breach will result in a confession being excluded. But their lordships make clear that the fact that there has been a breach of a constitutional right is a cogent factor militating in favour of the exclusion of the confession.”

56. What is apparent from that extract is that the circumstances of the breach of the constitutional right to consult a lawyer will influence whether a confession is excluded. This circumstance however may vary from case to case.

¹⁵ (2012) 89 WIR 357

¹⁶ (2006) 68 WIR 37 (PC)

¹⁷ (1998) 53 WIR 444, [1999] 2 AC 111, [1999] 2 WLR 552 (PC)

57. Mr Norde also referred to the Canadian case, **R v Sinclair**.¹⁸ He relied on this case to bolster his submission on the failure of the police to facilitate the Defendant in consulting with his mother about retaining counsel. At paragraph [27] of the **Sinclair** judgment, the Supreme Court of Canada said that the requirement of informing an accused of the right to counsel fulfills its purpose in two ways:

“First, it requires that the detainee be advised of his right to counsel. This is called the informational component. Second, it requires that the detainee be given an opportunity to exercise the right to counsel. This is called the implementational component. Failure to comply with either of these components frustrates the purpose of s 10(b) and results in a breach of the detainee’s rights: **Manninen** [1987] 1 SCR 1233 implied in the second component is a duty on the police to hold off questioning until the detainee has had a reasonable opportunity to consult counsel.”¹⁹

58. Section 10(b) of the Canadian Charter referred to in the extract from **Sinclair** above provides that upon arrest or detention, a person has the right to “retain and instruct counsel without delay.”²⁰
59. The Supreme Court of Canada judges however felt that a detainee was required to invoke his right and to be “reasonably diligent” in exercising his right.

Application

60. How do the facts of this case relate to the law?
61. The starting point is that Mr Liverpool was arrested by the police around 7:00 p.m. on the 17th of September 2020. He was taken to the Roseau Police Station and placed in a cell. Mr Liverpool was informed at the time of his arrest that he had a right to retain an attorney at any stage of the investigation. There was no indication from the State’s witnesses that the Defendant was offered a telephone call to inform a friend or a family member of his whereabouts, or to request anything from them.
62. The following morning, the 18th of September 2020, Mr Liverpool was removed from the cell around 10:00 a.m. by the investigating officer and taken to an office at the CID to be interrogated. There was no indication that the investigating officer sought to ascertain that the Defendant, who was in custody for upwards of twelve hours, was fed and watered.
63. When Mr Liverpool was taken to the CID office, he indicated that he personally, was unable to retain a lawyer, but if needs be, his mother would do so. At the time, Mr Liverpool resided with his mother. His statement indicated that he required his mother to assist him in getting a lawyer.

¹⁸ [2011] 1 LRC 216

¹⁹ At page 229

²⁰ See paragraph [19], [24] and [25] of **Sinclair**

64. Within minutes of Mr Liverpool indicating a need to get his mother's assistance, Mr Cuffy brings the Defendant's mother in to the room at the CID. Mr Liverpool however was not permitted to speak privately with his mother, or to solicit her assistance in securing legal representation for him. Rather, Mr Liverpool was told by the police that his mother was there to provide evidence against him and the police proceeded to conduct what they called a confrontation.
65. Under cross examination from Mr Norde, the Investigating Officer indicated that there was no urgency necessitating the conduct of any inquiry with Mr Liverpool. Officer Nichols acknowledged that:

"Delaying the interview to permit him [Mr Liverpool] to get a lawyer would not have prejudiced the investigation of the matter."

66. **Cox's Criminal Handbook, 2009-2010** notes at paragraph 17.1440:

"Once a person who has been detained indicates a desire to contact a lawyer, the police must provide him with an opportunity to exercise his right to counsel, and they must cease questioning or otherwise attempting to elicit evidence from him until he has had such an opportunity unless there is some particular urgency for the questioning to continue."

67. The Investigating Officer testified that it was Mr Cuffy who determined the order in which the investigation was done and that it was Mr Cuffy who decided that the confrontation between the Defendant and his mother would occur first.
68. The sequence of events revealed that immediately after the Defendant indicated that he would need his mother to get a lawyer for him, she was brought into the interrogation room at the CID by Mr Cuffy. The Defendant's mother however was brought there as a witness; she was not brought to the CID to facilitate the Defendant's desire to get her to secure legal counsel for him. Mr Liverpool was not even allowed to conference with his mother privately. The police conduct towards Mr Liverpool was clearly unfair.

69. **Watt's Manual of Criminal Evidence, 2004**, at paragraph 37.04 notes that:

"A trial judge should apply a contextual approach to determining the admissibility of a confession. S/he should consider all the circumstances in deciding whether there is a reasonable doubt about voluntariness, bearing in mind all aspect of the rule. Relevant factors include, but are not limited to:

- threats or promises
- oppression
- the operating mind requirement
- police trickery."

70. **Watt's Manual** goes on further to look at whether a defendant was capable of making good choices or of understanding the consequences of making a statement:

“In determining whether D had an ‘operating mind’ at the time of making a statement, a trial judge should decide whether the action of the police authorities deprived D of the right to make an effective choice by reason of:

- i. coercion;
- ii. trickery;
- iii. misinformation; or
- iv. lack of information.

71. There was unfair or improper conduct on the part of the police towards the Defendant, who was deprived of an opportunity of speaking with his mother, even though he was already in police custody for about fifteen hours without being allowed to contact anyone.

Conclusion

72. The State has (quite appropriately) conceded on that point raised by Mr Norde that the written question and answer interview obtained by the police from the Defendant was recorded in breach of the provisions of the **Criminal Law and Procedure Act**.
73. Based on what Mr Liverpool said to the police on the different occasions that he was informed at the CID of his right to counsel, it is apparent that what the Defendant was saying was while he was impecunious, he had a desire to access legal advice. The police did not facilitate Mr Liverpool in his quest to speak to his mother to retain counsel on his behalf. Rather, the police after hearing of the Defendant's desire, frustrated that option. The conduct of the police was not fair, not reasonable, not just.
74. The submission that the statements made by Mr Liverpool to the police on the 18th of September 2020 be excluded for denying the Defendant his constitutional right and for being in breach of the **Criminal Law and Procedure Act** is sustained and in the interest of justice and fairness those bits of evidence must be excluded.

Colin Williams
Judge

By the Court

Registrar