

**EASTERN CARIBBEAN SUPREME COURT
ST. VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO. SVGHCR 2020/0026

BETWEEN:

THE KING

AND

JAHBERY JACKSON aka MICHAEL RICHARDS

Appearances: Ms. Kay Bachus-Baptiste, Counsel for the Applicant
Mr. Richie Maitland & Ms. Maria Jackson-Richards Crown Counsel for the Respondent

2024: March 11th, 13th, 15th, 18th, 19th, 20th, 21th, 22nd, 25th

JUDGEMENT ON APPLICATION TO EXCLUDE STATEMENTS

[1] **FLOYD J [Ag]:** This is an application to exclude the statements of the Applicant, Jahbery Jackson aka Michael Richards. The primary statement was obtained during an electronically recorded police interview conducted on 15th November 2018. However, two other statements were obtained, and both of those are at issue as well. The first, was a statement obtained from the applicant by police, at the Central Police Station, where he was brought when he was initially arrested, on 14th November 2018. That statement was not electronically recorded. The remaining statement was obtained from the applicant when he was taken to the scene of the incident by police on 16th November 2018. That statement was not electronically recorded. The applicant is charged with the offence of murder.

The Facts

[2] On the 14th November 2018, at Paul Over, two masked men, armed with handguns, robbed a local store, in broad daylight. In doing so, the shopkeeper, Sabitree Lyttle, was shot and killed. The gunmen escaped. Police were alerted, and descended upon the crime scene. They commenced a search. Later that day, the defendant was arrested, and taken into custody.

- [3] Although neighbours heard and saw portions of the incident, no one was able to identify the gunmen, as their faces were covered, and they escaped. The defendant was seen in the vicinity, and was provided with some water by another shopkeeper.
- [4] Upon his arrest, the defendant was taken to the Central Police Station, and turned over to the investigating officer, Sgt. Quow. The transporting officer, Sgt. Morgan, advised that the defendant had indicated a desire to give a statement or provide information about the incident. Sgt. Quow spoke to the defendant and made notes in the presence of Supt. Ballantyne. However, that statement was not electronically recorded, and the written notes did not confirm that a police caution had been administered.
- [5] The defendant was placed into the holding area overnight, and the following day, an electronic statement was obtained under caution, and after rights to counsel had been provided. The defendant identified the gunmen as “Gobbler” and “Steppie.” They were known to him, and had approached him on the day of the incident, as he was walking. Each had a pistol. They asked him to “govern” the area, or act as a lookout, while they went on a “mission.” It was unclear to the defendant what the two men intended to do. He later heard some gunshots and saw “Gobbler” running away. He described the clothing worn by the two men, which matched what other witnesses had seen at the time of the incident.
- [6] On 16th November 2018, the defendant went with police to the crime scene, and pointed out locations where he and the two gunmen had been, and provided other information. The police took notes during that interaction, and it became a signed statement of the applicant. Those notes contain a police caution acknowledged by the applicant.
- [7] Later that day, the defendant was taken to the local hospital after ingesting a toxic substance. He remained there until his discharge back to police custody on 20th November 2018.
- [8] The defendant was charged with murder. “Gobbler” and “Steppie” were never charged with this crime, and both passed away 2 – 3 years later.

THE LAW

- [9] As this court has previously held in the case of **The Queen v Maybe Rodriguez, et al BVI HCR No. 5 of 2019**, statements given by detained suspects to police, particularly those described as being confessions, must be given voluntarily. The determination of this is a question of law. Considerations must include whether the statement was influenced by violent, oppressive, inhuman, or degrading conduct. If so, it may adversely affect the truth of the statement. For the statement to be admissible, it must be made voluntarily, and not in breach of the privilege against self-incrimination. A statement or confession made to a person in authority implicating the detained suspect must be given without fear, prejudice, hope or advantage. Nothing must be done which saps the free will of the suspect. No threats, promises or inducements can be made to encourage the statement. The judge hearing an application regarding such a statement must ensure a fair trial according to law. That includes the consideration of all acts done, words spoken, and all surrounding circumstances.
- [10] **Section 1(a)** of the **Saint Vincent and the Grenadines Constitution Order, CAP 10**, states that every person is entitled to the fundamental rights and freedoms of life, liberty, security of the person, and the protection of the law. **Section 5** of the constitution confirms that no person shall be subjected to torture or to inhuman or degrading punishment or other treatment. **Section 8(2)(a)** and **(b)** of the constitution states that anyone charged with a criminal offence shall be presumed to be innocent, and shall be informed, as soon as reasonably practicable, in a language that he understands, and in detail, of the nature of the offence. All of those sections are at play in this application.
- [11] The court, when ensuring a fair trial, may exclude otherwise admissible evidence if it is determined that its prejudicial effect outweighs its probative value. That will include confessions and admissions obtained from a suspect by improper or unfair means. It is incumbent upon the Crown to prove beyond a reasonable doubt that the statement or confession was obtained voluntarily. All of this is well established at law, however, see **Blackstone's Criminal Practice 2010 at F2.1, F2.3 and F2.10**.
- [12] The consideration of the circumstances surrounding the obtaining of the statement includes the suspect's mental condition at the time of the confession. Reference is made to **Blackstone's Criminal Practice 2010 at F17.15**. The test to be applied is an objective one. It is not what the

police officers' thought (if they thought anything) about the mental condition of the suspect, but instead the actual condition of the suspect, as subsequently ascertained by a medical doctor.

- [13] In cases where the mental condition of the suspect is a relevant factor, expert evidence is admissible, if it demonstrates some form of abnormality, relevant to the reliability of a suspect's confession. The operative consideration is simply whether the abnormality might render the confession unreliable. The physical and mental condition of the suspect, and the particular vulnerability of the suspect is part of the background and circumstances that must be considered. Is the statement likely to be unreliable, owing to the suspect's ill health, if any, at the time?
- [14] **The Interviewing of Suspects for Serious Crimes Act, 2012** deals with confessions and admissions. **Section 4(1)** states that a custodial interview must be recorded. **Section 9(1)** confirms that an electronically recorded statement, which is relevant, may be admitted into evidence unless it is shown that it was unfairly obtained. If the statement is challenged, then reference is made to **s. 9(2)**, which states that it is incumbent upon the prosecution to prove beyond a reasonable doubt that the statement was made by the defendant voluntarily, and is reliable. All of this legislation codifies much of the case law established in this area, and relates it directly to proceedings in this jurisdiction.
- [15] Under **s. 6.1** of the **First Schedule** of the Act, an electronically recorded interview of a suspect who is a vulnerable person **must** (emphasis added) take place in the presence of an appropriate adult. Vulnerable person, is described under **s. 1.2** of the **Second Schedule** to include a mentally disordered or otherwise mentally vulnerable person. Appropriate adult, is defined under **s. 1.2(b)**, in the case of a mentally disordered or mentally vulnerable person, to be a relative, guardian or someone responsible for his care or custody, or someone experienced in dealing with mentally disordered or mentally vulnerable persons, but who is not a member of a law enforcement agency.

THE POSITION OF THE PARTIES

- [16] Learned Counsel for the applicant submits that all three of the statements attributed to the applicant should be excluded. He was suffering from a mental illness at the time, and had been subjected to physical violence by the police prior to giving his first statement. The applicant did not have an operating mind at the time, such that he could comprehend his situation, and the jeopardy that he was facing. He was physically and mentally ill. The Crown, it is submitted, has failed to

discharge its obligation to prove beyond a reasonable doubt that the statements are reliable, and were obtained voluntarily.

- [17] Counsel for the applicant submits that the mental illness of the applicant is confirmed in the medical evidence of the treating physician, Dr. Karen Providence, and the hospital file. This indicates that the applicant suffered from mild psychosis, based on satisfying two of the five medically recognized symptoms, and cannabis use induced psychosis. Major depressive disorder had not been ruled out when he was discharged. He had been prescribed diazepam, although it may not have been actually administered during his hospital stay. Anti-psychotic drugs were to be started once his lab results were normal, although no such drugs were received by the applicant before he was discharged. He was recommended for follow up with the psychiatric department upon discharge. His mental illness is obvious, it is submitted, to anyone viewing the demeanor of the applicant during the electronic interview.
- [18] Counsel for the applicant also took issue with Dr. Providence, who had been designated as an expert witness in psychiatry, based on work experience. It was submitted that the witness was not an unbiased expert. She attempted to “walk back” some of the findings in her report, when cross examined. She failed to inquire into the status and behaviour of the applicant at the time of his incarceration. If she had, she would have been alerted to the entries in the station diaries indicating auditory hallucinations, which were confirmed in some of the nursing notes, and aggressive and agitated behaviour. The court notes, however, that it would have been extremely unlikely that any inquiries made by Dr. Providence of the police, would have unearthed information such as that found in the station diaries, since the investigating officer himself testified that he was never aware of that information, and certainly was not aware at the time of any of the interviews. Nonetheless, such inquiries could have been made by the doctor. Counsel submits that had any of that been properly researched and obtained by Dr. Providence, a diagnosis of something more than merely mild psychosis, would have been made.
- [19] Such lack of diligence was also reflected, it was submitted, in the report prepared by the expert witness in 2023, in relation to the applicant. Dr. Providence failed to follow up her suspicion that she had examined the applicant before, by checking his hospital and medical records. That would have given her more information with which to produce a more fulsome report, and reflects an ongoing lack of thoroughness.

- [20] Counsel for the applicant submits that, not only is there evidence of a mental illness for the applicant at the material time, but there is also evidence of physical oppression against the applicant by the police. The medical records show that the applicant complained of chest pain, and had chest wall tenderness. That corresponds with the position of the applicant that he was struck in the chest with the butt of a police long gun, immediately before or during his transport to the police station upon arrest.
- [21] Counsel for the applicant submits that the police investigation was flawed, and that the police failed to consistently respect the rights of the applicant. Investigating officers failed to make themselves aware of the condition of the applicant before interviewing him, by examining the station diaries. If they had, they would have sought to have the applicant examined and assessed before being interviewed. This lackadaisical approach is also confirmed in the failure of the police to conduct any investigation into the poisoning of the applicant, including how the toxic substance was available to the applicant in a custodial setting.
- [22] Learned counsel for the applicant submits that the police failed to comply with the terms of the **Interviewing of Suspects for Serious Crimes Act 2012**, particularly as it pertains to the rights of vulnerable persons.
- [23] Counsel for the applicant also takes issue with the lack of disclosure in this case. Medical records and station diaries had to be requested from the prosecution. More troubling is the lack of disclosure by the prosecution of the discharge letter for the applicant, which the investigating officer said he received once the applicant had left hospital. Sgt. Quow was very specific in stating that he punched a hole in the document and affixed it to the file, even assigning it a particular page number. He stated that he submitted the entire file through the proper channels, assuming it would eventually reach the office of the prosecutor. Had that document been disclosed, counsel for the applicant submits, she would have requested the other material much earlier.
- [24] With regard to the statements, counsel for the applicant submits that there was no caution given to the applicant prior to the first statement. Although it does not appear on the written notes, Sgt. Quow initially stated that he administered the caution verbally, nonetheless. Counsel for the applicant submitted that he later conceded that he did not administer the caution. That caused her to question Supt. Ballantyne about that, as that officer was present during the interview. Counsel put it to Supt. Ballantyne that Sgt. Quow had conceded in his evidence that he did not caution the

applicant. Counsel for the respondent submits that the caution was administered verbally, although if that is so, it is curious that Counsel for the respondent failed to object to the wording of the question that a previous witness had stated otherwise.

- [25] Counsel for the applicant submits that the applicant was not told that he need not say anything before being interviewed. He was also not told that he need not go to the scene with police. The electronic interview was unfair, in that the interrogators failed to explain the concept of accessory or joint enterprise to the applicant during the interview, as he was being questioned. Such legal concepts would have been incomprehensible to the applicant, given the state of his mental health at the time. Counsel submits that each interview is tarnished by the failures of the preceding interview.
- [26] Counsel for the applicant referred the court to Blackstone's for issues of fairness, fair trial, and discretion to exclude statements. She also referred the court to the case of **John Franklyn and Ian Vincent v The Queen, 42 W.I.R. 1993**, which held that the provisions of the Constitution of Jamaica, which counsel submits are similar to the Constitution of St. Vincent and the Grenadines, codify the requirements of the common law, ensuring that an accused person receives a fair trial. It depends upon an assessment of the facts as against the general standards of fairness.
- [27] Learned counsel for the respondent submits that mild psychosis is just that, mild. As such, it does not rise to a level sufficient to make the obtaining of the statements unfair. Counsel acknowledges the duty of the Crown, pursuant to **s. 9** of the Act, to prove beyond a reasonable doubt that the statements are relevant and reliable, and were given voluntarily.
- [28] Counsel for the respondent points to the demeanor of the applicant as displayed in the electronic interview as illustrating good comprehension and normal behaviour. Answers given, were appropriate to the questions asked. There is no indication of confusion on the part of the applicant, and his range of movement is displayed when standing and demonstrating without any difficulty.
- [29] Counsel for the respondent points to the expert medical evidence, which indicates that the mild psychosis was not the primary presenting problem for the applicant. The applicant only displayed two of five of the listed symptoms of psychosis, and displayed no aggression or agitation. He was stable and normal. He was aware of his surroundings, and had no thought disorganization. The applicant never received any anti-psychotic medications, and diazepam was only prescribed "as needed." There were no major flaws in the treatment the applicant received nor in the medical

evidence presented. The court may be confident in that, and in accepting the evidence of Dr. Providence.

- [30] The poison that the applicant ingested was clearly administered after all of the interviews had been conducted, since Dr. Dommalur Jayarangaiah, Internal Medicine Consultant, testified that there would have been rapid onset, with effects being noticeable very soon after ingestion. It therefore had no bearing on the applicant's condition at the time of the interviews.
- [31] Counsel for the respondent submits that the statements of the applicant are important evidence in this case, and therefore meet the threshold of relevance under the Act. The court certainly accepts that position. Although it is curious that, if the statements of the applicant are as relevant and valuable to the prosecution of this crime as they appear, no charges were ever laid against the armed men who took part in the shooting, "Steppie," and "Gobbler." Those men are clearly described and identified by the applicant in his statements, yet apparently the applicant was the only person charged with this crime.
- [32] Counsel for the respondent submits that there is no evidence of the applicant being subjected to physical violence at the hands of police. There is no such oppression proven. All police witnesses denied administering any physical violence to the applicant, and did not observe any assaultive behaviour directed towards him. Although counsel for the applicant responded that, other than Sgt. Morgan, the Crown failed to call officers that travelled with the applicant in the police transport when he was first arrested, and that is the time that the applicant alleges he was struck with a police gun butt.
- [33] Counsel for the respondent submits that there is no evidence in the medical reports of the applicant complaining of physical abuse by the police, and no evidence of any chest injury.
- [34] Counsel for the respondent submits that the electronic interview was properly and fairly obtained. The first interview was also properly obtained, although counsel admits that it was not obtained according to the terms of the Act, since it was not electronically recorded at a place of detention, where recording equipment was located. However, that statement was nonetheless lawfully obtained according to s. 6 of the Act and s. 4.6 of the Second Schedule, when it was subsequently read to the applicant during the electronic interview, and confirmed by him. It is therefore admissible through the second statement, the electronic interview.

- [35] Counsel for the respondent submits that the third statement of the applicant, obtained at the scene visit, was obtained lawfully. It followed the provisions of the Act, as it was not a custodial interview conducted at a place of detention. It therefore did not have to be electronically recorded. Although the court notes that it is curious that the prudent and experienced police officers obtaining such an important interview in such a serious case, did not take steps to create an audio video record. Surely, cell phones were present and available, and could have been activated in order to create a record of what transpired. It would have been simple and easy, and would have eliminated all such questions by presenting an accurate and contemporaneous record.
- [36] Counsel for the respondent submits that the Crown is bound by the terms of the Act, as it pertains to the interview of vulnerable persons. He concedes that if the applicant met the definition of vulnerable person under the Act, then there was no appropriate adult present, as stipulated in the Act.
- [37] Counsel for the respondent relies upon the evidence of the investigating officers, as confirmed in the recorded interview statements, all witnesses called in the *voire dire*, and the electronic recording. This shows that the applicant did not request medical attention and was not in distress. He appeared comfortable, relaxed and at ease in the electronically recorded interview. He freely took part in all of the interviews after caution. No threats, inducements or promises were made by police to illicit the statements. No physical violence was administered to the applicant.

ANALYSIS

- [38] There can be no doubt that a detainee has the right to remain silent. A person whose liberty is placed in jeopardy by the criminal justice process cannot be required to speak or give evidence against himself, but rather has the right to choose whether to speak or to remain silent. The issue is whether the conduct of the authorities, considered on an objective basis, effectively and unfairly deprived the suspect of the right to choose whether to speak to the authorities or not. Further, where the mental health of the suspect is at issue, the court must determine whether such ill health, if proven, renders the statement unreliable. The question becomes whether the statement obtained was the product of the detainee's free will, and operating mind. Detainees are under no obligation to assist police with their investigations.
- [39] In this case, the applicant submits that he was the victim of physical abuse by police prior to the electronically recorded interview, which began at 09:47 AM on 15th November 2018. He was struck

in the torso by a police officer with the butt of a rifle, immediately after his arrest and during his transport to the Central Police Station, in the late afternoon of 14th November 2018. His distress and discomfort, it is submitted, are visible in the video of that interview.

- [40] To refute that allegation, the respondent called a number of police witnesses, who either had custody of the defendant or who observed him at various points in time from his arrest to the time of his audio video recorded interview. Each of those witnesses denied observing any physical altercation with the defendant, and denied assaulting the defendant in any way. The defendant was not beaten, slapped, threatened, nor subjected to any violence. Those witnesses include Sgt. Morgan, who was in charge of the police detail that located, arrested, and transported the applicant. He said there was no need for a confrontation with the defendant, as he did not misbehave in any way.
- [41] Sgt. Morgan stated that he had known the applicant for a number of years. His behaviour was not out of the ordinary that day. He appeared to be normal.
- [42] To further confirm a lack of physical injury on the part of the defendant, the respondent refers to the hospital records and discharge summary for the applicant. He was taken to the local hospital on 16th November 2018, where he remained for 4 days, until discharge back to police custody. The physical assessment of the applicant upon admission to hospital indicates no bruises or bleeding, no pain, and good range of motion.
- [43] Although the medical record does indicate that in some places, it also confirms complaints of chest pain and tenderness by the applicant in other parts. The records are therefore not clear, one way or the other, with regard to regard to chest injury. It must also be remembered that the applicant had ingested toxins, and had vomited several times. That may also have had an effect on his body, overall.
- [44] The applicant also submits that he was induced to provide a statement to police by offers or promises of assistance if he was to give evidence against “Gobbler” and “Steppie.” It would be to his benefit, if he became a police witness. Cpl. Ollivierre, who assisted in conducting the audio video interview, denied that any such inducement was ever made to the defendant. However, Sgt. Quow, who led the interview, could not recall. Such an inducement, however, cannot be confirmed in the audio video statement, nor in any other evidence.

- [45] Having closely watched the audio video recorded interview of the defendant, the court did note some unusual behaviour displayed by the applicant. The interview lasts 46 minutes. From the time the defendant enters the interview room and sits down, he leans forward, with his arms folded across and over his stomach. He answers questions, but his speech is quiet, and slow. It gradually becomes more audible, but his body positioning remains the same. At one point, the applicant stands up to show his height, but quickly sits down. He reaches around and scratches his back. There is no gesticulation until well into the interview, when it is noted that he moves his left arm as he speaks. He then briefly gestures with both hands a total of 6 times during the interview. He gesticulates 3 more times with his left hand. He rubs his neck once. He turns his body to the right briefly one time. He points to his pants once while describing clothing, and reaches down to touch his shoes once. He leans forward with his arms on his knees. Other than those occasions, he sits with his arms folded across his stomach.
- [46] This is very different to the way the applicant has been observed by the court throughout the *voire dire*. He consistently sits upright, or slightly forward, with his hands folded in his lap. He does not slouch or hunch forward. That is also consistent with how the court has seen the applicant during his other appearances this law term. That is not to say that the body positioning during the interview is confirming of any physical injury. It is a somewhat curious demeanor, but as we often advise juries, one should be cautious in the weight one attaches to impressions created by demeanor. Demeanour can be affected by many factors including the culture of the witness, stereotypical attitudes, and the somewhat artificial and sometimes stressful pressures associated with a courtroom **or a police station** (emphasis added). It is therefore difficult to determine, with any degree of certainty, any physical injury suffered by the applicant prior to his interview.
- [47] With such ambiguity in the medical records relating to chest pain and injury, or lack thereof, coupled with an inability to definitively confirm any physical injury displayed in the audio video recorded interview, the court is not satisfied that the applicant was the victim of physical abuse or violence at the hands of police, such that it constituted oppression, and caused him to cooperate and provide statements, when he otherwise might not have.
- [48] What is of greater significance, however, is the state of the applicant's mental health throughout his period of custody, and his interactions with police. Although all of the police witnesses called in this *voire dire*, who had contact with the applicant, indicated that he appeared normal, and not in

distress, evidence tendered contradicts that. Of particular note are the entries in the station diaries, while the defendant was in custody at the Central Police Station.

- [49] The applicant was brought in sometime after 5:00 PM on 14th November 2018. At 03:30 AM on 15th November 2018, an entry is made in the station diary that indicates, when the applicant was checked in the holding area, he was seen to be sitting on the bench talking to himself. The entry at 04:00 AM indicates that he is observed to be standing, and talking to himself. At 04:16 AM, the applicant is again checked, and is heard to say that he is going to kill a police officer, or an officer's family member when released. He will make a telephone call and have them killed. When checked at 04:30 AM, the applicant was asleep. As noted, the electronic interview began at 09:47 AM that morning. The evidence clearly indicates that the applicant was exhibiting unusual behaviour, to say the least, immediately prior to his electronic interview, and not long after his first police interview. The behaviour is therefore contemporaneous to those interviews.
- [50] At 4:30 PM on 15th November 2018, the applicant was back in the holding area. When he was checked, he was seen to be pulling pieces of steel from the ceiling, saying that he was going to use them to hit police. Sgt. Quow confirmed in his evidence that one would need to stand on a table to reach the ceiling in the holding area. Again, this is highly unusual behaviour displayed by the applicant, contemporaneous to the statements provided.
- [51] On cross examination, Sgt. Quow confirmed that, prior to the electronically recorded interview he conducted with the applicant, he was not aware of any of those station diary entries. Nor was he aware of any of that behaviour exhibited by the applicant prior to the interview. He said that none of that information was brought to his attention. He agreed that it was strange behaviour. When asked what he would have done, had he known of that behaviour, he responded that he would have reported it to his supervising officer, and sought guidance. Cpl. Oliviere, who took part in the electronic interview, stated that he was also unaware of such behaviour exhibited by the applicant prior to the interview.
- [52] It is troubling that the investigating officer in this case, Sgt. Quow, a police officer of 28 years' experience (somewhat less at the time of the interview, but substantial nonetheless), was unaware of such important and relevant behaviour on the part of his main suspect, whom he had just interviewed and who was about to be interviewed properly and electronically. A suspect in a murder investigation, detained in the holding area of the main Police Station in St. Vincent, is seen

to be talking to himself, and threatening to kill police officers, and no one does anything about it nor reports it to the officer in charge of the case. Nor does the investigating officer make it his business to check on the cell records before interviewing his prime suspect. That police behaviour is concerning. It indicates a general lack of care and due diligence on the part of the police. Not only are safety concerns and issues raised for police, but the health and safety of the detainee is engaged. It calls into question the state of mind of the applicant, and demands an investigation before the interview. Unfortunately, that did not happen. In a murder investigation being conducted by experienced police officers, one would expect more.

- [53] The concerns about the applicant's state of mind, as demonstrated, are later borne out when his behaviour escalates to standing on furniture, in order to get at the ceiling, and apparently obtain a weapon with which to either harm himself or police. Then of course, the applicant ultimately ingests a toxic substance, and is finally rushed to hospital for treatment.
- [54] The lack of interest and engagement on the part of the police is confirmed when the investigating officer admits during the *voire dire* that no investigation into how the applicant obtained poison while in custody at the main police station, was ever, to his knowledge, carried out.
- [55] This surprising and disturbing chain of events continues, when it becomes apparent that the discharge summary that was given to the police, following the applicant's hospital stay, was attached to the case file by the investigating officer. However, it did not form part of the disclosure package given to defence counsel. Of course, it is unknown how the document became detached from the file, and no aspersions can be cast at any department in particular. Indeed, when requested by defence, the prosecution office obtained and produced medical records, station diaries, and other material. However, it is another example of the disjointed and rather cavalier attitude with which the case, and in particular the applicant, was treated by persons in authority.
- [56] On 16th November 2018, the applicant was admitted to the local hospital, after ingesting a foreign substance while in police custody. The applicant told medical staff that he had swallowed a pesticide, with a view to taking his own life. He did not want to go to court or to jail. It was determined to be an organo-phosphate insecticide, referred to as "touchdown." There was an indication of auditory hallucinations, or the hearing of voices. The applicant was referred to the psychiatric team.

- [57] A report was prepared by Dr. Providence on 17th November 2018. It indicated that the applicant reported hearing voices every day. He has had suicidal ideation since he was a teenager, and does not want to go to court. He had ingested a toxic substance. He had a dysphoric mood, and a blunted affect. There was a need to rule out major depressive disorder, and cannabis use disorder with psychosis was noted. He was to start anti-psychotic medication. The applicant was described as labile, with poor judgment and insight.
- [58] Of note, an entry was made in the applicant's patient record on 18th November 2018, at 3:00 PM, that he was having auditory hallucinations, talking to himself aloud. The very same behaviour as previously noted in the police station diary, while he was detained.
- [59] The applicant was discharged on 20th November 2018, with a final diagnosis of ingestion of toxic substance, a need to rule out major depressive disorder, and cannabis use induced psychosis. He had been assessed by the psychiatric team for 4 days, and given a direction to follow up with the psychiatric department at the Mental Health Centre. It is unknown (although highly unlikely) whether any such follow up ever occurred, as the applicant remained in custody.
- [60] Sgt. Quow, as the investigating officer and the lead interrogator in the police interview, was asked if it would be proper to interview a suspect who was suffering with a psychiatric illness, including talking to himself. His answer was no, it would not be proper.
- [61] Two medical experts gave evidence in this voire dire. Dr. Dommalur Jayarangaiah, was designated as a medical expert, particularly in the area of Internal Medicine. Dr. Karen Providence, was designated as an expert in psychiatry, based on work experience. Dr. Providence has been a medical doctor since 1999. She obtained a post graduate degree in psychology, and received training in substance use prevention and treatment. She has worked at the general hospital in St. Vincent, and from 2002 until her retirement in 2023, she was part of the psychiatric service at the Mental Health Centre in St. Vincent. She is now in private practice.
- [62] Dr. Providence described psychosis as a break in one's understanding of reality. It is a condition of the mind. She described five symptoms. The first involved perception and senses. An impairment of the function of one or more senses, for example, hallucinations. The second involved an impairment of one's thoughts and beliefs, for example, delusions. The third involved disorganized behaviour. The fourth involved negative symptoms, for example, a frozen appearance or flat affect. The fifth symptom involved a disorganization of speech.

- [63] It is interesting to note that, although Dr. Providence examined the applicant for a psychiatric report in 2023, he was adamant that he had never seen her before. He claimed it was his brother she had assessed. That interview was conducted while the applicant was on remand on this charge. Is that an ongoing symptom of his mental health condition, a lie, as the Crown contends, or something else altogether? We cannot say.
- [64] During the applicant's admission in November 2018, he was referred to Dr. Providence for psychiatric evaluation, primarily due to his suicidal ideation. The applicant admitted such thoughts to Dr. Providence on 17th November 2018. Although he was described as understanding reality, he had a dysphoric mood and blunted affect. He admitted to having auditory hallucinations for years. He was described as having depressive cognition effecting his insight.
- [65] The applicant was diagnosed with a psychosis, although it was not severe. He displayed two of the five symptoms, namely, auditory hallucinations, and blunt affect. Dr. Providence stated that the applicant was prescribed intramuscular injections of diazepam for aggression and agitation. During cross examination, Dr. Providence agreed that threatening to kill someone would constitute aggressive behaviour, and pulling rods from the ceiling, would constitute agitated behaviour, which of course was the behaviour displayed by the applicant immediately before his hospital admission, while in police custody. Although the primary consideration was to treat the self-harm ideation, because the applicant displayed psychotic symptoms, antipsychotics were to be commenced, once lab tests were normal. In cross examination, Dr. Providence stated that administering those drugs would not have been ordered unless they were needed. She agreed that mild psychosis was, nonetheless, still psychosis.
- [66] Dr. Providence confirmed the entries in the applicant's patient notes for 18th November 2018 indicating the applicant was exhibiting auditory hallucinations, talking to himself aloud. She confirmed final entries regarding cannabis use disorder with psychosis, and a need to rule out major depressive disorder.
- [67] Police have an informational duty to advise a detained person of the right to remain silent and the right to retain and instruct counsel. There is also an implementational obligation imposed upon police to ensure that the detainee understands those rights. That must be part of the protection under law, as described as a fundamental right under the constitution of St. Vincent and the

Grenadines. Similarly, the constitution maintains that a charged person shall be informed of the nature of the offence in detail, and in a language that is comprehensible. While we can debate whether this applied to the applicant at the time of the electronic interview as he might not have yet been charged, it would surely be remiss not to equate all of those rights to the applicant at the time. It is clear, however, that the behaviour of the applicant as described in the station diary, and later at the hospital, was out of the ordinary, and indicative, as Dr. Providence confirmed, of a mental illness, such as psychosis.

- [68] Although that state of mind was unknown to the investigating officers, how can it be said that the applicant understood his rights to counsel, the police caution, and the explanation of the offence and the investigation? If the police were unaware of the state of mind of the applicant as displayed in his behaviour in custody, how could they have ensured that the language used in the interviews was suitable and understandable? They could not.
- [69] The state of mental health or indeed mental ill-health, of the applicant at the material times, is of paramount significance in this *voire dire*. The behaviour in the holding area confirms auditory hallucinations, or talking to one's self. The threats to kill police constitute aggressive behaviour. All of that occurred shortly before the electronic interview. That is behaviour indicative of mental health issues. Indeed, within one to two days, the applicant is medically confirmed as suffering from a psychosis. Interrogating officers were unaware of that behaviour and that condition at the time of interview. To his credit, Sgt. Quow testified that had he been aware of such behaviour, he would not have conducted an interview. It would not, he said, have been proper.
- [70] This pattern of behaviour continued to be exhibited at the hospital by the applicant very soon after the interviews. The diagnosis of cannabis use psychosis, based upon the extensive use of cannabis since a very young age must surely indicate that the condition had been present for some time. There is no indication that it suddenly manifested itself in the holding area on 15th November 2018. The applicant must have been suffering from the condition at the time of the first interview.
- [71] This court is satisfied that the applicant was suffering from a mental illness at the time of the electronic interview. Indeed, the court is satisfied that the applicant was suffering from a mental illness at the time of each of the three interviews conducted in this case. His observed behaviour in the holding cell area was confirmed upon his hospital admission. The diagnosis of psychosis, even

if it is described as mild, is sufficient. Applying the test objectively, the mental condition has been confirmed by a duly qualified medical doctor.

- [72] Having made a determination that the applicant was mentally disordered at the time of the statements, particularly the electronic interview, the court is satisfied that this engages the provisions of the **Interviewing of Suspects for Serious Crimes Act 2012**. The applicant is therefore found to be a vulnerable person under the act. An electronically recorded custodial interview of a vulnerable person must, under the terms of the act, take place in the presence of an appropriate adult. That did not happen in this case. No such person was located and was not present for the interview, and there is no evidence that reasonable efforts to locate such a person took place. Having failed to comply with the terms of the Act, and the Crown therefore having failed to prove beyond a reasonable doubt that the statement was made voluntarily, it follows that the statement must be excluded.
- [73] Since the first statement obtained from the applicant upon his arrival at the police station was not electronically recorded, it was incumbent upon the Crown to ensure that it was subsequently properly tendered during the course of the electronic interview. The Crown acknowledged that in the course of this *voire dire*. However, since the court has found that the electronic interview should be excluded, the first statement is also excluded for the reasons noted. There is no need for the court to make a finding of whether or not a police caution was provided to the applicant prior to the first statement being obtained.
- [74] As for the third statement obtained from the applicant at the scene visit, the court finds that it should also be excluded. The court is satisfied that the applicant was suffering from a mental disorder at the time of that statement. It cannot be said that the applicant had an operating mind at that time. Further, having made the decision to exclude the first two statements, particularly when the police were in breach of the Act, the subsequent interview is tainted. The doctrine of fruit of the poison tree is applicable in this case. Had it not been for the information garnered by police from the first two interviews, they would not have been in a position to move forward with the third interview and the scene visit.
- [75] Since the applicant was suffering, at the time of the statements, from a mental health condition, in addition to the provisions of the local legislation, the court is satisfied at common law that the statements were not given voluntarily, after informed consent.

- [76] The court is satisfied that the mental ill-health of the applicant at the time of the statements, as confirmed in the evidence, makes the confessions unreliable. To allow them to be admitted would be unfair to the trial process for the applicant. Clearly, the prejudicial effect outweighs the probative value of the statements. The evidence must therefore be excluded in order to ensure a fair trial.
- [77] This was a serious and violent crime. The charge is murder, wherein a shopkeeper was shot at her place of business in broad daylight. It demanded a fulsome investigation with clear and careful respect for the rights of the defendant, particularly while in police custody, and being interrogated. The intention was to use the applicant's inculpatory statements against his interests. The state has the means to confirm, record and prove every step taken in obtaining an accused person's statement, and that includes ensuring that his state of mental health is considered and respected, along with all of his rights. Unfortunately, that was not done. The court cannot be satisfied beyond a reasonable doubt that the statements were obtained voluntarily, nor that they are reliable.
- [78] In the interests of fairness in this trial, and for all of the reasons noted, this application is granted. The three statements given on 15th November 2018 and 16th November 2018 shall be excluded.

Richard G. Floyd
High Court Judge [Ag]

By the Court

Registrar