

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

[CRIMINAL]

COMMONWEALTH OF DOMINICA

CASE NO. 27 OF 2015

BETWEEN:

THE STATE

V

JOSEPH SENHOUSE

Appearances:

Ms. Fernilia Felix and Ms. Toussaint for the State

Mrs. Dawn Yearwood-Stewart for the Defendant

2015: November 23

RULING

[1] Thomas J. [Ag.]: The defendant Joseph Senhouse of Upper Penville is charged with three offences under the **Sexual Offences Act, 1998**, to which he has pleaded not guilty.

[2] Arising out of the trial is the issue to whether a confession which the Prosecution contends was made voluntarily by the defendant without any issues of negativity should be admitted into evidence. The defence says otherwise. This gave rise to the holding of a voir dire.

Evidence on the Voir Dire

- [3] At the hearing on the voir dire, the investigating officer WPC Joan Leblanc, and Inspector Emmanuel James testified on behalf of the State.
- [4] As far as WPC Leblanc is concerned, she testified that on return to the Portsmouth Police Station the accused made a confession after visits to places in connection with the alleged crimes. She testified that the accused indicated to her that he wanted to tell her what happened and that after he was cautioned, he made the following confession:

"I can't remember directly what day, but it was in August 2013 the mother came by me about 3 or 4 o'clock an afternoon time. We were watching a sex movie and we started having sex. About half an hour we there, I hear somebody knocking the back door. I get up to open the back door and Ivenia ran inside. The mother attempt to put her clothes back but I didn't have time to put off the movie. Ivenia stand up watching the movie and I put it off. The mother tell Ivenia what you come and do here, your father not giving you nothing. I don't have money to buy nothing for you. Then she tell me where the money. I gave her \$50.00 that day. She tell Ivenia to stay with me, she going to the shop to get something.

Ivenia tell me she see the sex on TV and don't know if it is the devil that go in my head, I tell her if she see it let me give her hers now. She lie down on the same foam she show you, she pull down her skirt and she put her panty on a side and I lie down on her. I didn't put my penis inside I just start to rub it on her pussy. I didn't put my penis inside cause a little girl is not a big woman that there is a little girl.

I tell her now let's stop that cause my penis cannot enter because she too small and her mother coming so let's stop that. We stop that. Then the mother come and told her lets go and she go with her mother.

She never tells that to nobody until she get involved with the other partner and she say that I kiss her on her lips and the side of her face but she too small."

- [5] The further evidence of the Investigating Officer, Leblanc, is that she read over to the accused the alleged confession which she recorded in the pocket book issued to her. She also testified that the accused was told he could add, alter or correct anything. The accused was then invited to sign the alleged confession which he did.
- [6] In summary, Officer Leblanc in her evidence-in-chief testified concerning the circumstances of the alleged confession in a room at the Portsmouth Police Station and the signing of it read over to

him. Under cross- examination, the witness detailed the following: the taking of the alleged confession was done on April 02, 2014; an accused statement form was not obtained for that purpose because it was late at night and it was trouble to get an independent witness; the accused was not handcuffed while he gave the alleged confession; she was never in any room at the Police station with the accused and Inspector James.

- [7] Specifically in relation to Inspector James, WPC Joan Leblanc denied several propositions put to her by learned counsel for the accused. The denials relate to the following: hearing Inspector James questioning the accused about sex with the alleged victim; recalling the Inspector sitting on a desk in the room and telling the accused about what he can do to have his bail denied if he did not sign the paper; telling the accused that “dead man don’t talk”; recalling that the Inspector pulled the drawer of the desk on which he sat had a gun in it; the Inspector telling the accused that he had to make a deal with the alleged victim’s mother in secret; the Inspector telling the accused to sign the paper or sign the same paper once or twice because it was for his good; the Inspector forbidding the accused to tell anyone what happened “in here” and the Inspector telling her to make something out of that gentleman and leaving the room after that.
- [8] Inspector Emanuel James in his evidence-in-chief testified that he is now based at the Marigot Police Station but in 2014 he was stationed at the Portsmouth Police Station. And with respect to the date of April 2, 2014, he did not recall it vividly.
- [9] With respect to his duties, the witness revealed the following: he supervises cases, including this one; while the accused was detained he did not see anyone beating him, or threatening him; he did not shout at the accused or promise him anything in order to get a confession; he was not in a room with the accused and Officer Leblanc; he was not sitting on a desk with the accused sitting on a chair in front of him; he never opened the desk drawer which had a gun in it; he did not recall asking the accused about having sex with the alleged victim or about having his bail denied; he did not tell the accused “dead man don’t talk”; no gun is kept in any office but in the armoury for safekeeping; he did not direct Officer Leblanc; he did not tell the accused about making a deal with the alleged victim’s mother; he did not direct the officer to go make something out of that gentleman; he did not say to the accused to sign the paper, or sign the damn paper.

[10] Under cross-examination, the Inspector said that he believes that he was at the station when the officers returned at which time he was apprised of what they did.

[11] Essentially, the remainder of the cross-examination, there were a host of denials. These include: getting a confession from the accused; the carrying of a firearm; inability to recall where the accused was placed at the station; placing his issued firearm in a desk drawer in a room where the accused was taken; inability to recall if the accused was handcuffed; did not shout "sit down" to the accused; Officer Leblanc stood next to the accused with her arms folded; never asked the accused if he had sex with the alleged victim; being aware that Officer Leblanc placed her pocketbook in front of the accused; unaware that officer Leblanc told the accused to sign as it was for his own good; being aware that Officer Leblanc went through the motion of washing hands and told the accused that she did not do him anything as she knew him, and giving any instructions for the accused to be taken to the cell.

Joseph Senhouse

[12] In his evidence-in-chief, the accused said he is Joseph Senhouse, the accused in the matter, having been arrested in connection with some sexual matters. He testified further that after his arrest, he was taken to the Upper Penville Village Council Office and then to his home, stopping at Vielle Case Police Station.

[13] The next stage of the accused's evidence consists of details of the events surrounding his arrival at the Portsmouth Police Station. According to him, he was placed on a chair wearing handcuffs and later taken to a room where he saw Officer James sitting on a table and Officer Joan was on the other side.

[14] In the next segment of his evidence, the accused detailed various suggestions and questions made to him by Inspector James about sex with the alleged victim. He added that the Inspector spoke to him sometimes in a "rough big voice" and that, initially, he denied the suggestions and answered in the negative as to the question of sex with the alleged victim. He also said that after Inspector James pulled out the drawer and the gun was exposed, he told him, "do you know dead man don't talk." And it is his further evidence that Inspector James said that it was the alleged victim's mother

with whom he had a relationship. He testified further that the Inspector told him that he would have to meet with the mother and make an agreement with her.

[15] In a direct assault on the alleged confession, learned counsel put all its constituents to the accused as propositions and with one exception, they were all denied by the accused.

[16] Under cross-examination, the accused repeated his evidence that while in the room with Inspector James and Officer Leblanc, he was questioned and was afraid when Inspector James told him, “a dead man don’t speak” and was told to sign the damn paper. In this context, he also testified as to his fear of the gun in the drawer.

[17] There was extensive cross-examination on the matter of the gun and being repeatedly asked to sign. In the end, the accused said he was scared of the gun.

[18] There was also cross-examination on the various statements and questions which the accused said Inspector James addressed to him. These were rejected as what was said earlier in this regard was maintained by the accused.

Findings of Fact

[19] The following are findings of fact by the court:

1. The accused, on his return to the Portsmouth Police Station with Officer Leblanc and three other Police Officers, was seated near to the guard desk and later taken to an office.
2. In the office, Inspector James and WPC Leblanc were present with the accused in the room.

3. The accused was questioned by Inspector James concerning the alleged offences on his return to the Portsmouth Police Station with Officer Leblanc and three other Police Officers.
4. The accused was questioned by Inspector James concerning the alleged unlawful sex with the alleged victim.
5. The court does not accept that any firearm was in the desk drawer in the room given the evidence of Inspector James, a senior Police Officer.
6. There would have been a raised voice on the part of Inspector James due to the repeated answers given by the accused and his initial refusal to sign the paper, over time.
7. Given the court's determination of the accused's stage in life educationally, the inference drawn is that some of the language he attributed to Inspector James are correct.
8. The court takes notice of the fact that the Portsmouth Police Station is the main station to the North of the island, and, as such, would have a large number of officers attached to it.

ISSUE

[20] As noted before, the issue for determination is whether the alleged confession should be admitted into evidence.

Submissions

[21] Submissions on behalf of the State; learned counsel for the State submits the following:

1. The accused admitted that he visited the scene of the alleged incident with police officers, the alleged victim and her mother.
2. The accused admitted that Officer Leblanc asked him to sign the note taken and he refused.
3. The accused admitted that he did give part of the alleged statement.
4. When Officer Leblanc gave her evidence, she never made mention that the accused told her these things at the house. Both counsel inspected the pocketbook and these words were never recorded as notes taken at the scene. It follows that they were taken after the visit to the scene which is what the Prosecution is alleging.
5. Although the accused denied saying anything having to do with a confession, he admitted that he said certain things which Officer Leblanc contends formed part of his alleged confession.
6. Officer Leblanc contends that on every occasion when the accused spoke he was cautioned and told of his rights to an attorney.
7. The accused admits that he was not beaten and the circumstances surrounding his questioning at the time he was alleged to have given the confession, was not threatening.
8. Inspector James denies threatening the accused, speaking to him in a rough manner or trying to induce him into making a statement.
9. Officer Leblanc denies the presence of Inspector James in the room in which the accused made his confession.

10. The accused admitted that he felt more afraid when Inspector James allegedly told him “sign the damn paper,” in a rough voice, than when Inspector James asked him if he had sex with the alleged victim and then opening the drawer to expose a gun, although admitting later that a threat by a gun is more serious.
11. In light of the evidence on the voir dire, the Prosecution has satisfied the burden of proof that the alleged confession was not obtained by oppression of the accused or in consequence of anything said or done which is likely, in the circumstances existing at the time, to render unreliable any confession which might have been made by him in consequence thereof.

[22] The cases cited are: **Ruth Susan Fulling** [1987] CR. App R. 136; **Ken Charles & Leonard O’Garror** and **Regina**, Criminal Appeals no. 16 & 17 of 2003; **Cox & Mitchell v R** Criminal Appeal nos. 25 & 26 of 1996 , **Grenada, Thongjai v The Queen** (Hong Kong) [1997] UKPC 31.

Submission on behalf of the Accused

[23] Learned counsel for the accused submits that a certain part of the confession was given to Officer Leblanc when she and other officers, the alleged victim and her mother exited his house. The submissions cover the following:

1. There was no evidence that the accused was cautioned at the time of the alleged confession.
2. The failure by Officer Leblanc to use the accused statement.
3. There was a break of Rule 2 of the Judges Rules regarding a right to an attorney of the accused’s choice.

4. On the return to the Portsmouth Police Station Officer James set out on a path to unlawful acts designed to sap the free will of the accused.
5. The whole atmosphere in the room was oppressive given the physical size of Officer James and his authority.
6. The atmosphere in the room was tense because the questioning did not produce the results being sought.
7. The law does not tolerate this type of behaviour from Police Officers connected to interrogation of accused persons. As such, the impugned statement should not be admitted since it is in breach of the Judges Rules and the Constitution of the Commonwealth of Dominica.
8. Although the statement was signed, it was a concoction by the investigating Officer who was trying to please her superior officer by making a story out of this man by putting down a confession relating to indecent assault, the least serious offence charged.
9. The Prosecution failed to meet the burden of showing that the maker of the impugned statement is the accused and that he signed it freely and voluntarily.

[24] The authorities cited in support are: **Ibrahim v R** [1914] AC 599; **Francois v The State** [1987] 40WIR 376.

Reasoning

[25] In summary, it may be said that the submission on behalf of the State, although there is some incursion into the matter of oppression, centres on the contention that the alleged statement or

confession is admissible into evidence. In this regard, the court finds that the following submission is significant:

“Other than the words of the accused, there is nothing to suggest that the confession was obtained involuntarily or the accused did not give the confession or that he was forced to sign the confession without showing its contents.”

[26] On the other hand, learned counsel for the accused gives a number of events and circumstances which render the alleged confession inadmissible.

[27] The court determines that the following events of April 02, 2014, arise for consideration in the context of admissibility of the alleged confession:

1. The events prior to the alleged confession, including the interview at the Upper Penville Village Council Office.
2. The atmosphere in the room in which the accused sat.
3. The accused being handcuffed in the room.
4. The absence of any evidence that the accused was given a break, refreshment or food from the time of arrest and up to the signing of the alleged confession.
5. The time when the alleged confession was signed; being around 11:45 pm.
6. The form of the alleged statement and the absence of an independent witness.

The Legal Matrix

[28] There are numerous authorities impacting the admission of confessions. And, as noted by learned counsel for the State, in **Thonjai v The Queen** (Hong Kong [1997]) UKRC 31, discusses the case of **Macpherson v The Queen** where, in their judgment, Lords Gibbs CJ and Wilson J stated at page 522:

“...the condition of the admissibility of a confession is that it was voluntarily made, and the judge must be satisfied in the balance of probabilities that this condition was fulfilled before he admits the evidence.”

[29] In the case of **Serraj Ajodha v The State**¹ Lord Bridge of Harwich, speaking for the Board in the context of the admissibility of a signed statement, examined what he termed “four typical situations most likely to be encountered in practice.” His Lordship gave the following as the second situation:

“(2) The accused, as in each of the instant appeals, denies authorship of the written statement but claimed that he signed it involuntarily. Again, for the reasons explained, the judge must rule on admissibility, and, if he admits the statement, leave all issues of fact as to the circumstances of the making and signing of the statement for the jury to consider and evaluate.”

[30] The court determines that the matters identified above dictate an examination of the law of oppression in this context. In this regard, the following learning is contained at paragraph F17.6 of **Blackstone’s Criminal Practice 2004**:

“At common law a confession obtained by oppression was regarded as involuntary and therefore inadmissible (see e.g.: **Callis v Guna** [1964] 1 QB 495; **Prager** [T972] 1 WLR 260. ‘Oppression’ was understood not only to include physical oppression **Burut v Public Prosecutor** [1975] 2 AC 579, in which the Privy Council held that the manacling and hooding of suspects under interrogation in Brunei was plainly oppressive but carried a wider sense; it was described by Sachs J in **Priestly** [1965] 51 Cr App R 1 at p.1 as something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary.”

The Resulting Narrative

[31] The evidence reveals that the accused was arrested by Officer Leblanc on April 02, 2014, at his home in the presence of three other Police officers. He was cautioned and told of the allegations against him. His response was a denial. This was recorded by Officer Leblanc at the Penville Village Council Office in Upper Penville where he agreed to an interview which was recorded in her

¹ [1981] 32 WIR 360, 371

pocketbook and read to the accused, then asked to sign; he refused. The interview started at 5:41 pm and ended at 6:41 pm at which time the contents of the interview were read over to the accused and he was told he can add or alter anything he wished. After the reading, the accused said the contents were true and correct. But when asked to sign, he refused.

[32] There was also a confrontation in which the Investigating Officer asked the alleged victim to repeat what she told her of the accused. This was done by the alleged victim in the presence of the accused. The details were again recorded by the officer in her pocketbook. The accused was asked to respond to what the alleged victim said. His response was recorded and read back to him which he said was true and correct; but refused to sign the pocketbook when asked to do so.

[33] The accused was next taken to his home in order that the alleged victim, who was with her mother, could point to the areas of the house where the alleged incidents took place. This was done in the presence of the accused. The accused was asked to respond after being cautioned. His response was a denial of what was said.

[34] The accused was next transported back to the Portsmouth Police Station where the accused is said to have signed the confession sometime around 11:45 pm. This time was given by Officer Leblanc to show the difficulty in obtaining the correct statement form and an independent witness.

Oppression in Context

[35] The cases relating to oppression suggest that this proposition of law relates to the circumstances in which the signing took place and the duration of the entire proceedings.

[36] In the case of **R v Prager** is an extract from a speech by Lord McDermott from an address to the Bentham Club in 1968, when he described 'oppressive questioning' as:

“...questioning which by its nature, duration or other attendant circumstances (including the fact of custody) excites hope (such as) hope of release or fears, or so affect the mind of the suspect that his will crumbles and he speaks when otherwise he would have stayed silent.”

[37] The courts have been strict in making a finding of oppression. And sometimes, it is patent where an accused being questioned while hooded and cuffed, there is virtually no contest.²

[38] In Vol. 11(2) of **Halsbury's Laws of England** at footnote 5 to paragraph 11.24 the following appears:

“For these purposes, ‘oppression’ includes torture, inhuman and degrading treatment; and the case of threat of violence, whether or not amounting to torture...The term should be given its dictionary meaning of ‘exercise of authority or power in a burdensome, harsh or wrongful manner; unjust or cruel treatment of subjects, inferiors, etc.; the imposition of unreasonable and unjust burdens...”

Conclusion

[39] Under cross-examination on the reason for the absence of the case of the accused statement form and the absence of an independent witness, one of the reasons given was that it was late at night, being about 11:45 pm. This leads to the fact that the accused was under the control of four Police Officers from the time he was informed of the report against him and continuing up to at least 11:45 pm. But the control at his house would have been prior to the interview which commenced at 5:41 and ended at 6:42 pm. Thus, without evidence of the time of arrival of the police to the approximate time of signing, a reasonable inference is that at least 7 hours would have elapsed.

[40] Then comes the matter of the handcuffs which the accused said were not taken off even when signing. The Inspector said he was not aware of this and officer Leblanc denied this.

[41] Added to the foregoing and as noted above, there is no evidence of the accused being given any break or refreshments during the more than 7-hour period of being in custody.

² See: *Mond Ali Bin Buent et al v The Public Prosecution Privy Council Appeal NO. 14 of 1994*, supra.

[42] It is also of some importance to note that prior to the signing of the alleged confession the accused denied all questions asked of him regarding sex with the alleged victim and also refused to sign Officer Leblanc's pocketbook, then at approximately 11:45 p.m. he signed the alleged confession. This is in the context of questions and suggestions made to the accused by Inspector James.

[43] The court's comment on the submissions on behalf of the State is that only brief mention was made of the notion of oppression and sought to show the legal correctness of the alleged confession.

[44] It is therefore the conclusion of the court; in agreement with the submissions on behalf of the accused on different reasoning, that oppression loomed large when the accused signed the alleged confession. To adapt the reasoning of Lord Justice Sachs in **R v Priestly**, the events which faced the accused tended to sap and had sapped that free will which must exist before a confession can be voluntary. For these reasons, the alleged confession is not admissible and no mention can be made of it at the trial.

[45] It follows that no evidence can be given regarding the excluded alleged confession said to be uttered by the accused.

.....
Errol L. Thomas
High Court Judge [Ag.]