

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

CRIMINAL CASE NO. SLUCRD 2010/1198

BETWEEN:

THE QUEEN

Claimant

AND

TROY CHARLES

Defendant

Appearances:

Mr. Alfred Alcide, Counsel for the defendant
Mr. Giovanni James, Crown Counsel for the Crown

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2013: FEBRUARY 12
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RULING ON VOIR DIRE

[1]. **CUMBERBATCH, J. :** The defendant was indicted on the 9th January, 2012 for the offences on aggravated burglary contrary to section 208 (1) of the Criminal Code and rape contrary to section 123(1) of the said code.

[2]. At a case management conference, the defendant challenged the admissibility of a statement and record of interview allegedly given by him to the police whilst in custody on the following grounds:

The confessions were influenced by violence, threats and oppressive conduct by Police Constable 16 Byron.

- [3]. The court ordered a voir dire be held to ascertain the admissibility of the alleged confessions made to the police by the defendant whilst he was in custody.
- [4]. The crown called three witnesses the first of which was Police Constable Byron. He testified that his role was merely to assist the investigators of the offences for which the defendant is indicted to locate him. He testified that he knew the defendant personally and had recently seen him in Sarot, an area which he frequents. He stated that on the 2nd October, 2010, he accompanied officers from the Marigot police station to a house where he had previously seen the defendant and arrested him. He thereafter handed him over to the officers of the Marigot police station. Under cross examination he denied assaulting the defendant at any time and stated that he did not go to the Marigot police station with the defendant.
- [5]. The next witness called was Theresa Mc Vane who testified that she was a justice of the peace and attended the custody suites at Castries where she witnessed the taking of an interview of the defendant by Woman Police Constable Thomas. She stated she was present when the defendant was asked if he was sick or hungry to which the defendant replied in the negative. She further testified that she sat next to the defendant during the interview and that he appeared normal. Nothing was done to force the defendant to answer the questions put to him nor was any promises made. She saw no bruises on the defendant during the interview nor did the defendant complain to her about the interviewing process or events prior to the interview. Under cross examination this witness stated that she played a neutral role in the whole process and was concerned about the welfare of the defendant.
- [6]. The final witness called by the crown was Woman Police Constable Thomas. She too testified that she asked the defendant if he was sick or hungry to which he replied in the negative. She also

stated that during the interview the defendant appeared normal. She also told him the justice of the peace was there to ensure that he was treated fairly and that no force threats or promises were made to him.

- [7]. That was the case for the crown in the voir dire. The defendant testified on his own behalf. He stated that he was cuffed by Police Constable Byron and about three (3) other policemen at his brother's home in Sarot and at a room in the police station in Marigot. He also said Byron threatened to shoot him if he doesn't talk. He said he answered questions to Woman Police Constable Thomas because he was afraid of Byron shooting him. Under cross examination he said he was arrested by Byron on previous occasions and he was not ill-treated by him. He said he was not vexed with Byron because he was just doing his job. Rather surprisingly, he said on this occasion he was not ill-treated by Byron. He also said Byron told him to speak the truth to the police, but instead he lied to them. He later went on to say Byron beat him all over his body and his face which caused his face to be swollen. Again rather surprisingly, the defendant stated that within a three (3) hours the swelling had subsided so that when he was in the presence of the justice of the peace later that day his face was not swollen. He made no complaints to the justice of the peace nor the magistrate that he was beaten by the police.

- [8]. The next witness called by the defence was Vincent Charles, the brother of the defendant. He testified that on the morning of the 2nd October, 2010, he was at home when he saw seven (7) heavily armed policemen at his home. He was then taken up the road where he was punched, kicked and beaten by these policemen and finally thrown bodily into the back of a van. Under cross examination he said all that Byron did was to take the defendant and hand him over to the other policemen. He further stated that the officers did nothing to the defendant at his home. He

went on to say however, that up the road, Byron kicked him in his belly then flung him whilst handcuffed into the tray of the van.

- [9]. Sections 70 & 71 of the Evidence Act provide the matters to be taken into consideration by the court in determining the admissibility of an admission by a defendant.
- [10]. Counsel for the defendant, Mr. Alcide, submitted that his client was subjected to force, violence and oppression by the police. The accepted explanation of the term oppression is that given by Sachs J in *R v Priestly* 1965 51 Cr. App. R 1 where the court said:

“this word in context of the principles under consideration imports something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary....Whether or not there is oppression in an individual case depends upon many elements....They include such things as the length of time of any individual period of questioning, the length of time.

Intervening between periods of questioning, whether the accused person has been given proper refreshment or not, and the characteristics of the person who makes the statement. What may be oppressive as regards a child, an invalid or an old man or somebody inexperienced in the ways of this world may turn out not to be oppressive when one finds that the accused person is of a tough character and an experienced man of the world.”

- [11]. I have considered the evidence adduced by the crown to satisfy the evidential burden herein which is on a balance of probabilities. Though the defendant has nothing to prove in that he's not required to prove that the statement was taken as a result of oppressive conduct, it is incumbent on the defendant to adduce evidence to support his contentions of oppression.

[12]. I have considered the evidence of the defendant and his witness and find first of all that there are material inconsistencies and discrepancies therein on material issues. Moreover, the defendant has contradicted himself when he states that Police Constable Byron did not ill-treat him when he arrested him on a previous occasion and did not do so on this occasion. That flies in the face of the testimony of he and his brother that Police Constable Byron beat and kicked him repeatedly causing his face to become swollen. However, about three (3) hours later, there was no sign of swelling as stated by the justice of the peace and the defendant himself. I would have expected the defendant to suffer from significant injury if he had been kicked, beaten and thrown in the tray of the van as stated by his brother.

[13]. I therefore, for the reasons aforesaid, reject the evidence of the defendant and his witness which I find to be unreliable and accept the evidence of the crown's witnesses. In the circumstances I find that the crown has proven on a balance of probabilities that the admissions made by the defendant to the police were not obtained in breach of sections 70 and 71 of the Evidence Act. I find the admissions to be admissible.


FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE