

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A No. Cr. 324/98

THE STATE

V.

JOSEPH REYES

Before the Honourable Justice P. Moosai

APPEARANCES:

Mr. W. Rajbansie for the State

Mr. K. Scotland and Mr. K. Wright for the Accused

R U L I N G

The Accused on 14th April, 1997, was charged for the murder of Oswald Campbell which occurred on or about 25th September, 1994.

Prior to the Prosecution opening the case the Court, with the consent of both Attorneys, embarked upon a voir dire to determine the admissibility of certain statements, namely, the written statement of 8th April, 1997, the oral statements of 9th April, 1997 and

evidence with respect to the conduct of the Accused in taking the police to a spot on the Toco Road on the said 9th April, 1997.

Mr. Scotland objected to the admissibility of the statements on the following grounds:

1. The Accused had not been cautioned;
2. The statements had been obtained by violence, threats, inducements;
3. Oppression;
4. The Accused had been denied the right to communicate with his Attorney-at-law.

I should mention at the very outset that in assessing credibility, I was not impressed with the general demeanour of the Accused. I found him to be unreliable in fundamental areas. Additionally the discrepancies between the particulars his Attorney submitted and his evidence lead me to the conclusion that I can't rely on his testimony to any great extent.

On the issue of the caution, the Prosecution has satisfied me that the Accused was cautioned and informed of his rights upon arrest by WPC Beverly Paul. Paul testified that she arrested the Accused around 12.20 p.m. on Monday 7th April, 1997 at Eastern Main Road, Sangre Grande and, upon arrest, told the Accused he was wanted by the police in connection with the murder of Oswald Campbell. She cautioned the Accused and he remained silent. She arrested the Accused and informed him of his rights to consult with an Attorney, to speak to a friend or relative and to make a telephone call. That, of course, is in keeping with the rights of the Accused as set out in the Judges' Rules and in the Constitution.

I am also satisfied that prior to the recording of the written statement at 7.50 p.m. on 8th April, 1997, the Accused was cautioned by the Complainant, Fermin Roy, and informed of the rights aforesaid. Further the Accused was asked by the Justice of the

Peace, who witnessed the statement, whether he had been informed of the aforesaid rights and the Accused replied in the affirmative.

The Accused then dictated the statement which commenced at 7.50 p.m. and ended at 9.45 p.m. In the said written statement the Accused admitted living in a common-law relationship with his aunt, Lauren Campbell, now deceased. The Accused further stated in that written statement that the said Lauren Campbell asked him to recruit some men to kill her father, Oswald Campbell, as he disapproved of the relationship between her and the Accused. Lauren Campbell wanted her father killed as he had made a will leaving everything for her and she was fearful that he might change his will. The Accused recruited three men and drove them to the home of the said Oswald Campbell on the night of 25th September, 1994. The three men went inside whilst the Accused remained in the car nearby. Some time later that night Oswald Campbell was found dead.

After the recording of the statement the Complainant testified that on the following day, Wednesday 9th April, 1997, he asked the Accused if he would take him to the spot where he transported the men and remained, and the Accused said no problem. Later that day the Accused went with the Complainant to Toco Road, Toco in the vicinity of 27½ mm and pointed out a spot on the Western side of that road and said, “is here where I transport the men and I remain.” The Complainant testified as a result he cautioned the Accused and he remained silent.

Mr. Scotland submitted that the oral statement of 9th April, 1997 and the evidence with respect to the conduct of the Accused in taking the police to the spot should be excluded on the basis that the Accused should have been cautioned once again. It is not in issue that on 9th April, 1997 the Accused was only cautioned **after** making the oral statements and showing the Complainant the spot on the Toco Road.

The Judges’ Rules provide for two forms of caution according to the stage which an investigation has reached. One is to be given when an officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence. After this caution questioning may continue but a record must be kept of the time and

place at which such questioning began and ended, and of the persons present. Rule II therefore provides:

“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 to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms:-

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.”

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.”

I have already found that the Accused was cautioned on 8th April, 1997 in relation to the written statement.

In **The State v. Glendon Ishmael** (1987) 52 WIR 444 Volney J. excluded two statements given by an Accused, the first being given on February 17, 1990 and the second on April 7, 1990, on the basis that the Accused had not been cautioned in either instance.

At pages 447 and 448 Volney J. stated:

“Clearly, given the evidence emerging both in the voir dire that followed upon objection to the admissibility of each of the impugned statements, and before the jury, there was evidence of which both Corporal Manbodh in relation to the first statement and Sergeant Lewis in relation to the second were aware and which ought to have triggered off the need to caution the accused having regard to Rule II of the Judges’ Rules. When the accused admitted to driving his vehicle at a speed well in excess of that lawfully permitted at the place and time of the accident, the prescribed

caution ought to have been administered. What in fact emerged in evidence was that the accused proceeded to incriminate himself and to compound it in the second statement and it was these bits of incriminating evidence upon which the prosecution sought to establish his guilt ...

The requirement of cautioning an individual in the circumstances given in Rule II of the Judges' Rules has in the view of the Court become a settled practice much in terms and effect as the right to be informed of the right to confer with an attorney at law which was restated in Whiteman's case. Accordingly, it would seem that in the instant matter the breaches complained of have resulted in the Accused incriminating himself after being deprived of the protective procedural provisions of the Judges' Rules and that statements following thereupon would have been covertly obtained."

Further in **The State v. Samuel Boney also called Sammy** Criminal Action No. 201 of 1999, Volney J, after refusing to admit certain oral admissions made by the Accused as a suspect, excluded evidence of the Accused's subsequent conduct purporting to identify the assault weapon and the incriminating oral admissions flowing therefrom on the basis that the Accused was not cautioned. At p. 3 of the judgment Volney J stated:

"It is now for the Court to decide whether this subsequent conduct of the Accused while still a suspect is admissible. Clearly there was a deprivation of his right to be cautioned against self-incrimination by the police officers in whose custody he was. It would seem to be a logical extension of the decisions in Whiteman and Ishmael that the court in giving force to these breaches of the Judges' Rules should treat with the exclusion of the evidence of subsequent incriminating conduct of a suspect on the same footing as it would in relation to an incriminating admission so obtained.

For this reason, any incriminating evidence obtained in breach of the Judges' Rules from the accused while he was still a suspect and at a time when he was entitled to be cautioned is liable to be excluded unless and until the breach is purged by a timely advice to the suspect of his right not to incriminate himself. Applying this position to the evidence before me, I am unable to admit the evidence in the incriminating oral statements or of the Accused's conduct tendered in proof of his guilt."

I am therefore of the view that in any event the oral utterances on 9th April, 1997 and evidence of the subsequent conduct of the Accused in taking the Complainant to the Toco Road must be excluded on the basis that the Accused was not cautioned once again. It is clear that the highly incriminatory matters contained in the written statement provided the police with reasonable grounds for suspecting that the accused had committed an offence. Any attempt to question the Accused further should have been preceded by a caution.

The Accused's testimony was to the effect that the Complainant and Inspector Lloyd Williams violently beat him on 7th April, 1997 for about twenty (20) to thirty (30) minutes. This did not accord with the particulars on his grounds as Counsel indicated that only Williams beat him on 7th. The Accused further testified that the Complainant and Williams also beat him on two separate occasions on 8th April, 1997 for about fifteen (15) to twenty (20) minutes. The Accused pointed to the lower left of his abdomen and indicated that the blows were all concentrated there. However the Accused was examined by Dr. Gidla on 15th April, 1997 pursuant to an order of the Senior Magistrate at Sangre Grande Magistrates' Court. Although the Accused complained of pain in the left upper abdominal, the doctor did not find any evidence of any contusions, external injuries or even tenderness. The degree of violence as demonstrated by the Accused would, at the least, have revealed one of the above. The Prosecution has satisfied me that the Accused was not beaten.

Additionally the Accused relied on an inducement held out by Superintendent Hubert Williams that he would be allowed to go home after he signed the statement. The Prosecution has satisfied me that there was no such inducement.

I have already found that the Accused was informed of his right to a lawyer. The Accused set out as one of his grounds that he asked Superintendent Hubert Williams to call his Attorney and Williams refused to do so. However it is to be noted that the Accused in chief made no mention of this. I therefore reject the Accused's evidence on this issue and find that the Accused made no such request of Superintendent Hubert Williams.

Under the ground of oppression the Accused contended that he was at the station from the time of his arrest around 12.20 p.m on 7th April, 1997 to the time the statement was taken (7.30p.m. on 8th April, 1997) without being fed. Further the Accused contended that he was initially handcuffed to a chair and then to a police regulation box at the back of the police station. And that he spent the entire night of 7th April and most of 8th April, handcuffed to the said box. Additionally he did not have the opportunity to take a bath, relieve himself, change his clothes nor see his family. It is to be noted that the ground of oppression was sufficiently particularised so as to put the Prosecution on notice of the case they had to meet. Yet no evidence was led by the Prosecution as to the provision of meals for the Accused for the period 12.20 p.m. on 7th April, 1997 to the time of his release on 9th April, 1997, save that the Complainant testified that he saw the Accused eating around lunch time on 8th April, 1997. In cross-examination the Complainant was unable to say what the Accused was eating. The Prosecution was unable to produce the feeding book and no other witness was called on the issue of the feeding of the Accused.

The Judges' Rules, Appendix B, under the rubric Administrative Directions on Interrogation and the taking of Statements stipulate at paragraph 3:

“3. Comfort and refreshment.

Reasonable arrangements should be made for the comfort and refreshment of persons in attendance for questioning or for which statements are being taken ...”

In the year 2001, it goes without saying that the denial of the basic human right to be fed is sufficient to exclude all incriminating admissions obtained as a result thereof.

From the time of his arrest on 7th April 1977 to 9th April, 1997, the Prosecution has adduced evidence, not very convincing, of the Accused being fed on one occasion. Even if the feeding register were destroyed, the Prosecution should have had a record of the police officers present at the station on that day. Surely one of them would have been responsible for the feeding of the Accused. I am therefore left in a reasonable doubt that the Accused was fed. The dehumanizing of the Accused for the purpose of extracting a confession cannot be countenanced by any court.

There were many other difficult factual matters raised in this voir dire. However, having regard to the conclusion I have reached on the issue of the feeding of the Accused, I do not think it is necessary to resolve all of them. Suffice it to say that I accept the Prosecution's evidence that the Accused was released on 9th April, 1997 and re-arrested on 12th April. Even though Carl Quamina, Attorney-at-law, testified that he saw the Accused at the police station on 10th April, I prefer the Prosecution's evidence in this regard as I am of the view that Mr. Quamina was mistaken as to the date. He had testified in chief and in the earlier part of his cross-examination that he saw the Accused at the police station on 11th, but then recalled that it would have been Thursday 10th April. He recalled it was a Thursday as he was the tutor of a law class, and classes were on Monday, and Thursdays. He recalled going to class after seeing the Accused on Thursday 10th April. However Mr. Quamina, who represented the Accused at the preliminary enquiry, never made a record of the date that he saw the Accused at the police station. Further Inspector Lloyd Williams testified that he saw Mr. Quamina outside the police station on 9th April, 1997. It was never suggested to Williams nor to the Complainant that Mr. Quamina was at the police station on 10th April, 1997.

However I accept the testimony of Mr. Quamina that he saw the Accused handcuffed to the said box. The Prosecution's witnesses all denied that the Accused was so handcuffed. The Prosecution has also led no evidence as to the provision of any mattress for the Accused. In the circumstances I am of the view that the Accused was left for the majority of the 7th, 8th and 9th April, 1997 handcuffed to the said box.

In the exercise of my discretion, I refuse to admit the written statement of 8th April, 1997, the oral statements of 9th April, 1997 and evidence of the incriminating conduct of the Accused in taking the police to the spot on the Toco Road.

Having regard to the unavailability of relevant records in crucial matters, perhaps the Director of Public Prosecutions may see it fit, at the earliest opportunity in a criminal trial, and certainly long before the commencement of the trial in the Assizes, to take copies of extracts of the matter from feeding registers, station diaries and other pertinent records. This should assist to a great extent in preserving copies in the event of the original records not being available for whatever reason.

Dated this 16th day of May, 2001.

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PRAKASH MOOSAI

JUDGE