8-Feb. 2010
CJ.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CRIMINAL SIDE

INDICTMENT NO. 87/08 - A

THE QUEEN

V

KIRKLAND HENRY
LARRY PRINCETON RICKETTS

APPEARANCES: Miss Cheryll Richards QC, Solicitor General and Mrs. Kirsty-Ann Gunn, Senior Crown Counsel for the Crown

Mr. Ian Bourne QC instructed by Mr. Ben Tonner of Samson and McGrath for the defendant, Kirkland Henry

Mr. Robert Fortune, QC and Mr. Stephen Atherton QC instructed by Priestleys for the defendant Larry Princeton Ricketts

RULING ON ADMISSIBILITY OF
CAUTIONED STATEMENT AND INTERVIEW

1. I have to decide on the admissibility of evidence obtained by way of statements from the defendant Ricketts, by the Police under two different sets of circumstances:

   (i) The statement recorded by Superintendent Bodden as having been given by the defendant Ricketts when he was taken to the Superintendent's office on the evening of the 27th October 2008 and when the booking in procedure which takes place in the Custody Suite was by-passed.

(ii) The statements recorded in the form of the question and answer interview conducted by Insp. Donovan Bailey on 28th October 2008.

2. It is acknowledged by Counsel that the basic test of admissibility is whether the statements were made voluntarily. And that, ultimately, the test is fairness because even if a statement is voluntary, the Court will rule it inadmissible if it would be unfair to do otherwise.

3. The principle is clearly and authoritatively stated in ***Peart v The Queen*** in these terms (at paragraph 24(iv);

> ***"The criterion for admission of a statement is fairness. The voluntary nature of the statement is the major factor in determining fairness. If it is not voluntary, it will not be admitted. If it is voluntary, that constitutes a strong reason in favour of admitting it, notwithstanding a breach of the Judge's Rules; but the court may rule it would be unfair to do so even if the statement was voluntary."***

4. Here the statements attributed to the defendant are challenged on a number of bases going not directly or exclusively to the question of voluntariness, but also to the very question of whether the statements were made by him at all.

5. It is, of course, of fundamental importance that I remember throughout my consideration of the matter, that the defendant assumes no burden of proof in raising and presenting these challenges.

6. Rather, his challenges having been raised, the burden rests upon the prosecution to satisfy me so that I am sure that the statements attributed to him were

voluntarily made by him and that ultimately, it would be fair to admit them into evidence.

7. As to the statement made to Supt. Marlon Bodden and Det. Supt. Joseph upon being taken to the Central Police Station on Monday evening 27 October 2008, I have a number of concerns.

8. First, while both Sgt. Wright and Supt. Bodden spoke of having "invited" the defendant to accompany them to the Police Station upon being accosted in the pathway to Elizabethan Square; it is clear from Supt. Bodden's evidence that the defendant had been immediately placed under arrest.

9. In fact. Supt. Bodden's evidence in this regard was as follows:

> *"I walked up to him, verbally identified myself to him as a police officer, held on to him saying 'Police Officer don't move!' I searched him for the presence of any weapons. I immediately arrested him on suspicion of murder. I cautioned him. He replied:*
>
> *'I just come from an area of Swamp looking for a friend named Kirk. I did not do anything...'*
>
> *I took him to the Police Station."*

10. That the defendant was, from the moment he was accosted, placed under arrest for suspicion of murder is also apparent from Sgt. Wright's further testimony. Not only did he describe how he assisted with conducting the defendant to the station by physically restraining him, he also spoke of having already, before arriving at the Custody Suite, formed an intention to detain the defendant in these words

seeking to explain why, at least from his own point of view; it was then both impractical and imprudent to take the defendant before the Custody Sergeant:

> *"I didn't want anybody who will be going to the cells to know what he (the defendant) would have been in the cells for.*
>
> ...
>
> *I didn't want any prisoner to know who would be going to the cells to know exactly who this person is and why he was in the cells."*

11. So it was clear in the minds of both Sgt. Wright and Supt. Bodden, that the defendant Ricketts was under arrest "on suspicion of murder" when they arrived with him at the Police Station. This is hardly surprising, having regard to what they had already been told of his involvement by the defendant Henry.

12. In the circumstances, it is clear that section 37 of the Police Law applied to the arrest of the defendant Ricketts and is mandatory in its terms:

> *"37 (1) When any person has been taken into custody without a warrant for an offence, the officer in charge of the police station or other place for the reception of arrested persons to which such person is brought shall at once enquire into the case, and if, when the enquiry is completed, there is no sufficient reason to believe that the person has committed any offence such person shall be released forthwith."*

13. The importance of this mandatory provision of the Law is explained by the Police Force Standing Orders 11 through 19. It is to ensure that the Custody Sergeant and the defendant understands the nature of the allegations, so that the Custody Sergeant may decide whether or not to accept the alleged charge and, if so, to ensure that the defendant understands what are his rights, including the right to speak to an attorney before he may be required to submit to interrogation.

14. There is an admission by the Prosecution of a breach of these mandatory provisions of the Law and Standing Orders; by the defendant Ricketts having been taken upstairs for interrogation before he was seen by the Custody Sergeant.

15. What the Prosecution submits nonetheless, is that as there were good practical reasons for temporarily by-passing the Custody Sergeant, and as the defendant's statement was freely and voluntarily given having been cautioned once when first accosted and again upon arrival in Supt. Bodden's office, there was no unfairness such as to justify its exclusion from evidence; the fact that it may have been obtained in breach of section 37 of the Police Law being in and of itself, no automatic reason for its exclusion. In this regard, the case of ***R v Sang [1980] A.C. 402 H.L.***, which remains good law, is relied upon as being directly on point.

16. What it comes back to then is whether I am satisfied so that I am sure that it would be fair to admit this statement.

17. Mainly for the following reasons, I am not.

18. In the first place, it would have been an obviously frightening experience for the defendant to have been arrested in the way that he was. While this does not suggest that any impropriety attended the arrest, it could hardly be supposed that he would have been in a position, calmly and collectively to have exercised his right to remain silent when taken to and detained inside Supt. Bodden's office.

19. Supt. Bodden recognised as much when he told Mrs. Gunn in her pre-trial interview with him, that upon arriving at the station, he had re-cautioned the defendant as he was concerned that he may not have understood the first caution "due to shock".

20. I am simply not assured that the defendant's state of mind would have been any different while confronted by Supt. Bodden and Sgt. Wright in what must have been the intimidating confines of the Supt.'s office.

21. The other reason for my dissatisfaction with this statement has to do with the incompleteness of the record of what transpired in Supt. Bodden's office.

22. While his note of the defendant's statement (which I accept was signed by the defendant) is presented as a complete transcript of what was said, it is plain enough that at least some – we do not know how many – questions were asked and answers given. Sgt. Wright acknowledged as much in his cross-examination (at 11:49 am on 3 February 2010): when he said it was a situation where when the defendant Ricketts spoke we (meaning Supt. Bodden and himself) *"just asked him to clarify what was said; that he was asked questions to clarify what was said."*

23. The fact that the note taken by Supt. Bodden is presented as a straight narrative of what the defendant Ricketts said is no mere technical failing in these circumstances..

24. Nothing could be more fundamental to the right of a fair trial, than that when a defendant's words obtained by interrogation are to be used in evidence against him by the police, there must be a full and faithful record of what was said. It is clear that no such proper record was made, either by Supt. Bodden or Sgt. Wright.

25. Supt. Bodden was most anxious, as he revealed also to Mrs. Gunn at the pre-trial interview, that he "just wanted to get a first account" from the defendant of what he knew and, it seems, I regret to note, that that state of anxiousness led to the circumvention, not only of the Police Law, but also of the proven, time honoured

and best practices for the taking of an interview of a defendant arrested for so serious an offence as murder.

26. I wish to be clear that I make no finding adverse to the veracity either of Supt. Bodden or Sgt. Wright. Rather, while I do not accept the defendant's allegations and, indeed, am in no doubt about the words attributed to him in this statement as being his, I am in doubt as to the accuracy and fullness of what was recorded and so am left in doubt as to the fairness of admitting it into evidence.

INTERVIEW OF 28TH OCTOBER 2008

27. Entirely different considerations apply to the subsequent interview of the 28th October. When, even the defendant himself admits to having been under no sense of compulsion, at least at the outset.

28. Indeed, as I understand the defendant's allegations against the admissibility of the record of interview, it is in effect that what is written in it as his answers were contrived and concocted by officers Bailey and Wright from information which they had put to him seeking to implicate him; which he did not accept but which they used against him by recording answers that he did not give.

29. A more serious allegation of abuse of the law, their powers of office and their duties of fairness owed to an accused person, it would be hard to imagine being leveled against police officers.

30. I say immediately that I entirely reject these allegations and hold them to be untrue.

31. In the first place, I find both officers Wright and Bailey to be witnesses of truth and was most impressed with the firmness of Insp. Bailey's demeanour as a

witness. I did not get the impression of his testimony being, as Mr. Fortune described it – a contrived and polished performance; rather I was impressed for the different reason of his complete lack of hesitancy in his responses and his obvious belief in the importance of fairness in his treatment of defendants under interrogation by interview.

32. While my impression of the witness's demeanour is important, it is even more significant that I am able to rely on some objective indicia for arriving at where the true lies as between the assertion of fairness on the part of the police and the allegation of contrivance, threat, intimidation and cajolement; on the part of the defendant Ricketts.

33. I point to the following six considerations in particular:

(i) The interview took place the day after his arrest when the defendant would have had time to reflect upon what he wished to say or do. The defendant agrees that he was forewarned about the interview, was refreshed by lunch being provided before it began (although he says he continued to eat during the interview) and was offered regular breaks and refreshment throughout. It is also significant that the interview took place after he had signed the custody record the evening before, evidencing that he had chosen not to request the services of a lawyer.

(ii) His signature and initials were placed by him without threat of force at many places throughout the record of the interview; including as acknowledging the caution and as having been twice reminded of his right to an attorney at the beginning of the interview.

The certificate at the end was written also by the defendant himself and signed by him. This was after he had read over the entire transcript of the interview, as the certificate itself explains.

Indeed, the defendant agreed in cross-examination that no threat of force was ever used towards him by the officers.

(iii) The defendant Ricketts was inconsistent and contradictory in his evidence as to the reasons why he signed, initialed and certified the record of interview. First in his examination-in-chief, he suggested that he had signed because, although he did not utter what the officers had written, they had assured him variously, that the interview was "not relevant" that although what they had written was not what he had said, that he was "just assisting with the Police Investigation".

Implausible though it may seem that he would then have believed the officers; he also went on to allege in his evidence, even more implausibly, that Insp. Bailey has also told him that "If I agree to it, he would probably let me go…that he would not charge me for the crime".

And, further, when he still refused to sign; that he was told that if he did not, he would spend the rest of his life in jail and his son (whose picture he claimed the officers brandished before him on his own cell phone) "would grow up calling some other man Daddy".

34. It is not clear whether it was this last alleged ploy on the part of the officers that finally persuaded the defendant to sign to the interview.

35. I regard it nonetheless to be properly described, as Miss Richards QC suggests – as the hallmark of the contrived reason for what was in fact voluntary conduct on the part of the defendant Ricketts in giving the responses recorded in the interview. For it is plain – from the record of the interview itself which he admits he had read over – that by signing to it, he must have known that he was signing to an admission to the offence of murder and so the consequence of his signature was likely to be exactly that which he says the officers had promised would not happen.

36. Further, as to the inconsistency of his reasons for signing and agreeing to the record of interview; the defendant Ricketts said:

> *"I did not want to sign it, probably they would beat me up and things like that; in Jamaica that is what they [the Police] do."*

37. This he asserted notwithstanding his evidence which followed immediately after in cross-examination; that neither Sgt. Wright nor Insp. Bailey ever threatened to beat him. Far from it, because he agreed that throughout the course of the interview they had treated him with kindness and consideration; without any threat of force whatsoever.

38. I find that this suggested apprehension of force being used against him was entirely unfounded and, like the other allegations of threat and promise, entirely contrived.

(iv) Having observed the defendant Ricketts testify on the *voir dire*, particularly under cross-examination; it is clear that he is quite intelligent,

deliberative and not easily intimidated. This impression of him was instructive in assessing his evidence.

He admitted that he had been aware from the time he was taken into custody on 27th October 2008, that he was under arrest in relation to the murder of Estella Scott Roberts. He also knew, he said in evidence, that he was entitled to a lawyer from the time he was taken to the Police Station. Yet he freely went along with the interview, to the point of reading over and signing the transcript as correct at the end.

Although he says he did ask for and was denied a lawyer, it simply defies belief having seen him testify; that he would have signed off on the interview nonetheless, being, as he must have been, fully aware of the consequences of doing so.

With all of the foregoing factors in mind, the fact as it is stated by the defendant and unrefuted by the Prosecution, that he had never been arrested before, causes me no concern in this regard. I am satisfied that any lack of familiarity with being interviewed by the Police would have contributed in no way to his willingness to sign an interview recording his admission of guilt.

(v) There was also a suggestion that Insp. Bailey and Sgt. Wright would have already known the information disclosed in the interview, such as to have enabled them to invent the answers attributed to the defendant. While I do not conclude that the information in the answers attributed to the defendant in the interview was not or could not otherwise have been

known to the officers; I do conclude that the nature of the questions and the natural and logical flow of the answers recorded as having followed from them, are entirely inconsistent with the defendant's allegations that the questions and answers were contrived and concocted by the officers.

In this regard, I believe the record of interview speaks for itself, beginning in particular with questions number 6 which simply invites the narrative of the defendant thus:

> *"Q. 6 Mr. Ricketts take your time and tell me everything you know about the incident with Mrs. Estella Scott-Roberts which occurred between Friday 10th October 2008 and Saturday 11th October 2008?"*

39. That said, I nonetheless accept Insp. Bailey's evidence as to the limited extent of the knowledge he had about the details of the investigation up until the point in time of the interview. Primarily he knew what Kirkland Henry had had to say in his statement the day before, and from that source alone, it would not have been possible to fabricate several of the answers attributed to the defendant Ricketts in the interview. This would have been the case, in particular, in relation to those several answers identified by Miss Richards as containing information which is not recorded in any statement as coming from the defendant Henry.

(iv) The reason given by the defendant Ricketts for his failure to have mentioned to the Jamaican Consular Representative Mrs. Elaine Harris, any concerns he may have had about the interview process and the recording of the admissions, also defies belief.

Here, at last, would surely have been to his mind, a person whom he could trust as a young man abroad, threatened, cajoled and intimidated into

signing away at a confession by police officers who would likely seek to place it before the Courts to secure his conviction and imprisonment, perhaps for the rest of his life.

The defendant's stated reason for not having mentioned his predicament to the Consular Representative was not as Mr. Fortune suggested, fatalistically because "what had happened had happened" but because, in his answer to the Court, he was not sure who this lady was, or what she was about.

His prevarication in that response was especially clear. It was immediately apparent that it was the answer which he seized upon in the absence of any other reason for not raising his concerns; apart from the fact that they did not exist.

40. I am convinced that in his interview, the defendant Ricketts had resolved to make "a clean breast of it".

41. At the time, he may well have been influenced by what he thought the defendant Henry must have already said to the police officers. And, indeed, no doubt by what he may have thought he had himself already admitted to in the now impugned statement to Supt. Bodden, by saying that he was with Henry on the night of the 10th October 2008.

42. In this regard, I have considered whether the fact of the irregularity attending the obtaining of that first statement from defendant Ricketts on 27th October 2008, could have in any way unfairly influenced the giving of his answers in the interview on the 28th. I am in no doubt that that was not the case. Not only had

he had over-night to reflect on the situation, it is also clear that the impugned statement, which was expressed as a denial of involvement in a suspected murder, could not have served involuntarily to evince from him the further detailed responses, admitting of guilt, which he later gave in the interview.

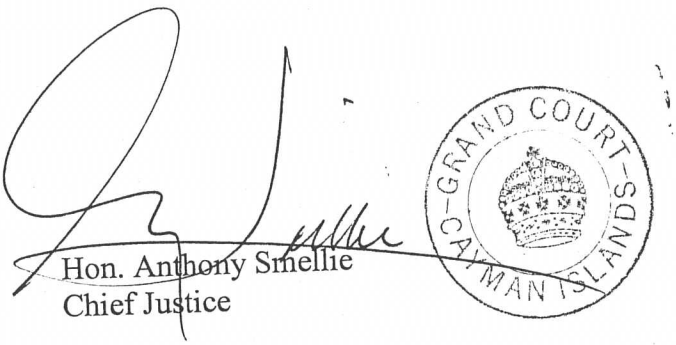
43. The proper approach to this issue is helpfully explained in the case of ***R v Neil [1994] Crim. L.R. 441***, as reviewed with approval by the Court of Appeal in ***R v Nelson [1998] 2 Cr. App. R. 399 (at 409)***: (I paraphrase):

> ***Where the court excludes one interview on the grounds of unfairness, and has to decide whether a later interview, which is itself unobjectionable, should also be excluded on the grounds that it is tainted by the unfairness of the earlier interview; that issue will be determined as a matter of fact and degree.***
>
> ***It is likely to depend on whether the objections leading to the exclusion of the first interview were of a fundamental and continuing nature, and if so, if the arrangements for the subsequent interview gave the defendant sufficient opportunity to exercise an informed or independent choice as to whether he should repeat or retract [(or as I find in this case – expand upon)] what he said in the excluded interview or say nothing."***
>
> [See also Archbold 2010 Ed. Para 15-469.]

44. Here, I find that the entirety of that test has been satisfied so as to preclude any basis for refusing to admit the interview on the 28th October 2008. Any misgivings operating in the mind of the defendant with regard to what

he had said on the 27th October and how that might affect what he might wish to say or not say on the 28th, would have been safely resolved during the time he had to reflect, by the cautions administered by Insp. Bailey and by his fair treatment of the defendant on the 28th October, including reminding him of his right to the services of a lawyer, a right of which the defendant quite deliberately chose not to avail himself.

45. For all the foregoing reasons, I conclude that the record of the statement taken on the 27th October 2008, shall be excluded from evidence and that the record of interview taken on the 28th October shall be admitted into evidence.



Hon. Anthony Smellie
Chief Justice

February 8 2010