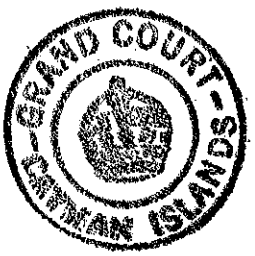
IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Ind. No. 79 of 2013

REGINA

V.

CHAD JONATHAN ANGLIN



Appearances:	**Mr. Simon Russell Flint Q.C. instructed by Ms. Elizabeth Lees for the Crown**
	Mr. James Reece Q.C. instructed by Ms. Fiona Robertson of Samson & McGrath for the Defendant
Before:	**Hon. Justice Henderson**
Heard:	**May 7, 2014**

RULING

1. On this *voir dire* I have been asked to consider the admissibility of the statement made by the defendant to two police officers at 2:45 p.m. on February 14, 2008.

2. The Crown has made a concession. The Crown concedes that the defendant should have been cautioned before being spoken to because the lead investigator, Detective Superintendant Marlon Bodden, considered that the defendant was a suspect and liable to arrest. Thus, there has been a breach of the *Judges' Rules*. The concession is not based upon a conclusion that there was enough evidence known to the police to require them to treat the defendant as a suspect, for that proposition is debatable. Rather, the Crown accepts that if the lead investigator has concluded that the defendant is a suspect whether the evidence goes that far or not, then he should be cautioned before being questioned.

3. Two issues present themselves to me. First, has the Crown proved beyond any reasonable doubt that the statement was voluntary? Second, should the statement be excluded because its admission would make the trial unfair?

4. At 2:45 p.m. on February 14th, Detectives Burton and Morrison attended at 224 Birch Tree Hill in West Bay, a residence in which the defendant Chad Anglin had been living. They saw Mr. Anglin lying on a couch in the front room. His grandmother was present. The officers explained to Mr. Anglin that they wished to speak to him in relation to the murder investigation regarding the death of Fredrick Bise and invited him to the police

station where he could be spoken to in a confidential manner. Mr. Anglin stated that he was comfortable staying at his yard and saw no reason to have to go to the station.

5. He was then asked to give his account of what he knew about the events of Thursday, February 7 to Friday, February 8, 2008, and whether or not he had seen the deceased. Mr. Anglin said that he was not going to give any statement or to sign anything because he did not want to be involved. He was informed by Officer Burton that since he was not going to give a statement or to sign anything, notes would be made by Burton of whatever Mr. Anglin said, and Mr. Anglin agreed to that. At this point, Officer Morrison began to converse with Mr. Anglin while Burton took notes.

6. Mr. Anglin gave a reasonably detailed account of his whereabouts on the dates of interest. At one point, he went into a room of the house and returned with a short-sleeved T-shirt and other clothing, which he produced voluntarily to the officers. It appears to have been his idea to do that. He said that this was the clothing he had been wearing on the night of interest, February 7/8, and the police could take them for testing. He added that if a piece of evidence was found on them the police could return and arrest him right away. When the interview ended, the defendant was invited to examine Officer Burton's notes and sign them but he refused to do that.

7. Towards the end of the interview, a Scenes of Crime Officer, Detective Constable Best, arrived. Around 4:35 p.m. Officer Burton spoke to the lead investigator, Detective Superintendent Bodden, by telephone and gave him a report. Bodden then instructed Officer Burton to arrest Mr. Anglin on suspicion of the murder of Mr. Bise.

8. I turn to the question of voluntariness. The Crown must satisfy me that the statement was not made as a result of any threat, promise or inducement made or held out by a person in authority and that it was not the result of oppression. The standard is proof beyond a reasonable doubt. I am satisfied of those requirements. I have heard the evidence of both officers who were present. The defendant has not called evidence on the *voir dire*. There is no evidence of anything having been said or done which might amount to a threat, promise or inducement. There is no suggestion of an atmosphere of oppression.

9. Was the failure to caution an act of bad faith? My consideration of this issue is governed by the decision in *Peart v The Queen* – 1 WLR 970 (PC), a decision by which I am bound. In *Peart*, beginning at para. 22, the court said this:

> "*Their Lordships acknowledge the importance of the principle of voluntariness, but are unable to accept that it is the only applicable criterion, as Mr. Guthrie attempted to argue. If it were the sole criterion, there would be no room for the operation of the principle whereby the judge may refuse in the exercise of his discretion to allow the admission of evidence which is otherwise legally admissible, as ex hypothesi confessions made voluntarily must be. One need only point to the remark of Lord Diplock in R v Sang € AC 402, 436E: 'there is discretion to exclude evidence which the accused has been induced to produce voluntarily if the method of inducement was unfair.'*
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> *The same sentiment was expressed by Lord Devlin in The Criminal Prosecution in England, pp. 38-39:*
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> *The essence of the thing is that the judge must be satisfied that some unfair or oppressive use has been made of police power. If he is so satisfied, he will reject the evidence notwithstanding that there is no rule which specifically prohibits it; if he is not so satisfied, he will admit the evidence even though there may have been some technical breach of one of the rules. It must never be forgotten that the Judges' Rules were made for the guidance of the police and not for the circumscription of the judicial power.*
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> *In their Lordships' opinion the overarching criterion is that of the fairness of the trial, the most important facet of which is the principle that a*

statement made by the accused must be voluntary in order to be admitted in evidence. There may be cases, as Lord Diplock observed in the passage quoted from R v Sang, where an admission has been voluntarily made but it would be unfair to admit it. An analogy may be found in the case law relating to statements obtained by means of torture: other reliable evidence may demonstrate the truth of those statements, but the courts will nevertheless reject them, on the ground that reliance on statements so obtained shocks the conscience, abuses or degrades judicial proceedings and involves the state in moral defilement ..."

10. Later, at para. 24, the court summarised the position in this way:

"From the foregoing discussion it is possible to distil four brief propositions.

(i) The Judges' Rules are administrative directions, not rules of law, but possess considerable importance as embodying the standard of fairness which ought to be preserved.

(ii) The judicial power is not limited or circumscribed by the Judges' Rules. A court may allow a prisoner's statement to be admitted notwithstanding a breach of the Judges' Rules; conversely, the court may refuse to admit it even if the terms of the Judges' Rules have been followed.

(iii) If a prisoner has been charged, the Judges' Rules require that he should not be questioned in the absence of exceptional circumstances. The court may nevertheless admit a statement made in response to such questioning, even if there are no exceptional circumstances, if it regards it as right to do so, but would need to be satisfied that it was fair to admit it. The increased vulnerability of the prisoner's position after being charged and the pressure to speak, with the risk of self-incrimination or causing prejudice to his case, militate against admitting such a statement.

(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 Judges' Rules; but the court may rule that it would be unfair to do so even if the statement was voluntary."

11. At 5:00 p.m. on February 13, 2008, the lead investigator, Detective Superintendent Marlon Bodden, made a policy note. In it he expressed his opinion that there was enough evidence against the defendant to permit his arrest. The note also says that the defendant should not be arrested unless he were to refuse to come to the police station voluntarily. It follows, if his opinion was correct, that the defendant should have been cautioned.

12. According to the oral evidence of Marlon Bodden and of the two police officers, this opinion was not communicated to them in any form until the interview of the defendant had ended. They said that, as far as they were concerned, the defendant was simply one of several potential witnesses to be interviewed.

13. There is, however, a body of circumstantial evidence which contradicts this. Louise Thornley, a civilian who was present at a planning meeting on February 14th, kept notes of some relevant decisions. Her notes record that at 3:10 p.m. a strategy meeting was held in Marlon Bodden's office. Mr. Bodden and his deputy, Kim Evans, were present. She has recorded a note labelled 3:20 p.m. which reads: "Chad Anglin, arrest. Morrison and Burton, Birch Tree Hill, West Bay". A note labelled 3:30 p.m. reads "brief Stephen Best". Best was a scenes of crime officer. A note labelled 1545 hours 3:45 p.m. reads "SB left for scene". Officer Best arrived on the scene prior to the arrest of the defendant.

14. In light of this note, and in particular because of the dispatching of a scenes of crime officer to the defendant's residence before the interview had finished, I find it more probable than not that Marlon Bodden had decided to arrest the defendant and had in some manner communicated his opinion and his intention to the officers conducting the interview. This communication occurred, at the latest, just before 3:20 p.m. Therefore,

the failure to administer a caution was not accidental but the result of a deliberate decision, most likely by the lead investigator. To this extent, the failure can be stigmatised as the product of bad faith.

15. Would the admission of this statement result in an unfair trial? Obviously, my finding that the failure to caution was not an innocent error but a deliberate strategem has a significant bearing on this question. However, there are a number of other factors which must be considered.

First, the statement was voluntary, as I have already found.

Second, some things in the statement were actually volunteered by the defendant. It appears to have been his own idea to produce the clothing he was wearing on the night in question.

Third, the statement was exculpatory. On its face, it exonerates the defendant. He made no admission or confession. Its significance now lies only in the fact that the Crown says some parts of the statement were untrue. The defendant wanted to make his lack of involvement clear to the police so that he would be removed from the list of possible suspects. He wanted the police to hear what he had to say.

Fourth, the defendant can be assumed to have been relatively sophisticated about his rights. He has been arrested on at least 43 previous occasions for a variety of offences of varying degrees of seriousness. It is likely that he was cautioned on many of those occasions. He was not in the position of a young or vulnerable suspect. He had been in a similar situation on many prior occasions.

Fifth, the defendant did not display any nervousness or apprehension while speaking to the officers. He was in his own residence. He had the presence of mind to refuse to go to the police station. He had the presence of mind to refuse to sign the officer's notes. He was in full control, not simply swept along by events.

16. When I weigh all of these varying factors, I conclude that this is not one of those cases where, although the statement was made voluntarily, it would nevertheless be unfair to admit it. The defendant wanted his statement to be taken into account and it would not be unfair now to do so.

17. I find that the statement is admissible in evidence.

Dated this 7th day of May, 2014

Henderson, J.

Henderson, J.
Judge of the Grand Court