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IN OPEN COURT
IN THE GRAND COURT OF THE CAYMAN ISLANDS

Libony
19/4/2007

INDICTMENT NO: 16/07

REGINA ♦

-vs-

BRANDON LESLIE EBANKS



BEFORE: The Honourable Madam Justice Levers

Appearances:
Ms. K. Gunn for the crown
Mr. N. Dixey for the defendant

Heard: 2nd – 3rd April 2007



RULING

Levers, J.

This is an application by the defence to object to the admissibility of certain oral and written statements made by the accused in this case.

The common ground canvassed in objecting to both the oral and the written confessions was that they were obtained in breach of the Judge's Rules and/or by threats or inducement.

1 I begin with an examination of the principles applicable to admissibility of
2 confessions and the exercise of my discretion. The classic formulation of
3 the principle applicable to the admissibility of confessions appears in Lord
4 Sumner's speech in *Ibrahim v R.* [1914] AC 599 where he stated at page
5 609:

6 "It has long been established as a positive rule of
7 English criminal law that no statement by an
8 accused is admissible in evidence against him
9 unless it is shown by the prosecution to have been
10 voluntary statement in the sense that it has not
11 been obtained from him either by fear of prejudice
12 or hope of advantage exercised or held out by a
13 person in authority."
14

15 This view was adopted by the Court of Appeal in *R v Pragar* [1972] 56 CAR
16 at page 151:

17
18 "These rules do not affect the principles: (e) that it
19 is a fundamental condition of the admissibility in
20 evidence against any person, equally of any oral
21 answer given by that person to a question put by a
22 police officer and of any statement made by that
23 person, that it shall have been voluntary, in the
24 sense that it has not been obtained from him by
25 fear of prejudice or hope of advantage, exercised
26 or held out by a person in authority, or by
27 oppression.

28 The principle set out in paragraph (c) is overriding
29 and applicable in all cases...."
30

1 Voluntary in this sense, of course, does not mean volunteered but made in
2 the exercise of a free choice to speak or to be silent.

3

4 In practice, when dealing with an objection to the admission of an alleged
5 confession, the trial court will first satisfy itself that it was freely and
6 voluntarily made. If, so satisfied then it should consider whether the
7 confession should in the exercise of its discretion be excluded
8 notwithstanding that it was voluntary and therefore strictly speaking
9 admissible, because in all the circumstances, the strict application of the rule
10 as to admissibility would operate unfairly against the accused. For example,
11 if there is a breach of the Judge's Rules or other unfair conduct surrounding
12 the makings of the confession, either on the part of a police officer, or some
13 other person which might indicate to a judge that there is danger of
14 unfairness then under the Judge's Rules it should be excluded. The test is
15 whether discretion should be exercised if the strict rules of admissibility
16 would operate unfairly against the accused. In other words, if not for the
17 conduct, or what was said to the accused, the accused might not voluntarily
18 have provided the evidence in question or the opportunity to obtain it.

19

1 The Judge's Rules are not rules of law, they are rules of practice drawn up
2 for the guidance of police officers and a statement made in breach of such
3 rules is not ipso facto inadmissible if it is a voluntary statement, although the
4 court has a discretion to disallow it. As I have stated previously, the
5 exercise of my discretion whether to exclude or admit confessionary
6 evidence will always depend on the facts of each particular case.

7
8 Where a breach of the Judge's Rules has been admitted or established, it is
9 for the prosecution to advance an explanation acceptable to the court for
10 such breach. The prosecution has a burden to prove beyond a reasonable
11 doubt that this was a voluntary statement not unfairly taken. The effect of
12 the judgment in *R v Sang* (1977) 2 AER at p1222 is as follows:

13

- 14 (1) A breach of the Judge's Rules does not by itself confer upon a
15 judge a discretion to reject a subsequent confession admissible
16 in law;
- 17 (2) the discretion does however arise if the breach has induced the
18 accused to make a confession which he would not otherwise
19 have made, because the breach will be improper if not unfair;
- 20 (3) if the breach is such that the confession which it induces is not
21 voluntary.... the judge has no discretion, and must exclude the
22 confession as inadmissible in law."

23

1 As I stated earlier there are three areas which must be looked at separately in
2 this case. The young man was stopped and he voluntarily got out of the car
3 even before being asked to do so. Subsequently, as a result of a search of his
4 body, ganja was found in a pack of Benson & Hedges cigarette. He then
5 advised the officers Coleman and Rodriquez that there was ganja in the
6 console of the car. That having been found, the police officers (there is a
7 contradiction as to who actually did the following search) searched the glove
8 compartment of the car and found an unlicensed firearm. According to
9 Detective Coleman, he asked the accused was the gun loaded and the
10 accused's answer was, "yes it was loaded". This verbal interchange is
11 objected to by defence on the basis that they had sufficient evidence to arrest
12 the accused before the question and did not do so. The defence submits that
13 at this stage they should have cautioned the accused and two persons in the
14 car but did not do so. That prior to the question there was an exchange of
15 questions between Detective Coleman and the accused in which the accused
16 informed Detective Coleman that the car belonged to Melissa Hall, Inspector
17 Kenrick Hall's daughter. The defence further states that it was at this stage
18 when Detective Coleman was informed as to who's car it was, he advised
19 the accused that unless he comes out with who the gun belonged to Ms Hall
20 and her mother could be arrested for the possession of this firearm and that

1 this threat of arrest of his girlfriend and her mother made him say to the
2 police officer, "let them go its mine". The note made of this conversation
3 differs in content. Detective Rodriquez was making notes at the scene and
4 the first part of the note has a different response to that in a subsequent
5 summary of the incident written by Mr. Rodriquez. Lockley Solomon who
6 is a police officer and an expert of guns who was at the scene when the gun
7 was found corroborates the accused statement that he was asked the question
8 (who is the gun for) but the other officers who were they only ones asking
9 questions deny asking that question. I therefore hold that the question as to
10 whether the gun was loaded was inadmissible, as not only was the response
11 not accurately recorded, I believe that there was in fact a threat made to the
12 accused about Melissa Hall and her mother being incarcerated. The
13 circumstances were such that the accused should have been cautioned prior
14 to being asked any further questions, once the gun was found in the car
15 driven by him in the glove compartment.

16

17 The next objection that was taken was to the notes made by Detective
18 Rodriquez at the scene and a subsequent summary of what he felt transpired
19 at the scene which he got the accused to sign it 5:00AM on the day of the
20 arrest. There is a contradiction between the accused and the police as to

1 when the notes were shown to him and whether they were signed that night.
2 The accused does not remember signing the notes but he says it was his
3 signature, therefore this Court can say that accused signed it. The police
4 officer, however stated that having cautioned him at the scene, they again
5 reminded him at the station and asked him whether he would sign the notes.
6 The notes in themselves are inconsistent, the responses are not accurately
7 recorded, and they are different in the body of the notes to the summary. I
8 am firmly of the view that the cumulative effect of the oppressive
9 atmosphere at the police station, the fact that the accused had not slept from
10 the morning before, he had had substantial alcohol and he was a young man
11 of 20, who had not seen a lawyer or his family, coupled with the
12 inaccuracies of the statement, coupled with the threat of Melissa Hall and
13 her mother being arrested, must have had an effect on his mind to induce
14 him to sign something which he may not have otherwise signed.

15

16 The accused was in custody. There was ample time to get him to sign the
17 notes in the proper circumstances. He had not slept all day. There was
18 ample time to advise him that the verbal at the scene could not be held
19 against him. But yet there was a rush to obtain the signature. I cannot over
20 emphasize my condemnation of this kind of action on the part of the police

1 which can hardly be in aid of the fair administration of justice. I therefore
2 hold that the notes are inadmissible.

3

4 The next objection which was taken was to the caution statement. The facts
5 surrounding the caution statement are the accused had been custody for
6 some two days. He was taken to West Bay Police Station where he slept on
7 an iron bed without a mattress. Subsequently, he was seen by the two
8 police officers who asked him if he wanted to make a caution statement.

9 The evidence is that the police officers left George Town Police Station with
10 a view to inducing the accused to make a statement. Before the caution
11 statement was given, the following did not take place:

12 1. The accused did not see a lawyer.

13 2. He did not see a member of his family or any friends.

14 3. He was not advised that any verbals that may be held against him
15 were not admissible therefore that inducement was still in his mind

16 4. The police allege that they had asked him if he wanted a lawyer at the
17 police station when he was checked in (see evidence of Sgt. Pinnock)
18 and also whether he wanted a telephone call. Amazingly, on the
19 paper, these two questions are dated by Sgt. Pinnock, but the
20 accused's responses are not recorded and the accused's signature is


1 not against those two questions despite provisions being made for it
2 on the form.

3
4 I am at this stage permitted to look at the evidence to consider the credibility
5 of the two witnesses giving this testimony and I am of the view that the
6 accused was never advised as to his right to have a lawyer till after he had
7 made the confession statement.

8
9 Further, before the questioning started there was still no documentary proof
10 corroborating the evidence of Detective Coleman or Rodriquez that there
11 was an opportunity given to the accused to see a lawyer. The caution
12 statement in itself is not accurate. Mr. Rodriquez was present in the room
13 that is not recorded. Mr. Rodriquez himself gave evidence that questions
14 were asked of the accused during the statement, which he does not recalled
15 as there is no record of it. Mr. Rodriquez gave the accused water and kept
16 going in and out of the room, and there is no evidence of that recorded on
17 the caution statement. In view of all this and the inducement that, in my
18 opinion, was still playing on the accused mind, I hold that the caution
19 statement is inadmissable. As a result of my holding that the caution
20 statement is inadmissible, I believe the question and answer which allegedly

1 was commenced to clarify what was said in the caution statement is also
2 inadmissible. The time lapse between the question and answer and the
3 caution statement is very short and any inducement and conditions that
4 played on the accused during the caution statement would still be in his mind
5 at the question and answer stage. I therefore hold that in the circumstances
6 of this particular case and on the evidence before me, I have come to the
7 conclusion that the question and answer too is inadmissible. The issue is
8 one of credibility and the inconsistencies in the prosecution evidence leaves
9 me in doubt as to the voluntariness and the fairness of these alleged
10 confessions.

11
12 Dated this ^{19th} day of April 2007

13 
14 Judge of the Grand Court

