COMMONWEALTH OF THE BAHAMAS **V.B.I No. 80/3/2024**

IN THE SUPREME COURT

Criminal Division

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

The Applicant

V

RAMON JOHNSON

The Respondent

Before: The Honorable Justice Dale Fitzpatrick

Appearances: Mrs. Janet Munnings for the Applicant

Mr. Geoffrey Farquharson for the Respondent

Heard on the Papers

Criminal Law – Unlawful Sexual Intercourse contrary to the Sexual Offences Act, Chapter 99 - Evidence Act, section 20 – Admissibility of Evidence – Confession Allegedly Made Under Duress – Admissibility of a Mixed Statement – Police Caution

DECISION

FITZPATRICK J

Introduction

[1.] On January 3rd, 2024, a resident of the Bluff, South Andros, attended the Kemps Bay Police Station. She reported that her 15-year-old daughter, "MS" (the "virtual complainant" or "MS"), had told her that she had engaged in sexual intercourse with the Respondent earlier that day.

[2.] Police Sergeant 2936 Bridgewater interviewed the virtual complainant in her mother's presence and recorded a written statement. MS stated that she had contacted a friend known to her as "Mon" on January 3rd, 2024 through Facebook and asked him to collect her from a friend's house in the Bluff area. She said that the Respondent collected her in a silver car at about 6:00 p.m. and drove her to Ralph Beach, behind her father's home, where they engaged in sexual intercourse. She stated that the Respondent then returned her to her friend's house and she walked home alone.

[3.] On January 4th, 2024, at about 11:00 a.m., Sgt. Bridgewater cautioned the Respondent. The Respondent waived his right to have an attorney present. Sgt. Bridgewater conducted an interview and the Respondent answered the questions put to him. In particular, the Respondent denied engaging in any sexual activity with MS on January 3rd, 2024 but stated that he had engaged in sexual intercourse with the virtual complainant in October, 2023. The questions and answers were written down contemporaneously forming the record of the interview (the "ROI"). At the completion of the interview, the Respondent read the ROI and signed each page. He was then released.

[4.] On January 12th, 2024, at about 7:40 p.m., the Respondent was cautioned again and arrested in the Johnson Bay area of South Andros. He was taken to the Kemps Bay Police Station and subsequently charged with two counts of unlawful sexual intercourse, contrary to *Section 11(1)(a) of the Sexual Offences Act, Chapter 99*. The first count alleges that the Respondent had unlawful sexual intercourse with the then 15 year old virtual complainant on January 3rd, 2024 in South Andros. The second count alleges that he had unlawful sexual intercourse with the then 14 year old virtual complainant during October, 2023.

Issues

[5.] The Respondent provided a mixed statement when interviewed by the police. He denied any sexual activity with the virtual complainant on January 3rd, 2024 but said that he had sexual intercourse with her in October, 2023. The issue to be determined here is whether the Respondent's mixed statement is admissible in evidence at trial.

Analysis

Whether the Respondent's mixed statement made to the police is admissible in evidence at trial

[6.] The Applicant submits that the Respondent's arrest and initial, temporary detention were lawful. Further, the Applicant states that the Respondent's statement to the police during the

interview on January 4th, 2024 was properly conducted. In particular, the Applicant submits that whether sexual intercourse occurred and, if so, on what date(s) are questions of fact for the jury to determine on the whole of the trial evidence. The Applicant says that the Respondent and the virtual complainant presenting different dates for the alleged sexual intercourse is not a basis for excluding the Respondent's statement. The Applicant further submits that the probative value of the statement outweighs any prejudice to the Respondent. The Applicant filed no affidavit in support of the Application.

[7.] In response, the Respondent submits that he was not properly cautioned by Sgt. Bridgewater in relation to any allegation of sexual intercourse. He argues that his interview statement is irrelevant to the first count alleging unlawful sexual intercourse on January 3rd, 2024 and inadmissible in relation to the second count alleging unlawful sexual intercourse in October, 2023. He argues that a statement made after a suspect has been cautioned in respect of one offence is inadmissible if the suspect is subsequently charged with another offence. Additionally, he argues that the prejudicial effect of admitting his statements to the police outweighs its probative value. For each of these reasons he says admission of his statements to the police on January 4th, 2024 must be denied. The Respondent filed no affidavit in support of his position on this Application.

[8.] The starting point in determining whether the Respondent's statement should be admitted is to review the relevant statutory regime. Here, the following sections from the *Evidence Act*, Chapter 65 bear reference:

Section 4 " In any proceeding evidence may be given of facts relevant to any fact in issue, including —

(a) any fact which is so closely connected with any fact in issue as to form in the opinion of the court part of the same transaction, whether it occurred at the same time and place or at some different time and place;

(b) any fact which is the occasion, cause or effect, immediate or otherwise of any fact in issue;

(c) any fact which explains the circumstances under which any fact in issue is said to have happened, or which afforded an opportunity for its occurrence, or which fixes or helps to fix the time or place of its occurrence;

(d) any fact which is consistent or inconsistent with any fact in issue or which supports, rebuts, qualifies or explains an inference suggested by any fact in issue;

(e) any fact which shows or constitutes a motive or preparation for any fact in issue;

(f) any fact or thing tending to identify any person or thing whose identity is a fact in issue;

(g) any fact may assist the court or the jury in assessing the damages or penalty in cases in which such assessment is necessary."

Section 20(1) “In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any fact in issue in the proceedings and is not excluded by the court in pursuance of this section.”

Section 20(2) “ If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession —

(a) was or may have been obtained by oppression of the person who made it; or

(b) is rendered unreliable by reason of anything said or done or omitted to be said or done in the circumstances existing at the time, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.”

Section 20 (5) “In this Act — confession” includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;

“oppression” includes torture, inhuman or degrading treatment, and the use of threat of violence (whether or not amounting to torture).

Section 178(1) “In any criminal proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.”

[9.] The Applicant bears the burden of proving, beyond a reasonable doubt, that the Respondent’s statements to the police on January 4th, 2024 were not obtained by oppression, coercion, threats, promises or other forms of improper inducements. In other words, the Applicant must establish, beyond a reasonable doubt, that the circumstances of the Respondent’s statements to the police were such that his mind was operating informed, including being appropriately cautioned, and free not overborne by undue external influences.

[10.] As noted above, neither the Applicant nor the Respondent filed an affidavit on this Application. The Court only has the ROI to consider.

[11.] The threshold issue on this Application is whether the Respondent was properly cautioned by Sgt. Bridgewater. The Respondent submits that the caution given erroneously described the alleged conduct as “unlawful sexual assault” rather than “unlawful sexual intercourse” thereby neutralizing the legal effect of the caution. As such, the Respondent argues that the statements he made during the ROI were without a caution and inadmissible.

[12.] Clearly, an accused person must be made aware of the allegations made against him as the necessary starting point to a police interview. There are no proscribed words or phrases that must

be used by the police to render a caution to an accused valid. What is required is that, prior to questioning the accused, the police provide sufficient information for him to understand the substance of the allegation and the conduct he is suspected of having committed. Such particulars would ordinarily include the date and place of the alleged misconduct, the identity of the complainant or person affected and a brief description of the misconduct alleged. The point is that the accused must have sufficient information from the police at the start of the interview to appreciate the substance of the allegation to enable an informed decision regarding whether he responds and, if so, how to respond.

[13.] The ROI reflects that the Respondent was given the following caution at the commencement of the interview:

> "It is alleged that you Ramon Johnson did on Wednesday 3rd January, 2024 at about 6:00 p.m. while in the bluff did intentionally and unlawfully sexually assaulted one MS a 15 year old girl. You are not obliged to say anything unless you wish to do so but whatever you say may be taken down into writing and given into evidence."

[14.] Prior to asking any questions about the allegation, Sgt. Bridgewater asked the Respondent if he understood the caution. The Respondent confirmed that he did.

[15.] Prior to asking any questions about the allegation, Sgt. Bridgewater asked the Respondent if he wanted a lawyer to be present during the interview. The Respondent answered that he did not.

[16.] Sgt. Bridgewater then commenced the interview by asking if the Respondent knew MS and what was their relation. The Respondent said he knew MS and that they had been friends for about one year. Sgt. Bridgewater continued his questioning asking the Respondent how he communicated with MS. The Respondent advised that they communicated electronically over Facebook and messaging platforms.

[17.] Next Sgt. Bridgewater asked if the Respondent had ever met MS in person and alone. The Respondent said yes. Sgt. Bridgewater then asked the Respondent when he first met MS alone. The Respondent stated he was together with MS in October, 2023. The officer then asked the Respondent what happened when he was alone with MS. This is question seventeen of the interview. The Respondent answered saying that "We was talking for a bit and then we had sexual relations". Notably, Sgt. Bridgewater has not specifically asked anything about alleged sexual activity between the Respondent and MS to this point. Sgt. Bridgewater followed up by asking the Respondent if this was the first time that he and MS had sexual intercourse. The Respondent confirmed it was. Subsequently in the interview, Sgt. Bridgewater asked the Respondent if he forced himself on MS when they had sexual intercourse in October, 2023. The Respondent denied this.

[18.] Sgt. Bridgewater continued the interview by asking the Respondent when he was last alone with MS. The Respondent stated the day before his interview, namely January 3rd, 2024. Sgt.

Bridgewater asked the Respondent whether he and MS had sexual activities while together on this date. The Respondent said no. The officer then suggested that the Respondent forced himself on MS and had sexual intercourse with her on January 3rd, 2024. The Respondent denied this and stated all they did was talk.

[19.] The ROI clearly establishes that, prior to any questioning regarding the allegations, the police advised the Respondent that he was not required to say anything to them during the interview unless he chose to. This caution was explained in plain, everyday language. The Respondent unequivocally confirmed his understanding of this caution. The police then further made it clear that the Respondent was entitled to have a lawyer present for the interview if that was his wish. The Respondent unequivocally stated he did not wish to have a lawyer present. There is no reasonable doubt that the Respondent was made aware of and given the opportunity to exercise his constitutional right to have legal representation per *Article 19(2) of the Constitution*.

[20.] The Respondent's primary argument is that Sgt. Bridgewater's reference to an allegation of unlawful sexual assault instead of unlawful sexual intercourse invalidates the caution thereby rendering all statements made by the Respondent thereafter inadmissible. The Court rejects that argument.

[21.] The Respondent relies on the English High Court decision of *Charles v CPS [2009] EWHC 3521 (admin*). This authority is factually distinguished from the Respondent's circumstances in two fundamental ways. The accused in *Charles* was found slumped over asleep in his vehicle and charged with the offence of being in charge of a vehicle while unfit through drink or drugs. He took and failed a breath test about one hour later. It appears that, based on this failed test, the police refocused to investigate for the offence of driving while under the influence.

[22.] The first point of difference between the accused in *Charles* and the Respondent is that the accused in *Charles* was charged with the offence of being in charge of a vehicle while unfit through drink or drugs prior to being questioned contrary to the *Police and Criminal Evidence Act* prohibition on post charge interviews except where necessity could be shown. In addition, the court in *Charles* noted that the police were required to administer a particular caution where intending to engage in a post charge interview, namely to advise the accused that "you do not have to say anything but anything you do say may be given in evidence". That particular caution was not given to the accused in *Charles*.

[23.] Here, the Respondent was not charged with any offence prior to the interview and there was no breach of any specific interview prohibition as in *Charles*. The Respondent was simply advised of the substance of the allegation against him at the start of the interview on January 4th, 2024. Further, it is worth noting, the Respondent was given the caution absent in *Charles*, namely that the Respondent was "not obliged to say anything unless you wish to do so but whatever you say may be taken down into writing and given into evidence". The Respondent was not charged until January 12th, 2024,

[24.] The second point of difference between the accused in *Charles* and the Respondent is that the accused in *Charles* was not informed of the substance of the allegation that the police then wished to question him about prior to the interview. The police had turned their focus to investigating whether the accused was driving while under the influence by the time of the interview. The accused was not advised that the police wanted to question him about whether he had been driving and not merely being in charge of a vehicle while under the influence. The accused was simply asked to say what happened "in his own words". He did so and was charged with driving while under the influence. In the Respondent's situation, the ROI confirms that the Respondent was informed of the substance of the allegation being made against him, namely sexual activity with MS on January 3, 2024, before he was questioned by the police.

[25.] The concern of the court in *Charles* and by courts generally for confessions is to ensure that the pre-interview caution by the police communicates the substance of the allegations to the accused and that he is not required to say anything about the allegations. In The Bahamas this is reflected Article 19(2) of *The Constitution, at Article 19(2)* directing the need for the suspect to be informed of why he or she has been arrested or detained before being interviewed by the police. The accused needs to know what he is alleged to have done and that he is not required to say anything prior to being asked any questions so that he can make an informed decision whether to provide answers or not. The Respondent argues that did not happen in his case. This Court does not agree.

[26.] The caution given by Sgt. Bridgewater prior to the interview provided the date of the allegation, namely January 3rd, 2024, the person affected, namely MS a 15 year old girl and the substance of the misconduct alleged, namely unlawful sexual activity.

[27.] The Respondent's argument is that the caution he was given failed due to the officer's description of the misconduct as unlawful sexual assault instead of unlawful sexual intercourse. The term sexual assault has a specific legal meaning, namely sexual touching of another without that person's consent. Sexual intercourse also has a specific legal meaning ranging from genital penetration to genital stimulation without penetration. It is not reasonable to expect that an accused, including the Respondent would or needed to be aware of these legal definitions for an effective caution.

[28.] What is required is for the caution to inform the accused and permit him to understand the substance of the allegation being made against him. There is no evidence that the Respondent did not understand that substance of the allegation or that he was confused by the language used by the officer, namely unlawful sexual assault.

[29.] It is clear from the answers given by the Respondent that he understood that the officer was asking about his relationship with MS, being alone with MS and engaging in sexual activity of any kind with her particularly on January 3rd, 2024. The Respondent demonstrated his understanding where he denied engaging in "sexual activities" and denied engaging in "sexual intercourse" with MS on January 3rd, 2024. The Respondent demonstrated his understanding where he admitted to

engaging in “oral sex”, “sex” and “sexual intercourse” with MS in October, 2023. His initial reference to sexual intercourse in October, 2023 was offered in response to police making the Respondent aware that they were questioning him about sexual activity with MS on January 3rd, 2024. The police had prior no knowledge of the October, 2023 meeting.

[30.] The caution given by Sgt. Bridgewater was legally sufficient. Further, there is no evidence that the Respondent’s statement to the police was obtained by oppression, coercion, threats, promises or other forms of improper inducements. The evidence establishes, beyond a reasonable doubt, that the circumstances of the Respondent’s statements to the police were such that his mind was operating informed, including being appropriately cautioned, and free not overborne by undue external influences.

[31.] The final consideration on this Application is whether admission of the Respondent’s statement to the police should be denied on the basis that the prejudice of doing so outweighs the probative value or where denying admission is otherwise necessary to ensure trial fairness.

[32.] The admissibility of evidence depends, first, on its relevance and, where its admission is challenged, on the court’s assessment of its probative value against any prejudicial effect: *Nadisha Beckford v The DPP [2023] SCCrApp No. 150 of 2022, paras 21–23*.

[33.] The probative value of any evidence is found in its contribution to proving a fact in issue at trial.

[34.] The prejudicial impact of any evidence is not measured in the potential harm it may do to a party’s position, including that an accused may be viewed in a negative light or found guilty based on the disputed evidence. The prejudice to be considered is the risk that the trier of facts, in particular a jury, will misuse the evidence for an improper purpose, including that the evidence will be given undue weight by the trier or arouse bias, prejudice, sympathy, or fear, with these emotions contaminating the decision-making process.

[35.] The issue of what, if any, sexual activity occurred between the Respondent and MS and on what date is central in this case. The Respondent’s statement presents evidence that is relevant to these issues.

[36.] The Respondent gave his statement to the police one day after the alleged sexual misconduct. The Respondent confirmed his knowledge of and year long relationship with MS. The Respondent described how they communicated electronically and also how they met in person, alone on two occasions, namely in October, 2023 and on January 3rd, 2024. He described what they did on both occasions. The Respondent denied any sexual activity on January 3rd, 2024 but admitted to sexual activities, namely oral and other sex or intercourse in October, 2023.

[37.] There is no evidence challenging the reliability of the Respondent’s statement. He answered the questions in a clear and straightforward manner.

[38.] The Respondent's statement, if accepted by the jury, are reliable and highly probative on the central issue of what, if any, sexual activity occurred between him and MS and on what date.

[39.] Again, the overall risk to assess is whether the jury will misuse the Respondent's statement thereby prejudicing the Respondent, including and in particular his right to a fair trial. There is no evidence or reason to support this concern. The Respondent was asked about his relationship with MS. He provided clear and direct responses where he denied any sexual activity on January 3rd, 2024 but admitted to sexual activities in October, 2023. There is nothing in the content of the Respondent's statements that raises any concern of prejudice and the Respondent has not identified any specific prejudice that would flow from admitting his statement.

[40.] In conclusion, the probative value of the Respondent's statement with respect to the central issue of what, if any, sexual activity occurred between him and MS and on what date in this case significantly outweighs any prejudice flowing from admitting his statement to form part of the trial evidence. In other words, admitting the statement in these circumstances accords with both the right to a fair hearing provided for by Article 20 of the *Constitution* and the interests of justice.

Disposition

[41.] The Director of Public Prosecutions' application is granted. The record of interview is admissible in evidence.

Dated this 30th October 2026

Fitzpatrick J