IN THE HIGH COURT OF JUSTICE
PORT OF SPAIN

INDICTMNET No. 107/07

THE STATE

V.

DEXTER BENNETT

****

(3) COUNTS OF SERIOUS INDECENCY
SEXUAL INTERCOURSE WITH A FEMALE UNDER 14
BUGGERY

RULING ON THE VOIR DIRE

BEFORE: The Hon. Mr. Justice A. Mon Désir

APPEARANCES:

Ms. Jennifer Martin for the State

Mr. Frank Peterson for Defendant

DATED: October 14, 2008

I PREAMBLE

1. There can be no doubt that in the context of a modern, civilised society there exists the sovereign requirement to ensure that persons who are charged with criminal offences and brought before these Courts are afforded the fullest protection of the law and that those vested with the responsibility to investigate such offences are held to the highest legal and ethical standards in the performance of their duties. Nevertheless, in the words of Volney J, in the case of *The State v. Phillip Placid*: [1]

> *"Scepticism over the admission in evidence of oral [and written][2] confessionary statements has for some time fuelled in the criminal courts a profound sense of caution and challenge."*

2. That scepticism is particularly acute where the persons involved are children or young persons, in respect of whom special care is required.

II FACTUAL BACKGROUND- SUMMARY OF EVIDENCE

3. In the instant case, the Accused, Dexter Bennett, is charged with three (3) counts of serious indecency, one (1) count of sexual intercourse with a female under the age of 14 years, and one (1) count of buggery. The State alleges that these offences were committed against the virtual complainant, Rainn Bennett on sundry occasions in the year 1999 when the Accused was fifteen (15) years of age and the virtual complainant was herself, a mere three (3) years old.

4. It is common ground that on October 26, 1999 the Accused and his mother, Jean Roberts went to the San Juan police station where the Accused was interviewed by the police in relation to these matters and the caution statement, which is the subject of the instant application, was recorded.

5. After the recording of the said statement, the Accused and his mother left the police station. He was later arrested and charged with these offences.

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[1] Crim. No. 113 of 2003

[2] My emphasis

6. I have however, in the ensuing paragraphs, attempted to summarise what the case for the State is regarding the circumstances by which the statement of October 26, 1999 came to be taken, and thereafter, I have outlined what the defence has said about the matter.

The State's Case

7. The State's case with respect to this written statement is that-

(a) It was given voluntarily after the accused was properly cautioned and told of is rights. There was no private conversation between Sgt. Silverthorne and the Accused in the Absence of his mother Jean Roberts, on the day in question.

(b) Neither Sgt. Silverthorne nor WPC Mc Kenzie persistently questioned the Accused on that day before he gave the statement, and that Sgt. Silverthorne never told the Accused that he would not be allowed to leave the station until he gave the station.

(c) While at the station on that day the Accused was offered something to eat but he made no request. At no time did the accused ever deny any of the allegations nor was he crying at any time while he was at the police station on that day.

(d) The accused was told that whatever he said would be taken down in writing and may be given in evidence against him. He was allowed reasonable opportunities to interact with persons seeking his interest and in particular his mother, Jean Roberts was with him at all times. Indeed, during the critical period of the recording of the caution statement, the Accused's mother was present at all times and thereafter, JP Ali came to authenticate the statement and spoke privately with the Accused and his mother in the absence of the police officers. Even though the mother of the Accused was present at the station on the day in question JP Ali was still invited to attend the station and authenticate the statement as ostensibly an independent third party, who would speak to the Accused and seek his interest.

(e) The JP questioned the Accused about whether the statement was his and if he gave it of his free will and the Accused told him "Yes". The JP also

enquired of the Accused as to whether he was comfortable during the recording of the statement and again the Accused said, "Yes". Both the Accused and his mother were given an opportunity to read and sign the statement on the day in question and that in particular, the accused was given an opportunity to correct, alter or add anything to the statement that he wished to.

(f) While at the police station on that day the Accused was merely a suspect in relation to the offences that WPC Mc Kenzie was investigating and both he and his mother attended the station voluntarily on that day, and further that they were allowed to leave freely afterwards.

(g) Over all, the Accused was treated in a fair, proper, civilized and unoppressive manner by the police and that he had reasonable opportunity to make a complaint to the JP and or his mother, if he really and genuinely thought that he was not giving the statement of his own free will, but rather as a result of some inducement or oppression brought to bear upon him by the police.

(h) With respect to the lack of notes in the station diary of which the defence have complained, what the State is effectively saying is that, those are unavailable, not because the police wish to hide anything from the Court or for any more sinister reason, but rather because of the inexperience of WPC McKenzie, who had only one (1) year police service at the time. Notwithstanding that however, the State say that the overall manner in which the statement came into existence is such that it was perfectly and completely fair to the Accused and that the statement which he dictated to WPC Mc Kenzie on the 26th of October, 1999 in the presence of his mother and Sgt. Silverthorne, was in fact given voluntarily in the true sense of the word.

The Defence's Case

8. On the other hand, the case for the defence on regarding this matter is that-

(a) The Accused did not dictate any statement to WPC McKenzie. The statement in question does not consist of his words and in any event, the

Accused has said that he did not give the statement voluntarily or of his free will.

(b) The Accused's account it that he and his mother Jean Roberts, went to the San Juan police station on the morning of October 26, 1999 at about 8:05am and that they had gone there pursuant to arrangements she had made with Insp. Silverthorne the Friday before.

(c) When the Accused and his mother arrived at the station on that morning, they met Insp. Silverthorne outside the police station leaning up on a wall, talking to someone. The officer then took them into a room at the back of the police station, where he introduced them to WPC McKenzie and then left. Once in the room, WPC McKenzie started to question the Accused about the allegations regarding himself and his sister Rainn Bennett, which she (WPC McKenzie) did about three (3) to four (4) times and on each occasion, the Accused denied knowing anything about the allegation.

(d) Thereafter, Ag. Insp. Silverthorne returned to the room, pointed to the Accused and said, "You! Come!" He then took the Accused to another room nearby where he proceeded to question the Accused about the allegations and Ag. Insp. Silverthorne, is alleged to have done this about five (5) to six (6) times when he would leave the room and then return, and on each occasion when asked, the Accused told him "no, I don't know anything about that."

(e) It was on the fifth occasion when Agt. Insp. Silverthorne asked the Accused about the allegations, that the officer told him that he, the Accused, was not leaving the station until he gave a statement. The Accused started to cry, as he was hungry, not feeling well and just wanted to go home. As such, when Ag. Insp. Silverthorne re-entered the room the 6th time and put the question to the Accused, he finally said, "Ah do it! Ah do it! Ah do it!" Ag. Insp. Silverthorne then left the room and returned with WPC Mc Kenzie and JR, the mother of the Accused.

(f) WPC McKenzie then entered the room and the accused started to give her the statement. She was asking him questions about the documents in front of her and he gave her his answers to suit her questions. Only WPC Mc

Kenzie, the Accused and his mother were present during the recording of the statement.

(g) At the conclusion of the Statement, the Accused was asked to sign it, which he did. His mother JR was also asked to sign the statement but she refused to do so. At no time was the Accused ever cautioned, or told of his legal rights. The JP later came to the police station and authenticated the statement, but he never asked the Accused if he was beaten, threatened, coerced or offered any inducement to give the statement. He never asked the accused if he was comfortable.

III SUMMARY OF SUBMISSIONS

Defence Submissions

9. On October 6, 2008, before this Court, Mr. Peterson, counsel for the Accused, advised that he would be challenging the admissibility of the said statement on the basis that it was obtained- (a) by oppression; (b) in breach of the Judges' Rules; and (c) in a manner that was unfair to the Accused.

10. In that regard, he has referred this Court to the authorities of the *Attorney General v. Whiteman*[3]; *The State v. Phillip Placid*[4] ; *The DPP v. Ping Lin*[5]; *Sookram, Ramdass and Sahadeo v. The State*[6]; *Boodram v The State*[7]; *R v. Keenan*[8] ; *R v. Delaney*[9]; and *R v. Canale*[10], to which I have had regard and will return to presently.

11. In substance however, Mr. Peterson contended that there were several breaches of the Judges' Rules by the officers involved in the investigation of this case and that the cumulative effect of the totality of circumstances surrounding the Accused being

[3] (1991) 39 WIR 397
[4] Crim. No. 113 of 2003
[5] [1975] 3 AER 175
[6] (Unreported) Cr.. App. Nos. 43, 45 and 46 of 1998
[7] (Unreported) Cr. App. No.17 of 2003
[8] [1989] 3 AER 598
[9] (1989) 88 Cr. App R 338
[10] [1990] 2 AER 187

at the San Juan police station on the 26th of October, 1999 is such that it constitutes an oppressive and unfair state of affairs against the backdrop of which, the final product- namely, the impugned caution statement, could not possibly have been voluntary.

Prosecution Submissions

12. Ms. Martin, counsel for the State, submitted that the circumstances in and by which the Accused came to "give" the caution statement of October 26, 1999 are unassailable. She argued that the "will of the Accused was not sapped" and as such the defence contentions that the said statement was involuntary or obtained in circumstances that were somehow "unfair" to the Accused, (in her words) "cannot be substantiated". Moreover, she submitted that the specific breaches of the Judges' Rules alleged by the defence are denied and that in any event those Rules are rules of practice and do not have the force of law. She therefore, submitted that even if this Court were to find that there were in fact breaches of those rules, this Court must nevertheless go on to consider the overall fairness of the entire event to the Accused.

13. In that regard, counsel for the State has referred this Court to the authorities of *Abdul Hakim Louis and Marlon Charles*[11] ; *Thongjai v The Queen*[12] ; *Ancil Edmund, Bruce Henry and Irene Ragbir*[13]; *The State v. Joel Marquis*[14] *; Ibrahim v The King*[15]; *François v. The State*[16]; *Shabadine Peart v R*[17]; and *Keston Adams v. The State*[18], all of which I have considered and will return to presently.

14. The State therefore, asks that this Court find that the statement of October 26, 1999 is voluntary and admissible.

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[11] HCA Cr. 129/04
[12] [1997] UKPC 31
[13] Cr. App. Nos. 22, 28 and 30 of 2006
[14] HCA 127/04
[15] PC Appeal No. 112 of 1913
[16] (1987) 40 WIR 388
[17] PC App. No. 5 of 2005
[18] Cr. App. No. 19 of 2001

15. In my ruling on this matter, I have considered all of the authorities referred to by both counsel as well as others which I have found particularly instructive. I have therefore, endeavoured in what follows to give full weight to everything said in those cases.

IV ANALYSIS- LAW

Determining the questions of Voluntariness and Admissibility where the Defendant denies having made the alleged Admission or Confession

16. In the instant case, the Defence have, in the outline of their grounds for objection to the admissibility of the caution statement of October 26, 1999, stated in respect of WPC McKenzie that- *"she dictated the statement to the Accused as to what she wanted him to say, and not what he wanted to say".* This formulation is identical to that which is contained in their letter to the Director of Public Prosecutions of June 30, 2008, a copy of which was supplied to the Court by Counsel. They have also by their submissions to this Court and cross-examination of the State's witnesses suggested that the Accused *never in fact dictated any statement to the police.* In that regard, it should be noted that during cross-examination of WPC Mc Kenzie on October 6, 2008 before this Court, the exchange between Counsel for the Accused and the witness ensued as follows:

> "**Q**- And I am suggesting to you that at no time during the course of the recording of the statement, that Dexter had anything to say. They were all verbals coming from your mouth?
>
> **A**- That is not so. The Accused dictated the statement and I recorded what he said.
>
> **Q**- I am suggesting to you that Dexter never dictated any statement to you.
>
> **A**- The Accused dictated the statement."

17. Notwithstanding that exchange however, it is to be noted that the actual evidence for the defence, as it unfolded, was somewhat antipodean and contradictory regarding this matter and in particular, with respect to what the Accused alleges he told the police on the morning of October 26, 1999 when the said caution statement was recorded. Indeed, under cross-examination by Counsel for the State, the Accused actually admitted dictating the statement to WPC Mc. Kenzie. Thus, while on the one hand, the Accused has effectively admitted having dictated the statement, on the other hand, his counsel (presumably on the basis of his instructions) has vehemently argues that the Accused did no such thing.

18. One of the issues which therefore, arises for this Court's determination is whether, when, (as is the case here) a defendant denies that he made an oral or written admission to the police but also alleges conduct by the police before or at the time of the alleged admission which might render the admission involuntary and inadmissible if it had been made, the trial judge should nevertheless conduct a *voir dire* to determine the voluntariness of the alleged admission, notwithstanding the fact that the defendant denies that he actually made it. In other words, when an alleged confession is denied, as in this case one version the defence allegation suggests- can it also be challenged as being involuntary and therefore, inadmissible?

19. The leading authorities on this issue are the judgement of the Privy Council, as delivered by Lord Bridge of Harwich in the case of *Ajodha v. The State*,[19] the judgement of the High Court of Australia in *Mac Pherson v. The Queen*[20] and that of the Privy Council as delivered by Lord Hutton, in the cases of *Thakoen Gwitsa Thaporn Thongjai and Lee Chun-Kong v. The Queen.* [21]

20. In *Ajodha* the question was said by the Board, in a judgement delivered by Lord Bridge of Harwich, to be:

> "*when the prosecution proposes to tender in evidence a written statement of confession signed by the accused and the accused denies that he is the author of the statement but admits that*

[19] [1982] AC 204
[20] (1981) 147 C.L.R. 512
[21] [1997] 3WLR 667

the signature or signatures on the document are his and claims that they were obtained from him by threat or inducement, does this raise a question of law for the decision by the judge as to the admissibility of the statement?"[22]

21. In *Thongjai* and *Lee Chun-Kong,* their Lordships also took the time to consider the instant issue and opined that the appeal heard by the Board in *Ajodha* had arisen as a result of a difference in judicial opinion in several Caribbean appellate courts with respect to the matter of whether *an issue is raised for the decision of the trial judge regarding the admissibility of a written statement* where the defendant denies that he is the author of the statement but admits that the signatures on the document are his and claims that they were obtained from him by threat or inducement. Their Lordships, referring to the case of *Williams v. Ramdeo*,[23] a decision of the Court of Appeal of Trinidad and Tobago, extracted the prevailing thought at that time:

> "*In our judgement, a clear distinction falls to be drawn between an objection that a statement made by a person charged with an offence was not made voluntarily and an allegation that he never made any statement at all. In the case of an objection that a statement was not made voluntarily, a judge sitting with a jury or a magistrate sitting without one must hear the relevant evidence and on it decide whether or not to admit the statement: if admitted, it will then have to be weighed along with the rest of the evidence in order to find whether the person charged is guilty or not. In the case of an allegation by a person charged that he made no statement at all, the statement must be admitted and the allegation will fall to be considered along with the rest of the evidence in the case and a verdict must be reached after consideration of the whole."*

22. The prevailing judicial thought prior to the decision in *Ajodha* was also succinctly summarised by Bollers CJ, in the Court of Appeal of Guyana in the *State v. Fowler*[24] where he stated, *inter alia*, that:

> "*I need hardly say that an accused person cannot raise a double-barrelled attack on a statement on the ground that (a) it is not free and voluntary, and (b) it is not made by him…"*

[22] [1982] AC 204 @ p. 214
[23] (1966) 10 WIR 397 @ 398
[24] (1970) 16WIR 452 @ 465

23. However, those pronouncements have since been held to be erroneous by the Privy Council in *Ajodha* and as Lord Bridge stated at p. 220:

> "*The fallacy, in their Lordships' respectful opinion, which underlies the judgements in the cases considered above… is to suppose that a challenge by an accused person to a statement tendered in evidence against him on the ground that he never made it and a challenge on the ground that the statement was not voluntary are mutually exclusive, so as to force upon the judge a choice between leaving an issue of fact to the jury and deciding an issue of admissibility himself. In all cases where the accused denies authorship of the contents of a written statement but complains that the signature or signatures on the document which he admits to be his own were improperly obtained from him by threat or inducement, he is challenging the prosecution's evidence on both grounds and there is nothing in the least illogical or inconsistent in his doing so."*

24. It is now settled law therefore, that where, as is the case here, the prosecution alleges that the defendant has made an admission in the form of the caution statement of October 26, 1999, and the case is raised on behalf of the defendant that he made no such admission or statement and further that he was ill-treated by the police before or at the time of the alleged admission- two distinct issues arise, but which are in no way mutually exclusive. The first issue, which is for the trial judge to decide, is whether, on the assumption that the alleged admission or statement was made, it is inadmissible as being involuntarily obtained. The second issue which is for the jury to decide, if the judge rules that the alleged admission or statement is admissible in evidence, is whether the admission or statement was in fact made.

25. The approach adopted by their Lordships in *Ajodha*, was applied by the High Court of Australia in *MacPherson* and at p. 522, their Lordships stated, *inter alia*, that:

> "*The condition of the admissibility of a confession is that it was voluntarily made, and the judge must be satisfied on the balance of probabilities that this condition was fulfilled before he admits the evidence. If the accused asserts that inducements were offered or pressure exerted but denies that he made a confession, and the judge, without considering the question of voluntariness, admits police evidence that a confession was made, the obvious*

possibility exists that the jury will accept the police evidence and find that the confession was made, and if that occurs they will have before them evidence that has not been found to be admissible, and an important rule which exists to protect accused persons, and to maintain proper standards of police investigation, will have been subverted. Of course once the evidence of the confession is admitted the jury are not concerned with the question whether it was voluntary; they have to consider only whether it was made and whether it was true, although they are entitled to consider the circumstances surrounding the making of the statement in deciding upon its weight and value."

26. However, the current state of the law on this matter is quite succinctly summarised by the learned authors of the *Archbold, 2008* edition at para. 15-385:

> "If the challenge to the admissibility of the confession succeeds, the trial continues without the evidence of the confession. If the challenge fails, the prosecution evidence of the confession and the circumstances in which it was obtained will be given in the presence of the jury. The defence are entitled to cross-examine the witnesses who gave evidence on the voir dire: R. *v. Murray* [1951] 1 K.B. 391, 34 Cr.App.R. 203, CCA. The jury must consider the probative value and effect of the evidence of the confession. Where the issues explored in the trial-within-a-trial are explored again in front of the jury, the trial judge should give appropriate directions to the jury. The logic of [*the relevant section*[25]] requires that they should be directed that, if they consider that a confession was, or may have been, obtained by oppression or in consequence of anything said or done which was likely to render it unreliable, they should disregard it: R. *v. Mushtaq* (Ashfaq Ahmed) [2005] 2 Cr.App.R. 32, HL. If a judge is not satisfied beyond reasonable doubt that a confession was not obtained by oppression or any other improper means it is excluded as Parliament considers that in those circumstances it should not play any part in the jury's verdict; but it would fly in the face of such a policy to say that a jury are entitled to rely on a confession even though, as the ultimate arbiters of all matters of fact, they properly consider that it was, or may have been, obtained by oppression or

[25] My emphasis

any other improper means: Where the only real dispute is whether the defendant's account of the interview is true, it may well be enough for the judge to indicate that, if the jury consider that the confession was, or may have been, obtained in the way described by the defendant, they must disregard it."

27. In the instant case therefore, the Accused- by the submissions of his counsel, the evidence which was called on his own behalf, and by the suggestions that he has made to the State's witnesses in cross-examination- has raised questions as to the voluntariness of the said caution statement of October 26, 1999. He has also, by the matters which he put to the State's witnesses, effectively denied that he in fact made any such confession. As such, this Court is obliged in law to first hold a *voir dire* upon which it could be decided whether the said statement was indeed voluntary and admissible. It is therefore, against that backdrop that I have proceeded with this application.

General Approach to Process and Principles of Admissibility

A. Three-stepped Approach

28. What therefore, of the manner in which the Court should approach the instant task? In *R v Barry*[26], the UK Court of Appeal, in discussing the approach that the judge should adopt upon an enquiry into the admissibility of a caution statement made by the Accused as it relates to section 76(2)(b) of the UK Police and Criminal Evidence Act, 1984 (PACE), opined that this section requires the judge to adopt a three-step process: (1) identifying what was said or done, taking into account everything said and done by the police; (2) asking whether what was said and done was likely in the circumstances to render unreliable a confession made in consequence, the test being objective; and (3) asking whether the prosecution have proved beyond reasonable doubt that the particular confession was not obtained in consequence of the things

[26] 95 cr. App. R 384

said or done. The matter should be approached in a common sense way rather than on any refined analysis of causation concepts.[27]

29. Although the provisions of PACE, being a UK statute, are not part of the laws of Trinidad and Tobago, I find the approach outlined by their Lordships particularly useful not only as reflective of best practice but also as demonstrative of, and consistent with the approach adopted by common law courts throughout the world. I therefore, adopt in the instant case, the approach commended by their Lordships in *Barry.*

B. Fundamental Principles

30. I also remind myself that the first test for admissibility of such caution statements, as enunciated by Lord Summer in the celebrated case of *Ibrahim v. The King*,[28] is that-

> *"… no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear or prejudice or hope of any advantage exercised or held out by a person in authority. The principle is as old as Lord Hale"*

31. In *Ajodha* [29], Lord Bridge of Harwich, having cited with approval the above passage from the dictum of Lord Summer stated as follows:

> "*A sound starting point for consideration of any question of admissibility is the dictum of Lord Summer in Ibrahim v. the King … Given this deeply entrenched and quite unequivocal principle it seems to their Lordships clear beyond argument that, if the prosecution tender in evidence a statement in writing signed in one or more places by the accused, they are relying on the signature as the acknowledgement and authentication by the accused of the statement as his own, and that from this it must follow that, if the voluntary character of the signature is challenged, this inevitably puts in issue the voluntary character of the statement itself."*

[27] See Archbold 2008, para. 15-384; see also *R v. Rennie*, 74 Cr. App. R. 207, CA
[28] [1914] AC 599, 609
[29] [1982] AC 204 @ 220

32. I also remind myself therefore, that the rule which requires the trial judge to be satisfied beyond reasonable doubt that an incriminating statement by the accused was given voluntarily before deciding that it is admissible in evidence, is anomalous in that it places the judge in a position where he must first make his own finding of fact and thus creates a unique and inevitable overlap between the fact-finding functions of judge and that of the jury. Thus, I further remind myself that at the conclusion of the *voir dire*, I must be satisfied beyond reasonable doubt that the statement of October 26, 1999 was in fact given voluntarily in the sense described by Lord Summer, and that this Court must form its own view, based on the evidence, of how the statement came to be produced.

33. Lord Bridge of Harwich put the matter this way:

> "*In the case presently under consideration, where the accused [effectively][30] denies authorship of the statement but admits signing it under duress, the overlap of functions is more complex. Hearing evidence on the voir dire, the judge will of necessity examine all of the circumstances and form his own view of how the statement came to be written and signed."*[31]

34. This general principle was somewhat differently formulated by Lord Hailsham of St. Marylebone, in the case of *Wong Kam-ming v. The Queen*[32] when he said that-

> *"..any civilised system of criminal jurisprudence must accord to the judiciary some means of excluding confessions or admissions obtained by improper methods. This is not only because of the potential unreliability of such statements, but also and perhaps mainly, because in a civilised society it is vital that persons in custody or charged with offences should not be subjected to ill treatment or improper pressure in order to extract confessions. It is therefore of very great importance that the courts should continue to insist that before extra-judicial statements can be admitted in evidence the prosecution must be made to prove beyond reasonable doubt that the statement was not obtained in a manner which should be reprobated and was therefore in the truest sense voluntary."*

[30] My emphasis
[31] [1982] AC 204, 221
[32] [1980] AC 247, 261

35. I therefore, bear all of these well-established principles in mind as I consider the instant matter.

C. Grounds of Challenge

36. I now turn to consider each of the grounds upon which the defence have put the prosecution to proof that the impugned statement is voluntary and admissible.

Oppression

37. The defence, although not citing any specific authorities in support of this head of their submission, say that the statement of October 26, 1999 was involuntary because it was obtained by oppression in the form of-

(a) "*Persistent questioning* of the Accused by Woman Police Constable Mc Kenzie concerning the part the Accused played in the allegation made against him, and the Accused denial of doing any of the act made in the allegation against him";

(b) "The *refusal* by Inspector Silverthorne to allow the Accused to have his mother present during the period he kept the Accused in a room questioning him at the San Juan Police Station, between the hours of 8:25 a.m. and 11:15 a.m. on the 26/10/99, notwithstanding that his mother was at the Station";

(c) "The *persistent questioning* of the Accused by Police including Inspector Silverthorne and Woman Police Constable Mc Kenzie at the San Juan Police Station on the 26/10/99 *without allowing the Accused to have a meal and or refreshment*, and the interviewing and recording of the caution statement from the Accused at a time when his free will was sapped"; and

(d) "*Inducements* made by Inspector Silverthorne to the Accused that he would not be allowed to leave the Station and go home until he gave a statement that he had committed the acts complained of."

38. In response to this the State contends that the will of the Accused was not sapped and that therefore, this ground of the defence's submission cannot be sustained. They further contend that although the Accused alleged that he and his mother, Jean Roberts, arrived at the San Juan Police station at 8:05am on October 26, 1999, that suggestion is denied by the State. Counsel for the State argued that on the evidence for the State, the Accused and his mother both arrived at the San Juan police station at about 11:00am on the day in question and left around 1:30pm on the same day, after the statement was recorded from the Accused. Counsel for the State further argued that, if this Court accepts the State's version of the evidence, following the decision in the case of *Abdul Hakim Louis*, the two (2) and a half hours spent by the Accused at the police station, would not be sufficient to vitiate the voluntariness of the statement and thus render it inadmissible.

39. In that regard, the State also argued that the Accused was in fact offered a meal while at the police station and that it was the Accused and his mother who voluntarily attended the San Juan police station on the day in question- rather than his having been brought there by the police. Counsel for the State therefore contends that in those circumstances, it is not open to the Accused to claim that he was oppressed by virtue of his not having eaten since the night before, when he was at liberty to have a meal before attending the police station on the day in question.

40. The State further denied that the Accused was persistently questioned by either Insp. Silverthorne or WPC Mc Kenzie on the day in question and they contend that no inducements were offered to the Accused to obtain the impugned statement.

41. For expository convenience, it is useful to first examine the meaning that the word 'oppression' bears at common law and in the context of an application such as this. At common law, the word "oppression", when used in the context of an application challenging the admissibility of a confession, was taken to mean "*something which tends*

to sap and has sapped the free will which must exist before a confession is voluntary.[33]" That is still the law in this jurisdiction today.

42. Additionally, in the 2005 case of *R v. Mushtaq*[34] Lord Carswell employed the following definition of oppression that was taken from that celebrated 1968 speech by Lord MacDermott and quoted with approval in *R v. Prager* [1972] 1WLR 260, CA 266):

> "…*questioning which by its nature, duration or other circumstances (including the fact of custody) excites hopes (such as the hope of release) or fears, or so affects the mind of the subject that his will crumbles and he speaks when otherwise he would have stayed silent."*

43. In that regard therefore, I bear those principles in mind and remind myself that, according to *Keane- "whether or not there was oppression in any particular case involved a consideration of a wide variety of factors, including the length of time of any period of questioning, whether the accused had been given proper refreshment and the characteristics of the accused in question*"[35].

44. The authorities nevertheless suggest, that in order for a particular *state of affairs* to be oppressive, there must be something above and beyond that which is inherently oppressive in police custody and must import some oppression actively applied in an improper manner by the police. That was the view held and upheld by the Court of Appeal in the case of *R v. Fulling*.[36] In that case the Court of Appeal held that "oppression" in section 76(2)(a) of PACE was to be given its ordinary dictionary meaning. Lord Lane CJ at page 432 stated that-

> "*The Oxford English Dictionary as its third definition of the word runs as follows: 'exercise of authority or power in a burdensome, harsh, or wrongful manner; unjust or cruel treatment of subjects, inferiors, etc., or the imposition of unreasonable or unjust burdens'."*

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[33] Per Sachs J in *R v. Priestly* (1965) 51 Cr. App. Rep 1n at p. 1-2; applied in *R v. Prager* [1972] 1WLR 260, CA
[34] [2005] 2Cr. App. R 32 HL
[35] The Modern Law of Evidence, 4th Ed. p. 321
[36] [1987] QB 426, CA

45. The authorities also suggest however, that although oppression requires some sort of *deliberate impropriety*, not all impropriety will amount to oppression. Sometimes it will be a question of degree. Thus, if an interrogator is rude and discourteous, raising his voice and using bad language, this does not necessarily constitute oppression,[37] but bullying and hectoring by officers adopting a highly hostile and intimidatory approach will amount to oppression.[38]

46. In the instant case, I find that I am persuaded by the evidence for the State on this point and I am satisfied so that I feel sure that the allegations made by the defence regarding the manner in which the Accused was treated while at the police station are unfounded. Indeed, even if the accused were to have been persistently questioned as the defence alleged, (which I do not accept happened) I am not persuaded that there was anything in those circumstances (both as regards the nature and degree of the alleged questions) that was above and beyond that which is inherently oppressive in police custody. The evidence of the Accused is that WPC Mc Kenzie questioned him "three to four times" about the allegations and that this was done in the presence of his mother. This could hardly be described as either persistent or oppressive. He further alleged that Insp. Silverthorne also questioned him about the allegations "five to six times", apart from WPC Mc Kenzie. Based on the narrative and sequence of events as chronicled by the Accused and his mother I do not believe that any such exchange ever took place between Insp. Silverthorne and the Accused. According to their evidence, when they met Insp. Silverthorne at the police station he took them to meet WPC Mc Kenzie at a room to the back of the station. There was no suggestion that Insp. Silverthorne was rude, rough or impatient towards them at that time. They testified that while in the room with WPC Mc Kenzie, she questioned the Accused three to four times about the allegation. There is no evidence that she ever left the room during that time to either complain to, or communicate with Insp. Silverthorne. Yet, according to the Accused and his mother, Insp. Silverthorne unsolicited by anyone, returned to the room, pointed to

[37] *R v. Emmerson* (1990) 92 Cr. App Rep 284, CA: See also *R v Heaton* [1993] Crim LR 593 CA
[38] *R v. Paris* (1992) 97 Cr. App. Rep. 99. CA, where the accused, who was of limited intelligence, had denied his involvement over 300 times. But see also *R v L* [1994] Crim LR 839, CA a decision under section 76(2)(b) of PACE, in which although similar methods were employed, *R v. Paris* was distinguished on the grounds, *inter alia*, that L was of normal intelligence and the length of detention was not excessive.

the Accused and said in what could only have been an abrasive tone of voice, "You! Come!" It incites the Court's curiosity as to why Insp. Silverthorne would have had to return to the Accused and speak to him in that manner, if he had no idea as to what stage the interview with WPC Mc Kenzie had reached or as to whether the Accused was co-operating or not. I therefore, find the defendant's entire account regarding this matter absolutely incredible and simply beyond belief.

47. Additionally, I have certainly found no *bona fide* evidence of ill-will, malice or subterfuge on the part of the police regarding the manner in which they dealt with the Accused while he was at the San Juan police station on October 26, 1999. There may perhaps be room for some valid criticism of them on the basis of their apparent slothfulness and perhaps even ineptitude, and I shall come to that presently.

48. I can however find no basis in law, on the facts of this case, upon which a challenge to the admissibility of the impugned statement could be sustained on the ground of oppression.

Inducement

49. As a sub-head in his submissions on the issue oppression, counsel for the Accused has also raised the issue of inducement by alleging that Insp. Silverthorne told the Accused that he would not be allowed to *"leave the Station and go home until he gave a statement that he had committed the acts complained of"*. The State denies that any such inducement was offered.

50. Having found as a fact, that the defendant's entire account regarding his exchanges with Insp. Silverthorne during the time when he claims to have been alone with him in a room, is so fantastic and simply beyond belief, I therefore, find that no such conversation took place and as such no inducement was offered to the Accused.

Breaches of the Judges' Rules

51. I now turn to the issue of the Judges" Rules. The defence have also argued that in particular, there have been *"breach[es] of Appendix A, Judges' Rules, principle (d) and a failure of Woman Police Constable Mc Kenzie to caution the Accused in terms of Rule III of the Judges' Rules in default of the application of principle (d)."* Moreover, they contend that the Judges' Rules have the force of law and that because in the instant case, as they alleged, there have been *so many breaches* by the police in their overall handling of this interview, those breaches were so various and so egregious that they serve to vitiate the validity and propriety of the manner in which the Accused was allegedly treated while at the police station, thus rendering the entire episode fraught with procedural unfairness to the Accused.

52. In response the State has said that not only do they deny the occurrence any of the breaches alleged by the defence, but the Judge's Rules do not have the force of law and as such, the true test is for one to have regard to the overall fairness of the circumstances in which the statement came to be made.

53. In support of their contentions, the defence have cited the authority of *Placid*. However, I do not interpret what was said by my learned brother Volney J., at p. 3 of that judgement to be a pronouncement by the Court that the Judges' Rules now have the force of law- and certainly not in the sense that none compliance with them in any respect would automatically vitiate the validity of any confessions derived there from. Indeed, in the case of *Francois v The State*[39], referred to by Ms. Martin for the State, my brother Volney J., quite rightly in my view, stated, *inter alia*, that-

> *"The Judges' Rules are rules of practice and do not have the force of law. Accordingly, in the event of a breach of the Judges'; Rules the trial judge has a discretion whether to admit or exclude the evidence."*

54. Additionally, John JA, delivering the judgement of the Court of Appeal of Trinidad and Tobago in the case of *Ancil Edmund and Ors,* stated at page 26 paragraph 90 that-

[39] (1987) 40 WIR 388

"*It is well settled that the Judges' Rules are not rules of law but administrative guidelines for police officers to follow during interrogation with persons in custody, including the taking of statements, oral and written. Breaches of those rules do not automatically make a confession inadmissible, the real issue is whether the effect of the breach was to render the proceedings unfair or suspect.*[40]

55. In this regard, I am also guided by the judgement of the Privy Council in the case of *Shabadine Peart*, where, at paragraph 24, Lord Carswell, delivering the judgement of the Court stated-

"*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 standards of fairness which ought to be observed.*

(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) *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."*

56. I therefore reject the submission by counsel for the defence that the Judges' Rules have the force of law as being an inaccurate statement of the current position in law regarding this issue.

Whether Judges Rule III Applies

57. In this case, some moment has been made by the defence of the fact that at the time of the recording of the statement from the Accused on October 26, 1999, the police

[40] See also HKSAR v Chan Kachun CACC 42/1999; and R v. Ng Wai-fai, Cr. App. R. 238/1989 @ p. 6

were (according to Mr. Peterson) in possession of sufficient information to charge the Accused for an offence and therefore, they should have cautioned him in accordance with Rule III of the Judges' Rules. I seize the opportunity therefore, to make a few observations regarding this matter.

58. In the case of *Ancil Edmund and Ors.*, the Court of Appeal of Trinidad and Tobago had this to say:

> "*Our courts, following their English counterparts, have recognised the relationship between Appendix A(d) and Rule III, The State v. Joel Marquis, The State v. Abdul Hakim Louis a/c Muslim and Marlon Charles a/c Toby,*[41] *and the police cannot be permitted to excuse a failure to apply Rule III by claiming that they had not charged a suspect or that they did not have evidence enough to prefer a charge. It is for the court on an objective analysis to determine whether there is at any stage of any investigation evidence sufficient to prefer a charge. The appropriate action would be for police investigators to err on the side of caution than to deprive the suspect of safeguards intended to prevent unintentional self-incrimination.*"

59. It is not in dispute that no Rule III caution was administered to the Accused at any time before or during the recording to the impugned statement. The State say that the reason for this is that the information which the police had available to them at the time was insufficient to base a charge. What therefore, is the information that the police had at the time of recording the interview from the Accused on October 26, 1999? The evidence for the State on this point is that on the day in question the police (WPC McKenzie) had available to them at least the statement of the virtual complainant and the medical report in respect of her examination. It is not clear from the evidence on the *voir dire*, (which is all that I am concerned with at this stage), whether the statement of the virtual complainant's mother, Ms. Patsy Garcia, was also available to them at that time.

[41] HCA 127/04; HCA No. Cr. 129/04

60. In my view the police were correct to proceed with the requisite degree of caution before deciding to charge the Accused on the basis of the information which they had available to them on September 28, 1999 when the virtual complainant and her mother made the initial report. This was particularly so because the virtual complainant was a mere four (4) years old at the time and they would have been obliged to find some other evidence, independent of hers in order bring the quality of the evidence to a stage where it could be said that there might be a reasonable prospect of a conviction. The other relevant information which they had on September 28, 1999 was the medical report for Dr. Neil Singh. However, the virtual complainant gave her formal written statement on October 14, 1999 in which she detailed at least some of the allegations against the Accused. When therefore, that information is married with that of the medical report which by that time they already in their possession, in October, 1999- the evidence of the virtual complainant, in my view, assumed an entirely different complexion. Not only did the police now have available to them the particulars of at least the allegations that the Accused had put his finger into the virtual complainant's vagina and that as a result of which, there was some bleeding- they also had the very powerful, **though not corroborative,** evidence of the doctor who found that this four (4) year old girl, Rainn Ms. Bennett, had "*a partially ruptured hymen*." In those circumstances therefore, the police would have had available to them, at that stage in the investigation, sufficient evidence to prefer a charge against the Accused. The obvious question which follows is this: had the Accused elected to remain silent when questioned by the police about the allegations made against him, and there was in fact no other evidence than that which they had at the time, would it not be sufficient for them to have charged the Accused on the basis of what they did have? In my view, yes. The distinction between the Rule II type of scenario and that of Rule III is in effect the distinction between suspicion and accusation. In the instant case, the evidence available to the police at the time of the recording of the statement from the Accused falls squarely into the latter category.

61. That being the case, in my view the application of Rule III cannot be avoided and the Accused should have been cautioned in accordance with the requirements

thereof. Nevertheless, this failure, in and of itself, is not in the view of this Court, sufficient to vitiate the voluntariness of the October 26, 1999 statement. The law requires that I consider the overall fairness of the entire event, and I shall deal with that presently.

Lack of Contemporaneous Notes

62. Mr. Peterson made somewhat of a truculent fuss over the fact that there were no notes made or kept by the police regarding this matter apart from the one (1) entry in the station diary on October 26, 1999 that merely reflected the fact of recording of the statement from the Accused. In that regard he contended that the absence of such notes [*to use his words*] creates "procedural unfairness to the Accused", which is incurable by the other mechanisms inherent in the trial process and available to the Court.

63. The State's answer to this argument is first of all that the law does not impose upon them a duty or requirement to produce that which does not exist- an argument which in my view would have been of greater weight had the defence complained of an abuse of process due to non-disclosure. Secondly, they say that in any event not withstanding the absence of the requisite notes, the Court must go on to look at the overall fairness of the totality of circumstances under which the Accused came to give the impugned statement.

64. In support of his contention Mr. Peterson cited the cases of *Keenan* and *Canale*, the relevant aspects of which are worth reciting herein for expository convenience. In *Keenan* Lord Hodgson, delivering the judgement of the Court of Appeal stated that-

> "*In R v Delaney (1989) 88 Cr App R 33 this court adverted to something else which makes it desirable that the code*[42] *provisions as to verballing should be strictly complied with. R v Delaney was a case where the appellant had been interviewed at length, but no contemporaneous record was made and it was not until the following day that a note was*

[42] Code of Practices for Detention, Treatment and Questioning of Persons by Police Officers (Code C)

made by the interviewing officer. In giving the judgement of this court Lord Lane said (at 341-342):

> *'By failing to make a contemporaneous note, or indeed any note, as soon as practicable, the officers deprived the court of what was, in all likelihood, the most cogent evidence as to what did indeed happen during these interviews and what did induce the appellant to confess. To use the words of [counsel for the appellant] to the court this morning, the judge and the prosecution were pro tanto disabled by the omission of the officers to act in accordance with the Codes of Practice, disabled from having the full knowledge upon which the judge could base his decision.'"*[43]

65. Although neither the UK PACE Act 1984 nor the Code of Practice are part of the laws of Trinidad, counsel for the defence has asked this Court to have regard to the dicta of Lord Hodgson in the particular circumstances of this case. Moreover, he commended the dicta of His Lordship at page 603 in <u>*Keenan*</u> where the learned judge went on to make the following observations:

> *"When the defence seek to exclude evidence obtained by or in circumstances alleged to amount to breaches of the 1984 Act or the codes, there are a number of different situations which may face the judge. (a) One or more breaches of the code may be apparent in the custody record itself or from the witness statements. Examples of the first situation might be where an order has been made by an officer of insufficiently high rank or no meal has been offered at the proper time (para 8.6). This case affords an example of the second. It was almost certain, on the evidence of the witness statements themselves, that there had been a breach of para 11.3(b)(ii), and a glance at the officers' notebooks would have revealed breaches of the other two paragraphs. (b) There may be a prima facie breach which, if objection is taken, must be justified by evidence adduced by the prosecution. An order refusing access to a solicitor can only be justified by compelling evidence from the senior police officer who made the order: see R v Samuel [1988] 2All ER 135, [1988] QB 615. (c) There may be alleged breaches which can probably only be established by the evidence of the defendant himself, e.g. cases of alleged oppression or in relation to para 13 of the code (persons at risk). Clearly the procedure appropriate in each case may vary. In (a) it may be that all that will be necessary will be an admission by the prosecution, followed by*

[43] [1989] 3AER 598 @ 603-4

argument. However, in cases like the instant one, we do not think that the prosecution will often be content to take this course in cases where they wish to persuade the judge to allow them to adduce their evidence despite the breaches. We have in mind what this court said in R v Delaney in a passage from the judgment immediately following the one already cited. Lord Lane CJ said (at 342):

> *'The judge of course is entitled to ask himself why the officers broke the rules. Was it mere laziness or was it something more devious? Was it perhaps a desire to conceal from the court the full truth of the suggestions they had held out to the defendant? These are matters which may well tip the scales in favour of the defendant in these circumstances and make it impossible for the judge to say that he is satisfied beyond reasonable doubt, and so require him to reject the evidence.'*

66. In *Canale*, an authority to which I have also been referred by counsel for the defence, Lord lane CJ, delivering the judgement of the Court, had this to say:

> "*As this court recently emphasised in R v. Keenan [1989] 3 All ER 598, [1989] 3 WLR 1193,…the importance of the rules relating to contemporaneous noting of interviews can scarcely be over-emphasised. The object is twofold: not merely is it to ensure, so far as possible, that the suspect's remarks are accurately recorded and that he has an opportunity when he goes through the contemporaneous record afterwards of checking each answer and initialling each answer, but likewise it was a protection for the police, to ensure, so far as possible, that it cannot be suggested that they induced the suspect to confess by improper approaches or improper promises. If the contemporaneous note is not made, then each of these two laudable objects is apt to be stultified."*

67. Thus, in the instant case the State has effectively conceded that apart from the actual caution statement of the Accused and the station diary extracts already disclosed to the defence, there were no other notes made by the officers in this investigation. However, this court is entitled probe further into the matter and ask itself, having regard to the evidence and the demeanour of the witnesses as they testified, why did the officers fail to comply with the rules of their own Standing Orders? Was it mere laziness or was it something more devious? Was it perhaps a desire to conceal from the court the full truth of the suggestions they had held out to the defendant?

68. I have given careful consideration to the evidence of the two police witnesses for the State and paid close attention to both the manner and the substance of their evidence and I am persuaded that the failure to make and or maintain the requisite notes in this instance was not as a result of any sinister motive on the part of the officers, but rather the inexperience of WPC Mc Kenzie at the time. I accept the evidence and explanations of both officers as to why better notes were not made or kept in the particular circumstances of this case, and I find no evidentiary basis upon which anything other than a lamentable oversight on their part could be attributed to their omissions in this regard. However, this Court notes that such oversights or omissions on the part of police officers are far too common during the investigative process and should never be treated lightly. While therefore, in the particular circumstances of this case, it may be explainable, it could never in this Court's view be excusable, since the existence of such notes is often to vital to the State's ability to demonstrate the overall fairness and integrity of the investigative process. In many cases, the absence of such contemporaneous notes, particularly if they relate to important issues in the trial, together with evidence of bad faith on the part of the officers, may well tip the scales in favour of the defendant and in the words of Lord Lane, CJ, "make it impossible for the judge to say that he is satisfied beyond reasonable doubt, and so require him to reject the evidence".

69. Thus, the importance of the rules relating to making and maintenance of contemporaneous notes of interviews and of properly documenting ever phase of the investigative process cannot be over-emphasised. In addition to the two objects already identified by Lord Lance, CJ in *Canale*, I think it is also quite indispensible to the level of public confidence which can be had in the integrity of the investigative process as well and the police would do well to ameliorate their practices in this regard.

Unfairness

70. I now turn to what can be described as the gravamen of the issues raised by the defence on this application. The defence have also raised the issue of unfairness as a separate and distinct ground of objection to the admissibility of the impugned

statement. They contend that the particular unfairness complained of, took the form of-

(a) "The failure of Woman Police Constable Mc Kenzie to inform the Accused that he may be prosecuted for an offence and that any further statement (by him) would be taken down in writing and might be given in evidence – a breach of Rule III, Judges' Rules";

(b) "The invitation made by Woman Police Constable Mc Kenzie to the Accused inviting him to give a written statement which implicated him in the acts complained of, after she had enough evidence to prefer a charge against the Accused";

(c) "Failure of Woman Police Constable Mc Kenzie to make contemporaneous notes of the first interview with the Accused whilst he was in the presence of his mother at about 8:10 a.m. on the 26/10/99";

(d) "The failure of Woman Police Constable Mc Kenzie to inform the Accused of his rights to communicate and consult with an attorney;" and

(e) "The failure of Woman Police Constable Mc Kenzie to comply the provisions of Appendix A Rule V (d) of the Judges Rules. She dictated the statement to the Accused as to what she wanted him to say, and not what he wanted to say".

71. The State refutes the allegations made by the defence with regard to the Accused's mother not being present throughout the recording of the statement. The state also refutes the allegation that there were two (2) interviews. They also argue that the case of *Adams* is distinguishable from the instant one in that the Accused in that case (who was also a minor) was not afforded the opportunity to have a parent or guardian present during the recording of the statement.

72. In the case of *R v Sang*[44], Lord Diplock recognised that, "… there is discretion to exclude evidence which the accused has been induced to produce voluntarily if the method of inducement was unfair."[45] The identical sentiment was expressed by Lord Devlin in The Criminal Prosecution in England at pages 38-39. These sentiments were cited with approval by the Privy Council in *Peart* at paragraph 22 where their lordships, quoting Lord Devlin, wrote:

> "*The essence of the thing is that a judge must be satisfied that some unfair or oppressive use has been made of police power. If he is satisfied, he will reject the evidence notwithstanding that there is no rule which specifically prohibits it; if he is not 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 Judge' Rules were made for the guidance of the police and not for the circumscription of judicial power."*

73. According to their Lordships at paragraph 23 of *Peart*, "… 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."

74. In assessing the overall fairness of the circumstances under which the accused came to produce the impugned statement, I have had particular regard for the fact that the accused was only fourteen (14) years of age at the time, but I also bear in mind the fact that on the totality of the evidence his mother Jean Roberts was present with him during the course of the recording of the said statement and that the Justice of the Peace Mr. Abrahim Ali also attended upon him, at the request of the police in respect thereof.

75. In all of the circumstances of this case, I find that the interview of the Accused conducted by the police on October 26, 1999 was fair and in no way oppressive to the Accused. Although, the Accused was only fourteen years old at the time, his level of intelligence and literacy were such that he could have and did indeed,

[44] [1980] AC 402
[45] [1980] AC 402 at p. 436

understand the nature of the exercise that he was participating in. Additionally, the general circumstances under which the caution statement came to be recorded were such that to the mind of any keen and objective observer, they could only be described and fair and scrupulously above board. Not only was his mother there with him throughout the entire process, but at the request of the police officers, Mr. Abrahim Ali, a Justice of the Peace was also invited to attend upon him to seek and represent his interest. Neither the Accused nor his mother made any complaint to the Mr. Ali regarding any matter whatsoever concerning the Accused, or the circumstances under which the latter came to give the statement- although they well had the opportunity to do so and were left alone with him for some time.

76. Further, even the very interview process itself cannot be faulted and I find nothing in the nature, duration or overall tone of the process that would even tend to suggest that the totality of a circumstances could lead to any degree of unfairness whatsoever to the Accused. He and his mother attended the police station voluntarily on the day in question. He was questioned about the allegations for a little over an hour, after which they left and went on their way.

VI CONCLUSION AND FINDING

77. Thus, for the reasons that I have outlined herein, I accept the account given by the witnesses for the State. I find that I am satisfied so that I feel sure that the statement of the Accused given to the police on October 26, 1999 was given voluntarily and is therefore, admissible.

André A. Mon Désir

Judge