**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT CRI/VBI/86/3/2014**

**Criminal Division**

**Between:**

**THE KING**

*Applicant*

**VS**

**PETER ROLLE**

**JERMAINE CURRY**

**JUSTIN WILLIAMS**

***Respondents***

**Before: The Honourable Mr. Justice Gregory Hilton**

**Appearances: Basil Cumberbatch along with Tabitha Frazier**

**for the Director of Public Prosecutions**

**Sonia Timothy for Peter Rolle**

**Murrio Ducille K.C. along with Bryan Bastian for Jermaine Curry**

**Stanley Rolle for Justin Williams**

**Hearing Date: 22nd April, 2023**

**RULING**

**Criminal Law – Voir Dire – Re: Record of Interview and Statement of Justin Williams – Medical evidence of injury to Justin Williams while in Police custody – whether explained by the Police.**

HILTON, J.

1. On 20th March, 2023 this Court empanelled a jury to commence the trial of the three (3) Accused on charges of Murder (4 counts) and Attempted Murder (6 counts) alleged to have occurred on 27th December 2013. The Crown, after a number of witnesses were called, indicated to the Court that they intended to enter in to evidence during the trial a Record of Interview (ROI), Statement and Video Enquiry conducted with the Accused Justin Williams by R/Inspector Keith Rolle in the presence of Cpl. 2578 Martin on 18th and 19th February, 2013.

2. The Accused through his Counsel challenged the admissibility of the Record of Interview, Statement and Video Enquiry on the basis of oppression and abuse meted out to him by then Sgt. 1908 Rolle (now R/Inspector Rolle), Sgt. 2357 Mark Penn and a number of unknown other officers on 18th and 19th February, 2014 and his participation in the Record of Interview, Statement and Video Enquiry was involuntary, and as a result of the treatment and abuse he received at the hands of the police.

The Accused through his Counsel also alleged that he was offered an inducement by R/Inspector Rolle to give a Statement and do the Video Enquiry. The inducement being that if he did so he would be released.

The Accused also belatedly alleged that he was denied the right to have an attorney present at the Record of Interview and Statement and Video Enquiry.

3. Counsel for the Crown contends that the Record of Interview, Statement and Video Enquiry were conducted fairly and that the Accused participated voluntarily. That there was no oppression (abuse/threats) meted out to the Accused prior to the Record of Interview and Statement being conducted; And no inducement was offered to the Accused to get him to participate.

Counsel also submitted that the Accused was not denied access to his Counsel nor were his constitutional rights breached.

4. The Court entered into a Void Dire and heard eleven (11) witnesses in the absence of the Jury; eight (8) for Prosecution and three (3) for the Defence to determine the admissibility of the Record of Interview, Statement and Video Enquiry.

5. The issue to be determined on the Voir Dire is whether they should be excluded as having been conducted (and the Accused participation obtained) in circumstances of oppression or as a result of anything said or done or omitted to be said, or done by the police which would render the Record of Interview, Statement and Video Enquiry unreliable.

6. Counsel for the Accused raised three (3) areas of objection to the admissibility of the Record of Interview, Statement and Video Enquiry:-

a) That immediately prior to the conduct of the Record of Interview, Statement and Video Enquiry on 18th and 19th February, 2014, the Accused was denied his Article 19(2) Constitutional right to “retain and instruct a legal representative of his choice and hold private communication with” him and was not permitted to have his lawyer present during the Record of Interview.

b) That the Accused’s participation in the Record of Interview and Statement and Video Enquiry was secured by an inducement by R/Inspector Rolle that if he gave information he would gain his freedom” and be released.

c) That the Accused participation in the Record of Interview, Statement and Video Enquiry process was obtained as a result of beating and threats meted out to him by the police on 18th and 19th February, 2014 prior to the Record of Interview, Statement and Video Enquiry.

**THE LAW**

7. The Court has considered the Law, as it relates to these issues contained in Section 20(1),(2),(3),(4) and (5) and 178(1) of the Evidence Act; And Article 19(2) of the Bahamas Constitution.

**EVIDENCE ACT**

Section 20 provides:

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.

(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.

(3) In any proceeding where the prosecution proposes to give evidence a confession made by an accused person the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence of any facts discovered as a result of the confession and so much of the confession as relates thereto.

(5) In this Act –

“Confession” includes any statements 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 threats of violence (whether or not amounting to torture).

Section 178 of the Evidence Act provides:

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 effects on the fairness of the proceedings that the court ought to admit it.

(2) Nothing in the section shall prejudice any rule of law requiring a court to exclude evidence.

**CONSTITUTION**

Article 19(2). Provides:

19(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understand, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal representative of his own choice and to hold private communication with him: and in the case of a person who has not attained the age of eighteen years he shall also be afforded a reasonable opportunity for communication with his parents or guardian.

8. The term ”oppression” has been said to include according to **Sach J. in Note to R. v. Preistly 51 Cr. App. R. 1.**

“Things such as length of time of any individual period of questioning …….. Whether the accused person has been given proper refreshments or not………..”

He describes it as “something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary.”

In R. v. Fulling [1987] Q.B. 426 Lord Lane at 452 paragraph F-G had this to say regarding the terms oppression:

“This in turn leads us to believe that oppression in section 76(2) (the equivalent to our s. 20(2)(a)) should be given its ordinary dictionary meaning. The Oxford English dictionary at its third definition of the word runs as follows: **“Exercise of authority or power in a burdensome, hash or wrongful manner; unjust or cruel treatment of subject inferior etc; the imposition of unreasonable or unjust burdens.”** One of the quotations given under the paragraph runs as follows: “There is not a word in our language which expresses more detestable wickedness than oppression”. We find it hard to envisage any circumstances in which such oppression would not entail some impropriety on the part of the interrogator.”

**THE EVIDENCE**

9. In brief the Prosecution’s case on the Voir Dire is that around 7:30 a.m. on the 18th February, 2014 the Accused was arrested at his residence without incident and booked in at the Grove Police Station and then taken to Central Detective Unit (C.D.U.). He was cautioned with regard to the alleged offences and later that same day participated voluntarily in the Record of Interview and Statement process and on 19th February, 2014 voluntarily participated in the Video Enquiry

10. Sgt. 2357 Mark Penn testified that on 18th February, 2014 he along with the Sgt. 1908 Keith Rolle went to the home of the Accused Justin Williams and after a protracted search found the Accused in the bathroom cupboard and he pulled him out of the cupboard and cautioned and arrested him. He testified that during the arrest neither he nor Sgt. 1908 Rolle assaulted the Accused and the accused made no complaints to him of any medical issues.

Under cross-examination he said the Accused had no complaints of pain or injury. He denied Counsel’s suggestion that he used excessive force during the arrest of the Accused and he denied that he kicked and punched the Accused in his stomach area or that he threw the Accused to the ground after he pulled him out of the cupboard.

11. R/Inspector Keith Rolle (who was Sgt. 1908 Rolle in 2014) testified that on 18th February, 2014 he along with Sgt. Penn and Officer Deveaux went to the Accused home where the Accused was arrested at around 7:30 a.m., he said neither he nor Officer Penn punched or kicked the Accused at his home during the arrest.

He testified that later the same day at around 5:30 p.m. he cautioned and interviewed the Accused in the presence of Cpl. Martin and the Accused voluntarily gave a Statement. He said that prior to the interview neither he nor any other officer punched or kicked the Accused in his presence and the Record of Interview and Statement were video recorded. He testified that the Accused was offered his rights and the Record of Interview and Statement were identified by him and tendered as exhibits in the Voir Dire. He said he offered no inducement to the Accused.

Under cross-examination he denied that Sgt. Penn threw the Accused on the ground after arresting him and denied that at the arrest he and Sgt. Penn hit and kicked the Accused to his stomach.

He said the Accused on his arrest did not complain of any pain but said he only had one kidney as a result of a prior motor-cycle accident.

When pressed by Defence Counsel he admitted that it was not in his report that the Accused said he was in a prior motor-cycle accident.

He denied that he and other officers beat the Accused while at Central Detective Unit about the body prior to the Record of Interview process and specifically denied hitting the Accused with a cricket bat to his back and abdomen.

He said he commenced the Record of Interview with the Accused at 5:25 p.m. on 18th February, 2014 and while he was aware that the Accused had been taken to the hospital earlier on 18th February, 2014 he did not know what time he was discharged.

He said he did not ask the Accused if he was well enough to participate in the Record of Interview and did not know if he had received his pain medication Voltaren prior to the Record of Interview. He said he did not know the Accused was prescribed Voltaren by the doctor on 18th February, 2014 but indicated that he knew Voltaren was for pain relief. He said as far as he was aware the Accused was well enough to participate in the Record of Interview on 18th February, 2014.

He categorically denied that he offered any inducement to the Accused, that if the Accused gave information about the shooting in Fox Hill on 27th December, 2013 he would have him released.

He denied Counsel’s suggestions that after he charged the Accused on 22nd February, 2014 and the Accused said “man I tell you what happened and us still charged me” that, that was evidence that the inducement had been given by R/Inspt. Rolle to the Accused.

12. D/Cpl. Nikita Pickstock testified that he video recorded the Record of Interview and Statement of the Accused on 18th and 19th February, 2014 and identified the videos which were exhibited and played in Court.

13. Dr. Nadia Gilbert testified that she saw and examined the Accused on 18th February, 2014. She was deemed an expert in acute medicine and she said his injuries were urinary infection and soft tissue muscle pain to the left side of the abdomen. She said she prescribed him pain medication. Voltaren and an x-ray was requested.

Under cross-examination she said she did not have her notes and did not recall him saying he was beaten, and if he did say so she would have it documented in her notes.

She said in her opinion a urinary tract infection would not cause a person to vomit blood.

She said in her opinion if blunt force is applied to the body it is likely that a person can suffer internal injury or bleed. She said a cricket bat is capable of causing blunt force trauma.

Under re-examination she said that if a patient did not use a prescription they could return to hospital for medical attention. She said there are many things that can cause blunt force trauma.

In answer to a question from the Court she said that she diagnosed the muscle pain to the left abdominal region from her physical examination of the Accused.

She said in her opinion (on a question from Defence Counsel with leave) that she would not expect abdominal pain to be present from motor-cycle accident from 3-5 years prior.

14. Dr. Hastings Johnson testified that the Accused was seen on 25th February, 2014 at Bahamas Department of Correctional Services (BDOCS) by a Doctor Curry. He was deemed a medical expert and was permitted to read the medical notes of Dr. Curry with whose handwriting he was familiar. The Medical Report was tendered and it indicated that the Accused complained that he was beaten by the police; that he was punched to his face and had an abcess to his cheek. The report noted he complained of being beaten about the body and having body pain. He was prescribed Myalger for muscle pain and prescribed an anti-inflammatory as well as antibiotics.

He explained that “abcess” is a collection of puss due to infection in an area. He opined that if a patient does not take prescribed medicine his pain could remain or get worse.

Under cross-examination he said beating can cause swelling and injury along with a thousand other causes. He admitted that only one cause was listed on the medical form. (i.e. being beaten by police).

He said blunt force trauma can cause an abcess and for an abcess to form in his opinion might indicate an injury that took a week or longer to heal.

He said while an extreme urinary tract infection could possibly cause a person to vomit. It would not cause vomiting of blood.

15. Sgt. Welver Oliver testified that he conducted an interview with the Accused on 19th February, 2014 in an unrelated matter at 4:50 p.m. He said that the Accused asked for his medication. He said he contacted the Accused’s wife who said she did not know he was on medication, and he said the Accused said he had the medication for a previous motor-cycle accident injury. He said that the Accused did not appear to have any visible injuries and said the accused did not say the year he had had the motor-cycle accident.

Officer Welver under cross-examination said he was not aware that the Accused was seen by a Doctor while in police custody on 18th February, 2014 and was given a prescription.

16. R/Sgt. 150 Margaret Gibson testified that on 21st February, 2014 she was at work at the Police Station when the Accused’s Mother came to the station with medication for the Accused. She testified that the mother told her that the lawyer had said to her that the medication should not be given to the Accused.

She said she didn’t recall that Emergency Medical Services (E.M.S.) personnel came and took the Accused to the hospital on the morning of 21st February, 2014.

17. Retired Sgt. 1872 Diedre Ferguson testified that on 19th February, 2014 she saw the Accused at around 8:20 a.m. and he was spitting up blood in the cell and asked to call his mother for his medication, and she said his mother said that his girlfriend has his medication.

DEFENCE EVIDENCE

18. The Accused testified in the Voir Dire he said between February, 2013 and 18th February, 2014 he had no medical issues; nor did he experience any vomiting up of blood prior to 18th February, 2014.

He testified that he first began to vomit blood at the police station on 18th February, 2014.

He testified that during his arrest on the morning of 18th February, 2014 Officers Penn and Rolle assaulted him. Penn punched and kicked him in is abdominal area and Sgt. 1908 Rolle hit him in his back.

He said he was scared and frightened. He said after he was taken to Central Detective Unit (C.D.U.) Sgt. 1908 Rolle and about six (6) officers hit and punched him numerous times and Officer Rolle wapped him on his lower back with a cricket bat and told him if he wants the beating to stop I must do what he tells me and say what he wants me to say in the interview.

He testified that Sgt. Rolle told him if he worked with him he would help him go home.

He testified that after he was beaten by the officers he was taken to the Grove Police Station and was taken to the Hospital because he was in pain.

He said he saw the Doctor and Nurse and the Nurse drew his blood and told him one of his kidneys was ruptured.

He said the doctor ordered an x-ray and told him that the left kidney was damaged.

He said he was prescribed medication, and later that day was taken back to Central Detective Unit.

He said before he participated in the Record of Interview Sgt. 1908 Rolle did not ask him to reach out to his family to get a lawyer.

He said what he said in the Record of Interview and Video Enquire was what Sgt. Rolle told him to say.

He said he went to the hospital a second time while he was in police custody.

He said the reason he did the Record of Interview Statement and Video Enquire was because he was scared and he as promised his freedom by Sgt. 1908 Rolle.

He testified that while he was in the police custody he never received the medication that was prescribed by the Doctor.

He said at his arraignment in the Magistrate’s Court on 24th February, 2014 he told the Magistrate that he was beaten by the police.

He said while in police custody he was vomiting blood and urinating blood and was in pain.

He said when he was taken to the Bahamas Department of Correctional Services he told the doctor who examined him how he was beaten while in police custody, and the Doctor gave him pain medication.

He said that the abcess to his check was a result of being punched in the jaw by the police at Central Detective Unit on 18th February, 2014.

He said that the motor-cycle accident he had had occurred in 2008 (some 5-6 years before his arrest).

Under Cross-Examination he said he doesn’t remember the exact time he was punched but that it was daytime before 12 noon. When the time between 2 p.m. - 3 p.m. on 18th February, 2014 was put to him he said yes he was being beaten at that time.

He said when he went to Magistrate’s Court he was slumped over because of pain. Notwithstanding a picture of him at court standing up straight.

He said Officers Penn and Rolle punched him in his mouth and stomach more than ten (10) times on his arrest; that at Central Detective Unit he was wapped with the cricket bat more than thirty (30) times. He said he was beaten everyday he was in police custody until he went to court.

He said on 18th February, 2014 after he came from the hospital he was beaten again by the police. He said everything in the Statement and Video Enquiry was what 1908 Rolle told him to say.

He denied Counsel’s suggestion that he was never beaten by the police.

He denied Counsel’s suggestion that his injuries were old and not recently caused by the police.

19. D.C. 2733 Lincoln McKenzie testified that on 18th February, 2014 at 10:18 a.m. he took the Accused to Princess Margaret Hospital for medical attention, and remained with him while he was examined.

He testified that at 11:20 a.m. the Doctor checked him and took blood from him and placed and I.V. in his hand. Then at 11:50 a.m. an x-ray was done to his chest. Then at 3:55 p.m. he was discharged and taken back to Central Detective Unit at 4:30 p.m.

Under cross-examination he said while at the hospital the Accused made no noise or complaints. And while he was in his custody he was never beaten or slumped over.

20. Cpl. Francis testified that on 21st February, 2014 he was at Grove Police Station when he spoke to the Accused who told him he need his medication. He testified that the Accused seemed in slight pain as he requested his medication and he tried to contact his mother, and he said that the mother told him that the lawyer said not to give him his medication.

**ANALYSIS**

21. From the evidence in the Voir Dire and on viewing the video of the Record of Interview and Statement and reading the caution at the beginning of the Record of Interview, I do not accept that the Accused was not advised of his right as regards having an Attorney. There is no breach of Article 19(2) of the Constitution. Additionally, as his answer to question 2 in the Record of Interview indicated he said “No” he does not have an Attorney that he wished to consult.

22. With regard to the allegation by the Accused that he was offered an inducement by Sgt. 1098 Rolle to give information and participation in the Record of Interview, Statement and Video Enquire, I find that the evidence of the Accused in this regard is not credible.

Indeed the evidence of the Accused in the Voir Dire in many respects was uncreditable.

I believe the evidence of Sgt. 1908 Rolle in this regard that no inducement was offered to the Accused.

23. On the evidence considered there were three (3) injuries that the Accused was seen to have after he was taken into custody they are:-

a) soft tissue abdominal injury, diagnosed by Dr. Gilbert on 18th February, 2014.

b) spitting or vomiting blood in the cell by W/Sgt. Diedre Ferguson on the morning of 19th February, 2014.

c) Bodily pain and abcess to the cheek as diagnosed by Dr. Curry at Bahamas Department of Correctional Services on 25th February, 2014.

24. With request to each of this injuries the Accused said they were the results of beatings by the police while he was in their custody after his arrest at 7:30 a.m. on 18th February, 2014. The police have denied beating the Accused.

25. Dr. Gilbert’s testimony is that blunt force trauma could cause the abdominal muscle pain she diagnosed on 18th February, 2014.

Dr. Gilbert also gave her opinion the blunt force trauma can cause internal injury and bleeding depending on the severity of the trauma; and the uncontroverted evidence is that the Accused was seen spitting up blood in the police cell on the morning of 19th February, 2014.

26. With regard to the abcess to the cheek of the Accused; Dr. Johnson who read the report of Dr. Curry who had examined the Accused at Bahamas Department of Correctional Services on 25th February, 2014, testified that Dr. Curry’s note is that the Accused said he was punched in his jaw and in Dr. Johnson’s opinion an abcess could form five (5) days to a weak after such and injury.

27. The Police evidence is that they did not beat the Accused and that the abdominal injury diagnosed by Dr. Gilbert was a result of a motor-cycle accident that the Accused had suffered injury from in the past.

The Court has considered the case of ***Thaddeus Williams Jr. v. Regina*** ***SSCr.App.No. 187 of 2017 where Sir Michael Barnett stated at paragraphs 16 and 17.***

16. In my judgment the reliance of the appellant on the decision in **R v Moss** is misplaced as it does not take into account subsequent decisions of this court in **Raymond Moss, Liston Gaitor and Sheldon Alleyne v R** *Criminal Appeal Nos. 19,20 & 21 of 1999* and in **Bowe v R [1999] BHS J No. 36.** In the former case this court said.

“It is not the law that if a prisoner is found with injuries while in police custody which are not explained by the police, the conclusion is inescapable that the injuries were the result of police brutality and any statement allegedly made by the prisoner, is involuntary and thereby rendered inadmissible.” In the latter case this court said: “We do not agree that an injury, however minor, for which no explanation given by the police will cause the statement to be held inadmissible.”

17. The police could hardly be called to explain an injury which on the evidence could have happened before he was in custody and could not been seen from a visible inspection of the appellant who had on no clothes.

28. The Court on reading the ***Mrss, Gaitor and Alleyne*** case takes note of page10 para 20 of the decision which states.

“The infliction or use of violence as results in injuries must necessarily taint the confession. But the fact of injury should not lead to an inevitable conclusion that the injury which calls for explanation is the injury consistent with the application of force by the police”. It is the absence of credible evidence by the prosecution on whom the burden of proving voluntariness rests, which would incline a trial judge to rule against the admissibility of the Statement allegedly given subsequent to the receipt of the injury.”

29. Counsel for the Director of Public Prosecution has submitted that explanation for the injury found by Dr. Gilbert and the spitting of blood seen by officer Ferguson is a result of pre-arrest injury suffered by the Accused in a motor-cycle accident.

30. As stated earlier Section 20(2)(b) of the Evidence Act provides that:-

“The Court shall not allow a confession to be given in evidence…. 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.”

31. The evidence of Officers Penn and Rolle at the time of the arrest of the Accused was that he had no visible injuries and made no complaints of being in pain.

The evidence of Dr. Johnson is that the Accused claimed he was beaten by the police on the day of his arrest and received injury to soft tissue to his abdominal area and abcess to his cheek and was prescribed pain medication.

The evidence of the police witnesses is that the accused complained of pain approximately two (2) hours after he was taken into custody and was taken to hospital where he was diagnosed with soft tissue abdominal pain.

And on the following morning was seen spitting up blood in the police cell which Accused claims was a result of being beaten by the police.

The explanation by the Prosecution is that any injury noted is a result of his pre-existing injury from an old motor-cycle accident.

The Accused testified that he had had a motor-cycle accident in 2008; and Dr. Gilbert testified that after a five (5) year period a bike accident would not show manifestation of soft tissue injury.

The Prosecution have given no explanation as to how the Accused was found to have swelling and abcess to his cheek by the Doctor at Bahamas Department of Correctional Services on 25th February, 2014.

32. In circumstances such as his I find the statements of ***George JA in Mott v. A.G. [1996] BHS J No. 113*** to be applicable.

He stated at para: 17 and 21 as follows:

17. The case against the first appellant is however not quite so clear cut. The evidence is that he was unharmed when he went to the Fresh Creek Police Station at about noon on 29th September and that when he was received in the prison on 3rd October he was suffering from injury to his right leg in the form of an abrasion and acute spasms, injuries which the doctor must have deemed serious for he ordered him to be transferred to the sick bay and prescribed among other medication tetanus toxoid and very strong doses of pain – killers. The police say they inflicted no injury on the appellant. And as the trial judge did not believe his evidence, there is no explanation of how he received the injuries that the doctor found. And needless to say the burden is on the prosecution to prove beyond reasonable doubt that an accused’s statement was free and voluntary. Although disbelief of the defence can lend support in the discharge of that burden, this is not always the case. The unanswered, and therefore the unsatisfactory part of the case for the prosecution is the lack of explanation to the injuries the doctor found that the appellant was suffering from when he left the custody of the police. As was so rightly and admirably put by Georges C.J. in the unreported case R. v. Moss at p.4:

“It appears to me reasonable as a general principle to state that whenever an accused person who has been in custody for some time is found to be suffering from injuries which are consistent with the application of force by the police, that there should be some explanation from the police as to how these injuries came to have been suffered. There are a number of ways in which such injuries could have been sustained – there could have been resistance on arrest or there could have been some altercation with a fellow accused – but once a prisoner in custody does suffer from injuries for which no credible explanation is given then I cannot be certain that these injuries were not inflicted by the police and in those circumstances it is quite impossible to be satisfied that any statement made by the accused is voluntary.”

21. And in case of State v Sattaur & Mohammed (1976) 24 WIR 157 Haynes, C. said inter alia at p. 161 that “it was not necessary to find that the police did any of the things (threats, assaults, promised of release) alleged, in order to exclude the statement, as it was sufficient if he found he was not satisfied they did not. “In support of this proposition he referred to the observation of Williams J. in the Australian case of Smith v. R. (1956) 97 C.L.R. 100 who said inter alia at p. 130 that that “it is not necessary.” to find that the police did any of these things, it is sufficient not be satisfied that they did not And after citing R. v. Rampersaud (supra) that Chancellor said that “(the judge) would not be justified in finding the statement voluntary and so admissible just because he doubted the veracity of the accused or could not regard him as a witness of truth.

33. Even if the version of event as alleged by the Accused is not accepted; (and I do not believe the extent of the beating he says he suffered - he clearly was embellishing his testimony) I still find that injury was suffered by the Accused while he was in police custody during the period in which the Record Of Interview, Statement and Video Enquiry was conducted. No sufficient satisfactory explanation had been given to dispel reasonable doubt as to whether it rendered any confession unreliable or involuntary.

34. Additionally, the fact that the Accused was prescribed pain medication prior to the Record of Interview on 18th February, 2014 for his injury and did not receive it while in police custody prior to the Record of Interview would, in, the Court’s view, be an omission and oppressive and that would render the admission of the Record of interview and Statement unfair.

35. Accordingly, I find that the prosecution has not discharged its burden of proof under Section 20(2)(b) of the Evidence Act beyond reasonable doubt that the Record of Interview, Statement and Video Enquiry was not obtained in circumstances of oppression or was not rendered unreliable by the action of the Police.

36. Consequently the Prosecution will not be permitted to lead any evidence regarding the Record of Interview, Statement or Video Enquiry with Justin Williams in the trial before the Jury.

**Dated this 25th day of April, 2023**

**Gregory Hilton**

**Justice of Supreme Court**