



CARIBBEAN COURT OF JUSTICE

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CCJ ORDERS RELEASE OF MEN ON DEATH-ROW

Port of Spain, Trinidad. The Caribbean Court of Justice (CCJ) today quashed the convictions of the two men sentenced to death for the 2006 murder of Damien Alleyne in the Barbados appellate jurisdiction matter of *Edwards and Haynes v The Queen*. The Court held that the convictions could not be upheld as the sole evidence presented by the DPP was not sufficient to ground a conviction having regard to the provisions and the general spirit of the Evidence Act.

The only evidence linking the appellants to the murder was their alleged oral confessions made to police officers in separate interviews with the officers while at the Glebe Police Station on July 19, 2007, almost a year after Alleyne's murder. Mr. Andrew Pilgrim, QC argued that there was no case to answer as this sole evidence was unreliable and as such the judge should have dismissed the case against the appellants. The CCJ therefore had to consider whether a defendant may be convicted in circumstances where the only evidence against him is a disputed and uncorroborated oral confession allegedly made to investigating police officers whilst the accused was in police custody.

The judgment of the Court was delivered by the Honourable Mr. Justice Anderson, with a concurring judgment by the Honourable Mr. Justice Saunders. The Court acknowledged that, prior to the Evidence Act, there was case law that supported the position that a man could be convicted of an offence where the sole evidence against him was an alleged oral confession provided that the jury was warned that such a conviction may be unsafe. The CCJ, however, highlighted that the purpose of the Evidence Act which was passed by the Parliament of Barbados in 1994 was “to reform the law relating to evidence in proceedings

in courts...” and to apply “standards that are more stringent than the common law, [compel] the judiciary to be guided by fresh approaches and [require] the executive to make available to the police new technologies.”

The Court stressed that the evidence against the accused men had to meet the appropriate standards outlined in the well-known decision of *R v Galbraith*. This meant that the evidence had to be reliable, especially in these proceedings where the punishment for murder in Barbados was death. Based on the spirit of the Evidence Act, alleged confessions made while in police custody could only meet this standard where it was supported by sound or video recordings of or by some other independent evidence linking the accused to the offence. For example, evidence from a witness other than another police officer or some form of forensic evidence (e.g. DNA or fingerprint). In this case, there was no other evidence and as such the judge should have dismissed the case against the appellants.

Mr. Justice Saunders was also of the view that the even if the evidence was sufficient, the judge did not properly warn the jury in accordance with the Act. It was not sufficient for the judge to merely warn the jury that the confessions may have been fabricated by the police, the judge should have also advised the jury that the appellants found themselves in a vulnerable position as they were in police custody where there was no video or sound-recording or some independent person present at the interview who could confirm their account of what actually took place. Additionally, the judge should have told the jury that police officers were generally 'practised witnesses' and it was difficult to tell when such a witness was being dishonest.

As it did last year in *Clarence Sealy v The Queen*, the Court criticized the 1994 suspension of Section 72 of The Evidence Act which makes provision for the use of video and sound-recordings whenever an accused wished to make a confession. Justice Saunders contended that “such an argument is no longer sustainable in this technological era especially in light of the fact that Caribbean states with fewer resources now require police officers to record official interviews with suspects and have been making good use of such technologies”.

While the Court allowed the appeals and quashed the convictions, it emphasised that nothing in the judgment was meant to cast a slur on the integrity or propriety of the Royal Barbados Police Force or of the police officers who served in this case. There is no evidence that the officers involved acted in any way inconsistent with the high traditions of professionalism and probity of the Force.

The judgment of the Court and an Executive Summary are available on the CCJ’s website at www.ccj.org.

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