In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
Case No. 18 of 2023

BETWEEN:

THE KING

-and-

ALEXTA GILL

Before: **The Hon. Justice Juan P. Wolffe**

Appearances: Ms. Khadija Beddeau for the Prosecution
Ms. Nicole Smith for the Defendant

Dates of Hearing: 8th & 9th July 2025
Date of Ruling: 9th July 2025
Date of Reasons: 27th July 2025

RULING

Voir Dire – Application to exclude evidence pursuant to section 93 of the Police and Criminal Evidence Act 2006 – Defendant's audio and video recorded police interviews – Defendant's legal rights upon arrest and during the taking of interviews

WOLFFE J:

1. The Defendant is charged with two counts of Importation of a Controlled Drug contrary to section 4(3) of the Misuse of Drugs Act 1972.

2. On the 8th and 9th July 2025, after the selection of the Jury but before the Prosecution opened its case, a *voir dire* was held in relation to the Defendant's application under section 93 of the Police and Criminal Evidence Act 2006 ("PACE") for the exclusion of two (2) recorded interviews conducted by the police on the 6th and 7th March 2023 whilst he was in police custody at the Hamilton Police Station (the "section 93 application"). In short, section 93 of PACE provides that the Court may refuse to allow evidence if it appears that, after having regard to all of the circumstances (including the circumstances in which the evidence was obtained), the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the Court ought not to admit it.

3. On the 9th July 2025 I dismissed the Defendant's section 93 application and set out herein are my reasons for doing so.

Decision

4. On the 2nd March 2023 the Defendant and his then girlfriend Ms. Jhordan George-Horsford arrived into Bermuda at the L.F. Wade International Airport (the "airport") on board a Westjet flight. However, one of their suitcases did not make the flight and it was not until the 4th March 2023 that this suitcase arrived at the airport on an Air Canada flight. Upon inspection of the suitcase by a customs officer it was discovered that it contained $473,630 worth of cannabis which was wrapped in six (6) individual packages and $203,100 worth of liquid cocaine which was stored in a Johnny Walker bottle. The documentation which accompanied the suitcase revealed that it was in the name of Ms. George-Horsford and that she and the Defendant were staying at the Fourways Inn located in Warwick Parish ("Fourways").

5. Police officers went to Fourways on the 4th March 2023 however the Defendant and Ms. Goerge-Horsford were not present and so they left. The police returned on the evening of the 5th March 2023 and after waiting for the Defendant and Ms. George-Horsford to arrive the police eventually arrested them and conveyed them to the Hamilton Police Station. The

next day on the 6th March 2023 the Defendant was interviewed by the police (the "first interview") in the presence of Mr. Bruce Swan who at the time was the on-call duty counsel appointed by the Legal Aid Office. On the 7th March 2023 the Defendant was interviewed for a second time (the "second interview") and it was also conducted in the presence of Mr. Swan. In the first interview the Defendant essentially stated that he and Ms. George-Horsford came to Bermuda as a tourist and that he had no knowledge whatsoever of the cocaine and cannabis which were in the suitcase. In the second interview the Defendant made statements which arguably amount to an admission that he knowingly brought the drugs into Bermuda for someone named "Andre" in order to erase an $8,000 debt which he owed to this Andre. No doubt at trial the Prosecution will seek to establish that the Defendant's first interview is a web of lies and that the second interview, at least in part, clearly implicates the Defendant. It is these two audio and video recorded interviews of the Defendant which are the subject of the Defendant's section 93 application.

6. Through the submissions of his now attorney Ms. Nicole Smith the Defendant's position is that the admission of the two interviews would have an adverse effect on the fairness of his trial. In the initial iterations of Ms. Smith's submissions it appeared that the Defendant's section 93 application rested on three (3) pillars: (i) that the Defendant was not afforded the counsel of his choice i.e. a Susan Moore-Williams; (ii) that Mr. Swan gave the Defendant no legal advice whatsoever in respect of the giving of the interviews or about what options he had in deciding whether or not to participate in the interviews; and (iii) that the Defendant was not properly cautioned by a Sgt. Courtney Downey and a DC Dre Wilkinson, the interviewing police officers, prior to the taking of the interviews.

7. However, as the evidential portion of the *voir dire* progressed it appeared that the Defendant's section 93 application dramatically transformed to include other theretofore unknown but far more serious pillars. Them being: (i) that Sgt. Downie and/or DC Wilkinson, in the tone and content of their questioning, made him scared and traumatized, and (ii) that Mr. Swan advised him to lie during a pause in the second interview. The belatedness of these recent complaints is definitely a factor to be taken into consideration in deciding on the Defendant's section 93 application.

8. I am compelled to say from the outset that I found Sgt. Downie to be a reliable and credible witness. Conversely, I found the Defendant's evidence to be weak, tenuous and it defied commonsense. In this regard, and in reaching my decision to dismiss the Defendant's section 93 application, I accept the evidence of Sgt. Downie and reject the evidence of the Defendant. Accordingly, I find as a fact that:

(i) **Throughout the entire time the Defendant was in custody at the Hamilton Police Station he was properly informed of, and that he fully understood, his legal rights to remain silent and to have access to legal advice, and further, that he fully understood that these legal rights were ongoing whilst he was in police custody and during the taking of both interviews.**

I therefore find that the police officers who interfaced with the Defendant at all material times, including Sgt. Downie and DC Wilkinson, acted in compliance with sections 58 to 61 PACE which collectively stipulate that a person who has been arrested shall be informed, as soon as he is brought to a police station, that the has a right to remain silent, right to have someone informed when arrested, and the right to access to legal counsel.

The findings in the below sub-headings will provide the specific bases upon which I arrive at this general finding.

(ii) **There was nothing untoward about Mr. Swan appearing at the Hamilton Police Station to provide legal assistance to the Defendant.**

It is indisputable that the Defendant chose Ms. Moore-Williams as his counsel. He accepted though that he did not know of the reputation of specific lawyers in Bermuda and that he chose Ms. Moore-Williams because her name was one of the names at the top of a list of lawyers. However, it is well known in the criminal defence bar that although at the material time Ms. Moore-Williams was the Senior Legal Aid Counsel she did not practice regularly in the criminal courts. It is also

well known that this list of lawyers that the Defendant referred to is a list which contains the names of members of the criminal defence bar who routinely have conduct of criminal matters from the arrest stage of accused persons and through to the trial stages. Ironically, the duty counsel scheme is designed to meet the needs of arrested persons like the Defendant who are foreign nationals and who may need immediate legal assistance. Mr. Swan's name was on this list as an on-call duty counsel and therefore the Legal Aid Office must have been of the view that he was competent enough and adequately equipped to effectively handle criminal matters from arrest to trial and to represent those who are being held in police custody.

So the Defendant's complaint that he did not receive the lawyer of his choosing is vacuous because it is unlikely that Ms. Moore-Williams would have attended the police station to render him legal advice in any event. Criminal law does not comprise Ms. Moore-Williams main diet of cases and so it matters not that Mr. Swan appeared at the police station instead of her. Had Ms. Moore-Williams visited the Defendant to give him legal advice she may have been the subject of a similar application which the Defendant now makes in respect of Mr. Swan. He should not therefore now complain that he was assigned Mr. Swan (someone who does criminal work and who was the on-call duty counsel) and not being given Ms. Moore-Williams (someone who did not do criminal work on a regular basis).

Moreover, upon learning that Mr. Swan was appearing at the police station and not Ms. Moore-Williams the Defendant could have informed the custody officer, and indeed Mr. Swan, that he wanted to have Ms. Moore-Williams represent him instead of Mr. Swan. There is no evidence that he did so and so the inescapable conclusion that can be drawn is that he was content with Mr. Swan coming to the station to represent him.

Finally, it amounts to little that the Defendant did not himself call for Mr. Swan and that someone else called for Mr. Swan. Firstly, the Defendant was in custody and so the obvious inference is that a custody officer would have called Mr. Swan who

was the on-call duty counsel assigned by the Legal Aid Office. Secondly, it would have made no difference whatsoever who appeared to represent the Defendant because the Defendant could not have in any event been able to differentiate between the lawyers who were on the list. Thirdly, and probably most importantly, on the Defendant's evidence he was told by the custody officers that they were unable to contact Ms. Moore-Williams. Had the police waited any longer to try and contact the uncontactable Ms. Moore-Williams then the potential consequence may have been that the Defendant would not have received legal assistance in a reasonable period of time and ultimately his right to access to legal advice may have descended into jeopardy. The fact that the police arranged for the attendance of Mr. Swan is not a diminution of the Defendant's legal right to access to legal advice, it is a fulfilment of it.

(iii) **The Defendant had ample time and opportunity to speak with Mr. Swan prior to, during and after both interviews.**

I accept Sgt. Downie's evidence that prior to the first interview that the Defendant was afforded reasonable time to speak with Mr. Swan. I do not accept the Defendant's evidence that he only met Mr. Swan for the first time in the interview room with Sgt. Downie and DC Wilkinson. Even if he did there was no evidence to suggest that Sgt. Downie and DC Wilkinson denied the Defendant access to Mr. Swan before, during or after the interviews, or, that they spoke to him in the absence of Mr. Swan.

Further, having seen the audio and video recorded interviews, read the transcripts, and seen the Defendant give evidence at the *voir dire* it is clear to me that the Defendant is no shrinking violet and that he exhibited enough intelligence, articulation, and assertiveness that he most likely would have insisted or even demanded that he speak to Mr. Swan prior to and after the interviews. Indeed, the Defendant had the presence of mind to ask for a seven (7) minute break in the first interview and a nineteen (19) minute break in the second interview to speak to Mr.

Swan. Surely, if he was unclear or confused about what was transpiring he could have raised it with Mr. Swan during those breaks, or even at the commencement of the interviews when the police officers told him that he could stop the interview at any time in order to speak to Mr. Swan.

(iv) **It is more likely than not that Mr. Swan gave the Defendant sufficient and competent legal advice before, during, and after the interviews.**

Unlike in the *voir dire* conducted during the Defendant's first trial (which was held in or around June 2024) the Defendant, no doubt for strategic reasons, chose not to call Mr. Swan to give evidence as to what was the nature and extent of the conversations between him and Mr. Swan when he was in police custody (which included the taking of the interviews). Instead the Defendant elected to take the stand in this *voir dire* to speak about what he says transpired. I suspect that it is because in the first trial Mr. Swan's evidence did not assist him with his section 93 application. What is interesting is that in the first trial the Defendant's complaint was not that Mr. Swan did not give him any legal advice at all but it was that the legal advice that he did give him was poor and deficient. In this second trial the Defendant's grievance is that Mr. Swan gave him no advice at all. This change in tact by the Defendant is notable and it speaks to the reliability of his position in this trial that Mr. Swan did not give him any legal advice at all.

Simply put, I do not accept the Defendant's evidence as to his interactions or lack of interactions with Mr. Swan. Primarily because the vast majority of what the Defendant did not make any sense whatsoever. I find it extremely difficult to accept that in the first meeting with the Defendant prior to the first interview that all that Mr. Swan said to him was his name. This, according to the Defendant, would have been after he told Mr. Swan why he had been arrested and that he travelled to Bermuda with Ms. George-Horsford. If this were the case then the meeting between the Defendant and Mr. Swan would have taken less than 60 seconds. There was no evidence from the Defendant that the meeting was short and from

this a strong inference can be drawn that more than just pleasantries would have been exchanged between the two.

Moreover, one would think that anyone who has been arrested, even those for the first time, would invariably ask their lawyer a plentiful number of questions about what is going to happen to them and what should they do. So even if Mr. Swan only gave his name, one would have expected that the Defendant would have asked Mr. Swan what was going to happen whilst he was in custody and when will he be released from custody. I find that it is more likely than not that the Defendant did ask Mr. Swan these questions and that Mr. Swan answered them. Further, that those answers would have included informing the Defendant about his right to silence and what was likely to take place in the interviews.

I find it equally nonsensical that during the pause in the first interview that all that the Defendant asked Mr. Swan about was the definition of controlled drugs. The Defendant's evidence that he thought that the police arrested him on suspicion of importation of pharmaceutical drugs beggars belief. Especially since the police officers, prior to the pause in the interview, told him that the drugs were cannabis and cocaine.

Even if the Defendant asked Mr. Swan about what controlled drugs were, this is not likely to have taken 7 minutes. Commonsense informs me that they would have spoken about a lot more than this and that their discussions would have likely involved legal advice as to what were the Defendant's legal rights and about how the remainder of the interview could look. I apply this same reasoning as it pertains to what likely would have been discussed between the Defendant and Mr. Swan during the 19 minute pause which was requested by the Defendant in the second interview.

(v) **The Defendant was properly cautioned by the police officers prior to the taking of both interviews and that he fully understood the nature and effect of those cautions.**

Specifically, the Defendant well knew and understood that he did not have to say anything unless he wished to do so and that whatever he said could be used in evidence. I further find that the Defendant firmly understood that this legal right was ongoing throughout the entirety of both interviews.

Ms. Smith attempted to make significant hay out of Sgt. Downie and DC Wilkinson using the words "submitted in evidence" when they cautioned the Defendant at the beginning of the first interview, and whether or not the Defendant understood those words. Unfortunately, her attempts did not bear fruit. Firstly, there is nothing technical or legalistic about those words. They are used and understood in everyday language by laypersons whether or not they are being interviewed by police. Further, it is obvious to me from the words used by the Defendant in both of the interviews and during his oral evidence at this *voir dire* that the Defendant was of sufficient intelligence to fully understand what was being said to him by Sgt. Downie and DC Wilkinson and the effect of what was being said by them. In this regard, I do not accept the Defendant's portrayal of himself as someone who lacked the basic intelligence and knowledge about human affairs or about how the justice/legal/police system works. One does not have to have been previously arrested or have spoken to a lawyer to understand, when told by a police officer or anyone, that they do not have to speak to the police if they do not want to. I find that the Defendant perfectly understood that he could say nothing to the police officers (which essentially amounts to "no comment" being given to the questions posed), what "submitted in evidence" meant, and that whatever he said was being recorded and could be used in further proceedings.

The Defendant also stated that he was not given any options and that he felt that he "had to" give the interview i.e. that it was mandatory that he answer questions. I

give this assertion short shrift. Firstly, the options clearly articulated by Sgt. Downie and DC Wilkinson were that the Defendant can (i) answer questions if he wished to do so or say nothing if he wished to do so, and (ii) can pause the interview at any time whenever if he wanted to speak to his lawyer. He obviously understood that these options were available to him because he exercised them by stopping the interview to speak to Mr. Swan.

Secondly, if the Defendant did not understand any of the words used by Sgt. Downie or DC Wilkinson then he could have at any time stopped the interview and asked Mr. Swan to explain them to him. In fact, the Defendant caused both of the interviews to be paused so that he could speak to Mr. Swan, and, on his evidence one of those pauses was to ask Mr. Swan what the words "controlled drugs" meant. He could have done the same for the words "submitted in evidence" if he did not understand them.

Thirdly, the police officers informing the Defendant that he did not have to say anything unless he wished to do so, and the fact that Mr. Swan was present during the interviews, are pellucid expressions of the police officers' statutory duty of ensuring that the Defendant's legal rights to silence and access to legal representation were observed and complied with by the interviewing police officers. I therefore find that the deliverance of the cautions in both interviews were in compliance with PACE.

(vi) **There was no coercion, threats, promises, or inducements that would have led to the Defendant's participation in any of the interviews.**

Prior to the commencement of the *voir dire* Ms. Smith advised the Court that the Defendant's section 93 application was <u>not</u> founded upon any allegation that Sgt. Downie or DC Wilkinson obtained the interviews through any coercion, threat, promises, or inducements upon the Defendant. Indeed, during her questioning of Sgt. Downie at the *voir dire* no allegations of coercion, threats, promises or

inducement were even put to him. It is also noteworthy that the Defendant did not advance any evidence or suggestion in the *voir dire* of the first trial that the statements were obtained as a result of any coercive or intimidating conduct of Sgt. Downie and/or DC Wilkinson.

It was not until the Defendant gave his oral evidence in the witness box during this *voir dire* that he, for the first time and out-of-the-blue, introduced evidence that the giving of the interviews was out of fear for Sgt. Downie and DC Wilkinson. To support this assertion the Defendant stated that the tone and content of Sgt. Downie's and DC Wilkinson's questioning made him scared and that he was traumatized. This is errant nonsense. As I said earlier, I had the opportunity of viewing the audio/visual recordings of both interviews and I have read the transcripts. There is absolutely nothing in the demeanour of the police officers or in the content of their questions which would remotely suggest that they were in anyway whatsoever intimidating or harsh towards the Defendant. They were calm and measured in the way that they spoke and indeed they were quite respectful of the Defendant. It is therefore obvious to me that the Defendant threw in his unsubstantiated allegations of coercion or threats in an attempt to have the interviews excluded by any means necessary. His attempt fell woefully flat.

Ms. Smith also suggested that the Defendant was "shaking" and that this is a sign of some level of fright. I comprehensively dismiss that suggestion. Throughout both interviews the Defendant is seen at times to be laughing with the police officers and he does not in any way whatsoever appear to be stressed, distressed, or scared. His demeanour did change to being less animated after the pause in the second interview but this <u>may</u> be more attributed to the Defendant embarking upon his *mea culpa* in respect of his commission of the offence and not because of anything said or done by the police officers or Mr. Swan.

For the avoidance of doubt, the police officers telling the Defendant that they did not believe that he was telling the truth in no way whatsoever amounts to any basis

upon which the Defendant could say that he somehow involuntarily gave the interviews.

(vii) **Mr. Swan did not, expressly or by inference, advise the Defendant to lie in the second interview.**

This allegation was not only unsubstantiated but ultimately it was egregious. Again, it is obvious to me that the Defendant was willing to employ any means necessary to have the interviews excluded. Even if it meant tarnishing the reputation of a standing member of the Bermuda Bar Association.

It was during the cross-examination of the Defendant by Ms. Beddeau that he, for the first time, raised the notion that Mr. Swan told him to lie. He made no utterances of this allegation at his first trial (including not in the *voir dire*). This belated evidence, which is not insignificant, wreaks of fabrication because one would have thought that something this potentially consequential would have featured prominently in the Defendant's first trial and when he was being questioned by Ms. Smith at the *voir dire* in this trial. It did not and it is for this reason that I do not accept even a scintilla of the allegation.

It should be noted that even before the Defendant spoke about "Andre" after the pause in the second interview, his answers to the questions put by the police officers in the first and second interviews appear to be inconsistent, confusing and nonsensical. On the Defendant's evidence he did not speak to Mr. Swan prior to the first interview. Therefore, if the Defendant's answers to questions in the first interview and in the first part of the second interview were lies (and there is cogent evidence to suggest that they were) then a reasonable conclusion can be drawn that the Defendant lied on his own volition prior to his story about Andre and without any prompting from Mr. Swan whatsoever. Put another way, it would appear that the Defendant did not need any nudging from Mr. Swan to lie (if indeed he did).

Further, it is obvious to me that if the Defendant did lie about Andre then he was motivated by reasons of his own making and not by anything said by Mr. Swan. On his own evidence the Defendant said that he felt that the police officers were not believing him and that under the direction of Mr. Swan he lied so that he would get bail. Firstly, there is absolutely nothing wrong with the police officers telling him that they do not believe him. The fact that they told him that and that he then went on to speak about Andre is more a reflection of his desire to say something which he thought the police may believe so that he may get bail. Even if it was to tell the police a lie. That was on him and not on Mr. Swan who did not cause the interview to be stopped.

Secondly, I would find it unbelievable indeed for any criminal defence lawyer, no matter their caliber, to advise their client that they would get bail if they lied about actually committing an offence. It is certainly correct that a person may lie and in doing so send the police on a wild goose chase. The reward for this may be bail, but it is by no means automatic if the person actually admits that they committed the offence. More likely than not a criminal law attorney would advise their client to say nothing to the police but that if they wished to admit to the commission of a crime then they should do so truthfully.

I find that it is more likely than not that this is generally the advice that Mr. Swan would have given to the Defendant in that 19 minute break in the second interview and that this is the reason why large swaths of the content of the Defendant's comments about Andre are detailed and elaborate. One thing which is certain, there was no evidence to suggest that Mr. Swan told the Defendant what to say in the considerable 59 minutes that the Defendant spoke after the pause.

9. The upshot of the above paragraphs is that I do not accept the reasons advanced by the Defendant for participating in both of the interviews. Primarily because the Defendant's evidence in respect of not choosing Mr. Swan, not being properly cautioned by the police, not having the opportunity to speak to Mr. Swan, Mr. Swan not giving him any legal advice,

Mr. Swan advising him to lie to the police, and that the tone and content of Sgt. Downie's and DC Wilkinson's questions do not align with basic commonsense and logic. In every aspect, the Defendant's evidence was inconsistent, nonsensical, and illogical, and, his evidence bore the hallmarks of someone who was weaving a web of untruths.

10. To be clear, and to reiterate, I find that the Defendant, before, during and after both of the interviews, and at all material times, firmly understood his legal rights to remain silent and to have access to legal representation, that he exercised those legal rights, and, that it is more likely than not that Mr. Swan properly advised the Defendant of his legal rights. I further find that during the taking of both of the interviews and at all material times Sgt. Downie and DC Wilkinson both conducted themselves in a manner which was not only in strict compliance with PACE but they also treated the Defendant with the utmost respect.

Conclusion

11. In consideration of the above paragraphs I find that having regard to all of the circumstances of this manner, including the circumstances under which both of the recorded interviews of the Defendant were obtained, that the admission of both of the interviews would not have any adverse effect on the fairness of this trial if they were admitted into evidence by the Prosecution.

12. Accordingly, I repeat my Ruling made on the 9th July 2025 that the Defendant's application under section 93 of PACE to have the recorded interviews excluded is hereby dismissed.

Dated the 27th day of July , 2025

SIGNED

The Hon. Mr. Justice Juan P. Wolffe
Puisne Judge of the Supreme Court of Bermuda