BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CRIMINAL DIVISION

Indictment No. 39/2020

BETWEEN:

THE QUEEN **Prosecution**

AND

HASAN KAREEM CATLYN **Accused**

Before: The Honourable Carlisle Greaves, Judge of the High Court

Date of Hearing: 2020 September 16, 23, 24

Date of Judgment: 2020 September 25

Appearances:

Mr. Rudolph Burnett for the Prosecution

Mr. Arthur Holder for the Accused

DECISION EXTEMPORE

Guilty plea - evidential valve of accused's unsigned oral statements

CARLISLE GREAVES J:

INTRODUCTION

[1] These are the reasons for my decision. The defendant, Hasan Kareem Catlyn, is charged on indictment that he possessed five rounds of ammunition, contrary to **section 3(1) (b) (D)** and **(9)** of the *Firearms Act, Cap. 179*. The particulars of which are that he, on 22nd January 2013 in the parish of St. Michael, possessed those five rounds without a valid permit to do so.

[2] The evidence suggests that the police executed a warrant at his residence in Bridge Road, St. Michael, upon which they were let in, either by the defendant or by his mother or a combination of the two, and upon that consequence, they saw the defendant traveling from the back of the house inside the house, where is situated a master bedroom with a built in toilet. The evidence is uncontested that the mother of the defendant, Beverly Foster, was the occupant or is the usual occupant of that bedroom and the defendant is the occupant of the front bedroom and his sister is the occupant of the middle bedroom in this three-bedroom house.

[3] The evidence is that the officers saw the defendant approach with both hands wet. That piece of evidence is not challenged. The evidence is that the five rounds of ammunition were found in the toilet in a plastic bag. That piece of evidence is not challenged. The evidence also is, the defendant was questioned by the police about the ownership of the ammunition in the bedroom and he made an oral statement which suggests that they were his. That piece of evidence is challenged. The defendant's position is that he made no such statement.

[4] The evidence is that the defendant's mother was also brought to the room and asked if she could account for the ammunition and she said she knew nothing about it. That piece of evidence is not challenged.

[5] For the first time at the end of the case, we heard that mother say that when asked about the ammunition in the presence of her son, in that bedroom, about the ownership, she said she didn't know anything about it, she said no and she said that the son also said no. That was the first time we heard that. That issue was never raised by the defence.

[6] The evidence from the officers is that at the police station they invited him to sign the orals which he had made and he refused. They invited him to give a written statement, he refused and on those occasions he said his lawyers, who visited him on two occasions, told him not to say or sign anything and he accordingly did not sign anything. That piece of evidence was never challenged. What was challenged is whether he refused and how he refused but it was never challenged that he said the lawyers told him don't sign anything.

[7] What is, in the circumstances, the only reasonable inference that a finder of fact could draw? A defendant makes an unchallenged statement that he was told by his lawyers not to sign anything and he did not, in circumstances where he was visited by a lawyer, by two lawyers, by three lawyers and on two occasions. I am directed by defence counsel that I should take into account the learning in the case of *Vincent Edwards* and *Richard Orlando Haynes v. R. CCJ Appeal BBCR 2015/006* or *2017 CCJ 10* appeal jurisdiction. In

particular, I am referred to **paragraph 39** of that decision, where the CCJ ruled that:

> *"It is not permissible for a person charged with an offence to be convicted of that offence in circumstances where the only evidence against him is an unsigned and otherwise unacknowledged uncorroborated confession which the prosecution alleged was made to investigating officers, whilst in police custody but which he denies making. Something more is required, either in the way of independent verification that the admission was actually and voluntarily made or in the way of other evidence that independently corroborates or otherwise points to the guilt of the accused."*

[8] It is my view that this case must be distinguished, or rather, is distinguishable from the cited case. It cannot be, in my opinion, that the CCJ must have intended that where a defendant acts, where there is evidence tending to show that a defendant acted in accordance with the instructions of his lawyer not to sign anything, that the admissions allegedly made by him are not sufficient for him to answer a case before a jury. If it was otherwise, nobody would sign anything and nobody would be required to answer anything.

[9] I think in this case, when one considers the evidence that has unfolded at the house with the ammunition found in the toilet in the presence of the accused, unchallenged by the defence that that did occur, that the defendant was seen walking from that area with hands wet, both of them, unchallenged is that evidence. No reasonable explanation is offered as to why he was walking

with such wet hands, in a situation where the ammunition was found doused in the waters of a toilet bowl and no challenge to the assertion that he did refuse to sign any statement, pursuant to the instructions given to him by the lawyer, in a case where the lawyers in numbers, visited him before the police were able to interview him or to request him to sign the orals, not one, not two, but three of them. Not on one occasion but on two or so occasions. No reasonable inference can be drawn other than that which I have already asserted.

[10] I find in the circumstances, therefore, that the defendant has a case to answer.

[11] That is my ruling.

Carlisle Greaves
Judge of the High Court