

THE FUNDAMENTAL RIGHTS AND HUMAN RIGHTS ISSUES TO BE OBSERVED IN LAW ENFORCEMENT

Lecture delivered by Lawyer Victor Cuffy, President of the SVG-Human Rights Association at the Police Training School

The first Chapter of the Constitution of Saint Vincent and the Grenadines (referred to as SVG hereinafter) sets out the Fundamental Rights and Freedoms for all Vincentians.

Section 1 of Chapter 1 states:

“Every person in SVG is entitled to the fundamental rights and freedoms, that is to say, the right whatever his race, place of origin, political opinion, colour, creed or sex, but subject to the rights and freedoms of others and for the public interest, to each and all of the following, namely

(a) to life, liberty, security of the persons and the protection of law;

(b) to freedom of conscience, of expression and assembly and association: and

(c) to protection of the privacy of his home and other property and from deprivation of property without compensation. But, these fundamental rights or human rights, which may also be referred to as Constitutional Rights (because they are include in our Constitution) are only enjoyed by each one of us as long as we do not infringe on or prejudice the rights and freedoms of other or the public interest.

The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on the 10th December, 1948 (International Human Rights Day since then) and was accepted as a general and universal standard of human rights for the people of the world everywhere.

Article 1 of the Declaration states, among other things, that: “All human beings are born free and equal in dignity and rights”

Article 2 says as follows:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

I have stated so far general basic principles relating to human rights and fundamental freedoms. It is necessary now to go into some fundamental and human rights issues which should be observed in law enforcement.

You are all policemen and women. You have important duties and responsibilities to perform. The power and authority that goes with your position as law enforcement officers must not be abused. You must always bear in mind that you must execute your duties against your countrymen and women remembering to recognize always the inherent dignity and the equal and inalienable rights of all human beings.

The nature of your work will bring you into contact with persons whom you will have to Arrest mostly for infringements of the Criminal law. By the way you should acquaint yourself with the Criminal Code and also the Criminal Procedures Code of 1988.

Arrest is a process by which a person is detained by a law enforcement officer (police in this case) and should only occur when authorized by law. Article 9 of the Universal Declaration of Human Rights provides that *“no one should be subjected to arbitrary arrest, detention or exile”*.

Article 9 (1) of the United Nations Covenant on Civil and Political Rights provides as follows:

“Everyone has the right to liberty and security of person. No one should be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.

The term “arbitrary” is not to be interpreted as meaning only as an arrest not according to law. It must be interpreted to include, for example, the situation of a detainee who has been kept in detention after his or her release has been ordered by a judicial authority, that is, for example, a Judge or Magistrate, and also a person arrested without any criminal charge against him

Section 3 (2) of the Constitution of SVG provides as follows:

“Any person who is arrested or detained shall with reasonable promptitude and in any case no later than twenty four hours after such arrest or detention be informed in a language that he (or she) understands of the reasons for his arrest or detention and be afforded reasonable facilities for private communication and consultation with a legal practitioner of his own choice and, in the case of a minor, with his parent or guardian”.

Section 3 (3) (b) of the said Constitution states:

“Any person who is arrested or detained upon reasonable suspicion of his having committed or being about to commit, a criminal offence under any law, and who is not released, shall be brought without undue delay before a Court.”

And Section 3 (6) says that *“any person who is unlawfully arrested or detained by any other person (non-police) shall be entitled to compensation therefore from that other person or from any person or authority on whose behalf that other person was acting.”*

HOW IS AN ARREST MADE?

Section 22 (1) of the Criminal Procedure Code of 1988 states that *“the police officer or other person making the arrest shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.”*

RESISTING ARREST

If a person forcefully resists arrest, or endeavours to resist arrest, the police officer or other person may use all means necessary to effect the arrest (S.2 of the Criminal Procedure Code). But note that the use of greater force than was necessary in the particular circumstances in which it was employed is not justifiable. This can bring a police officer to answer in a Court of Law for such excesses.

Police Officers may arrest a person without an order from a magistrate and without a warrant-

- (a) any person he suspects on reasonable ground of having committed an indictable offence;*
- (b) any person who commits in his presence an offence punishable by imprisonment;*
- (c) any person who obstructs a police officer while in the execution of his duty;*
- (d) any person in whose possession anything is found which may reasonably be*

suspected to be stolen property;

(e) any person who he suspects upon reasonable grounds of having in his possession without lawful excuse, any implement of house breaking.

NOTE: the list above is not exhaustive)

Article 9 (3) of the United Nations Covenant on Civil and Political Rights states as follows:

“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release”.

THE MEANING OF “REASONABLE SUSPICION”

One of the main grounds for an arrest is the existence of a *reasonable suspicion* that the person arrested has committed an offence.

Lets us now look at what the term “*REASONABLE SUSPICION*” means. To do so I will refer to the case of **Fox, Campbell and Hartley V the United Kingdom (U.K. (1991) 13 EHRR 157** which was decided by the European Court of Human Rights, which is about the most respected Court of Human Rights in the world today. The Judges in that case said as follows:

“The ‘reasonableness’ of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention.....Having a ‘reasonable suspicion’ presupposes the existence of facts or information which would satisfy an observer that the person concerned may have committed the offence in question”.

What is considered reasonable depends on all the circumstances and must be judged on the facts known when the arrest was made – not afterwards. Note that a simple ‘honest belief’ by the police officer that the person committed the offence is not enough. There must be an objective basis justifying an arrest.

SEARCH WARRANTS

If an application is made to a Magistrate or to a Justice of the Peace to the effect that a serious offence has been committed and (b) that there may be material on specified premises which is likely to be of substantial value to the investigation of the offence and also that the material is likely to be relevant evidence, the legal authority may issue a warrant authorizing a police officer/s to enter and search the premises.

Note:

- (a) It is illegal to enter and search premises without a Search Warrant*
- (b) On entry to the premises the search warrant must be shown . The inmates have a right to have the warrant read to them or to see it and read it for themselves.*
- (c) what specific items of goods or whatever the search is required for must be stated.*

A police officer may seize and retain anything for which a search has been authorized.

On searching premises police officers should show respect for the sanctity of the person's home, while at the same time diligently searching carefully in all crevices, containers, household cupboards etc. But it is wrong to toss clothes on the floor and smash household things and threaten the occupiers by pulling a firearm and threatening the occupiers to shoot when it is not at all necessary to do so.

NOTE: *there are sometimes Entry and Searches made of a persons' premises often a person has been arrested if the police have reasonable ground for suspecting that there is on the premises evidence that relates to the offence.*

THE USE OF FIREARMS BY LAW ENFORCEMENT OFFICERS

The Code of Conduct for Law Enforcement Officers was adopted by the General Assembly of the United Nations in December, 1979

The Code in its Introductory Preamble states, among other things, recalls the human rights principles set out in the Universal Declaration of Human Rights and

also the protection of all persons from being subjected to torture or to cruel, inhuman or degrading punishment and that law enforcement officers should perform their duties in compliance with the principles of human rights and adopted the Code of Conduct and decided to transmit it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials”.

Article 1 of the Code of Conduct provides as follows:

“Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.”

Article 2 states that –

“In the performance of their duty, law enforcement officials shall respect and protect human rights of all persons”.

(The human rights in question are the International Instruments, for example, the Universal Declaration of Human Rights (U.D.H.R.), International Covenant on Civil and Political Rights (ICCPR); Covention Against Torture and Other Cruel, Inhuman and Degrading Punishment and relevant National Constitutional provisions).

Article 3 provides that:

“Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”.

The use of firearms by all law enforcement officials is considered an extreme measure. They should only be used when a suspected offender offers armed resistance, or where such person puts the lives of other persons in jeopardy and less extreme measures are not sufficient to restrain or apprehend the offender.

Article 6 states that-

“Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular shall take immediate action to secure medical attention whenever required.”

Here in Saint Vincent and the Grenadines we have had several fatal shootings of civilians by police officers over the past ten years or so. Some of these police officers have been

tried for manslaughter at the Assizes and top a ranking Prison Officer was tried for murder for allegedly causing the death of an inmate. These cases were dismissed. The accused officials were found not guilty. However, it is always better to try and observe the rules I have mentioned here relating to the use of firearms, than having to go through the trauma of a criminal trial in your capacity as a police officer.

Police brutality or police violence is very evident in Saint Vincent and the Grenadines. Such violence against civilians occurs often in the secrecy of police stations where the victims have no witnesses to attest to their physical battering. Some rogue and inefficient criminal investigators beat and violate detainees so as to force them to confess to crimes for which they have been alleged to have committed. When physical violence is not applied, some police investigators resort to bullying and harassing the suspect. This is all wrong.

Let me remind you here of Article 10 (1) of the International Covenant on Civil and Political Rights which says as follows:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

HUMAN AND LEGAL RIGHTS IN CONFESSION EVIDENCE

There are factors which tend to show whether confessions should be admissible in Court. To start at the beginning confessions are made to police officers. They may be made voluntarily or involuntarily. Involuntary confessions were thrown out.

In the past and before the case of *Eversley Thompson vs The Queen* (Privy Council: No. 37 of 1997, what was known as the “Judges Rules” were applied in our Courts in relation to the admissibility of confession evidence. The Judges Rules were not rules of law, but they provided guidance to police officers in the investigative process of crime and they established the standard of conduct by which the investigative process relating to crime

was assessed. These rules applied in England before they were abolished by the Police and Criminal Evidence Act 1984. They also applied to Saint Vincent and the Grenadines.

But the Privy Council decided in Eversley Thompson's case that Sections 76 and 78 of the said English Police and Criminal Evidence Act 1984 (known as the PACE ACT) apply in Saint Vincent and the Grenadines as well.

Section 76 (2) of the PACE Act is important. It provides as follows:

“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 was or may have been obtained-

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done, which was likely, in the circumstances existing at the time, to render unreliable any confession which might have been made by him in consequence thereof,

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.

Section 78 (1) of the Act states:

“In any 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 effect on the fairness of the proceedings that the Court ought not to receive it”.

Confession evidence is given in a large number of criminal cases. The two sections quoted above of the PACE ACT 1984 are very important for police officers. It seems to me, however, that local police have not been trained regarding the application of the two sections of the English PACE ACT 1984 mentioned above. Perhaps at a future date, we may have the opportunity to discuss together, and in detail, the provisions of the application of PACE ACT in SVG.

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