



COURT MARTIAL

Citation: *R v Bergeron-Larose*, 2012 CM 1012

Date: 20121005

Docket: 201248

Standing Court Martial

Halifax Courtroom
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Ordinary Seaman R. Bergeron-Larose, Applicant

Before: Colonel M. Dutil, C.M.J.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR DECISION REGARDING THE ADMISSIBILITY OF SIX CONFESSIONS ATTRIBUTED TO THE ACCUSED BETWEEN 12 APRIL 2012 AND 31 MAY 2012

(Orally)

INTRODUCTION

[1] The prosecution is asking the Court to declare six statements attributed to Ordinary Seaman Bergeron-Larose between 15 April 2012 and 31 May 2012, to be admissible in evidence. All of these statements were made to persons in authority, that is, the accused's superiors at the time of each of the statements. The Court held a voir dire to determine whether each of the statements was made freely and voluntarily.

[2] The prosecution provided the following evidence at the voir dire:

- a) the testimonies of, in order of appearance, Sub-Lieutenant M. Dumaresq (Petty Officer 1st Class at the time of the events), Chief Petty Officer 1st

Class G.J. Westlake, Chief Petty Officer 2nd Class C.A. Farouse, Petty Officer 1st Class G. Reykdal and Chief Petty Officer 1st Class A. Skinner;

- b) Exhibit VD1-2, a document containing three distinct cautions read to Ordinary Seaman Bergeron-Larose at 0029 hours and 1407 hours, on 15 April 2012, aboard HMCS *St. John's*;
- c) Exhibits VD1-1 and VD1-3, which are written statements made by Ordinary Seaman Bergeron-Larose on 15 April 2012;
- d) Exhibits VD1-4 and VD1-5, namely, a document containing three distinct cautions read to Ordinary Seaman Bergeron-Larose, and a two-part written statement he subsequently made between 1023 hours and 1047 hours on April 19, 2012, aboard HMCS *St. John's*;
- e) Exhibit VD1-6, namely, the caution given to Ordinary Seaman Bergeron-Larose by Chief Petty Officer 1st Class A. Skinner at 0916 on 1 May 2012, at Chief Petty Officer 1st Class A. Skinner's office at Canadian Forces Base Shearwater;
- f) Exhibits VD1-7 and VD1-8, namely, a document with typed questions and handwritten answers recording the verbal answers of Ordinary Seaman Bergeron-Larose to questions asked by Chief Petty Officer 1st Class A. Skinner after he gave him the caution, and a typed statement prepared by the accused and given to Chief Petty Officer 1st Class A. Skinner later that same day; and
- g) Exhibits VD1-9 and VD-10, namely, the caution given to Ordinary Seaman Bergeron-Larose by Chief Petty Officer 1st Class A. Skinner at 0804 hours on 31 May 2012, at Chief Petty Officer 1st Class A. Skinner's office at Canadian Forces Base Shearwater, and a document with typed questions and handwritten answers recording the verbal answers of Ordinary Seaman Bergeron-Larose to questions asked by Chief Petty Officer 1st Class A. Skinner after he gave him the caution.

In addition to the evidence from the voir dire, there is the defence's admission to the effect that if Petty Officer 1st Class S.J.D. Tremblay had testified at the voir dire, he would have corroborated the testimony of Chief Petty Officer 1st Class Skinner, insofar as he was present at the interviews on 1 May 2012, and 31 May 2012.

FACTS

[3] The evidence heard on voir dire was given with a view to having admitted into evidence at trial all of the abovementioned statements obtained from the accused following allegations of possession and use of cocaine involving Ordinary

Seaman Bergeron-Larose during the evening of 12 April 2012, in Montego Bay, Jamaica, while Her Majesty's Canadian Ship (HMCS) *St. John's* was taking part in operation Op CARIBBE. That evening, Maritime Enforcement Officer 2nd Class Martinboro, one of the members of the United States Coast Guard attached to HMCS *St. John's* for this anti-drug operation, allegedly shared a taxi with the accused and another member of the *St. John's* during an outing to Montego Bay in the evening of 12 April 2012. He allegedly saw the taxi driver give the accused a transparent bag big enough to hold two tablets of Tylenol, containing a small quantity of white powder. On the basis of what he heard of the conversations in the vehicle and of a brief stop later on at a bank machine to pay the taxi driver, he concluded that an illicit purchase of cocaine had just taken place. After some discussion with his superior a few days later aboard the *St. John's*, these allegations were passed on to Ordinary Seaman Bergeron-Larose's chain of command. Some checks into the allegations passed on by Maritime Enforcement Officer 2nd Class Martinboro quickly led authorities on the *St. John's* to suspect that the accused was one of the perpetrators. At least, that is the conclusion that Chief Petty Officer 1st Class Westlake, the *St. John's* coxswain, came to when one of the ship's combat systems officers, Lieutenant (N) Thompson, informed him of the allegations passed on by Maritime Enforcement Officer 2nd Class Martinboro to his superior, Clifford, around 2100 hours, on 15 April 2012. This is when he went to see the executive officer of the *St. John's*, Lieutenant-Commander Monaghan, to notify him of the situation. Shortly after this, they went to meet with the captain of the *St. John's*, Commander Clarke, to notify him in turn. According to Chief Petty Officer 1st Class Westlake, Commander Clarke wanted to conduct a locker search as soon as possible. Chief Petty Officer 1st Class Westlake took the opportunity to prepare a search warrant while the ship's captain consulted with legal counsel. Ordinary Seaman Bergeron-Larose was called in and told that search under warrant would be conducted and that he had to be present. Petty Officer 1st Class Dumaresq was present. Ordinary Seaman Bergeron-Larose and the other person implicated by the allegations were escorted by Petty Officer 2nd Class Nadeau, according to Petty Officer 1st Class Dumaresq. She also stated that Commander Clarke asked Ordinary Seaman Bergeron-Larose if he had anything to say before he ordered the taking of a urine sample for analysis, and an officer was designated to assist him. The accused told him that he had nothing to say. The search was conducted about 30 minutes before the first interview, which took place around 0029 hours, on 15 April 2012. During the search, Chief Petty Officer 1st Class Westlake was accompanied by the executive officer, Lieutenant-Commander Monaghan. The accused was informed of the reasons for the search, namely, that he was suspected of possessing illegal drugs. No one read him his rights, including his right to counsel. All of the participants were in uniform, and Ordinary Seaman Bergeron-Larose had to remain on the scene. The search lasted 20 minutes and turned up nothing.

[4] After the search, Ordinary Seaman Bergeron-Larose was ordered to report to the office of Chief Petty Officer 2nd Class Eady. Chief Petty Officer 1st Class Westlake confirmed that Chief Petty Officer 2nd Class Eady had spoken with Ordinary Seaman Bergeron-Larose before he made his first statement but did not know what had been said. The accused was then summoned for the first interview, which took place in

the small (6' x 8') office of Chief Petty Officer 1st Class Westlake at 0029 hours on 15 April 2012. The witness Dumaresq described to us how small the space was, using the following expression in English: "It was cramped". Chief Petty Officer 1st Class Westlake presided over the interview. Also present were Petty Officer 1st Class Dumaresq, acting as translator, and Chief Petty Officer 2nd Class Farouse. According to Petty Officer 1st Class Dumaresq, Lieutenant (N) Thompson was also there and spoke to the accused at least once. Chief Petty Officer 1st Class Westlake and Chief Petty Officer 2nd Class Farouse contradicted her on this point. When the interview began, Ordinary Seaman Bergeron-Larose was standing at attention, while Chief Petty Officer 1st Class Westlake stood in front of him at the other end of the office. He spoke to the accused in a firm tone. He proceeded to read out the first and second cautions from the form filed as Exhibit VD1-2, and Petty Officer 1st Class Dumaresq confirmed with the accused that he understood by translating the document in question as they went along. Once the cautions had been given, Chief Petty Officer 1st Class Westlake, according to Chief Petty Officer 2nd Class Farouse, asked Ordinary Seaman Bergeron-Larose to "tell what he did". Ordinary Seaman Bergeron-Larose complied by filling out the statement filed as Exhibit VD1-1, between 0033 and 0047 hours on 15 April 2012. This statement, which he wrote out himself, is two pages long. According to the witnesses heard, the atmosphere was calm throughout the interview, although the accused seemed a bit nervous, and nobody raised their voice. Petty Officer 1st Class Dumaresq read back Ordinary Seaman Bergeron-Larose's statement and gave it to Chief Petty Officer 1st Class Westlake after Chief Petty Officer 2nd Class Farouse signed it as witness.

[5] After making a few checks, Chief Petty Officer 1st Class Westlake wanted additional information. He therefore ordered that Ordinary Seaman Bergeron-Larose be questioned again regarding the allegations of possession of cocaine. He had a list of supplemental questions drawn up and translated into French. This second interview took place in the office of Chief Petty Officer 2nd Class Eady in the presence of Petty Officer 1st Class Dumaresq. According to Petty Officer 1st Class Dumaresq, she translated and read to the accused the third caution, which appears in the exhibit filed as Exhibit VD1-2 and initialled by the accused and by Chief Petty Officer 2nd Class B.J. Eady as witness at 1407 hours, on 15 April 2012. Following this caution, the accused himself wrote down a second statement, from 1402 hours to 1453 hours. This statement responds specifically to each of the questions put to him in writing and is one page long. During this second interview, Ordinary Seaman Bergeron-Larose was not offered the services of counsel and, according to witness Dumaresq, never made such a request. According to Petty Officer 1st Class Dumaresq, the atmosphere was relaxed, and everything was calm and normal, although Ordinary Seaman Bergeron-Larose appeared to her to be respectful, yet nervous and worried because it seemed that he "did not understand why he was asked those questions". Apart from the fact that Ordinary Seaman Bergeron-Larose was asked questions and that he took his time answering them in writing, what was said or done during this approximately 50 minute period remains largely unexplained. No one present during the interviews that took place on 15 April 2012 or who participated in the search and the discussions in the presence of Commander Clarke took notes to record the events. What is more, there are no audio or video recordings, even though audio recording equipment was available on the ship,

more specifically, in the desk drawer of Chief Petty Officer 1st Class Westlake, who testified that the equipment was new and still in its original packaging. According to Chief Petty Officer 1st Class Westlake, it was not an emergency situation.

[6] After these two interviews, Chief Petty Officer 2nd Class Farouse allegedly discussed the matter with a certain Master Seaman Truswell, who informed him that he was aware of the illegal circumstances surrounding what had allegedly happened in Montego Bay on 12 April 2012. He reported this information to Coxswain Westlake, and after hearing this, Coxswain Westlake wanted to know more. A few days later, on 19 April 2012, around 1020 hours, Chief Petty Officer 2nd Class Farouse met with Ordinary Seaman Bergeron-Larose in the company of Petty Officer 1st Class Reykdal, who acted as witness. As appears from the caution form filed as Exhibit VD1-4, Chief Petty Officer 2nd Class Farouse read him his rights. The entire meeting was in English, at the accused's request. It appears from the document that Ordinary Seaman Bergeron-Larose stated that he had talked to the following people in advance regarding this matter: Chief Petty Officer 1st Class Westlake, Chief Petty Officer 2nd Class Farouse, Petty Officer 1st Class Dumaresq, Lieutenant (N) Thompson and Commander Clarke. Between 1023 hours and 1029 hours, Ordinary Seaman Bergeron-Larose wrote another statement, filed as Exhibit VD1-5. This time, the statement responded to the question put to him, in a firm tone, by Chief Petty Officer 2nd Class Farouse, which according to him went something like this: "The Coxswain spoke to you; do you wish to make [a] further statement concerning the night in Montego Bay?" Again, no notes were taken by Chief Petty Officer 2nd Class Farouse or Petty Officer 1st Class Reykdal. There is no audio or video record of this interview. The witnesses state that the atmosphere was normal and everything was calm. Petty Officer 1st Class Reykdal allegedly did not say anything during this interview. As soon as the interview was over, Chief Petty Officer 2nd Class Farouse went to see Chief Petty Officer 1st Class Westlake to update him on the situation. In return, Chief Petty Officer 1st Class Westlake asked him to submit an additional question, in writing, to Ordinary Seaman Bergeron-Larose regarding the identity of the person who was with him in Montego Bay. The evidence heard at the voir dire does not reveal when this last question was allegedly put to Ordinary Seaman Bergeron-Larose, but the last page of the statement filed as Exhibit VD1-5 indicates that it was completed at 1047 hours. The witnesses were unable to describe what went on, other than to say that the atmosphere was calm and normal, as was the tone and posture of everyone, although Ordinary Seaman Bergeron-Larose appeared to be a little nervous and took his time answering, according to Petty Officer 1st Class Reykdal. Again, no notes or audio or video recordings were taken, even though equipment was available. Petty Officer 1st Class Reykdal stated that he saw no need to take notes.

[7] After these events, the authorities on HMCS *St. John's* decided to repatriate Ordinary Seaman Bergeron-Larose to his parent unit, HMCS *Fredericton*. When HMCS *St. John's* returned, Chief Petty Officer 1st Class Westlake sent the case file to his counterpart on the *Fredericton*, Chief Petty Officer 1st Class Skinner, and took the opportunity to bring him up to date on the allegations surrounding the seaman in question.

[8] On 1 May 2012, Chief Petty Officer 1st Class Skinner called the accused to his office at Canadian Forces Base Shearwater at 0900 hours. He was accompanied by Petty Officer 1st Class Tremblay. The environment was as relaxed as possible, but the subject of the interview was clear in the minds of those present. It was not until around 0916 hours that Chief Petty Officer 1st Class Skinner read to Ordinary Seaman Bergeron-Larose the caution filed as Exhibit VD1-6 regarding his illicit drug use, as appears from paragraph 1 of the document. The entire interview was held in English, with no apparent difficulty for the accused. Ordinary Seaman Bergeron-Larose confirms in paragraph 4 that he had already discussed the matter with Chief Petty Officer 1st Class Westlake, Chief Petty Officer 2nd Class Eady, Petty Officer 1st Class Dumaresq and Commander Clarke. Chief Petty Officer 1st Class Skinner explained to the accused that he had consulted the *St. John's* file on him and that he wanted to confirm his version of events with him. He asked him the questions prepared in advance, in writing, and Ordinary Seaman Bergeron-Larose answered him verbally. Chief Petty Officer 1st Class Skinner recorded the answers in writing. Ordinary Seaman Bergeron-Larose signed the document, and Petty Officer 1st Class Tremblay signed as witness. That document was filed at the voir dire as Exhibit VD1-7. No notes or recordings were taken during the interview. There is nothing in the evidence regarding how long the interview lasted. According to Chief Petty Officer 1st Class Skinner, it ended just before 0940 hours.

[9] After the statement filed as Exhibit VD1-7 was obtained, Chief Petty Officer 1st Class Skinner left the office to take care of other duties. He stated that he got no further than 15 feet when the accused caught up with him and told him that there was something else. Chief Petty Officer 1st Class Skinner immediately told him that he was still under the same caution that had been read to him a few minutes ago. According to Chief Petty Officer 1st Class Skinner, Ordinary Seaman Bergeron-Larose admitted to him that he may have also used marijuana while he was in Montego Bay. Chief Petty Officer 1st Class Skinner immediately asked him whether he wanted to put this in writing, since he had to go to a meeting. Coxswain Skinner offered him the use of a computer. According to Chief Petty Officer 1st Class Skinner, Ordinary Seaman Bergeron-Larose dropped by in his cubicle about 25 minutes later—a little too casually for his liking, in his view—and gave him a typed sheet that he had signed. Chief Petty Officer 1st Class Skinner accepted the statement and immediately dismissed Ordinary Seaman Bergeron-Larose. This statement was filed as Exhibit VD1-8. Neither Chief Petty Officer 1st Class Skinner nor Petty Officer 1st Class Tremblay took notes or recorded these events in any way.

[10] On 7 May 2012, Chief Petty Officer 1st Class Skinner learned that the urine sample provided by Ordinary Seaman Bergeron-Larose tested negative. He nevertheless decided to see Ordinary Seaman Bergeron-Larose again, on 31 May 2012, to shed some light on the identity of the person who was with him in the taxi in Montego Bay, as indicated in the information that Maritime Enforcement Officer 2nd Class Martinboro had passed on. As appears from the exhibit filed as Exhibit VD1-9, Chief Petty Officer 1st Class Skinner met with Ordinary Seaman Bergeron-Larose in the company of Petty

Officer 1st Class Tremblay and gave him another caution regarding his involvement in allegations of cocaine possession. The caution began at 0804 hours. Again, Ordinary Seaman Bergeron-Larose states at paragraph 4 of the document that he had previously discussed this matter with the following persons: Chief Petty Officer 1st Class Westlake, Chief Petty Officer 2nd Class Eady, Petty Officer 1st Class Dumaresq, Commander Clarke, Chief Petty Officer 1st Class Skinner and Lieutenant(N) Herritt. He again asked him questions that had been written down in advance, and Ordinary Seaman Bergeron-Larose answered him verbally. This document, filed as Exhibit VD1-10, was also signed by Ordinary Seaman Bergeron-Larose and Petty Officer 1st Class Tremblay. As was the case in all the previous interviews, there are no notes or audio or video recordings documenting it. Again, there is no evidence as to how long this interview lasted. This concludes the evidence heard at the voir dire regarding the statements by Ordinary Seaman Bergeron-Larose regarding allegations of possession and use of cocaine made against him and the circumstances of these statements.

ANALYSIS AND DECISION

[11] The statements of an accused to an opposing party are admissions and are admissible in evidence under an exception to the hearsay rule. However, this rule is not absolute. Indeed,

[t]hey are admissible for the truth of their contents. When statements are made by an accused to ordinary persons, such as friends or family members, they are presumptively admissible without the necessity of a *voir dire*. It is only where the accused makes a statement to a 'person in authority', that the Crown bears the onus of proving the voluntariness of the statement as a prerequisite to its admission. This, of course, is the confessions rule.

This is what the Supreme Court wrote in *R v S.G.T.* 2010 SCC 20, [2010] 1 SCR 688, at paragraph 20.

[12] In the present case, all of the statements attributed to Ordinary Seaman Bergeron-Larose that the prosecution wishes to enter in evidence were obtained by or made to persons in authority in his chain of command at one time or another between 15 April and 31 May 2012. The parties agree on this issue, and the defence did not have to prove this situation. Accordingly, the Court held this voir dire to hear evidence regarding these statements.

[13] The prosecution does not have to prove beyond a reasonable doubt that the statements attributed to Ordinary Seaman Bergeron-Larose and submitted at the voir dire were in fact made. It has to show reasonable proof that these statements were made. However, the prosecution must prove beyond a reasonable doubt that any statement it intends to adduce in evidence, if it was indeed made, was made voluntarily. The requirements regarding the free and voluntary nature of a statement were clearly set out in *R v Oickle*, 2000 SCC 38, [2000] 2 SCR 3. *Oickle* clearly shows that a court cannot be satisfied that a statement is admissible unless the prosecution proves beyond a

reasonable doubt that the accused was not subject to any of the following factors: inducements, oppression, the lack of an operating mind, or police trickery. These requirements also apply where the persons in authority are not police officers. The rule in *Oickle* is not to be applied in the abstract or mechanically. It requires courts to make a contextual analysis of all of the conditions surrounding an accused's confessions.

[14] So the prosecution must first enter in evidence at the voir dire a sufficient record regarding the exchanges or interactions the accused had with persons in authority around the times roughly coinciding with the moments leading up to or during the accused's confession or confessions. At the voir dire, the prosecution does not have to call as a witness every person who allegedly had contact with the accused, be they persons in authority or not, but it does have to call each person in authority who could reasonably have affected the voluntariness of the accused's statements through what was said or done to the accused before or while the statements were made and before or during whatever caution was given. Each case will be assessed on all of the circumstances, in accordance with the contextual approach mentioned above.

[15] First off, it is important to clarify the particular circumstances surrounding the notion of "person in authority" in the present case. The relevance of the nature of the relationship of authority between the persons in question and Ordinary Seaman Bergeron-Larose goes beyond merely determining whether or not to hold a voir dire to assess the voluntariness of the statement. According to the facts filed in evidence at the voir dire, Ordinary Seaman Bergeron-Larose was confronted by the highest possible authorities in his chain of command right from the start, while he is among the lowest-ranking non-commissioned members. This started less than an hour before the search ordered by Commander Clarke. Without warning, he was ordered to report to the captain of the *St. John's*, accompanied by the ship's sergeant-at-arms and disciplinarian, Chief Petty Officer 1st Class Westlake, as well as other officers and higher ranking non-commissioned members. The search was carried out by, among others, Sergeant-at-Arms Westlake and the ship's executive officer, Lieutenant-Commander Monaghan. Before the first interview, he was ordered to report to the office of Chief Petty Officer 2nd Class Eady. He then reported to the office of Chief Petty Officer 1st Class Westlake, who had Chief Petty Officer 2nd Class Farouse and Petty Officer 1st Class Dumaresq at his side. The caution was almost immediately followed by the question forcefully put to him by Chief Petty Officer 1st Class Westlake. The events that followed always involved persons who had a real, direct and objectively very important status in relation to Ordinary Seaman Bergeron-Larose. This situation is by no means comparable to the relationship of authority between a suspect who is being held by a police officer for questioning. This in no way indicates that Ordinary Seaman Bergeron-Larose was subjected to inducements or oppression that made his statements involuntary simply because of this overwhelming relationship of force when, having no other choice, he took part in all of these interviews. This state of affairs requires, however, that the Court pay special attention to all of the circumstances that led to Ordinary Seaman Bergeron-Larose's statements.

[16] The onus is not on the accused to provide sufficient circumstances for the Court to be able to determine whether a statement was voluntary. There is no shifting of the burden of proof onto the accused when the prosecution decides to limit the number of persons or exhibits to be used to prove said circumstances. As I said above, the prosecution does not have to call as witnesses all of the people who were in contact with the accused in moments leading up to or during the accused's confession. Who should be called to testify depends on the context of the case.

[17] In this Court's view, the events surrounding the accused's being summoned to the office of Commander Clarke up until the first interview, which took place at 0029 hours on 15 April 2012 aboard the *St. John's* are essential for evaluating whether the willingness of Ordinary Seaman Bergeron-Larose was unduly influenced by inducements, oppression or the lack of an operating mind. The mere fact that Chief Petty Officer 2nd Class Eady did not appear as a witness is enough to exclude the statements given on 15 April 2012. The circumstances surrounding the cautions do not guarantee that the accused made the statements voluntarily. The Court cannot understand why the only person who was with the accused, in that person's own office, before bringing the accused to see Chief Petty Officer 1st Class Westlake was not called as a witness to describe the context and the interactions he had with Ordinary Seaman Bergeron-Larose in the minutes leading up to the first statement. The Court also does not accept that this individual was not called to testify about the circumstances surrounding the second statement, filed as Exhibit VD1-3, when he signed as witness, particularly when said statement was one page long and was allegedly drafted between 1402 hours and 1453 hours.

[18] The Court is not satisfied that the circumstances that the prosecution entered in evidence regarding the accused's statements are sufficient for the Court to be able to assess the voluntariness of the statements made by the accused between 15 April 2012 and 19 April 2012, that is, the statements obtained aboard the *St. John's*. Simply reading the cautions given to the accused shows that they raise too many unanswered questions, when the accused states that he discussed this matter with specific persons in advance. Be it with regard to Commander Clarke or Lieutenant (N) Thompson, the evidence shows that these persons would have been able to give evidence that would have provided a sufficiently complete portrait to satisfy the Court of the circumstances leading up to the first statements. It is not true that the sufficiency of the record is merely a question of reliability that should be left to the trier of fact to assess at the trial (see *McWilliam's Canadian Criminal Evidence* (Hill, Stranovich & Strezoz), Canada Law Book, Chapter 8, 8:30.10). This does not mean that the Court could not be satisfied that all of these statements were voluntary, but simply that the prosecution did not produce a sufficient record in the circumstances of this case to discharge its burden of proof. Clearly, the record would have been more detailed had the various participants taken notes throughout the entire process, from the meeting in Commander Clarke's office to the last interview on 19 April 2012 on the *St. John's*, but it is too little, too late. Ordinary witnesses appear before the courts every day to relate the events they were able to observe. Their having taken notes is not a precondition for finding their testimony to be credible and reliable. This analysis is done on the basis of the

circumstances of the entire case. The Court is well aware that the investigation was not done by police officers who are mindful of the importance of these questions when charges are laid and prosecuted in court. However, we must bear in mind that the reputation of the justice system depends on not lowering the requirements when criminal investigations are not conducted by police officers. The lack of notes makes a witness more vulnerable when they try to remember what happened previously and describe the circumstances of a case. The lack of an audio recording is also deplorable in the circumstances of this case, particularly when the necessary equipment was easily accessible and available. When an investigation relates to security and obtaining information to discover the cause of lost or damaged equipment, or the reasons for a person's performance in the course of his or her duties, it goes without saying that the investigative techniques and standards will depend on the legitimate objectives of that investigation. Where that situation exists, the standards of proof in court are the same for the prosecution regardless of whether the witnesses are ordinary witnesses or police officers. The standard of proof does not apply to the investigators; it applies to the prosecutor. The prosecution's burden of proof is not lessened because the investigation was conducted by persons who are not police officers. For these reasons, the Court rejects all of the statements filed as exhibits VD1-1, VD1-3 and VD1-5 because the prosecution has not provided sufficient circumstances to allow the Court to assess the voluntariness of the statements.

[19] The prosecution also intended to adduce in evidence three statements made by the accused to Chief Petty Officer 1st Class Skinner, which statements were filed as exhibits VD1-7, VD1-8 and VD1-10. The first two statements were filed two weeks after the last statement that Ordinary Seaman Bergeron-Larose had given when he was still on the *St. John's*. It must be determined whether these three statements are tainted and inadmissible in evidence because they are directly connected to statements that were themselves inadmissible or declared to be inadmissible, as counsel for the defence argues. The Supreme Court recently reiterated the state of the law surrounding the issue of derived statements in *R v S.G.T.*, above, at paragraphs 28–30, where Justice Charron, writing for the majority, notes as follows:

[28] The leading case on the derived confessions rule is *R. v. I. (L.R.) and T. (E.)*, [1993] 4 S.C.R. 504. In brief, the derived confessions rule serves to exclude statements which, despite not appearing to be involuntary when considered alone, are sufficiently connected to an earlier involuntary confession as to be rendered involuntary and hence inadmissible. For example, in that case, a young offender was charged with second degree murder and gave an inculpatory statement to the police. The next day, after meeting with his lawyer, the accused came to the police, wishing to modify the statement that he had given the previous day. The trial judge excluded the first statement but admitted the second, and the accused was convicted by a jury. The accused appealed the conviction on the basis that the second statement should not have been admitted. His appeal was ultimately successful in this Court.

[29] In outlining the principles applicable to derived confessions, the Court articulated a contextual and fact-based approach to determining whether a subsequent statement is sufficiently connected to a prior, inadmissible confession to also be excluded. In assessing the degree of connection, the Court outlined a number of factors

to be considered, including “the time span between the statements, advertence to the previous statement during questioning, the discovery of additional incriminating evidence subsequent to the first statement, the presence of the same police officers at both interrogations and other similarities between the two circumstances” (p. 526). The Court then held:

In applying these factors, a subsequent confession would be involuntary if either the tainting features which disqualified the first confession continued to be present or if the fact that the first statement was made was a substantial factor contributing to the making of the second statement. [p. 526]

The Court was clear in adding that “[n]o general rule excluded subsequent statements on the ground that they were tainted irrespective of the degree of connection to the initial admissible statement” (p. 526).

[30] It is plain from the above principles that the “derived confessions rule” emanates from the common law confessions rule. As such, like its parent, it is clear that it applies to secondary *confessions*, that is, statements made to a person in authority that are sufficiently connected to a previous involuntary confession to be deemed also involuntary. Whether the derived confessions rule also applies in respect of subsequent admissions made to persons not in authority, however, is not so clear.

[20] There can be no doubt that the statements given to Chief Petty Officer 1st Class Skinner by the accused were given by Ordinary Seaman Bergeron-Larose—there can be no doubt that these statements have another connotation. On its own, the climate surrounding these statements was substantially different. It must be noted that the statements are, however, directly connected with those that had been given on the *St. John's* and whose voluntariness could not be proved by the prosecution. On the one hand, the time between the tainted statements is significant, and this speaks in favour of the voluntariness of the statements that the accused made to Chief Petty Officer 1st Class Skinner. On the other hand, it is clear that Chief Petty Officer 1st Class Skinner obtained them by directly referring to the previous statement of Ordinary Seaman Bergeron-Larose, who admitted to Chief Petty Officer 1st Class Westlake that he had bought and taken cocaine (see the first paragraph of the statement filed as Exhibit VD1-7). What is more, Chief Petty Officer 1st Class Skinner did not disclose an additional piece of incriminating evidence to the accused after the first statement. The information regarding the information provided by Maritime Enforcement Officer 2nd Class Martinboro is not new incriminating evidence. Finally, even though the last three statements were made to new persons in authority, the existing relationship between Chief Petty Officer 1st Class Skinner and Ordinary Seaman Bergeron-Larose is identical to the relationship that existed on *St. John's* between the accused and Chief Petty Officer 1st Class Westlake. The way in which these statements were extracted from him is also relatively similar to the statements obtained during Op CARIBBE. In short, these later statements are sufficiently connected with the previous ones to suffer the same fate. These statements are therefore inadmissible.

FOR THESE REASONS, THE COURT:

[21] **REJECTS** all of the statements filed at the voir dire as exhibits VD1-1, VD1-3, VD1-5, VD1-7, VD1-8 and VD1-10 and declares them to be inadmissible.

Counsel:

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