

# “Investigating the Admissibility of Confessions in Criminal Trials in Sierra Leone”

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DOI: <https://dx.doi.org/10.47772/IJRISS.2024.802052>

Received: 16 January 2024; Revised: 29 January 2024; Accepted: 02 February 2024; Published: 06 March 2024

## ABSTRACT

This paper examines the rules for the admissibility of confession evidence in a criminal trial and any exclusionary principles in Sierra Leone. As a principle, a voluntary confession is admissible in the trial of the accused that made it. Sometimes, confessions carry much weight as convicting an accused independently. Even though illegally obtained evidence relevant to the matter is admissible in courts, confession illegally obtained constitutes an exception. This article claims that how certain extra-judicial confessions are obtained from accused persons is wholly or partly influenced by force, threat, fear, intimidation or promise. This makes such confession evidence “illegally obtained” and, therefore, legally inadmissible. This article uses secondary sources, including legislation, decided cases, textbooks, journals and articles, to give a comprehensive analysis of the issue by exploring the procedure and practice of courts regarding the inadmissibility of confession evidence in Sierra Leone. This reveals the challenges in the administration of justice in criminal trials. Recommendations are therefore tendered to help cure the weaknesses of the confessions’ admissibility system in Sierra Leone.

**Keywords:** Admissibility, inadmissibility, confessional statement, voir dire, Judges’ Rules

## INTRODUCTION

For Murphy, “confession is made when a suspect or an accused voluntarily accepts during a police interview or in court that he or she is guilty of the offence charged on indictment or information” ( Murphy, 2005, p.280). In England, Section 82(1) of the Police and Evidence Act 1984 adopts the inclusive definition of the term as recommended by the Criminal Law Revision Committee (Keane & Mckeown. 2012). It provides that: “confession includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise” (Keane & Mckeown, 2012, p.365). At common law, in the case of *Customs and Excise Comrs v Harz and Power* (1967) 2 WLR P297 (H.L.), a confession is defined to include “incriminating statements made by a suspect to persons in authority”. This definition provides the requirements of an admissible confession at common law, which governs and regulates the admissibility of confession evidence in Sierra Leone. Given the common law definition of confession, confession evidence which is testimonial evidence, would not be admitted by a judge as evidence unless the statement is made voluntarily (Murphy, 2005). There are two categories of confessions: judicial and extra-judicial confessions.

Accused persons make judicial confessions during their trials (Black, 1968). Judicial confession generally takes the form of a ‘guilty plea’ made by an accused at the start of a trial (Butler & Garsia, 1995). On the

other hand, extra-judicial confessions are made by a suspect out of court to a police officer during police investigations (Black, 1968). Confession, like any other evidence, must pass the test of admissibility before it can be used as evidence against an accused. The general admissibility test is that as long as the evidence is relevant and has probative value, it is admissible in a court of law (Murphy, 2005). Courts take a long procedural journey to ensure that admitted evidence is relevant, freely made by the accused himself and not by anybody else, nor influenced by threat, force or promise, and is made to a person in authority. The Sierra Leone Criminal Procedure Act 1965 stated in section 67: “Any statement made by the accused at the preliminary investigation may be given in evidence if admissible according to the rules of evidence”. This covers any statement, including confessions but does not specifically refer to them. It fails to provide the criteria and ways in which an accused confession can be admitted in evidence in criminal trials. The Sierra Leone Police Training Manual 1968, however, does provide for how police should interrogate suspects and how the suspect’s statement can be obtained: (Sierra Leone Police Training Manual, 1968, p.186).

“Where a person is charged with or informed that he may be prosecuted for an offence, he shall be cautioned in the following terms: “Do you wish to say anything? You are not obliged to say anything unless you wish to, but whatever you say will be taken down in writing and may be given in evidence”.

This Manual derives from the Judges’ Rules on interrogating suspects in criminal trials (Sierra Leone Police Training Manual, 1968). Courts take a long procedural journey to ensure that admitted evidence is relevant, freely made by the accused himself and not by anybody else, nor influenced by threat, force or promise, and is made to a person in authority. This article examines the grounds which confess inadmissible under the practice and procedural requirements by courts in Sierra Leone as it also addresses any challenges faced.

## **RULES FOR THE ADMISSIBILITY OF AN ACCUSED’S CONFESSION**

It has long been accepted in criminal trial that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage excited or held out by a person in authority or by oppression. The sub-headings below explain the rules for the admissibility of an accused’s confession.

### **Legal provisions**

The Judges’ Rules contain the rules for interrogating suspects and other witnesses on arrest and during preliminary investigations. The Judges’ Rules are considered ‘rules of practice laid down for the guidance of police officers in procuring statements or interrogating suspects’ (Butler & Garsia, 1995, para.1120). These rules were established to combat the problems faced by police officers over the years in conducting interrogations or interviewing a suspect (Johnson, 1966). Though originating from England, they have been incorporated into the Sierra Leone Police Training Manual and have been most effective to the police and the courts in Sierra Leone (Sierra Leone Police Training Manual, 1968). The procedure in the Judges’ Rules requires that ‘the rules should be read out clearly to a suspect in a language he or she understands before questions are asked in interrogation rooms’ (Sierra Leone Police Training Manual, 1968, p.186). Under the rules, suspects have to be cautioned and warned before obtaining extra-judicial statements from them; this includes specifics for juveniles’ interrogation and the recording of confessions by police investigators (Butler & Garsia, 1995). The caution is contained in Rule 2 and reads thus:

“As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence” (Johnson, 1966, p.88).

Over the years, there has been an upsurge in violations of the rules by police investigators (Sierra Leone Human Report, 2021). This is because confessions obtained in violation of the Judge's Rules may still be admitted. There is no provision intimating judges to sanction a police officer who violates the Rules or that compels the judge to declare such confessions inadmissible.

This, therefore, means that the non-respect of Rules does not automatically lead to the inadmissibility of confessions so obtained. In *The State v Yaliesama* (2019) c/s no 599/19, the accused was charged with murder on indictment. The prosecutor relied on a confession which the accused alleged was obtained by the police without any formal caution. The judge admitted the confession and held that statements obtained by police in breach of the Judge's Rules did not automatically render the confession inadmissible but that it was ground for the judge's discretion as to whether to admit it or not.

Unlike in the United Kingdom, with the Police and Criminal Evidence Act 1984, the Rules have not been codified into statute in Sierra Leone. They are contained in the Police Training Manual; they are, thus, mere rules of practice with no legally binding effect. The Sierra Leone Criminal Procedure Act of 1965, which is the criminal statutory procedural authority, has little or no procedural protocols or guidelines for the admissibility of confession evidence; this gives room for abuse. The situation is worsened by the fact that most accused persons are arraigned before the law without defence lawyers because they cannot afford to hire one or even when they may be afforded one; in practice, they are arrested and led to police stations before they may be offered the possibility to call one (Sierra Leone Human report, 2021).

### **Burden and Standard of Proof in the admissibility of confessions**

In criminal trials, the burden of proof is on the prosecution to establish the guilt of the accused, as in the case of *Woolmington v DPP* (1935) AC 462 (H.L.), it was held by the House of Lords to be misdirection. Viscount Sankey LC held that:

“Throughout the web of English criminal law, one golden thread is always to be seen that the prosecution must prove the prisoner's guilt.... If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with malicious intention, the prosecution has not made out the case, and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the prisoner's guilt is part of the common law of England, and no attempt to whittle it down can be entertained”.

Similarly, where the admissibility of the confession evidence is in dispute, the burden of proof is on the prosecution to establish that the accused made such confession voluntarily (Keane and McKeown, 2012). “The prosecution bears the legal burden of proving beyond reasonable doubt that the confession was voluntary” (Keane & McKeown, 2012, p.84). This is done by adducing evidence to prove that the confession was not obtained by the police officers through any form of intimidation or enticement. The term “burden of proof” refers to the onus or duty vested in a specific party to establish the guilt of another (Black, 1968). Two burdens of proof are required in criminal trials: legal or persuasive burden and evidential burden of proof (Choo, 2012). The legal and persuasive burden is vested on the prosecution, while the evidential burden of proof is vested on the accused to adduce evidence on a balance of probability – which is of a much lower standard (Choo, 2012)

In the case of *Hindowa and ORS v The State* (1980) 1 SLBALR 322 (C.A.), the appellants were convicted for the offence of robbery and larceny. They appealed because their alleged confession statements were wrongly admitted into evidence. The Court of Appeal, in its findings, ruled that the trial judge was wrong to place upon the accused the burden or onus of proving the involuntariness of the statements.

‘That the burden of proving the voluntariness of a confession is on the prosecution. The above case shows that when the admissibility of a confession is in dispute in a voir dire, the onus of proof regarding the voluntariness of the accused’s statement should be established by the prosecution.’

The prosecution must ensure they discharge the burden of proof with the requisite standard. In theory, the judge would not rule a confession to be admissible unless the prosecution satisfies the judge ‘beyond reasonable doubt’ that the statement was voluntarily made by the accused (Murphy, 2005). Furthermore, the judge must direct the jury on the standard of proof required even after such confession is admitted into evidence. In the case of *Bangurah v Reginam* (1969) 38/68 ALR SL 209 (C.A.), the appellant was charged with murder and sentenced. He appealed because the trial judge did not follow due process in admitting such evidence. The Court of Appeal held that:

“It is apparent that where a confession is admitted into evidence, it is the judge’s duty to direct the jury that before they can convict on the confession, they must be satisfied beyond reasonable doubt that it was voluntary and not made as a result of any inducement, threat or promise.”

Failure to give this direction will vitiate the conviction unless there is sufficient evidence apart from the confession that will establish the guilt of the accused (Keane & McKeown, 2012).

## GROUND FOR INADMISSIBILITY OF AN ACCUSED’S CONFESSION

Without a binding instrument, courts in Sierra Leone have had recourse to common law principles and leading textbooks like Archibold’s Pleading (1995) and other precedents to determine the admissibility of trial confessions. The grounds for which confession evidence is inadmissible are lack of relevance, involuntariness of confession, confession not made to a person of authority and the judge’s discretionary power.

### Lack of relevance of the confession to the matter in issue

It is a fundamental principle of law that for evidence to be admissible, and it must be legally relevant (Keane & McKeown, 2012). In general, relevant evidence can only pass the test of admissibility if such evidence is not excluded by any exclusionary rules provided for by statute or common law or excluded by the exclusionary discretion of the judge in a trial (Keane & McKeown, 2012). Confession as a form of evidence is no exception to these rules. Therefore, as previously stated, it must be legally relevant and admissible (Keane & McKeown, 2012). This means that it should not fall under any of the exclusionary rules of confessions or be excluded by the discretion of the judge (Keane & McKeown, 2012). As the confession relates to the offence charged, the court will admit it subject to other conditions, such as voluntariness. However, when a suspect is charged with rape but only admits to assault, that statement is not linked to the offence charged and, as such, is not relevant to the matter in issue. The court will therefore exclude such admission for lack of relevance to the issue. In the case of *Komba v The State* (1979)1 SLBALR 200 (C.A.), the defendant was charged and convicted of murder. He appealed because his statement was not a confession of murder but a mere admission of wounding the deceased, which does not amount to a confession. The appeal judge quashed the conviction and substituted it with a verdict of acquittal.

In this respect, courts have distinguished a confession and an admission. The difference between a confession and an admission is that a confession consists of statements made by a suspect which are directly connected to the offence charged, whereas an admission is a mere acknowledgement of facts by a suspect which are not directly connected to the offence charged as stated in *Komba v The State* (1979)1 SLBALR 200 (C.A.) stated above.

Police officers confusing an accused's admission with a confession when taking down his/her statement have serious legal implications on the outcome of the case (Keane & McKeown, 2012), such as leading to a conviction and grave punishment. Even at trials, some judges erroneously treat an accused's admission as a confession and pass judgment against the accused based on that. A judge's failure to distinguish a confession from an admission would result in a gross miscarriage of justice that should be corrected on appeal (Keane & McKeown, 2012).

### **Involuntariness of the confession**

A partial test for the admissibility of confession evidence in Sierra Leone is the "voluntariness rule." For a confession to be admissible in court, it must voluntarily be made by the suspect or accused (Butler & Garsia, 1995). The rule implies that a confession must be made freely by a suspect without any external influence, such as that of a person with legal authority to obtain statements from suspects (Ligertwood, 1988). As stated above, when suspects are apprehended and taken to police stations, they must be informed by police officers of their rights to the assistance of a lawyer and that they must be allowed to make statements willingly (Sierra Leone Police Training Manual, 1968). It follows that for a confession to be admissible as evidence, it must be made voluntarily by a suspect, and for such a statement to be voluntary, it must not be obtained through inducement in the form of 'fear, threat, promise, coercion, duress, torture and prejudice' (Hooper & Ormerod, 2013, p.2687). Thus, a statement obtained in such circumstances is inadmissible.

According to Archibold's pleading (1995), it is incumbent upon the prosecution to establish that the confession was not obtained through inducement for it to be admitted as evidence in court. The use of force by police authorities in obtaining confessions from a suspect is strictly prohibited by Sierra Leone Constitution according to section 20(1), which states that: "No person shall be subject to any form of torture or any punishment or other treatment which is inhuman or degrading." In the case of *Hindowa & ORS v The State* (1980) 1 SLBALR 322 (C.A.), the trial judge convicted the appellants. They appealed because 'the alleged confessions which formed most of the prosecution case were obtained through coercion and that the said confessions were signed under duress, that the trial judge wrongly admitted the confession evidence.' The Court of Appeal justified in its findings that a gross miscarriage of justice occurred in the trial. It further held that: "a confession obtained by police through coercion and duress renders the confession involuntary and inadmissible in law." The conviction was quashed automatically. The exclusion of confessions so obtained is mandatory and not discretionary (Cockle, 1957). Certainly, the rationale for courts excluding evidence obtained in such a manner is that if such confession is found admissible and tendered to the jury, it could prevent the accused from having a fair trial (Cockle, 1957)

According to Archibold's pleading (1995), two questions help determine the voluntariness of confessions:

- Was there any promise of favour or any menace or undue terror made use of to induce the prisoner to confess?
- If so, was the prisoner induced by such promise or menace, etc., to confess sought to be given in evidence?

If the answers are positive, the confession would be inadmissible in law (Butler & Garsia, 1995). However, in practice, against the principles of admissibility of confessions, when suspects are apprehended at the crime scene, they are often forced by the police (Sierra Leone Human Rights Report, 2019). For example, most of the protesters were arrested on 10 August 2021, while in police custody, suspects were coerced to make confessions and give names of any accomplices (Sierra Leone Human Rights Report, 2021). Sierra Leone is one of the countries where human rights violations by offenders of the law are high; many confessions obtained are convoluted by force, threat, intimidation and inducement by persons in authority (Sierra Leone Human Rights Report, 2019). As a result, when such confession evidence is about to be

tendered by the prosecution, the defence will object and announce the wrongful method by which it was obtained (Murphy, 2005). This calls for another procedure, *voir dire*, to be conducted, thereby causing delays to justice.

Besides involuntary confessions induced by fear or profit, suspects and accused might be making confessions without knowing the legal consequences of such statements. While the popular principle of law is that “ignorance of the law is no excuse”, legal education and knowledge are sparsely distributed in Sierra Leone (Sierra Leone Report, 2019); hence, many law offenders are completely ignorant of the rules about confessional statements in criminal trials. Then, given that confession evidence carries much weight and eases the prosecution’s burden in proving the defendant’s guilt (Butler & Garsia, 1995), it goes without saying that it condemns the accused without corroboration in most criminal matters. An admissible confession in some criminal matters is enough to convict an accused. This is undesirable as it exempts the court from examining other evidence to establish the accused’s commission of the offence (Butler & Garsia, 1995).

However, it is well established that the mere commission of a wrongful act does not necessarily make the accused liable (Murphy, 2005) for the offence he is charged with. For example, people may have been killed, but at the trial, they are acquitted and discharged for murder because of the defence of insanity, as stated in the case of *R v M’nighten* (1843) 8 E.R. 718. Meanwhile, confession relieves the court from the duty to establish the *actus reus* (guilty act) and *mens rea* (guilty mind) of the accused as well as any valid defence during the trial (Murphy, 2005). This may lead to a miscarriage of justice, especially if that confession alone was the basis of the accused’s conviction. The prosecution may go without proving anything other than emphatically referencing the accused’s confession (Murphy, 2005). The accused would, therefore, not benefit from any legal exoneration of liability even in cases where having committed the wrongful act, some ingredients are missing to make him criminally liable, the case is worsened where confession is admitted, and no objection is raised (Murphy, 2005).

### **Confession not made to a person in authority.**

The common law rule regarding the admissibility of a confession in Sierra Leone further provides that for a confession to be admissible in evidence, it has to be voluntarily made to a person in authority (Murphy, 2012). This means that a purported accused’s confessional statement is inadmissible if it was not made to a police officer during an investigation or given by him as a guilty plea in his/her trial (Keane & McKeown, 2012). In Sierra Leone, a person in authority could either be a police officer who has the accused in custody or any person who may be responsible for the administration of justice, according to section 4(1) of the Criminal Procedure Act 1965, which stated that: “In making an arrest the constable or other person making the same shall touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action”. In general, a person in authority about a confession is someone the suspect reasonably believes to have some amount of authority or power over his or her arrest or prosecution (Murphy, 2005).

The rationale behind why an accused/ a suspect confessional statement needs to be made to a person in authority is that persons in authority are representatives of the law. If an accused person admits to them of committing an offence voluntarily, then he is prepared for the law to take its cause on him as a guilty offender according to section 98 of the Criminal Procedure Act 1965, which states that: “If the accused or defendant admits the truth of the charge the Court may convict him thereof, or refuse to accept a plea of in guilty, as it thinks fit”. If an accused confesses to them, the accused is aware of the implication of making such a confessional statement and the consequences that follow (Murphy, 2005).

However, it does not make what he is saying true compared to when he makes such a statement to an ordinary person. Sometimes, those who commit offences are more inclined to speak the truth and admit to

their crimes when speaking freely to friends or relatives. They will get to the bottom of the truth and present the fact as to how it happened (Murphy, 2005).

### **Confessions against co-accused**

An important question concerning the admissibility of a confession in criminal trials is whether a statement made by an accused which tends to implicate a co-accused is admissible at law. According to Archibold's pleading (1995), "A statement made by an accused which implicates a co-accused is not admissible as evidence against the co-accused if such statement is tendered by the prosecution to the court" (Butler & Garsia, 1995, p.424). Confession is only admissible against the maker, not his accomplice (Butler and Garsia, 1995). During criminal trials in Sierra Leone, objections are normally raised by the defence counsels when an accused implicates a co-accused, and the courts grant such objections in due course. In the case of *Ouieme and Nine Others v Reginam* (1964) 27-36/64 ALR SL 149 (C.A.), it was decided in the Court of Appeal that the appellant was charged with murder. The 16<sup>th</sup> appellant was implicated by the first appellant in his statement to the police that the murderers met in the 16<sup>th</sup> appellant's house after killing the deceased and that she was directly involved in the deceased's death. The 16<sup>th</sup> appellant denied the statement. The Court of Appeal held that: "The confession of one accused person cannot be used as evidence against another accused".

However, most police officers would receive and record an accused's confession against his co-accused. Courts normally exclude any part of an accused's confession implicating a co-accused. The critical effect of such confession is that the co-accused lacks proper legal representation. In that case, they do not have a defence lawyer who may object to such confession being tendered and admitted as evidence against the co-accused (Murphy, 2013). This might cause the jury to consider it when the trial judge fails to dismiss such evidence. Many criminal trials do not involve a defence lawyer if the accused cannot afford to hire one (Butler & Garsia, 1995). The State has failed or has not achieved ensuring that accused persons facing criminal trials are provided with legal representation; this can account for the high conviction rate in court (Sierra Leone Human Rights Report, 2021). In the court, almost 90% of accused confessional statements go to the credit of the prosecution (Sierra Leone Human Rights Report, 2021). The accused, ignorant of the effect of his confession, does not contest its admissibility and is left at the court's mercy without the power to object as lawyers do. When such evidence is in the hands of the prosecution in court, the case may quickly be decided without further probing, whether it was legally obtained or not.

### **Judicial discretion**

Confessions may be declared inadmissible by a decision of judges. Judges using their exclusionary discretionary powers may exclude relevant confession evidence even though made voluntarily by a suspect in criminal trials (Keane & McKeown, 2012). In effect, judges have a residual discretionary power to do so. In practice, judges may use their discretion to exclude voluntary confessions 'where it appears that the police officers obtained a confession through the use of improper or illegal means, and where police investigators obtain the confession through violations of the Judges' Rules' (Keane & McKeown, 2012, p.282). The rationale for excluding such evidence is that if a judge admits confessions obtained by improper means, it would manifestly impede the accused from having a fair trial (Keane and McKeown, 2012) whereas the right to a fair trial is a fundamental right enshrined in the Constitution of Sierra Leone according to section 23(1), which stated that: "Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

Then, judges in a criminal trial can utilize their discretionary power to exclude confessions when it appears firmly that the confession tendered by the prosecution is "unreliable" (Ligertwood, 1988, p.387). This is generally invoked when the accused is of unsound mind, that is, suffering from mental illness or where he

hallucinated when the confession or admission of guilt was made (Ligertwood, 1988). This power is discretionary because, as discussed above, “the Judge’s Rules are by law just rules of practice” (Butler & Garsia, 1995, para.1140). Hence, in that respect, judges may not use mandatory exclusions. An example in which a judge can exercise discretion to exclude confessions obtained due to a breach of the Judge’ Rules is where the confession was procured by the police investigators without any formal caution or warning to the accused as prescribed by the rules. Before exercising their discretion, judges normally consider the breach’s nature and the offence’s seriousness (Murphy, 2005). Judges would ensure they exercise their discretion to exclude confessions improperly obtained, as this will lead to a miscarriage of justice (Choo, 2012). It follows that violations of the rules by police interrogators do not systematically render a confession inadmissible or automatically exclude it from evidence.

## ROLE OF THE JUDGE IN THE ADMISSION OF A CONFESSION

Judges are central to the admissibility of confession during a voir dire procedure, where they make decisions without the participation of the jury.

### The procedure: voir dire

In criminal trials, ‘when there is a dispute about the admissibility of a confession statement, it is the ultimate duty of the judge to determine and rule on the admissibility of the confession without a jury’ (Butler & Garsia, 1995, para.1115). The procedure is called ‘voir dire’ or trial within a trial (Butler & Garsia, 1995). However, a voir dire is not a trial but an inquiry conducted by a judge to determine whether a confession is admissible (Martin and Law, 2006). In the case of *Kamara and Others v The State* (1968) 36/67 ALR SL 355 (C.A.), the accused persons were charged in the High Court with burglary and larceny. They appealed because the alleged confession was wrongly admitted into evidence. The Court of Appeal held that:

“Where an objection is made as to the admissibility of an alleged oral admission, the judge must hear evidence in the absence of the jury and rule on the admissibility of such evidence in the absence of the jury”.

The trial commences after the defence counsel has expressly notified the prosecution that he or she intends to object to the admissibility of the confession (Hooper and Ormerod, 2013). At common law, counsel should refrain from tendering such as evidence, and the trial judge should immediately conduct a ‘voir dire’ to determine the admissibility of the confession (Hooper & Ormerod, 2013). The procedure requires that where the accused is not represented by a counsel, it is the judge’s duty to raise the issue of admissibility of the confession and to conduct a voir dire to determine its admissibility (Hooper & Ormerod, 2013). The judge dismisses jurors before such trial commences, and the trial is conducted in their absence (Hooper and Ormerod, 2013). In the voir dire trial, the prosecution and the defence counsels must call witnesses and adduce any evidence (Murphy, 2005). The prosecution would be obliged to tender evidence in order to establish that the confession was voluntarily made by the accused (Keane & McKeown, 2012). In practice, the police officers who took the statement and those that witnessed the taking of such statement would be called as witnesses for the State. After that, the prosecution would examine the witnesses in chief, and the questions asked must be relevant to the issue of voluntariness (Butler & Garsia, 1995). The accused would also be put in the witness box, and he would testify about how the statement was obtained (Butler & Garsia, 1995). The accused would have the opportunity to testify as to whether he or she was intimidated or induced during the process of testifying. The accused can call witnesses, if there is any, to support such assertion (Butler & Garsia, 1995). After hearing both sides, the trial judge will admit or exclude the evidence. Only after he had made that decision would jurors be invited into the courtroom (Butler & Garsia, 1995). If the confession is the only evidence in the prosecution’s possession and has been declared inadmissible by the trial judge, the defence will file a motion to quash the case (Keane & McKeown, 2012). If the confession is admissible, the trial continues.



## The functions of the judge and jury at voir dire concerning the admissibility of confessions

As just discussed, the trial judge alone determines the admissibility of a confession. In a voir dire procedure, the functions of the judge are distinct from that of the jury. In effect, voir dire requires that judges look at both substantive and procedural law to determine whether a confession is admissible, whereas the jury must access the confession as a fact only after the statement is admitted by the judge. The question of fact is mostly related to whether the confession is true or false (Butler & Garsia, 1995). The jury is vested with determining whether the admitted confession is credible and the weight to attach to such confession (Butler & Garsia, 1995).

In the case of *N'Doinje Bull and others v Reginam* (1967) 49-51/66-67 ALR SL 202 (C.A.), the appellants were charged with murder and sentenced by the trial court. They appealed because the trial judge wrongly received their statements into law. The Court of Appeal dismissed the appeal and held that:

“When there is a dispute as to the admissibility of a confession, it is for the judge to rule upon the admissibility of a confession, after hearing evidence in the absence of the jury, if the question of its admissibility arises, and it is for the jury then to determine what weight and value they should give to it but not to decide upon its admissibility or dismiss it upon their minds as inadmissible.”

Accordingly, after the confession has been ruled admissible by a judge in a voir dire, the judge is also vested with the function of directing the jury that even though such evidence is now admissible, it must be proved beyond reasonable doubt that such confession is voluntary before they could convict on such evidence case (Keane & McKeown, 2012). Failure of the judge to give such direction may cause his decision to be overturned on appeal (Keane & McKeown, 2012).

## CONCLUSION

In conclusion, an adverse admission relevant to the issue of guilt may be admissible in criminal cases as a confession. However, the confessional statement will not be admitted when the accused is oppressed or induced to make such a confession or the confession is unreliable. The admissibility of evidence is crucial in court proceedings, and courts have always required that evidence be relevant to the fact at issue and have probative value or weight before it is admitted. In general, when an accused makes a free and voluntary confession which is ‘direct and positive’, such confession would be enough for a judge to authorize conviction without corroborative evidence. In the admissibility of confidence evidence, courts have sought recourse in the Judges’ Rules. The Judges’ Rules are simply referred to as ‘rules of practice laid down for the guidance of police officers in procuring statements or interrogating suspects. These rules were established to combat the problems faced by police officers over the years in conducting interrogations or interviewing a suspect. The rules have been much effective for the police and the courts in Sierra Leone, which have now been incorporated into the Sierra Leone Police Training Manual.

In criminal trials, when there is a dispute about the admissibility of a confession statement, it is the ultimate duty of the judge to determine and rule on the admissibility of the confession without a jury. The procedure necessary for such is referred to as ‘voir dire’ or trial within a trial; the trial judge alone determines the admissibility of a confession. In a criminal trial, including voire dire, the functions of the judge are distinct from that of the jury. In effect, voire dire procedure requires that judges must look at both substantive and procedural law in order to determine whether a confession is admissible or not, whereas the jury must access the fact of the confession only after the statement is admitted by the judge. This article has investigated the rules for the admissibility of an accused’s confession, the grounds for the inadmissibility of such a confession, and the functions of the judge and jury at voir dire concerning the admissibility of confessions.

Based on the findings, confessional statements taken by threat, intimidation, force or promise and not made to a person in authority are not admissible in Sierra Leone courts. In Sierra Leone, the effect of free voluntary confession is governed by the common law. Free voluntary confession by an accused, whether made under Preliminary Investigation in a Magistrate court or to the police, is significant in aiding the prosecution's case.

## SUGGESTIONS

However, this article suggests that there should be legislation enacted in Sierra Leone which regulates the admission of confession evidence in criminal trials. It is needful that such legislation should be enacted with the view of making provisions for sections dealing with the mandatory and discretionary exclusion of confessions in criminal trials. The legislation should also provide the true meaning of voluntary confessions, and the mandatory exclusion should be extended to include confessions obtained through improper or illegal means. The enactment of the law regulating the admission of confession would facilitate the accessibility of such law even to the layman in the future. Besides the above, another suggestion is that voluntary confession should be corroborated before it is used to convict an accused person by a judge in a criminal trial. It appears that the current position in Sierra Leone criminal justice system is that a free voluntary confession, once direct and positive, is sufficient to convict an accused without any corroboration.' The researcher affirms that the courts must ensure that there should be supporting evidence outside the confession before such evidence is used to convict an accused. Providing such would reduce the number of wrongful convictions in the future. It will also prevent or reduce confessions fabricated or manufactured by the police from being admitted by a judge and reduce the admission of false confessions in criminal trials.

Moreover, another suggestion is that the Judges' Rules must be made rules of law. The current position in Sierra Leone's criminal justice system is that the Judges' rules are merely rules of practice and not rules of law.' it is evident that confessions obtained by the police in total violation of the Judges' Rule are admissible in evidence if it is voluntary. Such a rule must be made the rule of law to render confessions obtained in violation of such rule automatically excluded from evidence. This will also militate against the unlawful conduct of police investigators during the interview of a suspect. Furthermore, surveillance cameras should be provided in the police interrogation rooms. In Sierra Leone, it is apparent that confessions are submitted in courts orally, and such has been questioned in due course as to how the confession is obtained. For the prosecution or defence counsel to argue the admissibility of such evidence without any difficulties, police officers must ensure that all confessions, interviews and interrogations are conducted under strict surveillance cameras. The courts must ensure that evidence of the voluntariness of confessions must be recorded in visual footage and submitted to the court. It is certain that if this is provided for in every police station, then it will enable the court to know easily whether the confession is obtained through inducements, duress, or coercion. It will also aid the courts to know whether caution is administered to the suspect before obtaining evidence from the police. This will add efficacy to the Judges' Rules in Sierra Leone.

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