

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**ADMISSIBILITY OF CONFESSIONS AND THE DOCTRINE OF RECENT
POSSESSION IN THE ZAMBIAN CRIMINAL JUSTICE SYSTEM AND ITS
RESPONSE TO WRONGFUL CONVICTIONS**

BY


JOHN NGISI

A dissertation submitted to the University of Zambia in partial fulfilment of the requirements for the degree of Bachelor of Laws (LL.B) of the University of Zambia.

May 2012

DECLARATION

I, **JOHN NGISI**, computer number - **28026853** do hereby declare that I am the author of this Directed Research entitled: Admissibility of Confessions and The Doctrine of Recent Possession in the Zambian Criminal Justice System and its Response to Wrongful Convictions, and confirm that it is my own work. I further declare that due acknowledgement has been given where work of other scholars has been used. I verily believe that this research has not been previously presented for a degree at the University of Zambia or any other University.

Student's Signature: 

Date: 14/05/12

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that the Directed Research Essay under my supervision by:

JOHN NGISI

28026853

Entitled:

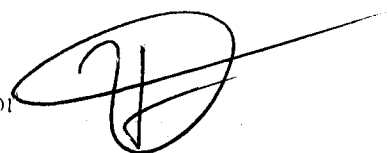
**ADMISSIBILITY OF CONFESSIONS AND THE DOCTRINE OF RECENT
POSSESSION IN THE ZAMBIAN CRIMINAL JUSTICE SYSTEM AND ITS
RESPONSE TO WRONGFUL CONVICTIONS**

Be accepted for examination. I have checked it and I am satisfied that it fulfils the requirements pertaining to format as laid down in the regulations governing Directed Research Essays.

Dated

10/5/12

Supervisor



Mr I. Zulu

ABSTRACT

It is an immutable fact that every Criminal Justice System has the obligation to ensure that it follows the principles of evidence laid down in the law and devise a mechanism to respond to wrongful convictions when they do arise. This work considers the extent of adherence to selected principles of evidence by the Zambian criminal justice system and how it has responded to wrongful convictions.

One aspect the essay examines is the principle of confessions and the extent to which the Zambian criminal justice system adheres to its requirements. It was found in this research that the Zambian criminal justice system largely adheres to the requirements of the principle of confessions. However, it was also noted that in practice, the principle is also flaunted. Thus, it is recommended that interrogations conducted by the police should be video-recorded to ensure that confessions given by the accused are voluntary.

Another aspect given regard in this essay is the Doctrine of Recent Possession and the extent to which the Zambian criminal justice system adheres to its requirements. Research conducted on this topic found that the Zambian criminal justice system does indeed adhere to the said requirements save for a few instances.

Furthermore, the essay looks at the phenomenon of wrongful convictions. It was found that the Zambian criminal justice system does not have an institution mandated to deal with aspects of wrongful convictions. However, of note is the fact that there are measures that have been put in place to prevent wrongful convictions. These include: establishment of a forensic unit; standard eyewitness identification procedures; and presence of an independent observer during police interrogations. It is recommended that an institution should be created in Zambia to solely consider aspects of wrongful convictions.

ACKNOWLEDGEMENTS

The completion of this Directed Research would not have been possible without the invaluable contributions of certain persons. It is for this reason that I am obliged to acknowledge the support they rendered to me throughout the period of this research.

Thus, I acknowledge: my supervisor- Mr Lungisani Zulu for the assistance and guidance rendered during the course of this research; My friends- Nehimunya Nedziwe and Bupu Mubanga for the help rendered during the preparation of this work. To them, I express my profound gratitude for gracefully taking the painstaking task of reading, correcting and offering valuable critic and suggestions on the content of this research.

I am eternally grateful to my siblings: Ruth and Ezekiel Ngisi for the continuous inspiration, motivation, support and encouragement during the research of this work. I would not have done it without them.

To all my friends whom I could not mention, thank you for the encouragement and for always providing a shoulder for me to lean on when things got tough. You all are truly amazing.

DEDICATION

This work is dedicated to the memory of my late mother, Vivien Simataa Ngisi, without whom all this would surely not be possible. It is terribly unfortunate that she is unable to witness the completion of a journey we started together so many years ago and ultimately culminating in this work. Her love, support, and strength brought me this far.

TABLE OF CONTENTS

CONTEXT	PAGE
PRELIMINARY PAGES	
Declaration	ii
Recommendation	iii
Abstract	iv
Acknowledgements	v
Dedication.....	vi
Table of Contents	vii
Table of Cases	xi

CHAPTER 1

AN OVERVIEW OF CONFESSIONS, THE DOCTRINE OF RECENT POSSESSION AND WRONGFUL CONVICTIONS

1.0 Introduction.....	1
1.1 Statement of the problem.....	2
1.2 Rationale and Justification.....	3
1.3 Methodology.....	4
1.4 An Overview of the Concept of Confessions	4
1.5 What is the Doctrine of Recent Possession?.....	5

1.6 A Brief Analysis of Wrongful Convictions and how they are
Prevented.....7

1.7 Conclusion.....9

CHAPTER 2

CONFESSIONS AND THE EXTENT TO WHICH THE ZAMBIAN COURTS ADHERE
TO THEIR REQUIREMENTS

2.0 Introduction..... 10

2.1 The History of Confessions..... 11

2.2 Admissibility of Confessions..... 12

2.2.1 Involuntariness of the
Confession..... 13

2.2.2 Requirement that Judges' Rules be Adhered to in Interrogation..... 15

2.2.3 Unfairness in Acquiring the Confession 15

2.3 Extent to which the Zambian Courts Adhere to the Principles of
Confessions..... 16

2.3.1 Analysis of Selected Cases 17

2.3.2 Critique of the Position that Zambian Courts Adhere to Principles of Confessions
.....21

2.4 Conclusion..... 22

CHAPTER 3

THE DOCTRINE OF RECENT POSSESSION AND THE COURT'S CONSIDERATION
OF ITS REQUIREMENTS IN ZAMBIA

3.0 Introduction.....24

3.1	Description of the Doctrine of Recent Possession.....	25
3.2	Operation of the Doctrine of Recent Possession	26
3.3	Extent to which the Zambian Courts Adhere to Principles of Recent Possession.....	29
3.3.1	Analysis of Selected Cases	30
3.3.2	Critique of the View that the Zambian Courts Adhere to the Principles of the Doctrine of Recent Possession	34
3.4	Conclusion.....	35

CHAPTER 4

A COMPARATIVE STUDY OF THE AMERICAN AND ZAMBIAN CRIMINAL JUSTICE SYSTEMS IN DEALING WITH WRONGFUL CONVICTIONS

4.0	Introduction.....	36
4.1	Response to Wrongful Convictions in the American Criminal Justice System	37
4.1.1	Institutions Aimed at dealing with Wrongful Convictions in the American Criminal Justice System.....	37
4.1.2	Specific Measures for Prevention of Wrongful Convictions in the American Criminal Justice System.....	38
4.2	Response to Wrongful Convictions in the Zambian Criminal Justice System	42

4.2.1 Institutions Aimed at dealing with Wrongful Convictions in Zambia 43

4.2.2 Specific Measures for Prevention of Wrongful Convictions in the Zambian Criminal Justice System 43

4.3 Conclusion..... 46

CHAPTER 5

RECOMMENDATIONS AIMED AT IMPROVING THE ZAMBIAN CRIMINAL JUSTICE SYSTEM

5.0 Introduction..... 47

5.1 Recommendations..... 47

5.2 Conclusion 50

BIBLIOGRAPHY

TABLE OF CASES

ZAMBIAN CASES

Abel Banda v The People (1986) Z.R. 105

Chabala v The People (1976) Z.R. 86

Chisoni Banda v The People (1991) SCZ Judgment No. 8 of 1991

John Mkandawire and Others v The people (1978) Z.R. 46

Mbuyi Jean v The People (1971) Z.R. 82

Morgan Ngosa v The People SCZ Judgment No. 30 of 2010

Mwiya and Ikweti v The People (1968) Z.R. 53

FOREIGN CASES

R v Hanemaayer, (2008) 234 C.C.C.

R v Wilson (1967) 2 QB 406

CHAPTER ONE

AN OVERVIEW OF CONFESSIONS, THE DOCTRINE OF RECENT POSSESSION AND WRONGFUL CONVICTIONS

1.0 Introduction

The courts, being the custodians of justice, are tasked with the responsibility to adjudicate on various cases. In terms of criminal matters, there are principles of evidence which must be adhered to during trial. Invariably, when these principles of evidence are not followed, wrongful convictions are the end result. There have been numerous reports in Zambia and across the globe in which individuals have been convicted for crimes they did not commit and were, after spending a number of years in jail, exonerated.

In the United States of America for instance, 16 year old high school sophomore Jeff Deskovic falsely confessed to the rape and murder of a classmate. Questioned without his parents, terrified, tired and only given coffee to drink with no food, he ended the interrogation distraught beneath the interrogation table. Seventeen years later, when the DNA from the scene was finally run through a national database, a match was discovered with someone who was already in prison. Jeff was released in 2006 at the age of 33.¹

This particular case highlights how disregard for the rules governing confessions such as the rule asserting that the accused should not be coerced to make the confession can lead to wrongful convictions.

¹ Richard Aborn. "Measures of Preventing Wrongful Convictions," www.RichardAbornforDistrictAttorney.com (accessed November 27, 2011)

In Zambia, the application of another principle of evidence, the doctrine of recent possession, can at the very least be considered questionable. *Morgan Ngosa v The People*² advances facts in which the court thought it proper to use the doctrine of recent possession and ultimately found the accused guilty by use of this principle. A deeper examination of these facts leads to the conclusion that the defendant's explanation for being found in possession of the property was reasonable and as such, it is plausible to argue that the doctrine was wrongly applied. This is by virtue of the fact that the doctrine of recent possession requires that when an accused gives a reasonable explanation for being found in possession of the property, he should not be convicted based on the doctrine.³

In light of the aspects raised above, it becomes necessary to consider whether the Zambian criminal justice system has any mechanisms or measures that help it to prevent wrongful convictions and if so, whether these preventive measures are effective.

1.1 Statement of Problem

In light of the fact that some judgments prima facie look questionable in some criminal matters decided by the Zambian courts, it is imperative that a research is conducted to try and ascertain whether this is the case. Further, it is noted that a person's liberty is held in high regard in most legal systems and Zambia is not an exception as the constitution highlights.⁴ Therefore, the rules or procedures that lead to loss of liberty must be critically analyzed and improved on from time to time.

² Morgan Ngosa v The People SCZ Judgment No. 30 of 2010

³ Judicial Commission of New South Wales. "Recent Possession," www.judcom.nsw.gov.au (accessed November 27, 2011)

⁴ Zambian Constitution, art. 13

This paper considers whether the Zambian courts properly apply selected principles of evidence, namely, rules relating to admissibility of confessions and the doctrine of recent possession. Moreover, when consideration is given to the fate of the principles above, it becomes a matter of necessity that a further examination as to how the courts deal with the danger of wrongful convictions is made. Thus, the study outlines measures the criminal justice system in Zambia has put to prevent wrongful convictions and whether these measures are effective in curbing wrongful convictions.

1.2 Rationale and Justification

The right to liberty is an important human right which should only be derogated from for very convincing reasons such as the conviction of an individual for having committed a crime. The rationale and justification of this study is grounded on this very proposition.

It is noted that numerous wrongful convictions are as a result of the courts not strictly adhering to principles of evidence such as admissibility of confessions and requirements of the doctrine of recent possession. Therefore, this study is justified in examining the extent that Zambian courts adhere to principles of evidence by virtue of the fact that loss of the accused's liberty must be arrived at after adherence to a fair and proper procedure.

Moreover, it is also imperative that in consideration of how dire the consequences of conviction are, the criminal justice system must have measures to counter the dangers of wrongful conviction. Therefore, it is essential for an examination to be conducted on how Zambian courts attempt to avoid wrongful convictions and whether the measures or means they resort to are effective.

Furthermore, it is paramount that a research in the mould of this study should be conducted on how other jurisdictions avoid wrongful convictions so as to advance recommendations on how the Zambian criminal justice system can improve on this score.

1.3 Methodology

This research will be dependent on both primary and secondary sources. Thus, the primary sources to be utilized will include interviews with judges, lawyers and scholars depending on which shall be relevant for each particular subject matter being researched on. Moreover, secondary sources to be referred to shall include books, dissertations, journal articles, as well as data from reports. Internet data will also be referred to in particular for its value in being updated with current affairs.

Having considered the elements above, the chapter will now delve into an overview on the various concepts that will be covered in the subsequent chapters of this work. To this end, the chapter will analyse the concept of confessions; the doctrine of recent possession; and the concept of wrongful convictions.

1.4 An Overview of the Concept of Confessions

Legal history is replete with instances in which accused individuals went on to confess to crimes they were indicted for. However, there are circumstances in which an accused may confess due to coercion. Thus, confessions must be given proper regard before being admitted by the courts. In this regard, this section of the chapter considers briefly but succinctly the concept of confessions. Particular attention is given to the principles followed in admitting the confessions in court.

Various authors define the term 'confession' differently. One definition given is that a confession is "a statement by the accused in which he admits committing an offence, or admits some fact that goes to show that he committed an offence"⁵ The author further goes on to highlight a distinction between inculpatory and exculpatory statements. The former refers to statements that are self-incriminating and the latter in loose terms refers to statements that have the effect of exonerating the accused. In this vein, most jurisdictions tend to pay much attention to inculpatory statements.

Furthermore, at the core of the concept of confessions are principles which dictate the admissibility of these confessions in court. Heydon puts it thus:

*"There are three rules to bear in mind when considering the admissibility of confessions. If the confession is involuntary, it is strictly inadmissible as a matter of law. If it infringes the Judges' Rules...it may be excluded in the discretion of the court. The third rule is that if admission of an otherwise admissible confession would operate against the accused unfairly, again it may be excluded in the discretion of the court."*⁶

These principles, as will be explained further in the next chapter, were set up in order to curb the dangers of admitting forcibly acquired confessions. Thus, the courts ought to treat statements made prior to its sitting quite tentatively.

1.5 What is the Doctrine of Recent Possession?

A quick perusal of some criminal cases adjudicated by the Zambian courts highlights a principle of evidence or presumption of fact in which an accused may be found guilty of an offence by

⁵ J. D. Heydon, *Evidence: Cases and Materials* (London: Butterworth and Company; 1984), 45

⁶ J. D. Heydon, *Evidence: Cases and Materials* (London: Butterworth and Company; 1984), 78

virtue of being found in possession of recently stolen property. This presumption can only be arrived at in an event that the accused fails to give a reasonable explanation for this possession. Thus, this section will consider what the doctrine of recent possession really is and delve into matters relating to how it operates.

The few authors that have written on this doctrine do not give a direct definition of the doctrine of recent possession but rather make an attempt at describing it. One such author is Turner who describes the doctrine as follows:

*"...there is one discretionary presumption of fact which deserves careful attention-viz. that the possessor of goods recently stolen may fairly be regarded as either the actual thief or else a guilty receiver. His possession raises also but less strongly-a presumption of his guilty connection with any further crime that accompanied the theft..."*⁷

The author further goes on to highlight the fact that the doctrine of recent possession is rebuttable. The accused must merely give an account that is reasonably probable for their being found in possession of the recently stolen property.

Furthermore, Wigmore advances three requirements that must be present for an accused to be found guilty under the doctrine of recent possession. He puts it thus:

"...the following considerations have been emphasized from the point of view of a definite rule: firstly, the possession must be unexplained by any innocent origin;

⁷ J. W. C. Turner, *Kenny's Outlines of Criminal Law* (Cambridge: Cambridge University Press, 1966)

*secondly, the possession must be fairly recent; and thirdly, the possession must be exclusive.*⁸

In view of the requirements of the doctrine of recent possession highlighted above, the courts have an obligation to ensure that the doctrine is followed to the latter. Most important is the realization by the courts that the presumption must be regarded as rebutted provided the explanation by the accused for their possession of stolen property is reasonably true.

1.6 A Brief Analysis of Wrongful Convictions and how they are Prevented

It may be argued that there exists no criminal justice system across the globe so perfect as not to be capable of wrongfully convicting an innocent individual. In this regard, most criminal justice systems have measures meant to prevent wrongful convictions and the effectiveness of these measures varies from one jurisdiction to another. Therefore, this section firstly considers the meaning of the term wrongful conviction and later briefly delves into how wrongful convictions may be prevented.

The definition of the term wrongful conviction is shown in the work of David. She provides the following:

*“Wrongful convictions are a relatively new concept of the criminal justice system and they are generally understood to mean those who are innocent of the crime for which they have been found guilty by the courts of law.”*⁹

⁸ John Wigmore, *Evidence in Trials at Common Law* (Boston: Little, Brown and Company, 1981), 67

⁹ Lisa David, “Wrongful Convictions: Review and Assessment of Miscarriage of Justice in Canada.” (Master’s Thesis: University of British Columbia, 2010), 7

The definition of wrongful conviction offered by the author leads to the conclusion that there may be two types of wrongfully convicted people, viz. factually innocent and legally innocent. David explains these two types of wrongfully convicted thus: "*Factual innocence is self-explanatory; the person did not actually commit the acts upon which the conviction rests. Legal innocence means the person may have committed the acts, but may not have met the legal standards to be found guilty of the crime.*"¹⁰

Furthermore, most criminal justice systems have measures or mechanisms which they depend on to prevent wrongful convictions. There are measures which are common and others which are particular to certain types of jurisdictions. This section does not assert which measures are specific to which jurisdiction but simply highlights the measures commonly used.

Firstly, some jurisdictions require that there is mandatory recording of interrogations.¹¹ This work has as one of its objects the highlighting of how confessions may be coerced out of an accused. In this regard, making recording of interrogations mandatory and thus leading to confessions being recorded can be argued to aid in the reduction of wrongful convictions as police officers or interrogators are unlikely to use force in acquiring confessions.

Secondly, most jurisdictions attempt to improve their eyewitness identification procedures as a mechanism for reducing or preventing wrongful convictions.¹² Eyewitnesses may be key sources of evidence in criminal matters. However, they may also lead to false identification of an accused as the perpetrator of the crime in question. Thus, it is pivotal that the procedure for identification is worked on in such a way that it leads to few, if any, false identifications.

¹⁰ Lisa David, "Wrongful Convictions: Review and Assessment of Miscarriage of Justice in Canada." (Master's Thesis: University of British Columbia, 2010), 7

¹¹ Fla innocence. "Wrongful Convictions: Preventive Measures," www.Flainnocence.blogspot.com (accessed February 7, 2012)

¹² Innocence Project. "Wrongful Convictions," www.innocenceproject.org (accessed February 7, 2012)

Thirdly, some jurisdictions have improved their standards and accountability at their crime laboratories.¹³ In modern times, criminal investigation has moved with the times and taken advantage of science in its investigation. With the use of forensic science, numerous criminal investigations have been solved. However, it has been observed that results from criminal laboratories may be manipulated in circumstances which include corruption of the personnel in charge. Therefore, making sure that the standards and accountability of crime laboratories is upheld leads to avoidance of wrongful convictions.

Moreover, it is essential that these crime laboratories are well funded and the employees are not over-burdened with unreasonable workloads. When this is done, less mistakes are likely to be made by employees and it necessarily follows that wrongful convictions will be prevented.

1.7 Conclusion

This chapter has given an overview of selected principles of evidence to be considered in depth in this paper. Firstly, it gave a synopsis of the concept of confessions; highlighting the pertinent principles for admission in court. Secondly, the chapter provided an analysis of the doctrine of recent possession, clearly outlining the principles the court ought to follow in applying the doctrine. Finally, the chapter delved into the measures that criminal jurisdictions generally use to prevent wrongful convictions. This was preceded by a discourse on the meaning of the term wrongful conviction. Thus, this chapter has set the scene upon which the rest of the chapters will follow in analyzing the extent to which the *Zambian criminal justice system* adheres to selected principles of evidence and how it deals with dangers of wrongful conviction.

¹³ Innocence Project. "Wrongful Convictions," www.innocenceproject.org (accessed February 7, 2012)

CHAPTER TWO

CONFESSIONS AND THE EXTENT TO WHICH THE ZAMBIAN COURTS ADHERE TO THEIR REQUIREMENTS

2.0 Introduction

The history of criminal law is replete with instances in which confessions have been used to convict an accused that issued them. This admittedly has been a huge help in resolving these particular cases. However, there have been instances in which confessions have been coerced from accused individuals by people in authority. Thus, over the years, the courts have been implored to treat confessions with great caution.

This chapter deals with the concept of confessions and examines the extent to which the Zambian courts adhere to the principles they are founded on. To this end, the chapter will firstly consider the history of confessions. This history of confessions has evolved from one century to another, albeit at a slow pace. Thus the chapter will consider the various principles that have governed confessions over selected stages in time.

Secondly, the chapter will delve into the rules pertaining to admissibility of confessions in court. In the current legal regime, having rules to govern the admission of confessions in court is a matter of necessity. Hence, this chapter will take an in depth look at these guiding principles.

Finally, the chapter will come to what should be considered as its core component. This core component is the analysis of whether the Zambian courts adhere to the principles that govern confessions. This objective will be achieved by the examination of three selected judgments made by Zambian courts over the years and relating these decisions to the principles of

confessions to be covered within the chapter. Consideration will also be given to the critique given by a practicing lawyer of the fact that actual adherence to the principles of confessions in lower courts is not always the case. A conclusion on the matter will ultimately be drawn.

2.1 The History of Confessions

Confessions have been used in trials for a very long time. However, for purposes of this work, the historical stages discussed will be those adumbrated by Wigmore who advances the following:

There may be noted four distinct stages in the history of the law's use of confessions. In the earliest stage (sixteenth century) there is no restriction upon their reception. In the next stage, comprising the second half of the 1700's, the matter begins to be considered and it is recognised that some confessions should be rejected as untrustworthy. In the third stage comprising the 1800's, the principle of exclusion is developed, under certain influences to an abnormal extent, and exclusion becomes the rule, admission the exception. In the last phase, constitutional considerations become predominant.¹⁴

The foregoing discourse highlights how the principle of admissibility of confessions has developed over time. The first stages in the fifteenth century admitted confessions without regard to how they were acquired from the accused. This implied that an accused could be tortured into inculcating himself and the confession he gave would be admitted and relied on to convict him. It perhaps comes as no surprise that a confession in this time period was followed by an immediate conviction.

¹⁴ John Wigmore, *Evidence in Trials at Common Law* (Boston: Little, Brown and Company, 1981), 382.

The second stage highlighted above is responsible for the birth of rejecting confessions suspected to have been coerced from the accused or unfairly acquired. However, it must be noted that even though an admission criteria was formulated, not many confessions were rejected.

The third stage in the evolution of confessions is attributed with having made the admissibility criteria for confessions more stringent. This strictness reached levels that were regarded as unreasonable due to the fact that an accused could not be convicted based on a confession if he could show that a person in authority promised him something as trivial as gin for the confession.¹⁵

The fourth stage takes into consideration aspects relating to the constitution. In some jurisdictions, constitutions provide for a person to be informed of their rights before questioning them and eventually getting a confession from them. An example of this is in the United States of America where an accused must be read their Miranda rights before questioning.

This, in brief, has been the development of the principles relating to admissibility of confessions. At present they are strict but not unreasonable as epitomised in the third stage of development. At this juncture, it is perhaps apt to delve into a discourse pertaining to these admission rules of confessions.

2.2 Admissibility of Confessions

The previous chapter asserted that a confession was a statement made by the accused admitting having committed an offence. When such a statement is alleged to have been made by the

¹⁵ John Wigmore, *Evidence in Trials at Common Law* (Boston: Little, Brown and Company, 1981), 38

accused, the law requires that the confession must meet certain set standards. Basically, there are three rules to bear in mind when considering the admissibility of confessions. These rules are: involuntariness of the confession rule; infringement of the Judges' Rules; and the unfairness rule. The rules will now be considered in turn.

2.2.1 Involuntariness of the Confession

A major condition for a confession made by an accused to be admitted in court is that it should be made voluntarily. The court has the onus to determine whether the confession was involuntarily given by the accused and this is normally done in a *voire dire*. There are several aspects considered in determining voluntariness of a confession. The pertinent two are given regard below: the second dependant on the first.

Firstly, for a confession to be regarded as voluntary, it must not be made as a result of an inducement. Wigmore describes this concept thus:

"A confession is inadmissible against the accused unless it is not obtained by inducement; that is, unless it is voluntary in the sense that it has not been obtained from him by fear of prejudice or hope of advantage..."¹⁶

There are two aspects to consider from this discourse. One being that voluntariness is negated by fear of prejudice. This implies that in an event that the accused is threatened or even tortured in coercing a confession from him, such a confession is tainted and as such involuntary. Another aspect the discourse brings out is that voluntariness may be negated by promising the accused some advantage if he confesses. Thus, an accused promised that his jail term would be

¹⁶ J. D. Heydon, *Evidence: Cases and Materials* (London: Butterworths and Company Publishers Limited, 1984), 175.

significantly reduced if he confessed may be regarded as having made such a confession involuntarily.

Secondly, the inducement negating voluntariness must proceed from a person in authority.

Wigmore provides thus:

"...the fear of prejudice or hope of advantage must be excited or held out by a person in authority for voluntariness of a confession to be curtailed."¹⁷

The pertinent question that the above provision raises is 'who is a person in authority?' A general answer given to this question is that any person able to affect the outcome of the prosecution or trial qualifies as a person in authority. Specific examples are given by Viscount Dilhorne in *R v Wilson* where he utters the following:

"There is no authority so far as this court knows which clearly defines who does and who does not come within that category...it is clear however...that the chairman of a company whose money was said to have been embezzled by the prisoner was said to be a person in authority. It is also clear that in some cases it has been held that a prosecutor's wife is a person in authority."¹⁸

Thus, it is evident that the decision finding that one is a person in authority is a matter to be determined from case to case. This decision must be made with regard to the fact that such a person must have capability to influence the trial.

¹⁷ J. D. Heydon, *Evidence: Cases and Materials* (London: Butterworths and Company Publishers Limited, 1984), 177.

¹⁸ *R v Wilson*(1967) 2 QB 406

2.2.2 Requirement that Judges' Rules be Adhered to in Interrogation

A confession that is to be admitted must have been acquired with adherence to the Judges' Rules. The Judges' Rules are a code of conduct that was formulated by judges in England to guide the police in interrogating suspects. These rules are observed by the Zambian courts as is illustrated in the following words of Chomba, J:

*"On examination of the Judges' Rules it is clear that those rules were designed to guide police officers in dealing with suspects and prisoners in the course of investigating crime. This court takes judicial notice that the training of police officers includes instructions in administering the warn and caution."*¹⁹

Admission of a confession infringing the Judges' Rules is at the discretion of the court. Heydon puts it thus:

*"There are three rules to bear in mind when considering the admissibility of confessions....secondly, if the confession infringes the Judges' Rules, a code of procedure drafted by the judges to guide the police while they question suspects, it may be excluded in the discretion of the court."*²⁰

2.2.3 Unfairness in Acquiring the Confession

There have been numerous instances in court that a confession that was given voluntarily has been rendered inadmissible by the court. This requirement that may be given consideration by judges in admitting confessions is known as the unfairness rule and is often argued to be closely

¹⁹ Abel Banda v The People (1986) Z.R. 105

²⁰ J. D. Heydon, *Evidence: Cases and Materials* (London: Butterworths and Company Publishers Limited, 1984), 175.

related to the Judges' Rules. It is used by judges in circumstances they feel admitting a confession would lead to substantial injustice. Heydon puts it in the following manner:

"The unfairness jurisdiction depends not on fairness but on such issues as reliability and police standards. There is little authority on the matter because in practice the Judges' Rules tend to cover most of the field. One reason for excluding evidence is where its probative value is small in relation to its prejudicial effect on the accused."

Primarily, the principles adumbrated above are what the court ought to take into consideration when deciding whether to admit a confession in court or not. However, theory and practice are not always in tandem. Hence, it becomes a matter of necessity to examine or analyse whether the criminal justice system adheres to the confession principles above.

2.3 Extent to which the Zambian Courts Adhere to the Principles of Confessions

Often times, legal representatives complain of the fact that the courts have admitted confessions which their client did not make or was tortured into giving. Thus, it naturally follows to question whether the courts do indeed disregard the applicable principles on confessions. This section of the paper examines the extent to which the Zambian courts adhere to the rules that govern the admissibility of confessions. In order to systematically present this analysis, the section will firstly give the facts and holding of one of the two selected cases and analyse it and proceed to the second case in similar fashion. The section will then give a critique given by a practicing lawyer on the lack of adherence to principles of confessions in practice by lower courts. A conclusion on the subject will then be proffered.

2.3.1 Analysis of Selected Cases

The first case given regard is *Mwiya and Ikveti v The People*²¹. The facts of this case in so far as they are relevant to this analysis were that the second appellant was alleged to have made a confession to the police that she and the second appellant had conspired in the murder of another party. During the subsequent trial, the second appellant denied having made the said confession to the police. The trial judge opted not to take the matter to a trial-within-the-trial and instead heard the submissions in the main trial and found that the confession was made by the second appellant.

On appeal, the main issue of contention was whether the trial judge was in order not to hold a trial-within-the-trial in ruling on the matter. The appeal court held that the trial judge was on firm ground in hearing the matter of the second appellant not having made the confession imputed on her in the main trial. This is because the issue of making a confession is a question of fact like any other advanced by the prosecution and does not have to be considered in a trial-within-the-trial.

This case advances one of the procedural principles of confessions. This procedural principle is that the court is not obligated to conduct a trial-within-the-trial when the accused simply denies having made the confession they are alleged to have given. Whelan, J explains this principle thus:

"In a trial before a magistrate or a judge sitting without a jury, when the magistrate or judge is the judge of both law and fact, a trial within a trial to determine the admissibility of a confession is, to say the least, not wholly apt. I consider it most undesirable that the

²¹ *Mwiya and Ikveti v The People* (1968) Z.R. 53

judge or magistrate should have to make a preliminary finding involving the credibility of an accused prior to putting him on his defence."²²

In the case under analysis, the court of appeal adhered to the said procedural principle in finding that the trial judge did not err when he did not go to a trial within a trial. This was after the accused denied having given the alleged confession. As has been adumbrated, a trial within the trial is not required where the accused simply denies having made the confession. It is often resorted to when the accused claims that he was coerced into giving the confession. Therefore, it can be argued that in principle, the Zambian courts do adhere to this procedural rule.

The second case given regard is *John Mkandawire and Others v The People*²³. Particulars of the case were that four juveniles were indicted for having murdered a certain shopkeeper. The first three had been positively identified by the daughter of the deceased who was present at the scene. The fourth defendant was only indicted due to the confession he was alleged to have given to the police and he challenged as not voluntarily given. The trial judge opted to go into a trial-within-the-trial and found that it was doubtful that the confession was voluntarily given and he proceeded to rule that it was inadmissible. However he found that the confessions given by the other defendants in similar circumstances were admissible.

The convicted parties (second and third appellant) appealed alleging among other issues that the trial judge erred in finding that their confessions were voluntarily given when they were given in similar circumstances with those given by the acquitted juvenile. The appeal court held that the trial judge erred in ruling that the second and third appellant's confessions were voluntarily given when he doubted the voluntariness of the fourth juvenile's confession. This is in consideration of

²² *Mwiya and Ikweti v The People* (1968) Z.R. 53

²³ *John Mkandawire and Others v The people* (1978) Z.R. 46

the fact that the confessions were made at the same time, by the same officers and finding one to have been made involuntarily should cast doubt on the others. Thus, they were wrongly admitted by the trial judge.

This second case is an illustration of how the *Zambian* courts regard one of the principles that ought to be fulfilled before admitting a confession. The said principle which was considered in depth in the previous section is that the court must be satisfied that the confession was voluntarily given to the authorities by the accused. The said principle requires that when there is doubt as to the voluntariness of a confession, the court should go to a trial within a trial and resolve whether the confession was coerced from the accused by the authorities.²⁴

In the case being analysed, the accused juveniles did indeed highlight that they were coerced into giving the confession by the policemen interrogating them. The trial judge conducted a trial within the trial and found that it was doubtful that the fourth accused voluntarily made the confession. In view of this, it is evident that the courts in *Zambia* adhere to this requirement of voluntariness before admitting a confession.

The third case considered in this section is *Abel Banda v The people*²⁵. The relevant facts of this case were that the appellant poisoned a third party by going to his house and giving him poisoned *Kachasu* which eventually killed him. He was warned and cautioned pursuant to the Judge's Rules by the police. Upon being interrogated, he confessed to poisoning the deceased but insisted that he was working under the instruction of another person. The trial judge found that there was no cogent evidence showing that the appellant's *Kachasu* was the source of the poison except the appellant's confession which was acquired after he was warned and cautioned.

⁴ *Chisoni Banda v The People* (1991) SCZ Judgment No. 8 of 1991

⁵ *Abel Banda v The People* (1986) Z.R. 105

Moreover, the trial judge conducted a trial within a trial after the appellant claimed that he was coerced into giving the confession. The lower court found that the confession was voluntarily given.

On appeal, the Supreme Court dismissed the appeal asserting that the warn and caution statement was acquired in a proper manner and that there was no valid proof showing that the confession thereof was involuntary. Chomba, J. asserted the law in the following manner:

*"It is settled law that a warn and caution statement which is taken in compliance with the Judges' Rules can only be excluded, in the exercise of the trial judge's discretion, if its admission would operate unfairly against the accused. It has been held that the admission would operate unfairly against the accused if the statement was obtained in an oppressive manner, or against the wishes of the accused."*²⁶

This third case brings into focus two of the principles of admissibility of confessions discussed in the preceding section. These principles or requirements are the need for the confession to have been acquired with adherence to the Judges' Rules and the need for the admission of the confession not to operate unfairly on the accused.

With regard to the principle of adherence to the Judges' Rules, the case under analysis took judicial notice of the fact that police officers in Zambia are taught how to acquire a warn and caution statement and observe other requirements in the Judges' Rules. A cardinal point in this case however is the adherence by the Supreme Court of the Judges' Rules by ensuring that a warn and caution was given by the police prior to getting a confession from the accused.

²⁶ Abel Banda v The People (1986) Z.R. 105

Therefore, on this score, it is safe to conclude that the *Zambian courts* adhere to this particular requirement of confessions.

Furthermore, the case also highlighted the principle that the judge has the discretion to render a confession inadmissible if its admission would operate unfairly on the accused. In the case under review, it was held that a confession which is taken in compliance with the Judges' Rules can only be excluded if its admission would operate unfairly against the accused.

In view of this holding, it is submitted that the *Zambian courts* endeavour to adhere to the principle of rendering confessions inadmissible, in the discretion of the trial judge, if such admission will operate unfairly on the accused.

2.3.2 Critique of the Position that *Zambian Courts* Adhere to Principles of Confessions

The submission made in the preceding section that the courts adhere to principles of confessions has come under criticism from practicing lawyers that were interviewed. They argue that whereas there is theoretical adherence, the practical side leaves much to be desired. Their general position was that during interrogation, police officers often torture accused persons into confessing that they committed the crime. Moreover, when the voluntariness is questioned in court, the independent person that is required to be present during interrogations often supports the police officers because they pick a person who is bias towards them.

Ms. Kalunga asserted the following on the matter:

“Police officers may go as far as creating a confession and coercing the accused into signing it by the use of force or even promising to give them water when they had deprived them of this for a long time. When the voluntariness of the confession is

*questioned in court, the police officers that interrogated the accused will claim that it was voluntarily acquired and the independent witness will often testify in their favour. This sort of arrangement cannot be claimed to be true adherence to the principles of confessions.*²⁷

The above provision illustrates what actually happens in practice and this cannot be reflected in the decided decisions covered earlier. In view of this critique, it is submitted that much as the Zambian courts endeavour to adhere to the principles of the admissibility of confessions, in practice this adherence still leaves much to be desired. Hence, it is concluded that the Zambian courts to a larger extent adhere to the principles of confessions but there remains room for improvement.

2.4 Conclusion

This chapter considered the concept of confessions and analysed the extent to which the Zambian courts adhere to the principles they are founded on. The chapter firstly presented the history of confessions. It then delved into the rules pertaining to admissibility of confessions in court. Finally, the chapter analysed whether the Zambian courts adhere to the principles that govern confessions. This objective was achieved by the examination of three selected judgments made by Zambian courts over the years and relating these decisions to the principles of confessions covered in the chapter. Consideration was also given to a critique advanced by a practicing lawyer of the fact that actual adherence to the principles of confessions in lower courts is not always the case. In view of the reasons given in previous sections, it was concluded that

²⁷ Felistace Kalunga, interview by author, Lusaka, Zambia, March 28, 2012.

the Zambian courts to a larger extent adhere to principles of admissibility of confessions.
However, there is much that can be done to improve the system.

CHAPTER THREE

THE DOCTRINE OF RECENT POSSESSION AND THE COURT'S CONSIDERATION OF ITS REQUIREMENTS IN ZAMBIA

3.0 Introduction

An analysis of some Zambian cases highlights the fact that in some instances, the court has convicted individuals that have merely been found in possession of property that was reported to have been recently stolen. This authority to convict is derived from one of the presumptions of fact known as the Doctrine of Recent Possession. Under this doctrine, there are various requirements that must be met before the court decides to convict an accused. Whether the courts in Zambia adhere to these requirements is a matter open to debate.

In this regard, this chapter examines the Doctrine of Recent Possession tracing its roots from the fact that it is a presumption of fact and analyses, using a recent judgment, whether the Zambian courts adhere to the principles of the doctrine in convicting people.

Thus, to systematically consider this matter, the chapter will firstly give a brief description of the Doctrine of Recent Possession and adumbrate how the doctrine falls in the category of presumptions of fact. Secondly, it will explain how the doctrine is meant to operate with regard to aspects of recency of theft, exclusive possession and the requirement that the possession should be unexplained by any innocent origin. Thirdly, the chapter will delve into analysing whether the Zambian courts adhere to the requirements or principles of the Doctrine of Recent Possession. This will be done by considering the facts and *ratio decidendi* in three selected judgments pertinent to this particular analysis and examining whether the court was in line with the doctrine in arriving at these decisions. A conclusion will ultimately be given.

3.1 Description of the Doctrine of Recent Possession

In recent times, the Doctrine of Recent possession has become a cardinal concept in the criminal justice system. This is perhaps because criminals have become more sophisticated and the crime scene seldom has evidence linking them to it. In this regard, the doctrine helps prosecutors to convict criminals by simply showing that they have possession of recently stolen property without reasonable cause other than the conclusion that they are responsible for the theft. At this juncture, it is of the essence to consider what really the Doctrine of Recent Possession is.

The Doctrine of Recent Possession is one of the presumptions of fact that are used in the legal system to resolve various crimes. It is thus pertinent to consider what presumptions of fact really are and comprehend how the Doctrine of Recent Possession falls in this category.

*"Presumptions of fact are inferences which may be drawn from the facts, but not conclusively."*²⁸

Ndulo explains presumptions of fact thus:

*"...the effect of presumptions of fact is that proof of a particular fact permits a court to infer some other fact if it so wishes. This is based on the proposition that common sense and experience show that a particular fact usually goes hand in hand with the other fact."*²⁹

The foregoing authorities highlight what can be regarded as an important aspect of presumptions of fact to be kept in mind. This aspect is that presumptions of fact are not conclusive. Thus, the

²⁸ Mick Woodley, *Osborn's Concise Law Dictionary* (London: Sweet and Maxwell, 2009), 319.

²⁹ Muna Ndulo, *The Law of Evidence: Cases and Materials* (Lusaka: UNZA Press, 1982), 45.

presumption made must not be given too much credence and if a person is to be convicted based on such a presumption, they should be given a proper opportunity to rebut the presumption.

The Doctrine of Recent Possession falls in the presumption of fact category by virtue of the fact that an individual found in possession of recently stolen property and without a convincing reason can be reasonably suspected to be the thief or guilty receiver of such property. Plainly put, the fact from which a presumption is drawn is that the accused is found in possession of recently stolen property and the presumption made is that the accused stole the property. This conclusion, as Ndulo puts it, is drawn from common sense.

From the foregoing discourse, it is clear that if a person is in possession of recently stolen property and does not have a proper explanation for this eventuality, then they have to be responsible for the theft; hence the Doctrine of Recent Possession.

3.2 Operation of the Doctrine of Recent Possession

The need for the court to make sure that it adheres to the requirements of the Doctrine of Recent Possession cannot be over emphasised. If these requirements are not followed, the dangers of convicting an innocent person are higher than when the requirements are followed. For this reason, it is essential to consider how the doctrine operates.

This section of the chapter attempts to convey how the Doctrine of Recent Possession must be utilised by the court. The section highlights the requirements of the said doctrine. These requirements are: property in question must have been stolen, exclusive possession; recency of possession; and unexplained possession.³⁰

³⁰ John Wigmore, *Evidence in Trials at Common Law* (Boston: Little, Brown and Company, 1981), 567.

The first requirement before the Doctrine of Recent Possession can be applied is that the person accused must have exclusive possession of the stolen property. However, the meaning of exclusive possession is widened to allow for circumstances in which the accused still exerts control on the person in actual possession of the property in question. The Judicial Committee of South Wales puts it thus:

“With respect to the doctrine of recent possession, the prosecution must establish some form of physical possession or dominion (or control) over the property by the accused. The possession will be sufficient even if the property is in the actual physical possession of a person over whom the accused has sufficient control, or with whom the accused has such a relationship that the property will be handed over to the accused upon request.”³¹

In essence therefore, if for instance an accused person leaves the stolen property in the possession of his friend, the court is implored to consider the requirement of exclusive possession as satisfied because the accused continues to enjoy control of the property and often times can get it on request.

The second requirement is that the property in question must be shown as having been stolen. The prosecution in presenting its case must show that the said property has been missing and the property found with the accused is the same property that went missing. Turner puts this requirement as follows:

³¹ Judicial Commission of New South Wales. “Recent Possession,” www.judcom.nsw.gov.au (accessed November 27, 2011).

“We have said that this presumption arises in the case of goods which have been recently stolen. It therefore does not arise until proof has been given that the goods in question have actually been stolen.”³²

In view of this, a person that fails to give a satisfactory answer as to the origins of the goods he is in possession of will not be convicted of being in possession of recently stolen property until it can be shown that the property he is in possession of was actually stolen.

The third requirement is that the accused's possession of the property must be recent. The court ought not to apply the doctrine if the property has been in the possession of the accused for a long time. The aspect of what should be considered a long time can be challenging at times. However, it is generally understood that the deciding factor will have to be the kind of property in question. Turner puts this matter thus:

“As to what time is near enough to be ‘recent’ no general rule can be given; for the period within which the presumption can operate will vary according to the nature of the article stolen. Three months has been held sufficiently recent for a motor car...but for such articles as pass from hand to hand readily, two months would be a long time...”³³

Thus, the court in deciding on the point of recency must consider the facts accompanying each case. In essence therefore, this question is to be resolved on a case by case basis. The duration of possession and the article in question must be given principal regard.

The fourth requirement is that the accused must be unable to give a reasonable explanation for being in possession of the stolen property. This requirement should not be interpreted to mean

³² Cecil Turner, *Kenny's Outlines of Criminal Law* (Cambridge: Cambridge University Press, 1966), 461.

³³ Cecil Turner, *Kenny's Outlines of Criminal Law* (Cambridge: Cambridge University Press, 1966), 461.

that the accused's explanation must be beyond any reasonable doubt. It simply means that the explanation must be a reasonable inference in consideration of the facts. The Judicial Committee of South Wales helpfully provides the following on this matter:

*"The matter which the court must finally determine, if there is no other basis for convicting apart from recent possession, is whether it thinks that any of the accused's explanations might reasonably be true. If so, the prosecution has not proved guilt beyond reasonable doubt."*³⁴

Based on this provision, the Doctrine of Recent Possession requires that the accused must be given an opportunity to rebut the presumption that they stole the property they are found with. Therefore, if for instance an accused is found in possession of recently stolen property, is brought before the court and he proffers a reasonable explanation which is not sufficiently quelled by the prosecution: then the court must find his explanation as probable and not convict based on the Doctrine of Recent Possession.

3.3 Extent to which the Zambian Courts Adhere to Principles of Recent Possession

As was earlier highlighted, it is imperative that the court adheres to the requirements of the Doctrine of Recent Possession because the ramifications of not doing so are profound on an accused's liberty. Misapplication of the doctrine can lead to the imprisonment of an innocent person. Therefore, this section of the chapter aims to analyse whether the Zambian courts adhere to the principles of the Doctrine of Recent Possession.

³⁴Judicial Commission of New South Wales. "Recent Possession," www.judcom.nsw.gov.au (accessed November 27, 2011).

In order to systematically address this matter, the section will firstly outline the facts and holding of one of the selected cases and analyse it. The subsequent cases will follow in similar fashion. The section will then give a critique of the application of the principle in Zambian courts. A conclusion on the matter will then be advanced.

3.3.1 Analysis of Selected Cases

The first case given regard is *Morgan Ngosa v The People*³⁵. Particulars of this case in so far as they are relevant to this work were that the accused was indicted for the murder of the deceased guards and theft of computers at the premises that were being guarded by the deceased. There was no evidence linking the accused to the murder scene. However, computers that were stolen were alleged to have been under his possession by a witness. The police later found the computers at the house of the accused's friend. The High Court relying on the Doctrine of Recent Possession found the accused guilty of theft and by implication of having stolen, he was assumed to have murdered the deceased.

The accused appealed to the Supreme Court alleging among other issues that the trial judge did not properly apply the Doctrine of Recent Possession. His claim was that he did not have possession of the computers and his presence at the premises where they were recovered was precipitated by other reasons. However, the Supreme Court dismissed the appeal asserting that it was too much of an odd coincidence for the accused to have been offering to sale computers to one of the witnesses the previous day and later be found in the same house where the stolen computers were recovered and not be responsible for their theft and eventual murder of the guards.

³⁵ Morgan Ngosa v The People SCZ Judgment No. 30 of 2010

This case raises the requirement of exclusive possession of the stolen property by the accused. As was adumbrated earlier, the Doctrine of Recent Possession will only be applicable if it can be shown that the person accused of theft has exclusive possession of the property. The meaning of exclusive possession was said to extend to circumstances in which the property was in the possession of someone that is under the control of the accused.

In the instant case, the accused was convicted based on the fact that a witness alleged that he had tried to sale computers to him and he had been shown these computers at the premises of the accused. The police were unable to find the computers at the appellant's house but were later able to find them at the accused's friend's place. The accused was also found at these premises.

In view of this decision, it is submitted that the *Zambian* courts adhere to the requirement that for the Doctrine of Recent Possession to be used in conviction, it must be shown that the accused had exclusive possession of the stolen property. Even though the computers were not found at the premises of the accused, it is evident that they were still under his control in the possession of his friend.

The second case analysed in this section is *Mbuyi Jean v The People*³⁶. Facts of the case were that the appellant with another person were indicted in the lower courts for burglary and theft. There was no evidence linking the accused to the crime scene except the fact that within two days of the theft, he was found in possession of the stolen property. On examination of the facts, the trial judge found that the appellant was guilty of burglary by virtue of the Doctrine of Recent Possession.

³⁶ *Mbuyi Jean v The People* (1971) Z.R. 82

The appellant appealed asserting that the trial judge erred in law by finding that the doctrine was applicable because two days was too long a time to apply the doctrine. The Court of Appeal dismissed the appeal stating that the trial judge did not misdirect himself when he found that two days was a recent enough period for the appellant to be convicted using the Doctrine of Recent Possession.

This case advances the requirement of recency of possession in applying the doctrine. The position of the doctrine as presented in the previous section is that recency of possession will be determined on a case by case basis. In resolving this situation, regard is given to the property stolen and duration that has passed from time of theft to time when the accused is found in possession.

Analysis of the case above leads to the conclusion that the Zambian courts do adhere to the principle of recency of possession. This conclusion is arrived at by virtue of the fact that the two days that had elapsed between the theft and the time the accused was found in possession of the property was sufficiently recent. Moreover, the court was alive to the fact that they had to consider the property stolen in relation to the recency of possession.

The third case given consideration is *Chabala v The People*³⁷. Particulars of the case were that the appellant had been charged with burglary and theft. This was after property that was recently stolen was found in his house. His explanation for this possession was that a friend of his had given him the property. The trial judge in applying the Doctrine of Recent Possession found the appellant guilty of the charges. He asserted the following on the explanation given by the accused for being found in possession of the recently stolen property:

³⁷ Chabala v The People (1976) Z.R. 14

"The accused under the laws of our land is not required to prove anything but when he asserts that a friend of his took the property to his house, and had he taken the police to that friend of his, the accused was not going to be charged with the subject offence...The accused's failure to pinpoint where his friend was simply showed that the said friend did not exist. He was just imaginary."³⁸

The appellant appealed to the Supreme Court alleging that the trial judge erred by requiring that the accused had onus to tell the court the whereabouts of the friend that gave him the property for his explanation to be regarded as reasonably true. The Supreme Court allowed the appeal asserting that the trial judge did not address himself to the question of whether the appellant's explanation was reasonable and that it was not the onus of the accused to lead the police to the said friend.

This case borders on the requirement that for the court to convict, the accused must be unable to give an explanation that is reasonably true. This explanation need not be believed by the judge, but must be a reasonably true inference in consideration of the facts. It was further noted that the accused need not prove that his explanation is true.

In the instant case, the court of appeal reiterated that the accused's statement was supposed to be examined as to whether it was reasonably true and that the accused did not have the onus to prove that his statement was true.

Thus, by virtue of this holding, it is submitted that the *Zambian* courts do indeed adhere to the principle of only convicting the accused based on their failure to proffer a reasonably true explanation for being found in possession of stolen property.

³⁸ Chabala v The People (1976) Z.R. 14

3.3.2 Critique of the View that the Zambian Courts Adhere to the Principles of the Doctrine of Recent Possession

The position that the Zambian courts adhere to the principles of the Doctrine of Recent Possession has come under stern criticism from legal scholars. Just like they argue with most principles of evidence, they posit that the Zambian courts theoretically adhere to these principles but actual practice breeds different results. A lecturer of law and legal practitioner, Nkhata, had the following to say on the matter:

“There is nothing wrong with the Doctrine of Recent Possession except for the fact that it is wrongly applied in Zambia. One example involves the case of Regina Chiluba who was convicted in the magistrate court for having stolen property. The court convicted the accused even when it was not shown by the state that the person that gave her the property (Frederick Chiluba) was guilty of theft.”³⁹

The said provision points to the fact that the magistrate misdirected himself by convicting the accused because she had given a reasonably true explanation by asserting that the property came from her husband who was not proved to have stolen the property.

In view of the case analysis and the critique given by the accused, it is apt to conclude that the Zambian courts do adhere to the principles of the Doctrine of Recent Possession albeit not always.

³⁹ Chipso Nkhata, interview by author, Lusaka, Zambia, March 28, 2012.

3.4 Conclusion

This chapter outlined the Doctrine of Recent Possession and examined whether the Zambian courts adhere to the principles of the doctrine in convicting people. As a systematic approach, the chapter firstly gave a brief description of the Doctrine of Recent Possession and explained how the doctrine falls in the category of presumptions of fact. It then asserted how the doctrine is meant to operate with regard to aspects of recency of theft, exclusive possession and the requirement that the possession should be unexplained by any innocent origin. The chapter then delved into analysing whether the Zambian courts adhere to the requirements or principles of the Doctrine of Recent Possession. Upon analysis of the selected judgments of the Zambian courts and critique of a legal practitioner, it was submitted that the Zambian courts largely adhere to principles of the Doctrine of Recent Possession.

CHAPTER FOUR

A COMPARATIVE STUDY OF THE AMERICAN AND ZAMBIAN CRIMINAL JUSTICE SYSTEMS IN DEALING WITH WRONGFUL CONVICTIONS

4.0 Introduction

The preceding two chapters considered the extent to which the Zambian courts adhere to the selected principles of evidence. It was noted that much as the Zambian courts are argued to adhere to the said principles, there are times when they do not sufficiently adhere to the principles. Often times, this lack of adherence leads to a wrongful conviction. Hence, this work would present an incomplete picture without analyzing how the Zambian criminal justice system deals with the phenomenon of wrongful convictions.

In this regard, this chapter considers the Zambian criminal justice system's response to the dangers of wrongful convictions by way of a comparative study with a much more advanced legal system. The United States of America criminal justice system has been selected as this advanced legal system to be considered by virtue of the fact that it is the most developed on the subject matter.⁴⁰ In systematically covering this topic, the chapter will firstly present the United States of America (USA) criminal justice system's response to wrongful convictions. It will then examine the response to wrongful convictions in the Zambian criminal justice system and outline whether this response is effective after each measure is presented. A conclusion will then be drawn.

⁴⁰ FPT Heads of Prosecutions Committee. "The Path to Justice: Preventing Wrongful Convictions," www.ppsc.gc.ca (accessed April 10, 2012)

4.1 Response to Wrongful Convictions in the American Criminal Justice System

Chapter one of this work described the concept of wrongful convictions. In addition to that description, it is imperative to note that wrongful convictions can be dealt with by having measures aimed at preventing them and by developing a mechanism meant to exonerate the wrongfully convicted. This section will firstly highlight the institution created in the USA to help exonerate wrongfully convicted persons and adumbrate on its work. It will then outline the specific measures put in place to prevent wrongful convictions in the USA.

4.1.1 Institutions Aimed at dealing with Wrongful Convictions in the American Criminal Justice System

The United States of America criminal justice system responded to the growing number of wrongful convictions by establishing the Innocence Project. The Innocence Project is described thus:

“The Innocence Project is a national litigation and public policy organization founded in 1992...It assists prisoners who can be proven innocent through DNA testing but also works to reform the criminal justice system to prevent wrongful convictions.”⁴¹

In a nutshell therefore, the USA has dealt with wrongful convictions by establishing the Innocence Project. The said institution’s mandate is twofold. The first mandate is that it was created to assist in the exoneration of wrongfully convicted persons. Its second mandate is that it should propose reforms to the criminal justice system whose aim will be to prevent wrongful convictions.

⁴¹ FPT Heads of Prosecutions Committee. “The Path to Justice: Preventing Wrongful Convictions,” www.ppsc.bc.ca (accessed April 10, 2012)

With the help of the Innocence project, the USA has managed to exonerate hundreds of wrongfully convicted persons.⁴² Moreover, with the aid of the Innocence Project, the USA has made a number of changes to its criminal justice system that are aimed at curbing the huge number of wrongful convictions in its jurisdiction. Some of these measures are discussed below.

4.1.2 Specific Measures for Prevention of Wrongful Convictions in the American Criminal Justice System

The first change or measure has been with regard to legislative reforms. At the core of these reforms is the belief that there is need to have institutions aimed at discussing means of preventing wrongful convictions. This belief is premised on the fact that sharing knowledge on this issue can only lead to improving the system. Garret highlights the following on this subject matter:

“The National Criminal Justice Commission Act of 2011 was enacted. Among other things, it would create a national commission composed of experts from across the criminal justice system to examine all aspects of the criminal justice system in the United States.”⁴³

The said legislation which provides for a commission of experts in the legal profession is a positive step in attempts to prevent wrongful convictions. This commission is vital because its periodical meetings analyse how to improve the criminal justice system. Among the issues covered are means to help prevent wrongful convictions. The individual states within the USA have also made their own commissions to aid in preventing wrongful convictions. For instance,

⁴² Innocence Project. “Wrongful Convictions,” www.Innocenceproject.org (accessed March 7, 2012)

⁴³ Brandon Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*, (Boston: Harvard University Press, 2011), 54

A dozen states have also created commissions, to examine cases of wrongful convictions and to recommend reforms as a result of them.⁴⁴

The second measure put in place in the USA has been with regard to forensic science. It has been advanced that one of the reasons for wrongful convictions is the fact that forensic science is not sufficiently effective and needs to be further developed in order to prevent wrongful convictions. In essence, an effective forensic science unit in criminal investigations tends to greatly reduce the risk of wrongful conviction. Thus, the USA criminal justice system has made great strides in making its forensic units efficient. Prior to this implementation, there was a report which stated among other things the following:

"In the area of forensic science, the National Academy of Sciences released a comprehensive report in February 2009 which advocated for significantly strengthened oversight, research and support so that forensic science can be more reliable in identifying perpetrators of crime, protecting the wrongly accused and ensuring public safety."⁴⁵

Furthermore, the USA criminal justice system has effectuated a third measure to prevent wrongful convictions. This measure is with regard to eyewitness identification procedures. Another cause of wrongful convictions has been noted to be faulty eyewitness identification procedures. Eyewitness misidentification has long been regarded as the leading, if not

⁴⁴ FPT Heads of Prosecutions Committee. "The Path to Justice: Preventing Wrongful Convictions," www.ppsc.gc.ca (accessed April 10, 2012)

⁴⁵ FPT Heads of Prosecutions Committee. "The Path to Justice: Preventing Wrongful Convictions," www.ppsc.gc.ca (accessed April 10, 2012)

overwhelming, cause of a wrongful conviction.⁴⁶ It thus comes as no surprise when the following is noted:

*"A 2008 study by the United States-based Innocence Project of 250 post-conviction DNA exonerations found that a staggering 75% of those wrongfully convicted involved erroneous eyewitness identification"*⁴⁷

In this regard, many initiatives have been embarked on to try and better the eyewitness identification procedure. One of the vital reports on the subject was that written by Judge Gaulkin. He posited the following:

*"...the test used by 48 states and the federal courts to determine the reliability of eyewitness testimony is flawed and inadequate, and should be replaced."*⁴⁸

Based on these assertions, the USA criminal justice system has received legislative overhauls aimed at improving the eyewitness identification procedures. For instance, it is required that a suspect should not be placed in an identification queue as the only black person when it is well known that the perpetrator was an African American.⁴⁹ This measure is effective by virtue of the fact that it eliminates bias on the eyewitness due to the accused's similar features with the actual perpetrator.

Another measure that has been put in place to prevent wrongful convictions relates to the need to discourage 'tunnel vision' during investigations. Tunnel vision refers to a tendency by

⁴⁶ R v Hanemaayer, (2008) 234 C.C.C.

⁴⁷ The Innocence Project, *Re-evaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of a Misidentification* (New York: Benjamin Cardozo School of Law, 2009), 34

⁴⁸ Innocence Project. "Wrongful Convictions," www.Innocenceproject.org (accessed March 7, 2012)

⁴⁹ FPT Heads of Prosecutions Committee. "The Path to Justice: Preventing Wrongful Convictions," www.ppsc.gc.ca accessed April 10, 2012)

investigators to direct their attention toward a person they believe is the perpetrator.⁵⁰ This sort of investigating can lead to a wrongful conviction and the USA criminal justice system has moved to discourage it. Numerous measures have been advanced and vital among these is the following:

“State policies on the role of the prosecution emphasize the quasi-judicial role of the prosecution and the danger of adopting the views and/or enthusiasm of others. Policies also stress that the prosecution should remain open to alternate theories put forward by defence counsel and other parties.”⁵¹

It can be argued that having the said policies leads to a reduction in the risk of wrongful convictions. This is because a lack of tunnel vision leaves the investigation with open minds to identify whether the accused was indeed responsible for the offence.

Furthermore, false confessions have been identified as a major contribution to wrongful convictions. An accused may be interrogated by the police and by virtue of their tunnel vision investigating, coerce him to confess to a crime he never committed. This also leads to wrongful convictions.

Thus, in order to curb wrongful convictions emanating from this cause, the USA criminal justice system has introduced a measure in which the interrogations of accused persons are video-recorded. This practice is not entrenched in the law. However, courts in this jurisdiction

⁵⁰ Morin Inquiry Report, *Investigation of Suspects*, (Canada: FFP, 2005), 479.

⁵¹ FPT Heads of Prosecutions Committee. “The Path to Justice: Preventing Wrongful Convictions,” www.ppsc.gc.ca accessed April 10, 2012)

encourage the said practice.⁵² Moreover, it is noted that certain aspects of an interrogation can lead to a false confession as is provided in the following extract:

“Certain aspects of an interview (in particular, excessively long interviews) and/or the personal characteristics of the subject (e.g., low intelligence, youth, emotional instability, mental health issues) may heighten the possibility of a false confession.”⁵³

In this regard, the USA criminal justice system has put forward measures in which interrogators are trained to pay special regard to the manner in which they conduct interrogations especially with persons that can be said to be vulnerable.⁵⁴ This move has the potential to greatly reduce wrongful convictions based on false confessions.

4.2 Response to Wrongful Convictions in the Zambian Criminal Justice System

The Zambian criminal justice system, like any other criminal justice system, has the capacity to convict an innocent person due to the fact that the system is not perfect. In this regard, it is vital that certain measures are put in place to prevent wrongful convictions. This section of the chapter considers the Zambian criminal justice systems response to wrongful convictions and means by which it attempts to prevent them.

In order to systematically tackle this issue, the section will firstly delve into the institution, if there be any, which ought to study convictions for purposes of exonerating the wrongfully convicted. It will then consider the specific measures that have been put in place to prevent wrongful convictions. The effectiveness of these measures will be asserted as they are presented.

⁵²FPT Heads of Prosecutions Committee. “The Path to Justice: Preventing Wrongful Convictions,” www.ppsc.gc.ca (accessed April 10, 2012)

⁵³FPT Heads of Prosecutions Committee. “The Path to Justice: Preventing Wrongful Convictions,” www.ppsc.gc.ca (accessed April 10, 2012)

⁵⁴FPT Heads of Prosecutions Committee. “The Path to Justice: Preventing Wrongful Convictions,” www.ppsc.gc.ca (accessed April 10, 2012)

4.2.1 Institutions Aimed at dealing with Wrongful Convictions in Zambia

As was adumbrated above, the United States of America has the Innocence Project as the focal institution that is aimed at dealing with wrongful convictions. However, the Zambian criminal justice system does not have an institution with this objective. A senior police officer interviewed asserted the following on this unfortunate circumstance:

“There is no institution in Zambia that looks into the exoneration of wrongly convicted persons as its main objective. The only hope for a convicted person is the appeal process and when it is exhausted at Supreme Court level, the convicted person cannot be entertained by the courts.”⁵⁵

The none existence of an organization that studies convictions for the purpose of exonerating the wrongfully accused and further looks at means in which the Zambian criminal justice system can be improved on in order to prevent wrongful convictions is a major flaw in the said system. The lack of such an organization means that there are possibly hundreds of wrongful convictions that have not been considered and the liberty of these innocent persons has been unfairly curtailed. It should however be noted that the Zambian criminal justice system is not wholly useless on this count. This is because there are certain measures that have been put in place in an effort to reduce the risk of wrongful convictions. It is to these specific measures that we now turn.

4.2.2 Specific Measures for Prevention of Wrongful Convictions in the Zambian Criminal Justice System

The Zambian criminal justice system, much maligned for its lack of institutions to deal with wrongful convictions, does have inbuilt measures to prevent wrongful convictions. These

⁵⁵ Kabwe Chilufya, Interview by Author, Lusaka, Zambia, April 16, 2012.

measures are now given regard. It should however be noted from the outset that these preventive measures have major flaws which will be highlighted after each measure is presented.

The first measure that has been implemented in the Zambian criminal justice system is the standard eyewitness identification procedure. Just like the procedure used in the United States criminal justice system, the Zambian criminal justice system identifies the perpetrator of a crime by parading a number of people including the suspect and asking the witness to select the person they believe committed the offence in question.⁵⁶

However, this eyewitness procedure has been criticized as heavily flawed due to the human factor involved. The problem arises not only because the witness can misidentify a suspect, but it is alleged that the police sometimes point the witness toward the person they believe committed the crime. Chilufya asserts the following on this matter:

"During interrogation, the police often adhere to the strict procedures that practice demands with regard to eyewitness identification procedures. However, there are some scrupulous police officers that manage to convince the witness to pick the suspect on an identification parade so as to make their work easier."⁵⁷

In view of the exposition given above, it is submitted that the measure put in place is in most cases effective in preventing wrongful convictions and helpful in fighting crime. However, the window for abuse is very wide and it needs to be improved on. The police must be warned to desist from nudging the witness to pick a person the identification parade they have predetermined as the perpetrator of the offence.

⁵⁶ Mulebwente, interview by author, Lusaka, Zambia, April 16, 2012

⁵⁷ Kabwe Chilufya, Interview by Author, Lusaka, Zambia, April 16, 2012.

Another measure that has been advanced in the *Zambian criminal justice system* in a bid to prevent wrongful convictions is the establishment of the forensic unit within the police service. Admittedly, the forensic science in Zambia is not as developed as that in the United States of America. The *Zambian forensic unit* includes entities such as: ballistics, toxicology, and handwriting analysis.⁵⁸ However, the establishment of this unit clearly goes a long way in preventing wrongful convictions as evidence adduced is scientifically proven.

However, this unit has received criticism alleging that the personnel employed to operate it are not qualified for the job. It has been claimed that the personnel are often trained for a few weeks when the forensic sciences in question require that one goes for lengthy training.⁵⁹ This arrangement obviously leads to increased chances of errors by the said personnel and by implication increases the risk of wrongful conviction.

Therefore, it is submitted that much as the forensic unit has been set up in the *Zambian criminal justice system*, it remains flawed. In this respect, it is essential that the highlighted challenges are swiftly resolved if wrongful convictions are to be prevented significantly.

The third measure put in place is aimed at eliminating false confessions in order to reduce the risk of wrongful convictions. As was earlier adumbrated, the *American criminal justice system* has made strides in eliminating false confessions by video-recording interrogations and ensuring that their police officers go through training aimed at minimizing chances of them causing the accused elicit a false confession. On this count, the *Zambian criminal justice system* seems to be rather stagnant. The only provision of note is that during interrogation, there is a requirement that

⁵⁸ Mulebwente, interview by author, Lusaka, Zambia, April 16, 2012

⁵⁹ Kabwe Chilufya, Interview by Author, Lusaka, Zambia, April 16, 2012.

an independent person is present.⁶⁰ This independent person can be a relation of the accused or another police officer not involved in the investigation.

However, the requirement of an independent person during interrogations has also been prone to circumvention by the police.⁶¹ They can go round it by inviting a fellow police officer with whom they collude to say that the confession was acquired voluntarily. This flaw can be resolved by requiring that all interrogations are video-taped.

In essence therefore, it is submitted that the Zambian criminal justice system is not sufficiently equipped to prevent wrongful convictions. The measures implemented cannot be said to have a huge impact on the prevention of wrongful convictions. Thus, there is need for more measures aimed at preventing these wrongful convictions. Some of these measures will be included in the next chapter dealing with recommendations.

4.3 Conclusion

In conclusion, this chapter considered the Zambian criminal justice system's response to the dangers of wrongful convictions by way of a comparative study with a much more advanced legal system. The United States of America criminal justice system was selected as this advanced legal system. The comparative study lead to the conclusion that there is much the Zambian criminal justice system needs to do in order to reduce the dangers of wrongful convictions. Some suggestions were advanced but the bulk of them are outlined in the next chapter dealing with recommendations.

⁶⁰ Mulebwente, interview by author, Lusaka, Zambia, April 16, 2012

⁶¹ Felistus Kalunga, interview by author, Lusaka, Zambia, March 28, 2012

CHAPTER FIVE

RECOMMENDATIONS AIMED AT IMPROVING THE ZAMBIAN CRIMINAL JUSTICE SYSTEM

5.0 Introduction

The previous chapters highlighted what can be referred to as the fundamental problems with the Zambian criminal justice system. These fundamental problems often lead to wrongful convictions. Thus, it is apt to end this work with recommendations aimed at resolving some of the challenges highlighted in the Zambian criminal justice system. In order to systematically cover this topic, the chapter will present a specific challenge faced by the Zambian criminal justice system and follow it up with a recommendation of how it can be resolved. After four of these recommendations have been proffered, a conclusion will be given.

5.1 Recommendations

The first recommendation relates to the need to create a practice of mandatory recording (video or audio) of interrogations. It was adumbrated in chapter two of this work that most cases before the court that involve the accused being alleged to have confessed often go to a trial within the trial to determine whether the confession given was voluntary. The trial within the trial is resorted to because accused persons often claim that they were forced or tortured into give the confession.

In this regard, mandatory recording of confessions is vital. It should be noted that "*the common law remains clear that the contemporaneous recording of a police interview: interrogation is not*

a requirement of the common-law confessions rule⁶². However, the criminal justice system would be within its powers to enact a requirement of recording interrogations in practice. Moreover, the benefits of recording interrogations are numerous and do not just accrue to the defence but the prosecution as well. Sullivan helpfully lists the benefits of recording interrogations as follows:

“Electronic recording creates an objective record, decreases false claims of police abuse, makes fact finding easier, and increases guilty pleas where a confession is made.”⁶³

In view of this provision, the accused persons will be deterred from falsely accusing the police of torturing him in acquiring the confession. However, the most important contribution it would make is to deter interrogators from coercing the accused to make a false confession and as such contribute to the huge number of wrongful convictions.

The second recommendation is that an institution in the mold of the American Innocence project should be created to look at possible exonerations of innocent convicts. It was stated in the preceding chapter that there is no criminal justice system that is so perfect as not to wrongfully convict an accused. However, the risks of wrongful conviction can be greatly minimized by the implementation of certain measures.

The ideal first step would be to create an organization to deal with wrongful convictions.

Therefore, the Zambian criminal justice system needs to create such a system. Like the

² FPT Heads of Prosecutions Committee. “The Path to Justice: Preventing Wrongful Convictions,” www.ppsc.gc.ca (accessed April 10, 2012)

³ FPT Heads of Prosecutions Committee. “The Path to Justice: Preventing Wrongful Convictions,” www.ppsc.gc.ca (accessed April 10, 2012)

Innocence Project, this institution's mandate should be twofold.⁶⁴ It should firstly be mandated to study applications from convicts that believe that they were wrongly convicted and decide the cases with merit. Upon this selection, the institution should acquire the relevant evidence and try to exonerate the person that was wrongfully convicted. The second mandate should be to suggest reforms that can be made to the criminal justice system aimed at preventing wrongful convictions. It is envisaged that the creation of such an institution would greatly reduce the dangers of wrongful convictions by virtue of application of the said mandates.

The third recommendation is that there must be huge investment of funds in the forensic unit existing in the police service in order to raise it to a more effective unit. Forensic science faces a lot of challenges in the Zambian criminal justice system. One such challenge is that it has stagnated as it only sticks to more traditional forms of scientific investigation mentioned earlier and as such has not moved to more novel forms of scientific investigation such as DNA testing.⁶⁵ Another challenge is that the persons employed to work in the forensic unit are not sufficiently qualified as they are only trained for a few weeks before being unleashed on society to decide the fate of accused persons.⁶⁶

It is this background that necessitates the need to invest huge sums of money in the forensic unit in order to raise it to acceptable standards. The funds invested should be channeled towards the development of DNA testing in order to ensure that when a person is deprived of their liberty, it is for reasons that are cogent such as having their DNA sample at the crime scene. Moreover, massive investment would also ensure that the personnel employed in the forensic unit are

⁶⁴ FPT Heads of Prosecutions Committee. "The Path to Justice: Preventing Wrongful Convictions," www.ppsc.gc.ca (accessed April 10, 2012)

⁶⁵ Kabwe Chilufya, Interview by Author, Lusaka, Zambia, April 16, 2012.

⁶⁶ Kabwe Chilufya, Interview by Author, Lusaka, Zambia, April 16, 2012.

properly trained. It would also be expected that better qualified personnel would be lured to the police forensic unit due to the increased funding.

The final recommendation in this work is that there should be serious punishment minted against police officers found wanting for giving the eyewitness clues as to whom the perpetrator is. As was earlier discussed in the preceding chapter, interrogators have developed a tendency to help out eyewitnesses identify the individual they believe is the actual perpetrator of the crime as the same individual the eyewitness saw at the crime scene.⁶⁷ The police tend to engage in this sort of behaviour due to the public pressure they get to have the crime investigated and resolved. The natural progression of this is that the risks of wrongful convictions are tremendously increased.

It is thus essential that a mechanism aimed at reducing the occurrence of this trend is developed.

One solution would be to punish police officers involved in this vice with heavy fines and/or imprisonment. It is anticipated that such a move would reduce the number of wrongful convictions by virtue of the fact that eyewitnesses would make independent decisions and thus being more likely to identify the person they actually saw at the crime scene.

5.2 Conclusion

This chapter's object was to give recommendations that would improve the *Zambian criminal justice system*. The four recommendations made were that: there should be mandatory recording of interrogations; an institution should be created to solely consider wrongful convictions; the forensic unit of the police service must be massively funded; and police officers that try to affect the judgment of eyewitnesses must be punished. Moreover, each of the recommendations was preceded by the challenge it is meant to resolve.

Kabwe Chilufya, Interview by Author, Lusaka, Zambia, April 16, 2012.

BIBLIOGRAPHY

BOOKS

Garrett, Brandon. *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*. Boston: Harvard University Press, 2011.

Heydon, J. D. *Evidence: Cases and Materials* London: Butterworth and Company; 1984.

Ndulo, Muna. *The Law of Evidence: Cases and Materials*. Lusaka: UNZA Press, 1982.

Turner, Cecil. *Kenny's Outlines of Criminal Law*. Cambridge: Cambridge University Press, 1966.

Wigmore, John. *Evidence in Trials at Common Law*. Boston: Little, Brown and Company, 1981.

Woodley, Mick. *Osborn's Concise Law Dictionary*. London: Sweet and Maxwell, 2009.

DISSERTATION

Lisa David, "Wrongful Convictions: Review and Assessment of Miscarriage of Justice in Canada." (Master's Thesis: University of British Columbia, 2010).

INTERVIEWS

Chipo Nkhata, interview by author, Lusaka, Zambia, March 28, 2012.

Felistace Kalunga, interview by author, Lusaka, Zambia, March 28, 2012.

Kabwe Chilufya, Interview by Author, Lusaka, Zambia, April 16, 2012.

Mulebwente, interview by author, Lusaka, Zambia, April 16, 2012

REPORTS

Morin Inquiry Report, *Investigation of Suspects* (Canada: FFP, 2005)

The Innocence Project, *Re-evaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of a Misidentification* (New York: Benjamin Cardozo School of Law, 2009)

WEBSITES

Aborn, Richard. "Measures of Preventing Wrongful Convictions,"
www.RichardAbornforDistrictAttorney.com (accessed November 27, 2011)

Fla innocence. "Wrongful Convictions: Preventive Measures," www.Flainnocence.com
(accessed February 7, 2012)

FPT Heads of Prosecutions Committee. "The Path to Justice: Preventing Wrongful Convictions,"
www.ppsc.gc.ca (accessed April 10, 2012)

Innocence Project. "Wrongful Convictions," www.innocenceproject.org (accessed February 7, 2012)

Judicial Commission of New South Wales. "Recent Possession," www.judcom.nsw.gov.au
(accessed November 27, 2011)