



under duress. The objection necessitated a trial within the trial. In the trial within trial, the prosecution called Sgt. James Ameh as PW1. The defendant testified in his defence as DW1.

The evidence of Sgt. James Ameh, attached to Special Anti-robbery Squad [SARS], is that he investigated the case concerning defendant. On 26/6/2018, the statement of the defendant was recorded under words of caution. It was without any form of force or intimidation. It was recorded in the general office where anybody can come in. He asked the defendant if he required the presence of a lawyer or any of his relations before making the statement. The defendant said his only relation he can call is out of the country and his number is not going through; and that he has no lawyer. He asked defendant if he could write by himself but he said he can only read in English Language. The defendant said he [PW1] should write his statement for him. He [PW1] wrote the statement for him. What the defendant said was what he [PW1] wrote in the statement for him.

PW1 further stated that the defendant read through and confirmed that the statement was what he said. The defendant signed the statement. He took the defendant to a superior officer. Before the superior officer, the defendant read his statement and confirmed that it was his statement. The superior officer, ASP Daniel Icherem (now DSP), endorsed the statement and the defendant counter signed. ASP Daniel Icherem signed after the endorsement. He [PW1] did not make any promise to the defendant. He did not torture the

defendant because he was cooperating from the Divisional level before the case was transferred to SARS.

During cross examination, PW1 was asked if he requested Legal Aid Council to be present at the time the statement of the defendant was taken. PW1 said he did not know about Legal Aid Council. After writing the statement, he read it to the defendant and the defendant also read it by himself. Their general office is not strictly for policemen and suspects; it is an office that anyone can come into. PW1 said in the course of writing the statement for the defendant, he engaged him in question and answer session.

In his evidence, the defendant [as DW1] stated that James Ameh was one of the Police officers that investigated his case. It is not true that he was not tortured or that promise was not made to him by the Police before he made his statement. On 26/6/2018, he was in SARS. They took him to the general office to make statement. They gave him one paper to write. He told them he cannot write. The IPO asked his name and he told him. The IPO asked him what happened for him to rob in his place of work. He told the IPO that he did not rob anyone. The IPO told him that he must confess if not they will kill him. From there, they started beating him. They handcuffed him on his leg and hand. They tied his leg and hand with rope and put a stick on the centre of his hands and legs. They carried him and dropped him on 2 tables and started beating him with 2 x 2 wood.

They asked where the money was and he said he did not carry anybody's money. They threatened to shoot him. They later dropped him on the ground after some hours. They loosened the rope and removed the handcuff. They asked him to come and sign one paper. He asked them to help him read the paper so he can understand what they wrote. They started beating him again and cut part of his right ear. DW1 showed the Court his right ear with a cut. As they cut his ear, he said the people really meant to kill me. So, he signed the paper. They put him inside the cell. The ear was paining him. He sold his trouser and bought ampiclox and took it. After about 6 months, the IPO brought him to Court.

The defendant further stated that it is not true that James Ameh took him to a superior officer. After about 3 weeks when he signed the statement, they carried him outside to meet their Oga. The man said he was busy because there were other people with him. He asked the officers to take him [DW1] back to their office. The IPO told him that if he did not sign the statement, they will repeat what they did to him before. He then signed the statement and they took him back to the cell. It is not true that he told the Police that he did not need a lawyer on the day he was to make his statement. It was on the day they brought him to court and read the charge that he knew the charge against him. The people who beat him and put him on a table are Kayode, James and about 3 others.

When the defendant was cross examined, he stated that he is from Benin Republic. The torture he narrated took place inside SARS general office on 26/6/2018. He made a statement at Utako Police station before he was taken to SARS; he signed the statement. The defendant's statement at Utako Police station dated 20/6/2018 was tendered by the prosecuting counsel through the defendant as Exhibit TWT 1. The defendant said he will not be surprised that his statement at SARS and his statement at Utako Police station contain almost the same facts because of torturing. When asked if he wants the Court to look at his statement at SARS; DW1 said yes. The IPO asked him details of the schools he attended. The IPO also asked him other questions with regards to other things contained in his statement. The torture was at the general office around 2-3 p.m.; only Policemen were there.

The defendant further stated during cross examination that there is a nurse that comes to the counter at SARS; anybody who needs drugs buys from the nurse. He admitted that he had worked with a white man before he started working with the nominal complainant. He left that employment because they were not paying him well.

At the conclusion of the trial within trial, C. I. Okoye Esq. filed defendant's written address on 15/10/2019; it was served on the prosecution on 4/12/2019. The prosecution did not file its written address. C. Nwaokorie Esq. adopted the defendant's written address on 27/1/2020.

In his written address, learned counsel for the defendant referred to section 2 of the Anti-Torture Act for the meaning of torture; and section 3 thereof to support the view that any confession, admission or statement obtained as a result of torture shall not be invoked as evidence in any proceedings. He referred to Lasisi v. State [2013] LPELR-20183 [SC] and Terver&Ors. v. State [2013] LPELR-20783 [CA] for the principles guiding a trial within trial. Mr. C. I. Okoye referred to the evidence adduced during the trial within trial and submitted that the defendant has made out a case for the rejection of the statement sought to be tendered by the prosecution. He urged the Court to reject the statement and mark it rejected.

It is important to draw a distinction between a situation where a defendant retracts or resiles from his confessional statement on the one hand; and where a defendant admits that he made the confessional statement but asserts that it was not made voluntarily on the other. The position of the law is that in the former case, the court will admit the confessional statement in evidence and determine the probative value or weight to be attached to it at the end of the trial. In the latter case, the court will conduct a trial within trial to determine the voluntariness or otherwise of the confessional statement. In other words, where an accused person [or defendant] disowns the statement in issue, it is not necessary to conduct a trial within trial.

In the case of Daniel Nsofor&Anor. v. State [2002] 10 NWLR [Pt. 775] 274, the Court held that where the objection to the admissibility of an accused

person's confessional statement is based on the ground that it was not read over to him or that he did not make it; and not on the ground that the statement was not voluntarily made because he was coerced or induced to make it, the statement is treated as voluntarily made and is admissible without the conduct of a trial within the trial which is necessary only in cases where the issue of the voluntariness or otherwise of a confession arises. The question whether the accused person made the confession is a matter to be decided by the trial court in its fact-finding capacity at the end of the case. See also the case of Eke v. State [2011] 3 NWLR [Pt. 1235] 589.

In his evidence, the defendant narrated how James Ameh, Kayode and about 3 other Police officers tortured him. Thereafter, they asked him to sign one paper. He asked them to read the paper for him to understand what they wrote. They started beating him again, cut part of his right ear. As they cut his ear, he reasoned that they really meant to kill him. So, he signed the paper. He also stated that he was not taken to a senior Police officer. He narrated how he signed the statement the second time after about 3 weeks because the IPO threatened that they will repeat what they did to him earlier.

The Court is of the view that from the above evidence of the defendant, he retracted or resiled from his statement since he said he did not know the content of the paper he signed. In the light of the principle in Daniel Nsofor & Anor. v. State [supra], the said statement is admissible and a trial within trial was unnecessary.

## CONCLUSION

From all that I have said, the statement of the defendant dated 26/6/2018 is admitted in evidence as Exhibit 6.

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HON. JUSTICE S. C. ORIJI  
(JUDGE)

### Appearance of counsel:

1. C. O. NnadiEsq. for the defendant.
2. J. A. AmehEsq. watching brief for the nominal complainant.