

IN THE COURT OF APPEAL OF BELIZE, A.D. 2007

CRIMINAL APPEAL NO. 25 OF 2006

BETWEEN:

KENT FRANCIS

Appellant

AND

THE QUEEN

Respondent

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BEFORE:

The Hon. Mr. Justice Mottley	-	President
The Hon. Mr. Justice Carey	-	Justice of Appeal
The Hon. Mr. Justice Morrison	-	Justice of Appeal

Mr. Anthony Sylvestre for the appellant.

Ms. Cheryl-Lyn Branker-Taitt, Deputy Director of Public Prosecutions  
for the respondent.

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5 June, 26 October 2007

CAREY, JA

1. The point which arises in this appeal requires a consideration of section 21(2) of the Juries Act, cap. 128 which enacts as follows:

“(2) For the trial of the issue in every criminal cause in which the accused person is arraigned for an offence not punishable with death, the jury shall consist of nine persons and that jury may, on or after the expiration of two hours from the time when it retired to consider its verdict, return a verdict whenever it is agreed in the proportion of eight to one or

seven to two, and that verdict when so delivered shall have the effect as if the whole jury had concurred therein.” (Emphasis supplied)

2. We do not propose to rehearse details of the offences upon which the appellant stood his trial as those facts are entirely irrelevant to an understanding of the matter before us. We confine ourselves to the facts which give rise to the point to be considered.
3. For purposes of the record, we would set out the following background information. The appellant was convicted before Gonzalez J and a jury on 6 November 2006 on an indictment which contained four counts:-

Count 1: Rape  
Count 2: Aggravated Burglary  
Count 3: Aggravated Assault  
Count 4: Threats of Death

He was sentenced to concurrent terms of ten (10) years’, twelve (12) years’, one (1) year and one (1) year imprisonment respectively. We wish to make one comment. It is to question the desirability of including comparatively minor offences, counts 3 and 4, in the context of such serious charges as alleged in this indictment. As a policy, we would doubt that it serves any useful purpose. The facts which prompt the minor charges provide material which aggravate the substantive charges and are likely to attract more severe punishment.

4. The ground of appeal argued on behalf of the appellant was stated in these terms:-

“The majority verdict returned by the jury was a nullity as it was not in compliance with section 21(2) of the Juries Act, cap. 128 of the Laws of Belize R.E. 2000.”

The relevant facts are as follows:-

THE COURT:                    We retire at what time?  
MARSHALL:                    1:05.  
THE COURT:                    We have that Ms. Matura, Mr. Lindo?  
MS. MATURA:                Yes, My Lord.  
MR. LINDO:                    Yes.

Jury retires.

Court adjourns at 1:05 p.m.

Afternoon session.

Court resumes at 3:05 p.m.

Verdict

5. Mr. Sylvestre argued that the verdict was not in accordance with the provisions of the Act. He cited a number of decisions of this court, viz. *Cecil Gill v. The Queen (unreported) 26 June 2003*; *Stanley Coleman v. The Queen (unreported) 4 June, 2004* where this court insisted on the necessity to comply with the provision and visiting the sanction of nullity on the proceedings. He sought support from analogous English statutory provisions and English authorities.
6. It should be pointed out that the English Juries Act 1974 section 17 is not in *pari materia* with its Belizean counterpart. The only similarity is the concept of a valid majority decision by a jury. Section 17(4) of the English Act is in this wise:-

“...(4) No court shall accept a verdict by virtue of subsection (1) or (2) above (which provide for the acceptance of a prescribed majority verdict) unless it appears to the court that the jury have had such period of time for deliberation as the court thinks reasonable having regard to the nature and complexity of the case; and the Crown Court shall in any event not accept such a verdict unless it appears to the court that the jury have had at least two hours for deliberation...”

A feature of the English Legislation is that it requires a minimum period of two hours for deliberation. On the other hand, the Belizean provision expresses itself in these terms:-

“...On or after the expiration of two hours from the time when (the jury) retired to consider its verdict.”

In the face of this clear difference between the legislation, it cannot be helpful to look at English authorities on their legislation. Nor do we think it is legitimate to read the concept of deliberation into section 21 of the Juries Act. Although the English Act was enacted subsequent to the Juries Act, cap 128, Parliament revisited the Act in 1998 and 1999 and did not think it fit to amend the law in this respect.

7. We are of opinion that the words should be given their grammatical meaning: the words are ordinary English words. In our judgment, a majority verdict is valid when returned on the two hour mark, alternatively, after the two hour mark has passed. Thus applying that interpretation to what transpired at this trial, the period of acceptance of the verdict as valid begins to run from the instant the jury retire to the instant it returns the verdict. Thus 1:05 p.m. to 3:05 p.m. satisfies the minimum requirement of the Act.

8. But we think the submission fails at the factual level. The verdict of guilty was not returned until after the two hours had elapsed. The record shows that the verdict was pronounced after the court resumed at 3:05 p.m.
9. Although only the solitary ground was advanced before us, we considered the case as a whole but saw no reason to interfere with the jury's findings.

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**MOTTLEY P**

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**CAREY JA**

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**MORRISON JA**