IN THE COURT OF APPEAL OF BELIZE, A.D. 2006

CRIMINAL APPEAL NO. 22 OF 2005

BETWEEN:

CHARLES BRADLEY **Appellant**

AND

THE QUEEN **Respondent**

—

BEFORE:

The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

Appellant in person.
Mr. Kirk Anderson, Director of Public Prosecutions, for Crown.

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30 June & 27 October 2006.

CAREY, JA

1. On 30 June, 2006 we allowed this appeal, quashed the convictions and set aside the sentences. We ordered that a new trial should be had at the earliest possible session of the Supreme Court. Our reasons which we promised, are set out hereunder:

2. The appellant was convicted before Arana J. and a jury of kidnapping “his” children Anthony Bradley (count 1), Christine Bradley (count 3) and J.B., the daughter of the children’s mother (count 5), indecent assault on J.B. (count 7) and blackmail (count 8). He was sentenced to fifteen years imprisonment on each of the counts charging kidnapping, three years’ imprisonment on the charge of indecent assault and fifteen years’ imprisonment on the charge of blackmail. The sentences were ordered to run concurrently.

3. Because of the decision at which we arrived, we do not propose to give more than a short summary of the facts nor do we intend to make any comments regarding the facts save what is required to appreciate, the deficiencies or irregularities which appear in the record.

4. The prosecution case in brief was as follows: The appellant had been in a common law relationship with Emre Bradley which had produced two children, Anthony and Christine. At the time of these offences, Anthony was four years old, J.B. was eight years old. The third child was not the appellant’s: she referred to him as her step-father. She was eight years old.

On 19 August 2002, the appellant requested permission from their mother to take the children to Benguche to sell clothes and thereafter to return them to her. When she did not see them return, she spoke with his mother and to the police. She eventually heard from the appellant who made her to understand if she wanted her daughter J.B, she would have to give him $1000 and; if she did not give him that sum, she would never see her child again. She would also after that have to pay $1000 for the recovery of each of the

other two. He never allowed her to speak to any of the children and refused to let her know where they were. He gave her details of the arrangements to obtain J.B. She sought help from the police. She also went around from house to house selling her jewelry in order to make up the $1000. She was not successful. Eventually the appellant brought the children to their mother. When J.B. in the course of giving evidence attempted to speak to the complaint she made to her mother, the trial judge intervened to rule it out. J.B. was taken to the hospital where she was medically examined.

5. Before we relate the result of this examination, it will be useful to give J.B.'s version of the events which occurred while she was in the company of the appellant. She confirmed that the appellant came to their home and sought permission for the children - Anthony, Christine and herself to accompany him to sell clothes. She gave a story of hitchhiking and tramping over the countryside, traversing a hill and crossing a creek to a house where he entreated a lady to allow them to stay for a few days. For the following night, the appellant made alternative arrangements which meant they slept in another house occupied by the appellant and two men. On that night before the two men arrived, the appellant indecently assaulted J.B. On the next day, they left for another place. That night he cooked plantain without any salt for their dinner. Next day, they went to another house where they were fed bread. That night, she was again molested by the appellant. On the next day, they walked to a town where the appellant telephoned their grandmother but the children were not allowed to speak. He also spoke to her mother demanding $1000 for her return. That night they slept in a half-finished house which a lady allowed them to use. Again, J.B. said, the appellant molested her. Next morning he said he would take her home. The appellant and herself

hitchhiked to Belize but her brother and sister were left behind. That night they slept on a piece of board placed on the ground. When she awoke, he indecently assaulted her. From there she was taken to another house where she was padlocked in the bathroom. From there she was taken home and told to pack clothes for the other children. She heard him ask her mother for a thousand dollars. Her mother did not have that sum and sent her to a neighbour to borrow three hundred dollars but she was not successful. By this time, the police arrived, the appellant tried to escape but was caught.

6. The medical evidence can now be appreciated in the context of the victim's evidence. The doctor said he did not recall the name of his patient and the prosecution applied for the doctor to be allowed to refresh his memory. After the application was granted a document was shown to the witness and the appellant and the question asked was – "Do you now recall the name of the patient?" No evidence was elicited to show that the document could be used for that purpose, for example, was it a part of the doctor's notes made at the time and like. We mention this to emphasize that a fair trial requires that the rules, in this case, the rules of evidence, be followed by counsel and enforced by the judge. The doctor said that vaginal examination revealed no signs of bruises or lacerations. The hymen was intact. Then this rather strange question was put - "Could you give us an idea of what was the result of your examination? What did you conclude at the end of your examination?"

To which the no less strange response was –

"After the end of the medical examination, I concluded that this was a case of suspected carnal abuse".

The appellant when it was his turn to cross-examine the doctor asked the following questions:-

Q. "What is the meaning of the word 'suspected' carnal abuse? Give me a definition of that?
A. It means that there is a strong possibility of carnal abuse in that case.
Q. Suspected?
A. Yes.
Q. It was only suspected?
A. That is how the term is used because if there was like lacerations or bruises or if the hymen was broken, then the term would go to a next level.
Q. The next level would it be stating that she had been molested where you find bruises and stuff?
A. Well, it would have been called as carnal abuse".

7. The appellant gave evidence on oath. He acknowledged that he asked permission for the children to go with him to visit friends in Guatemala and took them there. They spent a week. He could not return because there was a flood. He left the other children but returned with J.B. and explained to her mother. The police arrested him. He denied blackmail or that he molested J.B.

8. The appellant appeared on his own behalf at trial and before us in this court. We note that counsel for the prosecution interrupted the cross-examination of J.B. to apply to amend the indictment to particularize the locus of the indecent assault as "Big Falls in the

Punta Gorda District". This application was granted. The effect of this amendment was to render the evidence of other incidents of indecent assault committed by the appellant prejudicial to the appellant. The appellant himself made the point that the 'disclosure' he had received showed that crimes were committed outside the jurisdiction and wished the count for indecent assault to be dropped. The trial judge took the view that she could not accede to that request because there was evidence before the jury as to an offence at Big Falls. But, the judge did not at the end of the prosecution case deal with the fact of the inadmissible evidence so as to withdraw that evidence from the jury's consideration as they evaluated the evidence of the appellant. Nor did she deal with it in her summation. Indeed at p. 281 she mentions that evidence without comment. Having given perfectly correct directions on the definition of indecent assault, she continued:- "You have the evidence of J.B. that on at least four occasions between 19th of August and the 5th of September 2002, when Charles Bradley had taken her to Jalacte and Guatemala and later Big Falls, he molested her …"

That evidence ought not to have been referred to as evidence in the case. It was not concerned with proof of the count in the indictment. It was entirely inadmissible. In our judgment, it amounted to a misdirection.

9. In dealing with the medical evidence to which we alluded earlier, the trial judge left for the jury's consideration the doctor's opinion that the result of his examination that there were no injuries amounted to suspected carnal abuse in those word:-

> "It is a question of fact whether his evidence assists you in finding whether the prosecution has proven the crime of indecent assault".

10. It is not in doubt that the judge in a criminal trial has also a responsibility to the jury with regard to the facts. It is to assist them in the light of his or her experience to appreciate the significance of evidence. Consistent with the principle, it would, in our judgment be entirely wrong to direct them to consider evidence which has absolutely no significance. But in this case, the judge was elevating evidence with no significance to evidence capable of being left to a jury for serious consideration.

11. It is a matter of some regret that we are constrained to mention certain other deficiencies in respect to this trial. Counsel for the Crown, was allowed to open to the jury as regards allegations against the appellant which occurred in another jurisdiction:-

> "J.B. will come here and speak to you guys about what happened to her when she went with her step-father across the border…"

We note with strong disapprobation the discourtesy in addressing the jury as "you guys". Further, counsel for the Crown was allowed to cross examine as to the allegations of assault in Guatemala. On neither of these occasions did the judge intervene as she was obliged to do. We would call attention to *R. v. Albino Garcia (unreported) 24 June 2005,* where this court cited the observations of Lord Bingham in *Randall v. The Queen (UKPC No. 22 of 2001) 16 April 2002:-*

"…It is the responsibility of the judge to ensure that the proceedings are conducted in an orderly and proper manner which is fair to both prosecution and defence".

We again commend these observations and dare to hope that the deficiencies we have highlighted will not recur. The role of the judge in the trial process is critical to a fair trial. It is a responsibility from which there can be no abdication.

12. The appellant, we conclude was not afforded a fair trial. The Director with commendable candour accepted that a new trial should be had on this ground.

SOSA JA

CAREY JA

MORRISON JA