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

CRIMINAL APPEAL NO. 5 OF 2006

BETWEEN:

LAURIANO RAMIREZ **Appellant**

AND

THE QUEEN **Respondent**

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BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**

Mr. Simeon Sampson S.C. for appellant.
Mr. Kirk Anderson, Director of Public Prosecutions, for respondent.

—

12 and 27 October 2006.

CAREY, JA

1. The appellant was convicted before Arana J. sitting with a jury on an indictment on counts charging aggravated burglary (count 1) and rape (count 2). He was sentenced to respective terms of 10 years' and 12 years' imprisonment. He has appealed against his

convictions. We heard submissions on his behalf from Mr. Sampson S.C. who advanced one ground, the substance of which was that the trial judge declined to grant the appellant an adjournment to enable him to settle problems of representation albeit so late in the proceedings.

2. The Director was invited to address us on the trial judge's directions on the jury's proper approach to evidence of bad character with respect to the appellant, which caused us some concern. We intend to deal with this issue in this judgment.

3. It is right to point out that in the event, we concluded that we would apply the proviso to section 30(1) of the Court of Appeal Act, Cap. 90, dismiss the appeal and confirm the conviction. We promised to reduce our reasons for this decision into writing and hand those down at a later date. They are set out hereunder.

4. The nature of the matters raised in this appeal as indicated above, makes it wholly unnecessary to rehearse the evidence in any detail. The allegations against the appellant were that on the early morning of 26 February 2004 he entered the house of the victim with whom he had a visiting relationship but which had terminated, abducted her, took her on a bicycle to another house where he raped her. At all times he was armed with an ice pick which he used to ensure compliance and her silence. The medical evidence confirmed that she had several small puncture wounds on her right forearm, right hand and right thigh which were consistent with infliction by an ice pick. The appellant testified in his own defence, denying that he had entered her house or raped her. With respect to the charge of aggravated burglary, he said this -

> "What can I say, I was close to the house but I did not enter the house"

and in relation to the charge of rape, he stated as follows:

> "I can say is that I don't know anything about rape because I haven't raped no one."

He had also explained to the jury that at the material time of the entry into the victim's house and the subsequent rape he had gone to bed at his house where he fell asleep.

5. The judge categorized the defence as a defence of alibi but she also indicated to the jury that the appellant was also saying that he knew nothing about the aggravated burglary nor about the rape. She gave a full **Turnbull** warning, doubtless out of an abundance of caution. The essential issue in the case, was the credibility of the victim but no complaint was made in this regard.

6. We can now therefore consider the ground raised by Mr. Sampson which did not touch and concern the conviction by the jury nor the directions of the judge but focused on the judge's exercise of her discretion as to whether or not she would allow an adjournment. The factual bases on which counsel sought to found his submission were these: When the trial had reached the stage where the prosecution case was almost complete (evidence in proof of both charges had been adduced), the appellant who appeared on his own behalf, intimated to the trial judge that he wanted time to get an attorney. He said in answer to the judge that his mother was getting an attorney to act on his behalf and the attorney would be got by Monday. This took place on a Friday afternoon at about

3:10 p.m. when the court had reconvened after a short adjournment to allow for the arrival of two witnesses who counsel for the Crown was minded to call. These were the doctor who presumably had examined the virtual complainant and the investigating officer. In the event only the police officer was called to give evidence on the resumption the Tuesday following. The trial judge granted the application until the following Monday.

7. On the resumption, the appellant was asked if he had a lawyer and gave his name. The lawyer was not in attendance. As the prosecutor was indisposed, the trial was postponed to the next morning. But on that morning the judge was told that counsel for the appellant was appearing in a trial before another court. There was no information when the lawyer would be available. The judge stood the matter over until the afternoon, observing that if counsel was in fact retained, he should attend to make representations and that he could not hold the present trial indefinitely. Finally, counsel appeared at the afternoon session, but did not announce that he appeared. He proceeded to explain the status quo. He said that a member of the appellant's family had approached him a week or two earlier suggesting that he represent the appellant at his trial. He told this person that he would have to be retained immediately and a promise was made to him that the family member would return. That never occurred. That very morning the appellant's mother requested him to appear on behalf of the appellant, informing him that the matter was part-heard. He advised her that he would be willing to do so provided he was retained.

8. The fact of the matter was that counsel was never and had not been retained and indeed, the judge had been given information that was less than accurate.

9. The judge called on counsel for the Crown to address her. She explained that at the beginning of the session, the appellant had been asked by Lucas J. about legal representation and he had said that he would represent himself. On another occasion when he was before the court, the same judge had again inquired about this matter and received the same response. At the commencement of the present trial, when asked, he maintained the position. Counsel reminded the judge that during the trial the appellant had been allowed time and had also benefited from an extra day to enable him to settle his representation. The judge ruled that the appellant had had sufficient time to retain counsel and the trial should proceed.

10. It is plain that in these circumstances, the judge was called upon to perform a balancing exercise in order to ensure a fair trial. She had to consider the interest of the appellant and at the same time, the interests of justice. The appellant is entitled to legal representation if he can afford it. The Constitution guarantees a fair trial but it does not guarantee counsel. In the instant case, the only question is whether the trial judge wrongly exercised her discretion. It was plain that despite the best efforts of the appellant's family member or members, representation on his behalf had not been secured and there was no evidence that it was likely to eventuate in the foreseeable future. It could not be expected that the trial which was a trial by jury, could be postponed for some undetermined time when possibly the family could be in a financial position to secure legal representation for the appellant. The judge could not and is not expected to be other than alive to the realities. The jury could obviously not be sent home to resume the trial at some time in the future, which could not be ascertained. We do not think that there can be any doubt that more than ample time had been allowed the

appellant to decide whether he would have been able to obtain counsel to appear on his behalf. We come to the firm conclusion that the trial judge did not err but properly and correctly exercised her discretion. We must accordingly reject this ground of appeal.

11. This brings us to the trial judge's direction as to bad character which is taken from the Crown Court Bench Book prepared by the Judicial Studies Board for the guidance of Crown Court judges in the United Kingdom. The specimen directions, it should be noted, were prepared in anticipation of the Criminal Justice Act 2003 (UK). There is no equivalent legislation in Belize. The directions of the Judicial Studies Board, can be of immeasurable assistance to judges in this jurisdiction but care must be taken to ensure that the law in both countries, is in *pari materia*.

12. The learned trial judge in addressing the jury on the issue of bad character stated as follows:

> "You have also heard the evidence that the accused has a bad character in the sense that he used to beat up Jovita Jones and there was in fact a Restraining Order against him from the Family Court and you heard of this because the defendant asked questions which brought it up. You may use this evidence of the defendant's bad character in the following ways.
>
> If you think it right, you may take it into account when deciding whether or not the defendant's evidence to you was truthful. A person with a bad character may be less likely to tell the truth but it doesn't follow that he is incapable of telling

the truth. It is for you to decide to what extent, if at all, his character helps you when judging his evidence.

If you think it is right, you may also take it into account when deciding whether or not the defendant committed these offences with which he is presently charged. He is charged with aggravated burglary and rape and you must decide to what extent, if at all, his character helps you when you are considering whether or not he is guilty of these offences but bear in mind that his bad character cannot by itself prove that he is guilty. It will therefore be wrong for you to jump to the conclusion that he is guilty just because of his bad character." (Emphasis added)

13. It is right to say that this does not represent the law in Belize which is to be found in section 51 of the Evidence Act, Cap. 95 which provides as follows:

> "(1) In criminal causes or matters, the fact that the defendant or the accused person, as the case may be, has a good character may be proved, but the fact that he has a bad character is inadmissible in evidence, unless it is itself a fact in issue, or unless evidence has been given that he has a good character, in which case evidence that he has a bad character is admissible."

We understand from this provision that unless the character of the accused is in issue, the prosecution cannot lead evidence of bad character. In the instant case, the prosecution did not lead such evidence. The evidence that the appellant used to "beat up" the

victim was suggested to the jury as amounting to bad character by the trial judge but section 51(3), does not, we think, support that categorization. It provides –

> "In this section, the word "character" means reputation as distinguished from disposition, and evidence may be given only of general reputation, and not of particular acts by which reputation or disposition is shown."

Nor do we think that the Restraining Order issued by the family court qualifies as evidence of bad character in the sense of a general bad reputation. It could also be said that these acts could show he had a disposition to violence which would have rendered that evidence altogether inadmissible. The position stands thus: the trial judge has treated as evidence of bad character, evidence which is not, and gone on to give directions on the effect of that bad character. In doing so, however, we are of opinion that she gave directions which, based as they are on UK legislation, were not only inappropriate but were likely also to confuse rather than to be helpful to the jury.

14. The fact of the matter, is that the conditions section 51(1) required to exist so as to allow bad character evidence to be admitted, did not exist. Further, there was, as we have indicated, no evidence of bad character on the part of the appellant. What is to be understood, from all this, is that no directions on bad character were called for. In the event, what was stated was, we think, confusing. The first paragraph of the directions quoted above, told the jury that bad character evidence goes to credibility. The second part suggests that the same bad character evidence can properly be taken into account when deciding whether the appellant

committed the offence with which he was charged. That second particular of the directions was inapplicable given that there was no evidence of other similar behaviour on which the prosecution relied and which evidence the prosecution would have had to adduce if the UK legislation was the law of Belize.

15. Where bad character is admissible as is allowed by section 51(1) of the Evidence Act, then the first paragraph represents the law. That direction would be correct. We repeat, for emphasis, that evidence of bad character properly so called, can only go to credit; it cannot go to prove that an accused committed the offence.

16. This matter has given us anxious concern as to its effect on the trial. We think we should commend the judge in taking the time to refer to the specimen directions prepared by the Judicial Studies Board, but we fear, that we must suggest that judges take care to satisfy themselves that these directions represent the law of Belize, which is the only proper law. We are satisfied however that in the instant case, no miscarriage of justice has occurred. The evidence against the appellant was overwhelming, the injuries to the victim could never be explained on anything said by the appellant who gave evidence on oath. The jury would, we think, despite the confusing and incorrect directions as to bad character which was not an issue in the case, inevitably have come to the same decision.

17. It was for these reasons that we applied the proviso to sec. 30(1) of the Court of Appeal Act and dismissed the appeal.

MOTTLEY P

SOSA JA

CAREY JA