IN THE COURT OF APPEAL OF BELIZE, A.D. 2011

CRIMINAL APPEAL NO. 7 OF 2010

BETWEEN:

ARTURO EK **Appellant**

AND

THE QUEEN **Respondent**

—

BEFORE:

for the appellant.
Mrs. Cheryl-Lynn Vidal, Director of Public Prosecutions, for the Crown.

—

20 July 2012.

POLLARD JA

Introduction

[1] On 16 June 2010 Arturo Ek, the appellant, was convicted on the single count of murdering Eugenio Tzul otherwise known as Gutman. He was sentenced to life imprisonment on 14 July 2011. He appealed against his conviction adducing three grounds of appeal. The Prosecution alleged that between 17 and 18 November 2007, while the appellant and his friend, Isair Martinez, were having a drink at San Joaquin Bar in San Joaquin Village, the appellant got into an altercation with the deceased. When the deceased left

the bar, the appellant and his friend ambushed the deceased and dealt him several blows about his body causing him severe harm. He was eventually strangled with a piece of wire which the forensic pathologist, Dr. Estradabran, determined resulted in asphyxia causing his death.

[2] The Prosecution led no direct evidence from independent witnesses. In the opinion of the learned trial judge, the burden of the Prosecution's case which directly connected the appellant to the crime rested on a caution statement signed by the appellant and which was admitted in evidence after the conduct of a voir dire. In this caution statement the appellant, among other things, admitted to tying a piece of wire around the neck of the accused. A piece of wire was admitted in evidence and subsequently characterised by the Defence as the murder weapon. The wire was removed by the forensic pathologist from the neck of the deceased and employed by the Prosecution to establish the nexus between the appellant and the cause of death of Eugenio Tzul. The defendant was convicted by the jury for murder on 16 June 2010 and sentenced to life imprisonment on 14 July 2010.

[3] The three grounds of appeal adduced by the defence were:

a) the learned trial judge erred in law by omitting to direct the jury adequately on the effect of intoxication on the "intention to kill";

b) the learned trial judge omitted to give the jury a Mushtaq direction as required in the circumstances of the case; and

c) the learned trial judge erred in law in not withdrawing the case from the jury in light of the totality of inconsistencies identified in the caution statement and in misdirecting the jury on a very important question of fact relating to the murder weapon.

In the course of his submissions, the Defence abandoned the first and second grounds of appeal and relied entirely on the third ground of appeal which may be conveniently divided into two parts. The first part addressed the inconsistencies, approximately nine in all, identified in the caution statement by the learned trial judge to the jury and which should have advised her to withdraw the case from the jury. The second part is that the learned trial judge suggested to the jury that the murder weapon described in the caution statement and the "typing wire" tendered in evidence were the same" without foundation".

The Case for the Prosecution

[4] In his caution statement which was signed by the appellant, attested by the police officer Roy Ek and the Justice of the Peace Idalicia Zetina and admitted in evidence by the learned judge following a voir dire, the appellant stated the following. The night before the incident he was drinking by the yard of his friend, Isair Martinez, who suggested that they should go to a bar called Miramontes Bar to have some beers. At about 8:00 p.m. that night he left his house and joined his friend before departing with him for Miramontes Bar in a taxi in the company of two girls. At Miramontes Bar he and his friend drank fifteen bottles of beer each. Thereafter both of them decided to go to San Joaquin Bar to continue drinking.

[5] At San Joaquin Bar they encountered Gutman, the deceased, who asked the appellant for a beer. The appellant refused and Gutman accosted him in foul language and with indecent signs. The appellant got angry, and, as a consequence, conspired with his friend Isair Martinez to beat up Gutman. When Gutman left the San Joaquin Bar to go home, the appellant and his friend followed him and beat him up. The appellant contended that during the fray he hit Gutman with a stone in his back but he was so drunk that he did not feel when Gutman punched him in his face. The appellant and his friend continued to beat Gutman who leaned to the ground bleeding when Arturo Ek hit him in the lower back with a stone. The appellant took off Gutman's clothes and tied a piece of wire around his neck. The appellant then took off

his shirt and went to his house while his friend, Isair Martinez, went home. The appellant said that he had wanted to beat Gutman whom he described as a punk, a faggot and a whore. Gutman on a previous occasion had allegedly forced the appellant to make love to him and threatened to push an antenna in his anal cavity.

[6] Under cross examination by the Defence, P.C. Roy Ek, who had recorded the caution statement of the appellant in Spanish and subsequently translated it into English, testified that the appellant had admitted to beating up the deceased at a tyre place and tying a piece of black cable wire around the neck of the deceased. When the Defence showed P.C. Ek the piece of wire admitted in evidence P.C. Ek conceded, reluctantly, that it was not a piece of black cable wire but that it was grey in colour. The learned trial judge however, dismissed the interventions of the Prosecution in P.C. Ek's re-examination and determined that the colour of the wire was a matter to be left to the jury. Idalicia Zetina, the Justice of the Peace, testified that she was present when the caution statement was being recorded and that it was voluntary, unaccompanied by inappropriate inducements and that the appellant was informed about his constitutional rights. Corporal Fernando Valladarez also testified for the Prosecution and was duly cross-examined by the Defence. He testified that he retrieved the body of the deceased from the Corozal Town Hospital Morgue and transported it to the Karl Heusner Memorial Hospital Morgue where the body of the deceased, Eugenio Tzul, was identified by his nephew, Armin Pol, to Corporal Fernando Valladarez and Dr. Estradabran who had joined him there. Corporal Fernando Valladarez testified that during the postmortem examination he saw a piece of wire removed from around the neck of the deceased, Eugenio Tzul, together with a piece of metal rod which was removed from the deceased's anal cavity. He testified that Dr. Estradabran filled out in his presence two postmortem forms and handed him one of the forms on which Dr. Estradabran certified the cause of death as "strangulation asphyxia with head and body trauma, blunt force injuries".

[7] Dr. Mario Estradabran, a Prosecution witness, was on the application of the Prosecution and with the concurrence of the Defence, accepted as an expert in the field of forensic medicine by the learned trial judge. He identified the postmortem report which was prepared by him. Defence counsel did not object to the postmortem report being tendered in evidence nor to that report being used by Dr. Estradabran to refresh his memory. Dr. Estradabran testified that there were externally multiple contusions and blunt injuries on the face of the deceased and a 1 ½ inch stab wound in his lower back in addition to other wounds to the head which affected the left middle base of the cranium and bleeding on the surfaces of the brain. Dr. Estradabran opined that the direct cause of death was "strangulation asphyxia in a subject with head and chest trauma due to blunt force injuries". In clarifying strangulation asphyxia to the learned trial judge Dr. Estradabran explained it to mean compression of the neck by the wire producing an obstruction of the airways and lack of oxygen of the lower respiratory tract. Under cross-examination Dr. Estradabran admitted that the injuries suffered by the deceased were slow, deliberate, well aimed actions inflicted meticulously.

[8] The appellant opted to make an unsworn statement from the dock in which he said that he and his friend together with two girls went to Miramontes Bar where he was punched in the nose by a young man. They then went to San Joaquin in a taxi where he fell asleep on the way home. He reached about 12:00 o'clock. The next day Corporal Nicholas came to his home, arrested him and told him that he, the appellant, and his friend had killed a man called Tzul. The appellant denied the claim whereupon he was allegedly handcuffed and beaten by the police who placed a black plastic bag over his head and gagged his mouth. He was allegedly forced by the police to sign the caution statement after being beaten up, shocked in the testicles and threatened by Corporal Nicholas to say nothing to the Justice of the Peace.

Trial Judge's Summation and Grounds of Appeal

[9] Following the closing addresses by the Prosecution and Defence Counsel, the learned trial judge delivered her summation during which she read aloud for the court the English version of the caution statement of the appellant. The caution statement, explained the learned trial judge, was recorded in Spanish, the first language of the appellant, and then translated into English by P.C. Eck. Both the Spanish and English versions were admitted in evidence with no objection from the Defence counsel and accepted as exhibits RE – 1 and RE - 2 respectively. In her summation the learned trial judge explained to the jury, inter alia, their role as jurors as well as her role as a judge and the obligations and rights of the Prosecution and Defence. The learned trial judge explained to the jury the burden and standard of proof devolving on the Prosecution in criminal proceedings and their responsibilities as the judge of facts. In this context the learned trial judge identified the various elements of the crime of murder required to be proved by the Prosecution in order to establish the guilt of the accused and gave the jury various directions on relevant areas of the law to assist them in arriving at a safe verdict. At the termination of the evidence the jury returned a verdict of guilty of murder and sentenced the accused to life imprisonment. The accused appealed on three grounds mentioned above.

Failure of trial judge to direct the jury adequately on the effect of intoxication on the intention to kill

[10] In respect of this ground of appeal the learned trial judge informed the jury that the Prosecution must prove that the appellant had the specific intention to kill the deceased and in so doing they must look at all the surrounding circumstances. She cautioned the jury that they must not infer an intention to kill from the mere fact that death was a natural and probable result from the conduct of the accused. In this context the judge gave the jury an appropriate direction of the effect of alcohol on intention. She directed the jury that the crime of murder was a crime of specific intent. She directed the jury further that in deciding whether the appellant formed the intention to kill

the accused they must take into account the evidence that the appellant was extremely drunk. If the jury were convinced that because the accused was so drunk he did not intend or may not have intended to kill the deceased, then as a matter of law they must find him not guilty. The learned trial judge further directed the jury that if they were sure that the appellant, despite his drunkenness, still intended to kill the deceased, the Prosecution would still have discharged the relevant burden of proof since a drunken intent was still an intent as determined in **Reg v Sheehan [1975] 1 W.L.R. 739, 744 C** and expressly endorsed by Lord Mustill in **Re v Kingston [1975] 2 AC 355, 367 C**.

[11] In this context, the Prosecution conceded that the directions of the learned trial judge on the effect of intoxication on intention was indeed inadequate inasmuch as she should have instructed the jury that the essence of the partial defence of self-induced intoxication was the necessity to establish the absence of specific intent "because his mind was so affected by drink that he did not know what he was doing at the time when he did the act with which he was charged": **Sooklall and Mansingh v The State [1999] UKPC 37**. But, as indicated by the Prosecution in her written submissions, the detailed recollection of events articulated by the accused in his caution statement operated to preempt a finding that his recall of material events was so defective as not to bring him within **Sooklall and Mansingh v The State**. Where, however, the Defence had succeeded in establishing to a jury properly and adequately directed that the accused was unable to form the required intention, the issue of culpability should still be left to the jury who, on the facts established, may still convict the accused for an offence such as manslaughter which did not require proof of a specific intent.

[12] In vindicating the relevance of her submissions, the Prosecution cited **Sooklall and Mansingh v The State** where it was determined at paragraph 15 as follows:

> "15. This test is not satisfied by evidence that the accused had consumed so much alcohol that he was intoxicated. Nor

> is it satisfied by evidence that he could not remember what he was doing because he was drunk. The essence of the defence is that the accused did not have the guilty intent because his mind was so affected by drink that he did not know what he was doing when he did the act with which he has been charged. The intoxication must have been of such a degree that it prevented him from foreseeing or knowing what he would have foreseen or known had he been sober. This was made clear by Lord Denning in Bratty v Attorney General for Northern Ireland [1963] AC 386, 410, in a passage which was quoted by Widjery L.J. in Regina v Lipman [1970] 1 Q.B. 152 – 156:
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> > "If the drunken man is so drunk that he does not know what he is doing, he has a defence to any charge, such as murder or wounding with intent in which specific intention is essential, but he is still liable to be convicted of manslaughter or unlawful wounding for which no specific intent is necessary."

[13] In the ultimate analysis we were persuaded that the Prosecution was right in conceding that the learned trial judge did not adequately direct the jury on the effect of intoxication on intention. However, the Defence prematurely abandoned this ground of appeal.

Omission of Trial Judge to give the Jury a Mushtaq Direction

[14] In respect of the second ground of appeal we tended to be persuaded by the written submissions of the Prosecution on this issue. The learned trial judge reminded the jury that the Prosecution relied on the caution statement to prove that the appellant killed the deceased. The Prosecution had established no scientific link between the appellant and the articles tendered in evidence. She directed the jury that if they were sure that the appellant

made the caution statement, they must consider whether the confession was true. And in reaching a determination on the truthfulness of the caution statement the jury should have regard to all the circumstances in which it came to be made and to consider whether there were any circumstances which might cast doubt on the reliability of the caution statement. After identifying with a commendable measure of specificity the inconsistencies contained in the caution statement, the learned trial judge directed the jury to decide whether such inconsistencies prevented them from relying on its credibility. The learned trial judge directed the jury that it was their responsibility to decide and assess the weight to be accorded to the caution statement and if they were not sure, for whatever reason, that the caution statement was true then they must disregard it. The learned trial judge further directed the jury that if they were sure that the caution statement was true, they may rely on it even if it was or may have been made as a result of oppression or other improper circumstance.

[15] It was conceded by the Prosecution that this direction was a specimen direction from the Judicial Studies Board and was based on a case determined by the Judicial Committee of the Privy Council, to wit, **Chin Wei Keung v The Queen [1967] 2 AC 160**. This direction, as the Defence Counsel correctly intimated, in the perception of the Prosecution was found to be inappropriate in recent cases commencing with **Regina v Mushtaq [2005] UKHL 25** which was cited by Defence Counsel. In the submission of the Prosecution the circumstances requiring a Mushtaq direction were clearly indicated in **Barry Wizard v The Queen [2007] UKPC 21** which were on all fours with the facts established in the present appeal. At paragraph 35 of the immediately foregoing case it was stated:

> "35.A Mushtaq direction is only required where there is a possibility that the jury may conclude (i) that a statement was made by the defendant, (ii) the statement was true but (iii) the statement was or may have been induced by oppression. In the present case there was no basis upon which the jury could have reached these conclusions. The issue raised by the appellant's

> statement from the dock was not whether his statement under caution had been induced by violence but whether he had ever made that statement at all. The statement bore his signature. His evidence (rather statement from the dock) was that his signature was obtained by violence. This raised an issue that was secondary, albeit highly relevant, to the primary issue of whether he had made the statement. His case was that he had not made the statement, nor even known what was in the document to which he was forced to put his signature. In these circumstances there was no need for the judge to give the jury a direction that presupposed that the jury might conclude that the appellant had made the statement but had been induced to do so by violence."

[16] For the immediately foregoing reasons we agree with the submissions of the Prosecution that there was no reason for the learned trial judge to give to the jury a Mushtaq direction. In any event the Defence abandoned this second ground of appeal and relied entirely on the third ground of appeal which we shall now proceed to address.

Inconsistencies in the caution statement and the judge's misdirection on the murder weapon

[17] As intimated in paragraph 14 above, the learned trial judge detailed with commendable specificity the inconsistencies in the caution statement and directed the jury to determine whether such inconsistencies precluded them from relying on its credibility. In this context the learned trial judge reminded the jury that Dr. Estradabran the forensic medical expert confirmed that the injuries on the body of the deceased were inflicted deliberately and with careful aim. However the forensic medical expert conceded that a drunken person was less able to maintain his balance and that people who drank too much were not able to control their hands and feet. However Dr. Estradabran also conceded that alcohol had very little effect on some people. The learned trial judge also reminded the jury that the appellant said in the caution

statement that after consuming fifteen beers and six bottles of sum, he picked up the deceased and threw him in the air. She reminded the jury that as the judge of facts they were to decide whether this part of the statement was true.

[18] The learned trial judge drew the attention of the jury to the inconsistency in the caution statement relating to the location of the fighting with the deceased, to wit, the tyre shop in San Joaquin Village, and where the body of the deceased was discovered some distance away at the home of the deceased's brother, Gregorio Tzul, where the Scene of the Crime Technician conjectured appeared to be the location of death of the deceased. The learned trial judge directed the jury that as the finders of facts it was for them to decide if what the appellant was saying in his caution statement was true. Another inconsistency identified by the learned trial judge related to the presence of bushes in the back yard of the tyre shop where the ambush allegedly took place and the failure to discover any bushes when the judge and jury visited the loco in quo, bearing in mind that three years had elapsed since the occurrence of the incident in 2007.

[19] The learned trial judge next drew the jury's attention to the appellant's claim in the caution statement that he had hit the deceased in his back with a stone. However, the only injury detected on the back of the deceased by the forensic pathologist Dr. Estradabran was a stab wound of 1 ½ inches situated at the level of the lower back and which was inconsistent with the relevant assertions of the appellant in the caution statement. The next inconsistency identified by the learned trial judge related to the testimony of the Crime Scene Technician that the body of the deceased had on a piece of shirt and the appellant's statement in the written confession that he had taken off all of the deceased's clothing. The final inconsistency identified by the learned trial judge centered around the appellant's statement in the written confession or caution statement that he had tied a black cable wire around the neck of the deceased and the colour of the exhibit which Dr. Estradabran had removed from around the neck of the deceased.

[20] This brings us to the so called “murder weapon” described in the third ground of appeal of the Defence Counsel. Addressing the third ground of appeal, the Defence Counsel submitted that the learned trial judge erred in law in misdirecting the jury in relation to a “very important question of fact i.e. the murder weapon”. In this connection, the learned trial judge had pointed out to the jury that the appellant had said in the caution statement that he had tied a black cable wire around the neck of the deceased. She reminded the jury that they will have the wire which Dr. Estradabran had removed from the neck of the deceased and which was an exhibit in this case. She directed the jury that it was for them to decide if the exhibit was a black cable wire and whether it was consistent with what the appellant had stated in the caution statement.

[21] In our opinion Defence Counsel failed to persuade us that the wire which was accepted by the Court as an exhibit was not the identical piece of wire which Dr. Estradabran had removed from the neck of the deceased during the postmortem examination of the deceased. It appeared to us that the gravaman of the Defence’s complaint was that one prosecution witness, P.C. Ek, accepted that the piece of wire admitted in evidence and marked as an exhibit was grey and not black as the appellant had described in the caution statement. In our opinion it was not open to the Defence Counsel to reprobate and approbate in the same breath. If, as the Defence submitted the statements in the caution statement were not made by the appellant, the Defence would be precluded from relying on them to establish the innocence of the appellant. In any event we are constrained to observe that the learned trial judge left the verification of the murder weapon and its colour to the jury. And as a matter of law she was required so to do. However, the Defence maintained that her directions were so confusing that they must have operated to obfuscate the jury’s sense of judgment.

[22] In our opinion there is an even more compelling consideration in this context for asserting that the learned trial judge erred in law in her directions to the jury. And this consideration addressed the unqualified right of the appellant to a fair hearing prescribed in section 6 (2) of the Constitution and to

which all accused in this jurisdiction are entitled. It is not a subject of contention that the caution statement was recorded in Spanish, the original language of the appellant which he understood. Nor is it disputed that the recorded version in Spanish was translated into English by P.C. Ek whose linguistic competence was at one point in this trial a very live issue. During his examination-in-chief, for example, P.C. Ek testified that he translated the caution statement from Spanish to English; that he was, significantly enough, ”versed with both languages”; that he attended primary school and high school; that his first language was Spanish and that he understood and read in both languages. No evidence was led by the Prosecution that P.C. Ek was a certified translator nor that the English version of the caution statement was an accurate translation of the Spanish recorded version thereof. P.C. Eck testified that both statements which were marked A and B for the purpose of exhibits in the voir dire were in his handwriting and signed by him. In response to a question from the learned trial judge P.C. Ek testified that his first language was Spanish but he had not taken the CXC examination in Spanish. The caution statement was shown to the witness and the learned trial judge admitted both versions in evidence, on an application from the Prosecution, after verifying from the Defence that he entertained no objections to their being admitted in evidence.

[23] In response to a query from the Bench about the applicable law regarding the admission in evidence of translations of documents for the purpose of judicial proceedings, the D.P.P. advised that some time ago certified versions of translated documents into English were required in judicial proceedings but that a practice had developed whereby informal translations were now accepted in judicial proceedings. The D.P.P. undertook to determine the current status of the applicable law, in the opinion of this court, which must be seen to have important implications for the constitutional right to a fair hearing.

The Constitutional Right of the Appellant to a Fair Trial

[24] Our own concern about the fairness of this trial is informed by our awareness that in these proceedings the gravamen of the Prosecution's case had been expressed by the learned trial judge to rest on the caution statement of the accused. Equally important, is the fact that the learned trial judge read the English version of the caution statement to the jury and appeared to have relied on the English version as the basis of her directions to the jury. And this without any plausible assurance by way of an appropriate certificate that the English version of the caution statement was an accurate and reliable translation of the Spanish version originally recorded from the Spanish-speaking appellant. The Spanish version was not read to the jury some of whom may have had Spanish as their first language. In this connection it is important to recall the provisions of Article 85 (1) of the Evidence Act which reads as follows:

> "85(1). In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by virtue of this Part, regard shall be had to all the circumstances from which any inference may reasonably be drawn as to the accuracy or otherwise of the statement …"

[25] In the present context the relevant "circumstances from which any inference may reasonably be drawn as to the accuracy or otherwise of the (caution) statement" are not, in our respectful opinion, propitious. Such circumstances relate, inter alia, to the professional qualifications and linguistic expertise of P.C. Ek who recorded the caution statement in Spanish and translated it into Spanish. P.C. Ek admitted to the learned trial judge in response to her question that he did not take the CXC in Spanish. A similar question was not put to P.C. Ek concerning his qualifications in the English language. There was no certificate from an interpreter sworn in accordance with the provisions of the Oaths Act as required by Article 104(4) of the Evidence Act attesting to the accuracy of the English translation of the caution statement from Spanish. During his examination in chief, P.C. Ek said that he

informed the appellant of his "constitutional rights in the Spanish language, the language he understands." No evidence was led by the Prosecution to establish that the appellant also understood English. And given the critical reliance by the Prosecution on the caution statement in establishing the guilt of the accused, it is our considered opinion that in the absence of a plausible assurance about the accuracy and reliability of the English version of the caution statement, which must be perceived as a requirement of section 85(1) of the Evidence Act by ineluctable inference, it cannot be maintained with the desired measure of confidence and judicial dispassionateness that the appellant benefited from the fundamental principle of equality of arms in criminal proceedings, and consequently, the substance of a fair hearing in accordance with his unqualified constitutional right encapsulated in Article 6 (2) of the Constitution of Belize. The issue of a miscarriage of justice has, therefore, thrust itself on the consciousness of our court.

[26] It is probably no uncanny coincidence that Article 6 (2) of the Belize Constitution addresses the fundamental right of a fair hearing not unlike Article 6 of the European Convention on Human Rights which was spearheaded and ratified by Britain and extended to the Commonwealth Caribbean colonies, including Belize. This Convention has determinatively influenced the fundamental rights provisions of the constitutions of independent Commonwealth Caribbean countries with the notable exception of Trinidad & Tobago whose constitution was influenced by the Canadian Bill of Rights. And although Belize has not enacted the Convention into local law, it is an established rule of statutory interpretation that a statute will not be interpreted in a common law jurisdiction so as to place the country in breach of an international obligation: **Garland v British Rail Engineering Ltd [1985] 2 AC 751** at 755. In this context it is apposite to mention that Article 6 (3) of the Convention reads as follows:

> "(3) Everyone charged with a criminal offence has the following minimum rights …

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

And it is important to recall that during his examination in chief to be found at p. 82 lines 17 – 19 of the record, P.C. Roy Ek stated that he "also informed him (appellant) of his constitutional rights in the Spanish language, the language he understands:". This observation of P.C. Ek operates to underscore the significance of the omission to have a certified translation of the caution statement as well as an interpreter whose services were available to the appellant as the case may require in the opinion of the trial judge. Article 104 of the Evidence Act provides as follows:

"(1) In any criminal cause or matter in which evidence is given in a language not understood by a defendant or an accused person, the evidence shall be interpreted to him in a language which he understands.

(2) If the court thinks any document unnecessary to be fully interpreted, it may direct the substance only thereof to be interpreted or explained.

(3) An interpreter shall be shown to interpret in accordance with the provisions of the Oaths Act."

[27] There were credible indications during the course of the trial that the English version of the caution statement might not have been accurate as exemplified in the many inconsistencies identified to the jury by the learned trial judge. The Defence submitted that these inconsistencies were sufficient to justify the learned trial judge withdrawing the case from the jury. In this context, our court has taken careful consideration of the fact that the recorder of the caution statement in Spanish admitted under cross examination that the "murder weapon" was grey and not black as described in the English version of the caution statement. THE Defence did make heavy weather of this

discrepancy but our court cannot fail to recognise that the learned trial judge correctly left this issue to the jury. Other important inconsistencies identified by the learned trial judge related to the wound in the lower back detected by the forensic pathologist and the absence of evidence that a sharp instrument was employed in the fray, the location of the dead body of the deceased and the locus in quo of the fray, the state of dress of the deceased when his body was located and the relevant statement of the accused in the caution statement, the discordance between the drunkenness of the appellant and the required accuracy in the opinion of the forensic pathologist of several of the wounds on the deceased, the absence of bushes at the scene of the crime and the mention of bushes by the assailants of the deceased.

[28] Whether or not the inconsistencies identified by the learned trial judge should have advised withdrawing the case from the jury was a matter for the discretion of the judge who had control of the trial. It is a moot point whether the inconsistencies exemplified the inaccuracy of the caution statement such as to compromise the integrity of the information contained therein. Be that as it may the court recognised that the learned trial judge did direct the jury about the weight to be ascribed to the caution statement in view of the inconsistencies and their entitlement to disregard it if they entertained doubt about its credibility. And despite the fact that legitimate doubts might be entertained about the accuracy of the caution statement, this court has not determined from the evidence that the appellant was deprived of his entitlement to a fair trial consistently with his constitutional right in accordance with Article 6(2) of the Constitution of Belize.

[29] In **Kunnath v The State of Mauritius 1 WLR 1315** the Judicial Committee of the Privy Council was required to address the importance of conducting judicial proceedings in the language understood by the accused and the necessity of providing accused persons with professional interpreters as the case may require, in order to ensure respect for their constitutional right to a fair trial. In this case an uneducated Indian who did not understand English was charged with offences under the dangerous Drugs Act 1986. At his trial which was conducted in English, he was represented by experiences

counsel and was allowed access to an interpreter who translated his charge at the beginning of the trial, but not a word of evidence and only matters requested by the trial judge and the appellant's statement from the dock in which he denied understanding the evidence of the prosecution witnesses. Neither the Defence counsel nor the defendant at any time consented to the evidence not being translated. The defendant appealed, inter alia, on the ground that the lack of translation constituted a breach of his constitutional rights and violation of the rule of natural justice. The Judicial Committee of the Privy Council, allowing the appeal, held inter alia, "that it was an essential principle of criminal law that a trial for an indictable offence should be conducted in the presence of the defendant and that required not only his corporeal presence but also that he should be able to understand the proceedings … A defendant who had not understood the conduct of the proceedings could not, in the absence of express consent, be said to have had a fair trial." In delivering the judgment of the Board Lord Jauncey of Tullichettle said, inter alia, "unless the defendant himself consents otherwise, evidence given in a language other than his own shall be interpreted to him … (B)y virtue of the judge's duty to ensure that the defendant has a fair trial, the judge is in any event bound to ensure that, in accordance with established practice, effective use is made of the interpreter provided for the assistance of the defendant".

[30] The issue of the unqualified right to the translation of documents in the context of a fair trial in criminal proceedings was addressed in Blackstone's Criminal Practice, 21st edition, Oxford University Press, 2010 at P.A7.63 under the rubric "Right to Interpretation and Translation" where it was asseverated: "This right is not subject to qualification even if the accused is subsequently convicted: … The court has an obligation to ensure the quality of interpretation … Responsibility for ensuring that a defendant who needs an interpreter gets appropriate assistance rests with the judge, not counsel". In our opinion this statement applies *mutatis mutandis* to documents in a language other than English which, as a matter of law, is the official language of Belize and serves as a salutary reminder to judges in our jurisdiction about the importance of the availability of interpreters as the case may require.

[31] In the present case the issue of translation is not without considerable importance given that the learned trial judge expressly recognised that the Prosecution's case relied exclusively on the caution statement which was originally recorded in Spanish and translated into the language of the court by a novice lacking in the required expertise. The learned trial judge read the English version of the caution statement to the jury and her directions to the jury on important issues of law were delivered in English and based on the English translation of that statement. At no point in the proceedings was the appellant offered the facility of an interpreter. Despite the foregoing, however, our court has been constrained to recognise that no evidence was led by the Defence to establish that the appellant did not understand English. Nor did the Defence complain about the absence of interpreter and the inability of the appellant to follow the proceedings. Similarly, the learned trial judge did not discern any possible negative impact on the integrity of the proceedings due to their conduct in English. And it is not without considerable significance that the unsworn statement of the appellant from the dock was given in English. Cumulatively these events in our opinion operate to take this case out of **Kunnath v The State of Mauritius** cited above. Consequently, we have determined that the conduct of the proceedings in English did not deprive the appellant of his constitutional right to a fair hearing such as to constitute a miscarriage of justice and render the verdict unsafe.

[32] In the premises, the appeal is dismissed and the conviction of the appellant is confirmed.

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POLLARD JA