

IN THE SUPREME COURT OF BELIZE, A.D. 2020
CRIMINAL JURISDICTION

CENTRAL DISTRICT

Indictment No. C98/2018

THE QUEEN

v.

FILADELFIO ARRIAZA
GUMERCINDO MARCELO CAN

First Accused
Second Accused

- Murder

BEFORE: Honourable Justice Mr. Francis M. Cumberbatch

APPEARANCES: Ms. Janelle Tillett, Counsel for the Crown
Mr. Leo Bradley Jr., Counsel for Defendant First Accused
Mr. Earl Hamilton, Counsel for Defendant Second Accused

TRIAL DATES: 9th, 10th, 11th, 12th, 16th, 17th, 18th of April, 2018.

Ruling

[1] The Accused are jointly indicted by the Director of Public Prosecutions for the offence of murder contrary to *Sections 106 and 117 of the Criminal Code* allegedly committed on one Michael Adrian Pagette on the 31st day of August, 2016, at Benque Viejo.

[2] During the course of the trial, the Crown called the witness Apolonia Soriano who during her Examination-in-Chief pointed out and touched the

wrong person in the dock. The Crown sought and was granted an adjournment to determine whether or not an application should be made to have the witness deemed hostile.

[3] At the resumption of the hearing, the said witness, on her own volition proceeded to speak of being threatened and put in fear by the family members of one of the accused persons whom she also pointed out in court. She continued with this tirade despite the efforts by Crown Counsel to control her. The sum total of what she was saying is as follows:

- She was threatened by family members of one of the Accused persons with physical harm and/or death if she spoke the truth;
- A few minutes before she came to court she received threatening text messages from the said persons;
- The persons who allegedly threatened her are present in court.

[4] I invited addresses from both Crown Counsel and Defence Counsel. It was not surprising that Counsel on both sides urged the Court to recuse itself from further hearing this matter because of the utterances of the witness aforesaid.

[5] This is a trial to be heard and determined by a single judge. I accept that I have been exposed to highly prejudicial statements of witness tampering made by the said witness against the family of the Accused more particularly

the First Accused. As such, these statements may be viewed as being capable of impugning the fairness of the trial thereby giving rise to allegations of bias.

- [6] Accordingly, in the interest of justice I hereby order a mistrial. The Accused persons will be retried by another judicial officer. The Director of Public Prosecutions shall contact the Registrar of the Supreme Court for another trial date to be fixed for the retrial. The Accused are remanded to custody.

Dated this **Wednesday 18th day of April, 2018.**

Honourable Justice Mr. Francis M. Cumberbatch
Justice of the Supreme Court