

**IN THE SUPREME COURT OF BELIZE, A.D. 2022
CRIMINAL JURISDICTION**

CENTRAL DISTRICT

Indictment No. C111 of 2019

THE QUEEN

v.

MR. MIGUEL SEGURA

- Manslaughter

BEFORE Honourable Justice Mr. Francis Cumberbatch

APPEARANCES Mr. Cecil Ramirez – Snr. Crown Counsel along with Ms. Natasha Mohamed – Counsel for the Crown
Mr. Ellis Arnold – Snr. Counsel for the Accused

TRIAL DATES 3rd, 4th, 6th, 7th, 10th, 11th, 12th, and 13th of February 2020.

DECISION

{1} The Accused was indicted by the Director of Public Prosecutions for the offense of manslaughter by negligence contrary to section 108(1) (a) of the *Criminal Code*. To this indictment, the Accused entered a plea of not guilty and as a result, a fully contested trial was commenced.

{2} During the course of this trial, the Crown sought to adduce evidence against the Accused of the results of an analysis of his blood samples allegedly taken by a doctor on the 16th of August 2014. This application was challenged by the Defence on the grounds that the provisions of section 77

(6) of the *Motor Vehicles and Road Traffic Act* ('the Act') were not adhered to hence the taking of the blood samples was illegal. Section 77 (6) of the *Act* provides as follows:

(6) '...On requiring any person to provide a specimen in pursuance of this section, a Police Officer shall warn him that a failure to provide it may render him liable to prosecution...'

{3} The Court held a *voir dire* to determine the admissibility of the impugned evidence aforesaid. The Crown adduced evidence from SNR. SUPT Arzu testified that on the day in question he escorted the Accused to the hospital where the Accused agreed to have blood samples taken from him. This was done by a doctor and certain forms were tendered in support of this evidence.

{4} It is common ground that the Accused consented to the procedure of drawing blood samples. It is also common ground that the provisions of section 77(6) of the *Act* were not complied with.

{5} Crown Counsel submits that by virtue of the Accused agreeing to provide the blood samples, the need for the warning under section 77(6) aforesaid became unnecessary. He urges the Court to interpret the legislation in a manner in which it makes sense. Counsel goes on to submit that the Court must recognize the mischief that Parliament intended to address. As such,

the Court should interpret that section to mean that the warning should be given upon the refusal of the person requested to give blood samples.

Counsel further contended the fact that the Accused is a Deputy Commissioner of Police could be used to infer that he was at the material time well aware of the provisions of section 77(6) hence the failure of SNR. SUPT Arzu to inform him about it would not prejudice his rights.

{6} Mr. Arnold Snr. Counsel for the Accused, submits that the provision is mandatory. He relies on the *dictum* of the English Court of Appeal in the decisions of *Simpson v Spalding* [1987] RTR 221 and *Howard v Hallett* [1984] RTR 353 both of which were approved and followed in *Murray v Director of Public Prosecutions* [1993] RTR 209.

{7} In those decisions a similarly worded provision in section 8(8) of the *English Road Traffic Act of 1972 & 7(7)* of the RTA [1988] was held to be mandatory. The Court went on to hold that the non-compliance with section 8(8) of that legislation would amount to a disregard for the statutory procedure laid down by Parliament which would render the evidence to be inadmissible.

{8} A perusal of section 77 of the *Act* reveals that the marginal note states, “...provisions of specimens for analysis.” Subsections 1- 6 set out a

procedural scheme for the acquisition of samples for laboratory testing be it blood or urine as the case may be. Subsection 6 specifically states thus:

“On requiring any.... person to provide a specimen... a policeman shall warn him....”

{9} I find that on a plain literal interpretation of subsection (6), the **warning shall be given at the time of the request for blood samples**. I further find the contents of this section to be another link in the procedural chain of events as laid down by Parliament to govern the procedure for obtaining blood and urine specimens. Indeed, as the Crown’s witness stated one of the offenses for which he charged the Accused was driving with an alcohol limit over the prescribed amount. I must mention that the Court held in *Simpson v Spalding* that the fact that the Accused was a police officer was immaterial as the Court cannot assume that all police officers are aware of the provisions of the law in the RTA.

{10} Accordingly, I find that the objection is upheld and the evidence of the analysis of the blood samples shall not be allowed.

Dated this **13th day of February 2020.**

Honourable Justice Mr. F M Cumberbatch
Justice of the Supreme Court
Central Jurisdiction
Belize C.A.