

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

CENTRAL DISTRICT

Indictment No. C172 of 2013

THE QUEEN

v.

MR. MARLON CONTRERAS

- Manslaughter

BEFORE Honourable Justice Mr. Francis Cumberbatch

APPEARANCES Mr. Cecil Ramirez – Snr. Counsel for the Crown
Mr. Leeroy Banner – Counsel for the Accused

TRIAL DATES 28th of September 2022; 5th, 7th, 12th, 13th, 19th, 20th, 21st,
27th, 28th, and 29th of October 2021; 11th, 23rd, 25th, and 30th
of November 2022; 2nd and 7th of December 2021; 13th and
28th of January 2022; 12th of October 2022.

RULING ON VOIR DIRE

{1} The Accused is indicted by the Director of Public Prosecutions for the offense of manslaughter for that he on the 20th day of September 2007, at Benque Viejo Town in the Cayo District caused the death of Jose Howe ('the Deceased') by unlawful harm, to *wit*, stabbing with a knife.

- {2} During the course of the trial the Crown sought to tender into evidence an oral admission allegedly made by the Accused to the police, more particularly SGT Enrique Aldana.
- {3} The Defence opposed the Crown's application. Mr. Leeroy Banner for the Accused submitted that his client was subjected to force, violence, threats, and promises made and executed by certain police officers including SGT Aldana to whom the Crown asserts the Accused made the oral admission, RET.' SNR. SUPT David Henderson and CPL Mas. The oral admission allegedly made by the Accused to SGT Aldana was that he would take him to the place where he killed the Deceased.
- {4} Sections 90 (1) & (2) provide thus:

90.-(1) An admission at any time by a person charged with the commission of any crime or offense which states, or suggests the inference, that he committed the crime or offense may be admitted in evidence against him as to the facts stated or suggested if such admission was freely and voluntarily made.

(2) Before such admission is received in evidence the prosecution must prove affirmatively to the satisfaction of the judge that it was not induced by any promise of favour or advantage or by use of fear, threat, or pressure by or on behalf of a person in authority.

{5} The Court held a *voir dire* to determine whether the Crown has satisfied the provisions of section 90 of the *Evidence Act* more particularly the provisions of section 90(2) aforesaid.

The *Voir Dire*

{6} The Crown called a number of police officers to satisfy the legal and evidential burden placed upon them to satisfy the Court that the alleged oral admission was freely and voluntarily made.

{7} SGT Aldana, now INSP Aldana testified that on the 3rd of December 2007, he reported for duty at the San Ignacio Police Station. Whilst at the station he received a caution statement allegedly made by the Accused. After reading the same he had a conversation with the Accused who told him he would take him to the place where he stabbed the Deceased. He said he cautioned the Accused and together with CST Antonio Manzanero he took the Accused to the Benque Viejo Police Station where he met with Jose Nabet Justice of the Peace who joined the party.

{8} They proceeded to a spot on the Western Highway that the Accused pointed out as where he stabbed the Deceased. He thereupon instructed the CST to draw a sketch of the area, which was done, and the said sketch was signed by him, the Accused, and the Justice of the Peace. This sketch was not

produced to be tendered into evidence and no explanation was proffered for its absence.

{9} Under cross-examination the witness agreed that he did not mention the words of caution he uttered to the Accused either in his examination-in-chief or in his statement. Indeed he admitted that in his statement no mention is made that he cautioned the Accused before they left the station for the scene. He agreed that the Accused was detained by SGT Grinage for the offenses of robbery and burglary. He testified that he could not recall allowing the Justice of the Peace and the Accused to have private time together at the Benque Viejo station. He said he did not caution the Accused when they arrived at the scene and could not recall if PC Sanchez was with them at the scene. Indeed he said he cannot recall if anyone was with them at the scene. He denied telling the Accused to take him to the scene and that he will not be charged. He denied having had dealings with the Accused prior to the 3rd of December 2007, because he was on sick leave from the 1st to the 3rd of December 2007.

{10} *(This witness specifically denied having had any contact with the Accused until the 3rd of December 2007 when he spoke with him at the San Ignacio Police station. He stated that he was sick hence he was not at work from the 1st of December 2007 to the 3rd of December)) 2007 when the Accused*

was detained and held in custody. I, therefore, understand the witness to be saying that because of his absence from work during the aforesaid time when the Accused was in custody he could not have been involved in any force, violence, fear, threats, pressure, or promises made or inflicted on the Accused.)

{11} **SGT Solomon Mas** was called by the Crown. He testified that he had no dealings with the Accused because INSP Aldana was the lead investigator. However, he knew that the Accused was detained for murder and **that he was detained by the** investigating officer then **SGT Aldana**. He went on to say that he had firsthand knowledge that the Accused was detained by **Mr. Aldana**.

{12} SGT Joel Grinage testified in his evidence-in-chief that on the 1st of December, 2007, whilst attached to the San Ignacio formation as a CPL and the team leader of the Quick Response Team he was requested by the Central Investigation Branch (“**CIB**”) to apprehend and detain the Accused who was wanted for investigation in a case of murder. **He along with other police officers detained the Accused and then handed him over to then SGT Aldana of the CIB office. He went on to say in cross-examination that when he handed over the Accused to the CIB all the CIB officers were present which includes PC Pech and PC Mas.**

{13} ASP Dalton Sanchez testified that he assisted INSP Aldana to take the Accused who was a suspect for murder back to the crime scene. He said the Accused identified the scene and the Crime Scene Technician took photographs and drew a sketch plan.

{14} This witness admitted that he was aware that the Accused who was a murder suspect was taking the police back to the *locus en quo* and that he witnessed the whole process. However, he did not write a statement about the events he witnessed in 2007. He said none was requested of him. He went on to state that he wrote a statement on the 18th of October 2021, (8 LINES) and that he made no mention of the Accused being cautioned at the scene nor did he state in detail what occurred at the scene. He said he wrote to the best of his ability as at the **date of the statement. He denied meeting the Accused on the 2nd of December 2007 and to the best of his recollection he met him on the 3rd of December hence he could not have had any conversations with him about giving the police a statement about the murder in return for which they would not charge him for the robbery and other offenses.**

{15} **JOSE NABET** the Justice of the Peace testified that on the 3rd of December 2007, he was 63 years old, and he is now 75. He recalls being called to the Benque Viejo police station to go to a site where a murder took place. He

boarded a jeep along with two police officers and a gentleman. According to his statement, the name of the gentleman was Marlon Contreras, but he cannot remember his face. On reaching an intersection of the old border road and the western road the vehicle stopped and the police officers and the gentleman came out of the jeep. He stayed behind them and did not go along to check the place. After everything was done, he was presented with a map of the site. He returned to the station where he was released and went home. He cannot recall the names of any of the officers nor could he recognize the face of the gentleman. **(NO MENTION WAS MADE OF THE CST OR PRIVATE TIME WITH THE ACCUSED).**

{16} **DAVID HENDERSON** a **RET.' SNR. SUPT** of police testified. He stated that in 2007 he was the SNR SUPT in charge of the San Ignacio Police Station. He said in his examination-in-chief that on Thursday 29th of November 2007, he received information about a taxi driver who was killed on the Benque road. As a result, he along with other police officers visited the area on Benque Road where the taxi driver was seen inside the vehicle apparently dead. An investigation was conducted and he together with SGT Sanchez and PC Mas visited the Central Prison where they spoke to one Abraham Guerra who confessed to them, and a statement was recorded from

Guerra by PC Mas. The witness stated that was the extent of his involvement in the investigation as far as he could recall.

{17} Under cross-examination the witness admitted that he went to the prison and interviewed Guerra who was eventually charged with the Accused. He also agreed that after Guerra gave his caution statement, he learned that according to his statement that the Accused was also involved. He, however, could not recall speaking to the Accused about his involvement in this murder, he could not recall handing over the Accused to SGT Augustine to record a caution statement from him, he was not sure when the Accused was arrested, he could not recall showing the statement recorded from Guerra to the Accused and could not recall interviewing the Accused in his office; he could not recall talking to the Accused in his office together with PC Mas and SGT Aldana.

{18} The witness said he knew that in the statement recorded from Guerra, Guerra said that he along with Richard Contreras committed the murder. He was not sure that Richard Contreras and the Accused are brothers. He denied telling the Accused that if he gave a statement against his brother he would not be charged with robbery and aggravated assault. He stated that he could not tell the Court anything about the Accused because he does not remember dealing with him. He agreed that he did not caution the Accused or explain

his rights under the constitution. He denied that he together with PC Mas and Aldana assaulted and choked and punched him. He denied that the reason why he made no mention of the Accused in his statement was that he wanted to distance himself from him the Accused.

{19} **RET'D SGT MARK AUGUSTINE** testified. He said that on the 2nd of December 2007, at about 3:30 p.m., he was requested by SNR SUPT Henderson the OFFICER IN COMMAND (“O/C”) at San Ignacio Police Station to record a statement under caution from the Accused who was detained for the offense of murder. He took the Accused into the O/C’s office which was spacious and air-conditioned where he recorded a statement from him.

{20} That was the extent of the evidence in the Crown’s case in the *voir dire*.

Defense

{21} The Accused in his unsworn statement said he was detained for robbery. He said he was not cautioned nor allowed private time with Jose Nabet, JP. He contends that he was taken to an office at the San Ignacio Police Station where he met with Messrs. Henderson, PC Mas, and Aldana in a room. He was told by SUPT Henderson that he was implicated in a murder by Guerra in a statement to which he simply replied “no”. He was beaten in his head with a big book by Officer Mas and choked by SGT Aldana all in the

presence of Henderson. Henderson told him its best he gives a statement and left the room. He said he was told to admit that he committed the crime to which he again replied, no. They continued to hit him with a book and choke him and he became afraid because he did not expect them to get so physical. When he was almost about to pass out Officers Aldana and Mas stopped and took him back to his cell.

{22} On the 3rd of December 2007, he stated that he was approached by Aldana who told him he would take him to Benque Viejo where the crime had occurred. They boarded a mobile with Officers Sanchez and Mas and CST Manzanero. They went to the Benque Viejo Police Station where another man joined the vehicle and they proceeded towards the Benque Viejo border. They stopped at a junction where Manzanero took photographs and drew a sketch which he gave him to sign. They then returned to the Benque Viejo station where he was dropped off.

{23} The Accused said at no time was he cautioned, instead he was abused and became scared. He was not allowed to speak privately with the JP or with any family members.

Submissions

{24} Mr. Ramirez for the Crown submitted that all of the Crown's witnesses denied that they assaulted the Accused or that they promised him anything.

INSP Aldana stated that he cautioned the Accused. The JP Jose Nabet stated that a crime scene was visited, and a map was drawn and that there was no allegation by the Accused that he complained to the JP that he was assaulted and was not acting voluntarily.

{25} Crown Counsel further contends that the CST who has not been Accused of any unlawful behaviour said it was the Accused who pointed out a particular area and that he took a photograph and drew a sketch thereof which the Accused signed in the presence of the JP.

{26} Mr. Banner for the Accused submitted, that the Crown has failed to present evidence that the Accused acted freely and voluntarily. He further submitted that the rights of the Accused in the Judge's rules were not complied with in that there is no evidence that the Accused was cautioned in the form and manner as is required by the rules.

{27} Defence Counsel went on to contend that INSP Aldana did not state the words used to caution the Accused and that he has conceded that it is not recorded in his statement that he cautioned the Accused.

{28} Mr. Banner contended that ASP Sanchez who was part of the team on the visit to the *locus en quo* did not write a statement of his participation in the investigation until October 2021, which is all that he could remember about this matter.

{29} He asked the Court to accept the unsworn testimony of his client and to deny the Crown's application.

Analysis and Decision

1. No evidence as to the circumstances leading up to the Accused volunteering to take the police to the scene.
2. Aldana's evidence that he had no dealings with the Accused until the 3rd of December, is inconsistent with the evidence of SGT Grinage and CPL Mas. SGT Grinage testified that after he detained the Accused, he handed him over to SGT Aldana. CPL Mas, who was attached to the CIB at the San Ignacio police station at that time testified that he had first-hand knowledge that the Accused was detained by SGT Aldana.
3. *SGT Aldana specifically denied having had any contact with the Accused until the 3rd of December 2007, when he spoke with him at the San Ignacio Police station. He stated that he was not at work from the 1st of December 2007 to the 3rd of December, 2007, when the Accused was detained and held in custody. I, therefore, understand the witness to be saying that because of his absence from work during the aforesaid time when the Accused was in custody he could not have been involved in any force, violence, fear, threats, pressure, or promises made or inflicted on him.*

4. No private time with the JP before the Accused visited the scene. The Accused in his unsworn statement stated that he was not allowed any private time with the JP before he was taken to the scene nor was, he allowed to speak with his relatives. The JP does not deny this assertion by the Accused and indeed he did not testify in chief or at all that he was allowed private time with the Accused to ensure that he was not being forced to do anything against his will before they traveled to the *locus*. In his evidence, he said that the party that visited the scene comprised himself together with 2 policemen and a gentleman. No mention made of the CST Manzanero.
5. SNR SUPT Henderson consistently denied and/or could not recall having had any involvement with the Accused. However, retired SGT Augustine testified, under oath that he was requested by Henderson to record a caution statement from the Accused and that this was done in Henderson's office.

{30} The burden of proof that the oral admission was freely and voluntarily given rests with the Crown as set out in section 90 of the *Evidence Act* aforesaid. The key witnesses in this investigation namely SNR SUPT Henderson, INSP Aldana, and PC Mas all distanced themselves from the Accused at the crucial times of the investigation that is before the recording of the caution

statement and the alleged making of the oral admission whilst the Accused was in police custody. Their evidence was contradicted by sworn testimony from other police officers aforesaid.

{31} There are also doubts in the evidence as to whether or not the Accused was cautioned before he volunteered to take the police to the scene. SGT Aldana simply stated in chief that he cautioned the Accused at the station. However, the words of caution were not stated in his testimony. This witness also admitted that in his statement he did not state therein that he had cautioned the Accused. Thus some 14 years after the event SGT Aldana is saying for the first time that he cautioned the Accused. In any event, there is no direct evidence that the correct words of the appropriate caution were stated to the Accused by SGT Aldana or any other officer. The Court cannot assume or infer that when SGT Aldana said he cautioned the Accused that the correct words of the appropriate caution were used.

{32} Thus after having fully considered all of the evidence in the *voir dire* I find that the Crown has presented unreliable and inconsistent evidence on significant issues in this *voir dire* to wit: was the Accused beaten, threatened, and promised certain things before he allegedly agreed to the visit to the *locus*, and was he cautioned?

{33} The JP who is considered to be a neutral person whose presence is intended to ensure that the Accused is not unfairly or unlawfully treated in these proceedings is not for the reasons aforesaid a helpful witness for the Crown.

{34} In *Lisandro Matu v The Queen* Motley JA opined thus on the application of what is now section 90(2) of the *Evidence Act*.

“In our view, it is not permissible for the judge to assume that the admission was not induced by any promise of favour or advantage or by the use of fear, threat, or pressure by or on behalf of a person in authority. The use of the word ‘affirmatively’ suggests that the prosecution must lead evidence that satisfied the judge that the admission was not induced by any promise of favour or advantage or by the use of fear, threat, or pressure by or on behalf of a person in authority. This subsection makes it absolutely clear that before the admission is received into evidence certain things must be proved affirmatively. If there is no affirmative proof of the factors set out in the subsection, then the evidence relating to the admission cannot be given in evidence.”

{35} Counsel for the prosecution did not lead any evidence regarding the circumstances surrounding the making of the alleged admission. No evidence was led to show that the alleged admission was not induced by any

promise of favour or advantage by any person in authority. Evidence should also have been led to show that no fear, threat, or pressure was used by anyone of authority.

{36} In the absence of such evidence, we hold that it cannot be said that there was affirmative evidence upon which the judge could have been satisfied beyond reasonable doubt that the admission ‘was not induced by any promise of favour or advantage or by use of fear threat or pressure by or an [sic] behalf of a person in authority. Failure to lead such evidence meant that the condition required before the introduction of the alleged admission into evidence was not met.

{37} Accordingly, I find in the circumstances that the Crown’s evidence has not satisfied me that the provisions of section 90 (2) have been complied with and that the oral admission was freely and voluntarily made.

Dated this **12th day of October 2022.**

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