IN THE SUPREME COURT OF BELIZE, A.D. 2021
CRIMINAL JURISDICTION

CENTRAL DISTRICT

Indictment No. C51 of 2018

THE QUEEN

v.

MR. SHAYLON SANTOS **FIRST ACCUSED**
MR. JAMIE PATNETT **SECOND ACCUSED**

- Murder

BEFORE Honourable Justice Mr. Francis Cumberbatch

APPEARANCES Mr. Cecil Ramirez Snr. Crown – Counsel for the Crown
Mr. Arthur Saldivar – Counsel for the First Accused
Mr. Dickie Bradley – Counsel for the Second Accused

TRIAL DATES 20th, 27th, 28th, 29th, and 30th of September 2021; 6th, 11th, 12th, 13th, 14th, 15th, 19th, 20th, and 21st of October 2021; 2nd, 4th, 10th, and 24th of November 2021; 6th of December 2021; 23rd of February 2022.

DECISION

{1} The Accused were indicted by the Director of Public Prosecutions for the offense of murder for that they on the 11th day of March 2017, murdered Kiona Ara ('the Deceased'). During the course of the trial, the Crown sought to tender into evidence the statement of one, Ischelle Tablada ('the

witness') dated 16th of March 2017, on the ground that she is afraid to attend court and testify because she fears her life and safety.

{2} The Court held a *voir dire* to determine whether the statement should be admitted into evidence. The Crown called D/C Dwayne Joseph, who testified that on the 16th of March 2017, he recorded a statement from the witness, which was done in the presence of, Jose Garcia Justice of the Peace. He went on to say that the statement was read over by the witness who signed the same as being true and correct. The supporting statement of the Justice of the Peace was read into evidence as it was established that he is now deceased. There was no objection to the Crown's application to have the statement of Jose Garcia Justice of the Peace read into evidence.

{3} CPL Wilbert Thompson, testified that the witness whose date of birth is the 14th of February 1983, visited the Central Investigative Branch at the Roaring Creek police station on the 12th of March, 2020, and told him *inter alia* that she was afraid to attend court and testify because she had been receiving threats of death and bodily harm from various sources. He recorded a statement from her to that effect.

{4} It is an established feature of criminal trials that an Accused person has the right to face his or her accuser. That right ought not to be summarily denied or compromised. Parliament has, however, recognized the need for hearsay

evidence from witness statements of absent witnesses to be admitted in certain cases as identified by statute. Section 105A of the ***Evidence Act*** aforesaid specifies fear to be a ground for the admission of the statement of a witness who because of fear of death or bodily harm is afraid to attend court.

{5} After hearing the submissions of Counsel on both sides this Court in a written decision having considered the seriousness of this offense and other matters stated therein ruled *inter alia* that at that stage of the trial the Crown has not yet closed its case. Hence, the Court is not seised of all of the available evidence adduced by the Crown to be considered in the determination of what weight should be given to the contents of the statement and whether it can be found to be reliable.

{6} Thus, for the reasons stated in that decision this Court allowed the statement to be admitted into evidence at that stage. Matters of weight and reliability shall be considered after the close of the Crown's case after due consideration is given to all of their evidence and the circumstances surrounding the making of the statement.

{7} At the close of the Crown's case, the Court heard submissions by Counsel for the Accused that their clients should not be called upon to provide a defense to the charge aforesaid. Both Defence Counsel relied on ground 2(a) of the celebrated decision of ***R v Galbraith*** to wit:

"***Para 4-294 of Archbold 2001*** *cites the case of* ***R v Galbraith*** *which sets out the proper approach which should be adopted when a no case submission is made relying on the second limb which is as follows:*

> ***"… (2) The difficulty arises where there is some evidence but it is of tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence:***
>
> > ***(a) Where the judge concludes that the prosecution's evidence taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, upon a submission being made, to stop the case."***

{8} Mr. Saldivar for the First Accused submitted as follows:

- The three statements allegedly made by the witness amount to no more than a nullity; namely the statements dated 14th of March, 2017, 16th of March 2017, and the 12th of March, 2020;
- The statement of the witness dated the 12th of March, 2020, speaks of another undated statement brought to her at her home in the month of March, 2018, by Mrs. Johnson the then Clerk of Court of the Magistrate's Court of Belmopan requesting her signature thereon but without inserting a date;

- The statement of the 16th of March, 2017, should not be accepted as reliable because of the assertions made in the statement of the 18th of March, 2020, *inter alia*;
- On a consideration of the whole of the Crown's case there is no other evidence implicating his client because:
    - The DNA analysis did not implicate his client in this offense.
    - Despite tests done by the National Forensics Science Services on exhibits submitted by the Crime Scene Technician who processed the home of the First Accused, the clothing found therein and took swabs of the trunk of the grey Toyota Camry allegedly used to convey the body of the Deceased to the dump site, the results did not implicate the Accused.

{9} Defence Counsel went on to submit at length the circumstances surrounding the making of the statement on the 16th of March 2017, on which the Crown relies. He submitted that the evidence of D/C Joseph ought not to be accepted more so when contrasted with the inconsistencies in his sworn evidence, his report dated the 21st of March, and the statement of the Justice of the Peace.

{10} Counsel further submitted to the Court that the allegations made against Mrs. Johnson in the statement of the 18th of March, 2020, have not been addressed by the Crown nor has there been any disclosure of the additional statement allegedly taken by the police from the witness after the alleged intervention by, Mrs. Johnson, in this matter.

{11} Mr. Saldivar addressed the Court on the decision of ***The Queen v. Japheth Bennett*** a decision from the Caribbean Court of Justice ("**CCJ**") in support of his submissions aforesaid.

{12} Mr. Bradley for the Second Accused also relied on the *dictum* of the CCJ in the ***Japheth Bennett*** decision. He too stressed the importance of the absence of the additional statements mentioned in the statement of the 18th of March, 2020, which have not been disclosed by the Crown notwithstanding the provisions of section 105A of the Evidence Act aforesaid.

{13} Mr. Ramirez for the Crown submitted that the application by Counsel for the Accused should be denied. He contended inter alia that the evidence disclosed in the impugned statement of the 16th of March 2017, was by virtue of the nature and extent of the details stated therein a document that could only be the product of the witness. He further contended that the Crown's witnesses more particularly D/C Joseph could not have

manufactured those contents and as such the statement is true, reliable, and contains evidence upon which the Court could convict these Accused persons.

[14] Crown Counsel's submissions appeared to be based on the provisions of sections 90 (1) & (2) of the ***Evidence Act***. The thrust of Counsel's submissions is that the witness's evidence amounts to no more than an oral confession made to her by the two Accused. He went on to contend that section 91(3) of the ***Evidence Act*** provides that a confession or admission voluntarily given is sufficient and that no corroboration or confirmatory evidence is required. He submits that the *dictum* of the CCJ in ***The Queen v. Japheth Bennett*** is not applicable because that case was about a hostile witness and that there is in Belize clear legislation that no corroboration or confirmatory evidence is required in respect of a confession or admission.

{15} Mr. Ramirez relied on the local Court of Appeal decision of ***The Queen v. Giovanni Villanueva & Sharim Baeza*** and the Privy Council decision of ***The Queen v. Barry Wizard***. He did not address the Court on the provisions of section 105(a) of the ***Evidence Act*** which provides the legislative basis for the Crown's application for the statement of the witness-bearing the date 16th of March, 2017, to be admitted into evidence.

The Law

{16} Sections 105 of the ***Evidence Act*** and 105 A of the ***Evidence Amendment Act*** No. 10 of 2009, provide the statutory framework for the admission into evidence of a hearsay statement made by a witness who through fear of death or bodily injury to him or a member of his family is unwilling to give or continue to give oral evidence in a court to *wit*:

> ***(1) Notwithstanding anything to the contrary contained in this Act or any other law, but subject to subsections (4) and (5), a statement made by a person in a document shall be admissible in criminal proceedings (including a preliminary inquiry) as evidence of any fact of which direct or oral evidence by him would be admissible if –***
>
> > ***(a) The requirements of one of the paragraphs of subsection (2) are satisfied, and (b) the requirements of subsection (3) are satisfied.***
>
> ***(2) The requirements mentioned in subsection (1) (a) are-***
>
> > ***(a) That the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;***
> >
> > ***(b) That- (i) the person who made the statement is outside Belize; and (ii) it is not reasonably practicable to secure his attendance; or***

(c) That all reasonable steps have been taken to find the person who made the statement but that he cannot be found.

(3) The requirements mentioned in subsection (1) (b) are that the statement to be tendered in evidence contains a declaration by the maker and signed before a magistrate or a justice of the peace to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it were tendered in evidence he would be liable to prosecution if he willfully stated in it anything which he knew to be false or did not believe to be true.

(4) Subsection (1) above does not render admissible an admission or confession made by an Accused person that would not be admissible except in accordance with section 90 (2).

(5) Section 85 of this Act shall apply as to the weight to be attached."

Analysis

{17} In my consideration of the statutory framework aforesaid, I have also considered and applied the principles outlined in the decision of the CCJ in ***The Queen v. Japheth Bennett*** which I find to be the *locus classicus* on the admissibility of a hearsay statement. I find that the statement that the Crown

seeks to rely on to prove its case falls under this classification as a hearsay statement and not an oral confession as Mr. Ramirez submits.

{18} The governing UK legislation on the admission of hearsay statements in cases such as the one at *bar* contains provisions that limit or qualify the circumstances under which such hearsay evidence could be admitted. The provisions in section 105A of the ***Evidence Act*** aforesaid are not similarly endowed with safety devices as in the UK CJA 2003.

{19} In this regard the CCJ at para 4 of Bennett Justice Wit opined thus:

> **"We note that fairness in this context is not limited to the defendant; the trial should be fair to all: defendant, victims, witnesses, and society as a whole. As section 6(2) of the Belize Constitution puts it: "If any person is charged with a criminal offence, then …the case shall be afforded a fair hearing…". Procedural fairness is therefore an overriding objective of the trial. Verdict accuracy, however, is equally important and must also be considered. Although it is possible (but surely not proper) to reach an accurate verdict through an unfair process, a procedurally fair process leading to an obviously inaccurate result can hardly be called fair, especially if the verdict is a conviction of a possibly innocent person. It is therefore obvious that the judge's**

duty to ensure a fair trial must also include safeguards against reaching an inaccurate or wrong conviction."

{20} Later on in paragraph 14 Justice Wit continues:

"We note in passing that these common law powers and discretions of the judge have an even stronger foundation in Belize because they directly flow from, and give further content to, the judge's constitutional duty to ensure a fair trial. We also note that the very fact that the right to a fair trial (including the judge's corresponding duty to ensure it) is a fundamental constitutional right in Belize, not only means that the judge needs to conduct himself fairly in accordance with his common law duties, but also that if the common law would not sufficiently allow the judge to do what basically needs to be done from a perspective of fairness in the broader sense as set out in [4] , the common law could, and depending on the circumstances should, be recalibrated or incrementally adapted in order to enable the judge to comply with his constitutional mandate. We hasten to say, however, that we do not see a need to embark on that exercise in the case before us. The existing legal instrumentarium is in our view adequate to properly deal with this case."

{21} In ***The Queen v. Riatt Et Al*** 2012 EWCA 1509 Hughes LJ opined thus,

> ***"The true position is that in working through the statutory framework in a hearsay case (below), the court is concerned at several stages with both (i) the extent of risk of unreliability and (ii) the extent to which the reliability of the evidence can safely be tested and assessed… . … The circumstances of the making of the hearsay statement may be such as to reduce the risk of unreliability."***

{22} This passage was cited with approval by the CCJ in para 17 by Justice Wit who stated the:

> ***"The job of the judge was, either at the admission stage or after the close of the prosecution case, "to ensure that the hearsay can safely be held to be reliable."***

{23} At para 17 the CCJ on a further examination of the *dictum* of Hughes LJ in Riatt continued:

> **"*We are therefore of the view that the proper approach for Belize would not be to require the judge to make a finding on the reliability of the hearsay evidence (prohibited by Galbraith) but to limit himself to the question whether the hearsay evidence could safely be held to be reliable. That test does not go to the reliability of the evidence as***

***such, which would be for the jury to assess, but to the pre-condition of the quality of the evidence, more or less in the same way as in Turnbull where the judge must exclude inherently weak identification evidence*.**"

{24} As stated aforesaid this Court admitted the impugned statement into evidence pending a final determination on its weight after the Crown had adduced all of its evidence herein. On the question of the approach of the Court at the no-case submission stage Justice Wit opined thus:

"***We do not, however, agree that the test should altogether be the same for both the admission stage and the no-case submission stage. Although it might be true, as Hughes LJ stated in Riat, that "If it is the Crown which is seeking to adduce the evidence, and if the evidence is important to the case, the judge is entitled to expect that very full inquiries have been made as to the witness's credibility and all relevant material disclosed", it would seem to us more aspirational than real to expect that at that early stage of the proceedings all the relevant evidential material would be available to make the decision to exclude the evidence. As is stated in Phipson: "The more important the hearsay is to the prosecution's case, the more is required by way of counterbalancing factors to ensure the***

trial was fair. During a trial at first instance, the extent to which a statement is supported by other evidence or is decisive may depend upon how the trial unfolds, hence the need for English trial judges to be able to stop trial proceedings after hearsay has been admitted." What is true for English trial judges is also, if not more, true for Belizean trial judges. In this respect we would also refer to what was said in the recent case of HM Advocate v Alongi:

"[I]f there is no strong corroborative evidence to enable the fact-finder to conduct a fair and proper assessment of the reliability of the statement allegedly made by the deceased, then unfairness may be seen to occur …"

{25} The evidence adduced by the Crown at the *voir dire* as to the circumstances under which the impugned statement was created was given by D/C Joseph who testified that on Thursday 16th of March, 2017, the witness entered the Belmopan police station at around 8:00 a.m. and told him she wanted to give a statement in respect of the murder investigation in the murder of the Deceased. He recorded a statement from the witness. He also contacted a Justice of the Peace, Jose Garcia, to witness the recording of the statement. He said he recorded what she said happened after which she placed her signature on the top and bottom and the Justice of the Peace placed his

signature next to hers. He identified it as the statement he recorded from the witness.

{26} He further testified under cross-examination that he had recorded a statement from the witness on the 14th of March 2017 and that on the 16th of March 2017, he recorded another statement from her to clear up certain matters. The officer could not recall whether the witness's return to the station on the 16th was as a result of him calling her to do so. However, he said that after he had given the statement recorded on the 14th of March to Officer Cab who was the investigator, he was told by Cab that certain matters needed to be clarified so that is why the witness voluntarily came to the station on the 16th of March 2017.

{27} The statement of the 14th of March was typed on the computer and when the witness returned on the 16th, he made the clarifications to the statement of the 14th of March on the computer. He denied that he added what he wanted to the statement of the 14th of March. He said the witness arrived at the station at 8:00 a.m. on the 16th of March, 2017.

{28} This officer denied that the statement of the 16th of March was signed by the witness at her home in March of 2018.

{29} Later on in the main cause this officer testified in his examination in chief that on the 16th of March, 2017, the witness visited the Central Investigation

Branch office at the Belmopan police station where she sat at his computer and typed the clarifications she wished to make to her previous statement after which he printed same and had her and the Justice of the Peace sign it. Under cross-examination, he agreed that in his statement of the 21st of March, he did not mention that it was the witness who typed the clarifications to the statement of the 14th of March 2017. Thus, in effect the officer is for the first time since March 2017, saying that it was the witness and not him who typed the contents of the statement dated 16th of March 2017.

{30} In his report dated 21st of March, 2017, this officer stated that on the 16th of March, 2017, the witness visited the Belmopan station at around 8:00 a.m., and stated that she observed certain things in her home and was willing to give the police a statement to assist them. He stated he got on his Lenovo computer and typed her statement in the presence of the Justice of the Peace. Both she and the Justice of the Peace signed that statement.

{31} In the statement of Jose Garcia, Justice of the Peace, dated 14th of March, 2017, which was tendered into evidence it is stated that on Thursday 16th of March at about 9:00 a.m., whilst at home, he received a call from D/C Joseph requesting his assistance to witness a statement in relation to a murder investigation. He agreed and went to the CIB office where he met

the witness who denied that she was threatened. The statement continues that it was D/C Joseph who typed exactly what the witness said on a black Lenovo computer after which the witness read the statement and made certain clarifications which were altered by Joseph. He, the Justice of the Peace read the statement and signed as a witness behind her signature. He further stated, that the said statement of the 16th of March commenced at 9:15 a.m. and ended at 11:10 a.m. In that same statement, the Justice of the Peace said he also witnessed a statement from the witness on the 14th of March 2017.

{32} Thus, in his statement dated 14th of March 2017, which was recorded by D/C Joseph the Justice of the Peace on the 14th of March speaks about witnessing statements recorded from the witness on both the 14th and 16th of March 2017. D/C Joseph testified that where the date 16th of March 2017, appears in the first line of that statement that is a typo. Nothing was said about the other inconsistencies aforesaid.

{33} The impugned statement from the witness dated the 16th of March bears the time of commencement as 11:10 a.m. The Justice of the Peace said in his statement that it commenced at 9:15 a.m.

{34} Arising from the consideration of the circumstances surrounding the taking of the impugned statement the evidence of D/C Joseph and the now

deceased Justice of the Peace startlingly conflicting as to how, when, and by whom it was recorded.

{35} In her statement dated **12th of March, 2020,** tendered into evidence by the Crown the witness says thus:

Name: Ischelle Danielle Tablada **Age**: 37 years **D.O.B**. 14th February 1983
Nationality: Belizean **Recorded at (place)**: Roaring Creek Police Station
Date: 12th March 2020 Time: 10:09 a.m.
Name, Rank, and Regulation Number of recording officer: Wilbert Thompson PC31419

"This statement consisting of (2) pages, each signed by me; is true to the best of my knowledge and belief, and I make it knowing that if it tendered in evidence, I shall be liable to prosecution if I have willfully stated in it anything that I knew to be false or do not believe to be true.

Signed: I. Tablada
Witness (if any):

States: I am a Belizean Second-Class Clerk at the Ministry of Transport and NEMO, Belmopan City, Cayo District, and a resident of Belmopan City. On Tuesday the 14th of March, 2017, I was told that I was escorted to the Crimes Investigation Branch Office (CIB) located in Belmopan Police Station as I was told that I was detained pending investigation for the murder of one, Kiona Gaby Ara. While at the said CIB office, I was asked to give a statement in the presence of a Justice of the Peace and I agreed under the circumstances that my Supreme Court Bail which I was under at the time would be revoked, fearing for going to prison I made the statement where I mentioned certain things. Since then after I had made that statement and was detained pending the investigation of the said murder. I had been receiving threats from the family member of the Deceased, Kiona Gaby Ara. Also been receiving calls on my cell phone from a male person with a phone number that is linked to the Belize Central Prison located in Hattieville Village, Belize District. The calls were on a regular basis where my life was threatened in that I would get hurt or even killed, if I was to appear in court when the time arrives. Based on this, I been living in fear for my life and the

life of my family. I have reported all threats to Police Officers who are attached to CIB in Belmopan City and had not done anything, therefore I feel alone and vulnerable in the fact that I have no protection from the police. With this said, I will further state that I no longer want to testify in court in respect to what I have mentioned in my statements pertaining to the said Murder case. I also want to mention that sometime in the month of March, 2018, the Clerk of Court who I know as Mrs. Johnson visited my house and presented to me what she claimed to be a copy of a statement which I had given to the police at CIB office in Belmopan and asked if I could sign the statement as the original had been stolen. I did not read over the statement and was asked not to date it after which I carelessly signed the statement which Mrs. Johnson, had brought to me and also based on the fact that I have signed on a statement which I did not read over. I am afraid that words were added to the statement as I had lost credibility on the investigation of the said Murder case. Also I want to mention that in the same month of March, 2018, based on the fact that I had to sign on the said statement which was brought to me by Mrs. Johnson, Police Officers, attached to CIB Belmopan arrived at my home and escorted me to the CIB office Belmopan and took a statement from me in respect to the statement I had signed from Mrs. Johnson. As I had mentioned above, I no longer want to testify on my statement which I had given to the Police in respect to the said murder case, based on my reasons mentioned.

This above statement is recorded by me at the Roaring Creek Police Station, it was read over to the maker, and was asked to add, change, or alter anything she wishes who certify the statement to be correct by placing her signature below.

Signed: Wilbert Thompson
PC31419

{36} Emerging from this statement are a number of issues:

1. The witness speaks of being escorted to the Belmopan Central Investigation Branch on Tuesday 14th of March, 2007, on which date she gave a statement to the police;

2. The witness speaks of being detained pending investigations into this murder;
3. She feared her Supreme Court bail would be revoked, hence, she agreed to give a statement where she mentioned ‘certain things’;
4. In March 2018, the Clerk of Court Mrs. Johnson visited her home and caused her to sign an undated statement which she had not read. She was specifically told not to date it and is afraid that words were added to the statement because she has lost credibility in the murder investigations;
5. In this regard it is the Crown’s case that the statement dated 16th of March, 2017, was an extension of the one dated 14th of March, 2017. Moreover, the original copy of the statement dated 14th of March, 2017, cannot be found. Accordingly, the object of her concern could be interpreted to be that unauthorized additions were made to her statement of the 14th of March 2017, the original copy whereof cannot be found.
6. During the month of March 2018, as a result of her signing the statement brought to her home she was escorted to the Central Investigation Branch office in Belmopan where another statement

was taken from her with respect to the statement she had to sign from Mrs. Johnson.

{37} This Court with the agreement of Counsel for the Crown and Defence has admitted into evidence a copy of a statement dated **14th of March, 2017,** purporting to be signed by the witness. It is common ground that the original copy of this statement cannot be found. That statement does not implicate either her or the Accused.

{38} Section 105A (1) (c) provides *inter alia* that evidence tending to prove whether before or after the witness made the impugned statement, that witness (whether orally or in a document or otherwise) made another statement inconsistent therewith, shall be admissible for the purpose of showing that the person contradicted himself. I find that inherent in this section is the duty of the Crown to disclose to the Defence and the Court all statements made by the witness in connection with this matter for their perusal and use pursuant to the provisions of this section. In my opinion, fairness demands no less.

{39} As mentioned aforesaid the copy of the statement dated 14th of March, 2017, does not implicate the Accused and as such is inconsistent with the statement of the 16th March. In her statement to the police on the 12th of March, 2020, aforesaid the witness specifically states that she was escorted

to the Central Investigation Branch Belmopan police station on Tuesday the 14th of March, 2017, where she gave a statement to the police. Thus, the witness is saying that prior to the bizarre incident with the Clerk of Court she had only given one statement to the police which was on the 14th of March, 2017.

{40} The statement of the 12th of March, 2020, makes reference to two statements that have not been disclosed, namely the statement allegedly taken to the witness by the Clerk of Court and the statement taken by the police from her as a result of her complaint of the statement brought to her by Mrs. Johnson. This is so notwithstanding submissions made by Defence Counsel about the absence of these documents.

{41} No reason has been proffered by the Crown for the non-disclosure of these statements hence the contention by Defence Counsel that the statement that the witness states she signed without reading is the statement dated the 16th of March, 2017, on which the Crown is relying herein. Indeed the Crown has maintained complete silence and has not been candid with the Court on these matters. Moreover, there is stated therein that the witness was at that time on bail by the Supreme Court which she feared might be revoked if she did not give a statement to the police. Thus, the obvious questions which arise are:

1. Was the witness charged or held in custody at any time in connection with this matter?
2. Could she too be considered an accomplice, or a person with an interest to serve?
3. The real likelihood that in the circumstances aforesaid the witness was coerced or felt compelled to give a statement that may well be untrue implicating the two Accused who at that time were held in custody for this offense.

{42} Once again matters arising out of the contents of the witness's statement of the 12th of March, 2020, remain unaddressed by the Crown. The person mentioned as the Clerk of Court in March 2018, was not called at the trial. Crown Counsel at the close of his submissions stated that Mrs. Johnson is out of the country. No evidence was adduced by the Crown as to what steps were taken to have Mrs. Johnson testify and to justify the statement made by Mr. Ramirez that she was indeed out of the country. I can say from my own knowledge that one day during the course of the trial I saw Mrs. Johnson who is known to me within the precincts of the court in Belmopan.

Corroborative/ Supportive Evidence

{43} The Crime Scene Technician's, Messrs. Barrington Montero and Teul submitted a number of exhibits to the National Forensics Science Services

for examination including but not limited to suspected blood stains on clothing and articles in the residence of the Accused, and swabs taken from the trunk of a grey Toyota Camry allegedly used to transport the deceased to the dump site. Exhibits were also sent abroad for DNA analysis.

{44} It is common ground that none of the tests done locally at the National Forensics Science Services produced positive results implicating any of the Accused with this crime. There was no DNA match with the suspected bloodstains on clothing and articles in the home of the Accused and the blood samples taken from the Deceased. Thus, at the end of the day, there is no forensic evidence connecting or implicating the Accused with this offense.

{45} The witness, Efrain Garcia, who was employed as a watchman at the dump site where the partly burnt body of the Deceased was discovered testified that he had seen a grey car and a brown van enter the dump site at or around the time when he discovered the body of the Deceased. However, during his testimony-in-chief, he stated that he would not be able to identify the car he saw entering the dump site because there are many other cars like it. Under cross-examination, he said he was not able to see anyone inside any of the vehicles that went inside to the dump.

{46} It is common ground that the police caused a Crime Scene Technician to use a luminal on the inside of a Toyota car allegedly belonging to the witness and used to transport the body of the deceased to the dump site. Swabs were also taken from areas sprayed with luminal and sent to the National Forensics Science Services for analysis all of which turned out to be inconclusive.

Conclusion

{47} At the end of the day the Court finds after having considered all of the evidence adduced by the Crown in this matter it is clear that the only evidence capable of connecting the Accused to this offense lies in the contents of the statement dated 16th of March, 2017. There is no other evidence upon which a tribunal of fact could convict.

{48} Thus, the Court must apply the relevant principles enunciated in ***Bennett*** aforesaid which are well worth repeating here in determining whether or not the application by Defence Counsel should succeed.

> **'We do not, however, agree that the test should altogether be the same for both the admission stage and the no case submission stage. Although it might <u>be true, as Hughes LJ stated in Riatt, that "If it is the Crown which is seeking to adduce the evidence, and if the evidence is important to the case, the judge is entitled to</u>**

expect that very full inquiries have been made as to the witness's credibility and all relevant material disclosed", (it would seem to us more aspirational than real to expect that at that early stage of the proceedings all the relevant evidential material would be available to make the decision to exclude the evidence.) As is stated in Phipson: "The more important the hearsay is to the prosecution's case, the more is required by way of counterbalancing factors to ensure the trial was fair. During a trial at first instance, the extent to which a statement is supported by other evidence or is decisive may depend upon how the trial unfolds, hence the need for English trial judges to be able to stop trial proceedings after hearsay has been admitted." What is true for English trial judges is also, if not more, true for Belizean trial judges.

{49} The Court has considered and taken into account the grave inconsistencies in the evidence of the Justice of the Peace and D/C Joseph aforesaid surrounding the actual recording of the statement dated 16th of March, 2017, and the astonishing testimony given for the first time that it was the witness who took control of the police computer to type the said statement.

{50} Further and additionally there are bizarre issues arising from the statement dated the 12th of March 2020, the details whereof are fully set out aforesaid. I find that the steadfast silence by the Crown in the face of these issues has made the situation that much more egregious having regard to the grave and astonishing inconsistencies referred to in the recording of the statement.

{51} The nondisclosure of the additional statements allegedly made by the witness as stated in her statement of 12th of March 2020, has deprived the Defense of taking advantage of the provisions of section 105A(4)(c) aforesaid. The requirement for full disclosure is now deeply entrenched in our jurisprudence. Moreover, section 6 of the Constitution provides:

> **"*Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court…"***

{52} Thus, I find that not only were the provisions of section 105A of the ***Evidence Act*** not complied with aforesaid but the Constitutional Rights of the Accused in section 6 aforesaid have been breached.

{53} Accordingly in all the circumstances of this case, I find that there is overwhelming evidence adversely affecting the reliability of this statement. Thus, the Crown has been unable to satisfy this Court that the statement

could be found by a tribunal of fact to be reliable to the extent that that tribunal could render a conviction that would not be unsafe, unsatisfactory, and result in a miscarriage of justice.

{54} Thus, pursuant to rule 2(a) of ***Galbraith*** aforesaid I find that the Crown's case at its highest on a consideration of the totality of the evidence and circumstances of this case a tribunal of fact properly directed cannot convict. The submission is upheld, and the Court finds that the Crown has not made out a case against the Accused to merit them being called upon to lead a defense. In the circumstances of this being a judge-alone trial, a verdict of not guilty is entered against both Accused.

Dated this **23rd day of June 2022**.

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