IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 0005/2021

BETWEEN

THE KING

and

OSCAR SELGADO

Defendant

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Ms. Cheryl-Lynn Vidal, SC, Director of Public Prosecutions, with her
Mr. Dercene Staine for the Crown.

Mr. Adolph Lucas Sr. for the Defendant.

2023: October 3rd; 4th; 11th;
November 6th; 8th; 23rd; and
December 1st; 6th; 19th.
2024: January 22nd; 23rd; 25th; 26th;
February 1st; and 7th.

JUDGMENT

ABETMENT OF MURDER-SUBMISSION OF NO CASE TO ANSWER.

[1] **PILGRIM, J:** Oscar Selgado ("the defendant") was indicted for the offence of abetment of murder, contrary to section 20(1)(a) read along with section 117 of the **Criminal Code**[1], ("the Code"). The trial by judge alone began with the arraignment of the defendant on 3rd October 2023 before this Court pursuant to section 65A(2)(c) of the **Indictable Procedure Act**[2] ("the IPA"). The indictment alleges that the defendant, on 7th February 2019, solicited the commission of the crime of murder by asking Giovanni Ramirez ("Mr. Ramirez") to kill Marilyn Barnes ("Ms. Barnes").

[2] The Crown has closed its case whereupon Mr. Lucas Snr. for the defendant has submitted that there is no case to answer. He grounds this submission on the basis that in his view the evidence is inherently weak, vague and inconsistent and that this Court, in its fact-finding function, could not properly convict on it if properly directed, even taking the evidence at its highest. The Crown has submitted that there is a case to answer as the points taken in the submission by the defendant are matters of reliability and credibility which are matters for the Court's fact-finding function and that there is no basis for the case to be stopped at this stage.

[3] The Court will firstly look at the legal framework for this submission, before analysing them.

The legal framework

[4] It would be helpful to firstly examine the elements of the crime of abetment of murder for which the defendant stands indicted.

[5] The definition of murder is found at section 117 of the *Code*:

> *"117. Every person **who intentionally** **causes the death of another person** by any **unlawful harm** is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mentioned." (emphasis added).*

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[2] Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.

[6] The Court is assisted in establishing the elements of the offence of murder by a decision of our Court of Appeal in **Peter Augustine v R**[3], per Carey JA:

> *"11. **Murder is defined in the Criminal Code as intentionally causing the death of another without justification or provocation…It was essential to emphasize… that the specific intent which the prosecution must establish on the charge against him was an intent to kill**." (emphasis added)*

[7] . The elements of abetment are dealt with at section 20 of the *Code*:

> *"20.-(1) Every person who–*
> *(a) **directly or indirectly** instigates, commands, counsels, procures, **solicits** or in any manner purposely aids, facilitates, encourages or promotes **the commission of any crime**, **whether by his act, presence or otherwise**; or*
> *(b) does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of a crime by any other person, whether known or unknown, certain or uncertain, shall be guilty of abetting that crime and of abetting the other person in respect of that crime."*

[8] The issue of abetment was considered by our local Court of Appeal in **DPP v Delita Chavez**[4] where Mottley P opined:

> *"10. **Under section 20(1)(a) the offence is committed where a person directly or indirectly, instigates, commands, counsels, procures, solicits or in any manner purposely aids, facilitates, encourage or promote the commission of any crime** …. **The wording of section 20(1)(a) does not require a person to instigate command etc. another person… to commit a crime.** **The offence under this subsection is completed with the instigation, commanding counseling procuring soliciting etc. the***

[3] Criminal Appeal No. 8 of 2001.
[4] Criminal Appeal No. 34 of 2004.

commission of any crime. The subsection does not require that the crime must have in fact been committed before a conviction may be obtained under its provisions.

11. The provision of section 20 (1) (a) is to be contrasted with the provisions of section 20 (1) (b). Under 20 (1) (b) the offence is committed by doing any act for the purpose of aiding facilitating encouraging or promoting the commission of a crime by any other person (emphasis ours). It is an essential ingredient of the offence under 20 (1) (b) that the aiding etc is the commission of a crime by another person.

12. In relation to 20 (1) (a) there is no requirement that the crime which it is alleged, was abetted, should have actually have been committed. That this is so, is clear from the provisions of section 20 (2) which states that, where the crime abetted has in fact been committed, in pursuance or during the continuance of the abetment, the person abetting shall be guilty of the crime abetted. Section 20 (3) provide for the punishment of a person who abets a crime where the crime has not been carried due to the circumstances prescribed in that subsection.

13. Two separate and distinct offences are created by section 20 (1)(a) and 1(b). ***Under 20 (1)(a) all that is required is for a person directly or indirectly to instigate etc, the commission of a crime. It is not necessary to show that the person directly or indirectly instigates any particular person to commit any particular crime. Under section 20(1(a) the offence is committed where a person directly or indirectly instigates the commission of a crime or where a person purposely facilitates etc the commission of a crime. There is no need that the offence instigated should in fact have been committed***.

…

15. It is necessary to compare this requirement of section 20 (1)(a) and section 20 (1)(b). ***Under 20 (1)(a) the offence is the instigation etc of the crime. There is no need that any particular person be instigated to commit a crime. The use of the words "instigates, commands, counsels, procures, solicits" all import the concept that the offence under section 20 (1)(a) may be committed by words alone.*** *Under 20 1(b) the offence require that another person be aided or facilitated etc. Further the offence required that it must be an act done for the purpose of aiding etc. Words alone would not suffice under section 20 (1)(b)." (emphasis added)*

[9] The defendant, as noted above, is charged pursuant to section 20(1)(a) of the *Code* therefore he is charged for the instigation of **any** crime. The form of instigation charged is solicitation, so it would be helpful to legally define that term. It is not defined in the *Code* but the Court is assisted by the decision of the Supreme Court of New Zealand in **Sweeney v Astle**[5], per Stout CJ:

> *"**The word "solicit" is a common English word, and it means, in its simplified form, "to ask". In various English dictionaries this simple meaning is given, but other similar words are also used to explain other meanings it possesses, such as "to call for", "to make request", "to petition", "to entreat", "to persuade", "to prefer a request"**." (emphasis added)*

[10] The elements of abetment of murder in the context of this case, in the Court's view, require proof of the following:

i. The defendant directly or indirectly;

ii. Solicited, that is, asked for or requested;

iii. For the commission of any crime, there being no requirement that the crime solicited, actually occurred on the authority of *Chavez*. The evidence in this case alleges the crime of murder being the intentional killing of Ms. Barnes by unlawful harm, without justification or provocation.

[11] What then is the test in this jurisdiction for when a case should be stopped without requiring the defendant to answer? That question is answered by our apex court, the Caribbean Court of Justice ("the CCJ") in the Belizean case of **Bennett v R**[6], per Wit JCCJ:

> *"[9] The power to stop the trial at the close of the prosecution case is founded in the common law. The appropriate tests are to be found in the well-known case R v Galbraith. In accordance with that decision, there is no difficulty 'if there is no evidence that the crime alleged has been committed by the defendant …The judge will of course stop the case.' **The difficulty arises, Lord Lane CJ said, 'where there is some evidence, but it is of a***

[5] [1923] NZLR 1198 at p 1202

[6] 94 WIR 126.

tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.' He then identified two scenarios: '(a) Where the judge comes to the conclusion that the [prosecution] evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the [prosecution] evidence is such that the strength or weakness depends on the view to be taken of the witness's reliability, or other matters which are generally speaking to be taken within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.'" *(emphasis added)*

[12] This is a mandatory judge alone trial by virtue of the provisions of the IPA cited above. By virtue of section 65D of the IPA it is this Court that not only makes rulings on the law but also makes such findings of fact, "which would have been required to be determined or made by a jury." Therefore, when the CCJ refer to leaving matters to be considered by "the jury" in this jurisdiction, and on this charge, it means "the Judge" in his fact-finding function. The Court interprets *Bennett* as saying then in this context that this Court can only stop this case without calling upon the defendant to answer the charge: (i) if there is no evidence to make out any element of the charge; (ii) if the evidence, taken at its highest, is so weak, vague or inconsistent that a reasonable fact finder **could** not convict.

[13] The fact that the test for a no-case submission is the same for both a judge-alone trial as in a jury trial is borne out by a decision of the Northern Ireland Court of Appeal in **Chief Constable v Lo**[7], per Kerr LCJ:

> *"[14]* ***The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in Galbraith. The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is the tribunal of fact. It is important to note that the judge should not ask himself the question, at the close of the prosecution case, 'do I have a reasonable doubt?'. The question that he should ask is whether he is convinced that***

[7] [2006] NICA 3.

there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the judge could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict*." (emphasis added)*

[14] The Court in this regard also relies upon the Belizean High Court decision of **R v Nicoli Rhys**[8], per Benjamin CJ:

> *"[5]…****It is important for the Court in the present case to remind itself that at this stage of the case, the judge must not embark on a fact-finding exercise that involves the assessment of the strength of the evidence and the drawing of definitive inferences****. ****Rather, the (judge) (sic) must identify the inferences capable of being drawn that are most favourable to the prosecution and determine whether a reasonable mind could arrive at a verdict of guilt to the criminal standard. The judge is required to look at the evidence critically and as a whole, and answer whether there can be a conviction without irrationality****." (emphasis added)*

[15] The high nature of the threshold that the defendant must clear in relation to the second limb of *Galbraith* is demonstrated to this Court by two decisions. The first is that of the Belizean Privy Council decision of **Taibo v R**[9] where the Board held that even if a case is "very thin" if a tribunal of fact **could** without irrationality, be satisfied of guilt the Court is required to let the matter proceed. The second is a recent Barbadian CCJ decision of **James Fields v The State**[10] . In this case the CCJ upheld that a fact finder, in that case a jury, is entitled, in their freedom to determine for themselves what facts that they accept or not, to rely on the evidence of a witness even if they accept at certain points that that witness has lied, thus highlighting the danger at the no-case stage of trying to resolve questions concerning who is telling the truth and what evidence is or is not to be believed, per Saunders PCCJ and Anderson JCCJ:

> *"[32] It is elementary law that the judge is the trier of law, and the jury is the trier of fact. The categories of evidence which are admissible are matters of law for the judge; the weight to*

[8] Indictment No C29/2012.
[9] (1996) 48 WIR 74 at p 84.
[10] [2023] CCJ 13 (AJ) BB.

be placed on admissible evidence is a matter of fact for the jury. The criminal law provides multitudes of examples where the judge may properly exclude certain categories of evidence from consideration by the jury. A judge is also entitled to stop the trial altogether at the end of the prosecution's case if there is no evidence that the crime has been committed by the defendant or where the evidence given is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. But even in such cases where the evidence is tenuous, if its strength or weakness depends on the view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury, and on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the case to be tried by the jury…

[33] ***The role of the jury is to evaluate the testimony of the witnesses and to determine what weight and reliability to assign to their statements. This role is crucial in the fact-finding process. In determining credibility, the jurors may have regard to the demeanour, consistency, bias or motive, prior inconsistent statements, corroborating evidence, and all the various factors a person will use in their daily life in order to assess and distinguish between truth and falsity*. *The fact that a witness has provided false information on one point under oath can impact the credibility of that witness and the weight given to their testimony. But once the case has been given over to the jury, it is the jury and the jury alone that has the responsibility to carefully consider the implications of the untruthfulness and evaluate how it affects the overall credibility of the witness' testimony on the essential question(s) in issue***.*" (emphasis added)*

Analysis

[16] The case for the Crown to prove this charge rests primarily on the evidence of the hearsay statement of Mr. Ramirez, which was admitted pursuant to a written ruling by the Court[11], and the secondary evidence of a recording coming from Commissioner of Police Chester Williams ("COP Williams") and Wilfredo Ferrufino.

[11] Dated 6th December 2023.

[17] The statement of Mr. Ramirez contains the following evidence:

i. In February 2019 he met a man named Oscar Selgado whom he later had several interactions with both in person and over the phone;

ii. Oscar Selgado had told him that he wanted Ramirez to "get rid" of Ms. Barnes, because she was tarnishing his reputation. Ramirez was paid monies, shown pictures of Ms. Barnes and her home. Oscar Selgado subsequently repeatedly requested to know why he had not yet killed Ms. Barnes because she was supposed to be killed at a particular time; and

iii. That he had made recordings of Oscar Selgado.

[18] The Court is of the view that subject to proof that the Oscar Selgado the witness is speaking about is the defendant, the statement of Mr. Ramirez by itself is capable of establishing the elements of the offence charged. The evidence contains a direct request from Oscar Selgado to Mr. Ramirez to cause the death of Ms. Barnes by unlawful harm without justification or provocation.

[19] The evidence of Wilfredo Ferrufino and COP Williams is that they are familiar with the voice of the defendant, and they heard a recording in which the defendant spoke of wanting to have Ms. Barnes killed.

[20] The Court wishes here to record the basis upon which it admitted the secondary evidence. The evidence on the Crown's case is that Mr. Ramirez would have made a recording of conversations between himself and an Oscar Selgado on a white Samsung Galaxy phone which he handed over to the police. Wilfredo Ferrufino testified that he had received that Samsung phone directly from Mr. Ramirez. Cpl. Keron Cunningham extracted eight recordings from a black SD card in a white Samsung phone which he received from Mr. Ferrufino and copied them onto two DVD/R discs. Her Honour Ms. Tricia Pitts-Anderson produced TPA 1, her list of exhibits tendered with the depositions in the preliminary enquiry in this matter, which shows the following exhibit XIII having been admitted, namely, "Manilla (sic) envelope with Pink Exhibit label bearing date 17th March 2019 and marked as containing 1 silver compact disc verbatim brand and marked Samsung cellular phone with signature of Cpl. 138 Keron Cunningham and a white envelope with a black memory chip." Trienia Young, the Registrar of the Senior Courts of Belize, was handed over the case file in this matter which she did not open but felt CD cases inside. That file

was handed over to Honourable Justice Susan Lamb with those cases still felt inside of it. She subsequently checked that file and found no CD's and checked all drawers in Justice Lamb's chambers and could not locate them. The Crown sought to adduce secondary evidence of the recording captured on the CD/DVD R on the basis that they were lost after a diligent search had been made.

[21] The law used to be that the courts would not easily accept production of copies of documents and recordings but required proof by production of the original, apart from certain exceptions, loss being one.

[22] The modern position on the admission of secondary evidence is found in **R v Governor of Pentonville Prison Ex p. Osman (No.1)**[12] per Lloyd LJ:

> *"…this court would be more than happy to say goodbye to the best evidence rule. We accept that it served an important purpose in the days of parchment and quill pens. But since the invention of carbon paper and, still more, the photocopier and the telefacsimile machine, that purpose has largely gone. Where there is an allegation of forgery the Court will obviously attach little, if any, weight to anything other than the original; so also if the copy produced in court is illegible. But to maintain a general exclusionary rule for these limited purposes is, in our view, hardly justifiable. So we would, if we could, be happy to accept Mr. Nicholls' first submission.*
> *But although the little loved best evidence rule has been dying for some time, the recent authorities suggest that it is still not quite dead. Thus in Kajala v. Noble…Ackner L.J. said at p. 152:*
> ***"The old rule, that a party must produce the best evidence that the nature of the case will allow, and that any less good evidence is to be excluded, has gone by the board long ago. The only remaining instance of it is that, if an original document is available in one's hands, one must produce it; that one cannot give secondary evidence by producing a copy****."*
> *…*
> ***What is meant by a party having a document available in his hands? We would say that it means a party who has the original of the document with him in court, or could***

[12] (1990) 90 Cr. App. R. 281 at ps. 308-309.

have it in court without any difficulty. *In such a case, if he refuses to produce the original and can give no reasonable explanation, the court would infer the worst. The copy should be excluded. If, in taking that view, we are cutting down still further what remains of the best evidence rule, we are content." (emphasis added)*

[23] The Court is of the view that the authority of **R v Baintan et al**[13] submitted by the defendant, a first instance decision from 1967, represents the state of the old common law.

[24] The Court also adopts the legal principle pronounced in the locus classicus English Court of Appeal decision of **Kajala v Noble**[14], that the best evidence rule does not apply to video recordings, per Ackner LJ:

> *"**Nowadays we do not confine ourselves to the best evidence. We admit all relevant evidence. The goodness or badness of it goes only to weight, and not to admissibility:***
>
> *…*
>
> ***In our judgment, the old rule is limited and confined to written documents in the strict sense of the term, and has no relevance to tapes or films**." (emphasis added)*

[25] This Court found that the search done by the Registrar was a diligent search, having searched all drawers of the judge who had been given the custody of the casefile. It was not contested that the Registrar did make those searches, and the Court accepts her evidence that she searched the office of Justice Lamb. The Court takes judicial notice of the notorious fact that Justice Lamb has demitted office some time ago. The Court, as a matter of human experience and common sense, found it unlikely that a casefile would have been stored anywhere other than in the judge's chambers. In that regard if it could not be found there the Court holds that the DVD/CD has been proved lost after due search. In any event, to use the words of *Pentonville*, on the Crown's case the DVD/CD cannot be produced without difficulty.

---

[13] (Unreported 1st November 1967)

[14] [1982] 75 Cr. App. R. 149 at p 152.

[26] The Court appreciates that this is important evidence, but its admission can be counterbalanced by self-directions of caution suggested by the English Queen's Bench decision in **Taylor v Chief Constable of Cheshire**[15]. In that case secondary evidence had been given by witnesses who had identified that defendant in a video recording, which had subsequently been erased and could not be produced at trial. The Queen's Bench held that this was permissible, per Ralph Gibson LJ:

> *"Finally, it was submitted that even if there is no demonstrably applicable principle of law by reference to which evidence of what is seen on a recording can be treated as inadmissible if the recording is not produced, this Court should nevertheless as a matter of policy pronounce such a principle because, if the recording is not produced, there is no possibility of the court assessing what Mr. King referred to as the only real evidence which was the recording itself.*
>
> ***I for my part am unable to accept those submissions. In my judgment the evidence tendered was not inadmissible in law, whether by reference to the hearsay rule or any other principle in law****…*
>
> *…*
>
> ***In substance I accept the contention made for the prosecutor. For my part I can see no effective distinction so far as concerns admissibility between a direct view of the action of an alleged shoplifter by a security officer and a view of those activities by the officer on the video display unit of a camera, or a view of those activities on a recording of what the camera recorded. He who saw may describe what he saw because… it is relevant evidence provided that that which is seen on the camera or recording is connected by sufficient evidence to the alleged actions of the accused at the time and place in question. As with the witness who saw directly, so with him who viewed a display or recording, the weight and reliability of his evidence will depend upon assessment of all relevant considerations, including the clarity of the recording, its length, and, where identification is in issue, the witness's prior knowledge of the person said to be identified, in accordance with well established principles****.*

[15] (1987) 84 Cr. App. R. 191.

Where there is a recording, a witness has the opportunity to study again and again what may be a fleeting glimpse of a short incident, and that study may affect greatly both his ability to describe what he saw and his confidence in an identification. When the film or recording is shown to the court, his evidence and the validity of his increased confidence, if he has any, can be assessed in the light of what the court itself can see. ***When the film or recording is not available, or is not produced, the court will, and in my view must, hesitate and consider very carefully indeed before finding themselves made sure of guilt upon such evidence. But if they are made sure of guilt by such evidence, having correctly directed themselves with reference to it, there is no reason in law why they should not convict. Such evidence is not, in my view, inadmissible because of the hearsay principle. It is direct evidence of what was seen to be happening in a particular place at a particular time and, like all direct evidence, may vary greatly in its weight, credibility and reliability****." (emphasis added)*

[27] The secondary evidence also has the capacity to establish that the defendant asked Mr. Ramirez to kill Ms. Barnes by unlawful harm with no justification or provocation. This is evidence that can potentially support the correctness of the hearsay statement of Mr. Ramirez.

The grounds of the defendant's submissions

[28] The essential points made by the defendant to establish that this case falls within the second limb of the *Galbraith* test are as follows:

i. There were discrepancies in the date of the recording and the exhibit list and the number of clips on the recording between COP Williams, William Ferrufino and Cpl. Cunningham;

ii. There were inconsistencies by omission in that COP Williams and Ferrufino in their pre-2023 statements never mentioned listening to the recording;

iii. No transcript was prepared of the recording and there was no evidence as to the last time that COP Williams or Ferrufino heard the voice of the defendant before listening to the recording. Essentially the evidence of voice identification was poor; and

iv. No identification parade was held in which Giovanni Ramirez identified the person he spoke of as Oscar Selgado in his statement as the defendant, nor was there even a dock identification in this case.

[29] In the Court's view none of these points make the case for the Crown, taken at its highest, so vague, weak or inconsistent that no reasonable tribunal of fact properly directed could convict.

Discrepancies and inconsistencies

[30] Firstly, the Court adopts the reasoning of the Guyanese Court of Appeal in **Anand Mohan Kissoon et al v The State**[16] which held that the fact that inconsistencies in a witness's evidence may have weakened the prosecution case against a defendant is no ground for the trial judge withdrawing the case from the tribunal of fact, per George C[17]:

> *"**With respect, I do not think that Smith JA meant to say that whenever there are inconsistencies in the evidence on substantial issues it was incumbent on the judge to withdraw the case from the jury. In my opinion it is only in the extreme circumstances of the prosecution's witnesses being totally discredited that the judge should take that drastic step. The fact that the inconsistencies have weakened the case is not sufficient**." (emphasis added)*

[31] A tribunal of fact can legally accept part of one witness's evidence and reject other parts of the evidence of that same witness as noted by the English Court of Criminal Appeal in **R v Fanning et al**[18]; and indeed, the CCJ held in *Fields* it can accept the evidence of a witness who is found to have lied in certain parts of his testimony. The inconsistencies with regard to the failure of COP Williams and Ferrufino to mention that they had listened to the recording are not in the Court's view so fundamental as to reach the standard that their evidence has been totally discredited. Nor are discrepancies about the number of clips and whether they are audio or video. These are matters for careful consideration in the Court's fact-finding function.

[16] (1994) 50 WIR 266.
[17] Ibid. p 274.
[18] [2016] 2 Cr. App. R. 19 at para 27.

[32] The issues in relation to the marking of the exhibit are issues of continuity and chain of custody which are matters of fact for the tribunal of fact as held by the Eastern Caribbean Court of Appeal in **R v Hodge**[19]. Or if viewed as a discrepancy with the evidence of Cpl. Cunningham it is not so irreconcilable as to cause the Court to stop the case at this stage.

The voice recognition evidence

[33] The Court is of the view that matters of identification/recognition are, generally speaking, matters of fact for the tribunal of fact unless it is unsupported and so poor that no conviction is possible. The Court relies on the decision of the Bahamian Privy Council decision of **Larry Jones v R**[20], a case of visual identification which, in the Court's view, would apply mutatis mutandis to the issue of voice identification/recognition, per Lord Slynn of Hadley:

> *"**Their lordships consider that the trial judge, in ruling that even if the circumstances were not ideal the case should be left to the jury on the question of identification, was entitled to take the course he took. Whether Mrs Taylor recognised the accused man in all the circumstances was essentially a question for the jury rather than for the judge to decide. The jury would be very familiar with the degree of light available at that time and they had had the opportunity of seeing Mrs Taylor and would have the opportunity of seeing and perhaps hearing the accused. Even if there were some discrepancies in the evidence and even if the quality of identification was not of the best, it cannot be said that no reasonable jury could convict. Their lordships accordingly reject the argument that the judge erred in not ruling that there was no case to answer**." (emphasis added)*

[34] COP Williams and Ferrufino have testified that they were familiar with the voice of the defendant before listening to the recording, having heard his voice a number of times on different occasions. The recordings were between 7-8 clips which the witnesses said they listened to. In the Court's view whether they recognised the voice of the defendant, and whether they can do so now after more than four years

[19] (2010) 77 WIR 247 at para 12.
[20] (1995) 47 WIR 1.

without a transcript are matters of fact for the Court's fact-finding function, noting the special need for caution in treating with voice identification/recognition evidence as observed in the local Court of Appeal decision of **Robert Taylor v R**[21].

[35] It is also to be noted that that voice recognition evidence, even if poor, is supported potentially by the statement of Mr. Ramirez.

Identification of the defendant by Mr. Ramirez

[36] The test in this jurisdiction for when an identification parade should be held was set out by the Court of Appeal in **Krismar Espinosa v R**[22], per Awich JA:

> *"[26] While bearing in mind fairness and transparency, it is important to note that, holding an identification parade is a very important step in the investigation of a crime. It is held when a police officer considers it to be useful in the investigation, and the suspect consents to participating in the parade; moreover, it must be held when a suspect has demanded that it be held."*

[37] The hearsay statement of Mr. Ramirez speaks to a number of meetings between himself and the person he refers to as Oscar Selgado in person and for relatively lengthy periods. There is little room for realistically arguing that Mr. Ramirez only had a fleeting glance of the person he is referring to as Oscar Selgado if Mr. Ramirez is to be believed. There is also no evidence that the defendant demanded an identification parade. In that regard the decision to not have an identification parade between Mr. Ramirez and the person he referred to as Oscar Selgado at the time of charge is not one that so affects the evidence of recognition that it is irretrievably poor.

[38] There was no identification of the defendant in court in this matter. However, the Court would note that in every case involving the admission of a hearsay statement under section 105 of the **Evidence Act**[23] that would be the case. The Court has derived considerable assistance from the English Queen's Bench

---

[21] Criminal Appeal No. 6 of 2017 at paras. 12-14.
[22] Criminal Appeal No. 8 of 2015.
[23] Chapter 95 of the Substantive Laws of Belize, Revised Edition 2020.

decision of **Pattison v Director of Public Prosecutions**[24]. In that case the issue under consideration was proof that a person named in a conviction report as a disqualified driver was the defendant before that court. In the Court's view this situation is analogous to establishing the proof of the identity of a person mentioned by an unavailable witness in a witness statement. Newman J opined:

> *"[16] … **I am entirely satisfied that the identity of a person on a memorandum of conviction is capable of being proved by the same multiplicity of ways in which any other essential fact can be proved in a criminal case**.*
> *…*
> *[26] In my judgment the following principles can be distilled from the cases. (a) As with any other essential element of an offence, the prosecution must prove to the criminal standard that the person accused was a disqualified driver. **(b) It can be proved by any admissible means…(f) An example of such means is a match between the personal details of the accused on the one hand and the personal details recorded on the certificate of conviction on the other hand. (g) Even in a case where the personal details such as the name of the accused are not uncommon, a match will be sufficient for a prima facie case**." (emphasis added)*

[39] There are a number of commonalities between the Oscar Selgado mentioned by Ramirez in his statement and the defendant as confirmed in his voir dire testimony which was incorporated by agreement of both parties in the main trial pursuant to the CCJ guidance in **Manzanero v R**[25] on 22nd January 2024. These include name, occupation, phone number, vehicle, knowledge of Marilyn Barnes and so on. It is trite that any fact which can be proved directly, in this case Mr. Ramirez actually pointing in court to the defendant as the Oscar Selgado he was referring to, can be proved indirectly by circumstantial evidence as is demonstrated in *Pattison.* It must be noted that as the CCJ indicated in the Belizean case of **August et al v R**[26] that it is no derogation of evidence to call it circumstantial. These are facts upon which it is open to a reasonable tribunal of fact taking the Crown's evidence at its highest that the Oscar Selgado that Mr. Ramirez is speaking about is the defendant.

Disposition

[24] [2006] 2 All ER 318.
[25] [2021] 1 LRC 543 at para 37.
[26] [2018] 3 LRC 552.

[40] The Court for the reasons given above finds that the evidence is not so vague, weak or inconsistent that no reasonable tribunal of fact could properly convict. In those circumstances the application to withdraw the case before its fact-finding function is refused by the Court. The Court will call upon the defendant to answer the charge.

Nigel Pilgrim
High Court Judge
Dated 7th February 2024