IN THE COURT OF APPEAL OF BELIZE, A.D. 2025
CRIMINAL APPEAL NO. 6 OF 2018

BETWEEN:

MARVIN NEAL

Appellant

and

THE KING

Respondent

CRIMINAL APPEAL NO. 7 OF 2018

BETWEEN:

JAROUD LAMB

Appellant

and

THE KING

Respondent

Before:

Hon. Mme. Justice Minnet Hafiz Bertram	President
Hon. Mr. Justice Peter I. Foster KC	Justice of Appeal
Hon. Dr Justice Arif Bulkan	Justice of Appeal

Appearances:

Mr. Leeroy Banner for Marvin Neal
Mrs. Peta-Gay Bradley for Jaroud Lamb
Mrs. Cheryl-Lynn Vidal S.C., Director of Public Prosecutions, for the Respondent

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2025: 24 March;
4 June

JUDGMENT

[1] **BULKAN, J.A.:** The appellants, Marvin Neal and Jarod Lamb, were convicted in 2018 of the murder of Steven Valencia at a judge-alone trial conducted by Moore J.

Following a sentencing hearing, each was sentenced to life imprisonment with eligibility for parole after thirty (30) years, to take effect from their respective dates of arrest in 2013. Both appellants now appeal to this court, alleging errors by the trial judge and praying that their convictions and sentences be quashed.

[2] The deceased, Steven Valencia, was shot and killed in the course of a robbery at his home in Santa Elena Town in January 2013, for which murder the appellants were jointly indicted. The sole evidence against the pair came from caution statements allegedly given by them to the police shortly after their respective arrests. There being no other evidence to implicate them, whether direct or circumstantial, the circumstances under which these caution statements were obtained are of paramount importance, overshadowing every other consideration.

[3] Both appellants challenged the voluntariness of the statements at the trial. Marvin Neal, the first appellant, alleged that the police inflicted violence on him, including shocking him with an electrical wire, and also that they promised him that he would be released if he gave a statement. Jarod Lamb, the second appellant, alleged oppressive conduct on the part of the police as well as unfairness in the manner in which the statement was taken. Further, Lamb also alleged that the statement was not his, but that it was prepared by the police who, along with the JP, prevailed upon him to sign it.

[4] The trial judge rejected all these allegations of the use of force, violence, promises and concoction by the police authorities. Not only did she find them not to be credible, but she also accepted the version of events put forward by the investigating officers, concluding that the statements were freely and voluntarily given and thus admissible. Though each statement raised a cutthroat defence, once admitted, they provided the basis for Moore J to find evidence of individual participation along with the requisite intent to kill, so as to ground convictions for murder.

[5] In these appeals filed after conviction, both appellants rehash their original objections to the voluntariness of the statements, though they also raised additional grounds as to whether convictions for murder could be justified on the basis that the trial judge did not adequately deal with the issue of mens rea. The Crown formally opposed the appeals, but at the hearing of this matter, certain pivotal concessions were made – at least with regard to the first appellant. For the sake of clarity, the remainder of this judgment will deal with each appellant separately, focusing first on the common ground as to whether, as alleged, the learned trial judge erred in admitting their caution statements into evidence.

Statement of Marvin Neal

[6] The first appellant submitted that the trial judge erred by admitting the caution statement into evidence for the following reasons:

A. By wrongly assuming that because he turned himself in with Assistant Commissioner of Police Noel Leal, he gave the caution statement freely and voluntarily;

B. By considering the context (sic) of the caution statement in determining whether the statement was given without any inducement or pressure;

C. By assuming facts not in evidence;

D. By misquoting crucial pieces of evidence;

E. By finding that he had a rapport and was comfortable with DC Requena, because of which he decided to give a statement to DC Requena;

F. By concluding that he was familiar with the police and knew the system; and

G. By not assessing his evidence fairly.

[7] The prosecution's case on the voir dire rested mainly upon the evidence of the detective who recorded the statement (DC Requena) and the JP who witnessed it (Desol Neal). Following the murder of the deceased on January 24, 2013, the first appellant was apparently sought by the police but was in hiding. He turned himself in after some three (3) months, but because he was afraid of being beaten by the police, he sought the assistance of no less than the Commander of the Professional Standards Branch, ACP Noel Leal, to escort him in. ACP Leal duly picked him up at an undisclosed point on the Western Highway and took him to San Ignacio Police Station on April 19th, where he was handed over to Senior Superintendent Ralph Moody at about 12:20 pm. Supt. Moody claims to have cautioned him and then delivered him to the charge room, though such was the brevity of Moody's testimony that he neglected to say what, if anything, the first appellant said in reply to the caution.

[8] The next step in this narrative occurred about one (1) – two (2) hours later. According to Superintendent Reyes, on that same day, April 19th, he went to the San Ignacio Police Station after lunch (sometime between 1:30 pm and 2:30 pm) and, having found out that the first appellant was in custody. He sent for DC Requena and requested that DC Requena interview him. This, Supt. Reyes claimed, was the full extent of his involvement in the case – instructing that the first appellant be interviewed by DC Requena. In his cross-examination of this witness, Mr. Banner explored the oddity of this scenario, whereby someone not in charge or even involved in the investigation would – seemingly out of the blue – issue instructions, doing so with admittedly no knowledge of what had transpired up to that point. We propose to return to this later, and for now, note that it is the Prosecution's case that upon returning from lunch that afternoon, and without knowing what had taken place

in relation to the appellant or the investigation, Supt. Reyes requested that DC Requena *interview* the first appellant.

[9] For his part, DC Requena testified that at about 3:30 pm that day, he was at the San Ignacio Police Station when Supt. Reyes asked him to *record a statement* from the first appellant. DC Requena's exact words were that Supt. Reyes told him that *"Mr. Neal is in custody. He handed himself in and wants you to take a statement from him."* This, of course, is dramatically (and materially) different from Supt. Reyes' account of what transpired, but as promised, we will examine these discrepancies later. What is important is that DC Requena, taker of the caution statement, explained his involvement as originating solely at the alleged behest of Supt. Reyes, communicated to him via a direct and specific instruction.

[10] DC Requena then proceeded to do as instructed, first seeking the assistance of a Justice of the Peace, Mrs. Desol Neal. Once they were all together in the office, he informed the first appellant of the reason for his detention, cautioned him (no evidence was given as to what the appellant said in reply, if anything), and then left him alone with the JP. Some four (4) – five (5) minutes later, the JP told him that the appellant was ready to speak, at which point he proceeded to record the statement at the appellant's dictation. DC Requena recited all the safeguards he observed, namely that they were seated in a fully air-conditioned office, that there was nothing threatening on his person, that he read the various cautions to the appellant, and that he made no promises or offers to him in order to obtain the statement. Once finished, he handed over the statement to the "investigator", Cpl Sierra.

[11] The testimony of the JP, Desol Neal, largely mirrored that of DC Requena. Having been called by DC Requena to assist in the taking of the statement, she went to his office, where she said the first appellant was already seated. The JP recounted being introduced to the first appellant, though it would be revealed later that she already knew him as he is related to her by marriage. DC Requena then read the captions on the form to the first appellant before leaving the two of them in the room

alone. The JP then recounted her conversation with the first appellant, during which he assured her that he had not been beaten or forced to give the statement and that he was "okay", before going on to describe his involvement in the crime. DC Requena then returned to the office, after which he read the cautions to the first appellant for a second time before recording the statement. At the conclusion, the first appellant signed the statement, as did the JP who signed as a witness.

[12] The first appellant contested material parts of this narrative. Regarding his arrest, the first appellant admitted to being on the run but said that he decided to turn himself in because he became scared for his life, given that he was shot at by the police during this period. This was why he sought an escort into the station. ACP Leal confirmed that during the journey, the appellant told him that he was afraid of being beaten by the police, which is why he wanted to be accompanied.[1] However, ACP Leal simply deposited him at the police station and left, after which, according to the first appellant, the threats and violence unfolded.

[13] In both his counsel's cross-examination of the police witnesses and his statement from the dock, the first appellant alleged mistreatment by the police at the San Ignacio Police Station. He claimed that prior to giving the statement, he was subjected to both threats and physical violence, naming Supt. Reyes, DC Requena, Senior Supt. Moody, Cpl. Sierra and PC Puc as the ones involved. He stated that he was taken out of the cell, handcuffed and dragged into the conference room, where Supt. Reyes shocked him several times on his right leg using an exposed electrical wire. In addition, he said, both Supt. Moody and PC Puc hit him about his body at different times. Eventually, when Supt. Reyes was about to shock him again with the wire, he capitulated and agreed to cooperate by giving a statement. He was then taken by DC Requena to the CIB office, where he saw the JP already sitting. The first appellant claimed that the JP referred to their family connection and assured him that she could help, promising that if he cooperated, he would be able

[1] Record of Appeal, page 111.

to go home that same day. It was at that point he repeated a story that DC Requena had told him.

[14] At the conclusion of the voir dire, the trial judge reviewed the evidence and concluded that the first appellant's statement was given freely and voluntarily, thus admitting it into evidence. In so concluding, she made some key findings. Acknowledging the conflict between Supt. Reyes and DC Requena regarding how the appellant came to confess, the learned judge accepted DC Requena's version, on the basis that, in all the circumstances, it was reasonable and believable that the first appellant would choose to give a statement deflecting culpability. The trial judge added that the appellant was not a novice when it came to being in custody or dealing with the police, but rather, "he knew the system". His surrender, she found, was well thought out and he decided to cooperate with the police, including by giving a statement. She also found no discrepancy in the timeline, reasoning that the appellant was brought in during the lunch hour, booked and placed in the lockups, where he remained until DC Requena took him out to make his statement. For all these reasons, she found DC Requena's version of the conversation with Supt. Reyes – namely, that the appellant told Supt. Reyes, he wanted to confess to DC Requena – was believable and accurately reflected what happened.

[15] On appeal, the first appellant reiterated his objection to the voluntariness of the statement, submitting that the learned trial judge erred by admitting it into evidence. Counsel relied on a list of errors allegedly made by the judge in this regard, as itemised above at paragraph [6]. These errors can be classified according to one of three types, namely that her finding was founded on ***assumptions*** (for example, that the appellant had a well-thought out plan when he turned himself in, and that the appellant specifically requested DC Requena to take his statement when he turned himself in), or that it was based on ***mis-statements*** (for example, that he was not a novice when it came to being in custody or dealing with the police) or that it did not address ***gaps*** in the evidence (such as what happened in the first two (2) hours after the appellant arrived at the station and why he came to give the caution

statement). For these reasons, Mr. Banner submitted that the learned trial judge wrongly admitted the statement into evidence.

[16] The Crown opposed this appeal. While in her written submissions, Mrs. Vidal S.C. responded to each of Mr. Banner's arguments, at the hearing of this appeal, she made two important concessions. First, the learned DPP described as a concern that by accepting the evidence of DC Requena, the trial judge acted on hearsay, as there was no affirmative evidence that the first appellant said to Supt. Reyes that he wanted to give a statement to DC Requena. Second, the learned DPP acknowledged that the Crown did not lead any evidence as to how the first appellant agreed to give a statement. These are material concessions, but before analysing the evidence on these various points, it would be useful to highlight the basic principles of the law on this subject.

[17] The legal requirements for admitting a confession of an accused into evidence are well-settled and can be shortly stated. ***Section 90*** of the ***Evidence Act***, ***CAP 095, Substantive Laws of Belize 2000***, provides:

> *"90.-(1) An admission at any time by a person charged with the commission of any crime or offence which states, or suggests the inference, that he committed the crime or offence 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."*

[18] This section is a faithful replication of a longstanding common law position. More than a century ago, in ***Ibrahim v R*** [1914] AC 599, the Privy Council determined that to be admissible in evidence, the statement of an accused person must be shown to be voluntary, that is to say, not obtained from him or her by fear of prejudice or hope of advantage, exercised or held out by a person in authority. The

burden of so demonstrating is at all times on the Prosecution, to be discharged by way of affirmative evidence and to the criminal standard. As noted by Mr. Banner, these standards have been repeatedly affirmed and applied by courts in Belize – as, for example, in ***Matu v the Queen***, Criminal Appeal 2 of 2001 (decision dated 25/10/2001) and ***Pook v the Queen***, Criminal Appeal 25 of 2011 (decision dated 14/3/2014). In ***Matu***, Mottley JA affirmed as follows:

> *"…the prosecution must lead evidence which shows, beyond reasonable doubt, that the admission which it intends to introduce into evidence, was not obtained 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. If such evidence is not given, then the admission cannot be introduced into evidence."*

[19] This brings us, then, to the central issue in the case against Marvin Neal, which is whether the Prosecution discharged its burden of proving that Neal's confession was freely and voluntarily given. Mr. Banner has challenged multiple aspects of the trial judge's reasoning, but much of the conflict, ambiguity and apparent irrationality of the Prosecution's case converge on a single, unresolved issue: *why did the first appellant confess?* Around what should be a simple question swirls a host of irregularities in the evidence, as itemised hereunder.

[20] The event immediately preceding the taking of the statement was when DC Requena took Neal out of the lockups into the CIB office. DC Requena said he did so because Supt. Reyes instructed him to take a statement from Neal, but Supt. Reyes denied issuing any such instruction. According to Supt. Reyes, he learnt that Neal had turned himself in and thought it important that he be *interviewed* about the crime. In light of Supt. Reyes' explicit and specific contradiction of DC Requena's claim, there is no admissible evidence as to what led up to the taking of the statement.

[21] Moreover, the stark reality of the combined testimony of these two officers is that there is no evidence that the first appellant was ever *interviewed* by the police prior to giving the statement. That is a significant gap, because confessing is against a

suspect's interest, so there should be a full and plausible account of how (and why) it occurred. There need not be an elaborate explanation (a suspect may blurt out a confession on arrest, s/he may confess when presented with evidence against him or her, or when confronted with an accomplice, or s/he may choose to unburden himself or herself because of guilt, just to give a few scenarios), but at a minimum, the Prosecution must present some (credible) narrative in which they describe what led to the accused talking. That is especially so where, as here, there are allegations of improper conduct on the part of the police to elicit that statement. However, there is a complete absence of evidence on this from the Prosecution.

[22] The trial judge's way out of this morass was simply to say that she believed DC Requena's version, which was that he was told by Supt. Reyes that Neal requested him to record his (Neal's) statement. The trial judge found this believable because she concluded that the first appellant had a well-thought-out plan, that he knew the system well, and that he decided to cooperate with the police by giving a statement deflecting culpability. Each of those reasons, however, is a mix of speculation (as Mr. Banner submitted) and hearsay (as Mrs. Vidal S.C. conceded). It was thus an unjustifiable finding because it was based on a legally inadmissible foundation.

[23] To begin with, the logic of this analysis is difficult to discern. Given the chronology of events as accepted, how does confessing to a crime where the police had no evidence against him constitute a "well-thought-out plan"? Relinquishing his constitutional right to silence and incriminating himself is what enabled the first appellant's conviction, so to voluntarily adopt that course is not the action of a rational or self-interested person, rendering the Prosecution's conflicting narrative questionable.

[24] Moreover, the first appellant had been on the run, as it was put multiple times, for three (3) months after the killing of the deceased. When he decided to turn himself in, he sought the protection of a senior officer because he was fearful of being beaten by the police. But if the first appellant had intended to cooperate with the police all along and confess, there would have been no reason to be fearful. It was

only if he was intent on maintaining innocence he would have had to fear violence at the hands of over-eager police anxious to solve the case by any means necessary.

[25] Then there is the issue of the alleged conversation between the first appellant and Supt. Reyes, in which he indicated that he would confess (but only to DC Requena). The trial judge found it believable partly because DC Requena claimed to have a rapport with the first appellant, but that, in and of itself, is not a likely supposition as there were no reasons considered by the trial judge to support that finding. Moreover, there are two critical flaws which undermine that explanation:

i. First, exactly when did the first appellant have this conversation with Reyes? ACP Leal testified that he escorted Neal to the San Ignacio police station, while Supt. Moody testified that he booked him on arrival and placed him in the charge room. The prosecution led no evidence of anyone, least of all Supt. Reyes, having contact with the first appellant until DC Requena took him out of the cell. Given this timeline, then, there is no admissible evidence of any interview conducted by Supt. Reyes during which the first appellant would have volunteered that he wanted to confess to DC Requena.

ii. And second, if this conversation did occur, how could Supt. Reyes forget it? It is not plausible that a senior officer would have no recollection that he spoke to a suspect who, after being on the run for months, then agreed to confess to someone else in the station. A promised confession would have represented a monumental break in the case which had been stalled for months, and that Supt. Reyes has no recollection of any such conversation – but in fact denies it altogether – is a significant weakness in the prosecution's narrative.

[26] Even the limited role that Supt. Reyes admitted to playing compounds the perplexing and questionable circumstances of the Prosecution's narrative. Supt. Reyes was not involved in the investigation, nor is it even clear whether he was stationed at San Ignacio at the material time, but nonetheless claims that on arriving there after lunch, he immediately sent for DC Requena and instructed him to interview the first appellant. Mr. Banner explored the incongruity of this at length, and rightly so. Once again, it strains credibility that someone not involved in the investigation and not knowing what had taken place in relation to a suspect, would – without any prior discussion – issue an instruction as to what to do next.

[27] Altogether, there are many preposterous elements to the claim that the first appellant told Supt. Reyes he wanted to confess to DC Requena, aside from the fact that it was rejected outright by both participants in the alleged conversation. This leaves a cavernous gap in the Prosecution's case regarding how and why the appellant came to make this alleged confession.

[28] There are useful lessons to be drawn from how other courts have approached gaps in policing when considering the admissibility of a confession. Obviously, each case turns on its own facts and requires independent analysis, but there are two cases of some similarity which propound general standards. The first is ***The State v Colin Joseph de France*** (1978) 26 WIR 179, a decision of the Guyana court of appeal. The appellant was convicted of the murder of his stepfather, the sole evidence against him being that of a confession, which was supposedly obtained after he was confronted with statements by accomplices implicating him in the crime. The investigating officer, D/Cpl Wilson, testified in the voir dire that although he was not very keen to get a statement, he felt one could have helped him in the investigations; Wilson varied this before the jury by saying he thought it was necessary to obtain one from the appellant. The trial judge ruled the statement free and voluntary, and it was admitted into evidence. However, because D/Cpl Wilson varied his testimony, the appellant's appeal was allowed. A majority of the court of appeal found that the evidence under cross-examination before the jury that D/Cpl Wilson thought it was necessary to get a statement from the accused revealed a lack of frankness about

his state of mind, and that disclosure was of sufficient materiality to require the trial judge to review his decision to admit it on the voir dire.

[29] In the course of his judgment, the venerable Haynes C had this to say (at page 197):

> *"An accused is in a peculiarly weak position when he makes an allegation of [the use of improper pressure to obtain a confession] against the police, even if it is true. The word of two officers, whose character appears to be above suspicion, will almost (sic) be preferred to that of a person accused of crime. The police know that whatever they say or do within the walls of a police station, they are in this very strong position when they are contradicting the evidence of an accused person who would have no independent witness to corroborate his story and a strong motive to lie. Judges are conscious of this disadvantage in position of the ordinary citizen being questioned by the police and to make up for it, they follow a practice to throw out confessions on such suspicion."*

[30] A second case of some relevance is ***McPhee v the Queen*** [2016] UKPC 29, a decision of the Privy Council in an appeal from the Bahamas. Here, the appellant was convicted of murder in the course of armed robbery, based upon the evidence of an accomplice and a written confession. At the trial, the appellant challenged the voluntariness of the confession on the ground that he was tortured by the police over the course of two days, but the statement was admitted by the trial judge. On appeal to the Board, the principal question was whether that confession should have been excluded, and to the allegations of torture, the appellant now emphasised the conditions under which the statement was obtained. Citing his age, the appellant being a minor at the time, the fact that no contact was made by the police with his mother or any other appropriate adult to be present with him while he confessed, his extended detention prior to the confession, and the failure of the police to give him anything to eat or drink for some twenty (20) hours out of that period, his counsel submitted that he was subjected to oppressive conditions and that the Crown failed to prove that his confession was voluntary. After reviewing all the circumstances surrounding the taking of the statement, the Board agreed, concluding that the Crown had not discharged the burden of proving that the confession was not unfairly obtained. The appeal was therefore allowed.

[31] In arriving at this conclusion, the Privy Council pointed to a number of troubling aspects in the prosecution's case as to voluntariness. In particular, none of the officers involved had been able to say what happened to the appellant for a period of some seven (7) hours during the second day of his detention. Station logs revealed that there were periods when he had been removed from his cell, but these were entirely unexplained. These circumstances created doubt regarding whether he had been interviewed informally by the police, a possibility the Board found overwhelmingly likely, as the investigating officers would have wished to question him.

[32] Delivering the judgment of the Board, Lord Hughes had this to say (at paragraph 10):

> *"This requirement for a scrupulous record of all interviews with a suspect is a critical part of modern policing. Experience the world over has shown the damage that can be done to the criminal process by informal interrogations or assertions of informal admissions and/or by allegations that such conversations have taken place. The rule requiring a record is both a very necessary protection of suspects and also designed for the protection of police officers against unfounded allegations, all too easily made by those who have little to lose and, in the absence of a record, extremely difficult to refute. In sum, the rule is a vital feature of a system which aims to convict the guilty and acquit those whose guilt is not proved. It is central to the fairness of the process."*

[33] These cases, delivered four (4) decades apart, reveal a consistency of approach by common law courts when considering disputed confessions. First, there is an obvious need for caution when the only evidence against an accused person is that of a confession, especially if it is contested as being improperly obtained. Not the least of the reasons for this is that where there is no incriminating evidence against a suspect, the need for a confession becomes exponentially greater, and overzealous policing could easily lead to improper pressure being exerted. Second, in light of the power imbalance between suspect and police, courts should be alive to suspicious circumstances around the taking of a statement and not be clouded by unconscious bias. Third and finally, in this fraught scenario, the need for proper

documentation and scrupulous testimony is essential, and where lacking, that may be an indication of something untoward having occurred.

[34] Returning, then, to this case, it would be useful to recap the key elements to determine whether the trial judge properly addressed her discretion to admit the statement. In the first place, the general context is important. When the first appellant turned up at San Ignacio Police Station in April 2013, the police had no evidence against him, or evidently, against anyone else. That being the case, there would have been no reason for the first appellant to voluntarily incriminate himself. On the other hand, since the murder had occurred some three (3) months earlier, the pressure on the police to produce results would have been substantial.

[35] When the first appellant turned himself in, the uncontradicted evidence is that it was because he was fearful for his life. Moreover, he sought the protection of a senior officer because he was afraid of being beaten by the police. This strongly suggests that he had no intention of confessing.

[36] In fact, the first appellant did not confess to anyone initially – not to the officer who escorted him nor to the officer who received, booked and cautioned him. These were obvious opportunities to unburden himself, if that was his "well-thought-out plan", but nothing of the sort occurred. His silence up to that point, on the other hand, is consistent with his posture of non-cooperation. It is also consistent with the reality that he need not have said anything, given the lack of evidence implicating him.

[37] In that scenario, what happened to the first appellant during those first two (2) hours at the police station, which caused him to confess? The prosecution case on this most critical point is undermined by contradiction (between Supt. Reyes and DC Requena), silence (every single one of the police officers involved in this investigation carefully distanced himself from the first appellant during that two (2)

hour period), and doubt (what caused the appellant to change his posture and become so cooperative?).

[38] While the prosecution's case is silent as to motivation, the first appellant alleges that several police officers inflicted acts of violence against his person, which included shocking him with an exposed electrical wire. It was because of this treatment, and wanting to forestall further violence, that he agreed to confess. The Prosecution's evidence on this issue does not provide an alternative explanation of why he agreed to confess. Moreover, as to that critical two (2) hour period during which the appellant claims he was beaten, none of the officers involved were able to say what happened to him, but instead each placed himself far away from the room in question.

[39] For all these reasons, substantial doubt remains as to the circumstances surrounding the taking of the first appellant's alleged confession, which the Prosecution has failed to resolve. Like ***de France***, the police witnesses were not just lacking in frankness, but they also contradicted each other. Like ***McPhee,*** there remains an unexplained gap in the evidence during which time all the police involved are conveniently absent. In our view, the trial judge, uncharacteristically we would add, did not properly analyse these weaknesses in the Prosecution's case.

[40] Two other features of the case against the first appellant are of concern. One is the reference by the learned trial judge to the actual content of the statement. In discussing the conflict in the evidence regarding how the first appellant came to confess, and explaining why she chose to believe DC Requena's version of events, she said:

> *"I agree the evidence from the two officers is not in alignment but I believe that what Detective Requena said is how the conversation must have occurred between him and Superintendent Reyes. It seems reasonable and perfectly believable to me that in the circumstances the First Accused chose to give a caution statement deflecting culpability."*

Mr. Banner submitted that in so reasoning, the learned trial judge erred by considering the content of the statement. We agree, not necessarily as a general rule, but certainly in the circumstances of this case.

[41] It may be legitimate to assume that investigating detectives used no force, violence, threats or promises to obtain a statement which deflects culpability. Common sense alone dictates that no suspect needs any pressure or inducement to proclaim their innocence, as doing so is to act normally in one's own interest. But in this case, it is not obvious that the statement allegedly given by the first appellant was exculpatory. While the first appellant did not admit to pulling the trigger, in the statement he places himself at the scene and is an integral part of the enterprise, so it was incorrect to characterise the statement as "deflecting culpability". Indeed, having admitted the statement into evidence, the trial judge acted upon it to find him guilty of murder. It was thus misleading and unfair of her to characterise the content of the statement as she did, and then to invoke that description to buttress her conclusion that the statement was freely given.

[42] Another troubling aspect of the police investigation, which adds to the irregularities in this case, is the propriety of inviting a relative of the suspect to witness the taking of the statement – as happened when Mrs. Desol Neal was summoned by DC Requena. No argument was advanced at any stage about this relationship, at least not in this appeal, though Mr. Banner did cross-examine Mrs. Neal about the frequency of her interactions with the police. Excessive familiarity between investigators and a specific JP could raise doubts as to partiality, but since that line of questioning was not pursued, nothing turns on it now. However, the fact that Mrs. Neal is related to the first appellant by marriage should have disqualified her from acting as the witness to his statement, and the failure of the trial judge to consider it in assessing the evidence taints her analysis and conclusion.

[43] An obvious reason to ensure that witnesses and suspects are not related is to maintain distance and strict neutrality during the interview process. It is easy to see how a sympathetic family member could break down the resolve of a suspect, simply by his/her presence in the room, and so help the police obtain a confession. That may be the outcome even if it is not the intention of the witness to encourage a confession, as his or her presence alone as a 'person in authority' may operate in subtle and unpredictable ways. Maintaining the appearance of impartiality is also important, so that is another reason to ensure that the parties involved are not related. For these reasons, no person should function as the JP witnessing the statement of a suspect to whom he or she is related, including relations through marriage.

[44] What compounds the above irregularity is that the appellant alleged that Mrs. Neal invoked their familial connection and indicated that she could "help", promising that if he cooperated, he could go home that same day. The trial judge emphatically rejected this allegation, but in light of their relationship (not to mention Mrs. Neal's initial attempt to minimise or even deny it, as revealed in the record), it was incumbent on the trial judge to consider the propriety of having that particular JP in the room witnessing the statement and whether their familial connection could have played any role in what happened that day.

[45] None of this is meant to impugn Mrs. Neal's integrity. However, the potential impact of the relationship between the suspect and the witness on the voluntariness of the statement should have been considered. Had the trial judge paid attention to this relationship and provided reasons for dismissing it, it would have been difficult to interfere with her decision. But since that was not done, it is yet another factor that adds to the weaknesses of the analysis and the unsustainability of the ultimate conclusion of voluntariness.

[46] For all these reasons, we find that the trial judge did not properly exercise her discretion in admitting the statement of the first appellant into evidence. The

prosecution's case was riddled with gaps and inconsistencies on material aspects, leaving substantial doubt as to whether the statement was freely and voluntarily given. As such, we find that the Crown has failed to meet the requirements of ***section 90*** of the ***Evidence Act*****,** rendering the statement of the first appellant inadmissible.

Statement of Jarod Lamb

[47] The prosecution's case on the voir dire concerning the statement of Jarod Lamb was far slimmer and can be briefly outlined. The second appellant, who was in police custody from some undisclosed time in early June 2013, was taken to the San Ignacio Police Station on the evening of June 5th. The following day, at around 10:00 am, DC Puc escorted him into the CIB office, where he was interviewed about the murder of Steven Valencia. DC Puc cautioned him and showed him the statement given by the first appellant, at which point Lamb responded, *"Boss, I will give you my statement."* DC Puc said that at that point, he cautioned the second appellant and then summoned a Justice of the Peace, Mr. Cyril Simmons, to witness the taking of the statement.

[48] Once Mr. Simmons arrived, introductions were made and then DC Puc left the two of them alone in the office so that they could speak privately. After about two (2) – three (3) minutes, DC Puc returned to the office and started taking the statement. On completion, the formalities were duly complied with and each of them signed the form as required. DC Puc testified that he did not use any force, violence or threats against the second appellant, nor did he make any promises or offers, in order to obtain the statement. What is more, DC Puc claims to have asked the second appellant if anyone else used force or threats or made any promises or offers to him, and he said no.

[49] Under cross-examination by Mr. Selgado, who represented the second appellant in the court below, it was put to DC Puc that the statement was obtained through

duress, and more specifically that the second appellant was beaten by Senior Supt. Moody and Supt. Reyes. To these suggestions, DC Puc replied, *"I don't know."* Mr. Selgado also put to several other of the prosecution witnesses – specifically Senior Supt. Moody, Supt. Reyes and Cpl. Sierra – that the second appellant was beaten, but they all denied assaulting him or making any promises to him so that he would confess.

[50] The second appellant elected to give sworn testimony. He made a series of allegations against the police – that he was assaulted by several of the officers there, such as Supt. Moody, for example, who stamped on his back; that he was denied food and drink from the time he arrived at San Ignacio at 5:00 pm on June 5th; and that both DC Puc and Senior Supt. Moody promised him that if he signed a statement, they would withdraw all charges against him. The second appellant also testified that the JP, Mr. Simmons, was complicit in these events against him. According to him, when the JP arrived, he told him to sign the statement and he would be a free man, as there was nothing in it against him. It was at that point that he signed the statement, which had already been prepared.

[51] After this testimony, the trial judge allowed the prosecution to call Mr. Simmons in rebuttal. However, Mr. Simmons was unable to testify as to what happened on June 6, 2013, when the statement of the second appellant was purportedly given, because of the time that had elapsed since then. Nonetheless, in answer to the judge, Mr. Simmons described the general procedure adopted by him when witnessing a statement. He also denied, in general terms, the allegations of the second appellant, saying that he would never tell a suspect to sign a statement that had already been prepared because there was nothing incriminating in it. Mr. Simmons added that the police would not do that to him.

[52] At the conclusion of the voir dire, the learned trial judge rejected all the allegations of the second appellant. She did not accept that he was mistreated by the police, or that promises were made to him, or that he was encouraged to sign the statement

by the JP, Mr. Simmons. On the contrary, the trial judge believed the evidence of DC Puc and Mr. Simmons, finding that the second appellant did in fact give the caution statement to the police, and that he did so voluntarily, having seen the statement of the first appellant, which implicated him. As such, she ruled that the statement was freely and voluntarily given and admitted it into evidence.

[53] On appeal from conviction, the second appellant challenged the decision to admit the caution statement into evidence, on the ground that it was neither voluntarily given nor freely taken from him. In support, counsel for the second appellant cited a number of reasons:

a) Showing him the statement of the co-accused (Marvin Neal) without telling him that it was not admissible against him in court was oppressive, unfair, and pressured the second appellant into incriminating himself;

b) Being questioned by Cpl. Sierra when he was in the cell without being cautioned first;

c) That the same detective, namely DC Puc, conducted the interview and recorded the caution statement;

d) That the prosecution did not conclusively prove that the second appellant was provided with food and water, so that the statement was obtained in oppressive conditions, and

e) That the JP could not recall what transpired with the second appellant and his evidence was in general terms, rendering it unfair.

[54] Each of these complaints was meticulously answered by Ms. Vidal S.C. on behalf of the Crown. The first three grounds are patently unsustainable, and we fully accept

the responses of the learned Director to each of them. As to the first reason, it is not improper for the police to show a suspect the statement of someone else, including that of an alleged accomplice, which incriminates him/her. Doing so is not only good investigative practice, but it is also expressly permitted by the Judges' Rules. What is improper is for the police to "invite a reply" if they do show a suspect an incriminating statement, and only if the police cross that line would they be pressuring a suspect and possibly operating unfairly. In this case, however, no such thing happened according to DC Puc, who testified that upon being shown Neal's caution statement, the second appellant immediately said that he would give his own statement. At that point, he was cautioned for a second time by DC Puc.

[55] The second appellant complained next about being questioned by Cpl. Sierra at the cell without being cautioned, but that is also of no moment because he said nothing to incriminate himself in reply. Cpl. Sierra asked whether he knew anything about the murder, and he replied that he did not. That exchange added nothing to the Prosecution's case and was rightly ignored by the trial judge in her deliberations. Likewise, that DC Puc carried out both roles of interviewing the appellant and then subsequently recording his statement was not a procedural or other irregularity. The trial judge viewed this with some concern, yet ultimately it did not affect her view of the statement's voluntariness, and on that specific point, she cannot be faulted. Both functions are integrally related, and where a suspect indicates during an interview that he or she wishes to give a statement, proceeding to record it is simply a continuation of that exchange. The safeguard against any impropriety during the entire process is having a witness present, so in determining the issue of voluntariness, it is the latter's evidence which is consequential. Accordingly, the first three (3) reasons advanced by the second appellant can be easily dismissed.

[56] This brings us to the actual interview and the circumstances leading up to the second appellant's confession. As recounted above, the appellant made several allegations against the police at San Ignacio Police Station, namely that he was beaten by some of the officers there and that he was also promised that he would

be released if he confessed. He added that the Justice of the Peace, Mr. Simmons, was complicit in these irregularities by urging him to sign the statement because it was not incriminating. This inducement, the appellant claimed, was part of the circumstances leading up to and causing him to sign the statement that was presented to him. The trial judge permitted Mr. Simmons to testify in rebuttal, but he was of marginal help as he could not remember what happened on the date in question. All he could recount was the general procedure he would adopt when witnessing statements, but when asked about the statement of the second appellant, he was unable to answer directly. The relevant portion of his testimony reveals clearly the extent of the JP's difficulty:

> *"Q: Do you recall being present on the 6th of June, 2013?*
> *A: I cannot answer by date or name. I do not remember nothing (sic) concerning the date or any caution name. It was five years ago. I do not remember that. I am here to say how I do my service when the witness talked or once they want to give a statement.*
> *Q: You do not recall the name Jarod Lamb or Jarod Arthurs?*
> *A: Well, I hear the name because they are in Court but I don't remember anything to do with them concerning taking their statement or any statement from them."*

[57] The trial judge tried to redeem this witness, returning to the procedure normally adopted by him and asking whether he would ever do anything such as what the second appellant alleged. Mr. Simmons was unhesitating in his answer, affirming that he would never prevail upon a suspect to sign a prepared statement, even adding that the police would never engage him in such conduct. Satisfied with this, the learned trial judge held his testimony to be capable of rebutting the appellant's allegations and concluded that the statement was freely and voluntarily given.

[58] Regrettably, we do not take such a favourable view of the JP's testimony, which was of a purely general nature. In the first place, it is useful to bear the context in mind,

namely that this case concerns an indictment for murder and that the issue faced by the trial judge was the voluntariness of a confession that constituted the sole evidence against the appellant. This means not only that the Prosecution was required to meet the criminal standard of proof beyond a reasonable doubt, but more importantly, that since obtaining a confession would have been crucial for the police, the evidence surrounding the taking of the statement should leave no unexplained gaps.

[59] Mindful of that approach, the JP's testimony was not of sufficient precision or specificity to displace the very pointed allegation raised by the second appellant. Also concerning is the sheer implausibility of what he recounted. Testifying about the general procedure adopted by him when witnessing "many statements" over a nineteen-year career, the JP stated that he would "*always*" explain to the subject that they were not obliged to give a statement, to which they would "*always*" confess. As he remembered, he would say, *"You can back out if you want, if you want to change your mind. They always insist that they will give the statement. Then when the officer comes in, the statement would be recorded."*[2] Frankly, it seems quite far-fetched that over the course of almost two (2) decades, not a single suspect would change their mind and elect to remain silent, even after hearing from a neutral party that they are absolutely free to do so. This is not to impugn the JP's integrity, but instead to simply raise the question as to the reliability of his memory, particularly since he is now in his eighties (80s).

[60] Compounding the improbability of this narrative is the testimony of DC Puc under cross-examination. When questioned as to why he chose Mr. Simmons to witness the appellant's statement, even though he was of an advanced age, DC Puc replied, *"He was the one available. He cooperate (sic) with the police. He doesn't have to be young or old."*[3] In the face of an explicit allegation that the JP urged the second appellant to sign the confession and he would be released, this statement by DC

[2] Record of Appeal at pages 252-3.
[3] Ibid at page 88.

Puc that this JP *cooperates* with the police potentially undermined his neutrality and ought to have received some consideration by the trial judge when assessing his credibility. However, it would seem that this answer passed unnoticed, despite the gaps left by the witness's incomplete recollection.

[61] In all the circumstances, therefore, the evidence of the JP falls short of the standard required to rebut the second appellant's allegations. In a case of this nature, where the stakes were so high and a conviction was wholly dependent on a disputed confession, the trial judge ought to have analysed the evidence more rigorously. Ultimately, her willingness to act on the Prosecution's case cannot be justified in light of its questionable quality.

[62] The second appellant's remaining reason for objecting to the admissibility of the statement was the allegedly oppressive conditions he experienced at the police station, which he submitted was not conclusively rebutted by the Prosecution. In a nutshell, his claim was that he had been brought to the San Ignacio Police Station from about 5:00 pm the day before and was not given anything to eat or drink until he signed the statement on the following day. Denying him nourishment for an extended period, he claimed, constituted part of the oppressive conditions which resulted in his acquiescence.

[63] The learned trial judge did not expressly rule on this objection, because in her view the second appellant did not allege that he signed the statement *because* of any oppressive conduct. In her words:

> *"However, the testimony from the Accused is not of the lack of food and water was why he signed the statement but because of his (sic) promise he would be released and that the statement is not his in any event."*[4]

[4] Ibid at page 350 of 539.

The learned judge then went on to say that she did not find the second appellant credible and that she did not believe that any such promise (to be released) was made to him. Concluding, she expressed her "firm view" that the second appellant did give the statement and signed it in accordance with the ***Evidence Act*** **and** thereupon admitted it into evidence as free and voluntary.

[64] Failing to rule on the appellant's objection was a material error on the part of the learned judge. That was a puzzling stance to take. At the outset of the voir dire, when the prosecutor requested the grounds for objecting to the statements, Mr. Selgado, on behalf of the second appellant, included the allegation that he was not given any food or water from the time that he was arrested. This was repeated by the second appellant during his sworn testimony, while the relevant witnesses for the Prosecution were all asked about it. In light of this evidence and the specific objection raised, the trial judge was duty-bound to consider what, if any, effect that situation could have had on the appellant's resolve and whether, in fact, it contributed to the pressure which led to his confession. It did not matter that the appellant may not have said that this caused him to confess, if it is true that he did not use those identical words. Having given sworn evidence about allegedly oppressive conditions in the voir dire and even raising it as an objection at the outset, the trial judge was obliged to consider it.

[65] Moreover, the evidence led by the Prosecution on this issue was scanty. DC Puc, who interacted the most with the second appellant, gave questionable testimony on this aspect. In evidence in chief, he did not testify about asking the appellant whether he was fed prior to taking the statement. When asked about it under cross-examination, he claimed to have done so, but he also admitted that he made no record of doing so in his own statement. For someone who recited each caution that he gave and testified meticulously about the procedure he followed, one is forced to question why, if he had indeed inquired about the appellant's welfare, he would have omitted it from his statement. His failure to document such an important part of what

he did raises doubt whether he had in fact done so or whether his perfunctory answer under cross-examination was a last-ditch effort to salvage his testimony.

[66] No other prosecution witness filled this gap. The JP could not remember the actual case, but testified that asking about being fed was not something he would normally do. The other prosecution witnesses – Supt. Moody, Supt. Reyes or Cpl. Sierra – did not have any dealings with the second appellant and so could not speak to the conditions of his detention. At the end of the day, therefore, the Prosecution led no affirmative evidence to disprove the second appellant's allegation of oppressive conditions.

[67] Relatedly, a matter of considerable concern is how the defence was frustrated in leading its case on this aspect, and generally when trying to give evidence of the threats allegedly made. At several points during the counsel's examination of the second appellant, as he attempted to testify about receiving threats, the Prosecutor objected on the basis that it was hearsay evidence, following which the trial judge ruled the evidence inadmissible. Parts of the relevant exchanges at the voir dire are extracted and reproduced below, as follows:

> *Q: When you say "he", who are you referring to?*
> *A: Corporal Sierra and also Mr. Lenard Puc.*
> *Q: When you say "he", you mean one person?*
> *A: Mr. Puc told me that I will not get no water or no food unless I give a caution statement. Mr. Sierra had told me the same thing.*
> *MR. RAMIREZ:* ***What exception to the hearsay rule is being utilized here****?*
> *…*
> *MR. RAMIREZ: My Lady, the Defence is subject to the same rules as the Prosecution.*
> *THE COURT:* ***I agree completely*** *but that's why, Mr. Selgado, this witness is different from a formal witness who might be able to just give the narration. You need to guide him a bit.*

MR. SELGADO: My Lady, as per the objection that was raised, in the case of (inaudible) it is held that hearsay evidence may be admissible to show the fact that the statement was made not necessarily that the truth of the statement had been ascertained. For instance, My Lady - -

THE COURT: ***It doesn't matter that it was made****. This is not an instance where it matters. I am not so much concern with that. I am just asking you to guide your witness a bit so that just as I just asked you to so in this instance he asked for food and water. Did you get any food and water? That's really the point.*[5]*"*

[68] Similar obstructions occurred repeatedly as the second appellant testified. As he attempted to describe the threats and promises made by the police, he was stopped time and again, following objections by the Prosecutor, on the ground that it was inadmissible hearsay. This was wholly wrong. As Mr. Selgado correctly submitted, evidence may be given of things said out of court if they are tendered not for the truth of content but for the fact of being said. That was precisely the point here. The evidence which the appellant sought to give (that he was *told* he would not be fed until he gave a statement and that he would be released if he did) constituted the substance of the threats and promises made to him and which were the subject of the voir dire! These were the actual allegations and the court was obliged to receive them fully. Contrary to the judge's ruling, it mattered very much whether such threats were made – that was the entire point of the exercise. If they were, that renders any confession obtained inadmissible – and it was her function in the voir dire to listen to the objection, the testimony in support, and then determine whether she believed the allegation or not. No question of hearsay arises here, and denying and frustrating the appellant from setting out his case on this point was a material irregularity.

[5] Record of Appeal, pages 221-222 of 539 (emphases added).

[69] The combination of these multiple missteps renders the eventual finding of voluntariness unsupportable. Not only was the second appellant repeatedly stymied as he attempted to testify about the threats and promises allegedly made, but the trial judge also adopted at the outset the bewildering position that it didn't matter that they were made. In line with this stance, she then declined to consider this objection on the misguided basis that the appellant did not explicitly say that the oppressive conditions caused him to confess. Ultimately, the Prosecution failed to rebut the allegations, as they presented no affirmative evidence that the second appellant was provided with food and water from the outset of his detention until he signed the statement. This leaves us with no alternative but to uphold Mrs. Bradley's submission that the Prosecution failed to rebut the appellant's claim as to the oppressive conditions he experienced, which amounts to yet another reason why his caution statement ought not to have been admitted into evidence. In light of these doubts regarding whether the second appellant freely and voluntarily signed the statement, the Crown failed to meet the requirements of ***section 90*** of the ***Evidence Act,*** rendering the statement of the second appellant inadmissible.

Conclusion

[70] Without these confessions, there remains no evidence linking either appellant to the murder of Steven Valencia and so there is no need to consider the remaining grounds of appeal. We note in passing that there is substantial merit to the issue of mens rea as raised by each appellant, for since both of them denied being the principal, the question of intent looms large and deserves more rigorous analysis. At least in one statement, there was the suggestion that the principal may have been acting on a vendetta unique to him, since he reportedly said at the time of shooting the victim: *"remember you sent me to jail".* While one accused person cannot testify against another, what one accused says should be relevant in relation to his or her own self. In other words, it may have shed light not on the co-accused, but on the one giving the evidence, insofar as it suggests that their respective intentions did

not coincide. The failure even to consider that possibility thus strengthens the appellants' submissions on the issue of mens rea.

[71] In any event, for the reasons discussed above, we conclude that the learned trial judge did not properly exercise her discretion in admitting the caution statements. The circumstances under which both statements were made are beset by inconsistencies and gaps in the evidence, which were not satisfactorily resolved or explained by the Prosecution. Accordingly, we find that the prosecution did not establish beyond a reasonable doubt that the statements were freely and voluntarily made, rendering them inadmissible. Without those statements, there is no remaining evidence to connect either appellant to the murder of Steven Valencia, so their convictions cannot be sustained.

Disposition

[72] In the premises, the appeals are allowed and the appellants' convictions for murder and their sentences are quashed.

Dr. Arif Bulkan
Justice of Appeal

Minnet Hafiz Bertram
President

Peter I Foster KC
Justice of Appeal