

IN THE COURT OF APPEAL OF BELIZE A.D. 2026

CRIMINAL APPEAL NO. 6 of 2025

BETWEEN:

DAVID VALENCIA

Appellant

and

THE KING

Respondent

Before:

The Hon. Mme. Louise Esther Blenman

Chief Justice

The Hon. Mme. Sandra Minott-Phillips, KC

Justice of Appeal

The Hon. Mr. Peter I Foster, KC

Justice of Appeal

Appearances:

Mrs. Peta Gay Bradley and Mr. Javier Williams, for the Appellant

Ms. Sheiniza Smith, Deputy Director of Public Prosecutions, for the Respondent

2026: March 5;
May 29.

JUDGMENT

Introduction

- [1] **BLENMAN, C.J.:** This is the judgment of the Court on which all members are agreed. The appeal was brought by Mr. David Valencia (“Mr. Valencia”) against his conviction and sentence for the offence of murder, contrary to **section 117 read together with section 106(1) of the Criminal Code**.¹ Mr. Valencia was convicted of the murder of Mr. Robert Hurley (“the deceased”) by the Honourable Mme. Justice Creary-Dixon (“the learned trial judge”), sitting without a jury in accordance with section **65A of the Indictable Procedure**

¹ Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011.

Act.² Mr. Valencia was subsequently sentenced to life imprisonment with eligibility for parole after twenty-five years. The Crown resists his appeal.

Background

- [2] The background to the matter, derived from the prosecution's allegations, is set out succinctly by the learned trial judge in her judgment, as follows:

“The Prosecution alleges that at about 12 midnight on 9th of June 2020, the accused re-entered the home of the deceased and his spouse and fatally stabbed the deceased multiple times. He also inflicted a single stab wound to the back of the deceased's spouse, with whom he had previously had a romantic relationship. According to the evidence led by the Prosecution, the motive for doing so was unrequited love of the spouse and/or monies owed to the accused by the deceased, for work done.”³

- [3] In the court below, the prosecution relied *inter alia* on a caution statement taken from Mr. Valencia on 10th June 2020, in which he made admissions concerning his presence at the scene and his involvement in the incident. Mr. Valencia challenged the voluntariness of that caution statement at the trial. He alleged that it was obtained through a combination of threats, coercion, inducements, and that the contents were either fabricated or improperly recorded by the police in circumstances where he did not understand or knowingly adopt them.

The Voir Dire

- [4] On Mr. Valencia's case in the court below, the learned trial judge was enjoined to consider the admissibility of Mr. Valencia's caution statement. In the proper exercise of her discretion, the learned trial judge conducted a *voir dire*.

² Cap. 96 of the Substantive Laws of Belize (Revised Edition) 2020.

³ Paragraph 3, Page 2 of the Judgment in the Court below.

Prosecution's Evidence in the *Voir Dire*

- [5] The prosecution called three witnesses in the *voir dire*, namely, Sergeant Alejandro Rodriguez ("SGT Rodriguez"), the investigating officer, Sergeant Newton Martinez ("SGT Martinez"), who took the caution statement from Mr. Valencia, and Ms. Desol Neal ("Ms. Neal"), the Justice of the Peace who witnessed the taking of the statement.
- [6] SGT Rodriguez testified that he was the investigating officer in relation to the stabbing incident which resulted in the death of the deceased. Acting on information received, he located Mr. Valencia and detained him on 10th June 2020. SGT Rodriguez stated that he then transported Mr. Valencia to the San Ignacio Police Station ("the station") where he was formally processed and a prisoner-in-custody acknowledgement form was administered, at which time his rights were explained to him.
- [7] SGT Rodriguez stated that, following Mr. Valencia's detention, he conducted a verbal interview with him at the station. As part of his ongoing investigation, he subsequently requested the assistance of SGT Martinez to take a caution statement from Mr. Valencia. He arranged for a Justice of the Peace to be present for that purpose. SGT Rodriguez testified that the statement was thereafter taken by SGT Martinez in the usual way and, upon completion, the statement was handed over to him and placed in the case file forming part of the investigation.
- [8] Under cross-examination, SGT Rodriguez accepted that he could not account for every interaction between Mr. Valencia and other officers during the entire period of his custody and that he had no knowledge of any alleged threats made by other officers. SGT Rodriguez maintained his position that he did not exert any improper influence on Mr. Valencia and that the decision to give a statement was made voluntarily.
- [9] SGT Martinez testified that on 10th June 2020 at about 12:10 p.m., while on duty at the San Ignacio Police Station, he was requested by SGT Rodriguez to take a caution statement from Mr. Valencia, who was then in custody in connection with a murder investigation. SGT

Martinez indicated that a Justice of the Peace, Ms. Neal, was present at the station for the purpose of witnessing the taking of the statement. SGT Martinez said that he escorted Mr. Valencia to the conference room, introduced him to Ms. Neal, and informed him that he intended to take a statement under caution. SGT Martinez said he then allowed Mr. Valencia and Ms. Neal to confer privately for a short period before returning to proceed with the interview.

[10] SGT Martinez stated that upon re-entering the room, Mr. Valencia was informed of the reason for his detention and confirmed that he understood. SGT Martinez said he then cautioned Mr. Valencia and asked whether he wished to say anything to the police. According to SGT Martinez, Mr. Valencia indicated that he did and agreed that his statement should be reduced into writing. SGT Martinez said that Mr. Valencia then provided an account, which he took in writing. Thereafter, in order to clarify certain matters, SGT Martinez said he asked Mr. Valencia a series of questions to which Mr. Valencia responded, and those answers were also taken down in writing.

[11] SGT Martinez further testified that, upon completion of the statement, he read over both the narrative account and the questions and answers to Mr. Valencia, who confirmed that the contents were accurate and that he was satisfied with them. SGT Martinez stated that Mr. Valencia was given the opportunity to make any additions, alterations or deletions but did not do so. According to SGT Martinez, the statement was then signed by Mr. Valencia and witnessed by Ms. Neal, who stamped each page. The process started at approximately 12:21 p.m. and concluded at approximately 1:35 p.m.

[12] In cross-examination, SGT Martinez accepted that the interview was not electronically recorded and acknowledged that recording would ordinarily be best practice. SGT Martinez also accepted that he could not speak to what may have transpired between Mr. Valencia and other officers prior to Mr. Valencia being brought to him for the taking of the statement. However, SGT Martinez rejected the suggestion that Mr. Valencia had been improperly treated in his presence and denied that he merely directed Mr. Valencia where to sign or that the contents of the statement had not been properly read over. SGT Martinez' evidence

remained that the statement was given by the Mr. Valencia of his own free will and accurately reduced to writing.

- [13] Ms. Neal testified that on 10th June 2020 at about 12:00 p.m. she was at her home when she was approached by SGT Rodriguez and asked to accompany him to the San Ignacio Police Station to witness the taking of a caution statement. She stated that upon arrival at the station, she was informed that SGT Martinez would be taking a statement from a male person detained in connection with a murder investigation. Ms. Neal said that she was then taken into the conference room where she saw Mr. Valencia seated. Ms. Neal said that SGT Martinez introduced them to each other and explained her role as the Justice of the Peace present to ensure that the process was conducted properly.
- [14] Ms. Neal also testified that after the introductions, SGT Martinez left the room, allowing her to speak privately with Mr. Valencia. According to Ms. Neal, during that conversation, she enquired whether he was comfortable, whether he required anything, and specifically whether he had been threatened, promised anything, or otherwise induced to give a statement. According to her evidence, Mr. Valencia indicated that he was not threatened or promised anything and that he agreed to give the statement. Ms. Neal said that she then called SGT Martinez back into the room so that the process could proceed.
- [15] Ms. Neal testified that, in her presence, Mr. Valencia was cautioned and invited to give his account. She said she observed SGT Martinez take Mr. Valencia's statement as he spoke and later read the contents back to him. She said that Mr. Valencia indicated that he agreed with what had been written and made no corrections. She further testified that Mr. Valencia signed the statement, and she also signed and stamped it as witness. According to Ms. Neal, Mr. Valencia was calm, cooperative, and appeared to act voluntarily throughout the process.
- [16] Ms. Neal also recounted that, after the written statement had been completed, an officer entered with a camera and the statement was again read over in her presence, with Mr.

Valencia confirming its accuracy and again indicating his agreement. Ms. Neal said that she knew Mr. Valencia and stated that “his cousin is [her] husband’s cousin”.⁴

- [17] In cross-examination, Ms. Neal accepted that she was unable to speak to what may have transpired between Mr. Valencia and the police prior to her arrival at the station, and that she had no knowledge of any earlier interactions. When asked if the statement ought to have been recorded from the start, Ms. Neal stated that “...they don’t have and [sic] camera in the room...San Ignacio Police Station doesn’t have any camera to take the statement like to video the statement.”⁵ Ms. Neal rejected the suggestion that she would be unable to detect coercion, stating that she would not have proceeded with the process had she formed the view that Mr. Valencia was acting under threat or pressure.

Defence’s evidence in the *Voir Dire*

- [18] The Defence called no witnesses in the *voir dire*. In his defence, Mr. Valencia gave an unsworn statement from the dock, addressing the circumstances in which the caution statement was obtained. It is prudent for me to recite it in its entirety. Mr. Valencia testified that:

“I just want to say that when the officer, Alejandro Rodriguez arrested me he told me that he will arrest me for investigation of a murder. I told him that I don’t have no knowledge of what he is talking about. Then he take me to the cell and locked me down to the back. And after a while a officer came by he had a revolver gun on his ankle here and one on his side here. He had a short machine gun in his hand and he told, ih seh you luckily I neva meet you last night caz I was going to shot you, and ih seh but wait until tonight I will make you talk. When they was taking me to the Benque Viejo road when the vehicle stop he told me to run, run so I could shoot you. I tell Mr. Alejandro I don’t want to give no statement caz I have no knowledge about the crime, but he insisted. He told me even if I give a statement and they don’t find no evidence they will release me, and they take my clothes and my tennis. I said I still neva want to give the statement, but no one doesn’t want to believe me. My

⁴ Record of Proceedings, page 52 lines 20 – 21.

⁵ Record of Proceedings, page 56 lines 8 – 9.

family was right outside the police station, I ask to see them, they deny me to see them. I ask for me to give them a call they refuse to give me a call. All the officers refuse to give me a call they just leave my sisters right outside the station standing, so I accepted to give him the statement but when Ms. Desol Neal the JP reach, she told me like this, she told it's best I do what the officers say or else they would use my kid against me. Then the officer Newton Martinez he just write down the statement and seh that I...he just point me where to sign. I never mention to him nothing about killing anybody, they just write it down and he point me where to sign, and I don't know to read and write so I never know what they are doing to me and Alejandro Rodriguez told me that this will be a recorded statement, so everything will be recorded with a video camera for proof. That's the reason why I request for the video, the recording of this so we can see what take place while recording the statement. That's all I have to say."

Judgment in the Court below on the *Voir Dire*

- [19] The learned trial judge directed herself that the sole issue in the *voir dire* was whether Mr. Valencia's caution statement had been made freely and voluntarily, and therefore whether it was admissible in the main trial. The trial judge acknowledged that the prosecution bore the burden of proving beyond reasonable doubt that the statement had not been obtained by oppression, threat, promise, or improper influence.
- [20] In assessing that issue, the learned trial judge evaluated the competing accounts given by the prosecution witnesses and Mr. Valencia. The trial judge accepted the evidence of SGT Rodriguez, SGT Martinez, and Ms. Neal, finding their testimony to be credible, consistent, and reliable, particularly as it related to the procedure by which the statement was taken and Mr. Valencia's apparent willingness to give it.
- [21] Conversely, the learned trial judge rejected Mr. Valencia's allegations of threats, inducements, and coercion. In particular, she did not accept that Mr. Valencia had been forced to sign or that the contents of the statement were fabricated by the police.

[22] The learned trial judge also gave cognisance to the fact that there had been non-compliance with the **Commissioner of Police Rules Guidelines for the Interviewing and Treatment of Persons in Police Detention** (“Commissioner’s Rules”),⁶ most notably the failure to electronically record the interview. The trial judge stated:

“The Court must emphasize that it is undesirable that there was no recording submitted of the proceedings – whether before or after the statement was taken; this fact offends section 7 of the Guidelines for Treatment of Persons in Detention which mandates that all police station interviews must be recorded...”⁷

The Court must register its displeasure at the fact that:

(a) The recording took place after the statement was taken; a recording before the statement was completed would have added evidential value and bolstered the Crown’s case that the statement was given freely;

(b) The recording was never submitted to the Court, and no explanation was given for this. Had it not been for the credibility of the Crown witnesses’ evidence in this voir dire, the accused might have been disadvantaged by the fact that there was no recording submitted.”⁸

[23] Having so held, the learned trial judge held that:

“On the strength of the prosecuting witnesses’ evidence, the failure to record would not amount to a substantial miscarriage of justice, as the JP and the police officers all concurred and gave cogent and reliable evidence that the accused freely and voluntarily narrated the events of the caution statement; it was read over to him, and he stated that he understood and agreed with its contents.”⁹

[24] Accordingly, the trial judge found the prosecution had discharged its burden of proving that the statement was freely and voluntarily made, and that its admission would not render the

⁶ Issued pursuant to section 7 of the Police Act (Chapter 138).

⁷ Record of Proceedings, page 191 lines 22 – 25.

⁸ Record of Proceedings, page 192 lines 11 – 21.

⁹ Record of Proceedings, page 192 lines 23 – 25 and page 193 lines 5 and 6.

proceedings unfair. The trial judge therefore ruled the caution statement admissible in evidence.

The Main Trial

Prosecution's Case in the Main Trial

- [25] The trial continued after the *voir dire* and the learned trial judge admitted the caution statement into evidence. The caution statement (transcribed) states:

"Name: David Anthony Valencia. Age: 49 years. DOB: 1 January 1976. Race: Creole. Recorded at (place): San Ignacio Police Station. Date 10th June 2020 (at time) 12:21pm. Name, Rank and Number of Recording Officer: Newton Martinez, Sgt 928.

STATES: I, David Anthony Valencia, at the time of my arrest, I was informed by Newton Martinez Sgt 928, of the reason of my arrest, in that, I was arrested for the crime of "Murder". I was also informed that I can communicate without delay and in private with a family member or attorney of my choice.

Accused: David Valencia (signed)

Witness: Desol Neal J.P. (signed & stamped)

I, David Anthony Valencia was duly cautioned by Sgt N Matinez at the San Ignacio Police Station on Wednesday, 10th June 2020, as follows: "You do not have to say anything unless you wish to do so but what you do say, will be taken down in writing and given in evidence."

Accused: David Valencia (signed)

Witness: Desol Neal. J.P. (signed & stamped)

I, David Anthony Valencia, wish to make a statement. I want someone to write down what I say. I understand that I need not say anything unless I wish to do so and what I say may be taken down in writing and given in evidence.

Accused: David Valencia (signed)

Witness Desol Neal, J.P. (signed & stamped).

All right then. I was in Unitedville right? When Sheldeen Evans told me that she has a job for me to go and break down a house. I came with her to break down the house. It took me two days to break down the house and pack it up on the road side. Then they asked me to chop the yard, then the man paid me two hundred dollars, then she asked me to borrow one hundred dollars, so I lent it to her, then she said when she got her money, she would pay me back. When she got her money, she did not pay me. Instead, she

come to Cayo and drank out the money, then she and her man started to argue and broke up their phones. There were two phones that she broke, hers and the one belonging to her man. The next day I continued with my work, chopping the yard, when she came to me and asked me to lend her twenty dollars. I told her that I could not do that because she did not give me back the money that I lent her and when I go back home, I will not have any money to take home. She then got angry and started cursing at me and at that time I had my daughter there with me by the house that she was living. My daughter then told me that Patty had broken her tablet. My daughter then came to me crying and told me that she wanted to go home. I then told her to pay me for the last day that I had worked for and she told me that she did not have any money for me because she had already paid me. She and her man then went inside their house. I then began calling out for them but they did not answer. I then went upstairs to ask them once more for my money. When I reached there, both of them got up and told me that they were going to kill me. I then got frightened, because they said that the man was an Ex-Military Man, and I did not know what was going on, and this girl, I know is dangerous, because she had stabbed me three times already, and I had to take surgery. There were two of them and she told me that her man is an Ex-Military man and he had beaten up two police. I got frightened. Both of them attacked me and she grabbed me first and the man was coming towards me and I saw a shiney knife and I took it and fired some jucks to try and defend myself, and I quickly grabbed my baby and left the house. I decided to leave and forget about the money. When I left the danger zone I threw the knife to the road side and continued. Afterwards, the police came and grabbed me. I did not know that the man was dead. I did not mean to kill the man, it just happened accidentally. I was just trying to protect myself and my daughter. I am that they be lenient with me.

Q: Who is Sheldeen Evans?

A: She is the girl that lives with the man.

Q: Which man does Sheldeen lives with?

A: His name is Robert, but they call him Bob.

Q: When did you go to break down the house?

A: Saturday.

Q: Which Saturday?

A: This past Saturday.

Q: So the job took you two days?

A: Yes, but they gave me two more days to chop.

Q: When was the first day you started to chop the yard?

A: Monday.

Q: When did you finish chopping the yard?

A: Yesterday.

Q: When was yesterday?

A: Tuesday, 9th June 2020.

Q: Where is the yard that you were chopping?

A: Benque Road. It is a big land.

Q: What is your daughter's name?

A: Stacey Myers.

Q: You said you fired some jucks with the knife, what do you mean?

A: I fired some stabs to frighten them.

Q: Who is Patty?

A: Sheldeen Evans. Patty is her nickname.

Q: You said that they told me that "they were going to kill me". Who told you that?

A: Robert. And Sheldeen told me that she was going to kill me earlier too.

Q: You said you decided to leave and forget about the money, leave from where?

A: From their house, to go back to Unitedville.

Q: What do you mean by "Danger Zone"?

A: I mean the yard.

Q: Which yard?

A: Robert's land, where I was working.

Accused: David Valencia (signed)

Witness: Desol Neal, J.P. (signed and stamped)

I, David Anthony Valencia have asked Sgt Newton Martinez to read over the the above statement. I have been given the opportunity to correct, add or alter anything I wish. The statement is true. I have made it on my own free will.

Accused: David Valencia (signed)
Witness: Desol Neal J.P. (signed and stamped)

I, Desol Neal, Senior Justice of the Peace witnessed the recording of a statement made under caution by David Anthony Valencia. He made the statement on his own free will.

Witness: Desol Neal, JP (signed and stamped)
Justice of the Peace

I, Newton Martinez, Sgt 928 recorded the above statement from David Anthony Valencia on Wednesday, 10th June 2020. I, read the statement to him and he answered the questions put to him. He made the statement on his own free will, in the presence of Mrs Desol Neal Senior Justice of the Peace
N. Martinez (signed) Sgt 928.”

- [26] The prosecution called several witnesses to prove the case, including, SGT Martinez, SGT Rodriguez, Dr. Loyden Ken (“Dr. Ken”) and Ms. Sheldeen Victoria Evans (“Ms. Evans”)
- [27] According to the police, while processing the scene of the crime the following morning they found a black in colour handled knife within the bushes that were on either side of the highway at the entrance to the house where the deceased was found.
- [28] Greater detail of the events that transpired on 9th June 2020 (extrapolated from the written judgment of the learned trial judge) were provided by Ms. Evans, who was the spouse of the deceased and the prosecution’s main witness. She testified that:

“She had lived with the accused prior, for 6 months. On Tuesday 9th June 2020 at about 8:30 pm she was asleep at her home with the deceased and her two children. The accused had left the house earlier. The witness says she does not know when the accused returned to the house, but whilst sleeping, she was awakened by what she thought was a mosquito biting her and so she got up; when she got up, she saw David Valencia standing over her bed and bending over her bedside without shirt in a blue jeans pants; he was using his finger to beckon her to him; she told him “no” by shaking her head from left to right . She then saw him bend over and he pinched her toes. After that, he took out a knife from his waist. She identified the knife as her kitchen knife, which she no longer used because it had gone rusty. She had cleaned it up and

put it away. At this point, she started knocking the deceased on his arm to wake him so he could see what was going on, but it was difficult to wake him because he was drunk. He eventually jumped up, looked round and uttered an expletive. She then rushed into the accused and pushed him in his chest and walked towards the deceased.

Whilst she was walking towards the deceased, the accused used the knife that he had to slice the deceased on his left side, above his waist; he then stabbed her in her back on her right shoulder. The deceased told her to run and get help, which she did. She ran from the house, naked, into the bushes, whilst the accused chased her. She asked one of her neighbours for help and then ran back to the house.

She tried unsuccessfully to resuscitate the deceased. He had a wound to his chest. The police came a few moments later and took the deceased and the witness to the hospital.”

[29] In the cross examination of Ms. Evans, it was revealed that Mr. Valencia had been at the farm at 3:00 p.m. that day. Ms. Evans said that she was not drinking but she was smoking weed in her bedroom that night. She stated that Mr. Valencia and the deceased had been drinking. According to Ms. Evans, Mr. Valencia came back after leaving at 3:00 p.m. and asked the deceased for his money. Ms. Evans admitted that in her statement to the police she never told them that the deceased had told her to run and get help. Ms. Evans admitted to being ‘high’, that night from the marijuana but said because she had fallen asleep, ‘the high’ was already gone when she woke up. Ms. Evan said that the children slept in separate bedrooms from her and the deceased.

[30] Dr. Ken, gave evidence that the deceased sustained multiple stab wounds, including injuries to the left chest, left shoulder, chin and left portion of the back. The cause of death was determined to be acute pulmonary oedema due to multiple organ failure as a consequence of multiple stab wounds.

[31] SGT Rodriguez gave evidence similar to that in the *voir dire*. He testified that he located Mr. Valencia on a passenger bus on the morning of 10th June 2020 travelling along the Benque Viejo Road, where Mr. Valencia was accompanied by a minor. SGT Rodriguez stated that

he identified himself to Mr. Valencia, informed him that he was being detained in connection with a murder investigation, and took him into custody.

Defence's Case in the Main Trial

[32] Mr. Valencia gave sworn evidence at his trial. He testified, largely, that he went to work for Ms. Evans and her spouse on 9th June 2020 having been tasked with taking down a wooden structure. He said he took it down and was to pack up the boards. However, he left that day and walked to the highway to catch the bus as it was getting late. According to Mr. Valencia, he did not return to Ms. Evans and her spouse until the next day when a man on a motorcycle told him what was going on. Mr. Valencia said he saw no one at the house, so he headed back home on the bus which was stopped by police officers who took him and detained him at the police station pending a murder investigation. Mr. Valencia said that his 9-year-old daughter was with him at the time. He maintained that he was on his farm on 9th June 2020 at 6:00 p.m. Under cross examination, Mr. Valencia denied getting annoyed because Ms. Evans owed him money. Mr. Valencia denied asking Ms. Evans for sex on 9th June 2020 and he denied ever having a relationship with her.

[33] Mr. Valencia called one witness, namely, his sister, Ms. Marcelina Valencia ("Ms. Valencia"). Ms. Valencia testified that Mr. Valencia went by her house to pick up his daughter after 6:00 p.m. on 9th June 2020, and that he had supper there, as he does every evening. Ms. Valencia said that Mr. Valencia left her house at about 9:00 p.m. that night. Ms. Valencia said that Mr. Valencia came by the house at about 4:00 a.m. on 10th of June 2020, to pick up his daughter, so he could take her to spend the day with him at work that day.

Judgment in the Court below in the Main Trial

[34] The learned trial judge, having accepted the evidence of the principal eyewitness as credible, relied on Mr. Valencia's caution statement to place him at the scene, rejected his alibi and defences as untrue, and concluded that the prosecution had proved beyond reasonable

doubt that he intentionally caused the death of the deceased without justification or provocation.

- [35] Mr. Valencia, having been convicted, appealed against his conviction, renewing his challenge to the voluntariness of the statement, while raising additional grounds.

Grounds of Appeal

- [36] In this Court, Mr. Valencia filed three grounds of appeal, namely:

- (1) The Learned Trial Judge erred in admitting the alleged caution statement of the Appellant;
- (2) The conviction of the Appellant is unsafe;
- (3) The Learned Trial Judge failed to consider the *mustaq* [sic] direction in the treatment of the caution statement.

- [37] Counsel for Mr. Valencia explained these grounds in his written submissions and in oral argument before this Court. Accordingly, the grounds of appeal, as pursued at the hearing, may be crystallised as:

- (1) The learned trial judge erred in admitting the alleged caution statement of the appellant.
- (2) Alternatively (should we disagree with the appellant's submissions that the learned trial judge erred in admitting the caution statement), the appellant submits that she erred in failing to consider self-defence and provocation being elements that arose on the caution statement.
- (3) The conviction of the appellant is unsafe.

The third ground of appeal, that the learned trial judge failed to consider the **Mushtaq**¹⁰ direction in the treatment of the caution statement, was abandoned at the hearing before us and not pursued.

¹⁰ 18 BHRC 474.

Appellant's Submissions

- [38] Learned counsel, Mr. Javier Williams ("Mr. Williams") submitted that the learned trial judge erred in law in admitting the caution statement following the *voir dire*, notwithstanding admitted breaches of the **Commissioner's Rules**, most significantly the failure to electronically record the interview and the failure to produce any recording of the re-reading of the statement.
- [39] Mr. Williams contended that the learned trial judge adopted the wrong legal approach by treating the breaches as non-fatal and by relying primarily on the credibility and consistency of the prosecution witnesses to justify admission. Mr. Williams argued that compliance with the **Commissioner's Rules** is not a mere technical matter, but constitutes an important safeguard, and that the absence of recording deprived the court of objective evidence of what occurred during the interview. Mr. Williams relied on the High Court decision by Pilgrim J in **The King v Juan Choc**.¹¹
- [40] Mr. Williams further submitted that the learned trial judge failed to give proper effect to the fairness limb of the admissibility test as articulated in **Peart v R**.¹² Mr. Williams argued that while the learned trial judge purported to apply the fairness test, she in substance confined her analysis to voluntariness and credibility, rather than considering whether, in light of the procedural breaches and surrounding circumstances, the admission of the statement would adversely affect the fairness of the proceedings.
- [41] In this regard, Mr. Williams emphasised several additional matters which, he contends, the trial judge failed to properly weigh cumulatively in the fairness assessment. These include alleged gaps or lack of continuity in the evidence of custody prior to the taking of the statement and the fact that the Justice of the Peace was a relative to Mr. Valencia, which, she argued, compromised the independence of that safeguard. Mr. Williams relied on the

¹¹ Indictment No. C72/2019.

¹² [2006] UKPC 5.

case **Neal and Lamb v The King**.¹³ Mr. Williams also included the judge's rejection of Mr. Valencia's evidence of fear on speculative grounds, rather than requiring the prosecution to disprove fear beyond reasonable doubt.

- [42] Mr. Williams submitted that, applying **Peart**, the fairness enquiry is a distinct and protective discretion, concerned with preserving the integrity of the trial process. Mr. Williams argued that the learned trial judge misapplied that discretion by focusing on the strength of the prosecution evidence rather than the manner in which the statement was obtained, and that, had the correct approach been taken, the statement ought to have been excluded.

Respondent's Submissions

- [43] Learned Deputy Director of Public Prosecutions, Ms. Sheiniza Smith ("Ms. Smith") submitted that the learned trial judge did not err in admitting Mr. Valencia's caution statement and properly exercised her discretion in doing so. Ms. Smith argued that the correct legal principles were applied, namely that admissibility depends on the twin requirements of voluntariness and fairness, and that the assessment of those matters falls primarily within the province of the trial judge.
- [44] Ms. Smith contended that the trial judge carefully considered all relevant factors, including the admitted breach of the **Commissioner's Rules** arising from the failure to electronically record the interview. However, Ms. Smith emphasised that such a breach does not automatically render a statement inadmissible. Ms. Smith argued that the **Commissioner's Rules** themselves preserve the trial judge's discretion to admit the statement where the breach does not adversely affect fairness.
- [45] Ms. Smith submitted that the learned trial judge properly resolved the issue of voluntariness by assessing the credibility of the witnesses who testified at the *voir dire*. Ms. Smith argued that the evidence of the prosecution witnesses was consistent, cogent, and mutually

¹³ BZ Criminal Appeals Nos. 6 and 7 of 2018.

corroborative, and that the judge was entitled to accept that evidence and reject Mr. Valencia's allegations of threats and inducements as untrue.

- [46] In relation to fairness, Ms. Smith argued that the learned trial judge undertook the requisite evaluative exercise and concluded, correctly, that the procedural breach was neither significant nor substantial, and therefore had no adverse effect on the fairness of the proceedings. Ms. Smith emphasised that fairness is not determined by the mere presence of a breach but by its impact, and that no prejudice to Mr. Valencia was demonstrated.
- [47] Ms. Smith also addressed Mr. Valencia's ancillary complaints. Ms. Smith submitted that there were no material gaps in the evidence of custody, that the trial judge properly evaluated and rejected Mr. Valencia's allegations of fear as lacking credibility, and that the participation of the Justice of the Peace, although less than ideal, did not give rise to any actual prejudice or unfairness. She argued that while Ms. Neal acknowledged that she knew Mr. Valencia, Mr. Valencia never acknowledged that he knew her. Accordingly, the psychological effect identified by Bulkan JA (as he then was) in **Neal and Lamb** did not apply.
- [48] Ms. Smith contended that the learned trial judge correctly applied the principles in **Peart**, treating fairness as the governing criterion, and that her conclusion that the statement was voluntary and that its admission did not compromise the fairness of the trial, was fully supported by the evidence and cannot be disturbed on appeal.

Analysis and Discussion

- [49] I will address Ground 1 of the appeal, which concerns the admissibility of Mr. Valencia's caution statement, while Justice Minott-Phillips will address the remaining two grounds.

Ground 1: The learned trial judge erred in admitting the alleged caution statement of the appellant.

[50] I have given deliberate consideration to all of the submissions¹⁴ and the following represents my views and conclusions on Ground 1.

[51] I will briefly outline the framework that guides an appellate court in reviewing a trial judge's decision to admit a caution statement and then apply it to the present case.

The Relevant Legal Framework

[52] The determination of this ground of appeal falls to be resolved by reference to well established principles governing the admissibility of confessional evidence. Those principles require this Court to consider three interrelated questions: (i) voluntariness, (ii) compliance with procedural safeguards, and (iii) overall fairness.

Voluntariness

[53] I turn now to briefly address the relevant statutory framework. The Court must first determine whether the caution statement was made freely and voluntarily, within the meaning of **section 90 of the Evidence Act**,¹⁴ which provides that:

“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.**” [Emphasis added]

¹⁴ Chapter 95 of the Substantive Laws of Belize (Revised Edition) 2020.

[54] This statutory provision reflects the longstanding common law rule laid down by the Privy Council in **Ibrahim v R**¹⁵, per Lord Sumner:

“It has long been established as a positive rule of English criminal law, that **no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority.**” [Emphasis added]

[55] This also reflects the guidance contained in the **Criminal Bench Book for Barbados, Belize and Guyana**.¹⁶

[56] It is noteworthy that where the judge finds that the caution statement was freely and voluntarily given, these are findings of fact for the trial judge.¹⁷ Consequently, judicial restraint is necessary before an appellate court can interfere with the judge’s findings of fact. That factual enquiry, however, does not exhaust the admissibility analysis.

Compliance with Procedural Safeguards

[57] The gravamen of Mr. Valencia’s complaint revolves around the breaches of the **Commissioner’s Rules**. As alluded to above, voluntariness while necessary, without more, is not determinative. The Court must consider whether there has been compliance with applicable procedural safeguards, including the **Commissioner’s Rules**, which provide as follows, where relevant:

“6. POLICE STATION INTERVIEWS

6.1. A police station interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence at a police station, which **must be done under caution**.

¹⁵ [1914] AC 599.

¹⁶ (2023) The Caribbean Association of Judicial Officers (CAJO), at p 771 - 774.

¹⁷ *Hernan Manzanero v The Queen* [2020] CCJ 17 (AJ) BZ.

6.2. All police station interviews **must take place in the presence of a justice of the peace.**

6.3. Whenever a person has been arrested, further arrested or detained for a serious crime the police officer must carry out a police station interview to question that person in respect of the offence in question.

6.4. In every case where a significant statement has been made that has not been electronically recorded, the police officer must also carry out a police station interview to put the statement onto record and to give the person an opportunity to confirm or deny the making of that statement and add anything they might wish.

7. ELECTRONIC RECORDING OF INTERVIEWS AND CAUTION STATEMENTS

7.1. All police station interviews carried out under Part 6 and all caution statements **shall be electronically recorded.**

7.2. The recording medium used should be capable of having an image of the date and time superimposed as the interview or caution statement is being recorded.

7.3. Notwithstanding Rules 7.1 and 7.2, a senior police officer may authorise an officer not to electronically record the police station interview or caution statement or to use another recording medium where it is not reasonably practicable to comply with these Guidelines because of reasons not limited to, the non-availability of recording equipment, the failure of the recording equipment or the non-availability of a suitable interview room and the senior police officer considers on reasonable grounds that the police station interview or the taking of the caution statements should not be delayed until the failure has been rectified or a suitable room or recording equipment becomes available.

7.4. In respect of all police station interviews and caution statements that are not electronically recorded, the senior police officer must complete the form contained at Schedule 2 to record in specific terms the reasons for not doing so.

7.5. In cases where there is no obligation to carry out an electronically recorded police station interview under these Rules, the police officer retains discretion to electronically record the interview or caution statement.”

[58] There is no dispute that the **Commissioner's Rules** requiring electronic recording of interviews and caution statements, serve as important safeguards designed to ensure transparency in the interview process, reduce the risk of dispute as to what transpired, and protect against oppression and impropriety.

[59] It is equally well established that non-compliance with the **Commissioner's Rules** does not automatically render a statement inadmissible, and the effect of any breach must be assessed in the context of the particular case and must be construed in the context of fairness. In this regard, the **Commissioner's Rules** themselves contemplate that a breach 'may' lead to exclusion where it has an adverse effect on fairness, thereby preserving the trial judge's discretion. **Rule 17** provides as follows:

"17. ADMISSIBILITY

17.1. Failure to follow any of these Rules is admissible in criminal proceedings.

17.2. Where there has been a **significant or substantial breach** of these Rules **and** its admission into evidence would have **an adverse effect on the fairness of the proceedings**, this **may** result in a statement made by the person being excluded from evidence or, exceptionally, in the case being stayed as an abuse of process." [Emphasis added]

[60] It is helpful to have recourse to the pronouncements of Lord Steyn in **Mohammed v The State**,¹⁸ in which speaking in the context of a confession obtained in breach of an accused person's constitutional rights, he stated 'the judge must perform a balancing exercise in the context of all the circumstances of the case' (quoted with approval by Rowe P, delivering the judgment of this court in **Robert Hill v The Queen**¹⁹). Therefore, the exercise by a judge of his discretion in such circumstances would not have been open to challenge on appeal unless it could be shown to have been premised on erroneous considerations. Although the present appeal does not involve a constitutional breach, the same principle applies; where

¹⁸ (1998) 53 WIR 444 at 455.

¹⁹ Criminal Appeal No 5 of 2000, judgment delivered 8 March 2001 at page 3.

a trial judge is called upon to exercise discretion, the balancing exercise is for the judge, and deference on appeal follows.

Fairness

- [61] It is the law that even if the judge finds that the statement was freely and voluntarily given, the further enquiry which is critical is that of fairness, as articulated by the Privy Council in **Peart**. In that case, the Board made clear that voluntariness, while essential, is not determinative. The Board stated thus:

“[22] Their Lordships acknowledge the importance of the principle of voluntariness but are unable to accept that it is the only applicable criterion, as Mr. Guthrie attempted to argue. If it were the sole criterion, there would be no room for the operation of the principle whereby the judge may refuse in the exercise of his discretion to allow the admission of evidence which is otherwise legally admissible as ex-hypothesi confessions made voluntarily must be. One need only point to the remark of Lord Diplock in *R v Sang* 1980 AC 402 at 436: “There is discretion to exclude evidence which the accused has been induced to produce voluntarily if the method of inducement was unfair

...

[23] In their lordships’ opinion **the overarching criterion is that of the fairness of the trial, the most important facet of which is the principle that a statement made by the accused must be voluntary in order to be admitted in evidence**

...

[24] (iii) **The criterion for admission of a statement is fairness. The voluntary nature of the statement is the major factor in determining fairness. If it is not voluntary, it will not be admitted. If it is voluntary, that constitutes a strong reason in favour of admitting it, notwithstanding a breach of the Judges’ Rules; but the court may rule that it would be unfair to do so even if the statement was voluntary.**” [Emphasis added]

- [62] As the Board illustrated in **Hunte and Khan v The State of Trinidad and Tobago**,²⁰ the admissibility of a confession is not determined solely by whether the statement satisfies the legal requirements for admissibility. The Board adopted a two-stage approach for determining the admissibility of an incriminating statement. First, whether the evidence was admissible as a matter of law. Secondly, if so admissible, whether fairness nevertheless required it to be excluded. Consequently, the role of the trial judge at the *voir dire* was to first determine whether the statement was given freely and voluntarily and then whether it was fair to admit it in the proceedings.
- [63] Accordingly, a statement which is voluntary may nonetheless be excluded, and a breach of procedural rules will only justify exclusion if it operates to undermine the fairness of the trial process. The fairness enquiry is therefore contextual and fact-sensitive and concerned with the practical impact of the impugned evidence on the accused's right to a fair trial.
- [64] It is noteworthy that the trial judge retains a discretion to exclude a caution statement given in breach of the **Commissioner's Rules** if to do so would amount to unfairness.
- [65] Building on that framework, this Court in **Krismar Espinosa v R**,²¹ per Awich JA, as he then was, comprehensively outlined:

"[93] ... A confession which is not voluntary is not admissible in evidence whether the trial is before a judge and a jury, or before a judge alone. Where a confession is challenged in a trial ... the judge must investigate... the circumstances in which the confession was made, and may admit it only when he is satisfied beyond reasonable doubt that, the confession was made freely and voluntarily. That is the common law, and now the statutory law in ss.90 and 91 of Evidence Act, Laws of Belize.

...

[94] There are several levels of consideration of voluntariness in the admissibility of a confession in evidence. **First where the judge rules... that, a confession was not free and voluntary and therefore not admissible in evidence... the so called confession must, and will be excluded from the full trial.**

²⁰ [2015] UKPC at paragraph 24.

²¹ Criminal Appeal No. 8 of 2015.

...

[95] **Secondly, where the judge decides that, a confession was voluntary, but was obtained by a person in authority or a person charged with the duty of investigating offences or charging offenders, without complying with Judges Rules, he may refuse to admit it in evidence or he may exercise discretion to admit it, depending on whether the circumstances proved warrant it.**

...

[96] **Thirdly, the judge may not admit a confession in evidence, as a matter of the exercise of the general exclusionary discretion of a judge when he considers that, admitting a particular item of evidence will be unfair to the accused in the circumstances. Generally the discretion is exercised on the ground that, the prejudicial effect of the item of evidence outweighs its probative value.**" [Emphasis added.]

[66] In applying the fairness test, the court must consider the totality of the circumstances, including:

- (1) the nature and seriousness of any breach of procedural rules;
- (2) the circumstances in which the statement was obtained, including the presence or absence of safeguards (such as a Justice of the Peace);
- (3) the position and characteristics of the accused, including any vulnerability; and
- (4) whether the manner of obtaining the statement resulted in forensic prejudice, such as:
 - (i) the creation of inconsistencies,
 - (ii) distortion of the evidential position, or
 - (iii) impairment of the accused's ability to defend the case.

The enquiry is not directed merely at whether a breach occurred, but at whether that breach materially affected the fairness of the proceedings.

[67] It is important to emphasise that voluntariness and fairness are distinct but related enquiries. Voluntariness focuses on how the statement was obtained, that is, whether it was the product of free choice. Fairness focuses on whether admitting the statement would compromise the integrity of the trial, even if it was voluntary. This distinction, underscored in

Peart, ensures that the court retains a residual discretion to exclude evidence where its admission would be unjust or would undermine confidence in the administration of justice.

[68] Properly understood, the trial judge was required to:

- (1) determine, beyond reasonable doubt, whether the statement was freely and voluntarily made;
- (2) consider whether any breaches of the Commissioner's Rules and any other considerations arose so as to engage the court's discretion to exclude the caution statement; and
- (3) determine whether, in all the circumstances, the admission of the statement would render the proceedings unfair.

[69] It is also apposite to have regard to **Needham's Point Declaration on Criminal Justice Reform** adopted in Barbados in October 2023,²² which underscores modern safeguards in the treatment of suspects and, in particular, emphasises the importance of audio and video recording of police interviews as a means of promoting transparency, accountability, and reliability in the criminal process. The Declaration recognises that such recording reduces disputes about what transpired during questioning and serves as protection against allegations of oppression or improper conduct. However, as made clear both by the **Commissioner's Rules** and the principles articulated in **Peart**, the absence of recording does not, without more, mandate exclusion. The question remains whether that omission, viewed in the context of all the circumstances, gave rise to unfairness.

Appellate Review

[70] The application of the above principles involves findings of fact, assessment of witness credibility, and an evaluative judgment as to fairness. Those are matters primarily within the province of the trial judge.

²² Needham's Point Declaration on Criminal Justice Reform: Achieving A Modern Criminal Justice System (CCJ Academy for Law Seventh Biennial Conference, Bridgetown Barbados, 20 October 2023) pp 6 and 18. Adopted by acclamation on 20 October 2023 at the Hilton Hotel in Needham's Point, Bridgetown, Barbados.

[71] It is settled law that an appellate court will not lightly interfere with the exercise of discretion. In **Hernan Manzanero v The Queen**,²³ it was observed that in judge alone trials, the judge assumes the dual function of determining both law and fact. Inherent in this acknowledgment is the fact that the judge is not required to direct himself on every weakness or strength of the prosecution's case.

[72] Indeed, in **Dionicio Salazar v The Queen**²⁴ Wit JCCJ, writing on behalf of the Court underscored the fact that in judge alone trials, there is no obligation to rehearse every evidential weakness or to deliver a summation of the evidence as would be required for assistance of lay jurors.

[73] In **Jeffrey Sersland MD another v St Matthews University School of Medicine Limited**,²⁵ the Caribbean Court of Justice, at paragraph 73 of its judgment, stated:

“In approaching the question of whether we should interfere, we recall the trite principle of law which is summarised in the following passage in *Nilon Ltd v Royal Westminster Investments SA* at [16]:

[I]n appeals from the exercise of a discretion, an appellate court should not interfere with a decision of a lower court which has applied the correct principles and which has taken into account matters which should be taken into account and left out of account matters which are irrelevant, unless the appellate court is satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion which has been entrusted to the court.”

[74] In **Thompson v The Queen**,²⁶ the Board observed:

“The Court of Appeal does not set aside the exercise of the trial judge's discretion... unless it concludes that the decision to admit the confession was unreasonable in the *Wednesbury* sense. In *R v Christou* [1992] QB 979 at page 989 Lord Taylor of Gosforth CJ

²³ [2020] CCJ 17 (AJ).

²⁴ [2019] CCJ 15 (AJ) at paragraph 29.

²⁵ [2022] CCJ 16 (AJ) BZ.

²⁶ (1998) 52 WIR 203 at 229.

stated: 'The judge's exercise of his discretion could only be impugned if it was unreasonable according to *Wednesbury* principles'."

- [75] In **Thompson** their Lordships went on to consider the case of **Reg. v. Middlebrook and Caygill**²⁷ in which the English Court of Appeal stated:

"This is the judicial exercise that has been referred to as a discretion in the cases. It may involve the finding of facts on a voir dire, but once the facts are found it is an exercise of judgment carried out by the judge in the light of all the circumstances known to him in the immediacy of the trial. Since that is its nature, it is a task or function whose discharge by the trial Judge will not readily be interfered with in this court. If, of course, the material in the case discloses a state of affairs in which a reasonable judge must have concluded that the admission of the evidence would produce unfairness, this court will set aside a ruling which goes the other way. We think that this is what is meant by the references to *Wednesbury* in the cases."

- [76] In **Thompson**, the Board also quoted from the decision of the Court of Appeal of the Eastern Caribbean Supreme Court where the Chief Justice had observed:

"In my view, there were objective reasons to support the judge's conclusion that the appellant's story was incredible, and untrue. In addition, the judge had the advantage of seeing the appellant and the other witnesses who testified on this issue, and I would not [underestimate] the value of that advantage in determining the credibility of the appellant's story."

- [77] These pronouncements are apt and I endorse them as contextualising the extent of the appellate review. Having set out the relevant legal framework, I come now to address firstly the question of voluntariness, which is a necessary precondition to admissibility.

²⁷ (1994) (unreported) 18 February.

Voluntariness

[78] The starting point is **section 90 of the Evidence Act**. The question is whether the trial judge was entitled to conclude that the prosecution proved beyond reasonable doubt that the statement was not obtained by fear, inducement, or oppression.

[79] The learned trial judge conducted a full *voir dire* and was presented with competing accounts. On one hand, the prosecution led evidence from SGT Martinez, SGT Rodriguez, and Ms. Neal, all of whom asserted that Mr. Valencia was cautioned, agreed to give a statement, provided the contents which were recorded, read over, and signed, and was not subjected to threats, inducements or promise. On the other hand, Mr. Valencia alleged threats, inducement, and coercion, including pressure exerted through his child and promises of release.

[80] The resolution of that conflict depended squarely on credibility. The trial judge, having had the advantage of seeing and hearing the witnesses, resolved the competing accounts in favour of the prosecution. The learned trial judge rejected Mr. Valencia's allegations of threats and inducement and impropriety involving the Justice of the Peace as recent fabrications. The trial judge accepted the evidence of the prosecution's witnesses as cogent and consistent. The learned trial judge held that:

"In the absence of the recordings, the crown' witnesses gave cogent evidence that the accused freely and voluntarily narrated and signed the statement. The fact that there was a recording of a re-reading, support the Court's conclusion that the accused gave a statement which was read over to him."²⁸

[81] That approach is entirely consistent with the principles governing voluntariness and the appellate restraint emphasised in **Thompson, Manzanero, and McPhee**, which all underscore that findings based on credibility are not lightly disturbed. There is no indication that the learned trial judge misdirected herself as to the burden or standard of proof, nor that her findings were unsupported by the evidence.

²⁸ Record of Proceedings, page 191 lines 16 – 20.

[82] In evaluating Mr. Williams's argument, advanced by reference to **Juan Choc**, that greater weight should have been given to the absence of objective safeguards, I am unable to accept that submission. The absence of recording does not displace the trial judge's function to determine voluntariness on the evidence before her. The learned trial judge did precisely what **section 90** requires, that is, she assessed whether the prosecution had discharged its burden, having regard to the viva voce evidence, and she was entitled to do so.

[83] Further, the trial judge's findings necessarily locate the alleged inducement at a stage prior to the making of the statement, which is also Mr. Valencia's own case. That conclusion is critical. It follows that any recording of the re-reading of the statement, even if it existed, would not have assisted in determining whether inducement occurred at the earlier stage. Accordingly, the absence of such a recording is of no probative value in resolving the voluntariness question. It is, in that sense, immaterial.

[84] In those circumstances, the finding of voluntariness discloses no error.

Compliance with Procedural Safeguards

[85] The next question concerns the admitted breach of **Rule 7 of the Commissioner's Rules** requiring electronic recording of caution statements. It must be acknowledged, consistently with **Juan Choc**, that the **Commissioner's Rules** are not mere technicalities. They are designed to provide safeguards of transparency and accountability. In that respect, I accept that the failure to record the taking of the caution statement represents a departure from proper practice and infringes **Rule 7**. This, however, is not the end of the matter.

[86] Mr. Williams's submission, properly understood, is that the breach should have led to exclusion. That submission cannot be sustained when **Rule 17(2) of the Commissioner's Rules** is properly construed. The question of whether the statement should have been admitted, notwithstanding the breach, was a matter for the trial judge in the exercise of her discretion. The Rule provides that, even in the case of a significant or substantial breach, exclusion only arises where admission would have an adverse effect on the fairness of the

proceedings. The language is permissive: the court 'may' exclude. This confirms that admissibility is governed by an exclusionary discretion, not by any rule of automatic inadmissibility.

[87] Indeed, having found that the statement was voluntary, the learned trial judge proceeded to assess the nature of the breach in accordance with **Peart** and **Rule 17(2) of the Commissioner's Rules**. The learned trial judge determined that the failure to record the caution statement breach was not a substantial breach of the **Commissioner's Rules**. I agree with that conclusion on the facts. The absence of recording, while 'undesirable', did not occur in isolation; it was accompanied by:

- (1) the presence of a Justice of the Peace,
- (2) the reading over and adoption of the statement, and
- (3) consistent evidence from the prosecution witnesses which was accepted.

[88] Moreover, even if, contrary to that conclusion, the breach was characterised as substantial, that would not be determinative. The Rule makes clear that substantiality is not sufficient; The critical question is whether the breach, viewed in the context of all the circumstances, rendered the proceedings unfair. The trial judge answered that question in the negative, and I see no error in her assessment.

[89] It is of no moment that the statement was recorded when re-read. I agree with the trial judge that 'this recording would not have captured the entire proceedings - especially before the caution statement was taken which is when most of the allegations of threat and the promise, were made.'²⁹

[90] In that regard, Mr. Valencia's reliance on the absence of any recording of the re-reading of the statement does not advance the argument. As already noted, that aspect does not engage the core safeguard. The relevant breach is the failure to record the taking of the statement. The absence of any recording of the re-reading is, in this context, neither here nor there.

²⁹ Record of Proceedings, page 190 lines 24 – 25.

Fairness

- [91] The central issue is whether there is any discernible error in the learned trial judge's exercise of discretion as explained in **Peart**.
- [92] The learned trial judge correctly appreciated that fairness is a distinct and residual enquiry and cannot be reduced to voluntariness alone. Mr. Williams's criticism is that the trial judge effectively collapsed the two and focused unduly on credibility. In my view, this is not a fair criticism of what the judge did. On this issue of fairness, the learned trial judge found that:

"The Court finds that the caution statement was feely and voluntarily given, and so now considers whether admitting the statement would be fair: that is, has there been a significant and substantial breach of the Guidelines and would the caution statement's admission into evidence has an adverse effect on the fairness of the proceedings.

The court does not believe there was a substantial breach of the Guidelines as the evidence of the crown's witnesses makes me feel sure that even in the absence of the recordings to prove or disprove otherwise, the witnesses corroborated each other's evidence and that they were not discredited on cross-examination. I am therefore inclined to see them as witnesses of truth and to accept their evidence that the accused gave the caution statement freely and voluntarily.

Consequently, **the statements' admission into evidence would not have an adverse effect on the fairness of the proceedings.** The order of the Court is that the statement be admitted for use in the main trial."³⁰

- [93] The second step is to consider whether the breach produced prejudice or unfairness in practice, as required by **Peart**. In **Peart** the court found that the admission was unfair because the appellant was 18 years old, in custody, without a lawyer and questioned extensively after charge. In **Peart**, the breach concerned post-charge questioning in the absence of exceptional circumstances, contrary to the Judges' Rules. The Board emphasised that such questioning was inherently problematic because, once charged, an accused is in a position of heightened vulnerability and may feel compelled to respond to

³⁰ Record of Proceedings, page 197 lines 11 – 25 and page 198 lines 1 – 3.

interrogation, thereby risking self-incrimination. Importantly, the questioning in **Peart** was not merely procedurally irregular; it was substantively unfair in its operation. The structured questioning produced answers which fixed the accused's movements, created internal inconsistencies, and supplied the prosecution with material which undermined his defence and effectively compelled him to testify. It was this demonstrable forensic prejudice arising directly from the improper mode of interrogation that led the Board to conclude that the admission of the evidence rendered the trial unfair.

[94] The circumstances in the present appeal are materially different. There is no suggestion that the caution statement was obtained through improper or impermissible questioning. The learned trial judge, after a full *voir dire*, made a clear and reasoned finding that the statement was freely and voluntarily made, rejecting Mr. Valencia's allegations of threats, inducement, and impropriety as recent fabrications. There is no basis upon which this Court could properly disturb that finding. This distinction significantly weakens Mr. Williams's reliance on **Peart**.

[95] On the record, Mr. Valencia was able to fully challenge the statement in a *voir dire*; the circumstances of the statement were explored through cross-examination; the judge made clear findings rejecting the allegations of oppression. There is no evidential basis for concluding that the absence of recording deprived Mr. Valencia of a fair opportunity to challenge the statement, obscured material facts, or impaired the conduct of his defence.

[96] While the burden of proof did not lie on Mr. Valencia, the fairness enquiry remains grounded in demonstrable impact. There is simply nothing before the Court to support a finding of unfairness.

[97] Mr. Williams's reliance on **Neal and Lamb** raises the question whether the cumulative effect of the alleged custody gaps, and the participation of a related Justice of the Peace undermined fairness. The trial judge addressed both matters. In relation to the Justice of the Peace, while **Neal and Lamb** and the observations of Bulkan JA underscore the importance of the independence of the Justice of the Peace in the taking of a caution statement, those

principles must be applied to the factual matrix of the particular case. In the present appeal, the evidence of Ms. Neal was that any relationship was not a direct familial one between herself and Mr. Valencia but rather arose through her husband who shares a cousin with Mr. Valencia. On the evidence, therefore, there was no blood relationship between Ms. Neal and Mr. Valencia capable, without more, of impeaching the integrity of the process.

[98] Further, there was no evidence that Mr. Valencia was aware of any such relationship at the relevant time capable of influencing or impacting his decision to give his statement. Significantly, in his unsworn statement from the dock, he made no mention of any connection between himself and Ms. Neal, referring to her merely as “Ms. Desol, the JP.” This omission is telling and militates against any suggestion that the relationship had a psychological or coercive effect on him in the course of the taking of the statement.

[99] In any event, even if the existence of a relationship were capable of giving rise to concern, it would not, of itself, render the caution statement inadmissible. As the authorities make clear, including **Peart**, admissibility ultimately turns on the fairness of the proceedings. The learned trial judge was alive to this consideration. She evaluated the relationship as one factor within the broader matrix of circumstances, together with the credibility of the witnesses and the manner in which the statement was obtained. Having done so, she concluded that the relationship did not compromise the fairness of the process. That conclusion was plainly open to her and discloses no error of principle. Similarly, the alleged custody gaps did not give rise to any finding of coercion or impropriety. The trial judge was entitled to conclude that they were not material to voluntariness or fairness.

[100] When these factors are considered cumulatively, as required, the position does not improve for Mr. Valencia. There is no indication that, taken together, they produced any forensic or procedural disadvantage.

[101] Finally, standing back, the question posed by **Peart** is whether admission of the statement would undermine the integrity of the trial process. In the present case, the statement was found to be voluntary; the alleged coercion was rejected; the defence had full opportunity to

challenge the evidence; and no prejudice has been identified. In those circumstances, the integrity of the trial was not compromised.

- [102] It is also important to emphasise that it is no part of the function of this Court to speculate as to why the police did not comply with the recording requirement or what a recording might have revealed. The analysis must proceed on the evidence actually before the Court, and that evidence does not support a finding of unfairness. With the caution in **Dionicio Salazar** in mind, I am guided to the position that the judge's exercise of discretion cannot be faulted on the mere basis that the Crown offered no explanation for why the recording of the reading over of Mr Valencia's statement to him was not produced in the trial

Appellate Review

- [103] In the *voir dire*, the trial judge's finding that Mr. Valencia's statement was voluntarily and freely given is a finding of fact. As with any finding of fact, the review of it requires appellate restraint unless, exceptionally, the finding of fact was plainly wrong. The second point is that the admission of a caution statement into evidence engages the exercise of the judge's judicial discretion, as recognised in **Thompson, Sersland**, and related authorities. Here again, appellate review of discretion requires restraint. This Court may only interfere where the decision is based on a misdirection in law or is plainly wrong. Given that the standard of proof in criminal cases is very high, appellate courts are enjoined to exercise caution in reviewing the exercise of discretion by courts of first instance.
- [104] The learned trial judge identified the correct legal principles, including **Peart**, considered the breach of the **Commissioner's Rules**, evaluated the relevant circumstances, and concluded that admission of the statement did not render the proceedings unfair. That conclusion falls well within the ambit of reasonable discretion. Even if this Court might have weighed the factors differently, that is not a sufficient basis for appellate interference. Absent demonstrable error of principle or a conclusion that is plainly wrong, the appellate court must exercise restraint.

[105] It is also important to emphasise that this was a judge-alone trial. In such circumstances, the trial judge is not required to rehearse every aspect of the evidence, nor to provide a detailed, piece-by-piece accounting of every factor considered. As the authorities make clear, there is no obligation on a judge sitting without a jury to recite the evidence in minute detail or to address every subsidiary contention expressly. What is required is that the judgment demonstrates that the judge properly directed herself on the law and addressed the central issues arising for determination. In my view, the learned trial judge satisfied that obligation.

[106] Given the totality of the circumstances, I am unable to accept the contention that the trial judge exercised her discretion improperly in holding that it was not unfair to adduce the caution statement, which she had earlier found was given freely and voluntarily.

[107] By way of emphasis and applying the governing principles to the facts:

- (1) The finding that the statement was freely and voluntarily made was open to the judge and discloses no error;
- (2) The failure to record the taking of the statement was a breach of **the Commissioner's Rules**, but the Rules confer an exclusionary discretion, and do not mandate exclusion;
- (3) The absence of a recording of the re-reading of the statement was immaterial and had no probative value;
- (4) Neither individually nor cumulatively did the identified irregularities render the proceedings unfair within the meaning of **Peart**.

[108] For the above reasons, I would dismiss ground 1 of appeal.

Ground 2: The learned trial judge erred in failing to consider self-defence and provocation, being elements that arose on the caution statement.

[109] **MINOTT-PHILLIPS, J.A.:** In light of our conclusion that ground 1 of the appeal fails, it is strictly unnecessary to consider ground 2 of the appeal, which was advanced in the alternative. Nevertheless, for completeness, we go on to say that we do not see any error in the judge below's consideration of self-defence and provocation - as elements that arose on the caution statement. There is an error in the governing statement of ground 2 asserting that the Judge below '*erred in failing to consider self-defence and provocation in respect of the caution statement*'. I say that because the trial judge expressly said³¹,

“Given that the court rejected the alibi defence of the accused and preferred instead the version of events in the caution statement, the Court **is duty-bound to address the issue of self-defence raised in the accused man's caution statement. Based on the statement provocation is also another legal issue which was addressed.**” [my emphasis].

[110] The learned trial judge then went on to address both self-defence and provocation in her written judgment on conviction (between paragraphs 65-72). I see no error in her analysis of the elements of self-defence and provocation arising on the caution statement or in her application of the law to those two issues. We agree with the following submission made on behalf of the Crown:

“It is acknowledged that the defences of self-defence and provocation were raised in the Appellant's caution statement. However, in determining whether those defences were successful, the trial judge was required to evaluate their availability in light of the totality of the evidence. Accordingly, the trial judge properly considered both the defence and the prosecution evidence in assessing (1) whether the Appellant's belief in the necessity of defending himself was honestly held [see paragraph 69 of the judgment] and (2) whether there was evidence of extreme provocation and a loss of self control [see paragraph 72 of the judgment].”

³¹ At numbered paragraph 65 of her written judgment on conviction.

[111] The alternative ground 2 is not established.

Ground 3: The conviction of the appellant is unsafe.

[112] We are of the view that the conviction of Mr. Valencia is not unsafe.

[113] On the issue of identification, the judge below (correctly in our view) identified the major issue in this case as one of credibility and noted that it fell into the category of ‘recognition’ cases³². The main witness for the prosecution and sole eyewitness to the incident was the ex-girlfriend of Mr. Valencia, Ms. Evans, who was also the spouse of the deceased. The trial judge’s assessment of her at trial was that she was an honest witness³³ (and she gave some of the reasons that led her to that view). The trial judge reminded herself³⁴ that Mr. Valencia was someone with whom Ms. Evans was intimately involved for at least six months, and whom she had seen a few hours prior to the incident, and whom she would see occasionally as he worked for the deceased.

[114] As regards Ms. Evans’ reliability, the trial judge did identify it as *“the major area of weakness in the Crown’s case”* for the following reasons³⁵:

- (1) No evidence was led as to the lighting conditions which made it possible for the accused to be identified as the person who was in the bedroom that night, and who stabbed the deceased; and
- (2) the entrance to the property was very dark.

[115] The trial judge did, however, say this *“could be perceived as a weakness in the case for the Crown. There was no evidence led either as to the distance of the accused from the eyewitness and the deceased; and whilst she did indicate that he was bending over her bed, the witness did not say how she was able to see the accused clearly enough to identify him so assuredly as the shirtless accused.”*

³² See paragraphs 25 & 31, respectively, of her judgment on conviction.

³³ Paragraph 28 of the trial judge’s judgment on conviction.

³⁴ In paragraph 31 of her judgment on conviction.

³⁵ Paragraphs 29, et seq of her judgment on conviction.

[116] Specifically in relation to the area outside being dark, the trial judge expressly noted that *“none of the witnesses (the officers, Crime scene technician) despite indicating the area outside was dark, had a challenge seeing the evidence at the crime scene.”*

[117] At that stage the trial judge reminded herself that this is a case of recognition and, importantly, of someone with whom the witness was intimately involved for at least six months. The trial judge gave herself the requisite warning of reliance on identification evidence in the circumstances that obtained and went on to say³⁶, *“I can only rely on the identification evidence if I am sure that it is accurate. I need to consider carefully all the circumstances in which the accused was identified.”* She then proceeded to do just that. We do not find that the judge below misapplied the principles in **R v Turnbull** pertaining to identification evidence. On the contrary, she applied them quite faithfully. These are her words³⁷:

“I warned myself when considering this [identification of the Appellant by Ms Evans] evidence because experience has shown that any witness who has identified a person can be mistaken, even when the person is honest and sure that they are right. Such a witness may seem convincing but may be wrong. In a “recognition” case: This is still true, even though a witness knows a person well and says that they have recognized that person. The witness could still be mistaken.”

[118] She went on to address her mind sequentially to the criteria for consideration suggested by the Court of Appeal in its guidance to trial judges provided in **R v Turnbull**.

[119] What emerges from this is that the trial judge’s assessment of Ms. Evans’ evidence as a whole (taking into account such weaknesses she perceived) caused her to be sure that Ms. Evans correctly identified Mr. Valencia as the person who entered the bedroom in their house and stabbed her spouse and herself while they were abed on the night of 9th June 2020.

³⁶ At numbered paragraph 32 of her judgment on conviction.

³⁷ At paragraph 32 of her judgment on conviction.

[120] Mr. Valencia has not established that the trial judge failed to properly resolve material inconsistencies in the Crown's case; or to consider the cumulative impact of the weaknesses identified in the prosecution's case. That submission is unfair to her as she, in fact, dedicated an entire section of her judgment on conviction to addressing the discrepancies and inconsistencies in the Prosecution's evidence.³⁸ The fact that she found the evidence of the main prosecution witness corroborated by the material in the caution statement that put the accused on the scene of the crime does not mean that the evidence adduced by the prosecution other than the caution statement was insufficient to cause the trial judge to feel sure of the guilt of Mr. Valencia. The trial judge found³⁹ that:

“...the injuries suffered by the witness [Ms Evans] and the deceased were consistent with the version of the events that she advanced to the Court: the stab wound to the shoulder when she shoved the accused and turned her back on him to step between the accused and her husband: the “slice/cut” above the waist of the deceased (as confirmed by the crime scene technician). Her overall credibility remained intact. **Conclusively** I found that this witness was credible.” [my emphasis].

[121] And in considering whether the death was caused by unlawful harm by the accused, the trial judge said the following:⁴⁰

“According to the main witness, the deceased was unarmed, naked and vulnerable when he was stabbed by the accused; it must be pointed out too, that the deceased had no defensive wounds; the attack began whilst the deceased was on the bed and concluded there; it was there that he was found by the police officers and the crime scene technician; this gives rise to an inference that the deceased did not even get the opportunity to advance beyond the confines of his bed, to mount an attack or defence. According to the main witness, Ms Evans, he had just awoken from a deep slumber when he was confronted with the deceased in his bedroom, armed with a knife. The witness was unshaken on these points in cross-examination. There was therefore no justification for the killing of the deceased.”

³⁸ Paragraphs 35 et seq of her judgment on conviction.

³⁹ At paragraph 49 of her judgment on conviction.

⁴⁰ At paragraph 61 of her judgment on conviction.

[122] For those reasons ground 3 of appeal is not made out and fails.

Conclusion

[123] The order of the court is as follows:

- (1) The appeal is dismissed.
- (2) The conviction and sentence are affirmed.

[124] This is the judgment of the court on which all members of the court are agreed.

Louise Esther Blenman
Chief Justice

I concur.

Sandra Minott-Phillips, KC
Justice of Appeal

I concur.

Peter I Foster, KC
Justice of Appeal