

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

CRIMINAL APPEAL NO. 7 of 2023

BETWEEN:

RIGOBERTO CHAN

Appellant

and

THE KING

Respondent

Before:

The Hon. Mme. Louise Esther Blenman
The Hon. Mme. Minnet Hafiz Bertram
The Hon. Mme. Sandra Minott-Phillips, KC

Chief Justice
President
Justice of Appeal

Appearances:

Mr. David McKoy, for the Appellant
Mrs. Shanidi Chell-Urbina, Senior Crown Counsel and Ms. Dovini Chell, Crown
Counsel, for the Respondent

2026: June 26;
August 6;

JUDGMENT

Introduction

[1] **BLENMAN, C.J.:** This is an appeal by Mr. Rigoberto Chan ("Mr. Chan") against his conviction for the offence of incest contrary to **section 62 of the Criminal Code**.¹ Mr. Chan was tried before the Honourable Madam Justice Antoinette Moore ("the learned trial judge"), sitting without a jury, pursuant to **section 65A of the Indictable Procedure Act**.² On 21 February 2023, the learned trial judge convicted Mr. Chan of incest and subsequently sentenced him to twelve (12) years' imprisonment.

¹ Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020.

² Chapter 96 of the Substantive Laws of Belize (Revised Edition) 2020, as amended by Act No. 3 of 2022.

- [2] Mr. Chan filed a Notice of Appeal against both conviction and sentence. However, at the hearing before this Court, learned counsel Mr. David McKoy ("Mr. Mckoy") indicated that Mr. Chan's appeal against sentence was no longer being pursued. The appeal therefore concerns conviction only.
- [3] The Crown resisted the appeal and contended that the conviction is safe and ought to be affirmed. It is therefore necessary to outline the factual and procedural background in order to place the issue arising on this appeal in its proper context.

Background

Case for the prosecution

- [4] The prosecution's case was that on 26 December 2015, at Xaibe Village in the Corozal District, X, who was then ten (10) years old, was preparing to bathe in an outdoor bathroom situated on the property where she lived with her grandfather, AC. X testified that while she was in the bathroom, Mr. Chan entered, removed her underwear, sat her on top of him and penetrated her vagina with his penis. According to X, she screamed, attempted to kick him, but instead struck a wall and injured her toe. X stated that her brother, Y, arrived shortly thereafter. X identified Mr. Chan, whom she knew as her maternal uncle, as the person who assaulted her.
- [5] The prosecution also relied on the evidence of Y, who testified that after hearing X scream, he ran towards the bathroom area and observed Mr. Chan in the bathroom with X. Y stated that X was screaming and wrapped in a towel, while Mr. Chan was pulling up his pants. Y further testified that when he asked Mr. Chan what he was doing, Mr. Chan responded that he was helping X bathe.
- [6] The prosecution further called FC, a relative and neighbour, who testified that she saw X and Y run from the yard after hearing screams. FC also stated that she saw

Mr. Chan emerge from the property and heard an exchange between him and Y before she contacted the police.

- [7] The prosecution additionally relied on medical evidence from Dr. Andre Correa (“Dr. Correa”), who examined X on the day of the incident. Dr. Correa testified that he observed injuries to the genital area, including redness, swelling and a fresh hymenal tear. In his opinion, the findings were consistent with X having been carnally known within twenty-four (24) hours prior to the examination.
- [8] The prosecution also adduced evidence from Corporal Belky Gilharry, the investigating officer; Leidiana Cantun, the Scenes of Crime Technician; and EJ. Documentary evidence, including birth certificates and a medico-legal form, was tendered in support of the prosecution's case.

Case for the defence

- [9] Mr. Chan was unrepresented throughout the trial and conducted his own defence. During his cross-examination of the prosecution witnesses, he denied having sexual intercourse with X and suggested that the allegation against him was false. Mr. Chan further suggested that others may have influenced X to make the allegation.
- [10] At the close of the prosecution's case, the learned trial judge explained to Mr. Chan the options available to him in presenting his defence. Mr. Chan elected to make an unsworn statement from the dock and called no witnesses in support of his defence.
- [11] In his unsworn statement, Mr. Chan denied having sexual intercourse with X. He asserted that X possessed information which she was unwilling to disclose and alleged that EJ had mistreated X and exercised influence over her. Mr. Chan further suggested that EJ had a motive to see him imprisoned because of disputes concerning property belonging to his late father, AC.

Judgment in the Court Below

- [12] In a written judgment delivered on 21 February 2023, the learned trial judge reviewed the evidence adduced by the prosecution and the defence. The learned trial judge accepted the evidence of X and found that her account was supported by the evidence of Y, FC and the medical evidence of Dr. Correa.
- [13] The learned trial judge rejected Mr. Chan's denial of the allegation, attached little or no weight to his unsworn statement, and was satisfied that the prosecution had proved beyond a reasonable doubt that Mr. Chan had sexual intercourse with X, who was his niece, and that he knew of that relationship at the relevant time. Having found that all the elements of the offence were established, the learned trial judge convicted Mr. Chan of incest.

Ground of Appeal

- [14] Mr. Chan advances a single ground of appeal, namely, that the learned trial judge descended into the arena during the conduct of the trial and thereby deprived him of a fair trial.
- [15] With due appreciation for the industry and cogency of learned counsel Mr. McKoy's single ground of appeal, coupled with the oral arguments that were advanced in support of the ground, I am of the considered view that the issue arising for determination is whether the interventions of the learned trial judge during the course of the proceedings were such as to create an appearance of partiality or otherwise deprive Mr. Chan of a fair trial, thereby rendering his conviction unsafe.

Submissions on behalf of Mr. Chan

- [16] Learned counsel Mr. McKoy submitted that the conviction is unsafe because the learned trial judge descended into the arena and thereby deprived Mr. Chan of a

fair trial. While Mr. McKoy accepted that **section 65 of the Evidence Act**³ empowers a trial judge to question witnesses, he contended that the interventions in the present case exceeded what was permissible and resulted in the learned trial judge assuming an adversarial role.

- [17] In support of the ground, Mr. McKoy pointed to several interventions made by the learned trial judge throughout the evidence of prosecution witnesses. Particular reliance was placed on the learned trial judge's questioning of X after she testified that she felt something enter her vagina. Mr. McKoy argued that the question elicited evidence on a matter central to proof of the offence and ought properly to have been asked by the prosecutor.
- [18] Mr. McKoy also complained about various interventions during the evidence of Y, EJ and FC, contending that the learned trial judge repeatedly engaged in questioning that formed part of the examination-in-chief rather than merely clarifying the witnesses' evidence.
- [19] Mr. McKoy additionally relied on the exchange between the learned trial judge and Mr. Chan in which the learned trial judge stated that "[t]his is not outside in the streets". Mr. McKoy submitted that the remark demonstrated hostility towards Mr. Chan and contributed to the appearance of unfairness.
- [20] Mr. McKoy nevertheless accepted that certain interventions, when viewed individually, may have fallen within the scope of **section 65 of the Evidence Act**. His principal submission was that the interventions must be considered cumulatively. Viewed as a whole, Mr. McKoy argued, the learned trial judge intervened throughout the evidence of virtually every witness, conducted aspects of examination-in-chief and cross-examination, and thereby crossed the line between adjudicator and advocate.

³ Chapter 95 of the Substantive Laws of Belize (Revised Edition) 2020.

[21] In support of these submissions, Mr. Mckoy relied on **Conroy Stephenson v R**⁴ and the observations of the Privy Council in **Peter Michel v The Queen**,⁵ emphasizing that although a trial judge may clarify evidence and resolve ambiguities, the judge must not assume the role of counsel or conduct the examination of witnesses.

Submissions on behalf of the Crown

[22] Learned Senior Crown Counsel Mrs. Shanidi Chell-Urbina ("Mrs. Urbina"), appearing on behalf of the Crown, submitted that Mr. Chan has failed to establish that the learned trial judge descended into the arena or that he was deprived of a fair trial. Mrs. Urbina contended that the interventions complained of were permissible interventions aimed at clarifying the evidence and ensuring the orderly conduct of the proceedings. She relied on **section 65(7) of the Evidence Act**, which empowers a trial judge to question witnesses in the interests of justice.

[23] Mrs. Urbina emphasized that Mr. Chan was unrepresented throughout the proceedings. She submitted that the learned trial judge took considerable care to explain the trial process, the role of the participants, Mr. Chan's rights, and the manner in which he could question witnesses. Mrs. Urbina argued that many of the interventions complained of must be viewed in light of the learned trial judge's obligation to ensure that an unrepresented accused was able to participate meaningfully in the proceedings.

[24] At the hearing of the appeal, Mrs. Urbina quite properly conceded that the learned trial judge did not expressly inform Mr. Chan that a judge is entitled to ask questions of witnesses. However, counsel submitted that the omission was not fatal and did not render the trial unfair.

⁴ [2025] JMCA Crim 29.

⁵ [2009] UKPC 41.

- [25] Mrs. Urbina submitted that the interventions relied upon by Mr. Chan were distinguishable from the interventions considered in **Conroy Stephenson** and **Peter Michel**. In relation to X, Mrs. Urbina argued that the learned trial judge merely clarified evidence that had already been given when X testified that she felt something enter her vagina. The question did not introduce new evidence but sought clarification of an existing account.
- [26] Mrs. Urbina further submitted that the interventions during the evidence of Y, EJ and FC similarly served the purpose of clarification, continuity and case management. They did not amount to the conduct of the prosecution's case and did not prevent Mr. Chan from challenging the evidence through cross-examination.
- [27] Mrs. Urbina rejected the suggestion that the learned trial judge displayed hostility towards Mr. Chan. She submitted that the exchanges relied upon by Mr. Chan, including the comment that the proceedings were "not outside in the streets", must be viewed in context. The learned trial judge was explaining courtroom procedure to an accused who repeatedly attempted to give evidence while witnesses were still testifying. Mr. Urbina argued that the remarks were directed towards maintaining the orderly conduct of the trial.
- [28] Mrs. Urbina submitted that the record demonstrates that the learned trial judge repeatedly assisted Mr. Chan in formulating questions, ensured that he was afforded full opportunity to cross-examine witnesses, explained his options at the close of the prosecution's case, and facilitated his questioning of Dr. Correa. Mrs. Urbina further submitted that Mr. Chan was ultimately able to advance his defence of denial and his allegation that others had influenced X to make the accusation.
- [29] Mrs. Urbina therefore submitted that none of the interventions, whether viewed individually or cumulatively, deprived Mr. Chan of a fair trial. The learned trial judge remained impartial throughout the proceedings and the evidence supporting the conviction remained strong. Accordingly, the conviction is safe and the appeal should be dismissed.

Court's Discussion and Analysis

Judicial intervention

- [30] The sole ground of appeal requires this Court to determine whether the learned trial judge, by her interventions during the course of the trial, descended into the arena and thereby deprived Mr. Chan of a fair trial.
- [31] The issue of judicial intervention in criminal proceedings has been considered on numerous occasions both in Belize and throughout the Commonwealth Caribbean. It is therefore convenient to identify the principles emerging from the authorities before considering the facts of the present case.
- [32] The starting point is that a trial judge is not a passive observer of criminal proceedings. A trial judge bears responsibility for ensuring that the proceedings are conducted fairly, efficiently, and in accordance with law. Consistent with that responsibility, **section 65(7) of the Evidence Act** expressly empowers a judge, at any stage of the examination of a witness, to put such questions as the judge thinks fit in the interests of justice. Similarly, **section 109(1) of the Indictable Procedure Act** confers upon the court the power to call and examine witnesses during the course of a trial. Accordingly, the mere fact that a trial judge asks questions or otherwise intervenes during the evidence does not, without more, establish bias, unfairness or a departure from the judicial role.
- [33] The limits of permissible intervention are, however, well established. In **R v Hulusi and Purvis**,⁶ Lord Parker CJ observed that, although interventions directed towards clarification are entirely proper, a judge must not descend into the arena or give the appearance of acting as an advocate. His Lordship identified three categories of intervention capable of rendering a conviction unsafe:

⁶ [1973] 58 Cr App Rep 378.

“Of course it has been recognised always that it is wrong for a judge to descend into the arena and give the impression of acting as advocate... Whether his interventions in any case give ground for quashing a conviction is not only a matter of degree, but depends to what the interventions are directed and what their effect may be. Interventions to clear up ambiguities, interventions to enable the judge to make certain that he is making an accurate note, are of course perfectly justified. But the interventions which give rise to a quashing of a conviction are really three-fold; **those which invite the jury to disbelieve the evidence for the defence which is put to the jury in such strong terms that it cannot be cured by the common formula that the facts are for the jury...** The second ground giving rise to a quashing of a conviction is where the interventions have made it really impossible for counsel for the defence to do his or her duty in properly presenting the defence, and thirdly, cases where the interventions have had the effect of preventing the prisoner himself from doing himself justice and telling the story in his own way.”
[Emphasis added]

- [34] Similar concerns informed the decision of the Privy Council in **Peter Michel**. Delivering the advice of the Board, Lord Brown gave the following guidance at paragraph 34:

“... Of course he can clear up ambiguities. Of course he can clarify the answers being given. But he should be seeking to promote the orderly elicitation of the evidence, not needlessly interrupting its flow. He must not cross-examine witnesses, especially not during evidence-in-chief. He must not appear hostile to witnesses, least of all the defendant. He must not belittle or denigrate the defence case. He must not be sarcastic or snide. He must not comment on the evidence while it is being given. And above all he must not make obvious to all his own profound disbelief in the defence being advanced.”

- [35] Lord Bingham speaking for the Board in the Privy Council case of **Randall v R**,⁷ has also emphasised that not every departure from good practice will render a trial unfair. Lord Bingham observed that, inevitably, matters may occur during the course of a trial which, viewed retrospectively, ought not to have happened. There comes a point, however, where a departure from proper practice becomes so gross, persistent, prejudicial or irremediable that an appellate court is compelled to

⁷ [2002] UKPC 19.

conclude that the accused did not receive a fair trial. The right to a fair trial belongs equally to the guilty and the innocent.

[36] The question for an appellate court is therefore not whether the trial judge intervened, but whether the interventions complained of occasioned unfairness or resulted in a denial of justice. In **Jacob (Benedict) v Regina**,⁸ subsequently applied in **Earl Fraser v Commissioner of Police**,⁹ **Taylor v Regina**; **Evans v Regina**¹⁰ and **Neville Knowles v Regina**,¹¹ it was recognised that the appellate inquiry is directed to the effect of the interventions upon the fairness of the proceedings as a whole.

[37] It follows that allegations of excessive judicial intervention must be assessed in the context of the proceedings viewed in their entirety. The appellate court must examine the proceedings in the round and determine whether the cumulative effect of the interventions compromised either the reality or the appearance of judicial impartiality and thereby occasioned unfairness or a denial of justice.

[38] Local authorities are consistent with these principles. In **The Queen v Jacinto Roches et al**,¹² Awich JA recognised that judicial intervention is a legitimate feature of the trial process where such interventions are directed towards ensuring that the proceedings are conducted in an orderly, proper and fair manner.¹³ At the same time, the Court cautioned that intervention must not assume such a scale or character as to usurp the role of counsel or undermine the adversarial nature of criminal proceedings. Individual interventions which may appear unobjectionable when viewed in isolation may nevertheless, when considered cumulatively, undermine the fairness of the proceedings.

⁸ (1997) 56 WIR 255.

⁹ MCCrApp 178 of 2011.

¹⁰ [2015] 2 BHS J. No. 111.

¹¹ SCCrApp & CAIS No. 94 of 2016.

¹² Criminal Appeal No. 23 of 2013.

¹³ Ibid at p61; see Barry Randall.

- [39] Subsequent Commonwealth Caribbean authorities have consistently emphasised that the mere number of interventions is not determinative. In **Christopher Belnavis v R**¹⁴ and **Lamont Ricketts v R**,¹⁵ the courts recognised that the significance of an intervention depends upon its nature, purpose and effect in the context of the proceedings as a whole. Judicial interventions ought ordinarily to be confined to matters of clarification, a proper understanding of the evidence, case management, or the resolution of issues insufficiently explored by counsel. Conversely, interventions which interrupt the flow of the evidence unnecessarily, assume responsibility for eliciting testimony, or convey an appearance of partiality may compromise the fairness of the proceedings.
- [40] In a several decisions in the Court of Appeal of Jamaica, including **Tara Ball v R**,¹⁶ **Lawrence Oliver v R**¹⁷ and **Conroy Stephenson**, Straw JA reiterated that the decisive consideration is not the frequency of judicial intervention but its purpose and effect. Interventions directed towards clarification, evidential management and the proper discharge of the judicial function will ordinarily be unobjectionable. By contrast, interventions which undermine the defence, impair the credibility of defence witnesses, convey an appearance of partisanship, or otherwise cause the judge to descend into the arena may render a conviction unsafe.
- [41] Thus, in **Tara Ball** and **Lawrence Oliver**, Straw JA concluded that the impugned interventions, although in some instances extensive, were directed towards clarification, the enforcement of evidential rules, or the proper management of the proceedings and did not occasion unfairness. By contrast, in **Conroy Stephenson**, Straw JA held that sustained questioning of defence witnesses served to undermine their credibility before the jury and amounted to interventions of the kind contemplated in **Hulusi and Purvis**, with the result that the conviction could not

¹⁴ (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 101/2003, judgment delivered 25 May 2005.

¹⁵ [2021] JMCA Crim 7.

¹⁶ [2023] JMCA Crim 2.

¹⁷ [2023] JMCA Crim 48.

safely stand. The cases illustrate that judicial intervention becomes objectionable where it ceases to assist the court's understanding of the evidence and instead affects the adjudication of disputed issues in a manner inconsistent with the court's duty of impartiality.

- [42] The Court's task, therefore, is to examine the proceedings in the round and determine whether the cumulative effect of the impugned interventions compromised either the reality or the appearance of judicial impartiality and thereby occasioned unfairness or a denial of justice.

Judge-alone trial

- [43] These principles assume particular significance where the trial is conducted by a judge sitting without a jury. In such proceedings, the judge serves not only as arbiter of law but also as tribunal of fact. It follows that, where necessary, the judge may seek clarification of evidence in order properly to assess its reliability, credibility and probative force.
- [44] In **Forbes, Vasquez and Harris v The Queen**,¹⁸ subsequently applied in **Clark and Casildo v The King**,¹⁹ Hafiz Bertram P rejected a complaint that the trial judge had descended into the arena by asking extensive questions of witnesses. The Court held that interventions directed towards evaluating the reliability, significance and coherence of the evidence were consistent with the judicial function in a judge-alone trial. The fact that a judge asks numerous questions will not, without more, establish unfairness. The critical inquiry remains whether the questioning was directed towards the proper judicial task of understanding and evaluating the evidence, or whether it crossed the boundary between impartial adjudication and participation in the adversarial contest.

¹⁸ Criminal Appeal Nos. 20;21 and 24 of 2018.

¹⁹ Criminal Appeal Nos. 9 and 10 of 2017.

Unrepresented accused

- [45] An additional consideration in the present appeal is that Mr. Chan was unrepresented throughout his trial. The authorities recognise that the responsibilities of a trial judge are heightened where an accused appears in person.
- [46] In **Akeem Thurton v The Queen**,²⁰ Awich JA observed that the objective of criminal proceedings is to reach a verdict by a fair trial. That is the requirement in **section 6 of the Constitution**.²¹ It is the duty of the trial judge to achieve that objective, whether the accused is represented by counsel or not. Where the accused is unrepresented, the duty of the trial judge is “more demanding”. In such circumstances, the judge is required to assist the accused by informing him of his relevant rights, explaining the relevant procedures, assisting the accused in putting questions to witnesses, especially in cross-examination, and generally putting forward the defence that the unrepresented accused wishes the court to consider.
- [47] At the same time, there are limits to the assistance that may properly be provided. Adopting the observations of Rose LJ in **R v De Oliveira**,²² Awich JA recognised that a trial judge is required to perform a “difficult tight-rope” exercise. While the judge must provide such assistance as is necessary to ensure that the unrepresented accused receives a fair trial, that assistance must be given “without either descending into the arena on behalf of the defence, or generally speaking, putting any sort of positive case on behalf of the defence.”²³
- [48] The same principle was applied by this Court in **Jose Ochoa v The Queen**.²⁴ The Court, in its judgment prepared by Cary JA explained at paragraph 6 and 8 the duty of a trial judge, and its limit in these words:

²⁰ Criminal Appeal No. 4 of 2012.

²¹ Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020.

²² [1997] Crim LR 600.

²³ Ibid at p 5.

²⁴ Criminal Appeal No. 1 of 2007.

“There is no question that the judge’s clear duty is to give such assistance to unrepresented defendant as is appropriate in the circumstances. That, we apprehend, does not mean that the judge must bend over backwards, or to use the words of Lord Bingham CJ, ‘give the defendant his head, to ask whatever questions, at whatever length, he wishes’.

...

8. The duty of a trial judge where an accused person is unrepresented is to assist him to ensure that the jury understand the defence being put forward. He is not to act as defence counsel. Clearly he will assist the accused to put questions in cross-examination, having ascertained the point or the issue the accused wishes to address, within the bounds of relevance. This duty to assist an unrepresented accused includes assistance in putting forward his defence in intelligible terms. If the trial judge carries out these responsibilities which we have outlined, to the best of his or her ability, this court would be loath to interfere...”

[49] Similarly, in **Alex Guzman v The Queen**,²⁵ Awich JA reiterated that it is a fine line between merely assisting the accused in order to ensure a fair trial and acting as a defence counsel. How far a judge can assist an accused depends on the particular circumstances in the proceedings. The judge is not required to formulate a defence in the first place; that is for the accused, if he chooses to do.²⁶ The judge is also not required to create questions in cross-examination. It is for the accused, if he chooses, to put forward the original question, which the judge may assist him with in putting it in a way that conveys his defence.²⁷ Simply put, the judge must not assume the role of advocate. The judge’s duty is facilitative rather than partisan.

[50] Like principles have been recognised elsewhere in Commonwealth Caribbean jurisprudence. In **Dario Tinker v Regina**,²⁸ the Bahamas Court of Appeal emphasized that where a defendant is unrepresented the reviewing court must assess whether, viewed in the round, the judge’s conduct remained within legitimate bounds while adequately protecting the defendant’s right to a fair trial.

²⁵ Criminal Appeal No. 10 of 2015.

²⁶ Ibid at para. 53.

²⁷ Ibid at para. 54.

²⁸ CAIS 107 of 2009.

- [51] The present appeal must therefore be examined against the background of these principles. The questions for determination are whether the learned trial judge's interventions, viewed cumulatively and in the context of a judge-alone trial involving an unrepresented accused, remained within the permissible bounds of judicial engagement or instead crossed the line into conduct inconsistent with the appearance or reality of impartial adjudication.

Application of the Principles to the Present Appeal

- [52] Having reviewed the entirety of the record, the submissions of counsel and the authorities to which reference has been made, I am unable to accept that the learned trial judge descended into the arena or otherwise deprived Mr. Chan of a fair trial.
- [53] It is common ground that the learned trial judge intervened during the course of the proceedings. Indeed, as Mr. McKoy candidly accepted, the interventions complained of, when viewed individually, are capable of falling within the powers conferred by **section 65(7) of the Evidence Act**. His principal submission was that, when viewed cumulatively, the interventions exceeded what was permissible and created the appearance that the learned trial judge had assumed the role of prosecutor. The issue therefore is not whether the learned trial judge intervened, but whether the nature, purpose and cumulative effect of the interventions occasioned unfairness.
- [54] In undertaking that assessment, two features of the present case are of particular significance. First, this was a judge-alone trial. Second, Mr. Chan was unrepresented throughout the proceedings. As the authorities recognise, the trial judge in such circumstances, was required to perform a delicate balancing exercise. The trial judge must ensure that the accused has a fair opportunity to understand and participate in the proceedings without assuming the role of advocate or abandoning the position of impartial adjudicator.

- [55] I deal first with Mr. McKoy's submission that the learned trial judge failed to explain to Mr. Chan that she was entitled to ask questions of witnesses. The submission is factually correct. The transcript reveals no occasion on which the learned trial judge informed Mr. Chan that she possessed a statutory power to question witnesses. Mrs. Urbina properly conceded as much before this Court.
- [56] However, the omission does not, in my judgment, render the proceedings unfair. No authority was cited establishing that a trial judge is under a duty to explain the source of the power conferred by **section 65(7) of the Evidence Act** before exercising it. The relevant inquiry remains whether the interventions themselves crossed the permissible boundary identified in **Hulusi and Purvis, Peter Michel** and the subsequent authorities.
- [57] It is noteworthy, that while the learned trial judge did not explain her power to question witnesses, the transcript demonstrates that she repeatedly sought to ensure that Mr. Chan understood particular aspects of the proceedings as they arose. At the commencement of the trial, the learned trial judge informed Mr. Chan that, because he had no lawyer, he should raise matters which he did not understand and that she would assist him "up to the point that the law allows". Later, the learned trial judge also explained the admission of exhibits, the distinction between questioning witnesses and giving evidence, and the options available to him at the defence stage.
- [58] Mr. McKoy directed particular attention to the learned trial judge's intervention during the evidence of X. X testified that Mr. Chan removed her underwear, sat her on top of him and that: "When I felt something went into my vagina, I started to shout." The learned trial judge thereafter asked: "You said that you felt something entered your vagina. Can you tell us what it was that entered your vagina?" and X replied: "His penis."

- [59] It is undoubtedly the case that the question concerned a matter central to the allegation. However, viewed in context, the question was directed to clarifying evidence already being given. X had already described Mr. Chan removing her underwear, placing her on top of him, and her feeling something enter her vagina. The intervention did not introduce a new issue, suggest an answer, challenge the witness, or conduct a cross-examination. Rather, it sought clarification of evidence already before the court.
- [60] In my considered view, this intervention falls within the category of clarificatory questioning approved in **Hulusi and Purvis** and **Peter Michel**. It is also consistent with the observations of this Court in **Forbes** and **Clark** concerning the legitimate role of a judge sitting as tribunal of fact in a judge-alone trial.
- [61] I have similarly reviewed the interventions during the evidence of the remaining prosecution witnesses Y, EJ and FC. Many of the interventions were administrative or clarificatory in nature. For example, the learned trial judge sought clarification regarding photographs, distances, locations, the identity of persons referred to in the evidence, and the admission of documentary exhibits. On a number of occasions, the learned trial judge asked questions to ensure that answers were audible or that the transcript accurately reflected what the witness had said.
- [62] None of these interventions, whether individually or collectively, bear the hallmarks identified in **Hulusi and Purvis** as interventions which invite rejection of the defence case, prevent the defence from being properly presented, or prevent Mr. Chan from telling his story in his own way.
- [63] The record further discloses occasions on which Mr. Chan struggled to formulate questions and instead made assertions or attempted to give evidence while witnesses were testifying. In those circumstances, the learned trial judge repeatedly reminded him that the witness was present for questioning and that he would later have an opportunity to present his own account. On several occasions she

reformulated his assertions into questions capable of being answered by the witness. Thus, when Mr. Chan repeatedly denied having sexual intercourse with X and suggested that someone had influenced her, the learned trial judge converted those assertions into questions and put them to the witness.

[64] In my view, those interventions are more readily characterised as efforts to facilitate the participation of an unrepresented accused than as conduct advancing the prosecution's case. They are consistent with the obligations discussed in **Thurton**, **Ochoa** and **Guzman**.

[65] Mr. McKoy also relied upon the learned trial judge's statement: "You can't just seek to say what you want when you want in court. This is not outside in the streets." Read in isolation, the final phrase might be regarded as unnecessary. However, appellate courts do not assess judicial remarks in isolation.

[66] The transcript reveals that prior to making the remark, the learned trial judge had repeatedly explained the distinction between questioning witnesses and giving evidence. During the cross-examination of X, when Mr. Chan began making assertions instead of asking questions, the learned trial judge told him: "That's not a question. Sir, you must ask me the question. What you want to say, you will have another opportunity after all the witnesses have finished say what you want to say to me." Shortly thereafter, the learned trial judge explained: "'A question has a question mark at the end. So, you are asking someone something. You are not telling your side of the story. Through your questions you can still get answers.'" When Mr. Chan continued to make assertions, the learned trial judge again reminded him: "You said that already. So, do you have a different question to ask." And later: "You are saying you were not in the bathroom at all. Do you want to ask that in a question?"

[67] The same pattern continued during the evidence of Y. After Mr. Chan again departed from questioning and began giving his own account of events, the learned

trial judge reminded him: "Now you are starting to testify." When he persisted, she again stated: "You are not asking a question now. You are testifying." The learned trial judge thereafter explained: "You will have a chance to speak. I have said that to you several times. When the witness is here, you ask questions."

[68] It was only after those repeated explanations and warnings that the learned trial judge made the statement complained of.

[69] Equally significant is what occurred immediately afterwards. Rather than leaving the matter there, the learned trial judge continued to explain the procedure to Mr. Chan. Following the departure of the witness, she returned to the subject in even greater detail: "This is a court. The prosecution has charged you on behalf of Belize ... It is my duty to try to help you and to be fair to everyone in the court." She further explained: "I am trying to help you along by telling you what the rules are..." and she reminded him: "If you have a question, you can ask me. I allowed you to ask questions even after your turn was over. You can ask questions, but they must be questions not long statements. Even sometimes when you made a statement, I turned it into a question for the witness."

[70] Viewed in context, I do not consider that the remark demonstrates hostility, ridicule or bias. Rather, it was directed towards maintaining order and ensuring compliance with ordinary courtroom procedure.

[71] The final question is whether the cumulative effect of the interventions rendered the trial unfair.

[72] I accept that the interventions were numerous. However, as **Belnavis, Ricketts, Tara Ball** and **Lawrence Oliver** make clear, quantity alone is not determinative. What matters is the purpose and effect of the interventions. Unlike the circumstances which arose in **Conroy Stephenson**, the learned trial judge did not engage in sustained questioning which undermined the credibility of defence

witnesses, repeatedly challenge the defence case, or communicate an adverse view of Mr. Chant's credibility prior to reaching her verdict. Nor did she prevent Mr. Chan from presenting the defence he wished to advance, namely that he had not committed the offence and that others had influenced X.

[73] In my considered view, the cumulative picture presented by the transcript is not one of a judge who assumed the role of prosecutor. Rather, it is that of a judge actively managing a judge-alone trial involving an unrepresented accused, seeking clarification where necessary, explaining aspects of the proceedings as they arose, and attempting to ensure that the accused was able to present the defence he wished to advance.

[74] Viewing the proceedings in the round, I am not persuaded that the interventions compromised either the reality or appearance of judicial impartiality. The interventions remained within the permissible bounds identified in the authorities and did not occasion unfairness or a denial of justice.

[75] The sole ground of appeal therefore fails.

Disposition

[76] The appeal against conviction is dismissed. As the appeal against sentence was abandoned, no order is required in relation thereto.

[77] The conviction against Mr. Chan is affirmed.

[78] I gratefully acknowledge the assistance of learned counsel.

Louise Esther Blenman
Chief Justice

[79] I concur.

Minnet Hafiz Bertram
President

[80] I concur.

Sandra Minott-Phillips, KC
Justice of Appeal