**IN THE SENIOR COURTS OF BELIZE**

**CENTRAL SESSION-BELIZE DISTRICT**

**IN THE HIGH COURT OF JUSTICE**

**INDICTMENT NO: C98/2025**

**BETWEEN:**

**THE KING**

**and**

**MONIQUE ESCALANTE**

Defendant

**Before:**

The Honourable Mr. Justice Nigel C. Pilgrim

**Appearances:**

Mrs. Portia Staine-Ferguson, Assistant Director of Public Prosecutions, for the Crown.

Mr. Leslie Hamilton for the Defendant.

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2026: June 30th;
September 8th and 15th.

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**EXTORTION- APPLICATION TO ADMIT HEARSAY STATEMENT-WITNESS OUT OF THE JURISDICTION- APPLICATION TO REOPEN THE PROSECUTION CASE**

**JUDGMENT**

**[1]** Monique Escalante ("the defendant") is indicted for an offence arising from an allegation that Jahnoi Shaun-Dhee Richards ("Mr. Richards"), a Jamaican national, was unlawfully required to pay money while being processed at the Philip S.W. Goldson International Airport. The Crown wishes to rely on Mr. Richards' written statement dated 20th March 2024 in proof of its case.

**[2]** Mr. Richards has not attended to give oral evidence. The Crown applied under section 105 (2)(b) of the **Evidence Act**[1] ("the EA") to admit his statement on the basis that he is outside Belize, and it is not reasonably practicable to secure his attendance. A voir dire was conducted. After calling its witnesses and expressly closing its case on the voir dire, the Crown applied for leave to reopen it to call immigration officers who personally dealt with Mr. Richards in relation to his travel to avoid infringing the hearsay rule. The Court heard the reopening application first. These are the Court's reasons and its consequential ruling on the hearsay application.

**The evidence at the voir dire**

**[3]** Justice of the Peace Encarnita Bennett testified that she was present at the Ladyville Police Station when Mr. Richards gave a statement to Detective Constable Carlton Anderson. She identified Mr. Richards in the silent video recording and identified the written statement by her signature and stamp. The evidence of Ms. Bennett and DC Anderson established that the statement contains the statutory truth declaration, was signed by Mr. Richards and was signed before Ms. Bennett as a Justice of the Peace.

**[4]** DC Anderson testified that he unsuccessfully attempted to contact Mr. Richards by a Jamaican telephone number and an email address. He could not recall either address in his oral evidence. He also spoke of information which he received from a representative of the United States Embassy about Mr. Richards' location and of information received from the

[1] Chapter 95 of the Substantive Laws of Belize, Revised Edition 2020.

Belize Immigration Department. DC Anderson had no personal knowledge of the immigration movements recorded by either institution.

**[5]** Mr. Rodolfo Bol, the Information Technology Manager at the Ministry of Immigration, described MIDAS as the system used by immigration officers at ports of entry to record travelers' entries and exits. He said that on 12th April 2026 he was asked to conduct a search concerning Mr. Richards. He did not testify to conducting the search, its result, the underlying entries, or Mr. Richards' present location. No immigration officer who made or acted upon an entry concerning Mr. Richards testified before the Crown closed its case.

**[6]** Corporal Alvi Torres of INTERPOL Belize testified to requests sent to INTERPOL offices in Jamaica, Panama and Mexico. He said that responses were received from some offices, but did not give admissible evidence of any migration history which established that Mr. Richards was outside Belize on the date of the application. The Crown's written application referred to a MIDAS report, information from INTERPOL and information from the United States Embassy.

**The application to re-open**

**[7]** The Crown submitted that leave should be granted in the interests of justice. It described the omission as an oversight, stressed that the evidence was critical to admissibility and relied upon the seriousness and age of the matter. The defence objected that the Crown had closed its case after a full opportunity to prove the statutory foundation and should not be permitted a second opportunity to repair the failure.

**The legal framework for re-opening**

**[8]** The general rule is that, once the prosecution states that its case is closed, it may not adduce further evidence. The discretion to permit reopening exists, but must be exercised with great

caution. In that regard the Court relies on the English decisions of **R v Frost**[2] and **R v Munnery**[3]. In the latter Court of Appeal case Mustill LJ opined:

> *"What matters is that the judge should have in the forefront of his mind the strictly adversarial nature of the English criminal process, whereby the cases for the prosecution and the defence are presented consecutively in their entirety.* ***To depart substantially from the normal order of events, unless justice really demands, is liable to cause confusion and hardship. Moreover, as was pointed out in Francis and again in the present case, the defendant may be prejudiced if his advisers have identified a gap in the prosecution's evidence, and have drawn attention to it by a submission of no case only to find that the judge gives leave to put it right; whereas if they had kept silent until the time to address the jury the prosecution would have been too late.***
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> ***These are important considerations which the judge must always bear in mind, but they are not necessarily conclusive. Tactics are a legitimate part of the adversarial process, but justice is what matters: justice to the public, represented by the prosecution, as well as to the defendant****." (emphasis added)*

**[9]** The recognised exceptional circumstances include evidence required to answer a matter which arose ex improviso and could not with reasonable foresight have been anticipated; evidence which unexpectedly became available only after the close of the case; and, in narrowly confined circumstances, evidence of a purely formal nature inadvertently omitted which leaves a merely technical gap as noted in the English Court of Appeal cases of **R v Doran**[4] and **R v McKenna**[5]. The last category must not be used to rescue a prosecution

[2] (1839) 4 St Tr NS 85 at col. 386.
[3] (1991) 94 Cr App R 164.
[4] (1972) 56 Cr App R 429.
[5] (1956) 40 Cr App R 65.

which failed to prepare or prove its case properly as noted in the English Divisional Court decision in **Central Criminal Court, ex parte Garnier**[6].

**[10]** The discretion should not be used to allow the prosecution the opportunity to prove the very matter in issue which they have failed to prove. In **Gainsborough Justices, ex parte Green**[7], the prosecution evidence in support of an allegation of a breach of a community service order revealed no such breach. The justices, rejecting a submission of no case to answer, allowed further evidence to be called to establish the breach. The Divisional Court quashed the conviction. In that case Griffiths LJ opined:

> *"The general principle is that when the prosecution closes their case they must stand or fall on the evidence they have produced. It is only in exceptional circumstances that there is a discretion in the court to allow the prosecution to call further evidence. An obvious example is if a point is taken by the defence that the prosecution have failed to prove some purely technical matter which cannot in truth be seriously in dispute, and an example of such a situation is to be found in Royal v. Prescott-Clarke (1966) 130 J.P. 274; [1966] 1 W.L.R. 788.* ***The general rule in that the prosecution cannot re-open the case and have, as it were, a second bite of the cherry, having heard a submission of no case to answer, and realizing they have failed to call the evidence they should have called.*** *The principles are to be found clearly explained in R. v. Pilcher (1975) 60 Cr. App. R. 1.*
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> ***This was not a case in which there was a technical lacuna in the prosecution case, this was a case where, unfortunately, no doubt through inexperience, the prosecution just failed to place any evidence before the court that would have justified a conviction on either charge. In those circumstances, it was not within the discretion of the magistrates to allow the prosecution to re-open the matter for a second presentation****." (emphasis added)*

[6] [1988] RTR 42.
[7] (1984) 78 Cr App R 9.

**[11]** The controlling consideration is fairness in the interests of justice. Relevant matters include the stage reached, the reason for the omission, whether the need for the evidence was reasonably foreseeable, whether the evidence was previously available, its nature and importance, and the prejudice which reopening would cause. The seriousness of the charge is relevant to the public interest in a proper trial, but it cannot lower the standard of proof for admissibility or displace the defendant's entitlement to have the Crown prove its application in the ordinary course.

**Analysis of the application to reopen**

**[12]** The proposed evidence does not answer anything which arose unexpectedly from the defence case. Whether Mr. Richards was outside Belize was, from the inception of the application, an express statutory condition which the Crown bore the burden of establishing. The Crown's own written application relied upon immigration movements. The need for admissible proof of those movements was therefore obvious and entirely foreseeable.

**[13]** Nor is this evidence said to have become available only after the Crown closed its case. The proposed witnesses are immigration officers who dealt with Mr. Richards. There is no evidence that they were previously unknown, unavailable, or discovered only after closure. The Crown called the Ministry's Information Technology Manager but did not elicit from him any admissible evidence capable of proving present absence and did not call the officers with personal knowledge or any evidence admissible under a statutory exception to the hearsay rule.

**[14]** Most importantly, the proposed evidence is not purely formal. It is intended to establish a substantive condition precedent to the admissibility of the complainant's account. Without proof that Mr. Richards is outside Belize, section 105(2)(b) is not engaged at all. Evidence supplied to establish that fact would not authenticate a fact already proved; it would provide the missing fact upon which admissibility depends. This is precisely the scenario in *ex parte Green* where the Crown should not have been able to re-open their case. The Court must also place on record that the issue of the admissibility of the Crown's evidence was raised

by the Court ex proprio motu for their consideration since 30th June 2026 before their case was closed on September 8th.

**[15]** The Court accepts that the statement is important to the Crown's case. Those features do not make the circumstances exceptional. Indeed, the greater the importance of the statement, the stronger the need for the Crown to establish the statutory safeguards through properly prepared admissible evidence. To reopen in these circumstances would permit the Crown, after the deficiency was exposed, to recast its proof and obtain a second opportunity to establish the very foundation of its application.

**[16]** The defence would be entitled to cross-examine any additional witness and could seek time to investigate the new proof. That procedural opportunity would reduce, but would not remove, the unfairness inherent in allowing a substantive and foreseeable gap to be repaired after the Crown elected to close. Finality in the orderly presentation of a voir dire is not a technicality, particularly where the issue is whether untested hearsay may replace the complainant's oral evidence.

**[17]** Balancing the interests of justice, the Court is not satisfied that this is an exceptional case in which the discretion should be exercised. The Crown's application to reopen its case on the voir dire is refused.

**The legal framework for the hearsay application**

**[18]** A voir dire is a trial within a trial. As a result a no case submission can be made on the close of the Crown's case. The Court has a duty to not allow a case to proceed if there is no evidence to make out the elements of the application, as accepted to be the test on the first limb of the no case jurisdiction as noted by the apex court, the Caribbean Court of Justice ("CCJ"), in **Bennett v R**[8]. This is even if there is no submission of no case made on the basis

[8] (2019) 94 WIR 126 at para 9.

of the English Court of Appeal authority of **R v Davina Brown**[9]. In this case one has been made.

**[19]** Section 105(1) of the EA makes a statement by a person in a document admissible in criminal proceedings only where one of the requirements in subsection (2) and the requirement in subsection (3) are satisfied. The Crown relies on subsection (2)(b), which requires proof both that the maker "is outside Belize" and that it is not reasonably practicable to secure his attendance. Subsection (3) requires the prescribed declaration, signed before a magistrate or Justice of the Peace.

**[20]** Section 105 is a statutory exception to the rule against hearsay. Its preconditions must be proved before the exception is engaged. In **Micka Lee Williams v R**[10], the Court of Appeal treated the matters in section 105(2) as preconditions to admissibility. In **Salazar v R**[11], the CCJ confirmed that section 105 is subject to the common-law safeguard against material prejudice and to the requirement that the statement must be capable of safely being held reliable.

**[21]** **La Vende v The State**[12] is particularly instructive. Construing a materially similar statutory condition, the Court of Appeal of Trinidad and Tobago held that absence from the country is a condition precedent which must be proved by evidence. It is not a matter of which judicial notice may be taken, and a deficiency in proof cannot be supplied by outside knowledge, irrespective of how reliable or authoritative that knowledge may appear, per Hyatali CJ:

> *"Dr Jankee's evidence that he saw Dr Edwards leave Trinidad by the country's national carrier, BWIA, on 4th July 1976 and that he had not seen Dr Edwards in Trinidad since that day was insufficient, in our view, to establish that Dr Edwards was absent from the country on the material date.*

[9] [2002] 1 Cr App Rep 46.
[10] Criminal Appeal No. 16 of 2006.
[11] [2019] CCJ 15 (AJ).
[12] (1979) 30 WIR 460 at 464.

*This conclusion is fortified by the admission of Dr Jankee in his evidence when he said that there were periods before 4th July 1976 (he said so in cross-examination) when Dr Edwards was in fact in the country and when he (Dr Jankee) did not see Dr Edwards.*

***It is clear to us that the Ordinance contemplates proper proof of the absence from the country as one of the conditions precedent to the admission in evidence of the deposition of a witness.***

***It is a fact which must be proved by evidence, however, and it is not one of which judicial notice can be taken; nor can any outside knowledge irrespective of how reliable or how authoritative it is, be employed for the purpose of supplying any deficiency in the proof of that fact****." (emphasis added)*

**[22]** The English learning under the analogous section 116 of the **Criminal Justice Act 2003** is consistent. Where the only material relied upon to show that a maker was abroad was itself inadmissible hearsay, the statement ought not to have been admitted as noted in the English Court of Appeal decision in **R v Case**[13]. As Owen LJ opined in that decision, "The statements are hearsay evidence and cannot be relied upon to provide the evidence which would enable a court to allow those very statements to be adduced in evidence". The party seeking admission must provide a sufficiently compelling and detailed evidential foundation for the witness's absence and for the asserted impracticability of securing oral evidence, whether in person or by video link.

**Analysis of the hearsay application**

**[23]** There is no prima facie evidence that Mr. Richards is outside of Belize. His Jamaican nationality may support a suspicion that he later departed. They do not prove where he was when the application was heard in September 2026. Failed telephone calls and unanswered emails prove only that DC Anderson was unable to communicate with him through the

[13] [1991] Crim LR 192.

contact details which he used. His hearsay statement, as *Case* held, cannot be used to prove itself.

**[24]** The MIDAS evidence and the information attributed to the United States Embassy and foreign INTERPOL offices cannot supply the deficiency. No person with personal knowledge proved the material immigration movements. DC Anderson's repetition of what the Embassy or Immigration Department reportedly communicated was tendered to prove the truth of that information and was itself hearsay. The Crown cannot establish the factual gateway to one hearsay exception by relying upon unproved hearsay, absent some other applicable basis of admissibility.

**[25]** This is not a case in which a compelling chain of admissible circumstantial evidence permits the necessary inference. The evidence establishes only that Mr. Richards was a Jamaican visitor in March 2024 and cannot presently be reached using the particular telephone number and email address employed by DC Anderson. It leaves open the reasonable possibilities that he remained in Belize, travelled elsewhere within the country, changed his contact details, or is deliberately not responding. The Court would be speculating, rather than drawing a sure inference from proved facts, if it found that he is presently outside Belize. No reasonable tribunal of fact properly directed in law could find that Mr. Richards is outside of Belize on the evidence led.

**[26]** The first limb of section 105(2)(b) is conjunctive with the second. Its failure disposes of the application. Due to the fact that a statutory precondition is not proved, the Court cannot reach a final balancing determination on material prejudice or threshold reliability. The admission of hearsay evidence, particularly that of the central witness who cannot be confronted, must be carefully considered and the evidence to admit it must be carefully marshalled.

**Disposition**

**[27]** The Crown's application for leave to reopen its case on the voir dire is refused. The Crown has not provided prima facie that Jahnoi Shaun-Dhee Richards is outside Belize, as required

by section 105(2)(b)(i) of the Evidence Act. The application to admit his written statement dated 20th March 2024 is consequently refused.

**Nigel C. Pilgrim**
High Court Judge
Criminal Division
Central District
Dated 15th September 2026