

**IN THE SENIOUR COURTS OF BELIZE**

**CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT**

**IN THE HIGH COURTS OF JUSTICE**

**Indictment No.** C49 of 2017

**Between:**

**The King**

and

[1] **Cardinal Alexander Lemoth**

**Defendant**

**Appearances:**

Ms. Natasha Mohamed, counsel for the King.

Mr. Leeroy Banner, counsel for the Defendant.

**Dates:**

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Trial Dates:       2023:   October 11, 23, 27  
                          2024:   June 27  
                                          July 12  
                                          September 13, 30  
                                          October 2, 9

Judgment Date:    2024:   May 13 Plead Guilty - Manslaughter

Sentencing Date:   2024:  
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**RULING ON VOIR DIRE**

[1]     The Accused was indicted by the Director of Public Prosecutions on two counts of murder for that he on the 15 May 2015, at Teakettle Village in the Cayo District murdered Julian Jones and Paul Sognorino ('the Deceased') contrary to the

provisions of section 106(1)<sup>1</sup> of the **Criminal Code** CAP 101 of the Substantive Laws of Belize (Revised Edition) 2020. To this indictment he entered a plea of not guilty, hence, a judge alone trial was held pursuant to the provisions of section 65A<sup>2</sup> of the **Indictable Procedure Act** CAP 96 of the Substantive Laws of Belize.

[2] During his case management hearing Counsel for the Accused objected to the admissibility of a statement under caution allegedly given by the Accused to the police whilst in police custody on the following grounds:

- That the caution statement given by the Accused was as a result of a promise made to him by SGT Aldo Costillo and PC Ack that he would not be charged if she gave a statement.
- That the Accused was beaten by both SGT Costillo and PC Ack.
- That the Accused was held in custody longer than the period of 48 hours when he gave the statement.

[3] The court ordered that a *voir dire* be held to determine the admissibility of the impugned statement.

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<sup>1</sup>CAP 101 of the Substantive Laws of Belize Revised Edition 2020 section

106.- **(1)** Subject to sub-section **(2)**, a person who commits murder shall be liable, having regard to the circumstances of the case, to— (a) suffer death; or (b) imprisonment for life.

<sup>2</sup>**Indictable Procedure Act** CAP 96 of the Revised Edition 2020 of the Substantive Laws of Belize section

65A.- **(1)** Notwithstanding anything contained in this Act, the Criminal Code, the Juries Act or any other law or rule of practice to the contrary, every person who is committed for trial or indicted, either alone or jointly with others, for any one or more of the offences set out in sub-section (2) shall be tried before a judge of the court sitting alone without a jury, including the preliminary issue (if raised) of fitness to plead or to stand trial for such offences. **(2)** The offences referred to in sub-section (1) are— (a) Murder, (b) Attempt to murder, (c) Abetment of Murder, and (d) Conspiracy to commit murder. **(3)** In an indictment charging an accused person with any of the offences specified in sub-section (2), no other count for an offence not referred to in the said sub-section shall be added.

### **The Voir Dire**

- [4] **SGT 1392 Lynette Lemoth** testified that on the **4 July 2015** as a consequence of a report that the Accused was wanted by the police in Belmopan police station in connection with a double murder in the Cayo District at around 1:00 p.m., she went in search of the Accused and apprehended him in Belize City. The Accused was cautioned and informed that he was wanted by the Belmopan police in connection with a double murder committed earlier in the year 2015, in the Cayo District. He was placed in the police mobile and taken to the Queen Street police station where she handed him over to the INSP in charge as the Executive Desk Officer ('the EDO') The witness stated that she detained the Accused around 1:15 p.m., that day.
- [5] **Under cross-examination** this witness stated that when she detained the Accused, he was a prisoner. She does not recall going back to check on him after she picked him up. She said when she picked him up, she handed him over to the EDO. She also stated that whilst at the station she gave the Accused a phone call and she is positive that she detained him at around 1:15 p.m. She said she did not inform Belmopan police station of his arrest because she had handed him over to the EDO.
- [6] **Under re-examination** the witness stated that as she reached the Queen Street Police Station, she gave the Accused a phone call. He said he wanted to call his mother. She observed him speaking and the call lasted about 2 minutes.
- [7] **INSP Aldo Castillo** testified that in May 2015 he was SGT369 and was stationed at the Belmopan Police Station as the NCO of the CIB. On Friday 15 May 2015, at

around 6:00 p.m., he responded to information of two lifeless bodies in a house at Pineapple Hill, Teakettle Cayo. On visiting the house, he found the two lifeless bodies in a building under construction. The bodies were identified as the two Deceased.

[8] This witness continued that during the investigation he and other officers were on the lookout for the Accused and one Shaylon Santos. He said Santos was taken into custody and charged with burglary whilst a wanted poster was issued for the Accused who was detained on the 4 July 2015.

[9] On the **6 July 2015**, the Accused was brought to Belmopan Police Station and on that day, he conducted an interview with him at which time he presented him with a copy of the caution statement given by Santos. That was done sometime after 11:00 a.m.

[10] On that same day sometime between 1:30 to 2:00 p.m., he was informed that the Accused wanted to speak with him. When he visited him in the cell block the Accused told him that he wanted to give a caution statement. As a result, he escorted the Accused from the cell block to the CIB office and made arrangements with Sonia Burn JP and PC Nestor Segura to record a caution statement from him. On that same date he arrested and charged the Accused with burglary and on the 8 July 2015, he formally arrested and charged the Accused and Santos for the murder of the Deceased.

[11] The witness said the interview with the Accused lasted for about one hour and he was alone with him. He said he did not make any promises or threats to the Accused, nor did he beat him. He said his second interaction with the Accused was when he took him out of the cell block. He said he did not make any threats or

promises to him that he would not be charged if he gave a caution statement. nor did he beat him. At that time there were CIB officers in other sections of the office. He stated that nobody in his presence threatened the Accused beat him or made promises to him that he would not be charged if he gave a caution statement.

[12] The witness went on to say that during the second interaction with the Accused Carmelo Ack visited his office. At that time, he worked with Special Branch and would visit the CIB office as they had a good working relationship, and it was normal for him to visit the office to check on cases. The witness said he was present when PC Ack was at the office, and he did not promise the Accused that he wouldn't be charged if he gave a caution statement. When PC Segura was ready to record the caution statement it was minutes to 2:00 p.m., or shortly after that. The JP was present at that time.

[13] **Under cross-examination** this witness stated that the Accused was detained on the 4 July 2015, and that he should have been charged or released not later than 1:15 p.m., on the 6 July 2015. He said he questioned the Accused at 2:00 p.m., after the expiration of his 48 hours and the Accused should not be kept in custody or questioned after 48 hours. He said he did not present the court with a copy of his notes of interview. He said he did not say to the Accused that if he gave a caution statement against Santos he would not be charged. He denied that he and PC Ack went for the Accused in a pick-up. He denied stopping in Hattievillie and taking out the seat and left the Accused on the floor and that they assaulted him to tell them what had taken place.

[14] This witness continued that Ack was an intelligence officer trying to get information on suspects. He denied that they beat the Accused with batons. He said he gave

Ack a copy of the caution statement as per procedure. He said the Accused did not say he would not give the police a caution statement. He said he was not present when the JP spoke with the Accused.

[15] **Under re-examination** the witness stated that the Accused was given the caution statement of Santos to analyse. Then he asked to give a caution statement. That is why he was still in custody after the 48 hours. He said he gave him the caution statement from Santos around 11:00 a.m., when he had the interview.

[16] **Sonia Burn Justice of the Peace** (the "JP") testified that she has been a JP since around December 2002. She said that on the 6 July 2015, she was contacted by INSP Carillo to go to the Belmopan Police Station. On her arrival, Carillo took her to the CIB room where he introduced her to the Accused. She told the Accused that she was a JP and that she was there to witness, and they were left alone for a short while. She remembers asking him if he had eaten and he said yes, if he was beaten by the police and he said, no. They were left in the room for a short while and conversed. She asked him if he wanted to give a caution statement, and he said, yes. This witness continued that a short while afterwards Mr. Segura entered the room. When he saw them, he gave them a little more time together. Afterwards they went to the back of the building where the CIB office was to start the caution statement. It's in the upstairs of the building behind the police station. The Accused sat on the right the officers and me sat in front of each other in the same room. When he began Segura asked the Accused if he wanted to write the caution statement himself and the Accused said no Segura could write it for him. PC Segura proceeded to write whatever the Accused said and at the end the Accused, Segura, and she signed same. At some stage the Accused asked to go

to the bathroom and was allowed to do so. He was not handcuffed. He had a water bottle and coke in his hands. The Accused was told that he was arrested for murder. He was cautioned by Segura and was told he could communicate with an attorney. He was asked if he wanted an attorney and said no. The caution statement was read over to the Accused who was asked if he wanted to add or put in anything. He said it was ok.

[17] The witness stated that the Accused appeared to be normal. She doesn't recall seeing swelling on his face. She doesn't recall seeing the Accused in pain going up the stairs. The Accused said he was not promised anything, and he made no complaints to her. The witness said she spent 5 minutes alone with the Accused. Nobody beat him or promised him anything.

[18] **Under cross-examination** this witness stated that when she met the Accused, he was in the CIB office. She doesn't remember if he was with several other officers. She said there were about 4 other officers in the room when she met the Accused. She recalls Segura came to the office but when he saw them, he left them alone. The room was closed but not locked. The other officers went out of the room. They did not go far. At one time the Accused went outside and talked with Castillo. She said she may have asked the Accused if he was promised anything, and she did not know that the Accused was in custody for more than 48 hours when she spoke to him.

[19] There was no re-examination.

[20] **CPL Carmelo Ack** testified that he was an intelligence officer attached to the Belmopan police station and his duties included gathering intelligence in major incidents and of national security. He recalls the 15 May 2015, at around 7:00

p.m., when he received information of a double murder at Teakettle Village. He said on Saturday 16 May 2015, he received additional information of an additional suspect in respect of the murders and on that day he along with SGT Costillo went to Cotton Tree to locate a possible suspect, but he was not there. On the **6 July 2015**, he made checks at the Belmopan and learned that the Accused was detained at that station pending investigations for murder. On that same day he arrived at the CIB office and observed the Accused having a conversation with SGT Castillo. He said he asked the Accused where he was from, and the Accused mentioned Cotton Tree Village. He said he left the office and that was the only conversation he had with the Accused. The witness continued that at no time did he threaten, promise or offer anything to the Accused. He said he did not beat or inflict injuries to the Accused and that he spent about three to five minutes with him. He said no one in his presence beat the Accused or made promises to him. That was his only interaction with the Accused.

[21] **Under cross-examination** the witness said this double homicide was a high-profile case. Two Americans were murdered. He said he had no pressure from the USA. He worked closely with the CIB on this case. The witness stated that he did not know that the Accused was arrested on 4 July 2015. He said he did not pick up the Accused from Belize City and was not aware that he had arrived at Belmopan. He said he did not know if the Accused was questioned by SGT Castillo. He denied that he and Castillo escorted the Accused from Queen Street Police Station to the Belmopan Police Station. He denied that they pulled to the side of the road and made the Accused sit on the floor and assaulted him. He also denied that the Accused was beaten at the Belmopan police station with batons to his



knees. He denied telling the Accused that he must give a statement against Shaylon Santos, and he will be released and that the police were more concerned with arresting and charging Shaylon Santos.

[22] There was no re-examination.

[23] **CPL Nestor Segura** testified. This witness stated that during the month of July 2015, he was attached to the major crimes division at the Belmopan police station. He stated that on Monday 6 July 2015, at about 2:10 p.m., SGT Castillo requested his assistance in recording a caution statement from the Accused who was detained pending investigations for murder. As a result, he said he visited the CIB office in Belmopan where he met the Accused and Sonia Burns JP, so he stepped out to give the Accused time to speak with the JP. Around 2:35 p.m., the JP informed him that she was finished talking with the Accused and he was ready to give his caution statement.

[24] This witness went on to state that he approached the Accused and asked him if he wanted to give a caution statement. The Accused said yes so, he escorted him to the major crimes office upstairs in the CIB building. At the office he said he invited the Accused to sit at his right side and the JP sat in front of them across the table. The office was fully air conditioned, and the Accused was not handcuffed, nor did he have a firearm with him. He said he informed the Accused that he could drink water or the soft drink during the process. He said he also informed him that he could use the bathroom. It was only the Accused the JP and him in the office.

[25] The witness continued that the Accused told him that he wanted to give a caution statement, and he wanted him to write it for him. He obtained the caution statement forms and wrote the first caption and read it to the Accused and asked

him to sign it which he did. He said he cautioned the Accused in the following manner '*You do not have to say anything unless you wish to do so but whatever you say will be taken down in writing and will be used in evidence.*'

[26] He went on to state that the Accused voluntarily started to narrate a series of events which he wrote down on the caution statement form. When he was finished, he asked the Accused if he wanted to read it, but the Accused asked him to read it for him which he did. He said he asked the Accused if he wanted to add alter or correct anything on it but he said it was ok. He then asked the Accused to sign the caution statement which he did. The JP also signed the caution statement. He stated that he then wrote another caption that the above statement was read to Cardinal Lemoth, and he was told that he can correct add or alter anything in it. That his statement was true and that he made it of his own free will. He then wrote another caption as the recording officer of the caution statement which was taken on Monday 6 July 2015. Statement given under caution by Cardinal Lemott. He then wrote the final caption for Ms. Sonia Burns JP who witnessed the recording of the statement made under caution by Cardinal Lemott and that he made it on his own free will. That was signed by the JP.

[27] The witness stated that the Accused did not make any complaints to him and that he did not make any promises or threats to the Accused, nor did he use force on him. He further stated that no one in his presence used force or made threats or promises to him. He said that he did not observe any injuries on the Accused and that the Accused walked up the stairs to major crimes office which was approximately 12 to 13 steps. The Accused was in front followed by the JP and him and that whilst going up the stairs the Accused did not appear to be in any

pain. He said no one entered the room when he was with the Accused and that the Accused did not leave the room at any time.

[28] **Under cross-examination** the witness stated that he recorded the caution statement, and he did not ask the Accused if he was promised anything. He agrees that he should have asked the Accused if he was beaten or promised anything to give the caution statement. He said he did not know if other officers were outside of the room when he recorded the caution statement. He denied that after the Accused spoke with the JP SGT Castillo took him outside. He stated that he did not find out how long the Accused was in custody.

[29] Re-examination was declined.

[30] That was the case for the crown in the *voir dire*.

[31] The Accused was given his three choices at the close of the Crown's case which were that he could remain silent, or he could make a statement from the dock in which case he could not be questioned, or he could give sworn testimony in which case he might be cross-examined by Crown Counsel. After consultation with his lawyer, he chose to give an unsworn statement. He stated thus:

[32] My name is Cardinal Alexander Lemott Jnr. I am 27 years old, and I live in St. Matthews Village, Cayo District. On the **4 July 2015**, I was stopped by a mobile patrol in Belize City, and they told me that they wanted to conduct a search on me for illegal firearm and ammunition. I said, no problem. They concluded the search on me and nothing illegal was found. They then told me that I would be detained in connection with a double murder In Belize City. They then placed me in a cellblock area in the police station and they will inform the Belmopan Police Station of my detention. I asked them, if I would be escorted that same day or the

following day? They said they were just going to inform the police they did not know when they will come for me. No one came to pick me up on that same date.

The following morning, **the 5 July 2015, sometime in the morning two male officers came in the cellblock area** of the Queen Street Police Station informing me that they would escort me now to Belmopan Police Station. They then escorted me out of the cellblock area into a marked police mobile that was in the parking lot at the Queen Street Police Station. We then left the police station and while coming on the George Price Highway around the Hattieville area they pulled over and lift up the back seat which I was seated on and told me to sit on the floor in the mobile. They then proceeded on the George Price Highway. While proceeding on the George Price Highway they began asking me questions about a double murder in Teakettle Village. I told them I do not know anything about a double murder in Teakettle village. That is when PC Ack started to assault me by slapping me across my ears and on the back of my head. We then reached at the Belmopan Police Station in the parking lot area where they told me that they were going to interview me at this moment in the Belmopan CIB office. They took me into the CIB office and placed me to sit on an iron chair. SGT Castillo sat across a desk from me and PC Ack stood beside me. They then proceeded to ask me questions about the double murder in Teakettle Village. PC Ack then began to assault me by slapping me across my ear and behind my head again. Telling me that I am telling lies. SGT Castillo then took me to the cellblock area in Belmopan and told me that he would come outside. No one came to see me for the rest of that day.

[33] On the **6 July 2015**, sometime in the afternoon, the time I cannot really recall, SGT Castillo then came back for me and took me to the CIB office in Belmopan. When I reached in the office PC Ack and other police officer were already there in the CIB office. SGT Castillo asked me if I wanted anything to drink. I said, no. He then went and got a bottled water and a coke for me to drink. Interview me in the Belmopan CIB office. They took me into the CIB office and placed me to sit on an iron chair. SGT Castillo sat across a desk from me and PC Ack stood beside me. They then proceeded to ask me questions about the double murder in Teakettle Village. PC Ack then began to assault me by slapping me across my ear and behind my head again. Telling me that I am telling lies. SGT Castillo then took me to the cellblock area in Belmopan and told me that he would come outside. No one came to see me for the rest of that day.

[34] He then told me that he knows that I did not commit the murder in Teakettle Village. He said that his investigations led him to one Shaylon Santos who committed the murder in Teakettle Village. I told him I do not know anyone by the name of Shaylon Santos. He then asked me if I could read. I told him, yes. He then gave me some papers which I recognized as statements from Shaylon Santos. I the read the statements and told him that I do not know what Mr. Santos is talking about.

[35] He said they know that Shaylon Santos is telling lies. If I could give a statement stating that it is Santos who killed the two Americans in Teakettle Village, he will charge Santos for the murder because it is Santos that he really wanted not me. I told him I cannot do that. That was when PC Ack then box me behind my head telling me to help myself and help them. I asked them help who. PC Ack then

went to a rack located in the CIB office and took out a baton pointing the baton at my ears telling me to help them and help myself.

[36] I told them that I cannot help them giving any statement on Santos because it is going to be a lie. He then used the baton hitting me on my knees. I begged him to stop and leave me alone. And that was when SGT Castillo told me, Lemott help yourself and help us. Give a statement stating that it is Santos, and I am going to let you go. I then said okay. He told me to write one of those statements and he is going to get a Justice of the Peace for recording the statement that he wanted me to give.

[37] He then left me in the presence of PC Ack and left. I read over the statement about three to four times, and I waited there until he returned. I waited there in the cellblock until he returned with a female by the name of Sonia Burns. He then left outside and left me and Ms. Burns in the office. PC Ack and the other officers then followed behind him. I then told Ms. Sonia Burns that I am going to give a statement on a double murder that happened in Teakettle Village. We conversed for about 5 minutes in the office. SGT Castillo then stuck his head in the office about two times when we were conversing checking up on me. He then stated that he is going to get an officer to record the statement. The officer came and introduced himself to me and Ms. Burns as PC Seguro.

[38] They then escorted me upstairs of the CIB building, and told me to sit down in an office and Ms. Burns sat beside me. He then told me about the statement that he is going to record and began to record the statement. That is how the statement got recorded. I would like to say that SGT Castillo promised me that he was going to let me go. They assaulted me and I was tired of being in the cellblock area

sleeping on the floor, giving me no water to drink, and no food to eat. I was exhausted and tired of being in their detention area. So, I took his promise and gave the statement. That is all I have to say, Your Honour.

[39] The Accused called no witnesses and that was the case for the defence in the *voir dire*.

### **Submissions**

#### ***Crown***

[40] Ms Mohammed for the Crown in her written submissions contended that then Accused was detained on the 4 July 2015, and was transported to the Belmopan police station on the 6 July 2015. She submits that though the Accused stated in his unsworn statement that he was taken to Belmopan police station on the 5 July 2015, that was never suggested to Carillo or Ack.

[41] The Crown admits that the Accused was detained for in excess of 48 hours without being charged. Crown Counsel, however, submitted reasons why this breach occurred for the court's consideration.

#### ***Defence***

[42] Mr. Banner for the Accused submits that the Deceased were two American citizens hence the police were under intense pressure from the US Embassy and US authorities to make an arrest and institute charges for these offences. He further contended that in the circumstances the police were willing to break the law by keeping the Accused in custody for in excess of 48 hours whilst they assaulted him and made promises to release him if he gives a caution statement.

[43] Accordingly, Defence Counsel submits that the impugned caution statement should not be admitted into evidence for a breach of the constitutional rights of the

Accused and for the Crown's inability to prove beyond reasonable doubt that the caution statement was taken in compliance with the provisions of section 90 (2) of the **Evidence Act**.

### **The Law**

[44] The governing legislation which provides for the admission into evidence of a caution statement purportedly made by a prisoner can be found in section 90 of the **Evidence Act**<sup>3</sup> which provides thus:

**90.– (1) “An admission at any time by a person charged with the commission of any crime or offence which states, 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.”**

[45] The Crown seeks to satisfy its evidential burden aforesaid from the evidence of its witnesses called in this *voir dire* aforesaid.

[46] SGT Lemoth testified that at around 1:15 p.m., on the 4 July 2015, she detained the Accused at the Queen Street Police Station. She also testified that when she detained him, she cautioned him, and he requested a phone call which she

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<sup>3</sup> Evidence Act CAP 95 Section 90(1)(2) of the Substantive Laws of Belize Revised Edition 2020



allowed. She states that the Accused called and spoke with his mother for about two minutes.

[47] INSP Castillo testified that he learned on the 6 July 2015, that the Accused was in custody at the Belmopan police station. He interviewed him for about an hour but made no record of the contents of that interview. He denied under cross-examination beating the Accused on the 6 July 2015, together with PC Ack whilst they conveyed him from the Queen Street police station to Belmopan. Indeed, he denied transporting the Accused with PC Ack to Belmopan from Belize City. PC Ack also denied being together with Castillo on the 6 July 2015, transporting the Accused from Belize City to Belmopan during which time they beat him.

[48] It is to be noted that both police officers aforesaid denied that they were under pressure from officials from the US Embassy to charge the Accused for murder since the Deceased persons were US citizens.

[49] Sonia Burns JP testified that during her private conversation with the Accused prior to the taking of the caution statement, she asked him if he was beaten to which he replied no and asked him if he had eaten and he replied yes. This witness's evidence was unchallenged during cross examination by the defence.

[50] The thrust of the evidence for the defence was that the Accused whilst being transported to Belmopan on the 5 July 2015, was beaten by Castillo and Ack and he was again beaten by these two officers at the CIB office in Belmopan. This has been denied by both officers who stated that neither transported the Accused to Belmopan from Belize City nor did they beat him. They also denied promising to release the Accused if he gave a statement implicating one Shaylon Santos with the murder of the two American persons. Indeed, Castillo testified that when he

learnt on the 6 July that the Accused was in custody at the Belmopan Police Station, he visited him at the cell block and gave him a copy of the statement of Shaylon Santos.

[51] As stated aforesaid the burden of proving that the impugned caution statement was freely and voluntarily given lies exclusively with the crown. The crown must satisfy the court beyond reasonable doubt that the caution statement was given free from oppression, promises and inducements.

[52] In *R v Priestly*<sup>4</sup> ((1965) 51 Cr App Rep 1), Sachs J opined thus on the issue of oppression,

**“... .. but, to my mind this word in the context of the principles under consideration imports something which tends to sap, and has sapped that free will which must exist before a confession is voluntary ... .. whether or not there is oppression in an individual case depends upon many elements... They include such things as the length of time of any individual period of questioning, whether the Accused person has been given proper refreshment or not and the characteristics of the person who makes the statement. What may be oppressive as regards a child, an invalid or an old man or somebody inexperienced in the ways of the world may turn out not to be oppressive when one finds that the Accused person is of a tough character and an experienced man of the world”.**

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<sup>4</sup>*R. v. Priestley* (1965) 51 Cr. App. R 1 at p.1.

[53] The above definition was adopted and applied by the English Court of Appeal in the case of *R v Prager*<sup>5</sup> ([1972] 1 All ER 1114,). The test is highly subjective and would appear to embrace almost any words and/or actions which are calculated or likely to weaken the mind of the Accused to whom it is addressed or undermine his will.

[54] Defence Counsel is contending that his client was beaten by Castillo and Ack whilst being transported to Belmopan and whilst at the CIB office in Belmopan. The Accused further contends that he was not given food or water whilst in custody and it is against that background promises were made to him that he would be freed if he gave a caution statement implicating one Shaylon Santos.

[55] The Crown relies on the testimony of INSP Castillo PC Ack and Sonia Burns JP to satisfy the requirements of section 90(2) of the *Evidence Act*<sup>6</sup> aforesaid. to wit:

***“(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.”***

[56] **Under cross-examination** it was put to both Castillo and Ack that on the 6 July 2015, whilst transporting the Accused from Belize City to Belmopan they beat him. INSP Castillo testified that he first saw the Accused at the cell block at Belmopan police station around 11:00 a.m., on the 6 July when he had heard that he was

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<sup>5</sup> The Queen v Nicholas Prager [1971] EWCA Crim J1110-1

<sup>6</sup> Evidence Act CAP95 section 90(2) of the Substantive Laws of Belize

there. The Accused however stated in his unsworn statement that he was transported to Belmopan police station on the 5 July 2015 by Castillo and Ack.

[57] The Accused in his unsworn statement and defence counsel under cross examination Accused Castillo and Ack of inflicting harm to the Accused to his head, face and knees using their fists and a wooden baton prior to him agreeing to give a caution statement.

[58] Sonia Burns JP testified however that the Accused told her he was fed whilst in custody, nobody beat him, and he wanted to give the caution statement. She further stated that:

'The Accused appeared to be normal. She doesn't recall seeing swelling on his face. She doesn't recall seeing the Accused in pain going up the stairs. The Accused said he was not promised anything, and he made no complaints to her. The witness said she spent 5 minutes alone with the Accused. Nobody beat him or promised him anything.'

[59] The JP further stated that PC Segura cautioned the Accused before taking the caution statement and asked him if he wanted an attorney to which he replied, no. The Accused was not handcuffed in the room and at one stage he was allowed to leave the room to use the bathroom.

[60] This evidence by the JP was not challenged in xx by defence counsel. I have carefully analysed the evidence of this witness and during her testimony observed her demeanour and the manner in which she answered questions put to her both in examination-in-chief and under cross-examination. I have also considered this

evidence in light of the accusations by the Accused in his unsworn statement aforesaid.

[61] Having done so I find that I believe and accept the evidence of this witness.

Moreover, I find her testimony to be very powerful evidence coming from a neutral party in these proceedings in support of the Crown's case that the statement was freely and voluntarily given in terms of the provisions of section 90(2) of the ***Evidence Act***.

[62] I will now turn to consider the issue raised by the defence that the caution statement was taken after the Accused was in custody for a period of time in excess of 48 hours contrary to the provisions of section 5(3) of the Constitution<sup>7</sup>, to wit:

**“(3) Any person who is arrested or detained,**

**(a) for the purpose of bringing him before a court in execution of the order of a court; or**

**(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law, and who is not released, shall be brought before a court without undue delay and in any case not later than forty-eight hours after such arrest or detention.”**

[63] It is common ground that the Accused was taken into custody at around 1:15 p.m., on the 4 July 2015, and that the impugned statement was taken at 2:40 p.m., on

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<sup>7</sup> CAP4 Belize Constitution section 5(3) November 2022

the 6 July 2015, approximately 1 hr 25 minutes after the expiration of the Accused being held in custody for 48 hours without being charged for an offence.

[64] The issue to be determined herein is whether the court has a discretion to admit the caution statement into evidence when faced with this breach of a constitutional provision and in light of my finding that the caution statement was freely and voluntarily given.

[65] I will refer to the dictum of the court in the PC decision of **Allie Mohammed v The State**<sup>8</sup> 1998 UKPC 49. In that decision it was acknowledged that in searching the suspect the police had acted in breach of the rights guaranteed under the Constitution of Jamaica. That provision read as follows: *“Except with his own consent, no person shall be subjected to the search of his person or his property or the entry of others on his property.”*

*“21. The Crown’s case was that the police found drugs on the defendant. The defendant said the drugs were planted on him. The magistrate accepted the evidence of the Crown; he admitted the challenged evidence; and he convicted the defendant. The Court of Appeal dismissed an appeal. After a lengthy review of the authorities Lord Hodson observed (at 319C-G): - “The appellant relied in support of his submission that the evidence illegally obtained against him should be excluded on the argument that it was obtained in violation of his constitutional rights, and reference was made to an Irish case of **The People***

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<sup>8</sup> Privy Council Appeal No. 29 of 1998

*(A.G.) v. O'Brien*, where the point was discussed by the Supreme Court of Eire. The provision of the Jamaican Constitution scheduled to the Jamaica Order in Council, No. 1550 of 1962 (paragraph 19) gives protection to persons against search of persons or property without consent.

22. This constitutional right may or may not be enshrined in a written constitution, but it seems to their Lordships that it matters not whether it depends on such enshrinement or simply upon the common law as it would do in this country. In either event the discretion of the court must be exercised and has not been taken away by the declaration of the right in written form.

23. Having considered the evidence and the submissions advanced, their Lordships hold that there is no ground for interfering with the way in which the discretion has been exercised in this case.

24. This is not in their opinion a case in which evidence has been obtained by conduct of which the Crown ought not to take advantage. If they had thought otherwise, they would have excluded the evidence even though tendered for the suppression of crime.

25. Counsel submitted that this decision was concerned with the discovery of real evidence during an illegal search rather than a confession obtained in breach of a suspect's rights. That is true. Counsel further pointed out that in the case of a confession

*obtained in breach of the duty to inform a suspect of his right to legal advice, there is the added factor of the suspect's right not to incriminate himself. On this ground counsel submitted that King is distinguishable and should not be treated as applicable. In the alternative counsel argued that King was wrongly decided. At present their Lordships are only considering whether, contrary to the Miranda ruling, a trial judge has a discretion to admit a voluntary confession obtained in breach of constitutional rights. On this point, King is highly material. Lord Hodson cited authorities dealing with the judge's discretion to exclude confessions. And he considered the matter in the context of evidence obtained in breach of a constitutional right. King is therefore weighty authority for the proposition that in such a case a judge has a discretion to exclude or admit the confession. And subsequently in what was admittedly an obiter dictum by Lord Diplock the Privy Council affirmed in **Thornhill v. Attorney-General of Trinidad and Tobago** [\[1981\] AC 61](#) at page 68 in respect of a confession obtained after a breach of the defendant's constitutional right to communicate with his lawyer that only the trial judge (as opposed to a judge hearing a constitutional motion) can rule on the question whether the statement should be admitted in evidence. It is plain that the Privy Council took the view that even in such a case the trial judge has a discretion to admit or exclude a confession."*



[66] Crown counsel submitted that Castillo was informed sometime around 1:30 to 2:00 p.m., that the Accused wanted to speak with him. Ms Mohammed further submits that at that time the Accused informed Castillo that he wanted to give a caution statement. As a result, the Accused was taken from cell block to the CIB office hence the continued detention of the Accused was necessary.

[67] Ms. Mohammed relies on the *dictum* of the board in the PC decision of **Ramsingh v The AG of Trinidad & Tobago**<sup>9</sup> 2012 UKPC 16. In that decision the facts are that:

“1. On 25 February 2002 the appellant was detained in a police station in Trinidad and Tobago on suspicion of assault. She remained in detention for over five hours while the police waited for a medical report on the condition of the victim. In the event the report showed no serious injury to the victim and the appellant was released without being questioned or charged. The appellant brought civil proceedings against the Attorney General in which she claimed damages for false imprisonment.

Was the continued detention justified?

16. The answer to this question depends upon all the circumstances of the case. As explained above, the respondent must show that the whole period of detention was justified.

However, while it would be wrong in principle to hold that, because the initial arrest was justified, it follows that the

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<sup>9</sup> Privy Council Appeal No. 0111 of 2010

subsequent detention was also justified, it is important to consider the subsequent detention in the light of the arrest.”

[68] The court went on to state thus at para 19:

“19. It is submitted on behalf of the respondent that, given the reasonable suspicion that the assault was serious, perhaps very serious, it was prudent for the police to detain the appellant until the position was clear. If it had been a serious assault, the appellant would have known that, and it is far from clear what she might have done if released. Equally, if it had been a serious assault, it would no doubt have been appropriate to charge her accordingly and perhaps to oppose an application for bail. The police did not of course know how long it would take to obtain information from the hospital. In the event it took over five hours. It might have taken less. The Board accepts those submissions.

20. In summary, although the Board does not accept all the reasoning of the judge or the Court of Appeal, it concludes that the police acted reasonably (and proportionately) in detaining the appellant until medical information was available.”

[69] I have carefully considered the evidence adduced at the voir dire on the admissibility of the impugned caution statement in terms of the provisions of section 90(2) of the **Evidence Act** and English common law. Having done so as stated aforesaid I have found that the caution statement was freely and voluntarily obtained from the Accused. I must also consider that there is no provision in the Constitution or in any other law in Belize which limits the discretion of the Court to

admit or exclude a confession statement was entirely abolished by section 5(3) of the *Constitution* aforesaid. In that regard, I have also considered the provisions of section 4 of the *Evidence Act*<sup>10</sup> CAP 95 of the Laws of Belize to wit:

**“Subject to the provisions of this Act and of any other statute for the time being in force, the rules and principles of the common law of England relating to evidence shall, so far as they are applicable to the circumstances of Belize, be in force therein.”** (Emphasis added)

[70] After having considered the decisions of the PC on *Allie Mohammed v The State* and *Ramsingh v The Ag of T & T*, I accept and will apply the principles of law stated therein.

[71] It is common ground that the Accused was a suspect in what has been described as a double murder. Indeed, in that regard a wanted poster had been issued for him and notices were sent out to other police formations that the Accused should be detained on sight. Thus, the seriousness of the alleged offences for which the Accused was wanted was clearly acknowledged by the police and hence in the circumstances it cannot be trivialised.

[71] The facts herein disclose, and it is common ground that the Accused was detained for a further period of 1 hour and 25 minutes after the expiration of 48 hours from the time he was detained. I am satisfied to the extent that I feel sure that during that time there were no additional constitutional or other breaches to the rights of the Accused as he gave his caution statement to the police.

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<sup>10</sup> Evidence Act CAP 95 section 4 of the Substantive Laws of Belize Revised Edition 2020

- [72] Crown Counsel submits that given the seriousness of the alleged offences herein it was prudent of the police to further detain the Accused to give him an opportunity to say what he wanted to say after having read the statement of Shaylon Santos another suspect in this matter and expressed the intention to give his statement thereon.
- [73] Accordingly, in the circumstances and for the reason hereinbefore stated this court finds that the decision by the police to keep the Accused in custody until he gave his statement to PC Segura is not unreasonable but is a prudent decision in light of the fact that they were involved in the investigation of a case of a double homicide in which the Accused was a suspect. Moreover, I accept the evidence that this was done after the Accused sought an opportunity to give his statement to the police after having read the statement of Shaylon Santos another suspect in this matter.
- [74] Thus, the application by the Crown for the caution statement of the Accused to be admitted into evidence is granted.

**Hon. Mr. F M Cumberbatch**

Justice of the High Courts