

**IN THE HIGH COURT OF BELIZE, A.D. 2024**

**CENTRAL SESSION – BELIZE DISTRICT**

**IN THE HIGH COURT OF JUSTICE**

**INDICTMENT NO: C80/2024**

**Between:**

**THE KING**

**v.**

**JAIRO AMADOR**

**BEFORE: The Hon. Justice Derick F. Sylvester**

**APPEARANCES: Ms. Shanell Fernandez for the Crown**

**Mr. Norman Rodriguez for the Defence**

**DATES OF HEARING: 25<sup>th</sup> 28<sup>th</sup> 29<sup>th</sup> October 2024**

**DATE OF DELIVERY: 15<sup>th</sup> November 2024**

**RULING: ADMISISIBILITY OF DOCK IDENTIFICATION**

**[OBJECTION NO. 1]**

**[1] SYLVESTER J:** During the trial of this matter the defence raised a trilogy of Legal objections, they are as follows:

i. Firstly, objection to the dock identification of the accused.

ii. Secondly, the prosecution witness Leon Ferguson, was the officer, who detained, arrested, charged, investigated, recorded the accused's statement, swore to the information on oath to charge the accused, and therefore, the procedure was

impartial and unfair, and the charge ought to be dismissed. There exists a conflict of interest.

iii. Thirdly, a submission of no case to answer.

[2] This judgment shall deal with the submission on issue number one:

i. Objection to the dock identification.

[3] On the 1<sup>st</sup> day of October 2022, the accused was a Police Officer attached to the Hattieville Police Station, and detailed to work at the Hattieville, Vehicle Check Point [VCP]. It is alleged that the accused detained Ann Savard for an alleged Motor Vehicle Insurance Violation. Further, he requested money in exchange for her release, and did receive the sum of one hundred Dollars United States Currency [USD100.00].

[4] On the 6<sup>th</sup> October 2020, the accused was charged with the offence of Extortion, contrary to section 284 (1) read along with section 310 of the Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020. Section 310 of the Criminal Code states:

'310. A public officer is guilty of extortion who under cover of his office demands or obtains from any person whether for public purposes or for himself or any other person, any money or valuable consideration which he knows that he is not lawfully authorised to demand or obtain, or at a time at which he knows that he is not lawfully authorised to demand it.

[5] The Particulars of the Crime are as follows:

*'JAIRO AMADOR, on the 1<sup>st</sup> day of October 2022, at Hattieville Village, in the Belize District, in the Central District of the High Court, under the cover of his office as a police constable in the Belize Police Department, obtained from Ann Savard, the sum of USD\$100.00, which he knew he was not lawfully authorised to obtain.'*

[6] On the 25<sup>th</sup> day of October 2024, the accused's trial commenced before a Jury pursuant to section 65 of the Indictable Procedure Act<sup>1</sup>.

The Crown's witnesses who were germane to the issue relating to the objection of dock identification were as follows:

- |                     |                          |
|---------------------|--------------------------|
| i. Ann Savard       | Virtual Complainant [VC] |
| ii. Michael Bandick | Husband of the VC.       |

### **Defence's Submission**

[7] During the evidence of Ann Savard (the Virtual complainant), the defence objected to the dock identification of the accused, alleging that a foundation has not been laid to enable the identification.

### **Prosecution's Reply**

[8] The Prosecution submitted that a foundation shall be laid to satisfy the dock identification. Further, by nature of the defence's case, identification may not be an issue. In any event the Turnbull guidelines can be adopted and applied if necessary.

## **LAW AND ANALYSIS**

### **Asp Delfin Zuniga [unchallenged]**

[9] The central issue at the nucleus of this submission, is whether identification is a live issue in this trial. The agreed evidence of Assistant Superintendent of Police Delfin Zuniga was that he was assigned duties for the week 25<sup>th</sup> September, 2022 to 1<sup>st</sup> October 2022, and he was working morning duties. He confirmed that Jairo Amador, Police Constable 1395 who is in relief No. 3 was working morning duties, which is from 8:00 am to 4:00pm daily except for Sunday.

---

<sup>1</sup> Chapter 96, of the Substantive Laws of Belize, Revised Edition 2020.

**Jairo Amador [Unchallenged statement]**

- [10] Further, in the unchallenged statement of Jairo Amador [Accused], the accused placed himself on the scene. The statement was tendered into evidence, without objection by the defence and marked **LF1**. In sum the accused stated that he was working on the 1<sup>st</sup> October 2022, at the Vehicle Check Point [VCP] in Hattieville and he reported for work at 8:00am. The other person working along with him was PC 139 Ryan Bainton. He confirmed he was working at the VCP, denied receiving USD 100 from a person whilst at the check point, but stated he gave Inspector Bernardez a USD 100.00 currency at the check point, which he found on the ground when he went at the long post to take a 'piss'.

**CPL 1123 ADRIAN MENDEZ**

- [11] The evidence of Cpl. Adrian Mendez was that he was stationed at the Hattieville Police station, on the 1<sup>st</sup> October 2022, at approximately 7:45 am. On that day his team was short of personnel, so he deployed both PC Amador and PC Bainton to the Check point at mile 15 on the George Price highway. The cross examination of Cpl. Mendez was mainly geared towards the written statement, purporting to be his, however the signature was not his. There was no cross examination on his statement, challenging that he was deployed to work at Hattieville, together with PC Bainton or leaning towards identification being an issue in this case.

**INSPECTOR MARK BERNARDEZ**

- [12] The evidence of Inspector Barnardez, was to the effect that, PC Amador confessed that he was the one who dealt with these persons. That he took USD 100, and he took the money from them because they were driving an uninsured motor vehicle and he let them go.
- [13] There was no cross examination to the effect that identification was at issue in this case. At no time during the trial and specifically up to the point of the taking of the evidence of Ann Savard, was there any issue raised by the defence, either in cross

examination or otherwise that 'identification of the accused' was an issue in this case. Specifically, it was not the defence's case, as put in cross examination, that it was a case of mistaken identity. Identification was never proffered throughout the trial.

- [14]** The defence completed the Case Management Conference [CMC] form, pursuant to the Criminal Procedure Rules Rule 9.11. One of the questions on the form stated:

The Defendant is raising an alibi Defence, please provide particulars:

Answer: None.

Evidently, the accused was not raising the issue of alibi, since if he did, he was required pursuant to section 125 of the Indictable procedure Act, to provide the name/s and address/es of the alibi witnesses.

- [15]** Further, on the CMC form the question whether the defendant will raise any legal argument or challenge the admissibility of evidence, the Defendant stated inter alia:

The Defendant, Jairo Amador, will challenge the admissibility and or validity of the following:

The identification of the[sic] Ann Denise Savard and Michael Robert Bandick, both foreigners and whom [sic] did not know him before the date of the incident in the absence of an identification parade.

- [16]** The above is representative of a cursory challenge to not having an identification parade. However, there was no indication that identification of the Defendants was an issue in the trial. This court notes that not in every instance will an identification parade be necessary, or even relevant, especially in this case where identification of the defendant was not a live issue. It is not in every instance will it be necessary to have an identification parade, when there is overwhelming evidence from numerous witnesses, including the accused that he was present at the scene. In any event identification was not an issue canvassed by the defence. The crux of the case was credibility.

[17] This court is of the view that an identification parade is only necessary if it will serve a useful purpose. Further, where identification is not an issue, the dock identification by a witness is not prejudicial to the fair trial of the accused. Where the accused is saying, it was me who was present, but I did not do what was alleged by this witness, it would run contrary to good sense to refuse a dock identification or to hold an identification parade during the conduct of a police investigation. The safeguards lacking in dock identification cannot be overstated<sup>2</sup> however, which includes the presumption of guilt by the jury, since the accused is sitting in the dock, but in and of itself it is not the end of the matter.

[18] The accused was detained the same day, shortly after the alleged extortion occurred. The other Officer PC 139 Bainton also provided a statement to the police. The crown indicated he could not be found and so was not called. The only two officers who were working at the VCP, on the 1<sup>st</sup> October 2022, were Amador and Bainton. Amador throughout maintained he was stationed at the check point with Bainton. This court concludes that identification was not a live issue in this trial but raised as an afterthought.

[19] It is accepted that where the suspect asserts that his identity is in issue, then an identification parade is mandatory, and where it is not held, the reasons for not holding one must be given. Whenever a dock identification is allowed, the appropriate direction on the dangers of dock identification must be given to the jury. An example of this instance was postulated by Lord Brown in par. 14 of **John v. State of Trinidad and Tobago**<sup>3</sup> at par. 16 thus:

*[14] As a basic rule, an identification parade should be held whenever it would serve a useful purpose. This principle was initially stated by Hobhouse LJ in R v Popat [1998] 162 JP 369, 2 Cr App Rep 208, 215, [1998] Crim LR 825 and endorsed by Lord Hoffmann giving the judgment of the Board in Goldson & McGlashan v R (2000) 56 WIR 444. Plainly an identification parade serves a useful purpose whenever the police have a*

---

<sup>2</sup> Seon Toal v Her Majesty Advocate [2012] HJAC 2013 Lord Justice General paras. 71-73.

<sup>3</sup> *ibid*

*suspect in custody and a witness who, with no previous knowledge of the suspect, saw him commit the crime (or saw him in circumstances relevant to the likelihood of his having done so, for example en route to a robbery). Often, indeed usually, that is the position and, when it is, an identification parade is not merely useful but, assuming it is practicable to hold one, well-nigh imperative before the witness could properly give identifying evidence. In such a case, Lord Hoffmann said in Goldson, “a dock identification is unsatisfactory and ought not to be allowed,” although he added: “Unless the witness had provided the police with a complete identification by name or description, so as to enable the police to take the accused into custody, the previous identification should take the form of an identification parade.”*

[20] In conclusion, in **John’s case**<sup>4</sup> the court examined two cases from Belize, where the convictions were quashed for failure to hold an identification parade. It is important to note that the factual matrices in both cases are in stark contrast to the present. In both cases identification was a material issue. I can do no better justice than to preproduce verbatim paras. 20-22, of Lord Brown’s exposition as follows:

*[20] The Board has had occasion to deal with failures to hold identification parades in a number of subsequent cases. Amongst them are Aurelio Pop v R [2003] UKPC 40, [2003] 5 LRC 320 and Pipersburgh and Robateau v R [2008] UKPC 11, [2008] 4 LRC 345, each an appeal from the Court of Appeal of Belize, both resulting in the quashing of the Appellant’s convictions, and in both of which Lord Rodger of Earlsferry delivered the judgment of the Board. It is unnecessary to rehearse here the detailed facts of either case. Both, however, in their different ways involved unsatisfactory recognition evidence and dock identifications only. In Pop, the witness Adolphus who identified the accused as the gunman, only made the link between the man he knew simply as R and the accused as the result of an*

---

<sup>4</sup> *ibid*

*improper leading question by prosecuting counsel (see paras 7 and 10 of the judgment). That, coupled with the failure to hold an identification parade which should have been held under Belize law (see para 9 of the judgment) required that the judge should have: “warn[ed] the jury of the dangers of identification without a parade and should have explained to them the potential advantage of an inconclusive parade to a Defendant such as the Appellant. For these reasons, he should have explained, this kind of evidence was undesirable in principle and the jury would require to approach it with great care” (para 9) and he should have “pointed out to the jury that [because of counsel's leading question] they required to take even greater care in assessing Adolphus's evidence that it was the Appellant who had shot the deceased” (para 10).*

*[21] In Pipersburg (an appeal heard, the Board regretfully recorded, with the DPP unrepresented) no identification parade had been held because the suspects' pictures had been published in the press and it was feared that they would be identified from these – an inadequate justification for dock identifications over 18 months later. It is sufficient for present purposes to cite para 17 of the Board's judgment: “In the present case, it may well be that the judge bemoaned the fact that no identification parade had been held and pointed out the advantages of such a parade. But, despite what the Board had said in Pop, he did not point out that Mr Robateau had thereby lost the potential advantage of an inconclusive parade. Moreover, while giving directions on the care that needs to be taken with identification evidence in general, the judge did not warn the jury of the distinct and positive dangers of a dock identification without a previous identification parade. In particular, he did not draw their attention to the risk that the witnesses might have been influenced to make their identifications by seeing the Appellants in the dock. And, perhaps most importantly, even if the judge's directions would have ensured that the jury appreciated that this type of identification evidence was undesirable in principle, he did not explain that they would require to approach that evidence with great care.*



*On the contrary, the closing words of the direction really left the whole matter to the jury on the basis that the witnesses said that they knew the men and it was simply up to the jury to accept or reject their evidence.”*

*[22] Pop and Pipersburg are really the high watermark of the Appellant's case. Mr Birnbaum submits that through the failure to hold an identification parade here, this Appellant too “lost the potential advantage of an inconclusive parade”. In the context of the present case, however, there could only have been “an inconclusive parade” if Lewis was actually lying – as, of course, the Appellant said he was – in claiming to know him. If he did know him in the sense of recognising him from the streets or even, indeed, merely from having driven him down south and back again on the occasion of the robbery, he could hardly have failed to pick him out on the parade.*

**[21]** The authorities state and this court accepts, that to enable the fair trial of an accused, when identification is in issue, an identification parade must be had<sup>5</sup> and if not, reasons must be given for not so doing. And where a dock identification was made under the above circumstances, then the trial Judge must give directions on the risks of a mistaken dock identification, and the assumption that because the accused sits in the dock he committed the offence<sup>6</sup>.

**[22]** The important of dock identification to the fair trial of the accused would be guarded jealously by this court. However, the discretion to allow it depends on the circumstances of the particular case. As was stated throughout this judgment, where identification is not in issue, then there is no need for an identification parade, and dock identification can be allowed in those circumstances. That dock identification can be allowed in exceptional circumstances. It is the view of this court that the circumstances in paras. 8-18 above are exceptional circumstances, namely identification not being a live issue in the trial. This therefore warrants allowing the

---

<sup>5</sup> Terrell Neilly v. Queen [2012] UKPC par. 33

<sup>6</sup> Terrell Neilly v. Queen [2012] UKPC par. 32 & 34

dock identification. In **Maxo Tido v The Queen**<sup>7</sup> Lord Kerr at par. 21 postulated that dock identification is not inadmissible per se but admissible in exceptional circumstances.

*'21. The Board therefore considers that it is important to make clear that a dock identification is not inadmissible evidence per se and that the admission of such evidence is not to be regarded as permissible in only the most exceptional circumstances. A trial judge will always need to consider, however, whether the admission of such testimony, particularly where it is the first occasion on which the accused is purportedly identified, should be permitted on the basis that its admission might imperil the fair trial of the accused. Where it is decided that the evidence may be admitted, it will always be necessary to give the jury careful directions as to the dangers of relying on that evidence and in particular to warn them of the disadvantages to the accused of having been denied the opportunity of participating in an identification parade, if indeed he has been deprived of that opportunity. In such circumstances the judge should draw directly to the attention of the jury that the possibility of an inconclusive result to an identification parade, if it had materialised, could have been deployed on the accused's behalf to cast doubt on the accuracy of any subsequent identification. The jury should also be reminded of the obvious danger that a defendant occupying the dock might automatically be assumed by even a well-intentioned eye-witness to be the person who had committed the crime with which he or she was charged.*

**[23]** Having concluded that identification was not a live issue in this case, and the dock identification did not derogate from the fair trial of the accused, and therefore the need for direction to the jury on the dangers of dock identification will serve no useful purpose, the application by the defence is refused.

---

<sup>7</sup> [2011] UKPC 16 par. 21 -22

**[24]** The dock identification by both Ann Savard and Michael Bandick is allowed. The Defence's objection is overruled.

---

**Derick F. Sylvester**  
**Justice of the Supreme Court**