

**IN THE SENIOR COURTS 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: APPLICATION FOR DISMISSAL IMPARTIALITY/UNFAIRNESS  
[OBJECTION NO. 2]**

**[1] SYLVESTER J:** During the trial of this matter the defence raised a trilogy of Legal objections. This judgment shall focus on the defence's submission requesting a dismissal of the case against the accused on the basis of impartiality, improper procedure and unfairness as follows:

- i. The prosecution's 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.

- [2] 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].
- [3] 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.
- [4] The substance of the charge against the accused were particularised on the indictment 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.’*
- [5] 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>.

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

[6] The Crown called a total of six [6] witnesses to prove its case against the accused.

They are as follows:

- |                               |                          |
|-------------------------------|--------------------------|
| i. Ann Savard                 | Virtual Complainant [VC] |
| ii. Michael Bandick           | Husband of the VC.       |
| iii. Inspector Mark Bernardez | Police Officer           |
| iv. Cpl 1123 Adrian Mendez    | Police Officer           |
| v. ASP Delfin Zuniga          | Police Officer           |
| vi. Sgt 1270 Leon Ferguson    | Investigator             |
| vii. Brandon Oshon            | Justice of the Peace.    |

### **Defence's Submission**

[7] The Defence at the close of the case for the prosecution, submitted that the charge against the accused should be dismissed, since the trial was tainted with impartiality and unfairness. Counsel contends that there was a procedural defect from the initial investigation to the proffering of the charge by Sgt 1270 Leon Ferguson, resulting in a procedural defect and an unfair trial of the accused. The particulars of the procedural defect, through the evidence of Sgt Ferguson, which has tainted the trial are as follows:

- i. He received the information about an alleged extortion.
- ii. He was the Chief Investigator, and the officer who detained the accused.
- iii. He conducted the investigation and recorded a statement from the accused.
- iv. He prepared a sworn information and complaint and swore to the charge.
- v. He came to the Court to give evidence against the accused.

[8] The application for a dismissal of the charge is grounded on impartiality and unfairness, in that the sole Investigator has received the report, investigated, made a determination to charge and indeed charged the accused, and further came to court to give evidence. The officer is therefore conflicted and the procedure leading

up to the trial is tainted beyond repair, and therefore the charge ought to be dismissed.

- [9] The defence relied on two authorities from India namely, **Megha Singh v. State of Haryana [AIR] 1995 SC 2339**, and **State of Karnataka Paper Town v. Sheshadri Shetty and Ors. [2005] CriLJ 377**.

### **Prosecution's Reply**

[8] The Prosecution succinctly responded as follows:

- i. The defence has failed to establish the basis for unfairness and impartiality to vitiate the trial at this stage
- ii. The investigating officer is not the complainant. There is an independent complainant in this matter, and therefore any issues relating to unfairness, conflict and impartiality is misplaced.
- iii. The officer conducted a thorough examination, and even if Sgt Ferguson's evidence is removed from the trial the remaining evidence is sufficient to result in a conviction.

### **LAW AND ANALYSIS**

[9] The quintessence of the powers, duties and privileges of a police officer are circumscribed within sections 16-23 of the **Police Act Cap 138**, and encapsulated there as, non-restrictive, both from an investigative and procedural perspective. A police officer therefore expressly has the authority to preserve the peace, detect crime, apprehend and summon a person found committing or reasonably suspected or who are charged with having committed an offence. Section twenty [20] of the Police Act states the duties of the police department as follows:

#### **PART II Powers, Duties and Privileges of Police Officers**

20.-(1) The duties of the Department shall be-

(a) to preserve the peace, detect crimes, apprehend and summon before a magistrate persons found committing, or whom they may reasonably suspect of having committed any offence, or who are charged with having committed any offence, to execute all summonses, warrants, subpoenas, notices and criminal processes issued from any court of criminal jurisdiction, or by any magistrate in a criminal matter or by a coroner and to do and perform all duties appertaining to the office of constable or imposed upon constables by the law of Belize;

(b) to perform such duties in connection with the repression of crime, guarding of prisoners, prevention of offences against the revenue, the preservation of order at the sittings of any court, and the execution of any process thereof, as may be required of them by any law, or under any regulations made under this Act, or as may be specially ordered by the Minister or the Governor General;

[10] The above power is all embracing to prevent, avert and or stop the commissioning of criminal offences. There appears from the above section to be no procedural or substantive restrictions, in relation to an officer's conduct during an investigation.

[11] The **Criminal Procedure Code of Belize Cap 172**, prescribes the procedure when a complaint has been filed to the moment the charge has been laid. Either the magistrate or the police officer preferring the charge can sign the information or complaint. In this case Cpl 1270 Leon Ferguson [Now Sergeant] on the 6<sup>th</sup> day of October 2022, signed the information and complaint in the presence of the Justice of the Peace, Rita M. Coleman, which was then stamped and signed. The correct procedure in the court's view was followed by the investigating officer. The Criminal Procedure Code sections 70 (3) and (5) are applicable to the issue at hand. The complete section shall be reproduced, as follows:

#### **70. Complaint and charge**

(1) Criminal proceedings may be instituted by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without a warrant.

(2) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a magistrate.

(3) A complaint may be made orally or in writing, but if made orally shall be reduced to writing by the magistrate, and in either case shall be signed by the complainant and the magistrate: Provided that where proceedings are instituted by a police officer or other public officer, acting in the course of his duty as such, a formal charge, drawn up in conformity with the requirements of this Code, and duly signed by such officer, may be presented to the magistrate and shall for the purposes of this Code be deemed to be a complaint and shall be signed by the magistrate.

(4) A magistrate, upon receiving any such complaint, shall, unless such complaint has been laid in the form of a formal charge under subsection (3), draw up, or cause to be drawn up, and shall sign, a formal charge containing a statement of the offence with which the accused is charged.

(5) When an accused person who has been arrested without a warrant is brought before a magistrate, a formal charge containing a statement of the offence with which the accused is charged shall be signed and presented by the police officer preferring the charge.

(6) Every complaint shall be for one matter only but the complainant may lay one or more complaints against the same person at the same time and the court hearing any one of such complaints may deal with one or more of the complaints together or separately as the interests of justice appear to require.

(7) Notwithstanding anything in subsection (6), no complaints shall be heard together if they could not be charged together in an indictment in accordance with the provisions of section 165.

[12] With due deference to Learned Counsel for the accused, the above sections, both in the Police Act and Criminal Procedure Code, clothe the investigating officer with the authority to conduct the investigation without restriction. Once the police officer is satisfied, upon the investigation, that there is information to lay a charge, it can be done by him, and the signing of the information and complaint procedurally, can be completed either by the police if arrested without a warrant or the Magistrate.

### **Distinguishing the authorities submitted by the Defence**

[13] Both authorities submitted by the defence, namely, **Megha Singh v. State of Haryana [AIR] 1995 SC 2339**, and **State of Karnataka Paper Town v. Sheshadri Shetty and Ors. [2005] CriLJ 377**, are factually diverse from the present case. The legal principle emanating therefrom is that where a police officer or an investigating officer is also the complainant in a matter, then in those circumstances the investigation will be tainted and deemed impartial. That an impartial investigation is the bedrock for any successful prosecution. The conflict arose in the above authority where the investigator, whilst conducting the investigation into the said matter, was also a complainant and therefore the conflict was patent. The officer was then operating in two positions, as complainant and investigator in his 'own cause or matter'. Logically, when this matter proceeds to trial, the question that would arise is, in what capacity would he give evidence, is it as an investigator or virtual complainant. Therein lies the difficulty in **State of Karnataka Paper Town v. Sheshadri Shetty and Ors. [2005] CriLJ 377**, (which followed **Megha Singh v. State of Haryana [AIR] 1995 SC 2339**). In that case the police officer was the complainant and investigator in the same case.

[14] The factual matrix in Megha's case and the procedural and legal difficulty was highlighted by Saldanha J at par. 3 as follows:

3. One of the basic infirmities which have been held against the prosecution by the Trial Court emanates from the fact that H. Manjappa who was the Sub-Inspector of Police at the relevant time had gone to the spot and being also the Investigating Officer has recorded his own Complaint, treated it as

the FIR and has proceeded with the investigation. The legal complications that emanate from a situation of this type have been highlighted by the Supreme Court in the case of Megha Singh v. State of Haryana, 1995 CrLJ 3988 wherein the Investigating Officer was the very person who had lodged the complaint which was treated as the FIR and the starting point of the investigation. The Supreme Court disapproved of the procedure and undoubtedly, there was very valid reason for it because the Supreme Court has indicated that where the Investigating officer happens to be the Complainant that it would be perhaps difficult to uphold that position that the investigation was impartial. An impartial investigation is the essential bedrock for any successful prosecution.....this is a legal infirmity and impediment'.....it was one of the principal grounds on which the accused have been acquitted'.

- [15] Without further ado, the authorities submitted and their principles, are not applicable to the present case. Sgt 1270 Leon Ferguson was not a complainant in this matter, albeit he was investigating a matter wherein his fellow police officer and colleague was being investigated. For it is only the police who can investigate the police for alleged wrongdoing. There is not an independent arm prescribed in Belize legislatively to investigate and charge when a police officer is alleged to have committed a criminal offence.
- [16] The defence's submission that, the trial was unfair, that Sgt. 1270 Leon Ferguson was impartial by; conducting the preliminary investigation, signing and filing of the information and complaint including the taking of the accused statement, must fail.



**[17]** The defence's submission is overruled, and the matter shall proceed.

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