

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: 25th 28th 29th October 2024

DATE OF DELIVERY: 15th November 2024

RULING ON NO CASE SUBMISSION

[OBJECTION NO. 3]

Introduction

- [1] SYLVESTER J:** During the trial of this matter the defence raised a trilogy of Legal objections. This judgment shall deal with the submission of, ‘no case to answer’.
- [2]** On the 1st day of October 2022, the accused, a Police Officer was 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] After an investigation into the above matter, on the 6th 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 Particulars of the Crime are as follows:

*'**JAIRO AMADOR**, on the 1st day of October 2022, at Hattievillage 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 25th day of October 2024, the accused's trial commenced before a Jury pursuant to section 65 of the Indictable Procedure Act¹. The Crown called a total of seven 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 |

¹ Chapter 96, of the Substantive Laws of Belize, Revised Edition 2020.

iv. Cpl 1123 Adrian Mendez	Police Officer
v. ASP Delfin Zuniga	Police Officer
vi. Sgt 1270 Leon Ferguson	Police Officer
vii. Brandon Oshon JP	Justice of the Peace

[6] On the 29th day of October 2024, the Crown closed its case against the accused. The Defence thereafter intimated to the court an intention to make a particular application, which was acceded to in the absence of the jury². The defence made a no case submission and premised it on both limbs identified in the seminal authority of **R v. Galbraith**³. Firstly, that there was no evidence that the accused committed the offence, and in the alternative, the prosecution's evidence taken at its highest, a jury properly directed could not properly convict on it. During the Defence's submission, the first limb of the Galbraith test was abandoned, and the defence focused solely on the second limb. It is therefore on the second limb that this judgment will be focused.

Defence's Submission

[7] The gravamen of the defence's submission is that the prosecution's case was so discredited under cross examination, the evidence so tenuous, and the evidence of the prosecution's witnesses, in particular Ann Savard and Michael Bandick, was so discredited that the case should not be permitted to proceed any further. In sum, the evidence of the police officers and the Justice of the Peace do not 'pass muster' and therefore must be withdrawn from the jury. In conclusion, the court is evidentially snafued, and therefore the only course is a withdrawal of the case from the jury.

Prosecution's Submission

[8] The Prosecution submitted, that where the issue of credibility arises, it is for the tribunal of fact, and since there is sufficient evidence coming from the virtual

² Crossdale v R (1995) 46 WIR 278 PC

³ [1981] 2 ALLER 1060

complainant and her husband that the accused did receive the sum of one hundred USD dollars in exchange for the release of Ann Savard, coupled with his oral confession to Inspector Mark Bernardez and the accused's unchallenged caution statement tendered into evidence as **LF1**, the matter should be left with the jury.

LAW AND ANALYSIS

[9] As a precursor firstly, it has been postulated in a plethora of decisions, and it has now become trite law, that in a criminal trial, issues as to credibility, are best left solely within the domain of the jury. For example, where jury trials exist, as in this case, or with the judge if it's a judge alone trial. The Caribbean Court of Justice, our Apex court in **Bennet v R**⁴, has restated the position in Galbraith, that where the prosecution's evidence is such that the strength or weakness depends on the view to be taken of the witness' reliability, or on one possible view over the next, then the matter must be left with the jury. The Hon. Mr. Justice Jacob Wit in *Bennett v R*, at par 9 expounded the legal position as follows:

'The power to stop the trial at the close of the prosecution's case is founded in the common law. The appropriate tests are to be found in the well-known case *R v Galbraith*. In accordance with that decision, there is no difficulty "if there is no evidence that the crime alleged has been committed by the defendant... The judge will of course stop the case." The difficulty arises, Lord Lane CJ said, "where there is some evidence, but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence." He then identified two scenarios: "(a) Where the judge comes to the conclusion that the prosecution's evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution's evidence is such that the strength or weakness depends on the view to be taken of the witness's reliability, or other matter which are generally

speaking to be taken within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.”

[10] Secondly, at the hearing of a submission of no case to answer, the question is not whether there is a reasonable doubt, but rather if there are no circumstances in which a jury properly directed can convict. Lord Kerr in dealing with this issue as to the proper approach a judge should take with his fact-finding exercise in a judge alone trial, in the decision in the Court of Appeal of **Chief Constable v Lo**⁵ posited the following:

“[14] The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in Galbraith. The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is the tribunal of fact. It is important to note that the judge should not ask himself the question, at the close of the prosecution’s case, ‘do I have a reasonable doubt?’. The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the judge could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict.” (emphasis added)

Prosecution’s Case

Ann Savard’s and Michael Bandick’s Testimony

[11] **Ann Savard’s** evidence was that she is a Canadian Citizen, who arrived in Belize three days prior, with her husband and they had purchased a home in Belize. On the 1st October 2024, they rented a Black Ford Expedition, and was *en route* to

⁵ [2006] NICA 3 par. 14

Placencia. She was stopped at a Vehicle Check Point [VCP] in Hattieville. She described the officer's uniform by colour, being, a khaki shirt with a dark pants and blue stripe. She informed the officer that the vehicle was a rental, after she was informed the vehicle's insurance had expired. She was denied a phone call to dial the rental company from whom the vehicle was rented. In her evidence she stated the following:

- I. *'He ask me to exit the vehicle and follow him, and he led me to a small yellow building on the side of the road. He went inside and I followed him, and he sat down and I sat across from him and he continued to tell me that I could go to jail, driving with no insurance. I could be arrested. At this point I was terrified, in tears and shaking. And then he said I can make it go away if you give me a donation.*
- II. *Next my husband came into the booth. There was another police officer trying to keep my husband from coming into the booth. He was keeping my husband from getting into the booth and my husband was trying to get away from him and got into the booth and asked what is going on here and I said he told me I was about to be arrested but he can make it go away if I gave him a donation. My husband said a donation for what your steak dinner. My husband asked him how much money he wanted and he would not give us a number, he said it's up to you how much. So I asked my husband how much we should give him and my husband looked at him and said would a hundred dollars work and he shrugged his shoulders and I took one hundred dollars US bill and I handed it to the officer, and he put it in his pocket. He gave me my Driver's licence back and said we could go.*
- III. *I was terrified and crying, when he took me into the booth. I was terrified and crying.'*

[12] Ms. Ann Savard was not discredited in cross examination and maintained her evidence throughout, despite rigorous cross examination. The sole variance with

her testimony and her husband, was who gave the police officer the USD 100.00. She indicated she gave the officer, while her husband in cross examination said he did.

[13] Michael Bandick's evidence duplicates that of his wife's Ann Savard, save and except that he gave the police the USD \$100.00. He stated he was driving behind his wife when she was pulled over at a Vehicle Check Point [VCP], he stopped, exited his vehicle and he stated as follows:

- I. *My name is Michael Robert Bandick, retired. I am Canadian. On the 1st October 2022, I recall that day. At approximately 10:30am, I recall the date and time. We were pulled over, my wife Ann Savard and I. She was pulled over I was following her. She was pulled over at the Hattieville Police Check. There is a sign on the road, "PoliceChekc". There were two officers there. They were police officers dressed like that fellow. (points to court officer in beige shirt and blue pants).*
- II. *I pulled up at the check behind my wife, and the officer said the insurance on the car expired and she could be or would be arrested and go to jail as the insurance had expired. He was showing us the expired sticker on the vehicle. We have been in Belize for three days, so we didn't know that is where they put the sticker on the vehicle.*
- III. *The police officer pulled her over, one of the officers. The other officer was checking another vehicle. He took her licence and ask her to go into a check room an 8x8 building, a small yellow building with a single door. At that time the other younger officer came up to me to try to detain me from following them there. He had to go and do his job in traffic so I proceeded to the building and I asked my wife what was going on, she was crying and shaking, pretty upset, having been in the country for only three [3] days. She was crying, and she said they will put her in jail, and I asked exactly what is going on, and he said he can make this all this go away for a donation. I said to him, for your steak dinner tonight, and what do you expect. I was mad and frustrated.*

- IV. *I asked him how much. He said he cannot say it is up to me, and shrugged, and I just gave him 100 dollars. I gave him 100 dollars and I didn't want my wife go to jail and probably won't be released until after the weekend. And after that, the vehicle did have insurance on it, it just didn't have the sticker but the officer refused to let me call them. The officer refused to let me call the insurance company. I told him I can call the insurance company to verify or straighten this out and he said no that doesn't matter, as if to say the crime is already committed.*
- V. *My wife looked at me and said Belize or American and I said American. After he got the money, he said we are free to go. We proceeded to our vehicle and went to the rental car company. And I went to the car company guy and said we are in trouble. The whole fleet of vehicles didn't get their stickers on that is how he explained it.*

[14] In cross examination the witness was unshaken as to the material aspects of the case, and admitted he gave the police officer a donation, after he demanded it.

Inspector Mark Bernardez (Accuse Oral Confession)

[15] The evidence of officer Mark Barnardez was that the accused orally confessed to receiving the USD \$100.00. He stated he was the one who dealt with these persons and he took USD 100.00 from them, because they were driving an uninsured motor vehicle and he let them go.

- i. *.....I had a brief talk with PC Amador, I told PC Amador that the information we received is genuine and it is wrong what they are doing. Shortly after PC Amador, uttered the following words:*
'Officer I was the one that dealt with these persons, and I took 100 dollars USD currency from them because they were driving an uninsured motor vehicle and I let them go'.
- ii. *I did not say anything to him before he said that. The procedure is to first caution the individual then we go step by step with whatever information. I did not inform PC Amador of anything before he gave me the statement.*

Thereafter, I detained him for the crime of extortion and I once again cautioned him in the following words:

You are not obliged to say anything but what you say will be taken down in writing and may be given in evidence.....”

ii. *After PC Amador told me he was the one who dealt with those individuals he then put his hand on his gun holster and his hand on his waist, and in a small compartment on the gun holster he took out the 100 USD currency, which I believe to have been difficult to locate whilst CPL Ferguson was conducting the search on him. I informed CPL Ferguson of what transpired, and PC Amador should be detained for extortion.*

[16] Inspector Bernardez then informed that the USD 100.00 note was retrieved and passed to Sgt Leon Ferguson who packaged it, recorded the serial number as **KL02 599806B**, and it was tendered into evidence at trial and marked as an exhibit.

SGT. 1270 Leon Ferguson

[17] Finally, Sgt Leon Ferguson recorded the statement from the accused, which was tendered into evidence unchallenged by the defence. The crux of the statement was that he was working at the Vehicle Check Point [VCP] on the material date in question, and he gave Inspector Bernardez a USD 100.00 dollar note. When asked how he came into possession of the USD 100.00 dollars he made no comment [Q. 19]. When pressed further [Q. 21], he stated thus:

‘When I gone to piss at the long post, it was thrown into the bush, not on the bush in the grass’.

Q. 22 Who threw the \$100.00 US currency?

Ans. I have no idea, when I gone piss it was already there.

Q.23 Did you ask who the \$100.00 USD belong to?

Ans: Nope.

- [18]** The evidence emanating from the quartet witnesses above mentioned, if any one of the above is believed by the jury, it is sufficient to convict the accused. There was no material discrepancy or discrediting of any of the prosecution's witnesses to justify the removal of the case from the jury. The court will be loathed to encroach upon the domain of the jury, in circumstances where it is patently obvious that the issues to be determined are that of 'credibility'.
- [19]** The court during the conduct of this matter, invited the defence to examine its submission in light of the law, and the authorities. However, defence Counsel insisted with legal vehemence, that he was fortified in his submission. The legal principle of leaving the issues of credibility solely to the jury, and that a trial Judge should not encroach on the jury's fact-finding function is hackneyed, and the cardinal principle replete throughout the authorities.
- [20]** There is no dearth of authority, which explicitly states that a trial judge must leave a case to the jury, in the following circumstances:
- i. At the hearing of a no case submission, the Judge should not ask, 'Do I have a reasonable doubt?'. The question should be whether there are no circumstances to warrant a conviction.
 - ii. Where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion the defendant is guilty.
 - iii. Even in circumstances where the evidence is thin or very thin the matter should be left to the jury, or
 - iv. Where the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability.
- [21]** The court is therefore duty bound to highlight the authorities which state the position above mentioned.

[22] In **R v. Galbraith**⁶, it was opined by Lord Lane CJ at page 1062 as follows:

“How then should the judge approach a submission of 'no case'? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence, but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the Crown's evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.

(b) Where however the Crown's evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.”

[23] In **Ellis Taibo v The Queen**⁷, a decision of the Privy Council emanating from Belize, the court expressed the legal position that, even if the evidence is thin or very thin, if the jury can find the evidence to be truthful and reliable, and there is evidence wherein a jury could, without irrationality, be satisfied of guilt, the case should be left to the jury. Lord Mustill adumbrated as follows:

‘ These were serious weaknesses in the case for the prosecution, but they were not necessarily fatal. The indicators of possible guilt had to be added together. The red shirt was of common manufacture, but its presence thrown away on the road not far from the scene suggested a connection with the murder, and there was evidence that the appellant had been wearing a similar shirt not long before the crime. The story of the green shirt

⁶ [1981] 2 ALLER 1060

⁷ [1996] UKPC 68

was unsatisfactory, but if the jury accepted that a 'Memo' green shirt was found in a place lived in by the appellant obvious questions arose about how a garment sold only in Europe could have found its way to a small village in central America; and the jury might not have been impressed by the suggestion that it was accounted for by the British military presence in Belize. Finally, there was the evidence of Francisco Valerio. If the jury believed him, the appellant had in mind to spend the night at a house where he was friendly with the cohabitant of the deceased. All in all, although the case against the appellant was thin, and perhaps very thin, if the jury found the evidence of Jane Cruz, Cons Guzman and Francisco Valerio to be truthful and reliable there was material on which a jury could, without irrationality, be satisfied of guilt. This being so, the judge was not only entitled but required to let the trial proceed: *R v Galbraith* [1981] 1 WLR 1039.

[24] Our Apex Court in two recent decisions, firstly **Marius Wilson v. The King**⁸, further postulated that issues of fact, was for the jury to consider, which includes the weight and or credibility to be attached to witness' evidence. In upholding the Court of Appeal's ruling on the point, Barrow JCCJ, stated at par. 35-36 the following:

[35] '.....The argument that these witnesses did not testify to the precise moment of the shooting was a matter for the jury to consider, in assessing the weight of the evidence as to whether Winsbert had a gun. So, too, was the evidence of the police officers who recovered no firearm at the scene with which Winsbert might have attacked the appellant. The state of the evidence at the close of the case for the prosecution was exactly as described in Galbraith, where Lord Lane said:

...[w]here however the Crown's evidence is such that its strength or weakness depends on the view to be taken of

⁸ [2024] CCJ 17 par. 34-36

the witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury can properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.

[36] The appellant has advanced nothing to show that it was erroneous for the Court of Appeal to have held that the stated evidence, coupled with the uncontroversial fact that the appellant shot Winsbert, was sufficient to establish a case of an unlawful shooting to leave for the jury to consider. This ground of appeal must fail.

- [25] Secondly, our Apex Court in the matter of **James Fields v State**⁹, confirms that the evaluation and determination of what weight, reliability, and credibility should be given in relation to statements are solely within the domain of the jury. At par. 33 Saunders PCCJ and Anderson JCCJ postulated the legal position succinctly hereunder:

[33] The role of the jury is to evaluate the testimony of the witnesses and to determine what weight and reliability to assign to their statements. This role is crucial in the fact-finding process. In determining credibility, the jurors may have regard to the demeanour, consistency, bias or motive, prior inconsistent statements, corroborating evidence, and all the various factors a person will use in their daily life in order to assess and distinguish between truth and falsity. The fact that a witness has provided false information on one point under oath can impact the credibility of that witness and the weight given to their testimony. But once the case has been given over to the jury, it is the jury and the jury alone that has the responsibility to carefully consider the implications of the untruthfulness and evaluate how it affects

⁹ [2023] CCJ 13 par. 33

the overall credibility of the witness' testimony on the essential question(s) in issue.

- [26] In conclusion, the jury will have before it the evidence of Ann Savard, and if believed, even taken in isolation, is sufficient to return a verdict of guilty. Her evidence is that the officer obtained the money from her, to be released without charge. Despite the fact that he was identified by the witness for the first time in the dock, identification was not in issue as the accused's unchallenged statement confirmed this. He stated that he was present at the scene on the day and time and that he picked up the USD 100.00 on the ground. Independently, in his oral confession to Inspector Bernardez, wherein the testimony was, he told him, he got the USD 100.00 from them and she was released, the jury is left to determine whether Inspector Bernardez is a truthful witness or whether his testimony is prevaricated. The jury is entitled to draw any inference from the varying versions and to determine which version is to be believed. Further, the evidence of Michael Bandick supports his wife's testimony.
- [27] The strength, nature, gravity and weight of the prosecution's evidence has left this court without an iota of doubt that this is a fit and proper case for the tribunal of fact.
- [28] For the reasons above stated, the court is of the view that the mountain of evidence elicited by the crown, is sufficient for the matter to proceed before the jury. The no case submission is hereby overruled.
- [29] The accused is thereby called upon to lead his defence.

Derick F. Sylvester
Justice of the Supreme Court

