

IN THE SENIOR COURTS OF BELIZE  
CENTRAL SESSION- BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE  
(CRIMINAL DIVISION)

INDICTMENT NO. CR20230068C

BETWEEN:

THE KING

and

DEMAS MENDEZ

Before:

The Honourable Madame Natalie Creary-Dixon, J

Appearances:

Mr. Cecil Ramirez, Senior Crown Counsel, for the Crown

Mr. Mr. Hurl Hamilton, for the Accused

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2024:  
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**JUDGMENT ON VOIR DIRE**

- [1]** **NATALIE CREARY-DIXON**, Mr. Demas Mendez (hereinafter “the accused”) stands before the court charged with two counts of murder, contrary to section 117 read in conjunction with section 106(1) of the Criminal Code, Cap. 101 of the Substantive Laws of Belize (Revised Edition) 2020, (hereinafter “the Code”). The allegation is that he set ablaze the house of his ex-girlfriend killing her and her two-year-old son who were trapped inside.
- [2]** The accused pleaded not guilty at his arraignment and challenged the admissibility of the caution statement on which the Crown intended to rely.
- [3]** The Court in its discretion, held a voir dire to determine the admissibility of the caution statement; that is, to determine whether the Crown could satisfy the provisions of section 90 of the Evidence Act and prove that the caution statement was freely and voluntarily given by the accused. Thereafter, it should be determined if it is fair to admit the statement, in accordance with the case of **Krismar Espinosa v R, Criminal Appeal No.8 of 2015.**
- [4]** The Crown called four witnesses in support of its case: Corporal Wilbert Thompson; -Sergeant Alejandro Rodriguez and Justice of the Peace Leonora Flowers and Louise Willis.

## **THE CROWN’S CASE**

### **Evidence of Corporal Wilbert Thompson**

- [5]** Corporal Wilbert Thompson detailed that his first interaction with the accused was in police custody where he visited him at the cell block at the Roaring Creek Police Station. After explaining to the accused what a Notes of Interview was, he enquired and the accused agreed, to do a notice of Interview, he said he “granted the accused with a phone call or the opportunity to get in contact with any family member or an attorney, however, Demas Mendez replied saying he doesn’t want to make any

calls. The Justice of the Peace (“JP”) Mrs. Louise Willis, who had come to assist with the process, was left alone with the accused for five minutes.

- [6]** Based upon the responses supplied in the interview, the officer explained to the accused what a caution statement was, after which the accused agreed to give one. He then printed the Notes of Interview and handed them to the accused and informed him that he could read over and that he could add, change, or alter anything he wished. The accused did not add, alter, or change anything. Both the Justice of the Peace and the accused appended their signatures to the document.
- [7]** The Notice of Interview lasted about an hour and a half. He denied offering any promises to, threatening, forcing, or pressuring the accused in any form or manner.
- [8]** At the time when he went to the cell block to speak to the accused, and then took him to the CIB Office, the accused had been detained for about 27 hours.
- [9]** In response to whether he saw the accused reading over the Notes of Interview, he responded in the affirmative.” I saw him holding the Notes of Interview, looking at the interview.”
- [10]** Under cross-examination, he denied telling the accused that his mother was gravely ill at the hospital, and if he was to give this statement and Notes of Interview, he would be given an opportunity to go and see his mom; he denied getting visibly upset with the accused because he was not getting his way and punching him twice in the stomach. He admitted that when he had that interaction with Demas Mendez around 9:00 a.m. in the cell block on the 8<sup>th</sup> of May, he didn’t have a Police Notebook, and nothing was recorded.
- [11]** He was adamant that the accused was given adequate opportunity to consult with a legal practitioner of the accused man’s choice; he denied

that the second interaction he had with the accused on the 9<sup>th</sup> at the cell block was to threaten him that this was his last chance to give a Notes of Interview and caution statement, or else he will be charged for murder; he denied leaving instructions with the Diarist that the accused should not be provided with any food until further instructions.

**[12]** He admitted that between 10:00 a.m. on the 8<sup>th</sup> of May 2021, and 4:00 p.m. on the 9<sup>th</sup> of May 2021, he couldn't say what happened to the accused during that period; neither could he say, between that period after 10:00, on the 8<sup>th</sup> of May 2021, and 4:00 pm on the 9<sup>th</sup> of May 2021, whether the accused was provided with food. He stated that he made the accused aware that there is a phone if he wanted to make a phone call. He denied that his interaction with the accused where the accused agreed to give the Notes of Interview was not recorded in his notebook, or anywhere else because it did not occur.

**[13]** He denied that the accused mentioned to him that he could not read or write.

**[14]** He denied that he did not give the accused an opportunity to say whether he wanted to add, change, or delete anything because the accused cannot read.

**[15]** He agreed that during the Notes of Interview, he did not ask the accused if he wanted a little break, to use the bathroom, or have anything light to eat. At the conclusion of the Notes of Interview, he did not have the accused sign on the device that was being recorded, that he agreed with the content, nor did the JP sign on the device that was used to record the proceedings. This he explained was because the camera system that the CIB office is equipped with does not facilitate an instant burn of a disk.

**[16]** For that same reason, the accused was not given an opportunity to view the recording. He admitted that he couldn't say what was retrieved from that device

### **EXAMINATION-IN-CHIEF OF LOUISE WILLIS, JUSTICE OF THE PEACE (“JP”)**

**[17]** This witness introduced herself to the accused as a JP, who was there to witness the Notes of Interview being taken. Her evidence aligned with the evidence of Corporal Thompson in that she confirmed that the accused was read his constitutional rights; cautioned; spent five minutes with her before giving the caution statement; and said he still wished to do the Notes of Interview. She noticed that he appeared to be in good health, and he did not complain to her of any illness or bad treatment by the police.

**[18]** The accused was told that the interview would be video recorded. She saw the accused looking down at the statement when he was asked to read it. She did not hear the Corporal threaten the accused or give him or offer him anything for him to make the statement.

### **CROSS-EXAMINATION OF LOUISE WILLIS BY MR. HAMILTON**

**[19]** She agreed that she couldn't really say what happened to Demas Mendez prior to her introduction to him that day. The accused did not tell her that he was pressured by the Corporal to give a Notes of Interview, or that he was punched in the stomach. She did not hear the accused tell the Corporal that he could not read.

### **EXAMINATION-IN-CHIEF OF ALEJANDRO RODRIGUEZ**

**[20]** On Sunday, the 9<sup>th</sup> of May 2021 he went to assist with the recording of the accused man's caution statement. Consequently, he introduced JP Ms. Leonora Flowers, to the accused and told the accused that “she was present in the capacity of a Justice of the Peace and was there to ensure that no one is beating him, offering him any gifts, or threatening him to give the statement under caution. He then informed the accused that he would be leaving him and the Justice of the Peace, inside the office for him to have some privacy with her.” He said he then informed him of his constitutional rights, including his right to an attorney; he also cautioned him.

**[21]** After the accused gave his statement, he was informed that he could alter, he can correct anything he wish to do so, where he altered one word from his statement 'seeing to hearing'.

**CROSS-EXAMINATION OF ALEJANDRO RODRIGUEZ BY MR. HAMILTON**

**[22]** In his initial encounter with the accused, he denied telling the accused that "might as well you give the caution statement because you already gave Corporal Thompson a Notes of Interview"; he denied telling the accused that "it's just a caution statement that was needed; once given the accused would be released you will be released after you give that statement".

**[23]** He agreed that he could not say what interaction police officers had with the accused prior to his arrival; the caution statement lasted for half an hour. He does not recall telling the accused that those rights were already explained to him earlier, and he was asked to sign.

**[24]** When asked by Defence Counsel if "At that stage, wouldn't you think that it would have been prudent even though according to you he was told those right, right to an attorney, don't you think that it would have been prudent to ask the defendant, do you want time to consult with an attorney, don't you think it would have been prudent at that stage?" He admitted that he didn't tell the accused that if he wanted one, he would have given him time to get one. He admitted that he did not ask the accused if he wanted a break, (a bathroom break) to eat or to have water", and he was not aware if he was offered food or anything prior. He read over the caution statement to the accused, but it was not because the accused told him that he could not read.

**EXAMINATION-IN-CHIEF OF EMERCIANO ALCOSER BY MR. RAMIREZ**

**[25]** Emerciano Alcoser then served as an Administrator for the Crime Information Management System, also known to the police as the CIMS, and presently, is an IT Technician for the Department. He gave evidence

of extracting two files which he handed over to Corporal Wilbert Thompson.

#### **EXAMINATION-IN-CHIEF OF LEONORA FLOWERS BY MR. RAMIREZ**

**[26]** According to JP Ms. Flowers, at the end of the caution statement, “the policeman read it back to him [the accused] at the end, and to me, and I signed off on what he had said, where he showed me where I should sign at the top and at the bottom as usually ...”

#### **CROSS-EXAMINATION OF LEONORA FLOWERS BY MR. HAMILTON**

**[27]** This witness also admitted that prior to arriving at the station that evening around 6:30, she could not say what happened to the accused. She repeated that the accused never told her that he was being pressured to give a caution statement. She denied that the accused told the police officer that he could not read or write.

#### **UNSWORN STATEMENT BY THE ACCUSED**

**[28]** In May 2021, he was picked up by Wilbert Thompson, and a group of officers who took him to the Roaring Creek Police Station, on a charge of murder. Later on, in the afternoon Mr. Wilbert Thompson came and asked him if he wanted to give a statement, a caution statement or a Notes of Interview. He declined but asked for a phone call to family members. At that time, he had no food, no water, and he wanted to call his family members about food and water.

Then in the evening, Wilbert Thompson came again, and he asked if he would give the caution statement, and again, the accused declined. The following afternoon he came, and he asked the accused again, if “I am still willing to give a caution statement or a Notes of Interview...” Again he said he declined, so he was then taken out of his cell and into an office where he was told that if he gave the statements he would be free; and also that his mother was hospitalized, and if he gave the statement he could go to see her. Two minutes later he was told that if he didn't give

the statement he would be charged. He was then punched twice in his stomach. He told the officer he was “pressing him, so he would give the statement”. He was then allowed to speak privately with the JP, to whom he recounted the assault and the promise that he could go to see his mother after giving a statement.

After the conclusion of the Notes of Interview, Sergeant Alejandro Rodriguez came and told him that he had already been informed that the accused would give a caution statement so he could go see his mother; hence they should make haste.

Again, he was allowed to speak privately with a JP. He also recounted to this JP that he was assaulted, and a promise that he would be released to go see his ailing mother if he gave the statement. He concluded “I was under pressure that day, I didn’t have nothing to eat, just a little bit of water. “

## THE LAW

**[29]** The legislation which underpins this application to exclude the accused man’s caution statement applicable legislation is to be found in section 90 (1) (2) of the Evidence Act which provides that

*“An admission at any time by a person charged with the commission of any crime or offence which states, or suggests the inference, that he committed a 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”.*

**[30]** This is buttressed by the principle found in the Judicial Committee of the Privy Council matter of Shabadine Peart v. R., which outlines that:



*The criterion for admission of a statement is fairness. The voluntary nature of the statement is the major factor in determining fairness. If it is not voluntary, it will not be admitted. If it is voluntary, that constitutes a strong reason in favour of admitting it, notwithstanding a breach of the Judges' Rules; but the court may rule that it would be unfair to do so even if the statement was voluntary.*<sup>1</sup>

**[31]** Further, our very own Court of Appeal espouses these principles of voluntariness and fairness. The case of Krismar Espinosa v R, referred to above, states that

*"[93] ...a confession which is not voluntary is not admissible in evidence whether the trial is before a judge and a jury, or before a judge alone. Where a confession is challenged in a trial before a judge and a jury, the judge must investigate (in a voir dire), the circumstances in which the confession was made, and may admit it only when he is satisfied beyond reasonable doubt that, the confession was made freely and voluntarily. That is the common law, and now the statutory law in Sections 90 and 91 of the Evidence Act, Laws of Belize."*

**[32]** The case further states that the judge may not admit a confession in evidence, as a matter of the exercise of the general exclusionary discretion of a judge when he considers that, admitting a particular item of evidence will be unfair to the accused in the circumstances. Generally, the discretion is exercised on the ground that, the prejudicial effect of the item of evidence outweighs its probative value.

**[33]** Two issues therefore arise for determination:

- (i) *Whether the caution statement should be admitted as freely and voluntarily given because it was not given by (a) any promise of favour or advantage; (b) by use of fear, (c) threat;*

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<sup>1</sup> Peart v. R. [2006] UKPC 5, 68 WIR 372, [2006] WLR 970, PC.

*or(d) pressure, on behalf of an authority figure; and*

- (ii) *Whether admitting the statement would be fair: that is, has there been a significant and substantial breach of the Guidelines for Interviewing and the Treatment of Persons in Police Detention (“the Guidelines”) and would the caution statement’s admission into evidence have an adverse effect on the fairness of the proceedings?*

**[34]** The determination of these issues is largely resolved by assessing the credibility of the witnesses, which includes the feasibility and practicality of their evidence to include their responses under cross-examination.

#### **CHALLENGES TO THE STATEMENTS**

**[35]** The challenges to the Caution Statement which arose in the CMC form and by cross-examination are many and varied. I have collated them all from the submissions of both Counsel and listed them below: under the headings outlined in Section 90(2) of the Evidence Act; these headings are: 1. promise of favour or advantage; (2) use of fear, (3) threat; or (4) pressure

1. The first challenge to the statement was the allegation that the accused cannot read or write; he was adamant that he stated this to the police, and was therefore unaware of what he had signed:

In the recording of the Notes of interview, however, this Court noticed that the officer asked the accused if he wanted to read the statement himself, or if he wanted the officer to read it over for him. Had the accused told the officer that he could not read, as he alleged that he did, and as he put to the JP and Officer, it is not likely that the officer would have asked him in sincerity if he wanted to read the statement himself; nor would the officer confidently invite him to sign the statement after reading it over to him; notably, the officer did not call him over to make his “mark”, which is the prescribed way of “signing a document when one cannot read. I therefore did not believe that the accused told the officer that he could not read or write.

Further, from the recording, the statement was read over to the accused who appeared to be listening intently; he does not appear to be registering any discomfort with what is being read to him.

#### **HEADING #1: PROMISE OF FAVOUR**

**[36]** The accused alleged that the police, specifically Investigating Officer Wilbert Thompson promised to release him if he told Corporal Thompson what happened. In answer to this Corporal Thompson said that he did not tell the accused that all he wanted to know was what happened and that he would be released. He was not discredited on cross-examination; he appeared honest even to the point of admitting his shortcomings such as not having his notebook for recording; not asking the accused if he wanted a bathroom break; or to have anything to eat. There is no reason to disbelieve him when he said that he did not make that promise to the accused.

**[37]** The defendant said that shortly after the Notes of Interview was conducted Sergeant Alejandro Rodriguez came in and told him that he was already spoken to about the Caution Statement so he can go see his mother. The Sergeant assured him once he gave the Caution Statement that he would be free. He then said that Sergeant Rodriguez told him “the quicker you give the statement, the quicker you can go see yoo mah”. The accused also said he told this to the justice of the Peace. Both the officer and the Justice of the Peace stoutly deny this. Having appreciated that they both gave cogent and consistent evidence and were not discredited on cross-examination, I have no reason to disbelieve them.

#### **HEADINGS #2 AND #4: USE OF FEAR; USE OF PRESSURE**

**[38]** The accused relayed that Corporal Thompson asked him three times if he wished to give a statement; he said no, no, no, repeatedly. Finally, he gave in when Corporal Thompson told him his mother was sick and was in the hospital. Corporal Thompson vehemently denied this. Although this story has a ring of truth to it, because it is accepted that this is the sort of pressure that could break someone’s steely resolve, I rejected it for the reason that the officer and both JP denied it strongly; as they gave cogent evidence and were

not discredited on cross-examination, I had no reason to disbelieve them when they said that they did not tell the accused that his mother was ill and hospitalized.

**[39]** The accused also complained that he was punched by the Investigating Officer in the stomach. The officer again, strongly denied this allegation. In this case, the Court relied on the evidential value of the video recordings of the statements to assess the appearance of the accused mere minutes after the alleged assault had taken place, to determine if it appeared as if he had in fact been hit twice in the stomach, and if he appeared unwilling to provide the statement.

**[40]** The Court concluded that the accused appeared very relaxed and calm when narrating the statement; he even bent down to attend to his footwear, and displayed no sort of discomfort, as would be expected from someone who had just been punched in the stomach more than once by a bulky adult male, a few moments ago. That being said, I do not accept this version of the accused man's evidence.

**[41]** The Court also questioned whether the officer would really have assaulted the accused mere minutes before allowing him to sit in private with the JP.

#### **THREAT**

**[42]** The accused said that he was also threatened by Corporal Thompson to give an Interview and a Caution Statement and if he did that he would not be charged for murder. This allegation of threat is denied both by Corporal Thompson and Sergeant Rodriguez. As Corporal Thompson was not discredited in his evidence, I accept his evidence that he did not utter these words to the accused.

#### **OPPRESSION**

**[43]** There is an allegation of oppression as no food was given to the accused. According to the defence, there is no evidence that the defendant was fed during his incarceration period up to the time of the taking of the Notes of Interview and Caution Statement; no record was presented by the Prosecution, to show that the Prisoner was being fed all these times that he

was under detention. Counsel further expounded that the defendant went into the Police station some time on Saturday morning, the following day into the evening, up to the evening point, he had not been fed; Counsel is of the view that he is in a vulnerable position at this stage; and that would sap anyone's willpower to give in.

Counsel also pointed out that it is a clear breach of Guideline 13.5 which mandates that 2 light meals and one main meal should be given within any 24-hour period.

**[44]** Counsel commended the High Court's judgment of Juan Choc to this Court for consideration of this point, and so I will borrow from Paragraphs 59 and 60, as this court is in agreement with my brother judge, Justice Nigel Pilgrim's reasoning:

"59. The Court was of the view that keeping a person in custody for 10-12 hours without being offered food, whether intentionally or by negligence, had the potential to place pressure on the Accused, or at least had the potential to sap his will. Also, the offer of a meal was something that was supposed to be done by the two persons in authority in relation to the Accused, Insp. Sanchez and Cpl. Casanova, pursuant to the Guidelines.

In this regard the Court noted the views of the author of the text, Confession Evidence, Practice and Procedure in the Commonwealth Caribbean, Darshan Ramdhani, at paragraph 9.11: "A finding of oppression may also be easily made where the police fail to provide the defendant with meals and other necessities related to his detention." (emphasis added)"

**[45]** The Jamaica Court of Appeal case of Kayode Garwood V R [2023] JMCA Crim 52 ("Kayode Garwood") is also helpful. At paragraph [97], it reads:

"...the applicant would have been in custody without food or drink for at least four hours, and possibly eight hours, accounting for the time he would have been in transit and in the Spanish Town lock-up. This would have been a long

enough time for him to be uncomfortably hungry or thirsty. Whilst we believe that the applicant should have been asked (in accordance with the Judges' Rules) if he wished to have anything to eat or drink, and provided with the same if that answer was yes, we do not think the period of time that elapsed was so inordinate to have caused the applicant such distress to make the process in which the statement was obtained unfair, **especially in the light of the fact that at no time did he make any complaint of hunger or thirst.** (My emphasis)

**[46]** That case can obviously be distinguished from the case at bar in that this accused, Demas Mendez, was in custody for a much longer period of time. However, I asked myself whether the accused could say that this fact was enough to sap his will; whether the period of time that elapsed was so inordinate as to have caused the him such distress to make the process in which the statement was obtained unfair, especially in the light of the fact that at no time did he make any complaint of hunger or thirst."

**[47]** **However**, similar to the case above, the accused, Demas Mendez at no time complained to anyone, that he was hungry or thirsty, which, in human experience, would be expected if food had not been served for a full 27 hours or an extended period.

**[48]** This Court notes also that it was not unbearable hunger or thirst according to the accused, that led him to give in eventually, but rather the fact that he wanted to see his mother and was punched in the stomach. It does not appear therefore, that even if the accused had not been fed, that he was so affected by it that he lost all resolve and decided to give a statement. Further, he was observed refreshing himself from a fairly large bottle of water by his feet during the taking of the Notes of Interview and Caution statement.

#### **PROCEDURAL BREACH**

**[49]** The defence alleged that there were breaches of the Guidelines in the recording of the Caution Statement; the allegation is that the procedure was flawed.

**[50]** According to the defence, these breaches are as follows:

- (i) As required under the Guidelines the accused was not shown the video recording after either the Caution Statement or the Notes of Interview. However, Corporal Thompson said that that was done. The JP, however, Ms. Flowers, said that she did not recall seeing that happen.
- (ii) Tied to the breach just discussed, is the submission that the officer, defendant, and the JP did not sign the master recording as required under the Guidelines; nor did the officer seal or treat the device as an exhibit. There was no evidence led to create doubt as to the integrity of what was recorded; although it may be a breach, the Court does not believe that this breach led to unfairness in the proceedings.

**[51]** Corporal Thompson, under cross-examination also indicated that the entire police station was equipped with cameras, however, there is no independent evidence to suggest that the defendant was not under oppression prior to him being taken to the CIB office upstairs. This is a regular complaint of accused persons who challenge the admissibility of caution statements or Notes of Interviews; there is no pre-recording of the event prior to the taking of the statements; that is, the period when an accused usually alleges that he was beaten or threatened by the authority figures. After years of such complaints being made, it begs the question as to why the Court is never privy to what occurs behind the scenes prior to the recording of the statements. It is an undesirable practice and one that continues to contribute to the defence's applications for caution statements to be omitted. In the absence of such pre-recordings, the admissibility is then determined largely on the credibility and recollection of the witnesses, as well as the evidential value of the post-recordings.

**[52]** In response to Mr. Mendez's complaints of procedural breaches, I borrow from the judgment of The Hon. Mr. Justice A. Mon Désir of the Supreme Court of

Trinidad and Tobago in the case of *The State v Dexter Bennett* Indictment No 107/07; he said he considered

“The evidence of the police officers and I am persuaded that the failure to make and or maintain the requisite notes in this instance was not as a result of any sinister motive on the part of the officers, but rather a lamentable oversight on their part. However, this Court notes that such oversights or omissions on the part of police officers are far too common during the investigative process and should never be treated lightly. It is not appreciated, since the existence of such notes is often vital to the State’s ability to demonstrate the overall fairness and integrity of the investigative process. In many cases, the absence of such contemporaneous notes, particularly if they relate to important issues in the trial, together with evidence of bad faith on the part of the officers, may well tip the scales in favour of the defendant and in the words of Lord Lane, CJ, “make it impossible for the judge to say that he is satisfied beyond a reasonable doubt, and so require him to reject the evidence”.

69. Thus, the importance of the rules relating to making and maintenance of contemporaneous notes of interviews and of properly documenting every phase of the investigative process cannot be over-emphasized. In addition to the two objects already identified by Lord Lance, CJ in Canale, I think it is also quite indispensable to the level of public confidence which can be had in the integrity of the investigative process as well and the police would do well to ameliorate their practices in this regard.”

**[53]** This practice must be frowned upon, nevertheless, I do not find in these particular circumstances that the accused was prejudiced from the officer not having his notebook , on the strength of the evidence given by the prosecution witnesses as to how the events unfolded that day.

**[54]** That being said however, this Court accepted that the truth of what occurred prior to the recording of the Notes of Interview and caution statement could be gleaned from the actual video recordings of the Notes of Interview and Caution statement, as those recordings were done mere minutes before the alleged



harassment. This Court accepted that those video recordings did not disclose that the accused appeared to have been harangued or punched shortly before giving the statements.

**[55]** Another breach of the Guidelines is the submission that the JP, Ms. Flowers seemed to be a very passive bystander and did not fulfil her obligation under Rule 10.8.<sup>2</sup>

**[56]** Specifically, under cross-examination the JP admitted that she was not told the reason for her being there, so she didn't know what she was doing there, she just came, she also admitted under cross-examination that she only saw the defendant looking at the statement but couldn't say whether he was reading it; she did not positively indicate to the accused that he could have remained silent if he so chose, or consulted with an attorney. Also, the JP did not ask the accused if anyone had promised him anything.

**[57]** This Court must indicate that simply asking the accused "if he is ok", and indicating to the accused that they are there "to witness the caution statement" does not complete the duties of a JP. The purpose of their presence is outlined in Section 10 of the Guidelines, which mandates that they should not act as mere observers, but rather as advisers to the accused persons; observe if the process is being conducted properly and fairly; facilitate communication between the person being interviewed.

**[58]** Nevertheless, I note that despite the omission of the Justice of the Peace, to explain her role, and the failure of the police officers to inform or remind her of her role as required by the Guidelines, the accused still saw the Justice of the Peace as a person he could confide in; even if he really did not confide in her, the fact that he says he did shows that he appreciated her role ; it could be inferred that he knew and appreciated why she was there. The Court also observed her demeanour, manner of explaining herself and her responses to the questions asked, on cross-examination, and determined that she appeared to be forthright and honest and was not discredited under cross

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<sup>2</sup> Rule 10.8

examination. For that reason, I cannot see any unfairness in these proceedings or find a reason to disbelieve the evidence she gave.

**[59]** Another breach, defence Counsel submitted, was where the officer said that he “granted” a phone call to the accused, as opposed to ***asking the accused if he wanted a phone call***; according to Counsel, “asking” someone if they want a phone call, and “granting someone” a phone call in his opinion, were not the same; according to Counsel the latter was in breach of the Guidelines which require that adequate opportunity must be given for legal instructions.

**[60]** Here, this Court found the case of **Kayode Garwood** helpful, yet again. In this case the Court “reject[ed] the notion that the accused man’s right to legal representation was breached because he was not given a phone call, I find that it was open to him to accept or reject the phone call and nothing further was expected of the officer who clearly indicated to the accused that he would be provided with a call if he so chose.” **[My emphasis]**.

**[61]** The Court also accepted the officer’s evidence that the accused Mr. Demas Mendez was informed that he could be given a phone call but declined the offer. On the authority of **Garwood** mentioned above, nothing further was expected of the officer.

**[62]** The defence also attacked the credibility of the crown witness Sgt. Rodriguez. Counsel pointed out that Sergeant Rodriguez stated under cross-examination that he wasn’t even aware that a Notes of Interview was conducted prior to him being there to conduct the caution statement; that is unlikely, and such a lie goes to the credibility of the witness.

**[63]** Given the likelihood that the officer would already have been notified by the officer who requested his assistance with the caution statement that Notes of Interview had already been conducted, I accept Counsel’s posture that the officer may have already known and his credibility was in question here, however, I reject this portion of his evidence, as it is not a material fact on which these proceedings hinge. Hence, whilst I rejected this part of his evidence, I accepted all the other salient parts.

**[64]** Clause 17 of the Guidelines outlines that a failure to follow any of these rules is still admissible in criminal proceedings; however, in the case of a significant or substantial breach, then consideration must be given to whether the admission of the statement would lead to unfairness in the proceedings. This Court finds that the breaches are such that the admission of the statements would not render the proceedings unfair to the accused. The Court accepted that the accused signed voluntarily, and freely, after also freely narrating the events, the Court also accepted that the contents were read over to the accused and he agreed with them, before signing.

**[65]** However, there remains another criterion for admitting a caution statement into evidence: the issue of fairness. Given there were breaches of the Guidelines identified, the question to be answered overall is,

**Is it fair to admit the Caution Statement?**

The Court finds that the caution statement was freely and voluntarily given, and so now considers whether admitting the statement would be fair: that is, has there been a significant and substantial breach of the Guidelines, and would the caution statement's admission into evidence have an adverse effect on the fairness of the proceedings?

**[66]** The court does note that there were a number of breaches of the Guidelines; however, the breaches were not such that there was any prejudice to the accused or any unfairness in the proceedings. The evidence of the crown witnesses makes me feel sure that the accused gave the caution statement freely and voluntarily.

Consequently, the statement's admission into evidence would not have an adverse effect on the fairness of the proceedings. The order of the Court is that the statement be admitted for use in the main trial.

**DISPOSITION**

**[67]** Conclusively, I find that the evidence of the Crown's witnesses has satisfied

me to the extent that I feel sure that the statement 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, and is admissible in evidence, to be used in the main trial.

**[68]** This is the judgment of the Court.

Delivered this     day of     2024.

**Natalie Creary-Dixon; J**  
High Court Judge

**By the Court Registrar**