

IN THE SENIOR COURTS OF BELIZE
CENTRAL SESSION- BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

INDICTMENT NO. CR20210035C

BETWEEN:

THE KING

and

DAVID VALENCIA

Before:

The Honourable Madame Natalie Creary-Dixon, J

Appearances:

Mr. Cecil Ramirez, Senior Crown Counsel, for the Crown
Ms. Rachel Montejo and Mr. David McKoy for the Accused

2024: February 13,
March 05, 26
April 16, 25
May 09, 29
June 10, 13, 14, 17, 20, 28
July 02, 10, 12, 16, 25, 31
September 20, 24, 25, 26

JUDGMENT FOR THE ADMISSIBILITY OF CAUTION STATEMENT

[1] NATALIE CREARY-DIXON, J: David Valencia (hereinafter “the Accused”) was indicted for the offence of murder, contrary to section 116(1) read along with 108(1)(b) of the Criminal Code, Cap. 101 of the Substantive Laws of Belize (Revised Edition) 2020, arising out of the stabbing death of Robert Hurley in June 2020. The Accused challenged the admissibility of the caution statement on the grounds that it was obtained unfairly and through oppression. In particular, the accused alleged that:

- (1) Although mention was made (by the Justice of the Peace) that Inspector of Police Jose Batty came in to record the reading of the caution statement to the accused, that recording was never disclosed to the defense. .
- (2) The accused was pressured into giving the statement because there was a promise to release his 9-year-old daughter

The accused introduced the following grounds of objection during his unsworn evidence:

1. Prior to a request for the accused to give a caution statement, an unknown dark-skinned Police Officer with a machine gun went to the cell of the accused and told him “yu lucky I neva meet you last night, because I was going to shoot yu; but wait until tonight, I will mek you talk”. This same officer who was one of the officers taking him to the Benque Viejo Road, also told him to “run; run mek I shot yuh”.
2. Thereafter he was told certain things by Sgt. Rodriguez, that is, that he would release him if no evidence was found
3. Police took him to Benque Viejo and threatened to shoot him if he ran
4. The Justice of the Peace told him that it was best to give the statement, or the officers would use his daughter against him
5. Sgt. Martinez wrote the statement and just indicated where the

accused should sign

6. He was promised by Sgt. Rodriguez that the statement would be recorded

[2] The Court held a Voir Dire to determine the admissibility of the caution statement.

(3) At the point at which the Defence had closed their case, and the Court was about to entertain the submissions of both Counsel, the accused indicated that he no longer wished for his Counsel to appear for him, as she was not representing his interest. The Court adjourned the matter for another Counsel to be assigned; to ensure a seamless transition and the continuation of this matter, the Court also provided the notes of evidence to the new counsel.

[3] The Crown in support of its application to admit the caution statement called evidence from Sergeant Newton Martinez (hereinafter "Sgt. Martinez"); Sergeant Alejandro Rodriguez (hereinafter "Sgt. Rodriguez"); and Ms. Desol Neal, Justice of the Peace (hereinafter "the JP").

The Accused elected to give an unsworn evidence after being advised of his rights¹.

THE EVIDENCE OF THE PROSECUTION WITNESSES

Examination in Chief of Sergeant Newton Martinez

[4] The Crown's first witness was Sgt. Martinez. He testified that on the 10th of May he recorded a caution statement from the accused, in the

¹ The accused was informed of his right to remain silent, for which the Court ought not to make any adverse inferences; his right to give an unsworn statement from the dock (in which case he cannot be cross-examined or asked questions by the Court or the Prosecutor, except to clarify what he has said); his right to give sworn evidence in the witness box, in which case he opens up himself to cross-examination; his right to call witnesses

presence of the JP. Prior to recording the statement, he had gotten the consent of the accused. He had also allowed five minutes for the accused and the JP to communicate in private. The accused was cautioned.

[5] Thereafter, Sgt. Martinez read over all the questions that were asked and the answers given by the accused, and asked the accused if he was satisfied with what had been read to him and if it was in accordance with what he had said. The accused replied that he was satisfied;

[6] Sgt. Martinez said that he wrote down a caption indicating that the accused gave that statement of his own free will: he was not forced, nor threatened and he was not promised anything in exchange for that statement, and he gave that statement on his own free will. The accused indicated that he was "ok" with that, and he signed to that effect.

CROSS-EXAMINATION

[7] This witness admitted that when recording statements the best practice would be to have a camera. He also informed that he had asked that the statement be recorded. He also said that he explained to the accused the consequence of making a statement. He admitted that he did not submit any video surveillance of what transpired before the recording of the interview began.

[8] He did not trace the police officers who went by the cell prior to the recording. He denied offering his personal cellular phone to the accused to make a phone call to his attorney. He also denied threatening the accused but admitted that he could only speak for himself in this regard; he denied that he did not read the statement out to the accused but that he only indicated where the accused was to sign. At no time did the accused request to make a phone call.

This witness was recalled a few days later when the new Counsel for the

accused pointed out in his submissions that the Sergeant admitted in the recordings of the notes of evidence that he threatened the accused prior to the recording of the statements. In fairness to the accused, the officer was recalled to speak to his response to this line of questioning.

Questions and answers are replicated below:

Q. And you cannot be certain if any officer threatened the accused prior to you recording the caution statement, correct?

A. I can only be certain of myself, and I did.

Q. Can you answer with a yes or a no, the question.

A. You said any officer, ma'am, so I am certain of myself, so the answer would be yes.

When he was recalled a few days later and the recording played over to him, the officer admitted that he said, "I did", in the recording, but that he meant to say, "I didn't". However, he then reiterated what was said in his examination-in-chief, which is that he did **not** threaten the accused.

[9] What does the Court make of this unusual contradiction? Well, the Court noted that in examination-in-chief, this officer said that he did not threaten the accused; in cross-examination, a few questions before the contradictory response, the witness was asked if he agreed that not all recording of caution statements were fair. He responded, "I cannot speak to every other caution statement, I can only speak to the one that I record, in relation to this caution statement that I recorded it was done fairly."

[10] It would not be logical for the witness to say that he conducted the caution statement fairly, and then a few sentences down he indicates that he threatened the accused; that would not amount to conducting the caution statement fairly. This Court therefore accepts that the witness meant that he did **not** threaten the accused.

[11] It must be noted also that the accused did not at any point indicate that

he was threatened by Sgt. Martinez; nor was it put to the Sgt. that he threatened the accused. Although he could only describe the officer who allegedly threatened him, it is believed that when he came to Court, if indeed Sgt. Martinez was the one who threatened him, he would have been able to recognize him as the officer who threatened him, as by then he would have had sufficient interaction with Sgt. Martinez to recognize him in stature, voice, and appearance, before coming to court.

[12] I therefore accepted Sgt. Martinez's evidence on recall, and I believe that he did not threaten the accused; I had no reason to reject this witness's evidence in relation to the procedure and what occurred during the recording of the statement, as he otherwise gave cogent, detailed evidence in Court, and he was not discredited under cross-examination.

EXAMINATION-IN-CHIEF OF ALEJANDRO RODRIGUEZ

[13] The second witness for the Crown Sgt. Rodriguez corroborated the account of Sgt. Martinez, in that he requested the assistance of Sgt. Martinez to record the caution statement of the accused.

CROSS-EXAMINATION:

[14] Under cross-examination, he revealed that his investigation team comprised four persons: himself; a PC Tott of Mayan descent, another police officer whom he could not recall, and a female officer. He denied knowledge of an officer in camouflage uniform visiting the cell that the accused was held in moments before this witness spoke with the accused about a caution statement. He denied telling the accused to give a caution statement admitting to the crime. He denied promising the accused that he would be released as soon as forensics completed their testing. He denied knowledge of a team member visiting the cell of the accused, with his weapons, to intimidate the accused. This witness was

not discredited under cross-examination either.

EXAMINATION-IN-CHIEF OF DESOL NEAL (“JP”)

- [15]** At about 12:00 pm on June 10, 2020, she recalled that Sgt. Martinez introduced her to the accused at the CIB Office at the San Ignacio Police Station, and told the accused that she, as the Justice of the Peace, was there to witness that everything is going fine with him; and that nobody will force him to say anything he doesn't want to say.
- [16]** She was left alone with the accused for five minutes. During that time, she informed that she had a conversation with the accused asking him if he was okay, if he was thirsty or hungry, and if anybody offered him anything, threatened him, or any kind of thing to let him give the caution statement. He replied that no one had offered him anything to give his caution statement; that he agreed to give it. He responded in relation to whether he was thirsty or hungry: he said he was okay
- [17]** According to the JP, Sgt. Martinez told the accused that “he can communicate with anybody like a relative or a lawyer, whatever, attorney then, which his sister was out there already.” When the accused finished his narration, Sgt. Martinez told the accused that he was going to read it for him, and he can do any kind of addition or alteration to the statement. The accused agreed with the statement after it was read over to him. At that moment, Sgt. Martinez indicated that the statement should be recorded. Inspector Jose Batty then came in and introduced himself with a camera that would record the reading of the caution statement. The accused agreed. Sgt. Martinez, read it over whilst Inspector Batty recorded.
- [18]** The JP is a cousin of the accused. The accused would attend church with his cousin, Ricky Valencia who is also her husband's cousin.

[19] When Sergeant Newton walked out of the room, she was left alone with the accused and she spoke to him as she was shocked to see him as a murder accused, because she didn't know him as "those kind of person". In answer to how he appeared to her when she first saw him at the station, her response was that he looked calm; "just as we were seeing him in the Court, because that is the sort of person he is."

CROSS-EXAMINATION

[20] The witness admitted that she was unaware of any prior "police dealings" with the accused; and that she could not say what occurred one hour prior to her coming into the station; she agreed that it was unusual that after the recording of the statement, the Inspector came in for a statement to be recorded whilst it was being read but attributed this to the fact that "they don't have any camera in the room...the San Ignacio Police Station does not have any camera to take the statement; like to video the statement." She didn't think that the accused lied to her about being threatened, but also admitted that she would be unable to tell if Mr. Valencia gave a statement because he was threatened.

[21] This witness appeared to be very honest, forthright, and credible. One could say that, as the relative of the accused she had an interest to serve; she recalled him in a positive light, as someone who attended church with her husband, and someone who was a calm person. She therefore could have given evidence that was favourable to him; in fact, it would have been in her best interest to say to the Court that the accused was threatened and forced to give the caution statement as it would likely lead to an exclusion of the statement in favour of the accused. However, the witness indicated that the accused gave the statement of his own free will, and did not complain of any threat or oppression. This witness was not discredited under cross-examination. I have no reason to disbelieve her evidence.

UNSWORN STATEMENT OF DAVID VALENCIA

[22] The accused denied knowledge of the crime. As a result, he was taken to the cell and locked down to the back; after a while an officer who had a revolver gun on his ankle and one on his side came by. He had a short machine gun in his hand, and he told the accused that “ih seh you luckily I neva meet you last night caz I was going to shoot you... but wait until tonight I will make you talk”. When they was taking me to the Benque Viejo road when the vehicle stop he told me to “run, run so I could shoot you.”

[23] He told Sgt. Rodriguez that he did not want to give a statement because he had no knowledge about the crime, but Sgt. Rodriguez insisted. He told the accused that even if he gave a statement and they don't find any evidence they would release him, and they took his clothes and his tennis.

[24] According to the accused, “I said I still neva want to give the statement, but no one doesn't want to believe me. My family was right outside the police station, I ask to see them, they deny me to see them. I ask for me to give them a call they refuse to give me a call. All the officers refuse to give me a call they just leave my sisters right outside the station standing, so I accepted to give him the statement but when Ms. Desol Neal the JP reach, she told me like this, she told me it's best I do what the officers say or else they would use my kid against me. Then the officer Newton Martinez, he just write down the statement and seh that I...he just point me where to sign. and I never mention to him nothing about killing anybody, they just write it down and he point me where to sign, and I don't know to read and write so I never know what they are doing to me, and Alejandro Rodriguez told me that this will be a recorded statement, so everything will be recorded with a video camera for proof. That's the reason why I request for the video, the recording of this so we can see

what take place while recording the statement. That's all I have to say.”

THE LAW

[25] The legislation which underpins this application to exclude the accused man's caution statement 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”.

[26] 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”.*²

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

² Peart v. R. [2006] UKPC 5, 68 WIR 372, [2006] WLR 970, PC.

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.”

[28] 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.

[29] 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; 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?

[30] The determination of these issues will be analyzed in light of the credibility of each witness's evidence. In the Court's assessment of the evidence, I have to consider the honesty, reliability, and credibility of each witness and the reasonableness, coherence, and probability of the event unfolding according to the evidence of each witness. I have considered their evidence in terms of whether their evidence is consistent with or is supported by other evidence. I have particularly and cautiously examined evidence that I considered was contradictory, inconsistent and unsupported.

ANALYSIS

[31] Issue #1: Was the caution statement voluntarily and freely given? Subsumed in this issue, are the underlying sub-issues which go towards proving whether the statement was freely and voluntarily given.

[32] These sub-issues are (a) whether there was any promise of favour or advantage; (b) whether the statement was given by fear; (c) the accused felt threatened to give the statement according to the dictates of the officers; and whether the accused was pressured to give the caution statement. These sub-headings will be addressed individually.

Was there any promise of favour or advantage?

[33] **The Prosecution witnesses all deny that** the accused was promised anything, and they were unshaken in cross-examination on those issues. The accused maintained however, that Sergeant Rodriguez told him that he would be released if he gave the statement, but forensics found nothing; and also, that he was told that the proceedings would be recorded so it could show exactly what occurred during the taking of the statement.

[34] It is unclear what became of this recording; whilst this recording would not have captured the entire proceedings-especially before the caution statement was taken, which is when most of the allegations of threat and the promise, were made-the fact that the statement was read over to the accused negates the accused man's statement that "...***the officer Newton Martinez he***

just write down the statement and seh that I...he just point me where to sign. I never mention to him nothing about killing anybody, they just write it down and he point me where to sign, and I don't know to read and write so I never know what they are doing to me."³

[35] The accused went further to say:" ... Alejandro Rodriguez told me that this will be a recorded statement, so everything will be recorded with a video camera for proof. That's the reason why I request for the video, the recording of this **so we can see what take place while recording the statement...**"

[36] In the absence of the recordings, the crown' witnesses gave cogent evidence that the accused freely and voluntarily narrated and signed the statement. The fact that there was a recording of a re-reading, support the Court's conclusion that the accused gave a statement which was read over to him.

[37] The Court must emphasize that it is undesirable that there was no recording submitted of the proceedings - whether before or after the statement was taken; this fact offends Section 7 of the Guidelines for Treatment of Persons in Detention which mandates that all police station interviews must be recorded, and by obvious implication, must also be submitted. There is a proviso however, in Rule 7.2, which states that an officer who is at rank of Sergeant, or above may authorize that the statement not be recorded where, amongst other things, there is no suitable recording equipment. Although not an officer, Ms Neal, a seasoned JP who obviously had knowledge of this particular police station, informed the Court that there was no proper recording equipment. Still, it was not challenged that an attempt was made by Inspector Batty to record the re-reading of the statement. The Court must register its displeasure at the fact that:

³ The fact that Inspector Batty came in to record the re-reading of the statement went unchallenged by the defence. The Court accepts that there was a recording, and the statement was re-read to the accused.

- (a) The recording took place after the statement was taken; a recording before the statement was completed would have added evidential value and bolstered the Crown's case that the statement was given freely;
- (b) The recording was never submitted to the Court, and no explanation was given for this. Had it not been for the credibility of the Crown witnesses evidence in this voir dire, the accused might have been disadvantaged by the fact that there was no recording submitted.

[38] On the strength of the prosecuting witnesses' evidence, the failure to record would not amount to a substantial miscarriage of justice, as the JP and the police officers all concurred and gave cogent and reliable evidence that the accused freely and voluntarily narrated the events of the caution statement; it was read over to him and he stated that he understood and agreed with its contents.

Was the statement given by use of fear?

[39] The words allegedly spoken by the officer with the gun on his ankle and on his side who visited the cell block to intimidate the accused were not put to any of the witnesses; those words were not introduced until the unsworn evidence of the accused; neither was this bit of information conveyed to the JP. The Court hastens to add that it is unappreciated that the JP who ought to be a neutral party to the proceedings, is a cousin of the accused. This JP ought rightly to have excused herself and not participate in the proceedings. Nevertheless, no prejudice to the accused or the fairness of the proceedings, was observed by her participation.

[40] Further, it is noted that the allegation of an officer telling him to run so he could be shot whilst he was being transported along the Benque main road, was also not put to any of the witnesses, and the accused never told this to the JP.

[41] The Court observed that a slew of issues that the accused would ordinarily be expected to have told his counsel and to put to the crown's respective witnesses-because they would have formed such an integral part of his case, and would therefore have been at the forefront of his mind,-were not put to the witnesses, and appear to be recent fabrications. For example, the JP indicating to him that they may use his child against him; ' the officer telling him to run so they could shoot him.

[42] From the demeanour and comportment of the accused, he was very present before and during the trial; he appeared to be fully aware of the issues and evidence before the Court and what the Crown needed to prove; he actively participated in the proceedings; on more than one occasion, the accused called his counsel to his side during the trial, to give instructions and to challenge the evidence of the live witnesses. Based upon the Court's observation of the proceedings, the Court finds it difficult to accept that the issues introduced by the accused man in Court, were anything but recent fabrications.

[43] The Court noted also that despite these allegations of intimidation by unknown police officers, even after that, the accused refused to give a caution statement. What broke his steely resolve not to give the statement, according to the accused, was the fact that "my family was right outside the police station, I ask to see them, they deny me to see them. I ask for me to give them a call, but they refused to give me a call. All the officers refused to give me a call they just left my family right outside the station standing, so I accepted to give him the statement". Coupled with this, he said the JP told him "It's best I do what the officers say, or else they would use my kid against me." These very important bits of evidence were never put to the JP or any witnesses in cross-examination. The Court is of the view that this allegation of what the JP said, was a recent fabrication as well.

[44] The Court does accept the accused man's evidence that his family was outside (confirmed By the JP), and accepts that it is not inconceivable that the accused could have experienced some anxiety *if* he was not allowed to see them at some point, but no witness was questioned in relation to the allegation that his sisters were not being allowed to see him or that his child would be used against him. This is despite the fact that the crown witnesses who could purportedly speak to these issues, gave evidence for the crown, and could have been cross-examined on these issues. These issues appeared to have been fabricated by the accused whilst giving evidence.

[45] The JP told the Court that his sisters were outside, in the context that the accused was told that he had the right to "... communicate with anybody like a relative or a lawyer, whatever, attorney, which his sister was already outside". From this statement, the Court concluded that *at some point* the accused would be communicating with his sister; there was no inference that the accused was or would be prevented from doing so. When it is considered that it was put to Sergeant Martinez that he gave his personal mobile phone to the accused to call an attorney, who, even had this been the case, could have conveyed any message to his sisters on the outside, the conclusion of any pressure being placed on the accused because his sisters were on the outside and he could not get to see or call them, seems unlikely.

Was the accused threatened to give the statement according to the dictates of the officers?

[46] This response is the same as the response below; both subsections were dealt with simultaneously and the response is therefore the same.

Was the accused pressured to give the caution statement?

[47] The accused contended that the statement was already written down and he was just shown where to sign, and because he is illiterate, he did not know what they were doing to him. To address this point the Crown commended the

case of **Barrington Wizzard**, the essence of which is that the police officer would not be apprised of so many details of the offence to produce such a detailed statement of what transpired on the night in question. The Defence countered that that information could also have come from other police officers and witnesses during the investigation of the case, the Court was favourably inclined to accept the Defence's reasoning; it is possible that the information contained in the statement could have come from other actors-witnesses, police officers, in the matter. However, the Court on the strength of all the Crown witnesses' evidence, accepted that the accused signed voluntarily, and freely, after also freely narrating the events; the Court also accepts that the contents were read over to the accused and he agreed with them, before signing.

[48] 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?

[49] The Court finds that the caution statement was feely 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?

[50] The court does not believe there was a substantial breach of the Guidelines as the evidence of the crown witnesses makes me feel sure that even in the absence of the recordings to prove or disprove otherwise, the witnesses corroborated each other's evidence and that they were not discredited on cross-examination. I am therefore inclined to see them as witnesses of truth and to accept their evidence that the accused gave the caution statement freely and voluntarily.

[51] Consequently, the statements' 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

[52] Conclusively, I find that the cogent 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.

Given this **26th** day of **September 2024**

[53] This is the Judgment of the Court.

Natalie Creary-Dixon; J
High Court Judge

By the Court Registrar