

IN THE HIGH COURT OF BELIZE, A.D. 2023

CRIMINAL JURISDICTION

CENTRAL DISTRICT

INDICTMENT NO: C72/2019

THE KING

v.

JUAN CHOC

BEFORE: The Hon. Mr. Justice Nigel Pilgrim

APPEARANCES: Ms. Romey Wade for the Crown

Mr. Anthony Sylvestre for the Defence

DATES OF HEARING: 25<sup>th</sup>, 26<sup>th</sup>, 28<sup>th</sup> April, 2023; 2<sup>nd</sup> and 4<sup>th</sup> May, 2023

DATE OF DELIVERY: 11<sup>th</sup> May, 2023

JUDGE ALONE TRIAL

DECISION

1. Juan Choc (hereinafter “the Accused”) was indicted for the offence of manslaughter, 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 death by manual strangulation of Abdush Salam on the 1<sup>st</sup> day of July, 2017. The trial began with the arraignment of the Accused on the 25<sup>th</sup> day of April, 2023 before this Court by judge alone pursuant to section 65A(2)(e) of the *Indictable Procedure Act, Cap. 96 of the Substantive Laws of Belize (Revised Edition) 2020* as amended by the *Indictable Procedure Act (Amendment) Act 2022*.
2. The Crown’s case rested heavily on a caution statement allegedly made by the Accused on 14<sup>th</sup> July, 2017 (hereinafter “the caution statement”) where certain admissions were made. The Accused challenged the admissibility of the caution statement on the ground that it was obtained unfairly and through oppression. The Court chose to hold a voir dire to determine the admissibility

of that statement as opposed to during the course of the trial. This was done in fairness to the Accused, to allow him to give evidence freely in the voir dire to address the admissibility of the statement in circumstances where claims of oppression were made. The Court in this regard, identified with the views of the editors of the ***Criminal Bench Book for Barbados, Belize and Guyana (February 2023)***, at page 772:

***“...there may be a practical reason for the use of voir dices, in judge alone trials. A defendant can still maintain their right to remain silent in the main trial, whilst having to give evidence in challenging the admissibility of an out of court statement, based on say, voluntariness.”*** (emphasis added)

3. The Accused objected to the admission of the caution statement into evidence and provided written particulars. Those particulars were:
  - i. While in the lockup at the Queen Street Police Station, the Accused was not informed of his constitutional rights, including the right to communicate with an attorney, nor was he provided with any food or refreshment.
  - ii. At around 1:00 p.m. Insp. Isaias Sanchez (“Insp. Sanchez”), then a Sergeant, and two unknown police officers started to question the Accused, at intervals telling him that he needed to do the right thing, that he would not be charged if he did the correct thing and thereafter threatening him that he would go to jail if he did not tell them about the incident. The Accused denied any involvement but they continued to pressure and threaten him to give a statement.
  - iii. The Accused was later taken to the Euphrates Police Station where demands were again made of him to give a statement and to which he eventually conceded under duress and pressure.
4. The Crown in support of its application to admit the caution statement called evidence from Sgt. Joan Grinage (hereinafter “Sgt. Grinage”), P.C. Rollington Fuller (hereinafter “P.C. Fuller”), Insp. Sanchez, Cpl. Rocael Casanova (hereinafter “Cpl. Casanova”) and Justice of the Peace Andrew Godfrey (hereinafter “JP Godfrey”). The Accused elected to give evidence on oath and was cross-examined after being advised of his rights.

### **THE EVIDENCE ON THE VOIR DIRE**

5. The Court began with consideration of the agreed evidence of Crown witness, Sgt. Grinage. Her evidence on deposition was admitted pursuant to section 106 of the ***Evidence Act, Cap. 95 of the Substantive Laws of Belize (Revised***

**Edition) 2020.** The Court notes that the latter section, at section 106(1), provides:

*“...the admission by any party of any such fact under this section shall as against that party be conclusive evidence in those proceedings of the fact admitted.”*

6. The evidence of Sgt. Grinage was that on 14<sup>th</sup> July, 2017, at around 6:50 a.m. on New Road in Belize City, she saw the Accused. She called over the Accused and he came. She then identified herself with her Police Identification Card to the Accused and informed him that he fitted the description of a male person wanted by the Crimes Investigation Branch (‘CIB’). The Accused then confirmed to her that he had just been released from the police station and that he had not done anything. She then confirmed his identity and handed him over to P.C. Fuller, who was passing nearby on his motorcycle. Sgt. Grinage later had a conversation with Insp. Sanchez.
7. The evidence of P.C. Fuller was similarly agreed. His evidence was that around 7 a.m. on 14<sup>th</sup> July, 2017 while riding his motorcycle he was stopped by Sgt. Grinage. She then briefed him with certain information and requested his help in escorting the Accused to the Queen Street Police Station and he agreed. P.C. Fuller then identified himself to the Accused as a police officer and requested his name, who gave it as Juan Roberto Choc. P.C. Fuller then informed the Accused that he will be detained pending investigation into the murder of the deceased which occurred on Saturday 1<sup>st</sup> July, 2017. He then cautioned the Accused with the following words: “You do not have to say anything unless you wish to do so but what you do say will be taken down in writing and maybe (sic) used in evidence”. P.C. Fuller then informed the Accused of his constitutional rights as a detained person in that he had the right to communicate without undue delay with a lawyer of his choice and give him instructions. The Accused remained silent. P.C. Fuller then placed handcuffs on the Accused.
8. P.C. Fuller and Sgt. Grinage escorted the Accused to the Queen Street Police Station, which was about two hundred feet from where they were standing. At the station the Accused confirmed his identity. P.C. Fuller then explained and filled out a pair of “Suspect in Custody Acknowledgement forms” and the Accused was given a copy. The Accused was then escorted to the cell block area where he was placed on lock down. P.C. Fuller later contacted Insp. Sanchez and handed over the Acknowledgement Form and the Accused to him.
9. Insp. Sanchez gave live evidence and was cross-examined. His evidence in chief was that on 14<sup>th</sup> July, 2017 he was the Non Commissioned Officer in charge of

the CIB at Precinct One Police Station located at Euphrates Avenue. On that day at 8 a.m. he received information from P.C. Fuller. He then left his office located at Precinct One Police Station and proceeded to Queen Street Police Station. Insp. Sanchez met and spoke to P.C. Fuller who handed over an Acknowledgement Form for the Accused who was in police custody. He then proceeded to the cell block area at Queen's Street Police Station where he met and spoke with the Accused. Insp. Sanchez then identified the Accused to be the same person that he was looking for in relation to a murder investigation.

10. Insp. Sanchez further testified in chief that both he and the Accused identified themselves to each other. Insp. Sanchez then informed the Accused of the reason for his arrest being for the crime of murder concerning the death of Abdush Salam that allegedly occurred on July 1<sup>st</sup>, 2017. He then cautioned the Accused that he is, "not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and used as evidence". The Accused remained silent. Insp. Sanchez then read him, the Accused, his constitutional rights, namely, that he can communicate without delay with a family member or a legal practitioner of his choice. The Accused then requested a telephone call to his stepfather. Insp. Sanchez provided him, the Accused, with a telephone call. The Accused was left in the cellblock.
11. Insp. Sanchez further testified in chief that at 1 p.m. he revisited the Accused at the cellblock where he, Insp. Sanchez, requested certain things from the Accused. Insp. Sanchez escorted him to the scenes of crime office where he provided, and the Accused signed, a consent form in relation to a DNA sample.
12. Insp. Sanchez further testified in chief that at about 5:30 p.m. he and the Accused proceeded to the former's office at Precinct One. Whilst there Insp. Sanchez informed the Accused that he was going to conduct an interview. Insp. Sanchez then showed the Accused the evidence as it relates to the facts of the case and further showed him video footage. Insp. Sanchez testified that at that moment the Accused said that he wished to explain what happened. Insp. Sanchez reminded the Accused that he was under caution and if he wished to say anything it will be a caution statement which will be taken down in writing. The Accused replied he will give the statement. Insp. Sanchez immediately contacted Cpl. Casanova and requested that he record a caution statement from the Accused. Insp. Sanchez testified that his discussion with the Accused took about ten minutes.
13. Insp. Sanchez testified in chief that the Accused made no complaints to him at all about anything, including being hungry, thirsty, induced, threatened or

beaten. He also testified that neither he nor anyone in his presence beat the Accused, placed him in any fear, used any pressure or favour to get the Accused to give the caution statement. Insp. Sanchez testified that he did not observe any bruises or injuries on the body of the Accused. He said that it was only the Accused and himself in the office.

14. Insp. Sanchez also testified to knowing the feeding hours of detained persons at a police station and that it was in the morning between 6-7 a.m., at midday, between 12-1 p.m. and in the evening at 5-6 p.m.

15. Insp. Sanchez was then cross examined. He accepted that the Accused was in custody for about ten hours before 5:30 p.m. on the day of the caution statement and it was reasonable to expect that in those circumstances a person should be provided some food or refreshment. It was suggested to Insp. Sanchez that it was not true that he showed the Accused video footage and evidence in the case and then he, the Accused, said he wanted to explain what happened. Insp. Sanchez denied that suggestion. It was suggested to Insp. Sanchez that he told the Accused that it is better for all of us if you cooperate. Insp. Sanchez denied that suggestion. It was also suggested that from the time Insp. Sanchez met the Accused he demanded a statement from him, again the former denied this. It was suggested that he told the Accused in Spanish, “Este para nosotros que este viaja muy rapido para nosotros”, that is, it is good for all of us to speed this up. Insp. Sanchez denied this.

16. The Crown next relied on the evidence of Cpl. Casanova. He testified that on 14<sup>th</sup> July, 2017 around 5:40 p.m. whilst at Precinct One Police Station Insp. Sanchez requested his assistance to record a caution statement from the Accused. Cpl. Casanova visited Queen Street and requested the assistance of JP Godfrey to witness the recording of the caution statement. On returning to Precinct One he escorted JP Godfrey to a room and introduced him to the Accused. Cpl. Casanova then informed JP Godfrey that the Accused was detained for the murder of the deceased and he wanted to give a caution statement. Cpl. Casanova then came out of the room and left JP Godfrey and the Accused alone in the room for about ten minutes. He then returned to the room unarmed and asked the Accused if he wanted to give a statement under caution.

17. Cpl. Casanova testified that he then asked the Accused if he wanted to give a caution statement and he said yes. Cpl. Casanova then asked the Accused if he was forced, threatened, or promised anything for him to give the caution statement and he answered no. Cpl. Casanova testified that he then made a

physical check on the body of the Accused for injuries however he did not see any injuries on him. The Accused was then told of the reason for his detention by Cpl. Casanova who also informed him that he could communicate without delay and in private with an attorney of his choice as well as to a relative and friend. Cpl. Casanova wrote certificates of the rights that the Accused was advised of and that he was cautioned. The Accused was then asked by Cpl. Casanova whether he wanted to write his statement or if he wanted someone to write it for him, and the Accused chose the latter.

18. Cpl. Casanova testified that the Accused narrated the caution statement and he typed exactly what the Accused said. Cpl. Casanova testified that at the conclusion of the statement he read it over to the Accused and informed him that he could add, alter or correct anything he wished, however, he did not add, alter or correct anything. Cpl. Casanova then wrote a certificate. The Accused was then asked nine questions by Cpl. Casanova for clarification purposes, and the latter recorded the questions and the answers and recorded a further certificate for himself and JP Godfrey.
19. Cpl. Casanova testified that the caution statement was recorded between 6:03 p.m. and 6:55 p.m. He further testified that the Accused was not forced, threatened or promised anything and that he gave the caution statement of his own free will. Cpl. Casanova testified that he printed out the caution statement and that he, JP Godfrey and the Accused signed it. Cpl. Casanova testified that the Accused made no complaints to him, and that neither he nor anyone in his presence beat, used fear, pressure or inducements to get the Accused to give the caution statement.
20. In cross-examination Cpl. Casanova testified that he was aware of the guidelines of how people were to be treated when detained. He also indicated that he was not previously involved in the investigation of the murder of the deceased.
21. The Crown, finally, called JP Godfrey. He testified in his evidence in chief that on 14<sup>th</sup> July, 2017 at about 5:45 pm he received a phone call from Cpl. Casanova who requested his presence for the recording of a caution statement. Upon his arrival at Precinct One he was introduced to the Accused. He then asked Cpl. Casanova to speak to the Accused in private. Cpl. Casanova complied. JP Godfrey then proceed to inform the Accused that he was a Justice of the Peace, and that his purpose for being present was to make sure that his constitutional rights were not infringed. JP Godfrey further advised the Accused that he was there to make sure he was not beaten, threatened or promised anything for his

cooperation and whatever he does will be done voluntarily and of his own free will.

22. JP Godfrey testified that, the time being 5:45 pm, he did inform Cpl. Casanova to be wary of the time as it was close to supper hour. JP Godfrey testified that he told Cpl. Casanova that he must ask the Accused if he is willing to do the caution statement prior to 6 p.m. or after he already ate supper, as supper time was from 6-7 p.m. Cpl. Casanova told JP Godfrey that the station already has food for the Accused there. According to JP Godfrey's testimony, the Accused said that he does not eat prison food. JP Godfrey spoke to the Accused for about 6-7 minutes in private. At no time did the Accused make any complaint to JP Godfrey according to the latter. Cpl. Casanova later returned to the room and asked the Accused if he was still willing to give the caution statement, to which the latter said yes.
23. JP Godfrey testified that he then asked Cpl. Casanova if he had explained to the Accused what a caution statement was and his response was yes he did. After this, in JP Godfrey's presence, Cpl. Casanova told the Accused of the reason for his detention, his right to communicate with a legal practitioner, and he cautioned him. JP Godfrey testified that somewhere around 6-6:05 p.m. they proceeded with the caution statement where the Accused narrated what occurred and Cpl. Casanova wrote it down. The caution statement took about an hour, until about 7:05 p.m., according to JP Godfrey. Cpl. Casanova asked the Accused questions after the caution statement, JP Godfrey testified. Cpl. Casanova read back the statement and told the Accused he can add, alter or correct anything in the statement and he did not. JP Godfrey testified that after that Cpl. Casanova invited the Accused to sign after each caption at the bottom of each page which the latter did. JP Godfrey and Cpl. Casanova also signed the caution statement. JP Godfrey testified that Cpl. Casanova was not armed during his interaction with the Accused, nor was the Accused handcuffed. JP Godfrey testified that the Accused made no complaints to him and that no one in his presence beat, threatened or made any promises to the Accused.
24. JP Godfrey was then cross-examined. He said there were no breaks during the taking of the caution statement. He testified that Cpl. Casanova did not explain what a caution statement was to the Accused in his presence. It was suggested to JP Godfrey that he only spoke to the Accused for two minutes, which was denied. It was also suggested to JP Godfrey that he merely told the Accused that he was there to witness the statement, which was denied.

25. JP Godfrey was re-examined. He testified that he could not say if a camera at the station was recording or working on the day of the caution statement.
26. The Crown closed its case and after the election was put to the Accused he chose to testify on oath.
27. The Accused testified that he was taken into police custody around 7:15 a.m. on 14<sup>th</sup> July, 2017, at the Queen's Street Police Station. He testified that he remained on his own in the cellblock until 10:30 a.m. and that no food had been offered to him. The Accused said that he last ate the evening before. An unknown police officer took the Accused up to Insp. Sanchez's office. Insp. Sanchez was there with two other officers. The Accused said the men all identified themselves but he could not recall their names. Insp. Sanchez and the other officer asked the Accused if he knew why he was here, to which the latter replied no. The Accused testified that one of the police officers asked him if he loved what he did. The Accused said that he responded that he did not do anything. One of the officers with Insp. Sanchez asked the Accused if he liked how he, "raped the guy", and if he, "would like to feel what that person did feel". The Accused said he stayed quiet after that. The Accused testified that Insp. Sanchez and the other officers kept telling him that they needed him to talk. The Accused said he was then taken back to the cell block. The Accused denied that Insp. Sanchez cautioned him or told him of his constitutional rights.
28. The Accused testified that he was later taken to Precinct One. Insp. Sanchez took the Accused into an office with two male police officers and one female officer. The Accused testified that Insp. Sanchez asked him if he wanted to give a statement. The Accused said that he did not understand what a caution statement was and that he did not speak well in English, but spoke well in Mayan and Spanish. The Accused testified that Insp. Sanchez then began speaking Spanish. They were then alone. Insp. Sanchez told the Accused that he could tell him what happened, but the Accused did not answer. Insp. Sanchez said that it would be hard for him, the Accused, and when the latter asked why, the former said that he would be charged for murder. Insp. Sanchez told the Accused, "if I say anything it would be taken to the court." The Accused testified that he was told by Insp. Sanchez that if he gave a statement that it will help him and that was when he was told in Spanish that it was better for all of us to get through with this. The Accused said that he was feeling bad at this point because he did not have anything to eat or any water. The Accused said that Insp. Sanchez never explained to him what a caution statement was. According to the Accused, Insp. Sanchez told him that he had him for a murder

so if he gave a statement it will help them a lot and it will help him. The Accused left the office. The Accused testified that he was “really fed up” and thought that if he gave a caution statement that he would be released. The Accused then contacted Insp. Sanchez and agreed to give the caution statement. Cpl. Casanova was then contacted and met with the Accused.

29. The Accused testified that JP Godfrey spoke with him privately and they introduced themselves to each other. JP Godfrey had told the Accused that he was there to witness if anything happened to him. The Accused said that, “I did not tell him anything, I did not speak with him too much, I did not have anything to say to him...I never did tell him anything about food.” He denied that the JP made any enquiries of Cpl. Casanova with regard to his food, nor did he make any response about not eating prison food. The Accused accepted it was his signature on the caution statement and said that he never knew the nature of the document he was signing. The Accused said that the statement took about one and a half hours. The Accused said he had no idea what a lawyer was and that he was not fed since he was detained. The Accused said the statement was not read back to him.
30. The Accused was then cross examined. He accepted that he spoke with JP Godfrey for ten minutes. He accepted that the JP told him that he was there to make sure that everything he did that day was voluntary. The Accused testified that he knew JP Godfrey was there to look out for him and that he chose not to say anything to him. The Accused stated, “I had complaints, but I did not say anything to anyone”. The Accused agreed with the suggestion that being alone with the JP who said he was there for him was the perfect time to tell him he did not understand what was happening. The Accused said that he did ask Insp. Sanchez for a call to his stepfather but that that was after he had given the caution statement.
31. The Accused accepted that Insp. Sanchez had showed him a DVD in his office and that was when he said to him he wanted to explain what happened. However, after this he said that he did not tell him anything else. He accepted that Insp. Sanchez then asked him to give a caution statement, to which he agreed. The Accused accepted that Cpl. Casanova read back what had been written on screen but had not read back the printed document and instructed him where to sign.
32. The Accused was re-examined and said he never understood the question posed to him about whether it was the perfect time to say what was wrong when he was with the JP.

33. Both the Crown and Defence filed written submissions, which were carefully considered by the Court.

### **THE LAW**

34. In determining the application of the Crown to admit the caution statement into evidence the Court is guided by section 90 of the **Evidence Act, Cap. 95 of the Substantive Laws of Belize (Revised Edition) 2020** (“the EA”) which reads:

*“90.–(1) 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 the 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.**”  
(emphasis added)*

35. The Court is also guided, in terms of the questions it should ask itself in this application, by the decision of our Court of Appeal in **Krismar Espinosa v R, Criminal Appeal No. 8 of 2015** which reads, where relevant, per Awich JA:

*“[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 ss.90 and 91 of Evidence Act, Laws of Belize.** The sections do not mention a voir dire.*

*[94] **There are several levels of consideration of voluntariness in the admissibility of a confession in evidence. First where the judge rules in a voir dire that, a confession was not free and voluntary and therefore not admissible in evidence, the jury will not hear about it at all; the so called confession must, and will be excluded from the full trial.** This rule dates back to R v Baldry (1852) 2 Den. 450. It has been much developed- see Regina v Mustaq [2005] UKHL 25, in 2005. But where the judge rules that, a confession was free and voluntary, the prosecution may (and usually will) adduce it in evidence in the full trial. The jury will hear it.*

*[95] **Secondly, where the judge decides that, a confession was voluntary, but was obtained by a person in authority or a person charged with the duty of investigating offences or charging offenders, without complying with Judges Rules, he may refuse to admit it in evidence or he may exercise discretion to admit it,***

**depending on whether the circumstances proved warrant it.** See *Mohammed v The State (Trinidad and Tobago)* [1998] UK PC 49; *Robert Hill v The Queen Crm. Appeal 5 of 2000*; and *Pipersburgh's Case*.

[96] **Thirdly, 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.** In *R v Sang* [1980] AC 402, the House of Lords gave that answer to a question certified by the Court of Appeal (England); and held that, it was no ground to exclude evidence, that it was obtained as the result of the activities of an agent provocateur.

[97] **There are three reasons for the rule that, a confession must be voluntary regardless of to whom it is made, for it to be admitted in evidence. 1. A confession which is not voluntary, that is, obtained by oppression or such other improper conduct is unreliable. 2. The public attaches importance to proper behavior by police officers and other officials. 3. Deriving from the judgment in *Regina v Mustaq*, admission in evidence of a confession obtained by oppression or such other improper conduct is inconsistent with the constitutional right against self-incrimination, implied in the right to a fair hearing, guaranteed in s.6 (1) and (2) of the Constitution of Belize, and the constitutional right of an accused not to be compelled to give evidence at his trial, guaranteed in subsection (6). Also see *Lam Chi-ming v The Queen* [1991] AC 212 at page 220, Lord Griffiths.** (emphasis added)

36. The Court interprets its duties under *Espinosa*, in the context of the Crown's application to admit the caution statement, to be as follows:
- i. The Court must be satisfied beyond reasonable doubt that the caution 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.;
  - ii. The Court must consider whether there were any procedural breaches<sup>1</sup>, which could trigger the exercise of its discretion to exclude the caution statement.; and
  - iii. The Court must finally consider, under its general exclusionary discretion, whether it is fair<sup>2</sup> to admit the statement.

37. With regard to the second duty, since this is a matter after 1st January, 2016, the Judges Rules, mentioned in *Espinosa*, have now been supplanted by the **Guidelines for the Interviewing and Treatment of Persons in Police Detention** (hereinafter "the Guidelines") which were made pursuant to section

---

<sup>1</sup> Para. 95

<sup>2</sup> Para. 96

7 of the **Police Act, Cap. 2 of the Substantive Laws of Belize (Revised Edition) 2020.**

38. This Court is of the view that the *Guidelines*, having been made pursuant to statutory powers given to the Commissioner of Police, are subsidiary legislation within the meaning of section 3(1) of the **Interpretation Act, Cap. 1 of the Substantive Laws of Belize (Revised Edition) 2020** (“the IA”). The latter provision reads:

“ ‘subsidiary legislation’ means any proclamation, **regulation, rule, order, resolution, rule of court, by-law, or other instrument made under or by virtue of any Act and having legislative effect...**”  
(emphasis added)

39. In the Court’s view the *Guidelines* are regulations or rules made “under or by virtue of any Act and having legislative effect” as mentioned in the latter section.

40. The Court believes that this is a significant legal finding because of the effect of subsidiary legislation by virtue of section 22 of the *IA* which reads:

“**22. Subsidiary legislation shall have the same force and effect and be as binding and shall be construed for all purposes as if it had been contained in the Act under which it was made.**”  
(emphasis added)

41. The Court in this regard is of the view that the *Guidelines*, unlike the Judges Rules at common law, have the force of law and should be followed as such, though the consequences of a breach are to be weighed up in the exercise of the Court’s discretion pursuant to Guideline 17.2. The Court in coming to this conclusion adopts the reasoning of my learned brother, Cumberbatch J., in **Indictment No. C2 of 2018 R v Melvin Budna (Voir Dire Notes of Interview)** at paragraphs 26 and 34.

42. The Court in examining the evidence led in the voir dire is also guided by the decision of our Court of Appeal in **Lisandro G. Matu v R, Criminal Appeal No. 2 of 2001** in terms of clarifying the onus on the Crown in this application in the context of section 90(2) of the *EA*, per Mottley JA:

“**12. In our view, it is not permissible for the judge to assume that the admission was not induced by any promise of favour or advantage or by the use of fear, threat or pressure by or on behalf of a person in authority. The use of the word "affirmatively" suggests that the prosecution must lead evidence which satisfied the judge that that admission was not induced by any promise of favour or**

advantage or by the use of fear, threat or pressure by or on behalf of a person in authority. This subsection makes it absolutely clear that before the admission is received into evidence certain things must be proved affirmatively. If there is no affirmative proof of the factors set out in the subsection, then the evidence relating to the admission cannot be given in evidence.

What is meant by the expression "prove affirmatively to the satisfaction of the Judge"? The subsection in fact enacts the formulation of Cave, J in the Queen v Thompson [1893]2 QB 12. In that case, the learned judge, after referring to previous authorities including adopting a statement from Taylor on Evidence (8th Ed. Part 2, Ch 15 5872) at p. 16 stated:

"The material question consequently is whether the confession has been obtained by the influence of hope or fear; and the evidence to this point being in its nature preliminary, is addressed to the judge, **who will require the prosecutor to show affirmatively, to his satisfaction, that the statement was not made under the influence of an improper inducement, and who, in the event of any doubt subsisting on this head, will reject the confession.**" (emphasis added)

## ANALYSIS

43. The Court first asked itself, pursuant to *Espinosa*, whether the caution statement was 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.
44. The Crown's witnesses stoutly denied that any promises, threats, or violence were directed towards the Accused. They were unshaken in cross examination on those issues.
45. The evidence of that misconduct came from the Accused. There were substantial inconsistencies and inherent improbabilities in the evidence of the Accused which caused the Court to reject his evidence that Insp. Sanchez and other police officers made promises and threats to get him to give the caution statement.
46. The first and most substantial inconsistency would be how the caution statement came to be. The Accused's version in evidence in chief was that after being improperly harangued by Insp. Sanchez and other police officers to give a statement he left the office, got fed up, and after consideration thought it was best in his deliberate judgment to give a statement. In cross-examination for the first time, and contrary to what was put by his counsel to Insp. Sanchez,

the Accused admitted that he was shown a DVD by Insp. Sanchez and he then confirmed, as was the Crown's case, that that is when he told Insp. Sanchez that he wanted to explain to him what happened.

47. The Court also found that there was a shocking recent fabrication in the evidence of the Accused with regard to evidence that one of the officers in company with Insp. Sanchez had implicitly threatened to rape him. This came from the direct evidence in chief of the Accused that, "one of the other officers with Sanchez was carrying on and tell me and accusing me if I like how I rape the guy...the same police officer asked me if I would like to feel what that person did feel." This suggestion was never put to Insp. Sanchez when he testified, and the Court considers that a significant, and unexplained omission, under the authority of the Privy Council decision of *Warren Jackson v The State (1998) 53 WIR 431* at pages 440-442, which undermines the credit of the Accused.
48. This omission was even more troubling when looked at in the context of the admission by the Accused that he accepted that he knew the JP was there to help him and he made no complaints to him, mere hours after being threatened with rape. The Accused provided no explanation for his failure to make a complaint but only to say that, "I chose not to say anything to him, I also chose to make no complaints to him."
49. The Court found that it was inherently improbable that a person who suffered the threats, promises and endless demands for a statement would not complain to the person whom he understood was there to represent his interests. The Court considered, on these matters, that the Accused was an unreliable witness.
50. The Court also accepted that the Accused, on the day in question, was cautioned and aware of his rights, firstly, as he had conclusively accepted that through his formal admission of the evidence of P.C. Fuller that he had been cautioned. Secondly, the Accused also accepted in evidence in chief that Insp. Sanchez said that, "if I say anything it would be taken to the court", which is half of the content of the caution. Also, as indicated above, the evidence of Insp. Sanchez and Cpl. Casanova was not shaken on that issue in cross examination.
51. The Court was, however, concerned about the evidence on the feeding of the Accused, which was a particularized written ground of objection and the Accused in his evidence identified hunger as a source of pressure. The *Guidelines* provide:

*“13.5. At least **two light meals and one main meal** should be offered in **any 24 hour period**. **Drinks should be provided at meal times and upon reasonable request between meals.**” (emphasis added)*

52. Insp. Sanchez was the Non Commissioned Officer in charge of the CIB at Precinct One. Insp. Sanchez himself gave evidence as to the feeding times for detained persons as being between 6-7 a.m., 12-1 p.m. and 5-6 p.m. The Accused claimed that he was not fed while in police custody, from 7:15 a.m. to 7:05 p.m., when the caution statement process was completed. This was almost twelve hours. Insp. Sanchez, who was given custody of the Accused by P.C. Fuller on the morning of the caution statement, made no mention of the Accused being offered a lunchtime meal by him, instructing someone to offer him a meal, or observing that he was offered a meal.
53. The only evidence of an offer of an evening meal came from JP Godfrey who spoke of the Accused rejecting “prison food”, which the Accused stoutly denied. There was a taint on this evidence, however. This was clearly highly significant evidence coming from the JP that he told Cpl. Casanova to, essentially, mind the feeding of the Accused, but Cpl. Casanova did not mention this at all in his evidence, even obliquely. Cpl. Casanova, in the Court’s view, would have appreciated the significance of this evidence as he accepted in cross-examination that he was aware of the *Guidelines*, so it is mystifying to the Court that if this exchange happened, why he did not raise it in his evidence. This was, in the Court’s view, a significant discrepancy by omission.
54. This highlighted, what in the Court’s view, was a significant breach of the *Guidelines*, namely the failure to electronically record this caution statement. The relevant *Guidelines* provide:

*“7.1. All police station interviews carried out under Part 6 and **all caution statements shall be electronically recorded.**”*

*7.3. Notwithstanding Rules 7.1 and 7.2, a senior police officer may authorise an officer not to electronically record the police station interview or caution statement or to use another recording medium where **it is not reasonably practicable to comply with these Guidelines because of reasons not limited to, the non-availability of recording equipment, the failure of the recording equipment or the non-availability of a suitable interview room** and the senior police officer **considers on reasonable grounds that the police station interview or the taking of the caution statements should not be delayed** until the failure has been rectified or a suitable room or recording equipment becomes available.*

*7.4. In respect of all police station interviews and caution statements that are not electronically recorded, the senior police officer **must***

**complete the form contained at Schedule 2 to record in specific terms the reasons for not doing so.** (emphasis added)

55. In the Court's view the *Guidelines*, which the Court has already found are subsidiary legislation, mandated that this caution statement ought to have been electronically recorded and if it was not, some justification ought to have been given in evidence as to why it was not. This issue was not addressed on the Crown's case at all. It is again noted under *Matu* that the Crown has an affirmative duty to the Court in terms of presenting its evidence in support of an admission.
56. This was a breach that had consequences because the violent conflict with regard to whether there was an evening offer of a meal before the caution statement could have been resolved had this caution statement been electronically recorded, and there is no evidence that it could not have been so recorded.
57. The Court also notes, in passing, that another very significant issue as to whether the printed caution statement was read over or if he was asked whether he wished to correct it could have also been so similarly resolved.
58. In the face of the discrepancy by omission between the evidence of Cpl. Casanova and JP Godfrey, and the absence of any evidence from Insp. Sanchez with regard to any offers of a meal to the Accused the Court was of the view that it must have reasonable doubts on the issue of whether the Accused was offered food whilst in police custody.
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*.
60. 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)

61. The Court was of the view that, again on the authority of *Matu*, this was a matter upon which an affirmative burden was placed on the Crown which it had failed to discharge, whether or not the Accused had complained to the JP about it. The Court had reasonable doubt as to whether the Accused gave this caution statement without pressure from not being offered food for almost ten hours before the caution statement began. In that regard it was the duty of the Court to exclude the caution statement and it was so ordered.
62. The Crown was granted, and took, the opportunity to consider its position with regard to the viability of the prosecution of the Accused, post the exclusion of the caution statement.
63. On 4<sup>th</sup> May, 2023 the Crown indicated that they would be offering no further evidence against the Accused and closed its case. The Accused made a no-case submission on the first limb of ***R v Galbraith [1981] 2 All ER 1060*** that there was no evidence to make out the offence, which the Crown did not oppose.
64. The Court upheld the no-case submission as there was literally no evidence of guilt once the caution statement was excluded. The Court acquitted the Accused and discharged him from custody on the same date.

Dated 11<sup>th</sup> May, 2023

NIGEL C. PILGRIM  
JUDGE OF THE HIGH COURT OF BELIZE  
CENTRAL DISTRICT