

IN THE SUPREME COURT OF BELIZE, A.D. 2020
CRIMINAL JURISDICTION

CENTRAL DISTRICT

Indictment No. C98/2018

THE QUEEN

v.

FILADELFIO ARRIAZA
GUMERCINDO MARCELO CAN

First Accused
Second Accused

- Murder

BEFORE: Honourable Justice Mr. Francis M. Cumberbatch

APPEARANCES: Ms. Janelle Tillett, Counsel for the Crown
Mr. Leo Bradley Jr., Counsel for Defendant First
Accused
Mr. Earl Hamilton, Counsel for Defendant Second
Accused

TRIAL DATES: 9th, 10th, 11th, 12th, 16th, 17th, 18th of April, 2018.

Ruling on *voir dire*

[1] The Accused and another are indicted by the Director of Public Prosecutions for the offence of murder contrary to *Sections 106 and 117 of the Criminal Code* allegedly committed on one Michael Adrian Pagette on the 31st day of August, 2016, at Benque Viejo.

[2] At his trial, the Crown sought to tender into evidence a caution statement allegedly given by the Accused to Corporal Adrian Mendez on the 3rd day of

August, 2016. This statement was opposed by Defence Counsel, Mr. Bradley, on the grounds that his client was threatened and coercive mechanisms were used to get him to give a statement. This was allegedly done by individuals who picked up the Accused on the same day the statement was given.

- [3] The Court held a *voir dire* to determine the admissibility of the impugned statement. The Crown called six witnesses which included police officers and a Senior Justice of the Peace. The police officers all denied beating, threatening, and making promises to the Accused whilst in their custody. The police officers also testified that the Accused received food and water and made no complaints to them whilst in custody. These officers included Sergeant Ferrufino and PC Ayala who were members of the arresting party and Corporal Co the investigating officer.
- [4] Sergeant Ferrufino denied that the Accused cast broke after he beat him. PC Ayala also denied that he hit the Accused whilst he was on the ground in the area where he had the cast.
- [5] The Sr. Justice of the Peace also testified that no force, threats, inducements, promises were made to the Accused by anyone in his presence.
- [6] At the close of the Crown's case, the Accused gave an unsworn statement in which he spoke of being beaten, kicked, and threatened by police officers

who arrested him before he was taken to the police station. He specifically stated that he was hit on his left hand which at that time had a cast as a result of a work place injury.

[7] The Court invited Counsel on both sides to provide written submissions together with authorities on which they relied. The Court also received oral submissions from Counsel. The Court took into consideration the submissions from Counsel aforesaid.

[8] At the close of the voir dire, the Court returned to the main cause during which time Corporal Co again testified. During his cross-examination, Defence Counsel produced a document entitled 'CUSTODY RECORD' which he stated was an administrative document used by the Belize Police Force. It is done by the Diarist on duty and brought to him as the investigating officer. He would then read it before he signed it. The prisoner would also sign it. This witness admitted signing that document and acknowledged that it was also signed by the Accused. He accepted that in the column under the heading of 'remarks' it is stated thus: 'left hand in cast complaining of pain in his arm'

The Law

[9] *Sections 90 & 91 of the Evidence Act CAP 95* of the Laws of Belize provide thus: READ *Section. 90 and 91* (1) provide as follows:

[10] The Crown is obliged to satisfy me beyond reasonable doubt that the statement was made freely and voluntarily by the Accused, that is, that was not obtained by an inducement, promise of favour or advantage, the use of fear, threats or pressure by or on behalf of a person in authority.

[11] It is with this in mind, that I must consider whether or not the evidence adduced by the Crown satisfies me beyond reasonable doubt that the statement was freely and voluntarily given. The evidence in the *voir dire* is replete with denials of force, promises, threats inducements made to the Accused to cause him to make the statement. However, during the cross-examination of the investigating officer in the main cause it was revealed in the Custody Record in respect of the Accused made on the 3rd day of August, 2016, the day of his arrest and detention and the taking of the impugned statement that the Accused complained of pain in his left hand which was covered with a cast.

[12] Though this evidence was revealed during the main cause I find that I cannot ignore it in determining the voluntariness of the statement. It is common ground that the Accused was taken into custody with a cast on his left hand. To even a casual observer this is indicative of the seriousness of the injury suffered to necessitate a cast being placed on his arm.

[13] *Section 100(4) of the Criminal Code* provides thus: READ. *Subsection 9* defines what constitutes “necessaries of life” thus READ. This section imposes a duty on the police officers at the Benque Viejo Police Station to cause the Accused to receive medical treatment for the pain complained of. Thus, I find it astonishing when in his examination-in-chief in the *voir dire* Corporal Po stated, “the Accused made no complaints to me whilst a prisoner. He appeared normal while in custody.” Under cross-examination Corporal Po stated “the Accused mentioned to me he was ok. He made no complaints to me he was in pain and needed to go to the hospital. He mentioned to me he was ok.” This is further exacerbated by the presence of his signature on the custody report aforesaid.

[14] Crown Counsel in her written submissions has urged The Court to find that though the Crown ‘is not disputing the first Accused might have been experiencing some sort of discomfort to his left hand the witnesses firmly deny inflicting any harm to him on the 3rd day of August, 2016.

[15] I find that this submission is unsupported by evidence from the Crown’s witnesses. No one has testified as to why after receiving his complaint of suffering pain on his left arm he was not taken for medical treatment. Had that been done in pursuance of *Section 100(4) of the Criminal Code* the Court may have been in a position to say with certainty that that existing

injury has not been affected by recent interventions and/or whether the pain suffered would have affected the voluntariness of his statement? In other words, would it have sapped his free will to give a statement of his choice?

[16] The Crown was well aware from the cross-examination of the police officers aforesaid that the Accused was alleging that he was beaten on the cast on his left arm. Moreover, the Crown was at all material times in possession of the custody report on which it is stated that the Accused at or around the time of his detention complained of pain on his left arm which has a cast. He was not afforded an opportunity to receive medical attention to which he is entitled by law. The totality of the evidence is bereft of any or any reasonable reason why this is so. However, Corporal Po after having spoken with the Accused sought the assistance of Corporal Mendez shortly thereafter to have a statement taken from him but neglected to have him medically examined.

[17] Accordingly, I am not satisfied to the extent that I feel sure that the Crown's case has met the requirements of *Section 90 of the Evidence Act* that is that the statement was not induced..... I cannot deny the likelihood of the Accused being promised that he would be taken to the doctor/hospital after he gave a statement. Thus, I am not satisfied beyond reasonable doubt that the statement was freely and voluntarily given.

[18] The statement will not be admitted into evidence.

Dated this **Wednesday 18th day of April, 2018.**

Honourable Justice Mr. Francis M. Cumberbatch
Justice of the Supreme Court