

**IN THE SUPREME COURT OF BELIZE A.D. 2021  
(CRIMINAL SESSION)**

**CENTRAL DISTRICT**

**INDICTMENT NO.** Amended C48 of 2019

**THE QUEEN**

**AND**

**MR. RAFAEL MENCIAS**

**- Murder**

**BEFORE** **The Honourable Mr. Justice Francis Cumberbatch**

**APPEARANCES** Ms. Natasha Mohamed – Counsel for the Crown  
Mr. Arthur Saldivar – Counsel for the Accused

**DATES** 7<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup>, 21<sup>st</sup>, 26<sup>th</sup>, and 27<sup>th</sup> of July; 18<sup>th</sup>, 22<sup>nd</sup>, 29<sup>th</sup> of September 2021; 1<sup>st</sup>, 3<sup>rd</sup>, 9<sup>th</sup>, 11<sup>th</sup>, 15<sup>th</sup>, and 17<sup>th</sup> of October 2021; 14<sup>th</sup> of December 2021; 7<sup>th</sup> of February 2022; 5<sup>th</sup> and 25<sup>th</sup> of May 2022; 9<sup>th</sup> and 16<sup>th</sup> of June 2022.

**JUDGMENT (Ruling on *voir dire*)**

{1} The Accused was indicted by the Director of Public Prosecutions for the offense of murder for that he on the 29<sup>th</sup> day of November 2017, at Cotton Tree Village murdered Hilton Wade Snr, (the ‘Deceased’). At his arraignment, he entered a plea of not guilty, hence, a fully contested trial was held before a single judge pursuant to the provisions of section 65A of the *Indictable Procedure Act*.

{2} At the end of the trial, the Accused was found guilty of the offense of murder as indicted.

{3} The Court ordered a psychiatric report, a social inquiry report, and a prison report be provided. The Court also fixed a date for a sentencing hearing.

### **The Facts**

{4} The convicted man in a statement under caution described how he was contacted by another person who offered to pay him the sum of five thousand dollars (\$5, 000.00) to kill the Deceased. He agreed to carry out these heinous acts as described by, Dr. Mario Estrada Bran, who conducted a post-mortem examination on the body of the Deceased.

{5} The post-mortem examination revealed a total of 30 stab wounds located on various areas of the chest, the smallest of these being 25 mm in length whilst the largest is 50 mm in length. There were contusions to the knee caused by the dragging of the body. Internal examination revealed that the head was completely separated from the body by irregular cuts. Some of the stab wounds penetrated the chest, the chest cage, the lungs, the aorta, and the right kidney.

{6} The cause of death was determined to be exsanguination due to internal and external bleeding due to multiple stab wounds to the trunk. The doctor further

opined that a large, sharp, and pointed instrument was used with heavy force to inflict the injuries that cause death.

### **The Hearing**

{7} At the sentencing the evidence of SGT Carrillo disclosed that there is no video recording equipment in the Central Investigation Bureau room at the Belmopan Police station. SGT Coye stated that he took the decision independently to record the statement without awaiting for a video recorder to be present. There was a Justice of the Peace present and this was confirmed by the Accused in his testimony. He further testified that the Accused made no complaints to him about ill-treatment. Indeed, the Accused in his testimony did not include SGT Coye among the group of police officers who allegedly tortured him.

{8} The Accused admitted that he was allowed to speak privately with the Justice of the Peace before the statement was recorded. A perusal of the statement of the Justice of the Peace which was read into evidence does not disclose that the Accused made complaints to him that he was the victim of acts of torture. Indeed, had that been so I cannot imagine that the Justice of the Peace would have participated in the recording of the statement by SGT Coye without ventilating the complaints of ill-treatment made by the Accused to SGT Coye and other senior officers at the station. D/C Martinez had testified that he

personally bought tamales for the Accused and gave it to him when they arrived at the Belmopan Police station.

{9} The law does not impose a legal burden on the Accused to prove that he was indeed subjected to force, violence, and oppression. Section 90 (2) of the *Evidence Act* provides that the Crown must prove beyond reasonable doubt that the statement was not obtained by an inducement or promise of favor or by the use of fear, threats, or pressure by someone in authority. Notwithstanding this, however, the Accused must nevertheless adduce some evidence in support of his allegations that force, violence, and oppression were used on him to obtain the statement.

{10} The evidence of Dr. Novelo did not support the assertions by the Accused of the nature, degree, and extent of force and violence allegedly used on him. He spoke of his head being slammed several times against a concrete wall, a baton, used to pound his knees, being kicked in the groin, the baton used to pound him on his chest, and being tasered. He further stated that there are marks on his body from the ill-treatment at the hands of the police officers.

{11} Though the Accused was taken to the Karl Heusner Memorial Hospital he was not hospitalized but was treated and discharged that same day. There is no medical certificate issued by the doctors at that hospital that indicates the nature and extent of any injuries found on him. Dr. Novelo, who ordered that

the Accused be taken to the hospital some three days after his admission to the prison did not testify of observing any injuries on his body and I find this to be astonishing. Indeed, the doctor testified that he had received a report of the Accused coughing up blood and this was some three days after his admission to the prison. He further said, he did see evidence of blood coming out of a tube placed through his nostrils, so he referred him to the Karl Heusner Memorial Hospital for evaluation and treatment. Under cross-examination the doctor stated, he did not determine the cause of the bleeding and that bleeding in the stomach could arise from various circumstances. That was the extent of Dr. Novelo's interaction with the Accused.

{12} There is no evidence from the doctor or anyone else at the prison that the Accused made complaints of having injuries from beatings. Moreover, there were no results of medical examinations made by the medical staff at the prison which disclosed that he was beaten and otherwise ill-treated. This I find to be even more astonishing having regard to the allegations made by the Accused both in his testimony at the *voir dire* and in the main cause. Finally, there is no evidence that the Accused made complaints to the Magistrate when he was taken to Magistrate's Court.

{13} Having considered the evidence of the Accused, I find that I do not believe and accept that he was ill-treated by the police whilst in custody as alleged by

him, and as such I have rejected this evidence as being unreliable. I believe and accept, the evidence that the Accused was fed by D/C Martinez aforesaid and it was against that background that I find that the Accused was not deprived of refreshments whilst in custody.

{14} Though the statement was not electronically recorded, I am satisfied that there is no such equipment installed at the Belmopan Police station and that there was a Justice of the Peace present throughout the process of taking the statement. Moreover, no complaints of force, violence, or promises were made against SGT Coye who recorded the statement. Thus, I am satisfied that there was no miscarriage of justice occasioned by the absence of an electronic recording of the impugned statement.

{15} Accordingly, I find that the evidence of the Crown's witnesses has satisfied the burden of proof as set out in section 90 (2) of the *Evidence Act*. Thus, I am satisfied to the extent that I feel sure that the statement was not obtained by means of force, threats, and violence against the Accused and is admissible in evidence.

Dated this **8<sup>th</sup> day of June 2018**.

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Honourable Justice Mr. F M Cumberbatch  
Justice of the Supreme Court  
Central District