IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE
(CRIMINAL JURISDICTION)

INDICTMENT NO: C3 OF 2022

THE KING

and

RODMAN WELCH

Accused

Before:	**The Honourable Mr. Justice Nigel Pilgrim**
Appearances:	**Mr. Riis R. Cattouse for the Crown.** **Mr. Hubert Elrington S.C. and Mr. Orson J. Elrington for the Accused.**
Dates of Hearing:	**2nd, 5th,10th, 12th, 17th, 30th October 2023**
Date of Delivery:	**2nd November 2023**

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MURDER- ADMISSIONS- VOIR DIRE- PRE-CHARGE DETENTION- REASONS FOR DECISION

[1] PILGRIM J.: Rodman Welch ("the Accused") was indicted on 11th January 2022 for murder, contrary to section 106(1) read along with section 117 of the **Criminal Code**[1]. The allegation is that the Accused shot and killed Shakeem Felipe Dennison ("the deceased") on 12th October 2020. The Accused was arraigned on 2nd October 2023 and pleaded not guilty, and a trial began before this Court, by judge alone, pursuant to section 65A(2)(a) of the **Indictable Procedure Act**[2].

[1] Chapter 101 of the Substantive Laws of Belize. Revised Edition 2020
[2] Chapter 96 of the Substantive Laws of Belize. Revised Edition 2020

[2] The Crown wishes to rely on a caution statement dated 15th October 2020 ("the caution statement") and a video recording of that statement in proof of its case. The Accused in his case management form indicated that he objected to its admission on the ground that it was the fruit of a threat made by Sergeant Elroy Vernon ("Sgt. Vernon) as well as a promise of release if he gave the statement.

[3] The Court was therefore enjoined to enquire into the fairness of the admission of the caution statement. The Court, in its discretion, held a voir dire to determine its admissibility so that the Accused could testify freely to establish his grounds of objection without being subjected to cross-examination on the main issue of guilt or innocence in the course of a main trial in fairness to him[3].

[4] As the evidence at the voir dire unfurled the Accused added another ground of objection. He further submitted that the caution statement was obtained in breach of his procedural and constitutional rights against undue pre-charge detention.

THE EVIDENCE

[5] The Court first heard from Theresita Audinett, a police Sergeant, ("Sgt. Audinett") who interviewed the Accused on 14th October 2020 under caution ("the Audinett interview"). The interview of the Accused was admitted in evidence as TA1. In that interview he indicated that he had no problem with the deceased and that he was not involved in the shooting and killing of the deceased. Indeed, he gave an alibi for himself at the time of the shooting. In her cross-examination she accepted that she had she had received information from Inspector Isaias Sanchez ("Insp. Sanchez") that owing to new information he had received from a Rupert Lopez he had ordered that the Accused be re-arrested after being released from detention at 2 p.m. on 15th October 2023. Sgt. Audinett testified that she asked Sgt. Vernon for assistance in recording a caution statement sometime between 4:30 and 5 p.m. that day.

[3] **Criminal Bench Book for Barbados, Belize and Guyana**, at p. 772

[6] Lorraine Herrera, Justice of the Peace ("JP Herrera") was the Crown's second witness. She testified in evidence in chief that around 4:55 p.m. on 15th October 2020 she was contacted by Sgt. Vernon to witness a caution statement. She agreed and had a private conversation with the Accused at the Crimes Investigation Branch Support Office at the Queens Street Police Station, after being introduced to him. She asked him several questions, including if he was forced, coerced or promised anything for his caution statement to which he replied, no. JP Herrera testified that she asked the Accused if he was giving the caution statement of his own free will to which he replied, yes. She further testified that she witnessed the Accused narrate the caution statement. In cross-examination JP Herrera accepted that she could not say what happened to the Accused before she arrived at station.

[7] The Crown's third witness was Sgt. Vernon. He testified that around 4:45 p.m. on 15th October 2020 he was asked by Sgt. Audinett to assist in the recording of a caution statement from the Accused. He met the Accused and asked him if he wanted to give a statement under caution, and the latter replied yes. Sgt. Vernon explained to the Accused that the statement would be video recorded in the presence of a Justice of the Peace. At the time of this conversation JP Herrera was already at the police station. During the recording of the statement the Accused was cautioned and advised of his constitutional rights. Sgt. Vernon testified that the Accused narrated the statement and on its completion was advised of his rights to add, alter, or correct it before signing. He also testified that the Accused was not beaten, threatened, or promised anything to give the caution statement. The caution statement was tendered in evidence as EV1 and the video recording of the caution statement was admitted in evidence as EV2.

[8] Sgt. Vernon accepted in cross-examination that the Accused was in custody since the 13th October 2020. He further accepted that he was aware that the JP was present in the office when he asked the Accused if he wanted to give a caution statement. Sgt. Vernon said that it was his decision to ask the Accused about the statement without JP Herrera accompanying him. Sgt. Vernon denied threatening

the Accused's children and a suggestion that if he gave the version of events in the caution statement he would be convicted of manslaughter and go free.

[9] The Crown's last witness was Insp. Sanchez. He testified in chief that he received a call from Sgt. Vernon on 15th October 2020 that a statement was recorded from Rupert Lopez which placed the Accused at the crime scene. Insp. Sanchez after listening to the evidence and knowing that the time for detention of the Accused was going to expire, he called on one of his investigators, P.C. Francisco Montejo, and gave him specific instructions to release the Accused from police custody and to explain to him the reason for being re-arrested thereafter. Insp. Sanchez testified that the Accused was re-arrested on the basis of the evidence of Rupert Lopez.

[10] Insp. Sanchez was cross-examined and indicated initially that he was unsure if the call from Sgt. Vernon was before or after 2 p.m. but later said that the call was before 2 p.m. He also indicated that the statement of Rupert Lopez began at 1:45 p.m. and was seven legal sized pages long.

[11] The Accused elected to give sworn evidence. He testified in chief that on 15th October 2020 he was threatened by Sgt. Vernon that if he did not take the manslaughter charge, he will harm his kids and make them go missing. The Accused testified, "he told me if I want to see my kids again take the manslaughter charge and he would set me free." He testified that he said what he was instructed to say in the caution statement by Sgt. Vernon.

[12] The Accused was cross-examined and accepted that he was allowed to speak to JP Herrera privately for 5 minutes after Sgt. Vernon made the threat to him. He accepted that JP Herrera had asked him if he was threatened, and that he had replied no. The Accused testified that JP Herrera did not ask him if he had been promised anything to give the statement. He testified that despite the fact that JP Herrera said she was there to protect his rights he did not take the opportunity to tell her that he had been threatened by Sgt. Vernon neither did he tell her that he was promised certain things by him.

[13] The Crown and the Accused made written and oral submissions which were carefully considered by the Court.

THE LEGAL FRAMEWORK

[14] The **Evidence Act**[4] ("the EA") provides as follows:

> *"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)*

[15] The task of this Court in exercising its discretion whether to permit admissions into evidence were comprehensively outlined by our Court of Appeal in **Krismar Espinosa v R**[5], 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 …the judge must investigate… 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.*
> *…*

[4] Cap. 95 of the Substantive Laws of Belize, Revised Edition 2020.
[5] Criminal Appeal No. 8 of 2015

> *[94] There are several levels of consideration of voluntariness in the admissibility of a confession in evidence. First where the judge rules… that,* ***a confession was not free and voluntary and therefore not admissible in evidence… the so called confession must, and will be excluded from the full trial****.*
>
> *…*
>
> *[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****.*
>
> *…*
>
> *[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****." (emphasis added)*

[16] 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, in this case as it is a post-2016 offence that would involve a consideration of the **Guidelines for the Interviewing and Treatment of Persons in Police Detention** ("the Guidelines"), or constitutional breaches 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 to admit the statement.

[17] The **Constitution** provides at section 5, where relevant:

"5.- (1) A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:

…

(e) upon a reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law;

…

*5(3) Any person who is **arrested or detained**-*

…

*(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law, and who is not released**, shall be brought before a court without undue delay and in any case not later than forty- eight hours after such arrest or detention**." (emphasis added)*

[18] These provisions were considered by our Court of Appeal in **AG v Margaret Bennett and Others**[6], per Morrison JA:

*"[31] …it is beyond question that, as Wooding CJ said in Irish v Barry (at page 180), **"a police officer... has the common law right to arrest without warrant any person whom he reasonably suspects to have committed a felony, whether a felony has in fact been committed or not"** (see also the oft-cited judgment of Diplock LJ in Dallison v Caffery [1964] 2 All ER 610, 619). **The common law rule finds an echo in section 5(1)(e) of the Constitution of Belize ('the Constitution'), which exempts from the general prohibition against depriving a person of his personal liberty those cases in which such deprivation may be authorised by law, such as "upon a reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law"**. However, **it is no doubt in recognition of the fact that this is a wholly exceptional power that section 5(3) of the Constitution provides that any person arrested on a reasonable suspicion of having committed or being about to commit a crime, "and who is not released, shall***

[6] Civil Appeals 48-50 of 2011

be brought before a court without undue delay and in any case not later than forty-eight hours after such arrest and detention"

…

[32] At common law, it is also equally clear that, as Diplock LJ explained in Dallison v Caffery [1964] 2 All ER 610, 629 -

"Since arrest involves trespass to the person and any trespass to the person is prima facie tortious, the onus lies on the arrestor to justify the trespass by establishing reasonable and probable cause for the arrest. ***The trespass by the arrestor continues so long as he retains custody of the arrested person, and he must justify the continuance of his custody by showing that it was reasonable****."*

…

[34] ***The question of whether or not a reasonable suspicion existed is therefore essentially an objective one, although it will obviously be relevant in any subsequent consideration of the matter in a particular case to know what the arresting officer had in his mind****. Thus in Dallison v Caffery, Diplock LJ said this (at page 619):*

*"****The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause****." (emphasis added)*

[19] In a similar vein, considering section 5 of the *Constitution*, James J. (Ag.), as he then was, sitting in our High Court, opined as follows in **Ashton Martin v AG and Others**[7]:

"16. ***It is for the State to show that the detention was necessary****.* ***The 48 hours provided by the Constitution is an outer limit for detention it is not a minimum. It does not allow police officers to just arrest someone and keep them detained for 48 hours without doing anything or providing the Court with evidence as to what***

[7] Claim No. 819 of 2019

they did to make the further detention reasonable." *(emphasis added)*

[20] The Guidelines provide, where relevant:

"6.2. All police station interviews must take place in the presence of a justice of the peace.

…

13.1. All persons in custody must be dealt with expeditiously and released as soon as the need for detention no longer applies.

…

15.5.A police officer must make a charging decision as soon as reasonably practicable and in any event within 48 hours.

15.6. Any person who is in custody at the expiration of 48 hours without charge must be released immediately.

*15.7.**A police officer may re-detain or re-arrest the person for the same offence for which they have been released without charge, but in such cases authorisation from a senior officer must first be given on the basis that there is some new evidence that was not available at the time of their release**.*

…

17 .2. Where there has been a significant or substantial breach of these Rules and its admission into evidence would have an adverse effect on the fairness of the proceedings, this may result in a statement made by the person being excluded from evidence or, exceptionally, in the case being stayed as an abuse of process." (emphasis added)

ANALYSIS

[21] The Court assessed the evidence by directing itself that the Crown bore the burden of proof and needed to prove its case beyond reasonable doubt before the admissions could be allowed into evidence. The Court also followed the required reasoning process outlined by the Caribbean Court of Justice in **Dioncicio Salazar v R**[8] and considered the Crown's case first and if there was sufficiently strong evidence to consider admitting the caution statement the Court considered the case

[8] [2019] CCJ 15 (AJ) at para. 35

for the Accused. If the evidence of the Accused was rejected, then the Court would look at the totality of the evidence to reach a final decision.

[22] The Court in analysing the issue of the fairness of the admission of the caution statement separated the considerations into three heads. The heads are as follows: (i) is the Court sure that there was no threat to give the caution statement; (ii) is the Court sure that there was no promise of favour to give the caution statement; and (iii) was there a breach of the Accused's constitutional rights, and if there was, does it require an exclusion of the caution statement.

The Threat

[23] The Court does not find the evidence of the Accused that Sgt. Vernon threatened him to give the statement credible. The Court firstly found that Sgt. Vernon's evidence was clear, cogent and without any material inconsistency. This made the witness believable in the Court's eyes. The Court finds it implausible that after Sgt. Vernon would have levied such a serious threat to the Accused's children that he would then permit that same Accused to speak to JP Herrera in private for 5 minutes. From Sgt. Vernon's perspective, who did not know the Accused from Adam, the Court did not think it plausible that he would risk the consequences that would flow from the disclosure of that threat to JP Herrera by allowing her a private audience with the Accused, if he had in fact made the threat.

[24] The Court also did not accept the evidence of the Accused on this issue. The Accused accepted that he told JP Herrera he was not threatened which is a material inconsistency. He explains this by his fear of Sgt. Vernon. The Court finds that evidence implausible. The Accused said that JP Herrera expressly told him that she was there to protect his rights. There is nothing on the evidence to establish that the Accused had any reason to doubt that, or that she was aligned with Sgt. Vernon in any way. The Court finds it implausible that he did not report such a serious matter,

if it in fact happened, to his "representative" whose independence was not in question.

[25] The Court has also the advantage of looking at the manner and demeanour of the Accused in the video recording of the caution statement EV2. The Court formed the view that the Accused was calm, deliberate and composed at a time not too long after the threat was supposedly made. The Accused also appeared to be freely narrating the information and, in that regard, it seemed inconsistent with the claim of a forced account.

[26] The fact that the Accused changed his account in a matter of a day is not in the Court's view a necessary indication of any threat from Sgt. Vernon but may be for reasons locked inside the mind of the Accused. The Court notes however that in both accounts given, from the Accused's perspective, he has not inculpated himself as in the first he completely denies involvement in the shooting and in the second he has justified the shooting by saying it was in "self-defence". The Court does not find that reversal inherently implausible.

[27] The Court also does not find anything sinister in Sgt. Vernon asking the Accused by himself whether he wished to give a caution statement outside of the presence of JP Herrera. Firstly, the law does not require it, as Guideline 6.2 only requires the presence of the Justice of the Peace at the interview, and the request for the statement was not, in the Court's view, the interview. The interview would be the actual questioning about the offence. Secondly, the Justice of the Peace independently and privately established that the Accused was giving the caution statement of his own free will.

[28] The Court, on the basis above, is satisfied so that it is sure that Sgt. Vernon did not threaten the Accused to give the caution statement.

The promise

[29] The Court does not find that the evidence that the Accused was induced to give the statement by a promise from Sgt. Vernon credible.

[30] The Court as indicated on the previous head found Sgt. Vernon a reliable witness and likewise finds it implausible that he would make such an inducement to the Accused and then leave him in private and unsupervised conversation with JP Herrera.

[31] The Court, in the case of the promise, finds that the inducement itself is implausible. The Court finds that it is implausible as a matter of human experience that the average Belizean would believe that if he admitted to shooting someone in a statement to the police, and commit "manslaughter" that he would be permitted to go free.

[32] The Court also finds it implausible that the Accused did not tell JP Herrerra about the promise when he had every opportunity to say so, if the promise had in fact been made.

[33] The Court is satisfied so that it is sure on the basis of the findings under this head and some findings under the previous head that there was no inducement by Sgt. Vernon to give the caution statement.

Constitutional and procedural breaches

[34] The evidence of Insp. Sanchez appeared clear that the red line for the 48-hour detention of the Accused was 2 p.m. on 15th October 2020. By section 5(3)(b) of the Constitution the Accused was supposed to be released from custody. As was noted by the Court of Appeal in *Bennett* and James J. in *Martin* the continuing detention of the Accused must be justified by the Crown.

[35] Again, though there was no ground of objection relating to pre-charge detention the Crown must be alive to these issues on its case as it has a duty to "affirmatively" establish the voluntariness of the admissions it wishes to rely on the authority of a decision of our Court of Appeal in **Lisandro G. Matu v R**[9] and the wording of section 90(2) of the EA itself. The undue detention of an Accused clearly has the capacity to place pressure on an Accused to speak when otherwise he may not have. There must also be regard to the constitutional rights of suspected persons, as our Court of Appeal noted in **Robert Hill v R**[10] which adopted the Trinidadian Privy Council decision of **Allie Mohammed v The State**[11]:

> ***"The stamp of constitutionality on a citizen's rights is not meaningless: it is clear testimony that an added value is attached to the protection of the right."***[12] *(emphasis added)*

[36] The Guidelines provide for a re-detention if new evidence became available after release. In the instant case the senior officer, Insp. Sanchez, authorised the re-detention based on the evidence of Rupert Lopez whose statement began being recorded 15 minutes before the time set for release. This was evidence which, according to Insp. Sanchez's evidence placed the Accused at the crime scene, contradicting the evidence given by the Accused in the Audinett interview the day before that he had an alibi and had merely heard the shots. This was evidence that objectively and subjectively could provide reasonable and probable cause for the Accused's further detention as defined by the Court of Appeal in *Bennett*. The Court is of the view that the re-detention of the Accused could be justified on that basis. The Court is of the view that there were no procedural or constitutional breaches that would justify triggering the Court's exclusionary discretion on that basis.

[37] If the Court is incorrect on this issue, it would have still not exercised its exclusionary discretion as there was no evidence of a deliberate frustration of the rights of the

[9] Criminal Appeal No. 2 of 2001 at para. 12
[10] Criminal Appeal No. 5 of 2000
[11] (1998) 53 WIR 4
[12] At p. 4

Accused by the police, in the Court's view. The Court relies in this regard on the case of *Hill* and *Mohammed* referred to above.

[38] It was also not challenged that the Accused was cautioned and told of his legal rights and privileges before giving the caution statement.

[39] Consequently, the Court finds that the Accused's caution statement was given freely and voluntarily.

Fairness

[40] In all of the circumstances the Court does not find any unfairness in the admission of the caution statement. The Accused was fully aware of his rights, was allowed a private audience with his representative and did not appear pressured in the video recording of the statement.

[41] The Court will exercise its discretion to admit the caution statement., and the video recording of that statement.

[42] The Court notes that these factual findings are based on the evidence in the voir dire and must keep these findings under review throughout the main trial as is the requirement outlined by the Privy Council in the Trinidadian case of **Ajodha v The State**[13].

Other issues

[43] The Court does not want to leave this matter without commenting on two matters that occurred in the voir dire.

[44] The Crown had initially sought to tender the caution statement which contained clear admissions and not tender the Audinett interview as well, which was wholly

[13] [1981] 2 All ER 193 at p. 203

exculpatory. The Court brought to the Crown's attention two Privy Council decisions, **R v Gordon**[14] and **R v Cedric Gordon**[15], both of which in the Court's view support the proposition that fairness dictates that if the Crown is relying on one statement of the Accused to establish guilt it should tender all of his statements for appropriate context. The Crown eventually in light of the authorities tendered both.

[45] The Crown in argument would have made the submission to the Court, as a reason to accept the evidence of JP Herrera, "Why would JP Herrera lie?"[16], in a case where there was no evidence of a motive to lie. The Court is of the view that this is an impermissible train of reasoning on the authority of a decision of the Trinidadian Court of Appeal in **Reed Richards v The State**[17], which adopted an Australian case of **R v Palmer**[18], per Weekes JA, as she then was:

> *"19. The Court further explained that asking the question "Why would he or she lie?" would cause the jury to speculate. They quoted Sperling, J. in the Court of Criminal Appeal of New South Wales in R v. E [1996] 39 N.S.W.L.R. 450 at 464:*
> ***"[W]e are dealing here with a case where there is no direct evidence of an actual motive to lie, nor evidence from which a specific motive to lie could reasonably be inferred. To ask, "Why would he or she lie?' in such a case is to invite the jury to speculate as to what might be possible motives for lying and to assess their likelihood. That is not to try the case on the evidence, but to speculate concerning unproven facts. The absence of evidence of a motive for lying and of a plausible explanation for lying is not proof that there was no motive for lying. Yet to pose the question at all is to give legitimacy to that method of reasoning and to that conclusion**.*
> *…*
> *21.* ***The Court further held that by inviting the jury to consider the Crown Prosecutor's submission that the complainant had no***

[14] [2010] 77 WIR 148 at paras. 31-38
[15] (1996) 49 WIR 300 at p. 305
[16] Para. 15
[17] Criminal Appeal No. 12 of 2008
[18] (1998) 193 CLR 1

motive to lie, the trial judge was instructing the jury to start with a presumption that a crown witness is telling the truth. This is inconsistent with the concepts underlying a criminal trial, embodied in the standard directions concerning onus of proof and the jury's obligation to consider what evidence to accept and what to reject*.*

…

*24****. In the…case, where there is no evidence of a motive to lie, to allow the question to be put to the jury "Why would the witness lie?" would run the risk that the jury may think it open to them to infer that because the witness had no apparent motive for lying that fact of itself showed the witness was telling the truth. The second case, where there is a real issue in the case whether the witness had an actual motive to lie is one where that issue is a relevant factor in judging a witness's credit and the question may be asked****." (emphasis added)*

DISPOSITION

[46] The Court exercises its discretion to admit into evidence into the main trial the written caution statement previously tendered and marked as EV1 and the DVD previously tendered and marked EV2.

Dated 2nd November 2023

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