IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-CAYO DISTRICT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL JURISDICTION)

INDICTMENT No. C 0007 OF 2023

BETWEEN:

THE KING

and

BRIAN CASTILLO

Defendant

Appearances:

Mr. Cecil Ramirez for the Crown

Mr. Arthur Saldivar for the Defendant

2023: December: 5; 6; 12; 12; 14;

December 27.

JUDGEMENT

VOIR DIRE- ADMISSIBILITY OF CAUTION STATEMENT -MURDER

[1] **CREARY DIXON, J**.; Mr. Brian Castillo (herein after "the accused") stands before the court charged with two counts of murder, contrary to section 117 read in conjunction with section 106(1) of the Criminal Code, Cap. 101 of the Substantive Laws of Belize (Revised Edition) 2020, (hereinafter "the Code"). The allegation is that he murdered his girlfriend and her twelve year old daughter.

[2] The accused pleaded not guilty at his arraignment.

[3] Counsel for the accused Mr. Arthur Saldivar outlined in his case management form that he was challenging the caution statement on which the Crown indented to rely. The challenge was made pursuant to Section 90 of the Evidence Act.

[4] He indicated that Section 90 is hinged on two elements:

(i) Whether the admission was freely and voluntarily given: the assertion of the accused was that persons in authority oppressed him by way of violence and threats, in particular, in relation to the well-being of his son, in an effort to have him state matters in a statement, that were not true.

(ii) Attendant to that, the accused asserted that he was beaten prior to giving the statement and his rights as a person in custody were violated without recourse as the Justice of the Peace did not attend to his needs as a person in custody.

[5] The Court in its discretion, held a voir dire to determine the admissibility of the caution statement; that is, to determine whether the Crown could satisfy the provisions of section 90 of the Evidence Act and prove that the caution statement was freely and voluntarily given by the accused. Thereafter, it should be determined if it is fair to admit the statement, in

accordance with the case of **Krishmar Espinos v R, Criminal Appeal No.8 of 2015 .** The effect of the voir dire is that the accused would be allowed to testify freely without being subjected to cross examination on the issue of his guilt or innocence, as he would be in the main trial. This is outlined in the **Criminal Bench Book for Barbados, Belize and Guyana**[1]. It states:

> *"In a voir dire, the prosecutor and the court must focus only on the admissibility issue and not on issues of innocence or guilt. The defendant would be able to freely give evidence to support their claim, and in so far as that evidence is relevant in that context, it is inadmissible in the main trial."*

Evidence of the Crown

[6] The Crown called three police officers and a Justice of the Peace to satisfy the legal and evidential burden placed upon them to satisfy the Court that the caution statement was freely and voluntarily given.

[7] The first witness called by the Crown, Officer William Tot, stated that on Tuesday November 23, 2021, he was at home when he received a phone call from Detective Sergeant A. Rodriguez. As a result of that phone call, he went to the Benque Viejo Police Station in the Cayo District, where Sergeant Rodriguez introduced him to the accused. Thereafter, he went into the interview room where the accused was seated; he invited the Justice of the Peace (the "JP") into the room. He then told the JP that no-one forced Mr.. Castillo to give any statement or promised him anything. He further informed the accused of his constitutional rights. He was with the accused for about an hour; during that time, he did not promise him anything; neither did he do anything to cause him to be fearful; also, no pressure was placed on him to give a statement. Without any objection, the caution statement was tendered as Exhibit WT1.

[1] **Criminal Bench Book for Barbados, Belize and Guyana**, at p772

[8] Under cross examination, he stated that he first saw the accused in the interview room alone. He did not see the accused man's seven year old son. He maintained that the accused was not promised anything. He also denied telling the accused that he would not place his son in a children's home rather, he would place him with family, if he gave a statement to the police. He denied that in the absence of the Justice of the Peace, both he and Sergeant Rodriguez used their firearms to hit the accused in his stomach, placed a gun to his head, and demanded that he give a statement. In fact, he said that he did not even have a gun at the time. He denied that both he and Officer Rodriguez continued to beat and threaten the accused if he didn't give the statement they wanted him to give; he countered that there were surveillance cameras inside and if the accused was beaten, he could have reported it to the police. He wasn't sure if there was video footage of what took place with the accused. He maintained that, in the presence of the JP, the accused said he was still willing to give a caution statement. Although not noted in his statement, he said he enquired of the accused if he had had anything to eat that day, and had also offered him some water. He did not indicate the accused man's response. He also admitted that he did not enquire from the accused, the length of time for which he had been in custody. He admitted that it was important to know if the accused was stressed before being interrogated, but denied that the accused was being interrogated: he said the accused was sitting there calmly; no one was interrogating him". He denied not bothering to ask the accused if he was stressed; he said he asked him; however, Officer Tot did not state the accused man's response. He maintained that the statement was freely and voluntarily given; and denied having his firearm in full view at all times. I noted that although he did not state the accused man's response, there is nothing in the evidence to say that the accused denied the offer of water or said that he had had no food. In fact, I note that the accused did not state in his sworn evidence, at any point, that he was hungry or that he had not been fed prior to giving the statements.

[9] He said the accused appeared to be in good health when he was handed over.

[10] The second witness for the Crown was Carlos Cortez, a JP. He testified that around 9am on November 23rd 2021, he was contacted by Corporal Albert Kelly to witness a notice of

interview at the Benque Viejo Police Station. At the station he was introduced to Sergeant Rodriguez, who then introduced him to the accused. Sergeant Rodriguez then proceeded with the interview. At the end of the interview, Sergeant Rodriguez read out the notes to the accused and asked him if everything there was what he said. The accused agreed to what was there and signed to it. Sergeant Rodriguez then asked him if he wanted to do a next statement. As a result, the JP stated that he stayed a few minutes with the accused, by himself. They were alone in the interview room at this time. This was five minutes before the caution statement was taken. The JP asked him if he wanted to do the interview "by himself", and the accused replied that he did. I understood the JP to be indicating from this statement, that the accused was stating that he was giving the statement of his own free will.

[11] Officer Tot cautioned the accused and proceeded with the interview. During the interview, the JP was seated beside the accused. At the conclusion of the interview, the accused was asked if he wanted to change anything and he said no; all three participants then signed the caution statement.

[12] Under cross examination, he admitted that he did not enquire as to how long the accused had been in custody. When it was pointed out that his statement did not say that he asked the accused if he had had anything to eat prior to the statement being taken, the JP replied that that was none of his business. Likewise, it was none of his business to ask if the accused had water; he was just doing his job. He said however, that it may not be in his statement, but the accused had food and water. When it was put to him that there was no food or water in the interview room, he said he could not recall the full details.

[13] He admitted that he did not get an opportunity to speak to the accused between interviews; he repeated that it was only after the first interview (that would have been minutes before the caution statement was taken) that he was afforded the opportunity to speak privately with the accused. During that time, he asked the accused if he wanted to give a statement and the

accused said yes. The content was the same. He admitted that it was irregular for him not to speak with the accused between interviews, but he never questioned it. He also admitted that at no time did he ask the accused to lift up his shirt to show his body. To his knowledge, all he had been called to the station to do was to witness the caution statement. In response to the question of whether he knew that he had been there to look after the interest of the accused, he responded that he asked the accused if he was ok, after he had answered questions and all that.

[14] There was no re-examination of this witness.

[15] Sergeant Alejandro Rodriguez, the third witness for the Crown, testified that he first encountered the accused at the Belize Guatemala border, where he had been handed over to the Belizean authorities by the Guatemala police. The accused was then taken to the Benque Viejo Poilce Station. At around 9:30 pm on November 23, 2021, he conducted notes of interview with the accused at the Benque Viejo Police Station. At the end of the interview Sergeant Rodriguez asked the accused if he would like to give a statement under caution. The accused responded in the affirmative. Consequently, Sergeant Rodriguez contacted PC William Tot to conduct the statement. He said he did not promise the accused anything for him to give the statement. He also said he did not do anything to put the accused in fear, to give the caution statement. He did not threaten or pressure him to give the caution statement. He also said that he spoke with the accused after midnight when the caution statement had been completed.

[16] On cross examination he admitted that his statement did not mention that he cautioned the accused before the notes of interview; or that he gave the accused anything to eat or drink. Whilst it was appreciated that, according to counsel, the objection to the admissibility of the caution statement had direct bearing on the conduct of the witness, and everything that he did prior to the recording of the caution, it was also appreciated that the voir dire should be limited to the procedure directly relating to the caution statement which is in question. The

witness denied threatening the accused by stating that if he did not do the caution statement his son would go to a children's home. He also denied that he and other officers took their firearms and beat the accused in his stomach with it; he also denied keeping the firearm in full view of the accused whilst the caution statement was being recorded. He further denied putting a gun to the accused man's head. He indicated that he had no control over the cameras and that no other person-to include a seven (7) year old boy-was handed over by the Guatemala police that night.

[17] The fourth and last witness for the crown was Corporal Albert Kelly, His statement was agreed evidence. Under cross examination, he agreed that no footage showed an empty room; the footage started with all participants inside the room; the footage does not show what would have obtained before that. The system is constantly downloading, but he was instructed to lift only footage showing the beginning of the interview process. He cannot recall if there was any water or food in the room at any point.

[18] This witness was not re-examined.

[19] Counsel Mr. Saldivar objected to the admission of the recordings of the notes of interview and the caution statement on the bases that:

(i) The admission process was selective; it was not geared towards showing the full measure of what occurred in the room, only what was directed.

(ii) At no point did he elect to show an empty room and what may or may not have transpired as occupants entered the room; as a result of this, the recordings provide no basis upon which the court can make any determination of what may have happened prior to the commencement of the interviews, leading to the caution statement itself;

(iii) The only value the recordings have is that they show the persons inside the room; but for the purpose of what is being challenged, every possibility for that to have been depicted, were intentionally defeating the purpose entirely of having the interview being recorded.

[20] Counsel for the Crown responded that the submission is mere speculation about what they did intend. The recordings were directly connected to what Corporal Kelly intended, and he could have been asked about it under cross-examination. The purpose of the recording was to show where and when the statements were taken.

[21] I ruled that:

(i) The recordings were admissible: they did not offend any principle of law in relation to their admissibility;

(ii) It then became a matter of weight to be attached to the recordings; and

(iii) The recordings had probative value in that I could garner from the accused man's demeanor, gesticulations and appearance, whether he appeared to have been beaten prior to the statements being taken;

(iv) Consequently, the recordings were more probative than prejudicial and ought to be admitted.

(v) The recordings were admitted as AK 2(Notes of interview) and AK3 (Recording of Caution Statement).

Evidence of the Accused

[22] The accused gave sworn evidence. He stated that he was arrested in Guatemala around 6:30pm, and remained in custody there until 8:35pm when he was handed over to the Belizean authorities, to include Officers Rodriguez and Tot at the Belize Guatemala border. Thereafter he was carried into a COVID 19 shelter .Then he crossed the border, where he was pushed into a private vehicle. Four men including Officers Rodriguez and Tot, were in the vehicle with him. From the vehicle, Officer Tot was aggressive to him-by that he meant that Officer Tot put his hand towards his throat and held him back, even though the acused told him that he was hurting his hand which was handcuffed behind him. He said he was carried into a bushy area along the border, where there is an old gas station. He was placed to kneel down towards them .Officer Rodriguez came towards him and held his throat; Officer Tot put a gun in his head and told him certain things. They hit him in his belly and he ran out of breath; he cried and told them he was innocent. Then they picked him up and placed him in the car and took him to the police station. At the station, they placed him in a room where

Sergeant Rodriguez told him that if he did not follow procedure he would take his son and he would not see him anymore; so he got frightened and followed "their procedure". The document was not of his own free will; had it been of his own free will, he would have told the officers where he was and not wasted the court's time.

[23] Under cross examination, he admitted that it was never put to the witnesses that they took him to an old gas station, or even that he was in the vehicle with Officers Tot, Rodriguez and two (2) others. He also admitted that it was not put to Sergeant Rodriguez that he punched him (the accused) in his stomach.

[24] When asked where his son was, when he was handed over at the border, the accused said that his son was at the Benque Viejo police station. He said he knew this because he saw on the news that he (the accused) was wanted; when pressed by the prosecutor that he could not have known where his son was at that time, as he himself was in Guatemala, the accused then stated that he saw his son at the station, in the company of "the other two guys "who had been in the car with him. He denied giving an interview to a crime reporter in Guatemala in Spanish, speaking about how the incident happened. He however, did admit to being the individual in a photograph in a newspaper clipping, shown to him by the prosecutor. At this point, the Crown applied to call a rebuttal witness, being the crime reporter. The Crown also applied to recall witnesses Tot and Rodriguez to speak to the issues raised in the accused man's testimony, that were not put to them.

[25] In the interest of justice, the prosecution was allowed to re-open their case and recall the two officers. However, it was felt that the proper foundation had not been laid for the crime reporter to be called. Although Counsel for the Crown indicted that the reporter was being called to rebut the accused man's assertion that he had not done any interview, and thereby undermine his credibility, I am of the view that the court would now be drawn into the realm of determining the guilt or innocence of the accused; determining the truth of what was said; that is an issue to be determined at the trial; this is not the purpose of the voir dire, which seeks only to determine the circumstances surrounding the giving of the caution statement; that is, whether the statement was given freely and willingly, and was fairly obtained, thereby

determining its admissibility. The case of **Wong Kam-Ming Appellant and the Queen [Appeal from the Court of Appeal of Hong Kong] [1980] A.C.247 is** instructive here. It states:

> " *It is preferable to maintain a clear distinction between the issue of voluntariness which is alone relevant to the voir dire, and to the issue of guilt falling to be decided in the main trial. To blur this distinction can lead to unfortunate consequences*."

[26] The accused said he had been in the bushes with the officers for about five minutes. He said he gave the statement about half an hour after being in the bushes.

[27] The evidence of Officer Tot when he was recalled, was that he got to the Benque Viejo police station on his motorcycle. He denied transporting the accused in a private motor car from the border to the police station. He denied that enroute to the station he reached from the back seat to choke the accused, whilst the accused had his hand behind him. He denied stopping at a gas station enroute to the Benque Viejo gas station, where he and Sergeant Rodriguez beat the accused.

[28] Sergeant Rodriguez recounted when recalled, that on the day in question, he, along with a team from the Belmopan Headquarters and a representative from INTERPOL, went to the border in his police mobile. He did not stop anywhere from the border to the Benque Viejo Police Station. There were no civilians at the police station when he got there. Under cross examination, he denied knowing about any old gas station. In fact, I noted that neither officer was, and had never been stationed at Benque Viejo police station. They did not display much familiarity with the surroundings where the beating is alleged to have occurred. He admitted that he went to the western border in a police mobile, but denied leaving in a private motor car. He denied that in his presence, whilst in the car, Officer Tot choked the accused, whilst the accused was handcuffed with his hands behind his back. He further denied taking the accused to the abandoned gas station and beating him there. He also denied that Officer Tot placed his firearm on the temple of the accused, at the gas station, and told him that if he did not cooperate, he would be harmed.

[29] An application was made by both counsel for a visit to the locus in quo, being the old abandoned gas station. The application was denied on the basis that, a precondition to a decision to visit the locus is that there is evidence that the locality is unchanged since the commission of the alleged offense; any variation or alteration to the geographical or structural nature of the locality would more likely confuse, rather than clarify the issues. [2] No evidence had been led to speak to whether the locality had remained the same since the commission of the incident. Consequently, I decided not to exercise my discretion to visit the locus in quo and denied the application.

THE LAW

[30] The applicable legislation 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 offense 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".*

[31] This 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*

[2] Criminal Bench Book page 663

of the Judges' Rules; but the court may rule that it would be unfair to do so even if the statement was voluntary.[3]

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

[33] 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.

[34] 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?

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

[35] The determination of these issues, will be analyzed in light of the credibility of each witness's evidence. In my 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

Issue #1: Was the caution statement voluntarily and freely given?

[36] (a) **Was there any promise of favour or advantage**? According to the accused, he was promised by Officer PC William Tot, that "if he followed the procedure" his son would be placed with a family member and not in a Children's home. In short, the accused indicated that they threatened to take away his son if he did not follow procedure. I did not accept the accused man's evidence on this issue. When he got to the station, one would have expected that he would have made enquires about his son, especially if-as he claimed-he had seen his son at the police station when he got there. I noted that he volunteered the information that his son was also at the station, *only after* the Crown asked him where his son was. He never mentioned it before in his evidence. Further, the information that he had seen his son at the station seemed an afterthought; initially he had said he knew his son was at the station "because he heard the news and he (the accused) was wanted". It is expected that if he had truly seen his son at the station, he would have immediately said that he knew his son was there because he saw him there. The fact that he did not give that automatic response first, made his assertion rather dubious, Consequently, I am satisfied so that I am sure that, this accused was not promised anything if he gave the caution statement.

[37] (b) **Was the statement given by use of fear**? The accused said that he gave the statement "according to procedure" because he feared that if he said otherwise he would be further armed. The accused man's evidence lacked specificity and details. He does not for example, mention exactly what the "procedure" was that the officers said he was supposed to follow, however, he explained the harm meted out to him by each officer thus:

(i) Sergeant Rodriguez knelt in front of him in the grassy area and held his throat; he also hit him in his stomach such that he ran out of breath.

(ii) PC Tot on the other hand, choked him in the car and held a gun to his head in the grassy area. Both he and Sergeant Rodriguez had their firearms in full view of him whilst he gave his statement.

[38] The Crown's witnesses strongly denied that any promises, threats, or violence were directed towards the accused. They were unshaken in cross examination on those issues. Interestingly, the allegation of both officers travelling in a car with the accused from the border, choking him and stopping at an old gas station to beat him, arose for the first time in the accused man's evidence; they were never put to the witnesses under cross-examination. I feel sure that the accused was not in fear of what either officer would do to him if he did not "follow their procedure", for these and other reasons which I will now outline.

[39] I have looked at all of the evidence with the aim of being objective, careful, impartial and dispassionate. I have also considered extraneous matters, such as any supporting indication of the physical abuse allegedly meted out to the accused. I did not find any; I am supported in this conclusion, by the video recordings of the statements, tendered as exhibits. In those recordings-which the accused man said took place within half an hour of being beaten in the grassy area-the accused appeared very calm and composed; he was quite freely narrating the events. He did not appear to be in any physical pain, as would be expected after a mere half an hour of being choked, hurting his handcuffed hand in the process and being beaten such that he ran out of breath.

[40] Notably also, he never said that he attempted to communicate any physical discomfort to anyone at any point; he had an opportunity to report any violation of his rights, to include a beating, to the JP; yet he did not do so. Further, at no point did he state that he had to be taken to seek medical treatment for any injuries to his person. Whilst the Justice of the Peace disappointingly distanced himself from his role of enquiring whether the accused person had

had anything to eat or drink, I believed him when he said he spent five minutes with the accused before the recording of the caution statement (as evidenced by the video recordings,) and during that time he ascertained from the accused if he was ok, and confirmed that he wished to give the caution statement "by himself". Although the JP admitted that he did not ask the accused man to lift up his shirt to reveal any bruises, it is noted that he would not have done so since there was no allegation of a beating reported to him.

[41] However, I am compelled at this time to further analyse the JP'S evidence. The JP's appreciation –or lack thereof-of his duties, was a cause for concern. Not only did he indicate that it was not his business whether the accused ate or drank, but he also clearly stated that all he was called to do at the station was to witness a caution statement. It seemed as if he saw this as a literal obligation without more. At one point he said that the accused had food and water, yet a little later he says he does not recall seeing any there as he does not recall the full details. This witness could not say definitively that the accused had food and water prior to giving the statement. This is a clear breach of Section 10 of the Guidelines which states as follows:

10.8. Where a Justice of the Peace or an appropriate adult is present at an interview, they shall be informed

10.8.1 They are not expected to act simply as an observer; and

10.8.2 The purpose of their presence is to:

Advise the person being present or making the caution statement

Observe whether the process is being conducted properly and fairly; and

Facilitate communication with the person being interviewed or making the caution statement.

[42] However, I noted the demeanor and manner of the JP. He appeared to be an honest witness, even exposing his deficiencies to include his lack of training. Since he appeared to be an

honest witness, I believe that he did ask the accused if he was ok, and that he got a reassuring response from the accused. I also believed him when he said that he asked the accused if he was giving the statement of his own free will and the accused said yes. The JP's evidence aligned with the other two officers on the salient points, such as the information that all three of them asked the accused individually and at different times if he wished to give a caution statement and without fear or favour, the accused said yes, on all three occasions. The JP appeared to have an easy, approachable and relaxed manner. He appeared quite relaxed in the interview room. For these reasons, I believe, that his easy manner meant that the accused could freely speak with him about any abuse meted out to him by the persons in authority. He could also complain to him about any discomfort he was feeling, prior to the recordings. I note however, that the accused did not make use of this opportunity. His failure to report that he was beaten did not mean conclusively that he was not in fact beaten; therefore, I still reviewed the evidence to see if there was any independence evidence to support his allegation of being beaten. I did not find any. It is important to highlight that the JP had a private moment with the accused before the taking of the statement. He may have indicated that all he was there to do was just to witness the caution statement, however, he went beyond that to enquire of the well-being of the accused and to enquire if he was giving the statement voluntarily.

[43] Having regard to the timelines mentioned by the witnesses from the time the accused was captured and handed over, to the recording of the caution statement, as well as the reasonableness, coherence and probability of events occurring in the manner described by the witnesses, I found both officers to be credible and reliable witnesses, whose evidence remained unshaken during cross examination. I have no reason to disbelieve their denial of the accused man's allegation of being threatened, beaten and leaving their guns in full view of him whilst he gave his statement. Although such incidents of brutality meted out to prisoners are not unheard of, the evidence of this accused man on the other hand, appeared to be fabricated and tenuous. For that reason, I accepted the prosecution witnesses' evidence, and rejected the accused man's evidence.

[44] At the start of the recording, the accused took his time to look at his watch, and to supply the time to the recorder of the interview. His voice-much like the recorder's –was calm, un-agitated and unhurried. I detected no fear; I am satisfied so that I am sure that, the statement was not produced out of fear.

[45] (c) **Was the accused threatened to give the statement according to the dictates of the officers**? For the reasons outlined above, I am satisfied that the accused was not threatened to give the caution statement. He freely, voluntarily and calmly gave the caution statement.

[46] (d) **Was the accused pressured to give the caution statement**? The evidence does not disclose any situation that could be deemed to be pressuring on the accused. From the recordings, he appeared to be in good health, and did not appear pressured whilst narrating the statement. I am satisfied so that I am sure that, he was not pressured to give the caution statement.

[47] However, there remains another criterion for admitting a caution statement into evidence: the issue of fairness.

Is it *fair* to admit the Caution Statement?

[48] Having regard to all the circumstances of this case, I must now determine the fairness of admitting the caution statement. I do not think it would be unfair to admit the caution statement. I reject the accused man's assertions that he gave that caution statement because he was threatened, promised something and beaten to "follow procedure". I find that although the JP did not fully appreciate his role as a representative of the accused, his failure to appreciate his role did not cause any actual prejudice. Importantly, the accused was

allowed a private audience with the JP. Lastly, I find that the accused was cautioned and made aware of his rights before freely narrating the caution statement. I am satisfied so that I feel sure that the caution statement was freely and voluntarily given and it is fair to admit it in evidence.

DISPOSITION

[49] Conclusively, I find that the 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.

Natalie Creary-Dixon

High Court Judge