

IN THE SENIOUR COURTS OF BELIZE
CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT
IN THE HIGH COURTS OF JUSTICE

Indictment No. C16 of 2023

Between:

The King

and

[1] **Javan Moody**

Defendant

Appearances:

Ms. Natasha Mohamed, counsel for the King.

Mr. Ronell Gonzalez, counsel for the Defendant.

Dates:

Trial Dates: 2023:
 2024:

Judgment Date: 2024:

Sentencing Date: 2024:

RULING ON NO CASE SUBMISSION

[1] **CUMBERBATCH, HON. MR. FRANCIS M.; J:** The Accused was indicted by the Director of Public Prosecutions for the offence of murder for that he on the 8 day of February 2020, at San Ignacio Town in the Cayo District in the Central District of the High Court murdered Ariana Bejerano (‘the Deceased’).

[2] At the close of the Crown's case, Defence Counsel made submissions of no case to answer to wit:

1. The evidence before the court is weak tenuous and tainted with inconsistencies. That the Crown's case at its highest point is not strong enough to secure a conviction.
2. The Crown's case at its highest is the discovery some personal items found at the scene of the alleged offence where the body of the Deceased was found. However there is no evidence of any clothing belonging to the Accused and that the crown is relying on an assumption.
3. The evidence suggests that the Accused was in a relationship with the Deceased and the personal items consisted of a shirt, pants, some underwear and a wallet.

[3] Mr. Gonzalez further contended, that the only other evidence relied on by the Crown was a speck of blood that was found in the area of the ear of the Accused which was suspected to be the blood of the Deceased. He further contends, that the DNA

analyst has testified that the said speck of blood when tested was found to be inconclusive to that of the Deceased person.

[4] Defence Counsel submits, that it was his client who discovered the body of the Deceased and made a report to the police. There are no eye witnesses to say conclusively that it was the Accused who is responsible for the death of the Deceased. Thus, counsel relies on the second limb of *The Queen v Galbraith* and asks the court to dismiss the case against his client at this stage.

[5] It is accepted that there is no direct evidence of the Accused inflicting the fatal injuries to the Deceased on that fateful night. Thus Crown Counsel in her submissions has made it clear that the Crown is relying on circumstantial evidence to prove its case against the Accused.

[6] The strands of evidence upon which the Crown relies are as follows:

1. The Accused made a report to the police on the morning of the 8 February 2020, that he went to the home of his girlfriend, the Deceased and found her in a pool of blood. This was confirmed by PC Garcia

who visited the scene with the Accused after having received the aforesaid report.

2. The scene was visited by the CST Pot who reported finding pools of blood on the floor, the bathroom, and a mattress which partially covered the Deceased.
3. The CST found a pair of white pants which contained a wallet in which was a Belizean Social Security card, a USA Employment Authorisation Card and a North Seattle College Card all of which bore the name of the Accused. There was also what appeared to be blood on the shower curtains and the floor of the bathroom. He also found a pair of grey and black boxers and a grey shirt.
4. The left ear of the Accused was observed to contain what appeared to be blood and a swab thereof was taken by the CST.
5. A search of the Accused's apartment by SGT Rodriguez revealed a pink and white iPhone S with a clear plastic case with dark blue and light blue. SGT Rodriguez testified banana leaves. This witness also

testified that the Accused told him that the phone belonged to the Deceased. This was verified in the statement of Zoey Theo Jones the sister of the Deceased which was read into the record without objection. There was also money found hidden in a speaker.

6. The Crown also relied on the testimony of Vincent Young that on the night of the 7 February 2020, the Accused asked him to transport him to Cayo to get money from his girlfriend, the Deceased. Young said he agreed but had to be paid. He said the Accused gave him fifty five dollars (\$55.00) from a black wallet which he carried in the pocket of his short pants like basketball pants the colour of which he could not recall. However he stated that there was a design on the pants and that he wore a short sleeved T-shirt. He left to go to his girlfriend to obtain the balance of money.
7. The Accused returned sometime between 45 to 90 minutes later driving a silver grey RAV 4 and gave

Young the balance of the money for transportation to Cayo. When the Accused returned he was dressed differently, in a long pants and a dark jacket.

8. Trajan Malique Humes testified that he was picked up and held in custody by the police at the Ladyville and San Ignacio Police stations. He met the Accused at the San Ignacio Police Station
9. When he asked to meet the person who told the police he was with him on the 8 February 2020. The Accused was brought to him and told him he was trying to use him as an alibi. The Accused also said that Humes was not with him.

[7] Crown Counsel stated, that the blood speck observed on the left ear of the Accused was similar in shape to those bloodstains observed on the walls of the room in which the Deceased was found. Hence, it was not on his ear from touching the Deceased and thereafter touching the ear of the Accused.

Reply

[8] In reply, Defence Counsel, in his reply addressed the court on the findings of the DNA analyst and contended that those

findings were of no assistance to the Crown's case as it was inconclusive.

[9] The court's record reveals that the DNA analyst testified thus whilst under cross-examination of her findings having tested the swab containing the blood derived from the ear of the Accused. She had stated that she found a mixed profile. She further stated thus in reply to Defence Counsel:

Q. Concerning the mixture you mentioned of at least two different persons, you are saying there is a possibility that it can be more than two people?

A. Yes.

Q. And just from the testing, the analysis you did, were you able to determine the gender of those blood types, male or female?

A. No, not to identify them separately I can say that there is at least one male as there are male gender markers.

Q. And, the last question, what you just referred to is concerning the test from the cotton swab EV1, is that correct?

Ruling

[10] It is common ground that there is no direct or eye witness evidence as to who and under what circumstances the fatal injuries were inflicted on the body of the Deceased and resulted in her death. Thus it is inevitable that the crown would seek to rely on the circumstantial evidence arising from the facts herein.

[11] Mr. Gonzalez contends that the only piece of evidence bearing any evidential strength is that the Accused's wallet was allegedly found in a white short pants at the crime scene. He further contends that the other pieces of evidence relied on by the crown were weak and tenuous. He further submitted, that the presence of the wallet in the pants was not sufficient to prove guilt.

[12] In the decision of the CCJ in *Gregory August & Alwyn Cabb v The Queen* the court opined thus on circumstantial evidence at paragraph 38:

“A case built on circumstantial evidence often amounts to an accumulation of what might otherwise be dismissed as happenstance. The nature of

circumstantial evidence is such that while no single strand of evidence would be sufficient to prove the defendant's guilt beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the defendants' guilt is proved beyond reasonable doubt. There was therefore a serious misdirection wholly in August's favour when the trial judge directed the jury that each strand of the circumstantial evidence required its own proof of August's guilt beyond reasonable doubt. It is not the individual strand that required proof beyond reasonable doubt, but the whole. The cogency of the inference of guilt therefore was built not on any particular strand of evidence but on the cumulative strength of the strands of circumstantial evidence. Accordingly, the circumstantial evidence, as a whole, adduced by the prosecution pointed sufficiently to August's guilt to entitle the jury to convict him".

[13] Thus, emerging from the principles enunciated by the CCJ aforesaid the test of the strength or weakness of the strands of

evidence which comprise the circumstantial evidence is to be determined when the strands are woven together and considered whether they all lead to the inevitable view that the Accused's guilt is proven beyond reasonable doubt.

[14] Obviously, this exercise is intended for the Tribunal of Fact and accordingly the submission of no case to answer is overruled. The court will call upon the Accused to lead a defence if he so desires.

Hon. Mr. F M Cumberbatch

Justice of the High Courts