IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION- BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

INDICTMENT NO. CR20220011S

BETWEEN:

THE KING

and

JONATHAN BLITZ

Before:

The Honourable Madame Natalie Creary-Dixon, J

Appearances:

Ms. Cherly-Lynn Vidal, SC, Director of Public Prosecutions along with Ms. Maria Nembhard Santana for the Prosecution

Mr. Ellis Arnold, SC, and Mr. Bryan Neal for the Accused

2024: October 10, 11, 16, 17, 24
2025: January 29

JUDGMENT IN VOIR DIRE

[1] **NATALIE CREARY-DIXON, J:** Mr. Jonathan Blitz (hereinafter "the accused") is before the Court on an indictment charging him with one count of the offence of Trafficking in persons.

[2] The Crown seeks to tender into evidence, an audio-visual recording of an interview of the accused whilst in custody on the 14th of January 2021, along with notes of that interview.

[3] The accused challenge their admissibility on the following grounds:

1. He alleges that the confession was not voluntarily made because:

(i) it was induced by promise of favour and advantage; and
(ii) by the use of fear and pressure by persons in authority, namely Jian Young and Fermin Choco; both officers in the Belize Police Department.

Specifically, the accused was forced to participate in the interview and the police officers (acting individually or collectively) told him that he and his wife would not be charged with possession of a firearm and ammunition offences; this situation arose when his unlicensed firearm was revealed during a search of his house in relation to the current charge of trafficking in persons. He further alleges that Officer Choco extorted $2,500.00 in exchange for not charging him with the firearm.

He was threatened that his only daughter would be taken away and put into protective custody with the Belize Social Services Department and that he and his wife would be remanded at the Hattieville Prison.

The accused contends therefore that the interview was taken in contravention

of the requirements of Section 90 of the **Evidence Act**[1] since (i) it was not voluntarily made and is therefore inadmissible. Coupled with this, the accused contends that, the police officers failed to follow the procedure required by the Guidelines for the Treatment and Detention of Prisoners in Police Custody ("the Guidelines") 2016; and that in all the circumstances, it would not be fair to admit the recordings and Notes of Interview.

[4] The Court considered whether the objection ought to be made on the basis of an" inducement "in the true definition of the legal meaning of that word. In the text Confession ***Evidence Practice and Procedure in the Commonwealth Caribbean***[2], for example, the Court observed the following definition of an inducement:

> *"An inducement by way of a promise made to a defendant may, if proved, be sufficient to cause the rejection of the confession made by him as a result of such promise. It must be shown, however, that such promise amounted in some way to providing the defendant with some way of escaping the criminal charge against him.*
>
> *It has been held that if the promise relates to collateral matters and not to the defendant avoiding the charge against him, the confession would not be considered to have been induced and would accordingly be admitted."*

[5] Since the "promise or favour" to be done to the accused does not relate directly to the charge of trafficking in persons charge. He does not escape this charge; whether he paid the money or not for the gun; or whether he gave the statement or not in relation to the offence of trafficking in persons, he would still have been charged with the offence of trafficking in persons; he would not have escaped that charge.

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[1] Chapter 95 of the Laws of Belize R.E. 2020

[2] Ramdhani Darshan LLB AEQUITAS- Professional, Academic and Literary Publishers 2008

[6] The Court does appreciate however, the spirit of the objection being made by the accused, that it was held out to him that he and his wife would not be immediately imprisoned, and his daughter taken away, if he cooperated and did the interview in relation to the offence of trafficking in persons.

[7] A voir dire was therefore held to determine the admissibility of the recording and notes of the interview.

THE LAW

[8] The law on which this application to exclude the audio recording and notes of interview is founded comprises the Evidence Act, the Guidelines for the Treatment of Persons in Detention, and case law.

The Evidence Act

[9] Section 90 of the Evidence Act states:

"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 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.

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

[11] Further, our very own Court of Appeal espouses these principles of voluntariness and fairness. The case of **Krismar Espinosa v R**[4], 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."

[12] This 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.

WHAT IS THE ISSUE TO BE RESOLVED?

[13] The issue to be resolved on the voir dire is whether Inspector Young, Corporal Choco, and Corporal Segura induced or threatened the accused to participate in the interview. In essence, the Court needs to determine:

3 Peart v. R. [2006] UKPC 5, 68 WIR 372, [2006] WLR 970, PC.
4 5 Criminal Appeal No 8 of 2015

(i) Whether the audio recording and notes of interview should be admitted into evidence as being 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?

[14] The Court will resolve the issues by assessing the credibility of each witness. The Court, in assessing credit and reliability, must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses.

[15] The Court directs itself that if there are inconsistencies and discrepancies the Court must look to see if they are material and if they can be resolved on the evidence. The Court must consider whether any inconsistencies or discrepancies arose for innocent reasons, such as a faulty memory with the passage of time; or if it is because the witness is lying and trying to deceive the Court.

[16] Unresolved inconsistencies or discrepancies could result in the Court's rejection of that piece of evidence or all of the witness's evidence entirely. The Court must also consider the cumulative effect of those inconsistencies or discrepancies on a witness's credit and reliability. If the Court finds the evidence of a witness implausible it will reject either that witness's evidence entirely or that part of it.

THE CROWN'S CASE

[17] Five witnesses testified on behalf of the Crown: Corporal Fermin Choco, Inspector Jian Young, Corporal Nestor Segura, Deborah Coston JP, and Corporal Luis Peraza.

Evidence of Corporal Choco

[18] Corporal Fermin Choco testified that on the 14th of January 2021, he assisted Inspector Jian Young and his team by pointing out the residence of the accused. He entered the house for but 5 minutes; he did not participate in the search, and he left the premises, prior to the departure of Inspector Young and the other officers. He did not go to the Maya Beach Police Sub-station and took no further part in the operation on that day.

[19] He admitted to having contact with the accused subsequent to the operation when the accused sought assistance to deposit his firearm with the Belize Police Department for safekeeping. He denied having retrieved a firearm and ammunition from the accused at the time of the search and denied ever going to the Maya Beach Sub-station. He further denied threatening the accused and demanding or receiving money from him.

INSPECTOR JIAN YOUNG (Inspector Young)

[20] Inspector Young testified that he led the operation on the 14th of January 2021, based on information provided to him by another police officer. He led the search of the premises, retrieved the complainant's travel documents, and video-recorded the interview of the accused. He was of the view that since a statement had not yet been recorded from the complainant in the matter, he was not at the stage where he could have charged the accused. He opted to take him into custody for an interview and after same was done, he released him. He denied making any arrangement with the accused and insisted that no firearm had been

retrieved from the premises that day. He had no conversations with anyone about a gun or money to be paid in respect of same.

[21] Inspector Young confirmed the evidence of Corporal Choco, that Corporal Choco's role was to point out the residence of the accused; that Corporal Choco was inside the residence for no more than 5 minutes; and that Corporal Choco was not given any firearm and did not assist in the search.

[22] Inspector Young denied that his intention was always to detain the defendant and take him to the station to work out an arrangement; he denied that he arrested the defendant, despite what was said in a prior statement that he arrested the defendant. Officer Young addressed this inconsistency by explaining that it was an error and a manner of speaking; he was adamant that it was in fact Corporal Nestor Segura who later arrested and charged the accused.

CORPORAL NESTOR SEGURA

[23] Corporal Nestor Segura testified in relation to accompanying Inspector Young to the premises. He did not participate in the search. He remained with the complainant outside of the house. At the conclusion of the search, they were called in by Inspector Young. He also conducted the interview of the accused.

JUSTICE OF THE PEACE - DEBORAH COSTON ("JP")

[24] Deborah Coston witnessed the interview of the accused. Her evidence as to what transpired at the time of the interview is consistent with the evidence of Inspector Young and Corporal Segura and the video recording itself.

CORPORAL LUIS PERAZA

[25] Corporal Luis Peraza testified that he was also part of the team on the

14th of January 2021, but he did not participate in the search; he was the designated field officer. He accompanied Inspector Young and the accused from his house to the Maya Beach Police Sub-station. When they arrived there, he remained outside with fellow officer PC Yelena Monterrosa.

DEFENCE'S CASE

[26] The accused was the sole witness for the defence. His account of what transpired on the day in question was very different from the evidence of the Crown's witnesses. He testified that it was Corporal Choco who retrieved the complainant's documents from his locker and that prior to having done so, he had informed him that he had a firearm in the locker and produced it along with the ammunition and his firearm license, which, by that time, had expired.

[27] Corporal Choco he claims, then told him that Belize has draconian gun laws and that he could be arrested along with everybody else in the house, including his wife, and that Human Services would take his baby away. He said he was scared of losing his child and of himself and his wife being imprisoned.

[28] He explained to Officer Choco that he was outside of the country, it was the COVID period and begged the officer not to take away his child, especially as he had no family in Belize.

[29] He testified further that Corporal Choco went to speak to Inspector Young and thereafter told him that Inspector Young said that they would deal with the gun issue later, but in the meantime, he had to cooperate and do exactly as they said. He testified, that he felt this was his only option and he had to do exactly as they said, so as not to lose his only child. He said he felt hopeless.

[30] The accused went on to testify that he later spoke with Inspector Young directly and Inspector Young ordered him to accompany them to Maya Beach Police Substation to give a statement. When questioned, the Officer told him that he (the accused) was going to give a statement. It was an order, not a request. Having been ordered to comply earlier, he felt that he had no option but to participate in the interview.

[31] He detailed meeting with Officer Choco secretly, where he was made to sit in the front of his own car with his back to Corporal Choco who was seated in the back; warned against recording the interaction between the two, and then the money was passed to Corporal Choco as demanded, in order to prevent the arrest of his household and the taking of his child by Human Services. He was still, at this time, days after the operation, very frightened. He testified that he was a foreigner with no family in Belize, he felt alone and powerless and was under threat of police taking all his family away.

[32] After giving $2,500.00 to Corporal Choco, he also met with him nine days later on 23 January 2021, and the two went by boat to the Independence Police Station where his firearm was deposited. The firearm remains there to this day.

[33] He concluded that had the gun not been found and threats not been made, he would not have volunteered to do the interview; in cross-examination, he explained this reluctance to give the interview, by saying that doing so would have "felt wrong", because he had never been in such a situation before, and would have preferred to call a lawyer, first. He said that he felt uncomfortable answering questions, but he didn't dare disobey the officers.

ANALYSIS

[34] The Court carefully considered the submissions of both the Prosecution

and the Defence and arrived at the analysis below.

[35] All the officers testified that they did not, nor did anyone in their presence, promise the accused anything; do anything to put him in fear; threaten him, pressure him in any way, or use any force against him, prior to his participation in the interview; the witnesses all maintained that Corporal Choco did not participate in the search, and neither was Corporal Choco at the Maya Beach Police Substation. They were not discredited on these points during cross-examination.

[36] The evidence of the police was corroborated by the Justice of the Peace.

[37] Corporal Choco maintained that he did not collect any money from the accused, but admitted that he assisted on the 23rd of January 2021, by accompanying the accused to the Independence Police Station to deposit his firearm; this situation arose after the accused came to the Placencia Police Station to deposit his firearm and Corporal Choco told him that it was the Independence Police Station that accepted firearms for safekeeping, not the Placencia Police Station.

[38] The Court, however, did appreciate that had the accused man suffered the ordeal he described during the search at his residence, then he would not have sought the assistance of Corporal Choco to deposit his firearm at the Independence Police Station, which is what this Court believes happened. The Court formed this view from an assessment of the demeanour and evidence given by the witnesses in totality. The Crown witnesses gave consistent and reliable evidence in relation to what transpired on that day.

[39] When asked by Corporal Segura if he wished to give a statement, the accused declined to do so; he participated in the interview only. He was asked questions and answered them. He claims that he answered those questions

because he believed that he and his wife would have been arrested and that he "would never see [his] child again". However, the fact that he exercised his right to say "no" to the interview, in the Court's mind, negates any inference of fear and feelings of oppression and helplessness that the accused said that he felt in the situation.

[40] The accused stated that his constitutional rights were never told to him and that he was never cautioned or given an opportunity to contact an attorney. It was pointed out, however, that in the same breath, he said that he did not wish to contact anyone because of "the threats" to his family. Again, the crown witnesses gave consistent evidence that he was told of his constitutional rights, cautioned, and given an opportunity to contact an attorney. In the audio recordings, Officer Nestor Segura is clearly heard telling the accused man about his right to speak with an attorney and cautioning him:

> "*And also, Jonathan, I need to inform you of your 10 constitutional rights which are "You could communicate without delay with a legal practitioner of your choice and you have every opportunity to give instructions to a legal practitioner of your choice", all right. I will caution you "Jonathan Robert Blitz, you don't have to say anything unless 15 you wish to do so, but what you do say, will be taken down in writing and may be given in evidence*."
>
> The Court also noted that he was left with his personal phone, which is not usually the case when a person is detained; there was no evidence led to indicate that he was not able or allowed to use said phone freely.

[41] Although he was told that the Justice of the Peace was there to safeguard his rights, he was of the view that she did nothing to protect his rights. He was not left alone with the Justice of the Peace, but he says he did not want to talk to her in any event because he was afraid of upsetting the officers. Tied to this complaint is the fact that, according to the Guidelines, the accused, being a non-national of Belize, ought to have been given an opportunity to

communicate with a Consular Officer. (The accused has dual nationality in that he is both a South African and a Dutch citizen.)

[42] The Defence submitted that on the evidence the police made no attempt to allow him to make contact with any of the embassies before the interview was recorded.

[43] The Court therefore considered whether the Justice of the Peace acted as a mere observer, and did not perform her role in accordance with Section 10 of the Guidelines which mandates her to advise the accused and facilitate communication on his behalf.[5] Although the accused man's accent might have alerted the police and the Justice of the Peace to the fact that the accused may have been from a country other than Belize. it was not disputed that neither the officers nor the JP knew that the accused was a non-national, and therefore no arrangement was made for him to attend a Consular office of which he is a national.[6]

[44] On this point, the Crown submitted that "***there is no Embassy or Consular Office of South Africa in Belize, nor was Corporal Segura aware of a Consular office of the Netherlands in Belize. The accused was cautioned and told of his constitutional rights, at the residence, both prior to, and subsequent to the search, and then again before the commencement of the interview. He confirmed this by signing the Acknowledgment Form. No impropriety attended the conduct of the interview."***

[45] The Court did not find that the accused man was severely prejudiced by the

[5] Rule 10.8 of the Guidelines provides: "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 to act simply as an observer, and 10.8.2 The purpose of their presence is to: • Advise the person being interviewed 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."

[6] Rule 3.1.3, last bullet point: "If the person in custody is not a citizen of Belize, to be provided with reasonable facilities to communicate with any consular office of the country of which the person is a citizen located within Belize (if any);"

fact that he was not taken to a consular office, and neither could he say that he was unaware of this right ,given that the Acknowledgment Form (which he admitted to signing) outlines the right of a non-citizen in custody, to communicate with a consular office of which that person is a national. The inference is that the accused read the form that he signed, saw this right, and could have made inquiries in relation to same.

[46] Further, the fact that he was still left in possession of his personal cellular phone, gave him the opportunity generally denied to a person in custody, to make a telephone call to anyone he wished; he had the opportunity to do so with or without the officers' knowledge.

[47] The Crown described the accused man as a "private island-owning, private plane-chartering, international award-winning hotelier, from an upscale neighbourhood. [The accused man] is an educated and presumably sensible man. He is a 45-year-old adult."

This description went towards proving that (i) the accused was not susceptible to pressure by a police corporal; (ii) he was not alone and powerless and compelled to act for fear of losing his family in the situation he was in; (iii) that he would have possibly believed that since he had not renewed a licence in his name, that his wife could have been arrested and his child taken by the State and he would never see her again; and that (iv) the fear that he claimed had him praying harder than he had ever prayed before, did not lead him to consult with any of his attorneys to ascertain the actual position and his options.

[48] The Court is entitled to consider the background of the individual in assessing what would be a normal reaction to the situation they are in. The Court finds support for this decision in the case of **Priestley (1965) 51 Cr. App. R. 1**, where Sachs J., as he then was, said: *"… What may be oppressive as regards a child, an invalid, or an old man, or somebody inexperienced in the ways of*

this world may turn out not to be oppressive when one finds that the accused person is of a tough character and an experienced man of the world." It can be said that the accused is "an experienced man of the world'; coupled with his responses in Court, his demeanour, and comportment throughout the voir dire (and even in the video recordings), the Court formed the view that the accused man was one to skilfully navigate his way out of the situation he found himself in; such a situation as described, he would have been less likely to "fold and give in" under the conditions described.

[49] The Defence highlighted some inconsistencies and deficiencies in the Crown's case as follows:

(1) Corporal Segura testified that he was not given a police notebook by Inspector Young to sign, while the latter had testified that after he had reduced what the accused had said at the residence to writing, and he had refused to sign, he asked Corporal Segura to sign.

The Crown submitted that since Inspector Young's account was not disputed by the accused, either in cross-examination or in his own evidence, his credibility is not affected. The Court agrees with this submission.

(2) The Defence submitted that there were more than enough vehicles in which to transport the accused to the Maya Beach Substation, yet Officer Young exercised his discretion to have the accused drive in his own vehicle to the station. This, the Defence submitted, was because there was already a plot to engage in further discussions with the accused privately, as it relates to payments for the firearm.

The Crown denied this and submitted that "…***Corporal Segura denied the suggestion that there was no need for the accused to go to the Station in the pick-up. While his evidence-in-chief***

was inconsistent, in re-examination he confirmed that at the time of departure from the premises, the Special Branch vehicle that Corporal Choco and Corporal Mangar had arrived in was no longer there as they had left during the course of the search; that they were assisting both the social worker, Ms. Cunningham, and the complainant and they did not want to put the accused in the same vehicle. This is why, according to his evidence, the accused had not been placed in the Police Prado. This is consistent with the evidence of Inspector Young, who testified that he made the decision to utilize the accused's vehicle since there was only 1 other vehicle available at the time to go to the Maya Beach Substation and it was not appropriate to place the accused in that vehicle, as the complainant would have been in it with the Social Worker. He also said that the fact that he knew that he would not have kept the accused in custody at that time contributed to his decision, as the accused would then have been able to find his way home without police assistance. He also did not want to make two trips. "

[50] This explanation seems credible to the Court; it is not expected that the accused and the complainant should travel in the same vehicle; it was not difficult to appreciate and understand that the other vehicles had also left the scene already; the officer's explanations are consistent and do not seem incredible; it is unusual for the accused to be allowed to travel in his own vehicle, but it is not unbelievable, especially given the explanations advanced.

[51] The accused submitted that contrary to Officer Young's testimony that he accompanied the accused to retrieve the complainant's passport, Officer Young instructed Officer Choco to follow him to retrieve the passport; that Officer Young is therefore not a credible witness as no officer corroborated

Officer Young's testimony on this point.

[52] The Court noted that Officer Choco's evidence supported Officer Young's testimony, as Officer Choco strongly denied that he accompanied Officer Young for the passport. So too did Nestor Segura who was on the second floor with the complainant for a short while. It is also noted that most of the officers could not have reliably stated who went upstairs with Officer Young as they were on the outside for the entirety of the search.

[53] The Defence submitted that under cross-examination, Officer Peraza ***did not deny*** that Officer Choco was at the Maya Beach Substation but merely said he only recalled Ms. Yelena Monterrosa being there…that his response implies that Officer Choco ***may have*** been at the substation:

It was put to him that:
"*At the Maya Beach Police Station, on January the 14th, 2021, Officer Choco was outside circling that station the whole time.*

And he responded:
No, ma'am because it was only me and Ms. Monterrosa given directives to provide security to the…I was focused on doing only that" (page 164).

[54] However, this Court does not find any inconsistency or ambiguity in the officer's response; notably, Officer Peraza was asked this question twice, and on both occasions, he replied in the negative:

"At the Maya Beach Police Station, on January 14th, 2021, Officer Choco was outside circling that station the whole time.

I only recall being with Ms. Yelena Monterrosa, Your Honour.

Since that is all, you can recall in fairness, you're saying that Officer Choco

might have been there, but you forgot?

I am saying I only recall being with Ms. Yelena Monterrosa"

The Court infers that this officer did say with certainty that Officer Choco was there.

[55] The Court also noted, that, this officer was clear that Officer Choco was at the ***residence,*** as he saw him "going in and out". The Court was concerned about this bit of evidence initially; the Court was initially not able to resolve the statement that Officer Choco was seen going "in and out" when Officer Choco himself mentioned that he only went in and out once. However, the Court also noted that there was no other part of Officer Peraza's statement that supported the accused man's evidence in relation to the actions of Officer Choco: for example, Officer Peraza did not recall being with Officer Choco at the station; nor did he recall the retrieval of any items.

[56] The Defence questioned: "Why would an Officer (Choco) who only 9 days earlier was part of a search of the accused man's house be meeting to surrender an unlicensed firearm with the accused? How would he know to meet the accused man if not for the fact that they exchanged numbers?" According to the Defence, this fact confirmed that the accused was in fact being truthful when he said he did the interview because "he feared for the freedom of his family and the well-being of his infant child."

[57] The Officer explained this by indicating that it was the accused who enquired at the station a few days after the search, about submitting his firearm for safekeeping, and who then requested Officer Choco's assistance to accompany him to the Placencia Police Station to submit his unlicensed firearm. The Court finds that a more likely question would be, why, after sufficient days had passed, would the accused still proceed with the illicit

agreement, when he would have had more than enough time to report the officer's activities and to get legal advice and assistance in relation to that situation? This is a fair question especially since he had the legitimate excuse of not being able to renew his license on account of the restrictions during the COVID pandemic.

[58] The accused submitted further that "before that day, he had never met Officer Choco and would have had no reason to phone him or have his number. It was on the 14th of January 2021, that he and Officer Choco exchanged numbers. This is important because it proves that there were inappropriate conversations with an officer." Without more, the Court finds that the mere fact of an officer exchanging numbers with an accused in a matter he is investigating does not lead to an inevitable conclusion of inappropriate conversations between the two; especially since the accused was informed on the 14th that there would have been an investigation into the matter.

[59] The Court found the following areas of inconsistency in the accused man's defence: it was said to Officer Choco that the accused was first approached whilst he was in his yard:

Q."When you got to the residence of the defendant, did you immediately go inside the compound, not the house?

A. The compound, yes, as I mentioned, I followed the lead vehicle, which was Mr. Young's vehicle.

Q. And am I correct in saying that Mr. Young approached the defendant ***outside of the building?***

A. Yes.

Q. And it was there and then that he read to him the search warrant, isn't that so?

[60] This is contrary to what the accused man said, the accused detailed a dramatic episode where the officers first approached him whilst he was

in his car with his family and shouted, "down with the glass!" This raises doubt about the accused man's entire narration of that dramatic event. This introduces the fact that this dramatic episode was not put to any of the Crown witnesses for their responses. This dramatic account of the officers banging on the glass was heard for the first time in the examination-in-chief of the accused.

[61] Although one would have naturally expected this to be put to the crown witnesses so they could respond accordingly, the Court is aware that there are many reasons that an accused will not put his case to the witnesses. ***In Reed Richards v The State Cr. App. No. 12 of 2008***, the core of the Appellant's submission was that when the Prosecutor referred to certain aspects of the Appellant's case which were not put to the Prosecution witnesses, she wrongly asked the jury to conclude that the Appellant was lying. The Court of Appeal stated:

"65 The judge had clearly directed the jury that there were various reasons why counsel for the accused may not have put certain things to a witness. An attorney may forget, it may be that in his professional opinion, he thinks it unnecessary or it may be that he never received those instructions. The jury in Jackson had the benefit of the trial judge explaining to them the various reasons why certain facts may not have been put. The jury was also exhorted to look at the evidence in the case and not punish the accused because either he or his attorney had forgotten something."

[62] From the demeanour and comportment of the accused, he was very present before and during the trial; he appeared to be fully aware of the issues and evidence before the Court and what the Crown needed to prove; he actively participated in the proceedings; on more than one occasion, the accused called his Counsel to his side during the trial, to give instructions and to challenge the evidence of the live witnesses. Based upon the Court's observation of the proceedings, the Court finds it difficult to accept that quite

a number of issues that the accused would ordinarily be expected to have raised with his Counsel and to put to the Crown's respective witnesses because they would have formed such an integral part of his case, and would therefore have been at the forefront of his mind,-were not put to the witnesses, and appear to be recent fabrications.

[63] However, the Court will not make a finding that they were recent fabrications, in appreciation of the fact that the Court does not know the reasons that these matters were not put to the witnesses; they may have been told to Counsel by the accused, and not put for various reasons, which may not be because of any shortcomings on the part of counsel or the accused man.

[64] The decision of the Court of Appeal in Trinidad, ***Kenyatta v R*** **Cr. App. No. P022 of 2021** supports the principle that a tribunal of fact ought not to make any adverse findings against an accused where his case is not put to the witnesses in cross-examination. Paragraph 73 is instructive in terms of how this Court should treat this issue:

> *"The judge was required to consider all the evidence and evaluate it, notwithstanding the failure to put aspects of it to the prosecution witnesses. The approach of disregarding aspects of the evidence or placing no weight on it solely or largely because it was not put is not an approach sanctioned by the authorities cited above.* ***The judge or jury is required to grapple with the evidence nevertheless and determine where the plausibility and credibility assessment of that evidence carries the case. (My emphasis).***

[65] For that reason, whilst this Court acknowledges the duty to put material issues to witnesses in cross-examination[7], in grappling with this evidence the Court made no adverse findings against the accused for failure to put his case to the

[7] Warren Jackson v The State (1998) 53 WIR 431 at p 442

witnesses in the specific terms in which he described the event. The Court attached more weight to the fact that the evidence put to the witnesses in cross-examination, in relation to how the officers first approached the accused, contrasted with the evidence of the accused in his examination- in -chief. This severely affected the credibility of the accused man.

[66] The Court noted that there were several matters that were put in cross-examination of the witnesses that were inconsistent with the actual evidence of the accused.

[67] The first example of an inconsistency with the accused man's evidence and what was put to the witnesses is observed where it was put to Inspector Young that Officer Choco was the one who had driven the accused man's vehicle to the Maya Beach Substation. However, the evidence of the accused is that, after he (the accused) exited his vehicle at the substation, Officer Choco later asked him for the key. The Crown was quick to point out that Officer Choco would not have had to ask for the keys if he had driven the vehicle there himself, as was put to Officer Young.

[68] Another example of an inconsistency in the accused man's evidence and what was put to the witnesses is where it was put to Inspector Young that he had told the accused, at the Station, that "if he gave a satisfactory interview [he] would tell him what to do with the gun." Both of these suggestions were denied by Inspector Young. This account was not given by the accused in his evidence.

[69] The Crown submitted that "*Contrary to the questions put to Inspector Young to suggest otherwise, the accused gave no evidence of having spoken to Inspector Young at the Sub-Station prior to the interview*[8]*. It was also put to*

[8] Two suggestions were put to Inspector Young: (1) "Eventually, I'm suggesting that you then agree to speak with the defendant, and he was brought to you by the front door of the house. (the accused never said this in his evidence); (2) "I suggest to you further, sir, that when the defendant came to you, you informed him that

Corporal Segura that he knew that Choco had frightened the accused that he would be arrested if he did not give a statement regarding the trafficking in persons. The evidence of the accused was that it was Inspector Young who told him so, Corporal Choco had just, according to him, told him to cooperate."

[70] From observations, the accused man did not appear to be a credible witness in this voir dire. This conclusion is made in accordance with inconsistencies in his evidence, coupled with the observations made of the accused man on the video recording. His demeanour, responses, and mannerisms belied all the fear, anxiety, and apprehension he claimed to have been feeling at the moment of the recording. Having made this determination, the Court must then return to the Crown's case.

[71] The Court then returned to the Crown's case and found that on the evidence the officers did not promise or threaten the accused in order for him to participate in the interview. He did so voluntarily.

[72] This Court found no issue of unfairness; there was no substantial breach of the Guidelines , warranting an exclusion of the audio recordings and notes of interview on the basis that it would be unfair and prejudicial to the accused man, to use it in the main trial; The Guidelines do not require the Justice of the Peace to be left alone with the suspect, although the Crown conceded that this was best practice. The Court detected no prejudice for the fact that this was not done, as the accused was still made aware of his rights, and the opportunity to communicate with whomever he wished was not restricted. Further, there is no Embassy or Consular office of South Africa in Belize, nor was Corporal Segura aware of a Consular office of the Netherlands in Belize. The accused was cautioned and told of his constitutional rights, at the residence, both prior to, and subsequent to the search, and then again before

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you are prepared to deal with the firearm matter, providing that the defendant agreed to give that interview", Again, the accused never said this.

the commencement of the interview. He confirmed this by signing the Acknowledgment Form. The Court does not believe that there was any unfairness in the conduct of the interview.

DISPOSITION

[73] Conclusively, the Court finds that the cogent 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.

Given this **29th** day of **January 2025**

[74] This is the Judgment of the Court.

Natalie Creary-Dixon; J
High Court Judge

By the Court Registrar