IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Application No. BZCR2018/001
BZ Criminal Appeal No. 6 of 2016

Between

DIONCICIO SALAZAR **Appellant**

And

THE QUEEN **Respondent**

Before the Honourables: **Mr. Justice J. Wit, JCCJ**
Mr. Justice D. Hayton, JCCJ
Mr. Justice W. Anderson, JCCJ
Mme Justice M. Rajnauth-Lee, JCCJ
Mr. Justice D. Barrow, JCCJ

Appearances
Mr. Anthony Sylvestre for the Appellant
Ms. Sheiniza Smith and Mr. Cecil Ramirez for the Respondent

REASONS FOR DECISION
of
The Honourable Justices Wit, Hayton, Anderson, Rajnauth-Lee and Barrow

Delivered by
The Honourable Mr. Justice Wit
on the 12th day of July 2019

Introduction

[1] Having already heard and dismissed this appeal, we promised to give reasons. These reasons are now given.

Factual Background

[2] In the early morning hours of 13 June 2010, two men, Marlon Rivera and Dean Dougal, were sitting on the street in front of Belmore Hotel in the centre of San Ignacio Town, Belize, when they were approached by a man with a gun. The man immediately fired several shots in their direction hitting both Rivera and Dougal. Rivera remained motionless at the scene and was later pronounced dead. Dougal was transported to the hospital for treatment of his injuries. At the trial, which took place six years later before Justice Moore without a jury, there was little doubt that the killing of Rivera fell in the category of murder. The main issue in this case was whether that murder was committed by Salazar, the accused (and appellant) in this case. Salazar denied involvement from the start, pleaded not guilty at the trial and has since maintained his innocence.

[3] The prosecution's case was based, to a great extent, on the evidence of Dougal's common law wife, Ms. Keisha Bahado, Omar Rodriguez, a former police officer who at the time was on mobile patrol near to the scene, and a deposition (police statement) of Dean Dougal, who had died (of causes unrelated to the shooting) prior to the start of the trial.

[4] An issue at trial was the admissibility of Dougal's statement to the police, which was given to Corporal Solomon Mas ('Corporal Mas') 18 days after the shooting on 1 July 2010. The deposition was admitted into evidence pursuant to section 123 of the *Indictable Procedure Act* ('IPA') at the conclusion of a *voir dire*. During the *voir dire*, the trial judge made enquiries about Dougal's condition, who else was present and some of the language used in the statement. The trial judge admitted the statement into evidence as she was satisfied that the preconditions in section 123 of the IPA were met.

[5] In her examination in chief, Ms. Bahado testified that Dougal died on 26 November 2013 and that she received a death certificate, which was admitted into evidence. On *voir dire*, Corporal Mas gave evidence that he recorded the statement from Dougal on 1 July 2010. He had already sought to do so three to five days after the shooting, but at that time Dougal was yet unable to speak due to his injuries. Mas

stated that although Dougal had a breathing tube attached to his neck on 1 July, he was able to understand what Dougal said. Dougal read his statement and signed the declaration as well as the bottom of the first two pages. Corporal Mas denied the accusation of defence counsel that he prepared the statement and that he had been trying to implicate Salazar in the killing of Marlon Rivera. The reason for this would have been because Salazar had been acquitted of killing, the son of Mas' friend, Alberto August, Dougal's brother. Mas testified that Dougal had given his statement voluntary.

[6] Dougal stated in his deposition that around 3:30 am on that Sunday morning, while he was sitting in front of the Belmore Hotel with Marlon Rivera sharing some food, he suddenly felt that something touched him on the left side of his head. He immediately turned his face and came face to face with Dionicio "Life" Salazar, who was about two (2) feet in distance from him. Salazar had a gun in his outstretched hand and stuck the gun to the left side of his, Dougal's, head. Dougal slapped the gun away and immediately thereafter Salazar raised the gun again and opened fire at him and Marlon from close range. The last thing he remembered, was seeing Salazar pulling the trigger with fire coming from the gun he held, after which he fell face downwards to the street, Marlon falling beside him. When this incident occurred, the lighting condition was good and there was no one else in the immediate vicinity. Dougal reiterated that he positively identified Dionicio "Life" Salazar as the man who shot Marlon and him. There was no mistaking his identity nor was there anything obstructing his view. He had known Salazar for many years, he stated. In fact, he stated that "I would even venture to say that in years gone by we were friends."

[7] That situation changed, however, when Salazar was accused of the chopping murder of Dougal's nephew, Rodney August, in June 2004: "Since he was released from jail about two (2) years ago he has at least on three (3) separate occasions tried to challenge me. And on every occasion, I ignored him." When Salazar stepped up to him, placed the gun against his head, pulled the trigger and fired several shots at him and Marlon, it was the first time he saw him during the early hours of that morning in June. Because of that fact and "the swiftness of the incident" he could not recall the colour of the clothes Salazar was wearing.

[8] Keisha Bahado, Dougal's common law wife, testified at the trial that around the time of the shooting she was standing across from the Belmore Hotel (in front of which Dougal and his friend Rivera were sitting) at some distance. When she heard several shots, about six she thought, she was standing with her back towards the area where the shots came from. She turned around and saw her husband and his friend on the ground in front of the hotel. She also saw a man standing about 15 feet from the bodies with his arms to his side. He stood about 35 feet from where she stood. She recognized the man to be the accused, whom she called Dionicio "Life" Salazar. She yelled at him "You shot Dean". She then saw the man running away from the scene dropping a shiny object under a vehicle as he ran. Moments later she told the police, officer Rodriguez, "Dionicio 'Life' Salazar just shot Dean!" She did not claim that she actually saw that, but she drew a conclusion based on what she had seen and heard. Ms Bahado said she had seen Salazar earlier that morning in a nearby nightclub as she stood in the bathroom line. She had known him for many years and used to socialize with him. She had not seen him for a very long time (a decade) but he had not changed much. In the nightclub the man was wearing a grey T-shirt, blue jeans pants and a red cap. The man she saw standing near the bodies had on the same clothes: it was the accused. She admitted on cross-examination that she knew there was "bad blood' between her husband and his family on the one hand and the accused on the other but, as she saw it, she had nothing to do with that.

[9] The trial court also heard testimony from former police constable Omar Rodriguez who was on duty the morning of the shooting. He was the driver of a police vehicle that prior to the shooting had been parked outside the Belmore Hotel. Rodriguez had observed Dean Dougal and Marlon Rivera sitting together outside the hotel. By the time of the shooting he had left his spot near the hotel to deal with an incident with a taxi not far from there. When he heard the shots, however, he returned quickly to the Belmore Hotel where he saw the two men apparently shot and lying on the ground with Ms Bahado screaming over them for help, shouting to Rodriguez: "Life just shot my husband and he is wearing a red cap!"

[10] In her judgment, the trial judge subjected the evidence to a thorough analysis. She made clear that especially the deposition, in fact a police statement of Dougal,

evidence that was not sworn and could not be tested by cross-examination, needed to be examined and tested with utmost care, considering all the circumstances under which the statement was made. The judge focused on two aspects in particular: the accuracy of the statement and the truthfulness of its maker.

[11] With respect to the accuracy of the statement, the judge took into consideration that convincing witnesses may still be mistaken witnesses, that Dougal saw the shooter only very briefly, that even though he claimed to have recognized Salazar as the shooter, he had not seen him before the shooting. On the other hand, both Dougal and Keisha Bahado (who provided *viva voce* evidence and who was cross-examined) placed Salazar squarely at the scene of the shooting. Dougal stated that he came face to face an arm's length away from Salazar immediately before the shooting happened. That the distance between the shooter and the two victims was small. This had been confirmed by the evidence of Keisha Bahado and the evidence of the forensic pathologist, Dr Estrada Bran, who testified that the deceased, Rivera, was shot at close range, between 3 and 10 feet. Also, according to all the evidence, in particular the photographs taken at the scene of the crime that very morning, the lighting condition in front of the Belmore Hotel was good. It was a well-lit area with a working street lamppost right next to where the shooting had taken place.

[12] The Judge concluded that from the totality of the evidence it was also clear that Dougal and Salazar were no strangers. They knew each other, although there is a dispute about how well they were acquainted. Be that as it may, it follows from the evidence, and this was even emphasized by the defence, that there was some 'bad blood' between Dougal's family on the one hand and Salazar and his family on the other. Dougal's statement indicates that he was very wary of both Salazar and his brothers some of whom he had seen shortly before the shooting.

[13] With respect to the truthfulness of Dougal, the judge considered this aspect against the background of the main defence submission that Dougal and Ms Bahado were biased against Salazar because they believed that he was responsible for the death of Dougal's nephew. The bitterness over that incident would be the reason that they accused Salazar of the shooting. Given this background, it was a real possibility that Dougal had fabricated the account given to the police assisted by and in collusion

with his common law wife Ms Bahado. To make things worse, Corporal Mas, who recorded Dougal's statement, was also a friend of the father of Dougal's nephew.

[14] Given this background, it would not be entirely fanciful to assume that Dougal and Ms Bahado may have had an incentive to conceal or misrepresent the facts and that they even could have been assisted by Corporal Mas who also was a friend of the August family. Moreover, it was a fact that Dougal's statement was given 18 days after the shooting incident which suggests that there was enough time for Dougal and his common law wife Ms Bahado (and perhaps officer Mas who also took her statement before he took Dougal's) to concoct a story in order to get back at Salazar.

[15] Upon further examination of the evidence before her, however, the judge dispelled any doubts that may have existed about the truthfulness of both Dougal and Ms Bahado's statement. She noted that Ms Bahado had shortly after the shooting yelled to officer Rodriguez that Salazar was the shooter ("Life just shot Dean!"). Ms Bahado claims even to have used his full name ("Dionicio" "Life" Salazar") but she might be mistaken about that. Rodriguez testified in court that he heard her say "Life just shot Dean" but it is clear from his evidence and from the evidence of ASP Reyes (who testified that he went to Salazar's residence on that same morning of the 13 June 2010 after speaking to Ms Bahado, and that Salazar became his prime suspect on that very day). In her police statement, which was taken the day after the shooting, Ms Bahado mentioned Salazar as the shooter. And also, Rodriguez had put in his report that Ms Bahado had told him that "Life just shot my husband." These exclamations from Ms Bahado were uttered right after the shooting and could therefore not have been the result of some conspiracy. Both Ms Bahado and Rodriguez were cross-examined and maintained their earlier statements.

[16] Given Dougal's bad health situation in the first few days after the shooting, it would have been impossible for him to conspire with Ms Bahado to cast the blame for the shooting on Salazar. In fact, in that scenario she would apparently have been the one who had taken the initiative to falsely accuse Salazar and then conspired with him to play along. But, if that would have been the case, she could easily have taken the leap to testify, and she probably would have testified, that she actually saw the shooting itself. However, she never claimed she did. Also, as the judge rightly

stated, it seems unreasonable that Dougal would not have wanted whomever shot him to be captured and punished: "This would be uppermost on his mind."

[17] Ms Bahado struck the trial judge, who was in a position carefully to observe the demeanour of the witnesses before her, generally as truthful and accurate (although, certainly after 6 years, not flawless and with memory failures at points which she admitted). Rodriguez, she thought, was also truthful but less accurate in relating some of the facts, such as distances, timelines and the number of people present at the scene of the shooting. These were not simply impressions from a professional judge, important as these are, but to a certain extent the result of the fact that the judge was in a position to verify the accuracy of the testimony from both witnesses. She was able to compare what was said with what was shown on the photographs taken soon after the shooting and with her observations during a visit of the Court to the *locus in quo* or the scene of the crime which made it possible for the judge to make a reasoned assessment of the relevant issues.

[18] The trial judge was also able to assess the accuracy of Ms Bahado's identification evidence. She considered the fact that the area where the shooting took place was well-lit. That immediately after the shooting Ms Bahado was able, as she had claimed from the start, to oversee the situation with Salazar standing at a distance of 35 feet from her (verified as plausible at the visit to the locus), that she knew Salazar well, although she had not seen him for a decade, that she had seen and recognised him earlier that morning in the Fire Water Club in San Ignacio and was able to observe him closely and that she then directly, after she heard the shots and turned around in the direction of the hotel, saw him again dressed in the same clothes as she had earlier seen him in the club, standing close to Dougal and Rivera who were lying on the ground with no other persons in the direct vicinity. The judge noted that although Ms Bahado was cross-examined at length, she was not shaken in her evidence.

[19] It had not escaped the judge's attention that Salazar and his common law wife, Verona Usher, who resided in Belize City, both testified under oath that they were actually present in the centre of San Ignacio Town (far away from Belize City) in

the early hours of 13 June 2010. The point they tried to get across, however, was that they had left around 2.00 am, long before the shooting took place. The judge carefully considered the evidence of Salazar and Usher. She stated that the testimony of the accused and his witness appeared well rehearsed. She was struck by the similarity in language used by the accused and his witness using the exact same expression s in several instances. The judge found it highly unusual that two people would be recalling movements with exact precision (having no special reason to recall such minute details) and consistency after 6 years "not gearing off course what appeared to be a scripted tale" to her. On these grounds, she did not accept the evidence of the accused and his witness as truthful and so rejected the alibi of the accused.

[20] It was only after the alibi evidence was heard that the prosecutor uncovered 'evidence" that the defence witness had previously testified for the accused in another unrelated earlier trial, then under the name of Verona Chacon. The prosecutor therefore asked the judge to recall the accused and the defence witness, which the judge allowed. Before the recall, the prosecutor had sent the transcript of the previous testimony (only the defence part) to the judge and defence counsel, to which the latter did not object. The transcript confirmed that Ms Usher had indeed been the alibi witness for the accused in June 2015. She did not deny that. When it was put to her that when she testified in 2015, she had not disclosed that she was at that time the common law wife of Salazar, she acknowledged this fact but gave as an explanation that she had not been asked that question. It is not quite clear what effect these revelations had on the thinking of the judge. One gets the impression that it somewhat strengthened her already strong disbelief, vis-a-vis the alibi evidence.

[21] Whatever that effect was, the judge immediately continued by stating that "even with this additional evidence the accused has nothing to prove to this Court. Even if I do not accept his testimony and that of his witness, it does not mean that I may convict because I do not believe him. An accused may fabricate an alibi to voucher a genuine defence. So that rejection of an alibi does not lead me to a guilty verdict. It is the prosecution's evidence that must make me feel sure of the guilt of the accused, so I will revert to the prosecution's case."

Which she then did and having once more considered the evidence as a whole, found Salazar guilty of murder.

[22] Salazar appealed against his conviction to the Court of Appeal of Belize but by judgment of 13 March 2018 this appeal was dismissed, and the conviction affirmed. Salazar then appealed to this Court after having been granted special leave.

The Appeal Before This Court

The grounds of appeal

[23] The appeal before us focussed on a few evidential issues arising from the trial judge's reasoned judgment. One of those issues was that the trial judge had given "full weight" to the deposition of Dean Dougal. Salazar argued that hearsay evidence admitted under section 123 of the IPA must *as a starting point* be considered of lesser weight than similar evidence admitted under section 105 Evidence Act, although at the end after a full analysis of the entire evidence it could be given full weight. His complaint was that the trial judge had not adverted her mind to this point. This in his view amounted to a "material error" and the risk of a miscarriage of justice. His second ground of appeal concerned the fact that the trial judge considered a portion of a transcript of a previous unrelated trial, which had not been entered as evidence in the trial against him for the sake of confirmation of evidence given by Salazar's alibi witness. Salazar considered this a material irregularity equally amounting to a substantial miscarriage of justice.

[24] There were also some other issues that in his view increased the risk of such a miscarriage of justice. These include that the judge had wrongly admitted the statement of Rodriguez where he testified that he had heard Ms Bahado say that "Life just shot my husband" as this was hearsay evidence the prejudicial effect of which far outweighed its probative value. But even if it was admissible, it was evidence of too poor a quality to be used in a serious matter as this one. Salazar was further of the view that the judge had not properly considered the defence case as she had already reached the conclusion that he was guilty before she even looked at his alibi evidence. In his view she should have considered all the evidence before concluding halfway through the judgment that he had killed the deceased.

Bench trial

[25] Before going into these issues, it is necessary to point out the constitutional requirement that any criminal trial needs to be fair. This implies, among other things, that the accused and society must be able to understand the verdict flowing from that trial. Underlying this idea are the rule of law and the avoidance of arbitrariness. As the European Court of Human Rights has put it: "In the judicial sphere, those principles serve to foster public confidence in an objective and transparent justice system, one of the foundations of a democratic society."[1] Although both jury trials and bench trials may satisfy these requirements, the safeguards for achieving this goal are not the same.

[26] An area of concern of jury trials has always been the fact that juries, lay juries for that matter, are not required to provide reasons for their decision, be it a conviction or an acquittal. The safeguards that must be put in place to avoid arbitrariness and to enable the accused to understand the reasons for his conviction (or for the prosecution to understand the reasons for an acquittal) are then to be found in rather strict rules for the admission of evidence and on the requirement for the presiding judge to provide the jurors with clear, precise, sometimes even detailed directions on the legal issues and on the (rules of) evidence. It is to be assumed that jurors usually understand and follow these directions and will do their level best to reach a fair decision, thus satisfying the relevant constitutional requirements.

[27] In the case of a bench trial conducted before a professional judge, the safeguards are directly to be found in the reasoning in the judgment of the trial judge. In accordance with the European Court of Human Rights, reasoned judgments

> oblige judges to base their reasoning on objective arguments, and also preserve the rights of the defence. However, the extent of the duty to give reasons varies according to the nature of the decision and must be determined in the light of the circumstances of the case… While courts are not obliged to give a detailed answer to every argument raised … it must be clear from the decision that the essential issues of the case have been addressed.[2]

[1] *Taxquet v Belgium* (Application no. 926/05).at [90]
[2] *Ibid* at [91].

[28] The Court of Appeal in Northern Ireland stated in *R v Thompson*[3] with respect to the duty of the judge giving judgment in a bench trial:

> He has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant legal aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision by others. His task is to reach conclusions and give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that if there is an appeal it can be seen how his view of the law informs his approach to the law.

[29] Equally, a judge sitting alone and without a jury is under no duty to "instruct", "direct" or "remind" him or herself concerning every legal principle or the handling of evidence. This is in fact language that belongs to a jury trial (with lay jurors) and not to a bench trial before a professional judge where the procedural dynamics are quite different (although certainly not similar to those of an inquisitorial or continental bench trial). As long as it is clear that in such a trial the essential issues of the case have been correctly addressed in a guilty verdict, leaving no room for serious doubts to emerge, the judgment will stand.

Discussion on the grounds of appeal raised

[30] Returning to the case at hand and in keeping with these principles, the Court can be brief in its assessment of this appeal. In our view, the judgment of Justice Moore speaks for itself. It contained a balanced and fair assessment of the evidence, including its weight. The judge's analysis of the evidence was thorough and methodical (and, as we will see, almost flawless). The judge addressed all the essential issues of the case. She seriously considered the propositions of the defence. It is true that she ultimately rejected these propositions, but this was done in a transparent, rational and convincing manner. She wisely used the visit of the Court to the *locus in quo* to better assess and to verify the veracity of the essential pieces of evidence. She reached the conclusion that she would give full weight to the unsworn deposition of Dougal despite the impossibility of cross-examination. But this conclusion was clearly reached after considering the totality of the evidence before her.

[3] [1977] NI 74.

[31] Salazar's counsel himself admitted that in the end, such a conclusion could be reached. But he argued that the starting point of the judge should have been that deposition evidence admitted under section 123 IPA, that is basically an unsworn written statement given to the police without involvement of a judicial officer (justice of the peace or magistrate), is to be considered as of lesser weight than that given in the presence of a judicial officer pursuant to section 105 of the Evidence Act, and that she should have directed herself in that manner. Apart from the last part of his submission (which we have dealt with): this is not how the assessment or weighing of evidence works. Such an exercise requires a holistic approach and cannot be captured in terms of an algorithmic mechanical process. It is exactly what section 85 of the Evidence Act says: "In estimating the weight, if any, to be attached to a statement rendered admissible as evidence … [NB in fact almost any evidence] *regard shall be had to all the circumstances* from which any inference may reasonably be drawn as to the accuracy or otherwise of the statement…". Therefore, this argument fails already at face value. We will, however, address some of the aspects of admitting out of court statements under section 123 IPA and section 105 Evidence Act at the end of this judgment as these seem to require further clarification.

[32] The fact that the trial judge considered a portion of a transcript of a previous unrelated trial against Salazar for the sake of confirmation of evidence given by Salazar's alibi witness, whereas this transcript had not been entered as evidence in the trial, did constitute an irregularity but, for the reasons set out by the Court of Appeal in [68] of its judgment, not a material irregularity. Given the fact that there was no inconsistency between the answers that the witness, Ms Usher, gave to the few questions asked by the judge at the trial and the relevant passages of the transcript, the fact that Salazar's counsel had not objected to the use of this transcript which he had gotten beforehand and the clear indications in the judgment that the judge had already decided, on good and proper grounds, that the alibi evidence was not acceptable, Salazar did not suffer any prejudice. There was no grave departure from established criminal procedure[4] and no substantial miscarriage of justice resulted from the irregularity. To suggest that the judge might have read other things

[4] *Hyles & anor v DPP* 93 WIR 353; [2018] CCJ 12 (AJ) at [74].

in the transcript that would have given her a bad impression of Salazar is pure speculation and it can safely be assumed that a professional judge would be able to keep such an impression out of his or her objective reasoning. The judgment does not give any indication whatsoever to doubt that.

[33] As to the point of the alleged hearsay character of Rodriguez's statement, the Court can also be brief. The evidence of Rodriguez that he had heard Ms Bahado say that "Life" had shot her husband" is not hearsay because it only confirmed that she had said those words (right after the shooting); it was not used as direct evidence that he was the shooter. It merely showed that Ms Bahado identified Salazar as the shooter immediately after the shooting incident, which served to putting to rest the suggestion that she was involved in some conspiracy against Salazar. The evidence that Salazar was the shooter came from the deposition of Dougal and the evidence of Ms Bahado herself. It is true, as Salazar's counsel pointed out, that the trial judge seemed to have lost track at some point. She confused herself when she treated Ms Bahado's statement as hearsay by focusing on the latter's exclamation "Life shot Dean" as an excited utterance and applying the "res gestae" doctrine to that utterance. That approach came down to a logical fallacy: once a statement is an out of court statement and in that sense hearsay evidence as well as an excited utterance, it can under certain conditions, be admitted under the "res gestae" doctrine but that does not mean that an excited utterance is hearsay evidence. It is also unclear why in particular Rodriguez's statement about Ms Bahado's exclamation would be poor evidence as the utterance was also recorded in his police report.

[34] That the judge had not properly considered the defence case as she had already reached the conclusion that Salazar was guilty before she even looked at his alibi evidence, reveals a misconception of what a judge does when evaluating evidence in a bench trial. In *R v Thain*[5], Lord Lowery LCJ observed:

> Where the trial is conducted and the factual conclusions are reached by the same person, one need not expect every step in the reasoning to be spelled out expressly, nor is the reasoning carried out in sealed compartments with no intercommunication or overlapping, even as the need to arrange a judgment in a logical order may give that impression. It can safely be inferred that, when deliberating on a question of fact with many aspects,

[5] [1985] NI 457.

> even more certainly than when tackling a series of connected legal points, a judge who is himself the tribunal of fact will (a) recognize the issues and (b) view in its entirety a case where one issue is interwoven with another.

[35] As a rule, the judge will consider the prosecution's evidence first. If that evidence seems strong enough to carry a conviction, the judge will consider the evidence of the defence. The judge will then look at the totality of the evidence to reach a final decision. It is there where the intercommunication and overlapping take place. It is after this polymorphic process that the judge needs to arrange his or her judgment in a logical order which will not always be able to reflect the complicating thinking process as such. This is exactly what the judge did in this case. The judgment does not reveal any bias from her side. The Judge's primary reasons and findings were upheld by the Court of Appeal. We too, albeit having looked at these reasons and findings from a somewhat different perspective, found the judgment to be unassailable, the reason why we dismissed the appeal.

Post Script

[36] It would appear that in Belize the unsworn statement of a person to a police officer is in principle admissible as evidence in criminal proceedings if the maker of the statement dies before the trial. However, the statement needs to contain a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he willfully stated in it anything which he knew to be false or did not believe to be true.[6] The printed forms that are used by the police in Belize, to write down a witness statement contain that declaration. Such out of court statements are regularly used in Belize and are admitted either under section 123 IPA or section 105 Evidence Act. Section 123 IPA is restricted to those cases where the accused has been committed for trial for any crime. In such a case the deposition, which under section 1 IPA includes a written statement recorded by the police, of a witness may without further proof be read as evidence at the trial of the accused, "provided that the court is satisfied that the accused will not be materially prejudiced by the reception of such evidence". The provision does not say anything about the weight of such evidence.

[6] See: section 36 IPA and section 105(3) Evidence Act.

[37] Section 105 Evidence Act has a wider and a narrower range. It applies to all criminal proceedings (including a preliminary inquiry but also a summary trial and a trial upon committal). However, it is limited to statements "made by a person in a document", which is not further defined in the legislation. Section 105(5) provides that "section 85 of this Act shall apply as to the weight to be attached to any statement rendered admissible as evidence by this section." In this case, however, the declaration mentioned in [36] needs to be signed before a magistrate or a justice of appeal.

[38] It would appear that in Belize written statements and statements by a person in a document are seen as overlapping, so that such a statement can be admitted under either provision, depending on whether a justice of the peace was present when the statement was taken. This is somewhat awkward because the IPA makes a difference between a "written statement' which needs to comply with section 36 IPA (requiring the declaration) and "statements" that need to comply with section 38 IPA. This section *inter alia*, requires that before the committal proceedings begin, the prosecutor notifies the magistrates court and each of the parties to the proceedings that he believes (a) that the statement might by virtue of sections 83 and 105 of the Evidence Act (statements in certain documents) be admissible as evidence if the case came to trial; and (b) that the statement would not be admissible as evidence otherwise than by virtue of sections 83 and 105 of the Evidence Act if the case came to trial. Given section 38(2)(a) and (b) IPA, it would follow that a written statement complying with section 38 IPA, even if it contains a declaration co-signed by a justice of the peace or magistrate, could not be tendered at the preliminary inquiry as a statement (because it is otherwise admissible as a "written statement"). This would seem to indicate that a distinction must be made between a "written statement" and a "statement in a document". In that case, it would not be possible to have an overlap between sections 123 IPA and section 105 Evidence Act.

[39] A second remark to be made is that although it is clear that section 105 Evidence Act does not have the proviso "that the court is satisfied that the accused will not be materially prejudiced by the reception of such evidence" it is clear that that proviso

also exist with respect to that provision. Albeit, under the aegis of the common law. After our decision in *Bennett v the Queen*[7] it must also be clear that this proviso, in whichever emanation, is no longer limited to the longstanding rule that a judge in a criminal trial has an overriding discretion to exclude evidence if the prejudicial effect outweighs the probative value and the exclusion of evidence which is judged to be unfair to the defendant in the sense that it will put him at an unfair disadvantage or deprive him unfairly of the ability to defend himself. The proviso also extends to the situation wherein it is clear that the statement cannot in reason safely ever be held to be reliable.

[40] A third remark is that although section 123 IPA, in contradistinction to section 105 Evidence Act, does not prescribe the application of section 85 Evidence Act or any other rule for the assessment of the weight of the admitted hearsay evidence, that does not mean that depending on the circumstances these rules should not be applied. These are rules of thumb and common sense that should always be applied whether legislatively prescribed or not.

[41] A last remark: the law of evidence has gone through many changes especially in the last two decades. The rule against hearsay is certainly no longer what it used to be and surely not in Belize. The crime situation in the country as in so many other countries, has made it imperative to make more and more inroads into that rule. Many rules of evidence can only be understood against the background of the concept of a trial by lay jurors who needed to be guarded from evidence that they would not be able to properly assess. In the course of time, many rules of evidence were developed with an eye on the reliability of the evidence and the fairness of the trial.

[42] On the other hand, societal developments required stronger measures to fight ever more violent crimes. The legislature created opportunities for the prosecution to get a better grip on crime. At the same time, it also needed to keep their eyes on the Constitution and the safeguards it seeks to ensure. This all has led, as in so many

[7] [2018] CCJ 29 (AJ).

other countries, to a patchwork of piecemeal changes and amendments that do not always seem to honour the values of consistency and clarity. Moreover, for years now, the most serious crimes in Belize are dealt with by a judge alone without a jury. That concept of adjudication would require a different approach to the handling of evidence altogether. In short: rethinking in a conceptualized manner aspects of criminal procedure and the law of evidence would be advisable.

/s/ J. Wit

The Hon Mr Justice J Wit

/s/ D. Hayton

The Hon Mr Justice D Hayton

/s/ W. Anderson

The Hon Mr Justice W Anderson

/s/ M. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D. Barrow

The Hon Mr Justice D Barrow