IN THE COURT OF APPEAL OF BELIZE AD 2017

CRIMINAL CASE APPEAL NO. 14 OF 2014

CHRISTIAN NEAL Appellant

v

THE QUEEN Respondent

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BEFORE

The Hon Mr. Justice Sir Manuel Sosa	President
The Hon Mr. Justice Samuel Awich	Justice of Appeal
The Hon Mr. Justice Murrio Ducille	Justice of Appeal

Oswald Twist for the appellant.
Cecil Ramirez, Senior Crown Counsel, for the respondent.

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9 March 2016 and 24 March 2017

AWICH JA

[1] On 9 March, 2016 when this appeal came for hearing we allowed the appeal and ordered that, the appellant be tried anew in the Supreme Court, the trial court below. The full orders and notes that we made were the following:

"1. We note the concession made by Mr. Ramirez in regard to the ground of appeal No.1, and that, he cannot support the conviction.

2. The Court allows the appeal on ground No.1; the purported trial of the appellant is declared a nullity.

3. We note that, Mr. Ramirez has expressed the view that, it is necessary that the appellant be put on trial at a later date; the Court expresses the hope that in the interest of justice, any future trial of the appellant be proceeded with without delay."

[2] We hope that, the appellant has since been taken to trial, if it remained the intention of the Director of Public Prosecutions to pursue the indictment filed against the appellant. The orders that we made did not indicate that the trial should wait until we would have given reasons for the orders made.

[3] The set of orders was self-explanatory. It stated that, we based our decision to allow the appeal exclusively on the complaint in ground of appeal No.1 which was acceded to by learned counsel, Mr. Ramirez, Senior Crown Counsel, representing the respondent. Given that we have ordered that, the appellant be tried properly in a new trail, it is undesirable to relate the evidence in detail, or to examine the rest of the grounds of appeal.

[4] The précis of the case is this. The appellant, Christian Neal, was indicted in the Supreme Court to stand trial on three counts. In the first count he was charged with the offence of carnal knowledge of a female child under the age of 14, an offence under s. 47 (1) of the Criminal Code Cap. 101, Laws of Belize. The age of the child was stated as thirteen years and eight months. The incident was said to have taken place on 20 May, 2011 in Santa Elena Town. In the second count, the appellant was charged with robbery, an offence under s.147 (1) of the criminal Code. The particulars were that, on 20 May, 2011 in Santa Elena, "by use of force whilst armed with a machete, [the appellant] stole from [E.F] one gold chain with a gold rose medal, together valued at

$300.00, [the property of E.F]". The third count was also of the offence of robbery under s. 147 (1) of the Criminal Code. The particulars were that, on 20 May, 2011 in Santa Elena Town, "by use of force whilst armed with a machete, [the appellant] stole from Jordy Cano one black LG chocolate cell phone valued at $300.00, [the property of Jordy Cano]."

[5] On 20 May, 2014 the appellant was arraigned. He was not represented by counsel. He pleaded not guilty to all three counts. He was tried before a judge and a jury. The prosecution adduced evidence and closed its case. The appellant elected, and made an unsworn statement. Although he had informed the judge that he would call two witnesses, he did not call any.

[6] After the appellant had been given opportunity, the learned judge summed – up the case to the jury. At the end of the summation it was noted:

> "Jury retires at 12.50 pm."
> "Jury returns at 2.44 pm."

[7] When the jury returned to the courtroom at 2.44 pm, they returned a verdict of guilty on the first count of carnal knowledge, by a majority of eight to one. They also returned a verdict of guilty on the second count of robbery, by a majority of eight to one. However, the jury returned a verdict of not guilty on the third count of robbery. On 23 July 2015, over one year after, the trial judge sentenced the appellant to twelve years imprisonment on the first count, and ten years imprisonment on the second count. She ordered that, the two sentences run concurrently. The appellant appealed against the convictions and sentences.

[8] Ground of appeal No. 1 is based on the notes in the record which states: "Jury retires at 12.50 pm", and, "Jury returns at 2.44 pm." The ground is worded as follows:

> "The Court breached the mandatory provision of Section 21(2) of the Jury Act Chapter 128 of the Revised Laws of Belize 2000, in that the jury only deliberated [for] 1 hour 54 minutes and not [for] 2 hours in reaching the majority verdicts."

[9] In this Court the ground of appeal has succeeded without opposition. Mr. Ramirez, for the respondent, gracefully conceded in these words: *"The respondent concedes that the jury deliberated for one hour and fifty-four minutes only to arrive at a majority verdict. The respondent submits that the case is on all fours with* ***Cecil Gill v The Queen****, Criminal appeal No. 1 of 2003, and that the Court by its own precedent ought to order a re-trial as the instant case cannot be distinguished from Cecil Gill v The Queen."*

Determination.

[10] Although we need not say anything further, we consider it important to remind trial judges and counsel, especially counsel for the prosecution, of the need to be alert to this point of procedure. It has been recurring though not too frequently; but when it does, the rest of the good work of the judge and of counsel, as it is in this case, is thrown to waste. It is not clear how the error was occasioned in this case. It is not recorded that the learned judge invited the jury back to the courtroom. Presumably, as it is usually the case, the foreman indicated to the marshal that the jury was ready to render verdicts. It would still be the duty of the judge and counsel to check whether the jury had exhausted the time for deliberation.

[11] Section 21 of the Juries Act, Cap. 128, Laws of Belize, which is to the point in the ground of appeal provides as follows:

> **21. –(1) For the trial of the issue in every criminal cause in which the accused person is arraigned for an offence punishable with death, the jury shall consist of twelve persons and the verdict of that jury**

shall be unanimous, nevertheless on an indictment for murder that jury may on or after the expiration of four hours from the time when it retired to consider its verdict, return a verdict of manslaughter if it considers that crime proved, whenever it is agreed in the proportion of eleven to one or ten to two, and that verdict when so delivered shall have the same effect as if the whole jury had concurred therein.

(2) For the trial of the issue in every criminal cause in which the accused person is arraigned for an offence not punishable with death, the jury shall consist of nine persons and that jury may, on or after the expiration of two hours from the time when it retired to consider its verdict, return a verdict whenever it is agreed in the proportion of eight to one or seven to two, and that verdict when so delivered shall have the same effect as if the whole jury had concurred therein.

[12] In this appeal we are concerned with subsection (2) only. It requires that, where an accused is charged with an offence not punishable with death, the jury must have had a minimum of two hours to consider their verdict, if their verdict is by majority, rather than by unanimity. For a majority verdict of guilty to be accepted by the judge, it must be in the ratio of eight to one or seven to two. In this case the verdicts of guilty on the first and the second counts were by the acceptable ratio of eight to one, there was no error in the ratio.

[13] But an error was occasioned when the jury, having retired at 12.50 p.m. to consider their verdict, returned to the courtroom at 2.44p.m. They returned after one hour and fifty four minutes of deliberation. They took six minutes less in their deliberation than s. 21(2) of the Juries Act requires.

[14] One might suggest that, six minutes deficiency in the time for the jury to consider a verdict is not that much, and should not result in treating the entire proceedings as a nullity. We shall not entertain that philosophical argument against the wish of the Legislature. Our answer is that, this Court has consistently interpreted the provisions of s. 21 (1) and (2) as mandatory – see: ***Cecil Gill v The Queen, Criminal Case Appeal No. 1 of 2003; Stanley Coleman v The Queen, Criminal Case Appeal No. 6 of 2004; and Kent Francis v The Queen, Criminal Appeal Case No. 25 of 2006***. We continue to interpret the provisions of s. 21 as mandatory.

[15] In ***Cecil Gill***, the appellant was charged with the offence of attempted murder, and in the alternative, with the offence of intentionally causing dangerous harm. The offences were not punishable with death so, subsection (2) of section 21 of the Juries Act applied. The time when the jury retired to consider their verdicts was not recorded. After some time the jury returned to seek clarification from the judge, as to whether they could return a majority or a unanimous verdict on one or the other count. After the judge had directed them, the jury retired to consider their verdicts. The time was recorded. After 19 (nineteen) minutes from the time recorded, they reported that they had reached verdicts. The judge invited them to sit. They returned a verdict of not guilty on the first count by a majority of eight to one; and a verdict of guilty on the second and alternative count, by a majority of eight to one also. This Court (Motley P, Sosa and Carey JJA) in the judgment prepared by Carey JA, noted that, the jury retired for only nineteen minutes to consider their verdicts. The Court declared the trial a nullity, quashed both verdicts and ordered a new trial.

[16] ***Stanley Coleman*** was a case in which the indictment charged a single count of murder. In summing -up, the judge gave directions on the count of murder, and also left the offence of manslaughter for the jury to consider, in the event, they could not reach a verdict on the count of murder. The jury retired at 11.55 a.m. to consider their verdict. At 3.00 p.m. they informed the judge that, they had been unable to reach a verdict on murder; and that, on manslaughter they were divided in a ratio that the judge could not

accept. The judge directed them that, they still had 45 minutes left of the minimum time. That was incorrect, they had 55 minutes left of the four hour minimum. The jury retired and returned in 40 minutes. They were invited to sit. They reported that they had been unable to agree on a verdict on the charge of murder. They returned a verdict of guilty to manslaughter in the ratio of 11 to 1 (eleven to one). This Court (Mottley P, Sosa and Carey JJA) held that, s. 21 (1) of the Juries Act provided for a minimum of four hours of jury deliberation in order for the judge to accept a majority verdict, and that, in the case the jury had another fifteen minutes to meet the requirement of four hour minimum. The Court declared the trial a nullity.

[17] In ***Kent Francis***, this Court (Mottley P, Carey and Morrison JJA) dismissed the appeal on the facts of the case. The jury retired at 1.05p.m. to consider their verdicts and returned at 3.05 p.m. to announce their verdicts. The indictment charged the appellant with the offences of: rape in the first count; aggravated burglary in the second; aggravated assault in the third; and threat of death in the fourth. All the offences were not punishable with death so, s. 21 (2) of the Juries Act applied, the minimum time required for the jury to consider a verdict was two hours. In the appeal case, the time taken by the jury to consider their verdicts was from 1.05 p.m. to 3.05 p.m., two hours exactly. Notwithstanding, the ground of appeal was that, the majority verdict returned on each count was not in accordance with s. 21 (2) of the Juries Act, the jury took less than two hours to consider their verdicts. The Court rejected the ground and dismissed the appeal.

[18] In a judgment prepared by Carey JA the Court stated:

> *"In our judgment, a majority verdict is valid when returned on the two hour mark, alternatively after the two hour mark has passed. Thus applying that interpretation to what transpired at this trial, the period of acceptance of the verdict as valid begins to run from the instant the jury retire to the*

instant it returns the verdict. Thus 1.05 p.m. to 3.05 p.m. satisfies the minimum requirement of the Act."

[19] In the above three cases it was stated or accepted that, the law was that, for the court to accept a verdict of guilty to manslaughter on a charge of murder, the jury must have retired for a minimum of four hours to consider their verdict; or for the judge to accept a verdict of guilty to an offence not punishable with death, the jury must have retired for a minimum of two hours to consider their verdict.

[20] This judgment gives the reason for the orders we made on 9 March, 2016.

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SIR MANUEL SOSA P

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AWICH JA

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DUCILLE JA