

**IN THE SUPREME COURT OF BELIZE, A.D. 2022**

**CRIMINAL JURISDICTION**

**Central District**

**Indictment No C3/2019**

**THE QUEEN**

**V.**

**JOEL ARZU**

**BEFORE:                       The Honourable Justice Susan Lamb**

**APPEARANCES:             Ms. Portia Staines Ferguson for the Crown**  
**Mr. Jose Alpuche for the Accused**

**DATES:                         26 July 2022, 27 July 2022, 28 July 2022 and 2 August 2022**

**DECISION ON ADMISSIBILITY OF CAUTION STATEMENT (*VOIR DIRE*)**

1. Sixteen year old Joel Arzu was arrested on suspicion of murder on 29 August 2017, at around 9 a.m. Around two and a half hours later, he provided a caution statement at the San Pedro police station, without the benefit of legal advice and in circumstances where the obtaining of any legal advice was likely impossible for him in any event. No police station in Belize provides duty counsel or any other form of State-financed legal assistance for any defendant, including to unaccompanied juveniles.
2. Joel Arzu made this statement without the presence of a parent or guardian. The Prosecution witnesses say that this was because no relative was able to be found. Instead, he was interviewed under caution in the presence of a Justice of the Peace and a social

worker: persons who the Guidelines for the Interviewing and Treatment of Persons in Police Detention (“Commissioner’s Rules”) indicate are considered appropriate persons in circumstances in where a parent or guardian is unavailable or would not be appropriate to have present.<sup>1</sup>

3. In other material respects, however, the Commissioner’s Rules were not followed. In particular, Joel Arzu’s caution statement was not video and audio recorded, as the Rules require.<sup>2</sup> Nor was any justification for failure to do so provided, as the Rules also require, when circumstances render audio or video recording impossible or impracticable.<sup>3</sup>
4. This decision has hinged on whether, in all the circumstances, Mr. Sergio Guerra, the Social Worker present during Joel’s police interview and Justice of the Peace Francisco Arceo, both of whom testified during the *voir dire*, carried out their roles adequately, but also on the wider question of whether admission of the caution statement would be fair in all the circumstances.
5. This inquiry requires me to decide whether or not the Accused’s caution statement was given freely and voluntarily. In this respect, the Prosecution must affirmatively show that it was not induced by any promise or fear, threat or pressure by any person in authority. A confession obtained by oppression will be regarded as involuntary and therefore inadmissible. “Oppression” in this sense is understood not only to include physical oppression, but carried a wider sense, as “something which tends to sap, and has sapped, that free will which must exist before a confession is voluntary.”<sup>4</sup>
6. As was further found by the Judicial Committee of the Privy Council in *Peart v. R.*:

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.<sup>5</sup>

7. In *Williams (Ricardo) v. R.*, the Judicial Committee of the Privy Council also found that the voluntariness of the statement is not the sole criterion for its admissibility: the issue of fairness is also key. In that case, it determined that a statement made by a 12 year old boy was inadmissible on grounds of unfairness, and that the mere presence of a Justice of the Peace did not suffice to rectify this unfairness.<sup>6</sup>

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<sup>1</sup> *Guidelines for the Interviewing and Treatment of Persons in Police Detention (Commissioner of Police Rules)*, February 2015, Ministry of National Security and Belize Police Department, available at: <https://www.hrcbz.org/download/guidelines-for-interviewing-treatment-of-persons-in-detention/>

<sup>2</sup> Rule 7.1, Commissioner’s Rules.

<sup>3</sup> Rules 7.3 and 7.4, Commissioner’s Rules.

<sup>4</sup> *R. v. Priestley* (1965) 51 Cr. App. R 1 at p.1.

<sup>5</sup> *Peart v. R.* [2006] UKPC 5, 68 WIR 372, [2006] WLR 970, PC.

<sup>6</sup> *Williams (Ricardo) v. R.* [2006] UKPC 21; (2006) 69 WIR 348.

8. Furthermore, Belize is a signatory to the Convention on the Rights of the Child.<sup>7</sup> The CRC in its preamble states, "...the child, by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection." The vulnerability that requires special protection be provided to young people is based on their developmental immaturity.
9. Article 37 (d) of the CRC, which is concerned with procedural rights, provides that a young person deprived of his or her liberty has the right to prompt access to legal and other appropriate assistance. This has never been actualized in any meaningful sense in Belize. This is a difficulty which has been long-standing and consistently adverted to in periodic reporting under the CRC for the past 20 years, but not to date addressed.<sup>8</sup>
10. It nonetheless follows from Belize's treaty commitments under the CRC that Joel Arzu's vulnerability as young person entitled him to special protection. The CRC is incorporated into Belize law by virtue of the Families and Children's Act ("FACA").<sup>9</sup> While the Commissioner's Rules and Section 90 of the Evidence Act also enshrines some of these standards, the procedural rights specifically protected in Article 37 (d) of the CRC are not given effect to with any particularity in Belize legislation, policies or practice. I have therefore sought guidance from courts that are familiar with doing so. While such decisions are not binding on courts here, I consider them relevant and helpful when determining what it means to respect and uphold a young person's rights on the issues

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<sup>7</sup> United Nations General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

<sup>8</sup> See e.g. Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Second Periodic Report of States Parties due in 1997 (Belize), CRC/C/65/Add.29, 13 July 2004, at para. 282: "[t]here continue to be reports of inadequate procedures and conditions in ... police holding cells throughout Belize. Coupled with the frequent absence of due legal advice to young people, this too often continues to mean that children brought before the courts are not represented, [and] are unable to access legal advice ..."; and Report of the Committee on the Rights of the Child, 38<sup>th</sup> Session, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention (Concluding Observations: Belize), CRC/C/15/Add.252, 31 March 2005, at para. 71: "The Committee recommends that the State party establish a system of juvenile justice that fully integrates into its legislation, policies and practice the provisions and principles of the Convention, in particular articles 37, 39 and 40 [...]."

<sup>9</sup> See *Anthony Bowen and David Jones v. Attorney General of Belize*, 214/2007, Supreme Court of Belize, 27 September 2010, at para. 28 (noting that Belize was among the first member states of the United Nations to ratify the CRC (on 2<sup>nd</sup> September 1990) and enacted provisions in the FACA to give effect to this (citing in particular Section 3 and the First Schedule of the Act and Section 149 on promoting, monitoring and evaluating the implementation of the CRC)); see also *ibid.*, paras 106 and 109: "[a] court must always be astute to recognize and if possible give effect to international human rights obligations contained in treaties or conventions the state has subscribed to. The First Schedule sets out the Guiding Principles in the Implementation of the Act. Paragraph 4 of the Schedule sets out the rights a child shall have and sub-paragraph (c) states as follows: "to exercise, in addition to all the rights stated in this Schedule and the Act, all the rights set out in the UN Convention on the Rights of the Child, with the appropriate modifications to suit the circumstances in Belize, that are not specifically mentioned in the Act or in this Schedule." Paragraph 110 of this same decision stresses that the phrase "appropriate modifications to suit the circumstances of Belize" does not claw back the rights in the CRC or negate any obligations contained thereunder: "I am of the considered view after having carefully perused the CRC itself and the provisions of the Families and Children Act, that the latter has by reason of the express reference theory made the former applicable in Belize. I am also satisfied that from the several provisions of the Families and Children Act, there is sufficient evidential nexus between this Act and the CRC to warrant the conclusion that the letter was intended by the Legislature to have direct effect in Belize."

relevant to this case. I have in particular drawn considerable guidance from a recent decision of the New Zealand Youth Courts, which has extensively and helpfully considered these questions.<sup>10</sup>

11. The Canadian Supreme Court has further emphasized that the right to silence and right to counsel recognizes that a detained person, who is potentially in a position of disadvantage to the State, may be at risk of incriminating themselves.<sup>11</sup> An Accused is entitled to rectify this disadvantage by speaking to legal counsel at the outset, to ensure he is aware of his right to silence.<sup>12</sup> The central enquiry in this regard is whether the Accused understood generally the jeopardy in which he found himself and appreciated the consequences of deciding for or against the exercise of his right to silence and his right to counsel at the time he made the statement.<sup>13</sup>
12. The animating principles of the right to silence and the right to counsel, coupled with the developing jurisprudence regarding special protections owed to juveniles in detention, requires me to enquire as to whether Joel Arzu's rights were explained in a manner and in language that was appropriate to his age and level of understanding. Whether the explanation of rights given in these circumstances by Mr. Guerra and Justice of the Peace Francisco Arceo was adequate requires a fact-specific enquiry.
13. To meet their burden of showing that the caution statement was freely and voluntarily given, the Crown called five witnesses: the arresting officers (PC Kareem Staines and Corporal Adan Uh), the officer taking the statement (Sergeant Henry Thomas), Justice of the Peace Francisco Arceo and Social Worker Sergio Guerra. The prior statement of Superintendent Henry Jemmott, who is deceased, was read into evidence by agreement. In the Crown's submission, this statement was a formal statement, signed, and given under penalty of perjury by a seasoned and experienced police officer, and thus possessed indicia of reliability: a submission which I accept. However this statement is contentious, and it is no longer possible to clarify any doubts or ambiguities surrounding it.
14. At the conclusion of the Crown evidence, Joel Arzu gave an unsworn dock statement in which he alleged that he was beaten on the head by PC Staines upon his arrest and his bloodied shirt removed following this assault, promised by Superintendent Jemmott that he would be released if he gave a caution statement but charged with murder if he did not, and denied the opportunity to call his uncle, who was nonetheless later permitted to visit him in the station cell. PC Staines, Corporal Uh and Sgt Thomas all categorically deny that Joel Arzu was beaten or otherwise mistreated in the course of his arrest or indeed at any point. PC Staines denies that Joel was taken to see Superintendent Jemmott upon arrival at the San Pedro Police station. However, Superintendent Jemmott's deceased statement acknowledges that he spoke to Joel upon his arrival at the San Pedro

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<sup>10</sup> *NZ Police v. FG (a young person)* [2020] NZYC 328 (per Fitzgerald J).

<sup>11</sup> *R. v. Bartle* (1994), 1994 CanLII 64 (SCC), 92 C.C.C. (3d) 289 (S.C.C.)

<sup>12</sup> *R. v. P (M.B.)*, (1994) 1994 CanLII 125 (SCC), 89 C.C.C. (3d) 289 (S.C.C.); *R. v. Fitzpatrick* (1995), 1995 CanLII 44 (SCC), 102 C.C.C. (3d) 144 (S.C.C.)

<sup>13</sup> *R. v. Smith* (1991), 1991 CanLII 91 (SCC), 63 C.C.C. (3d) 313 (S.C.C.) ("The accused's understanding of his situation is relevant to whether he has made a valid and informed waiver" of his rights).

Police Station. This statement indicates that Joel was remorseful and sought to engage Superintendent Jemmott in a conversation, which Superintendent Jemmott states he shut down. This conversation would clearly have been at least material to, if not at the heart of, the issues now in dispute.

15. Prior to the giving of his caution statement, within two hours of Joel Arzu's arrival at the station, it is undisputed that Joel Arzu spent approximately five, and certainly no longer than ten, minutes alone with Justice of the Peace Francisco Arceo, and Social Worker Sergio Guerra prior to giving his statement.
16. Mr. Guerra initially stated in evidence that Mr. Arzu had not wished to provide a caution statement. Upon being permitted to refresh his memory and to view the statement he gave at the time, he clarified his earlier responses and instead stated that the Accused had volunteered the caution statement of his own free will. His evidence thereafter was tentative and frequently vague. Though I find it likely that Mr. Guerra's quality of recall reflect an inability to remember details of events or nervousness, his overall hesitancy and the findings I make below concerning the extent to which the interests of Mr. Arzu could have been effectively safeguarded in this instance ensure that I cannot regard these discrepancies to be merely minor.
17. Mr. Guerra further stated in evidence that he informed Joel that he was not obliged to make a statement but, far from advising him to remain silent, indicated that if he wished to cooperate, 'it might be better if he told the truth.'
18. Justice of the Peace Francisco Arceo in his evidence depicted his role as that of a witness and if anything, identified himself with police efforts to stamp out the scourge of youth crime in Belize. During his evidence, he became highly emotional due to the apprehension that Superintendent Jemmott, who he described as his best friend, may be subjected to criticism in any form.
19. At no time did either adult present during and immediately before the police interview do more than simply recite the usual caution that Joel Arzu did not have to speak if he did not want to: "You have the right to remain silent. You do not have to make any statement or answer any questions". However, Rule 10.08 of the Commissioner's Rules make it clear however that where a Justice of the Peace or an appropriate adult is present at an interview, they are not expected to simply act as an observer. The purpose of their presence is to advise the person being interviewed or making the caution statement.
20. Sergio Guerra did not seem to have a full or confident understanding of the rights protected by the caution. He did not appear to appreciate how serious those charges were, or indeed, whether or not Joel Arzu was under arrest.
21. I find that Joel Arzu, in the circumstances he found himself in, would not have been apprised of the peril he was in; certainly, and this is not disputed, neither Mr. Guerra nor Justice of the Peace Arceo cautioned him not to speak or counsel him in any way beyond a *pro forma* recitation of his rights. I therefore agree with the Defence that in these

circumstances, it is far more likely that Joel Arzu would have viewed both men as facilitators of his statement on behalf of the police, rather than as there to safeguard his rights.

22. In the circumstances, I have been unable to satisfy myself that Joel Arzu possessed sufficient appreciation of this jeopardy to permit him to validly waive his right to silence and his right to counsel. As a sixteen year old in police custody, and without means, this right to counsel was in any case theoretical.
23. In conclusion, Joel Arzu was detained and subjected to an unrecorded interview under caution within approximately two hours of arriving in police custody. Although I am largely persuaded by the evidence of PC Staines, Corporal Uh and Sgt Thomas and find that the Crown has discharged its burden of showing that the statement was not induced by violence, threats or intimidation, I find it difficult to conceive of how these circumstances could be anything other than oppressive for a sixteen year old in Joel Arzu's position.
24. The availability of an audio-visual recording may have assuaged some of these concerns. It's unavailability, coupled with the alacrity in which the caution statement was taken, the inability to cross-examine Superintendent Jemmott on material aspects of his statement and discrepancies between it and the evidence of the other officers, and the manner in which Mr. Guerra and Justice of the Peace Arceo conceived of and carried out their roles, have led me to conclude that it would be unfair in all the circumstances to admit the caution statement. I do not agree with the Crown that the undocumented failure to audio and video record a caution statement, given within hours of arrest by a vulnerable sixteen year old in the circumstances described, can be described as a mere technical oversight.
25. For the above reasons, I have determined the caution statement to be inadmissible.

Dated this 2<sup>nd</sup> day of August 2022

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Susan Lamb  
Justice of the Supreme Court