**[2026] CCJ 6 (AJ) BZ**

**IN THE CARIBBEAN COURT OF JUSTICE**
**APPELLATE JURISDICTION**

**ON APPEAL FROM THE COURT OF APPEAL OF BELIZE**

**CCJ Application No BZCR2025/001**
**BZ Criminal Appeals Nos 14 of 2019 and 15 of 2019**

**BETWEEN**

**THE KING** **APPELLANT**

**AND**

**LEONARD NUNEZ**
**HALLET KING** **RESPONDENTS**

**Before:** **Mme Justice Rajnauth-Lee**
**Mr Justice Barrow**
**Mr Justice Jamadar**
**Mme Justice Ononaiwu**
**Mr Justice Eboe-Osuji**

**Date of Reasons:** **10 April 2026**

**<u>Appearances</u>**

Mrs Cheryl-Lynn Vidal SC, Director of Public Prosecutions and Ms Maria Nembhard-Santana, Crown Counsel for the Appellant

Mr Arthur Robert Saldivar for the Respondents

*Criminal law – Manslaughter – Mens rea – Essential element of offence – Entire context of evidence important – Abuse of accused in custody – Unduly prejudicial evidence – Proviso – No substantial miscarriage of justice occurred.*

**Cases referred to:**

*DPP v Newbury* [1977] AC 500; *DPP v Walker* (1974) 21 WIR 406 (JM PC); *Gray v Barr* [1971] 2 QB 554; *Johnson v State* 223 Md App 128 (2015); *Nunez v R* (BZ CA, 25 February 2025); *R v Carey* [2006] EWCA Crim 17; *R v Church* [1966] 1 QB 59; *R v Coughlan* (1976)

63 Cr App R 33; *R v Larkin* [1943] 1 All ER 217; *R v Singh* [1962] AC 188; *R v Sparrow* [1973] 2 All ER 129; *Schlossman v State* 105 Md App 277 (1995).

**Legislation referred to:**

**Belize –** Criminal Code, CAP 101, Senior Courts Act 2022.

**Treaties and International Materials referred to:**

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

**Other Sources referred to:**

Baker D and Williams G, *Textbook of Criminal Law* (4th edn, Sweet & Maxwell 2015); *Oxford English Dictionary* (2026) <https://www.oed.com/dictionary/harm_n?tl=true> accessed 17 March 2026.

**REASONS FOR DECISION**

**Reasons:**

Eboe-Osuji J (Rajnauth-Lee, Barrow, Jamadar and Ononaiwu JJ concurring) [1] – [38]

**Disposition** [39]

**EBOE-OSUJI J:**

## Introduction

[1] At the conclusion of the hearing on 20 January 2026, this appeal was allowed, with reasons to follow. Here now are the reasons.

[2] The appeal was brought by the prosecution against the Court of Appeal's reversal of the convictions of Hallet King and Leonard Nunez ('the Respondents' or the 'Defendants'). They are two former Belizean policemen. They were prosecuted on

a single count of manslaughter for the unlawful death of Hilbert Sotz, for their encounter with him while he was in police custody. Tried as parties to a joint criminal enterprise, the Respondents were convicted by a jury on 15 July 2015 and sentenced to nine (9) months imprisonment on 13 August 2019 but were immediately discharged because they were in pre-trial detention for ten (10) months. The Respondents appealed their convictions. The Court of Appeal overturned the convictions on the reasoning that the trial judge erred in two respects: (i) for failing to instruct the jury that a charge of manslaughter required the prosecution to prove intent on the part of the accused to cause death by unlawful harm; and, (ii) for allowing the prosecution to adduce certain items of evidence that were considered to be more prejudicial than probative of the charge. The prosecution appealed those findings to this Court.

**The Facts**

[3] The prosecution's case was that Mr Sotz was taken into custody on the morning of 8 June 2015 by Mr Nunez, then a police constable assigned to the Criminal Investigation Branch ('CIB') of the Police Formation of Caye Caulker, Belize. Mr Sotz's detention was part of an investigation into an incident of burglary. Later that day, Mr Sotz was taken from the cell block by Mr Nunez to the CIB interrogation wing where they met Mr King, another police constable attached to the CIB office.

[4] At the trial, prosecution witness Manuel Guerra (a friend of Mr Sotz who was also being detained as part of the same burglary investigation) testified that he heard certain commotion from the interrogation room. He heard Mr Sotz 'bawling and shouting,' together with sounds of pounding and slapping, as Mr Nunez asked Mr Sotz about where the items were. He said that Mr Sotz continued to bawl and shout harder 'please stop, please stop.' And then silence.[1] Following the silence, said Mr Guerra, he next saw the two Respondents taking Mr Sotz out. Mr Sotz was evidently 'knocked out, cold and somber' when the Respondents were taking him out, said Mr Guerra, and the Respondents put Mr Sotz on a red golf cart which Mr

[1] See Record of Appeal, Transcript of proceedings, *R v Nunez* (Supreme Court of Belize) 251.

Nunez drove off.[2] Notably, the word 'somber' was transmuted to 'limber' in the course of submissions of counsel on both sides,[3] suggesting counsel's shared understanding that the witness was describing the physical appearance of Mr Sotz, not his mood.

[5] The prosecution called further evidence to the effect that the Respondents took Mr Sotz to a nearby medical facility, where the intake nurses described him being brought into the medical centre. The nurses' description of Mr Sotz's condition when the Respondents brought him in was essentially the same condition that Mr Guerra saw him in when he was taken out and put on the golf cart. According to the nurses, Mr Sotz was unresponsive when he was brought in. The duty physician pronounced him dead within minutes.

[6] The forensic pathologist called by the prosecution testified that upon external examination of Mr Sotz's remains, the following were found on his body: multiple bruises on the neck; a 12mm wound on the right hand; multiple superficial post-impact bruises on the right and left area of the abdomen and on the inner area of the left thigh; and injury on the right toe. Internal examination revealed multiple and irregular bloody concussions located on both sides of the head; prominent swelling of the brain's folds and ridges due to oedema and congestion of the blood vessels; two and half inches of blood clot in the brain; discoloration of the midbrain due to lack of oxygen; tooth impression bite marks on the tongue; and, solid mass in the entire length of the right superior vena cava—right atrium of the heart, right and left ventricles.

[7] The summary of the autopsy report was rendered in the following impressive medical parlance:

> Summary of opinion as to cause of death is post traumatic bleedings concussion (points to the top of the head) directly affects the sagittal sinus where blood clot was found. Swelling of the brain with important vascular congestions, erythema of the subarachnoid. Blood clots to the venous plexus

[2] ibid 252.
[3] ibid 93 (prosecution counsel), 317 (defence counsel).

> of the neck of the heart caused death by vascular shock due to massive heart thrombosis due to acute post traumatic edema.[4]

[8] The pronouncement would doubtless have baffled the jury and anyone else with no medical training. But it was all to say in more accessible English that death resulted from shock in the medical sense of 'a threatened life condition due to circulatory failure. In this particular case [it] was directly due to blood clots travelling from the superficial circulation of the brain to the right side of the vessels of the neck, arriving to the heart, blocking the function of the heart. … All of that was also due to acute post traumatic cerebral oedema which means trauma to the head.'[5]

[9] In short, Mr Sotz died from head trauma occasioning blood clots that ultimately interfered with the functioning of the heart. This trauma, the pathologist said, would have occurred no earlier than three (3) or two (2) hours prior to his death.[6] There was no evidence that Mr Sotz had any preexisting health problems, nor did the cross-examinations elicit any. The father of Mr Sotz testified that he was healthy before he was detained and Mrs Sotz testified that he was not suffering from any illnesses.

[10] The case for the defence was that Mr Nunez detained Mr Sotz as part of an investigation into a burglary and placed him in a cell. In the course of questioning him in the police interrogation room, he emitted the smell of alcohol and was acting boisterously. They allowed him time to calm down. He suddenly started to complain of breathing difficulty. They helped him to get onto a golf cart to take him to the medical centre (and he walked onto the cart by himself). He collapsed *en route* to the medical centre; and he was pronounced dead at the medical centre. All in all, they said, at no time did they hit or harm Mr Sotz in any way. Needless to say that the jury did not accept that version of the events. And, so, they convicted the Respondents of manslaughter, as the prosecution urged.

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[4] ibid 280 – 281.
[5] ibid 281.
[6] ibid 283.

[11] The Respondents appealed their conviction. The Court of Appeal allowed the appeal on the grounds that the judge erred by failing to make clear in his directions to the jury that, for a charge of manslaughter, the prosecution must prove the 'requisite intention of causing death by unlawful harm';[7] and, by allowing the introduction of certain items of evidence the prejudicial effect of which outweighed their probative value. Accordingly, the Court of Appeal quashed the convictions of the Respondents.

[12] The prosecution then filed a notice of appeal to the Caribbean Court of Justice ('CCJ') on grounds that the Court of Appeal erred in law in their findings summarised in the preceding paragraph, as well as in not considering the application of the proviso to s 216(1) of the Senior Courts Act 2022 which would allow the Respondents' conviction to stand in the event of a harmless error by a trial judge.

**Analysis**

[13] Initially, there were two main grounds of appeal raised before this Court. The first was that the Court of Appeal had committed an error by reasoning that for a charge of manslaughter, the prosecution must prove a 'requisite intention of causing death by unlawful harm.'[8] Counsel for the Respondents conceded that ground of appeal by agreeing with the prosecution—as do we—that the Court of Appeal was mistaken in that understanding of *mens rea* for manslaughter. The mistake is aptly captured by the observation in a famous textbook that the 'ingredients of manslaughter are supposed to be the same as that of murder, except that the requirements of oblique intention or actual intention as to killing are omitted.'[9] Indeed, that difference is aptly illustrated by ss 116 and 117 of the Criminal Code of Belize,[10] respectively defining manslaughter and murder. Up to a point, they

[7] See *Nunez v R* (BZ CA, 25 February 2025) at [30], [31].
[8] ibid at [30]. See also at [31]: 'A simple direction inviting the jury to consider whether they were sure that the Appellants had intended to cause death of Mr. Sotz by unlawful harm would have been sufficient.'
[9] Dennis Baker and Glanville Williams, *Textbook of Criminal Law* (4th edn, Sweet & Maxwell 2015) para 15-001.
[10] CAP 101.

generally define manslaughter[11] in identical language as murder[12]—in the shared phrase 'causes the death of another person by any unlawful harm'. The difference, however, is that murder has the added element of '*intentionally* causes death of another person by any unlawful harm'. What the Court of Appeal indicated was the intent for murder (as described in s 117), not manslaughter (as described in s 116).

[14] In this opinion, there will be no immersive discussion of the law of manslaughter, since elements of the offence were not in issue except only in relation to the element of 'harm.' For a better appreciation of the issue presented, that particular element of the offence forms the starting point of this analysis.

[15] The common law world has produced extensive jurisprudence on manslaughter. This is because the branch of the crime known as 'unlawful *act* manslaughter' traditionally depended on the legal quality of the 'act' that caused death. The customary debate was whether the *act* would sufficiently attract conviction for manslaughter merely because the act was 'unlawful.' Should the act not also be 'dangerous'?[13]

[16] Doubtless mindful of that debate, the drafters of the Criminal Code of Belize cast the crime of manslaughter directly in terms of 'unlawful *harm*' rather than 'unlawful act.' Section 116 says so in this way:

> (1) Every person who causes the death of another person by any unlawful harm is guilty of manslaughter.
>
> (2) If the harm was negligently caused, he is guilty only of manslaughter by negligence.

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[11] Section 116 of the Criminal Code defines manslaughter as follows:

> (1) Every person who causes the death of another person by any unlawful harm is guilty of manslaughter.
> (2) If the harm was negligently caused, he is guilty only of manslaughter by negligence.

[12] Section 117 of the Criminal Code defines murder as follows:

> Every person who *intentionally* causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mentioned (emphasis added).

[13] See *R v Larkin* [1943] 1 All ER 217 at 219; *R v Church* [1966] 1 QB 59 at 70. See also *DPP v Newbury* [1977] AC 500 at 509; *R v Carey* [2006] EWCA Crim 17.

[17] What then is 'harm'? According to the *Oxford English Dictionary*, harm means: 'Evil (physical or otherwise) as done to or suffered by some person or thing; hurt, injury, damage, mischief. Often in the set phrase "to do more harm than good."'[14]

[18] Since the law doesn't trouble itself with trifles, the extent of seriousness of the harm must be considered in a charge of manslaughter. But that is a matter of degree rather than of the element itself. There is case law to that effect. In *R v Church*, Edmund Davies J, at the Court of Appeal of England and Wales, stated the leading proposition as follows:

> [T]he conclusion of this court is that an unlawful act causing the death of another cannot, simply because it is an unlawful act, render a manslaughter verdict inevitable. For such a verdict inexorably to follow, the unlawful act must be such as all sober and reasonable people would inevitably recognise must subject the other person to, at least, the risk of some harm resulting therefrom, albeit not serious harm.[15]

[19] *Schlossman v State*,[16] from the State of Maryland, is another instructive case. The defendant was convicted of manslaughter for the death of a homeless man with a chronically diseased heart who died of a heart attack. The prosecution's medical evidence was to the effect that the heart attack was the direct result of the stress occasioned by an altercation between the victim and the defendant during which the defendant poked the victim with a stick, urinated on him, threw paint on him, and kicked dirt and rubbish on him. It was found, on the basis of medical evidence, that the physical abuse to which the defendant subjected the victim had a direct causal connection with the victim's heart attack. Hence, the defendant was convicted of involuntary manslaughter.

[20] That harm, for purposes of manslaughter, can be physical or mental is also reflected in the case law. In *Gray v Barr*, for instance, Lord Denning MR observed that '[i]n the category of manslaughter relating to an unlawful act, the accused must do a dangerous act with the intention of frightening or harming someone, or with the

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[14] *Oxford English Dictionary* (2026) <https://www.oed.com/dictionary/harm_n?tl=true> accessed 17 March 2026.

[15] See *R v Church* [1966] 1 QB 59 at 70; *DPP v Newbury* [1977] AC 500 at 507, 509 – 510. See also *R v Carey* [2006] EWCA Crim 17.

[16] *Schlossman v State* 105 Md App 277 (1995). Reaffirmed in *Johnson v State* 223 Md App 128 (2015) at [18].

realisation that it is likely to frighten or harm someone, and nevertheless he goes on and does it, regardless of the consequences.'[17]

[21] So it is that battery (meaning application of physical force to the body of someone else) or deliberately subjecting her to mental distress will qualify as harm for purposes of s 116 of the Belize Criminal Code. Whether the degree of harm is such as would justify conviction for manslaughter is a question of fact for the jury.

[22] It is against the foregoing background that we shall approach the remaining issue in this appeal, originally raised as the second issue.

[23] Before the Court of Appeal, the Respondents complained that the trial judge had allowed the prosecution to adduce certain items of evidence that were more prejudicial than probative of the charge of manslaughter. The Court of Appeal accepted the submission as a reason to overturn the guilty verdict and rendered judgment accordingly. The prosecution has now further appealed that finding. It is to that issue that we must now concentrate the remainder of this analysis.

[24] The Respondents' submissions, which persuaded the Court of Appeal, related to certain photographs (hereafter the 'Photographic evidence') that the prosecution tendered into evidence. They were: (i) autopsy photographs showing small burn marks around Mr Sotz's left and right nipples; and (ii) photographs of the interrogation room, showing an electrical cord with the wires stripped at the tips. The Respondents complained that the photographs were more prejudicial than probative of the charge laid against them. In the submissions of Mr Saldivar (counsel for the Respondents), the mere presence of these photographs was enough to excite the imagination of the jury regarding guilt.

[25] The judge did not caution the jury against using the photographs in their consideration of the verdict. Mr Saldivar submitted that this was an error of law. Mindful of the charge and the facts and circumstances of the case, we disagree.

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[17] *Gray v Barr* [1971] 2 QB 554 at 568.

[26] A proper appreciation of the probative value of the impugned evidence in the context of this case requires keeping in mind the fuller elements of the offence of manslaughter. The Respondents were charged with manslaughter. As noted earlier, the offence is defined in s 116 of the Criminal Code of Belize as follows:

> (1) Every person who causes the death of another person by any unlawful harm is guilty of manslaughter.
>
> (2) If the harm was negligently caused, he is guilty only of manslaughter by negligence.[18]

[27] According to that provision, there are two kinds of manslaughter: proactive harm manslaughter and negligent harm manslaughter. The defining physical element (or *actus reus*) of either kind of manslaughter is to engage in conduct that generates unlawful harm which occasions death. The required mental element (or *mens rea*) is the intent to engage in the conduct that generates unlawful harm that occasions death. There are many ways in which harm can be generated unlawfully. It is neither necessary nor wise to attempt to list them all. But they say that art imitates life, so we can take examples from art to illustrate legal points. Movies abound which show people torturing their fellow human beings in a bid to extract confessions or obtain other information from their victims. It is not only violent criminals who are portrayed doing these things to other human beings in movies. State agents, including police officers, are not presumed to be above these abhorrent tactics. It is for that reason that human rights law generally prohibits from criminal proceedings the use of evidence obtained by torture. Torture is undoubtedly amongst the more odious ways of inflicting unlawful harm. Anyone who indulges in the conduct is called *hostis humani generis*—an enemy of all mankind. In setting out to outlaw the conduct, the international community defined torture as follows in the Convention against Torture:

> For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third

[18] CAP 101.

> person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[19]

[28] Evidently, the provision recognises that 'public official[s] or other person[s] acting in an official capacity' are not above torture.

[29] Certainly, in the case now on appeal, it was the aim of the prosecution to show that the photographic evidence was consistent with torture.[20] But, as we saw earlier, for purposes of manslaughter, unlawful harm need not take such an extreme form. Assault or battery of a lesser degree, such as slapping someone about, also amounts to the infliction of unlawful harm. Investigating police officers are allowed to ask questions to those they detain (as long as they informed them of their rights in the usual way), but they are not free to slap or strike their detainees.

[30] When any of these unlawful things—from slapping about to a more aggravated act of torture—is done to a human being, thereby causing or provoking the victim's death, the perpetrators expose themselves to the risk of prosecution for unlawful harm manslaughter pursuant to legislation like s 116(1) of the Criminal Code of Belize.

[31] In the event, a charge of manslaughter requires the prosecution to prove that the defendant was engaged in conduct that generated unlawful harm which caused the victim's death, and that the defendant engaged in that conduct intentionally. It is important to stress that the death of the victim is not the focus of the inquiry regarding the intention for manslaughter. It is rather the intention to engage in the conduct that generated unlawful harm. Whether or not the conduct in question entailed a foreseeable risk of death to the victim, from the point of view of a reasonable person in the position of the defendants, will be a question of fact for

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[19] See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 1(1).

[20] See Record of Appeal, Transcript of proceedings, *R v Nunez* (n 1)362.

the jury as the trier of fact. That question of fact will take into account the totality of the evidence—including available medical evidence showing the extent of injury inflicted on the victim—from which the jury may draw available inferences.

[32] It is thus open to the prosecution, without more, to adduce evidence tending to show that the conduct that generated unlawful harm was intentional. The photographic evidence has probative value in that regard.

[33] Furthermore, the probative value of the photograph evidence is given added significance by the defendant's theory of the case. Here, it is important to stress that defendants bear no obligation to prove their own innocence. They are entitled to silence and may not be compelled to testify in their own defence. They are entitled to make unsworn statements from the dock; and they may not be cross-examined when they make such statements. But none of these precepts means that what defendants say when they break their silence—or proffer alternative theories of the case—must be disregarded in the overall ferment of the criminal case.[21] It is well established that the jury may take into account the unsworn statement of a defendant—for what it is worth.[22] But the worth of an unsworn statement can cut either way. It may give credible colour to the case for the defence, as it may do to the case for the prosecution.

[34] In the present appeal, the Respondents' theory of the case was that at no time did they inflict harm of any sort upon Mr Sotz. All they did, they said in their unsworn statements,[23] was ask him questions about a burglary. That he got all worked up and verbally aggressive. That they allowed him to calm down. Then he started experiencing breathing difficulties. And then he died. The prosecution disagreed with that theory, insisting that the Respondents subjected Mr Sotz to a course of harmful physical abuse. To prove their own theory of the case, the prosecution adduced all the evidence showing that Mr Sotz's treatment in the hands of the Respondents was not nearly as innocent as what the defence's theory of the case

[21] See generally *R v Singh* [1962] AC 188 at 198; *R v Sparrow* [1973] 2 All ER 129.
[22] See, for instance, *DPP v Walker* (1974) 21 WIR 406 at 410 (JM PC) (Lord Salmon). See also *R v Coughlan* (1976) 63 Cr App R 33.
[23] See Record of Appeal, Transcript of proceedings, *R v Nunez* (n 1) at 420 – 422, 427 – 430.

suggested. The prosecution's medical evidence showed that the multiple bruises and skin abrasions on Mr Sotz, as well as his internal injuries, were consistent with Mr Guerra's evidence that he heard slapping and pounding as Mr Sotz cried out in increasing agony, urging his assailants to 'stop' and 'please stop'.

[35] In that overall context, the challenged pieces of photographic evidence are entirely unremarkable. They are part of the totality of the evidence tending to show that the Respondents were engaged in a course of conduct that intentionally occasioned unlawful harm upon Mr Sotz. Notably, in a mark of candid advocacy, counsel for the Respondents conceded in oral argument that there was objective reason to believe that Mr Sotz did experience some level of abuse in the hands of the Respondents while in their custody.

[36] In the final analysis, it is important to keep in mind the dictates of s 9 of the Criminal Code of Belize regarding the proof of intent. At a minimum, it permits the Court and the jury, as the case may be, to decide the question of intention 'by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.'

[37] We are thus not persuaded that the evidence was more prejudicial than probative of the charge of manslaughter.

[38] In light of our conclusion that the photographic evidence was not more prejudicial than probative, we do not consider it necessary to trouble the question of applicability of the proviso to s 216(1) of the Senior Courts Act 2022.

**Disposition**

[39] The Court in its determination, concludes as follows:

a. That the appeal is allowed.
b. The convictions of the Respondents are reinstated.
c. The matter is remitted to the Court of Appeal for the hearing and determination of the appeal by the Crown on sentencing.

/s/ M Rajnauth-Lee

**Mme Justice Rajnauth-Lee**

/s/ D Barrow

Mr Justice Barrow

/s/ P Jamadar

Mr Justice Jamadar

/s/ C Ononaiwu

Mme Justice Ononaiwu

/s/ C Eboe-Osuji

Mr Justice Eboe-Osuji