

IN THE SENIOR COURTS OF BELIZE

CENTRAL DISTRICT – BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT No C0012 /2024

BETWEEN:

THE KING

and

KENRICK KEVIN LONGSWORTH

Defendant

Before: The Honourable Mr. Justice Derick Sylvester

Appearances:

Mr. Riis Cattouse and Shannell Fernandez for the Crown.

Mr. Andrew Bennet for the Defendant.

2024: May 15; 16

JUDGMENT

[1] **SYLVESTER J**, Kenrick Kevin Longsworth (hereinafter the accused) was born on the 19th of August 1992. He was twenty-seven [27] years old at the time of the offences wherein he was charged. He is indicted for the offences of the murder of Mark Tuyul and attempted murder of Zemark Tuyul and Markeem Tuyul, who are the children of the accused's female partner, Zema Requena.

- [2] The particulars of the three-count indictment are that:
- a) Kenrick Kevin Longsworth on the 10th day of January 2020 at Belize City, in the Belize District, in the Central District of the High Court, murdered Mark Tuyul.
 - b) Kenrick Kevin Longsworth on the 10th day of January 2020 at Belize City, in the Belize District, in the Central District of the High Court, attempted to murder Zemark Tuyul.
 - c) Kenrick Kevin Longsworth on the 10th day of January 2020 at Belize City, in the Belize District, in the Central District of the High Court, attempted to murder Markeem Tuyul.
- [3] On the 10th day of January 2020, Zema Requena left the children with the accused, her male companion. She returned home approximately 5:00pm. The accused looked upset and told her, “Them pickney them frustrate me”. She then noticed Mark Tuyul’s face ‘beat up and bruised up’. She then took Mark to the hospital, where he was pronounced dead. Subsequently, the other children Zemark Tuyul and Markeem Tuyul were taken from the home in an ambulance, to the hospital, as they also had injuries.
- [4] The dates of birth of the children and their respective ages at the time of the offence are listed hereunder, together with the offences for which the accused was indicted.

Name	Date of birth	Age at the time of the offence	Offence Indicted
Zemark Tuyul	21 st April 2015	Four [4] years	Attempted murder
Mark Tuyul	29 th July 2016	Three [3] years	Murder
Markeem Tuyul	5 th September 2017	Two [2] Years	Attempted Murder

- [5] The accused was committed to stand trial before the Supreme Court for the crime of murder and attempted murder on the **20th March 2023**. As a result, he was tried by a judge alone.
- [6] The accused pleaded not guilty to the offences when he was arraigned on the 15th day of May 2024, in Belize High Court in Belize City.
- [7] Pursuant to the provisions of **Section 65A of the Indictable Procedure Act, Chapter 96 of the Laws of Belize, as amended by Act No. 5 of 2011**, the accused's trial was conducted before a judge of the Supreme Court sitting alone without a jury.
- [8] The crime of murder is defined at **Section 117 of the Criminal Code, Chapter 101 of the Laws of Belize, Revised Edition 2020** 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 section mentioned.”

- [9] The crime of attempted murder is defined at **Section 18, read along with section 117 of the Criminal Code, Chapter 101 of the Laws of Belize, Revised Edition 2020**.

Section 18 (1) of Chapter 101 of the Laws of Belize reads:

“A person who attempts to commit a crime by any means shall not be acquitted on the ground that by reason of the imperfection or other condition of the means, or by reason of any circumstances under which they are used , or by reason of any circumstances

affecting the person against whom or the thing in respect of which the crime is intended to be committed, or by reason of the absence of such person or thing, the crime could not be committed according to his intent.”

Section 107 of the Criminal Code creates the offence of attempt murder, and states as follows: –

“Every person who attempts to commit a murder shall be liable to imprisonment for life.”

[10] I have directed my mind to, and I am cognizant of the requirements of the Criminal Code of Belize, which provides at, **Section 18(6)** as follows:

“That any person who attempts to commit a crime shall be liable to be punished on conviction in the same manner as if he had committed the offence itself.”

Section 18(2) of Chapter 101 of the Laws of Belize, reads:

“That even if the attempt to commit an offence is frustrated by reason of circumstances, or events independent of his/her will, the person is deemed guilty of an attempt in the first degree and shall be punishable just as if the crime had been completed.”

Elements of the Offence of Murder

[11] In order to convict the accused of murder, the Crown is required to prove five elements so that I feel sure of each, viz, (1) that Mark Tuyul (hereinafter referred to as the deceased) is dead, (2) that he died of harm, (3) that the accused inflicted the harm that resulted in the death of Mark Tuyul, (4) that when the accused inflicted

the harm he did so with the intention to kill Mark Tuyul, and (5) that when the accused inflicted the harm on Mark Tuyul he did so without lawful justification.

Elements of the Offence of Attempted Murder

[12] To convict the accused of attempted murder I am duty bound to address the issue of whether the crown has presented evidence so that there is proof, so the court can feel sure, beyond a reasonable doubt that the accused attempted to murder Zemark Tuyul and Markeem Tuyul.

[13] The elements of the offence of attempt to murder was adumbrated by Carey JA in the Court of Appeal, in the **Queen v. in Peter Augustine**¹ (par. 13) as follows:

An attempt to commit a crime is itself a crime. Before the accused can be convicted of this offence, it must be proved.

(a) *that he had the intention to commit the full offence, and that to carry out that intention, he...*

(b) *did an act or acts which is/are steps towards the commission of the specific crime, which...*

(c) *are directly or immediately and not merely remotely connected with the commission of it, and...*

(d) *The doing of which, cannot be reasonable regarded as having any other purpose than the commission of the specific crime.*

It is noted that all the above must co-exists; for intention alone is not sufficient, it is not an offence merely to intend to commit a crime. Therefore, committing the act alone without intention is not sufficient. The acts that are done must be something more than mere preparation for the commission of the offence. Therefore, the

¹ Criminal Appeal # 8 of 2001

accused must have acted with the intent to commit murder, and he also must have gone beyond the bounds of mere preparation.

Intention

[14] I have addressed my mind to **Section (6)(1) of the Criminal Code** which prescribes the standard test for the meaning of **Intention** by posing the following question:

“Did the person whose conduct is in issue either intend to produce the result, or have no substantial doubt that his conduct would produce it?”

[15] I therefore note that I am required to be satisfied with the evidence to the extent that I am sure beyond a reasonable doubt that the elements of the offence of murder have been proven. Looking at the intent, it is noted the Crown must prove that the person who injured/harmed the complainant/s intended to produce the result of killing him/them by unlawfully inflicting bodily hurt/harm. **Section (9) of the Criminal Code** must also be taken into consideration on arriving at a decision.

[16] Further, in considering whether the accused intended to kill the complainant/s, I am duty bound to consider **Section (9) of the Criminal Code** as factor/s relevant to the intention of the accused.

a) whether death could have been a natural and probable result of the acts of the accused.

[17] All the evidence must be looked at and considered and from this body of evidence the intent to kill must be seen. Then by drawing the proper inferences the intention must lead to the final consideration of whether the accused can be convicted.

Circumstantial evidence

[18] I will direct myself cogently on the case for the Crown as submitted, that certain inferences can be drawn and when pieced together can lead to the inescapable conclusion of the accused’s guilt. Later in this judgment I will examine all the

evidence as presented by the prosecution. The case for the Prosecution is based partially on circumstantial evidence. It is well established, and I am guided, that it is “no derogation of evidence to say that it is circumstantial”².

[19] *“Circumstantial evidence is particularly powerful when it proves a variety of different facts all of which point to the same conclusion...[it] ‘works cumulatively, in geometrical progression, eliminating other possibilities’ and has been likened to a rope comprised of several cords: ‘One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus, it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a strong conclusion of guilt with as much certainty as human affairs can require or admit of.’³”*

[20] I would direct myself that a case built on circumstantial evidence often amounts to an accumulation of what might otherwise be dismissed as happenstance. Upon examination of the prosecution case, I am obliged to look critically at all the evidence in the round, to determine whether the facts as I find it, leads me to the conclusion, so that I am sure of the accused’s guilt⁴. In other words, the cumulative effect of the evidence led when taken holistically, leads to the inescapable conclusion that the accused is guilty so that I am sure of his guilt.⁵

Burden and Standard of Proof

[21] Sitting as a judge alone, I am both the judge of the facts and law. As such, I direct myself throughout my deliberation that the Crown has the burden of proof in this case. I am mindful that the accused is innocent until proven guilty. He has nothing

² August [2018] CCJ 7 (AJ)

³ Criminal Bench Book: Belize Barbados Guyana p. 342-343

⁴ *Mc Greevy v DPP* [1973] 1 WLR 276.

⁵ Criminal Bench Book page. 342

whatsoever to prove; rather, it is the prosecution that has the duty to prove each element of the offence of murder. The burden remains on the Crown, and it is beyond a reasonable doubt, that I must feel sure before I can convict.

[22] I shall further direct myself that the Crown must prove each element of the offence by providing me with evidence that I can feel sure of the respective elements. Ultimately, if I am sure of each element and have no reasonable doubt, then I can be certain of the guilt of the accused and may convict him. If, on the other hand, the crown fails to make me feel sure and I have a reasonable doubt of any of the elements of the offence I will be obliged to acquit the accused of murder and attempted murder.

The Prosecution Case: Overview

[23] The prosecution presented evidence from sixteen (16) witnesses to prove its case. Some were agreed witnesses pursuant to the Criminal Procedure Rules, part 10 and others were sworn and gave evidence under oath.

[24] The following witnesses were sworn, and led evidence inter alia as follows:

- a) **Daniel Daniels**- Crime Scene Technician [CST] Tendered 46 photos marked [DD1-46].
- b) **Martha Rhys**- Supt of Police Belmopan [Tendered the interview of the Accused Exhibit [MR 1]
- c) **Stephanie Davis** [Accused admitted to her to 'lashing' the children]
- d) **Zema Requena** [the mother of the children, was told by the accused that the children frustrated him]
- e) **Dr. Lloyd Ken** [Pathologist-listed the injuries that caused the death of Mark Tuyul]

[25] The undermentioned witnesses were agreed, including, all the doctors who were agreed as experts, and their evidence were read into the record of the court proceedings. The substance of their evidence is paraphrased as follows:

- a) **Lavern Longsworth's** evidence stated that Kenrick is her son and when frustrated he would normally beat the children with his hand, belt and stick. That Zema would also pinch them or wring their ears, when they were giving trouble. On 10th January 2020, she saw Kenrick who, while bathing Zemark was beating him with a flat piece of stick. She was about 13 feet away from them, the day was clear, and the sun was out. However, she didn't tell Kenrick anything, because he likes to 'rail' up.
- b) **CPL # 585 Rocael Casanova** in her evidence stated she is a Police Investigator. She was present at the hospital when Dr. Jorge Flores pronounced Mark Tuyul dead. She also attended at the house where the other children, Zemark and Markeem were seen with visible injuries; they were later transported via ambulance to the hospital. The Crime Scene was processed.
- c) **PC # 2261 Kevon Moro's** evidence was that he detained the accused with the assistance of Cpl. Martinez and a civilian along the Isabella Bank Village, Rural North. The accused was cautioned, handcuffed, and brought to the Queen Street Police Station, where he was issued with an acknowledgement form.
- d) **SGT # 396 Shani Alvarez's** evidence states that she is an officer attached to the Domestic Violence Unit and that Dr. Chulin had issued medico legal forms and certified the injuries on Zemark and Markeem as '**Grievous Harm**'. She then made arrangements to have a statement and video recording from Zema Requena. A statement was subsequently recorded from Zema Requena. She also witnessed the postmortem examination of

Mark Tuyul and the identification of the body by the mother Zema Requena. She further stated the accused was cautioned and reissued with an acknowledgement form.

- e) **DC # 2125 Rosalie Sutherland's** evidence states that she visited the hospital where Mark Tuyul was pronounced dead by Dr. Flores and observed visible injuries on both Markeem Tuyul and Zemark Tuyul.
- f) **Andrew Godfrey JP** evidence states that he was the Justice of the Peace who was called by ASP Martha Rhys to visit the police station for the purpose of witnessing and ensuring an interview was properly conducted, taken in writing, and recorded from the accused. Further, the accused consented to a DNA swab being taken from inside his mouth and he also witnessed the interview with Zema Requena.
- g) **Antonio Manzanero's** evidence states that on the 13th day of January 2020 at the request of Sgt. Alvarez, he visited the hospital for the purpose of witnessing and taking photos of the postmortem examination of Mark Tuyul, which was conducted in the presence of Dr. Lloyd Ken, and other officers. The body was identified by Zema Requena. A total of 114 photos were admitted into evidence and marked "**AM1-114**".
- h) **Carilee Perteau's** evidence states that she was the neighbour of the accused and Zema Requena, and that she knows Kenrick all her life. On the 10th day of January 2019 [meaning 2020], Zema accompanied her to court. Upon the return to their dwelling, she observed Zema threw herself against a fence, and appeared as if she was in her own world. A few minutes after she saw her brother, Paul Alvarez with one of Zema's sons holding him in his hands, and the child hands were hanging, and the baby looked lifeless.

- l) **Dr. Luis Chulin's** evidence states that on the 10th January 2020 at about 9:44 pm, at the hospital he examined Zemark Tuyul and Markeem Tuyul where he observed injuries to their body. Zemark Tuyul and Markeem Tuyul's injuries were classified as "**Grievous Harm**" due to multiple traumas. Markeem Tuyul had bruises and swelling noticed on his face, neck, arms, abdomen, back and legs, left knee with a cut wound of approximately 2-3 cm that had been sutured. In relation to the anus and genital no signs of trauma nor abuse was noticed.

- i) **Dr. Mauro Castello's** evidence states that on the 10th January 2020, she attended to Zemark Tuyul at the hospital; he had an actively bleeding open wound to his shin. There were other injuries to the face, back and gluteus. Thereafter Zemark started passing dark urine, and he was referred to the paediatric department.

- j) **Dr. Jorge Flores'** evidence states that on the 10th day of January 2020, at 6:16 pm, while at the hospital he attended to Mark Tuyul. He observed, no signs of life, cyanosis, unresponsive with injuries to face, neck and right side of the rib cage. He then pronounced Mark Tuyul dead.

[26] The Crown's case against the accused relied partially on circumstantial evidence through the testimonies of, Zema Requena, Carilee Perteau, Lavern Longworth, Martha Rhys, Supt of Police, and experts Dr. Lloyd Ken, Dr. Luis Chulino, Dr. Mauro Castell and Dr. Jorge Flores. The witnesses' testimony shall be examined hereunder.

[27] I will now examine evidence in relation to the five elements which must be proved by the Prosecution to make me sure of the guilt of the accused.

Mark Tuyul is Dead and Died of Harm

- [28] The evidence presented by the Crown through the statements of Dr. Jorge Flores and Dr. Lloyd Ken respectively, establishes beyond a reasonable doubt that Mark Tuyul is dead and died from harm.

Testimony of Dr. Jorge Flores

- [29] Dr. Jorge Flores was accepted as an expert and his evidence states as follows:

“Ref: Mark Tuyul

D.O.B 29th July 2016

The above named was brought to the Accident and Emergency Department of the Karl Heusner Memorial Hospital on January 10, 2020, at approximately 6:01 pm.

On arrival the patient was received with no signs of life, cyanosis, unresponsive with scrapes to the face and neck and bruise to the right side of the ribcage.

On evaluation the patient had no vital signs, anal bleeding and damage to the sphincter was noted, CPR was performed which was unsuccessful for approximately 20 minutes.

The patient was pronounced dead at 6: 16 pm.”

Testimony of Dr. Lloyd Ken

- [30] On the 16th day of May 2024, **Dr. Lloyd Ken** gave sworn testimony and was deemed an expert in Forensic Pathology. He was cross examined, and he gave the cause of death of Mark Tuyul as follows:

“-CAUSE OF DEATH- Asphyxia, due to combined, multiple blunt force traumatic injuries to the head, with bronchopulmonary aspirations of gastric contents as a consequence of thoracoabdominal compression. He was pinned down or pressed down to the chest and abdominal region, so the stomach contents were pressed out of the stomach into the windpipe.”

- [31] The dual reports of Dr. Flores and Dr. Ken have satisfied me that I am sure that Mark Tuyul is dead.

[32] The evidence of Dr. Lloyd Ken detailed injuries to the face head, chest, abdomen, genito-anal injuries on the body of the deceased.

[33] This evidence from the expert medical witnesses, including its cogent quality, I am left to conclude without doubt that the deceased died from harm.

[34] The **Belize Criminal Code Cap. 101 section 96** describes harm as follows:

“Harm” - means any bodily hurt, disease, or disorder, whether permanent or temporary.

[35] Later in this judgment I address how I considered the expert evidence presented in this trial.

Was There Harm Inflicted on Zemark Tuyul and Markeem Tuyul?

[36] The evidence from the crown is uncontroverted in that Dr. Luis Chulin’s and Dr. Mauro Castello’s agreed evidence confirms beyond a reasonable doubt that harm in accordance with **Section 96 of the Belize Criminal Code** was inflicted on both Zemark Tuyul and Markeem Tuyul. In relation to Markeem’s injuries, there were sutured injuries and no evidence of recent or fresh injuries were depicted from the evidence.

[37] **Dr. Luis Chulin’s** agreed expert medical evidence in its totality states as follows:

“Ref: Zemark Tuyul
D.O.B: 21 April, 2015

A medico legal report was done at Accident and Emergency Department of Karl Heusner Memorial Hospital Authority (KHMHA) on the 10th of January 2020 at around 9:44 pm after evaluating the above-mentioned.

I was called by Accident and Emergency personnel on said date, upon reaching I saw the above — mentioned child already in hospital's pajamas who was being hydrated. He had already been evaluated by surgical team and pictures had already been taken by police personnel.

I evaluated the child along with Dr. Lila Estephan, Medical Officer and in the presence of the surgical team and police personnel. My report was mostly based on the inquiry if the child had been sexually assaulted since his care required mainly surgical management.

Upon examination of child was laying on the bed with severe injuries (trauma) to various part of his body that included swollen face with a bruised right eye, a sutured area of about 4-5 cm in width already sutured was seen. Multiple hematomas noted to upper and lower limbs, abdomen, back and his flanks. (Specifics of said traumas will be given in the report of the surgical team). In relation with anus and genital, there were no signs of trauma or abuse.

The child was admitted by the surgical team and other treatment given will be submitted by them.

On the 15th of January 2020, after routine laboratory checkup done on the child, surgical team noticed that he was having serious complications, and an acute kidney injury was diagnosed so the paediatric team was called for evaluation.

After child was evaluated by the paediatric team and it was concluded that child was suffering from Rhabdomyolysis (serious complication due to direct muscle injury) and at this time he was transferred to paediatric care.

After continuous intervention and treatment, the child resolved said complication and was discharged from paediatric care on the 25 of January 2020.

With regards to permanent disfigurement, it would have to be answered by the surgical team.

*Diagnoses: Child with multiple trauma which was classified as ‘**Grievous Harm**’ on the Belize Police Department Medico Legal Form.”
Rhabdomyolysis resolved.*

- [38] **Dr. Luis Chulin** expert medical evidence, detailed the injuries, but of importance, there were no fresh injuries, he wrote of a “sutured injury” and nil internal injuries. He listed Markeem Tuyul injuries as follows:

“Ref: Markeem Tuyul
D.O.B 5th September 2017

I was called from the Accident and emergency Department of the Karl Heusner Memorial Hospital on January 10, 2020 at approximately 9:22 pm. On reaching I saw a male child already in hospital's pajamas being hydrated and had already been evaluated by the surgical team, pictures had already been taken by police personnel.

I then began to evaluate the child along with my medical officer Dr. Lila Estephan in the presence of police personnel.

Upon examination child was positioned on his back and bruises and swelling noticed on his face, neck, arms, abdomen, back and legs, left knee with a cut wound of approximately 2-3cm that had been sutured. (See page 5 on the graphic description of injury).

In relation with anus and genital no signs of trauma nor abuse was noticed.

Child was then admitted by the surgical team and other treatment done would have to be explained by said team. Looking at all the trauma inflicted on this child did permanently injured his health, nil internal injury occurred to him but his life was in fact endangered.

With regards to permanent disfigurement would have to be answered by the surgical team.

Diagnoses: child with multiple trauma

The injuries were classified as “**Grievous Harm**” on the Medico Legal Form

Dr. Luis E. Chillin”

Did the Accused Inflict the Harm Which Caused the Death of Mark Tuyul?

Did the Accused Intend to Kill Zemark Tuyul and Markeem Tuyul?

[39] Since, the case for the prosecution rests partially on the circumstantial evidence of the witnesses namely.

[i] Zema Requena.

[ii] Carilee Perteau.

[iii] Stephanie Davis.

[iv] Lavern Longsworth.

[v] Martha Rhys.

[40] I will give a synopsis of the evidence hereunder and examine certain parts of the evidence in detail to determine whether the Crown has satisfied me that I feel sure that the accused inflicted harm on the deceased and when he did so, it was done with the intention to kill. I will keep foremost in my mind, that in Belize the offence of murder is a crime of specific intent, that being the intent to kill.

(a) **Testimony of Zema Requena [Mother of the Deceased]**

[41] The evidence of Zema Requena together with her cross examination are highlighted hereunder, there was no re-examination by the crown.

[42] That, she lived in Lovely Lane with her three children namely, Mark, Zemark and Markeem together with her common law husband, the accused, who is not the father of the children. She was employed as a Janitor at the Novellos Bus Terminal. Her three [3] children are as follows:

Zeemark Tuyul	- born 21 st April 2015- four [4] years old.
Mark Tuyul	- born 29 th July 2016- [3] three years old.
Markeem Tuyul	- born 5 th Sep 2017- [2] two years old.

[43] On the 10th of January 2020, she left the children home with the accused. When she left there were no issues with her and the accused, everything was good, and the children were all normal. However, when she returned at about 5:00pm, the accused looked upset, and she enquired what happened. The accused told her next time carry her 'pickney'. When she went inside the house she saw Mark Tuyul, with injuries on his face. When she enquired of him what was wrong, he said, 'the pickney them frustrate me'. The accused then requested of her to buy a cigarette in the shop next door. Upon her return she took the baby [Mark Tuyul] to the hospital. Upon arrival at the hospital, she passed out. Later, the ambulance took the other children from the home. She attended at the postmortem of Mark Tuyul. She stated when

she left on the 10th January 2020, the children were healthy, she fed them and told them go to bed. She also testified that, both her and the accused would penalise the children, but not that severe. He would clap them with his hand and get a belt and “*stin dem*”, and she would normally “*clap them*” but she would never abuse the children.

- [44] Zema Requena was cross examined, wherein, she admitted that both she and the accused would physically strike the children, but she will never hurt the children. She stated that Mark Tuyul had a medical condition and some complications, asthma and sickle cell. That, a year before he had to do something with his throat, and he was born premature. She maintained that when she left the children, they were normal. She further, testified that it is not normal for the accused to abuse the children. She maintained she did not cause the injuries.
- [45] The accused in his evidence, which will be dealt with later, confirmed that he physically ‘clapped’ Mark Tuyul in his head with his hands, both in sworn testimony and his interview. However, he maintains the fatal injuries were inflicted on the children by Zema Requena after he indicated to her that he could not continue with the relationship.
- [46] The evidence of Zema Requena wherein she would “*clap*” the children meaning striking them with the hand, and further she was aware that the accused would normally, “*clap them*” and sometimes “*sting dem*” with a belt. It is unfortunate and disheartening. The children were ages 2-4 years of age at the time of the offence, mere toddlers, who were being subjected to such physical abuse in the form of punishment. This in my view account for the old injuries that were seen by Dr. Ken when he conducted the postmortem and the old injuries seen by Dr. Luis Chulin on Markeem Tuyul. I would make no further comment on Zema Requena’s conduct as she is not an accused before me in this trial.

[47] I am aware that I can accept the whole of a witness testimony or part of it, and I can assess credibility and demeanor of the witness to come to that conclusion. I have examined Zema Requena when she gave her testimony and she appeared credible and unshaken in cross examination in relation to some parts of her testimony, for example, the way she left the children in the care of the accused. However, upon her return, Mark Tuyul had physical injuries. She gave no evidence in relation to the other two children as she did not visit them in the room upon her return to the home. Thereafter, she had left with Mark Tuyul for the hospital. She made no enquiries about the other two [2] children before she left for the hospital with Mark Tuyul.

[48] The Defence put to Zema Requena in cross examination, that it was she who inflicted the injuries because the accused was ending the relationship, and in response she said, 'I look crazy to hurt my pickney over man when I could always find another man'. I accept and find credible that the witness Zema Requena would normally inflict physical punishment on the children but not during the period when the accused was alone with the children which is up to 5:00pm on 10th January, 2020.

[49] I am therefore convinced that when Zema Requena left the children with the accused they were normal. However, I take note and accept as per the Doctors evidence that there were old and sutured injuries, which I can ascertain from the evidence pre-dated the 10th of January 2020.

(b) Agreed Testimony of Carilee Perteau [Friend of Zema Requena who went out with her on 10th January 2020]

[50] The evidence of Carilee Perteau also called "*Kaika*", states that on the 10 January 2020, Zema Requena who is her neighbour, came to her shop, and she accompanied her to the family court. She knew the accused, as she once lived with his mother for a few months when she was 18 or 19 years old, and the accused was also residing in the same house at the time. They returned about 4:30 to 4:45 pm that day. Zema went into her house as they live in very close proximity. Her evidence

is that it was one big house divided into two, she lives in half and Zema lives in the other half. She saw Kenrick walk past to get cigarette from the shop. Then she heard Zema say, “*Dis da lone rass mien*”. She asked her what happened, she did not answer, and she threw herself against the fence. She looked frightened. Zema then requested a dollar and went to buy a cigarette, she came back and looked as if she was in her own world. Then her brother Paul Alvarez came with one of Zema’s children holding him, with his hands hanging. He went to the check point and Zema went also. The baby looked lifeless. The accused was on the street looking on. Then her baby started crying and she left to attend to her baby. At approximately 7:00 pm the police van came, and the accused ran.

[51] The agreed statement of Carilee Perteau, is undisputed and supports the evidence of Zema Requena that, Zema was away, and the children were left with the accused, until approximately 5:00pm. Therefore, the only reasonable and inescapable conclusion is that the accused had the care, custody, and control of the children during that period. Further, Zema’s behaviour when she returned, and saw the condition of the child Mark Tuyul, evidenced shock and dismay. This was confirmed by Zema in her evidence and corroborated by Carilee Perteau.

[52] I am satisfied to the extent that I feel sure, that the accused had the control and custody of the children on the 10th of January 2020 from 10:00 am to 5:00pm when Zema Requena returned, and upon seeing the injuries on Mark, she was in indeed in shock.

(c) Sworn testimony of Stephanie Davis

[53] The evidence of Stephanie Davis states that on Friday 10th January 2020, she recalled socialising with some friends, when she saw Kenrick Longsworth. She asked Mr. Longsworth what are you doing here, and he said he came to see her. He told her he was frustrated, he told her he lashed his kids. She asked him, you lash the baby dey, but he didn’t answer. Thereafter she saw the police went to her neighbour, and they said they were looking for Kenrick, she was frightened, she didn’t know Kenrick did something, so she said nothing to them.

- [54] After the police left, she told Kenrick, the police were looking for him. He said he is going to the station to see why they are looking for him. They both borrowed two bikes, however, Kenrick rode in a different direction and did not go to the station as promised.
- [55] In cross-examination, the witness spoke to the character of the accused when she said, I do not know Kenrick as that type of person. I know Kenrick as a kind person, not anyone violent. I know him to be kind and loving.
- [56] The sworn testimony of Stephanie Davis, whose testimony was credible, her demeanour under cross-examination has led me to the conclusion that she is believable and had no interest to serve than speak the truth. She categorically stated, that Kenrick told her he lashed the kids.

(e) Agreed Testimony of Lavern Longworth [Mother of the Accused]

- [57] Ms. Longworth's evidence states, that she is the mother of Kenrick Kevin Longworth, 27yrs old who was born on August 19, 1992. Sometimes Kenrick is in a good mood but sometimes he gets ignorant. In 2016 he moved with her to the Saint Martin's area because her house had burned down. However, about two months ago Kenrick moved to Lovely Lane with his girlfriend Zema and her three children Zemark, Mark, and Markeem. They lived with her for more than one month and she noticed that the children were rude. This means that they like to cry for everything, and they like to have their own way. Sometimes Kenrick is frustrated when the children give trouble, he beat the children. He would lash them with a belt, with his hand and stick and I would tell him to leave the children alone and he would listen to me, and he leaves them alone. Sometimes Zema would pinch them or wring their ears when they give trouble.
- [58] On Friday 10th January 2020, from some time after 10:00am she was in front of "Jenny" shop. For most of the day she was there because she does not live far from

the shop. There was a lot of them out there that morning including Kenrick, Zema, Carilee who we call "*Kaika*" and her daughter Kyla Reynolds. Kenrick had just come from court. He asked her for ten dollars, but she did not have any money, so he asked her for a phone call, and she lent him her phone. She saw him say something to Zema and Zema left. She came back shortly after with some food and then they went home. She believed they went to eat and feed the children. Kenrick and Zema came back to the shop and then Zema left again to go home to get ready to go out with Carilee. Carilee and Zema left together because Carilee said she had to take clothes for her daughter to go to court for 1:30 that afternoon. Sometime after 2:00pm Kenrick came from home and told her to go and look for Zema at the Family Court. He gave her a bicycle to go on and she left to look for Zema on the bicycle. At this time Kenrick looked normal.

Nothing seems strange about him. Shortly after, Zema came from the back of the yard where her house is, and she heard her ask Carilee for a dollar. Zema looked normal and she went to the shop and bought a cigarette. She then went back to her house. Vicente shouted from upstairs and told her to go and see what was happening. She then went to see what was happening and Ms. Therese was holding Zema's son Mark in her hand and she said, "*The baby dead*". She was asking what happened, but no one answered her. They were trying to get a vehicle to take them to the hospital. When she saw Mark in Ms. Therese's hand, he looked like he was sleeping. She got into a taxi and went to meet Zema at the hospital. When she went to the hospital Kenrick was right there standing up on the street side.

[59] She further stated that on Friday 10th January 2020 when she went to Kenrick's house, it was some time in the afternoon. She stood up at the gate that leads to Kenrick's house and saw Kenrick outside in the yard bathing Zemark, she was about thirteen feet away and could see them clearly. Kenrick was bathing Zemark, he was beating him with a flat piece of stick that is about two feet long. As she saw this she turned around and left the yard. At the time when he was beating Zemark she did not see the other two children Mark and Markeem.

[60] The undisputed evidence from Ms. Longworth, is that she witnessed Kenrick beating Zemark with a flat piece of stick about two feet long, on the said day that the Doctor observed the injuries on him and Mark Tuyul. This is strong circumstantial evidence that I will take into consideration, when I am examining holistically the medical evidence of the Doctors who examined the children, the recent injuries, and the evidence of Carilyn Perteau, coupled with the police interview of the accused which was taken by Supt. Martha Rhys.

d) Agreed testimony of Superintendent Martha Rhys

[61] The testimony of Superintendent Martha Rhys was agreed by both the defence and the prosecution. However, she gave sworn testimony solely for the purpose of tendering the police interview of the accused.

Interview of the Accused

[62] The accused's statement in particular question 18 confirms that he hit Mark. He stated he "boxed" him in his head on two occasions, which was the day that the alleged incident occurred. This I will take into consideration, in reaching my final decision in this matter as to whether the accused inflicted harm on the children, with the intention to cause their death. He further asserted at questions 20-24 that it was Zema Requena, the mother of the children who struck the children causing the major injuries. I have concluded that the injuries which caused the death of Mark Tuyul and injures to Zemark Tuyul were inflicted by the accused. This is based upon my assessment of the evidence, including the accused's statement, as well as the testimonies of Carilee Perteau and Lavern Longworth.

[63] I will now direct myself on how to treat with the expert evidence.

Expert Evidence

[64] In relation to the expert testimony⁶ of the numerous doctors⁷ who led evidence either sworn or agreed, I will direct myself that I shall determine whether I accept the expert evidence and what weight I should reasonably attach to it, if I do accept it. The testimony of experts is within their areas of expertise. The testimony of an expert should be assessed in the same manner as the testimony of a non-expert witness. Therefore, I am not compelled to accept the expert's testimony because it is from an expert. I may accept or disbelieve all, none or part of the testimony of an expert just as with any other witness. While the expert opinion is not binding on me, I should "*not simply cast aside expert evidence without some cogent reason*".⁸ The expert opinion must be based on facts that are in evidence and if the testimony is not based on facts, I should give the expert opinion less weight.

I have no reason to disbelieve Dr. Lloyd Ken, Dr. Luis Chulin, Dr. Mauro Castello and Dr. Jorge Flores, as it relates to the cause of death and the injuries as detailed in the respective reports. In addition, I accept the cumulative evidence of the Doctors as experts in their field of expertise. As a final note, none of this evidence was challenged materially and some was agreed evidence.

[65] Dr. Lloyd Ken's evidence was detailed and gave evidence of both recent and old injuries. In relation to Mark Tuyul, there were injuries including, numerous curved fingernail markings around the ears, injuries to the head and chest etc. The cause of death was asphyxia, due to combined, multiple blunt force traumatic injuries to the head, with bronchopulmonary aspirations of gastric contents because of thoracoabdominal compression. Dr Ken states the deceased was pinned down or pressed down to the chest and abdominal region, so the stomach contents were pressed out of the stomach into the windpipe.

⁶ Evidence Act Cap 95. Section 36 [Use of report of official analysts as prima facie evidence]

⁷ Evidence Act Cap 95. Section 45 [Expert evidence- can be tendered]

⁸ Criminal Bench Book [pages 348-367]

[66] Evidently, from Dr. Ken's evidence, Mark Tuyul was asphyxiated due to the blockage of the windpipe from the stomach contents combined with blunt force traumatic injuries.

Crown and Defence Submission Regarding Exhibits DD 24 & DD 45

[67] The Crown and defence submitted in their closing submission, that the exhibit in the photograph tendered by Denis Daniels as **DD24 and DD45** which shows a stick which is the handle of a shovel, wherein the accused under cross-examination stated he had it in the house for Arlene's husband. The Crown submitted it is not far fetch, that the accused would beat someone else with it. The marks on the children could have been caused by the very said stick in the exhibit abovementioned.

[68] The defence retorted, that the stick was for Arlene's man and not for the children. It was to protect the home of the accused from someone who was stealing. Therefore, the marks on the skin of the children cannot be from the stick in exhibit **DD 24 and DD45**. Further, the defence submitted it was the mother Zema Requena who "*stin*" the children with the stick when the accused sought to terminate the relationship. Also, the mother indeed admitted customarily hitting the children, albeit not with a stick.

[69] I have examined the exhibits DD 24 and DD45, together with the mark patterns on the photos tendered of the marks on the body of children, I cannot determine whether the stick tendered into evidence caused those marks. It would lead to a quantum leap of which I am not qualified/ authorized or have the expertise to make. There was no forensic evidence or mark pattern analysis or comparative analysis to determine whether the wooden handle of the shovel/stick was used on the children. In any event, the most I can say is, if an adult were to use the handle of a shovel on a two-, three- and four-year-old child to beat them, the injuries may have been more dire. I would go no further with this comment, and I make no further pronouncement on the issue, as no forensic expert evidence was led to enable me to come to a definitive conclusion, one way or the other.

[70] Without the scientific, forensic and fingerprint pattern analysis or other forms of expert evidence in relation to mark pattern analysis, the court is therefore left to examine the matter circumstantially, together with, the partial confession statement of the accused, the statements of Zema Requena, Carilee Perteau, Lavern Longworth, Supt. Martha Rhys and the medical expert evidence. There was also no forensic evidence led in relation to DNA or mark pattern analysis of the fingernail markings found Mark Tuyul.

[71] The *sine qua non* of a modern criminal justice system is the need for forensic, scientific and other forms of expert evidence including DNA, in criminal trials. This statement was opined in a recent decision from our Apex Court the Caribbean Court of Justice, in the matter of, **Roy Jacobs v. State**⁹ Anderson J, at par. 31 states thus:

(31) This Court has repeatedly stated its preference for the reliance on modern modes of forensic evidence over eyewitness and confession evidence: **Sealy v R**; 12 **Edwards v R**. 13 This preference has now been affirmed in the regional Needham's Point Declaration on Criminal Justice Reform adopted in Barbados in October 2023.

[72] The CCJ Academy of Law at the Seventh Biennial Law Conference in the Republic of Barbados, **Needham's Point Declaration on Criminal Justice Reform: Achieving A Modern Criminal Justice System** endorsed the greater use of forensic, scientific and other evidence in a trilogy of declarations namely, 6, 11 and 18 which states:

6. That laws be enacted to provide for greater use of forensic, scientific, digital, and expert witness evidence, including the use of modern evidence gathering techniques such as interception of communications, digital recording of

⁹ [2024] CCJ 9 [GY]

confessions and interviews, and DNA testing. This is preferable to prosecutions based solely on admissions and confessions.

11. That the capabilities and use of forensic science centers in the region be strengthened to enhance the prosecution of serious crimes, including organised crime.

18. That police and prosecution make greater use of forensic, scientific, digital and expert witness evidence, digital recording of confessions and interviews, and DNA testing on the basis that this is preferable to prosecutions based solely on admissions and confessions.

[73] The above prescriptive declarations, can shine no brighter light on the necessity for, and the need to have, forensic evidence, training and centers to achieve a modern criminal justice system.

Deliberation on Whether the Accused Harmed the Deceased

[74] Based on the totality of the prosecution evidence, in particular the collective evidence of Zema Requena regarding the condition of the children when she left them in the accused care and upon her return, including the condition of Mark Tuyul and later the other two children. The evidence of, Carilee Perteau whom the accused told "*he lash the child*"; Lavern Longsworth who saw the accused hitting Zemark Tuyul with a stick on the said day of the alleged offence; the police interview and sworn testimony of the accused wherein he stated he hit the children, him having the opportunity and was the only one who had custody of the children since Zema Left them in his care. I have no doubt that the accused caused the harm that killed the deceased. The crown proved beyond a reasonable doubt that the accused was at home, and he inflicted harm on the children. The children were left with the accused unharmed as per Zema Requena when she left and when she returned,

they were injured. I will deal with Zemark Tuyul, separately as his injuries were deemed old injuries by Dr. Chulin's testimony.

[75] For completeness, I do not accept the theory of the defence, that it was Zema Requena who inflicted the injuries, which caused the death of Mark Tuyul and caused the harm to the other children. Dr. Lloyd Ken testified of old scars seen on the gluteal region, linear scars, anterior aspect of the neck and ulcerated lesion on the left parietal region of the scalp with healing margins. These were old injuries.

[76] As mentioned earlier in this judgment, the standard of proof in a criminal case is that I must feel sure of each element to convict. I am sure, without a reasonable doubt, that on the 10th January 2020, the accused inflicted fatal harm on Mark Tuyul and harm on the other child namely, Zemark Tuyul. I would deal with Markeem Tuyul separately, as I indicated before his injuries were old, sutured injuries.

Intention to kill Mark Tuyul/Zemark Tuyul/Markeem Tuyul

[77] Having concluded that the accused caused the harm to the deceased, I turn my attention to whether he intended to kill the deceased and the other two children when he harmed them. The intention to kill, as stated prior is the *mens rea* for murder in Belize.

[78] **Section 117 of the Criminal Code**, informs and guides me when I examine the surrounding circumstances in this matter to determine the intention of the accused. Section 9 of the Criminal Code states that to determine if an accused person intended to produce a particular result by his conduct, it must be decided by reference to all the evidence, drawing such inferences from that evidence as appear proper in the circumstances. I have directed myself in this regard and will deliberately examine the element of intention.

Further, I am mindful that I am not bound to infer an intention to kill from the mere fact that death was in my opinion a natural and probable result of the action of the

accused. This is, however, a fact that is relevant to the question of intent and I would have to take it into account when considering all the evidence and the proper inferences to be drawn from that evidence.

[79] I considered the following factors in deliberating the element of intention to kill in this case - the evidence of the witnesses. Zema Requena's evidence was that the accused was otherwise a good parent except on occasion when they both physically struck the children. He had never done anything like that before. I also note that the specific intent for murder can be formed at the spur of the moment and no specific planning is necessary. I have also considered the fact that the accused admitted to hitting the children even on the day in question. However, he asserted under examination-in-chief that he was correcting the children, which seemed to have been the modus operandi, with the parents, unfortunate as it is. I must be sure that the accused had the specific intent to kill Mark Tuyul and the children.

[80] In the circumstances and considering the circumstantial and other evidence of all the witnesses in the round, as presented, I am satisfied that I am sure the accused intended to cause harm to the children, which resulted in the death of Mark Tuyul and injuries to Zemark Tuyul. I state categorically that the evidence of the doctor stated there were no recent injuries to Markeem Tuyul, so I am left to conclude that there were no injuries inflicted by the accused on the 10th January 2020.

[81] Further, I am not satisfied that I feel sure that the accused intended to kill the children. I have reasonable doubt that the element of intention to kill has been proven by the crown to the requisite standard. However, the accused intended to cause harm to the children as per **Section 96 of the Criminal Code, Cap. 101** which states:

“any bodily hurt, disease or disorder, whether permanent or temporary.”

[82] I am therefore guided by **section 116 of the Criminal Code Cap 101** which defines Manslaughter as:

“Every person who causes the death of another person by unlawful harm is guilty of manslaughter”.

And **Section 126 (1) of the Indictable Procedure Code** which states:

“Upon an indictment charging an accused person with murder, if the prosecution fails to prove that the accused person intentionally caused the death of the deceased, but the jury is satisfied that the accused person caused the death of the deceased by unlawful harm, it shall find the accused person not guilty of murder but guilty of manslaughter.”

[83] In relation to Zemark Tuyul I am satisfied to the extent that I am sure that the accused caused harm to him on the 10th January 2020, and therefore can be held liable for any other crime which has been proved. I am guided by the Indictable Procedure Act **Section 136, Cap 96** which states:

*“Every count of an indictment shall be deemed divisible, and if the commission of the crime charged, as is described in the enactment creating the crime, or as charged in the count, **includes the commission of any other crime, the accused person may be convicted of any crime so included which is proved**, although the whole crime charged is not proved, or he may be convicted of an attempt to commit any crime so included.”*

[84] The prosecution has satisfied me to the extent that I feel sure that the accused committed intentional harm to Zemark Tuyul contrary to **Section 79 and 96 of the Criminal Code Cap 101**. The former section states:

“Any person who intentionally and unlawfully causes harm to a person shall be liable to imprisonment for five years.”

[85] In relation to Markeem Tuyul, the injuries being old injuries, I therefore cannot conclude to the extent that I feel sure that firstly, the injuries were inflicted on the 10th January 2020 or by the accused. Therefore, there is not sufficient evidence

before me in relation to the child Markeem Tuyul, that the accused caused harm to him on the 10th January 2020.

[86] The Crown has satisfied me, to the extent that I am sure that the accused, killed Mark Tuyul by unlawful harm and therefore is guilty of “**Manslaughter**”. In relation to Zemark Tuyul I am satisfied beyond a reasonable doubt that the accused did commit the offence of wounding. In relation to Markeem Tuyul, I am not satisfied to the extent that I am sure that the accused committed any offence in relation to him, including wounding on the 10th day of January 2020.

The Defence

[87] As the judge of the facts, I have the duty to consider the defence accurately and faithfully, as I did the prosecution¹⁰.

[88] At the close of the case for the prosecution, I informed the accused of the three rights he is entitled to as an accused person in a criminal case in Belize. That he can remain silent, give an unsworn statement or give sworn or affirmed testimony. I also explained to the accused how the court would view whichever option he exercised-not holding it against him if he chose to exercise his right to be silent; considering the content of any unsworn statement and giving it whatever weight I thought the statement was due; and treating sworn or affirmed evidence as all other sworn evidence, that is accepting what I believe and rejecting what I disbelieve. The accused elected, after consulting with his Attorney, to exercise his right to provide sworn testimony in the trial. The defence did not call any witnesses.

Testimony of the Accused

¹⁰ **Gomez v the Queen**, Criminal Appeal No. 17 of 2012.

[89] The defence, as can be gleaned from the sworn testimony of the accused is a denial of the offence and in the alternative, claiming it was an accident. The essence of the accused's testimony is that he did inflict punishment on Mark Tuyul but did not cause his death. It was Zema Requena the mother of the children who got angry when he ended the relationship and turned her anger on the children. The accused agreed that he did strike the deceased and one of the children namely, Zemark Tuyul, but denies inflicting the level of injuries as stated by the doctors.

[90] The testimony of the accused, can be summarised in the following words.

- i. That he lived at 27 Lovely Lane, prior to the incident 10th January 2020, he was living with Zema Requena and her three (3) kids, Zemark, Mark and Markeem. The 3 children are not his biological children; he is a loving person and usually takes care of them and carry them to school.
- ii. He would normally instruct the children what to do. He would bathe the children and take care of them when Zema was working at the Belize Bus terminal. He recalled the 10th January 2020. He woke up after 7am; Zema was there beside him, the children were in the room with him. He went to court and came back at about 10 minutes to 11am. When he got back from court the children were in the house.
- iii. He gave Zema money to buy fry chicken which they ate. Later they went by the Chinese to hang with the crowd that was in front of the Chinese shop. Then Zema asked him if she can go with Carilee, and he agreed. They kissed and she left.
- iv. While at the house, he put the children to sleep. The children went on the sponge, and he went on the mattress. He was awakened because he had a bladder problem, then used the bathroom. Then he checked to see if the children were in the room. The room was dark as it had one window, then he went back to sleep.

- v. When he got up, he realised, Mark was not on the sponge in the room, so he walked outside and met Mark at the front gate where he was crying. He enquired what happened and he said he was looking for his brother Zemark. Further, he had tripped on one of the tyres at the school yard.
- vi. When he got back to the room, he told Mark go to sleep, and he started to cry, so he 'boxed' him two to three times and told him not to make noise to wake up his brothers. He didn't box him hard to cause harm. Then he went and used the bathroom again, however Mark was still crying, so he boxed him two more times. He started getting frustrated saying to himself he cannot take it no more. Then Zema came and he told her he cannot take it no more, and she lost her composure and she started to beat the children. After he watched her beat the children, then he told her don't do that here, that is not the south side. Thereafter, he told her he wanted to move out. He then went to the bedroom and pack his things.
- vii. Zema then ask him to wake the child who was sleeping, as Mark eyes were half open and he was breathing hard, with vomit in his mouth, which he wiped. He told Zema the child is in a coma it seems, and he should be taken to the hospital, and took the child to the outside. On the way Zema just dropped down on the street and started to bawl. He then gave Ms Therese the child and went to assist Zema on the ground. Ms. Therese said it looked like the child was dead. The child was given to Paul Alvarez, and they made their way to Pickstock Checkpoint.
- viii. He remained until the police came, however they took another individual for him, then Paul returned and told him he was being blamed for what happened. Then 4-5 police mobile came, and he went inside and sat down and watch them. He then went to Victoria Street, to Stephanie's house, where he spoke to her. She told him the police was looking for him.

- ix. They decided to go to the police station together, wherein they got on two bikes and proceeded to the station. He changed his mind on the way and took a different route. He rode to Isabella bank that same night. Two days after he heard vehicles approaching and he ran in the bushes and got lost. Then he heard a weed whacker. He followed the sound and got out of the bushes. As he reached on the main road he saw an unmarked police vehicle. He met Mr. Kevin who told him the police is looking for him, so he was taken to his uncle. He was thereafter apprehended by the police and taken to the Queen Street Police Station.
- x. He gave an interview while detained and he was subsequently given three [3] charge sheets. He maintained that Zema was beating the kids with a piece of stick he broke for Arlene's man. Zema placed the children across her knee and struck them with it, which she did for about 15 mins, then he stopped her. Then he went and packed his things.
- xi. He admitted that he would discipline the children with either a belt or using his hands, and Zema would discipline the children also. On one occasion Zema choked Mark Tuyul; at that time, he lived in his cousin's house. On more than one occasion Zema mentioned she wanted to give the kids to social services.
- xii. He concluded by stating he didn't inflict the injuries on the children, neither did he kill Mark or hurt any of the other children and that it was Zema who was responsible for all the offences for which he was charged.

Cross- Examination Kenrick Longsworth

[91] In cross-examination, the accused admitted to striking the children but maintained it was Zema Requena who inflicted the fatal injury. He admitted the children were rude at times and he would discipline them, but he never caused a bruise. He disagreed with his mother, Lavern Longsworth testimony that she saw him striking Zemark with a stick on the 10th January 2020. He stated, further that Zema always

beat the children and denied saying to Zema that the children frustrated him. He disagreed to striking the children with a stick but agreed to striking Mark, but not Zemark or Markeem. He exclaimed that he was frustrated, and he was in jail for four years and four months, and he is suffering. He maintained the injuries were inflicted by Zema Requena, and he didn't go to the police station and went away because of fear.

[92] There was no re-examination by the Crown.

[93] The accused's sworn testimony is in substance, a denial of the charges. He consistently maintained that he only struck Mark Tuyul and not the other two children. He further testified that it was the mother Zema Requena who inflicted the injuries on the children. I have assessed the demeanour and credibility of the accused, and despite he appeared consistent in cross-examination, the totality of the evidence does not support his defence. The children were in his care when they were injured. Further, he ran away when the police came, he refused to attend at the police station even though he told Stephanie Davis he was going to the station. Instead, he went away to a rural village, wherein he was captured and arrested thereafter. I cannot accept that someone who had nothing to hide would act the way the accused did.

[94] The accused was asked in cross-examination, whether striking or boxing a three [3] year old child, would cause injuries. His response was, he is not specialised in that field, he wouldn't know what would happen, he did it before and nothing happened, that's normal. He didn't see it as dangerous.

[95] It is evident that the accused saw nothing amiss with striking a three-year-old, or that it would or should cause any injury. I cannot accept the testimony of the accused that he only struck Mark Tuyul. Circumstantially, he was the only person who had care, custody, and control of the children during the time the mother left to when she returned. Further, the mother of the accused stated on the day of the incident

she saw the accused striking Zemark outside, this evidence, being agreed evidence was therefore accepted by me.

[96] As already mentioned, I do not accept the core of the testimony of the accused. Later in this judgment I will direct myself in reference to any lies I believe the accused told in these proceedings.

[97] I note at this juncture the accused under cross examination, was loathe to point out that he has been suffering for 4 ½ years awaiting his trial. He has been on remand post the offence 10th January 2020. He stated in cross- examination as follows:

“I frustrated am in jail four years and four months. I am not refined. I suffer at this present moment.”

[98] The Caribbean Court of Justice in the case of **Solomon Marin v Queen**¹¹, as per Jamadar J, frowned on delays in criminal trials, he opined as follows:

“In the delivery of justice, delay is anathema. Delay has a corrupting effect on the purity of justice. It renders its delivery increasingly valueless for parties and all too often even prejudicial. It undermines public trust and confidence in the justice sector. It corrodes the very fabric of society. Delay denies justice. Such is its toxicity. Indeed, it is constitutionally renounced in Belize”.

[99] The **Needham’s Point Declaration [CCJ academy of Law]** seek to address complaints synonymous to the above, the declaration has laid a benchmark that indictable trials should be held within a one (1) year period of the accused being charged and during the transition period not more than two to three years. Further, the preamble and article 19 states, as follows:

Further observing that there are intolerable delays in the administration of criminal justice including unreasonably long periods spent on remand.

19. That as a rule, trials should be held within one (1) year of the accused being charged (for indictable offences) and six (6) months (for summary

¹¹ [2021] CCJ 6

offences). During the necessary transitional stage to this ideal, trials should be held within two (2) to three (3) years of the accused being charged (for indictable offences) and twelve (12) months (for summary offences).

- [100] The above delays are not germane to Belize but also endemic across the region. The adoption and application of the Declaration will ultimately obliterate not only back logs and accused complaints, but it will guarantee certain fundamental rights and freedoms enshrined in our independent constitutions of the region and engender public confidence in the justice system.

There was No Lawful Justification to Harm the Deceased/Accident

- [101] I will now apply my mind to whether the defense of accident put forward by the defense applies. The defense is suggesting that the accused indeed struck the children, but not to the extent of the injuries as alleged. If the court accepts that it was the accused who inflicted the injuries then the defense of accident should apply, resulting in the acquittal of the accused. The nature and extent of the injuries, including the number of injuries, although some are superficial, bruises and scratches, this is sufficient to rebut the defense of accident. I have therefore considered the defense of accident and upon careful deliberation, the prosecution has negated the defense of accident as raised by the accused beyond a reasonable doubt.

Defence Submissions and Assessment of the Testimony of Accused

- [102] It is important that I reiterate some of the facts in relation to the defence of accident and do justice to the accused defence. The defence submits that the injuries to the children were inflicted by the mother Zema Requena. The central issue is who inflicted the fatal injury to Mark Tuyul. The forceful submission of the defence was that upon the accused terminating the relationship with Zema, she released her anger on the children. The defence reiterated that Zema would have been living with

the accused at Lovely Lane residence for at least 6 months and she would have had a relationship with him for 2 years. By that time these children were already in existence, so this included a family setting whereby the children were part of that relationship, and there was no violence.

[103] No evidence was proffered to suggest these children posed a problem in the relationship. There were outings to the park and Kenrick was present at those outings. Kenrick took care of the children so Zema could do her duties at the terminal. Taking care of the children included bathing them, feeding them and general watching over them. In the course of watching over them, it could be inferred that Zema had no concern that these children would be in the path of danger. As a matter of fact, she said Kenrick would at time '*stin*' them with the belt.

[104] I have examined the accused's testimony wherein he admitted to hitting Mark Tuyul. This bit of evidence, coupled with all the other witnesses, Lavern Longworth, Stephanie Davis and the other evidence above mentioned, cumulatively, has led me to the conclusion that I am sure, the accused caused harm to the children, but not intending to cause death.

[105] The defence further submits that the accused struck Mark in his head three times with his hand, in an effort to stop him from making noise and thereby sending him to sleep. That Kenrick was a father to the children, doing fatherly duties. On the day of the alleged offence, 10th January 2020, Kenrick was not upset, he kissed Zema goodbye. There was no problem at all at home. There was no contention about him taking care of the children. That was what Kenrick did; he always took care of the children. He gave them instructions how to take a bath. The kind of partner that he is, he would take food for Zema at work. Which violent person does all those things for their family?

[106] That in relation to the stick, which the defence is saying was used against Mark Tuyul, this was heavily refuted, and it was submitted the stick was to protect the

home from someone who was stealing. That when Zema came home and Kenrick told her to move on with her life, she was frustrated and struck the children. At no time you heard a confession or admission that he had done anything to the children. Carilee was not in the yard or the home. So, the court was urged not to be persuaded by Carilee to make a finding that it was Kenrick who inflicted those injuries. Nobody was in the home but Zema and Kenrick. That Zema admitted at times to 'stinging' the children as well. This time she 'sting' them a little bit too much and with that stick.

[107] The defence propounded that the account given by the accused was unshaken. He was never shaken in terms of what he saw. That Zema said she did all of this in terms of living with Kenrick because of love, he would make things better she said. It is that rejection which enraged her. She went through the entire testimony, spoke of everything, but when it was put to her that because she was rejected, she broke down. Because she knew that she became enraged because of rejection she would not have it. She took out her rage on those children. Further, the independent witness Stephanie Davis spoke positively about the accused and his good character, and therefore his evidence should be believed and Zema's evidence rejected. The defence was submitted that the allegations of sexual assault was never made out, as swabs were taken from the accused and never presented. The Crown has therefore failed to prove the elements of the offence. However, if the court finds the accused inflicted the injuries it is open to find him guilty of manslaughter.

[108] The Crown also submitted, that if the court finds that the accused did not intend to kill but intended to cause harm to the children then an alternative verdict of manslaughter is available.

[109] I gave due consideration to the accused's version of events, and despite he was consistent throughout in his sworn testimony and cross-examination, he fled from the police and hid until he was caught. His mother saw him striking Zemark on the said day, whose evidence was unchallenged, he told the witness Davis that he

struck the children, and he was frustrated. When she enquired why he did, she said, he did not answer, so they never prolonged the conversation. This has led me to believe to the extent that I am sure, that the accused inflicted unlawful harm on the children on that day 10th January 2020 namely, Mark Tuyul and Zemark Tuyul.

- [110] With respect to the testimony of the accused, having concluded that he is being partially truthful, in that he placed himself in the house, but only admitting to striking Mark Tuyul in the head. I direct myself that I cannot convict him on that basis. I direct myself that accused persons may fabricate defences and facts for reasons other than guilt. Most importantly, the prosecution has the burden of proof and thus it is the evidence that must make me feel sure of the guilt of the accused. Before I return to the prosecution evidence with this in mind, I remind myself of the **Lucas Direction**.

Lucas Direction

- [111] In this case, I believe that the accused lied about not striking Zemark Tuyul and that he was not frustrated as he stated to the other witnesses. I further believe that he lied about not harming the deceased. I direct myself that it has been shown that persons may lie not because they are guilty, but for other reasons (for example, to bolster a weak case, to protect someone, out of panic, or to cover up disgraceful behaviour)¹². Thus, it is not the lies of the accused that lead me to conclude he is guilty. It is because I believe the prosecution's evidence that I have reached the conclusions that I am sure of the accused guilt.

Good Character

- [112] The good character of the accused in this trial was raised by Stephanie Davis, who said in cross-examination that she has known the accused all her life, to be kind,

¹² R v Lucas [1981] 2 All ER 1008

loving and non-violent. In my view, this is sufficient to consider the good character directions. I will therefore direct myself on the law of good character.

[113] Good character is not a defence. The two limbs of good character are credibility and propensity. The accused gave sworn testimony and thus is entitled to both limbs of good character. The first limb is where the accused has good character it helps to support his credibility where he has testified under oath. The second limb is that good character of the accused supports the lack of propensity that the accused committed the crime with which he is charged. This means that because the accused has good character, he is less likely than otherwise might be the case to commit the crime with which he is charged.¹³.

[114] I have taken the accused good character into consideration; however, it cannot alter my determination of the factual matrix in dealing with his credibility and propensity.

Revert to the Prosecution Case

[115] At this point in my deliberations, I return to the prosecution's evidence. As already noted, the crown's case has convinced me so that I am sure of the first two elements of murder, that the deceased is dead and that he died of harm. Moreover, primarily the evidence of the witnesses, in conjunction with the circumstantial evidence, and medical expert evidence convince me beyond a reasonable doubt that the accused killed the deceased.

As for the *mens rea* element, the Crown made me sure based on the timeline the accused were with the children, his statement to the witnesses, the evidence of the accused's mother and the accused interview that was unchallenged, has led me to the conclusion that the accused intentionally caused unlawful harm to the children resulting in the death of Mark Tuyul and causing harm to Zemark Tuyul.. Finally, the Crown negated, beyond a reasonable doubt, the existence of the defence of

¹³ Bailey [2017] EWCA Crim. 35 [Criminal Bench Book p. 441]

accident or any lawful justification for the accused to have harmed the children including the deceased. The prosecution has proven each element of the offence so that I am sure that the accused is guilty of manslaughter in relation to Mark Tuyul and wounding in relation to Zemark Tuyul and not guilty in relation to Markeem Tuyul.

[116] Furthermore, after giving the accused the benefit of both limbs of good character, that he would not have the propensity to lie or offend the law, I give little weight to his good character. This is so because the previous good character of the accused does not alter my acceptance of the prosecution evidence and the inevitable conclusions that evidence has led me to adopt.

Verdict

[117] Based on the prosecution's evidence and taking all other evidence into consideration, I have no doubt that the accused is guilty, and verdict should be as follows:

- i. In relation to Mark Tuyul not guilty of murder but guilty of manslaughter.
- ii. In relation to Zemark Tuyul guilty of wounding.
- iii. In relation to Markeem Tuyul not guilty.

[118] The matter is therefore adjourned for a separate sentencing hearing as advised by the Caribbean Court of Justice in **Linton Pompey v DPP**¹⁴. By virtue, thereof the court orders the following:

- i. Social inquiry report of the accused.
- ii. Police criminal record/report of the accused.
- iii. Prison report of the accused.
- iv. Victim impact statement.

¹⁴ [2020] CCJ 7 (AJ) GY11

v. Psychiatric report of the accused.

[119] The matter is adjourned to the 17 June 2024, for receipt of reports and filing of submissions.

Derick F. Sylvester

High Court Judge

Senior Courts of Belize

Delivered 5th June, 2024