

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C6 OF 2023

BETWEEN

THE KING

and

LEANNE DAVIS

Defendant

Appearances:

Mr. Robert Lord, Crown Counsel for the King

Mr. Leeroy Banner for the Defendant

2024: May 1; 2; 3; 9

June 18

JUDGMENT

MURDER- JUDGE ALONE TRIAL-DECISION

History of the Matter

- [1] **NANTON, J.:** Leanne Davis (hereinafter referred to as “the Accused”) was indicted for the offence of Murder, contrary to **Section 117 read along with section 106(1) of the Criminal Code Chapter 101 of the Laws of Belize**¹, (hereinafter “the Code”) arising out of an incident of stabbing involving the death of Venecia Staine (hereinafter “the Deceased”) on 4th April 2021. The Trial by Judge Alone began with the arraignment of the Accused on 01st May 2024 before this Court pursuant to **Section 65 A (2)(a) of the Indictable Procedure Act Chapter 96 of the Laws of Belize** ².

The Crown’s Case

- [2] The Crown’s case is that on 4th April the Accused and the Deceased got into a verbal altercation which escalated when the Accused stabbed the Deceased multiple times causing her death.

Agreed Evidence

- [3] Pursuant to **Rule 10 of the Criminal Procedure Rules 2016**, (hereinafter “the CPR”) and **Section 106 of the Evidence Act, Chapter 95 of the Laws of Belize**³, (hereinafter “the EA”) the Crown read into evidence the statements of the following witnesses:

- 1) Brian Lopez Sr.- CST who took photographs of the scene and the body of the Deceased which were tendered into evidence as **BL 1-29**.

¹ Chapter 101 Criminal Code of the Laws of Belize Revised Edition 2020

² Chapter 96 Indictable Procedure Act of the Laws of Belize Revised Edition 2020

³ Chapter 95 Evidence Act of the Laws of Belize Revised Edition 2022

- 2) Miguel Sarceno- witnessed the post mortem examination of the Deceased.
- 3) Clifton Breakman- identified the body of the Deceased as that of Venecia Staine.
- 4) Anthony Flowers- police officer at station when Accused was detained- observed injuries on Accused's right hand.
- 5) Jonas Coy – police officer at station – observed injuries on the Accused's right hand.

Live Witnesses

[4] The Crown called the following live witnesses in the order shown below:

- 1) Kalia Staine – eye witness.
- 2) Dr Mario Estradaban- performed post mortem examination on the body of the Deceased.
- 3) Lucille Staine – eye witness.
- 4) WPC Hayra Alvarez –present during interview with Accused.
- 5) Anthony Guzman- arresting officer who arrived on the scene shortly after incident.
- 6) Cpl Leon Fergurson- investigating officer.

Documentary evidence

- 1) **LF 1-** Interview Notes of the Accused
- 2) **BL 1-29-** Photographs

The Defence Case

[5] At the close of the Crown's case, the Court told the Accused of the three options available to her i.e., to remain silent, to give a statement from the dock, or to give evidence on oath and his ability to call witnesses. The Accused gave a statement from the dock in which she denied stabbing the Deceased. Her statement, in summary, was that the Deceased was the aggressor who, whilst armed with a knife,

attacked her. During the struggle which ensued, the Accused said that she held on to the knife and that it was the mother of the Deceased, Lucille Staine, who fired chops at them with a machete striking the Deceased.

[6] The Accused did not call any witnesses.

Closing Addresses

[7] The parties gave closing addresses, which were carefully considered by the Court.

Analysis

[8] The Court has directed itself that the Accused is presumed innocent and has absolutely nothing to prove. The Court has directed itself that the obligation is on the Crown to satisfy the Court so, that it is sure of the guilt of the Accused and if there is any reasonable doubt the Court is duty bound to acquit her.

[9] The Court has considered all of the evidence with the intention of reaching a fair and dispassionate assessment of that evidence. The Court notes that in assessing credit and reliability it must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. The Court notes that if there are inconsistencies and discrepancies the Court must look to see if they are material and if they can be resolved on the evidence. Unresolved inconsistencies or discrepancies would lead the Court to reject that bit of evidence or all of the witness's evidence entirely. The Court must also consider the cumulative effect of those inconsistencies or discrepancies on a witness's credit and reliability. If the Court finds the evidence of a witness implausible it will reject either that witness's evidence entirely or that particular bit.

[10] The Court begins firstly with analyzing the evidence on the Crown's case, and if the evidence is strong enough to consider a conviction it would consider the case for

the Accused, as is the required reasoning process noted by our Apex Court, the Caribbean Court of Justice (hereinafter “the CCJ”), in **Dioncicio Salazar v R**⁴.

Elements of the Offence: Murder

[11] The Court has derived great assistance from a decision of our Court of Appeal in **Peter Augustine v R**⁵ in defining the crime of murder, per Carey JA:

“Murder is defined in the Criminal Code as intentionally causing the death of another without justification or provocation (section 117 Cap. 101). It was essential to emphasize to the jury that the specific intent which the prosecution must establish on the charge against him was an intent to kill.”

[12] The Court understands that the Crown must prove to the satisfaction of the Court so that it is sure that:

- 1) Venecia Staine is dead.
- 2) Her death was caused by the act of the Accused.
- 3) The Accused specifically intended to kill the Deceased.
- 4) There was no legal justification for the killing of the Deceased.
- 5) The Accused was not legally provoked into killing the Deceased

Whether Venecia Staine is Dead?

[13] The Crown has established that Venecia Staine is dead on the combined evidence of Clifton Breakman, who identified the body of the Deceased as that of Venecia Staine and the evidence of Dr. Estradaban who conducted a post mortem examination on the body of the Deceased and determined that the Deceased had died as a result of exsanguination due to internal and external bleeding due to multiple stab wounds. He described the six stab wounds suffered by the Deceased as follows:

⁴ [2019] CCJ 15 (AJ)

⁵ Crim. App. 8/01

- i. 13.5 cm in length with rat tail abrasion located on the right anterior segment of the arm wounding soft and vascular tissues of the area upward depth of 5.5 cm.
- ii. 4.5 cm in length located at 3 cm from the anterior middle line of the body on the right side
- iii. 5 cm in length which is located on the upper center of the nape of the neck upward depth of 5 cm wounding soft tissues of the area and vascular plexus
- iv. 4.5 cm in length and 8 cm in depth on a slanted angle wounding soft and vascular tissues of the neck area
- v. 15 cm in length located on the posterior region of the right index finger
- vi. 17 mm in length which is located on the right upper temporal wounding soft tissues making an impression fracture on the same temporal bone.

[14] Dr Estradaban described the second stab wound as fatal by itself; however, his opinion was that all of the stab wounds contributed to her death.

Whether the Deceased's Death was caused by the Act of the Accused?

[15] One of the main issues for the Court's determination is whether the Court is satisfied beyond reasonable doubt that it was the Accused who inflicted the injuries on the Deceased. It is not in dispute that the Accused was present when the incident occurred. What is in dispute is whether the Accused was the person who inflicted the fatal injuries on the Deceased. The case for the Accused being essentially that during the struggle, it was the mother of the Deceased who inflicted the wounds upon the Deceased, and that the Accused herself had merely struggled for the knife in an attempt to defend herself from the Deceased's attack.

[16] On the Crown's case the evidence to be examined in relation to this issue comes mainly from the following sources which will be analysed below:

- 1) Evidence of Lucille Staine
- 2) Evidence of Kalia Staine
- 3) Evidence of Dr Estradaban
- 4) Evidence of Anthony Guzman
- 5) LF 1- Interview notes of the Accused
- 6) BL 1-29- Photographs

Evidence of Lucille Staine

[17] The testimony of Lucille Staine was that the Accused came to her shop to buy some snacks, the Deceased was at the time standing by the door with her phone in her hand. The Accused bounced the Deceased when she was exiting through the door. The Deceased then said "*Venecia say you have no manners for nobody*". The Accused and the Deceased were exchanging words when the Accused pushed the Deceased down the steps and they fell on the ground. They started fighting and the Deceased was on the ground. The Accused grabbed a knife off the kitchen table. The witness described the knife as about 1 foot long with no handle. She said she was about 5-6 feet away from them and could see the entire incident which lasted about 5-10 minutes. She said Kalia came to try to separate them. She saw the Accused stab Kalia in the area of her temple on the right side of her face. The witness said that she then grabbed her machete and flagged the Accused two times on her leg. She said after the incident the Accused ran off, and she did not see where the Accused put the knife. The witness pointed out areas in the photos like the kitchen and the back of the house where she said the stabbing happened.

[18] Under cross examination the witness accepted that she had not mentioned that the Accused took a knife from the table in her statements to the police, which were given in close proximity to the incident. She agreed that she had never told the police that after the Accused pushed the Deceased down that she ran for the knife. She said that at the time she gave the statements she was still in shock. She agreed that she had in fact expressly told the police in her statement in July that she did not see

where the Accused got the knife from. She said that she was not lying in her testimony, but that at the time of giving the statement she did not remember. She said that she now remembers, because it was her knife that the Accused took.

- [19] She accepted that she had not told the police that she saw when Kalia had gotten stabbed, and explained that when the emotions are high there are a lot of things you don't say. She maintained that she was telling the truth when she said that she saw that.
- [20] The witness vehemently denied the allegation put by Counsel for the Accused that it was she who had stabbed the Deceased with her machete, and that she had been drinking that day.
- [21] She agreed that she had said in her statement that Kalia was on the Accused's back when she lashed the Accused with the machete. She denied chopping her daughter on the back of her neck.
- [22] She denied that her daughter was on the floor when she was stabbed. She said that they were wrestling and that the Accused had the upper hand, because she was the taller of the two women. She said that it was after the Accused had already stabbed the Deceased that she intervened with the machete.
- [23] She said that she still has the machete as the police never asked her for it.
- [24] When shown **BL 11** she denied that that was the knife that the Accused had used. She said that she did not give the knife shown in that photograph to the police. She said that it was a bigger knife that the Accused had used, and that the Accused had held the knife in her right hand. She denied the suggestion that she had never seen the knife. She stated that she knew the knife as it was her own knife that the Accused used.

- [25] She denied the suggestion that she disliked the Accused and stated that there was no reason for her not to like her, and that she had allowed her to stay in her house and still treats her grandchildren well.
- [26] She said that at the time of the incident her husband was by the riverside building his boat, and when he reached the fight had already finished. She said the Accused had already run off and her husband ran behind her. She said she did not see him with a machete.
- [27] She denied the suggestion that she, her husband, Kalia and the Deceased attacked the Accused, and stated that it was the Accused who had attacked her daughter first. She denied that her daughter had the knife or had attacked the Accused first.
- [28] She said that the reason she had not intervened at first was because she didn't want to get stabbed. She said when she intervened, the Accused had already nearly killed the Deceased.
- [29] She denied the suggestion that she kept adding on to her story, because she was not being truthful.

Kalia Staine

- [30] On 4th April Kalia stated that she and her aunt Venicia Staine, the Deceased, were at her grandmother's house in Gracie Rock. She said that the Deceased was by the door with her phone in her hand, while the witness said that she was sitting on a bench in the backyard on her phone about 5 feet away from the door. She said she saw the Accused come to purchase snacks, and she saw her bump into the Deceased who then said "*it look like unno ppl doh have no manners and can't say excuse*". She said that the two women started to fuss and she remained seated until she saw the Accused push the Deceased outside. While pushing her she saw the Accused stabbing the Deceased in the back of her neck which caused the Deceased

to fall to the ground. When the Deceased fell the witness said she got up from her seat and intervened trying to take away the knife. She said that the Accused stabbed her on the left side of her face. She said at that time the Deceased was using both hands to block the knife from catching her face. She said her grandfather came at that point and hit the Accused with a machete on her right leg. He said that her grandfather and the Accused got into an argument and then the Accused run off. She and her grandmother tried to stop the Deceased's blood from running.

- [31] She said that she saw the entire attack which lasted about 3 minutes.
- [32] She described the knife as being a silver handle-less knife about 8 inches long. She was shown **BL 11** and said that that was not the knife that the Accused had used.
- [33] The witness identified the bench upon which she was seated and the area where the incident happened on the photographs.
- [34] In cross examination, she denied the suggestion that her grandmother was drunk and had been drinking on that day. She denied that she had not being paying attention because she was on her phone and that she had not seen when the stabbing occurred. She denied the suggestion that during the altercation her aunt had the knife. She further denied the suggestion that it was her grandparents who had chopped her aunt with the machete, or that they had killed her aunt. She denied the suggestion that they had all attacked the Accused, or that the Deceased was the aggressor.

Evidence of Dr Estradaban

- [35] **Section 45 of the Evidence Act**⁶, provides for the opinion of an expert on any point of science. The Court after having satisfied itself of the skills, qualifications and experience of Dr Estradaban in the field of forensic pathology deemed him an

⁶ Chapter 95 of the Substantive Laws of Belize Revised Edition 2020.

expert. He was therefore allowed to express his opinion based on his findings of his post-mortem examination of the body of the Deceased.

[36] His finding was that the Deceased's suffered six (6) stab wounds. His opinion was that the wounds were inflicted with a sharp and pointed instrument due to heavy force being applied. He stated that a knife was such an instrument. The following excerpt is taken from his evidence in chief.

Q- *Which of these injuries were fatal?*

A- *The second stab wound on the right side of chest was fatal by itself but also all of them contributes to the death of the decedent.*

Q- *What caused the temporal fracture?*

A- *A sharp and pointed instrument due to heavy force being applied during the action.*

Q- *What type of instrument?*

A- *A knife.*

Q- *Would you be able to tell us the position of the individual when she received these injuries?*

A- *The decedent was moving – its different positions that's why the decedent had injuries from front body – upper limbs which were defence wounds and to back nape of the neck. The decedent was in front of the perpetrator at the time when the injuries of the upper limb were inflicted*

Court- *how are you able to tell that?*

A- *Due to the characterisations and the depth of the stabbing as well as the angle of the stab wounds*

[37] It is necessary to reproduce this excerpt from the cross examination of the witness:

Q- *A knife is pointed and sharp?*

A- *Yes.*

Q- *A machete is also pointed and sharp?*

A- *Yes.*

Q- *A knife like this (witness shown BL 11) – cannot cause this big cut?*

A- *Yes, it can.*

Q- *A machete can also cause this injury?*

A- *Depends on the force being used. That injury can't be caused by a machete, because of the depth and angle of the wound machete produces more massive injuries than a knife. The wound would have to have more length.*

Q- It doesn't depend on the size of the instrument?

A- Yes.

Q- You cannot rule out that these injuries were caused by a machete?

A- Yes, I can rule out that these injuries were caused by a machete.

Q- The stab to the forehead, you said heavy force was used?

A- Yes.

Q- You spoke of the damage?

A- Yes.

Q- Put that was caused by a machete.

A- If that was caused by a machete it would produce massive fracture.

Q- But it all depends on the force used not the instrument?

A- If a heavy force was used with a machete the injury would be more fractures more important.

Q- You were not there to know the force?

A- I know the force because the injury describes the type of action

Q- All these injuries they all have different sizes?

A- Correct.

Q- There is a possibility that two different instruments were used?

A- I go by facts, only one instrument was used because different sizes and angles depends on the position and force of the perpetrator all those injuries were characterized by a struggle.

[38] In assessing the evidence of the Dr Estradaban, Counsel for the Accused has invited the Court to reach a different conclusion based on the Court's own examination of the exhibits- particularly the photographs taken of the Deceased's injuries. Now, that may be a perfectly legitimate request to make as the Court is entitled to assess the accuracy of the experts' conclusions by following what he has demonstrated. However, the Court must exercise caution in drawing conclusions without reference to the evidence, which the expert has given as this Court does not have the skills required to carry out an expert examination of a human body to determine causes of death, or to express opinions on the nature of the weapon used

without the assistance of the experts. The Court's task is to reach a conclusion based upon an assessment of what evidence or parts of the evidence from the expert the Court accepts and not to reach an independent judgment of my own without a proper evidentiary basis for same.

Evidence of Anthony Guzman – The Oral Utterance

- [39] Anthony Guzman testified that he arrived at Gracie Rock at about 3:00 pm when his attention was drawn to the Accused. He approached her asked her name and she answered Leanne Davis. He said that he identified himself to her as a police officer and informed her that she will be detained pending the investigation of the stabbing incident and cautioned her by saying, "*You do not have to say anything unless you wish to do so, but anything you say will be taken down in writing, and given in evidence*". He said that she then uttered the words "*Da long time she deh inna me life I got tired of it so I do it to her ras*". He said that she was in an angry manner and he immediately cautioned her once again informed her of her constitutional rights and also informed her to communicate with a lawyer of her choice in which she remained silent. He said that he did not use any force, coercion, pressure, threats, promises of fear, or favour to the Accused before she made the statement.
- [40] This oral utterance was admitted into evidence at the conclusion of a *voir dire* held by the Court to determine its admissibility. Learned Counsel had objected to the admission of this evidence on the ground of fairness. Defence Counsel had contended that Officer Guzman had failed to comply with the Commissioner's guidelines i.e. that no contemporaneous note was taken of what was said by the Accused, and that it was not read back to her in the presence of a Justice of the Peace.
- [41] The Court held that notwithstanding the unchallenged breaches, the spontaneous manner in which the statement was alleged to have been made did not render the

circumstances of the oral statement unfair. The Court exercised its discretion to admit the statement pursuant to **Sections 90 and 91 of the Evidence Act**.

[42] Having decided on its admissibility, the Court now turns to the factual issue of whether the Court believes that the statement was in fact given. It was suggested to the witness in cross examination that the Accused never uttered these words to the witness, that if she did he would have recorded it promptly and not two months later, which is when he included the utterance in his report. The Accused in her unsworn statement denied that she had ever given such a statement to the police, but asserted that she had remained silent when cautioned.

[43] The Court finds that it is not satisfied beyond a reasonable doubt that the Accused made the alleged utterance to Officer Guzman for the following reasons:

- i. The Court finds it strange that the statement was alleged to have been made in the presence of another police officer, who for some unexplained reason never testified before this Court. The utterance, if true, would be of highly probative value and Officer Guzman would have no doubt been aware of its importance to the case, and as such it would be expected that all relevant supporting evidence would be advanced. Officer Guzman's explanation that he was not sure if the officer was with him when he approached the Accused is unbelievable due to the fact that he was about to effect an arrest of a suspect in a murder investigation and it is unlikely that the accompanying officer would not be present for that arrest.
- ii. The fact that Officer Guzman did not make any effort to reduce what he had heard into writing until two months later also casts significant doubt on the veracity of Officer Guzman's evidence. Again, the officer must have appreciated the importance of a confession and would have been expected to record the details of that confession at the earliest opportunity had it in fact been made. His explanation for this inconsistency that he

only put what he did and not what was said – by an Accused person- is unbelievable.

- iii. Even if the failure to transcribe the utterance was due to mere inadvertence on the part of the officer, had such an utterance been made one would expect the arresting officer to communicate such an incriminatory admission to the investigator in this matter. Under cross examination Officer Ferguson stated that Officer Guzman never told him that the Accused had made any utterance to him.
- iv. The interview notes which the Accused accepted she gave is in direct contrast to the alleged utterance and more consistent with her present account than the alleged utterance.

[44] The Court; therefore, placed no reliance on the oral utterance as the Court is doubtful whether it was in fact given. The Crown has failed to satisfy this Court beyond a reasonable doubt that the utterance was in fact made by the Accused.

Interview Notes of the Accused

[45] In her interview recorded under caution, which the Court found to have been recorded in compliance with the requirements outlined in the Commissioner's Guidelines, the Accused admitted to being involved in the struggle for a knife with the Deceased. While she denied inflicting the stab wounds upon the Deceased she admitted to being party to the fight that ultimately led to the death of the Deceased.

[46] The Court refers to the test outlined in the seminal case of R v Garrod⁷ of whether a statement is "*mixed*". The Court of Appeal in that case explained that a statement could not be treated as a mixed statement unless the admissions or inculpatory parts were significant in relation to the Prosecution's case as it was conducted at trial.

⁷ [1977] Crim L R 445

- [47] In R v Papworth and Doyle⁸ it was stated that “where the statement contains an admission of fact, which is important to any issue in the case, meaning those which are capable of adding some degree of weight to the Prosecution’s case on an issue which is relevant to guilt, then the statement must be regarded as “*mixed*” for the purposes of this rule.
- [48] In this case, that admission of being party to that fatal struggle is relevant to the ingredients of the offence of murder, and as such the interview falls to be treated as a mixed statement. The interview note also raises some aspects of self-defence and the limited defence of provocation, which will be addressed further below.
- [49] The Court in treating the statement as mixed considered the whole of the statement both the exculpatory and the incriminating parts in considering where the truth lies bearing in mind that the excuses may not have the same weight. The Court also referred to the fact that the Accused gave an unsworn statement at trial which was consistent with her earlier statement to the police.
- [50] In her interview under caution the Accused said that she went over to her mother in law’s home to purchase some items. There she met the Deceased who began to verbally disrespect her. She said that the Deceased was cursing at her calling her a “*dumb bitch*” and telling her that she doesn’t like her and that the Accused should have respect for her mother, and that if her mother ended up in the hospital she would guarantee that she would let her family deal with her. She said that the Deceased never liked her since she got with her brother and that the Deceased used to threaten her through text message by telling her that she would stab her up and that she would take her boyfriend gun and whap the Accused in her mouth with it.
- [51] On the 4th April, she said that the Deceased pulled a knife that she had in her pants side and charged at her. She said that the Deceased stabbed her in her hand as

⁸ [2007] All ER (D) 167

she was trying to block the stab. She grabbed the knife, because the Deceased wanted to stab her in her chest. That is when she said she received a cut wound to her right hand. The Accused said she continued to hold the knife and they were struggling for it. The commotion led them outside into the yard. As they were wrestling for the knife the Accused said she fell to the ground. She said that was when the little girl also came to beat on her. She said the Deceased's father and mother came out of the house with a machete and whapped the Accused two times on her right leg. She said they were all holding her down on the ground while the mother whapped her up with the machete. She said that the Deceased was on top of her and had her pinned down on the ground with her knees in her chest.

- [52] She said she saw the mother coming down with the machete, and the Deceased rose up at the same time and she (the Deceased's mother) chopped her daughter in her neck and she saw blood spray. She said that she told them to let her go and the mother told her that she would "*kill her rass*" and she would die. She said she ran off.
- [53] She said that she did not know what happened to the knife after she let it go during the struggle.
- [54] She said that during the struggle Lucille Staine was intoxicated as she could smell the alcohol on her breath, and she was drinking.
- [55] She said that the injuries she received was on her right leg when Ms. Lucille Staine whapped her with the machete and that her left hand was paining her.
- [56] She said that she did not inflict any injuries on the Deceased.

Analysis: Factual Conclusions Drawn from the Crown's Case

- [57] The first step of this analysis requires the Court to determine whether the Crown's witnesses are honest witnesses. The Court, in assessing credit and reliability, must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. The Court notes; however, on the authority of the Belizean CCJ decision of **August and Anor. V R**⁹ that it need not comb the record for inconsistencies or contradictions.
- [58] The Court considered discrepancies between the witnesses' accounts; however, in considering the discrepancies between witnesses the Court is assisted by the dicta of the ECCA in **Maynard v R**¹⁰, per Pereira CJ that *"it is not at all unusual for different witnesses seeing and recalling a scene to which their attention is drawn differently."*
- [59] Witnesses may have had different vantage points, under differing pressures and with different powers of observation and recall. Different witnesses may observe and take note of different things, and that does not mean that the witness is being untruthful in his account of what he saw. In this case, Lucille Staine was inside the house where the verbal altercation originated, while Kalia Staine was outside of the house. Kalia witnessed the physical altercation as it progressed outside where she was already seated. Kalia's point of view would; therefore, have been different from Lucille's in many respects and it is the view of the Court that the differences in their accounts in some respects relate more to their point of view than to either of these particular witnesses being untruthful. These discrepancies will be examined below during the Court's explanation of its factual findings:
- i. The Court accepts as a fact that the Accused and the Deceased got into a verbal altercation which commenced after the Accused had entered the kitchen area to purchase snacks. Both Crown witnesses testified that the Accused bounced past the Deceased, and the Court accepts as a fact that this was the genesis of that altercation. The Accused's version that

⁹ [2018] 3 LRC 552 at para 60

¹⁰ (2022) 101 WIR 243

the Deceased spontaneously started cursing at her seems more than likely to have been as a result of that interaction rather than a random spontaneous outburst.

- ii. The Court also accepts as a fact that there had been previous “bad blood” between the Accused and the Deceased which would explain why a “bounce” would cause such a heated altercation. This evidence comes from the interview of the Accused herself and also from the answers given by Lucille Staine to questions put to her during cross examination on the nature of the relationship between the Accused and the Deceased. The Court accepts as a fact that the Deceased insulted the Accused verbally. This again comes from the interview notes of the Accused and the Court accepts that portion of her account.
- iii. The Court accepts as a fact that this angered the Accused and caused her to physically attack the Deceased. The evidence that the Accused launched at the Deceased comes from both Lucille and Kalia and the Court accepts their evidence that it was the Accused, who initiated the physical altercation. The Court found that the Crown witnesses’ evidence on this point was credible honest and truthful. They both withstood the rigours of Mr. Banner’s cross examination and were both unshaken on the critical issue of who started the fight. The version given by the Accused on this point was untested in cross examination and the Court also finds as a fact that it does not believe the Accused’s version that it was the Deceased who initiated the physical attack.
- iv. The evidence from Lucille that she saw the Accused grab the knife from her table was heavily contested by the Defence. It was suggested to the witness that she never stated seeing the Accused grab the knife when she gave her statement to the police. Her explanation was that at the time she gave the statements she was still in shock. She agreed that she had in fact, expressly told the police in her statement that she did not see from where the Accused got the knife. She said that she was not lying in her testimony, but that at the time of giving the statement she did not

remember. She said that she now remembers, because it was her knife that the Accused took. The Court finds this portion of the witness' evidence to be unreliable. The witness gave evidence years after the incident took place, while she may have made the assumption that that was where the Accused got the knife, the Court is of the view that had she seen that she would have given that information to the police and had she simply forgotten to or did not because of her state of shock she would not have categorically stated that she did not see from where the Accused got the knife.

- v. The Accused's account in her interview under caution was that the Deceased pulled the knife out of her pocket. The Court rejects the Accused's account on the strength of Kalia's evidence, which was tested under cross examination, that the Deceased never had the knife. The Court found Kalia to be an honest and reliable witness. Kalia's evidence was that the Accused was the one armed with the knife attacking the Deceased who tried to fend off the attack. Kalia's evidence is also supported by and consistent with Dr Estradaban's opinion.
- vi. The evidence of Lucille is less specific than that of Kalia as to how the injuries were caused. That is explainable as during part of the fight it is clear that Lucille ran inside for her machete. She therefore may not have seen exactly how all of the six injuries were inflicted.
- vii. The Court accepts the evidence that the struggle transitioned to the outside of the house. The apparent blood seen on the ground in the photographs is consistent with this version and all witnesses agree that that was where the stabbing occurred. The fact that the stabbing occurred outside is important as it supports Kalia's evidence that she saw the full interaction despite Defence Counsel's suggestion to her that she could not. Kalia's evidence of the actual stabbing is the most detailed of all the witnesses- even including the evidence from the Accused in her interview notes and her unsworn statement which would be more fully analysed below under the Defence's case. The Court found that Kalia actually had

the best vantage point and she explained with the most detail how the actual stab wounds were inflicted. Her version of events is also largely consistent with the expert evidence of Dr Estradaban.

- viii. The Accused in her statement alleges that it was Lucille who chopped the Deceased to the back of the neck when she said that the Deceased was on top of her. It is glaringly curious that she does not give any account for how the Deceased would have come by the other 5 injuries particularly the chops to her arm- which were characterised as defensive wounds and the chop to her chest area which had a front to backwards path direction. Her account during interview is silent as to how Kalia received the chop wound to her face – the fact of this injury was not challenged. The Court rejects the account in the interview as it is implausible and inconsistent with the injuries sustained and described by Dr Estradaban and the evidence of Kalia Staine.
- ix. The Court accepts the evidence of Kalia Staine in relation to the sequence of events and how the stab wounds were inflicted. The Court accepts Kalia's evidence that the Accused first stabbed the Deceased in the back of the neck when she was standing causing her to fall forward. This is consistent with Dr Estradaban's finding that this injury was inflicted while the Decedent was standing which the Court also accepts. Dr Estradaban explained the basis for his opinion that the Deceased was standing. He said that the angle and depth of the injuries are different when the decedent is standing or lying. He said that while she may have been crouching down the Deceased could not have received that type of injury while lying down as had been suggested by the Defence.
- x. The Court accepts the opinion evidence of Dr Estradaban that the injuries were inflicted with a knife and not a machete. The Court accepts Dr Estradaban's unshaken evidence that injuries caused by a machete will produce a different type of injury than that, which was observed on the Deceased. The Court finds the Accused's version that Lucille Staine

could have accidentally caused the type of injuries observed on the Deceased to be highly implausible.

- xi. The Court accepts that it was the Accused who had the upper hand in the fight. This is consistent with the evidence of both Crown witnesses and this finding would explain why the relatives later tried to intervene to get the Accused to stop attacking the Deceased. This would also explain why after such a violent interaction the Accused herself had no apparent injuries other than the cut to her hand – specifically in the area of her palm (go through injuries) which are consistent with a struggle for the knife but inconsistent with the Deceased stabbing at her. The injuries of the Deceased particularly the injuries to the arm and hand which were described as defensive stab wounds due to its downward trajectory are consistent with the Accused attacking her and the Deceased using her arms to fend off the attack.
- xii. The cut on the Accused's hand in contrast is more consistent with someone holding a handle-less knife than someone defending themselves from a chop as it is unrealistic that someone would attempt to defend themselves with an opened palm.
- xiii. The wound to Kalia herself is also consistent with the Accused being the person armed with the knife and trying to fend off Kalia as she attempted to assist her aunt.
- xiv. There is a discrepancy in the evidence of Lucille and Kalia as to who had the machete i.e. whether it was Absalon or Lucille. The consistent evidence from all witnesses is that the Accused was whapped on her leg with a machete. It is possible that the father of the Deceased also had a machete and that Kalia could have been wrong or mistaken when she said that it was her grandfather who whapped the Accused. The Court finds that this inconsistency is not material, because there is no issue for this Court's consideration that turns on whether the grandfather was also armed with a machete- except for the Defence contention that the four persons gang up on the Deceased- which I will address in my assessment

of the Defence case. The Court finds that the whapping on the Accused's leg occurred after the Deceased had already been stabbed. The Court finds that the use of the machete by either or both of the elder Staines was an attempt to stop the Accused from continuing her attack.

- xv. The Court rejects any suggestion that when she stabbed the Deceased the Accused believed, or may have believed, that she was being attacked and that force was necessary to protect herself. The Court is satisfied on the Crown's case that it was the Accused who initiated the attack and inflicted the six stab wounds on the Deceased.

Intention to Kill

[60] **Sections 6 and 9 of the Criminal Code** guides the Court in its application of the standard test of intention. The Court has derived great assistance from a judgment of our Court of Appeal in **Gareth Hemmans v R**¹¹ on the question of intent, per Hafiz-Bertram JA:

[51] Section 6 of the Criminal Code provides for the standard test of intention, that is, whether the person, (the appellant in this case) intended to produce the result, that is, to kill Mr. Zaiden when he chopped him with the machete.

[52] Section 9 of the Criminal Code sets out the approach to be adopted in relation to proof of intention to kill. Section 9 of the Criminal Code provides that:

"9. A court or jury, in determining whether a person has committed an offence-

(a) shall not be bound in law to infer that any question specified in the first column of the Table below is to be answered in the affirmative by reason only of the existence of the factor specified in the second column as appropriate to that question, but

(b) shall treat that factor as relevant to that question, and decide the question by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

*[53] The relevant question and factor in this case as shown in the table being whether the person charged with the offence intended to produce a particular result by his conduct (question) by the "fact that the result was a natural and probable result of such conduct." (appropriate factor). **The***

¹¹ Crim. App. 12/16

question to be asked is whether the trial judge arrived at the conclusion of intent to kill by looking at all the facts and circumstances which were disclosed in the evidence.” (emphasis added)

Accident

[61] The learned authors of **Archbold, Criminal Evidence Pleading and Practice 40th Edition**, states at para 598a:

*“The Accused either by cross-examination of the prosecution witnesses or by evidence called on his behalf or by a combination of the two must place before the courts such material as makes [the Defence] a live issue fit and proper to be left to the jury. But once he has succeeded in doing this it is for the Crown to destroy that Defence in such a manner as to leave in the juries mind no reasonable doubt that the Accused cannot be absolved on the grounds of the alleged [facts constituting the Defence] per Edmund Davies LJ, in the **R v Gill**, 1968 47 Cr App R 166 at 171 As long as the issue has been raised the manner in which it was raised is inconsequential”.*

[62] The burden of disproving accident lies with the Crown. It is the Prosecution’s burden to prove that the harm caused was not as a result of an accident. Accident means that the act complained of, the actus reus, was not intended by the Accused - **Montez and the Queen**¹². At paragraph 36 of the Belize Court of Appeal case of **R v. Anderson**¹³ it was said that *“there was evidence which raised issues of accident and self-Defence, which it was the undoubted obligation of the prosecution to negative.”* The offence of murder is a crime of specific intent, and so accident is specifically linked to the lack of intention to kill. Accident is a complete defence and renders a Defendant not guilty of the charge. The absence of accident or negating of that evidence is an essential factor for the Prosecution to establish the offence of attempt to murder.

[63] The Court understands that if the stabbing occurred accidentally, or if I am unsure about whether the stabbing was accidental, then the Crown would not have proven its case to the required standard. The act would not be that of the Accused at all; it

¹² Criminal App 12 of 2015

¹³ Criminal Appeal No. 3 of 2011

would not be a deliberate or voluntary or intentional act and I would have to acquit the Accused.

[64] The Accused, by her defence has not directly raised the issue of Accident; however, the Court considers that certain aspects of the Defence case i.e. the Accused's unsworn statement and statements under interview seem to suggest that the Deceased came by her injuries unintentionally. The Court has addressed its mind to that issue, but has rejected it for the reasons below.

[65] The Court has looked at all the evidence on the Crown's case and divines that the specific intention to kill can be inferred from the combination of the following evidence:

1. The Accused fired the first stab wound to the back of the Deceased- the neck injuries while the Deceased's back was to her.
2. The Accused inflicted six stab wounds to various parts of the Deceased's body including the chest area which contains vital organs, such as the lung.
3. The stab wound to the chest was inflicted with sufficient force to puncture through soft tissue of the area causing through muscle bone and thereafter puncturing the lower inner area of the upper lobe of the lung also wounding the trachea into the lumen close to the right bronchial where the trajectory ended.
4. That stab wound to the chest was by itself invariably fatal.
5. The multiplicity of stab wounds- including to the head, neck and chest- is demonstrative of a deliberate intent to cause death.

[66] The Court finds that if the Court accepts the case for the Crown that this is conclusive evidence of intention to kill.

Whether there was Legal Justification for the Killing?

- [67] The Court considers that there is prima facie evidence sufficiently strong that is derived from the combination of the interview note of the Accused and her unsworn statement from the dock to raise the issue of self-defence. In both accounts, the Accused stated that it was the Deceased who attacked her first.
- [68] The Court is of the opinion that although the Accused never stated that she inflicted any stab wound at all on the Deceased, the Court considers that it is obligated to consider the issue of self-defence.
- [69] On the version of facts already accepted by this Court, it is satisfied that the Accused did inflict the stab wounds on the Deceased, as alleged by the Crown. The Court accepts as a fact that there was a struggle between the Accused and the Deceased. The Court must therefore consider whether the Accused was acting under self-defence when she stabbed the Deceased. This is also an important consideration bearing in mind that the Accused referred to a specific threat she alleged had been made by the Deceased.
- [70] The Court is undoubtedly aware that every person has a right to protect himself/herself from imminent attack and if necessary to inflict violence to repel that attack. When a person does so no crime is committed even where the person formed an intent to kill, so long as the force used to dispel the attack was reasonable in the situation. The question of reasonableness in a given situation depends on what the person honestly believed was required to resist the attack.
- [71] The type of action used cannot be wholly out of proportion to the necessities of the situation. In some situations it may be that immediate defensive action may be necessary. The Court appreciates that a person under attack is not required to weigh to a nicety the exact measure of the defensive action. It is important to consider what the person honestly and distinctively thought was necessary.

[72] The Court reminds itself that it is the duty of the Crown to prove the unlawfulness of the Accused's conduct i.e. to disprove self-defence -to the standard that the Court is sure that the Accused did not act in self-defence. If the Court is unsure whether the Accused acted in self-defence then the Court is duty bound to acquit her.

[73] The questions the Court must answer is this:

- i. Did the Accused honestly believe or may have honestly believed that it was necessary to defend herself?
- ii. If so taking the circumstances and the danger as she honestly believed was the amount of force she used reasonable? ¹⁴

[74] The Court for the reasons already advanced rejects the suggestion made by the Accused that the Deceased was the physical aggressor. The Court is satisfied so that it is sure of the Crown's evidence from Kalia and Lucille Staine that it was the Accused who first grabbed the knife and attacked the Deceased.

[75] The Court does not need to answer the second question as the Court finds at all times that it was the Accused the person armed with the knife attacking the Deceased and that the Deceased suffered injuries as a result of defending herself from the blows and also deliberate and forceful stab wounds to her chest, neck and head.

[76] The Court finds that on the evidence the Crown has discharged the burden to the standard that the Court feels sure that there was no legal justification for the killing of the Deceased.

Whether the Accused was not Legally Provoked into Killing the Deceased?

[77] **Sections 117, 119, 120 and 121 of the Criminal Code** provide, so far as relevant, as follows:

¹⁴ **Norman Shaw v The Queen**, Privy Council Appeal No. 58 of 2000

117. 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 ...

119. A person who intentionally causes the death of another person by unlawful harm shall be deemed to be guilty only of manslaughter and not of murder, if there is such evidence as raises a reasonable doubt as to whether—

(a) he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in section 120; or

....

120. The following matters may amount to extreme provocation to one person to cause the death of another person, namely—

(a) an unlawful assault or battery committed upon the accused person by the other person, either in an unlawful fight or otherwise, which is of such a kind either in respect of its violence or by reason of words, gestures or other circumstances of insult or aggravation, as to be likely to deprive a person, being of ordinary character, and being in the circumstances in which the accused person was, of the power of self-control.

...

(e) anything said to the accused person by the other person or by a third person which were grave enough to make a reasonable man to lose his self-control.

121.—(1) Notwithstanding the existence of such evidence as is referred to in section 119(a), the crime of the accused shall not be deemed to be thereby reduced to manslaughter if it appears, either from the evidence given on his behalf, or from evidence given on the part of the prosecution.

(a) that he was not in fact deprived of the power of self-control by the provocation.

(b) that he acted wholly or partly from a previous purpose to cause death or harm, or to engage in an unlawful fight whether or not he would have acted on that purpose at the time or in the manner in which he did act but for the provocation;

(c) that after the provocation was given, and before he did the act which caused the harm, such a time elapsed or such circumstances occurred that a person of ordinary character might have recovered his self-control; or

(d) that his act was, in respect either of the instrument or means used, or of the cruel or other manner in which it was used, greatly in excess of the measure in which a person of character would have

been likely under the circumstances to be deprived of his self-control by the provocation.

- [78] The Court notes that the burden is on the Crown to prove beyond reasonable doubt that the Accused was not legally provoked into killing the Deceased. The Court also notes that the evidence of provocation is derived from the notes of interview under caution (adduced on the Crown's case) as well as the unsworn statement of the Accused; however, because it is the Crown that bears the burden to disprove provocation it may be apt to address the issue here.
- [79] The binding authority of R v Gordon¹⁵ examines these provisions. In that case, it was stated that **Section 119(a)**, reduces murder to manslaughter, but does so where there is such evidence as to raise a reasonable doubt as to whether the Accused was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in **Section 120**. **Section 120 (a)** also imposes an objective consideration in that the provocative conduct must be such as to be likely to deprive a person, being of ordinary character, and being in the circumstances in which the Accused person was, of the power of self-control. Similarly **120 (e)** also imposes an objective standard of the reasonable man as it relates to the loss of self-control by words said.
- [80] **Section 121** makes it clear that the person must in fact have been deprived of self-control to avail itself of provision **119(a)** notwithstanding the existence of provocative conduct.
- [81] In this case, there is evidence capable of amounting to provoking conduct in that it can be reasonably inferred from the facts accepted by this Court that there was evidence of words exchanged between the Accused and the Deceased and there is specific evidence of an utterance attributed to the Deceased when she cursed at the Accused (this comes out more fully on the Defence case which will be addressed below).

¹⁵ (2010) 77 WIR 148

[82] There is therefore an evidential basis of provocative conduct by reason of words, gestures or other circumstances of insult or aggravation. If the Court accepts this evidence then it must go further to determine on an objective standard, whether the provocative conduct would cause a person of ordinary character in the circumstances of the Accused to lose the power of self- control.

[83] Once the Court so concludes it must then must consider whether there is evidence of a loss of self-control. As highlighted in bold above- anger may be accompanied by a loss of self-control, but it is not conclusive of same. The Court concludes that what emerges from the evidence accepted by the Court is consistent with a frenzied attack, which can be consistent with a loss of self-control. The Court further notes that the presence of an intention to kill is not inconsistent with provocation. Therefore, although the Court is satisfied that the Accused formed the intent to kill the Court also finds that the issue of provocation is a live issue for the Court's consideration.

[84] The Court finds the reasoning in **Daniel v The State**¹⁶ to be persuasive authority relevant to the specific question of what may constitute evidence of loss of self-control. While the Court exercises caution as the Belizean legislative framework on provocation is not in para materia to the common law, in other respects, the Court considers the observation made in the local appellate authority of **Norman Shaw**, where it was stated that the expression "self-control" plainly bears the meaning familiar in the context of provocation.

[85] In **Daniel** the Appellant was convicted of Murder and he appealed on the ground (inter alia) that provocation ought to have been left to the Jury. In their judgment the Privy Council said at paragraph 13:

"[13] Before the issue of provocation can be left to the jury there has to be evidence on which the jury might properly find that the accused killed when he had lost control of himself as a result of provocation. In the present case there was some evidence (if the jury accepted the statements under

¹⁶ [2014] 3 LRC 402

caution) that the deceased threw a bottle at the accused and had kicked him in the groin in the subsequent struggle for the gun. Although it came only from the out of court statements under caution, not endorsed by any evidence from the accused, this was material from which the jury might have concluded that there may have been provocative conduct. But there was no evidence at all that the appellant had lost control of himself. Rather, the evidence was that he had not. He himself, when admitting in his statements under caution that he was the robber, did not begin to suggest that he had lost his self-control....

Anger may be accompanied by a loss of control, and in some circumstances it may be evidence from which loss of control may be inferred. In other circumstances it may indicate the reverse, namely a considered, controlled, retaliation which, as Devlin J pointed out as long ago as R v Duffy [1949] 1 All ER 932, is positively inconsistent with the loss of control inherent in provocation. In the present case there was not even any real evidence of anger, but certainly none of lost self-control.” [Emphasis added]

[86] The Court, after a consideration of all the evidence, is not satisfied beyond a reasonable doubt that the Accused was not legally provoked- put in the positive the Court finds that there is evidence capable of demonstrating that the Accused was in fact legally provoked that has not been sufficiently disproven by the Crown. The Court deduces this from the following:

- i. The Deceased said insulting and threatening words to the Accused i.e. she told her that she would make her end up in hospital if anything happened to her mother and that she would call all her family members to deal with her. There was also past history between the Deceased and the Accused that the Deceased would send her threatening messages via phone and that she never liked the Deceased.
- ii. Those words were capable of depriving in the ordinary person the loss of self-control- bearing in mind the past history between the two women, an ordinary person in the Accused's circumstances may have been deprived of self-control in similar circumstances.
- iii. The Accused did in fact lose her self-control as evidenced by her frenzied attack on the Deceased- the anger, rage and multiplicity of injuries described are consistent with a momentary loss of self-control.

Defence Case

- [87] The Court having found evidence that may result in a conviction then, following the guidance in **Salazar**, considers the case for the Accused.
- [88] The Court understands that the Accused has nothing to prove as the burden remains on the Crown to prove the guilt of the Accused beyond a reasonable doubt throughout this trial.
- [89] At the close of the case for the Crown, the Accused was told of three options available to her and opted to give an unsworn statement from the dock and did not call witnesses.
- [90] The Court has considered the evidence for the Defence with the intention of reaching a fair and dispassionate assessment of that evidence. The Court notes that in assessing the credit and reliability of the case for the Defence it must examine inconsistencies, discrepancies, and any implausibility on his evidence. The Court notes that if there are inconsistencies and discrepancies, the Court must look to see if they are material, and if they can be resolved on the evidence. Unresolved inconsistencies or discrepancies would lead the Court to reject that bit of evidence or all of the witness's evidence entirely. The Court must also consider the cumulative effect of those inconsistencies or discrepancies on the witness' credit and reliability. If the Court finds the evidence of a witness implausible, it will reject either that witness's evidence entirely or that particular bit.

Good Character Direction

- [91] The Court is guided by the Apex Court's decision in **August**¹⁷: *"It is understood that the aim of a good character direction is to ensure fairness of the trial process. It is the duty of the trial judge to ensure that the trial is fair and even-handed and an appropriate good character direction plays an important part in ensuring that*

¹⁷ **August and Another v R** [2018] 3 LRC at para 49

fairness and even-handedness. Where a Defendant, of good character, has given sworn testimony and has subjected himself to cross-examination, the Trial Judge maintains fairness and balance in the trial by directing the Jury that, because of his good character, the Defendant is a person who should be believed.”

- [92] Although good character is not a defence to the charge, the fact that the Accused has not offended in the past may make it less likely that she acted in the violent manner that the Prosecution alleges in this case. Although the Accused has not given sworn evidence and as such has not subjected herself to cross examination she has given a pre-trial account to the police which has been placed before this Court and upon which she relies. The Court has therefore taken her good character into account in her favour in its consideration of this evidence and its determination of whether she has told the truth when she gave that account. Her good character supports her credibility i.e. whether she is worthy of belief.

Accused's Unsworn Statement

- [93] The Court refers to the following portion of the Accused's unsworn dock statement:

*“I want to mention that from ever since I got with her brother, who is my ex common in law Kenroy Staine, Venecia did not like me based on the negativity; the things that her mother will call and tell her about me. Venecia also would send me a barrage of text messages threatening me telling me that when she get the chance she will stab me, or she will take her boyfriend gun and whap me in my mouth. Venecia is very problematic; she constantly harass me and send me messages of threats making promises that she would hurt me, and **she also told me if anything would happen to her mother that would make her end up in the hospital; she would make sure she call her family members to come up there and deal with me. I then told my ex mother in law Ms. Lucille Staine to control her daughter. Venecia then told me in the rage of anger she was, that I do not have the right to speak to her mother like that and if I have anything to tell her mother I should tell it to her first. So, I told Venecia leave me alone. I told her, gyal no deh trouble me because I am not troubling you. Venecia then told me what the eff I wah do bout it and that is when I saw her charging from the door where she was standing. She came running towards me same time pulling from the waist of her blue ball pants (like a jersey pants) a brown handled knife. She came running towards me. I saw her raise her hand and stabbing the knife***

forward toward my chest causing me to raise both my hands in the air blocking the chop that she was about to give me. I then saw her knife caught me between my thumb and index finger causing blood to splatter towards my toes I grabbed the blade of her knife and me and Venecia began to immediately struggle in the kitchen. The struggle then led for us both to drift towards the back door, and we both came out into the open back yard. Venecia then grab me with her other hand in my hair and she began to haul and pull me around in the yard as she remained holding on to her knife, and I remain holding on to the blade. Venecia then was fighting to take back her knife, because she wanted to stab me again as she continue to haul me in my hair forcefully. I began to get very dizzy. I then lost my balance and I fell to the ground with Venecia stumbling down on top of me. I want to mention that I never did went to my ex mother in law house to harm anyone. Me and Venecia then continue to struggle. Her mother then, Ms. Lucille Staine who appeared to be drunk, came with a machete. I then saw her in the rage of anger she was, began to chop down to where me and Venecia was on the ground still struggling and holding on to the knife. I saw my ex mother in law Ms. Lucille Staine then came behind Venecia, because she was on top of me. I saw her chopping her machete down towards us as we remain there on the ground struggling. I then saw, when I look up at Venecia, I saw blood spray into the sunlight that evening from Venecia. Kalia Staine then came running from in front of the house to where the commotion was happening and immediately intervene into the fight. Kalia then began to beat on me. My ex mother in law, who is Lucille Staine took her machete and lash me on my right leg. I then saw my ex father in law Mr. Absalon Staine walking up towards where the commotion was happening. I saw him had a machete as well in his hand. **I want to mention I was only trying to defend myself when Venecia attacked me first. Mr. Absalon Staine intervened in the commotion as well they all ganged up on me that day. I then look back up at Venecia as she remained on top of me. I then saw her blinked her eyes down twice Venecia then struggle to her feet. I told the rest of them that attacked me as well to come off me. I then saw Venecia got up and I let go of her knife. I saw her got completely to her feet and she walked back towards the back door of her mother's house taking back her knife with her in her hand. Kalia Staine then began to make phone call from her grandmother's phone. Ms. Lucille Staine then went inside of her house; she came back out. I did not saw where she put her machete. I saw her eating a bowl of food. I did not saw where Venecia put her knife for they were the one who had all the weapon. Mr. Absalon Staine then charged at me in the yard. He then told me that as long as he have life within him he will make sure that they kill me. Fearing for my life, I then went in search of my ex common law Kenroy Staine Sr. I then met him. He then came with me back to his parents' house that was when I saw the yard began to get very crowded with a lot of people some I know and some I do not know.**

Assessment of the Defence Case

- [94] The main disparity between the Crown and Defence case is who started the fight, and who inflicted the stab wounds on the Deceased, and the relevant point at which those wounds were inflicted.
- [95] The Court has highlighted the portion of the Accused's unsworn statement as directly relevant to this issue and reflective of the Defence's position.
- [96] The Court is unable to accept the Accused's full account for the following reasons:
- i. the contention that it was the Deceased who charged at her after uttering the words "*wa u go do about it*" seems more likely that the Accused would have been angered by the words uttered by the Deceased and would have charged at her.
 - ii. The Accused said that the Deceased fired a chop at her chest which she attempted to brace with her hands. This is inconsistent with injury shown in the photos and the absence of Defence wounds. - had the Accused been attempting to brace, why would her palms be open?
 - iii. The fact that the knife had no handle would explain the injury on the Accused's hand during the struggle.
 - iv. The Accused's version does not explain how the Deceased would have sustained the injuries to the back of her neck- the Court has already accepted Dr Estradaban's account that the injuries were inflicted with a knife and not a machete.
 - v. The evidence that it was the machete that caused the chop wounds is inconsistent with the accepted accounts of the Crown witnesses- particularly Dr Estradaban's opinion that the machete could not have inflicted those injuries based on the nature of the injuries, two of which were consistent with defensive action, and which according to Dr

Estradaban is more likely to have occurred while the Deceased was standing- and not on the ground as suggested by the Accused.

- vi. The Court for itself considered the location of injuries from the photographs.
- vii. The Court considered the implausibility of four persons three of whom according to the Accused were armed, attacking the Accused and her escaping unscathed with the exception of a cut on her palm.
- viii. If the Accused was holding onto the blade the entire time then the Deceased could not have been stabbed even accidentally as the blade would have been pointed in the direction of the Accused and the blunt end in the direction of the Deceased.
- ix. The Accused's version of an accidental chopping by Lucille Staine is inconsistent with the severity of the force applied.

[97] The Court further notes that this account was not tested in cross examination and although there is no onus on the Accused to prove or say anything at all, the Court in its fact finding function can accord the statement from the dock whatever weight it deems appropriate. The Court attaches little weight to the Accused's statement from the dock for the reasons advanced above. The account is not credible and implausible in several respects on its own accord, and also on the Court's acceptance of the Crown's case. The Court finds that the Accused attempted to exculpate herself by minimising her role in the attack on the Deceased.

[98] The Court; however, accepts the Accused's evidence relative to the verbal exchange between herself and the Deceased- and for the reasons advanced above the Court is of the view that there is reasonable doubt as to whether the Accused acted without legal provocation.

Disposition

[99] After a full consideration of the case for the Defence on the main material issue of who inflicted the fatal stab wounds to the Deceased, the Court rejects the Accused's

account for the reasons advanced above in relation to its assessment of the Defence's case and on the strength of the Crown's case, which it is entitled to do.

[100] The Court is not satisfied so that it is sure of the guilt of the Accused on the charge of Murder on the indictment for the reason advanced above in relation to the limited defence of extreme provocation. The Court therefore finds that it is satisfied beyond reasonable doubt that the Accused is guilty of the lesser offence of Manslaughter.

[101] The Court finds the Accused not guilty of Murder but guilty of the lesser offence of Manslaughter on the basis of extreme provocation as outlined in **Section 119 (a) of the Criminal Code.**

Candace Nanton

High Court Judge

Senior Courts Belize

Dated 18th June 2024