

IN THE COURT OF APPEAL OF BELIZE, A.D. 2024

CRIMINAL APPEAL NO. 30 of 2019

BETWEEN:

ERNEST CASTILLO

1st Appellant

v

THE KING

Respondent

CRIMINAL APPEAL NO. 31 of 2019

KEIRON FERNANDEZ

2nd Appellant

v

THE KING

Respondent

CRIMINAL APPEAL NO. 32 of 2019

TERRENCE FERNANDEZ

3rd Appellant

v

THE KING

Respondent

CRIMINAL APPEAL NO. 33 OF 2019

ASHTON VANEGAS

4th Appellant

v

THE KING

Respondent

CRIMINAL APPEAL NO. 34 OF 2019

WILLIAM 'DANNY' MASON

5th Appellant

v

THE KING

Respondent

Before:

The Hon. Madam Justice Hafiz Bertram
The Hon. Mr. Justice Peter Foster KC
The Hon. Mr. Justice Bulkan

President
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Aaron Tillett for the first, second and third Appellants
Mr. Norman Rodriguez for the 4th Appellant
Mr. Hubert Elrington SC for the 5th Appellant
Mrs Cheryl-Lynn Vidal SC, Director of Public Prosecutions for the Respondent

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2024: March 21
July 11
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JUDGMENT

- [1] **HAFIZ BERTRAM, P:** This judgment concerns consolidated appeals against the convictions of murder of the five appellants, Ernest Castillo (‘Castillo’), Keiron Fernandez (‘Keiron’), Terrence Fernandez (‘Terrence’), Ashton Vanegas (‘Vanegas’), and William “Danny” Mason (‘Mason’). Terrence and Keiron are brothers (‘the Fernandez brothers’). Mason was the employer of the other four appellants. The appellants also appealed against their sentences except for Mason.
- [2] On 19 June 2017, the five appellants were charged jointly for the offence of murder, contrary to section 117 read along with section 106(1) of the *Criminal Code*¹. It was alleged that on the 15 July 2016, between Miles 30 and 31 on the George Price Highway, in the Belize District, they murdered, Llewllyn Lucas (‘Pastor Lucas’).
- [3] According to telephone records, Mason sent a message to Pastor Lucas requesting him to go to his home on Intelco Hill, Belmopan, to pick up money owed to him by Mason. He went to Mason’s house with two other men on 15 July 2016. All three men were duct taped and placed in the back of Mason’s Ford F 150 pickup truck (‘pickup truck’). They were then driven to Mason’s Farm at Miles 30 to 31. Two of the men were released but Pastor Lucas was never seen alive again.

¹ Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011, as amended by the Criminal Code (Amendment) Act 2017.

- [4] The Police upon an investigation into a robbery found Pastor Lucas' decapitated head in a bucket in the pan of Mason's pickup truck which was parked at Sancho's Bar. Pastor Lucas' eyes, nose and mouth were covered with duct tape. Upon further investigation, the police found badly burnt bones in a pit on Mason's farm.
- [5] The five appellants were each convicted of the offence of murder in a judge alone trial, by Moore J ('the trial judge'), in a judgment delivered on 3 December 2019 and each sentenced on 30 July 2020 to life imprisonment with individualized minimum terms.
- [6] This Court heard the appeals on 21 March 2024 and reserved its decision. The appeals of Castillo and the Fernandez brothers (Keiron and Terrence) will be addressed together. Then the appeal of Vanegas followed by the appeal of Mason.
- [7] The Court has considered the grounds of appeal of each of the appellants, written submissions and oral submissions, and it is our view that the appeals should be dismissed and the convictions and sentences affirmed. Our reasons follow.

The case for the Prosecution

- [8] The Prosecution called thirty witnesses to prove its case of murder which was based substantially on circumstantial evidence that the appellants murdered Pastor Lucas. The witnesses included David Dodd, Francisco Yatz, Magdalena Teul, Pastor Richard Smith, Inspector Ismael Westby, Corporal Holly Vasquez (Investigating Officer), Barrington Montero (Scenes of Crimes Technician), Sergeant Blackette, Jason Hyde of Belize National Forensic Science Service (NFSS), Dr. Charity Davis, FBI Analyst, Insp Osman Mortis and Harry Noble of the Police Information Technology Unit (PITU).
- [9] The category of evidence included direct evidence of incidents leading up to the death of Pastor Lucas and electronic evidence, that is, telephone records and digital video recordings from a Closed-circuit television (CCTV) surveillance camera system installed at Mason's Intelco House. Additionally, there were photographs and forensic evidence.

[10] The Prosecution proved its circumstantial case by several strands of evidence, including (i) Events at Mason's house on Intelco Hill, Mason's Farm and Sancho's Bar; (ii) Events at Belmopan Police Station; (iii) Evidence supported by electronic evidence (telephone and video evidence); and (iv) Evidence supported by Forensic evidence.

Evidence in relation to events at Mason's House, Farm and Sancho's Bar

[11] Mr. Dodd testified that on 15 July 2016, after 1:00 pm, Pastor Lucas asked him for a ride to Mason's house on Intelco Hill in Belmopan. He took him there and Pastor Wright accompanied him. Whilst waiting in his car for Pastor Lucas who went into Mason's house, he and Pastor Wright were invited to go into the house as well. On exiting the car they were taken by two men into a downstairs bathroom on Mason's premises, forcibly blindfolded and tied up and kept there. Pastor Wright had resisted and was struck by one of the men and he fell on the floor. He testified that one of the men wore a white shirt and the other a red shirt. The one with the white shirt held a gun in his hand when they were taken to the bathroom and the one with the red shirt met them at the car. He further testified that eventually, he and Pastor Wright were loaded into the back of a vehicle. Although he could not see, he felt when another person was loaded into the vehicle with them and then the cover of the tonneau was lowered. They were then driven to another location.

[12] At the other location, Mr. Dodd recalled hearing pigs and was afraid they would be fed to the pigs. He was later let out of the vehicle whilst still blindfolded and he had a conversation with someone who spoke in a cultured way who informed him that he had identification and other information on him. The person did not have an American, Canadian or Belizean accent. He testified that the person spoke calmly but became agitated when he spoke about Pastor Lucas. Thereafter, he was led to his car, told to drive away, not look back, and not tell anyone what happened. Mr. Dodd testified that he did as he was instructed, turned left and drove to Belmopan. He has not seen Pastor Lucas again.

[13] Magdalena Teul worked as a domestic helper for Mason at the time of the incident. She identified him in the court and the other appellants, except Castillo. She testified that on 15 July 2016, she prepared lunch for Mason. She saw Pastor Lucas arrive at the house after lunch and she served him with water as he was speaking with Mason. She did not

see when they left. Later, about 2.00 pm on the same day she and Mason's wife, Melissa went out with a taxi because the black pickup truck belonging to Mason was not there when they were ready to leave.

[14] Mr. Franciso Yatz testified that he worked for Mason in 2016. He identified him as the person he called "Mr. Danny". He identified all the other appellants as persons who worked at Mason's residence. He said that on 15 July 2016, after lunch, he heard Mason said that there would be a meeting. He enquired if he had to join the meeting and he was told that he and the domestic helper, Teul were not to do so. Mr. Yatz said that he saw Pastor Lucas visit the house and he spoke to Mason. Further, he had seen him visit the house on previous occasions and recognised him. He further testified that he saw the other four appellants take Mr. Dodd and another person from a vehicle to the bathroom under Mason's house.

[15] Inspector Ismael Westby testified that on 15 July 2016, around 5.15 pm, he saw the five appellants arrive at Sancho's Bar in a black Ford pickup truck. He saw each of the five appellants exit the pickup truck and saw Mason lock it. He described the clothing that the appellants were wearing which matched photographs in evidence taken from each of them at the Belmopan Police Station. He further testified that he informed Sgt Vasquez of the presence of the pickup truck and the men at Sancho's Bar. He did so because of a robbery that had occurred earlier.

[16] Sgt Holly Vasquez was the investigating officer in this case. He was attached to the Major Crimes Unit in Belmopan City. He testified that on 15 July 2016, whilst he was investigating a robbery, he received information that the perpetrators of the robbery were four creole descent male persons of Roaring Creek who were in a black pickup truck. He gave this information to Inspector Westby who gave him certain information.

[17] He further testified that as a result of his conversation with Inspector Westby, he went to Sancho's Bar accompanied by Cpl Ryan Martinez, PC Sean Guzman and PC Myvette, who were all officers from the Quick Response Team ('QRT'). He saw a black Ford F-150 pickup truck parked on the premises and he saw four male persons standing approximately 20 feet away from the pickup truck. He approached the four male persons and requested the assistance of Cpl Martinez and his team to search the men who

became boisterous and refused to be searched. He testified that they started yelling “*you won’t f...ing search me*” and Terrence hit away one of the officers hand.

[18] Sgt. Vasquez then indicated to the men that he wanted to search the black pickup truck. He enquired from Keiron as to who was the driver of the pickup truck and he directed him to Mason, an East Indian descent person who was sitting at a table near the entrance of Sancho’s Bar. He introduced himself to Mason and informed him that he would like to search his pickup truck. Mason informed him that he was not in possession of the keys as his wife brought him to the Bar. Sgt Vasquez then looked into the vehicle using a flashlight and saw a shotgun which raised his suspicion that the men were part of a robbery.

[19] He further testified that he attempted to search the pickup truck but was met with resistance and unruly conduct from the first to fourth appellants. He then called acting Commissioner of Police, Mr Blackett, requesting the assistance of additional police officers. Two police vehicles with Mobile Interdiction Team (‘MIT’) members arrived and he instructed them to detain the four men (first to four appellants) pending investigation of robbery and behaving disorderly. The first to fourth appellants were then taken to the Belmopan Police Station. In the meanwhile, the officers from QRT who had accompanied Sgt Vasquez to Sancho’s Bar provided a security perimeter around the pickup truck.

[20] Sgt. Vasquez requested the vehicle key again from Mason who told him he had a spare key at home. He and other members of the MIT took Mason to his residence to retrieve the key. In the meantime, other police officers guarded the pickup truck in his absence at Sancho’s Bar. Mason called his wife using his cell phone when they arrived at his gate and she brought out a set of keys which she handed to Mason. Upon their return to the Bar, Sgt Vasquez saw other QRT team members who formed a perimeter around the pickup truck. Mason was then asked to open the pickup truck but he was not successful. Mason told Sgt Vasquez “*I must have gotten the wrong set of keys*”. Sgt Vasquez noticed that the pickup truck had a code system and asked Mason to open the vehicle using the code. He attempted three times to do so but was not successful. He said, “*I do not recall the code.*” A mechanic, Elisar Pineda was called to assist but he was also unsuccessful.

[21] Sgt. Vasquez's then took a walk around the pickup truck with Mason and Cpl Martinez. He attempted to open the back passenger door but that was locked. He then attempted to open the cover of the pan of the pickup truck by turning a knob which secured the pan. Upon doing so, the pan opened and stopped where the hydraulic system was bucked. He then used his flashlight to see inside of the pan. He saw a black plastic bucket which was tied to the rear end of the pickup with metal wires and yellow and blue string. He also saw a roll of grey duct tape and a yellow gasoline nozzle. In the bucket, he saw a white crocus sack with blue stripes which was open and he saw a black object that appeared to be the decapitated head of a male person. He said he observed that the head was covered from the eye down with grey duct tape and it was in a lying down position as though sleeping. He immediately turned to Mason and asked him to look at what was found. Mason said, "*I don't know who that is.*" Sgt Vasquez then cautioned Mason and informed him that he will be detained for murder.

[22] After that, Sgt. Vasquez called the Belmopan Police Station for assistance including Scenes of Crime Technician, Mr. Barrington Montero who processed the scene including the decapitated head. He saw Mr. Montero take off the duct tape from the eyes and mouth before taking photographs. He also saw a white cloth and a blue bandana by the neck area of the decapitated head.

[23] He testified that the keys to the pickup truck was later found on the premises of Sancho's Bar which was used to open the pickup truck. Later, he asked the MIT members to escort Mason in the pickup truck to Belmopan Police Station. He then proceeded to Belmopan Western Regional Hospital along with Mr. Montero and delivered the bucket and its contents to Dr. Dana Lawrence.

[24] Barrington Montero was the Scenes of Crime Technician in this case. He testified that he processed the scene at Sancho's Bar and the Ford pickup truck. He confirmed that he photographed Pastor Lucas's head at Sancho's Bar after removing the duct tape from his eyes and mouth.

[25] He further testified that he processed the scene on Mason's farm. On 16 July 2016, he discovered and retrieved 4 (four) pieces of burnt bones from a smoking pit. He could not retrieve all the bones because the pit was too hot. On 17 July 2016, he returned to the farm

and he observed that the fire was completely extinguished. He entered the pit and collected several pieces of bones which he later packaged, labelled and sealed and prepared a chain of custody form for the exhibits.

[26] Mr. Montero testified that he later retrieved from the storeroom all exhibits which he handed over to National Forensic Science and Services (NFSS) exhibit keeper, Mr. Rene Moh. On 2 August 2016, he returned to the lab and signed a chain of custody form receiving the bones which he delivered to Dr. Estrada Bran for inspection at Karl Heusner Memorial Hospital morgue.

[27] Richard Smith, a pastor and a talk show host testified that he was building greenhouse frames for Mason. Terrence called him to go to the farm to collect money owed to him by Mason. On the 15 July 2016, between 4.00 and 5.00 pm he went to the farm accompanied by three police officers. He spoke to Terrence and he saw Keiron, both of whom he knew for many years. His testimony was that he waited for about 45 minutes before he was permitted entry to the premises of the farm. He spoke briefly to Terrence and left without being paid.

[28] He further testified that between 8:00 and 8:30 pm he received a telephone call from Mason who asked him if he could call off the police who were attempting to search his pickup truck. Mr. Smith said he knew it was Mason calling him because he had his number stored in his phone and he addressed him in a particular manner. He said that he informed Mason that he could not assist as he had no authority to intervene in police business.

Electronic Evidence

Phone records and text messages

[29] The phone and text messages records were primarily between Mason and Pastor Lucas. Sgt Vasquez testified that in August 2016, he made an application to the office of the Director of Public Prosecutions to obtain a court order for the interception of text messages and phone calls related to the appellants in this case, all of whom he had identified in the courtroom. He received the Order and served it on two Belize Telecommunication Limited ('BTL') offices and thereafter he received the text and phone records. By these records, the Prosecution showed the increasing animosity

between Mason and Pastor Lucas prior to his killing. The text messages proved that Mason told Pastor Lucas to meet him on 15 July 2016 at his house on Intelco Hill and he agreed to do so.

[30] The phone records put into evidence by BTL IT Specialist also proved that Mason called Mr. Smith on the evening of 15 July 2016 when the police attempted to search his pickup truck, that is, before Pastor Lucas' head was found in Mason's pickup truck. Pastor Smith's evidence of a call from Mason was confirmed by BTL records.

CCTV video recordings from Mason's surveillance camera system

[31] The evidence heard by the trial judge as to what transpired at Mason's Intelco house on 15 July 2016 was supported by CCTV video recordings captured by his surveillance cameras. These cameras captured images which were converted to digital through a Digital Video Recorder ('DVR'). The CCTV video recordings were extracted from the DVR and placed on a DVD which was admitted into evidence pursuant to the **Electronic Evidence Act**.² Two DVRs were taken from Mason's premises on the strength of a search warrant obtained by the Investigating Officer, Sgt. Vasquez but only one had data. These video recordings were shown to the trial judge in the courtroom. Several prosecution witnesses testified about the provenance and collection of the DVR from which CCTV video recordings were extracted and which formed significant strands of evidence in the circumstantial case which the Crown relied on to prove its case.

[32] Sgt Vasquez testified that during the search at Mason's house in his presence, two DVRs were collected. He later handed over the DVRs to Inspector Osman Mortis of the Police Information Technology Unit ('PITU'). He instructed PITU to extract video recordings from 1:00 pm to 4:00 pm on 15 July 2016, from three different cameras or channels of the DVRs. Mr. Mortis instructed Mr. Harry Noble to extract the CCTV video recordings.

[33] The CCTV video recordings showed an image of Pastor Lucas at the residence of Mason at about 1:15 pm on 15 July 2016. Mrs. Usher testified that the image was of

² Cap 95.01 of the Laws of Belize

her brother, Pastor Lucas. These images confirmed the testimonies of prosecution witnesses, Dodd, Teul and Yatz that on 15 July 2016, Pastor Lucas was at the home of Mason.

[34] The CCTV video recordings also showed video images of each of the appellants. The trial judge in her judgment at paragraphs 21, 22 and 23 addressed who and what she saw. This Court was asked by the first three Appellants to view these images. However, in our view, that would not be prudent for this Court do so since we were not given an opportunity to view the images on the same trial court equipment and using the same DVR admitted into evidence by the trial judge. Further, she was the finder of fact and had visited the locus. We have no difficulty relying on what the trial judge saw on the CCTV video recordings and what she heard on the audio. She addressed the grainy video which was the main contention in the court below and analysed all three frames, compared them and was able to identify who was in the grainy video as shown at paragraphs 21, 22 and 23 of her judgment.

Forensic evidence

Blood evidence

[35] Sgt. Vasquez testified that after leaving the Hospital, he went to Belmopan Police Station and he requested that all the detainees (the appellants) be taken out of the cell. He then learned the names of the five appellants. He informed all of them that they were detained for the crime of murder. He further testified that he observed what appeared to be blood on Castillo's short pants and he asked him to remove his clothing and he acknowledged the request by nodding his head. He asked Mr. Montero to use the Scenes of Crime Office for Castillo to remove his clothes. He gave instructions for the collection of the clothing of all five appellants.

[36] Mr. Montero testified that on 16 July 2016, Sgt Vasquez asked him to collect the clothing of the five suspects. He retrieved the clothing from the first to fourth appellants in his office located at the Belmopan police station in the presence of Sgt Vasquez. He testified that each appellant was in his office one at a time. They each consented to the removal and retrieval of their clothing. He took photographs of each of the appellants in their clothing before removal and thereafter gave them white crime scene processing

suits to wear (white Tyvek suit). He further testified that Mason's clothing was retrieved at Mr. Blackett's office with his consent and he was given a white Tyvek suit.

[37] He testified that the clothing for each of the appellants was packaged separately, labelled and sealed. The packages were accompanied by a chain of custody form and locked in the Scenes of Crime storage room which is located next to the Scenes of Crime Office. He was the only one with keys to that storage room at the time.

[38] Jason Hyde of Belize National Forensic Science Service (NFSS) testified that he received the clothing items from Mr. Montero for each of the accused. He found the presence of human blood on the clothes of Castillo, Keiron and Terrence. He prepared cuttings, which he sent to the Federal Bureau of Investigation (FBI) in the United States for DNA Analysis. Mr. Hyde's evidence was that he followed proper protocol and procedures and as such there was no risk of cross contamination of the clothing at the laboratory.

[39] Dr. Charity Davis, FBI analyst testified that on 10 August 2017, she conducted DNA analysis on specimens delivered to the FBI in this case. She developed a DNA profile of Pastor Lucas from his molars. She found that the human blood stains from cuttings of the clothing identified by laboratory reference numbers belonged to Castillo and the Fernandez brothers and matched the DNA profile of Pastor Lucas.

Cause of Death could not be determined

[40] Dr. Mario Estrada Bran, the Forensic Doctor testified that he could not determine cause of death without the body of Pastor Lucas for examination. He examined the head and determined that the death was not caused by injury to the head itself and there was no injury to the brain. He testified that the brain showed signs of activity before the decapitation. But, he could not give an opinion as to whether Pastor Lucas was alive before his head was severed.

Evidence in relation to extraction and storage of the video recordings

[41] Mr. Noble testified that he received two DVRs on the 19 July 2016 for extraction. He explained how he extracted the CCTV video recordings from one of the DVRs. The other had no footage. He connected a USB flash drive to the USB port of the Digital Optical Disc (DVR) and then exported the videos to the flash drive. He then transferred

the videos from the flash drive to his personal Linux computer. He confirmed that what had been extracted from the DVR was what was stored on his computer and that both the flash drive and the computer were in good working order.

[42] On the 24 August 2016, he transferred the CCTV video recordings from his Linux computer to the DVD, made 5 copies, and handed over all to Sgt. Vasquez. He testified that between the 19 July 2016 and the 24 of August 2016, no one had access to his computer and the files, as his computer is password protected and he kept the password to himself. It was the DVD that was sought to be admitted into evidence and no one had access to the footage that was transferred to the original DVD.

[43] He further testified that the server room in which the DVRs were stored was also only accessible by him. That room is accessed by entering Inspector Alcoser's office and then going through another door. He said that he had keys for both Mr Alcoser's door and the steel door to the server room and he was the only one with keys to his door.

The Defence of Keiron Fernandez and Mason

[44] Castillo, Vanegas and Terrence exercised their constitutional rights to remain silent and they called no witnesses on their behalf. Keiron and Mason gave unsworn statements. Mason called one witness, Mr. Timothy Reid.

Keiron Fernandez Unsworn statement

[45] Keiron Fernandez gave an unsworn statement from the dock. He called no witnesses. He said that he had worked on the day of the incident at Mason's house and farm at Mile 31. He left the residence in Belmopan after lunch and went to work at the farm. Also, that after work he went with co-workers to Sancho's Bar. Keiron said he did not kill Pastor Lucas and knew nothing at all about the crime or who committed it. Further, that he had never been convicted of any criminal offence except for a traffic violation.

Mason's unsworn statement

[46] Mason gave an unsworn statement and called one witness. He said that he met Pastor Lucas through Mr. Jesus Castillo and he became a good friend who confided in him. They respected each other, became close, and got along very well. He said he never had any issues with Pastor Lucas and would update Mr Jesus Castillo about his performance

since he had referred Pastor Lucas to him. Mason said that a few days before the 15 July 2016, Mr. Jesus Castillo sent him a text indicating that someone threatened to kill Pastor Lucas and he had asked him if they should discuss how to assist him. Mr Jesus Castillo then asked him to do what he could. As such, Mason said he told Pastor Lucas to go to his house on 15 July 2016 and he arrived there at about 1:30 pm. According to Mason, Pastor Lucas said that he had not worked for a month and he wanted to borrow some money. He told him that he would see what he could do. Mason said Pastor Lucas thanked him and stated that he had to leave. Mason said that he was also departing.

[47] What followed is quoted in its entirety from the judgment of the trial judge at the third sub-paragraph of paragraph [103]:

“...The fifth accused said as he and his staff prepared to leave, he saw lots of people (more than 15) under and around the house. He said this included private construction contractors that were building a parking lot. He said his staff got into vehicles; there were about 3 vehicles, including the F150 pickup. The fifth accused said that when the vehicles stopped at the gate to exit the premises that some people came out of the vehicle. He said that when they passed the bus terminal heading to Forest Drive they stopped again and other people came out the vehicle. They stopped at Reimers to purchase horse medication. He did not see anyone else leave any of the vehicles. He said he didn't see all the people that were left at the house. When they left Reimers they went to the ranch at Mile 31 in Democracia Village. The fifth accused said he immediately got out of the vehicle, consulted his staff, and attended to the horses. The fifth accused said that at no time did he see Llewellyn Lucas on the ranch.

Later that evening, Jesus Castillo invited the fifth accused to a bar. He and his staff got into his pickup truck and went to the bar in Belmopan. On arrival, there were several vehicles in the bar's parking lot, two cars, two pickup trucks, and a white van. The fifth accused parked besides the white van. He said his staff went into the bar and he sat at a table where Jesus Castillo and others sat. There were two other police officers who were friends of his that joined them. The fifth accused said he never moved from that table. There were two or three waitress that were sitting at the table also. The fifth accused said he saw three police officers enter the bar. They brought some individuals to the front of the bar and they started harassing and searching them when he realized the individuals were his staff. He said he inquired what was happening and a plain clothes officer approached and asked if the truck belonged to him. The fifth accused said he asked who was asking and the man said he just wanted to know if the truck belonged to him. The plain clothes man said he would conduct a search on the truck. The fifth accused said he told the officer if he wanted to search the vehicle, he should tow it and get a search warrant. By that time the police had taken the staff of the fifth accused to a vehicle where they held them. The officer asked for the keys to the vehicle. The fifth accused said he responded

that the keys were at the table with his phone. They went to the table to get the keys but the keys were not there. The waitress and everyone that was at the table had been using the keys to open beers so the fifth accused said he assumed someone had the keys that had been at the table and he told the officer that he could not find the keys.

Then the fifth accused said he saw other officers coming in the parking lot and he became very concerned. He said he called his wife to see if she had a second set of keys.

He said that the police took him and his staff to the Belmopan Police Station and then brought back one of his staff. He said he didn't know where the police took the staff member and the police asked the fifth accused to show them where he lived. He said he was given a phone call to ask his wife to come down with the spare keys. It was he said around 8:30 to 8:40 that evening. He received the keys and returned to the bar. Before entering the perimeter of the bar, the parking lot of the bar, the fifth accused said he saw three officers at the back of the F150 pickup. One of them who was in the pan of the pickup and the other two were leaning on the tailgate of the pickup. He said he told the police officer you have these individuals in my truck and the officer didn't reply. The fifth accused said they tried the key but it didn't work. The plainclothes officer called someone to pry open the door but they were unsuccessful. The same officers at the pan of the truck were ordered to break the glass of the driver's side of the truck.

At that time a police officer handed him a phone and told him that someone wanted to speak to him. It was ACP, Mr Russell Blackett, who later came to the bar and started verbally assaulting the fifth accused, according to him. Another police officer with Mr Blackett from the Belmopan police station, hit the fifth accused with a baton on his left leg and told him he should say what happened. The fifth accused said he did not know what the officer was talking about. The plainclothes officer told him he was under arrest and put cuffs on him. The fifth accused said he was not searched and his rights were not read to him. Mr Blackett then took him inside the bar and asked where he had been sitting. The fifth accused says he told him exactly where he was sitting and with whom. The same officer that handed him the phone to speak with Mr Blackett, came back with the keys to the truck. He showed it to Mr Blackett in front of the fifth accused. The fifth accused said that Mr Blackett swung his hand and hit him across his chest. The officers tried the mechanism on the key and the four parking indicators flashed, unlocking the front cab of the truck. Mr Blackett left the bar and told the officer when he finished to bring the fifth accused to Blackett's office.

The fifth accused said he saw the Scenes of Crime technician arrive and saw other officers assist in removing an object from the back of the vehicle. They took a bag out of a bucket. The fifth accused was about 30 feet away from the tail gate of the truck, he said. They started to take pictures. He then noticed that his staff member was near the truck and two police officers hit him in the stomach and held him by his arms and took him to the truck's tailgate and leaned his head forward onto the plastic bag. Afterwards, the fifth accused said

he was driven in his own vehicle by the police to the Belmopan Police Station, where he went to Mr Blackett's office. In their private discussion, the fifth accused said Mr Blackett spoke about his rank and what he can do to the fifth accused, including arresting his wife if the fifth accused didn't tell him what happened. The fifth accused said he told Mr Blackett that he didn't know anything about what happened to the deceased. He said he learned the head of Mr Llewellyn Lucas was found in his truck and he was saddened to hear this. He said he told the officer that he had nothing to do with this.

Sgt Vasquez searched the fifth accused and the police took a photograph of the fifth accused outside of Mr Blackett's office in the lobby area. He was told that the Crime Scene investigator needed to collect his clothes which he gave to them. The fifth accused said he again spoke to Mr Blackett for less than 8 to 10 minutes. The third time he came out of the cell he said was to meet someone from the US Embassy where he, Mr Vasquez and the person spoke. The fifth accused said he didn't know why he was seeing a US Embassy individual but that he was told that they could give him protection but he wondered what sort of protection they could provide since he was not a US resident. The following day the fifth accused accompanied the police on a search of his house in Intelco Hill. The fifth accused said that he told Mr Vasquez that he wished for his lawyer to be notified that the search was going to be conducted. Mr Vasquez, with other police accompanied the fifth accused to his house where the fifth accused told Charlie (Mr Yatz) to give the keys to Mr Vasquez. There were about 15 officers searching the house. The police videotaped the search. While the search was occurring, the fifth accused said he was in a small room with the JP, Jose Garcia. During the search, the police disconnected the DVRs from the camera surveillance system and other items were taken. He said he saw his lawyer Mr Panton. The next day there was another search. The police forced the door open because they couldn't get in and they continued the search with the K9 Unit and removed more documents from the safe. The fifth accused said he was arrested and charged with murder and other offences when he returned to the Police Station.

Evidence of Timothy Reid

[48] At paragraph 104 of the judgment, the trial judge referred to the evidence of Mr. Timothy Reid, a former Security Officer for the US Embassy in Belmopan, witness for Mason. The trial judge stated that Mr Reid provided a witness statement recalling his interaction with Mason on the 17 July 2016 which was read into the trial record as agreed upon evidence after being edited for hearsay and other inadmissible material. The trial judge then referred to the evidence of Mr. Reid:

“Mr. Reid's statement said that he had been contacted by Ag Commissioner Russell Blackett who was seeking assistance interviewing a U.S. citizen witness, Mr. David Dodd, in a kidnapping and murder investigation. Mr Reid, along with the head of the National Crimes Investigation Branch and the Police

Legal Advisor Bartholomew Jones, interviewed Mr Dodd who provided an account of his kidnapping. Mr Reid said he was taken, along with Mr Jones, to the residence where Mr Dodd was held captive, a residence that Mr Reid said was later confirmed to belong to William “Danny” Mason.

Upon completion of the Dodd interview, Mr Reid said that the Police Investigator Holly Vasquez spoke with Mr Blackett who inquired if Mr Reid should speak with the fifth accused, because the fifth accused had reportedly asked to speak to someone from the US Embassy. Mr Reid spoke with the fifth accused. He identified himself to Mr Mason as a US Federal Agent working with the US Embassy. He spoke with the fifth accused in the presence of Mr Vasquez, who advised the fifth accused of his rights. After a brief introduction, Mr Reid said Mason stated that his true name was Rajesh Quellet and he was born in Guyana and had previously resided in Canada for a large portion of his life. Quellet said that he went by other names and feared for his life. He said that he arrived in Belize approximately 18 months prior and was a businessman and a philanthropist. Quellet said that he was principally an entrepreneur and most recently was selling medical equipment in Belize. Mr Reid said that the fifth accused claimed that he was being framed by the Minister of National Security John Saldivar. Mr Reid’s statement also said that the fifth accused...believed that the reason he was still alive was that no one had spoken of the information to that point. Quellet said he ...needed assurances for his safety. Mr Reid said that RSO personnel advised the fifth accused that he could not provide assurances and that he was under the care and custody of the Belize Police and that he should seek legal counsel. Mr Reid said that on July 19, Sgt Vasquez requested RSO assistance in reviewing documents seized during searches of Quellet’s residence.

Findings of the trial judge

Pastor Lucas died of harm

[49] The trial judge found that the evidence of Mr and Mrs Usher, along with the evidence of Dr. Estrada Bran, the Forensic Doctor proved that Pastor Lucas is dead and also that the Prosecution had proved beyond a reasonable doubt that he died of harm.

[50] *Combination of Circumstantial evidence to prove joint conduct to inflict harm*

In considering the third element that the five accused acted jointly to inflict harm that resulted in the death of Pastor Lucas, the trial judge stated that in an effort to prove that they acted jointly the Prosecution marshalled a combination of circumstantial evidence which included electronic and forensic evidence. She relied on the case of **August and**

Gabb³ at paragraph 38, where the court explained the nature of circumstantial evidence “... is such that while no single strand of evidence would be sufficient to prove the defendant's guilt beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the defendant's guilt is proved beyond reasonable doubt...”

- [51] She further directed herself on the reasonable inferences to be drawn as a fact finder from all the evidence including the joint conduct of all the appellants. She directed herself on the legal principle of joint enterprise that is, “where two or more persons together commit a crime with each participating in the commission of the offence in different (or the same) ways and with each having the requisite *mens rea* to carry out the crime.”
- [52] Under the heading of circumstantial evidence, she considered the evidence of Mr. Dodd, Mr. Yatz, Ms. Teul, Mr. Smith and Sgt Vasquez. The trial judge assessed their evidence and concluded at paragraph 19 that Pastor Lucas went to Mason's house on 15 July 2016 at about 1.15 pm along with Mr. Dodd and Pastor Wright. The latter two persons were held in Mason's downstairs bathroom. Thereafter, all three men were loaded in the pan of Mason's pickup truck and driven to the location where Mr. Dodd heard the sound of pigs. At the new location, Mr. Dodd had a conversation with a man who spoke ill of Pastor Lucas. Dodd and Wright then left the area without Pastor Lucas and he was never seen alive again.
- [53] The trial judge then analysed the other strands of circumstantial evidence and stated that the Fernandez brothers were at Mason's Farm approximately 4 – 5 pm. Also, Mason in his unsworn statement places himself at the farm with his staff. Then she analysed the incidents at Sancho's Bar. That is, all five appellants arrived at the bar in Mason's pickup truck. She then referred to Sgt. Vasquez's evidence in relation to the search of the pickup around 8.00 pm and the resistance by all five appellants, especially Mason. Further, the telephone call placed to Pastor Smith by Mason asking him to prevent the search by the police and after that conversation Sgt. Vasquez found Pastor Lucas's head in the pan of the pickup truck.

³ [2018] CCJ 7 (AJ)

Electronic evidence

Authenticity of DVR and CCTV Video Recordings

[54] The trial judge analysed the electronic evidence and the law in relation to the admission of this type of evidence, pursuant to the **Electronic Evidence Act**. At paragraph 21 of the judgment, she concluded that she was satisfied of the authenticity of the DVR and CCTV video recordings extracted from that device. She considered the evidence of Sgt Vasquez who retrieved the DVRs and handed them to Insp Osman Mortis of PITU. Mr. Noble was then tasked by him to extract video recordings from 1 – 4 pm on 15 July 2016. The trial judge's view was that the CCTV video recordings formed significant strands of evidence which added to the circumstantial evidence the Crown relied on to prove its case.

[55] She carefully reviewed the CCTV video recordings which confirmed that Pastor Lucas went to Mason's house about 1.15 pm and also confirmed the evidence of prosecution witnesses, Dodd, Teul and Yatz that Pastor Lucas was at Mason's home at that time.

Identification of appellants on CCTV Video Recordings

[56] The trial judge distinguished the images on the video of each of the appellants partially by their clothing, stature, and in some instances their gait and their face and hair. She carefully assessed those images and identified each of the appellants in the images which she stated assisted her in reaching certain conclusions. She saw the first to fourth appellants put Pastor Wright, then Mr. Dodd and lastly Pastor Lucas in the pan of the pickup truck which then departed the premises followed by the white Honda car (Mr. Dodd's car) driven by one of the appellants.

Telephone evidence

[57] In relation to the telephone evidence, the messages confirmed the animosity between Mason and Pastor Lucas. Also, Mason texted Pastor Lucas to go to his house and he agreed to do so. She concluded that this evidence explained how Pastor Lucas was at Mason's house before he died. Further, the call to Pastor Smith by Mason which she stated was an effort to prevent the police from gaining access to the pickup truck. The trial judge concluded at para 27 of her judgment that Mason did not want the police to search his vehicle because he knew they would find Pastor Lucas's head.

Fundamentally, she noted that when this evidence is taken together with the remaining circumstances it provided a view other than innocence.

[58] As a result of the above conclusions and findings, the trial judge accepted the relevance and authentication of the electronic records and gave them significant weight.

Forensic evidence

[59] With regards to the forensic evidence, the trial judge carefully considered the blood evidence. She relied on the evidence of Jason Hyde who found the presence of human blood on the clothing of Castillo and the Fernandez brothers. She gave this evidence full weight. She also carefully considered the evidence of Dr. Davis, FBI analyst who testified that she developed a DNA profile from Pastor Lucas's molar and found that the human blood stains on the clothing of Castillo and the Fernandez brothers matched the DNA profile of Pastor Lucas. The inference drawn by the trial judge was that the blood from Pastor Lucas came to be on their clothing because of their contact with him.

[60] At paragraph 32 of her judgment, the trial judge said that she was fully satisfied of the integrity of the source, collection, storage, transmission and testing of the molars taken from Pastor Lucas during the exhumation of his remains. She was also sure of the integrity of the source, collection, storage, transmission and testing of the blood on the clothing taken from Castillo and the Fernandez brothers.

[61] The DNA profile was compared with the blood stains found on the three appellants' clothing. The trial judge directed herself in accordance with the guidance from **Doheny and Adams**.⁴ She found that the DNA evidence was highly probative especially when combined with sufficient additional evidence to give it significance as discussed in **Doheny and Adams**.

Finding of joint conduct to kill on totality of circumstantial evidence

[62] The trial judge meticulously assessed all the strands of circumstantial evidence from the Prosecution and found that on the totality of the evidence, which was overwhelming, the five accused acted jointly to kill Pastor Lucas.

⁴ [1977] 1 Cr App R 369

[63] She visited Mason's Intelco House and his farm and Sancho's Bar. She compared the evidence with the CCTV video recordings and in her view, the CCTV video recordings and the head of the deceased were the two most probative strands of evidence. However, based on her consideration of all the circumstantial evidence, including the forensic and electronic evidence, decapitated head in the pan of the pickup truck, burnt bones on the farm, the CCTV video recordings from Mason's home and the deceased blood on the clothing of three of the appellants, she found that the five appellants jointly carried out this heinous crime with intent to kill and without lawful justification.

Weight given by trial judge to the unsworn statements of Terrence and Mason

[64] The trial judge gave no weight to the unsworn statement of Terrence. In relation to Mason's unsworn statement she gave parts of his statement no weight and accepted certain portions as seen at paragraph 105 of her judgment. She accepted that Pastor Lucas was at Mason's house and they spoke to each other about money and portions of what happened at Sancho's Bar. The trial judge reminded herself that it is the prosecution who has the burden of proof and as such it is their evidence that must make her feel sure of Mason's guilt.

Conclusion and finding by trial judge on totality of circumstantial evidence

[65] The trial judge assessed the numerous strands of circumstantial evidence which when woven together formed a strong case against all the appellants. She said, "*all of these strands of evidence do reliably exist and collectively lead me in one direction only and one inevitable conclusion. I cannot conclude anything other than the five accused jointly killed the deceased with the intention to kill him and without a lawful reason to do so.*"

The Appeals

[66] The appeals will be dealt with in the following order: (a) Castillo, Keiron and Terrence; (b) Vanegas and (c) Mason.

The appeals of Castillo, Keiron and Terrence

[67] The issues raised are whether:

- 1) The Electronic Evidence Act have been satisfied in admitting into evidence the DVR surveillance recording.

- 2) The conviction was safe having regards to the state of the circumstantial evidence of the prosecution's case.
- 3) The trial judge erred in failing to direct herself of the need for caution before acting on identification evidence based solely on videotape evidence.
- 4) The trial judge erred in holding that video footage was of a quality to make a proper identification.
- 5) The trial judge erred in admitting into evidence the clothing of the appellants without first satisfying herself that the appellants' clothing was freely and voluntarily given.

Did the trial judge err in admitting into evidence the DVD which showed the CCTV video recordings without satisfying the provisions of the Electronic Evidence Act?

[68] The complaint under this ground by the three Appellants, Castillo, Keiron and Terrence was that sections 5 and 7 of the provisions of the Belize **Electronic Evidence Act** had not been satisfied by the Prosecution. The central issue being the admission of the CCTV video recordings extracted from the DVR from Mason's house and placed on a DVD which was admitted into evidence. The trial judge having considered the evidence of Mr. Noble, Sgt Vasquez and the statement of Justice of Peace, Jose Garcia, was satisfied of the authenticity and integrity of the CCTV video recordings surveillance which was taken from Mason's house with a search warrant.

[69] Mr. Tillett for the appellants submitted that the **Electronic Evidence Act** does not define "authentication." To support his arguments he sought guidance from United Kingdom, **The Police and Criminal Justice Act, 1984 (PACE)** at section 69 which provides:

"69 – (1) In any proceedings, a statement in a document produced by a computer shall not be admissible as evidence of any fact therein unless it is shown-

- (a) that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer and;
- (b) that at all material times the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents; and
- (c)

[70] Counsel further relied on Chris Reed’s article titled “*Admissibility and Authentication of Computer Evidence – A Confusion of Issues*,” where Reed stated that the statutes lay down minimum authentication requirements. He referred to paragraph 2.1 in that Article where Reed explains the meaning of authentication as “[*authentication means satisfying the court (a) that the contents of the record has remained unchanged, (b) that the information in the record does in fact originate from its purported source, whether human or machine, and (c) that extraneous information such as the apparent date of the record is accurate.*”

[71] In our view, authentication as stated in section 69 of PACE and by Reed have been satisfied in the present case. Mr. Noble’s evidence proved the origin of the CCTV video recordings and authentication of the CCTV video recordings which remained unchanged from what was extracted from the DVR from Mason’s house. This will be discussed further by applying the relevant laws of Belize on electronic evidence at the time of the incident in this case.

Belize Electronic Evidence Act

[72] Belize **Electronic Evidence Act** (now repealed) was enacted on 31 December 2003. It provides for the authenticity and the integrity of the electronic records. Section 5 of the Act provides:

“5. The person seeking to introduce an electronic record in any legal proceeding has the burden of proving its **authenticity** by evidence capable of supporting a finding that the electronic record is what the person claims it to be .”

[73] Sections 7(a) and (b) of the Act which addresses integrity states:

“7. In the absence of evidence to the contrary, the **integrity** of the electronic records system in which an electronic record is recorded or stored is presumed in any legal proceeding:

(a) where evidence is adduced that supports a finding that at all material times the computer system or other similar device was operating properly, or if not, that in any respect in which it was not operating properly or out of operation, the integrity of the record was not affected by such circumstances, and there are no other reasonable grounds to doubt the integrity of the record.

(b) where it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it;”

Authentication

[74] The trial judge relied on section 5 of the Act and carefully assessed the evidence before making her finding on authentication and admission of the DVD into evidence. She stated at paragraph 21 that:

“Digital Video Recorders and Recordings

[21] The video recordings (CCTV video recordings) of the 15th of July 2016 from the residence of the fifth accused were extracted from the DVRs, digital video recorders, taken by the police from the house pursuant to a search warrant. After several Crown witnesses testified about the provenance and collection of the DVRs, I was satisfied of the authenticity of the DVRs and recordings. Sgt Vasquez said in the course of searching the house of the fifth accused, in his presence, the DVRs were collected. After retrieving the DVRs, Sgt Vasquez handed them to Insp Osman Mortis of the Police Information Technology Unit (PITU). Sgt Vasquez said he asked that the PITU extract video recordings from 1 pm to 4 pm from the 15th of July 2016 from the three different cameras or channels of the DVRs.”

[75] The Prosecution had the burden of proving the authenticity of the CCTV video recordings as provided by section 5 of the Act by evidence “*capable of supporting a finding that the electronic record is what the person claims it to be.*” The Prosecution proved that the DVRs was secured after taken from Mason’s house on the authority of a search warrant. Sgt Vasquez’s testimony showed that on the basis of the search warrant, he went to the residence of Mason and discovered the surveillance system which he took in the presence of Justice of the Peace, Garcia. He handed over two DVRs to Osman Mortis who secured them in a locker. Mortis then handed over the two DVRs to Mr. Noble who extracted the video footage.

[76] Mr. Noble worked for the Police Department as a Wide Area Network Database Consultant. At the time of the trial, he had 15 years’ experience working for the Police Department. His main duty was to ensure the network and data base of the Police Department, mainly their Crime Information Management System, is working. He also did Computer Forensics for the Department, that is, examination of digital equipment.

He has experience to extract video files from surveillance cameras in the entire country of Belize.

- [77] He testified that he was given two DVRs by Insp Osman Mortis, a Revo Lite brand and a Lorex brand. He examined both DVRs and the Lorex brand had no data. The Revo Lite had a lot of video footage. He extracted video footage on 19 July 2016, for the time frame between 12:00 pm and 3.00 pm on 15 July 2016, as was requested by Sgt. Vasquez. His testimony was that there was no malfunction with the Revo Lite brand. The only thing he noticed was a slight time difference of eight minutes and twenty four seconds behind local time.
- [78] In his testimony, he explained the process he used to extract the CCTV video recordings. He connected a USB flash drive on a USB port of the DVR and then exported the videos in an Audio Video Interlace (AVI) format that is playable on a normal DVD player. He explained that the process cannot affect the actual content that was on the DVR. Then, he transferred the video recordings to his computer in order to place it on a DVD media. This allowed him to make copies from the videos that he had stored on his computer and put on a DVD on 24 August 2016, for court presentation purposes.
- [79] Mr. Noble also gave evidence that his flash drive and his computer were working properly. Further, he viewed on his computer the videos he extracted from the surveillance DVR to ensure it was working properly. Also, what he viewed on the computer was the same that he put on the DVD on 24 August 2016. He also viewed the DVD on his computer to ensure it was working properly. At no time did he interfere or edit the images. Further, the five DVDs that were burnt were labelled 'Mason House' and placed by Mr. Noble in a sealed envelope and later handed over to Sgt. Vasquez.
- [80] Mr. Noble's evidence was that he extracted videos from three different cameras and there were six video files, two from each camera. The DVD was viewed on the Court's computer and images from three cameras were shown. Each camera showed date and time. The first showed 13.00 hours on 7/15/2016. The third camera showed 13.47 to 14.05.

[81] This was not a complex operation for Mr. Noble who had experience in his field of computer information (digital equipment, digital videos). He also had experience in extracting video images from surveillance cameras and had the knowledge in the format to be used before placing on the DVDs which he handed over to Sgt. Vasquez. There was no evidence led by the appellants to say that those CCTV video recordings from 12.00 – 3.00 pm on 15 July 2016, for three cameras were inaccurate. In our view, the authentication of the DVR, USB and DVD was proven beyond a reasonable doubt by the Prosecution and the trial judge was correct in admitting the one DVD into evidence (Exhibit HN1) which showed the CCTV video recordings.

Presumption of Integrity of the DVR and Computer – section 7

[82] Integrity was presumed based on evidence brought by the Prosecution to satisfy the provisions of section 7. The integrity of the electronic records system, the DVR in which the electronic record is recorded or stored that is, the CCTV video recordings, were proved by the evidence of Mr. Noble that the DVR was in working condition and showed no malfunction thus satisfying the requirements of section 7(a) that the DVR was operating properly.

[83] Further, the integrity of the DVR was established by the Prosecution pursuant to section 7(b). The Prosecution proved that the CCTV video recordings were recorded or stored by Mason, the fifth appellant, who is adverse in interest to the Prosecution which introduced it into evidence. This was admitted into evidence by the trial judge in the form of a DVD.

[84] Mr. Noble's evidence also proved that his Linux Computer onto which the CCTV video recordings were downloaded after extracted from the DVR was operating properly at the time. He was the one with the password for the computer and could therefore speak to its reliability. The integrity of the DVR onto which the CCTV video recordings were recorded or stored, was therefore presumed under section 7 by evidence which the trial judge found to be reliable. She therefore admitted into evidence the DVD onto which the CCTV video recordings were placed after the extraction.

Was there a failure to call Spt Mario Alcoser?

[85] The appellants complained that there was a failure by the Crown to call ASP Mario Alcoser as a witness and questioned the authentication of the DVR for two reasons (a) Mr. Noble was out of office from 19 July 2016 to 24 August 2016 and (b) the evidence of Mr. Noble was that another person working in the Police Information Technology Unit in 2016, had the capacity to access any equipment by by-passing the password and manipulate data on an equipment such as retrieving deleted data.

[86] The evidence of Mr. Noble which the trial judge accepted proved that he was the only who had access to his computer which was password protected and he kept it to himself. He was the only one who had access to his files. He also testified that the server room in which the DVR itself was stored was also only accessible by him. The server room was accessed by entering Insp. Alcoser's office and then going through another door. While Mr Alcoser had keys for his office door, only Mr. Noble had keys for both Mr Alcoser's door and the steel door to the server room. The evidence showed that there was no possibility that anyone accessed the DVRs.

[87] The complaint that Mr. Noble testified that another person in the Police Department had the ability to bypass passwords is inaccurate. His evidence was that there was no likelihood at all that anyone would have been able to get into his computer and interfere with the files without the password because he had a Linux Computer which is a secured system. In his examination-in-chief, at page 353 of the Record, Mr Noble said:

“Q. And, Mr. Noble is there any likelihood at all that one of those other five persons would have been able to get into your computer and interfere with those files while you were not there?

A. Not likely without the password because the computer is a Linux Computer.

Q. And what is the significance of it being a Linux Computer?

A. It is one of the most secure operating systems as compared to Windows or the Macintosh computer. It takes me five minutes to get into anybody's Window's computer, doesn't matter what password you have.

Q. And Mr. Noble you had said previously that on the 24th you burnt the DVD and you handed it to Holly Vasquez. You said that you played back the DVD,

can you tell us whether or not what you saw on that DVD when you played it back was what you had originally seen on the DVR?

A. Yes.”

Then in cross-examination Mr. Noble said at pages 363 to 364 of the Record :

“Q. You said, Mr. Noble, that at some point you were able to train ten officers in the process of extraction?

A. In the process of extraction.

Q. Can you tell us when you did that, please?

A. Training happened after 2016, probably 2017, more likely.

Q So in 2016 you were the only person with this capability in the Police Department?

A. There was one other policeman who had—

Q. Can you say how many other persons had this capability?

A. One other person.

Q. Can you say if that person was in your unit or elsewhere in the Police Department?

A. The person was in Belize City, still is in Belize City.

THE COURT: Listen to the question carefully and answer carefully, in your unit.

Q Was that person in your unit or elsewhere in the Police Department?

A. In the PITU Unit, yes.

Q. In your unit?

A. Yes.

Q. The unit?

A. For which I work, the Police Information Technology Unit, yes.”

[88] There was no evidence that the one person (not Alcoser) who had the capability of extraction and stationed in Belize City had access to the DVR. Alcoser was stationed in Belmopan and had no access either. We do not see that the evidence of Alcoser could have assisted the trial judge with the issue of authenticity. As such there was no need for the Crown to call him to prove authenticity. Further, the trial judge found Mr. Noble’s evidence reliable.

Was the search warrant improperly issued?

[89] The appellants also complained that the search warrant was improperly issued since it was given by a senior justice of the peace and not a magistrate as required by section

20 of the **Indictable Procedure Act**.⁵ The Court is of the view that the search warrant was not improperly issued by JP Garcia. The **Justice of the Peace Act**⁶ provides for a Justice of the Peace to have concurrent jurisdiction with Magistrates in specific cases including issuing of search warrants. Section 4 of the Act provides:

“4.-(1) Every Justice of the Peace and Senior Justice of the Peace shall have and exercise all such powers, privileges, rights and jurisdiction throughout Belize as are conferred upon him under this Act or any other written law.

(2) A Justice of the Peace and a Senior Justice of the Peace shall have and exercise concurrent jurisdiction with Magistrates with respect to the following, (a) the issuing of summonses and warrants of arrest and search warrants and other process of Court;”

Senior JP Garcia, in our view, clearly had the authority to issue the search warrant as provided by section 4.

Did the trial judge properly assess the statement of JP Garcia (Deceased)?

[90] The statement of Senior JP Garcia was tendered and admitted into evidence pursuant to section 123 of the **Indictable Procedure Act**, after his death was proved. The Appellants complained that the trial judge did not say what weight she gave the statement of JP Garcia for the purposes of corroborating the evidence of Sgt. Vasquez. The court accepts that the trial judge did not address what weight she gave the statement in her judgment. The appellants relied on the case of *Dionicio v R*⁷, and we agree with this position, that there has to be a determination of the weight that will be given to the statement of a deceased witness admitted into evidence pursuant to section 123.

[91] Nevertheless, it is our view, that the trial judge must have addressed her mind to the search itself and assessed the statement though she omitted to put in the judgment the weight. The Court does not see any prejudice to the appellants. Further, part of Mason unsworn statement which the trial judge accepted supported Sgt. Vasquez’s testimony regarding the search at his house and that JP Garcia was present when the DVRs were disconnected from the camera surveillance system.

⁵ Cap 96

⁶ Chapter 119:01 of the Substantive Laws of Belize (Revised Edition) 2020

⁷ [2019] CCJ 15

Was hearsay evidence admissible under the old Electronic Evidence Act?

[92] The appellants submitted that the Electronic Evidence Act which was enacted in Belize on 31 January 2003 provided for the admissibility into evidence of electronic records which otherwise would be deemed hearsay and not admissible into evidence as the truth of its contents. We disagree with this submission on hearsay evidence. The Director correctly submitted that video evidence is treated as real evidence and not subject to the hearsay rule. Section 4 of the Act states:

“4.–(1) This Act does not modify any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.

(2) A court may have regard to evidence adduced under this Act in applying any common law or statutory rule relating to the admissibility of records.”

[93] Recordings were admissible under the common law prior to the Electronic Evidence Act as shown in the authorities referred to the Court by Madam Director. See the cases of **R v Maqsud Ali**⁸ at page 701 and **R v Dodson**.⁹

[94] In **Maqsud**, Marshall J speaking for the court said that for many years photographs have been admissible in evidence as proof that they are relevant to the issues involved in the case. The court could not see any difference in principle between a tape recording and a photograph and it would be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and voices recorded properly identified. Also, provided that the evidence is relevant and otherwise admissible. The judge further stated that such evidence should always be regarded with some caution and assessed in light of all the circumstances of the case.

[95] **Maqsud** was followed in **Dodson**. The appellants in **Dodson** were identified and convicted of attempted robbery by using photographs taken from security cameras at the crime scene. On appeal they claimed that the judge should have excluded the photographs

⁸ [1966] QBD 688

⁹ [1984] 1 WLR 971

as the only reason for admitting them was to enable the jury to identify them by observing them in the dock and looking at their photographs, and that was equivalent to dock identification which was not allowed. The Court of Appeal dismissed the appeal and held that no injustice arose from allowing an alleged offender to be identified using the photographs, provided that the jurors were firmly directed that they should be certain that the person in the dock was the person in the photographs in order to convict them. The jury was made aware of the need to exercise that particular caution. As such, the appellants suffered no injustice.

[96] Watson LJ in the judgment stated that what is most important is “the quality of the photograph, the extent of the exposure of the facial features of the person photographed, evidence, or the absence of it, of a change in a defendant’s appearance and the opportunity a jury has to look at a defendant in the dock and over what period of time are factors, among other matters of relevance in this context in a particular case, which the jury must receive guidance upon from the judge when he directs them as to how they should approach the task of resolving this crucial issue.”

[97] These authorities without a doubt show that electronic evidence is not hearsay and is admissible provided that jury or judge exercise caution. In our view, there was no failure by the trial judge in admitting into evidence the DVR (Exhibit ‘HN1’) which contained the CCTV video recordings. The Prosecution had proven beyond a reasonable doubt that the relevant provisions of the Electronic Evidence Act, sections 5 and 7 (a) and (b) have been satisfied. The trial judge admitted the DVD with the CCTV video recordings from three cameras, each had two videos. The evidence of proof are from Sgt Vasquez who retrieved the DVR in the presence of JP Garcia. He then handed them to Insp Osman Mortis of PITU who gave them to Mr. Noble for extraction. That extraction was properly done by Mr. Noble, a witness with experience in computer extraction among other computer knowledge.

Did the trial judge err in failing to direct herself of the need for caution before acting on identification evidence based solely on video tape evidence?

[98] The gist of the complaint under this ground was that the trial judge accepted the CCTV video recordings evidence from Mason’s premises without direction to herself on the

need for caution on identification. The video recordings, a strand of the evidence in the circumstantial evidence, showed all five appellants and the role they played when placing Mr. Dodd, Pastor Wright and Pastor Lucas in the pan of the pickup truck. The focus of the appellants was one particular frame which was grainy and not the totality of six video recordings running at the same time.

[99] Learned counsel, Mr. Tillett referred to paragraphs 24 and 108 of the judgment of the trial judge and argued that she failed to direct herself of the need for caution and failed to address her mind as to the factors/matters that are commended in **The Supreme Court of Judicature of Jamaica Bench Book** on “**Identification from Visual Images: Comparison by Juries**” under sub-para “**Direction**” which sets out the caution that is to be given in cases where identification is based on video footage, at 15-2, p 215 and 216. These directions are those stated in the **Turnbull** guidelines on mistaken identity. Mr. Tillett also relied on **R v Nikolovskil**¹⁰ and **Gubinas v HM Advocate**.¹¹ The latter two authorities were referred to the trial judge in closing addresses and she discussed them in her analysis of the evidence of the CCTV video recordings.

[100] This was a judge alone trial and it is accepted the trial judge did not express in her judgment that she warned herself as she would have warned a jury on mistaken identity and the need for caution as shown in the **Turnbull** guidelines and other directions stated in the Jamaican Bench Book on visual images. We have considered the analysis of the trial judge in her judgment on identification including paragraphs 24, 25 and 108 relied upon by counsel. It can be seen that identification by the trial judge was not made on the one grainy frame and it is clear that she exercised great caution in analysing all the frames and gave significant weight to the entirety of the CCTV video recordings. Paragraphs 22 and 23 show the extent of the careful and detailed analysis by the trial judge,

“[22] The video recordings formed significant strands of evidence which added to the circumstances the Crown relied on to prove its case. The video shows an image of the deceased at the residence of the fifth accused at about 1:15 pm. In her testimony, Mrs Usher testified that the image was of her brother, Llewellyn Lucas.

¹⁰ [1996] 3 SCR 1197

¹¹ (2017) HCJAC 59.

This video image confirmed the testimony of prosecution witnesses Dodd, Teul, and Yatz that the deceased was on the 15th of July 2016, the last day of his life, at the home of the fifth accused.

Additionally, I can distinguish the images on the video of each of the accused, partially by the clothing they are wearing and also by their stature and in some instances their gait and their face and hair. The fifth accused is wearing the same clothing at his residence during the day of the 15th of July as he is wearing when he is photographed at the Police Station after his detention that evening. He is wearing the same clothing that Insp Westby describes seeing him in at the bar. He is clearly seen handing a firearm to the fourth accused in one particular frame of the recording. **The physical stature, gait and face of the fifth accused are un-mistakeable at different frames of the recordings.**

The first accused appears to have the same bright orange short pants (with small black panels at the bottom of the shorts) that he is seen wearing later that day when detained at the bar and when photographed at the Police Station. He has a different colour shirt on in the evening, a purple tee shirt, from what he is seen wearing in the video, a white tee shirt. He is identifiable also by his stature, being the **smallest of all of the accused.**

The image I believe is of the second accused is in the same long blue jeans pants in the video as the second accused is wearing at the bar when detained. He appears in the video in a grey sleeveless shirt different from the shirt he is later photographed in at the Police Station when he is wearing a grey polo shirt with stripes and the sleeves cut off. **He is slightly taller and broader in build than the first accused and can be clearly seen in certain frames of the recordings.**

Images of a person I believe is the third accused appears to have the same bright blue coloured short pants that he is seen wearing at the bar and at the Police Station based on the photograph in evidence. However, the third accused appears on the video in a brightly coloured tee shirt while he was photographed at the station in a white tee shirt with sleeves which appears similar to the tee shirt that the fourth accused is wearing on the video. Learned counsel Mr Neal, submitted that the images do not appear to be the third accused because the third accused is more muscular than the person shown in the video. **The third accused is the tallest of all the five accused and in my view is easy to distinguish from the other accused persons.** He appears in the video images as he does in the photograph of the third accused, an exhibit in the trial.

The fourth accused is the second tallest of the five accused persons. In the frames that appear to be the fourth accused, he is seen wearing the same khaki short cargo pants he is later detained in and he is also wearing a white round

neck tee shirt with markings on it. He was later photographed at the police station in a white vee neck tee shirt with the sleeves cut off. I have no doubt that I am looking at the fourth accused at specific frames on the recordings.

Without a doubt, the five accused appear at different frames in the video recordings and this evidence assists me in reaching certain conclusions.

[23] In the video recordings I see the first, second, third, and fourth accused **(in various pairings) put three persons into the back of the black pickup truck parked under the house.** While this is happening, the fifth accused is **pacing from the front to the back of the pickup observing the human cargo being loaded into the vehicle.** Upon close review of the recordings, the first person put in the back of the pickup is more or less dumped in, for the most part not moving of his own volition. The person however does not appear lifeless as his legs are seen moving after he is in the truck. He is not identifiable; however, based on the evidence from Mr Dodd about Pastor Wright being injured when resisting his captors, I have gathered that the first person who is essentially dumped in the back of the pickup is Pastor Wright. (I do not accept the Crown's submissions that this person is the deceased.) Mr Dodd is the next person put in the truck and the deceased appears to be the last person put into the vehicle. **The last person is walking with a slight limp and is of a short slender stature, consistent with the appearance of the deceased when clearly seen and, at one point, identified earlier in the recordings.** The deceased, as he is walking towards the pickup, has his hands behind him. I infer from this that his hands are bound because it is not the natural way a person would walk nor is the deceased seen walking this way in any of the earlier frames.

After these three persons are placed in the back of the pickup, the first accused gets in with them and the third accused closes the top over the pan of the truck. The fifth and third accused get into the pickup truck and it departs. The second and fourth accused are seen going towards the white car that fits the description of the vehicle the deceased had originally arrived in with Mr Dodd and Pastor Wright. That white car is driven from the property after the pickup truck. I can see no other vehicles in the recording and I see no other persons around the immediate area while the loading activity took place involving the five accused." (emphasis added)

[101] Then at paragraph 24, the trial judge addressed the point of the appellants that the Crown relied solely on video footage for identification purposes without adducing evidence from witnesses identifying the appellants in the CCTV video recordings. She correctly, in our view, came to the conclusion that she can do so as the fact finder. She

applied the ruling in **Gubinas** that as a fact finder she was entitled to make her own determination on whether the image was that of the accused. The trial judge said:

“[24] Two of the learned defence counsel, Ms Shoman and Ms Swift, argued that without witnesses to identify the accused persons in the video recordings that the trier of fact could not identify the images. The counsel cited **Gubinas v HM Advocate (2017) HCJAC 59** for this proposition. Gubinas is a Scottish case that reviews how video evidence has been dealt with in various jurisdictions. Ultimately, the Gubinas Court ruled that the **fact finder is entitled to make their own determination on whether an image is the accused even where no witness has identified the image**. At paragraph 62 ‘... a fact finder ... will be entitled to form their own view on whether or not an image is that of an accused.’ The Court adopts the notion that the video tape recording is a ‘silent witness’ and therefore speaks for itself.

[102] At paragraph 25 of her judgment the judge further explained how she was able to identify the appellants:

“[25] I find the images on the recordings as sufficiently clear in certain frames as to be identifiable. In carefully reviewing the recordings, **I have stopped the video at points and closely studied the pertinent frames. In particular, I was keenly interested in the frames in which the three individuals, including the deceased, are placed in the back of the pickup truck. These frames are especially grainy and unclear however each of the accused are identifiable in other frames, helping to establish the identity of the images that are unclear.** In my opinion, this portion of the video recording displays the joint conduct and coordination of the five accused in relation to the deceased before his death. Also, I note that a portion of the video recording shows, clearly in my view, the deceased upstairs walking behind the fourth accused and in front of the second accused who is holding a machete in one hand and a blue and white bandana in the other hand. I have given significant weight to these recordings and find they add to the circumstantial evidence against the five accused.”

[103] At paragraph 108, the trial judge frontally addressed the point made by defence counsel on the quality of the video footage:

“[108] Among the submissions made by learned respective defence counsel were:

“.....

(2) That the quality of the video footage was poor and the recording so unclear that it could not safely be relied upon to determine what was being done and by whom on the tape. Another submission regarding the CCTV electronic evidence was that a witness should have been called by the Crown to identify the people

shown on the tapes and not leave to the Court to identify who and what is being seen on the tapes.

I addressed this earlier and will only say that based on my readings of the authorities, the trier of fact, may make determinations from the recordings if the quality is good and the images clear, even if only in some of the frames. The video recordings in this case was clear enough for me to identify each of the five accused in certain frames and from those I was able to determine where I saw each accused re-appear in other frames of the recordings.”

[104] In our view, the omission of the trial judge on the need for caution in the written judgment was not prejudicial to the appellants. Paragraphs 22, 23, 24 25 and 108 showed that she exercised great care and was cautious when she meticulously analysed all the frames put into evidence, stopping them and replaying them at her own pace to identify each appellant and the role played by them. She did not rely solely on the grainy and unclear frame to make a finding as to identification in relation to who was doing what. The grainy CCTV video recording by itself would not have satisfied the trial judge.

[105] In **R v Nikolovski**, the Supreme Court of Canada pointed out that where a trier of fact seeks to rely on video footage for identification and there is no independent corroboration by a witness that the person in the video or image is the accused, the trier of fact must exercise caution and care before acting on this form of identification. Cory J giving the majority judgment said at [30] and [32]:

“ 30 . Although triers of fact are entitled to reach a conclusion as to identification based solely on videotape evidence, they must exercise care in doing so. For example, when a jury is asked to identify an accused in this manner, it is essential that clear directions be given to them as to how they are to approach this task. They should be instructed to consider carefully whether the video is of sufficient clarity and quality and shows the accused for a sufficient time to enable them to conclude that identification has been proven beyond a reasonable doubt. If it is the only evidence adduced as to identity, the jury should be reminded of this. Further, they should be told once again of the importance that, in order to convict on the basis of the videotape alone, they must be satisfied beyond a reasonable doubt that it identifies the accused.”

.....

32. A trial judge sitting alone must be subject to the same cautions and directions as a jury in considering videotape evidence of identification.”

[106] The trial judge in the instant case, did not warn herself as she would have warned a jury but it can be seen by her careful analysis of the evidence that she subjected herself to the same cautions and directions as stated in both **Gubinas** and **Nikolovski**. She carefully examined the images and compared images before placing any reliance on them. Further, the appellants were not convicted of murder based on the CCTV video recordings alone. It was only a strand of evidence of the circumstantial case. Pastor Lucas was last seen alive in those images at Mason's House. We are satisfied that the appellants received a fair trial despite the trial judge having not issued a warning to herself of the need for caution.

[107] To support their arguments, the appellants also relied on **Salazar v R**¹² at paragraphs 25 to 28 in relation to constitutional safeguard. Paragraph 29 which was not mentioned by the appellants is also helpful. Wit JCCJ said:

“[29] Equally, a judge sitting alone and without a jury is under no duty to “instruct”, “direct” or “remind” him or herself concerning every legal principle or the handling of evidence. This is in fact language that belongs to a jury trial (with lay jurors) and not to a bench trial before a professional judge where the procedural dynamics are quite different (although certainly not similar to those of an inquisitorial or continental bench trial). As long as it is clear that in such a trial the essential issues of the case have been correctly addressed in a guilty verdict, leaving no room for serious doubts to emerge, the judgment will stand.”

[108] The learned trial judge carefully analysed the CCTV videos recordings, a strand of evidence in the circumstantial case. This experienced trial judge is quite aware of the **Turnbull** guidelines as stated the **Bench Book**. This is not a case where the trial judge was identifying the appellants committing the murder of Pastor Lucas and therefore had to apply the **Turnbull** guidelines. The complaint by the appellants in this instant case focused on the grainy CCTV video recording although the judgment shows that the trial judge analysed that frame with several other frames and made comparisons including with clothes and stature.

[109] It would have saved the Court time if the trial judge had expressed the need for caution in her written judgment thus avoiding this ground of appeal. However, she was indeed cautious as shown by her careful analysis of all the CCTV video recordings. Those

¹² [2019] CCJ 15

images put together was of sufficient quality to identify the appellants, not committing murder, but placing the three men in the pan of the pickup truck, the last time Pastor Lucas was seen alive. The CCTV video recordings was a strand of circumstantial evidence which did not show the beheading of Pastor Lucas.

[110] The trial judge correctly stated the position as shown in paragraph 101 above that as a fact finder she was entitled to form her own view on the images. Further, she exercised great care in doing so thus satisfying the principles stated in **Nikolovski** by Cory J at paras 30 and 32. In the view of the Court, the omission not to expressly direct herself of the need for caution before acting on identification evidence based on the CCTV video recordings evidence did not cause any prejudice or unfairness to the appellants.

Did the trial judge err in holding that the video footage was of a quality to make a proper identification?

[111] This ground is inextricably linked to the previous ground as it shows how the trial judge addressed identification of the appellants. At paragraph 25 of her judgment she explained how she was able to identify the appellants since some of the images were clear while one was grainy and unclear. At no time did the judge conclude that all of the frames were of good quality. In fact she had difficulties which she sorted out by carefully reviewing all the frames. She paused the videos at points and closely studied the pertinent frames. She stated that she was keenly interested in the frames in which the three individuals, including Pastor Lucas were placed in the back of the pickup truck. That one was grainy and unclear. The trial judge sought assistance in other frames, and as she put it, to help “*establish the identity of the images that are unclear.*”

[112] Then again at para 108, also discussed above, the trial judge was careful to use the words “*certain frames*” and “*re-appear in other frames*” when assessing the evidence on identification of the appellants. She said: “The video recordings in this case was clear enough for me to identify each of the five accused in certain frames and from those I was able to determine where I saw each accused re-appear in other frames of the recordings.”

[113] We see no flaws in the approach taken by the trial judge to identify the appellants. That is, to put together the clear with the unclear to make the identification. Further, she said, “*I can distinguish the images on the video of each of the accused, partially by the*

clothing they are wearing and also by their stature and in some instances their gait and their face and hair partially by the clothing they are wearing and also by their stature and in some instances their gait and their face and hair”

[114] In the case of **Nikolovski**, the Court examined a ground of appeal touching on whether the quality of the video recording was such as to reasonably entitle the trier of fact to conclude that the image is that of the accused said:

“22. So long as the videotape is of good quality and gives a clear picture of events and the perpetrator, it may provide the best evidence of the identity of the perpetrator.”

[115] The Court accepts that a good quality video may provide the best evidence of identity of an accused. The factual position is different in this case as some of the frames are clear and one unclear. There was no need to exclude the grainy video as inadmissible as there were other frames running at the same time. The trial judge did her analysis as explained above, by comparison of both the clear and unclear in order to make the identification of the appellants loading the men in the pan of the pickup truck.

[116] This Court has not reviewed the CCTV recordings seen by the trial judge, as requested by the appellants. For this Court to have viewed the CCTV video recordings, it would have had to be done by using the same DVR that was admitted into evidence by the trial judge and viewed on the screen in the trial judge’s court. The request was made without any arrangements made to do so. We will not attempt to do so by any other means. In any event, the fact finder was the trial judge who had an advantage as she saw all the photographs of the appellants which was put into evidence by Mr. Montero and she saw the appellants every day during the trial sitting in the dock. She visited the locus including Mason’s house from where the DVRs were taken and from which the CCTV video recordings were extracted. The Court has no reason to doubt what the trial judge saw when she viewed the CCTV video recordings.

[117] The trial judge did a careful analysis of the totality of the CCTV video recordings in order to identify the appellants as the persons loading the men in the pickup truck, including Pastor Lucas. He was last seen alive in that footage. The trial judge did not err, in our view, in holding that the CCTV video recordings in totality was of a quality

to make a proper identification. This conclusion was made after viewing all six frames of the CCTV video recordings. The trial judge made no error in including the grainy footage as she saw the role each appellant played in placing the men, including Pastor Lucas, in the pan of the pickup truck.

Did the trial judge err in admitting into evidence the clothing of the Appellants without first satisfying herself that the Appellant's clothing was freely and voluntarily given?

[118] The DNA of Pastor Lucas was found on three of the Appellants clothing as shown by the evidence of Dr. Charity and it is one of the strands of the circumstantial evidence. The grouse under this ground is the voluntariness of the appellants in handing over their clothing to the police which had incriminating evidence. It is to be noted that two of the appellants had no blood on their clothing. However, the remaining strands of circumstantial evidence were sufficient to convict all the appellants.

[119] Learned counsel, Mr. Tillett accepted that the trial judge stated in her judgment that the items of clothing from each of the appellants were admitted into evidence without objections from the defence. However, he contended that the trial judge failed to satisfy herself that their clothes were freely and voluntarily given by them to the police at the Belmopan Police Station. He relied on section 6 of the Belize Constitution which provides for the right to protection of the law and incorporated within the plenary of those rights are the right to a fair trial and right against self-incrimination.

[120] Counsel argued that a mechanism to safeguard those two rights can be found in section 90 of the **Evidence Act**¹³ which provides that the prosecution must prove affirmatively that the admission was not given “*induced by any promise of favour or advantage or by use of fear, threat or pressure by or on behalf of a person in authority.*” To support his arguments he relied on **Viola Pook v Queen**,¹⁴ and **Lisandro G. Matu v R.**¹⁵ Both of these authorities, as correctly submitted by Madam Director relate to admissions by the suspect and not to seizure of any item of evidential value.

¹³ Cap 95

¹⁴ Criminal Appeal No. 25 of 2013

¹⁵ Criminal Appeal No. 2 of 2001

[121] Did the trial judge satisfy herself that the clothing was freely and voluntarily given to the Police? At paragraph 58 of the judgment of the court, she averted her mind to collection of clothing, consent and chain of custody. There being no issue raised by the defence that the appellants were induced to give their clothing, the trial judge did not consider inducement and self-incrimination. She referred to the evidence of consent:

“[58] On the morning of the 16th of July 2016, Sgt Vasquez asked Mr Montero to collect all five suspects clothing. As a result of the request, Mr Montero retrieved the clothing of the first, second, third, and fourth accused in his office located at the Belmopan Police Station. He testified that one accused at a time was in his office and that each accused **consented** to the retrieval of their clothing and removed their clothing themselves. Sgt Vasquez was present when the clothing was retrieved and Mr. Montero took photographs of each of the suspects in their clothing before collecting the items. The photographs are exhibits in this trial. Mr Montero said he provided each accused with white Tyvek crime scene processing suits for them to wear after their clothing was collected.

The clothing of the 5th accused was retrieved at Mr Blackett’s office, according to Mr Montero. The 5th accused was also given a white Tyvek effect suit. Mr Montero said that the 5th accused **consented** to the collection of his clothing and a photograph of the 5th accused was taken before his clothes were collected....”

[122] The trial judge then looked at the evidence on photographs, packaging, sealing and chain of custody of the clothing. At paragraph 66, she mentioned “.. *Without objection from the defence, these items of clothing from each accused were admitted into evidence and along with the chain of custody form are exhibits BM 41 through BM56 in this trial ...*” It is the view of this Court that without allegations or evidence of any threat or force used on the Appellants to hand over their clothing, the issue of lack of consent was not engaged.

[123] Further, as submitted by Madam Director, Sgt Vasquez who was the investigating officer, was duly authorized, having noted what he suspected to be blood on the clothing of Castillo, and having just found a severed head in the pan of Mason’s pickup truck from which his information showed, the appellants had alighted, to request that their clothing be provided. His evidence was that his request was acceded to. Mr. Montero testified they were given Tyvek suits and later family members took clothes for the appellants.

[124] The Standing Orders of the Police Department allows for change of clothing. It states:

“Changes of clothing

Changes of clothing may be permitted after reference to the investigating officer in any case. Where the clothing worn by the prisoner is relevant to the offence, the clothing may be seized for production at Court and replacement clothing obtained from relatives.”¹⁶

[125] The Court notes that the Standing Order speaks to seizure. There is no evidence that the clothing of the appellants were seized. There is evidence of consent when the appellants were in lawful custody for the crime of murder. Fernandez in his dock statement gave a different account as how his clothes were retrieved. There was no weight given to his statement and it can be inferred that it was rejected by the trial judge. Even if the clothing was seized, the case of **Ghani v Jones**¹⁷ relied on by Madam Director is persuasive. A police officer is entitled to take items which they reasonable believe to be material evidence. Lord Denning said:

“I would start by considering the law where police officers enter a man’s house by virtue of a warrant, or arrest a man lawfully, with or without a warrant, for a serious offence, I take it to be settled law, without citing cases, that **the officers are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the crime for which he is arrested or for which they enter.**”

[126] Assuming that the clothes were improperly obtained, the issue for this Court would be whether the admission of the evidence would have rendered the trial unfair. In our view, there is no prejudice or unfairness to the appellants as the bloodstained clothes do not amount to a confession. Further, it was not the taking of their blood or any other invasion of their body for DNA purposes without their consent.

[127] In the view of the Court, the decision of **Public Prosecution Service v McKee and Elliott**¹⁸ is instructive. The Court considered the common law position regarding the admissibility of improperly obtained evidence and stated:

¹⁶ Chapter 56 – “Prisoners”

¹⁷ [1969] 1 QB 693

¹⁸ [2013] UKSC 32

“[9] This legislation was enacted against the background of the well understood general common law rule that **evidence which has been unlawfully obtained does not automatically thereby become inadmissible**. That has been clear since at least the decision of the Judicial Committee of the Privy Council in **Kuruma v R** [1955] AC 197, [1955] 1 All ER 236, 119 JP 157, where the Defendant was charged with unlawful possession of ammunition which had been found on him as a result of an unlawful search, carried out by a policeman of insufficient seniority to make it. Lord Goddard CJ said this at p 203 “*In their Lordships' opinion the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained.*” This proposition was endorsed by the House of Lords in **R v Sang** [1980] AC 402, [1979] 2 All ER 1222, 143 JP 606, which dealt more specifically with the judge's discretion to exclude evidence which will have the effect of rendering the trial unfair (see now s 78 of the Police and Criminal Evidence Act 1984 and its equivalent, art 76 of the Northern Ireland Order). Likewise in **R v Khan** [1997] AC 558, [1996] 3 All ER 289, [1996] 3 WLR 162 evidence obtained by unauthorised surveillance and the secret recording of private conversations was admissible despite the unlawful methods by which it had been obtained. The position was summarised by Lord Fraser, with whom all other members of the House of Lords agreed, in **Fox v Chief Constable of Gwent** [1997] AC 558, [1996] 3 All ER 289, [1996] 3 WLR 162, 292A as follows “It is a well established rule of English law, which was recognised in **R v Sang**, that (**apart from confessions** as to which special considerations apply) any evidence which is relevant is admissible even if it has been obtained illegally.” It is clear that this inclusive rule of relevant evidence extends equally to evidence created by an unlawful process as it does to existing material uncovered by unlawful process; the recording in Khan is an example of the former...”

[128] Apart from the issue of consent, there was no evidence before the trial judge that there was oppression, violence or other impropriety in retrieving the clothes of the appellants. Further, the Court is of the view that there was no unfairness to the appellants as the clothes had Pastor Lucas' DNA profile. Further, we are of the view that even if the blood stain clothes were excluded, there would still be sufficient evidence to convict the appellants.

Is the conviction unsafe having regard to the state of the circumstantial evidence on the Crown's case?

[129] The appellants contended that when the key strands of evidence of the case for the Crown are examined and the deficiencies or unreliability of these strands are

highlighted, it would show that the appellants conviction are unsafe. The key strands referred to by Mr. Tillett are the CCTV video recordings and the appellants' clothing. Counsel relied on the case of **Gregory August** where the CCJ showed the approach to the challenge of the safety of convictions when a case is built on circumstantial evidence. The Court finds this case very instructive as it discusses at paragraph 38, the nature of circumstantial evidence:

“[38] A case built on circumstantial evidence often amounts to an accumulation of what might otherwise be dismissed as happenstance. The nature of circumstantial evidence is such that while no single strand of evidence would be sufficient to prove the defendant's guilt beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the defendant's guilt is proved beyond reasonable doubt. There was therefore a serious misdirection wholly in August's favour when the trial judge directed the jury that each strand of the circumstantial evidence required its own proof of August's guilt beyond reasonable doubt. **It is not the individual strand that required proof beyond reasonable doubt, but the whole. The cogency of the inference of guilt therefore was built not on any particular strand of evidence but on the cumulative strength of the strands of circumstantial evidence.** Accordingly, the circumstantial evidence, as a whole, adduced by the prosecution pointed sufficiently to August's guilt to entitle the jury to convict him.” (emphasis added)

Sufficiency of circumstantial evidence to prove guilt beyond a reasonable doubt

[130] The cogency of the circumstantial evidence considered by the trial judge against the three appellants, considered individually were:

Ernest Castillo

- (i) Castillo participated in the initial detention of David Dodd and Pastor Wright;
- (ii) He was part of the forcible taking of the men into Mason's black pickup truck, remained in the van with them when driven to the Farm;
- (iii) He was seen getting out of Mason's black pickup truck at Sancho's Bar in which Pastor Lucas's head was later found and was part of the group that formed a barricade to prevent the police from searching the vehicle;
- (iv) The shirt and pants which Castillo was wearing at the time of his arrest had blood stains which later proved to be the DNA profile of Pastor Lucas.

Keiron Fernandez

- (i) Keiron was part of the initial detention of the men. He is “red shirt” and Dodd’s evidence was that red shirt guided him from the steps to the bathroom and this is supported by the CCTV video recording.
- (ii) He assisted in the loading of the three men to the pan of the pickup truck and he closed the Tonneau cover.
- (iii) He got into the back of the cab of Mason’s pickup truck and went to the Farm.
- (iv) He admitted to having been on the Farm and he was seen there by Pastor Smith.
- (v) He went along with Mason and the others to Sancho’s Bar in the pickup truck in which the head of Pastor Lucas was later found.
- (vi) He tried to prevent the search of the pickup truck when it was parked at Sancho’s Bar by forming a barricade.
- (vii) His pants had blood stains containing the DNA profile of Pastor Lucas.

Terrence Fernandez

- (i) Terrence is seen on the CCTV videos communicating with Mason, via phone and in person.
- (ii) He was part of the initial detention of the men. He is “white shirt” and Dodd’s evidence was that white shirt had gone into the bathroom with a pistol and said to “load them up”.
- (iii) The CCTV videos show Terrence in a white shirt and taking a firearm from Mason.
- (iv) He threw the first person in the back of the pickup truck and remained there throughout.
- (v) After the three men were loaded into the pickup truck, he got into the front passenger seat of Mason’s truck (Mason was the driver);
- (vi) He was the one who provided the blue bandana (found at the base of the neck of Pastor Lucas) to Vanegas;
- (vii) He was at the Farm at the time when the prosecution says Pastor Lucas was killed. (Richard Smith placed him there and Dodd’s evidence was that he recognized the voice of both red shirt and white shirt);

(viii) Terrence went with Mason to Sancho's Bar. He tried to prevent the search of the pickup truck.

(ix) His pants were found to have blood stains with the DNA profile of Pastor Lucas.

[131] The cogency of the inference of guilt of Castillo and the Fernandez brothers was built on all the strands of circumstantial evidence as shown above. When these strands are woven together, they all lead to one conclusion, the guilt of the Appellants beyond a reasonable doubt.

[132] The beheading of Pastor Lucas was not seen by any witness for the Prosecution but, that does not weaken the case at all. The CCTV video evidence, the silent and powerful witness, speaks to the horrific end of Pastor Lucas's life. He was last seen at Mason's house on video, placed in the pan of Mason's pickup truck and driven to Mason's Farm. The behaviour of the Appellants at Sancho's Bar before Pastor Lucas's decapitated head was found in Mason's pickup truck was also significant as all the appellants formed a barricade to prevent the search of the pick-up truck.

[133] The trial judge, as discussed previously, did not err in admitting the DVR from which the CCTV video recordings were extracted and she carefully analysed them frame by frame. Also, there was no error in the admission of the blood stain clothes of the three appellants.

[134] The basis upon which this Court can allow an appeal are stated in section 216 of the **Senior Courts Act**¹⁹ which provides:

“216.-(1) The Court on any such appeal against conviction shall allow the appeal if it thinks that the verdict of the judge...should be set aside on the ground that **it is unreasonable or cannot be supported having regard to the evidence**, or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal.”

¹⁹ Act No 27 of 2022

[135] In the view of the Court, the guilty verdict of the trial judge for all three appellants can be supported by the strong circumstantial evidence as shown above. There was no miscarriage of justice.

The Appeal against the sentences of Castillo and the Fernandez brothers

[136] Castillo was sentenced to life imprisonment with the possibility for parole after serving 30 years less the period of four years spent on remand. He was given a reduction of five years because of his youth at the time of the murder. Keiron and Terrence were both sentenced to life imprisonment with the possibility for parole after serving 35 years less the period of four years spent on remand. Counsel contended that the sentences of life imprisonment with the possibility for parole after serving 35 years imposed by the trial judge was excessive.

[137] Mr. Tillett referred to the decision of **Yong Sheng Zhang v Queen**²⁰ where the Court relied on the well-established principles of sentencing as stated by Lawton L.J in **R v Sargeant**,²¹ that is, retribution, deterrence, prevention, and rehabilitation. Counsel also relied on **Linton Pompey v The Director of Public Prosecutions**²² which was followed in **Calvin Rancharran v DPP**²³ to argue that this Court is mandated to “*step in to correct discrepancies, reverse excesses or aberrations, secure consistency and promote observance of the rule of law.*”

[138] The basis for the argument that the sentences were excessive was the comparison of the crime and sentences in **R v Gurrie**²⁴ and **R v Massimo Sica**.²⁵ This Court is not persuaded by these authorities on the basis that the accused murdered more than one persons. In our view, based on the range of sentences imposed for murder in this jurisdiction, the sentences of 30 and 35 years imposed by the trial judge for beheading Pastor Lucas was not excessive and ought not to be disturbed by this Court.

²⁰ Criminal Appeal No. 13 of 2009

²¹ 60 Cr. App. R. 74 at 77

²² [2020] CCJ 7

²³ [2022] CCJ 4

²⁴ GDAHCR 113 of 2010

²⁵ [2013] QCA 247

The Appeal of Ashton Vanegas

[139] The issues raised by Mr. Rodriguez for Vanegas are: (i) Whether Pastor Lucas died from unlawful harm; (ii) Whether the Prosecution had to prove that the unlawful harm was inflicted by Vanegas; (iii) Intention to kill by Vanegas; (iv) Admissibility of evidence from Mason's Farm (v) Admissibility of evidence from Mason's vehicle; and (vi) Whether inferences drawn sufficient to convict Vanegas and the other Appellants.

Did the trial judge err in finding that the Prosecution discharged its burden of proof to show that Pastor Lucas died from unlawful harm?

[140] Learned counsel Mr. Rodriguez argued for Vanegas that there was no direct evidence which (a) proved the cause of death of Pastor Lucas (b) any of the accused persons had done the act or participated in the act that had caused Pastor Lucas death (c) His death had been caused by any unlawful act. That the Prosecution therefore relied on circumstantial evidence to prove the elements of murder (*actus reus* and *mens rea*).

[141] Counsel relied on the case of **Gregory August**²⁶ at para 32 on the nature of circumstantial evidence:

“[32] It is well established that it is “no derogation of evidence to say that it is circumstantial”. The nature and value of circumstantial evidence have been described as follows :

“Circumstantial evidence is particularly powerful when it proves a variety of different facts all of which point to the same conclusion...[it] ‘works by 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.’ ”

²⁶ [2018] CCJ 7

[142] The Court’s understanding of counsel’s main contention was that Dr. Estrada Bran, the Forensic Doctor could not determine the cause of death of Pastor Lucas and his evidence was inconclusive. Therefore, the circumstantial evidence on unlawful death had not been proven.

[143] In the view of the Court, the trial judge very ably and adequately addressed unlawful harm which is the decapitation of Pastor Lucas’ head, at paragraphs 9 and 10 of her judgment when she stated:

“[9] In the instant case, based on all of the surrounding circumstances, primarily the decapitation, it is **reasonable to infer that the deceased died as a result of harm**. Indeed, I am of the view that I can reach no other conclusion. I have considered the fact that the deceased did not suffer trauma to his head nor did he suffer any brain haemorrhage, according to Dr Estrada Bran. It is reasonable for me to conclude therefore that the deceased died either from something that happened to a part of his body other than his head and then his head was cut off or he died from the decapitation itself. There is no reasonable explanation for cutting off his head, other than harm having been inflicted on him. Not only was the head of the deceased cut off, I accept (and will discuss later) that there was an effort to conceal the head and the remainder of his body. If the deceased was first injured and may even have been dying as a result of the injury, then his head cut off, I can still only reasonably conclude that he died from harm. I recall here that the doctor said that the brain of the deceased showed signs of activity before the decapitation. Dr Estrada Bran could not say however that these signs of brain activity meant that the deceased was alive before his head was separated from his body. Finally, and obviously if the deceased was killed by decapitation, this unquestionably constitutes harm.

[10] The entirety of the available evidence, including the decapitation and the medical condition of the head, does not support that the deceased died from an accident, natural causes, or suicide. **I have concluded that the Crown has discharged its burden to prove beyond a reasonable doubt that the deceased died from harm.**” (Emphasis added)

[144] The trial judge also considered the issue of unlawfulness, at paragraph 91 of the judgment, indicating that there was no evidence supporting justification (self-defence) or partial excuse (provocation) for the killing.

[145] In our view, the trial judge cannot be faulted on the inference drawn that Pastor Lucas died of harm. The fact that Dr. Estrada Bran could not determine cause of death does not indicate that Pastor Lucas died of anything other than harm and that the harm was unlawful.

Did the judge err in finding that the unlawful harm was inflicted by Vanegas?

[146] Counsel Rodriguez, after referring to the evidence of several witness for the Prosecution contended that Vanegas had no motive to inflict any harm, or unlawful harm, on Pastor Lucas and he did not participate in the initiating act, the alleged kidnapping of him and the other two men, with the intention to inflict the harm that took his life. Further, counsel argued that he was not there because he was not dressed in a white shirt, a red shirt or a yellow shirt.

[147] The Court is unable to agree with Counsel. This was a case of joint enterprise brought by the Prosecution. The case was that all five appellants acted jointly to bring about the death of Pastor Lucas. The trial judge reviewed the evidence and pointed out at paragraph 82 that the evidence does not disclose who physically carried out the killing and concluded at paragraph 83 that she had no doubt that the appellants jointly killed Pastor Lucas. She said:

“[82]The evidence does not point to who physically carried out the killing but the prosecution is asking the Court to conclude that each accused helped to reach the desired end, that the deceased be killed. The circumstances, viewed together, point inexorably to joint conduct on the part of the five accused which led to the death of the deceased.

Conclusion on the third element of murder

[83] I find the totality of the Crown’s evidence on this critical element, whether the five accused acted jointly to kill the deceased, is persuasive and, in my opinion, overwhelming. I have no doubt that the five accused jointly killed the deceased.”

The law on joint enterprise

[148] The law on joint enterprise was correctly stated by the trial judge. In the case of **Brown and Isaac v The State**,²⁷ Lord Hoffmann, delivering the advice of the Board, stated, at paragraphs 7 and 8:

“Joint enterprise

[7] The chief ground of appeal advanced on behalf of both appellants before the Board concerned the judge’s directions on the law of joint enterprise. There was no direct evidence to show who had fired the fatal shot. Charmaine, in her last cry for help, had said that Foots had a gun. But Sonil might also have had a gun and used it. Or he might have taken Foots’s gun. In order to convict both appellants, it was therefore necessary to find them liable on the basis of joint enterprise.

[8] **The simplest form of joint enterprise, in the context of murder, is when two or more people plan to murder someone and do so. If both participated in carrying out the plan, both are liable. It does not matter who actually inflicted the fatal injury.** This might be called the paradigm case of joint enterprise liability. But things become more complicated when there is no plan to murder but, in the course of carrying out a plan to do something else, one of the participants commits a murder...” (emphasis added)

[149] In our view, the Prosecution did not have to prove which of the appellants actually inflicted the fatal injuries. Further, the trial judge made no finding as shown above that Vanegas inflicted the harm. It was a case of joint enterprise and she made no error in so finding based on the sufficient and strong circumstantial evidence against him as shown by the following:

Circumstantial evidence against Vanegas

- (i) Vanegas was clearly seen receiving a blue and white bandana from Terrence on the CCTV video recording;
- (ii) He was clearly seen walking behind Pastor Lucas with the bandana in one hand and a machete in the other on the CCTV video recording;
- (iii) He was one of the persons engaged in putting Pastor Lucas and the two other men in the back of Mason’s pickup truck;
- (iv) He was seen on the CCTV video recording walking towards Dodd’s vehicle, which was later on the farm;

²⁷ (2003) 62 WIR 440

(v) Vanegas was with the other four appellants when Mason's pickup truck arrived at Sancho's Bar and he was also part of the barricade formed to try to prevent the search of the vehicle;

(vi) A blue and white bandana was found wrapped around the base of Lucas' severed head.

[150] In our view, the trial judge was entitled to find on the circumstantial evidence that Vanegas was part of the joint enterprise to kill Pastor Lucas and it was not necessary for her to specifically find that he injured him.

Did the trial Judge err in finding that at the time the appellant inflicted the unlawful harm on Pastor Lucas, he did so with the intention of killing him?

[151] Mr. Rodriguez submitted that the Crown brought no direct evidence to show that Vanegas inflicted or even participated in the act that caused the death of Pastor Lucas. He referred to the CCTV video recordings which showed Vanegas walking behind Pastor Lucas with a machete in his hand and submitted that the question arises as to whether the actus reus is realized or whether it is enough to infer that Vanegas had the intention to cause the harm that caused Pastor Lucas' death or if his act in that CCTV video recording amounts to kidnapping. He argued that there is no other direct evidence or conclusive circumstantial evidence of Vanegas participation in the killing of Pastor Lucas.

[152] In a case of joint enterprise, as discussed under the previous ground, there is no burden on the Prosecution to prove who inflicted the harm. The case for the Prosecution in relation to murder is circumstantial and a conviction of kidnapping is not before this Court. The trial judge, in our view, adequately addressed the element of intention to kill from paragraph 84 of her judgment and concluded at paragraph 89 that all the appellants intended to kill Pastor Lucas. She said:

“The five accused intended to kill the deceased when they harmed him

[84] Because I am sure that each of the five accused persons participated in killing the deceased, I turn my attention to the element of intention to kill, the *mens rea* for murder in our jurisdiction.

[89] I can safely conclude, without any doubt, that the intention of the five accused in harming the deceased was that he be killed, not merely injured. I would reach this conclusion whether the deceased was killed by his head being cut off or killed by other means and then decapitated. The evidence supports that the five accused intended to kill the deceased when they jointly participated in harming him.”

[153] In our view, the fact that Pastor Lucas’s head was severed was sufficient to prove intention to kill regardless there is opinion as to cause of death. The trial judge did not err in concluding that at the time the unlawful harm was inflicted on Pastor Lucas it was done with the intention of all the appellants to kill him and this includes Vanegas.

Did the trial judge err in finding that the evidence obtained by the police as a result of the search of Mason’s Farm was admissible in evidence.

[154] It seems that counsel was challenging the authenticity of the CCTV video recordings although the ground refers to evidence obtained by the police at Mason’s farm. The authenticity of the recordings had been addressed above. The trial judge made no error in the admission and reliability of the CCTV video recordings.

[155] Mr. Rodriguez again made submissions under this ground on intention to kill by Vanegas. That issue was addressed under the previous ground. Further, I am in agreement with the Director that while Vanegas’ face is not visible throughout the CCTV video recordings, the trial judge was still in a position to determine which figure was him in the frames of interest, particularly because of the clothes that he was wearing and the machete that was in his hand.

Did the trial judge err and was wrong in law in finding that the evidence the police obtained by their search of Mason’s pickup truck was admissible in evidence?

[156] The complaint under this ground was that no reference was made to or what weight was placed by the court on Sgt Vasquez’s evidence brought out in cross examination that the head was found inside the pan of the pickup truck, which was unlocked, at a time sometime after 8:30 p.m. on 15 July, 2016. That this was after the Police had control of the vehicle by forming a security barrier with police officers around the vehicle, and

detained the first four appellants and Mason was taken from Sancho's Bar to his home to get the keys to open the cab of the pickup truck.

[157] The evidence for the Prosecution as accepted by the trial judge proved that when Sgt. Vasquez left with Mason to retrieve a set of spare keys for the vehicle from his Intelco home, the pickup truck was safeguarded by police officers. The vehicle had not been moved from the place where it was parked at Sancho's Bar until after the discovery of Pastor Lucas's head and the processing of the vehicle by Crime Scene Technician, Mr. Montero. There was no evidence that anyone had interfered with the vehicle. The trial judge was therefore correct in admitting and relying on the evidence of Sgt. Vasquez which was a strong strand of circumstantial evidence.

Did the trial judge err in finding that that the inferences to be drawn from the Prosecution's evidence was sufficient to convict the accused persons of murder when there was equally strong inferences inconsistent with their guilt to be drawn in respect of each or all of the elements of the crime of murder?

[158] Mr. Rodriguez questioned the circumstantial evidence in the case of the appellant. Counsel relied on paragraph 32 of **Gregory August** decision where the CCJ said:

“Circumstantial evidence is particularly powerful when it proves a variety of different facts all of which point to the same conclusion...[it] ‘works by cumulatively, in geometrical progression, eliminating other possibilities’ and has been likened to a rope comprised of several cords...”

[159] He contended that in the case of Vanegas, it may not be only one strand that is different from the other strands from which the Court inferred the Appellant's guilt, but a number of strands. He referred to the following:

- (i) Vanegas's non-participation in the initial act of violence against Mr. Dodd and Pastor Wright;
- (ii) His non-participation in the kidnapping of Mr. Dodd and Pastor Wright;
- (iii) The non-participation of Vanegas in the loading of the three men in Mason's pickup truck;
- (iv) His non-direct appearance in the video showing the loading of the men in the pickup truck;
- (v) The finding of no blood on Vanegas's clothes.

[160] The circumstantial evidence against Vanegas as shown under the ground of joint enterprise all pointed to the same conclusion and was like a rope comprised of several cords. The Court is unable to agree with counsel that the trial judge erred. There is no broken link in the chain of circumstantial evidence. Vanegas had the blue and white bandana and machete and was engaged in putting the men in Mason's pickup truck. He was seen on CCTV video recordings walking towards Mr. Dodd's vehicle which was later on Mason's farm. He went to Sanchos' Bar with the other appellants and was part of the barricade formed to try to prevent the search of the pickup truck. The blue and white bandana was found wrapped around the base of Pastor Lucas' severed head. These strands of circumstantial evidence are consistent with the guilt of Vanegas.

Appeal against Vanegas sentence

[161] Mr. Rodriguez submitted that the trial judge erred in passing a sentence of life imprisonment with the eligibility of parole after serving 35 years on Vanegas. He submitted that based on the evidence as he saw it, Vanegas should have been given a less stiff sentence. Further, he relied on the **Gregory August** case, and incorrectly stated that he was sentenced to life with possibility of parole after 30 years. He also relied on the sentenced passed Ernest Castillo in this case which was life imprisonment with possibility of parole after 30 years. Counsel submitted that this would have been the fitting sentence for Vanegas.

[162] The trial judge, in our view, properly considered the participation of Vanegas in the murder of Pastor Lucas and properly individualised his sentence to that of 35 years. Castillo received life imprisonment with a minimum of 30 years because of his youth. As for the **August** case, he was not given a life sentence but a fixed term of 30 years. His youth was also considered. In any event, sentences must be individualised and in the circumstances of this case, we are not persuaded that the trial judge erred and that August's sentence should be applied to Vanegas.

The appeal of William Mason

[163] Learned senior counsel, Mr. Elrington's sole ground of appeal was that the conviction of Mason was based on speculation.

Was the conviction of Mason based on speculation?

[164] Learned senior counsel Mr. Elrington, after referring to the evidence of the Crown addressed the law on circumstantial evidence in paragraph 22 of his submission:

“It is conceded that if each link in the chain is taken singly and apart from the others it may seem that the prosecution has failed to prove beyond reasonable doubt that particular link or element. But the legal test is not whether each element can stand by itself; the test is whether when the links are placed together they form a chain that is so logical compelling and strong that the chain is proved beyond reasonable doubt the guilt of the Defendant.”

[165] Counsel then concluded in paragraph 23,

“It is my respectful submission that even accepting this as a correct statement of the law, the links in this chain can be proved only if high speculation is substituted for proof and it is our submission that the prosecution put together a chain of high speculation and not a chain of proof and that the conviction should be quashed and the sentence set aside.”

[166] Senior Counsel Elrington has not pointed to any finding of the trial judge which was based on speculation. On the contrary, the findings of the trial judge in this circumstantial case were made on the evidence. There were numerous links when put together formed a strong chain, and pointed to one conclusion, the guilt of Mason, the boss of the other Appellants. The cogency of all the evidence will be discussed below. There is no basis to quash the conviction of Mason and set aside his sentence.

[167] Mason gave a dock statement and the trial judge accepted parts of his statement and gave no weight to the other parts as shown at paragraphs 105 and 106 of her judgment. She concluded:

“Conclusion Regarding the Defence of the Fifth Accused

[105] The fifth accused is saying that he saw the deceased, who was a good friend, at the residence, but did not see the deceased at the farm. In essence, the fifth accused is saying he had nothing to do with killing the deceased. He does not say he gave the deceased a ride but speaks about people getting out of the vehicles at two points. He speaks about three vehicles and 15 people being under and around the house when he and his staff are departing. The video evidence does not support this version of events. Based on the strength of the prosecution evidence, including the video evidence and Mr Dodd’s testimony, which I have found credible, **I give this part of the fifth accused’s statement no weight.** I do accept portions of his statement, particularly that the deceased was at the house of the fifth accused and that they spoke to each other about money. I also accept portions of what the fifth accused says happened at the bar, that is, the appearance of the police and their efforts to search his truck as well as their ultimate discovery of the bucket. I note here that the fifth accused says he told the police that he had the keys at the bar but Sgt Vasquez testified that the fifth accused said his wife had driven him to the bar and she had the keys. I accept Sgt Vasquez’s version of what he claims the fifth accused said about the vehicle keys, especially since the officer accompanied the fifth accused to his residence and obtained keys from his wife, so I give no weight to this aspect of the unsworn statement. In fact, it appears the obfuscation about the keys was part of the effort to prevent entry into the vehicle. As I understand the fifth accused, he is also saying that he was set up or framed to take the blame for this murder. I carefully considered if this were plausible but find it inconceivable based on the electronic and other prosecution evidence. I considered, for one, the way in which the bucket containing the head was tied with a wire to the back of the fifth accused’s truck. Based on the evidence, I do not believe that someone had the opportunity to access the truck and plant the bucket with the head in the back of the truck as it was parked no more than 30 feet away from all of the accused. On the Court’s visit to the bar, I was able to see that the top portion of the establishment is open so that sitting in the bar one could see the surrounding outside and streets, including where the pickup had been parked that evening. Moreover, I cannot reconcile that the fifth accused was framed with the fact that when the deceased was last seen on the video recording he was being involuntarily put into the back of the fifth accused’s pickup truck. When this is happening, the fifth accused is observing and pacing next to the truck. The fifth accused was previously seen on the recording giving what appeared to be instructions to his co-accused who afterwards led the deceased away. The fifth accused drove away with the deceased under the closed cover of the truck’s pan.

[106] Again, even if I do not believe crucial aspects of the fifth accused’s unsworn statement, I cannot convict him on this basis. I am reminded once more

that accused persons may fabricate defences and alibis for reasons other than guilt. **R v Lucas** [1981] 2 All ER 1008.”

Cogency of the circumstantial evidence against Mason

[168] The trial judge reminded herself that it was for the Prosecution to prove the case against Mason. She reverted to the Prosecution’s case against Mason which consisted of several strands/links of evidence, which, when woven/put together provided inescapable proof that he, along with the other appellants, murdered Pastor Lucas. The evidence consisted of the following links:

(i) The telecommunication messages that demonstrated the growing animosity between Mason and Pastor Lucas, shortly before his death. This is in direct contradiction with what he had stated in his statement from the dock that he was good friends with Pastor Lucas and had no issues with him. The messages also showed that on 15 July 2016, Pastor Lucas had gone to Mason’s residence at his request.

(ii) Mason admitted in his statement from the dock that he met with Pastor Lucas on 15 July 2016 at his Intelco Hill house about 1.30 pm and they spoke about money. The CCTV video recordings tendered by the prosecution and admitted into evidence by the trial judge showed they met upstairs. Mason was later seen on the CCTV video recordings giving what appeared to be instructions to his co-accused who afterwards led Pastor Lucas downstairs of the premises.

(iii) The CCTV video recordings clearly showed Mason’s involvement in the taking of Pastor Lucas from his premises at Intelco Hill, the last time he was seen alive. Mason’s physical stature, gait and face are unmistakeable at different frames of the CCTV video recordings. He was clearly seen handing a firearm to Terrence. Later Mason was seen pacing up and down by his pickup truck observing the other Appellants loading the three men, including Pastor Lucas in the pan of the pickup truck. His distinct body structure, hair and gait

made him obvious on the CCTV video recordings even when the slides were grainy.

(iv) As shown by the CCTV video recordings on 15 July 2016, Mason was wearing the same clothing at his residence during the day as he was wearing when he was eventually arrested at Sancho's Bar and photographed at the Belmopan Police Station.

(v) Mason admitted in his statement from the dock that he had driven to the Farm from his residence. The CCTV video recordings showed that his pickup truck was driven off his Intelco Residence at about 2.00 pm. Mr. Dodd gave evidence that a person with an accent spoke to him on the farm and it can be inferred that it is Mason who was very agitated when he spoke about Pastor Lucas.

(vi) That night on 15 July 2016, Pastor Lucas' severed head was found in the pan of Mason's pickup truck which was parked at Sancho's Bar. It had been fastened with tying wire. A nozzle and a roll of duct tape were also found in the pan of the pickup truck. Pastor Lucas' mouth, nose and eyes had been covered with tape.

(vii) Later that night on Mason's Farm a pit was still smouldering when police officers went there and human bones were found in it. On the farm as shown by the evidence of the Prosecution, were the pig pen, the storeroom where bags and buckets like the ones in which Pastor Lucas' head was found.

(viii) Mason's conduct at Sancho's Bar showed that he did not want his pickup truck searched. All five appellants barricaded the vehicle and most especially Mason. He had driven the pickup truck to Sancho's Bar and was in possession of the keys. He resisted when Sgt Vasquez attempted to search the pickup truck and claimed that he did not have the keys and that his wife had dropped him there. He messaged his wife to encourage her to give the same false narrative to support his version. He later produced wrong "spare keys"

which he had collected from his wife. The police search later unearthed the pickup truck keys in the grass at Sancho's Bar.

(ix) That same night at Sancho's Bar, about 8.30 pm, Mason contacted Pastor Smith by telephone to ask him to stop the police from searching his vehicle. It was after this call Sgt Vasquez was able to open the pan of the pickup truck and found Pastor Lucas's severed head in the pan of the pickup truck in a bucket. When confronted with Pastor Lucas' head Mason said, "*I don't know who that is.*"

[169] Each link shown above, when put together formed the chain of circumstantial evidence against Mason. The cogency of the inference of guilt was built on that chain and not on any single link. The CCTV video evidence is real evidence and Mason cannot escape from that piece of evidence. The head of Pastor Lucas in the pan of his pickup truck is by itself a powerful link in the chain. The Court disagrees with learned senior counsel, Mr. Elrington that the case was built on speculation. It was built on circumstantial evidence proven beyond a reasonable doubt by the Prosecution. The evidence pointed to no other conclusion but that Mason was part of the joint enterprise to murder Pastor Lucas. The trial judge was therefore justified in finding him guilty of murder. The Court is satisfied that there was sufficient evidence to support the guilty verdict as found by the trial judge. There is no basis to quash Mason's conviction and set aside his sentence.

Disposition of the Appeals

[170] The evidence led by the Prosecution was sufficient to establish the case against each of the appellants beyond a reasonable doubt. There has not been a miscarriage of justice on any of the grounds of appeal as shown above in the discussions of the Court. Accordingly, the Court makes the following order:

Order

The appeals of Castillo, Keiron, Terrence, Vanegas and Mason against their convictions are dismissed and their sentences affirmed.

Minnet Hafiz Bertram

President

Peter Foster K.C.

Justice of Appeal

Arif Bulkan

Justice of Appeal