

**IN THE SENIOR COURTS OF BELIZE**

**CENTRAL SESSION-BELIZE DISTRICT**

**IN THE HIGH COURT OF JUSTICE**

**INDICTMENT NO: C4/2024**

**BETWEEN**

**THE KING**

**and**

**DENVER BEVANS          Accused**

**Appearances:**

Mr. Riis Cattouse & Shannel Fernandez for the Crown.

Mr. Andrew Bennett for the Defendant.

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Trial:            18<sup>th</sup> 19<sup>th</sup> and 20<sup>th</sup> June 2024<sup>h</sup>

Decision: 27<sup>th</sup> June 2024  
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**JUDGMENT**

**MURDER- JUDGE ALONE TRIAL-DECISION**

**History of the Matter**

[1] **SYLVESTER J:** On the 14<sup>th</sup> day of November 2019, at approximately 7:10pm, Geovani Lennan was walking in Belize City, Belize District when an unknown assailant proceeded behind him stealthily and shot him in the head at point blank range. The graphic scene was retrieved from one of the CCTV cameras in the locality.

[2] The accused Denver Bevans (hereinafter referred to as “the accused”) was indicted for the offence of murder of Geovani Lennan, contrary to section 117 read along with **section 106(1) of the Criminal Code Chapter 101 of the Laws of Belize**<sup>1</sup>

[3] The particulars of the indictment are stated hereunder as follows:

*‘DENVER BEVANS in November 2019, at Belize City, in the Belize District, in the Central District of the High Court, murdered Geovani Lennan’.*

[4] The accused was arraigned, wherein he pleaded not guilty, and was tried by a single judge pursuant to **section 65 A (2)(a) of the Indictable Procedure Act Chapter 96 of the Laws of Belize**<sup>2</sup>.

### **The Prosecution’s overview**

[5] The Crown’s case is purely circumstantial as there was no direct evidence in relation to the shooting, and therefore much reliance was placed on the evidence of Corporal Bricenio Chub. On the 14<sup>th</sup> November 2019 at about **7:10pm**, while walking on Fullers Street, he heard a loud bang like a gunshot, he saw an individual running in his direction. When he got to about fifteen [15] feet, he identified the accused with a chrome colour firearm in his hand, running. He identified himself as a police officer and drew his licenced firearm and shouted, “police put down your firearm” and he pointed the gun in the direction of the accused, then he fired two shots at the accused, who took to his heels. The accused jumped a fence and escaped, however Corporal Chub heard two shots coming from the direction where the accused ran. He went to

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<sup>1</sup> Chapter 101 Criminal Code of the Laws of Belize Revised Edition 2020

<sup>2</sup> Chapter 96 Indictable Procedure Act of the Laws of Belize Revised Edition 2020

Welch Street, where he saw a male figure apparently lying dead. While there, he learnt that the police caught a male person at Rogers Stadium. He went and saw the accused in the police mobile, but only saw his head and could not see his clothing.

[6] On the 14<sup>th</sup> November 2019, at **7:15 pm**, Sgt 227 Oscar Carlos detained the accused at the Rogers Stadium. He was wearing a grey shirt, and no footwear. He was subsequently arrested and charged for the offence of murder.

### **Defence case**

[7] The accused elected to exercise his constitutional right of silence. The accused has therefore, left the burden on the Crown to prove its case against him. As the trier of the fact and law, I am aware that his silence cannot be held against him, since the supreme law of the land has given him the right to remain silent throughout his trial. Further, I cannot and will not impute guilt or innocence by virtue of his election. The fundamental rights are enshrined in the Constitution of Belize, and I am so guided.

[8] The Crown called a total of fifteen [15] witnesses, five [5] witnesses gave sworn testimony, and ten [10] witnesses were agreed pursuant to the Criminal Procedure Rules 2016 rule 10, read along with the Evidence Act, section 106 Chapter 95 of the Laws of Belize<sup>3</sup>.

[9] The following witnesses gave sworn testimony, namely, Sgt 227 Oscar Carlos, Cpl 762 Bricenio Chub, Shyrlee Lino, Sgt 1163 Elroy Vernon and CST Wenceslado Teul. All the witnesses were cross examined, save and except Shyrlee Lino and CST Wenceslado Teul.

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<sup>3</sup> Chapter 95 Evidence Act of the Laws of Belize Revised Edition

[10] The remaining ten [10] witnesses were agreed, and their evidence was read into the court's record they are, PC 1528 Andy Rodriguez, Newton Lennon, Laura Lopez, Dr. David Murillo, Dr. Mario Estradabran, PC 2125 Rosalie Sutherland, Cpl 1368 Wilbert Cob, Aldo Ayuso, CST Golda Reynolds, DC 2193 Edward Ciau.

## **Prosecution's evidence**

### **Cpl 762 Bricenio Chub [Sworn]**

[11] I. The testimony of Cpl Briceno Chub states that, he is attached to Seine Bight Sub Formation. In November 2019 he was attached to Operation Act, Racoon Street Belize City. On the 14<sup>th</sup> November 2019, at about 7:10 pm, he was walking alone on Fullers Street, heading to Gibnut Street when he heard a loud bang, sound like a gunshot coming from the direction of Gibnut Street. He was off duty, dressed in a maroon under shirt and grey 'jersey pants'. About 5 to 10 seconds after the sound, he saw a male person of medium built, brown in complexion, about five feet six inches in height, dressed in a beige shirt, grey short pants and a black cap, running from the direction of Gibnut Street into Fullers Alley heading towards his direction.

ii. From the first time he saw the assailant he was about seventy-five [75] feet away from him. He was able to see him, as the lamp post light was lit, and was about ten [10] feet away from the assailant. He observed that the male person was trying to place an object by his pants waist, however he was unable to do so as he was running. He kept walking and the male person kept running towards him, when the male person was about fifteen [15] feet away from him, he observed that he had a chrome colour pistol resembling a 9 mm. He was able to see the male person clearly, his face and his body for about ten [10] seconds. At the time a lamp post light was on which was about ten [10] feet away from the person.

iii. He was able to recognize the male person as the accused, Denver Devans. He has known him prior to the incident for about two [2] years. He had previously searched him on numerous occasions, at where he resides on Cemetery Road. Which area fell under the ACT mobile patrol, area of patrol. About two weeks prior to the incident, he had searched the accused

and got his particulars, where he identified himself as Denver Bevans, wherein he wrote his name on the police search sheet. At that time, he had him in his view for about a minute, he was able to see his face and whole body.

iv. On the day of the search, it was the afternoon at about 2:00 pm and the day was clear and sunny. The average distance he was from the accused was about two [2] feet, nothing was obstructing his view, he saw his face and entire body.

v. On the day he saw the assailant, he drew his licence firearm and he identified himself and shouted at him, "Police put down the firearm"! Which he repeated three [3] times. He then observed the accused lift his right hand with the firearm and pointed it in his direction. He then fired two shots at the accused, who went to his right, through a gate and made his way between two buildings. He followed behind and observed he jumped a fence and escaped. He heard two shots coming from the direction where the accused went. He hid behind a metallic gate and called for police assistance. Thereafter, he made his way to Welch Street, and he observed a male person, apparently lying dead-on Welch Street. The person was on the Street side.

v. He observed the male person to be someone that lived about 3-4 houses from where he lives. He was motionless. He didn't know his name, he only knew he was a firefighter, as he would see him in his uniform. The distance he saw the accused to the motionless body was 400 yards. He stated he was walking from Cemetery Road into Fullers Street. He saw the accused from the corner of Gibnut into Fullers Street. Welsh Street comes from Iguana Street. Welsh and Fullers do not meet.

Vi. The deceased was on Welsh Street, Welsh Street is about fifty [50] feet before the junction of Fullers Street. Whilst on the scene he got to understand, that police had caught a male person at Rogers stadium. He then made his way to Rogers Stadium entrance, where a crowd was gathered, and observed a police mobile exiting Roger's stadium and saw the accused seated inside the vehicle. The average distance was about 10 feet away when he saw the accused. In relation to the lighting condition, the area was



well lit, the lamp post lights were all on and nothing was obstructing his view. He was able to see his face, for about ten [10] seconds. He then made a statement at Queen Street, CIB office.

vii. He testified further that after he heard the bang like a gunshot coming off Gibnut Street area, about 5-10 seconds after he saw the assailant. He doesn't recall if he was wearing any footwear at the time. The closest distance he came to him was about 15 feet. During the period when he saw the accused to when he drew his gun and then disappeared was about a minute. The lighting condition during that minute was well lit as the lamp posts lights were on. The closest distance was fifteen [15] feet. The first time he saw the accused he was about seventy-five [75] feet away from him. Nothing was obstructing his view as he was able to see his face, he did not have on any mask and the streetlights were on.

ix. During his work week he would see the accused about 2-3 times a week, it would be during the day, it would be clear and at night the streetlights would be on. The average distance he would see him on those occasions would be about one [1] foot. He would have him in view for 2-3 minutes and nothing would obstruct his view and he would be able to see his face and body as he would conduct searches on him. He would be able to recognize him again if he saw him. He pointed and identified the accused sitting in court, by his dreadlocks and grey shirt [There was no objection from the defence]. He stated when he saw the accused running there was no one else on the street.

#### **Cross-Examination: Cpl 762 Bricenio Chub**

[12] Corporal Bricenio Chub was cross examined extensively, by learned Defence Counsel and his evidence stated hereunder:

i. On November 14<sup>th</sup> he was already a Corporal. On November 14<sup>th</sup> around 7:10 pm he was in Fullers Alley; he did not state in his witness statement where he came from when in Fullers Alley. However, he was coming from a shop he cannot recall the name of the shop. The shop is on the corner of Cemetery Road and Fullers Alley and he was heading home. He was at home immediately before he went to the shop, and his home is on Welch Street. He was there for the entire day and spent the entire time inside his house. He saw the deceased around, but never spoke to him. At the time he was attached to ACT mobile patrol.

ii. He cannot recall what 'ACT' means. He was familiar with the accused prior to November 14<sup>th</sup>, he searched him on many occasions. He had searched him two weeks prior to November 14<sup>th</sup>, 2019. Part of the function is to search persons. He understands the value of the right to privacy. He agreed that the citizens of Belize and any democracy should be protected from arbitrary search by the state. In the accused case he disagreed, the ACT unit targeted him. In his witness statement he didn't say if anything incriminating was found on the accused.

iii. The accused lived on # 97 Cemetery Road; he doesn't know how far Roger's stadium is from where the accused lived. Cemetery road runs alongside Roger's stadium. Roger's stadium is a public place. In fact, it's a sport facility. It has a softball field, a gym and a small basketball court. People from the neighborhood, and far and wide would go to Roger's stadium. He is not sure if it is unusual to see the accused in that vicinity. On that night, 14<sup>th</sup> November at 7:10 pm he was walking alone. He heard a single loud bang, that sounded like a gunshot. It is sometimes usual to hear those sounds in that vicinity.

iv. He was coming from the shop; he had bought a gallon of water and was carrying it on his shoulder. When he heard the loud bang as a police officer it came to his mind to be alert. When he heard the loud bang, he was about halfway into the alley, and was not able to see the actual shooting. In his statement he said the area where he was well lit. The lamp post light was on at that time. The houses had their lights. At some point he saw a person running in his direction, at a fast pace, and he started to experience fear. This person had on a beige shirt. It was short sleeve. [Demonstrated the sleeve was reaching just above the elbow]. In relation to the beige shirt, he repeated that he positively identified it was a beige shirt, and in relation to the pants it was a grey short pants, that he saw.

v. He testified that the person was wearing a dark-coloured cap, but he did not say the cap had the colour white on it. When he saw the accused had an object in his hand, at that point he wasn't sure if it was a firearm or not. He estimated the distance was about seventy-five [75] feet when he first saw the person. However, he did put in his witness statement there was a lamp post within fifteen [15] feet. Further, at seventy-five [75] feet away he didn't

recognize the person as accused as yet. In relation to his witness statement and how he knew the accused he only spoke of the times he interacted with him. He did not give any particulars of his features in relation to his face, as having brown complexion, **he did not describe his nose, lips, eyes or eyebrow. He did not see his hair. He saw his face, but he did not describe what of his face he saw.** While the person was running towards him, he was trying to put the object in his waist band. He confirmed he did say the object was in his right hand. **All of this was happening in a matter of seconds.** It was unobstructive.

vi. Where he saw the person was 15 feet away. He saw something that resembled a 9 mm firearm. But he can say for sure it was a 9 mm firearm, he is familiar with firearms, he has a licensed firearm as well. On his license firearm it would have markings to determine what caliber it is, that is how he knows if that firearm is a .380, 40-, 45- or 9-mm caliber. He didn't put in his witness statement if he saw any marking on the 9 mm caliber.

vii. At some point he had to draw his firearm, the assailant was 15 feet away from him, and he discharged his firearm at some point, shooting at the suspect. He does target practice from time to time, and is familiar with his licenced firearm, and has had his licensed firearm for about 6 years. He has his firearm for two (2) years prior to 14<sup>th</sup> November 2019. After he fired in the accused's direction, he ran into a yard, he pursued the accused, into the yard by about 20 feet inside the yard. It was at that point he heard two gunshots. Upon hearing that he took cover behind a metal gate. The metal gate was adjacent to the fence where the person entered.

viii. The yard has a picket fence where the person ran through, made from wood, and now there are two entrances to the yard. The hurricane damaged most of the fence. The last time he saw the accused was when he jumped and then about fifteen [15] more minutes after when the mobile was taking him away.

ix. At some point he made his way to Roger's stadium, and saw the accused on the police mobile, where he only saw his head. He did not see his clothing, or his feet. He disagreed that he was mistaken as to what he saw. He agreed he was in fear for his life. But disagreed he had little time to fully observe the



accused, because he was wearing a hat. He disagreed that he said it was Denver Bevans because he saw him in the police mobile for the first time.

[11] In re-examination he said that he pointed out yesterday at the visit to the locus where the accused entered the gate and adjacent to that was a metallic gate.

#### **Visit to the locus<sup>4</sup>**

[12] During the examination in chief the Crown made an application to visit the locus in quo, for the purpose of showing the distances, street location and the direction the assailant ran. The defence agreed to the application and the court acceded. The distances, streets and the direction the assailant ran were pointed out by the witness Cpl. Chub. The Court enquired where the deceased was found, and that area was also pointed out.

#### **Sgt 1163 Elroy Vernon [Sworn]**

[13] The evidence of Sgt #1163 Elroy Vernon states as follows:

i. That, he was attached to the Crime investigation Branch [CIB] and currently posted at the Precinct one police station Kings Street Belize city.

ii. On the 14<sup>th</sup> November 2019, at about 8:55 pm he accompanied Cpl. Andy Rodrigues, to an alleged murder scene on Welch Street Belize city. On arriving at the scene, they both did a complete walk through. Cpl Rodriguez showed him the location where the body of the murder victim was found. He then took over the murder investigation and went to Precinct one police station the same night. At about 9:37 pm Sgt Oscar Carlos arrived at the Precinct one police station and come in the CIB office where he was and handed over to him a male person whom he had in his custody. The male person was slim built, brown complexion with a low hair cut dressed in a grey sleeveless shirt and blue three-quarter jeans pants.

iii. After he was briefed by Sgt Carlos, he asked the individual his name, and he gave it to him as Denver Bevans. He informed him that he would be detained for the murder of Geovanni Lennon, and attempted murder of Bricenio Chub. After Denver Bevans introduced himself to him, he also introduced himself as Sgt Vernon.

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<sup>4</sup> Criminal Bench Book: Locus In Quo pages 663-665

Thereafter, he cautioned Denver Bevans with the words, you do not have to say anything unless you wish to do so, whatever you say will be taken down in writing and given in evidence.

iv. Denver Bevans did not say anything to incriminate himself at the time. He also informed Denver Bevans of his constitutional rights in that he can communicate without delay and in private with a legal practitioner of his choice; in order to receive legal instructions and he also has the right to contact a friend or relative to inform them of his whereabouts.

V. This right was explained to Denver Bevans and was issued to him on an acknowledgement form. During that night he received a medical form, from Sgt Oscar Carlos in the name of Denver Bevans, issued by Cpl. 1519 Zair Pott. On the following day 15<sup>th</sup> November 2019 at about 10:20 am, he requested Edward Ciau to retrieve some footage from Belize Dry Cleaners. Mr. Ciau retrieved the footage and handed it over to him; he saw the footage. On the same date at 12:30pm he requested from Edward Ciau to retrieve some additional footage from No. 1 Gibnut Street in Belize city. He retrieved them and handed them over to him as part of the investigation.

vi. On 15<sup>th</sup> November 2019, he visited the KMHM morgue to witness a postmortem of the deceased Geovanni Lennon. Also accompanying him was CST Golda Reynolds.

vii. On 16<sup>th</sup> November 2019, at 6:30pm he swore to an information and complaint, obtained a warrant in the first instance and formally arrested and charged Denver Bevans for the offences of murder and aggravated assault, and cautioned him. He identified the accused as Denver Bevans in court by him wearing a grey and white checkered shirt and hairstyle.

viii. The video exhibit, EC1, was shown to Sgt Vernon and he stated that the shirt the person who was running in the video was wearing is not the same as what the accused was wearing when he was handed over to him, but the pants look similar. He pointed out the right side of the screen is Roger's stadium and pointed to the top right side as entrance to Rogers Stadium.

**[14] Sgt 1163 Elroy Vernon was cross examined, and stated as follows:**

i. He was the investigator in this case, at the time he started the investigation he was attached to Precinct One, on Kings Street in Belize City, at that time it was located on Euphrates Avenue.

ii. On the 14<sup>th</sup> November 2019, he and Cpl. Rodriguez at 8:55 pm went to a certain location. The reason for him going to that location is because there was a fatal shooting scene. That happened on Welch Street. By the 16<sup>th</sup> November about 6:30 pm he had concluded and charged the accused. He agreed and felt satisfied that he had all the strands in this rope to satisfy himself he was bringing the charge against the correct person.

iii. He saw the videos in the court. The videos do not show clearly the face of any particular person, and as a matter of fact the video is in black and white. He neither put in his witness statement whether he knew the accused prior to 14<sup>th</sup> November 2019 nor whether he had prior interaction with him before 14<sup>th</sup> November.

iv. In relation to Welch Street he knew the deceased lived on Welch Street. It came to his knowledge that the deceased lived with family members. One of those family members is his domestic partner Ms. Shantel Mendoza. Prior to charging the accused with murder he had spoken to Ms. Mendoza. He did not put that in his witness statement, he had spoken to Ms. Mendoza. In relation to Ms. Mendoza, he eventually recorded a statement from her. That statement came long after he had already charged the accused. Ms. Mendoza did not indicate whether the deceased had any problems with anybody. The question was put to her if the deceased had problems with anybody, but she did not identify anyone he had problems with.

v. He had no knowledge of whether the deceased had any problem with the accused. He spoke to more than one person that live within the area, and the police officer that gave a statement also live within the area, he is Cpl. Chub. Mr. Chub did not give him any information about any problems with Mr. Lennon and the accused. He had obtained some information from Mr. Chub about some person he would have seen in Fullers Alley. The person that was seen by Mr Chub, he described him as wearing a beige shirt.

vi. He saw Oscar Carlos statement, the information from Oscar Carlos was that he detained someone with a grey sleeveless shirt, and a blue ¾ pants, and it is an entirely different colour from beige. He cannot recall whether the conducted search was fruitless, he was not there during the search. He took from the accused some specimens, buccal swab, some clothing, the shirt and the pants he was wearing, which was the grey sleeveless shirt and blue ¾ pants. He didn't take blood specimen from the accused. **This was a shooting, but he didn't conduct any swab for gun powder residue.** He did not personally swab persons before for gun powder residue neither



had he witnessed it. He heard about it being done. He saw a report from Rosalee Sutherland, a Police officer. He is familiar with the whole case file; he does not recall the name Raven Bennet.

vii. He was aware Rosalie Sutherland took a statement from Raven Bennet, he saw the witness statement, the statement seems to be a domestic issue. He would have seen the report of the firearm specialist, he doesn't recall the exact report from the firearm specialist, and do not recall the contents or its conclusion, the report would have come to his knowledge based on his investigation. Cpl. Chub had a licensed firearm that night.

viii. As part of his investigation, he did not take that firearm. The accused was not in his custody or at Precinct One, the entire time up to charge, he was at Precinct Three Queen Street, police Station. There was an attempt to interview the accused, he made the attempts, he doesn't know if anyone else attempted. He was not with the accused all the time. **He does not have the weapon allegedly used in the shooting; however the weapon would have been critical to his investigation.** The entire scene from the start of Welch Street, down Fuller Street all the way to Rogers Stadium is a little less than a quarter mile.

ix. When he looked at the video recording, he cannot make out if the person on the screen had a firearm. He was not there for the initial search, but he went back the following day. They searched Roger's stadium and the market next to the stadium but did not get the firearm, they searched the route that the suspect ran through Fullers Alley including the entire scene but did not find the firearm.

x. In relation to the buccal swab, it was sent for DNA analysis, and he thought that it was necessary, but he did not get back the DNA analysis, he still has not received the DNA analysis up to now. **He learnt where the accused lived at some point but did not search his home.** The police did not use torture, to his knowledge, to find out about the firearm. He did not recall if at the time the accused was arraigned before the magistrate he was suffering from a fractured mandible, but he knew he was issued a medical form. He does not know if he was taken to the hospital on the day of the arraignment and has no knowledge whether he was tortured while in custody.

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

**Sgt 227 Oscar Carlos [Sworn]**



[16] The evidence of Sgt 227 Oscar Carlos [Now Inspector] states as follows:

i. That he is an Inspector of Police attached to Precinct one Police Station King's Street. On the 14<sup>th</sup> November 2019, he was attached to the "ACT" operation, [Addressing Crime together], at that time he was a Sergeant of police, with regulation number #227.

ii. On November 14<sup>th</sup> 2019 at about 7:15 pm whilst at the corner of Vernon Street and Magazine road, he received a transmission via the police control room. As a result, he proceeded to Roger's stadium where he and PC Blades entered the compound on board a marked police vehicle. He was requested of PC Blades to put the high beam on the police vehicle to illuminate the area.

iii. Immediately upon doing so, he saw a male person, lying on the grass on the corner of the fence, he alighted the vehicle and immediately walked towards the person, and recognized the male person to be Denver Bevans Aka' Vato'. He recognized the male person because on daily routine work as a police officer he came across that same male person. He immediately identified himself as a police officer, and he instructed him to stand up. He saw that he had the same matched description of the person on the information that was passed onto him earlier via the police control room. He immediately proceeded to detain him, pending investigation of a shooting incident.

iv. Himself and PC Blades conducted searches in the immediate area with a view to find the firearm in question but proved fruitless. He then enquired of the accused if he was hurt, however he stated No! Upon putting him under arrest he informed him of his constitutional rights, which are to afford him to speak to a lawyer without undue delay, or to give him reasonable facilities to contact a friend or relatives. After telling him his constitutional rights he chose not to exercise any, and he immediately cautioned him using the following words:

"You do not have to say anything unless you wish to do so but what you say will be taken down in writing and maybe used in evidence'.

Then he proceeded to ask him his particulars, wherein he said his name to be Denver Bevans, 18 years, date of birth 6<sup>th</sup> January 2001, with an address 97 Cemetery Road. He observed that he had some abrasions to his foot and hand, and he decided to take him to KMH to seek medical attention. Whilst at KMH, Cpl Pook arrived, and issued him with a medico legal form, and waited until the Doctor examined him, and thereafter he took him back to Precinct one and handed him over to Sgt Vernon, who was the investigating officer.

v. He handed over to Sgt Veron the medico legal form, which had been certified by the Doctor. If he was to see the accused again, he would be able to identify him, he had him in his view for approximately 10-15 minutes, he took him to KHHH, waited with him at KHHH and took him back to Precinct one. That night he had him in his view for about an hour. It was clear, average distance they were close, about three feet, nothing was blocking his view from seeing him, he saw his whole body and face. He knew him before that date about two years approximately; he would see him approximately 2-3 times per week.

vi. Witness identified Denver Bevans, wearing dreadlocked hair and checkered shirt. From the time he got the communication via the radio, it took him about a minute to arrive at the Rogers Stadium compound. After he arrived, he immediately spotted Denver Bevans, he was not wearing any footwear.

### **Cross Examination of Sgt Oscar Carlos**

[17] Sergeant Oscar was cross examined and stated as follows:

i. When he found Mr. Bevans, he was wearing a grey shirt, During the detention of Denver Bevans he didn't speak to or see CPI. Bricenio Chub.

ii. Before that night he had already known Mr. Bevans, he knew his name, but he asked him to identify himself with his particulars. Prior to that he never addressed him as Mr Bevans.

[18] There was no reexamination by the Crown.

### **Shyrlee Lino [Sworn-Expert Firearm examination]**

[19] The introductory evidence of Shyrlee Lino MSc states that, she is employed as a Firearm Examiner, at the National Forensics Science Service, and has been in the present position for the past thirteen [13] years. She obtained a bachelor's degree in biology from the University of Belize in 2007, and in 2015, she obtained a master's degree in forensic science from the University of Strathclyde in Glasgow United Kingdom. That she has testified before the High Court and deemed an Expert, in the field of Firearm Examination. She was deemed an expert in Firearm examination by the Court without objection.

i. That she recalled performing an examination on 2<sup>nd</sup> June 2020, she was at the laboratory where she received four [4] envelopes with Laboratory reference numbers FOR 19-15-4F. She performed an analysis on that day, it was concerning deceased Geovanni Lennon and accused Denver Bevans and she would be able to recognize the report.

ii. She identified the report by her signature, heading and reference number on each page including her signature on each of the three [3] pages of the report and the laboratory reference number on each page assigned to the case FOR19-4F. The report was tendered and marked without objection as, **SL1**.

iii. Document shown., She identified the pages. Her signature was at bottom of three pages, laboratory reference numbers on the pages and the date she completed the analysis was 3<sup>rd</sup> June 2020. [**Report tendered and marked 'SL1'**].

iv. The results of her analysis are as follows:

- a. The eight [8] expended cartridge cases from **case [1]**, were all fired from an unidentified 9mm caliber firearm.
- b. The four [4] expended cartridge cases from **case [2]**, two cartridges were fired from an unidentified 9x19 mm firearm and the other two [2] were fired from a second unidentified firearm.
- c. The seven [7] expended cartridge cases from **case [3]**, two cartridges were fired from an unidentified 9 mm firearm.

The cartridge cases from all three cases were compared. Corresponding class and individual characteristics were present on all eight [8] cartridge cases from case [1], two cartridge cases from case [2] and seven [7] cartridge cases from case three [3]. It was determined that these cartridge cases were fired from the same unidentified 9x19 mm caliber.

### **CST Wenceslado Teul [Sworn]**

[14] i. The evidence of Crime Scene Technician, Wenceslado Teul states that, he is attached to Belmopan CST office for fourteen [14] years. In November 2019, he was posted in Belize City. That on Thursday 14<sup>th</sup> November 2019, at 7:50 pm, while he was on duty, he received a call from Precinct [1] CIB requesting the assistance of Scene of Crime Unit to process a shooting scene that occurred on Welch Street Belize City. He responded to the call and immediately proceeded to the mentioned location. On his arrival on Welch



Street, he met a CIB personnel by the name of Andy Rodriguez who told him certain things, and pointed out to him the motionless body of a creole descent male individual who was lying face up with suspected blood underneath the head. He observed that the body at the time was wearing a grey T-shirt with red, white and black short pants. Using a NIKON digital camera, he took photographs of the general area, and of the motionless body that was on the street. He then examined the immediate area and searched for items of exhibit but found nothing.

ii. He then labelled the motionless body with yellow evidence label as No. 1], and then took photographs of the body. He thereafter visited Mortars Alley also known as Fullers Alley and observed **two [2] expended bullet casings** in the alley, which he numbered as exhibit number 2 and 3. He then took photographs of the area in general and mid-range views of the expended bullet casings. He observed exhibit No. [2] had the marking 'Hornady 9mm' on the base of the expended casing and No. 3 with the marking NCC/R 9mm on the base. He collected these items and packaged them separately in white envelopes and sealed each with red evidence tape. He then visited the construction site on Dolphin Street, and on the rear corner of the yard he observed another **two [2] expended bullet casings**, which he numbered as **[4] and [5]** with yellow exhibit label. A further search of the immediate area was conducted but nothing else was found.

iii. At the construction site, he found a white and black snapback cap which was labelled as number [ 6]. He then took photographs of the general area of the [2] expended bullet casings and of the snap back cap. He then collected both expended bullet casings and packaged each separately in white envelope which he sealed with red evidence tape.

iv. On the same date at 9:00 pm he visited an address located on Cemetery Road Belize City, and he observed a beige in colour T shirt and a black wristwatch, both of which were situated on the step of a board and zinc structure which was inside the yard. He took general photographs of the area, **he observed the shirt, and the wristwatch was stained with suspected blood, he took photographs of the shirt and the watch.**

v. He then returned to the scene of crime office and prepared a chain of custody form for each of the items collected at the scene, at about 11pm. Precinct [1] CIB officers visited the scenes of crime office along with **a creole descent male individual, who at the time was wearing a grey sleeveless shirt and a ¾ blue jeans pants.** On the request of the police officers, he took photographs of the individual, he then examined the clothing that he was wearing **and observed the shirt and the pants he was wearing was stained with suspected blood,** he took photographs of the stain suspected blood that was on the shirt and pants, then collected and packaged the items.



vi. On the 20<sup>th</sup> November 2019, he delivered all the items of exhibit he collected to the National Forensics Science Service. He then printed at the scenes of crime office nineteen [19] photographs, 5x7 inches on Matte photographic paper and then made [6] copies of these photographs. He labelled each photograph with the date taken, brief description, his name and signature. He identified and explained the [19] photographs and identified them by his name and signature on the back of each photograph. The [19] photographs were tendered into evidence without objection and marked "**WT1-19**".

[15] There was no cross examination of CST Wenceslado Teul.

#### **PC #1528 Andy Rodriguez [Agreed evidence]**

[16] The summary of PC Andy Rodriguez evidence was that on the 14<sup>th</sup> November 2019, at about 7:20 pm he received information of a shooting on Welsh Street, Belize City. He visited the location along with other officers, and a dark skin male person lying face up in a pool of blood. It was the body of Giovanni Lennan, a Belizean firefighter, thirty [30] years old. He requested assistance from the Scenes of crime personnel W. Teul, where a blood swab was retrieved. **The body of Geovanni Lennan was taken to the Karl Heusner Memorial Hospital [KMH], where he was pronounced dead by Dr. David Murillo at 8:28pm.**

#### **Newton Lennan [Agreed Witness]**

[17] The evidence of Newton Lennon, was mainly for identification purposes, and that on the 15<sup>th</sup> November 2019, at the hospital Morgue, he confirmed and identified that the lifeless body was that of his brother, Geovanni Lennan, thirty [30] years old, who was born on the 22<sup>nd</sup> November 1988. That Sgt Elroy Vernon was present and Dr. Estradabran.

#### **Laura Lopez [Agreed witness]**

[18] Laura Lopez evidence states that she is the Human Resource Manager at Belize Dry Cleaners and is equipped with forty two [42] cameras, which capture footages and is stored on a HD recorder NVR with model number NVR8-0129. On the 15<sup>th</sup> November 2019, Police Edward Ciau requested permission to view and retrieve video footages stored on the DVR

surveillance, for the 14<sup>th</sup> November 2019, in connection with a murder investigation, and permission was granted.

**Dr. David Murillo [Agreed witness]**

[19] Dr. David Murillo's evidence states that on Thursday November 14<sup>th</sup> 2019, he examined eighteen [18] year old Denver Bevans, who was examined at the Karl Heusner Memorial Hospital [KHHM]. He was examined and found to have multiple areas presenting abrasion type injuries and bruises of varying sizes including on both forearms, posterior face, left hand, both knees, left leg, right 2<sup>nd</sup> and 3<sup>rd</sup> toes. The wounds were dressed and he left with police escort.

**DR MARIO ESTRADABAN AGREED [Agreed witness]**

[20] Dr. Mario Estradabran's evidence states that she examined the body of the deceased, Geovanni Lennan, at the KHHM hospital and observed there was two [2] orifices by a projectile from a firearm. There was an entry on the right area of the face and an exit of irregular shape located on the left mastoid area. The cause of death was traumatic shock caused by brain hemorrhage due to gunshot wound.

**PC 2125 Rosalie Sutherland [Agreed witness]**

[21] Police officer Rosalie Sutherland testified that on the 14<sup>th</sup> November 2019, acting upon information received from Police Control Room, of a murder, she proceeded to Welch Street, where she saw the lifeless body of a male person lying in a pool of blood. She met Cpl. Brizenio Chub, and she observed two [2] spent shells four feet away from a lamp post, in front of a two-storey wooden house, and a further two [2] shells found on a work site on Magazine road beside Belize dry cleaners.

**Cpl. 1368 Wilbert cob [Witness agreed]**

[22] Corporal of police Wilbert Cob's evidence was that on 14<sup>th</sup> November 2019, at 11:00 pm he was on duty at Precinct [1], when Sgt Elroy Vernon requested his assistance to take the accused to the Scenes of Crime Office, to take photographs. He was wearing a grey T-shirt

and a ¾ jeans pants. The clothing was taken from him for analysis purposes, and he was provided with another set of clothing.

### **Aldo Ayuso [Agreed witness]**

[23] The evidence of Police Officer Aldo Ayuso was that he lives on Gibnut Street, and he has four cameras situated on his house, overlooking the yard and surrounding streets. On the 15<sup>th</sup> November 2019 at 1:20 pm he gave permission to DC Ciau who came to his premises and retrieved the footage from the DVR.

### **CST Golda Renaud [Agreed witness]**

[24] Crime Scene Technician Golda Renaud's evidence was that on the 15<sup>th</sup> November 2019, Sgt #1163 Elroy Vernon requested of her to take photographs of a post mortem which she did at the KMH hospital. The autopsy was performed on Geovanni Lennan and was identified by Newton Lennan. She took a total of five [5] photos which were tendered into evidence and marked [GR1-5].

### **DC 2193 Edward Ciau [Agreed witness]**

[25] The evidence of DC Edward Ciau states that he retrieved data from the DVR from Belize Dry cleaner, wherein permission was granted to him by the Manager Laura Cuello. The first surveillance showed an individual running from an incident on Welch Street and the second surveillance showed a shooting incident on Welch Street. The two videos were tendered and marked [EC 1 and 2], without objection.

### **Defence case**

[26] At the close of the Crown's case the three options were given to the accused, and he elected to remain silent. See paragraph 7 supra.

### **Burden and Standard of Proof**

[27] Sitting as a judge alone, I am both the trier of fact and judge of the law. As such, I direct myself and kept in mind throughout my deliberation of this matter that the prosecution has the burden of proof in this case and that the accused stands innocent before me. The accused has nothing whatsoever to prove; rather, it is the prosecution that has the duty to prove each element of the offence of murder.

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

[29] The Court will consider and deliberate on all the evidence presented either mentioned specifically or not, with the aim of reaching an impassive and fair assessment of the evidence. The Court will also consider the cumulative effect of any inconsistency or discrepancy of the credit and reliability of the witnesses. If the Court finds the evidence of a witness implausible, it can reject that witness's evidence entirely or that aspect of it. The Court notes that in assessing credit and reliability it must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. That if there are inconsistencies and discrepancies the Court must look to see if they are material and if they can be resolved on the evidence. Unresolved inconsistencies or discrepancies would lead the Court to reject that bit of evidence or all of the witness's evidence entirely.

### **Law and analysis**

[30] The offence of murder is a crime of specific intent, in that the accused must have the intention to kill, to be so convicted, an intention to cause harm or otherwise will not suffice for the offence of murder, but maybe for lesser offences. The learning from the Court of



Appeal decision in Peter Augustine v R<sup>5</sup> states the position succinctly, per Carey JA thus:

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

[31] The Court accepts the submission of the Crown that in order to convict the accused the undermentioned five [5] elements must be proved beyond a reasonable doubt to the extent that it is sure of these elements as follows:

- 1) That Geovanni Lennan is dead.
- 2) He died from unlawful harm.
- 3) The accused had the specific intention to kill when he inflicted the harm.
- 4) The accused inflicted the unlawful harm on the deceased.
- 5) There was no legal justification for the killing of the deceased.

#### **Whether Geovanni Lennan has died from unlawful harm**

[32] The Court has no reservation in accepting as a fact the deceased died and from unlawful harm. This was evidence from the video of the shooting tendered into evidence by DC 2193 Edward Ciau as ‘**EC1 and 2**’. Further the evidence of Dr. Mario Estradabran that the deceased died from traumatic shock brain haemorrhage due to entry and exit of a gunshot wound to the brain.

#### **Specific Intention to kill**

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<sup>5</sup> Criminal appeal #8 of 2001

[33] The Court will consider sections 6 and 9 of the Criminal Code of Belize in relation to intention, to determine the issue of specific intent. The Court of Appeal judgment of Hafiz Bertram JA in the matter of **Gareth Hemmans v R**<sup>6</sup> at paras. 51-54 is instructive and adopted as follows:

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

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

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

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

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

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

[54] ..... the trial judge considered sections 6 and 9 of the Criminal Code, which sets out the statutory matters which should be taken into account in relation to proof of intention to kill. In the view of the Court, the judge was not required to set out sections 6 and 9 in his judgment or use the formula as set out therein, provided that he makes it clear that the appellant intended to kill.....”.

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<sup>6</sup> Criminal Appeal # 12 of 2016

[34] The Court has found without reservation that here was a clear intention to kill, by the assailant in the video sneaking up, behind the deceased and shooting him in the head, demonstrating a clear intention to kill without more, as per the video evidence 'EC 1 and 2'.

**Direction on circumstantial evidence.**

[35] I will direct myself cogently on the case for the crown as submitted, that certain inferences can be drawn and when pieced together it can lead to the inescapable conclusion of the Accused's guilt. Later in this judgment I will examine every detail as elucidated by the prosecution. The case for the Prosecution is based on circumstantial evidence. It is well established, and I am guided, that it is "no derogation of evidence to say that it is circumstantial"<sup>7</sup>.

[36] "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.'<sup>8</sup>

[37] I would direct myself that 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 Accused's guilt beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the Accused's guilt is proved beyond reasonable doubt.<sup>9</sup>

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<sup>7</sup> Gregory August [2018] CCJ 7

<sup>8</sup> Criminal Bench Book: Belize Barbados Guyana p. 342-343

<sup>9</sup> Criminal Bench Book page 342.

**Did the accused shoot and kill Geovanni Lennan [Video evidence vis a vis Cpl Briceno Chub identification evidence]**

[38] The two main pieces of evidence among others are the video evidence of Edward Ciau, exhibit EC 1 and 2 and the evidence of Cpl Brizenio Chub which will be dealt with in that order.

**Video Recording of the shooting – EC 1 and EC2**

[39] As a precursor to this aspect of the case the court notes that, none of the prosecution witnesses sought to or gave any evidence that they were able to identify the shooter, on the videos. On both occasions the shooter was seen running. On the first occasion when he ran up to the deceased and shot him and the other video when he was apparently running away after the shooting.

[40] Cpl Brizenio Chub who stated in evidence that he was able to identify the accused that night, he did not give any evidence identifying the accused on the video. The court notes that if the accused was identified that night by Cpl Briceno Chub, he would have been able to recognise him on the Video, either by his clothing, height, gait or other body features, since he has given evidence that he has known the accused for a number of years prior.

[41] The video evidence therefore had no value in relation to identifying the suspect physically, however it assisted in relation to the incident, its timing and the direction of the movement of the assailant.

[42] The court notes that the video did not cover every aspect of the movement on the street that night, for example Cpl Briceno Chub and the arresting officers were



not seen on the video. Despite Cpl Chub indicated he walked to the Roger's stadium after he saw the deceased on Welsh Street and only saw the head of the accused in the police mobile.

[43] For completeness the Court notes that the videos were tendered into evidence pursuant to sections 4-6 of the **Electronic Evidence Act 2021** and the common law test for the admissibility of video evidence as set out in the decision of the Supreme Court of Canada in **R v Alexander Nikolovski**<sup>10</sup>, Cory J stated at par. 28 thus:

*“28. Once it is established that a videotape has not been altered or changed, and that it depicts the scene of a crime, then it becomes admissible and relevant evidence. Not only is the tape (or photograph) real evidence in the sense that that term has been used in earlier cases, but it is to a certain extent, testimonial evidence as well. It can and should be used by a trier of fact in determining whether a crime has been committed and whether the accused before the court committed the crime. It may indeed be a silent, trustworthy, unemotional, unbiased and accurate witness who has complete and instant recall of events. It may provide such strong and convincing evidence that of itself it will demonstrate clearly either the innocence or guilt of the accused.”*

[44] There was no evidence that the DVR or videos were tampered with, and it was confirmed by Office Ciau, that he retrieved the data and stored it appropriately, maintaining the chain of custody.

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<sup>10</sup> [1996] 3 SCR 1197

[45] This court is guided by the fact that there are four circumstances in which, subject to a sufficient warning, the jury could be invited to conclude the accused committed the offence based on a photographic image from the scene of the crime which is admitted into evidence. This guidance was provided in **Attorney General Reference (No. 2 of 2002) [2022] EWCA Crim 2373[2003] 1 CR App R 21**<sup>11</sup> Rose LJ:

*“19. In our judgment, on the authorities, there are, as it seems to us at least four circumstances in which, subject to the judicial discretion to exclude, evidence is admissible to show and, subject to appropriate directions in the summing-up, a jury can be invited to conclude that the defendant committed the offence on the basis of a photographic image from the scene of the crime:*

*-where the photographic image is sufficiently clear, the jury can compare it with the defendant sitting in the dock (Dodson and Williams);*

*- where a witness knows the defendant sufficiently well to recognise him as the offender depicted in the photographic image, he can give evidence of this (Fowden and White, Kajala v Noble, Grimer, Caldwell and Dixon and Blenkinsop); and this may be so even if the photographic image is no longer available for the jury (Taylor v Chief Constable of Chester);*

*- where a witness who does not know the defendant spends substantial time viewing and analysing photographic images from the scene, thereby acquiring special knowledge which the jury does not have, he can give evidence of identification based on a comparison between those images and a reasonably contemporary photograph of the defendant, provided that the images and the photograph are available to the jury (Clare and Peach);*

*-a suitably qualified expert with facial mapping skills can give opinion evidence of identification based on a comparison between images from the scene, (whether expertly enhanced or not) and a reasonably contemporary photograph of the defendant, provided the images and the photograph are available for the jury...”*

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<sup>11</sup> Criminal Bench Book page 232 [Identification Evidence]

## **Cpl. Brizenio Chub evidence & identification**

### **Identification direction and guidance**

[46] To avoid the risk of injustice, I have warned myself of the special need for caution before convicting the Accused on the visual identification marinated with the circumstantial evidence in this case. A witness who is convinced in his own mind that the person he saw is the Accused may as a result be a convincing witness but may nevertheless be mistaken. Mistakes can also be made in recognition of someone well-known to the witness such as a close a friend or relative. So, I must carefully examine the circumstances in which the identification was made: for how long was the Accused under observation by the witness, at what distance, and in what light, did anything interfere with his observation, for example fear? Thus, the Court must be more cautious in its consideration of the evidence of visual identification.

[47] Having warned myself of the danger of mistakes that can be made with identification, including with someone well know, as the Judge of the facts I have examine the quality of the identification evidence above and I am directed by the law on identification. This means that in a case which hinges on identification, I must direct myself in accordance with the locus classicus on identification **R v. Turnbull**<sup>12</sup> guidelines. In that classic case, the general guidance is as follows:

“Whenever the case of an Accused person depends wholly or substantially on the correctness of one or more identifications of the Accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting in reliance on the correctness of the identification. He should instruct them as to the reason for that warning and should make some reference to the possibility that a mistaken witness could be a convincing one and that a number of witnesses could all be mistaken.”

[48] So first, I warn myself, as the trier of the facts, of the inherent difficulties in identification evidence and consequently the special need for caution before relying on such evidence. The reason there are inherent difficulties in identification evidence and thus a special need for caution in relying on such evidence, is that mistaken

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<sup>12</sup> R v Turnbull (1977) QB 224, (1976) 3 ALL ER 549

identity is not uncommon. In fact, mistaken identification has been shown to occur and have resulted in miscarriages of justice. It is well known that persons may look alike and when a case relies on identification the possibility of error on the part of one or more witnesses must be taken into account to prevent these miscarriages of justice. I further direct myself as the trier of fact, in accordance with **Turnbull**, that a convincing witness could be mistaken and that a number of convincing witnesses could all be mistaken.

[49] The **Turnbull** guidelines say that besides the general warning, the Judge should also point out to the trier of facts the weaknesses in the identification or recognition evidence to determine the quality of that evidence. The judge should explain why something is a weakness which may cast doubt on the reliability of the identification. **Turnbull** says further, that the trier of the facts must review the witness' ability to observe the person he or she is identifying—the **lighting**, the **distance** from which the observation occurs, the **length of time** to observe, if any **obstructions** were present, if there are any **inconsistencies or discrepancies** in the identification, is there supporting evidence and did the witness **know the person prior to the incident**, and if so, under what circumstances.

[50] As the Judge of the facts, I must also look at whether the observation was made under difficult conditions<sup>13</sup>.

#### **Circumstances of the identification:**

#### **Cpl Briceno Chub vs Sgt Oscar Carlos vs Sgt Elroy Vernon vs Video evidence**

[51] The Court will examine and analyse the evidence and circumstance of Cpl Briceno Chub's identification of the assailant to determine whether he could have been mistaken honestly or otherwise and any specific or inherent strength or weaknesses in his evidence, when examined in its entirety.

- I. **Recognition/period of observation**: Cpl Brizenio Chub testified that at approximately 7:10 pm on the 14<sup>th</sup> November 2019, he was walking on

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<sup>13</sup> Wade et al v R, Crim App No. 28 of 2001.



Fuller's Street to Gibnut Steet. He came from the shop with a gallon of water, when he heard the loud bang, like a gunshot. About 5-10 seconds later at approximately 75 feet away he saw someone about 5 ft 6 inches with a beige shirt and grey short pants, brown complexion and a black cap running from Gibnut Street into Fullers Street. He observed a chrome pistol and was able to see the male person's face and body for about 10 seconds, as the lamp post was about 10 feet away. He knew Denver Bevans two years prior to the incident, he had searched him on numerous occasions and as recent as two (2) weeks ago. On the many occasions he would see him nothing will obstruct his view. He later went to Roger's stadium where he saw Denver Bevans about 10 feet away in a police mobile that was exiting the stadium, however he was only able to see his head.

- II. The court notes with scepticism, that Cpl Chub did not identify the assailant on the video footages exhibited at EC 1 and 2, despite the colour was black and white and it was nighttime. The assailant was seen running in one video, when he shot the deceased and apparently running away from the scene after the shooting. The height, body structure, gait and general appearance was visible albeit the face was not very clear. Having seen the assailant in person that night, the clothing, and him running, it should have been easy for him to identify it was the same assailant he saw that night as on the video. At least the clothing could have been identified as that which was worn by the assailant. The court notes that the assailant that was running in the video was not wearing a beige shirt and a grey pants as was stated by Cpl. Chub. On the video however the assailant had a shirt and short pants, not a  $\frac{3}{4}$  jeans pants or an armless jersey as depicted in the photograph exhibited and marked [**WT17**]. The beige or light brown T Shirt, with an abundance of red substance resembling blood, which was tendered

into evidence as exhibit WT15, was not identified by Cpl Chub as being worn by the assailant that night. In cross examination, Cpl Chub indicated he was in fear, during the encounter with the assailant, who was wearing a cap, however he stated the cap did not have any white colour on it. The cap that was tendered via photograph exhibit as 'WT 12' was not confirmed by Cpl. Chub as being worn by the assailant or resembling the same. The court notes that the black cap had a diamond shaped white insignia at the front with lines. The above has caused the court some disquiet in relation to Cpl. Chub's identification. The above discrepancy has levelled tremendous doubt on the accuracy of Cpl. Chub's identification of the assailant.

**iii. Lighting:** The Court is mindful that upon a visit to the locus, the Lamp post was some distance away and not ten [10] feet as alleged by Cpl. Chub, neither was the deceased 400 yards away from where Cpl. Chub saw the assailant. The distance is about 100 yards as suggested by the prosecution in his address, a distance the court accepts. The court notes that even if the distance may have not been accurately stated, many people are not very good at averaging distances and therefore nothing turns on the court's interpretation of the distance of the lamp post light. The court notes that if this incident occurred in a matter of second, while Cpl. Chub was operating under fear, and the assailant was running, with a cap on his head, in the night, it would have been difficult to identify the accused. The court is of the view that Cpl. Chub could have been honestly mistaken.

The court took note that, Cpl. Chub, that night, never confronted the accused neither at the Rogers Stadium or at the police station immediately after he was arrested. He was not confronted in relation to the clothing that was found by any investigator, as to whether it belong to him. Of tremendous interest to the

court, is that the assailant who shot the deceased was not wearing the clothing the accused was wearing when he was caught at Rogers stadium. Let us suppose as the prosecution suggested, he could have magically changed into other clothing or he was wearing two jerseys and removed one, there was no DNA testing of the apparent blood found on the beige shirt to determine whether it was the accused or the deceased. This would have been strong circumstantial evidence, linking the accused to the offence, if the court was of the view that the beige shirt was worn by the accused that night. However, to date, the results from the DNA testing was not made available. In cross examination Sgt 1163 Elroy Vernon stated that to date he has not received the DNA analysis. This could have played an integral role in this matter.

- iv. **Distance and obstruction:** The court notes that Cpl. Chub saw the assailant seventy five (75) feet away and sought to identify him when he was 10 feet away, with the streetlight in close proximity. It was someone he well knew from two years prior and having conducting searches on the accused very recently. The court also note that the assailant was wearing a cap and the whole incident took a matter of seconds, with gunshots being fired between the assailant and Cpl. Chub. The fear of Cpl. Chub in relation to the whole encounter, the flight of the assailant who was running, while exchanging gun fire and even while the assailant was approaching with the gun, in the night, wearing a black cap no doubt would have had a negative impact on the identification of the assailant.

#### **Sgt 227 Oscar Carlos/Sgt 1163 Elroy Vernon/ video footages**

- v. Sgt Oscar Carlos' evidence was that he detained the accused at Rogers Stadium. Interestingly at no point did Cpl. Chub have any conversation with the accused or conducted any form of identification. He stated in cross

examination that during the detention of Denver Bevans, he did not speak to or see Cpl. Brizenio Chub. The accused had multiple abrasions and as a result Sgt Carlos took him to the KHHM hospital for treatment. The court notes that there was what appeared to be blood found on the grey jersey and pants of the accused. DNA analysis could have provided strong circumstantial evidence, depending on the results of the test. In the absence of this, the court is left to speculate and unfortunately, the Court cannot proceed in that direction.

- vi. Sgt Elroy Vernon was shown the video footage and confirmed the shirt the assailant was wearing in the video is not the shirt the accused had when he was handed over to him. He requested Edward Ciau to retrieve video footages from Belize Dry Cleaners and Gibnut Street, which he viewed. However, there was no evidence of identification of the assailant, elicited from his testimony or that of any other witness. The exhibited videos were unhelpful in identifying the person who shot the deceased from behind and the assailant who was running away in the second video.

**[52]** The court is left wanting in relation to the accused being the assailant that night. There is no casual connection between the accused and the shooting. At its highest, even if Cpl. Chub was correct that it was the accused who shot at him, with no other evidence forensic or otherwise, the court will be left to determine at what point the accused was shot, which could have been on any of the two occasions, that shots were heard by Cpl Chub:

- a.) Was it when Cpl. Chub was walking and he heard a gunshot and saw someone running, with a gun? or,
- b) was it on the second occasion when he heard two shots fired, after he had fired shot at the assailant?.



On the evidence presented, there are so many loose strands in the rope of circumstantial evidence, that the court has lurking doubts, more particularly stated above, as to the evidence presented against the accused.

**Specific areas of weaknesses:**

**No ballistics tying the accused**

[53] The court notes that, there was no swab taken from the accused in relation to gun powder residue on the right hand of the accused, which would have confirmed whether he recently used a firearm. This would have been particularly useful as none of the officers, who knew the accused over a long period of time, were able to identify the accused on the video throughout the conduct of the proceedings.

[54] The Court notes with immense scepticism the failure of Cpl. Chub, who saw the assailant that night, to identify him by any means whatsoever on the video surveillance, albeit the incident occurred at night. His inability to identify the assailant as the person he saw running when he was 75 feet away from him until he got to 15 feet, and looking at the assailant running on the video should have led to some comparison. However, he did not identify the assailant as the accused using the video footages through exhibit EC 1 and 2. This was material in the Court's view.

**No DNA evidence linking the accused**

[54] There was no DNA evidence linking the accused to the offence. The discrepancy in the clothing, the lack of proper identification including the inability to identify the assailant on the video recordings, has resulted in reasonable doubt resonating with the Court in its deliberation. None of the prosecution witnesses, including Cpl. Chub who allegedly saw the accused that night could have identified him on the video. This weighed heavily on the court in its deliberation.

**The gun was not retrieved.**

[55] Unfortunately, the murder weapon was not retrieved, wherein fingerprint analysis and other forensic analysis could have been conducted. In the round the Court has not been satisfied to the extent that it is sure the accused was the shooter.

**The clothing of accused does not match the shooter & no testing of the accused clothing.**

[56] Firstly, the clothing the accused was found with does not match the assailant. Cpl Chub stated the assailant was wearing grey short pants and a beige short sleeve shirt. When the accused was arrested, he was wearing a sleeveless grey shirt and a pair of 3/4 jeans pants. It would have been circumstantially helpful to conduct a DNA test on the apparently bloodied beige shirt that was collected for analysis and was never brought before the court. The deceased was shot at point blank range, therefore the confirmation as to whose blood was on the shirt would have been a prosecutorial game changer, once it was confirmed it was the accused wearing the shirt.

[57] The Crown has strenuously invited the court, that in the absence of DNA testing and analysis, to draw the inference that the substance on the clothing of the accused is blood, and it got on his clothing in the manner shown in the video, because he shot the deceased at close range. These inferences, as tempting as they may be, the court is not qualified to make such quantum leaps by inference. The Court would have to infer that the blood on the clothing of the accused was the deceased's blood, which got there when he shot him, based on video evidence, wherein the accused was not identified. The court is unable to do so.

**Was there a gun in the assailant's hand in the video?**

[58] The video footage showed the assailant running, however, there was no evidence that he had a gun in his hand. The assailant ran along the sidewalk and crossed into the road thereafter disappearing from view. There was therefore sufficient time to see whether he was carrying a firearm in his hand. There was no evidence of such, despite Cpl. Chub indicated he had a chrome 9 mm in his hand when he shot at him and ran. A visit of the locus shows

that it was a short distance from where Cpl. Chub saw the assailant to where he was seen running, and therefore the firearm would have either been with him or thrown within close proximity of the chase. The firearm has not been recovered to date. This case is ideal for the use of forensic DNA analysis.

[59] The **Needham's Point Declaration, on Criminal Justice Reform: Achieving A Modern Criminal Justice System, CCJ Academy of Law**, declaration 6 has echoed the clarion call, for administrations to make greater use of forensic science, including DNA analysis, which is preferable to prosecutions based solely on confessions. The declaration states:

*"6. That laws be enacted to provide for greater use of forensic, scientific, digital, and expert witness evidence, including the use of modern evidence gathering techniques such as interception of communications, digital recording of confessions and interviews, and DNA testing. This is preferable to prosecutions based solely on admissions and confessions*

### **Can the Court make its own identification from BF1**

[60] The Court is satisfied that it can make its own assessment of the video identification to conclude whether the video image is sufficiently clear and compare it to the Accused sitting in the dock. This guidance was provided in **Attorney General Reference (No. 2 of 2002) [2022] EWCA Crim 2373[2003] 1 CR App R 21<sup>14</sup>** Rose LJ:

*"19. In our judgment, on the authorities, there are, as it seems to us at least four circumstances in which, subject to the judicial discretion to exclude, evidence is admissible to show and, subject to appropriate directions in the summing-up, a jury can be invited to conclude that the defendant committed the offence on the basis of a photographic image from the scene of the crime:*

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<sup>14</sup> Criminal Bench Book page 232 [Identification Evidence]

- (i) *where the photographic image is sufficiently clear, the jury can compare it with the defendant sitting in the dock (Dodson and Williams).*

[61] The Court has examined EC 1 and 2, video footages and sought to compare it with the accused sitting in the dock. This it has done for a few days of the trial, to determine after appropriate warning, and reminding itself of the burden and standard of proof being beyond reasonable doubt is required, as to whether they are one and the same person. The court has considered the quality of the image, the comparison between the accused and the image and the recognition, the lighting in the video, the face of the assailant and body structure including his gait. This incident occurred over 4 years and seven months ago.

[62] The court is unable to say beyond a reasonable doubt that the assailant in the video is the accused sitting in the dock. The face is not clear, as the accused is unknown to the court and therefore a determination cannot be made in relation to his body structure, height and gait since he would have been eighteen [18] years old at the time of the alleged offence.

[63] The court has not listed and delved into every bit of evidence, but has considered all the evidence in its deliberation, focusing mainly on the evidence it deems material to the case at hand. The court was guided by the expert witnesses namely, Shyrlee Lino Msc Firearm Expert and Doctors David Murillo and Mario Estradabran.

#### **Expert Evidence:**

[64] I direct myself that I must determine if I accept the expert evidence and what weight I should reasonably attach to it if I do accept it. The testimony of an expert should be within his or her area of expertise. The testimony of an expert should be assessed in the same manner



as the testimony of a non-expert witness, meaning I am not compelled to accept the expert's testimony because it is from an expert. I may accept or disbelieve all, none or part of the testimony of an expert just as with any other witness. However, while the expert's opinion is not binding on me, I should "not simply cast aside expert evidence without some cogent reason"<sup>15</sup>.

[65] The expert opinion must be based on facts that are in evidence and if the testimony is not based on facts, I should give the expert opinion less weight. I therefore accept as a fact and accept both experts' testimonies, both in relation to the ballistic testing by Shyrlee Leo and ... Doctors David Murillo [injuries to the accused] and Mario Estradabran [cause of death of the deceased].

#### **Maybe, Could Be, It Is Possible, What If?**

[66] The Court in its deliberations cannot determine the evidence on the basis of, maybe it's possible, it could be the case, if it is possible or what if it happened. The evidence before the court has led to the conclusion that I cannot be sure of the accused guilt. That the burden and standard of proof rest on the crown to the extent that I am sure, I cannot feel sure of the guilt of the accused under these circumstances. The Court's journey would be saddled with conjecture prior to reaching its destination of guilt, a journey the Court is loath to undertake.

[67] With due deference to the Crown, who has forcefully urged this court to consider the final appellate court's decision in the matter of **Gregory August [2018] CCJ 7**, an authority emanating from this jurisdiction and the locus classicus on circumstantial evidence. The Court respectfully notes and accept the learning from the Apex court and has applied the

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<sup>15</sup> Stockwell 1993] CrApp R. 260

principles stated therein, however the factual matrix in August and the present case is dissimilar.

[68] In Gregory August, the accused had threatened the family of the deceased the prior evening. There was forensic evidence that supported the tennis shoe print impression of the accused linking his presence on the premises, there was forensic evidence that supported the negative O type blood found on the tongue of the deceased shoe and deceased also had type O blood. The accused had also threatened the family of the deceased that he will return after slapping one of them. There was an access route to the deceased's property from the accused home. There was sufficient forensic evidence linking the accused to the crime marinated with his prior conduct. The accused's conviction was therefore founded on the tapestry of circumstantial evidence<sup>16</sup>, unlike in this present case.

### **Conclusion**

[69] The Court having examined the case in its totality and examining the inherent strengths and weaknesses of the prosecution's case, including the combined effect of all the evidence presented, observing, recognising and applying the test for circumstantial evidence above mentioned is of the view that the prosecution has not discharged its burden, beyond a reasonable so that I feel sure of the guilt of the accused.

[70] The accused is therefore found not guilty of the offence of 'Murder' and is hereby discharged.

**Derick F. Sylvester**

High Court Judge

Dated 27<sup>th</sup> June 2024

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<sup>16</sup> Gregory August [2018] CCJ 7 par. 31