

IN THE SENIOUR COURTS OF BELIZE
CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT
IN THE HIGH COURTS OF JUSTICE

Indictment No. C1 of 2021

Between:

The Queen

and

[1] **Jorge Galindo**

Defendant

Appearances:

Mr. Cecil Ramirez S.C.C., counsel for the Queen.

Mr. Leeroy Banner, counsel for the Defendant.

Dates:

Trial Dates:	2023:	March 20, 21, 22, 23, 28, 30, April 16 and 26 May 10, 22, 29, and 30 June 1, 5, 7, and 26 July 10, 20, and 27
Judgment Date:		October 16 December 6
	2024:	January 18 February 28 March 18
Sentencing Date:	2024:	June 27

DECISION

- [1] **MR. FRANCIS M CUMBERBATCH; J:** Jorge Galindo, the Accused was indicted by the Director of Public Prosecutions for the offence of murder contrary to sections 106(1)¹ and 117² of the **Criminal Code** CAP 101 of the Substantive Laws of Belize (Revised Edition) 2020 for that he on the 25 August 2019, at Santa Elena Town murdered Nelson Flores ('the Deceased').
- [2] At his arraignment he entered a plea of not guilty, hence, a fully contested judge alone trial was held pursuant to the provisions of section 65 A of the **Indictable Procedure Act**³ CAP 96 of the Revised Edition of the Laws of Belize 2020.

THE FACTS

- [3] I will for ease of reference summarise the evidence adduced at this trial by the witnesses for the crown and the defence. However, in arriving at my verdict I will do so after having considered all of the admissible evidence in this trial.

WPC TRACY SUTHERLAND

¹ CAP 101 of the Substantive Laws of Belize Revised Edition 2020 section 106.- **(1)** Subject to sub-section **(2)**, a person who commits murder shall be liable, having regard to the circumstances of the case, to– (a) suffer death; or (b) imprisonment for life.

² CAP 101 of the Substantive Laws of Belize Revised Edition 2020 section 117. Every person who intentionally causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mentioned.

³ **Indictable Procedure Act** CAP 96 of the Revised Edition of the Laws of Belize 2020 65A.- **(1)** Notwithstanding anything contained in this Act, the Criminal Code, the Juries Act or any other law or rule of practice to the contrary, every person who is committed for trial or indicted, either alone or jointly with others, for any one or more of the offences set out in sub-section (2) shall be tried before a judge of the court sitting alone without a jury, including the preliminary issue (if raised) of fitness to plead or to stand trial for such offences. **(2)** The offences referred to in sub-section (1) are– (a) Murder, (b) Attempt to murder, (c) Abetment of Murder, and (d) Conspiracy to commit murder. **(3)** In an indictment charging an accused person with any of the offences specified in sub-section (2), no other count for an offence not referred to in the said sub-section shall be added.

- [4] This witness testified that in August 2019, she was attached to the CIB San Ignacio and that around 9:27 p.m. on the 25 August 2019, she received information about a shooting incident at the Flores residence on the George Price Avenue, Santa Elena. She visited the scene where she met one Alma Woodye the common law wife of Nelson Flores. She looked around the scene and saw what appeared to be a lot of blood on the floor of the house. She also observed one Tyler Evans the stepson of Nelson Flores crying. She spoke with him. She saw Flores' vehicle enters the yard. She approached the vehicle and noted that a young man named Norwin Lennon was driving it and he told her something.
- [5] The witness said she took a walk through the scene along with the Crime Scene Technician and saw a 9 mm expended shell on the floor. At around 11:00 p.m., that night she received a call that Nelson Flores passed away.
- [6] **UNDER CROSS-EXAMINATION** The witness said that she arrived at the scene less than five minutes after she got a phone call. She agreed that the Deceased was a known drug dealer and that there were bundles of marijuana all around the yard and a bundle of marijuana by the front door. She said when she got there the lights were on inside the house and there were what appeared to be blood stains going through the back door of the house. She doesn't recall seeing bloodstains on the street.
- [7] The witness stated that at the house Alma Woodeye told her that the person who attacked her husband was tall and slim and had on a full black helmet. She said the person came from the back of the house and started to fire shots at them, so she took cover under the dining table.

[8] She also spoke to Tyler Evans and spoke to Mr. Lennon who said he did not see anything because of the darkness from where he was. Neither Alma Woodye nor Tyler Evans told her that the Accused was the shooter. She agreed that in 2019, the Accused was bigger than he is now. She said that in 2019, she learned from a policeman that it was not the Accused who killed the Deceased.

[9] **UNDER RE-EXAMINATION** The witness said she did not ask either Tyler Evans or Alma Woodye who was the shooter. She said there were bundles of marijuana scattered around but she could not say the amount. From her own knowledge she does not know who the shooter was.

[10] **CPL 1039 ERIC YOUNG** testified that in August 2019, he was attached to Special Branch at the San Ignacio Police Station. He recalls that on Monday 28 August 2019, at around 4:30 p.m., he was with other officers, and they proceeded to the Galindo residence. There he met the Accused and informed him he was wanted in connection with a murder investigation. He cautioned him and told him of his rights. He took him to the San Ignacio Police Station where he handed him over to SGT Rodrigues. He had custody of the Accused and passed him over to the diarist.

[11] **UNDER CROSS-EXAMINATION** the witness stated that he could not recall having a conversation with the Accused when he detained him. He said he did not tell the Accused he knew that he, the Accused, was not responsible for the Deceased' death. When he detained the Accused, he co-operated fully with the police. He was not suffering from any gunshot injuries and his involvement in this investigation was just to detain the Accused.

[12] There was no re-examination.

[13] **Dr. MARIO ESTRADA BRAN** testified and was deemed an expert in forensic medicine. He stated that on the 26 August 2019, he performed a postmortem examination on the body of the Deceased. His external examination revealed six orifices characterised by firearm injuries to various parts of the body. The internal examination disclosed the passage of bullets through the body of the Deceased and the damage caused thereto.

[14] In the opinion of this witness, the direct cause of death was traumatic shock due to brain damage due to multiple gunshot wounds to the head.

[15] **UNDER CROSS-EXAMINATION** the witness stated that someone who receives those injuries could not engage in a struggle.

[16] There was no re-examination.

[17] **BARBARA VELASQUEZ** testified that she is a Crime Scene Technician and that on the 25 August 2019, around 9:30 p.m. she accompanied the police to a crime scene at George Price Avenue in Santa Elena. On arrival she observed a wooden house measuring approximately 22' X 33" with a zinc roof and wooden louvres painted in white.

[18] She commenced a search of the residence and observed suspected blood at a spot on the edge of the George Price Avenue. She also observed marijuana at various points therein.

[19] At the front door at front wall, she observed suspected bullet impressions and, on the floor, near to the front door was a jacketed projectile with suspected blood. In the living room was four expended shells and a pool of suspected blood was observed. In the kitchen area, suspected bullet impressions were observed and three expended shells. The witness also observed spots of suspected blood in the

corridor leading to the back door and bullet impressions on both walls leading to the back door. She took a number of photographs and collected exhibits which were packaged, labelled, and in respect of which a chain of custody form was completed.

[20] This witness returned to the scene on the 26 August 2019, at around 10:30 a.m., and continued to take photographs of bullet impressions. On that same day, she proceeded to the Karl Heusner Memorial Hospital where she attended the postmortem examination of the Deceased, took photographs of the body, and collected and labelled vials of blood and vitreous fluid. She also collected two jacketed projectiles all of which she packaged and labelled.

[21] At around 7:00 p.m. that same day, the witness returned to the scene in search of suspected bullets. She found a jacketed projectile in the rear left side room which she packaged and labelled. She later took all exhibits to the exhibit manager at the National Forensic Science Services to be analyzed.

[22] **UNDER CROSS-EXAMINATION** this witness stated that there was a trail of suspected blood which went through the back corridor at the scene and that there were also what appeared to be blood spots on the George Price Avenue. She collected samples of those blood spots. She said at the scene she learned that both individuals were shot but she did not learn that the attacker got shot. She was referring to the Deceased and a minor that got shot. She said if she was on the street in front of the house at night the back of the house is dark. In photo 1, the white post is a lamp post and photo 60 was taken during the day.

[23] The witness stated that she went back to the scene to see if she had missed anything the day before. On photo 60, she mentioned bullet impressions on the right side of the house. She could not recall if any pictures inside of the house showed

light bulbs. She stated that photo 31, showed a corridor leading to the back door and the corridor is dark. She was shown photo 50 and said no light bulb is shown on photo 50.

[24] There was no re-examination.

[25] **ALMA WOODEYE** testified. She said that she remembers Sunday 25 August 2019, around 9:00 p.m. At that time, she was in the kitchen eating and afterwards heard the sound of shots outside. She told her husband, the Deceased, she heard pop shots, but it was gunshots. Afterwards, a gunman ran inside the house shooting towards the Deceased. He was shooting from by the front door whilst she was in the kitchen. Afterwards she saw the man shooting her husband right in front of her. When she saw that she dropped to the floor to the side of the table and afterwards the Accused walked towards her husband and shot him in his back to the floor. After he had finished shooting the Deceased he proceeded to shoot around the house. She said she told him she was hurt and asked that he release her husband. Thereafter he shot her daughter, Nasine Flores, then walked towards the front door and went outside.

[26] This witness stated that the shooter was the Accused who she knew well because he used to visit her home and go out with her daughter and bring her back home at the house and she has known him for about 15 years at that time. He dated her daughter for about 5 years, so she used to see him with her daughter. About two weeks before the 25 August 2019, she saw the Accused when she went to the store. The Accused did not live too far away from her house. She remembers how the Accused was dressed when he was in the house shooting and she saw his face for about three minutes when he was shooting in her house, and he was about 6' away

from her when she saw his face. Nothing was between them, and the lights were on, and it was bright, he was right in front of her. When her daughter went out with the Accused, they talked and had conversations.

[27] **UNDER CROSS-EXAMINATION** the witness said the police arrived about half an hour after her husband got shot. It was a female officer, Ms Sutherland. She told her, she saw the Accused shoot her husband. She said she told the police that the shooter had on a helmet but in front of the helmet was glass and she could see clearly because the lights were on. The shooter did not have on a ski mask, just a helmet. The shooter entered the house running and firing shots so she took cover under a table, but she could still see the Accused. The table was small, and the Accused was about 6' from her. She said she told the police in a sworn statement dated 28 February 2020, that she saw the shooter for about 10 to 12 seconds. The shooter was not too long in her house, and she cannot remember how long. The incident happened quickly but she could identify the shooter. He did not have on a ski mask and there was no shield on his helmet so she could have seen his face. The corridor leading to the back door was not dark, it had lights. The shooter had on a black vest, but she can't remember if it was a short or long sleeve shirt. She said she saw the Accused fire shots at her husband. Her daughter told her the Accused said if he can't have her, he will hurt one of her relatives. She saw him in the house shoot her husband because she was concerned with her husband's injuries. She doesn't recall having a Facebook account under the name Jessie Guy. 'I never said on Facebook Joel got killed and I'm glad he's dead because he killed my husband and shot my daughter'. It's not true that Joel Sierra shot my husband. I don't know that Joel Sierra got shot when my husband was shot. The person who

shot my husband had one gun. I know that the doctor removed 9 mm and .38 slugs from the body of my husband I don't know that my husband was a drug dealer, and the shooter went to rob my husband of drugs. He had just come home from work at Cisco Construction Co. Ltd. I don't know if it was a robbery gone bad. In front of the yard had streetlights and there were lights at the back. She said she was not shown a vest found at her home and the Accused was the only person she saw had on a black vest. The Accused came in through the back door and opened the front door. The Deceased was taken through the front door to the hospital. She doesn't remember if her daughter was taken through the front door to the hospital. She said she did not make a report to the police that she was threatened. She told PC Usher that the Accused had threatened her.

[28] The witness said when her husband got shot there was no shoot out in the house with other persons. She didn't know that the person who shot her husband also got shot that night in the house. She doesn't know that the person who got shot ran through the back door of the house. She said she had known the Accused a long time ago but did not start speaking with him until after he dated her daughter, and they became friends. She denied that she did not talk to the Accused before the incident.

[29] There was no re-examination.

[30] **JOHN RUDON** testified. He was deemed an expert in the field of firearm identification and ballistics. He stated that on the 24 September 2019, he received a case folder along with ten manila envelopes and two white envelopes bearing laboratory number **FOR19-1171F** which he took to his office to be analyzed. The

envelopes were sealed, and he photographed them then opened them and removed the contents. He prepared a report which was tendered into evidence.

[31] The witness stated that a .38 pistol cannot be fitted with a 9 mm cartridge and a 9 mm pistol cannot discharge a .38/357 round of ammunition.

[32] This witness was not cross-examined.

[33] **SGT 406 ALEJANDRO RODRIGUEZ testified.** He said on 25 August 2019, at about 9:27 p.m. he received information of a shooting at 148 George Price Avenue, Santa Elena. He responded and arrived at the scene at around 9:45 p.m. where he was briefed by WPC Tracy Sutherland who told him that the Deceased and his daughter received gunshot wounds and were taken to the San Ignacio Community Hospital.

[34] The witness contacted the Crime Scene Technician Ms. Velasquez who proceeded to the scene that night and later that night at around 11:00 p.m. he learned that Nelson Flores had passed away and his daughter was transported to the Western Regional Hospital. As a result, he said he carried out investigations and directed that sworn statements be taken from witnesses including Alma Woodeye and Tyler Jonas.

[35] As a result of the investigations he detained the Accused, informed him of his rights in custody and issued him with an acknowledgement form. He was later arrested and charged for the murder of Nelson Flores on the 28 August 2019.

[36] **UNDER CROSS-EXAMINATION** this witness stated that he did not learn after the Accused was arrested and charged, that someone else was responsible for the shooting of the Deceased. It was not brought to his knowledge that the person who shot the Deceased also got shot. He did not check the Accused for any injuries, and

he has no knowledge that one Joel Sierra shot the Deceased. He does not recall seeing a blood trail from the back door to the street of the Deceased house. Crime Scene Technician Ms. Velasquez took swabs from all different locations where she found blood. It was not established where the motorcycle was parked. Neighbours said they heard the sound of a motorcycle speeding off after the shooting.

[37] There was no re-examination.

[38] **TYLER EVANS JONES** testified. He said that on Sunday 25 August 2019, at around 9:00 p.m., Jorge Galindo approached him at his home and asked for the Deceased. He told him he is not at home. Galindo walked away not too far from him and pulled out a black 9 mm gun rushed into him and said, 'nah move asshole'. He said Galindo grabbed him by his throat and put the gun to the side of his head. He then started to rush into the house through the back door and tried to walk, shoved him to the floor and said that his stepfather was his target. He said Galindo fired three shots at him whilst he was on the ground. Galindo went in the house and the witness said he heard more shots. From through the back door, he could have seen Galindo shooting his father the Deceased. He went into the house through the front door and went to his little sister who was shot in her chest. He took her to his grandmother who lived close by. He returned to the house and saw that his father was shot. He was on the floor with a lot of blood. He ran through the front door and saw two persons on a cycle. He said he did not know who the next person was, but he knew Galindo for about five years. He said Galindo was speaking in front of him and he knows his voice. He saw him the same day when he shot his father. It was in the evening when he went to the store. When he came out of the store, he saw Galindo outside sitting on a cycle. He got on his bicycle and looked

back and saw Galindo riding behind him. He was riding on the same cycle that he rode when he came to shoot his father. He said when he got home, he told his father about it.

[39] The witness said he knew Galindo's voice and watched him in his face when he placed the 9 mm to his head. When he saw Galindo at his house he could have seen him clearly. He had on a helmet, and he could see his face. When Galindo spoke to him and said 'whe Quacky deh'... he knew his voice. He said he knew him for the past five years when he used to date his sister. He went on to say that the lights from the street brightened the yard and all the lights in the house were on. He couldn't say how long the encounter lasted because he was frightened. Galindo wore long pants and military type boots and a shirt. He could not remember the colour of the shirt. He could have seen his face because they were face to face when Galindo grabbed him by the throat. When he came out of the house at 9:00 p.m., that night that was not the first time he had seen the motorcycle as he had seen it that evening. When he came out of the house was the second time he had seen the motorcycle. During the five years he had known Galindo, he spoke to him as he used to come by the house every night to drop off his sister and pick her up. He identified the Accused as Jorge Galindo.

[40] **UNDER CROSS-EXAMINATION** this witness said at the time of this incident he was 15 years old. He gave three sworn statements to the police, one on the 27 August 2019, the second on the 28 February 2000, and the third some time could be around March. He said he does not remember telling the police that the man wore a helmet with a warm cap with two holes by his eyes. He said he was able to recognize who it was because he knew the person for the past five years. He said

the area in the house by the back door was not dark. He could have seen him from the light inside the house.

[41] The witness said photo 31, the area in photo 31 is dark. He said photo 50 shows a light at the back of the house. It wouldn't have light if the light is not on. There is no light on the back verandah but from the streetlight the yard is clear, and he could have seen everything. He said photo1 shows the lamppost in front of his house and in photo 2 the yard is not dark. He could have seen Galindo. He does not remember speaking to WPC Sutherland shortly after the incident and does not remember telling her that the shooter was tall and slim. He repeats that he did not speak with WPC Sutherland. He said the person fired three shots at him. He accepted that his sworn statement says he told the police the man fired a shot at him. The man had on a bulletproof vest not a jacket. He does not remember the person wearing long sleeve clothing.

[42] The witness stated that his sister who got shot was taken to the hospital by the neighbours and he brought her through the back door. He said his grandmother is his neighbour. Then he went to look for his dad and saw him lying on the ground. He went through the front door and saw Galindo and there were two persons on the motorcycle and drove off. The shooter and the other man were outside trying to start the motorcycle they were on.

[43] When his sister was taken to the hospital the police had not arrived. When his father and sister got shot it was only the two of them in that room. He did not tell the police in his report that the Accused followed him because they had no problems with him. He stated that the Accused did follow him that day and was not wearing a helmet. He cannot remember telling the police that the man had on a helmet and a warm

cap. He cannot remember about any warm cap. He said he had on a helmet. He recognized him and recognized his voice as he knew him for the past five years. They spoke then and once before the incident.

[44] The witness denied that there was a shootout with the Deceased and other persons. The only person was Galindo, and he saw Galindo shoot his stepfather.

[45] This witness was not re-examined.

[46] That was the case for the Crown.

THE DEFENCE

[47] At the close of the Crown's case the court gave the Accused his three choices namely that he could stand where he is and remain silent, he could remain in the dock and make an unsworn statement in which case he will not be questioned by anyone, or that he could give sworn evidence from the witness stand in which case he may be cross-examined by Crown Counsel, Mr Ramirez. After due consultation with counsel the Accused chose to give sworn testimony.

[48] **JORGE GALINDO SWORN** The Accused stated that he is 36 years old and is the owner of a car wash. Sometimes he does tattoos. He said that on the 25 August 2019, at about 6:00 p.m. he was at home. His brother was there as well as Mario Munoz and Kareem Neal and they were all chilling and playing music. Around 10:30 p.m., he went upstairs to his house where he stayed in the same yard and from 6:00 p.m. to 10:00 p.m., he did not leave his car wash.

[49] With reference to the evidence of Alma Woodye the Accused said he was at home that night and with reference to the evidence of Tyler Jones he said he had no conversation with him that night. He was at home. He denied firing three shots at Tyler Jones with a 9 mm pistol because he was at home. Before the 25 August

2019, he did not know Tyler Jones to talk to and on the 25 August 2019, he did not shoot and kill the Deceased.

[50] **UNDER CROSS-EXAMINATION** The Accused said he went upstairs around 10:30 p.m. and that Mario and Kareem came to his car wash around 6:00 p.m., because that was the time he closes his carwash. He looked at a clock by the window and it said 10:30 p.m. It was a round wall clock white in colour. Mario and Kareem were at the car wash between 6:00 p.m., and 10:30 p.m., and he spoke with them.

[51] The Accused said they talked about how the day went and he told them he stayed at the car wash all day. Mario and Kareem did not tell him about their day. He did not notice how Kareem and Mario were dressed. Mario walked to his house, but he did not notice how Kareem got there. He said they got to his house around the same time, but Mario got there first, but he is not too sure how long after Kareem arrived, and he did not notice how Kareem was dressed. He said at some time it got dark and he put on the light around 6:00 p.m.

[52] The Accused said when he went upstairs at 10:30 p.m., he left them at the car wash. Mario left the house, and Kareem also left the house. When he left Mario and Kareem and went upstairs his brother was still with them.

[53] He denies knowing Alma Woodye to talk to. If he saw her, he would know who she is. Her daughter's name was Myra, and she was just a friend. He knew her for about six to seven months. He knew Alma Woodeye for about three to four years and knew Tyler Jones for about the same time. His house is about four blocks away from the Woodye' residence. He knew the Deceased but not to talk to. He knew him for about five years. There is a lamp post on the street in front of the car wash. At no time did he speak to Alma Woodye, and she was not his mother-in-law. He

denied ever taking Myra out and taking her home. He denied that at around 9:00 p.m., on the night of the 25 August 2019, he was at the home of Nelson Flores with one or two firearms, and he did not shoot Nelson Flores and his daughter because he was at home.

[54] There was no re-examination.

[55] **KAREEM NEAL TESTIFIED FOR THE DEFENCE.** He said on the 25 August 2019, at about 6:00 p.m., he was at the Galindo residence in Santa Elena socializing with Jorge, Mario, and David Galindo. No one left the residence between 6:00 p.m. to 10:00 p.m. He said he knows the Accused for about ten years, and he would see him every week. On Sundays they would be relaxing and playing music.

[56] The witness said that on the 26 August 2019, he along with his grandmother Desol Neal a Senior Justice of the Peace went to the San Ignacio Police Station to file a report about the Accused. He was not able to do so because the officer did not want to take the report.

[57] **UNDER CROSS-EXAMINATION** The witness said that the 25 August 2019, was a Sunday.

Question: How did you know it was 6:00 p.m.?

Answer: The witness did not answer

[58] He said he left the Galindo residence that night. He said he stayed at the residence inside the yard. He did not sleep in the yard, just hang out. It was him with the Accused and Mario hanging out at the Galindo residence the whole night. He left at about 3:00 p.m., on the 26 August. Mario Munoz left about the same time. He said he went to the San Ignacio Police Station at 3:00 p.m., and that the Accused was at the station at that time. He said he knows that the Accused was in the lockup

because they live in that same neighbourhood. He said 3:30 p.m., was the time he left for the police station.

[59] The witness did not answer when it was suggested to him by Crown Counsel that the police did not arrest the Accused until 4:30 p.m., on the 26 August 2019.

[60] The witness stated that the carwash is in the same yard at the front of the house and the colour of the whole house is blue. He did not know that the colour is mauve and blue.

[61] This witness was not re-examined.

[62] **NORWIN LENNON** testified on behalf of the Accused. He said that on the 25 August 2019, at around 9:00 p.m., he was across from his brother's house playing cards when he heard about six to seven shots fired across the street. He said he wanted to run across but was held back by his girlfriend. The sound was coming from directly across from where he was sitting and he knew it was from his brother's house, one Nelson Flores.

[63] When he heard screaming, he went to the middle of the road and saw his brother's front door pushed open by a tall slim built person wearing full black with a helmet on and a firearm in his hand. It was a black helmet with a plastic cover on the face part. He said he does not know the tall slim person. On the 19 April 2023, he gave an interview pertaining to this case on Chanel 7 news.

[64] **UNDER CROSS-EXAMINATION** This witness said he does not know one Tracy Sutherland, nor does he know WPC 1537 Sutherland. He does not recall on the 25 August 2019, returning to his brother's house in his vehicle and speaking to a police officer. He said on that night he drove the Deceased's vehicle and had gone to the San Ignacio Community Hospital. He said he was approached by a police officer

and told her that Nelson Flores is his brother. He denied telling WPC Sutherland 'That he was across the street in a yard when he saw a motorcycle pull up in front of the house with two male occupants and saw one of the male occupants come off the cycle, but he did not pay attention. About a minute later he heard about eight gunshots and saw someone run from the house and sped off on the motorcycle. Due to the darkness, he could not see who they were.

QUESTION: I am suggesting to you that you did not see anything.

RESPONSE: There was no answer.

[65] There was no re-examination.

[66] The court granted leave to the Crown to recall WPC Sutherland to adduce evidence in rebuttal in respect of the testimony of the witness Norwin Lennon aforesaid.

[67] **WPC SUTHERLAND** recalled. This witness testified that she said in her testimony on the 20 March 2023, that she had met one Norwin Lennon at the scene of this incident and that he told her certain things. He told her that he was across the road when he saw a motorcycle pull up in front of Nelson Flores house and that he paid no attention because there were always people at the house. The witness continued that due to the darkness he could not see who they were, meaning the people on the motorcycle.

[68] **UNDER CROSS-EXAMINATION** This witness said the person he saw exit the house was a tall and slim person wearing a motorcycle helmet covering his face.

[69] There was no re-examination.

CLOSING SUBMISSIONS

DEFENCE SUBMISSIONS

- [70] The Defence relied on an alibi. The Accused gave sworn testimony that on the date and time when the shooting allegedly occurred, he was at his residence with some friends. He also called witnesses in support thereof.
- [71] The thrust of the submissions by the Defence is based on the quality of the identification evidence adduced by the Crown through the evidence of Alma Woodye and Tyler Jones.
- [72] Defence Counsel in his closing submissions attacked the testimony of both witnesses aforesaid and asked the court to find that the case at *bar* is one of mistaken identity and fabrication of evidence against his client. Mr. Banner contends that WPC Sutherland who testified that she was at the scene about five minutes after the police received information of the shooting at the residence of the Deceased said that both witnesses told her that the shooter was tall and slim. He further contends that WPC Sutherland stated that Woodye told her that the attacker had on a full black helmet with the face covering down and Jones told her the attacker was wearing a black helmet with a glass shield and a warm cap with two holes in the eye area.
- [73] Defence Counsel relied on the evidence of WPC Sutherland that at that time the Accused was stout and that none of the two witnesses told her that the shooter was Jorge Galindo.
- [74] Mr. Banner further contended that, because of the manner in which the shooter was dressed and that he ran into the house firing shots made it very difficult if not impossible for the witnesses to make a positive identification of the shooter.
- [75] The Defence was also very critical of the evidence of the lighting conditions outside of the house at the time of the alleged shooting. He described those conditions to

be poor. Mr. Banner went on to identify what he considered to be inconsistencies in the evidence of the two Crown witnesses whose evidence he urged the court to reject.

[76] Defence Counsel further submitted that; the evidence of the ballistics expert John Rudon was that two different calibre slugs were retrieved from the body of the Deceased. He contends that no mention was made during the evidence of Woodye and Jones that the shooter used two firearms when shooting the Deceased. He also made mention of the presence of bags of marijuana scattered around the yard of the Deceased and contended that none of the Crown's witnesses testified that anything was taken from the house during the commission of the offence of murder.

[77] In closing Defence Counsel urged the court to find that the quality of the evidence relied on by the Crown to link the Accused to this crime is poor, inconsistent, and unsupported. Thus, he submits that the Crown has failed to prove beyond reasonable doubt that the Accused was the gunman who inflicted harm to the Deceased.

CROWN'S SUBMISSION

[78] Mr. Ramirez, in the Crown's response to the submissions by Defence Counsel on identification submits that the identifying witnesses, to wit, Woodye and Jones, were not challenged in their testimony that they had known the Accused for some years prior to the shooting of the Deceased. He further contends that Woodye was not discredited in or by cross-examination and that she testified that the Accused was in her house for about three minutes.

[79] Crown Counsel went on to contend that the Accused in his testimony admitted knowing the witnesses, Woodye and Jones, for some years prior to the shooting.

He further contends that the Accused admitted to knowing Woodye's daughter who he described as a friend. Mr. Ramirez further submitted that Jones who testified to knowing the Accused prior to this incident and knowing his voice was not challenged during cross-examination on these matters.

[80] On the question of another person being the shooter, Mr. Ramirez contends that, there is no evidence from the Crown's witnesses that it was someone else other than the Accused who shot the Deceased. However, he submits that there is evidence from Jones that another person went with the Accused to the Deceased's residence. In this regard Crown Counsel relies on the *dictum* of the UKSC in **R v Gnanago**⁴ (2011) UKSC 59. He went on to contend that,

“If the Court finds this evidence credible then the case of R v Gnanago [2011] UKSC 59 would apply in that the other party if he used a firearm whether inside or outside of the house which bullet struck the Deceased the transferred malice would apply to Jorge Galindo, the Accused. It does not matter who shot the Accused in terms of intention to kill as the parties would be acting jointly. In this regard, the other party who was with Jorge Galindo is jointly criminally liable on the basis of foreseeability”.

[81] Crown Counsel further contends that whoever that other person was that person would be acting in a joint enterprise with the Accused. He relies on the decisions of **Anthony Hyles v DPP**⁵ (2018) CCJ 12 (AJ) and **Chan Wing-Sui v R**⁶.

⁴ *The Queen v Gnanago* (2011) UKSC 59

⁵ *Anthony Hyles v DPP*⁵ (2018) CCJ 12 (AJ)

⁶ *Chan Wing-Sui v The Queen*

[82] Mr. Ramirez submitted that; the alibi of the defence was absolutely discredited. He referred to the inconsistencies in the evidence of the Accused and that of his witnesses. Crown Counsel also submitted that, the evidence of Norwin Lennon was challenged by a witness called in rebuttal, namely WPC Sutherland.

THE LAW

[83] As stated, aforesaid the Accused is indicted for the offence of murder contrary to section 106 (1) of the **Criminal Code**⁷. That section provides thus:

“106 (1) - Every person who commits murder shall suffer death”.

[84] Section 117 of the **Criminal Code**⁸ provides:

“117 - Every person who intentionally causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mentioned”.

[85] The Crown must prove the following beyond reasonable doubt:

1. That the Deceased is dead.
2. That he died from unlawful harm.
3. That the unlawful harm was inflicted by the Accused.
4. That the Accused intended to kill the Deceased when he unlawfully caused harm to him.

ANALYSIS AND VERDICT

[86] It is common ground that the Deceased is dead. The unchallenged evidence of Dr. Mario Estrada Bran is that he conducted a postmortem examination on the body of

⁷ **Criminal Code** CAP 101 of the Substantive Laws of Belize section 106

⁸ **Criminal Code** CAP 101 of the Substantive Laws of Belize section 117

the Deceased and found that the cause of death was traumatic shock due to brain damage due to multiple gunshot wounds to the head.

[87] The evidence and submissions by Defence Counsel do not reveal any reliance on matters of self-defence, provocation or accident arising therefrom. Indeed, Defence Counsel in his cross-examination of Dr. Estrada Bran enquired as to whether the injuries inflicted on the Deceased could have been caused during a struggle. The witness's answer was that anyone who received the injuries like those seen by him on the Deceased could not have been able to engage in any struggle. This matter was not pursued any further by Defence Counsel and accordingly, I find that the Deceased died as a result of unlawful harm.

[88] The thrust of the Defence case is that the Accused was not the shooter on that fateful night. Thus, the issue to be determined from the outset is whether it was the Accused who allegedly discharged rounds of ammunition at the Deceased that night. Therefore, the question of visual identification must be carefully and cautiously considered more so in light of the fact that the Accused relies on the defence of alibi.

ALIBI

[89] The evidence adduced by the defence came from the Accused himself and his witness aforesaid. The sum total of the Accused' evidence is that he was at home at his car wash from around 6:00 p.m. on the 25 August 2019, and that he did not leave home that night. He also stated that present with him that night were his brother Mario and his friend Kareem Neal and that he went upstairs at around 10:30 p.m., that night.

[90] His witness Kareem Neal testifies that he was present at the carwash from around 6:00 p.m. on the 25 August 2019, and remained there until around 3:20 p.m., the following day socializing with the Accused and his brother.

[91] He stated under cross-examination that he went to the San Ignacio Police Station at around 3:30 p.m. at which time the Accused was in custody at that police station to make a report that he was with the Accused that night at the carwash. He, however, did not answer the question put to him by Crown Counsel that CPL Young had testified earlier that he detained the Accused at his home at around 4:30 p.m. that day and thereafter took him to the San Ignacio Police Station.

[92] There are indeed as submitted by Mr. Ramirez inconsistencies with the evidence of the Accused and Kareem Neal as stated aforesaid and a glaring discrepancy as regards the time when the Accused was taken into custody for this offence. Mr. Ramirez contends that, the evidence of CPL Young as to the time when the Accused was detained was not challenged by the Defence by way of cross-examination. Thus, the Crown contends that Kareem Neal is not a reliable witness, and his testimony should be rejected.

[93] The court has also considered the evidence of the Accused that he was with Kareem Neal and his brother up to around 10:30 p.m., after which he went upstairs for the night whilst Kareem Neal testified that they were hanging out in the yard the whole night and that he, Kareem Neal, did not leave until around 3:00 p.m.

[94] The court takes judicial notice of the fact that Desol Neal is a Senior Justice of the Peace within this jurisdiction and has assisted the police during the taking of statements under caution and the conduct of identification parades. Therefore, I

find it difficult to believe that the police would have refused to take a statement from her nephew in her presence who seeks to make a report on a matter as important as this.

[95] I have carefully considered the evidence adduced by the Accused and his witnesses on the defence of an alibi and having done so, I reject same for the reasons aforesaid.

[96] I have directed myself that as the Crown has the burden of proving the guilt of the Accused, he does not have to prove that he was someplace else at the time when the shooting of the Deceased occurred. On the contrary the Crown must disprove the alibi. Though I may conclude that the alibi was false that by itself does not allow the court to find that he is guilty though it is a matter to be taken into account. The court should also bear in mind that an alibi is sometimes invented to bolster a genuine defence.

[97] Thus, though I have rejected the defence of an alibi it does not follow that the Accused is guilty of the offence charged. I must go on to carefully consider the Crown's case especially the evidence adduced in support of the identification of the Accused by the witnesses Woodye and Jones and the evidence of the defence witness Norwin Lennon on identification.

IDENTIFICATION

[98] As stated, aforesaid identification is a burning issue in this case. The fact that the Accused also relies on an alibi as a part of his defence makes the question of identification of the shooter that much more important. Both the Crown and Defence have set out in their submissions aforesaid the evidence and principles of law on which they rely in support of their contentions. The Crown's case wholly depends

on the correctness of the evidence of Woodye and Jones in their identification of him which he alleges to be mistaken. To avoid risk of any injustice in this case, such as has happened in the past, I must therefore warn myself of the special need for caution before convicting the Accused in reliance on the evidence of identification. A witness who is convinced in his/her own mind may as a result be a convincing witness but may nevertheless be mistaken. The same may apply to a number of witnesses. Mistakes can also be made in the recognition of someone known to the witness, even of a close friend or relative.

[99] Therefore, I must cautiously and carefully examine the circumstances in which the identification (by each witness) was made. I must consider how long did the witness have the person he/she says was the Accused under observation. At what distance? What were the lighting conditions at the time of the purported identification? Did anything impede or interfere with the observation? Had the witness ever seen the person before? If so, how often? If only occasionally, was there any special reason for remembering him? How long was it between the original observation and the identification to the police? Is there any marked difference between the description given by the witnesses to the police when he was first seen by them, and the appearance of the Accused?

[100] Both eyewitnesses have testified that the Accused was well known to and by them for some time prior to the commission of this offence. It has not been denied or challenged by the Defence that they all knew each other prior to the commission of this offence. However, the Defence contends that the Crown's eyewitnesses were mistaken when they allege that the Accused was the shooter that night because of the following reasons to *wit*:

1. The lighting conditions both inside and outside of the house in which the Deceased was allegedly shot were inadequate.
2. The shooter wore a helmet which covered his face.
3. The shooter also wore a warm cap which covered a part of his face and which contained two holes for him to see.
4. That because of the manner in which the shooter was dressed and that he ran into the house firing shots made it very difficult if not impossible for the witnesses to make a positive identification of the shooter.

[101] The Crown's response by Mr. Ramirez referred the court to the testimony of Woodye who stated under cross-examination that that the shooter was six feet away from her and that he was in her house for around three minutes. She further stated in her testimony that all of the lights were on in the house at the time of the alleged shooting of her husband by the Accused.

[102] The Crown further relies on the testimony of this witness that she knew the Accused for around 15 years, and she spoke with him because he dated her daughter at one time. Under cross-examination this witness admitted telling the police in her sworn statement the following, to *wit*:

'I managed to see Jorge Galindo for approximately ten to 12 seconds from the time he entered my home to the time he left. I got a good look to his face for approximately seven seconds after he shot my husband and turned his face towards me looking at me face to face'.

[103] She further stated in cross-examination the following:

'I know Jorge Galindo long time ago but we never talk until afterwards when he started dating my daughter then we became friends'.

TYLER JONES

[104] This witness was relied on by the Crown as another eyewitness to the commission of this offence by the Accused. He said in his examination-in-chief that he was on the road outside of the house when the Accused approached him asking for his father, the Deceased. The light from the streetlight up my back yard and inside my house all the light were on. However, the Crime Scene Technician Barbara Vasquez testified in cross-examination that the area at the backyard of the house as is shown in photo 31 which was taken on the night of the incident was dark. She further stated that, no light bulb is shown on photo 50. A perusal of photo 49 also discloses the area displayed therein to be dark as well.

[105] The Crown also relies on the voice identification of the Accused by Jones who stated that he was also able to recognize the Accused by his voice with which he had become familiar. He said thus:

“... when he first approached me and said whe Quacky de. It was George Galindo because I know his voice. I know George Galindo for the past five years he came to my house more than one time he use to date my sister...’

[106] The complexities of proof by voice identification were set out in the decision of the English C/A in *R v Flynn & St. John*⁹ 2008 EWCA (Crim) 970. The court opined thus:

“In general terms the expert evidence before us demonstrates the following:

- (1) “Identification of a suspect by voice recognition is more difficult than visual identification.

⁹ English C/A in *R v Flynn & St. John* 2008 EWCA (Crim) 970

- (2) Identification by voice recognition is likely to be more reliable when carried out by experts using acoustic and spectrographic techniques as well as sophisticated auditory techniques, than lay listener identification.
- (3) The ability of a lay listener correctly to identify voices is subject to a number of variables. There is at present little research about the effect of variability, but the following factors are relevant:
 - (i) the quality of the recording of the disputed voice or voices.
 - (ii) the gap in time between the listener hearing the known voice and his attempt to recognise the disputed voice.
 - (iii) the ability of the individual lay listener to identify voices in general. Research shows that the ability of an individual to identify voices varies from person to person.
 - (iv) the nature and duration of the speech which is sought to be identified is important. Obviously, some voices are more distinctive than others and the longer the sample of speech the better the prospect of identification.
 - (v) the greater the familiarity of the listener with the known voice the better his or her chance of accurately identifying a disputed voice.

However, research shows that a confident recognition by a lay listener of a familiar voice may nevertheless be wrong... ..”.

[107] There is no evidence on the length of the conversations between the Accused and this witness, whether there are any distinctive characteristics in the Accused’s voice, when last they spoke and for how long and how often they spoke.

Therefore, I find that the evidence from the witness Jones that he was able to identify the Accused by his voice to be weak and unreliable having regard to the *dictum* of the court in the decision of **R v Flynn** aforesaid.

[108] I have also found the following weaknesses in the evidence of this witness on the issue of his identification of the Accused as the shooter. I believe and accept the

evidence of Crime Scene Technician Ms. Velasquez that the area as shown on photo 31 where the witness claims to have seen the Accused was dark. There is no evidence of suitable lighting conditions to enable him to identify the Accused. Moreover, he admitted to being frightened and was lying on the ground when the shooting of his father took place. I have taken into consideration that he was just 15 years old in a state of fear and was lying on the ground when the act of shooting his father occurred.

[109] Accordingly, the court cannot rely on the evidence of this witness to be satisfied to the extent that it feels sure that the Accused was the shooter that night.

[110] I will turn to examine the evidence of Alma Woodye the next eyewitness relied on by the Crown to prove its case. This witness testified that on the night in question she was at home with her husband when she heard popping sounds coming from outside. She went on to state that she saw the Accused run into her home armed with a gun and fired same. She said she was able to recognize him by seeing his face through the front of the helmet which he wore. She denied that the Accused wore a ski mask on his face.

[111] This witness went on to state that she saw the Accused for about three minutes in her home. However, that is in contradiction with what she admits telling the police in her statement that she saw him for about 10 to 12 seconds in her home where he shot her husband and daughter. She further stated that, at the time when the Accused was shooting her husband, he was six feet away from her and that the lights were on, and it was bright in the house. She also said that nothing prevented her from seeing the Accused that night at her home. She stated thus:

"I managed to see Jorge Galindo for approximately ten to twelve seconds from the time he entered my home to the time he left. I got a good look to his face for approximately seven seconds after he shot my husband and turned his face towards me looking at me face to face".

- [112] Woodye denied telling WPC Sutherland that the shooter was a tall man. Indeed, she denied having a conversation with WPC Sutherland about the shooter that night. She further stated that "the shooter was smaller yes but right now George Galindo have dreads at that time he never had dreads, and he was smaller".
- [113] I have carefully considered the evidence of this witness and directed myself on the relevant principles of law aforesaid on the question of visual identification. I have observed her demeanour and the manner in which she gave her testimony both during her evidence in-chief and cross-examination. In so doing, I have also taken into consideration the evidence of the Crime Scene Technician that the size of the house was 22 feet by 33 feet which obviously was a small building. Photograph #19 shows the living room with shell casings which further indicates that this was a small building. Against that background, I have considered the evidence of Woodye that she was just 6 feet away from the shooter who she said looked at her whilst she looked at him after he had shot her husband.
- [114] I believe and accept the evidence that Woodye told the police that she saw the shooter for between 10 to 12 seconds whilst he was in the house. There is nothing in the evidence to suggest that this was a mere fleeting glance, indeed, Woodye seemed intent on observing the shooter that night in her house. Moreover, there is no evidence adduced during this trial that the house was not brightly lit that night as described by this witness. Further it is common ground

that she had known the Accused some years prior to that night when her husband was shot.

[115] I have considered the discrepancy in Woodye's evidence about the period of time she had the Accused under observation. She readily accepted that she had told the police it was a period of 10 to 12 seconds and not 3 minutes. I do not find this discrepancy to be of such significance to cast doubt on the witness's evidence that she saw the Accused for a sufficient period of time to enable her to make an accurate identification of him.

[116] I further find that having observed the shooter enter her home, then shooting her husband, and thereafter the two of them looking at each other face to face at a distance of 6 feet to be sufficient time in the circumstances for her to make an accurate identification of someone who she knew well.

[117] The court was asked by Defence Counsel to take into consideration the evidence of their witness Norwin Lennon who testified aforesaid that he saw a tall slim man leave the residence of the Deceased after the shooting that night. Under cross-examination he denied speaking with WPC Sutherland that night and that he told her that it was dark, and he could not see anyone. It was suggested to him by Crown Counsel that he did not see anything that night, but this witness remained silent and did not answer that question.

[118] It is common ground that WPC Sutherland recorded in her statement that Lennon told her thus:

A. Yes.

Q. And did Mr. Lennon tell you that he was across the street in a yard when he saw a motorcycle pull up in front of the house that is Mr. Nelson Flores house?

A. Yes.

Q. Did Mr. Lennon tell you that he did not pay attention as people were always at the house?

A. Yes.

Q. Did Mr. Lennon tell you that due to the darkness he could not see who they were meaning the persons on the motorcycle?

A. Yes.

[119] It is against this background that WPC Sutherland stated under cross-examination by Defence Counsel that Lennon told her he saw a tall slim person exiting the place and the person was wearing a black helmet over his face.

[120] Thus, in the circumstances, I find it astonishing that this witness having recorded in her statement that Lennon was unable to provide any details as to the identity of the shooter, but she nevertheless testifies that he told her he saw a tall slim person leaving the scene that night. Moreover, this witness further testified that the police had information that the Accused was not the person who killed the Deceased.

[121] However, SGT Rodriguez who was the investigator in this matter his testimony aforesaid denied under cross-examination that the police learned that someone else was the shooter who caused the death of the Deceased.

[122] On matters touching and concerning the identification of the shooter, I do not consider WPC Sutherland and Lennon to be reliable and a witness of the truth.

[123] In the PC decision of *Larry Raymond Jones v The Queen*¹⁰ (1995) UKPC 47 the Board opined thus:

“...Mrs. Taylor said that she saw the man’s face three times. The first was clearly no more than a fleeting glance at the back of the car, and if that had stood alone it might well not have been sufficient even to justify leaving the case to the jury. But it did not stand alone. She saw his face twice subsequently at a short distance (four feet and eight to ten feet) when she was out of the car. She was no doubt distressed but was equally concerned to see who it was that shot her husband. Even if her estimate of fifteen seconds was an overstatement it seems to their Lordships that the jury were entitled to conclude that she had seen him sufficiently to identify him in the light of the judge’s warning about the factors to be considered and as to the possibility of mistake”.

[124] Thus, after having analysed the evidence in support of the defence of alibi raised and relied upon by the defence, and having carefully and cautiously considered the evidence of visual identification relied on by the Crown together with the objections thereto in the defence submissions, I find that the evidence of the witness Alma Woodye satisfies the court to the extent that it feels sure that the Accused was seen by her shooting at the Deceased whilst in his home that night.

[125] The evidence from the Crime Scene Technician discloses that she retrieved expended shells and jacketed projectiles from the crime scene. She also collected

¹⁰ *Larry Raymond Jones v The Queen* (1995) UKPC 47

spent projectiles from Dr. Mario Estrada Bran at the postmortem examination. These exhibits were submitted to the National Forensic Science Services for examination. In his report, John Rudon who was deemed an expert in ballistics found that some of the expended shells were of a 9 mm calibre whilst others were of a .38/.357 calibre. This witness further stated a 9 mm firearm cannot be fitted with .38 calibre ammunition nor could a .38/357 calibre firearm discharge 9 mm ammunition. Indeed, Crime Scene Technician Ms. Velasquez testified that Dr. Estrada Bran handed over to her bullets of both calibres which were retrieved from the body of the Deceased.

[126] I have stated the submissions by counsel for the Crown and the Defence aforesaid. Defence Counsel submits that there is no evidence from the Crown's witnesses that the shooter used two firearms that night. Crown Counsel on the other hand urged the court to accept the evidence of Jones that another person went to the house with the Accused that night. He asked the court to find that whoever that other person was he acted as an accomplice with the Accused.

[127] The evidence of the Crime Scene Technician aforesaid states that there were four expended shells in the living room of the building and three expended shells in the kitchen. There was a jacketed projectile on the floor near to the front door and another jacketed projectile in the kitchen. There were also bullet impressions in different parts of the house. It appears that there was shooting from both the kitchen and the front door areas.

[128] I believe and accept the evidence of, Dr. Estrada Bran and the Crime Scene Technician, as regards the discovery of two bullets of different calibres aforesaid in the body of the Deceased at the postmortem examination. When I consider this

evidence in light of the unchallenged testimony of the Crime Scene Technician aforesaid as regards the location of the expended shells and jacketed projectiles it appears that there were at least two shooters at the home of the Deceased that night. I also believe and accept the evidence of Dr. Estrada Bran when he stated under cross-examination that in his opinion someone who had the injuries, he saw on the body of the Deceased could not have been engaged in a struggle. I also accept the evidence of Jones that he saw another person with the man who he said pointed a gun at him and shot his father. I find therefore that the Deceased was the victim of gunshots from two shooters on that fateful night.

[129] The uncontradicted evidence aforesaid leads the court to conclude that the two shooters targeted the Deceased is the finding of two bullets of different calibre in the body of the Deceased. In addition, thereto is the evidence of John Rudon the ballistics expert who stated in his report of his findings after having examined the packages submitted to the National Forensic Science Services by the Crime Scene Technician opined thus:

- There are 3 AGUILLA brand 9 mm calibre cartridge cases,
- Two G.F.L. brand 9 mm LUGER calibre expended cartridge cases,
- One FC brand LUGER calibre expended cartridge case,
- One CBC brand 9mm calibre expended cartridge case.
- All seven cartridge cases were determined to have been fired from the same unidentified 9 mm calibre pistol. The three 9 mm calibre bullets confirmed to have been fired from the same unidentified 9 mm calibre firearm.

- The two .38 calibre or .357 calibre expended bullets were confirmed to have been fired from the same unidentified .38 calibre or .357 calibre firearm.

[130] The facts disclose that one of the .38 or .357 calibre bullets was retrieved from the body of the Deceased whilst the other one was found by the Crime Scene Technician during her examination of the scene.

[131] I must now go on to consider whether or not the second shooter and the Accused were accomplices. The principles of joint enterprise applicable in this jurisdiction are those enunciated by the PC in ***Chan Wing-sui v R***¹¹ (1984) 3 WLR 677. In that decision Sir Robin Cooke described the simplest form of Joint enterprise thus:

“...a person acting in concert with the primary offender may become a party to the crime whether or not present at the time of its commission by activities variously described as aiding abetting, counselling inciting, or procuring it. In the typical case in that class, the same or the same type of offence is actually intended by all the parties acting in concert...”

[132] The presence of two types of bullets found in the body of the Deceased at the postmortem examination is very powerful evidence that both shooters aided and abetted each other in causing the death of the Deceased. Thus, the criminal liability lies in both participants in this offence.

INTENTION

[133] The Court must now determine whether when the Accused inflicted harm to the Deceased he intended to kill him when he did so. Section 6 of the ***Criminal Code***¹² provides thus:

¹¹ ***Chan Wing-sui v R*** (1984) 3 WLR 677

¹² ***Criminal Code*** CAP 101 of the Substantive Laws of Belize section 6

“6(1) The standard test of intention is, Did the person whose conduct is in issue either intend to produce the result or have no substantial doubt that his conduct would produce it”?

[134] Section 9 of the ***Criminal Code***¹³ provides the applicable law for the determination of a person’s intent.

“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”.

What is or is not a person’s intention is not easily ascertainable unless, of course, they disclose their intentions to you”.

[135] The Crown is seeking to prove that the Accused had the requisite intention to kill the Deceased when he shot him at his home that night. In so doing they are relying on the evidence of Woodye who testified to seeing the Accused armed with a firearm shooting at her husband that night. The Crown also relies on the forensic

¹³***Criminal Code*** CAP 101 of the Substantive Laws of Belize section 9

and circumstantial evidence of the Crime Scene Technician who testified to seeing several bullet impressions on the walls of the Deceased's home, the several spent shells and slugs found at the crime scene and the opinion of Dr. Mario Estrada Bran that the cause of death was in the opinion of this witness the direct cause of death was traumatic shock due to brain damage due to multiple gunshot wounds to the head.

[136] I am not obliged to infer that because the Accused was involved in firing gunshots at the head of the Deceased, he obviously intended to cause his death. So, when considering whether the Prosecution have proved to my satisfaction that the Accused had the necessary intention, I should draw such conclusions as I think right, and inferences as appear to be proper in the circumstances having considered all the evidence in this case.

[137] After having done so I find that the actions by the Accused of firing gunshots to the head of the Deceased in his home he unequivocally signalled his intention to kill him.

VERDICT

[138] I have carefully and cautiously considered and analysed the evidence adduced by the Crown and Defence at this trial. In so doing I have directed myself and applied the relevant principles of law aforesaid. At the end of the day the crown's case satisfies me to the extent that I feel sure that the Accused was the shooter who was observed by Alma Woodye shooting her husband at his home on that fateful night.

[139] The Crown's case also satisfies me to the extent that I feel sure that when he shot the Deceased, he was not acting in lawful self-defence nor was he acting as a result of extreme provocation.

[140] Accordingly, the Accused is found guilty of murder as indicted.

Hon. Mr. F M Cumberbatch

Justice of the High Courts