

IN THE SENIOUR COURTS OF BELIZE

CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT

IN THE HIGH COURTS OF JUSTICE

Indictment No. C49 of 2017

Between:

The King

And

[1] **Marlon Padilla**

[2] **Guillermo Duarte**

Defendant

Appearances:

Ms. Natasha Mohamed, counsel for the King.

Mr. Arthur Saldivar, counsel for the Defendant.

Dates:

Trial Dates: 26 April 2023; 3, 8, 10, 23, 31 May 2023; 7,
12, 13, and 15 June 2023; 5 October 2023; 6 December
2023; 26 February 2024; 22 and 25 March 2024.

Judgment date: 12 April 2024.

Sentencing date:

DECISION

[1] **CUMBERBATCH, HON. MR. FRANCIS M.; J:** The Accused were indicted by the Director of Public Prosecutions for the offence of murder for that they on the 2 April 2016, at Selena Village murdered Edgar Perdomo Aldana (“the Deceased”) contrary to the provisions of section 106(1)¹ read along with section 117² of the **Criminal Code** Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020. At their arraignment they entered pleas of not guilty, hence, a judge alone trial was held pursuant to the provisions of the section 65A³ of the **Indictable Procedure Act**.

The Facts

[2] I will summarise the facts relating to the evidence adduced by the Crown for ease of reference. However, in arriving at my verdict I will do so after having considered

¹ CAP101 Criminal Code section 106(1) of the Substantive Laws of Belize Revised Edition 2020 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 CAP101 Criminal Code section 117 of the Substantive Laws of Belize Revised Edition 2020 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 CAP96 Indictable Procedure Act section 65A of the Substantive Laws of Belize Revised Edition 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.

al of the evidence adduced by the Crown during the course of this trial. There was no evidence adduced by the Defence.

[3] **WPC Eva Dawson Testified.** She stated that on the 16 September 2019, at about 4:00p.m., she reported for duty and left for the Spanish Lookout substation to conduct mobile patrols. She was detailed to detain Guillermo Duarte who resided in Selena village Cayo and was wanted in connection with an ongoing murder investigation. At around 9:15 p.m., she visited Duarte's residence and informed him that he would be detained pending investigations in a murder case. She said she cautioned him and informed him about his constitutional rights and was taken to the San Ignacio Police Station.

[4] **Under Cross-Examination.** This witness stated that she was detailed to detain the Second Accused. She said she did nothing on her own to determine if he should be detained and at that time, she had no reason to suspect that he had done anything. She only detained him because of instructions from a superior officer.

[5] This witness was not re-examined.

[6] **PC Erick Mendez Testified.** He stated that on the 17 September 2019, he was attached to the Spanish Lookout substation. Whilst conducting patrols and acting on information from the CIB at San Ignacio police station that one Marlon Padilla was wanted for murder investigations, he visited a farm where Padilla was working. On arrival he met a clear slim Hispanic male person working on the farm. He identified himself to the person as a police officer and the person identified himself as Marlon Padilla. He told him the reason for his detention and cautioned

him. He remained silent and he informed him of his constitutional rights. He then escorted him to Insp Gonzalez of Major Crimes at the San Ignacio Police Station.

[7] **Under Cross-Examination** this witness stated that he did not have a warrant for the arrest of the First Accused. He also said he had no personal reason to suspect the First had committed any crime.

[8] This witness was not re-examined.

[9] **Dimas Duarte Testified.** He stated he is a businessman and has been SPC for about 12 years. On the 2 April 2016 at about 5:00 a.m., he visited a lot next to the school in Selena Village where he observed 2 bodies on the ground. He then called the police at the San Ignacio Police Station. Whilst awaiting the arrival of the police he recognised one of the persons to be the Deceased and the other was Reuben Monson. Monson had a cut below his nose and above his lip and he saw injuries on the Deceased's back. They were placed in an ambulance. He said the lot where the men were found is behind the school and from the school to the bathroom is a cement walkway. After the bathroom is a fence which is about 20 feet away. About 10 feet more is a small wooden house where the Deceased lived.

[10] This witness was not cross-examined.

[11] **ASP Jaime Gonzalez testified.** This witness stated that in April 2016 he was attached to the Central Investigative Branch Belmopan and on Saturday 2 April 2016, at about 7:00 a.m., he responded to assist in the investigation of a chopping incident in which the Deceased had died.

[12] At about 2:30 p.m., he conducted an operation along with members of Special Branch in search of the two Accused. On the 4 April 2016 at around 10:00 a.m., he

along with the body of the Deceased went to the Karl Heusner Memorial Hospital where a postmortem examination was conducted by Dr. Mario Estrada Bran and the cause of death was determined to be thromboembolism due to multiple chop wounds. He said after the postmortem examination he visited the general ward of the hospital and recorded a statement from Reuben Monzon.

[13] The witness said that on the 3 April 2017, he visited the San Ignacio Police Station where he learned that the First Accused was detained. He also learned that the Second Accused was also detained. He contacted Ms. Berry a Justice of the Peace to assist him in the interview of both Accused. In the presence of the Justice of the Peace, he interviewed the First Accused. He said he informed him of the reason for his arrest and cautioned him. He allowed him 5 minutes alone with the Justice of the Peace. He thereafter proceeded with the interview and when he was finished, the First Accused signed and at its conclusion he asked him to sign same which he did. The Justice of the Peace also signed as a witness.

[14] The witness said he met Reuben Monzon at the San Ignacio Police Station who indicated that he wanted to tell him certain things. As a result, he got Justice of the Peace Desol Neal to witness the statement. He allowed the Justice of the Peace to be alone with Monzon after which he recorded a statement from him in Spanish. He read him the contents of the charge and he said he understood same. He then cautioned him, and he remained silent.

[15] This witness continued that on the 17 September 2019, he received information concerning the Second Accused who was wanted for the murder of the Deceased. He escorted the Second Accused to the Central Investigative Branch office at the San Ignacio Police Station and informed him that he was arrested for the murder

of the Deceased on the 2 April 2016. He did so in Spanish which was the preferred language of this Accused. He told him he would conduct an interview in the presence of a Justice of the Peace, and he contacted Desol Neal Justice of the Peace. In the Justice of the Peace's presence, he told the Second Accused the reason of his detention and cautioned him. He informed him of his constitutional rights and the Accused requested a phone call which he granted. He said he allowed the Justice of the Peace 5 minutes private time with the Accused then proceeded with the interview. The Accused informed him that he would not answer any more questions until his attorney arrives, so he asked him to sign the interview they had which he did. The Justice of the Peace also signed and sealed same.

[16] On that same day the witness said he learnt that the First Accused was in custody. He spoke to him and informed him of the directive from the Director of Public Prosecution to re-arrest him and charge him with the murder of the Deceased. He cautioned him and he remained silent. He later swore to an information and complaint and obtained a warrant in the first instance and jointly charged the two Accused for the murder of the Deceased. He read the contents of the charge, and both Accused said they understood same. He cautioned them once more and they remained silent.

[17] This witness stated that when he recorded a statement from Reuben Monzon he was in hospital sitting on a bed and dressed in a gown. He had bandages around his head and his left hand. He also had an injury across his face with stitches horizontally between his nose and his mouth. He appeared normal but complained of pain.

[18] **Under Cross-Examination** this witness said he recalls recording a statement from one Monroy but had no eyewitness statement. That was from information received. Prior to the 4 April 2016, Duarte provided certain information. As regards the information received only one person fitted the description. Information was received of another person's voice. He denied that it was based on information of another person's voice that he decided to have the First Accused arrested. He said that on the 2 April 2016, together with Special Branch an operation was conducted by him in search of the two Accused. That was shortly after he had recorded the statement from Monroy. He does not recall Monroy saying that he made an observation or heard a voice. There was no provision of a name from Monroy but from other information. He said that the information he had between the 2 and 4 April 2016, is that the person in the vicinity of the school when the incident occurred was Monroy. SPC Duarte did not provide a statement until 2017. Prior to Monzon no other person gave him information of what they heard or saw at the school. He said he did not recall Monroy saying in his statement he did not see anything. He said he did not find it odd that by 2:30 p.m., he was seeking to locate both Accused. He said when he took the statement from Monzon at the Karl Huesner Memorial Hospital he was looking for the two Accused as suspects in the case and on the 4 April 2016, Monzon's injuries were relatively fresh. He was not aware of how long Monzon remained in hospital, but he enquired from doctors about his injuries, and he was aware that he was under pain medication. He said he did not see any medication being administered to him.

[19] The witness said he does not agree that the investigation he commenced on the 2 April 2016, was founded on speculation and not facts. He does not agree that

speculation was introduced to Monzon and that he did not invite him to the SIPS on the 3 April 2016. He said he met Monzon at the station and denied introducing any speculation to him. He stated that there are about 20 to 30 families residing at Selena Village in different houses. He continued that he did his investigation on what he encountered and denied that he did not do a proper investigation.

[20] There was no re-examination of this witness.

[21] **Reuben Monzon testified.** He said that he is a carpenter and in April 2016 he lived in Selena Village with the Deceased. He said he recalls the 1 April 2016 around midnight. That night he was coming from Cayo where he went to see a football match. He was together with two other friends. When he reached home the two Accused were at home drinking with the Deceased right in front of the seesaw at the school. He knows the school as Selena School. He said they offered him a drink which he took and then he went to sleep. He had the drink with them and remained with them for about 5 minutes before he went to bed.

[22] He continued and said that at around 4:30 a.m., he came out to urine, and he was offered another drink which he refused. After that he saw the 2 Accused chopping Mr. Edgar, the Deceased by the see saw at the school. He said they used machetes and after he saw that he left without speaking and did not say anything. He said that they then attacked him with machetes. The first chop he got was under his nose after which he went running. He said they followed him and gave him a chop on his back and head, so he ran back to the school where there is a little house. He does not remember much of what happened after that. He said the Deceased was just there talking with them before they started chopping him on his head.

[23] The witness continued and said that in April 2016, he lived in Selena Village for about a year. When he was offered the first drink the moon was lighting so he was able to see the two Accused in the moonlight. He said he was about 5 feet from the two Accused and the Deceased, they were all together. He said he saw everything on the two Accused bodies, and nothing obstructed his view of them. He did not see exactly who chopped him beneath his nose. He said no one else was present with the two Accused and Edgar when he was having a drink and when the Accused were chopping the Deceased no one else was present. He stated that the lighting conditions were clear when he saw the two Accused chopping Edgar. It was clear because of the moon. He stated that he saw everything of the First's body when he was chopping the Deceased, and he was also able to see everything on the Second Accused body when he was chopping the Deceased and that he was about 15 feet away when the Accused were chopping the Deceased. He went on to say that nothing prevented him from seeing the two Accused when they were chopping the Deceased. As he came out to urine the Accused offered him a drink and he was still urinating when they started chopping the Deceased. He said, *"I got in shock, so I don't remember how long they were chopping Edgar"*.

[24] The witness said that in April 2016, he had known the First Accused for about 4 months. He would see him when he passes the house about twice weekly. He said he would also see him 2 to 3 days in a week on the football field because he would go and stand by the field. This would be around 5:00 p.m. The witness said that in April 2016 he knew the Second Accused for about 6 to 7 months because he played football, and he plays with him and others on the field. He said sometimes

they would talk right there on the field. However, he did not really talk to the First Accused. He said when he saw the Deceased he did not see him carrying any weapons.

[25] **Under Cross-Examination.** This witness said he knew one Rodimiro Monroy. He lived with Edgar in another house beside the one they lived in. He said he was attending a football match prior to coming home and he only took one or two drinks. He took one drink with the people outside before he went to bed.

[26] He stated that the football game began at 9:00 p.m. and ended around 11:00 p.m. He said he arrived in San Ignacio around 8:00 p.m. and went from there to Selena. He said he was not with friends before he went to the football game, and he was alone in Selena. He got to the game in a friend's car. He went to San Ignacio with his friend Oscar Paz. He doesn't live in Selena. He said he was not drinking whilst going to the football game and whilst at the game. It was not until the game finished that he drank. He said he took one or two drinks. He said he was not drunk after the game. He said it's not true that because he was drunk, he could not have had more than a few drinks with Edgar. He said he arrived at Edgar's house at around midnight and about 5 minutes later he went to sleep. He came out about 25 minutes afterwards to urinate and denied that he could not know the persons outside with Edgar.

[27] The witness said he saw who chopped Edgar and he knows who chopped him. There were no trees between him and Edgar. He said he plays football, and he did play football with the Second Accused and that the Second Accused was at Edgar's house on the 2 April 2016.

[28] Re-Examination was declined.

[29] **Dr. Mario Estrada Bran testified.** This witness was deemed an expert in the field of forensic medicine. He stated that on the 4 April 2016, he performed a postmortem examination on the Deceased at the Karl Heusner Memorial Hospital autopsy room on the Deceased. In his opinion the cause of death of the Deceased was thromboembolism ascribed to multiple chop wounds. He opined that heavy force was used to cause the injury to the nape of the neck and a sharp machete type of instrument caused the injuries. The fractures to the temporal bone were caused by heavy force of the use of a machete. The injuries to the upper limbs were characterised as defensive wounds.

[30] Cross-examination of this witness was declined.

[31] Dr. Estrada Bran read into the record the medical report of Dr. Emerson Munguia on his findings when he treated Reuben Monzon as a patient at the Karl Heusner Memorial Hospital from the 2 April 2016. He opined that Monzon was suffering from acute anaemia, hypotension, active bleeding from his wounds. He observed chop wounds to the head, neck, mouth and the superior maxilla. He was taken to the theatre for lavage, suturing of his wounds and facial reconstruction and was discharged on the 6 April 2016.

[32] The statements of Reina Perdomo and CPL 1168 Lenard Puc were also read into the record with the approval of the Defence.

[33] That was the case for the Crown.

Defence

[34] At the close of the Crown's case the court informed both Accused of their rights that is:

- They could stand where they are and say nothing and this would not be held against them,
- They could make an unsworn statement from the dock in which case they cannot be cross-examined by Crown Counsel,
- They could give sworn testimony from the witness box in which case they could be cross examined by Crown Counsel.
- That they have the right to call witnesses.

[35] The court granted an adjournment to allow the Accused to hold discussions with counsel on which of the choices aforesaid they would make.

[36] On their return to court the Accused informed the court that they would remain silent and would not be calling any witnesses. That was the case for the defence.

Submissions

[37] Crown Counsel Ms. Mohammed in her written submissions to the court outlined the principles of law to be proved by the Crown to the extent that the court feels sure before it could convict. These are:

- (1) That Edgar Perdomo Aldana is dead.
- (2) That his death was caused by harm.
- (3) That the harm was caused by Marlon Padilla and Guillermo Duarte.
- (4) That at the time that the harm was inflicted there was an intention to kill Edgar Perdomo Aldana and
- (5) that the infliction of the harm was unlawful.

- [38] Crown Counsel went on to address the court on the evidence adduced by the Crown's witnesses especially the testimony of Reuben Monzon. She urged the court to find that this witness is reliable and that his testimony on the events that occurred that night leading to the death of the Deceased was not shaken nor contradicted under cross-examination.
- [39] Ms. Mohammed further contended that the witness testified that he knew both Accused prior to that night and had a drink with them prior to the attack on the Deceased and on him by them. Counsel further submitted that his observation of the two Accused was not a fleeting glance because he gave an account of how the events unfolded and that this was corroborated by the evidence of Dr. Estrada Bran who testified as to the injuries he observed on the body of the Deceased when he performed the postmortem examination.
- [40] Crown Counsel also relied on the testimony of SPC Dimas Duarte and the medical report Dr. Emerson Monguia which was read into the record aforesaid. She also submits that the number of chop wounds inflicted to the body of the Deceased and the force used constitute proof that the Accused intended to kill the Deceased when they chopped him.
- [41] On the question of whether the harm was unlawful Crown Counsel submits that there is no evidence to suggest that the Accused were acting in self-defence nor were they provoked into acting as they did.
- [42] Defence Counsel in his written submissions stated thus:

'The problem with Monzon's evidence, is that although he admits that he took a few drinks, it is highly doubtful that his sobriety was such that he could not be mistaken as to the identity of the persons

he said he saw that night in the schoolyard drinking and subsequently chopping the Deceased and himself. As stated, Monzon is the only eyewitness and cause bearer for the Prosecution's case'.

[43] It is submitted that despite the fact that both Accused did not say anything in their own defence, this does not prejudice them in any way as the burden still remains on the prosecution to discharge its burden beyond a reasonable doubt. In this regard the evidence of Reuben Monzon, leaves much to be desired in terms of reliability and as such, it would be dangerous to convict upon it.

Analysis and Verdict

The Law

[44] As stated, aforesaid the Accused are indicted for the offence of murder contrary to Section 106 (1) of the Criminal Code. That section provides thus:

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

[45] Section 117 of the Criminal Code 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".

[46] 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 acting together in a joint enterprise to cause his death.

4. That both Accused intended to kill the Deceased when they inflicted several chop wounds to his body and unlawfully caused harm to him.

[47] I must state at this stage that I accept the submission by defence counsel that the fact that the Accused remained silent does not in any way affect the case against them as the burden of proving their guilt lies solely with the Crown and the Accused are not required to prove their innocence. The Crown must satisfy the court to the extent that it feels sure of the guilt of the Accused before they could be convicted of any offence.

[48] It is common ground that the Deceased is dead and that he died from harm. The unchallenged evidence of Dr. Mario Estrada Bran discloses that the Deceased died from thromboembolism ascribed to multiple chop wounds. Dr. Estrada Bran further opined that heavy force was used to cause the injury to the nape of the neck and a sharp machete type of instrument caused the injuries. The fractures to the temporal bone were caused by heavy force of the use of a machete. The court accepts this evidence of Dr. Estrada Bran aforesaid.

[49] Throughout this trial issues of self-defence, provocation or accident did not arise either expressly or by implication. Therefore, it would be reasonable to conclude that the death of the Deceased which was caused as opined by Dr. Estrada Bran occurred as a result of unlawful harm.

Identification

[50] The sole eyewitness who testified for the Crown on the details of the commission of the offence of murder allegedly committed by the two Accused was Ruben Monzon. The court must carefully consider his testimony in light of the fact that no identification procedure was conducted by the police prior to the institution of the

charges herein. However, no objection was raised by the defence when the Crown sought to have this witness identify the persons who he said he saw chopping the Deceased on the night in question.

[51] Thus, in light of the foregoing the only evidence linking these Accused persons to the commission of this offence is provided by the witness Monzon. He said in his testimony that in April 2016 he had known the First Accused for about 4 months. He would see him when he passes the house about twice weekly. He said he would also see him 2 to 3 days in a week on the football field because he would go and stand by the field. This would be around 5:00 p.m. The witness said that in April 2016, he knew the Second Accused for about 6 to 7 months because he played football, and he plays with him and others on the field. He said sometimes they would talk right there on the field. However, he did not really talk to the First Accused. He had known the Second Accused for about 4 months and 6 - 7 months respectively prior to this incident and that he saw them about twice weekly during the daytime in public.

[52] This witness also stated under cross-examination that he knew the two Accused who were with the Deceased that night having a drink. Indeed, at one stage he responded to defence counsel "how would I not know them?" He later insisted that both Accused were there that night. He denied that there were trees which prevented him from seeing the two Accused chopping the Deceased.

[53] The witness also stated that he too was the subject of chop wounds inflicted by the Accused when he came outside to urinate. He said he received chop wounds to his face between his mouth and nose, to his head and back. This is corroborated

by the evidence of SPC Duarte who testified that he saw him and the Deceased lying on the ground of the school yard in Selena.

Analysis of Identification Evidence

[54] The case against the Accused depends wholly on the correctness of Reuben Monzon's identification of them which the defence alleges to be mistaken, unreliable or untrue. 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 visual identification. A witness who is convinced in his 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.

[55] I must therefore carefully examine the circumstances in which the identification was made. I should consider how long did he have the person he 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 Accused 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 witness to the police when he was first seen by them, and the appearance of the Accused?

[56] I have carefully and cautiously considered the evidence of Monzon and also considered his demeanour whilst he testified and the manner in which he answered questions put to him during his cross-examination. I have also considered the

absence of an identification parade in this case and am guided by the decision of the House of Lords in *R v Forbes*⁴.

[57] In the House of Lords decision of *R v Forbes* Lord Bingham opined thus:

"Identification on parade or in some other similar way in which the witness takes the initiative in picking out the Accused should be made a condition precedent to identification in court, the fulfilment of the condition to be dispensed with only when the holding of a parade would have been impracticable or unnecessary. An example of its being impracticable is when the Accused refuses to attend. An example of its being unnecessary is when the Accused is already well-known to the witness..."

[58] Having done so I believe and accept the evidence of Monzon that he was present at the school yard together with the Deceased and the Accused and that they were in close proximity to each other whilst having a drink and that he left them and later returned to the scene where they were still drinking. I accept that he was with the Deceased and the two Accused for about 5 minutes when they had offered him a drink. Thus, his observance of the Accused was not a fleeting glance. Moreover, the witness had a second opportunity to observe the Accused when he came outside to urinate.

[59] I also believe and accept the evidence from Monzon that he knew the Accused prior to that date and saw them twice weekly in public and he also played football with the Second Accused.

⁴ The Queen v Forbes [2000] UKHL 66 para. 8.1

- [60] I am satisfied to the extent that I feel sure that the lighting conditions which he described as clear enabled him to see the Accused and the Deceased on both occasions when he was in their company. Indeed, he was with them in close proximity to each other having a drink and I accept that when he returned to the scene it was the same persons present thereat. In the circumstances I have no doubt that had an identification parade been held he would have unhesitatingly picked out the two Accused as the persons he saw chopping the Deceased that night.
- [61] Defence Counsel submitted inter alia that the sobriety of the witness Monzon was as such that it is highly doubtful that he could not be mistaken as to the identity of the persons who he saw that night drinking and subsequently chopping the Deceased and himself.
- [62] During the cross-examination of Reuben Monzon Mr. Saldivar asked him about the number of drinks he had that night. He replied that he had 2 drinks after the football game. The court, however, believes and accepts the testimony of Reuben Monzon that after the game he had about one or two drinks and he was not drunk to the extent that he was unable to recognise the persons who inflicted the fatal injuries to the body of the Deceased.
- [63] The evidence of SPC Duarte which I believe and accept is that the bodies of the Deceased and Monzon both of which bore injuries were found at the school yard is very powerful circumstantial evidence of his presence at the scene when this incident occurred.

Intention to Kill

[64] The Court must now determine whether when the Accused inflicted harm to the Deceased they intended to kill him when he did so. Section 6⁵ of the **Criminal Code** provides thus:

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?"

[65] Section 9⁶ of the **Criminal Code** 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."*

⁵ CAP101 Criminal Code section 6(1) of the Substantive Laws of Belize Revised Edition 2020

⁶ CAP101 Criminal Code section 9(a)(b) of the Substantive Laws of Belize Revised Edition 2020

[66] What is or is not a person's intention is not easily ascertainable unless, of course, they disclose their intentions to you.

[67] The Crown must prove beyond reasonable doubt that the two Accused had the requisite intention which is to kill the Deceased at the time of the commission of the alleged offence. They intend to do so by asking the court to believe and accept the evidence of their eyewitness Reuben Monson.

[68] This witness stated that on the night in question he witnessed the two Accused inflict chops to the body of the Deceased using machetes. At some stage, thereafter, he was also the recipient of chop wounds at the hands of the Accused. The evidence of Dr. Mario Estrada Bran is that the injuries were inflicted with machete type instruments and that heavy force was used to inflict those injuries. In his opinion the cause of death of the Deceased was thromboembolism ascribed to multiple chop wounds. He opined that heavy force was used to cause the injury to the nape of the neck and a sharp machete type of instrument caused the injuries.

[69] The court believes and accepts the evidence of Dr. Estrada Bran aforesaid. The court further finds that reasonable common sense would enable the average person to deduce that inflicting chop wounds with heave force to the nape of the neck of another person would result in a fatality. Accordingly, the court finds that when the Accused inflicted the injuries found by Dr. Estrada Bran aforesaid to the Deceased, they intended to cause his death.

Joint Enterprise

[70] The essence of joint responsibility for a criminal offence is that each Defendant shared a common intention to commit the offence and took some part in it, however

great or small, so as to achieve that aim. Mere presence at the scene of a crime is not enough to prove guilt, but if I find that a particular Defendant was on the scene and intended and did by his presence alone encourage the other Accused in the commission of the offence, he is guilty.

[71] The Privy Council in Chan Wing-Sui⁷ [1985] AC 168 held that if a secondary party contemplated the act causing death as a possible incident of the joint venture, he is liable unless the risk was so remote that the jury take the view that the secondary party genuinely dismissed it as altogether negligible.

[72] The evidence before the court which I believe and accept to be true and reliable discloses that both Accused persons were engaged in inflicting chops to the body of the Deceased. Thus, I find that in the circumstances the two Accused were acting together in a joint to cause the death of the Deceased.

Verdict

[73] I have carefully considered the facts and circumstances and in so doing have directed myself on the principles of law aforesaid. Having carefully considered the law and evidence of the witness on the issue of identification I believe and accept the evidence of Reuben Monzon that he was present at the scene when the Deceased was chopped by the two Accused, that he was sober and was able to recognise the two Accused as the persons who chopped the Deceased that he had prior knowledge of the Accused and saw them on a regular basis. He was also in their presence prior to the commission of this offence and was in a position to observe them without and hindrances.

⁷ The Queen v. Chan Wing-Sui [1985]

Acting in concert

[74] After considering the evidence on the manner in which this offence was committed and the evidence adduced by the Crown that it was both Accused who chopped the Deceased at the school yard in Selena I am satisfied to the extent that I feel sure that the two Accused acted together in a joint enterprise to cause the death of the Deceased when they chopped him. I also find that when the Accused inflicted the chop wounds to the body of the Deceased, they did so intend to cause his death.

[75] As I stated aforesaid issues of self-defence, provocation, or accident were not raised by the Defence, nor did they arise during my consideration of the Crown's case and as such I find that the harm inflicted on the Deceased was unlawful.

[76] Accordingly, I find that the Crown has satisfied me to the extent that I feel sure of the guilt of the Accused for the offence for which they stand indicted. Thus, they are both found guilty of the offence of murder as indicted.

Hon. Mr. F M Cumberbatch

Justice of the High Courts