IN THE COURT OF APPEAL OF BELIZE, A. D. 2014

Criminal Appeal No. 21 of 2012

LAVERN LONGSWORTH **Appellant**

v

THE QUEEN **Respondent**

———

BEFORE:

The Hon. Mr. Justice Dennis Morrison	Justice of Appeal
The Hon. Mr. Justice Samuel Awich	Justice of Appeal
The Hon. Madam Justice Minnet Hafiz-Bertram	Justice of Appeal

G. P. Smith S. C. along with L. Mendes for the appellant
C. Vidal S.C., Director of Public Prosecutions, along with S. Smith for the respondent

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10, 21 and 27 June, and 7 November 2014

HAFIZ-BERTRAM JA

Introduction

[1] On 15 July 2010, Lavern Longsworth ('the appellant') threw some kind of accelerant on her common law husband, David White ('the deceased'), and thereafter threw a lit candle at him. The deceased sustained second degree burns to 85% of his body and died on 2 August 2010 of multiple organ failures and infection. On 19 September 2011, the appellant was indicted for murder, contrary to section 106(1) of the Criminal Code, Chapter 101, as on 2 August 2010, she murdered the deceased by unlawful harm inflicted on 15 July 2010. The trial before a jury commenced on 9 October 2012 and on 1 November 2010

the appellant was convicted of murder. On 8 November 2012, she was sentenced to life imprisonment.

[2] On 12 November 2012, the appellant gave notice to appeal her sentence and conviction. On 15 April 2014, she filed an amendment to her notice of appeal and an application for leave to adduce fresh evidence in the appeal, pursuant to section 33 of the Court of Appeal Act, Chapter 90. On 3 June 2014, she filed a further application to introduce fresh evidence. Both applications were heard by the Court of Appeal on 10 June 2014 and granted as prayed. The hearing was then adjourned to 21 June 2014 when the court heard submissions on sentencing.

[3] On 27 June 2014, the court, pursuant to section 31(2) of the Court of Appeal Act, substituted for the verdict of guilty of murder returned by the jury on 1 November 2012, a judgment of guilty of manslaughter. In substitution for the sentence of imprisonment for life imposed on the appellant by the learned trial judge, the court imposed a sentence of 8 years' imprisonment to be reckoned as having commenced on 8 November 2012, which is the date on which the appellant was sentenced in the court below. The court also indicated that in arriving at the sentence of 8 years, it has taken into account the period of almost 2 years (14 December 2010 – 8 November 2012) during which the appellant was on remand pending trial. The court promised to give written reasons for its decision and I do so now.

The case for the Crown

[4] The Crown's case is that on 15 July 2010, the appellant threw accelerant on the deceased and set him on fire with a candle that was nearby, after the deceased asked her for $10.00. Dr. Estrada Bran who conducted the post mortem on the deceased, who died 17 days after he was burnt, testified that the deceased died as a result of pulmonary edema due to multiple organ failure, due to second degree burns.

[5] The Crown's case was that the appellant was not justified in causing the harm to the deceased as he did not do anything to her. The deceased was in the process of smoking the drugs he bought with the $10.00 which she gave to him. The Crown relied on the caution statement given by the appellant, several interviews she had given to the media and a statement from the deceased to show the appellant's intention when she threw the accelerant on the deceased and to prove that she was not acting in self defence.

[6] The Prosecution relied upon the written statement of the deceased (which was given by the deceased to Woman Corporal Tomas in the presence of a Justice of the Peace at the Karl Heusner Memorial Hospital on 19 July 2010), to show that the appellant was not justified in causing the harm to the deceased. That is, that the appellant was not acting in self- defence since the deceased was in the process of smoking drugs when the accelerant was thrown on him by the appellant. The statement read to the jury is quoted below:

> "I am a laborer and live at No. 21 Castle Street, Belize City, with my common-law wife Lavern Longsworth, 33 years, date of birth 2 September 1974, Belizean … self-employed. On Thursday 15 July 2010, sometime after 8:00 pm myself and my common- law wife and my step-son, namely James Moriera Jr., along with two other occupants, at this time I can't remember their names, nor the young man name. Myself and my common-law wife was already in bed when my friend namely Carlos Castro called for me. I went outside and speak to him for about two to three minutes. I went back inside. I ask my common-law Lavern to give me $10.00. She started an argument. She asked me why I had to wait till she is already in bed before I ask her for $10.00. So, I told her it is important, me and Carlos going to deal with something. She eventually got up and gave me the $10.00. I left the house and went across the street and I buy some drugs out of the $10.00. I went back inside the house, my common-law Lavern was sitting in the hall. I pass her and went

into the kitchen area which is separated by a curtain. I was in the process of smoking the drugs that I bought when I felt a shoe pass through the curtain and hit me in the back. After that I felt a pint bottle in my back. My back was turn to the curtain area. Then I said to Lavern, babes hold that down. At that point she jump up and said, hold dat down, I wah kill you boy. Then I felt a liquid substance splash over me. Some of the substance went into my face and eye. When I taste it, it was then I realized that it must be gas or something flammable. So I began to wipe the burning sensation from my eyes. I felt myself on blaze. There was a candle close to me. Lavern grab the candle while I was wiping my eyes, and touched me with the candle and I got fire on me. I started to scream and ran into the hall and pull off my clothes. While I was in the hall, I felt a second portion of some liquid pour over me. At the time I taught it was more gas but it turn out to be water. Because my burnt started to sizzle and the flame went out. I manage to run out of the house and make my way to the street. I saw no assistance there so I ran more up towards Lovely Lane, Belize City, no assistance was there too, so I ran through the jungle area. I went to a friend house by the name of Michael Lord, where there was a gathering of five to six people. They calm me down because I was so frighten and I felt like I was getting crazy. One of the men call for ambulance. The ambulance reach within three to five minutes. The same friend Carlos Castro accompanied me in the ambulance. I was then rushed to Karl Heusner Hospital. I am requesting Court action into the matter."

[7] The Crown further relied on the statement given by the appellant to show that the deceased did not attack the appellant. On 16 July 2010, the appellant gave a caution statement to Corporal Shirley Thomas which was recorded by P.C. Jesus Cantun. In that statement the appellant said the accused always had a knife on his side. "…*When he di smoke, he had his knife on him. When he came in the house I still followed him and I was still railing up. I saw him do a*

motion with his hands towards his waist, I didn't know what he wanted to do so I throw the thing pan ah and grab the candle and throw it pan ah and his shirt ketch. He then start to bawl and I grab the gallon and out him. I then start to bawl for the pickney dat mi deh ena di room ."

[8] In an interview with Jose Sanchez on 19 July 2010, a few days after the incident, the appellant said:

> "…he just start to smoke again and thief me like that. He got my TV da pawn shop right now inna somebody else name – he pawn out mi TV. He thief me two hundred and fifty dollars last week Sunday night which was his birthday, the 11th July. All my children social and thing deh ena mi purse, everything and now I have to go and apply fi that back right now. And I feel bad fi haf to goh pay fi thing weh he tek from me and goh pay fi thing fi get it back. And I mi just get tired of iy and the night when he asked me for the ten dollars, he gone and come back and I just tek the thing and das it pan ahn."

[9] In a second interview with Jose Sanchez on 2 August 2010, the appellant said that the appellant did not beat her. "…… *he only haul the knife after me an da he bring the gas inna the room because he always do it. I sorry fi weh happen because dah me wa tek di licking."*

[10] The Crown relied also, on an interview with Monica Bodden on 2 August 2010 to show that there was no mention of a knife. The Crown urged the jury not to believe the evidence that the deceased hauled a knife at the appellant. The appellant was asked, "What transpired that day Lavern?" She replied"

> "The night I was sleeping and he came and ask me for ten dollars and I told him that I don't have any money. I got up because he was annoying me and I told him to go call my niece for me so that I could give him the

money. When he got the money he went and he came back to annoy me. He brought the gas in the room and put it on the floor. I took it and put it in the kitchen and when he came back I just threw it on him."

The case for the accused (appellant)

[11] The appellant in her defence accepted that she threw the accelerant on the deceased but, said that she acted in self defence from an angry drug addict. The appellant gave a dock statement at her trial and the learned trial judge properly directed the jury to give it such weight which the jury considered the statement deserved. The appellant in her dock statement said that she was 38 years old, self employed and live at 21 Castle Street. She said:

> "In 2001, I meet one David White by a friend Jason Clarke. He started to come around. I was living with my three kids at the time. I have a disable son James Moreira, he was five years old at the time. He (David White) invited me out and I went with him. He asked me if he can come and live with me, at that time everything was fine. I never know that he was on drugs. I found out when he started to get in trouble with the law. My kids use to attend St. Luke Methodist School. My kids use to eat at his mother's house, Ms. Yvonne Thompson. He was in and out of prison because of his drug habit. I end up taking him out of prison, I bail him out of prison and give him another chance. …. Sign bail for him so I can take him out of prison. In 2010 when this incident occurred, I was only defending myself because he always beat me. When I tell his mother she laughed at me. That went on for years and years. I live with all those problems between me and him before this incident happened.
>
> I want the court to know and everyone to know that he killed me before I killed him because he sickened me.

The night of the incident he was the one who haul the knife after me and I was scared for my life; because I know what terrible things he can do. It's not something I mean to do. Just because I did not want him to smoke the drugs in my house, around my disable child, that start the whole quarrel.

He was not living there, Your Honour, because my son had just put him out of my house, my son, Kenrick Longsworth had put him out and because my son is at prison he come back around.

I just want people understand that I know I did something wrong but it's not me kill him, it's the sickness that he give me kill him. He always beat me and because my son is not there to protect me no more, that is why he take advantage.

He and my son got charged for a robbery and my son get sentence for the crime because he had passed away and they find my son guilty of robbery for Bel Taco on Hydes Lane. My son was only 16 years old at the time of the incident. My son got 18 months because he was a minor at the time of the incident.

I just want the court and the jurors to understand that I am sorry for what I did and what happened because I am the loser. My kids suffer for I am in prison from 2010. My son is blind right now, he is 15 years old now; he is blind. ……

I have my kids and I need to get a chance, just like everybody else, Your Honor, if I can get a chance to go back to my family because my children are suffering right now because of how I am not with them. I'm mother and father to my three kids.

I am sorry for what I did. I want to tell his mother I am sorry for what happened to me but my family is suffering too from the pain because I am sick and I have to live with that sickness now. She lose a son but I am also … Only that I want to say."

Conviction for murder

[12] The appellant was found guilty of murder by a jury of 12 persons on 1 November, 2012. She was sentenced to life imprisonment by Lucas J with effect from 14 December 2010, which is the date she was remanded into prison.

Grounds of appeal

[13] In an amended notice of appeal dated 15 April 2014, the appellant appealed her conviction and sentence. The grounds of appeal were:

(1) The learned trial judge erred in not properly or adequately directing the jury that, when approaching self-defence under sections 36(4) and 119(b) of the Criminal Code, the jury must proceed on the basis of the appellant's honest perception of the threat, and not whether, objectively, the Applicant's perception of the threat was correct.

(2) The learned trial judge erred in not directing the jury that when considering the defence of provocation under sections 117, 119(a) and 120 (a) of the Criminal Code, it should take into account not only the provocative conduct in the moments before the offence, but the cumulative effect of a history of provocation from the deceased towards the appellant.

(3) There is medical evidence not presented at trial, which establishes that the appellant was suffering from Battered Woman Syndrome, a variant of Post –Traumatic Stress Disorder, at the time of the

incident. If such evidence had been advanced at trial, it could have:

(i) Affected the jury's decision to reject the defences under the Criminal Code, of:

(a) self-defence -section 34(4);

(b) causing excessive harm in self-defence – section 119(b);

(c) provocation – sections 117, 119(a) and 120(a); and

(d) lack of intent to kill – section 116(1).

(ii) Established a defence of diminished responsibility – section 118.

Relief Sought

[14] The appellant sought the following relief:

(1) That her conviction for murder be quashed and set aside; and

(2) That her conviction for murder be substituted for one of manslaughter;

(3) Alternatively, the matter be remitted to the Supreme Court for retrial.

Status of grounds of appeal at the hearing

[15] The learned DPP in her written submissions dated 3 June 2014, opposed the first ground of appeal, but conceded the second ground. The learned DPP further submitted that if the fresh evidence is admitted by the court, then she would also concede the third ground of appeal. The fresh evidence was admitted and at the hearing, the learning DPP conceded the third ground of appeal.

[16] Learned senior counsel, Mr. Smith at the hearing informed the court that he would not pursue ground 1, but would rely on the learned DPP's concession of grounds 2 and 3.

[17] In summary, ground 1 was not pursued and the learned Director conceded grounds 2 and 3.

The fresh evidence

[18] On 10 June 2014, the court heard two applications made by the appellant for leave to adduce fresh evidence in the appeal, pursuant to section 33 of the Court of Appeal Act. Both applications were granted for reasons to follow.

Application dated 15 April 2014 – Dr. Mezey

The grounds of the application dated 15 April 2014 were:

1. The fresh evidence was capable of belief as it was the evidence of an experienced and distinguished professional in the field of forensic psychiatry, and had a particular specialism in the psychological effects of domestic violence on its sufferers.

2. The fresh evidence was relevant to the issues that were before the jury in respect of all of the defenses that were left to them by the trial judge. Moreover, the fresh evidence had further significance in that it raised a potential defence of diminished responsibility.

3. The fresh evidence would have been admissible at trial.

4. Attorney who represented the appellant at trial had been asked for the reasons why no medical evidence was presented during the course of the trial.

5. If the fresh evidence had been presented at trial, the jury may have decided differently and acquitted the appellant or found her guilty only of manslaughter.

6. The fresh evidence would have provided the appellant with material before the jury that supported a defence of diminished responsibility.

7. The fresh evidence casted doubt as to whether the verdict was reasonable or can be supported by the evidence, or has otherwise resulted in a miscarriage of justice under section 30(1) of the Court of

Appeal Act. It was therefore, necessary in the interest of justice that leave be granted to adduce the fresh evidence.

[19] The application was supported by the affidavit of Leslie Mendez sworn on 15 April 2014. She deposed that on 21 February 2014, Dr. Gillian Mezey, a British based consultant forensic psychiatrist examined the appellant at the request of counsel for the appellant. The findings of Dr. Mezey indicated that the appellant possessed a history and behaviour consistent with Battered Woman Syndrome ("BWS"). Further, Dr. Mezey found that the appellant was suffering from BWS at the time of the offence. Ms. Mendez exhibited a copy of Dr. Mezey's report, marked "LM 1".

Dr. Gillian Mezey's report dated 4 April 2014

[20] Dr. Mezey, Consultant Forensic Psychiatrist of Shaftesbury Clinic Medium Secure Unit in London, in a 28 page report stated the background of the case of the appellant as shown by a letter of instruction given to her by the appellant's counsel. Dr. Mezey was also provided with all the documents in relation to the trial prior to her assessment of the appellant. She interviewed the appellant; Muriel Longsworth, the sister of the appellant; Ms. Hall, the appellant's niece; and Margaret McKenzie, former Chief Magistrate and acquaintance of the appellant. Dr. Mezey in her report addressed each of these interviews. Thereafter, she stated her opinion from pages 19 to 23 of the report, which is stated below:

"<u>OPINION</u>

1. Lavern Longsworth is a 36 year old woman who is currently appealing against her conviction for the murder of her partner, David White in November 2010. She is currently serving a life sentence in Belize Prison.

2. Ms. Longsworth has a history of childhood and adult abuse; she was physically and psychologically abused by her father; she was raped by an adult male at the age of 15 and she subsequently had a series of

relationships with men, which were unstable and frequently abusive. She was subjected to domestic abuse by her partner, David White, throughout their 9 year relationship, consisting of physical, sexual, financial and psychological abuse. She was physically abused through being beaten on a regular basis and choked to the point of loss of consciousness. Over the years she had sustained extensive bruising and injuries, as a result of his violence. She was verbally abused and threatened, including threats to kill; her possessions and those of her children were stolen or destroyed; her money was stolen and members of her family being robbed and abused by David White, on a regular basis. She also suffered years of psychological abuse, through David White's drug taking, his constant demands for money and his affairs with other women.

3. **The pattern of abuse and Ms. Longsworth's response to the abuse is characteristic of Battered Woman Syndrome** (BWS) (footnote omitted) which was first described by Lenore Walker in the 1980's and is **now regarded as a subcategory of Posttraumatic Stress Disorder** (DSMIV 309.81 APA 1994), which is a severe psychiatric condition that may occur following a traumatic event, including, but not limited to, physical assault.

4. Posttraumatic Stress Disorder is a severe mental condition that may arise following exposure to a traumatic event "that involves actual or threatened death, or serious injury, or a threat to the physical integrity of self or others." Their response at the time should involve "intense fear, helplessness or horror" (Criterion A). Many single instances of domestic violence, and certainly the cumulative pattern of violence and abuse over time, suffered by Ms. Longsworth over a period of many years, meet the DMS-IV-TR definition of Criterion A.

5. The symptoms that define PTSD include persistent re-experiencing of the traumatic event(s) in the following ways: intrusive symptoms (images, thoughts, perceptions; distress at exposure to cues that symbolize or remind one of the traumatic event; physiological reactivity to exposure to internal or external cues that resemble the traumatic event) and acting or feeling as if the traumatic event were recurring (Criterion B). These symptoms would have affected Ms. Longworth's emotions and behaviour at the time of the index offence, particularly those relating to the increased distress and physiological reactivity that would have been triggered by again being in a situation that resembled previous occasions when she had been hurt and abused by David White.

6. The third set of symptoms (Criterion C) are represented by behavioural and cognitive avoidance of the trauma and emotional numbing.

Symptoms include: feeling detached or estranged, efforts to avoid thoughts, feelings, conversations associated with the trauma and activities, places and people that arouse recollections of the trauma. Individuals with PTSD make efforts to avoid being in situations that resemble or remind them of previous trauma, because these situations are liable to trigger "intense psychological distress and physiological reactivity" (criterion A) which can be overwhelming. Ms. Longsworth attempted to avoid being re-traumatised by appeasing David White, by refusing to prosecute him following assaults, note these efforts were repeatedly unsuccessful. She avoided talking to family or friends about her relationship and the violence and became estranged from them over the years. She became unable to acknowledge the extent of the violence even to herself; such denial being a reflection of posttraumatic cognitive avoidance. The learned helplessness observed with Battered Woman syndrome can be viewed as an extreme form of post traumatic avoidance, whereby the victim becomes incapable of dealing effectively with the situation or of considering escape options.

7. Criterion D symptoms for PTSD are represented by persistent symptoms of hyper-arousal including: irritability or outbursts of anger and hyper-vigilance, both of which were present in Ms. Longsworth and which would have affected her perceptions of and reactivity to the situation she found herself in with David White.

8. Hyper-vigilance means that the victim becomes more sensitive to environmental threat i.e. they are more likely to perceive threat and to respond to what objectively may be fairly neutral events, as threatening, than individuals who have no past experience of abuse.

9. Battered Woman Syndrome, as a sub-category of Posttraumatic Stress Disorder, is recognized and applied by practitioners and mental health professionals, working with victims of domestic violence, within a range of clinical and legal (criminal, civil and family) contexts. This occurs within the context of a loving relationship and forms a three stage cycle of violence, in which an episode of abuse is followed by a period of contrition and reconciliation, during which loving feelings are re-kindled in the victim; tension then builds up and another violent episode follows, at which point the cycle repeats itself. This cyclical and recurring pattern of intermittent punishments and rewards, results in the victim veering between feelings of fear or anger and feelings of love and loyalty. Over time, the abuse reduces the victim's sense of self esteem and self efficacy, they are made to feel responsible for the violence and they come to regard the abuse as normal and possibly even deserved.

10. The central features of Battered Woman Syndrome are Learned Helplessness and Traumatic Bonding. *Learned Helplessness* is engendered partly by fear and partly by the perception that whatever the victim does, they will never be able to escape the control of the abuser. There is nowhere they can hide, there is nothing they, or anyone else can do, to protect them, or to stop the violence and abuse. Even though they may objectively appear free to leave the relationship, subjectively victims tend to perceive themselves as trapped within the relationship, a situation akin to a state of psychological captivity. *Traumatic bonding* is an intense, but paradoxical attachment and emotional dependency, between a victim of domestic abuse and the perpetrator, to the extent that the victim begins to internalize the abuser's values and world view and develops an intense emotional bond to their abuser, often to the exclusion of other relationships. Ultimately, the abuser is seen as more powerful, than those who might seek to protect the victim, she becomes increasingly isolated from friends and family members and increasingly emotionally dependent on the abuser. This bond, is generated by the psychological trauma and is based on fear, rather than love and respect.

11. Victims of domestic abuse tend to feel guilty and ashamed of the fact that they 'allow' themselves to be beaten, they tend to feel responsible for the violence and fear being blamed or criticized by other people, for remaining with their violent partner. Victims of domestic violence avoid talking about the violence to outsiders, or may lie about the cause of their injuries, or simply stay silent. Because of learned helplessness and traumatic bonding, as well as the fear of repercussions, they rarely report the violence to the police or, if they do, commonly retract allegations and refuse to proceed with criminal prosecution. Evidence of learned helplessness and traumatic bonding are apparent in Lavern Longsworth's relationship with David White. She was not only reluctant to report him, but also repeatedly paid for him to get bail, whenever he arrested. She believed that there was nothing she could do to protect herself, or to improve the situation, apart from buying favour with David White, by appeasing him and taking his side. She loved him, but was also frightened of him.

12. The psychological deficits associated with Battered Woman Syndrome can occur in any abusive relationship. However, they are more likely to develop where the abuse is severe and longstanding and also in response to cumulative experiences of abuse involving multiple perpetrators, as indeed was Ms Longsworth's experience. This may be because abuse experienced in early childhood, both normalizes violence in relationships, but also deprives the victim of developing effective coping strategies.

13. Ms. Longsworth's experiences of physical abuse by her father, to a certain extent sensitized her to and created an expectation of violence in her own adult relationships. Victims of child abuse are at significantly increased risk of experiencing domestic abuse in adulthood compared with those who have not been abused. Part of this represents a failure of the normal judgments and interpretation of social cues, that may protect against violent relationships; partly it is a reflection of the victim's loss of self esteem and self-worth, in that victims of abuse gradually come to believe that they deserve to be beaten (or don't deserve to be loved or treated with respect) and to regard such violence as both normal and expected.

14. Ms. Longsworth ambivalent feelings towards David White – a combination of love and fear – continued to be evidenced after he was admitted to hospital, when she paid a friend to keep her updated on his recovery. After he died, she went to sit with his body in the morgue and she continues to mourn his loss, keeping photographs of him with her in the prison, as a constant memento."

Application dated 3 June 2014 – Ms. Jex

[21] The appellant filed a further application on 3 June 2014 for leave to adduce fresh evidence in the appeal. The grounds of this application were the same as in the previous application except grounds 1 and 4. In ground 1, it was stated that fresh evidence was capable of belief, as it was the evidence of a certified and experienced psychologist with a master in psychology with a concentration in mental health counseling; In ground 4 it was stated that the evidence was not available at the time of the trial below as there were no qualified forensic psychiatrists available in Belize and the sole psychiatrist was unavailable.

[22] The application was supported by the affidavit evidence of Leslie Mendez sworn on 3 June 2014. She deposed that on 27 March 2014, Aimee Mercedes Jex who is a certified and experienced psychologist examined the appellant. A copy of the report was exhibited as "**LM 1**". The report dated 27 May 2014, showed that Ms. Jex is certified by the Ministry of Health to practice as a psychologist in Belize. Ms. Jex's experience is stated at page 9 of the report which showed among other things, that she is a board member of the Mental

Health Association in Belize. She completed a master's degree in Psychology with a concentration in mental health counseling at Florida International University in 2008.

[23] Ms. Jex stated that she was requested by the attorney for the appellant to prepare the report which is based on information provided to her by the appellant on 27 March 2014. Ms. Jex's report is divided into ten sections, namely: (i) Reason for referral; (ii) Mental status of the appellant; (iii) Family history; (iv) Work history; (v) Relationship history; (vi) The incident (throwing of the accelerant on the deceased); (vii) History of drug abuse; (viii) Medical/Health History; (x) Summary.

[24] Under the heading of 'Opinion', Ms. Jex discussed several factors which accounted for the appellant's behavior. These are: (i) Post Traumatic Stress Disorder; (ii) Learned Helplessness; (iii) Battered Person Syndrome; (iv) and the appellant's drug and alcohol addiction.

[25] Post Traumatic Stress disorder is new to the jurisprudence in Belize. Ms. Jex opinion is supported by Dr. Mezey's opinion. At pages 5 –7 she stated:

> "Arguments Accounting for Lavern Longsworth's Behavior
>
> *A. Post Traumatic Stress Disorder:*
>
> Some risk factors for Post Traumatic Stress Disorder (PTSD) as stated in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR; APA, 2000) include rape, abuse, neurochemical alterations, and sympathetic hyper-arousal. Symptoms of PTSD include re-experiencing events, hyper-vigilance, numbing and persistent anxiety or outbursts.
>
> Ms. Longsworth experienced these risk factors throughout her life. She was raped in her youth and she went through the legal process to prosecute the rapist, which is often a traumatic process that requires retelling, and for some victims reliving, the events of the rape. Since Lavern experienced

early trauma and showed signs of PTSD, her patterns in relationships would be impacted since the rape occurred at the phase in her life in which she was building her self confidence and establishing her identity. Besides the trauma of rape, Lavern reported that she would occasionally prostitute herself. She also reported a pattern of physical and psychological abuse by several partners. These experiences would establish new traumatic events and contribute to retraumatization.

Traumatic events are associated with hyper vigilance and hyper arousal, which signifies that an individual is in a state of alertness anticipating a threat. Since Lavern Longsworth experienced events throughout her life that would contribute to a diagnosis of PTSD, her behaviour at the time of the incident was in reaction to a moment of psychological distress. Her reaction would include defending herself in a state of anticipation of harm to her person. Ms. Longsworth would have been more likely to have a fear response with her previous knowledge that David White kept his knife at his waistband. Even at the time of the interview, Ms. Longsworth displayed hypervigilant behaviour by constantly checking her environment.

PTSD is an anxiety disorder which, when excessive, may be crippling since the person who has experienced trauma is either consistently ready for perceived aggression and unable to relax ("fight"), or may avoid or dissociate from the upsetting situation ("flight"; Pederson, 2005). At the time of the incident, Lavern Longsworth appears to have reacted with a "fight" response, but she also has a history of dissociating ("flight" response) from other situations.

B. Learned Helplessness

Learned helplessness serves as an explanation of why people continue in situations in which they experience aversive, unpleasant or painful events. The theory explains that individuals stay in aversive situations because they have a history of being ineffective in determining outcomes and perceive that they have little or no control of the situation (Seligman & Maier, 1967). People who experience learned helplessness often have emotional disruptions including aggression or passivity and have difficulties with problem solving. Learned helplessness contributes to Lavern's life experiences since she repeated cycles of abusive relationships. Even now, Lavern Longsworth states that she would be willing to continue a relationship with David White, if he were still alive.

C. Battered Person Syndrome:

Battered Person Syndrome is classified as physical under the umbrella of Maltreatment Syndrome (ICD-10). People who have been persistently

abused and have symptoms consistent with PTSD and stay in abusive relationships (learned helplessness) engage in a cycle of battering (Walker, 1979). In the cycle (Pedersen, 2005), the participants start with the phase of tension building in which there is minor battering and angering with little provocation. In this phase, the victim tries to placate the abuser and often makes excuses. The victim often believes that the violence is his or her fault and assumes the guilt. In the second phase, a triggering event occurs that leads to the acute battering. For up to 24 hours, the victim is violently and severely beaten. The violence of this phase is often minimized by the victim, and this is the phase during which the victim may seek help or turn to self-defense. In the third phase, the abuser is contrite and loving. The abuser believes that the victim has learned the lesson and often fears that the victim may leave. At this phase the victim believes that the abuser's true personality is the loving person now presented, and the victim hopes that phases 1 and 2 will not be repeated. Sometimes the victim fears for their life and/or the lives of their children (if present), but will stay because of societal expectations or dependency (learned helplessness). The victim may also have an irrational belief that the abuser is omnipresent and omniscient (symptom PTSD). The cycle will then be repeated.

Lavern Longsworth's history of relationships mirrors the cycle of battering described above. Even now, Lavern will describe David White and other former partners as very loving partners, and she attributes the violence at her not being able to provide for her partner. Lavern also minimizes the violence she experienced.

D. Drug and Alcohol Addiction:

Lavern also engaged in use of alcohol and marijuana since age 14. Drug use is considered a maladaptive coping mechanism (Pederson, 2005). Drugs are used to feel good or to at least to feel different. Drugs are often used to self-medicate or to cope with problems including trauma, stress or symptoms of mental health disorders. The way drugs work is based on a reward system, which leads to addiction.

Drug use may also have affected Lavern Longsworth's brain development (Squeglia, Jacobus & Tapert; 2009), particularly affecting the amygdale (Bergland, 2014). The amygdala is the structure of the brain responsible for the processing of emotions including fear, anger and pleasure, and it is also responsible for storing memories. Alterations of the amygdale may lead to non-normative reactions in response to fear and emotions, and to storing memories partially or differently.

Since Lavern Longsworth used both marijuana and alcohol consistently since age 14, her relationships were also affected by the drug use/drug

abuse. She reported that most of her partners used substances. When one or both partners have a history of drug use, the couple is more likely to engage in fights or violent behaviour. (Fals-Stewart, 2013). These fights often revolve around the drug use, financial problems exacerbated by drug use and responsibilities to the home. Domestic violence is also likely to happen when one of the partners has been using drugs. Additionally, Lavern engaged in "covering up" for her partners. During her relationship with David White, Lavern would re-buy items from her household or from her neighbor's homes that David had sold to purchase drugs.

X. Summary

On July 15, 2010 Lavern felt threatened by David White in her home after he had been using drugs. With Ms. Longsworth's knowledge that he usually carried a knife in his waistband and their history of domestic violence, her self-protective reaction to defend herself by lighting him on fire using gasoline and a candle is consistent with her psychological state. Lavern Longsworth's psychological state had been altered from a normative state as outlined above by Battered Person Syndrome, PTSD, learned helplessness and drug use. Additionally, Lavern Longsworth has shown that she has been able to make changes in her life since she stopped using drugs because she decided to take better care of her younger son, Thomas. Ms. Longsworth also reported that she has been working wile incarcerated to save money to keep in contact with her children. Lavern's behaviour indicated that she is now motivated by her family."

Jurisdiction of the court to admit new evidence

[26] **Section 20** of the **Court of Appeal Act** gives the Court a discretionary power to receive new evidence or 'fresh evidence' on appeal, if it thinks it necessary or expedient in the interest of justice. It is applicable to both civil and criminal appeals. In Part IV of the Act, which deals with criminal appeals, at section 33, it provides for supplementary powers of the Court. It states:

> *33. For the purposes of this Part, the Court* ***may, if it thinks it necessary or expedient in the interests of justice-***
>
> *(a) exercise any or all of the powers conferred by section 20 on the Court (other than those contained in paragraph (d)) but in the application of section 20 to an appeal in any criminal cause or matter, for the words "any party" and "that party" in paragraph (c), there shall be substituted the words "the appellant";*

[27] **Section 20** provides:

20. On the hearing of an appeal from any order of the Supreme Court or of a judge thereof in any civil cause or matter, the Court may, if it thinks fit-

(a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to be necessary for the determination of the case, provided that no person shall be compelled to produce under any such order any writing or other document which he could not have been compelled to produce at the hearing or trial;

(b) order any witness who would have been a compellable witness at the trial to attend and be examined before the Court whether or not he was called at the trial, or order the examination of any such witness to be conducted in manner provided by rules of court before any judge of the Supreme Court or before any officer of the Supreme Court or other suitably qualified person appointed by the Court for the purpose, and at any place and allow the admission of any deposition so taken as evidence before the Court;

(c) receive the evidence, if tendered, of any witness (including any party) who is a competent but not compellable witness and, if a party makes application for the purpose, of the husband or wife of that party in cases where the evidence of the husband or wife could not have been given at the trial except on such application;
…….

[28] It was clear from the above provisions that the court has a discretionary power to admit fresh evidence. It is to be noted that **section 20 of the Belize Court of Appeal Act, Chapter 90,** does not provide the same guidance, in considering whether to receive fresh evidence, as in section 23(2) of the **English Criminal Appeal Act 1968.** The court sought guidance from the English cases in this respect and concluded that pursuant to section 20 read along with section 33 of Court of Appeal Act, Chapter 90, it was expedient in the interest of justice that the court accept the evidence of Dr. Mezey and Ms. Jex. I will set out the principles which were considered by the court.

Principles governing the admission of fresh evidence

[29] Learned Counsel, Mr. Smith referred the court to several authorities which the court found helpful in considering whether to admit the fresh evidence of Dr. Mezey and Ms. Jex. The learned DPP did not oppose the reception of the

fresh evidence which proved that the appellant suffered from BWS. I have set out above at paragraphs 18 to 25 the important aspects of the fresh evidence.

[30] The court applied the principles laid down in the English authority, **R v Pendleton [2001] UKHL 66, [2002] 1 Cr App R 34** and **Robert Smalling v The Queen [2001] UKPC 12,** which is an authority from Jamaica. In **Pendleton** Lord Bingham of Cornhill at paragraph 10 said :

> "…. **Deciding whether or not to receive the evidence is the first task the court must usually undertake when application is made that it should do so under s 23(1) (c).** In considering whether or not it should receive such evidence, usually called "fresh evidence", the court must have regard in particular to the matters listed in (2) (a) (d). These are matters to which, as practice had developed over the years, the court has come to pay attention: … They are matters of obvious significance. When considering an application to receive the fresh evidence of a witness, the court will have before it a written statement of the evidence which the witness will give: see from 6, prescribed by r 3 of the Criminal Rules 1968… If the statement does not appear to the court on reading it to be even capable of belief, there will be little purpose in proceeding further. The statement may be obvious nonsense. Similarly, if it does not appear to the court when it reads the statement that it might, even if fully accepted, afford any ground for allowing the appeal, (that is, for thinking that the conviction may be unsafe) there will again be little point in proceeding further. It is obviously relevant to consider whether the fresh evidence would be admissible at the trial ……. The Court of Appeal will always pay close attention to the explanation advanced for failing to adduce the evidence at the trial, since it is the clear duty of a criminal defendant to advance any defence and call any evidence on which he wishes to rely at the trial. It is not permissible to keep any available defence on reserve for deployment in the Court of Appeal. Thus the

practice of the court is to require full explanation of the reasons for not adducing the evidence at the trial. … It is however clear that while the court must, when considering whether to receive fresh evidence, have regard in particular to the matters listed (statutory requirements) ….. the court has an overriding discretion to receive fresh evidence if it thinks it necessary or expedient in the interests of justice to do so."
(emphasis added).

[31] In Belize, the court also has the discretion to receive fresh evidence if it thinks it necessary or expedient in the interests of justice to do so pursuant to section 33 of the Court of Appeal Act.

[32] In the **Smalling case,** emanating from the Court of Appeal of Jamaican, the statutory requirements to receive fresh evidence are similar to that laid out in section 23(2) of the English Criminal Appeal Act. Lord Bingham of Cornhill, at paragraph 24, in looking at the jurisdiction of the Court of Appeal to receive fresh evidence, said at paragraph 24 of the judgment:

"24. The Board notes that the Court of Appeal may, under section 28 of the 1962 Act, receive fresh evidence if they think it necessary or expedient in the interests of justice to do so. There are various matters to which, by analogy with section 23(2) of the English Criminal Appeal Act 1968, the Court of Appeal may think it right to have regard in considering whether to receive fresh evidence from Dr. Gallwey or any other psychiatrist on whom the Crown might wish to rely: whether the evidence appears to be capable of belief; whether it appears to the court that the evidence may afford a good ground for allowing the appeal; whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; whether there is reasonable explanation for the failure to adduce the evidence in those proceedings. The practice of the Court of Appeal Criminal Division in this difficult field

was reviewed in some detail in *R v Criminal Cases Review Commission Ex p Pearson* [1999] 3 All ER 498.
(emphasis added)

Application of the principles to the new evidence

Was the evidence capable of belief?

[33] The court was of the view that the proffered new evidence of Dr. Mezey and Aimee Jex was indeed credible. Both of the experts were distinguished in their field. Dr. Mezey is a Forensic Psychiatrist and has expertise in the assessment and treatment of mentally disordered offenders and in the assessment and treatment of psychological trauma. She is recognized as an expert in the psychological effects of domestic and sexual violence. She established a Traumatic Stress Clinic at St. George's University of London in 1998 and published over 70 research papers and books relating to the mental health effects of abuse and trauma. Dr. Mezey went to the prison and interviewed the appellant who related to her the life long abuse and the abuse she suffered at the hands of the deceased. The appellant's abusive relationship with the deceased was corroborated by her sister, her niece and the former Chief Magistrate.

[34] Ms. Jex, who interviewed the appellant at the Belize Central Prison is an experienced Psychologist with years of experience. She had pursued certification to practice as a Psychologist in Belize and had been counseling in private practice at the Belize Medical Associates working with out-patients and inpatient clients. She was certified by the Ministry of Health to practice as a psychologist in Belize and is a board member of the Mental Health Association in Belize.

[35] There was also the unchallenged evidence at the trial of the appellant, as submitted by learned senior counsel, Mr. Smith and which the court fully agreed, that the deceased was a crack cocaine addict who was smoking cocaine at the time of the incident and had been shown to be a repeated violent offender who had served a number of prison sentences.

[36] There was no objection by the learned DPP to the evidence of Dr. Mezey and Ms. Jex. The evidence that the appellant was abused by the deceased and the opinion of the Dr. Mezey and Ms. Jex that the appellant suffered from BWS was in the opinion of the court, capable of belief.

Whether the fresh evidence would have been admissible at trial

[37] The court was of the opinion that the fresh evidence would have been admissible at the trial of the appellant in respect of her defences left to the jury, namely, self defence; causing excessive harm in self-defence through terror of immediate death or grievous harm and resulting from a loss of self-control; extreme provocation resulting in a loss of self-control; causing death through unlawful harm but without an intention to kill. The court agreed with the submission of learned senior counsel, Mr. Smith, that the fresh evidence would have also raised a potential defence of diminished responsibility as provided for by **section 118(1)** of the **Criminal Code.**

[38] The court considered the fresh evidence as stated by Dr. Mezey in her report which showed that the pattern of abuse suffered by the appellant and her response to the abuse was characteristic of BWS, a subcategory of PTSD which is a severe psychiatric condition. Dr. Mezey at paragraph 15.2 of her report stated that at the time of the incident, the presence of BWS and PTSD
" *would have heightened Ms. Longworth's perception of the threat posed to her. Of particular relevance in considering Ms. Longsworth behaviour are the criterion A and D symptoms for PTSD i.e. the sense of re-experiencing or re-living past*

traumatic events and of intense distress and hyper-arousal experienced as a result of her being in a situation which was similar to occasions when she had been severely beaten by him in the past." Hence the reason, as explained by Dr. Mezey the level of threat and severity of the provocation from the deceased would have been greater for the appellant than someone "*without the characteristic cognitive, emotional and behavioural deficits associated with PTSD and BWS."*

[39] The evidence at trial showed that on the night of the incident the deceased had smoked crack cocaine in the home of the appellant after he had demanded money from her. According to Dr. Mezey, events in the days and hours which preceded the incident would have represented severe provocation which, cumulatively, undermined the appellant's ability to exercise self control. According to Dr. Mezey the throwing of the accelerant and the candle on the deceased was a loss of self control which resulted from a build up of anger over the years. She explained that the appellant had reached her psychological 'breaking point'. This type of response, she stated, had also been described as "a 'slow burn' response to cumulative provocation, particularly observed in women who have experienced repeat abuse and which may occur in response to what objectively appears to be a relatively minor or trivial provocation, often after an apparent time delay between the last provocative act and the apparent loss of control."

[40] Dr. Mezey further explained in her report that the appellant in her heightened state of arousal was not capable of considering that her actions of throwing the accelerant and the candle were liable to result in serious harm to the deceased, herself and her son who was sleeping in the house at the time. Further, the fact that the appellant threw water on the deceased immediately after setting him alight, "*would be consistent both with a loss of control defence and with self defence."* The appellant had assisted the deceased by throwing

the water on him as he was no longer perceived as an imminent threat and had resumed full control of her behaviour.

[41] The court also considered the evidence of Ms. Jex which corroborated Dr. Mezey's evidence.

Whether there was reasonable explanation for the failure to adduce the fresh evidence at trial

[42] Learned senior counsel, Mr. Smith submitted that Kevin Arthurs represented the appellant at the court below. He referred the court to the second affidavit of Ms. Mendez in which she exhibited a letter from Mr. Arthurs which showed the reason for the unavailability of the fresh evidence. Mr. Arthurs in a letter dated April 12, 2014 addressed to senior counsel Mr. Smith, in response to a letter from him stated:

> "…At first instance, our Mr. Arthurs, represented Ms. Longsworth in furtherance of a Court assigned legal aid matter. During the preparation of her trial and the mounting of her defense, we had wished to conduct a psychiatric assessment of Ms. Longsworth.
>
> Unfortunately, there are no qualified forensic psychiatrists available in Belize and at the relevant times even the sole psychiatrist was unavailable.
>
> In any event, our current system of legal aid does not allow for the commissioning of expert reports.
>
> *Profectus in toto*, no evaluation of Ms. Longsworth could have been conducted at the time of trial…"

[43] The court considered that Mr. Arthurs gave a reasonable explanation as to why the fresh evidence could not be made available at trial. It is commendable that Mr. Smith sought to obtain the report from Dr. Mezey, the forensic psychiatrist from London.

Whether it appeared to the court that the evidence may afford a good ground for allowing the appeal

[44] The court was of the opinion that the fresh evidence which showed that the appellant suffered from PTSD and BWS, would have afforded a ground for allowing the appeal.

Fresh evidence admitted by the court

[45] In the opinion of the court, the fresh evidence satisfied each of the above test. (See **Smalling** case). As such, the court admitted the fresh evidence of Dr. Mezey who is an experienced psychiatrist, and Aimee Jex, the psychologist, which was necessary to determine the state mind of the appellant at the time of the incident.

The effect of the new evidence on the safety of the conviction

The test

[46] The fresh evidence as shown above had been admitted by the court which was the first task for the court. The second task for the court was to consider the fresh evidence and determine whether there had been a miscarriage of justice. The test for this had been exhaustively analysed in a number of authorities, including those cited by learned senior counsel, Mr. Smith, for the appellant. In a recent authority, **R v Earle** [2011] EWCA Crim 17, Leveson LJ, at paragraph 51 of the judgment, looked at the test after the evidence had been admitted. He said:

> "ANALYSIS
>
> [51] Against that background we must first consider the approach to the fresh evidence that we have admitted. The test for this court has been exhaustively analysed in a number of recent authorities

which have trodden the path created by *Stafford v DPP* [1974] AC 878, [1973] 3 WLR 719; *R v Pendleton* [2002] 1 WLR 72; *R v Hakala [2002] EWCA Crim 730; R v Hanratty [2002] EWCA Crim 114, [2002] 3 All ER 534;* [2002] 2 Cr App Rep 419; *Dial and another v State of Trinidad and Tobago [2005] UKPC 4,* [2005] 1 WLR 1660, 65 WIR 410 and, most recently in *R v Burridge [2010] EWCA Crim 2847; R v Ahmed [2010] EWCA* Crim 2899 in which Hughes LJ observed (at para 24) that the court would consider the issue before the jury and such information as it could gather as to the reasoning process through which the jury will have been passing but that **the question that matters most is whether the fresh material causes this court to doubt the safety of the conviction."** (emphasis added).

[47] In the case of **Dial and another v State of Trinidad and Tobago** supra the Board made it clear that the primary responsibility for deciding what effect the new material has on the safety of the conviction rests with the appellate court. Lord Brown of Eaton-under-Heywood, delivering the opinion of the majority of the Board, said at paragraphs 31 and 32:

" 31. In the Board's view the law is now clearly established and can be simply stated as follows. Where fresh evidence is adduced on a criminal appeal it is for the Court of Appeal, assuming always that it accepts it, to evaluate its importance in the context of the remainder of the evidence in the case. If the court concludes that the fresh evidence raises no reasonable doubt as to the guilt of the accused it will dismiss the appeal. **The primary question is for the court itself and is not what effect the fresh evidence would have had on the mind of the jury.** That said, if the court regards the case as a difficult one, it may find it helpful to test its view "by asking whether the evidence, if given at the trial, might

reasonably have affected the decision of the trial jury to convict": (*Pendleton* at p 83, para 19). The guiding principle nevertheless remains that stated by Viscount Dilhorne in *Stafford* (at p 906) and affirmed by the house in *Pendleton*:

> "While ... the Court of Appeal and this House may find it a convenient approach to consider what a jury might have done if they had heard the fresh evidence, **the ultimate responsibility rests with them and them alone for deciding the question (whether or not the verdict is unsafe)"."**

32. That is the principle correctly and consistently applied nowadays by the criminal division of the Court of Appeal in England-see, for example, *R v Hakala* [2002] EWCA Crim 730, *R v Hanratty, decd* [2002] 3 All ER 534 and *R v Ishtiaq Ahmed* [2002] EWCA Crim 2781 . It was neatly expressed by Judge LJ in *R v Hakala*, at para 11, thus:

> "However the safety of the appellant's conviction is examined, the essential question, and ultimately the only question for this court, is whether, in the light of the fresh evidence, the convictions are unsafe.""

[48] It is clear from the foregoing authorities, that the court's task was to follow Lord Bingham in **Pendleton** to consider the effect on our minds of the fresh evidence relied on to support the appeal and to determine whether the verdict was reasonable or can be supported by the evidence, or has otherwise resulted in a miscarriage of justice under section 30(1) of the Court of Appeal Act.

What was proven by the fresh evidence

[49] The court considered the fresh evidence given by Dr. Mezey and Ms Jex alongside the evidence given at trial. It was clear from the report of Dr. Mezey

and Ms. Jex that it was proven that the appellant, at the time of the incident, suffered from BWS, a subcategory of PTSD which is a severe psychiatric condition.

Consequence for the appeal as a result of the fresh evidence

[50] The view of the court was that the fresh evidence (which proved that the appellant suffered from BWS) would have established a defence of diminished responsibility at the trial. **Section 118(1)** of the **Criminal Code** provides:

> "*Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omission in doing or being a party to the killing."*

[51] BWS constitutes an abnormality of the mind. According to Dr. Mezey, the appellant was suffering form an abnormality of the mind, namely Post – traumatic Stress Disorder (PTSD) and Battered Woman Syndrome (BWS). She stated that: "*The abnormality of the mind was due to inherent causes, the most proximal and direct cause being her experience of physical, psychological and sexual abuse over the years. Both PTSD and BWS are associated with distorted cognitions, altered judgments and perceptions and impaired emotional and behavioural control. The condition would, in my view have impaired her mental responsibility for her actions at the material time; given the severity of the mental conditions, I consider such impairment is likely to have been substantial.*"

[52] Mr. Smith referred the court to several authorities in relation to the defence of diminished responsibility: **R v Thornton** (No. 2), **R v Hobson** [1998] 1 CR App R 31; **R v Erskine and R v Williams** [2009] EWCA 1425, [2009] 2 CR App

R 29; **R v Criminal Cases Review Commission, Ex p Pearson** [1999] 3 All ER 498 which was approved in **R v Erskine**.

[53] In **R v Erskine and R v Williams,** the appellants were convicted of murder in unconnected trials. On appeal they argued that their convictions should be quashed and substituted by convictions for manslaughter on the grounds of diminished responsibility.

[54] In the case of Erskine, he was convicted of 7 counts of murder and one count of attempted murder. He was sentenced to seven concurrent terms of life imprisonment for murder and 12 years' imprisonment (concurrent) for attempted murder. Each of the murders was heinous. Erskine brutally attacked the elderly and in some cases sexually assaulted them. An application was made for an extension of time of 20 years for leave to appeal against conviction and sentence.

[55] There was evidence at his trial which would have supported a defence of diminished responsibility. The grounds of appeal put before the court in the application for leave to appeal, arose from evidence which was available at the appellant's trial in 1988 but, was never ventilated by his then counsel. The court was invited to admit evidence which showed that when Erskine committed the offences, he was suffering from an abnormality of mind, taking the form of severe schizophrenia and psychopathic disorder. There was fresh evidence from two distinguished psychiatrists instructed on behalf of the appellant which showed that at the time of the killing, Erskine was suffering from diminished responsibility.

[56] In the case of Williams, he pleaded guilty to murder of Richardson and was sentenced to life imprisonment. In mitigation, counsel addressed the severe head injury which the appellant received when he was 12 years old and its

continuous effect on him. He also addressed Williams intoxication at the time of the killing. He sought leave to appeal against his conviction.

[57] In the judgment, the court discussed the reception of fresh evidence and the defence of diminished responsibility raised for the first time at paragraphs 90 to 94 which we respectfully adopt:

"Diminished responsibility

[90] ……. where it is proposed to raise diminished responsibility for the first time on appeal, the court is examining the Appellant's mental state at the time of the killing in accordance with s 2 of the Homicide Act 1957. It should normally be necessary to refer the court to **no more than the terms of s 23 of the 1968 Act, and the approach suggested in *R v Criminal Cases Review Commission ex parte Pearson* [1999] 3 All ER 498, 1 Cr App Rep 141 at p 164, [1999] Crim LR 732:**

> "Wisely and correctly, the courts have recognised that the statutory discretion conferred by section 23 cannot be constrained by inflexible, mechanistic rules. But the cases do identify certain features which are likely to weigh more or less heavily against the reception of fresh evidence: for example, a deliberate decision by a Defendant whose decision-making faculties are unimpaired not to advance before the trial jury a defence known to be available; **evidence of mental abnormality or substantial impairment given years after the offence and contradicted by evidence available at the time of the offence**; expert evidence based on factual premises which are unsubstantiated, unreliable or false, or which is for any other reason unpersuasive. But even features such as these need not be conclusive objections in every case. **The overriding discretion conferred on the court enables it to ensure that, in the last resort, Defendants are sentenced for the crimes they have committed and not for psychological failings to which they may be subject."**

[91] If reference to earlier decisions or historical analysis happens to be required, the present judgment, where the vast majority of all the relevant decisions have been collected, will normally suffice. We emphasise that the provisions of s 23 do not require any further judicial exegesis; the court will positively discourage references to previous decisions which exemplify but do not alter the principles identified by Lord Bingham in *Pearson*.

[92] The court will normally expect the parties to provide **a detailed analysis of the facts to assist it in the application of the statutory test**, **including an analysis of the following:**

> i) The psychiatric and/or psychological evidence or other information in relation to the Appellant's mental state which was available at the time of trial.
>
> ii) The evidence which has become available since the trial, and an explanation why it was not available at trial.
>
> iii) The circumstances in which the Appellant sought to raise on the appeal (a) the evidence available at the time of the trial and (b) evidence that has become available since the trial.
>
> iv) The reason why such evidence or information as was available at the time of the trial was not adduced or relied on at trial. This will ordinarily include details of the advice given, the reasons for the Appellant's decision at trial and, subject to paragraph . . ., any relevant evidence of the mental condition in the period leading up to and at the time of the trial and its impact on his decision making capacity.
>
> v) The impact of the fresh evidence on the issues argued at trial and whether and the extent to which it involves a re-arguing of issues considered at trial.
>
> vi) The extent to which the opinions of the experts are agreed and where they are not.

[93] These heads of analysis will not all necessarily apply in every case; in some cases additional areas of analysis may be required. However, any such analysis should suffice to assist and inform the court in its task of applying the provisions of s 23(1) of the 1968 Act."

[58] In the case of Erskine, the court said that it was overwhelmingly clear that at the time when he appeared at trial, there was unequivocal contemporaneous evidence that his mental responsibility for his actions at the time of the killing was substantially impaired. In addition, there was contemporaneous evidence which suggested that as a result of reduced mental acuity, not amounting to unfitness to plead, but part and parcel of his illness, the decision not to advance the defence of diminished responsibility was

irremediably flawed. Additionally the court said, "*There was nothing his legal advisers could do about it, and in reality nothing he could do about it himself. The interests of justice require us to admit the fresh evidence. We have examined it with care. We are satisfied that the convictions for murder were unsafe. We shall substitute convictions of manslaughter on the grounds of diminished responsibility."* In relation to his sentence, a hospital order was made under s. 37 of the Mental Health Act 1983.

[59] As for Williams, the court said that the issue of a possible defence of diminished responsibility was closely examined before the appellant pleaded guilty to murder. The plea was deliberate and properly informed. Further, the fresh evidence which had emerged since the trial was unconvincing, especially to any potential mental impairment which might have led the decision of Williams to plead guilty to murder. The court therefore, upheld the guilty plea and dismissed the appeal.

[60] In the case at hand, the court also considered the applicable conditions, under paragraph 92 of **R v Erskine and R v Williams** supra. As discussed above, at the time of the trial of the appellant in the case at hand, there was no psychiatric and/or psychological evidence or other information in relation to her mental state. Further, the letter from Mr. Arthurs showed that although he had concerns about the psychiatric health of the appellant, the medical evidence could not be obtained due to a lack of funding and the unavailability of a psychiatrist in Belize. The evidence of Dr. Mezey which had become available since the trial proved that the appellant suffered from BWS, a variant of PTSD. In **R v Thornton** (No. 2), **R v Hobson,** it is said that BWS constitutes an abnormality of mind and results in altered cognitive processing that impairs perception and judgment. BWS also impacts on self control. In this case, the Appellant was convicted of murder and sentenced to life imprisonment for stabbing her abusive and alcoholic partner to death during an argument. At the trial, the defence was self-defence though the learned judge properly left

provocation also for the consideration of the jury. The Appellant appealed against conviction on the grounds, inter alia, that at the time of the killing the circumstances of the case gave rise to BWS, which in turn gave rise to diminished responsibility for the killing in accordance with section 2 of the Homicide Act 1957. The Appellant therefore applied for the evidence of two psychiatrists to be considered, Dr. Mezey and Dr. Ghosh.

[61] The case for the appellant based on the reports of Dr Mezey and Dr Ghosh was that at the time of the killing, the history of the Appellant, and all the attendant circumstances, gave rise to the existence of BWS, which was capable of giving rise to, and did, in the appellant's case, gave rise to, diminished responsibility for the killing in accordance with the provisions of s 2 of the Homicide Act. Further, it was submitted that that condition, if it existed at the relevant time, was material to the defendant's characteristics when they fell to be considered in relation to the defence of provocation under s 3 of the Act. Therefore the application was made to the Court that the evidence of Dr Mezey and Dr Ghosh should be admitted.

[62] The court held that it would be proper to receive in evidence, reports from Dr. Mezey, Dr. Ghosh and Dr. Boyd (Dr. Boyd gave a report for the Crown) which they considered and took the view that it was a matter of significance that BWS was not part of the British classification of mental diseases until 1994, two years after the Appellant's conviction. However, it was appropriate for such evidence to be received for the reasons given. In the light of the receipt of that evidence the verdict of the jury could not be regarded as safe. The appeal was allowed and the conviction quashed.

[63] In the instant case, Dr. Mezey in her report said that such abnormalities, BWS and PTSD, would have substantially impaired Ms. Longsworth's responsibility for the killing of the deceased. Ms. Jex had arrived at the same conclusion as Dr. Mezey.

The impact of the fresh evidence on the defences of the appellant at trial

[64] The impact of the fresh evidence as shown by Dr. Mezey in her report, would also have impacted the appellant's defences at trial. The case for the defence was that on the night of the killing of the deceased, the appellant was acting in self-defence. The deceased had been smoking crack cocaine and during the incident, the appellant saw the deceased make a movement towards his waistband where he kept a knife. She feared that the deceased would attack her and so she threw the accelerant on him and a lighted candle. The appellant said that she was afraid for her life because she knew what terrible things the deceased can do.

[65] The learned trial judge also left three other defences to the jury namely, causing excessive harm in self-defence through a terror of immediate death or grievous harm and resulting from a loss of self-control; extreme provocation resulting in a loss of self-control; and causing death through unlawful harm but without an intention to kill.

[66] According to Dr Mezey, as shown in her report at pages 24 - 26, the presence of BWS and PTSD would have affected the appellant's defences of self-defence, causing excessive harm in self-defence, provocation and her lack of intent to kill, in the following manner:

(1) The presence of BWS and PTSD would have "heightened Ms. Longsworth's perception of the threat posed to her." The appellant had stated that she was scared of the deceased and she described how the deceased frequently 'haul' the knife. Dr. Mezey described this action as an "escalation of threat" and the appellant would have been sensitized to noticing and the interpreting of that action by the deceased, as signifying an imminent attack on herself given her past experiences of violence and abuse by the decease.

(2) The appellants altered cognitions would have increased the danger she perceived to herself as she knew what the deceased was capable of, based on his behaviour in the past. Further, the fact that

the appellant was smoking crack cocaine would have heightened her sense of danger. Even further, Dr. Mezey stated that it was significant that the appellant's son, Kenrick, who usually protected her from the deceased was not at home at the time of the incident and this made the appellant feel more vulnerable.

(3) "The cognitive, emotional and behavioural deficits associated with Post-traumatic Stress Disorder (specifically criterions A and D) Battered Woman Syndrome (learned helplessness and traumatic bonding, hyper-vigilance) would have affected Ms. Longsworth's perception of the severity of the provocation and the imminence of the threat on the night of the index offence, as well as her response to it." The appellant had suffered from 9 years of psychological, physical and sexual abuse by the deceased and on the night of the incident he demanded money from her to buy drugs. He then smoked that cocaine in her home where the appellant lived with her disabled son. This action increased the severity of the provocation as she was very protective of her son and did not allow the decease to take drugs around the son.

(4) The appellant's loss of self control was a result of build up of anger over the years. It appeared that her capacity to absorb such violence was finally exhausted and she threw the petrol and candle. Dr. Mezey described this response as 'slow burn' to cumulative provocation, which is observed in women who have experienced repeated abuse.

(5) The fact that the appellant threw water on the deceased after setting him alight would be consistent with a loss of self control and also self-defence, as she immediately took steps to assist the decease by throwing water on him. Further, in the appellant's heightened state of arousal, she was not capable of considering that her actions would result in serious harm. She could not imagine that her actions would have resulted in the death of the deceased.

Jurisdiction to allow the appeal on the ground of fresh evidence

[67] The court carefully examined the fresh evidence from Dr. Mezey and Ms. Jex and was satisfied that the conviction of the appellant for murder was a miscarriage of justice. The appellant was suffering from an abnormality of mind as a result of BWS and PTSD, at the time of the incident which resulted in the death of the deceased. It was for that reason that the court substituted for the

verdict returned by the jury, a judgment of guilty of manslaughter, on the ground of diminished responsibility, and imposed a sentence of 8 years on the appellant, pursuant to the powers under section 31(2) which provides:

> "31. (2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence and on the finding of the jury it appears to the Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict returned by the jury a judgment of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for the other offence, not being a sentence of greater severity."

Sentencing

[68] The court in arriving at the appropriate sentence for the appellant sought submissions from the parties since it was the first time in Belize that the court admitted fresh evidence in relation to BWS and PTSD which gave rise to a defence of diminished responsibility.

[69] As shown above, the court substituted for the verdict returned by the jury, a judgment of guilty of manslaughter. Section 108 of the Criminal Code, Chapter 101 stipulates that any person who is convicted of manslaughter is liable to imprisonment for life. However, the sentence of imprisonment for life is the upper limit and a sentencing judge may depart from the sentence fixed by statute depending on the gravity of the case. The court normally follow guidelines set by the upper courts. It is trite law that, "When sentencing, the court must have regard to the four classical principles of sentencing which could be summed-up in four words, "retribution, deterrence, prevention and rehabilitation." - **R v Sargeant 60 Cr App. R 74.**

Diminished responsibility - sentencing

[70] In cases of diminished responsibility there are also various options open to a judge. Learned senior counsel, Mr. Smith referred the court to the case of **The Queen v Germaine Sebastien Case No. 4 of 2006,** where Hariprashad-Charles J sought guidance for sentencing in a diminished responsibility case from the UK sentencing guidelines. At paragraph 34 of her judgment she said:

> "**The UK sentencing guidelines**
>
> 34. The maximum penalty is life imprisonment. The case of **Chambers** (Case No. 4 of 2005 (High Court Civil) British Virgin Islands [unreported] – judgment delivered on 21 February 2006) outlines the current UK practice. Leonard J. at pp. 103-104 states:
>
> > "In diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence will, in all probabilities, be one of life imprisonment.
> >
> > In cases where the evidence indicates that the accused's responsibility for his acts was so grossly impaired that his degree of responsibility for them was minimal, then a lenient course will be open to the judge. Provided there is no danger of repetition of violence, it will usually be possible to make such an order as will give the accused his freedom, possibly with some supervision.
> >
> > There will however be cases in which there is no proper basis for a hospital order, but in which the accused's degree of responsibility is not minimal. In such cases, the judge should pass a determinate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time, if any, for which the accused will continue to be a danger to the public."

[71] A hospital order was not recommended in this case for the appellant by Dr. Mezey or Ms. Jex. There was also no evidence that the appellant posed a danger to the public. Dr. Mezey in her evidence stated that the appellant's current state of mind showed no evidence of psychotic symptoms. As such, life imprisonment was not appropriate in this case.

[72] The court was of the view that the new evidence did not prove that the appellant's responsibility for her act was so grossly impaired that her degree of responsibility for it was minimal. As such, the court could not make an order to give the appellant her freedom, immediately.

[73] The court was of the opinion that a determinate sentence should be given to the appellant based on her responsibility for the killing of the deceased. Learned senior counsel, Mr. Smith submitted that the appellant's culpability was considerably diminished by her mental state at the time of the incident as well by the particular facts of the case. He referred the court to paragraph 15.3 of Dr. Mezey's Psychiatric report where she stated that the appellant's mental condition was substantially impaired at the time of the incident. The court carefully examined the appellant's mental impairment as shown in Dr. Mezey's report - (paragraph 20) above which showed her intense fear and helplessness; re-experiencing of traumatic events; Behavioural and cognitive avoidance of the trauma and emotional numbing; and persistent symptoms of hyper-arousal. Further, the court considered that the incident was not as a result of prolonged premeditation and that the appellant threw water on the deceased to extinguish the fire. The court was of the view that the evidence diminished the appellant's responsibility for causing the death of the deceased.

[74] In arriving at an appropriate sentence for the appellant, the court considered several cases involving 'Battered Woman Syndrome' or abuse which were cited by the appellant and the cases cited by the learned Director on provocation. (Provocation was also discussed by Dr. Mezey in her report).

[75] Learned Counsel for the appellant submitted that the appellant's case was one of exceptional circumstances which would warrant the court imposing a sentence of three years and six months or at most three years which would in effect give the appellant her freedom since she already spent three years and six months in prison. The learned DPP disagreed with this submission and recommended that a sentence of 10 years would be appropriate in the circumstances of this case taking into consideration the 3 years and 6 months she already spent in prison which meant she would have a portion of the 10 years left to serve.

[76] Learned Counsel for the appellant relied on the following authorities in relation to BWS or abuse. Learned Counsel submitted that in **R v Ahluwallia** [1992] 4 All ER 889, the defendant was sentenced to three years and four months at re-trial; In **R v Thorton,** the defendant was sentence to five years at retrial; In **R v Kristy Scamp** [2010] EWCA 2259, the court of appeal imposed a sentence of 6 years; In **R v Suluape**, the court of appeal reduced the sentence from 7 ½ years to 5 years. In **Ramjattan v The State,** the Court of Appeal imposed a sentence of 5 years in addition to the nine years which the appellant had already served.

[77] The case of **R v Ahluwalia** is similar to the case at hand. The appellant endured many years of violence and humiliation from her husband. One evening, she brooded over threats made to her by her husband to beat her the next day. Whilst he was sleeping that night, she threw petrol on him in his bedroom and set it alight with a stick which she lit from a candle. The husband sustained serious burns and died several days later. At her trial, a defence of provocation was left to the jury and she was found guilty of murder. On appeal she sought to admit fresh evidence to support a plea of diminished responsibility due to BWS and PTSD. The evidence was admitted and the court held that having regard to that fresh evidence which proved that at the time of the killing the appellant's mental responsibility for her actions was diminished and the fact that, without any fault of the appellant, there may have been an arguable

defence which was not put forward at trial, the verdict of guilty of murder was unsafe and unsatisfactory. The appeal was allowed and a retrial was ordered. On re-trial the accused was sentenced to three years and four months, which was time already served.

[78] Learned Counsel for the appellant submitted that Ahluwhalia premeditated the act for some hours and never attempted to extinguish the flames as was done by the appellant in this case. Hence, the submission that the appellant's case is an exceptional one which warranted the court to impose a sentence of three years and six months, already served by the appellant.

[79] The learned Director told the court that she knew of only two cases, in this jurisdiction, in which sentences have been passed for manslaughter by reason of diminished responsibility. The first was the case of **The Queen v Josue Moises Velasquez,** a trial conducted in 2000 by the then Chief Justice Conteh. The accused who had been friendly with an elderly man who gave him food everyday, arbitrarily took a machete and chopped the man to death. The defence was diminished responsibility and the jury brought back a verdict of manslaughter. He was sentenced to 12 years imprisonment.

[80] The other case, **The Queen v Giovanni Tasher** was conducted in 2009 and it was common ground that he had mental problems. He was in a mental facility and one day he walked out of the said facility and went to the market in Dangriga, where he stabbed a police officer who died from his injuries. The accused pleaded guilty to the offence of manslaughter by reason of diminished responsibility due to his mental condition. He was sentenced to 12 years imprisonment.

[81] The learned Director also referred the court to several other cases which, though not in relation to diminished responsibility, were helpful in relation to manslaughter by provocation. In the case of **R v Josephat Chuc** which was tried in 2008, the husband of the accused, a police officer, went home drunk and they got into an argument. Whilst he was standing on their verandah taking

a phone call, the accused shot him twice in the back with his service revolver. The husband died from his injuries. The accused pleaded guilty to manslaughter and she was sentenced to 10 years imprisonment.

[82] In the case of **Anthony Pop v The Queen,** Criminal Appeal No. 2 of 2006, the appellant was convicted of the murder of a mother of two children (former common-law wife), before a jury. He appealed against his conviction on the ground that the judge misdirected the jury on the issue of provocation. The Court of Appeal set aside the conviction for murder and substituted a conviction for manslaughter and imposed a sentence of 20 years which the court stated was within an appropriate range in this jurisdiction for the type of manslaughter cases.

[83] In **Jose Maria Zetina v The Queen, Criminal Appeal No. 9 of 2008**, the appellant was convicted for the murder of his common-law wife and sentenced to life imprisonment. The appellant's case was that he had stabbed the deceased in her throat due to extreme provocation as he had caught her with another man. The Court of Appeal quashed the conviction of murder, substituted a verdict of manslaughter and after a plea of mitigation imposed a sentence of 20 years.

[84] The learned Director made it clear in her submissions that the cases of **Pop** and **Zetina,** in relation to provocation, were referred to, so that the court would have some indication as to the usual sentence in relation to that aspect of manslaughter. In the appellant's case there is the issue of diminished responsibility which the court considered. The fresh evidence admitted by the court in relation to the appellant also dealt with provocation but in relation to diminished responsibility. The court considered Dr. Mezy's opinion where she stated at paragraph 15.31 of her report that the appellant's cognitive, emotional and behavioural deficits associated with PTSD and BWS would have affected her perception of the severity of the provocation.

[85] The court carefully analysed the authorities which the parties submitted to the court and determined that the appellant should be sentenced to eight years

imprisonment taking into account the period of almost 2 years (14 December 2010 – 8 November 2012) during which the appellant was on remand pending trial. The sentence therefore commenced from 8 November 2012, the date the appellant was sentenced in the court below, and not the date when she was remanded.

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MORRISON JA

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AWICH JA

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HAFIZ-BERTRAM JA