

**IN THE SUPREME COURT OF BELIZE, A.D. 2022  
CRIMINAL JURISDICTION**

**CENTRAL DISTRICT**

**Indictment No.** C20 of 2021

**THE QUEEN**

**v.**

**MR. DAVID CRUZ**

**- Murder**

**BEFORE** Honourable Justice Mr. Francis Cumberbatch

**APPEARANCES** Ms. Natasha Mohamed, Counsel for the Crown  
Ms. Liesje Barrow, Counsel for the Accused

**DATES** 27<sup>th</sup> of January; 8<sup>th</sup>, 16<sup>th</sup>, and 24<sup>th</sup> of February; 3<sup>rd</sup>, 10<sup>th</sup>  
and 23<sup>rd</sup> of March; 6<sup>th</sup> of May; 3<sup>rd</sup> of June; 2<sup>nd</sup> of August;  
3<sup>rd</sup> of October 2022.

**DECISION**

[1] The Accused was indicted by the Director of Public Prosecutions for the offense of murder for that he on the 12<sup>th</sup> day of December 2019, at Roaring Creek Village in the Cayo District murdered Timroy Neal ('the Deceased') contrary to the provisions of sections 117 and 106(1) of the *Criminal Code* Chapter 101 of the Substantive Laws of Belize.

[2] At his arraignment the Accused pleaded not guilty, hence, a judge-alone trial was held pursuant to the provisions of section 65A of the *Indictable Procedure Act*.

### **The Facts**

[3] I will for ease of reference summarize the evidence adduced at this trial by the witnesses for the Crown. However, in arriving at my verdict I will consider all of the admissible evidence in this trial.

[4] **Khadijah Thimbriel** testified. She stated that she is a Crime Scene Technician and on the night of the 12<sup>th</sup> day of December 2019, she processed a crime scene in front of the Lucky Entertainment bar in the Cayo District. She noticed a male person lying on his side in what appeared to be a pool of blood. She took a number of photographs that were tendered into evidence and identified a total of 11 expended shell casings, one slug, and a fragment of a bullet. On that same night, the witness photographed a blue Lifan motorcycle at the Roaring Creek police station. She said the lighting conditions were good when she arrived at the Lucky Entertainment bar. There were three fluorescent lights on the top of the veranda about 10 feet from the ground where the body lay.

[5] This witness was present at the post-mortem examination conducted by Dr. Mario Estrada Bran on the 19<sup>th</sup> day of December 2019, at the Karl Huesner

Memorial Hospital morgue where she took photographs of the body. She also collected a bronze slug, slug fragments, blood samples, and vitreous fluid retrieved from the body of the Deceased by Dr. Mario Estrada Bran.

[6] This witness was not cross-examined.

[7] **Brian Lopez** testified. He said that at around 8:30 p.m. on the night of the 12<sup>th</sup> day of December 2019, he was present at Lucky Entertainment with friends. He drove there with his silver SUV and parked it in front of the building. The Deceased was one of the persons with him at that time. Whilst there a man arrived on a motorcycle and his friends started to run. He heard shots fired and ran up the street and stopped a police officer coming on a motorcycle. On his return to Lucky Entertainment, he saw the Deceased lying in what appeared to be blood. He described the man who arrived on the motorcycle to be wearing a blueish/blackish helmet, black/blueish jacket, blue short pants, and brown slippers. When the man came off the motorcycle he pulled out something looking like a gun from under his jacket and that's when he ran up the road. Whilst talking to the police officer he saw the man go towards Garbutt gas station. He cannot say how tall the man was and he does not remember the motorcycle he rode.

- [8] Under cross-examination, the witness said he cannot recall the name of the police officer he spoke to and that the officer was alone. He said he stopped the officer close to the Flowers' residence. There was no re-examination.
- [9] **CPL Daniel Requeña** testified that on the 14<sup>th</sup> day of January 2020, at around 8:45 a.m. whilst on duty at the Belmopan police station the Accused entered the station. He informed him he was wanted by the police in connection with a murder investigation. He cautioned him and informed him of his constitutional rights and detained him. The Accused remained silent.
- [10] **CPL Marcelino Rash Ret'd** testified. He said at about 9:45 p.m. he together with PC Williams went on a police motorcycle driven by PC Williams to investigate a report of domestic violence at Camalote village. Whilst on their return from Camalote he heard the sound of a gunshot coming from the direction of Lucky Entertainment. He ordered PC Williams to stop the motorcycle and he alighted from the motorcycle. He saw a group of guys running in all directions of the highway and a motorcycle coming at full speed driven by a male person with a helmet on and about 50 yards away. Upon passing the pedestrian ramp the person lost control of the motorcycle and fell. As a result, he and Williams went to where the person fell, and the male person got up and ran leaving the motorcycle behind. The colour of the helmet was either blue and black or yellow and black. The person was a male person but

he did not make out who the person was. The person ran to the right shoulder of the road in a dark area behind Tim's shop. He could not describe the person but it was a male person and he only heard one gunshot that night.

[11] This witness retrieved the motorcycle and took it to the station and handed it over to CPL Fuller. He was not cross-examined.

[12] **Dr. Mario Estrada Bran** was deemed an expert by the Court in forensic medicine. On the 19<sup>th</sup> of December 2019, he performed a post-mortem examination on the body of the Deceased at the Karl Heusner Memorial Hospital morgue. The external examination revealed 16 orifices, characteristics of firearm injuries, and 8 entry and 8 exit wounds.

[13] The cause of death was traumatic shock due to massive brain damage from head injuries caused by multiple gunshot wounds. The witness opined that the Deceased was shot from close range and all 8 entry wounds were from close range, a distance of up to 32 inches from the target.

[14] **PC 1969 Shaun Williams** testified. He said that on the night of Thursday 12<sup>th</sup> of December 2019, he was on duty at the Roaring Creek police station. At about 8:43 p.m. he together with CPL Rash riding on a police motorcycle responded to a domestic violence report in Camalote Village and whilst on their return to the station he heard a gunshot upon reaching the area of the Puma gas station. Thereafter, he accelerated the motorcycle, and at about 100

yards away he heard 5 more gunshots coming from the direction of Lucky's Entertainment. He saw a dark complexion male person wearing a green jacket, blue  $\frac{3}{4}$  jeans pants, and a yellow and white helmet firing shots at a male person on the ground. Thereafter the person ran to a motorcycle. The lights were clear in front of Lucky's Entertainment.

[15] The motorcycle sped off to the right side of the road towards the Puma gas station going towards him. At that time CPL Rash was already off of the motorcycle and was behind him. He shouted stop police at the person on the motorcycle and fired shots at him. About 15 feet away he saw the person fall off the motorcycle right after the pedestrian ramp in front of the Puma gas station. He then made a U-turn on his police motorcycle towards the person's direction. He saw the helmet roll off the person's head about 10 feet away from the corner of the road. He shouted stop police and at that time the person looked at him. He then saw it was the Accused, David Cruz, better known as Deucy. The Accused looked at him for about 12 seconds. The lighting was clear in front of the Puma gas station. He tried to fire warning shots at him but he was out of ammunition. He saw the Accused retrieve his helmet and run down the dirt road on the right-hand side. He gave chase but the Accused made good his escape.

- [16] He went on to say that the lighting in front of Lucky's Entertainment was clear and he was about 20 feet away from the male person when he fell from the motorcycle. The road was about 15 to 20 feet wide and he fell right in front of the pedestrian ramp at the gas station in the center of the road. The lighting conditions were bright as there was light from the Puma gas station and the line post which was about 15 feet away.
- [17] This witness said that he was able to see the face of the Accused for about 12 seconds and nothing obstructed his view.
- [18] **Under Cross-Examination** the witness agreed that he heard the first gunshot about 200 yards away and that CPL Rash was behind him at that time. He accelerated when he heard the gunshot but did not stop to speak with anyone. There were people around Lucky Entertainment running towards the bridge. Rash was with him and got off the motorcycle when he heard 5 more shots. He stopped when he was about 100 yards away. He stopped because someone was shooting at someone. He did not take cover and his attention was drawn to a gunman dressed in a green jacket and blue  $\frac{3}{4}$  short pants with a yellow and white helmet on his head. He said when he was 100 yards away he saw the gunman bending over shooting another person. There was a grey Toyota Forerunner next to Lucky's and CPL Rash was already off the motorcycle behind him. He could not say if any of the shots he fired caught the Accused.

When the Accused fell by the bump he was about 20 feet away from him. He yelled stop police when he was sitting up. He said the Accused sat up and looked at him. He attempted to fire a warning shot at him but he was out of ammunition. He said the Accused sat up and looked at him as if he wanted to give up. He retrieved his helmet and ran away. The lighting came from a lamppost on the other side of the road from the gas station.

[19] **Rosendo Joel Cantun** testified. He said in December 2019, he was attached to the Information Technology and Cyber Unit of the police department and held the rank and number of PC 1448. He was an assistant programmer and did technical work. He holds an associate degree in computer science and did local and international training whilst at the unit.

[20] On Friday 13<sup>th</sup> December 2019, he was requested by CPL Ferguson to retrieve video recordings from a shop in Roaring Creek. He accompanied CPL Ferguson and on arrival at Lucky's Entertainment CPL Ferguson spoke to the supervisor of the shop who granted them permission to extract videos from their DVR. He had a flash drive and proceeded to check on the working condition of the DVR which he found to be very good. CPL Ferguson instructed him of the time frame they were looking for which was between 10:00 p.m. to 10:30 p.m. on the 12<sup>th</sup> of December 2019.



[21] The witness stated that he examined cameras 8 and 11 which gave the footage they were looking for. He reviewed recordings and his attention was drawn to a time frame of 10:15 p.m. to 10:30 p.m. which CPL Ferguson needed to be extracted which he did. He copied the video to his flash drive. He returned to his office and plugged the flash drive into his computer. He copied the contents of the flash drive and made 2 read-only DVDs and labelled and signed the DVDs as Lucky Entertainment Incident. The video was tendered into evidence without objections.

[22] **Under Cross-Examination** the witness said the system at Lucky's Entertainment had 8 cameras. The connections depended on how the owner named the cameras. He does not recall seeing a camera showing the gas station site. He knew that the owner granted permission to record the videos because he opened the door to allow him to enter the premises.

[23] This witness was not re-examined.

[24] **CPL Leon Ferguson** testified and said that on the 12<sup>th</sup> of December 2019, at around 10:50 p.m. he visited the Lucky Entertainment center at Roaring Creek village. He saw the area cordoned off with police caution tape and saw Crime Scene Technician Thimbriel and CPL Fuller present. He also saw the lifeless body of the Deceased on the ground lying face down in a pool of suspected blood. After he finished processing the scene he escorted the body of the

Deceased to the Western Regional Hospital where he was pronounced dead on arrival by Dr. Landero at 1:55 p.m. on the 12<sup>th</sup> of December, 2019.

[25] On the 13<sup>th</sup> of December 2019, he revisited Lucky Entertainment and spoke to the owner to obtain permission to review the video footage from his camera system. He later spoke to PC Cantun and gave him certain instructions about the video footage. On the 19<sup>th</sup> of December 2019, he visited the Karl Heusner Memorial Hospital where a post-mortem examination was performed by Dr. Mario Estrada Bran.

[26] This witness stated that on the 14<sup>th</sup> of January 2020, he learned that the Accused was in custody at the Belmopan Police station and informed him of the reasons for his detention and cautioned him. The Accused informed him that he is represented by his lawyer Mr. Arthur Saldivar. Based on his investigations on the 15<sup>th</sup> of January 2020, he formally arrested and charged the Accused with the offense of murder. He cautioned him and he remained silent.

[27] **Under Cross-Examination**, the witness stated that he instructed PC Cantun to retrieve footage of the incident. He does not recall how many cameras angles there were. He does not recall if there was a pedestrian crossing on the highway. There is a street to the left of the store. The footage he saw covered the entire front section of the building. There were several cameras

in front of Lucky's and he does not recall if there was footage showing the left side of the building on the street. He asked for the footage of the entire front where the incident occurred.

[28] The witness said he did not go to the gas station to collect footage from them nor did he go to the restaurant across the street to collect footage. He saw footage of the incident in front of Lucky's and requested it. He didn't know if the gas station and restaurant had cameras but he knew that Lucky's had cameras. He does not know if a motorcycle was found at the scene. He knew that PC Rash brought a motorcycle to the Roaring Creek police station which he impounded at the station. He was not aware that the motorcycle was found at the scene. He knew PC Rash brought a motorcycle to the station at Roaring Creek but he was not aware it was found at the scene. He made inquiries about the ownership of the motorcycle because it was impounded at the station and found out who the owner was but could not now remember his name. The owner said the motorcycle was stolen and did not want to give a statement. He said he asked for footage from in front of the store to be recorded.

[29] This witness was not re-examined and that was the case for the Crown.

[30] At the close of the Crown's case, the Defence Counsel made a no-case submission based on the identification evidence of PC Williams. The Court overruled this submission by applying rule 2(b) of *R v Galbraith*.

[31] In the decision of *Chief Constable of Police Service of Northern Ireland v LO*, the Court of Appeal of Northern Ireland considered and pronounced the power of a judge sitting alone in a criminal trial when faced with an application for the dismissal of the Accused on a no-case submission. Lord Kerr LCJ opined thus in paragraph 16:

*“[16] ... the inherent power of the judge to stop a case referred to in the judgment of Jones LJ in Wilson should only be exercised where he has concluded that the evidence could never be deemed sufficient to support a conviction. The exercise of that power therefore will not arise except where the second limb of Galbraith would apply, although, in theory, it can be invoked by the judge at any stage of the trial. It is unlikely to occur, however, other than at the direction stage when an assessment of the strength of the evidence against the Accused may most conveniently be made.”*

[32] After having considered all of the evidence adduced by the Crown in the case at *bar* I found that there was evidence to support a finding of guilt. Accordingly, the submission of no case to answer was overruled.

[33] The Accused was given three choices and after consulting with Counsel chose to exercise his right to remain silent. He called no witnesses.

## **The Law**

[34] As stated, aforesaid the Accused is indicted for the offense 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.*”

[35] 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.*”

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

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

[37] It is common ground that the thrust of the Defence case is that the Accused was not the shooter on that fateful night. Thus the issue to be determined from the outset is whether it was the Accused who allegedly discharged at

least 5 rounds of ammunition that night. Therefore, the question of visual identification must be carefully and cautiously considered.

[38] I have no difficulty in finding that the Deceased is dead. Indeed, the unchallenged evidence of Dr. Mario Estrada Bran disclosed that after having performed a post-mortem examination on the body of the Deceased he opined the cause of death to be traumatic shock due to massive brain damage from head injuries caused by multiple gunshot wounds.

### **Identification**

[39] The evidence of identification of the Accused as the shooter is of critical importance in this case and it all rests on the testimony of PC Williams. It is common ground that no identification procedure involving the Accused was held prior to charging him with this offense. During PC William's testimony, the Defence Counsel objected to him being allowed to identify the Accused as the person he testified that he saw that night fleeing the scene after the shooting. Hence, the Court held a *voir dire* to determine whether an identification parade was the sine qua non for PC Williams to be allowed to make a dock identification.

[40] During the *voir dire* PC Williams gave evidence of his prior knowledge of the Accused from around the year 2013 before he became a police officer and after he was attached to the Roaring Creek police station in 2017. He testified

of stopping and searching the Accused on several occasions and that during those times their communication was friendly and the Accused was cooperative. In his testimony, he stated that he recognized David Cruz as the person whom he allegedly saw fleeing the scene and as someone whom he knew from previous interactions with him as recently as the 6<sup>th</sup> of December 2019. I, therefore, find that in the circumstances the Accused was well known to and by PC Williams at the time of this incident. Thus in my opinion had the Accused been placed on an identification parade he would have been identified instantly by him.

[41] In the Privy Council 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 fulfillment 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..."*

## **Visual Identification**

[42] The case against the Accused depends wholly on the correctness of PC Williams' identification of him which the defense alleges to be mistaken, unreliable, or untrue. To avoid the 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.

[43] 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?



[44] PC Williams testified in chief that he was 20 feet about away from the man he was chasing when he fell off the motorcycle and that he fell right in front of the pedestrian ramp. He made a U-turn on his police motorcycle towards the direction where the man fell and he saw the helmet roll off his head. He shouted stop police at that time and the man looked at him. It was then he saw that it was the Accused David Cruz also known as Deucy. He said the Accused looked at him for about 12 seconds and he felt that he was going to give up. Under cross-examination he said he saw the Accused for about 5 seconds. The lighting was bright and came from in front of the Puma Gas station and the lamp post. He saw Cruz dressed in the green jacket and blue  $\frac{3}{4}$  pants retrieve the helmet and run down the dirt road to the right. He pursued him but he made good his escape.

[45] The Defence contends that CPL Rash's testimony does not support that of PC Williams. As stated aforesaid Rash said he could not make out who the person was but it was a male person on a motorcycle. He gave no description of the person save and except to say that it was a male. He stated that when the person fell he and PC Williams went to the place where he fell and the person got up and ran away.

## **Analysis of Identification Evidence**

- [46] I have carefully and cautiously considered the testimony of PC Williams. It is obvious that his evidence is not supported by that of CPL Rash. PC Williams stopped the motorcycle from which CPL Rash disembarked when he Williams said he heard 5 more gunshots. After that he concentrated on what was happening in front of Lucky's. He said his attention was focused on the gunman. Williams was able to give a description of the clothing worn by the gunman and where exactly he was when shooting at someone which was outside the front of Lucky's and at the front of the SUV. This was supported by the evidence on the video tendered by PC Cantun. That video showed where the shooting took place and the clothing worn by the gunman he saw shooting someone in front of Lucky's. Indeed in his testimony Williams stated that his attention was focused on the gunman shooting someone in front of Lucky's. He was able to give a description of the clothing worn by the gunman and he also discharged shots at the said gunman whilst he was fleeing the scene. He then made a u turn to intercept him when he passed him on the road and then fell at the ramp. It is at this point in time Williams said he saw the face of the gunman after he fell and his helmet rolled off of his head.
- [47] CPL Rash stated that when the man fell at the ramp both him and Williams went to the ramp. Rash also said he only heard one gunshot after which he

came off of the motorcycle. I find it astonishing that a trained police officer would have only heard one gunshot when Williams said he heard 5 shots from outside Lucky's and he himself fired 5 shots at the gunman. The Crime Scene Technician Thimbriel testified to having collected some 11 spent shells from the scene outside of Lucky's and the video shows a number of gunshots being discharged by a person dressed as described by Williams in front of Lucky's. Thus, I find that a significant number of gunshots were fired that night at the time of this incident and I could neither understand nor accept that CPL Rash could have only heard one gunshot.

[48] The sum total of CPL Rash's evidence is that he left the motorcycle after hearing one shot and heard no more shots. He is silent about his activities after he came off of the motorcycle. I find this to be even more astonishing in light of the fact that PC Williams who was in his company prior to him dismounting from the motorcycle proceeded to the area from which gunshots sounded indicating that a serious offence was being committed at that time.

[49] He then reappears at the ramp when the gunman fell. He gave no description of the clothing worn by the person he saw and was uncertain of the colour of the helmet he saw worn by the person. Moreover it is significant that PC Williams makes no mention of seeing CPL Rash on the ramp when the gunman fell off his motorcycle there. I do not find this witness's testimony

to be reliable. I find it strange that with all the gunshots fired that night he only heard one. The Court will not speculate on the reason why he only heard one shot and seemed to have removed himself from the scene of what was or might have been the commission of a serious offence. Suffice it to say, however, that I do not find him to be a reliable witness.

[50] I have also considered the submissions made by Defence Counsel who was very critical of the evidence of PC Williams in her written submissions. Counsel contended *inter alia* that PC Williams' evidence was:

- a. the identification of the Accused came from a single eyewitness, Williams, the reliability of whose account was plainly open to challenge, given the divergence between his statement to the police, his evidence in chief and his evidence under cross. Added to that is the fact that his partner, who was on the scene with him, and in as good a position to see as Williams, was entirely unable to corroborate his version of events. This is of huge and definitive importance.

[51] I have already stated that I do not find CPL Rash to be a reliable witness. At no time during his testimony was PC Williams challenged on inconsistencies, discrepancies or *lacunae* in his testimony as compared and contrasted with his

written statement. I must further state that the statement of PC Williams is hearsay and I will not address my mind to its contents as the statement was never put to the witness during his testimony for his acceptance or denial thereto. Moreover the statement was not admitted into evidence. Thus, without more I will not consider or apply hearsay evidence in arriving at a verdict herein.

[52] Defence Counsel also relies on the *dictum* of the Court decision of the Privy Council in ***Aurelio Pop v The Queen*** at paragraph 17 thereof stated:

17. *“In the present case the Court of Appeal considered that the circumstances in which the recognition of the appellant took place were “exceptional”. In their Lordships’ view, however, there is nothing in the circumstances of identification evidence in the present case that marked it out as being of exceptionally good quality. If anything, it was more than usually open to criticism. At the time of the shooting it was dark and the scene was lit by street lighting. The identification of the appellant came from a single eyewitness, Adolphus, the reliability of whose account was plainly open to challenge, given the divergence between his statement to the police and his evidence in court. There was no scientific*

*or other material evidence to corroborate his identification of the appellant. To make matters worse, no identification parade had been held to provide the usual safeguard for a defendant in the appellant's position..."*

[53] A reading of that decision reveals that the Board went on to say thus:

**“Worse still, the dock identification, which was already undesirable in itself, had been compromised by an improper leading question by prosecuting counsel. The judge had given the jury no directions on any of these important points.”**

[54] PC Williams testified that at the ramp where the gunman fell it was bright with lights from a street lamp and the gas station nearby. This has not been challenged in cross examination nor is there any witness who testifies to the contrary about the lighting conditions.

[55] Defence Counsel also submitted that the absence of video evidence from the gas station and the shop in the vicinity of the ramp where the man fell from the motorcycle. She also criticized the police for not obtaining more footage from the cameras outside of Lucky's.

[56] There is no evidence that the Puma gas station and the shop opposite to it had cameras and if so that those cameras were capable of recording scenes at the ramp. PC Cantun who recorded footage from the DVD at Lucky's said he

does not recall seeing cameras recording footage from as far as the ramp. The evidence of PC Williams discloses that the ramp is at least some 100 yards from Lucky's so without more I find it unlikely that that establishment would be recording activities from as far as that.

[57] In *R (Ebrahim) v Feltham Magistrates Court* 2001 WLR 1293 Brooke LJ opined thus at para 27:

1. *"It must be remembered that it is a commonplace in criminal trials for a defendant to rely on "holes" in the prosecution case, for example, a failure to take fingerprints or a failure to submit evidential material to forensic examination. If, in such a case, there is sufficient credible evidence, apart from the missing evidence, which, if believed, would justify a safe conviction, then a trial should proceed, leaving the defendant to seek to persuade the jury or magistrates not to convict because evidence which might otherwise have been available was not before the court through no fault of his. Often the absence of a video film or fingerprints or DNA material is likely to hamper the prosecution as much as the defence."*

[58] There is no evidence of the existence or possibility of video footage of the ramp where the man identified by PC Williams as the Accused fell or that there were cameras at these two establishments.

[59] The Court should not indulge in mere speculation about what the purportedly missing evidence might have disclosed or in the present circumstances consider what might have been but carefully and cautiously consider the available evidence of visual identification and the conditions and circumstances in which it was made. The Court will therefore apply the *Turnbull* directions hereinbefore stated.

[60] I find at the end of the day, that the Accused was well known to PC Williams who was quite capable of recognizing him having seen him for between five to twelve seconds from about 20 feet away under bright lights from the Puma gas station and the streetlamp the presence of which was not challenged under cross-examination. I also believe and accept the evidence that Williams was focused on the gunman whom he saw dressed in a green jacket, and blue  $\frac{3}{4}$  pants wearing a yellow and white helmet as is evidenced by the video footage from in front of Lucky's. Accordingly in the circumstances, after carefully and cautiously considering all the evidence and having applied the *Turnbull* directions on visual identification I believe and accept the evidence of PC Williams that the shooter on that fateful night was the Accused.



## **Unlawful Harm**

[61] At the close of the Crown's case, the Accused having been told of his options and having consulted with his counsel remained silent. Hence, the issue of self-defense was not raised by him. Moreover, self-defense did not arise in the evidence neither did the partial defense of provocation. Thus, I find that in the circumstances the Deceased died from unlawful harm.

## **Intention**

[62] The Court must now determine whether when the Accused inflicted harm to the Deceased he intended to kill him when he did so. Section 6 of the *Criminal Code* 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?"*

[63] Section 9 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 offense,*

*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.”*

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

[65] The Prosecution must prove that the Accused had the requisite intention, that is, to kill the Deceased at the time of the alleged offense. They intend to do so by asking the Court to believe and accept the evidence of its witness PC Williams that the Accused was the gunman firing several shots at the Deceased as seen in the video in front of Lucky’s. The Crown is also relying on the evidence of Dr. Estrada Bran who stated that he found whilst performing the post-mortem examination that the external examination revealed 16 orifices, characteristics of firearm injuries, 8 entry and 8 exit wounds. The doctor also found that the shots were fired at close range as is evidenced in the video footage aforesaid.

[66] I must direct myself, that I am not bound to infer that the Accused had the requisite intention to kill just from the fact that he fired several shots at the Deceased.

[67] So, when considering whether the Prosecution has proved to my satisfaction that the Accused had the necessary intention, I should draw such conclusions as I think right, and inferences as appear to be proper in the circumstances having considered all the evidence in this case. After having done so I find that the actions by the Accused of firing 8 headshots to the head of the Deceased from close range unequivocally signalled his intention to kill him.

### **Verdict**

[68] I have considered and analyzed the facts and circumstances in this case and in so doing I have applied the relevant principles of law thereto. I am satisfied to the extent that I feel sure that the Accused was the shooter that night. The Crown has also satisfied me that when he fired shots at the Deceased he intended to cause his death and that he was not acting in lawful self-defence. I have also found that the Accused did not act as a result of extreme provocation from the Deceased on that fateful night.

[69] Accordingly, I find that the Accused is guilty of the murder of the Deceased as indicted.

Dated this **3<sup>rd</sup> day of October 2022.**

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Honourable Justice Mr. F M Cumberbatch  
Justice of the Supreme Court  
Central Jurisdiction