

**IN THE SUPREME COURT OF BELIZE, A.D. 2021
CRIMINAL JURISDICTION**

CENTRAL DISTRICT

Indictment No. C5 of 2018

THE QUEEN

v.

ASHTON PUERTO

- **Murder**

BEFORE

Honourable Justice Mr. Francis Cumberbatch

APPEARANCES

Ms. Natasha Mohamed – Counsel for the Crown
Mr. Hurl Hamilton – Counsel for the Accused

TRIAL DATES

6th, 7th, 8th, 9th, and 29th of July, 2020; 22nd of September, 2020; 2nd of November, 2020; 14th of December, 2020; 14th and 25th of March, 2021.

DECISION

- [1] The Accused was indicted by the Director of Public Prosecutions for the offense of murder for that he on the 10th day of July 2016, at Roaring Creek Village, in the Cayo District murdered Maleek Norris ('the Deceased') contrary to sections 117 and 106(1) of the *Criminal Code*.
- [2] At his arraignment, the Accused entered a plea of not guilty and as a result, a fully contested trial was held before a judge alone pursuant to the provisions of section 65A of the *Indictable Procedure Act*.

Summary of facts

- [3] I will summarize the facts of this case. I must state however that in reaching my verdict I have considered all of the evidence in this case adduced by both the Crown and the Defence.
- [4] Tavia Bennett testified that on the 10th day of July 2016, at around 2:30 p.m. she was in the yard of one Kendra Pech sitting down on a concrete sidewalk and having a conversation with the Accused. She said she had seen the Accused there the night before and asked him what he was doing there and also asked him about a stab wound he had received a while back before July 2016. The Accused told her he was waiting on the Deceased as he wanted to see him. She enquired what he wanted to see him about and he said he just wanted to talk with him. She told him if that was the case don't do anything foolish because his stab wound was still healing. The Accused said he was not going to do anything, he just wanted to talk to him.
- [5] At that time this witness said she saw the Deceased and when the Accused saw him he got up. When he got up the Deceased was not very far away from them. He walked towards the Deceased who pulled out a small knife and held it close to the right side of his body whilst he continued walking along the road. The Accused then ran under Kendra's house and pulled out a pole from an old sofa under the house where he was lying down before.

The Accused then ran back towards the Deceased who was still on the street about 20 feet away and raised the iron pole with his left hand and gave it a hard knock with his right hand and it went off like a gunshot. The Deceased was hit and he dropped to the ground crying for help and appeared to be in pain. The Accused was trying to put something in the pipe and she yelled at him to stop. Kendra Pech came out of her home and also yelled at the Accused who then ran away through the back of the yard.

[6] The witness went to the aid of the Deceased who by that time had dragged himself to the grass. Neighbours came to the assistance of the Deceased and he was placed in a vehicle and taken away to the hospital.

[7] This witness stated that when the Accused ran under Kendra's house after he had seen the Deceased he was about 20 feet away from the Deceased. It was from that distance he raised the iron pipe and hit the bottom. She further stated that she did not see the Deceased do anything with the knife apart from holding it down by his right side. She doesn't recall the Deceased saying anything to the Accused when he was shot, nor does she remember the Accused saying anything to the Deceased.

[8] Under cross-examination, the witness stated that the Accused did tell her he was waiting for Maleek. She said he asked her if she had seen Maleek and she told him no and he said he wanted to see Maleek. She denied that the

Deceased was running towards the Accused with a knife in his hand and also denied that the Accused never moved from where he was when they were sitting and talking. She said the Accused did run under the house. She said when she heard the bang she saw the Accused trying to put something in the pipe and denied that after the bang he took off and ran away. She denied that when she heard the bang both the Accused and the Deceased were in Ms. Pech's yard and denied that the Deceased ran from Pech's yard to the road. She stated that the Deceased was never in Pech's yard. The Deceased was on the street. She stated that the Accused left from where they were talking and went for the pipe thing.

[9] Kendra Pech testified that on the afternoon of the 10th day of July 2016, she was at home watching TV when she heard a loud bang. She ran outside and saw the Accused about four feet away from her step. The Accused looked at her whilst he was holding a piece of metal pipe in his hand. She said the Deceased shouted to Ms. K he's going to shoot me. She shouted to the Accused '*don't do that*' and the Accused replied sorry Auntie. She went to where the Deceased was and called out to the neighbours for assistance. She joined a vehicle in which he was placed to be taken to the hospital. She said when the Deceased was shouting he was on the sidewalk across the street

from her house. When she saw the Accused four feet away from her step he was in her yard. She was not cross-examined.

[10] PC Derin Joe Mariano testified. On Sunday 10th day of July 2016, at around 2:45 p.m. he was at home at Another World Village Cayo on his verandah. Whilst there he saw the Deceased whom he knew well prior to that day walking along the roadway in an easterly direction. They had a short conversation. Whilst texting he glanced down the street to see if his common-law-wife was coming. He heard the sound of a gunshot and saw the Deceased fall to the ground in a puddle of water. He said he quickly went to the street where the Deceased was and heard him shouting for help. He also saw the Accused whom he had known for about ten years maneuvering between two fences with a metal object in his right hand which looked like a pole or a pipe. He said he observed what appeared to be gunshot wounds to the hands and hip of the Deceased.

[11] This witness under cross-examination stated that during the conversation with the Deceased he asked him if everything was all right and the Deceased said yes he's just going for a little walk.

[12] Dr. Loyden Ken was deemed an expert by the Court as an anatomical pathologist. On the 13th day of July 2016, he performed a postmortem examination on the body of the Deceased. His findings included gunshot

injuries to the left thigh, left hand, penis, and right forearm of the Deceased. All of the entry wounds were from the left to the right and from the front to the back.

[13] The doctor opined that the shooter would be to the left side of the victim and more to the front. He stated that the absence of stippling or soot indicates that these were distance range types of wounds and that the gun had to be more than 30 inches from the victim.

[14] Dr. Ken opined the direct cause of death to be internal exsanguination as a consequence of laceration to the left external iliac artery due to shotgun wounds to the left thigh region.

[15] Mr. Wenceslado Teul, the Crime Scene Technician testified that on the 10th day of July 2016, at around 4:00 p.m. he visited and processed a scene on an unnamed street at Another World Village. There he found what he suspected to be blood stains on the road and adjacent to those blood stains was a red-handled knife. He took possession of the knife and took photographs of the scene.

[16] On the 11th day of July 2016, at around 1:00 a.m. the witness stated that he visited the Young Bank area, Cayo District, in company with police officers. The police pointed out to him a metal pipe leaning on the stem of a tree. He took photographs of the pipe. He observed the pipe to be an apparent

homemade firearm. He collected the same and observed the pipe had a metal cover and inside the pipe was another pipe smaller in diameter. From one end of that pipe was a 12-gauge cartridge which had a firing pin impact, and the other end was open. He observed several pellets in the cartridge and took photographs of them.

[17] On the 13th day of July, Mr. Teul was present at the post-mortem examination of the Deceased. He took photographs of the injuries to the body. He also received from Dr. Ken two pellets removed from the body along with blood samples extracted therefrom.

[18] Under cross-examination, the witness said he could not recall how many pellets he saw in the 12-gauge cartridge and that the length of the blade and handle of the red handle knife was about eight to ten inches.

[19] CPL 927 Martinez arrested the Accused later on the 10th day of July 2016 and transported him to the Belmopan Police Station where he was detained. He later gave a statement under caution to the police which was admitted into evidence unchallenged. I will refer to the contents of that statement later in this judgment. That in summary was the case for the Crown.

[20] The Accused elected to make an unsworn statement from the dock. He said as follows: “Kareem Flowers, Evin Flowers, Maleek has always been tantalizing me, provoking me, and threatening me. One night when I was in

the house where I stayed across from Lucky entertainment, Henry Flowers and Evin Flowers, approached me in the house where I was staying. They pushed me on my head aggressively. They told me not to come out of my house or else they would do me things. Every other day they keep messing with me like they want to put me in the earth. I don't know why they push me in my head. After being tantalized from time to time I got fed up and I went across with a machete stuck in my waist. They were associating and drinking beer. I told them I don't want any problem with them so they could leave me alone. When I was turning to walk away one of them stone me with a pint in my face that knocked out my tooth. I went to the police station to make a report that is the Roaring Creek sub-station. Nothing was done. After recovery, I got a job with my father at the Santander Sugar Cane Industry where I worked for five months. Every time I got off from work I would have to get off at different points or take a different route for fear of my life because they told me they would kill me with knives and guns. This happened for a while and after a while, I left. I left the village and went to live with my mother. While in Belmopan I was stabbed in the back by Maleek. I almost died. I ran to the police mobile, and they escorted me to the Karl Heusner Memorial Hospital where I stayed for a week.”

[21] When I came out I went back to my mom. A month after the operation my mom told me I could not stay with her anymore. In fear for her life and mine I had to leave. I went back to the village of Roaring Creek with the intention to find somewhere to stay and recover so I could return to my job as I was only put on sick leave.

[22] When Kareem and Maleek heard I was in the village and knew where I was staying every time they met me they would chase me with knives. In fear of my life every time I see them I would have to run. One night, a Saturday night I went to the Chini to buy fry chicken when Maleek and Norris attacked me with a knife. In fear for my life, I lift up my bicycle and money and threw them all on him. I got fed up that night and run away. I fear all of them I told myself I would have to start carrying a weapon in fear for my life. I did not know where else to turn who else to go and what else to do.

[23] On Sunday 10th day of July, I went to my aunt's house, which I regularly do sometimes I go to eat Sunday dinner, and other times just to pay her a visit. I was there until evening; I was in the yard of my Aunt Kendra Pech's house talking with Tavie Bennett when I saw Maleek coming towards me. I never left the yard. When he saw me he pulled out a knife out of his waist in a thrusting and aggressive way. Immediately I feared for my life as I was stabbed by this individual before. Out of fright I instinctively, acting to

protect my life, pulled a homemade firearm out of my pocket and in fear of my life fired one shot toward Maleek. As the shot was fired I ran. When I ran it was in the evening. I met up with my cousin Ashley Bevans. He was on Facebook. I was concerned so I asked him if he heard what happened and he replied, yes, the boy is dead. Immediately I waited at the said location for the police to come and arrest me after which I was taken to Belmopan police station where they asked me if I wanted to give a statement about what happened. I said yes. It was taken down by WPC Rudon and JP Kent Fuller after which I was given a charge of murder. That is all.

[24] The Accused called no witnesses and that was the case for the Defence.

Closing submissions

The Crown

[25] At the close of the case for the Defence, Counsel on both sides presented written submissions together with authorities relied on in support of their case. The Court considered the contents of these submissions before arriving at a verdict herein.

[26] Crown Counsel contends that the Crown must prove to the court's satisfaction two essential issues namely:

1. When the Accused shot the Deceased was it his intention to kill him,
and;

2. Whether the harm inflicted by the Accused was unlawful.

[27] Crown Counsel submits that the intention of the Accused to kill the Deceased could be inferred from the weapon he used and the manner in which it was used. She further submits that the Accused admitted that he fired a shot toward Maleek, the Deceased. She contends that this is sufficient evidence to prove that when the Accused fired a shot at the Deceased he intended to kill him.

[28] On the question of whether the harm inflicted was unlawful, Crown Counsel addressed the Court on the provisions of section 36 of the *Criminal Code* which deals with self-defense. She also addressed the Court on the principles of self-defense as enunciated by the Privy Council on *Norman Shaw v R* and *Solomon Beckford v R*.

[29] Crown Counsel relied on the evidence of the witness Tavie Bennett whom she considers to be a credible witness. This witness places the Accused in the yard of Kendra Tech and the Deceased on the roadway at the time of the shooting. Crown Counsel goes on to submit that the evidence of Dr. Ken supports the positioning of the parties at the time of the shooting because the doctor opines that the shots entered the body of the Deceased from the left to the right.

[30] Ms. Mohammed submits that in the circumstances, the Accused could not have honestly believed that he was in imminent danger so as to fear for his life in the absence of any action performed by the Deceased against him. She further contends that if the court found that he honestly believed it was necessary to use force to defend himself then the force used was excessive.

[31] Crown Counsel, went on to submit that the partial defense of provocation does not arise because the evidence of the witness Tavia Bennett is that the Deceased neither spoke to the Accused nor did anything to him prior to the shooting. She contends that Bennett stated that the Deceased who had a knife in his right hand held the same close to his body on his right side and continued walking along the road. She closes by submitting that the defense of diminished responsibility was not raised by the Defence.

The Defence

[32] Mr. Hamilton for the Accused submitted that on that fateful day the Deceased was the aggressor hence it could be inferred that his client was under a threat from the Deceased based on his demeanour. He went on to contend that the Accused had no intention to kill the Deceased and invited the court to disabuse its mind from the offense of murder and consider if the Accused committed the offense of manslaughter.

[33] Defense Counsel submits that the Accused was attacked by the Deceased and acted spontaneously to defend himself by firing one single shot to disarm the Deceased who was armed with a knife. He closed by submitting that in all circumstances of this case the Court should find that his client acted in self-defense and a verdict of not guilty should be returned.

Analysis and verdict

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 Accused did shoot the Deceased which resulted in his death. However, he contends that he did so in self-defense. Thus, the issue to be determined from the outset is whether the Accused acted in lawful self-defense when he shot the Deceased on that fateful day.

Analysis

Self-defense

[38] The thrust of the Accused's defense is that he did shoot the Deceased but that he did so in self-defense.

[39] In the decision of the *Privy Council in Norman Shaw v Regina* the Board in an examination of the application of the defense of self-defense stated thus in paragraphs 14 and 19 to wit:

“...14. It was common ground between the parties to this appeal that, as pithily expressed in Smith and Hogan, Criminal Law, 9th Edition (1999) at page 253:

“The law allows such force to be used as is reasonable in the circumstances as the Accused believed them to be, whether reasonably or not. For example, if D believed that he was being attacked with a deadly weapon and he used only such

force as was reasonable to repel such an attack, he has a Defence to any charge of an offense arising out of his use of that force. It is immaterial that he was mistaken and unreasonably mistaken.”

“19. In the opinion of the Board, it was necessary for the trial judge to pose two essential questions (however expressed) for the jury’s consideration:

(1) Did the appellant honestly believe or may he honestly have believed that it was necessary to defend himself?

(2) If so, and taking the circumstances and the danger as the appellant honestly believed them to be, was the amount of force which he used reasonable?

[40] I will consider and apply the directions approved by the Board in *Norman Shaw v Regina* aforesaid. In so doing, I will direct myself in the following manner:

[41] First of all, if the Court believes and accepts the evidence of the Accused and finds it to be reliable and if I believe that he was or may have been acting in lawful self-defense I must acquit him. The Crown must prove his

guilt and it is for the prosecution to prove that he was not acting in lawful self-defense, not for the Accused to prove that he was.

[42] The Court must consider the matter of self-defense in light of the situation that the Accused honestly believed he faced. The Court must also consider if the Accused honestly believed it was necessary to use force to defend himself against the attacks or perceived attacks from the Deceased which in law he is entitled to do. I must also bear in mind that the Accused is under no duty to retreat and await the attack before taking defensive action.

[43] If after having considered the evidence I find that the Accused did or might have honestly believed that it was necessary to use force to protect himself from the attacks by the Deceased then I must go on to consider whether the type and amount of force were reasonable.

[44] I must also consider that a person who is under attack would react on the spur of the moment and cannot be expected to work out exactly how much force he needs to use to defend himself. On the other hand, if he goes over the top and uses force out of all proportion to the attack or more force than is really necessary to defend himself then the force used would not be reasonable.

[45] If the prosecution's case satisfies me to the extent that I feel sure that the force used by the Accused was unreasonable then he cannot be said to be acting in lawful self-defense and I must reject the defense of self-defense. If, however, I find that the force used was or may have been reasonable then I must acquit him.

[46] Before I come to make a finding on this defense, I must also consider the provisions of section 36(6) of the *Criminal Code* which provides thus:

(6) No force used in an unlawful fight can be justified under any provision of this Code, and every fight is an unlawful fight in which a person engages, or which he maintains, otherwise than solely in pursuance of some of the matters of justification specified in this Title."

[47] Having considered this provision in *Norman Shaw v Regina* aforesaid the Board opined thus in paragraph 11:

"11. The provision is clearly intended to deny a defendant the right to rely on self-defense if the force used by the defendant was used in the course of an unlawful fight. Thus, if criminal individuals or gangs inflict violence on each other in the course of the unlawful conflict between them, or an innocent victim inflicts or threatens violence against a criminal

aggressor, it is not open to either party in the first example or the criminal aggressor in the second to justify his conduct as self-defense. If the prosecutor seeks to rely on subsection (6) it is first necessary for the trial judge to consider whether there is any evidence fit for the jury's consideration that the act charged against the defendant occurred in the course of an unlawful fight. If the judge finds that there is no such evidence, the matter will not be left to the jury. If the judge finds that there is some evidence fit for the jury's consideration, he should in the course of his summing-up (a) identify such evidence and invite the jury to consider it; (b) tell the jury what is meant by an unlawful fight; (c) invite the jury to decide whether, on what they find to be the facts, the act charged against the defendant occurred in the course of an unlawful fight as defined by the judge; and (d) direct the jury that the defendant may not justify the act charged against him as self-defense if the jury concludes that it was done in an unlawful fight."

[48] The evidence upon which the defense of self-defense is premised comes from the Accused in his statement to the police aforesaid and his unsworn

statement from the dock. I have also taken into consideration the evidence of the Crown's witnesses including but not limited to, Tavie Bennett, Kendra Pech, and PC Derin Joe Mariano.

[49] The Accused in his statement under caution said that there was bad blood between himself and the Accused and others. He complained of being tantalized and threatened by them for some period of time. He also complained about being stabbed in Belmopan about a month before this incident. He stated that on the night of the 9th of July, 2016, "... *Maleek ran into me with a knife. While he was coming after me I lift up my bicycle in front of me and as he was getting closer with the knife I threw my money and my bike at him and ran.*" He went on to state, "**during the day I was at my aunt's yard up until the evening, and as I was about to leave right away that feeling came over me and I got really afraid right away I saw he pulled out a knife and walked close towards my aunty yard and right there and then I drew my weapon and acted in self Defence and out of fear.**"

[50] In his unsworn statement, the Accused gives a different version of certain events. First of all, he alleges that it was the Deceased who stabbed him in Belmopan, and secondly, as regards the facts leading up to the shooting he said thus: "**I was in the yard of my Aunt Kendra Pech house talking with Tavie Bennett when I saw Maleek coming towards me. I never left the**"

yard. When he saw me he pulled out a knife out of his waist in a thrusting and aggressive way. Immediately I feared for my life as I was stabbed by this individual before. Out of fright I instinctively to protect my life pulled out a homemade firearm out of my pocket and in fear of my life fired one shot towards Maleek.”

[51] It is clear that the Accused gives two different versions of the events leading up to the shooting of the Deceased in his caution statement and unsworn statement aforesaid.

[52] Tavie Bennett in her testimony aforesaid stated thus: “.....She saw Maleek and when the Accused saw him he got up. When he got up Maleek was not very far away from them. He walked towards Maleek who pulled out a small knife and held it close to the right side of his body whilst he continued walking along the road. The Accused then ran under Kendra’s house and pulled out a pole from an old sofa under the house where he was lying down before. The Accused then ran back towards the Deceased who was still on the street about 20 feet away and raised the iron pole with his left hand and gave it a hard knock with his right hand and it went off like a gunshot. The Deceased was hit and he dropped to the ground crying for help and appeared to be in pain. The Accused was trying to put something in the pipe

and she yelled at him to stop. Kendra Pech came out of her home and also yelled at the Accused who then ran away through the back of the yard.”

[53] I believe and accept the evidence of Tavia Bennett. I have observed her demeanor during her evidence-in-chief and when she answered questions put to her in cross-examination. I also noted that there are no inconsistencies in her testimony. Moreover, I consider her to be an independent witness who testified that she spoke regularly with the Accused and on that day even enquired about his stab wound and advised him against doing anything foolish because his wound was still healing.

[54] Thus, I believe and accept her version of the events leading up to the shooting of the Deceased that day. Therefore, I do not believe that the Deceased approached the Accused in a thrusting and aggressive way but that he continued walking along the road with the knife held close to the right side of his body.

[55] Notwithstanding this, however, I cannot disabuse my mind of the incident which the Accused complained of in his caution statement which occurred on the night before between him and the Deceased who drew a knife on him and he in turn threw his bicycle at him. Thus, I find that incident was sufficiently fresh in his mind to cause the Accused to hold the honest belief that there was a likelihood of danger to himself, hence, there was a need to

defend himself. Though I do not believe that the Accused approached him as he alleges, I am guided by the *dictum* of Lord Griffiths in *Beckford v R (1988) AC 130* on page 144 to wit “*a man about to be attacked does not have to wait for his assailant to strike the first blow or fire the first shot, circumstances may justify a preemptive strike.*”

[56] I will now consider whether the force used was reasonable in the circumstances. The evidence which I believe and accept is that at or around the time of the shooting the Deceased was some 20 feet away from the Accused and walking on the road. At that time, the Accused was in his aunt’s yard from wherefrom he retrieved the homemade shotgun. The Deceased was still holding the knife close to his right side and was as stated aforesaid about 20 feet away from the Accused. He was walking along the road and did not say anything to the Accused that day. I believe the evidence of Tavie Bennett in this regard aforesaid.

[57] While I accept that the Accused honestly believed that it was necessary to use force to defend himself that day, I find first of all that the use of a shotgun, and secondly, the manner in which it was used having regard to the circumstances of the case was unreasonable and the force used was excessive.

[58] Accordingly, in the circumstances, the Crown has satisfied me to the extent that I feel sure that when the Accused shot the Deceased he was not acting in lawful self-defense.

Intention

[59] I now turn to the question of intent. Did the Accused intend to kill the Deceased when he shot him on July 10th, 2016?

[60] 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.”

- [61] What is or is not a person's intention is not easily ascertainable unless, of course, they disclose their intentions to you.
- [62] The prosecution must prove that the Accused had the required intention, that is, to kill the Deceased at the time of the alleged offense. They intend to do so by asking the court to draw certain inferences from the evidence in this case.
- [63] 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 inflicted a fatal gunshot wound to the Deceased. However, while those facts may be relevant to the question of the Accused's intent, I would have to take it into account when considering all the evidence and all the inferences to be drawn from that evidence.
- [64] So when considering whether the prosecution has proved to my satisfaction that the defendant 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.
- [65] The Crown is asking me to infer that the Accused used the homemade firearm with the sole intention of killing the Deceased. Though in the ordinary course of events the making of a crude but effective device capable of firing a 12-gauge shotgun cartridge and firing the same at a person

presents very powerful grounds to infer that the person who does so clearly intends to cause that person's death.

[66] However, the law requires me to also examine and consider all the evidence in this case. The *raison d'être* for this whole unfortunate incident is the tantalizing and other forms of bullying to which the Accused was exposed from the Deceased and others in his company. The evidence discloses that on one occasion the Accused armed himself with a machete and approached his tormentors intending to cause a cessation of these activities. That was not successful and he ended up with a broken tooth from a pint bottle thrown at him. Thus, the machete did not have the desired effect of either scaring his tormentors or earning their respect.

[67] I find that the powerful inference could be drawn that the Accused created a homemade shotgun being a more potent weapon than a machete believing that the presence of that weapon would cause the Deceased and others to leave him alone. Accordingly, in the circumstances, the law requires that I draw and apply the inference more favorable to the Accused. Thus, having done so I find that the Crown has not satisfied me to the extent that I feel sure that when the Accused fired the shotgun at the Deceased it was because he intended to kill him.

Verdict

[68] The Crown has satisfied me to the extent that I feel sure that the Deceased died on the 10th day of July 2016, as a result of a gunshot injury inflicted on him by the Accused. The Crown has also satisfied me to the extent that I feel sure that the Accused was not acting in lawful self-defense when he shot the Deceased. The Crown has, however, not satisfied me to the extent that I feel sure that when the Accused shot the Deceased he did so intending to kill him.

[69] Thus, pursuant to the provisions of section 126(1) of the *Indictable Procedure Act*, I find the Accused not guilty of murder but guilty of manslaughter contrary to the provisions of *section 116(1) of the Criminal Code*.

Dated this **25th day of March 2021**.

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