

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

**CENTRAL DISTRICT**

**Indictment No.** C52 of 2018

**THE QUEEN**

**v.**

**SHEMAR SANTOS**

**BEFORE:** Honourable Justice Mr. Francis M. Cumberbatch

**APPEARANCES:** Mr. Cecil Ramirez S.C.C. along with Ms. Natasha Mohamed – Counsel for the Crown  
Mr. Ronell Gonzalez – Counsel for the Accused

**TRIAL DATES:** 20 February 2020; 15, 16, 22, 23, 25, 26, 29 and 30 June, 2020; 2, 6, 16, 23, July 2020; 13 August 2020; 24 September 2020; 24 March 2021.

**DECISION**

[1] The Accused was indicted by the Director of Public Prosecutions for the offence of murder contrary to sections 117 and 106(1) of the *Criminal Code* for that he on the 28<sup>th</sup> day of February, 2017, at Teakettle Village in the Cayo District murdered Ernesto Wiltshire Jnr. ('the Deceased'). 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 65(a) of the *Indictable Procedure Act*.

## **Summary of the Facts**

- [2] I will proceed to give a brief synopsis of the evidence at this trial. However, in arriving at my verdict I will do so having considered and examined all the evidence adduced during this trial.
- [3] Evelyn Woodye is the mother of the Deceased. She last saw him on Tuesday 28<sup>th</sup> of February, 2017, at her home. However, she had not seen him again on the following Wednesday, and Thursday and as a result on Friday 3<sup>rd</sup> day of March, 2017, she reported him missing. A search was conducted in Teakettle Village and his partially decomposed body was discovered on a hill in the village. The body was identified by his mother aforesaid and his brother, Yasir Jones.
- [4] The scene was visited and processed by Wenceslado Teul a Crime Scene Technician who discovered a silver kitchen knife without a handle near the feet of the body of the Deceased. Photographs were taken of the scene including the body of the Deceased and the kitchen knife.
- [5] Later that day, Dr. Loyden Ken who was deemed an expert as a general practitioner with a specialty in anatomical pathology conducted an on-site post mortem examination on the body of the Deceased. His findings included multiple chop wounds five in number to the head and neck regions of the body.

- [6] The doctor opined that the five wounds were inflicted by a heavy object with sharp edges. He found that the injuries were consistent with the use of a machete. He further opined that all of the aforesaid injuries could have been caused by the same instrument and that severe force was used to inflict the injuries seen and examined by him. Dr. Ken stated that in his opinion the cause of death is consistent with multiple cranioencephalic traumatic injuries with external exsanguination due to multiple chop wounds to the head and neck regions. The post mortem interval is within 72 hours.
- [7] The sole eyewitness to this alleged offence was one Darrel Montero. This witness testified that on the 28<sup>th</sup> of February, 2017, he was in the company of the Deceased, the Accused, one Jermaine Cruz and Raheem Rhaburn. They were all together and at one point in time went in search of coconuts. After having enjoyed the coconuts they then set out in search of a watermelon farm. They reached the top of a hill at which time the Accused had possession of a machete and the Deceased had possession of a shine knife without a handle which was approximately ten inches long.
- [8] The witness went on to state that the Accused and Deceased had an exchange of words during which they called each other names. He saw the Deceased who had the shine knife move towards the Accused and the Accused fired a chop at him with the machete which caught him at the back

of his head. The Deceased fell to the ground and did not move. When that happened he walked away and left the scene.

[9] Under cross-examination he, Darrell Montero, admitted giving two conflicting statements to the police about the whereabouts of the Deceased that day. In his first statement he, Darrell Montero, admitted telling the police that the Deceased asked him to accompany him to the bus stop in Teakettle Village and told him that he had problems with someone. He also, Darrell Montero, admitted telling the police that a car picked up the Deceased from the bus stop and that the vehicle was heavily tinted. He further, Darrell Montero, admitted telling the police that the Deceased told him he had something to go and do but that was not true. He stated that what he told the police in his first statement about the Deceased joining a car at the bus stop was not true. He, Darrell Montero, admitted that he lied to the police because the Accused threatened him to give that statement.

[10] This witness stated that he had a reason to give a second statement to the police. That reason he said was that the Accused wanted him to take the blame for what happened. He said he was taken to a police station in Belize City with his mother where he gave the second statement. A Justice of the Peace was also present when he gave that second statement.

- [11] After the statement was recorded he was taken back to Belmopan where he was released from custody. He denied that he was told by the police he would be released after he gave the second statement. He also denied that the police told him he should give another statement and that other persons were saying that he committed the murder.
- [12] Dorita Montero, the mother of Darrel Montero testified that she was present when her son gave both statements to the police. She stated that no one forced her son to give the statement in Belize City, no one promised him anything to give a statement and no one threatened him to do so.
- [13] Nancy Wallace and her sister Sheila Wallace testified that on the 28<sup>th</sup> of February, 2017, they were at Sheila's home in Teakettle Village when around 1:30 to 2:30 p.m., they saw four boys pass the residence heading towards the village. They knew the boys as the Accused Shemar Santos, Darrel Montero, Raheem Rhaburn and the Deceased. The boys greeted them and they replied. Sheila Wallace testified that when she saw the boys she did not observe anything unusual about them as they were all talking and laughing and seemed to be friendly.
- [14] At the close of the Crown's case Defence Counsel, Mr. Gonzalez made no case submissions that the Crown has not established a case against his client

for the offence for which he has been indicted and as such he should not be called upon to provide a Defence and be acquitted at this stage.

[15] After hearing submissions from both sides I gave a written ruling in which I stated my reasons for overruling those submissions and called upon the Accused to lead a Defence to the charge of murder.

[16] The Accused in an unsworn statement from the dock stated thus:

[17] My name is Shemar Santos and my Date of Birth is 20<sup>th</sup> of January, 1999. I am 21 years old. I used to work with my father doing construction.

[18] On the 28<sup>th</sup> of February, 2017, me, Darrel Montero, Raheem Rhaburn, Jermaine Cruz, and Ernesto Wiltshire we all decided to pick coconuts on top of a hill which is out of the village. We took about 15 minutes to reach the coconut farm. When we reached the farm all of us chop our own coconut. We took about 20 minutes up at the farm and we all came back down and we all walked back to the village. Jermaine Cruz told us he was going home which is on the main road. The four of us continued walking in the village and we pass Ms. Sheila and Doreen residence. Ms. Sheila was under the verandah. The four of us walked in the village and Ernesto got a call and we all stop in front of Ms. Chester house. Then he told us he was going to the bus stop to deal with a business and asked Darrell Montero to go with him to the bus stop because he has a problem with a Spanish man named Roberto

so I told him take care. Me and Raheem walked towards my house.

Raheem got his bicycle and rode home.

[19] Three days after on 3<sup>rd</sup> of March, 2017, all of us was picked up by the police and detained for murder. While we were in the cell block I saw the police came for Darrel Montero three times out of the cell block. This is all I have to say.

[20] The Accused called no witnesses and that was his case.

### **Submissions**

[21] The Court received both oral and written submissions from counsel on both sides. Crown Counsel submitted that the Court should accept the testimony of Darrell Montero notwithstanding the fact that he gave conflicting statements to the police when in custody for this offence. The Crown submitted evidence which they contend could be applied by the Court as corroboration of Montero's evidence.

[22] The Crown urged the Court to find that the Accused did not act in lawful self-Defence when he allegedly inflicted chop wounds to the Deceased and that he was not provoked when he did so. Thus, the thrust of the Crown's case is that the Accused be found guilty as indicted.

[23] The case for the Defence is that the Accused was not the person who inflicted the lethal injuries to the body of the Deceased. Indeed, the Defence

is submitting that the evidence of Darrell Montero is untrue, unreliable and unsupported by corroboration. Hence, the Court should reject this impugned evidence and acquit the Accused.

[24] Defence Counsel goes on to submit in the alternative that if the Court accepts the evidence of Darrell Montero then the Court should find his client acted in lawful self-defence when he chopped the Deceased. Accordingly, his client should be acquitted for the offence of murder.

### **Analysis and Verdict**

[25] The Crown's case is that the Accused was together with the Deceased, Darrell Montero, Jermaine Cruz, and Raheem Rhaburn. Whilst on top of a hill an oral altercation took place between the Deceased and the Accused during which time they called each other names. The Deceased who was in possession of a kitchen knife without a handle approached the Accused with the knife in his hand and the Accused who was seized of a machete swung same at the back of his neck. The Deceased after receiving the chop fell to the ground.

[26] The Defence case is first of all that the Accused never had an altercation with the Deceased that day as alleged or at all. Indeed, in his unsworn statement the Accused said that after they left the coconut farm the Deceased left to go to the bus stop and he was accompanied by Darrell Montero.



Thus, when he last saw the Deceased he was alive and well. The Defence is contending that the evidence of Darrell Montero is not credible and should not be accepted by the Court. They further contend that this witness gave two conflicting statements to the police, the first in which he stated that after they left the hill the Deceased went to a bus stop and joined a tinted car and left. He gave a second statement in which he implicated the Accused as the person who inflicted a chop to the back of the head of the Deceased. After he gave that statement he was released by the police and the Accused was charged with murder. The Defence urges the Court to find that there was no corroboration of Darrell Montero's evidence and moreover he Darrell Montero admitted that he lied to the police hence the Court should reject his evidence and acquit the Accused.

[27] The Defence is also submitting in the alternative that in the event that the Court finds that there was an altercation between the Deceased and Accused during which the Accused inflicted injuries on him with a machete then he was acting in lawful self-defence. In the circumstances, the Accused is entitled to a complete acquittal.

### **The Law**

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

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

[29] 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.*”

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

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

### **Analysis**

[31] The Court is satisfied to the extent that it feels sure that Ernesto Wiltshire is dead. I accept the evidence of the brother of the Deceased who said he identified his body on the 3<sup>rd</sup> of March, 2017, on a hill at Teakettle Village. I also accept the testimony of Dr. Loyden Ken who testified that he performed an onsite post mortem examination on the decomposed body of

the Deceased and found the cause of death to be consistent with multiple cranioencephalic traumatic injuries with external exsanguination due to multiple chop wounds to the head and neck regions. The post mortem interval is within 72 hours. Thus, I find that the Deceased died from harm.

[32] To prove the other ingredients of the offence of murder the Crown's case rests on the testimony of Darrell Montero. This witness in his evidence-in-chief stated that he was present along with one Jermaine Cruz and Raheem Rhaburn on the top of a hill in Teakettle Village when he saw the Accused chop the Deceased on the back of his head with a machete. However, under cross-examination he Darrell Montero admitted giving two conflicting statements to the police about what occurred on that fateful day. He also Darrell Montero admitted that he lied to the police when he gave them the first statement and that after he gave the second statement he was brought back to Belmopan police station where he was released.

[33] The Crown's witness Darrell Montero admitted lying to the police when he gave his first statement and alleged that he was threatened by the Accused to do so. In his evidence, he Darrell Montero, admitted telling the police that he accompanied the Deceased to the bus stop where the Deceased joined a heavily tinted car and left. That evidence he maintains was not true and he lied to the police as aforesaid.

- [34] He further stated that when he learnt that the Accused wanted him to take the blame for the death of the Deceased he decided to give the police another statement.
- [35] The evidence from Dorita Montero, the mother of Darrell Montero discloses that Darrell Montero was around 13 years old in February 2017. The Accused in his unsworn statement said his date of birth is the 20<sup>th</sup> of January, 1999. Thus, he was approximately five years older than Darrell Montero in February 2017. I do not consider it to be unusual for a 13-year-old boy to be afraid of and succumb to threats from someone five years older than him more so if he had indeed seen him inflict a chop wound to the Deceased.
- [36] Darrell Montero went on to state that after he learnt that he was to be blamed for the death of the Deceased he decided to give the police another statement. I consider this response to be a natural human reaction to the prospect of being wrongfully blamed for committing the offence of murder. However, before making a finding on the truth and reliability of this evidence I must consider the law as it applies to corroboration.
- [37] Section 92 of the *Evidence Act* provides for the circumstances in which corroboration is required at a trial on indictment. Subsection (3) provides thus...

*“(3) Where at a trial on indictment,*

*(a) a person is prosecuted for rape, attempted rape, carnal knowledge or any other sexual offence, and the only evidence for the prosecution is that of the person upon whom the offence is alleged to have been committed or attempted; or*

*(b) an alleged accomplice of the Accused gives evidence for the prosecution, the judge shall, where he considers it appropriate to do so, warn the jury of the special need for caution before acting on the evidence of such person and he shall also explain the reasons for the need for such caution.”*

[38] It is trite that the aforesaid provisions do not state that corroboration is specifically required in the circumstances of this case. Defence Counsel submitted, however, that the Court should deem the witness Darrell Montero an accomplice and as such pursuant to the provisions of section 92(3)(b) of the *Evidence Act* corroboration is required.

[39] I have considered this submission by Mr. Gonzalez and find that there is no evidence in the totality of evidence in this case that this witness was or may have been an accomplice to the killing of the Deceased. Indeed, counsel himself was unable to assist the Court to identify evidence in support of his submission that the witness Darrell Montero was an accomplice. Thus, I

will not apply the provisions of section 92 (3)(b) to the facts and circumstances herein.

[40] However, having regard to the age of the witness at the time when he gave his statements to the police coupled with the fact that he gave two conflicting statements and the fact that he, Darrell Montero, admitted that he lied to the police in one of those statements I find that I should warn myself of the special need for caution before acting on the evidence of Darrell Montero. It cannot be denied that there is a possibility that he lied to the police in both statements. Moreover, there is also the possibility that he because of his youthful age he was persuaded to implicate the Accused by making up the story against him.

[41] I must also take into consideration the unsworn statement of the Accused which suggested that he was not the person who killed the Deceased and when he last saw him he was alive and well and was on his way to the bus stop in company with Darrell Montero. Thus, I will exercise due care and caution in considering the evidence of the witness before making a determination on his truthfulness and reliability.

[42] Crown Counsel has submitted that there is evidence which amounts to corroboration to *wit*:

1. The evidence of Dr. Loyden Ken who performed an on-site post mortem examination on the body of the Deceased and found:
  - a. Five chop wounds to the right hand side of the head and neck of the Deceased;
  - b. That the injuries were consistent with use of a machete;
  - c. That the post mortem interval was approximately 72 hours;
  - d. Darrell Montero described the area where the chopping occurred which is consistent with where the body of the Deceased was found;
  - e. Dr. Ken opined that the Deceased was killed at the site where the body was found because of the accumulation of blood at the scene.

[43] I accept the submissions of Crown Counsel and to that I will add the presence of the knife without a handle which was found and photographed by the Crime Scene Technician, Mr. Teul. The witness Darrell Montero did testify that the Deceased had in his possession at the time of the incident a shiny knife without a handle about ten inches long. This knife appears in one of the photographs tendered into evidence and is at the feet of the Deceased. I will also consider the fact of the Deceased found face down at the scene is also consistent with Darrell Montero's evidence that after

receiving the blow from the Accused the Deceased fell face down and he did not see him move after he fell.

[44] I have carefully considered the evidence of Darrell Montero and the evidence which I find to be corroboration. I will also take into consideration the discrepancy in the evidence of Darrell Montero and that of, Nancy and Sheila Wallace, who testified that they saw four and not five boys passing their residence that afternoon of the 28<sup>th</sup> of February, 2017.

[45] I carefully observed the demeanor of Darrell Montero during his testimony both in his evidence-in-chief and his cross-examination and took into account the manner in which he answered questions especially under cross-examination. I find that the specific details given by Darrell Montero as regards the location of the incident, the position of the Deceased, and the presence of the knife are all matters which have been corroborated by the evidence of Dr. Ken and Crime Scene Technician Teul both of whom I find to be independent and reliable witnesses whose evidence I believe and accept to be true. Thus, I find that his personal knowledge of intimate details of the crime scene is compelling evidence that he was present and observed the killing of the Deceased. I find in the circumstances, that there is no evidence that someone other than the Accused was at the scene and



killed the Deceased nor was it suggested that someone else was present at the scene and inflicted the fatal injuries.

[46] I do not consider the discrepancy in the evidence of the Wallace sisters and that of Darrell Montero to be material to the extent that I should reject the evidence of Darrell Montero. What I find to be material, however, is that they both saw Darrell Montero, the Accused, and the Deceased all together that afternoon going into the village.

[47] Accordingly, I believe and accept the evidence of Darrell Montero when he said he was present and saw and heard the altercation between the Accused and the Deceased which developed from name calling to the Deceased moving towards the Accused whilst in possession of a shiny knife and the Accused chopping him with a machete. In so doing, I reject the defence of the Accused as stated in his unsworn statement.

[48] Though the witness stated he only saw one chop the evidence is that he turned and walked away after the Deceased fell and the Accused met up with him some time later which he estimated to be around five minutes later. There is no evidence of anyone else being present at the scene armed with a sharp heavy instrument like a machete who could have inflicted the other four chop wounds. Thus, in the circumstances I will infer that after the

witness walked away the Accused inflicted another four chop wounds to the body of the Deceased as described by Dr. Ken.

## **Intention**

[49] The Court must now determine whether when the Accused inflicted harm to the Deceased he intended to kill him when he did so. 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 offence,*

*a. shall not be bound in law to infer that any question specified in the first column of the Table below is to be answered in the affirmative by reason only of the existence of the factor specified in the second column as appropriate to that question; but*

*b. shall treat that factor as relevant to that question, and decide the question by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.”*

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

[51] The Prosecution must prove that the Accused had the required intention, that is, to kill the Deceased at the time of the alleged offence. They intend to do

so by asking the Court to draw certain inferences from the evidence in this case.

[52] 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 fatal chop wounds to the Deceased.

[53] So, when considering whether the Prosecution have proved to my satisfaction that the Accused had the necessary intention I should draw such conclusions as I think right and inferences as appear to be proper in the circumstances having considered all the evidence in this case.

[54] I have considered the Crown's case in its entirety more particularly the evidence of Darrell Montero and Dr. Ken. Montero stated that the Accused chopped the Deceased with a machete at the back of his head and he fell to the ground and did not move. Dr. Ken testified that there were five chop wounds to the Deceased all of which were found in the head and neck regions. He found the injuries were inflicted with the use of an instrument such as a machete. He described the amount of force used to inflict the injuries seen as severe.

[55] Montero testified that after the Accused inflicted the chop to the Deceased he walked away. About five minutes later the Accused joined him on the road. I infer from the evidence that the Accused having chopped the Deceased in

the presence of Montero and others inflicted four more wounds with the machete using sever force and left the Deceased in the bush to die. Thus, I find on the totality of the evidence that the Accused intended to kill the Deceased when he chopped him and left him on the hill in Teakettle Village.

### **Self-defence**

[56] The evidence of Darrell Montero discloses that the Deceased and the Accused were involved in name calling and that the Deceased whilst armed with a knife went forward to the Accused who chopped him with a machete with which he was armed. I find in the circumstances that the defence of self-defence arises though it was not suggested to the witness by Defence Counsel during cross-examination nor was it mentioned by the Accused in his unsworn statement. Indeed, the thrust of the case for the Defence is that the Accused was not the person who chopped and killed the Deceased. The issue of self-defence was raised in the alternative.

[57] Section 36(4) of the *Criminal Code* provides so far as is relevant to this case thus:

*“(4) For the prevention of or for the defence of himself or of another person against any of the following crimes, a person may justify the use of necessary force or harm, extending in case of extreme necessity even to killing, namely –*

(c) *Murder*

(k) *Dangerous or grievous harm.*”

[58] In the decision of the Privy Council in *Norman Shaw v Regina* the Board in an examination of the application of the defence of self-defence, stated thus at 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 offence 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?*

[59] 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:

[60] First of all, if the Court believes and accepts the submission of Defence Counsel and if I believe that he was or may have been acting in lawful self-defence 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-defence, not for the Accused to prove that he was.

[61] The Court must consider the matter of self-defence in light of the situation which 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

[62] 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 was reasonable.

[63] 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 would not be reasonable.

[64] The Crown's case is that the Accused and Deceased became involved in an argument during which they called each other names and at the time of this oral altercation the Deceased had in his possession a knife. At some time during the altercation he moved towards the Accused with the knife in his hand and the Accused dealt him a blow with the machete at the back of his head.

[65] I find that in the circumstances the Crown has not satisfied me to the extent that I feel sure that the Accused did not at the time when the Deceased approached him with the knife have a reasonable apprehension of danger to himself which necessitated him taking action to defend himself against the attack on him by the Deceased armed with a knife at that time. Accordingly, I find that the Accused honestly believed that it was necessary to defend himself against the attack of the Deceased.

[66] I now turn to consider whether the force used by the Accused to defend himself taking into account the circumstances and danger as he honestly believed them to be was reasonable. I believe and accept the evidence of Darrell Montero when he stated that the Accused dealt the Deceased a blow with the machete which caused him to fall face down to the ground and did not move. I also believe and accept the evidence of the Crime Scene Technician Teul that lying on the ground next to the feet of the Deceased was a kitchen knife without a handle which he photographed and tendered into evidence. I also believe and accept the evidence of Dr. Ken that he found five chop wounds to the face and neck of the body of the Deceased all of which were consistent with injuries inflicted with a sharp heavy object such as a machete and all of which were inflicted with severe force.

[67] I find that after the first blow the Deceased fell to the ground hence all danger to the Accused dissipated at that stage. However, I find that he went on to deliver a total of four more chops to the body of the Deceased and left him unattended. Thus in the circumstances I find that the force used by the Accused to defend himself was not reasonable. Accordingly, the Crown has satisfied me to the extent that I feel sure that when the Accused chopped the Deceased causing his death he was not acting in lawful self Defence.



## **Provocation**

[68] Section 117 of the *Criminal Code* under which the Accused is indicted provides thus:

*“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.”*

[69] Section 119 so far as is relevant to the case at bar provides:

*“119. A person who intentionally causes the death of another person by unlawful harm shall be deemed to be guilty only of manslaughter, and not of murder, if there is such evidence as raises a reasonable doubt as to whether,*

*(a) he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in section 120 of this Act; or*

*(b) he was justified in causing some harm to the other person, and that in causing harm in excess of the harm which he was justified in causing he acted from such terror of immediate death or grievous*

*harm as in fact deprived him, for the time being of the power of self-control.”*

[70] Section 120 (a) and (b) of the ***Criminal Code*** defines what may amount to extreme provocation as is relevant to this matter;

*“120. The following matters may amount to extreme provocation to one person to cause the death of another person, namely,*

*(a) an unlawful assault or battery committed upon the Accused person by the other person, either in an unlawful fight or otherwise, which is of such a kind either in respect of its violence or by reason of words, gestures or other circumstances of insult or aggravation, as to be likely to deprive a person, being of ordinary character, and being in the circumstances in which the Accused person was, of the power of self-control;*

*(b) the assumption by the other person, at the commencement of an unlawful fight, of an attitude manifesting an intention of instantly attacking the Accused person with deadly or dangerous means or in a deadly manner.”*

[71] The evidence which I believe and accept to be true discloses that the Deceased and the Accused were involved in an oral altercation which involved calling each other names. It is a usual feature of local culture that

when two teenagers indulge in an exchange of name calling the names called are not those which appear on the birth registers of each of them. Far from it as the names are usually degrading, obscene and insulting and cannot be categorized as terms of endearment. The evidence further reveals that the name calling morphed into an attack by the Deceased on the Accused whilst he the Deceased was armed with a kitchen knife approximately 10 inches long.

[72] I have considered the provisions of section 120 (a) & (b) of the *Criminal Code* aforesaid and find its provisions relevant to the circumstances of this case as hereinbefore stated. The Crown must satisfy the Court to the extent that it feels sure that the Accused was not provoked when he struck the Deceased with the machete.

[73] Crown Counsel in her written submissions contends that:

*“the calling of names and exchange of words among friends do not amount to provocation that is so extreme that a reasonable man would have chopped his friend to his head with a machete using severe force not one but five times.”*

[74] It should be noted, however, that there is no evidence of the exact words used in the name calling between the Accused and the Deceased. Thus the Court is unable to find or to conclude that those words were harmless.

Moreover, the acts which may amount to extreme provocation herein are not confined to name calling but also the Deceased advancing to the Accused with a knife.

[75] I must take into consideration the age of the Accused at that time. He stated in his unsworn statement that his date of birth is the 20<sup>th</sup> of January, 1999. Thus though he was an adult he had just achieved adulthood and it is quite possible that his maturity was not fully developed. There is no evidence that his status in life was that of a fully mature person who ought not to lose his self-control in the manner in which he is alleged to have done. I have also taken into consideration the provisions of section 121 of the *Criminal Code* though it was not relied on or referred to by counsel for the Crown or the Defence. This section provides for when provocation shall not be Darrell Montero admitted to wit:

*“121. (1) Notwithstanding the existence of such evidence as is referred to in section 119 (a) of this Act, the crime of the Accused shall not be deemed to be thereby reduced to manslaughter if it appears, either from the evidence given on his behalf, or from evidence given on the part of the prosecution,*

*(a) that he was not in fact deprived of the power of self-control by the provocation;*

*(b) that he acted wholly or partly from a previous purpose to cause death or harm, or to engage in an unlawful fight whether or not he would have acted on that purpose at the time or in the manner in which he did act but for the provocation;*

*(c) that after the provocation was given, and before he did the act which caused the harm, such a time elapsed or such circumstances occurred that a person of ordinary character might have recovered his self-control; or*

*(d) that his act was, in respect either of the instrument or means used, or of the cruel or other manner in which it was used, greatly in excess of the measure in which a person of character would have been likely under the circumstances to be deprived of his self-control by the provocation.*

*(2) Where a person in the course of a fight uses any deadly or dangerous means against an adversary who has not used or commenced to use any deadly or dangerous means against him, if it appears that the Accused person purposed or prepared to use such means before he had received any such blow or hurt in the fight as might be a sufficient provocation to use means of that kind, he shall be presumed to have used the means from a previous purpose to cause*

*death, notwithstanding that before the actual use of the means he may have received any such blow or hurt in the fight as might amount to extreme provocation.”*

[76] Having considered the provisions of section 121 aforesaid in light of the facts and circumstances of this case I do not find any of the provisions therein applicable to the case at bar.

[77] Thus, I find that the Crown has not met its evidential burden to satisfy me to the extent that I feel sure that the Accused was not provoked to lose his self-control when he chopped the Deceased.

[78] In the premises, I find that the Accused is not guilty of murder but guilty of the lesser offence of manslaughter by virtue of extreme provocation.

Dated this **24<sup>th</sup> day of March, 2021.**

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Honourable Justice Mr. F M Cumberbatch  
Justice of the High Court of Belize  
Central Jurisdiction  
BELIZE