

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

**CENTRAL DISTRICT**

**Indictment No.** C67 of 2020

**THE QUEEN**

v.

**MR. AARON HYDE JNR.**

- Murder

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

**APPEARANCES** Mr. Cecil Ramirez, Snr. Crown Counsel along with Ms. Natasha Mohamed – Counsel for the Crown  
Mr. Arthur Saldivar – Counsel for the Accused

**TRIAL DATES** 14<sup>th</sup>, 15<sup>th</sup>, 20<sup>th</sup>, and 22<sup>nd</sup> June 2022; 5<sup>th</sup>, 25<sup>th</sup>, and 26<sup>th</sup> of July 2022; 13<sup>th</sup>, 20<sup>th</sup>, 22<sup>nd</sup>, 26<sup>th</sup>, and 28<sup>th</sup> of September 2022; 3<sup>rd</sup>, 5<sup>th</sup>, 12<sup>th</sup>, and 26<sup>th</sup> of October 2022; 2<sup>nd</sup> December 2022.

**DECISION**

{1} The Accused was indicted by the Director of Public Prosecutions for the offence of attempted murder for that he on the 12<sup>th</sup> of January 2019 at Roaring Creek Village in the Cayo District, he attempted to murder Jamil Reyes (the virtual complainant) contrary to the provisions of section 18(2) and 117 of the *Criminal Code*. To this indictment the Accused entered a plea of not guilty.

Hence, a judge alone trial was held pursuant to the provisions of section 65A of the *Indictable Procedure Act*.

### **The Facts**

- {2} I will for ease of reference summarize the evidence adduced by the Crown and the Defence in this case. However, in arriving at my verdict I will do so after having considered all of the evidence adduced by both the Crown and the Defence.
- {3} **JAMIL REYES** testified. He stated that on the 12<sup>th</sup> of January 2019 at about 2:00 p.m., he was heading towards the creek when he saw the Accused's girlfriend, his little brother, and his girlfriend's sister. His girl was one Michelle Gongora, his little brother was Troy Smith and his girlfriend's sister is Felicia Gongora. When he saw them, Troy turned back towards the creek and his brother's girlfriend and her sister turned back and followed him. They all turned back and were gone.
- {4} When he saw this he turned in a different direction and whilst walking he heard noise in the bushes so he stopped and looked around and saw some birds. When he spun around to the opposite side he saw the Accused and Kyle Roberts. The Accused asked him what is going on with the 9 mm he heard he has stashed.

{5} The witness said when the Accused told that to him he froze but at the same time the Accused told Kyle go and get him. Kyle Roberts ran into him with a knife with an orange handle and stabbed at him towards his neck. He ducked and the two of them began to struggle. During the struggle he managed to get over Kyle Roberts and tried to stand up. As he did so he heard and felt a gunshot. He got weak and fell to the ground. He heard the Accused whose voice he knows well tell Kyle to make sure he cut his throat and make sure he's dead. He heard crackling in the bush like running and when he opened his eyes he noticed they were not there so he got up.

{6} The virtual complainant said he struggled to a house and he was weak and started to vomit. A man came towards him with a machete. He told the man he got shot and the man tried to help him. He was eventually taken to the Belmopan Regional Hospital and was still conscious when he arrived there. That night he was transferred to the Karl Huesner Memorial Hospital where he was admitted as a patient and remained there for two weeks.

{7} This witness continued his testimony and stated that when he was attacked by Kyle he was about 80 feet from the creek and when he first saw the Accused and Kyle they were about 10 feet away. When, he and Kyle, were struggling the Accused was behind them about four to five feet away and no one else was present. He was able to see the Accused and Kyle for about two minutes

when he turned around and saw them. The Accused had a gun. The gun was a silver gun and nothing prevented him from seeing the Accused and it was daylight. He last saw the Accused at the bus stop in Roaring Creek Village about a month or two ago. He identified the Accused as Aaron Hyde Jnr. He said he never had a struggle with the Accused that day nor did he have a fight with him. He said when he saw the Accused with the firearm he had it pointed at him. At that time, the Accused had a white shirt wrapped around his arm to support the firearm. He was not wearing a shirt only a short pants.

{8} **UNDER CROSS-EXAMINATION** this witness said the Accused did ask him about the 9 mm that was stashed. He said they were friends and denied that on the 12<sup>th</sup> of January 2019 he and one Bush Crip and others went to the creek to ambush the Accused and Kyle Roberts there. He denied that was why even though he was seen by members of the Accused's family he did not turn back. He denied that he tried to shoot Kyle Roberts but his gun jammed and that Bush Crip fired a shot and ran off. He denied that after that he and Kyle had a struggle over his gun and that during that struggle the Accused intervened and held the hand in which he had the gun and it went off.

{9} The witness agreed that when he saw the Accused at the bus stop the two of them had a beef. He agreed that the Accused did not know he was going to the creek on the 12<sup>th</sup> of January 2019. He went on to say that the Accused

found out because his little brother, his girl, and her sister told the Accused that he was in the area. He denied selling a motorcycle to the Accused which had to be left at the police station because it was stolen. The witness agreed that he was going to the creek to meet family and friends but he did not ask about them when he was injured and received help. When he first saw the Accused he had a gun pointed at him and that Kyle Roberts attacked him with a knife. He agreed that he did not pay attention to the Accused with the gun but was fighting the man with the knife and that he was unarmed. He said it was either he stand and fight or run. He said the Accused did say to buss his throat open till he's dead. He denied that he had a firearm which discharged and fell and that it was picked up by the Accused and Kyle Roberts. He agreed that he was at the scene for a couple of minutes and when he opened his eyes no one was around.

{10} **SGT KAREEM FULLER** testified that on the 12<sup>th</sup> of January 2019 at the Major Crimes Office Belmopan he recorded a caution statement from the Accused in the presence of one Kent Fuller Justice of the Peace. There was no objection by the Defence and the statement was admitted into evidence.

{11} **W/CPL KRISTY AVILA** testified. She stated that on the 12<sup>th</sup> of January 2019 she received information of a shooting incident at Roaring Creek. She proceeded to the Western Regional Hospital where she met Jamil Reyes 15

years old with an apparent gunshot wound to the back of his head. She issued two medico-legal forms as the virtual complainant was about to be taken to the Karl Huesner Memorial Hospital. She together with Crime Scene Technician Montero proceeded to the Hattieville area to find the scene of the incident but that was fruitless. She then proceeded to Roaring Creek Village where she met the Accused. She told him of the report made against him, cautioned him and told him of his rights. He told her "I know I shoot he but I had to tek away he gun... we had a beef long time". She asked him if he could take her to where the firearm was and he escorted her to a bushy area of Roaring Creek Village and pointed to a black plastic bag in the bushes. She observed that Crime Scene Technician Montero opened the bag and saw a rusty looking firearm with a blue handle. She asked him if he had taken a shower and he said yes. She then asked him for the clothing he wore at the time of the incident. He took her to his residence where he handed over a blue ¾ pants and green Old Navy slippers near the front door. He agreed to give the police a caution statement and she asked CPL Kareem Fuller to record same. She later received the caution statement from him. Further investigations were carried out and the Accused was later formally arrested and charged.

{12} **UNDER CROSS-EXAMINATION** this witness said that when she encountered the Accused he cooperated with her. When she arrested him she did not check his antecedents and up to now she has not done so. She had Kyle Roberts in custody but did not get a statement from him as to what had occurred. She said it was clear that he had an altercation with the virtual complainant. All statements in the matter came to her. The Accused informed her that the firearm belonged to the virtual complainant. The caution statement taken from the Accused and what she was told by the virtual complainant was the extent of the investigation carried out in this matter. She went on to say after what the Accused said in his caution statement and Kyle Roberts said in his interview and the sworn statement of the virtual complainant she did not see the need to investigate the matter as self-defence. She said she had no information that other persons besides Kyle Roberts were present at the time of the incident.

{13} The witness said she does not recall the names Felicia Gongora, Troy Smith, or Michelle Gongora. Kyle Roberts was asked in the presence of his mother to give a statement but they both refused to do so.

{14} Re-examination was declined.

{15} **DR. ANDREAS VASQUEZ** testified. He was deemed an expert by the Court as a doctor of medicine in the field of neurosurgery. He said on the 12<sup>th</sup> of

January 2019 he dealt with the virtual complainant as a patient with a bullet in his head and he was unconscious. He could not perform surgery at the time because his head was swollen. The patient was transferred to the ICU and got better day by day until he was discharged on the 23<sup>rd</sup> of January 2019. Months afterwards they did the surgery to remove the bullet. He opined that the injury to the virtual complainant could cause death, epilepsy, brain damage, paralysis and loss of sight.

{16} There was no cross-examination.

{17} **BARRINGTON MONTERO** testified. He said in 2019 he was a Crime Scene Technician and on the 19<sup>th</sup> of January 2019 he visited an area in Roaring Creek and made his way through a bushy area leading to the riverside. The shrubbery appeared disturbed, trampled on and mashed down. He also notice near the creek what appeared to be vomit on the grass area. He took photos of his findings and made his way to Another World. There was a concrete fence and within the growth he found a black plastic bag containing a rusted silver and black pistol. He took photos of the pistol, cleared it, and packaged it. He later turned it over to Crime Scene Technician Thimbriel for transportation to the National Forensic Science Services.

{18} The witness stated that he was summoned again to a house at Roaring Creek where he collected a jeans pants and T-shirt which he packaged separately and



handed over to Crime Scene Technician Thimbriel. The photos taken at the scene were tendered into evidence. He placed the firearm in a firearm box and signed same. The firearm box and chain of custody form were tendered into evidence.

{19} **SHERILEE LINO** testified. She was deemed an expert as firearm analyst. She said she received a sealed white gun box from the National Forensic Science Services exhibit manager. The box contained a pistol slightly rusty grey in colour slide and barrel with a brown and black plastic frame which was determined to be an FN-Browning brand baby model 6.34/.25 caliber serial number 200693. The magazine had a capacity for 6 rounds. She test fired the firearm using 3 rounds and determined that the pistol and magazine were in good working condition and the pistol was capable of firing. After her analysis she replaced it in the gun box which she sealed, signed, and initialed. Evidence tamper tape was also placed on the gun box.

{20} **UNDER CROSS-EXAMINATION** this witness said the firearm was not kept in ideal conditions because it was rusty. The ammunition used for testing was kept by National Forensic Science Services. A firearm could jam in use but it's not likely. There is a greater likelihood of jamming where the firearm and ammunition are not kept properly. She does not recall if she received the

serial number on any documents from the police. She was able to read the serial number when she cleaned the firearm.

{21} That was the case for the prosecution.

### **The Defence**

{22} At the close of the Crown's case the Court gave the Accused his three choices and he chose to give sworn testimony.

{23} **AARON HYDE JNR. SWORN.** The Accused said that on the 12<sup>th</sup> of January 2019 he honestly believed that the virtual complainant was going to kill him. On that day he was at the river with his girlfriend, sister-in-law, his brother, and Kyle Roberts. On that day they were hanging out at the river and he had no gun, no knife, and no weapons on him. Kyle Richards had a small pocket knife with an orange handle which they used to peel oranges and fruits. In the evening when everybody had enough at the river the girls went through the bushes ahead of them. The girls yelled at him, and his brother ran back to him and Kyle Roberts, saying that the virtual complainant was in the bush with a gun waiting for him. He did not believe them so he continued exiting the bush and saw the virtual complainant jump out of the bushes less than 10 feet away from him and Kyle Richards pointing a gun at his face. He pulled the trigger and the gun snapped. He froze knowing it was a life and death situation. Then Kyle Roberts rushed in stabbing at the virtual complainant

with his pocket knife. He missed him and whilst the virtual complainant was fixing his gun he turned and ran and felt the virtual complainant would shoot him in his back. He reached up to him defending his life, grabbed him and they started to struggle. He was trying to take away the gun but the virtual complainant was holding on to it tightly. When they were struggling at that moment the gun went off fell from the virtual complainant's hands and dropped to the ground. The gun fell from his hands and he ran away. He picked up the gun and ran home and told his mother what happened. She told his father and called the police.

{24} The Accused continued that the virtual complainant had tried to kill him before at that very same creek where he was swimming and he shot him in the water and missed then he ran off. It was the year before and he told his mother who told him not to report it and cause problems with his family.

{25} The Accused continued that he heard the virtual complainant testify telling the Court a fabrication of lies saying that his life was threatened at a bus stop by him with a knife. He said that is not true and after the incident where the virtual complainant tried to kill him the first time he never confronted him to threaten his life or anything like that. He said he would never intentionally threaten or try to hurt the virtual complainant because he is not that type of person. He was attending the Belizean Baptist High School at that time. The

virtual complainant's gun was only in his possession after it fell out of the virtual complainant's hands and he ran. He did not know that the Virtual complainant was shot until after the incident. He does not have a criminal record and this is the first offence after he defended his life. Kyle Roberts and Troy Smith were present when the first incident occurred. Before this incident he and the virtual complainant were friends and he broke up the friendship because the virtual complainant and his family have personal issues against his family.

{26} **UNDER CXROSS-EXAMINATION** the Accused said it is correct that he does not have a criminal record. At the creek there was a struggle with him and the virtual complainant. At first there a struggle between Kyle Roberts and the virtual complainant. When he and the virtual complainant were struggling Kyle Roberts was right there. When the gun went off he was right there struggling with the virtual complainant. They were on the ground rolling around struggling with him holding the virtual complainant's hand behind his back when the gun went off. Half of him was on the ground and the other half of him was on top of the virtual complainant. At that time Kyle Roberts was on the ground and he was on the right side and Kyle was on the left side and the virtual complainant's hand was in the middle of his back. He, the Accused was trying to bend the virtual complainant's hand but he was holding the gun

very tightly. When the virtual complainant rolled over on him that was when the gun went off. When the gun went off he was holding the virtual complainant's hand rolling on the ground. When the Virtual complainant rolled over him Kyle Roberts was right beside him standing. He said he doesn't recall on what part of his body the virtual complainant said in his testimony he got shot. He recalls the doctor said it was dangerous harm. He recalls the virtual complainant said he was shot at the back of his head and the doctor said the bullet entered the back of his head. He said he didn't know the virtual complainant was shot after the gun went off. When he was holding the virtual complainant's hand the gun was in the virtual complainant's hand. He didn't have any gun. He denied that he and his brother attacked the virtual complainant and that it was the virtual complainant who attacked them. At the creek he had no weapon, no gun, and no knife. The only knife was a small pocket knife. It was the virtual complainant's gun and everybody saw him and he is not making up any lies.

{27} There was no re-examination.

{28} **KYLE ROBERTS** testified. He said on the 12<sup>th</sup> of January 2019 he went to swim together with the Accused, Troy Smith, and two females. When they were finished swimming they were making their way back home when a Spanish complexion person jumped out of the bush and pointed a gun at them.

The gun snapped and the person with the gun then started playing with the top of the gun. At that time he was about 10 feet away so he took out his pocket knife that he had whilst socializing and tried to defend himself by taking two steps forward with the knife in his hands pointing towards the person with the gun that came out of the bushes. When he did so the Accused started to tackle with the person that had the gun. He was afraid because they were both tackling on the ground. He stepped back and heard a shot fired off. The person that had the gun ran leaving the rusty black gun behind.

{29} This witness said he knew the person who had the gun as a young man he grew up with in the village. Prior to the 12<sup>th</sup> of January 2019 he had gone to the river. After the person ran off they picked up the gun and ran off. They later called the police and gave the gun to them. He wanted to tell the police what happened but they didn't want to take a statement from him.

{30} **UNDER CROSS-EXAMINATION** the witness said the handle of the knife he had was orange in colour. The person who came out of the bush had on a black mask and had a blue handle gun with him. He admitted that he did say the person ran and left a black gun at the scene. There was only one gun at the scene not two. The person took off the black mask when the tackling began. One person came out of the bush that was the person who had the gun.

The Accused picked up the gun left at the scene and handed the gun to the police. He does not know which police officer he handed the gun to.

{31} The witness said he did not have a struggle with the virtual complainant at the scene nor did he have a fight or tackle with the virtual complainant. He did not fall to the ground with the virtual complainant fighting and he does not recall the position of the virtual complainant or the Accused when the gun went off. He did not stab at the virtual complainant and he did say the gun was black.

{32} There was no re-examination.

{33} **MISHA SMITH** testified, this witness said the Accused is her son. He came home and told her that the virtual complainant came after him with a gun. They struggled for the gun and the gun went off. The virtual complainant ran and the Accused picked up the gun. She told that to her husband who called the police. She said she knew the virtual complainant from since he was a little boy.

{34} **UNDER CROSS-EXAMINATION** this witness said she does not recall that the accused gave a caution statement to the police on the 12<sup>th</sup> of January 2019 (the Court had the statement read to the witness who said she doesn't understand it).

{35} There was no re-examination.

{36} **TROY SMITH testified.** He said the Accused is his brother. On the 12<sup>th</sup> of January 2019 the Accused, Kyle Roberts, Felisha Gongora, and him went to the creek enjoying themselves eating fruits. Afterwards they went up. Whilst walking he saw the virtual complainant with a gun in his hand and a mask over his face then he took off. When he saw the virtual complainant with the gun, he the virtual complainant, spun back and ran into the bushes. The witness ran and told the Accused that the virtual complainant shot at him. He shoot off at him and he made a report. Then afterwards when he walked back to catch up with his brother's girlfriend Felisha he heard a gunshot and thought his brother was shot. He stopped and turned around and saw the Accused and Kyle Roberts come running. They went home and told his mother and called the police. He said he is 19 years old and when the incident occurred he was 15 years old. He said he knows the virtual complainant because they are from the same village.

{37} **UNDER CROSS-EXAMINATION** the witness said he did not say the shooting happened on the 12<sup>th</sup> of January 2019. He said the virtual complainant had on a mask.

{38} That was the case for the Defence.



## **Closing Submissions**

{39} Both counsel addressed the Court on the law and evidence in this matter supported by the relevant authorities relied on. Mr. Saldivar for the Accused relied on the defence of self-defence and stressed that his client being fearful for his life was obliged to take reasonable and necessary steps to prevent death or severe injury. He also addressed the Court on his client's good character.

{40} Crown Counsel Mr. Ramirez, urged the Court to reject the defence of self defence and was severely critical of the evidence of the Accused and his witnesses. He urged the Court to accept the evidence of the virtual complainant which establishes all of the ingredients of the offence of attempted murder.

{41} Both counsel presented written submissions together with authorities relied on.

## **Analysis and Verdict**

{42} The Crown must satisfy the Court to the extent that it feels sure as follows:

1. That the Accused person intended to kill the virtual complainant.
2. That in pursuance of that intention he did acts with the sole intention of killing the virtual complainant.
3. That those acts are directly and not remotely connected with the commission of the offence of murder.

4. That those acts were not merely acts in preparation but acts immediately connected with the commission of the offence of murder.

{43} Section 18(2) of the **Criminal Code** provides thus:

*“(2) Every person who attempts to commit a crime shall, if the attempt be frustrated by reason only of accident or of circumstances or events independent of his will, be deemed guilty of an attempt in the first degree, and shall (except as in this Code otherwise expressly provided) be punishable in the same manner as if the crime had been completed.”*

{44} As stated, aforesaid the Accused is indicted for the offence of attempted murder contrary to section 18 read along with section 117 of the **Criminal Code**. Those sections 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.”*

{45} The Crown's case rests exclusively on the evidence of the virtual complainant and Dr. Andreas Vasquez. The virtual complainant testified that when he saw the Accused and Kyle Roberts, the Accused told Kyle go and Kyle ran into him with a knife with an orange handle and stabbed at him towards his neck. He ducked and the two of them began to struggle. During the struggle he managed to get over Kyle Roberts and tried to stand up. As he did so he heard and felt a gunshot. He got weak and fell to the ground. He heard the Accused whose voice he knows well tell Kyle make sure he cut his throat and make sure he's dead. He heard crackling in the bush like running and when he opened his eyes he noticed they were not there so he got up. The virtual complainant testified that the Accused pointed a gun at him and he heard the sound of a gunshot. He also felt pain.

{46} Dr. Vasquez testified that, on the 12<sup>th</sup> of January 2019 he dealt with the virtual complainant as a patient with a bullet in his head and he was unconscious. He could not perform surgery at the time because his head was swollen. Months afterwards they did the surgery to remove the bullet. He opined that the injury to the Virtual complainant could cause death, epilepsy, brain damage, paralysis, and loss of sight.

{47} The Defence, however, is one of self-defence. Indeed, at the commencement of the Accused's testimony he stated that when he saw the virtual complainant

he feared for his life because he honestly believed the virtual complainant was going to kill him. He said he was unarmed, had neither a gun nor a knife with him whilst the virtual complainant was armed with a gun. He stated that after a struggle with the virtual complainant over the gun it went off and he left the scene.

{48} Section 36(4) (c) (k) of the *Criminal Code of Belize*, so far as relevant to this case, provides:

*“(4) For the prevention of or for the defence of himself or of any other 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.”*

{49} 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?”*

{50} 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:

{51} 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-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.

{52} 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 virtual complainant 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. If necessary the accused could make a pre-emptive strike against his perceived attacker.

{53} 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 virtual complainant then I must go on to consider whether the type and amount of force was reasonable.

{54} In so doing 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.

{55} 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-defence and I must reject the defence of self-defence. If, however, I find that the force used was or may have been reasonable then I must acquit him.

{56} Before I come to make a finding on this defence 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.”*

{57} Having considered this provision in *Norman Shaw v Regina* aforesaid the Board opined thus at paragraph 11:

*“The provision is clearly intended to deny a defendant the right to rely on self-defence 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 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-defence. 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-defence if the jury conclude that it was done in an unlawful fight."*

{58} I have considered all of the evidence adduced by both the Crown and the Defence in this matter. I have taken into consideration the clean criminal record of the Accused, the fact that he gave sworn testimony and that he attended the Belizean Baptist High School and have directed myself that he is a person of good character.



{59} In considering the evidence adduced by the Defence, I have commenced with the caution statement given by the Accused to the police on the same day of this incident. This statement was not challenged by the Defence and was admitted into evidence. In that statement, the Accused told the police thus:

{60} **STATEMENT READ**

**Name:** Aaron Allan Hyde      **Age:**      **D.O.B.:**

**Place recorded:**      **Dated:**

**Name and Rank of Recording Officer:**

*This statement consisting of 1 page(s) each signed by me is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have willfully stated in it, anything which I know to be false, or do not believe to be true.*

**Signed:**

“I, Aaron Allan Hyde wish to make a statement. I want someone to write down what I say. I understand that I need not say anything unless I wish to do so and that what I say may be taken down in writing and given in evidence.

**Signature of Accused:** Aaron Hyde Jnr.

**Signature of Justice of the Peace:**

Around 3:30 in the evening me, my girlfriend, my brother, and my girlfriend sister was walking home from the Creek and my brother run to me and told me that

somebody the wait inna bush with a gun and about seven other Spanish persons. I told them go ahead as I didn't want any of them to get hurt then I went back to the Creek to hail my friend and I tell him Sméagol's was in a bush waiting for me. My friend gone round the bush and I gone straight up then I saw somebody with a black mask and a chrome and blue handle gun who approach me and then my friend bore a with a knife and the man bust a shot and my friend and Sméagol's start tackle and the next Spanish person stand up with black hand gun in his hand, so I mi fraid so I never approach the person cause I mi get fraid then after that the Spanish person run gone and I run and grab bally fi help my friend and I grab the gun and ie bust, it shoot, it fired and I run gone put up the gun and I call my ma and tella whe happen. From the past last year he mek a attempt come shoot atta mi dah the same Creek di and three friends. Me, Latesha, Ratta, and Bengie, and deh see a to. I think the whole thing start offa dah stolen cycle cause I buy the cycle from them and deh mi want it back cause deh mi want trade it fi weed and gun. I never giv deh back cause deh never want give me back my money, deh only mi want tek it back from mi then the police find me with the cycle the next day with the cycle parked up as I mi want get the papers but deh never tell me dat da mi wah stolen cycle. I mi ended up gone dah Court fi the cycle cause dah wah stolen cycle and from then they start show me bad face and from then they mi the beef with me.

Sometimes I not even sleep because I go dah night school and I have to watch my back.

**Signature of Accused:** Aaron Hyde Jnr.

**Signature of Justice of the Peace:**

{61} When cautioned and questioned about this incident by CPL Avila on the 12<sup>th</sup> of January 2019 the Accused said “*I know I shoot he but I had to tek away he gun... we had a beef long time*”. I understand him to be saying that he had a beef with the virtual complainant so he took away his gun and shot him.

{62} In his testimony, the Accused stated under cross-examination that he and Kyle Roberts had a struggle with the virtual complainant on the ground and that he was on the right side of the virtual complainant’s back and Kyle was on the left side and the gun went off. He further said that when the gun went off he was holding the virtual complainant’s hand behind his back. Kyle Roberts, however, denied in his testimony that he was ever in a struggle with the virtual complainant. He said it was the Accused who started a tackle with a person who had a gun and he heard a shot fired off.

{63} Troy Smith, in his testimony aforesaid stated that he saw a man come out of the bushes wearing a mask and had a gun. He told his brother, the Accused, that the man shot at him. He later heard a gunshot.

{64} The Accused's mother, Misha Smith, testified that her son the Accused told her that the virtual complainant came after him with a gun. They struggled and the gun went off and the virtual complainant ran away.

{65} In his statement to the police aforesaid, the Accused said as follows:

- A man with a gun and about seven other Spanish persons waiting in the bush;
- He saw somebody with a black mask and a chrome and blue handle gun approach his friend and his friend bore him with a knife and the person fired a shot and his friend and Sméagol's (the virtual complainant) and his friend started to tackle;
- A next Spanish man stood up with a black handle gun;
- He never approached the person because he got afraid and that after the Spanish person ran he ran to help his friend and he grabbed the gun and it went off so he ran home.

{66} In his caution statement given on the same day of the incident, the Accused was clearly speaking of a completely different incident from the one he spoke of in his sworn testimony and his answers under cross-examination.

{67} I find that every time the Accused spoke about this incident he gave a different version and each of the Defence witnesses added a different twist or spin to this incident.

{68} Emerging from a perusal of the oral and written statements given to the police by the Accused and the sworn testimony of him and his witnesses is a number of different versions of the events that occurred.

{69} Thus, in the circumstances I am unable to find the evidence adduced by the Defence and the statement given by the Accused to the police to be reliable and accordingly, I reject same.

{70} I must now return to the Crown's case and examine it carefully to ascertain if the defence of self-defence or any other defence arises therein in favour of the Accused. As stated aforesaid, the burden of proving the guilt of the Accused rests at all times on the Crown. The Accused does not have to prove his innocence. The virtual complainant, testified aforesaid of him being unarmed and walking through the bushes on his way to the creek. He saw the brother of the Accused who turned and ran when he saw him. He next saw the Accused who asked him about a 9 mm and he froze. He went on to speak of being attacked by Kyle Roberts, the friend of the Accused, who at that time was armed with a knife with an orange handle. He spoke of the Accused who was armed with a silver gun exhorting Kyle to kill him. After he was able to disengage himself from Roberts he heard a gunshot and eventually fell to the ground.

{71} Dr. Vasquez testified, that the injury to the virtual complainant's head is capable of causing death and I find that the injury to the back of the virtual complainant's head was inflicted when the virtual complainant was attempting to separate himself from the Accused and his group, including Kyle Roberts, who was at the time armed with a knife and the Accused who was armed with a gun.

{72} The Court must also consider if the Accused in the circumstances honestly believed it was necessary to use force to defend himself against the attacks or perceived attacks from the virtual complainant 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.

{73} I believe and accept the evidence of the virtual complainant that he was under attack by the Accused and Kyle Roberts at which time the Accused was armed with a gun and Roberts with a knife. As stated aforesaid I have rejected the evidence adduced by the Accused and his witnesses in support of his defence of self-defence and/or accident.

{74} Thus, in the circumstances I do not find that when the Accused shot the virtual complainant he honestly believed or may have honestly have believed that it was necessary to defend himself from acts by the virtual complainant. Indeed, I find that the Accused was at all material times the aggressor in the incident

that occurred between him and the virtual complainant. Accordingly, the defence of self-defence fails.

## **Intention**

{75} I now turn to the question of intent. Did the Accused intend to kill the Deceased when he shot him on the 19<sup>th</sup> of January 2019?

{76} Section 6 of the *Criminal Code* provides thus:

- 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?*

{77} 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.*

*What is or is not a person's intention is not easily ascertainable unless of course they disclose their intentions to you."*

{78} The prosecution must prove that the Accused had the required intention, that is, to kill the virtual complainant 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.

{79} 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 gunshot wound to the virtual complainant. 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.

{80} So when considering whether the prosecution have 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.

{81} The virtual complainant has testified aforesaid of the exhortations made by, the Accused to Kyle Roberts, to kill him. The evidence that I believe and



accept is that after the virtual complainant was able to get himself out of the clutches of Kyle Roberts he was shot by the Accused in the back of his head.

{82} It is a matter of common knowledge that serious head injuries usually result in death, hence, I find that after having considered the exhortations by the Accused to Kyle Roberts to kill the virtual complainant, followed by him shooting the virtual complainant at the back of his head, the only inference I could draw is that the Accused intended to kill the virtual complainant.

### **Attempt**

{83} The Crown's evidence aforesaid, discloses an attack to and on the virtual complainant by the Accused and his associate Kyle Roberts and that the Accused intended to kill the virtual complainant. The Crown's case has also satisfied me to the extent that I feel sure that those acts of exhorting Kyle Roberts to kill the virtual complainant and shooting him in the back of his head are directly and not remotely connected with the commission of the offence of murder. Moreover, those acts were not merely acts in preparation, but acts immediately connected with the commission of the offence of murder.

### **Verdict**

{84} I have considered the evidence adduced by both the Crown and the Defence and in so doing applied the relevant principles of law stated aforesaid. I have also applied the principles of the good character direction as I find that the

Accused should be considered to be a person of good character for the reasons aforesaid.

{85} The Crown's case has satisfied me to the extent that I feel sure that the Accused did shoot the virtual complainant in the back of his head on the 12<sup>th</sup> of January 2019 and that when he did so, he intended to kill him. The Crown's case also satisfies me to the extent that I feel sure that when the Accused shot the virtual complainant in the back of his head he was not acting in lawful self-defence. I further find, that this shooting was not accidental.

{86} I am satisfied to the extent that I feel sure that the Crown has proved that this shooting was an attempt to kill and not merely acts of preparation to do so.

{87} Accordingly in the circumstances, the Accused is found guilty of the attempted murder of the virtual complainant.

Dated this **2<sup>nd</sup> day of December 2022.**

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