

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

**CENTRAL DISTRICT**

**Indictment No.** C96 of 2019

**THE QUEEN**

**v.**

**MR. HUGH MIDDLETON**

- Murder

**BEFORE**

Honourable Justice Mr. Francis Cumberbatch

**APPEARANCES**

Ms. Natasha Mohamed – Counsel for the Crown  
Mr. Leeroy Banner – Counsel for the Accused

**TRIAL DATES**

15<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> and 28<sup>th</sup> of April, 2022; 10<sup>th</sup>, 11<sup>th</sup>, 18<sup>th</sup>, 20<sup>th</sup>,  
and 31<sup>st</sup> of May, 2022; 16<sup>th</sup> June, 2022.

**DECISION**

{1} The Accused was indicted for the offense of murder by the Director of Public Prosecutions for that he on the 21<sup>st</sup> of May 2018, at San Ignacio town in the Cayo District murdered Kyne Gentle ('the Deceased'). To that indictment, 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 the Facts

- {2} I will summarize the facts of the case as presented by the Crown and the Accused in his unsworn statement. I must state, however, that in arriving at my verdict I have taken into consideration all the evidence adduced by the Crown and the Defence in their respective cases.
- {3} **FILIBERTO POT** a crime scene technician testified that on the night of the incident he visited the scene at Hudson Street, San Ignacio, in the vicinity of the Blue Angels nightclub. On the sidewalk, at the entrance of the club, he observed and photographed the right side of a white and black sneaker. He also observed and photographed what appeared to be blood on the first step of the nightclub stairs. He also took photographs of the entrance to the club.
- {4} On Wednesday 23<sup>rd</sup> of May 2018, the witness attended the post-mortem examination of the Deceased conducted by Dr. Ken. There he observed the lifeless body of the Deceased who was identified by his father, Albert Gentle. He took photographs of injuries observed on the body and damage to the shirt of the Deceased which appeared to be pellet holes. He collected four plastic wads retrieved from the head and abdomen of the body and 10 lead pellets. The photographs were tendered into evidence.

- {5} **UNDER CROSS-EXAMINATION** the witness did not agree that the photo of the entrance to the club is very dark. He agrees that it is dark. He said the sign of Blue Angels could be seen in photo #1.
- {6} **GREGORY CODD** testified. He said on the 21<sup>st</sup> of May 2018, at around 12:30 a.m., he was selling food in front of the Blue Angels nightclub. Four persons had come to him to buy rice and beans and the Deceased was one of the four. He said when the incident happened he was selling food. He heard a loud bang at the entrance to the club and the Deceased was at the entrance looking up. He next saw him on the ground and a guy took about 5 seconds to put a gun to his head and the second shot went off. The guy went back the same way he came.
- {7} The witness said the Deceased was about five feet away from where he was. He had an umbrella that was shading the light which came from a streetlight between the nightclub and the supermarket. It was estimated to be at a distance of about 25 feet away. He was unable to identify the person who shot the Deceased because he had a cap pulled right down on his face. He was about 5 feet 9 inches tall and was a dark person. He was wearing a white shirt and dark pants and was carrying a double-barrel shotgun about 2 ½ feet long. He was about 4 feet away from him and nothing obstructed his view of the shooter during those 10 seconds.

- {8} **UNDER CROSS-EXAMINATION** the witness agreed that he told the police in his statement that the incident lasted for around 5-6 seconds. The shooter had no tattoos and had on a cap just above his eyes. Between the first and second shots, he had his head down.
- {9} **EUGENE FLOWERS** testified. He said on Sunday 20<sup>th</sup> of May 2018, at around 11:30 p.m., he was in front of the Blue Angels nightclub buying food along with other persons one of whom was the Deceased. He said he saw a shadow pass behind him and heard a gunshot. The Deceased held the left side of his chest and dropped. He said somebody passed behind him and fired the next shot. He said he turned and ran off when he saw the Deceased holding his left chest and he was about 10 feet away from him. The Deceased was inside the gate to an upstairs bar waiting to go up. There was a long fluorescent light over the gate to the establishment.
- {10} **UNDER CROSS-EXAMINATION** the witness denied that he said the person he saw was Hispanic or black. He said he only saw a shadow. His statement was read to him, "... ... *'When I reached on the verandah I saw two dark skin male person and two females, one which is of East Indian descent and the other was slim and of Spanish descent'* ... ..."
- {11} The witness admitted signing the statement which was read over to him by the police. He said he never looked to see anybody because he was scared.

He did not see a Spanish descent young man with straight hair 5 feet tall. He only saw a shadow.

{12} **JOZETTE WAIGHT** testified. She said on Sunday 20<sup>th</sup> of May, 2018, at about 11:45 p.m., she was getting food. It was she and other persons including the Deceased. After she got her food she went upstairs to the bar. She turned around and noticed her friends were not with her, so she went down the stairs when she saw the Deceased who was way down at the bottom of the stairs in front of the club. Whilst on her way down she heard a loud bang and saw the Deceased drop. She saw a male person behind him wearing a white shirt, navy blue long pants, and a black hat. She said she couldn't see the person's face just his hands and the gun. She ran back upstairs and went to a security guard and that was when she heard another bang. She said when she saw the person with the shotgun she was way to the top of the step and he was at the bottom. There was a light by the step and the shotgun was 2 ½.

{13} **UNDER CROSS-EXAMINATION** the witness said the shooter was on the sidewalk in front of the club. She was unable to see his face because the cap he wore was just above his eyes. When the Deceased was shot he was the only person on that staircase and the incident happened very quickly.

{14} At the close of the Crown’s case, the Defence Counsel submitted that there was no case to answer by his client and sought an order dismissing the case against him. The Court applied what is commonly known as ground 2(b) of *R v Galbraith* and overruled the submission. The Court also called on the Accused to lead a defense.

### **Case for the Defence**

{15} **ACCUSED UNSWORN.** On the 20<sup>th</sup> of May 2018, I visit my grandfather’s house and stayed there, me and my grandfather and two of my family. Their names are Douglas Hyde, Stephon Scott, and David Hyde. At ten o’clock that night we were watching westerns for about half an hour then I went to sleep. I woke up at 7:30 the next morning. I am innocent of this.

{16} The Accused called no witnesses and that was his case.

### **The Law**

{17} 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*”.

{18} 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.*”

{19} 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.

### **Analysis**

{20} The Court accepts the evidence of Dr. Loyden Ken that the Deceased is dead and that he died from penetrating shotgun wounds to the head and abdominal region. I also believe and accept the evidence that the body of the Deceased was identified to the pathologist by his father, Albert Gentle. I further find from the evidence of the Crown's witnesses that he died from unlawful harm. Indeed, the defense has not raised the defense of self-defense herein.

{21} Therefore, the next issue to be determined is whether it was the Accused who discharged at least 2 rounds of ammunition from a shotgun at the Deceased that night. It is common ground that the thrust of the defense case is that the Accused was not the shooter on that fateful night. Thus, the question of visual identification arises to be considered.

{22} The Crown's eyewitnesses to this event are Gregory Codd, Eugene Flowers, Jozette Waight, and Lourdes Codd, whose statements were read into the record, and Miguel Monroy.

## **Identification**

{23} To avoid the risk of injustice, I have warned myself of the special need for caution before convicting the Accused on the visual identification in this case. A witness who is convinced in his own mind that the person he saw is the Accused may as a result be a convincing witness but may nevertheless be mistaken. Mistakes can also be made in recognition of someone well-known to the witness such as a close friend or relative. So, I must carefully examine the circumstances in which the identification was made: for how long was the Accused under observation by the witness, at what distance, and in what light, did anything interfere with his observation? The fact that the Accused is also relying on the defense of an alibi is another factor to be taken into consideration in determining whether or not the Accused was the shooter that night. Thus the Court must be that much more cautious in its consideration of the evidence of visual identification.

{24} The witnesses: Gregory Codd, Eugene Flowers, Jozette Waight, and Lourdes Codd all testified that they were present on the scene and witnessed the shooting of the Deceased. They all with the exception of Flowers testified that the shooter wore a cap right down to his eyes which prevented them from seeing his face.



{25} The witness Flowers testified that he did not see the person who fired the shots at the Deceased but however admitted under cross-examination that he had told the police in his statement which he admitted was read over to him after which he signed same that the shooter was a Hispanic person, with straight hair and clear skin and was about 5 feet tall.

{26} Miguel Monroy testified that he had seen the shooter when he was on the steps of the nightclub looking at the Deceased who was his friend. He testified that he had picked out the Accused as the shooter when shown a photo array at the San Ignacio police station and on the following day identified him as the shooter in the compound of the San Ignacio police station.

### **The Identification Parade**

{27} SGT Piñelo invited the Accused to attend an identification parade after he was taken into custody and detained. The Accused after speaking with his lawyer refused to appear in an ID parade. SGT Piñelo then arranged for Miguel Monroy to view a photo array to see if he could identify the shooter. The witness picked out the Accused as the shooter. However, SGT Piñelo admitted that he did not invite the Accused's lawyer to be present at the viewing of the photo array because he did not think about it. He also admitted that he did not explain to the Accused about a group parade.

{28} SGT Piñelo said he was aware that the photos should be based on the

description of the suspect as given by the witness. He said that in his statement to the police the witness Montero described the hair of the shooter to be short, black, and twisted. He conceded that in the photo array neither the Accused nor any of the other participants had hair that was short, twisted, and black.

{29} SGT Flowers had stated that she conducted a covert group ID parade which was held in the compound of the San Ignacio police station. At that parade, Monroy identified the Accused as the person who shot the Deceased. However, the *Police Standing Orders* section 156 requires that the suspect be asked for his consent to a group identification parade. There is no evidence that SGT Flowers asked the suspect to participate in a group parade and in any event, SGT Piñelo admitted that he did not speak to the Accused about a group parade. Separate and apart from that, however, section 157 prohibits the holding of a group parade in police stations if alternative arrangements could be made unless for security or other reasons it would not be practicable to hold it elsewhere.

{30} I find from the testimony of SGT Flowers that there is no evidence that consideration was given to holding the group parade at a location other than the police station and the reasons for holding it at the police station compound. Moreover, the witness was shown a photograph of the suspect on the night before the group parade.

{31} I find that the holding of the group parade in the manner aforesaid contravened the provisions of section 157 of the *Standing Orders*. I further find that failure of the police to notify the Accused or his Counsel of their intention to hold a group identification parade was unfair. This was exacerbated by showing the witness a photograph of the Accused in the photo array prior to the holding of the group parade.

{32} I have carefully considered the evidence surrounding the conduct of the identification procedures and for the reasons aforesaid reject the evidence adduced by the Crown of the Accused being identified at an identification parade as being inadmissible.

{33} I will turn to consider the dock identification of the Accused by the witness Monroy. In *Maxo Tido v The Queen*, the Board emphasized that a dock identification was not per se inadmissible. In paragraphs 21 & 22 the Board opined thus:

**1. The Board therefore considers that it is important to make clear that a dock identification is not inadmissible evidence per se and that the admission of such evidence is not to be regarded as permissible in only the most exceptional circumstances. A trial judge will always need to consider, however, whether the admission of such testimony, particularly where it is the first occasion on which the Accused is purportedly identified, should be permitted on the basis that its admission might imperil the fair trial of the Accused. Where it is decided that the evidence may be admitted, it will always be necessary to give the jury careful directions as to the dangers of relying on that evidence and in particular to warn them of the disadvantages to the Accused of**

having been denied the opportunity of participating in an **identification** parade, if indeed he has been deprived of that opportunity. In such circumstances the judge should draw directly to the attention of the jury that the possibility of an inconclusive result to an **identification** parade, if it had materialized, could have been deployed on the Accused's behalf to cast doubt on the accuracy of any subsequent **identification**.

↴ The jury should also be reminded of the obvious danger that a defendant occupying the **dock** might automatically be assumed by even a well-intentioned eye-witness to be the person who had committed the crime with which he or she was charged.

2. The Board does not consider that this was a case where the judge was bound to have concluded that the admission of the **dock identification** ↴ of the appellant by Ms. Edgecombe would result in an unfair trial to the Accused. But the discretion to admit the evidence must be exercised in light of the particular circumstances of the individual case. Relevant circumstances will always include consideration of why an **identification** ↴ parade was not held. If there was no good reason not to hold the parade this will militate against the admission of the evidence.

Conversely, if the defendant resolutely resists participation in an **identification** ↴ parade, this may be a good reason for admitting the evidence.....

{34} It is common ground that the Accused refused to attend a conventional ID parade. I cannot rule out the possibility that he would have refused to participate in a group parade if requested to do so. Thus, in the circumstances, I do not find the dock ID to be inadmissible and will apply the principles on identification evidence aforesaid.

{35} The Accused in his unsworn statement raised an alibi that he was at the residence of his grandfather along with other persons on the night of this

incident. Indeed, when interviewed whilst in custody he raised the same alibi in his answers to the police.

### **Alibi**

{36} I have directed myself that as the Crown has the burden of proving the guilt of the Accused he does not have to prove that he was elsewhere at the time. On the contrary, the Crown must disprove the alibi.

{37} There is no evidence that having been made aware of the Accused man's alibi there is no evidence adduced by the Crown that this alibi was investigated. Thus, there is no evidence that the alibi is negative or challenged otherwise than by the evidence of Miguel Monroy.

{38} I will consider the evidence of Monroy along with the evidence of the other eyewitnesses. Monroy testified that nothing prohibited him from seeing and being able to identify the Accused as the shooter that night. However, the other witnesses namely Gregory Codd, Lourdes Codd, and Jozette Waight all said they were unable to see the face of the shooter because he wore a hat/cap which was pulled just above his eyes.

{39} I considered the evidence of Gregory Codd that the Deceased was at his stall buying food and that the shooting took place within a few feet away from where he was and that he saw the incident. He said the shooter wore a cap pulled down to just above his eyes and between the first and second shots the

shooter kept his head down. Thus, he was unable to see his face. The shooter did not have any tattoos.

{40} I heard the evidence of Lourdes Codd who was also close by, saw the shooting, and in her statement to the police which was read into evidence she stated that she saw the shooter even before he shot the Deceased who was her cousin but was unable to see his face because of the cap he wore right down to his eyes and he kept his head down. She further said the incident happened fast and she didn't get time to see if the shooter had any tattoos.

{41} Jozette Waight said she was on the steps of the nightclub when she saw the Deceased who was at the bottom of the stairs in front of the club. She saw when the Deceased was shot but she too was unable to see the shooter's face because of the cap he wore just above his eyes. She said the incident happened very quickly and when the Deceased was shot he was the only person on the staircase. As regards the evidence of Eugene Flowers I do not find this witness to be reliable, hence, I rejected his evidence.

{42} I have observed the demeanor of the witnesses Jozette Waight and Gregory Codd and found them to be truthful and reliable. The statement of Lourdes Codd was very detailed and on consideration of the admissible evidence therein having exercised due caution because she was not cross-examined, and I did not have an opportunity to observe her demeanor I believed and accepted her evidence.

{43} Miguel Monroy also testified that he saw the shooting of the Deceased. He said the Deceased was his friend and he was on the staircase when the incident occurred. He said he saw the shooter was a person with brown eyes, 5 feet 10 inches in height, and was of creole descent. He also said he was able to see a tattoo on his right hand. He, however, does not recall seeing the shooter wearing a cap pulled just above his eyes. He admitted telling the police in his statement that after he heard the loud bang he quickly took off up the stairs and stooped down behind a small partition that holds the board door leading up the stairs to the nightclub. He said he was afraid when he heard the bang and ran up the stairs. Prior to that day, he did not know the shooter.

{44} The discrepancies and inconsistencies between the evidence of Monroy and the other witnesses mentioned are major. In his examination-in-chief, he said he saw the shooter, his eyes, and tattoos on his right hand. It was brought out in cross-examination, however, that he does not recall seeing the shooter wearing a cap pulled down to just over his eyes. The issue of the cap is critical because the other eyewitnesses stated that the cap and the manner in which it was worn prevented them from seeing the face of the shooter. The witnesses whose evidence I believe and accept quite clearly and convincingly stated that they were unable to see the shooter's face because of the cap he wore just over his eyes. Monroy testifies that he does not recall seeing a cap but said he saw

tattoos which none of the other witnesses' aforesaid saw either because in the case of, Jozette Waight and Lourdes Codd because the incident happened fast, and they had no time to see if the shooter had tattoos. Gregory Codd said he saw no tattoos. I find Monroy's evidence that he does not recall seeing a cap on the head of the shooter to be inconclusive. Is he saying that he did not see the shooter wearing a cap or is he saying that he cannot remember whether or not he wore a cap? He is neither saying the shooter wore nor did not wear a cap pulled down to just above his eyes. This issue was not clarified by the Crown in re-examination. Another troubling aspect of this witness's testimony is that though he claims that he saw the Accused shoot his friend he did not give a statement to the police until some 8 days after the event and after the Accused was taken into custody. It was suggested by Defence Counsel that his statement was contrived. In answer to the Defence Counsel, he said nobody asked him about the matter. These inconsistencies cast reasonable doubt on the truthfulness of his evidence and its reliability.

{45} I must apply the directions of the law as it relates to identification. I have also taken into consideration the unchallenged alibi raised by the Accused from the time of his arrest and detention. After having carefully and cautiously considered all of the evidence by the Crown I am not satisfied to the extent



that I feel sure that Miguel Monroy saw the Accused on that fateful night, shoot and kill the Deceased.

{46} Accordingly, in the circumstances the Accused is found not guilty and is discharged.

{47} He further said that he does not recall seeing the shooter wearing a cap. This is in stark contrast to the evidence of the other witnesses who said they saw the shooter wearing a cap.

Dated this **16<sup>th</sup> day of June 2022.**

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