IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C0003/2022

BETWEEN

THE KING

and

RODMAN WELCH

Defendant

Appearances:

Mr. Riis Cattouse, Crown Counsel for the Crown.

Mr. Hubert Elrington S.C. and Mr. Orson J. Elrington for the Defendant.

2023: October 2nd, 5, 10, 12, 17 and 30th
November 2nd, 9, 14, and 16th
December 1st
2024: 25th January.

JUDGMENT

MURDER- JUDGE ALONE TRIAL-DECISION

[1] PILGRIM, J.: Rodman Welch ("the defendant") was indicted for the offence of murder, contrary to section 117 read along with section 106(1) of the **Criminal Code**[1], ("the Code") arising out of the shooting death of Shakeem Felipe Dennison ("the deceased") on 12th October 2020.The defendant was arraigned on 2nd October 2023. He indicated that he had no objections to the indictment and pleaded not guilty. Pursuant to section 65A(2)(a) of the **Indictable Procedure Act**[2] ("the IPA") trial began on that day by judge alone before this Court.

THE EVIDENCE

[2] The Crown's case, in a nutshell, is that the defendant shot and killed the deceased on the basketball court at the Yarborough Green Court ("the basketball court") on 12th October 2020.

Evidence not in dispute

[3] The parties, very helpfully, in the spirit of Part 10 of the **Criminal Procedure Rules 2016** have agreed a substantial amount of the evidence, pursuant to section 106 of the **Evidence Act**[3] ("the EA"). The agreed evidence is that of: (i) Jarvis Usher's first statement; (ii) Jervis Lockwood's first statement; (iii) Shaquere Rowland; (iv) Elvis Medina's first report and his photographs; (v) Golda Reynolds and her photographs; (vi) Angella Wiltshere and her photographs; and (viii) Rocael Casanova. Brian Flowers's police statements were agreed, and he amplified his evidence orally but his testimony was not challenged as there was no cross-examination. Theresita Audinett's ("Sgt. Audinett") first statement was agreed but she also testified orally and was cross-examined on issues not agreed. Dr. Mario Estrada Bran testified orally but his evidence also was not contested in that there was no cross-examination.

[4] Jarvis Usher's agreed evidence was that he was at the basketball court at sometime after 4 p.m. on the day of the shooting. He was there with his friend "Phillip" playing one and one basketball. Usher went to get the ball when it went out of bounds and observed an unknown dark skinned male person who appeared to be in his mid-twenties, slim built "Creole" who was wearing a black in colour helmet on his

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[2] Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.
[3] Chapter 95 of the Substantive Laws of Belize, Revised Edition 2020.

head and a blue in colour disposable face mask which was covering his nose and mouth and only his eyes were visible. He was wearing a sky blue and white stripe polo shirt and a ¾ black in colour short pants.

[5] The day was bright and sunny, and Usher could have seen the whole body of the male person as he walked towards the edge of the court. The male person then stood about fifteen feet away from where Usher stood. Nothing was obstructing Usher's view when he observed the unknown male person pulled out what appeared to be a black in colour firearm and pointed it in the direction of Phillip who stood about ten feet away from the male person. At the time of the shooting Phillip was facing away from the male person and the male person walked to about ten feet away from Phillip and fired the first shot. When the male person ("the shooter") fired the first shot Phillip then began to turn his head towards the shooter. The shooter then fired two more shots at Phillip after which Phillip then fell to the ground. The shooter then placed the firearm back into his pants pocket and walked towards where he had parked his black in colour Meilun motorcycle by the front of the Yarborough Green Court sign on the outside of the fence. The shooter then rode off into the direction of the Yarborough Bridge. The entire incident from the time the shooter got off his motorcycle, approach Phillip from behind and fired the shot at Phillip and went back to his motorcycle took about 1 minute.

[6] Usher then ran towards the direction of where Phillip had fallen to render assistance to him. Usher observed that Phillip had what appeared to be a gunshot injury to the right side of his neck and he also had what appeared to be a gunshot injury to one of his calves. The police came sometime later, and Phillip was taken to Karl Heusner Memorial Hospital ("KHMH"). Phillip said to his friend, Usher, on the way to the hospital, "I no wa dead so" and then he began to gasp for air.

[7] Usher met police officers at the hospital including Sgt. Audinett to whom he gave a statement.

[8] In her agreed evidence Sgt. Audinett, on Monday 12th October 2020 at about 4:46 p.m., observed the body of Shakeem Felipe Dennison, the deceased, at the basketball court suffering from what appeared to be gunshot wounds to the throat, calf and thigh. It was agreed that the deceased was pronounced dead at 5:14 p.m. that afternoon.

[9] Shaquere Rowland, in his agreed evidence identified the body of the deceased, his brother, on 15th October 2020 to Dr. Mario Estrada Bran and Elvis Medina at the Belize Medical College Morgue. Elvis Medina took photographs of the autopsy.

[10] Dr. Estrada Bran testified that the deceased died from bronchial aspiration, meaning simply that he choked to death on his own blood, due to multiple gunshots wounds to the shoulder and neck. There were four entry wounds, the last a re-entry. These were to the outer area of the left shoulder, right posterior area of the leg, another located below that area, and the left anterior lateral area of the neck.

[11] Golda Reynolds, a crime scene technician, processed the scene at the basketball court around 5:10 p.m. on the evening of the shooting. She observed three expended shell casings. Two were on the basketball court, and one was on the grass next to the court. She also observed a large pool of blood, and she photographed the area. Corporal Rocael Casanova visited KHMH on the evening of the shooting and he was handed two gold-coloured slugs from the shirt of the deceased by an attending doctor.

[12] Jervis Lockwood, the brother of the defendant, in his agreed evidence stated that in June 2020 the defendant told him that he had bought a green Meilun motorcycle, with licence plate number MC 6400. Lockwood registered that motorcycle in his name on behalf of the defendant. On 5th November 2020 after the motorcycle was impounded, he claimed it as well as a blue helmet on the defendant's behalf. Angella Wiltshire photographed that motorcycle but described it as dark green and blue.

[13] Rupert Lopez, in his agreed statement, indicated that he knows a person named Welch but did not know his full name. The defendant in his unchallenged interview note of 14th October 2020 and cross-examination in the main trial has accepted knowing Lopez, and that he was the person described in Lopez's account of the day of the shooting. Lopez stated that on that afternoon the defendant, his friend and former co-worker, came on a motorcycle with a Ms. Brown and parked it by a "Chiney" shop. Lopez socialised with Brown and the defendant. The defendant went to purchase something at the "Chiney" shop and came back. A person named Coolie came sometime after and he and the defendant smoked "weed" together. Coolie then asked the defendant if he can give his girlfriend a ride on his motorcycle to the bus terminal. The defendant agreed to give the female a ride on the motorcycle and they both left down the canal side in the direction of the bus terminal. Sometime after Lopez was inside

the house and heard two loud bangs which sounded like gunshots. They sounded very close as if they were right across the street. He then saw people running towards the basketball court. Lopez stated that some days later he was shown footage and purported to identify the someone dressed similarly to the defendant going to and coming from the basketball court in that footage.

[14] Corporal Brian Flowers ("Cpl. Flowers"), in his agreed statement, stated that he extracted DVR video footage from several locations in the vicinity of the Yarborough Green Court. They were all admitted without objection.

[15] Sgt. Audinett further stated in her agreed evidence that she obtained a search warrant and searched the home of the defendant at Fabers Road. A house search was conducted for a shirt matching the description of the shirt Sgt. Audinett had seen in video footage. Nothing useful was obtained. However, the defendant's motorcycle was seized owing to its resemblance to that seen involved in the shooting of the deceased. Sgt. Audinett then decided to detain the defendant pending investigation of murder in reference to the shooting death of Shakeem Dennison which occurred on Monday 12th October 2020 at the basketball court. The defendant was allowed to speak to his mother Ann Carcamo. Sgt. Audinett took the defendant and the motorcycle to the Precinct One police station. At the station she cautioned the defendant who chose to remain silent. She also informed the defendant of his constitutional rights. The defendant signed an acknowledgement form, and the defendant was issued with a copy. The defendant requested a phone call to his girlfriend Rahkm Brown via cell phone number which was granted. The defendant was then placed in a cell.

[16] Sgt. Audinett later visited the cell block and spoke to the defendant and asked him if he wanted to conduct an interview or give a caution statement. He agreed to participate in an interview. She then requested the assistance of Lorraine Herrera, Justice of the Peace ("JP Herrera") to witness a video recorded interview of the defendant.

[17] On Wednesday 14th October 2020 about 4:52 p.m. Sgt. Audinett conducted a video recorded interview with the defendant ("the Audinett interview") in the presence of JP Herrera under caution and after being advised of his constitutional rights. The written note of the interview was read back with no corrections and signed by the defendant and JP Herrera. The defendant was granted an attempt to call his mother which was fruitless, but he was later successful in reaching his girlfriend Rakhm Brown.

[18] In that interview the defendant indicated that he had been shot on 5th October 2019 while working at the Excelsior High School. He said that he had information that the deceased was a suspect in his shooting. However, he said that he had no issue with the deceased because he did not see who shot him. The defendant said he and the deceased had no problems. The defendant said he had seen the deceased after the October 2019 shooting, and they would acknowledge each other in a friendly way as both of their families were from the same area. The defendant accepted he was in the area of the Yarborough Bridge sometime after 4:00pm on the day of the shooting of the deceased. He said that on that day he was socialising with Rupert Lopez, Rakhm Brown and others in the vicinity of Steven Shop. He later left for home to get a piece of "fonto". He did not make it back to Steven Shop because he heard gunshots so then he fled back to his home. He accepted that at the time he was travelling on his light green Meilun motorcycle with registration number 6400. He said he was wearing a grey or blue shirt and a short pants but could not be certain. He denied that he was at the basketball court at the time of the shooting as well as being the shooter. He indicated that he was willing to give a caution statement.

[19] Sgt. Audinett further indicated in her agreed statement that on 15th October 2020 about 2:57pm, Isaias Sanchez, Inspector of Police ("Insp. Sanchez") informed her that based on new evidence obtained from the witness Rupert Lopez that he had instructed Detective Constable Francisco Montejo ("DC Montejo") to once again detain the defendant upon his release at 2:00pm. Based on this information Sgt. Audinett and Insp. Sanchez immediately made their way to Precinct Two police station. Sgt. Audinett informed the defendant of the reason of his further detention based on the new evidence gathered during the investigation. She then cautioned the defendant who chose to remain silent. She told the defendant of his constitutional rights; he signed an acknowledgement form and he made no request. Sgt. Audinett then asked the defendant if he still wanted to give the caution statement which he had agreed to on 14th October 2020 and he said yes.

[20] She later requested the assistance of Sergeant Elroy Vernon ("Sgt. Vernon") to record the caution statement, and she introduced the defendant to him. Sgt. Audinett requested the assistance of JP Herrera to witness the caution statement. After which Sgt. Audinett requested JP Herrera to speak to the defendant in private inside the conference room of the Crimes Investigation Branch office. At the conclusion of the caution statement recorded from the defendant Sgt. Audinett asked the defendant if

he wished to contact anyone and he said no. However, he asked her to inform his mother that he needed a jacket. On 16th October 2020 she charged the defendant for murder.

Evidence in contention

[21] At the heart of the Crown's case is the caution statement recorded by Sgt. Vernon. Objections were made to its admission and the Court held a voir dire to consider its admission. This was to allow the defendant to give evidence in the voir dire to substantiate his grounds of objection while shielding him from cross-examination on the main issue as would happen in a rolled-up hearing[4]. The Court admitted the caution statement after giving a written ruling dated 2nd November 2023 and after hearing evidence from Sgt. Vernon, JP Herrera, Insp. Sanchez, Sgt. Audinett and the defendant. On that same date the parties agreed to incorporate the evidence from the voir dire into the main trial as a time saving measure pursuant to the guidance of the apex court, the Caribbean Court of Justice, in **Manzanero v R**[5] and the *Belizean Bench Book*[6].

[22] Sgt. Vernon testified in examination in chief that around 4:45 p.m. on 15th October 2020 he was asked by Sgt. Audinett to assist in the recording of a caution statement from the defendant. He met the defendant and asked him if he wanted to give a statement under caution, and the latter replied yes. Sgt. Vernon explained to the defendant that the statement would be video recorded in the presence of a Justice of the Peace. At the time of this conversation JP Herrera was already at the police station. During the recording of the statement the defendant was cautioned and advised of his constitutional rights. Sgt. Vernon testified that the defendant narrated the statement and on its completion was advised of his rights to add, alter, or correct it before signing. He also testified that the defendant was not pressured, beaten, threatened, or promised anything to give the caution statement. The written caution statement was tendered in evidence as EV 1, and the video recording of the caution statement was admitted in evidence as EV 2.

[23] Sgt. Vernon accepted in cross-examination that the Accused was in custody since 13th October 2020. He further accepted that he was aware that the JP was present in the office when he asked the

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[4] **Criminal Bench Book for Barbados, Belize and Guyana (February 2023)** ("the Belizean Bench Book") at p 772.
[5] [2021] 1 LRC 543 at para 37, per Saunders PCCJ and Rajnauth-Lee JCCJ: *"…under the present criminal justice architecture, it would appear that both the prosecution and the defence, with the judge's concurrence, may agree to incorporate into the main or substantive hearing testimony or other evidence adduced during the voir dire…".*
[6] P 775.

defendant if he wanted to give a caution statement. Sgt. Vernon said that it was his decision to ask the defendant about the statement without JP Herrera accompanying him. Sgt. Vernon denied threatening the defendant's children and a suggestion that he told the defendant that if he gave the version of events in the caution statement he would be convicted of manslaughter and go free.

[24] Sgt. Vernon only testified in the voir dire and was not requested for either further examination in chief or cross-examination by either party in the main trial.

[25] JP Herrera testified in examination in chief that around 4:55 p.m. on 15th October 2020 she was contacted by Sgt. Vernon to witness a caution statement. She agreed and had a private conversation with the defendant at the Crimes Investigation Branch Support Office at the Queens Street Police Station, after being introduced to him. She asked him several questions, including if he was abused, forced, coerced or promised anything for his caution statement to which he replied, no. The defendant indicated in response to a question by JP Herrera that he both ate and drank. JP Herrera testified that she asked the defendant if he was giving the caution statement of his own free will to which he replied, yes. She further testified that she witnessed the defendant narrate the caution statement after being cautioned and advised of his rights. She also saw him sign the caution statement after being advised that he could add, alter, or correct it. She also signed the caution statement. In cross-examination JP Herrera accepted that she could not say what happened to the defendant before she arrived at station.

[26] JP Herrera, like Sgt. Vernon, only testified in the voir dire and was not requested for further examination by either party.

[27] In the caution statement the defendant stated that three weeks after he got his job at Excelsior High School he was shot in his head by "the young man Phillip and two others". He said that he feared for his life and consequently he told no one of the identity of his assailants. He noted however that, "recently same young man always hailing me like it's okay, playing like he like me and he know what he did to me" and, "Recently they started to stone my nephew and niece whenever they past Fabers Road going home." The defendant gave this account of his activities on the day of the shooting in the video recording of the caution statement EV 2:

> *"Early in the morning Monday, Phillip and Roy chase me again so in the evening I saw him passing me and screw at me again so I don't know what to do so I defend myself because*

I don't want to lose my life. I fear him whenever I see him because I knew he was the guy that shot me so ***I went and I defend myself. I didn't mean to do what I do but I do it under self-defense fearing my life****.*

…

Q: What do you mean by saying he "screw" at you?

A: Make up his face and watch you in a way like they want do you something.

…

Q: ***What do you mean by saying you used self-defense****?*

*A****: I just gaun and did him back the same thing he did me in self-defense****." (emphasis added)*

[28] Insp. Sanchez testified in chief that he received a call from Sgt. Vernon on 15th October 2020 that a statement was recorded from Rupert Lopez which placed the defendant at the crime scene. Insp. Sanchez after listening to the evidence and knowing that the time for detention of the defendant was going to expire at 2 p.m., he called on one of his investigators, DC Montejo, and gave him specific instructions to release the defendant from police custody and to explain to him the reason for being re-arrested thereafter. Insp. Sanchez testified that the defendant was re-arrested on the basis of the evidence of Rupert Lopez.

[29] Insp. Sanchez was cross-examined and indicated initially that he was unsure if the call from Sgt. Vernon was before or after 2 p.m. but later said that the call was before 2 p.m. He also indicated that the recording of the statement of Rupert Lopez began at 1:45 p.m. and was seven legal sized pages long. It was suggested to Insp. Sanchez that he could not have obtained the full statement of Lopez before the forty-eight-hour detention period had passed and that he had no new evidence to order the re-arrest of the defendant. Insp. Sanchez denied those suggestions. He indicated in cross-examination that he received a call from Sgt. Vernon as to the evidence of Rupert Lopez, not the actual statement when he ordered the re-arrest of the defendant.

[30] Insp. Sanchez only testified in the voir dire and was not requested for further examination by either side.

[31] DC Montejo testified in chief that on 15th October 2020 about 1:35 p.m. he was requested by Insp. Sanchez, to visit the Raccoon Street Police Station and inform the defendant, who was to be released at 2:00 p.m., that new information pertaining to the case has been received and based on the new information, he will be detained and that the investigator, Sgt. Audinett, was at the moment witnessing a post-mortem examination and that as soon as she was finished she will visit him and provide him with additional information. About 2 p.m. or minutes before 2, he visited Raccoon Street Police Station and went to the cell block area where he relayed the information to the defendant.

[32] He testified in cross-examination that the latest he would have received that phone call from Insp. Sanchez was 1:40 p.m. He stated that the defendant was never released but was "detained over" based on additional information.

[33] DC Montejo testified only in the main trial.

[34] Sgt. Audinett further testified in cross examination in the main trial. She accepted that in the statement of Rupert Lopez there was reference to the defendant giving a ride to a female person on his motorcycle. She accepted that she made no attempt to interview that female person. The explanation for not doing so was because she did not know who the female was nor how to locate her. She also noted that that ride was before the murder. In re-examination she clarified saying when the defendant left to drop the female person, this was prior to him returning to Rupert Lopez's residence and then he left again and then that was when the murder happened.

[35] There was a no case submission which, after carefully scrutinizing the arguments on both sides, was rejected in an oral ruling on 16th November 2023.

[36] The defendant testified on oath at both the voir dire, whose evidence is incorporated by agreement at the main trial, and in the main trial.

[37] His evidence in chief at the voir dire was that he had given the Audinett interview freely. He said what he was instructed to say in the caution statement by Sgt. Vernon. He testified that on 15th October 2020 when he was alone with Sgt. Vernon before the recording of the statement, he was threatened that if he did not take the manslaughter charge, he will harm his kids and make them go missing. The

Accused testified, “he told me if I want to see my kids again take the manslaughter charge and he would set me free.”

[38] The defendant was cross examined and accepted that he was allowed to speak to JP Herrera privately for five minutes after Sgt. Vernon made the threat to him. He accepted that JP Herrera had asked him if he was threatened, and that he had replied no. He said that he said no out of fear for his children due to the threat by Sgt. Vernon. The defendant testified that JP Herrera did not ask him if he had been promised anything to give the statement, which was not put to JP Hererra when she testified. He testified that despite the fact that JP Herrera said she was there to protect his rights he did not take the opportunity to tell her that he had been threatened by Sgt. Vernon neither did he tell her that he was promised certain things by him.

[39] The defendant testified in chief at the main trial that on the day of the shooting he was invited by Rupert Lopez for soup. He went to the “Chiney” shop by Lopez with his girlfriend Rakhm Brown on his motorcycle. He said he was wearing a blue helmet at the time. After he met Lopez at the “Chiney” shop, five minutes after Lopez asked him to take a young lady to the bus terminal. The defendant did. After that the defendant went straight home to get a “fonto” to roll some weed. When he came out of his house, the defendant saw his girlfriend coming and she said “babe someone had got shot over the bridge let us stay here”.

[40] He said that the next day he was held at his mother’s veranda by Sgt. Vernon and his house was searched after seeing a search warrant. He said that his bike was taken along with his blue helmet. He was detained and handcuffed. He said he gave the Vernon caution statement because of the threat to his children and said what he was instructed to say. He denied being the person in the footage going to the basketball court as he had a blue helmet and that person’s helmet was not blue.

[41] The defendant was cross-examined. He confirmed that the motorcycle photographed by Angella Wiltshire was his, and that that was the one he was driving on the day of the shooting. He stated that he and the deceased had no problems. He accepted he signed the caution statement, but the names Phillip and Roy Bennet were given to him by Sgt. Vernon. He accepted that he was shot in his face at Excelsior High School on 5th October 2019. He testified that he did not know who shot him. He denied that the deceased and others chased him and his family members. He accepted that he congregated

with Rupert Lopez right across from the Steven Shop shown in the video footage. He testified that he did not buy anything from Steven Shop that day, nor did he buy cigarettes for Rupert Lopez. He did not accept that either he or his motorcycle were in any of the video footage produced by Cpl. Flowers. He accepted that Steven Shop was two to three minutes' walk from the basketball court. He denied shooting and killing the deceased.

[42] The parties made closing submissions on 1st December 2023 which were carefully considered by the Court.

THE LAW

[43] Section 117 of the 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." (emphasis added)*

[44] The Court is assisted in establishing the elements of the offence of murder by a decision of our Court of Appeal in **Peter Augustine v R**[7], 1, per Carey JA:

> *"11. **Murder is defined in the Criminal Code as intentionally causing the death of another without justification or provocation…It was essential to emphasize… that the specific intent which the prosecution must establish on the charge against him was an intent to kill**." (emphasis added)*

[45] The Court understands from this authority that to convict the defendant of murder the Crown must prove to the satisfaction of the Court so that it is sure that:

i. Shakeem Felipe Dennison is dead.

[7] Criminal Appeal No. 8 of 2001.

ii. His death was caused by unlawful harm by the defendant.

iii. The defendant intended to kill the deceased.

iv. There was no legal justification for the killing of the deceased.

v. The defendant was not provoked into killing the deceased.

[46]On the issue of the justification of self-defence, the *Code* provides as follows:

> *"30.-(1) For the purposes of this Code, force or harm is justifiable and shall constitute a defence to any criminal charge when such force or harm is used or caused in pursuance of such matter of justification, and within such limits as hereinafter in this Title mentioned.*
>
> *…*
>
> *"36(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 …"*

[47]The Belizean Privy Council decision of **Norman Shaw v R**[8] considered the issues surrounding self-defence and opined, per Lord Bingham of Cornhill:

> *"[19] In the opinion of the Board it was necessary for the trial judge to pose two essential questions…*
>
> *(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?"*

[48]On the issue of provocation, the *Code* provides as follows, where relevant:

[8] (2001) 59 WIR 115.

"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;

…

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;"

[49] The above sections were considered in the Belizean Privy Council case of **R v Gordon**[9], per Lord Clarke:

"[21]… Section 119(b) is to be contrasted with s 119(a), which also reduces murder to manslaughter but does so where there is such evidence as to raise a reasonable doubt as to whether the accused was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in s 120. Section 120 provides a list of matters which may amount to extreme provocation for the purposes of s 119(a). They include, in s 120(a), an unlawful assault or battery committed upon the accused by another 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. Section 121(1)(a) makes it clear that the accused must in fact be deprived of the power of self-control by the provocation.

[22] It can immediately be seen that there is a distinction between s 119(a) and s 119(b). By reason of s 120(a), the unlawful assault or battery must be of such a kind as to be

[9] (2010) 77 WIR 148.

'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'. The test is thus to that extent objective."

[50] In terms of the connection between provoking conduct and the loss of self-control, section 121 of the *Code* provides, where relevant:

> *"121.-(1) Notwithstanding the existence of such evidence as is referred to in section 119 (a), 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;…"*

ANALYSIS

[51] The Court has directed itself that the defendant is presumed innocent with regard to the single count in the indictment and has absolutely nothing to prove. The Court has directed itself in relation to that count that the obligation is on the Crown to satisfy it so that it is sure of the guilt of the defendant, and if there is any reasonable doubt the Court is duty bound to acquit him.

[52] The Court begins firstly by analysing the evidence on the Crown's case and if the evidence seems strong enough to consider a conviction it would consider the case for the defendant as is the required reasoning process noted by the CCJ in **Dionicio Salazar v R**[10]. The Court, if it accepts the case for the defendant, or has a reasonable doubt about whether it is true, must acquit the defendant. It is only if

[10] [2019] CCJ 15 (AJ) at para 35.

the Court rejects the defendant's case that it returns to the Crown's case and considers the totality of the evidence and determines whether to convict.

[53] The Court, in assessing credit and reliability, must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. The Court notes however, on the authority of the Belizean CCJ decision of **August et al. v R**[11] that it need not comb the record for inconsistencies or contradictions. The Court directs itself that if there are inconsistencies and discrepancies the Court must look to see if they are material and if they can be resolved on the evidence. The Court must consider whether inconsistencies or discrepancies arose for innocent reasons, for example through faulty memory or lack of interest in what is transpiring, or if it is because the witness is lying and trying to deceive the Court. Unresolved inconsistencies or discrepancies would lead the Court to reject that bit of evidence or all of the witness's evidence entirely. The Court must also consider the cumulative effect of those inconsistencies or discrepancies on a witness's credit and reliability. If the Court finds the evidence of a witness implausible it will reject either that witness's evidence entirely or that bit.

[54] The Court also directs itself that the credibility of a witness is not a seamless robe where one lie, or even several, automatically strips the witness of all believability. However, the telling of lies on oath is not a trifling thing. If the Court finds that any witness has intentionally testified falsely as to any material fact, it may disregard that witness' entire testimony or, may disregard so much of it as it finds was untruthful, and accept so much of it as it finds to have been truthful and accurate. How the Court decides on this may depend on its view of how material to the issue the lie is, and the reason, if any, for it. This is the Court's understanding of the CCJ decision of **James Fields v The State**[12] in relation to evaluating testimony involving intentional lies.

[55] In the Court's view the Crown's case of murder against the defendant consists of the following bits of evidence: (i) the uncontroverted evidence of Dr. Estrada Bran and Shaquere Rowland that Shakeem Felipe Dennison is dead and he died from gunshot wounds; (ii) the caution statement which may establish that the defendant caused the death of the deceased by shooting him; (iii) the uncontroverted evidence of Jarvis Usher which may establish that the killing of the deceased was intentional and by way of unlawful harm and without provocation; and (iv) other circumstantial evidence.

[11] [2018] 3 LRC 552 at para 60.
[12] [2023] CCJ 13 (AJ) BB at paras 33-38.

[56] The Court accepts the unchallenged evidence of Dr. Estrada Bran and Rowland that Shakeem Felipe Dennison is dead, and he died from gunshot wounds after considering all of the evidence.

[57] The Court will consider the rest of the evidence in turn.

A. The Caution Statement

[58] The Court is of the view that the questions it needs to ask itself in relation the caution statement are: (i) is it fair to rely on the caution statement; (ii) was the caution statement made by the defendant; and (iii) is the caution statement true[13].

Is it fair to rely on the caution statement?

[59] The Court finds consistent with its ruling of 2nd November 2023 that the caution statement was given freely and voluntarily, and it is fair to rely on it. The evidence post admission of the caution statement has not changed the Court's findings. That post admission evidence which touched and concerned the caution statement was: (i) the agreed statement of Rupert Lopez; (ii) the evidence of DC Montejo; and (iii) the testimony of the defendant in the main trial.

[60] The agreed statement of Rupert Lopez which provided the basis for the defendant's re-detention beyond the 48-hour constitutional requirement provided the further evidence that a person who was seen near the scene of the shooting was dressed similarly to the defendant though he could not positively state that it was the defendant. That person was riding a motorcycle and stopped next to the basketball court, got off the motorcycle and ran onto the basketball court and then got back onto the motorcycle and left. This was in the context of the defendant's denial in the Audinett interview of being at the basketball court. This was new and material evidence that was not given by any other Crown witness to that point. Pursuant to Guideline 15.7[14] of the **Guidelines for the Interviewing and Treatment of Persons in Police Detention** this new evidence was an appropriate basis for his re-detention, and it was authorised by a senior officer, Insp. Sanchez.

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[13] **The Crown Court Compendium, Part I: Jury and Trial Management and Summing Up, June 2022** p 16-4.

[14] "*15.7.A police officer may re-detain or re-arrest the person for the same offence for which they have been released without charge, but in such cases authorisation from a senior officer must first be given on the basis that there is some new evidence that was not available at the time of their release.*"

[61] The Court accepts that evidence of Insp. Sanchez that he received a call from Sgt. Vernon before 2 p.m. verbally informing him of the evidence of Rupert Lopez. The evidence of the instructions to re-arrest in this regard were supported by DC Montejo. The Court, as a matter of human experience, appreciates that as a practical matter police officers would orally question a witness about their prospective evidence before taking a formal witness statement, otherwise how would they know whether there is any value in taking the statement. It appears that this is what happened in this case as in Rupert Lopez's statement there was reference to him long before 1:45 p.m. indicating the type of evidence that he would give in that he was shown video footage at the Queen Street Police Station on the morning of 15th October 2020 and made identifications of the defendant therefrom. However, the evidence was only being committed to record in a formal statement at 1:45 p.m.

[62] Therefore, it is not implausible that Sgt. Vernon would have known what Rupert Lopez was going to say even before the statement formally began being written at 1:45 p.m. thus allowing him to call Insp. Sanchez and relate to him the information before 2 p.m.

[63] The Court again is of the view that even if it is wrong on this issue, it does not find that there was any deliberate frustration of the defendant's rights to cause it to not rely on the caution statement, a discretion noted in the local Court of Appeal decision of **Robert Hill v R**[15].

[64] The evidence of DC Montejo simply clarifies the position that the defendant was not released at the 48-hour mark but was re-detained. This evidence does not affect the Court's initial findings. The defendant in examination in chief repeated his previous claim in the voir dire that Sgt. Vernon had threatened his children to give the caution statement, and that threat is why he gave it. The Court rejects that evidence for the reasons it had given at the time of admitting the caution statement. No evidence has been led subsequently to cause the Court to revisit that finding.

Was the caution statement made by the defendant?

[65] This fact is not in issue as the defendant in cross-examination accepted that he gave it and signed it. He is also seen in the video in EV 2 reciting the content of the caution statement. The Court finds that the defendant gave the caution statement.

[15] Criminal Appeal No. 5 of 2000.

Is the caution statement or the material parts of it true?

[66] In the context of this case, it would be helpful to first address the question of what the defendant is actually saying in the caution statement. In that regard the Court is of the view that it is crucial to read the Audinett interview and the caution statement together.

[67] In the Audinett interview the defendant stated that: (i) he was shot in October 2019; (ii) he did not know who shot him; and (iii) he was aware that the deceased was a suspect in the shooting.

[68] In the caution statement he stated: (i) "the young man Phillip and two others" shot him in his head, resiling from what was said in the Audinett interview; (ii) he knew who shot him but through fear he remained silent; (iii) that on the evening of Monday 12th October 2020 "Phillip" made up his face as if he was going to do him something, "I fear him whenever I see him because I knew he was the guy that shot me so I went and I defend myself"; (iv) he further said, "I didn't mean to do what I do but I do it under self-defense (sic) fearing my life"; and (v) when asked to clarify what he meant by self-defence he said, "I just gaun and did him back the same thing he did me in self-defense (sic)."

[69] The Court finds that it is an irresistible inference that in the caution statement the defendant is saying that he in fact shot and killed the deceased, Shakeem Dennison, in self-defence. The Audinett interview centred around the shooting of Shakeem Dennison on Monday 12th October 2020 at about 4:45 p.m. In fact, the defendant was asked if he shot him directly and the agreed evidence of Sgt. Audinett was that the defendant was informed that he was in custody for the killing of Shakeem Dennison. He said that the Shakeem Dennison was the person who was rumoured to have shot him. The reference to doing to the person the same thing done to him in self-defence, in the Court's view on all of the evidence, is that the defendant is effectively saying that he shot the person "Phillip" who was the person who had shot him. On a combination of the Audinett interview and the caution statement, the Court finds that the reference to Phillip and Shakeem Dennison are one and the same person, who is the deceased whom he said he shot in self-defence.

[70] The caution statement is consequently a mixed statement which establishes that the defendant caused the death of the deceased but with the justification of self-defence.

[71] This resolves itself into two questions. Is it true that the defendant killed the deceased? If the answer to that question is yes was the killing done in self-defence? There is another connected question, which is, does the caution statement provide an evidential basis to raise the issue of the partial excuse of provocation.

Is it true that the defendant killed the deceased?

[72] The Court finds that Sgt. Vernon and JP Herrera are credible witnesses, whose manner and demeanour was impressive. Their evidence was also unshaken in cross examination. The Court easily accepted their evidence as truthful.

[73] The Crown's case is that the defendant freely narrated his account of the shooting in the caution statement. The Court has had the benefit of reviewing the video recording, EV 2, and has seen the manner and demeanour of the defendant in it. He appears calm, deliberate and composed. Indeed, the only time he appeared agitated was at the end of the interview when Sgt. Vernon asked him to explain what he meant by self-defence and the defendant seemingly felt he was clear enough, began to hastily respond to Sgt. Vernon, who did not lose his cool. It appeared to the Court on watching EV 2 that the defendant was seeking to avoid actually saying the words, "I shot Phillip". This deliberation and calculation on the part of the defendant seems to suggest that the defendant was moving closer to giving a true account, away from the complete denial in the Audinett interview, but still giving himself room for an exculpatory account.

[74] EV 2 also supports the credibility of Sgt. Vernon because he appears calm, composed and respectful in it. The recording captures him inviting the defendant to say whatever he wanted to say at the beginning of the caution statement. The Court, as in its previous ruling of 2nd November 2023, finds it wholly improbable that Sgt. Vernon would threaten the defendant and leave him to have a private conversation with JP Herrera. The defendant could have reported that to JP Herrera which if she had reported it may have ultimately led to Sgt. Vernon himself being charged for perverting the course of public justice. The defendant accepted on oath in the voir dire that he had a 5-minute private conversation with JP Herrera, and he accepted that he had told her that he was not threatened. He

also accepted that JP Herrera told him that she was there to protect his rights though he did not avail himself of the opportunity to tell her that Sgt. Vernon had made illicit promises to him.

[75] The conclusion from this evidence is that the caution statement contains what the defendant actually wanted to say.

[76] The Court finds that as a matter of human experience and common sense the admission by the defendant that he shot the deceased is a declaration against interest and is most likely to be true.

[77] There is circumstantial evidence, which the Court accepts, that also supports the truth of the evidence that the defendant shot and killed the deceased. Jarvis Usher's agreed evidence was that the shooter he saw was driving a 125 Meilun motorcycle. The agreed evidence of Jervis Lockwood is that the defendant has a Meilun ML125-7A motorcycle. The defendant admits to riding that motorcycle on the day of the shooting in his testimony in cross-examination in the main trial. The defendant accepted in cross examination in the main trial that the residence he was at with Rupert Lopez and others on the day of the shooting was near to Steven Shop. He further accepted in cross-examination in the main trial that Steven Shop is 2-3 minutes' walk from the basketball court where the shooting occurred.

[78] There are however discrepancies between the caution statement and the description of the shooter given by Jarvis Usher and the defendant. Usher firstly describes the motorcycle as black, while the defendant's motorcycle is in fact green. The Court has had the benefit of looking at the photographs AW 1-3 and notes that the defendant's motorcycle is dark green with a black seat. The Court resolves this discrepancy by noting in that regard that a prominent part of the motorcycle is black and in the shocking and traumatic events that Jarvis Usher witnessed he may not have been paying particular attention to the colour of the motorcycle to recall it with precision as opposed to focusing on what the shooter was doing.

[79] Jarvis Usher also said that the shooter was wearing a black in colour helmet. The agreed evidence of Jervis Lockwood is that the defendant had a blue helmet. The Court resolves this discrepancy similarly as with the colour of the motorcycle, that Usher may not have been precisely recording the colour of the helmet.

[80] The Court finds that the evidence in the caution statement is true and that the defendant did shoot and kill the deceased.

Was the killing done in self-defence?

[81] The first question the Court must ask itself under the test in *Norman Shaw* is, did the defendant honestly believe, or may he honestly have believed, that it was necessary to defend himself? Jarvis Usher's agreed evidence, which the Court accepts as truthful, makes the claim of self-defence fail at the first fence. The Court finds that the defendant could not and did not honestly believe that it was necessary to take defensive action because on the agreed evidence of Jarvis Usher the deceased posed no threat. On Usher's evidence at the time of the first shot the deceased was facing away from the defendant, and the deceased was further shot while turning. There is no evidence that the deceased had a weapon or there was any threat by the deceased, verbal or otherwise, to the defendant. There is no evidence of anyone "screwing" up their face. The movements of the defendant on the evidence of Jarvis Usher appeared to have had all the markings of what is commonly referred to as a "hit". The Court finds that the killing of the deceased was not done in self-defence and was unlawful harm.

Provocation?

[82] The defendant said in the caution statement that he was chased by the deceased and others on the morning of the shooting which may have been an assault in that he was intentionally put in fear of an unlawful imminent battery. This may be provocative conduct under section 120(a) of the *Code*. However, assuming but not accepting that those acts happened, and the Court is of the view that as a matter of human experience and common sense with a mixed statement the exculpatory parts are less likely to be true, pursuant to section 121(c) of the *Code* sufficient time would have elapsed to have an ordinary person regain their self-control. Also, as *Gordon* opined, referencing section 121(a) of the *Code* provocation requires a loss of self-control, calculated revenge is not excused by the law of provocation.

[83] The evidence of the "screwing" up the face as a potential provocative gesture under section 120(a) of the *Code* is negated by the Court's acceptance of the agreed evidence of Jarvis Usher, that this did not happen, and the deceased was in fact shot when he was looking away from the defendant.

B. Intention

[84] The Court finds on all of the evidence that the defendant intended to kill the deceased, particularly considering the evidence of the caution statement, the medical evidence and the statement of Jarvis Usher. The evidence of Jarvis Usher is that the defendant wordlessly approached the deceased and shot him several times and left him to bleed on the ground and die as the defendant sped off on his motorcycle when he was finished. The medical evidence shows that the deceased was shot in his neck a vital area evincing an intention not to merely wound but to kill. He also had a motive to kill from the caution statement, namely his previous shooting at the hands of the deceased and the harassment of himself and his family by the deceased.

[85] The Court notes the evidence of Rupert Lopez that he and the defendant smoked "weed" together on the day of the shooting. However, there is no evidence coming from anyone, including the defendant on oath, that he was intoxicated either at all or in any way that would affect his ability to form the intention to kill[16].

C. Video footage

[86] The Court placed little reliance on the video footage as it could not positively identify the defendant in any footage. Also, there was no nexus made to satisfy the Court so that it was sure that the identifications made by Rupert Lopez in footage he was shown at the Queen Street Police Station is the same footage tendered by Cpl. Flowers.

D. The Defence case

[16] **Orlando Smith Jr. et al. v R. Criminal Appeal No. 4 of 2019** at para. 25-30.

[87] The Court having found the Crown's evidence strong enough to potentially convict it carefully considered the defendant's case. No evidence of good character was led so this issue was not considered. The Court for the reasons cited above, including the view of the defendant on EV 2 while giving the caution statement inconsistent with his claim that he was pressured; the inherent implausibility of the evidence of the threat and promise by Sgt. Vernon; his failure to report the promise to JP Herrera; rejected his case entirely. The Court found that the defendant simply was not a credible witness.

E. Findings

[88] The Court returned to the Crown's case and looked at the totality of the evidence. The Court is satisfied so that it is sure that Shakeem Felipe Dennison is dead. The Court is satisfied so that it is sure that the deceased was killed by unlawful harm caused by the defendant, namely shooting him. The Court is satisfied so that it is sure that the defendant intentionally killed the deceased. The Court is satisfied so that it is sure that the defendant's killing of the deceased was not justified, nor was it legally provoked.

DISPOSITION

[89] The Court finds the defendant guilty of the murder of the deceased as charged in the indictment. The matter is adjourned for a separate sentencing hearing as advised by the CCJ in **Linton Pompey v DPP**[17].

Nigel Pilgrim
High Court Judge
Dated 25th January 2024

[17] [2020] CCJ 7 (AJ) GY at para 32.