

IN THE SUPREME COURT OF BELIZE, A.D 2023

(CRIMINAL JURISDICTION)

CENTRAL DIVISION

INDICTMENT C24/2022

THE KING

v.

DAVID GONZALEZ

-

MURDER

Appearances:

Mr. Riis Cattouse, Crown Counsel for the Crown

Mr. Oscar Selgado and Mr. Leeroy Banner, both Counsel for the Accused

Hearing Date:

2023: November 10th;

Delivery Date:

2024: January 12th.

Accused convicted.

SENTENCE JUDGMENT

- [1]** SANDCROFT, J.: The accused was presented with the indictment and entered a plea of "Not Guilty."

The Prosecution's Case

- [2]** The Crown's case began with an opening statement. During the examination in chief, an application was made to read agreed evidence into the records. Several statements from various individuals were read into evidence, all of which were agreed upon by both the Crown and the Defence.

Examination-in-Chief of John Rudon

- [3]** John Edward Rudon, a witness with a Bachelor of Science Degree in Biology and specialized training in Ballistics and Firearms Identification, provided his background information. He has undergone specialized training courses related to firearms and ballistics, including training by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the United Nation's Regional Center for Peace and Disarmament in Latin America and the Caribbean (UNLIREC). He has been employed in his current capacity since January 2008 and has previously testified as an expert in firearms examination and ballistics in the Supreme Court.
- [4]** Rudon recalls conducting a firearm examination on July 26, 2021, in relation to the case involving David Gonzalez and the deceased Marisela Gonzalez. He made contemporaneous notes during the examination, which he could identify based on the unique laboratory number "FOR20-1229F" located on all three pages and his signature on each of them. He was shown a document, which he identified as the report he compiled after the firearm examination, and it was marked as "JR-1." This report is referred to as the "report of analysis." No objections were raised from the defence regarding his expertise in firearms examination and ballistics for the trial. The defence did not pose any questions during cross-examination, and there was no re-examination.
- [5]** Statement of P.C. Keir Morey, dated 11th of June 2021 read into evidence as agreed by

both the Crown and the Defence.

[6] Statement of Emmanuel Perriott, dated 12th of October 2020 read into evidence as agreed by both the Crown and the Defence.

[7] Statement of Corporal Djenn Cayetano, dated 15th of October 2020 read into evidence as agreed by both the Crown and the Defence.

[8] Statement of Maria S. Eiley, Justice of the Peace, dated 14th of October 2020 read into evidence as agreed by both the Crown and the Defence.

Examination-in-Chief of Zair Villatoro CST:

[9] Zair Villatoro, a Crime Scene Technician with 5 years of experience, testified that he created a report on January 21, 2021, regarding the death investigation of Marisela Gonzalez. He stated that he would recognize the report by identifying his signature, the information he personally wrote on it, and the fact that it consists of three pages. Villatoro was shown a document that he identified as the report he had written for the Marisela Gonzalez death investigation, and it was marked as "ZV-1" as an exhibit. The defence had no objections to this.

[10] Villatoro also mentioned that he had placed images on a DVD related to the case. He would be able to recognize the DVD by his handwriting and the information he added, including his name and signature. The DVD was shown to him and identified as the same one where he had burned digital images taken during the death investigation of Marisela Gonzalez. This DVD was marked as "ZV-2" and presented as an exhibit without objections from the defence.

[11] Exhibit "ZV-2" was played in court, displaying post-mortem pictures of the deceased Marisela Gonzalez. Villatoro further recalled taking pictures of a hard drive and placing them on the same DVD, which he could retrieve. All the images shown in court were from the DVD, related to the case. The defense did not pose any questions during cross-examination, and there was no re-examination.

Examination-in-Chief of PC Elian Robateau:

- [12]** Elian Robateau, Police Constable 2383 assigned to San Pedro Police Station since October 2020, recalled an incident on Monday, October 12, 2020, at 3:14 a.m. He received a phone call at the San Pedro Police Station from WPC Isoline Ramos of Ladyville Police Station, who provided specific information. After the call, Robateau made an entry (#5) in the personnel diary and instructed mobile patrols to be alert for a male individual.
- [13]** Robateau then used his personal cell phone to call a number he couldn't remember. A male person answered but had slurred speech. Robateau attempted to ask the caller various questions, but received no substantial responses. The conversation lasted approximately 2 minutes, after which he ended the call and informed his supervisor, Mikey Gillett. The defense did not pose any questions during cross-examination, and there was no re-examination.

Examination-in-Chief of Nestor Campos:

- [14]** Nestor Campos, a business owner and former police officer living in San Pedro, recalled events from October 12, 2020. He received a call at 9:43 a.m. from Mr. Alex Eiley, who provided specific information about an incident. Campos contacted Sergeant Woods and relayed the information to him. He rode his assigned motorcycle to the area specified by Mr. Alex Eiley.
- [15]** Upon reaching the area, Campos encountered Sergeant Woods and other police personnel who had cordoned off a section of the street near Marina Drive, where they found the lifeless body of a partially nude female lying face down. Campos then received additional information from Sergeant Allan Woods. While heading to the San Pedro Police Station, he received a call on his cell phone from Mr. David Gonzalez, who asked about his wife Marisela Gonzalez's whereabouts. Campos advised him to visit the police station and provide a formal report.
- [16]** David Gonzalez mentioned that he had a domestic dispute with his wife the previous day, and she had disappeared after jumping off a golf cart near the Boca Del Rio Bridge. At

the police station, Campos checked the station diary, sent a WhatsApp message for the detention of David Gonzalez, and subsequently detained him upon his arrival with Corporal Tyrell Tillett.

[17] During the detention, Campos informed David Gonzalez of the reason, cautioned him, served him with an acknowledgment form, and explained his rights. David Gonzalez remained silent during this process. Tyrell Tillett handed over a black CZ 9mm pistol, and Campos transferred it to Sergeant Woods. Campos identified David Gonzalez in the courtroom and indicated that he had known him for approximately four years.

[18] He had frequent phone and in-person contact with David Gonzalez, averaging two to three days a week, during which they would exchange words for a few minutes. Campos recognized David Gonzalez's voice due to their frequent conversations and had his cell phone numbers saved under variations of "David Gonzalez" on his phone.

[19] During the cross-examination, Mr. Campos confirmed that he was employed as an officer in the Crime Investigation Branch of the Police Department when he provided the statement about the murder investigation dated October 13, 2020. He acknowledged stating in the October 13, 2020 statement that he had known the accused for four years and had regular contact with the accused, approximately 3 to 4 times per week.

[20] Subsequently, the defence pointed out that the statement submitted to the police on October 13, 2020 did not contain any information indicating that Mr. Campos spoke with the accused, David Gonzalez, 3 or 4 times a week, to which Mr. Campos agreed.

[21] The defence then suggested that, as an officer in the Crime Investigation Branch, Mr. Campos did not create a written record of the alleged conversation he had with David Gonzalez, to which Mr. Campos concurred.

[22] The defence further suggested that Mr. Campos was denying the existence of any such conversation with David Gonzalez and that he only learned the details he mentioned in his October 13, 2020 statement after reading the station diary, to which Mr. Campos disagreed.

- [23]** When asked if he considered David Gonzalez his friend when he drafted the statement on October 13, 2020, Mr. Campos responded negatively. He was then asked to characterize the relationship between himself and David Gonzalez on October 13, 2020, describing it as primarily professional, indicating that he used to serve him with summonses.
- [24]** Regarding Mr. Campos's awareness of the deceased individual being Marisela Gonzalez, he disagreed with the suggestion that he already knew.
- [25]** Finally, Mr. Campos was questioned about why he didn't immediately contact David Gonzalez after reading the station diary, and he explained that it was because he had already informed David Gonzalez to come to the San Pedro Police Station to file a formal report. There was no re-examination of Mr Campos.
- [26]** Statement of Corporal Rogelio Carrillo, dated 3rd of December 2020 read into evidence as agreed by both the Crown and the Defence.
- [27]** Statement of PC Valentino Bol, dated 19th of February 2021 read into evidence as agreed by both the Crown and the Defence.
- [28]** Statement of PC Isolene Ramos, dated 13th of October 2020 read into evidence as agreed by both the Crown and the Defence.

Examination-in-Chief of Crime Scene Technician Jiro Sosa:

Jiro Sosa, a senior Crime Scene Technician, testified in court. He recalled creating a report on January 21, 2021, related to the accused David Gonzalez. He stated that he would recognize the report by the case information and his signature.

- [29]** Mr. Sosa was officially deemed an expert in processing crime scenes by the court. He mentioned that his initial report consisted of 17 pages. The court was presented with a document, which Mr. Sosa identified as the report he had created on January 21, 2021. He confirmed his signature on the document and all the information he had provided. This report was tendered and marked as exhibit "JS-1."

- [30]** Mr. Sosa explained that he stored the pictures from the crime scenes on a computer and burned them onto two DVDs. These DVDs were labelled with the case information and his signature. Each DVD was individually sealed in evidence bags, marked with yellow tamper-proof tape, and included a chain of custody. The court approved the tendering of these DVDs.
- [31]** Several clothing items were processed, all of which were identified by Mr. Sosa through their case information and his signature. These items included pants, towels, boxers, a kid's blouse, a shirt, a foot towel, and a T-shirt with various stains, which were sealed with yellow tamper-proof tape. The court allowed each of these clothing items to be marked as exhibits.
- [32]** Mr. Sosa also mentioned that the previous items were discovered in a garbage bin in San Pedro Town, all contained within a black garbage bag.
- [33]** Additionally, the court was shown Exhibit "JS-2," a DVD that was played for the court. Mr. Sosa discussed specific details within his report, highlighting a red substance on David Gonzalez's foot, which he referred to as item 3.
- [34]** He explained the use of blue light in crime scene processing, particularly in detecting substances like body fluids, hairs, fibres, bones, and drugs. He distinguished between fluorescence and absorption of light, noting that red stains often indicated blood.
- [35]** Mr. Sosa also talked about chemiluminescence, where chemicals produce light to indicate a reaction between the chemical and a substance on an object. This chemical was used to search for traces of blood, which, when detected, were swabbed for analysis to determine the substance.
- [36]** Furthermore, Mr. Sosa discussed the call history on David Gonzalez's phone, which included calls to Michael Garbutt and Michael's wife, indicating the timing and duration of these calls.
- [37]** During cross-examination, Mr. Sosa was asked if he agreed that the garbage bin was not

in David Gonzalez's yard and that the blue light that he used repeatedly in his evidence was capable of picking up other body fluids such as semen beside blood.

[38] Mr. Sosa confirmed that the garbage bin he mentioned in his testimony was not located in David Gonzalez's yard. He also acknowledged that the blue light he repeatedly referred to in his testimony was capable of detecting other body fluids, such as semen, in addition to blood. There was no re-examination of Mr. Sosa.

Examination-in-Chief of Michael Garbutt:

[41] Michael Garbutt, a tour guide with over 30 years of experience, testified that on October 12, 2020, at around 2:40 a.m., he received a call on his wife's phone. The caller was David Gonzalez, whom he had known for six years through his tour company, "Caribbean Adventures." Although they spoke more frequently during the high tourist season, they would have business-related conversations about 10-15 minutes on average. They mainly communicated over the phone, and when David visited Belize City, they would meet, and their interactions were usually more extended than 10 minutes.

[42] During the phone call in question, David Gonzalez, speaking in a slurred voice, mentioned BTB (Belize Tourism Board) and eventually confessed that he had shot his wife. Michael Garbutt recognized David's voice and told him he would call the police, to which David remained silent, and the call ended. Garbutt promptly called 911 and saved David's number in his phone contacts as "David Gonz."

[43] Garbutt was familiar with David Gonzalez's distinctive way of pronouncing words. The last conversation he had with David before that night's call was on October 11, 2020, which lasted about 40 seconds and was related to BTB's gold standards. David's number at that time was 6265309, and his wife's phone number was 6052016.

[44] In cross-examination, Mr. Garbutt was asked to confirm whether he was asleep when he got the call around 2:40 a.m. Michael Garbutt confirmed that he was asleep when he received the

phone call at approximately 2:40 a.m. Mr Garbutt was then asked about the phone call he received from David Gonzalez, wherein he explained that he answered his wife's phone because it was ringing, and his phone was off. When asked why he didn't record the conversation, he replied that he didn't know why. The defence questioned his decision to enter the number into his phone even though he recognized David Gonzalez's voice. Garbutt maintained that he didn't recognize the number, which is why he entered it.

[45] The defence suggested that he might not have recognized the voice because he was half asleep during the call. However, Garbutt disagreed and maintained that he could recognize the voice. The defence also questioned his previous statement to the police, where he mentioned having difficulty understanding the slurred words. Garbutt disagreed with the suggestion that he didn't speak with David Gonzalez that night or that the conversation was a product of his imagination.

[46] He affirmed that he considered David Gonzalez like a brother and disagreed with the suggestion that he didn't know where David lived. When asked if he visited David during the COVID-19 pandemic, he stated that he had not. The defence suggested that his recollection of the conversation was vague because he was in and out of sleep, but Garbutt disagreed, maintaining that he remembered the conversation.

[47] During the re-examination, Michael Garbutt recalled two crucial points from the phone conversation with David Gonzalez: the mention of "BTB" and the last 20 seconds when David said, "Can I trust you." He explained that in response, he sat up, asked why he should be trusted, and heard David say that he had shot his wife, followed by the question of her whereabouts. This prompted him to call the police.

Examination-in-Chief of Dr. Daniel Gonzalez:

[48] Daniel Benjamin Gonzalez, a medical doctor in San Pedro, provided his testimony on May 17, 2023. He mentioned that he practices obstetrics and gynaecology in Belize and is the owner of the Ambergris Hopes Clinic. His clinic has been in operation for 31 years. He has a son

named David Gonzalez, who was involved in the tourism business as a tour operator for his own company, Caribbean Adventures, in 2020. David lived in a house next to the clinic, and Daniel mentioned that David had a white vehicle that was sold by him. At one point, Mr. Woods called him to the police station in January 2021 to return some items that belonged to David, including an iPhone, keys to a 1994 Toyota vehicle, and the vehicle itself.

[49] In cross-examination, Dr Daniel Benjamin Gonzalez stated that he was not aware of the exact date when David acquired the van. He confirmed that David owned two other vehicles used as taxis and had a fleet of golf carts. The vehicle in question had a green license plate, indicating it was used as a taxi. David had the van rented out to drivers. When asked about the statement he gave to the police on January 14, 2021, he confirmed that he received a shattered iPhone from the police and signed the statement. The Defence had no further questions for him, and there was no re-examination.

Examination-in-Chief of Myra Guzman:

[50] Myra Guzman, the sister of Marisela Guzman Gonzalez, testified that she lived at David Gonzalez's residence in San Pedro, Belize, for approximately 3 1/2 years along with other family members. She worked as a salesperson at Caribbean Tours, which was owned by David Gonzalez.

[51] On October 12, 2020, she received a call from Sergeant Woods informing her about her sister's death. She immediately left for San Pedro and went to the police station. On January 1, 2020, after a night out at a club, David Gonzalez returned home without Marisela Gonzalez. When asked about her whereabouts, he claimed to have left her at the club with another family member, Esvin Guzman. Marisela later arrived home, and an argument between her and David ensued. The argument escalated, and David pointed a firearm at Marisela.

[52] Marisela eventually returned to the mainland (Stann Creek) for about a week. During this time, David frequently called her, and she later decided to return to his house. Myra did not accompany her.

- [53]** Myra was able to recognize various clothing items, such as shorts and a T-shirt, which belonged to David Gonzalez, as well as a towel that her sister had received from Ocean Tides Beach Resort. She also identified David Gonzalez's house and van.
- [54]** During cross-examination, the defence suggested that Myra stopped living at David Gonzalez's house in 2017, to which she disagreed. The defence questioned the timeline of when David Gonzalez moved into his new house, suggesting that Myra did not live with him in 2017, and she disagreed, mentioning that she moved in four months later.
- [55]** The defence suggested that the allegations regarding David pointing a gun at her sister did not occur in 2020 but in 2018, to which Myra disagreed. Myra acknowledged that she mentioned in her first statement that David was abusive towards her sister. She disagreed with the suggestion that her sister never begged her to stay with her in San Pedro. Myra also refuted the suggestion that she stayed with David Gonzalez because she was working with him or benefiting from him.
- [56]** The defence pointed out that she did not mention in her statements that David begged her to work for him. Myra confirmed that David left her sister alone when he returned home on January 1, 2020. She agreed that David was not with her and her sister when they went to Stann Creek District for a week. Myra did not mention in her statements that David took them there or was with them when they bought the pants at a second-hand store. She disagreed with the suggestion that David did not control her sister.
- [57]** According to Myra, to her knowledge, her sister never made any report against David. She confirmed that she did not see any police officer or scenes of crime personnel package Exhibit "JS-9" (pants). Myra did not give any statement describing the pants or put any marking on them to identify them. She agreed that she was not present when the item (pants) was packaged.

[58] The defence suggested that Exhibit "JS-16" (shirt) does not belong to David Gonzalez, and Myra disagreed. She acknowledged that the resort had more than one towel, and she did not see anyone package Exhibit "JS-5" (towel). Myra did not give any statement describing "JS-5" (towel) or put any marking on it to identify it. She agreed that she did not mark the towel, and therefore, she could not definitively identify it as the one her sister got from the Beach Resort.

[59] Similarly, due to the lack of markings, she could not assert that the shirt belonged to David Gonzalez or that the pants belonged to her sister. The defence had no further questions, and there was no re-examination.

Examination-in-Chief of Dr. Loyden Ken:

[60] Dr. Loyden Ken is a licensed medical practitioner and specialist in anatomical pathology. He performed a post-mortem examination on the body of Marisela Gonzalez on October 15, 2020, and created contemporaneous notes during the examination. These notes bear his signature, stamp, and the name of the deceased on each page. Dr. Loyden Ken's autopsy report, which provides details about the cause of death, was identified as exhibit "LK-1" and presented as evidence.

[61] The cause of Marisela Gonzalez's death was determined to be a single gunshot wound to the head. This wound was classified as a contact wound, indicating that the muzzle of the gun was in direct contact with the skin when the shot was fired.

[62] Additionally, the autopsy revealed various injuries and markings on the body, including contusions (bruises) on the right frontal and right palpebral regions of the head, as well as a right peri-orbital bruise near the right eye. Linear post-mortem friction abrasions were found on the chest, extending to the mammary region (breast area) and the right abdominal region, suggesting that they occurred after death and were caused by the skin being dragged over a rough surface. Superficial scratches were also observed on the anterior aspect of both thighs and legs, with more prominent scratches on the right side.

[63] Dr. Loyden Ken noted abrasions on the right lateral side of the neck, which were also post-mortem in nature. Multiple ant activities were observed on the anterior of the body. Additionally, fresh soft tissue haemorrhage was present in the lower para-vertebral region of the lower back. These findings provide insights into the condition of the body during the post-mortem examination and the injuries sustained by the deceased. The defense did not pose any questions during cross-examination.

[64] Dr. Loyden Ken was asked by the Court to describe the bleeding resulting from a perforated gunshot wound in the case of a contact wound. In such cases, the gunshot creates a blast inside the brain, perforating the skull and causing damage to brain tissue. The bullet and bone fragments exit the skull through the skin. The bleeding from this type of wound is described as acute and severe, characterized by a rapid and fast flow of blood. No additional questions were raised by the Court or the Crown regarding this matter.

[65] Dr Loyden Ken was asked by the defence if there would be blood everywhere. In response to the question, he explained that in cases of a contact gunshot wound to the head, the force generated within the brain would result in severe bleeding within the cranial cavity (skull). Some of that blood could potentially seep out, but this would depend on the size of the exit wound and the position of the body on the ground. The Defence did not have any further questions on this topic.

Examination-in-Chief of Sergeant Allan Woods

[66] Sergeant Allan Woods, currently attached to the Crime Investigation Branch at the San Pedro Police Station, testified about giving several statements and collecting various documents related to the investigation of the suspect David Gonzalez. He identified these documents, which included his statements and reports provided by forensic experts. Additionally, he pointed to David Gonzalez in the dock. The Defence did not raise any objections to the presentation of these documents.

Examination-in-Chief of PC Hector Blanco:

[67] Detective Corporal Hector Blanco testified that he gave a statement in the investigation of David Gonzalez on October 20, 2020. He also mentioned that he copied video footage onto a DVD related to the case, and if he saw the DVD again, he could recognize it based on the description, date, and his handwriting. The DVD was presented as evidence and marked as "HB-1," with no objections from the defence. There was no further question for the Crown, and the defence did not pose any questions during cross-examination.

Defence Case:

[68] Good afternoon, my name is David Augusto Gonzalez, I am a Belizean businessman, I born July 11 of 1988, I would like to start my defence explaining myself of my doings on October 11, 2020; on that day I wake up as every morning, kiss my wife Marisela Gonzalez, kiss my daughter Sofie Gonzalez, have breakfast with them and then I start my days work. I then drive around 8:30 my personal golf-cart to my company office: Caribbean Adventures, then I opened my office, I rent golf-carts, after I rent 6 of them and because it was Sunday, I decided to call it a day, I called my wife Marisela Gonzalez and asked her if she feel like going to the beach, she told me yes that she wish to go to the Secret Beach in San Pedro, I told her to go and get ready and changed our daughter to go to the beach, I then closed my office, drive my personal golf-cart back to my house and get my wife and daughter and then we start heading to Secret Beach, once we arrived at Secret Beach we choose our favourite restaurant and bar to have lunch and drink as always. We then had lunch and drinks with friends at the beach, we swim on the beach and in the afternoon, we decided to call it a day too, after the decision was made, we started driving back towards home, along the way on our journey towards home, I noticed that my wife Marisela Gonzalez had too many drinks, then she asked me to stop in San Pedro Town to continue our party, then I told her no, I have to work tomorrow and somebody have to take care of our daughter, she then argued with me and then started a fight, where she told me that she decided to stay in San Pedro Town by herself, then I take a decision to avoid an argument with her and because I have to work the next day, to take care of my daughter and allow her to stay in Town.

After giving her money and ask her to come back home earlier she then come out of the golf-cart at the bridge in San Pedro Town. I then keep driving with my daughter Sofie Gonzalez, went home, prepared dinner for my daughter and me, take a shower first then bathe my daughter and then I went to sleep with her. I then started watching television to kill some time or to spend some time to wait for my wife Marisela Gonzalez, watching television I fall asleep waiting on her. The next morning when I wake up, I noticed that my wife Marisela Gonzalez didn't come back home, I then tried to call her several times without the success of reaching her, I then take the decision, I just want to clarify that this is Monday October 12, to change my daughter and myself to get ready for work because I know that I had to collect the 6 golf-carts that I rent on Sunday October 11. Now then I take my private golf-cart with my daughter and I start my journey towards Caribbean Adventures, on my way to work I called my cousin Alicia Gonzalez and asked her to baby-sit my daughter during I work the morning shift. After driving my daughter to my cousin, then I start driving back to my office, after I reached I noticed that none of my employees have come to work. In due that I need a driver then I drive my golf-cart from my office towards Pescador Drive where I know the house of my employee Minor Ancona, after picking him up, then I drive back to my office to start collecting my golf-carts. During the morning while I was waiting for my golf-cart, two police officers come and tell me that I am wanted for questioning at the San Pedro Police Station, concerning the murder of my wife Maricela Gonzalez, they asked me for my license firearm which I respond that I have locked in my security safe in my private office in my company building. I then proceed to walk the two police officers towards my private office and handed them my licensed firearm. They proceed to escort me to the San Pedro Police Station where I find out that I was detained for the PI of the murder of my wife Marisela Gonzalez. I would like to clarify that in no such time I drive any of my three taxis.

I would like to clarify that after the possession of the taxi, Toyota Previa, white in colour, that it will show for Mr. Cattouse in your presence I do not who was the driver that worked that taxi. I would like to clarify that about Myra Guzman that she stop living in my property in 2017. I would like to clarify that in no such time I pulled out my licensed firearm to any human being, specifically to my beloved wife Marisela Gonzalez. I would like to clarify that in no such time in October 11 or October 12, I called Michael Garbutt. I would like to clarify that my I-Phone that

Allan Woods confiscate from me is not the same phone shown in this Court room from Mr. Cattouse. The reason why I know that I-Phone which was shown on the pictures is not my phone is because the screen that it was shown on Mr. Cattouse pictures are clear without any damages, the I-Phone that I handed to Mr. Woods it has a shattered screen at it was shown on the statement of my father Dr. Daniel Gonzalez that it was signed and stamped from a JP and sergeant Allan Woods, where it described that the actual I-Phone that he was returning to Daniel Gonzalez was a damaged I-Phone with a shattered screen. I do not tell Michael Garbutt anything concerning my private life, the reason is because such call never take place. I would like to give my point of view concerning the statements of Myra Guzman, they are untrue that's it concerning the statements and my whereabouts on October 11 and 12.

Your Honour, I am a law abiding citizen, on my 34 years I do not have any charges against my person, there is not any police reports against myself for domestic violence or aggressive behaviour, mi lord I do not even have a parking ticket. After being detained and charged for the murder of my wife, I was send to be remand at Belize Central Prison Kolbe Foundation, during my remanded time, I do not have a charge in prison also. I would like you to consider my innocence, I do not kill my wife. Thank you your Honour.

Findings & Discussions:

[69] It is now my duty to sentence the accused person for the crime he has been convicted of. In terms of our law there are three factors to be taken into account when considering an appropriate sentence, namely: (a) The personal circumstances of the accused; (b) The nature of the crime and (c) The interest of society.¹

[70] At the same time the sentence to be imposed must satisfy the objectives of punishment which are: (i) the prevention of crime; (ii) deterrence of the offender from re-offending (iii) rehabilitation of the offender and (iv) retribution.

[71] The determination of a suitable sentence is a complex exercise a presiding officer has to contend with. It does not involve a mechanical process in which predetermined sentences imposed for specific crimes in similar cases are to be considered. Even though following the said cases is an important consideration it is not overriding. Generally the sentencing court in each case must consider the factors referred to in **S v Zinn**², afford an appropriate weight thereto and strike a balance between the aforesaid various interests.

[72] However due to the difficulty experienced in harmonising and balancing these interests and applying them to the facts, equal weight need not be given to different factors as it might become necessary to emphasise one or more factor/s at the expense of others. The above determination will largely depend on the circumstances of the facts of a particular case, See **S v Van Wyk**.³ In striving to strike a balance between various interest in this case, I find it appropriate to follow and apply what the court in **S v Rabie**⁴ had said that: 'Punishment should

¹ S v Zinn 1969 (2) SA 537 (A) at 540G

² Supra.

³ S v Van Wyk 1993 NR 426 (SC)

⁴ S v Rabie⁴ 1975 (4) SA 855 (AD) at 862 G-H

fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances.’

[73] In the court's determination of what punishment is appropriate in this case, I will have regard to the triad of factors, namely the personal circumstances of the accused, the offence and the crimes committed and the interests of society. Punishment must fit the criminal as well as the crime. Considering the circumstances, it should be fair to the community as far as possible but also blended with a measure of mercy.⁵

[74] I will strive to balance the accused's and society's interests. Though all the general principles applicable must be considered, balanced, and harmonised when applied to the facts, I need not give them equal weight or value. The circumstances of a case might require emphasising one or more at the expense of others.⁶ The primary purposes of punishment are deterrence, prevention, reformation, and retribution. At the same time, deterrence is the all-important object of a sentence with the other aspects as accessories. Retribution is of lesser importance in modern times. However, in sentencing, the difficulty arises not from the general principles applicable but from the complicated task of harmonising and balancing these principles and applying them to the facts.⁷

[75] In **S v Rabie**⁸ Holmes JA quoting from Gordon Criminal Law of Scotland (1967) at 50 at 862A-B explained the differences between the different theories as follows:

⁵ S v Zinn 1969 (2) SA 537 (A) and S v Tjiho 1991 NR 361 (HC) (1992 (1) SACR 639); S v Rabie 1975 (4) SA 855 (A) at 862G – H; S v Seas 2018 (4) NR 1050 (HC) paragraph 23

⁶ S v Van Wyk 1993 NR 426 (SC) (1992 (1) SACR 147); S v Seas 2018 (4) NR 1050 (HC) paragraph 23

⁷ S v Van Wyk 1993 NR 426 (SC) at 448B-F approving and applying S v Zinn 1969 (2) SA 537 (A) at 540G-H and S v Khumalo and Others 1984 (3) SA 327 (A) at 330D-I and the authorities collected there.

⁸ S v Rabie 1975 (4) SA 855 (A)

'The retributive theory finds the justification for punishment in a past act, a wrong which requires punishment or expiation... The other theories, reformative, preventive and deterrent, all find their justification in the future, in the good that will be produced as a result of the punishment.'

[76] In **S v Banda and Others**⁹, while dealing with the interest of the community, the Court pointed out that Courts fulfil a vital function in applying the law in the community. The Court operates in society, and its decisions impact individuals in the ordinary circumstances of daily life. It covers all possible grounds. The Court promotes respect for the law through its decisions and the imposition of appropriate sentences. In doing so, it must reflect the seriousness of the offence and provide just punishment for the offender while also considering the offender's circumstances.

[77] I agree with what Corbett CJ stated In **S v Rabie**¹⁰:

'A judicial officer should not approach punishment in a spirit of anger because, being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interests of society which his task and the objects of punishment demand of him. Nor should he strive after severity; nor, on the other hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality. It is in the context of this attitude of mind that I see mercy as an element in the determination of the appropriate punishment in the light of all the circumstances of the particular case.'¹¹

⁹ 1991 (2) SA 352 (BG) at 356E-F

¹⁰ S v Rabie 1975 (4) SA 855 (A) 866B-C

¹¹ Referred to in S v Banda and Others (supra) at 354A-C; See also S v Zinn 1969 (2) SA 537 (A) at 541D-E and In S v Harrington 1989 (2) SA 348 ZSC at 362E-H where the Court stated that a sentencing court should never assume a vengeful attitude and correctly in my view quoted from Francis Bacon's essay 'On Revenge' which stated: 'Revenge is a kind of wild justice which, the more man's nature runs to, the more ought law to weed it out.'

[78] I also agree with what was stated in **R v Karg**¹² in respect of the importance of retribution, especially while violence against vulnerable persons continues relentlessly in the Belizean society:

'While the deterrent effect of punishment has remained as important as ever, it is, I think, correct to say that the retributive aspect has tended to yield ground to the aspects of prevention and correction. That is no doubt a good thing. But the element of retribution, historically important, is by no means absent from the modern approach. It is not wrong that the natural indignation of interested persons and of the community at large should receive some recognition in the sentences that Courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands. Naturally, righteous anger should not becloud judgment.'¹³

[79] The sentencing Court however cannot be requested or required to revenge the deceased's death. It is important to consider what was stated in **S v Harrington**¹⁴ where the Court said that a sentencing court should never assume a vengeful attitude and quoted with approval from Francis Bacon's essay 'On Revenge' which stated:

'Revenge is a kind of wild justice which, the more man's nature runs to, the more ought law to weed it out.'

[80] In **S v Gaingob and Others**¹⁵ the Namibian Supreme Court warned against lengthy sentences of imprisonment that have diminishing returns and thus eventually subjecting the accused to cruel, degrading and inhuman punishment that infringes their right to human dignity enshrined in the Namibian Constitution.¹⁶

¹² R v Karg 1961 (1) SA 231 (A) at 236A-B. Also see S v Kanguro 2011 (2) NR 616 (HC) paragraph 9 and S v Schiefer 2017 (4) NR 1073 (SC) paragraph 30

¹³ See also S v Bothile 2007 NR (1) 137 (HC) paragraph 21 and S v Matlata 2018 (4) NR 1038 (HC) paragraph 30, S v Kadhila [2014] NAHCNLD 17 (CC 14/2013; 12 March 2014).

¹⁴ S v Harrington 1989 (2) SA 348 ZSC at 362E-H

¹⁵ S v Gaingob and Others 2018 (1) NR 211 (SC),

¹⁶ See also S v Matlata 2018 (4) NR 1038 (HC) paragraph 35

[81] **Gaingob** established the following important general principles. Life imprisonment is the harshest penalty in Namibia. That penalty passes constitutional muster because it leaves open the prospect of the prison authorities releasing a person after he or she has served a minimum of 25 years imprisonment. A fixed sentence of long term imprisonment (such as those which were being considered in **Gaingob**) which – because of its length and the age of the convict – removes all hope of a prisoner ever being released from prison is a sentence harsher than life imprisonment and is unconstitutional for being cruel, inhuman and degrading.

[82] A court searches for an appropriate sentence in each case. It, however, does not mean that there is only one such appropriate sentence. No court of law is perfect. The court is the community's arm dedicated to making assessments for proper sentences. The court's sentence judgement is essentially its evaluation of what is fair in the circumstances of a given case. It is, however, not a scientific calculation. A sentence cannot be objectively measured and then snipped off in the correct lengths.¹⁷ It has been said that:

‘Sentencing, at the best of times, is an imprecise and imperfect procedure and there will always be a substantial range of appropriate sentences.’¹⁸

[83] There is a persistent demand for more severe sentences to be imposed on all offenders for all crimes. The apparent foundation for this demand is a steadfast belief that no punishment can be too harsh and that the more severe it is, the better it will protect society. Public expectation is not synonymous with the public interest. Although the courts must serve the interests of society and not be insensitive to or ignorant of general feelings and expectations, they may not blindly adhere to that. Remarks or submissions that public expectation equates to the public

¹⁷ S v Martin 1996 (2) SACR 378 (W) at 381E-G

¹⁸ Smith v The Queen 1987 (34) CCC (3d) 97 at 109-110 by McIntyre J in the minority judgment as quoted in S v Vries 1996 (2) SACR 638 (Nm) at 643f-g; S v Vries 1998 NR 244 (HC) at 249G-H

interest are inconsistent with the applicable principles of law and, therefore, of no assistance to the court.¹⁹

[84] With regard to the interest of society, members of society need to be protected from dangerous individuals like the accused. At the same time society will not condone a sentence which is inappropriately long as Frank AJA, in **Gaingob v S** (CSA 7 and 8- 2008) [20018] NASC (6 February 2018) found that 'fixed term sentences longer than 37 and a half years 'is materially misdirection and can be rightly described as inordinately long liable to be set aside.'

[85] While agreeing with that highest court's decision, in my view the right to life is the most sacred, the most precious right and must be bitterly guarded and protected. It is with great concern to see how many people are killed in domestic set up as in the present case. In my view such behaviour should be condemned as society will definitely not accept and approve the same.

[86] In determining an appropriate sentence, a court should strive to accomplish and arrive at a reasonable counterbalance between these elements to ensure that one factor is not unduly accentuated at the expense of and to the exclusion of the others. The process is not merely a formula, nor is it satisfied by simply stating or mentioning the requirements. What is necessary is that the Court shall consider, try to balance evenly, the nature and circumstances of the offence, the characteristics of the offender and his circumstances and the impact of the crime

¹⁹ S v Makwanyana and Another 1995 (3) SA 391 (CC) at 431C-D, S v Hanse-Himarwa (CC 05/2018) [2019] NAHCMD 260 (31 July 2019) paragraph 33

on the community, its welfare and concern. This conception, as expounded by the Courts, is sound and is incompatible with anything less.²⁰

[87] I find no fault with the caveat in **S v Reddy**²¹ stating:

'Though uniformity of sentences, that is of sentences imposed upon accused persons in respect of the same offence, or in respect of similar offences or offences of a kindred nature, may be desirable, the desire to achieve such uniformity cannot be allowed to interfere with the free exercise of his discretion by a judicial officer in determining the appropriate sentence in a particular case in the light of the relevant facts in that case and the circumstances of the person charged.'²²

[88] The convict lived in a domestic relationship with the deceased before the incident. They were married and had one child together. The convict never told the Court why he killed the deceased, he denied it to the end. I must still consider accused's human frailties as affected by the circumstances surrounding the commission of the offence in question and balance those frailties against the evil of the offender's deed. This is not an easy task as the accused has never taken the Court into his confidence.²³

[89] In **S v Tomas**,²⁴ Liebenberg J explained it as follows:

'Whereas the accused did not take the Court into his confidence and come clean as to what led to the incident during which the deceased was killed, the only conclusion to reach is that this was a senseless killing where a much weaker and defenceless person, the accused's own girlfriend and the mother of his only child, became the victim of the one who was supposed to protect and love her. The deceased died a violent death and after the assault was left at her own mercy until she succumbed. It seems unthinkable that anyone could be driven to such anger or rage and is provoked to act in the manner the accused did; yet, he remains unwilling to share that reason, if there were to

²⁰ S v Banda and Others 1991 (2) SA 352 (BG) at 355A-C

²¹ S v Reddy 1975 (3) SA 757 (A) at 759H-760B; See also R v Karg 1961 (1) SA 231 (A) at 236G-237A and S. v Ivanisevic and Another, 1967 (4) SA 572 (AD) at p 575

²² See also S v Kramer and Others 1990 NR 49 (HC) at 62H and S v Nanyemba, CC 12/2018) [2021] NAHCNLD 42 (27 April 2021) paragraph 14

²³ S v Seegers 1970 (2) SA 506 (A) at 511G: 'Remorse, as an indication that the offence will not be committed again, is obviously an important consideration, in suitable cases, when the deterrent effect of a sentence on the accused is adjudged. But, in order to be a valid consideration, the penitence must be sincere and the accused must take the Court fully into his confidence. Unless that happens the genuineness of contrition alleged to exist cannot be determined'. See also S v Kapia and Others 2018 (3) NR 885 (HC) paragraph 16

²⁴ S v Tomas (CC 02/2012) [2012] NAHC 222 (03 August 2012) paragraph 11

be any, with the Court. If that is done with the view of lodging an appeal, then it is something he has to live with, for the absence of remorse in the circumstances, is indeed an aggravating factor. Whereas the Court has already found that the murder was pre-meditated, this is another aggravating factor and one that weighs heavily with the Court when considering sentence.'

Many of the facts of this case are sadly like the facts of the above-quoted matter which tell their own story.²⁵

[90] I must consider any substantial time spent in custody awaiting trial. It is not a mitigating factor that lessens the severity of the criminal act or the accused's culpability. However, a court tasked with imposing an appropriate sentence cannot ignore the accused's substantial time in pre-trial custody pending his conviction and sentence. A court must accord sufficient weight to such time spent in custody and consider it together with other relevant factors to arrive at an appropriate sentence. Although it has been said that taking it into account does not mean simply deducting the time spent in custody from the intended punishment, this does not mean a Court cannot do this when it considers it appropriate.²⁶

[91] I wish to reiterate what was said in **S v Ncamushe**²⁷ and repeated in subsequent cases²⁸

'Gender-based violence and murders have reached unacceptable levels in Namibia. I get the impression that for some inexplicable reason, some males, I deliberately do not call them men, believe that women are their property to do with as they please. The Courts cannot allow this perception to continue, and society rightly expects that perpetrators of such crimes, and anyone who contemplates it, should expect substantial sentences if convicted.'

²⁵ However, the Tomas case's accused was 20 years younger than the accused in this matter. Furthermore, in the former matter, there was evidence that the murder was premeditated.

²⁶ S v Kauzuu 2006 (1) NR 225 (HC) at 232E-G quoting numerous South African cases that set this principle. See also S v Seas 2018 (4) NR 1050 (HC) paragraph 27 and S v Mbemukenga (CC 10/2018) [2020] NAHCMD 262 (30 June 2020) paragraph 11, S v Nanyemba (CC 12/2018) [2021] NAHCNLD 42 (27 April 2021) paragraph 10

²⁷ (CC 10/2017) [2021] NAHCNLD 45 (18 May 2021) paragraph 29 Also see:

²⁸ S v Katsamba (CC 14/2018) [2021] NAHCNLD 113 (6 December 2021) paragraph 28 and S v Domingo (CC 9/2020) [2021] NAHCNLD 115 (16 December 2021) paragraph 27

[92] Considering all the aforesaid factors, reasoning, and conclusions, I hold the view that the sentence set out hereunder is appropriate of this case. In the result the accused is sentenced as follows:

- (1) For Murder, David Gonzalez is sentenced to life-imprisonment. The Convict is to serve 35 years less the time spent on remand.

Dated the 12th day of January 2024

RICARDO O'N. SANDCROFT
Justice of the High Court