**IN THE HIGH COURT OF BELIZE, A.D 2023**

**(CRIMINAL JURISDICTION)**

**CENTRAL DIVISION**

**INDICTMENT C6/2022**

**THE KING**

**v.**

**HILDEBRANDT CODD**

**-**

**MURDER**

**BEFORE:** The Hon. Mr. Justice Ricardo Sandcroft

**Appearances:**

Mr. Riis Cattouse, Crown Counsel for the Crown

Mr. Ellis Arnold S.C. and Brian Neal for the Accused

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**Hearing Date**: 2023: July 24; 25; 26 .

**Delivery Date**: 2023: December 5th.

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CRIMINAL LAW – MURDER CONTRARY TO BELIZE CRIMINAL CODE

**Indictment read to Accused**

**Accused Plead Not Guilty**

**SANDCROFT, J.**

**Applications**

**[1].** Application made under **Part 10 of the Criminal Procedure Act** for the following statements to be admitted into evidence as agreed by both the Crown and the Defence:

(1) **Statement of Corporal Kareem Fuller** dated 2nd of December 2019 read into evidence as agreed by both the Crown and the Defence.

(2) **Statement of PC Daniel Itch Fuller** dated 27th of December 2019 read into evidence as agreed by both the Crown and the Defence.

(3) **Statement of Martin Jimenez**, Justice of the Peace, dated 23rd of February 2020 read into evidence as agreed by both the Crown and the Defence.

(4) **Statement of James Stewart** dated 9th of April 2020 read into evidence as agreed by both the Crown and the Defence.

(5) **Statement 1 of Sylvia Sherann Marjorie Gillet** dated 1st of December 2019 read into evidence as agreed by both the Crown and the Defence.

(6) **Statement 2 of Sylvia Sherann Gillet** dated 12th of February 2020 read into evidence as agreed by both the Crown and the Defence.

(7) **Statement of Madrid Cruz** dated 16th of January 2020 read into evidence as agreed by both the Crown and the Defence.

(8) **Statement of Sergeant Mateo Carillo** dated 25th of February 2020 read into evidence as agreed by both the Crown and the Defence.

(9) **Statement of Dion Gibson, Justice of the Peace**, dated 23rd of December 2019 read into evidence as agreed by both the Crown and the Defence.

(10) **Statement of Sergeant Orlando Bowen** dated 24th of December 2019 read into evidence as agreed by both the Crown and the Defence.

(11) **Statement of Sergeant Lydia Kerr** dated 27th of December 2019 read into evidence as agreed by both the Crown and the Defence.

(12) **Statement of Casilda Bowman**, dated 27th of December 2019 read into evidence as agreed by both the Crown and the Defence.

(13) **Statement of Inspector Julio Shal** dated 10th of March 2020 read into evidence as agreed by both the Crown and the Defence.

(14) **Statement of CST Robert Henrey Jr**., dated 27th of January 2020 read into evidence as agreed by both the Crown and the Defence.

(15) **Statement 1 of Lester Cadle** dated 25th February 2020 read into evidence as agreed by both the Crown and the Defence.

(16) **Statement of Inspector Julio Shal** dated 26th of July 2023 read into evidence as agreed by both the Crown and the Defence.

**Background**

**[2]**. This case concerns the disappearance and subsequent murder of Densmore Bowman on November 29, 2019. According to statements given to the police by Tiffany Cadle, an attorney-at-law, who recounted her actions upon learning of her brother Densmore Bowman's disappearance on November 30, 2019. She visited an establishment in Roaring Creek, obtained video footage showing Bowman leaving with Andrew Cho and Hildebrandt Codd, and initiated a search. Based on information from Cho, she believed her brother was dead. After days of searching, a message from an anonymous person, later identified as

Kazia Arnold, led her to discover her brother's body in a shallow grave. Communication with Arnold was via Facebook Messenger.

**[3]**. Kazia Arnold, the mother of Hildebrandt Codd's children and in a common-law relationship with Randy Barnett, provides a detailed account of Hildebrandt Codd's confession to the murder of Densmore Bowman. Codd allegedly admitted to a brutal killing, describing the events leading up to the murder and the disposal of the body. Codd allegedly confessed to Arnold on December 6, 2019, revealing details of the murder, including tying, chopping, stabbing, and burying Bowman's body. Arnold discovered what appeared to be blood in Codd's car on December 7 and 8, prompting her to question Codd about the murder. Arnold also revealed her notification to family members about the body's location through a fake Facebook profile named Maria Scott. Arnold created a fake Facebook account, Maria Scott, to inform family members of Bowman's body's location based on Codd's confession.

**[4]**. A post-mortem examination was conducted on Densmore Bowman at Karl Heusner Memorial Hospital on December 16, 2019. The cause of death was determined to be traumatic shock due to multiple chop wounds to the head, neck, and limbs.

Further, a landscaper from Belmopan, recalls washing a car for an individual known as "Papito" on the morning of November 30, 2019. During the cleaning process, he noticed a red-looking stain, a foul smell, and Belikin beer bottle pieces inside the vehicle. McCarthy identifies the car as a gray Nissan Altima with a damaged rear bumper.

**[5]**. Prior to the deceased's death, Lester Cadle, brother of the deceased recounts an incident on October 6, 2019, where he and his brother, Densmore Bowman, the deceased were walking to play dominoes. They encountered Hildebrandt Codd, known as "Papito,"

who allegedly threatened Bowman with the words " A wah kill yuh pussy." Despite attempts to defuse the situation, Codd continued the threats until a police mobile passed by, prompting him to leave.

**[6]**. The accused, Hildebrandt Codd, was later arrested on December 23, 2019, and charged for the murder of Densmore Bowman.

**[7]**. Hildebrandt Codd, the accused, however, provides a detailed account of his activities on November 29, 2019, focusing on interactions with Andrew Cho and Densmore Bowman. The day involved various locations and bars, an argument between Cho and Bowman, and Codd lending his vehicle to both for the night. Codd claims innocence in the murder of Densmore Bowman and asserts that evidence is being fabricated against him, highlighting personal disputes and inconsistencies in the legal process.

**CROWN'S CASE**

**[8]**. Tiffany Cadle initiated a search for her missing brother, Densmore Bowman, using video footage from a Roaring Creek establishment. Based on information from Andrew Cho, Cadle believed her brother was dead and shifted the focus to finding his body. Bowman's belongings partially burnt Western Union slip and burnt social security card were found near a bus stop in the area of mile 23-24. The police and forensic team were involved in searching the area where belongings were found, leading to the discovery of Bowman's clothing in a nearby swamp. Cadle received an anonymous message on Facebook Messenger, leading her to discover her brother's body in a shallow grave at mile 23-24. Communication with the anonymous messenger, later identified as Kazia Arnold, continued through Facebook Messenger.

**[9]**. The prosecution is likely to present the video footage, discovery of belongings, and communication with Kazia Arnold as crucial pieces of evidence linking Hildebrandt Codd to the disappearance and death of Densmore Bowman. They may argue that Codd played a role in Bowman's demise and that the evidence gathered supports the charges against him. The prosecution may focus on establishing a connection between Codd and the crime scene, emphasizing the credibility of the anonymous information and the subsequent discovery of Bowman's body.

**[10]**. Kazia Arnold is Hildebrandt Codd's ex-partner and mother of his children; she is in a common-law relationship with Randy Barnett. Arnold learns about Densmore Bowman's missing report on December 2, 2019, and notifies Hildebrandt Codd. Codd allegedly confesses to Arnold on December 6, 2019, revealing details of the murder, including tying, chopping, stabbing, and burying Bowman's body. Arnold discovers what appears to be blood in Codd's car on December 7 and 8, prompting her to question Codd about the murder. Arnold creates a fake Facebook account, Maria Scott, to inform family members of Bowman's body's location based on Codd's confession. Arnold identifies Codd's damaged car, linking it to the alleged crime.

**[11]**. The prosecution presented Arnold's testimony as a crucial piece of evidence, detailing a confession by Codd to a gruesome murder. The bloodstains in the car and the damaged bumper further link Codd to the crime scene. The use of a fake Facebook account to inform family members may raise questions about Arnold's motivations, potentially leading to a thorough examination of her credibility. The reliability of Codd's confession and the admissibility of the car-related evidence will play a pivotal role in the prosecution's case.

**[12]**. Dr. Estrada Bran is a qualified physician, surgeon, obstetrician, and forensic doctor with extensive training and experience. Dr. Estrada Bran conducted a post-mortem examination on Densmore Bowman on December 16, 2019, at Karl Heusner Memorial Hospital. Dr. Estrada Bran identifies and acknowledges a copy of the post-mortem report for Densmore Bowman, including the cause of death. The cause of death, according to the post-mortem examination, was traumatic shock resulting from multiple chop wounds to the head, neck, and limbs.

**[13]**. Dr. Estrada Bran's testimony and post-mortem report provide crucial medical evidence establishing the cause of Densmore Bowman's death as traumatic shock from multiple chop wounds. This expert opinion strengthens the prosecution's case, linking the injuries to a violent act. The forensic findings contribute to building a narrative around the alleged murder and may be used to support other evidence presented during the trial. The prosecution can rely on Dr. Estrada Bran's expertise to emphasize the severity and intentional nature of the injuries inflicted on the victim.

**[14]**. McCarthy was approached by "Papito" and Andrew Cho for a car washing job on November 30, 2019. McCarthy notices a red-looking stain on the right front passenger knob, a foul smell during the cleaning process, and Belikin beer bottle pieces inside the car. McCarthy identifies the car as a gray Nissan Altima with a damaged rear bumper. McCarthy identifies a person known to him as "Papito" sitting in the dock.

**[15]**. McCarthy's testimony provided key details about the condition of the car, including potential evidence such as the red-looking stain, foul smell, and Belikin beer bottle pieces.

The damaged rear bumper could be relevant to the alleged crime scene. The identification of "Papito" in the dock strengthened the prosecution's case by linking a specific individual to the car washing event. The prosecution sought to use McCarthy's account to establish a connection between "Papito," the car, and the potential evidence inside it, contributing to the overall narrative of the case.

**[16]**. Lester Cadle and Densmore Bowman encountered Hildebrandt Codd on Libertad Avenue. Codd allegedly threatened to kill Bowman, yelling loudly while following them. Lester Cadle intervened, questioning Codd about the threats, to which Codd responded with further threats. The presence of a passing police mobile prompted Codd to leave. Lester Cadle had known Hildebrandt Codd for three years before the incident. Lester Cadle pointed to Hildebrandt Codd in the courtroom as the individual who made the threats.

**[17]**. The prosecution presented Lester Cadle's testimony as evidence of a prior threat from Hildebrandt Codd against the deceased, Densmore Bowman. They could argue that this incident establishes a motive for Codd to harm Bowman. The prosecution sought to demonstrate the credibility of Cadle's account through consistency in his statements and any corroborating evidence.

Examination-in-Chief of Crime Scene Technician Robert Henry:

**[18]**. My name is Robert Henry, I am an advanced Crime Scene Technician, I am now posted at Belize City, I was posted at Ladyville Police Station in November 2019. I recall making a report in relation to the accused Hildebrandt Codd on 27th January 2020 and I recall taking 27 sets of 5 photographs on the 6th of December, 16th of December 2019, 23rd of December 2019. If I were to see the photographs again, I would recognize it by my signature in my own

handwriting, the description behind each photograph, also the dates behind each photographs. Witness shown some photographs which he identifies as the same photographs he had taken on the aforesaid dates; same photographs that I took with my signature in my own handwriting, the description behind each photograph, also the dates behind each photographs. and I see my signature on it, and I see all the information I placed on it. Photographs of Robert Henry Jr. tendered and marked as **exhibits "RH-1-27"**.

**[19]**. I prepared a chain of custody form, if I were able to see those chain of custody forms again I would be able to recognize them by my signature in my own hand-writing behind each of the chain of custody forms, there are 5 chain of custody forms.

**[20]**. Witness shown some documents, which he identified as the said chain of custody forms with his signature in his own hand-writing, chain of custody forms tendered and marked as **exhibits "RH28-32"**.

Examination-in-Chief of Tiffany Cadle:

**[21]**. My name is Tiffany Cadle, attorney-at-law of a Belize City address. I recall the 30th of November 2019, I received information that my brother Densmore Bowman was missing, I called my sister-in-law who is the common law for my brother, Sylvia Gillett in Belmopan. I went to Belmopan to try to get more information as to the whereabouts of my brother, I met up with an acquaintance of my brother, I don't know his real name; they just call him "Hammer", based on that conversation, I visited an establishment in Roaring Creek that is called "Lucky" establishment; at that establishment, I saw that they had video cameras within the establishment and outside, when I saw the cameras, I walked up to the bar area where there was a young Chinese girl and I asked her if I was able to see the video footage of the

premises of the night of the 29th of November coming on to the 30th, at first she declined, but eventually she agreed, she sent me different snips of video from the night, in these videos I saw my brother who was there with two individuals that I later know them to be Andrew Cho and the other Hildebrandt Codd, my brother was extremely intoxicated, it was clear from the videos that he was unable to walk properly, my brother left the establishment in a car with the two individuals, Andrew Cho go into the back passenger seat, Hildebrandt Codd was the driver, my brother Densmore Bowman went into the passenger side of the car, the car then drove off heading towards Belmopan, when I saw the two individuals, I then went back to my brother's home where the guy "Hammer" was, I then paid "Hammer" 150 and I told him to please go and bring me Andrew Cho, "Hammer" left and he came back with Andrew Cho, I asked Andrew Cho if he can please tell me where my brother is. Based on the information I received from Andrew Cho, I knew at that point that he was dead (her brother) and so I was no longer searching for my brother, I was searching for his body, I got a track for his phone it is called a ping, the last ping on his phone was picked up in mile 23-24, I knew then that my brother was in that area on the night of the 29th November coming on to the 30th, we went up there that day; me, the police from Hattieville, my sisters and we started to comb the area going into Ratville, we started to look into that area, we came up with nothing and we returned to Belmopan and again I spoke with Andrew Cho, based on that conversation we started to comb the Young-gal Makatree Road, we searched that area for hours and hours and we found nothing, we were then directed to the garbage area of Belmopan, we searched that area and we didn't find him, we were getting information from many people messaging the family, based on some of those we went back to the area of mile 23-24, that was the 6th of December 2019; at the bus stop we found some of my brother's belongings, we found the Western Union slip which was partially burnt, we found his burnt social security

card, when we discovered those items, we called the police from Hattieville, police arrived and later called the forensic team to retrieve those items because of that search the police immediately started to search the swamp immediately behind that bus stop, that was where they received my brother's clothing that he was wearing when he left on the 29th of November, at that point I knew for certain that he was dead, I held a memorial service at the Lion's Club in Belmopan, we were giving up and this was day 7 and it was not long after; this was 2 days after the memorial service, I received a message from an anonymous person, I acted on information, and the information led me to discover my brother's body in a shallow grave at mile 23-24 on the Western Highway, I later learnt the identity of the individual to by Kazia Arnold, my brother's body was retrieved and taken to the forensics department in Burrell Boom, I later took the remains of my brother's body to his resting place in Crooked Tree.

**[22]**. I received the anonymous message on Facebook Messenger. After we found the body, I messaged her to tell her thanks, she and I continued communication, at that time, the accused was still at large, after he was arrested on the 23rd of December 2019, she had a bit more confidence and she agreed to meet with me, it was at that point that I learnt her name and who she was and what relationship she had with Mr. Codd. The communication was done all by Facebook Messenger, she used the name Maria Scott. I gave "Hammer" the 150 to get a vehicle to go and pick up Andrew Cho.

Examination-in-Chief of Lester Cadle:

**[23]**. My name is Lester Cadle of a Cayo address. I recall 6th of October 2019 between 3:30 & 4:00 pm. On the 6th of October departed from Nargosta Street heading towards Toucan Street to play dominoes with some friends, whilst on the Libertad Avenue passing 168 Chinese Store I saw an acquaintance that I knew so I said "what's up", the acquaintance didn't answer me he looks quite angry so I said to him relax bro calm down, so he answered and said bwoy nuh get inna dis, yuh nuh know what did happen, this was said by "Papito", my acquaintance to be Hildebrandt Codd who is also known as "Papito". I didn't pay it any mind, so we proceed to Toucan Street where we were heading, me and Densmore Bowman, whilst walking on Libertad Avenue, "Papito", Hildebrandt Codd continued following us, he was yelling loudly "A wah kill yuh pussy", he was yelling at my brother Densmore Bowman, so we proceed to right in front of Sensontor Street and I turned around and said to Hildebrandt Codd, I said bro why are you threatening my brother while I am here then, so he said nuh get in a dis because I guh do it to you too. Just then a police mobile passes by and the driver of the mobile hails me and that's when Hildebrandt Codd proceeded down Sensontor Street and leave us alone. Yes I knew Hildebrandt Codd before the 6th of October 2019 for 3 years. Witness points to Hildebrandt Codd sitting in the dock.

**Examination-in-Chief of Dr. Mario Estrada Bran**:

**[24]**. My name is Mario Estrada Bran, I am a physician, surgeon, obstetrician and forensic doctor. As a forensic doctor, I make statements about the living and the dead through medical evidences to determine or rule out physical injuries. My qualifications are in general medicine and obstetrics from 1974 to 1981 at the University of Mitrocan, Mexico, through the Faculty of Medicine, from 1981 to 1982, I did forensic medicine at the National Forensic Services of Mexico City through the Tribunal Superior of Justice, from January 2000 to June

2001, I did legal medicine at the University of San Carlo, Guatemala through the Attorney General Ministry, Ministry of Health and Social Services. I am a registered medical practitioner since 1986 as a general practitioner and forensic specialist with a license number of 36-86. Dr. Estrada Bran is deemed an expert in forensic medicine, no objections from the Defence.

**[25]**. Yes, I recall the 16th of December 2019 at 4:00 p.m. I was at Karl Heusner Memorial Hospital practicing a post-mortem examination of Densmore Bowman. I took notes at the post-mortem examination. Witness shown a copy of the post-mortem report of Densmore Bowman and identifies it by the name of the deceased, the time, the date and by his signature in his handwriting. Post-mortem of 16th December 2019 tendered and marked as **exhibit "ME-1"**. No objections from the Defence.

**[26]**. The cause of death was traumatic shock due to multiple chop wounds to the head, neck and limbs.

**Examination-in-Chief of Kazia Arnold**:

**[27]**. My name is Kazia Arnold, of Ladyville. In 2019 was living at 152 Yellowtail Street, Ladyville. I know someone by the name of Hildebrandt Codd, I am the mother of his 2 children, they are a girl and boy twin of 14 years old, I lived with him from 2008 to 2009. We are co-parents. I am a common-law to Randy Barnett, I currently live with him since December 23rd, 2015. I recall the 2nd of December 2019, I saw a missing report on the news of Densmore Bowman and then I sent my baby-father Hildebrandt Codd a text of Densmore Bowman's missing report, if I see this? His response was "yes, da puppy did a gi trouble suh

I had to calm her down". He said he did not want to talk about it over the phone, that he would come in person to my house.

**[28]**. I recall the 6th December 2019, I was at home at 152 Yellowtail Street, Ladyville, Hildebrandt Codd came to my house, he never said nothing about the incident the whole day until about 7 - 7:30 the night on the 6th of December, he came to the back of the house and said come mek a tell yuh weh I do di bwoy, Hildebrandt Codd told me that he and Densmore Bowman was at a bar in the Market place in Belmopan, he said that Densmore Bowman told him "a mi gat you did live", he told Densmore Bowman "don't worry bout dat dog I dun forgive yuh fi dat" and they went and bar hop, the last bar they went to was Lucky Entertainment at Roaring Creek Village. Hildebrandt told me that he spent his last $60 to get Densmore Bowman more drunker he said he drink 20 Belikin stout (Densmore Bowman).

**[29]**. And then I asked Hildebrandt Codd what did you say to the dread guy in front of Lucky Entertainment, he said that he told the dread guy, watch what a going do to he right now, then he left from there; Lucky Entertainment and went up the highway between mile 24 and 26, he was with Andrew Cho and Densmore Bowman, he said that Densmore Bowman was in the front passenger seat and Andrew Cho was at the backseat, they drive up the highway and parked somewhere in the highway between mile 24 & 26 beside the Chinese Village. He said Densmore Bowman had his feet on the dash-board of the car, he said he grabbed his two feet, and he tied it, Densmore Bowman said to him; "Pops nuh duh mi dis." He then said he chopped Densmore Bowman in his face, then Hildebrandt Codd said Densmore Bowman tried to run and him chop him on his feet, he said some of his toes came off, afterwards he said that he tried to cut Densmore Bowman's neck, but it was too hard, so he

cut it from the back and he was still not dead, Hildebrandt said, he said he stab har inna di chest and him still neva dead. He then said he told Andrew Cho come put in a work bwoy and he said Andrew Cho performed like a real professional, I asked him Densmore Bowman had any tattoos on his body, he said yes, his daughter's name but I cut it out, he then naked Densmore Bowman, him cut off some of his dreadlocks, he then leave his body there a little bit off the highway, he said Andrew Cho told him let's go move the body but the vehicle was giving him mechanical problems, so he leave the body there and Hildebrandt Codd returned back on Tuesday between 5 and 5:30 in the morning. He said when he reached there, the body had worms on it already decomposing, he still proceeded to move the body, dragged the body to a grave that was dug, by dragging the body, one of Densmore Bowman's hand came off, Hildebrandt Codd said that he buried Densmore Bowman's head beside of his body.

**[30]**. I recall the 7th of December 2019 in the night, I was at 152 Yellowtail Street at my home, Hildebrandt Codd asked me to go into his car to get a bag of funto for him, I went for the funto, when I went in the car for the funto I looked around because I was curious, when I saw what appeared to be blood in the seatbelt area and by the area by the door and I went back inside and I told Hildebrandt about it, bwoy a blood dis inna yuh car, he said nuh worry bout that, I going mek them give the car a thorough clean. He asked for some soap and water, I left him outside by the car, I went back inside to get dressed, on the 8th of December, the Sunday, me an him was going to Western Union, and I saw what appeared to be more blood on the ceiling of the car and in the area of where you stick the seat belt inna. I asked him if he killed Densmore Bowman in the car, he said do not worry about the blood, he never answered the question. I done tell yuh dat I going to mek it get a good wash.

I recall the Monday morning of the 9th of December 2019; police passed my house and asked my sister who the car belonged to. I do not recall if anything else happened.

**[31]**. I saw the news that they found his body and I called Hildebrandt Codd, what I saw on the news, he said that yes dem find the fish dem. I do not recall if he said anything else. The car I got funto out of is a gray Nissan Altima, it has a damage on the side of the bumper, left and the back. Witness shown **exhibit "RH-24"**; this is my baby father, Hildebrandt Codd's car. Witness shown **exhibit "RH-26"**; this is my baby father, Hildebrandt Codd's car, bumper which is damaged on the left. When I went for the funto in the car, it was parked outside my house by the bridge. All that Hildebrandt Codd told me, I did not force him, threaten him or bribe him to tell me what he told me. I also did not pressure him in any way to tell me what he told me. Witness points to Hildebrandt Codd in the dock.

**[32]**. I do not remember doing anything else in this matter. After Hildebrandt Codd told me what he did to Densmore Bowman, when I saw the missing report, I created a Facebook profile and I informed the family members Tiffany Cadle and Sylvia Gillett, I told them where to find the body of Densmore Bowman, I knew where the body was because Hildebrandt Codd told me where the body was. I told them through Facebook Messenger, the Facebook fake account was in the name of Maria Scott.

**[33]**. Yes I met her in person after, I informed her about what Hildebrandt Codd told me, but first I introduced myself to her. I tell her that I am Kazia Arnold, Hildebrandt's baby mother and that I have two kids for him. The relationship between Randy Barnett and Hildebrandt Codd was cool.

**Examination-in-Chief of Roy Augustus Alexander McCarthy**:

**[34]**. My name is Roy Augustus Alexander McCarthy, I am a landscaper and I live in the Cayo District, the city of Belmopan. I recall the Saturday morning the 30th of November 2019 at 8:30 am, I was in my yard at 9 Corozal Street, Belmopan City. I heard someone shouting to me and ask me if I wanted to wash a car, as I usually wash car for people because I have a small business, and how much I would charge to wash a car, I told the person that I charge $BZ 20.00. I have been seeing the person on and off for 2 years, I don't know his full name but I know him by his nickname "Papito", I agree to take the job and I got my equipment and I proceeded across the street where the vehicle was parked, there was also a person that I know as Andrew Cho, who was in the right passenger front seat with ajax wiping down, I don't know what he was wiping down, I told him that I was going to proceed to wipe down the car. At this time Andrew Cho gave me the ajax and a rag and I recall seeing some red-looking stain on the right front passenger knob of the car but at first I thought that it looked like ketchup stain, but I wasn't paying it full attention, when I put the rag in the bucket to rinse it out, it gave off a red looking colour. I continued doing cleaning, where there was high foul smelling stench, not like food but something decaying, I continue washing the back seat with the brush that I had, cleaning inside the vehicle taking up the mats where I saw some Belikin point bottle pieces, so I did all my cleaning, I also observed that the back bumper of the car was falling off, which I did amend with some tied wire to hold it up and after that I proceeded to wash the outside of the car, it was very dirty and had on white thick marl outside on the door. I continued washing the car and dried it. The brand that saw was a gray colour Nissan Altima Sedan. Witness shown **exhibit "RH-25"**, this is the identical car that I washed for "Papito". Witness shown **exhibit "RH-26"**, I know it because it is identical to the car I washed

with the damaged rear bumper. Witness identifies person who he is known to him as "Papito" sitting in the dock.

Virtual Examination-in-Chief of Elizabeth O'Bannon: [SWORN]

**[35]**. My name is Elizabeth O'Bannon, I am in Oklahoma in the United States, currently a DNA Analyst at DNA Solutions in Oklahoma, I have been at DNA Solutions since 2014, I have been a DNA analyst for 8 years. I went to undergraduate College at University of Oklahoma, my degree was in Zoology, Biological sciences, I completed that in 2007, then I did my Master's degree at the University of Central Oklahoma in forensic science, that one was completed in 2013. Yes I have testified in a Court of law; I testified in a few different states in the United States, yes I have been deemed an expert by those Courts in the field of forensic science specifically DNA analysis. Witness deemed an expert witness in the field of forensic science specifically DNA analysis. I recall conducting certain DNA analysis on items received from Belize on the 1st of October 2020, those items that I received were in relation to a case: FOR19-1717 SER/DNA, Mary Noreen Coleman and Densmore Bowman.

**[36]**. Yes I performed DNA analysis on the items received, the analysis did result in a report, if I were to see the report I would be able to recognize by my signature, the name of my lab and the dates of the analysis, witness shown a document which she identifies as the report that she produced; it has my signature as well as the laboratory name and the dates of the report. Certificate of Analysis tendered and marked as **exhibit "EO-1"**.

**[37]**. We received 2 samples from Belize for testing and we were requested to prepare these two profiles to see if there was a parent relationship and in this case a maternal relationship.

It was determined that the sample of Mary Noreen Coleman was the mother for the sample of Densmore Bowman.

Examination-in-Chief of Sergeant Lydia Kerr:

**[38]**. My name is Lydia Kerr, Sergeant of Police, currently attached to Precinct II Crime Investigations Branch. On 23rd of December 2019, a search was found where certain papers were found in the glove compartment; certificate of insurance by the name of Hildebrandt Dominic Codd, it has on the particulars of the vehicle, which is a silver in colour Nissan Altima, licence plate # OWC-08613, witness shown a document and identifies it as the said certificate of insurance with the particulars of the vehicle, which is a silver in colour Nissan Altima, licence plate # OWC-08613. Also certificate of title which has on the name of Hildebrandt Dominic Codd, it has on the particulars of the vehicle which is a silver in colour Nissan Altima, licence plate # OWC-08613, witness shown a document which she identifies as the said certificate of title with of Hildebrandt Dominic Codd, it has on the particulars of the vehicle which is a silver in colour Nissan Altima, licence plate # OWC-08613, certificate of title tendered and marked as **exhibit "LK-1"** and the certificate of insurance is tendered and marked as **exhibit "LK-2"**.

**[39]**. Witness shown **exhibit "RH-24"**, identifies it as the same silver in colour Nissan Altima, that I conducted a search on and found the documents inside the glove compartment.

**CASE FOR THE DEFENCE**

**[40]**. Codd provides a detailed account of his activities on the day of the incident, supported by interactions with Cho and Bowman. This establishes an alibi for the time of the murder. Codd mentions his relationships with Andrew Cho and Densmore Bowman, portraying a

history of friendship and shared social activities. Codd raises concerns about the handling of evidence, including a delay in informing him about additional items collected from his vehicle and an alleged lack of transparency during forensic tests. Codd suggests a motive for false accusations, citing a history of financial disputes with Miss Arnold, who he claims has a contentious relationship with him.

**[41]**. The Defence in putting forth its case might question the reliability of the DNA evidence, emphasizing inconsistencies in the handling and presentation of the forensic findings. Emphasize the motive for false accusations due to financial disputes with Miss Arnold, raising doubts about the credibility of those making accusations. Investigate and question the procedures followed during Codd's arrest, particularly regarding the handling of the missing person report and subsequent murder charge.

**[42]**. Overall, the defense may focus on creating reasonable doubt by challenging the credibility of the evidence, highlighting inconsistencies in the investigation, and presenting a strong alibi supported by character witnesses.

Examination-in-Chief of Hildebrandt Codd:

**[43]**. My name is Hildebrandt Codd, I am 36 years old, date of birth is 17th of October 1987. I recall November 29, 2019, I woke up at around 7:30, I did some laundry, I began preparing my afternoon meal; which was macaroni and cheese and mashed potatoes. At around 12:30 that same day, I began watching a movie, the movie's name was "Captain America", at around 15 minutes pass 1, I received a text via messenger from Andrew Cho, after receiving that message, I went to the Belmopan Market place to a bar name "Through di Hole" at about 1:30, I met Andrew Cho and took him to Builder's Hardware Store to purchase a wash basin

and a toilet bowl, I then took him back to the said bar by driving my personal vehicle at the time; only me and my passenger Mr. Andrew Cho, I have known Mr. Cho for over 10 years; his mother was my baby-sitter when I was younger, after arriving at the bar, I helped Mr. Cho to take the wash basin and toilet bowl out of my vehicle, he offered me a drink, I then realized he was preparing the bathroom and wash basin for that same bar "Through Di Hole", I accepted the drink, the waitress at the bar brought the Belikin stout to me outside on the verandah, I drank that stout and was offered another stout by Mr. Cho, at around 3 p.m. that day, I saw Mr. Densmore Bowman with another individual Dion Richards at the local Western Union, Belmopan City, I have known Mr. Bowman for about 9 years, his baby-mother Sylvia Gillett was where I went to get my hair done, Mr. Bowman approached me and offered me a drink, we were good friends, we were always going around socializing, his kids and my kids play together, we have barbecue together, I heard Lester Cadle giving evidence yesterday in Court, a slight exchange of words was made but nothing to the effect that I threaten to kill Mr. Bowman. I approached Mr. Bowman and asked him when he was going to return a cellular phone that I had lent him, he told me that he would make arrangements for his sister Nickera Cadle to have one sent because he misplaced the phone, I told him that I did not believed he misplaced the phone but to just recompensate me for the phone, at the same time his brother got between the both of us and asked what was happening, I told him "dah nuttin to mek yuh worry bout everything blessed, Mr. Bowman assured. I went back to my house between 3 and 5 in the evening. That incident happened in October.

We drank about 4 stouts each, I purchased a fry chicken and fries from the Chinese Restaurant and me and Mr. Bowman shared the food, this was about around 4:15 on November 29, we were then joined by a next male individual known to me as Elston McKoy, we decided to drink a next round of stout at "Through Di Hole" bar, after drinking that round

of stout, at around 5 o'clock we went to another bar name Charisma, we were then joined by Mr. Andrew Cho; Mr. Elsmore McKoy, Densmore Bowman and myself, we drank about 5 stout each, Mr. McKoy left us to catch a bus. It was then decided that we wanted to go where there were more girls, we left Charisma at 8:30, we went to a bar/gentleman's club "Queens", we stayed at Queens for an hour and a half. While we were drinking at Queens, Mr. Bowman and Mr. Andrew Cho got into an argument over $15 that Mr. Cho had paid Mr. Bowman for a charter. Mr. Bowman got aggressive towards Mr. Cho; they became confrontational, sizing up each other, I told both of them to calm down, the security approached us and asked if we could leave, I was ready to go home. I had consumed about 12 stouts, I saw him having about 15, I saw Mr. Cho have about 10. I reluctantly agreed to Mr. Bowman and Mr. Cho, I took them to Lucky's bar in Roaring Creek, we reached Lucky's bar after about 10 p.m., I began playing the slots machine, drank 2 more Belikin stout and met the gentleman known to me as Enrique Tami, we used to play on the same football team. The 3 of us began to play the slot machines, I informed Mr. Cho and Mr. Bowman that I was ready to go home, I was taken home by Mr. Andrew Cho and Densmore Bowman in my personal vehicle, I lent Mr. Andrew Cho my vehicle and told him to bring it back in the morning, I have lent Mr. Cho my vehicle on more than one occasion. I did not see or know where Mr. Cho and Mr. Bowman were going, I went to sleep. I was awaken around 8:30 on the 30th of November by a phone call from Andrew Cho, I went outside and Mr. Cho was already cleaning my car, I hired Mr. Roy Augustus to clean my car for $20, he went for some bucket and rags, I then returned inside, took 2 Tylenol pills for a migraine I was suffering from due to the excessive drinking the night before, at around 10:30 am on the Saturday morning, 30th November, Mr. Roy Augustus came to collect the 20$ because he had finished cleaning the vehicle. I got up and paid him his money and took a bath. I then went to Belize City in my vehicle, I was

to attend a barbecue on Bukatool Avenue where I was invited by Mr. Bailey, I spent the entire day there. I was detained by police officers along with my vehicle and taken to the Raccoon Street Police Station, was charged for driving a motor vehicle with expired insurance, I was offered station bail and given a phone call to my uncle, Mr. Philipp Codd to come and bail me.

**[44]**. I recall 4th December 2019, I was at the Belmopan Police Station, I was taken to the Belmopan Police Station by an attorney Mr. Hurl Hamilton, on Sunday morning whilst strolling through Facebook, I saw that I was wanted for a missing person's report on Densmore Bowman, I contacted Mr. Hurl Hamilton and met him the next day at Belmopan, I caught a bus to reach Belmopan on Monday 2nd of December, I was taken to the station at 9 a.m., I met a CIB police; sergeant Mateo Carillo, he informed me of something. I wanted to give a statement to Mr. Carillo, but I was advised by Mr. Hamilton, so I did not give a statement. I was detained for 48 hours.

**[45]**. On the 18th day of December, I was picked up by the Orange Walk police and they informed me that I was detained for the murder of Densmore Bowman.

December 6, I was at home, the malicious accusations by Miss Arnold are totally untrue, I have never discussed the matter of Mr. Densmore Bowman missing or his unfortunate death, Miss Arnold and I have been at odds with each other from our separation in 2014, me and Miss Arnold lived for 6 years, raising my son and daughter. Money has always been an issue between me and Miss Arnold, I try to maintain minimal contact with Miss Arnold because she likes to fleece me for money. The last time I spoke with Miss Arnold was at the carnival in Orange Walk on 20th September 2019. On the 23rd of December, I was still detained in Orange Walk for about 96 hours, around 5 p.m. I was taken to the Crooked Tree junction

where Ladyville police and transferred me in a mobile to the Ladyville Police Station where I was introduced to corporal of police Ms. Lydia Kerr and she informed of my detention and a forensic check was to be done and I noticed that my vehicle was impounded at Ladyville Police Station, I felt shell-shocked because I had left my vehicle at 48 Gibnott Street at the family home in Belize City. Mr. Robert Henry then introduced himself to me along with a JP Mr. Gibson, a next young man came and introduced himself as Mr. James Stewart and did a blue star luminol test after opening my car, the test was conducted in my presence, I was shown by Mr. Robert Henry certain 6 swabs for DNA analysis, he did not specify for who or what. At no time during the blue star luminol test was any article or fabric removed from my vehicle in my presence. Yesterday on the 25th of July 2023, I was shown a chain of custody form by my attorney dated June 2020 that further articles such as a piece of seat belt, carpet from my trunk and fabric from my head rest in my vehicle and some rash rags received from a gentleman, no name was given. I outrightly deny those allegations, that I have no knowledge and I did not murder Mr. Bowman. Evidence is being fabricated against me.

**[46]**. Cross-Examination by the Crown:

**Question**: When did you retain Mr. Neal?

**Answer**: Around April of this year.

**Question**: When did you retain Senior Counsel Mr. Arnold?

**Answer**: January 2019.

**Question**: Do you assist in the financial commitments to the children?

**Answer**: Yes your Honour.

**Question**: How often did you give financial assistance to your children?

**Answer**: Weekly.

**Question**: How often do you see your children?

**Answer**: Every other day.

**Question**: How would you see your children?

**Answer**: I would see them in person.

**Question**: How often?

**Answer**: As long as I have time.

**Question**: What is the average time?

**Answer**: I would visit them 4 to 5 times for the month.

**Question**: Which school they go to?

**Answer**: Orange Walk Technical High School.

**Question**: Ladyville R.C. School?

**Answer**: Standard 5 & 6

**Question**: You have a close relationship with them?

**Answer**: Yes I do.

**Answer**: 6th form, I have an Associate's Degree in Natural Resource Management from University of Belize.

**Question**: Date of birth of your children?

**Answer**: 5th October 2007.

**Question**: Whilst they were going to the Ladyville RC School they were residing with their mother in Ladyville?

**Answer**: Yes.

**Question**: Their mother is Kazia Arnold who came to testify?

**Answer**: Yes.

**Question**: You know Miss Kazia's current gentleman?

**Answer**: He is known to me.

**Question**: The name of the gentleman living with Kazia Arnold is Randy Barnett?

**Answer**: I know him as Reds

**Question**:

**Answer**: He would be there when I go there.

**Question**: How long you cohabited with her?

**Answer**: From 2005 to 2013.

**Question**: And you resided at that address 152 Yellowtail Snapper Street?

**Answer**: Initially.

**Question**: Please tell us the name of the mother of Miss Arnold.

**Answer**: Ms. Nora Arnold.

**Question**: That Ms. Nora Arnold lives in a separate house on the property at 152 Yellowtail Snapper Street?

**Answer**: There is one house on the property.

**Question**: You lived at the above address with Ms. Kazia Arnold for 3 years?

**Answer**: For 2 years.

**Question**: You would say that you are familiar with the address?

**Answer**: Yes.

**Question**: Since you and Ms. Kazia you would co-parent?

**Answer**: I cannot call that co-parent.

**Suggestion**: So, for a portion of the 8 years your children lived with Ms. Kazia?

**Answer**: About 2 years.

**Suggestion**: That over those two years you had to communicate with Ms. Kazia's house.

**Answer**: I agree.

**Suggestion**: You have spoken to Miss Kazia, whilst you are in her house.

**Answer**: Yes.

**Suggestion**: That you have spoken to Rojo or Reds on some occasions.

**Answer**: I disagree.

**Question**: You have any conflict with Mr. Rojo?

**Answer**: No.

**Question**: Over the 2 years with your children, you know he would have been with your children?

**Answer**: Yes.

**Question**: Would you say that you are okay with his presence when I go to the house?

**Answer**: Yes.

**Question**: You were robbed sometime in 2019 right?

**Answer**: Not that I can recall.

**Suggestion**: That you used profanities and cursed words during that exchange.

**Answer**: I disagree.

**Suggestion**: You threaten Mr. Densmore Bowman that I go kill you.

**Answer**: I disagree.

**Suggestion**: The night of the 29th of November 2019, you also met a person by the name of Mr. Hammer.

**Answer**: I only know him as Elston McKoy.

**Question**: What type of phone was it?

**Answer**: Blu brand.

**Question**: When did you buy the phone?

**Answer**: 2019.

**Question**: Why did you lend him the phone?

**Answer**: He is my friend.

**Question**: When did you lend him the phone?

**Answer**: August 2019.

**Suggestion**: Witness shown **exhibit "RH-26"**, accepts that it is his car, "That you are called by the name "Papito".

**Answer**: I disagree, I am not called "Papito".

**Suggestion**: Roy Augustus has called you "Papito" before.

**Answer**: No, I am not called that.

**Suggestion**: That when you left the bar that you left with Andrew Cho and Densmore Bowman.

**Answer**: I agree

**Suggestion**: That Densmore Bowman was on the front passenger seat of the car.

**Answer**: I disagree.

**Suggestion**: That Andrew Cho was on the back seat of the vehicle.

**Answer**: I disagree.

**Suggestion**: That you stopped the car and told Andrew Cho to get out.

**Answer**: I disagree.

**Suggestion**: That you and Andrew Cho and Densmore Bowman went up the highway to Belmopan City.

**Answer**: I disagree. Mr. Cho was driving and took me and Densmore Bowman.

**Suggestion**: It is unbelievable that you will leave 2 drunk men in your nice Nissan Altima.

**Answer**: I disagree, at that time I was drunk.

**Suggestion**: You drove to mile 25 of the highway with Andrew Cho and Densmore Bowman.

**Answer**: I disagree.

**Suggestion**: You tied up Densmore Bowman.

**Answer**: I disagree.

**Suggestion**: You took a machete and chopped Mr. Densmore Bowman.

**Answer**: I disagree.

**Suggestion**: You tried to cut his throat.

**Answer**: I disagree.

**Suggestion**: Cho upon your instructions start dice up Mr. Densmore Bowman.

**Answer**: I disagree.

**Suggestion**: You parked your car in front of your baby mother's house.

**Answer**: I disagree.

## **Findings & Discussions**:

**[1]** I must identify only so much of the evidence as is necessary to help me to determine the issues in the trial. To determine what evidence must be identified, I must consider the following matters:

a) The facts in issue and the complexity of the facts in issue

b) The length of the trial;

c) The complexity of the evidence;

d) The submissions and addresses of the parties;

e) The manner in which the judge refers to the way in which the parties put their cases;

**[2]** I do not need to read out all the evidence or to analyse all the conflicts in it. Instead, I must provide a fair and balanced explanation of the law, the issues and the respective cases of the prosecution and defence.

**[3]** Where there is a significant dispute about material facts, I should succinctly identify the pieces of evidence in conflict, to focus my attention on the issues that I have to resolve.

**[4]** Throughout these proceedings, the defendant is presumed to be innocent. As a result, I must find the defendant not guilty, unless, on the evidence presented at this trial, I conclude that the Prosecution has proven the defendant guilty beyond a reasonable doubt.

**[5]** In determining whether the Prosecution has satisfied their burden of proving the defendant's guilt beyond a reasonable doubt, I may consider all the evidence presented, whether by the Prosecution or by the defendant.

**[6]** The defendant is not required to prove that he is not guilty. In fact, the defendant is not required to prove or disprove anything. To the contrary, the Prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. That means, before I can find the defendant guilty of a crime, the Prosecution must prove beyond a reasonable doubt every element of the crime including that the defendant is the person who committed that crime. The burden of proof never shifts from the Prosecution to the defendant. If the Prosecution fails to satisfy their burden of proof, I must find the defendant not guilty. If the Prosecution satisfies their burden of proof, I must find the defendant guilty.

**[7]** In this case, the prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift to the accused person and the accused is only convicted on the strength of the prosecution case and not because of weaknesses in his defence, (See **Ssekitoleko v. Uganda** [1967] EA 531). By his plea of not guilty, the accused put in issue each and every essential ingredient of the offence with which he is charged and the prosecution has the onus to prove each of the ingredients beyond reasonable doubt. Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (see **Miller v. Minister of Pensions** [1947] 2 ALL ER 372).

**[8]** The prosecution case depends (to a great extent) on circumstantial evidence rather than direct evidence. Direct evidence can take many forms, for example if there was a video recording of the defendant committing the crime, that would be direct evidence. Circumstantial evidence on the other hand simply means that the prosecution relies upon evidence of various circumstances relating to the crime which, when taken together, establish the guilt of the

defendant because the only conclusion to be drawn from that evidence is that it was the defendant who committed the crime.

**[9]** I must decide whether all of the evidence has proved the case against him. A very distinguished judge expressed the test in this way over one hundred years ago.[1]

> **"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one link breaks, the chain would fall. It is more like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of."**

**[10]** However, circumstantial evidence must be examined with great care for a number of reasons. First of all, such evidence could be fabricated. Secondly, to see whether or not there exists one or more circumstances which are not merely neutral in character but are inconsistent with any other conclusion than that the defendant is guilty. This is particularly important because of the tendency of the human mind to look for (and often to slightly distort) facts in order to establish a proposition, whereas a single circumstance which is inconsistent with the defendant's guilt is more important than all the others because it destroys the conclusion of guilt on the part of the defendant."[2]

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[1] Pollock CB in R v Exall [1866] 4 F & F 922 at 929.

[2] See R v McGreevy [1972] NI 125 where the leading authorities on circumstantial evidence are reviewed by Lowry LCJ and Lord Morris of Borth-y-Gest. Where there are circumstances which could be inconsistent with the guilt of the defendant, the trial judge must be careful to sum up the evidence in such a way as to bring this home to the jury with sufficient emphasis. See Hutton LCJ in R v Anderson pp 36-37 (NICA 21/9/1995 unreported).

**[11]** For the accused to be convicted of murder, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

(i) Death of a human being occurred.
(ii) The death was caused by some unlawful act.
(iii) That the unlawful act was actuated by a specific intent to kill; and lastly
(iv) That it was the accused who caused the unlawful death.

**[12]** Death of a human being may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body. There is the post mortem report dated 15th October 2020 prepared by P.W. (Dr. Mario Estrada Bran), who recalled performing a post-mortem on the remains of a male identified as Densmore Bowman on the 16th of December 2019. Defence Counsel did not contest this element. On basis of all that evidence, I am satisfied that it has been proved beyond reasonable doubt that Densmore Bowman is dead.

## DNA Profiles

**[13]** Deoxyribonucleic acid or DNA is found in nearly every cell of the body. It can be extracted from body fluids such as blood, saliva or semen or from the cells contained in other parts of the body such as bone, hair or fingernails. The process of DNA analysis is complex. This process was summarised by Moore-Bick, L.J. in **R v Richard Bates** [2006] EWCA 1395. It is important to note that in England at the time of Bates, the DNA analysis was done by reference to ten (10) markers and to the sex indicator.

**[14]** The process commences with DNA being extracted from samples. The DNA from each sample is multiplied by a specific enzyme into fragments of different sizes. The fragments produced are sorted according to size by the process of electrophoresis. Then by a system called 'imaging' he is able to see the actual

DNA fragments. Another complex method is employed to record the band pattern. The DNA analysis is based on the fact that different markers or regions or "loci" contain repeated blocks of material known as "alleles". Mr. Beecher told the court that in the instant case, eight (8) markers or loci were used. Although the loci at which the alleles are found are the same in everyone, the number of blocks making the alleles at each locus differ from person to person. At each locus there are two (2) alleles – one inherited from the father and one from the mother. A person's DNA profile is obtained by reference to the alleles present at the chosen eight (8) loci. If two (2) alleles are identified at each of the eight (8) loci of a sample of a person's DNA in such a case, the analysis is said to have produced a complete profile for that person.

## Profile Matching

**[15]** It is helpful to quote Moore-Bick, L.J.:

> **"When testing material for a match with a particular suspect the first step therefore, is to obtain a complete profile of the 'suspects' DNA for the purposes of comparison. A profile of DNA obtained from stains, hair or other materials found at a relevant location can then be prepared in the same way and the two compared. Data drawn from empirical research is available to enable analysts to calculate the statistical likelihood of any person within the population having a particular allele at a particular locus. Using that data it is possible to estimate the statistical likelihood that a particular sample of DNA originated from the person whose profile is being used for comparison. This is usually referred to as the 'match probability'."**

See **R v Bates** (supra) at paragraph 13. Any discrepancy between the profiles, unless explained, will show a mis-match and would exclude the suspect from complicity.

## Partial Profiles

**[16]** The presence of more than two (2) alleles at a locus is evidence that the sample contains the DNA of more than one person. This is known as a "mixed profile". Where at any of the loci, due to a variety of causes, only one allele or no alleles at all have been identified, such a profile is referred to as a "partial profile". If the missing alleles of the partial profile of the DNA of the deceased did not match those at that locus of the other samples which were analysed, it would establish that the blood found on the portion of the seatbelt taken from the car belonging to the defendant was not that of the deceased. Consequently, as Moore-Bick, L.J. said in **Bates**' case "every partial profile carries within it the possibility that the missing information excludes the person under investigation, but there is currently no means of calculating the statistical chances of that being the case" - paragraph 17.

**[17]** As stated before, the Crown's case against the defendant is based on circumstantial evidence. The DNA evidence provides one of the strands on which the prosecution's case is founded. It must be observed that although in the deceased's DNA profile, there was a void at one of the loci in that no alleles were identified there, there is no evidence of a mis-match. The burden of the analyst's evidence is that it would be rare to find another person in Belize with the same genetic profile as the deceased. This was her conclusion after finding that the DNA profile found on the portion of the seatbelt of the defendant's car matched the DNA profile of the deceased found in the blood sample at the corresponding markers. What is important, as the Crown submitted, is the match probability or the frequency ratio or the random occurrence ratio.

**[18]** Now the analyst apart from just doing the DNA profile has to predict the statistical likelihood of an individual that might be found in the genetic make-up of the population. In other words, the analyst has to arrive at the frequency

of the description of these markers in relation to the Belizean populace. She has to determine from collective data, the probability of finding persons in the population who would have a combination of similar markers to that of the deceased Mr. Densmore Bowman. For each of the markers she examined she calculated the genotype, the genotype is the numbers under the markers frequency and multiply them together to calculate the match probability and he came to the conclusion that the match probability from the markers that were obtained from the sample of blood allegedly taken from Mr. Densmore Bowman.

**[19]** Now, the analyst cannot say that the blood on the portion of the seatbelt from the defendant's car must be that of the deceased, what the analyst can say is that although it is possible for the next person in the relative chance of Maternity, assuming a 50% prior chance, is 99.9999% as compared to an untested, individual in the Caucasian, African American, and Hispanic populations. That is, it is possible, but it is highly unlikely that one will find that other individual being in Belmopan or all of Belize with the same DNA profile as Mr. Densmore Bowman on the twenty-ninth day of November 2019, shedding blood, and that it is highly unlikely is matter of fact for me.

**[20]** In **R v Doheny** (1997) 1 Cr. App Rep. 369 the learned Lord Justice said (p 372 B-E):

> **"The characteristics of an individual band of DNA will not be unique. The fact that the identical characteristics of a single band are to be found in the crime stain and the sample from the suspect does not prove that both have originated from the same source. Other persons will also have that identical band as part of their genetic make-up. Empirical research enables the analyst to predict the statistical likelihood of an individual DNA band being found in the genetic make-up of persons of particular racial groups 'the random occurrence ratio'.**

**As one builds up a combination of bands, the random occurrence ratio becomes increasingly more remote, by geometric progression. Thus, if two bands, each of which appear in 1 in 4 of the population are combined, the combination will appear in 1 in 16 of the population, and if to these is added a further band that is found in 1 in 4 of the population, the resultant combination will appear in 1 in 64 of the population. This process of multiplication is valid on the premise that each band is statistically independent from the others. The frequency ratio of the blood group is a factor which is statistically independent and thus this can also validly be used as a multiplier. If the DNA obtained from the crime stain permits, it may be possible to demonstrate that there is a combination of bands common to the crime stain and the suspect which is very rare."**

**[21]** The above passage was approved by their Lordships' Board in **Michael Pringle v R** (2003) 64 WIR 159. In the Pringle case at paragraph 13 the Board in referring to DNA evidence said:

**"Markers are used to identify specific DNA sequences. In the present case only two markers are used. This means that the DNA evidence was less strong than it might well have been if further markers had been used on the relevant material. The more markers that are used, the less likely it is that the same profile will be obtained from samples taken from two individuals. The greater the number of bands that match within this profile, the lower is the random occurrence ratio."**

**[22]** It is for my jury mind to consider the DNA evidence along with the additional evidence and to determine whether or not the evidence on its totality satisfies me of the guilt of the defendant. The important factor was the frequency with which the matching DNA characteristics were likely to be found in the Belizean populace.

**[23]** In **Bates** the prosecution relied on partial profile DNA evidence which it was submitted, tended to show that the appellant had been present at the scene of crime. At the trial it was submitted on behalf of Bates that the DNA evidence should be excluded on the grounds that it was impossible to ascribe any statistical value to the potential exculpatory effect of the voids in a partial profile and thus it was not possible to produce a true match probability. That submission was rejected by the judge who admitted the evidence subject to an appropriate warning to the jury of the limitations of partial profile DNA evidence. On appeal to the English Court of Appeal it was argued, (a) "that the effect of the decision in **Doheny** and **Adams** is that only statistical evidence can properly be placed before the jury in relation to DNA analysis and that in the case of a partial profile the inability to take account of the potential exculpatory effect of voids, invalidates any match probability; (b) that to invite the jury to assess for themselves the evidential value of a partial profile, having explained to them the potential significance of the voids, is to invite them to weigh up something which is inherently unquantifiable." – See paragraph 27 ibid.

**[24]** The English Court of Appeal in dismissing the appeal said (paragraph 28):

> **"Perhaps the first point that should be made is that the evidence derived from the testing carried out by the Forensic Science Service in the present case was presented to the jury in the form of statistical match probabilities of the kind contemplated in Doheny and Adams. Moreover we can find nothing in that case to support the proposition that only match probability calculations which take into account the statistical value of every conceivable possibility are admissible in evidence or that evidence based on partial profiles must be rejected in every case. … The court in Doheny and Adams was primarily concerned to provide guidance of a general nature in relation to the presentation of DNA evidence and to expose and eradicate the so-called 'prosecutor's fallacy' which elevated the significance of the evidence beyond its proper level. It was not**

**concerned with the distinction between full profile evidence and partial profile evidence, although there are passing indications in the judgment that the court may have had partial profile as well as full profile evidence in mind – see, for example, the reference to "the frequency with which the matching DNA characteristics are likely to be found in the population at large "at page 371 - E. Moreover it is necessary to bear in mind that in one sense all profiles currently obtainable are partial inasmuch as present techniques only allow testing at 10 loci. We were told that at the time when the tests considered in Doheny and Adams were performed the analysis was carried out by reference to 6 loci; now it is carried out by reference to 10 and we were told in the course of argument that advances in technology may make it possible to test by reference to many more. It remains the case however, that the presence of one allele at one locus that does not match the profile of the comparator is sufficient to exclude that person as the contributor."**

**[25]** The prosecution relied on these biological samples from which DNA profiles were extracted to assist, first of all, in establishing that the body found in the shallow grave between Miles 23 and 24 along the George Price Highway in the Belize District was that of Densmore Bowman and secondly to link the body to the blood in Mr. Hildebrandt Codd's car. The evidence to establish his identity was done by way of the maternity test (described above). I remind myself of the expert evidence in this regard:

**"I recall conducting certain DNA analysis on items received from Belize on the 1st of October 2020, those items that I received were in relation to a case: FOR19-1717 SER/DNA, Mary Noreen Coleman and Densmore Bowman. Yes I performed DNA analysis on the items received, the analysis did result in a report, if I were to see the report I would be able to recognize by my signature, the name of my lab and the dates of the analysis, witness shown a document which she identifies as the report that she produced; it has my signature as**

**well as the laboratory name and the dates of the report. Certificate of Analysis tendered and marked as exhibit "EO-1".**

**We received 2 samples from Belize for testing and we were requested to prepare these two profiles to see if there was a parent relationship and in this case a maternal relationship. It was determined that the sample of Mary Noreen Coleman was the mother for the sample of Densmore Bowman."**

**[26]** I remind myself that I would have to be satisfied that the body is that of Densmore Bowman, based upon the expert evidence. Furthermore, I remind myself that the evidence of the expert was that Ms. Mary Noreen Coleman was the mother.

**[27]** I also remind myself that, Ms. Bannon, in her evidence concluded that the blood samples found on the seatbelt of the car belonging to the defendant; Hildebrandt Codd, could not be excluded as being that of the deceased. Ms. Bannon made this conclusion based on the comparison with the DNA profile in respect to maternity (supra).

**[28]** I must decide if the procedure outlined by this witness assist me in the relationship, an opinion she gives me, assists me to come to a finding of fact in relationship to the connection between the deceased's body and blood found on the seatbelt and in the aforementioned car.

**[29]** Miss Bannon confirmed that the same evidence about the DNA evidence, she confirms it. And the significance of that scientific evidence about the comparison is that it is another link in the chain of circumstantial evidence. Who does that evidence link to? Because every time I look at the chain, I must see if it answers any of the questions of who, or what, or where. So I must ask

myself the question, if the scientific evidence is a link in the chain of circumstantial evidence, not in abstract, but who does it link to?

**[30]** At the end of the day I must ask myself if I am satisfied so I feel sure and even after I accept the DNA evidence if I do look what inference can be drawn from it?

**[31]** In **Doheny**, Phillips LJ, suggested the following be addressed in the summing up on the aspect of DNA evidence:

> **I should explain to my jury mind the relevance of the random occurrence ratio in arriving at my verdict and draw my attention to the extraneous evidence which provides the context which gives that ratio its significance, and that which conflicts with the conclusion that the defendant was responsible for the crime stain. In so far as the random occurrence ratio is concerned, a direction along these lines may be appropriate, although any direction must always be tailored to the facts of the particular case.**
>
> **if I accept the scientific evidence called by the Crown, this indicates that there are probably only [The Combined Maternity Index is 658,474,897, 583.5470 (Caucasian), 43,274,177,212.8717 (African American), and 2,865,378,422,467.6700 (Hispanic). From whom that semen stain could have come. The deceased is one of them. If that is the position, the decision I have to reach, on all the evidence, is whether I am sure that it was the deceased who left that stain or whether it is possible that it was one of that other small group of men who share the same DNA characteristics'.**
>
> **"What that means is that the probability of finding another person with the same DNA type from the local Belizean population who is neither the sample donor or anyone related to him is one in … five hundred thousand."**

## Chain of Custody

**[32]** The rationale for the requirement to establish a chain of custody, for biological or, what may be termed generic crime scene evidence, by the party desiring to adduce that evidence, is the preservation of the integrity of the item. In **Chris Brooks v R**, the Jamaican court accepted and adopted, the following declaration of the law by Baptiste JA in **Damian Hodge v R** (unreported), Court of Appeal, British Virgin Islands, HCRAP 2009/001, judgment delivered 10 November 2010):

> **"The underlying purpose of testimony relating to the chain of custody is to prove that evidence which is sought to be tendered has not been altered, compromised, contaminated, substituted or otherwise tampered with, thus ensuring its integrity from collection to production in court. The law tries to ensure integrity by requiring proof of the chain of custody by the party seeking to adduce the evidence. Proof of continuity is not a legal requirement and gaps in continuity are not fatal to the Crown's case unless they raise a reasonable doubt about the exhibits integrity."**

Romilly J in **R v Larsen**, at paras 61 to 66, which was cited in both **Chris Brooks v R** and **R v Grazette**, makes the same point.

**[33]** The more important, or rather, indispensable, part of the chain of custody is from collection to transportation to the forensic laboratory. This much is clear from the language of Romilly J in **R v Larsen**, at para 62. After commenting on the burden on the prosecution to prove that the substance alleged to be in the possession of the accused, is the same charged in the information, he said:

> "… Undoubtedly, then, continuity of possession of the substance from the accused to the law enforcement officer to the analyst is crucial ..."

Equally, Morrison JA (as he then was) in **Chris Brooks v R**, intimated a similar position when, at para [46], he said:

> "… the purpose of establishing the chain of custody of the envelope containing the swabs taken from the appellant was to demonstrate its integrity, so that the court could be satisfied that the sample which was examined by the analyst was that which was taken from him..."

**[34]** Therefore, if, subsequent to its testing, the item is destroyed or otherwise lost, the probative value of the evidence obtained is not, by that token, whittled away. In **R v Jadusingh** after the analyst issued his certificate attesting that the vegetable matter resembling ganja, recovered from the home of the appellant, was in fact ganja, skulduggery substituted ordinary grass. In face of that "rascality", relying on the appellants' admission that the vegetable matter was ganja and the chain of custody, this court held that there was sufficient evidence to support the magistrate's finding that the vegetable matter was ganja.

**[35]** What the interests of justice demand is preservation of the integrity of the exhibits and not so much the integrity of the chain of custody. Hence, the presence of gaps or imperfect recordkeeping, characterized as "continuity" in **R v Larsen**, do not result in an automatic exoneration of the accused. Therefore, I find myself quite unable to agree with Mr. Neal that the integrity of the exhibit is inextricably bound with the paper trail, in the absence of which, the integrity of the exhibit cannot be guaranteed.

**[36]** My assessment of the evidence of the chain of custody, which I endeavoured to set out in the evidence, reveal no gaps in the chain of custody. The criticism that there are inconsistencies, to which I will revert shortly, appears to be fair, but that there are gaps, is not. The passage of both packages with the

aforementioned items, from the motor car to the government forensic laboratory, was along an unbroken, easily discernible path.

**[37]** PW; Sergeant Lydia Kerr testified that:

> **"On 23rd of December 2019, a search was found where certain papers were found in the glove compartment; certificate of insurance by the name of Hildebrandt Dominic Codd, it has on the particulars of the vehicle which is a silver in colour Nissan Altima, licence plate # OWC-08613, witness shown a document and identifies it as the said certificate of insurance with the particulars of the vehicle which is a silver in colour Nissan Altima, licence plate # OWC-08613. Also certificate of title which has on the name of Hildebrandt Dominic Codd, it has on the particulars of the vehicle which is a silver in colour Nissan Altima, licence plate # OWC-08613, witness shown a document which she identifies as the said certificate of title with of Hildebrandt Dominic Codd, it has on the particulars of the vehicle which is a silver in colour Nissan Altima, licence plate # OWC-08613, certificate of title tendered and marked as exhibit "LK-1" and the certificate of insurance is tendered and marked as exhibit "LK-2".**
>
> **Witness shown exhibit "RH-24", identifies it as the same silver in colour Nissan Altima, that I conducted a search on and found the documents inside the glove compartment."**

**[38]** PW; SOC Robert Henry Jr. testified that:

> **"On the 23rd December, 2019 sometime about 7:00 pm I was once requested by Woman Corporal of Police Lydia Kerr to process a car which was allegedly involved the disappearance and murder of Desmore Bowman which was located on Marage Road Ladyville Village. I proceeded to the location on marge road where I met Cpl Orlando Bowen who shown me a silver in color Nissan Altima car without license plate parked off the shoulder of the road. I conducted an inspection of the car and took several photographs of the car. At about 7:55 pm I was requested by WCPL Kerr and was introduce to a male person which I leant his name to be Hilbrand Cod who was the owner of the car in respect to the report mention above. I**

**process the car with blue star for the detection of suspected blood inside the vehicle where several area of the car was swab with cotton swab in the present of a Justice of the Peace. The swab was packaged and sealed and on the 30th of December 2019 all items collected from the scene and the swab was transported to the National Forensic Lab along with a chain of Custody form where the exhibit manager signed for the items."**

**[39]** PW; SOC Robert Henry Jr. further testified that:

**"I prepared a chain of custody form, if I were able to see those chain of custody forms again I would be able to recognize them by my signature in my own hand-writing behind each of the chain of custody forms, there are 5 chain of custody forms.**

**Witness shown some documents, which he identified as the said chain of custody forms with his signature in his own hand-writing, chain of custody forms tendered and marked as exhibits "RH28-32"."**

**[40]** PW; SOC Robert Henry Jr. testified that:

**"On Monday 10th February, 2020 at about 2:00 pm I collected a Buccal swab for the both jaw from Ms. Mary Noreen Coleman for DNA. This was requested by the investigating officer Inspector Shal."**

**[41]** Exhibit "RH-28"; chain of custody form signed by the PW; SOC Robert Henry spoke to one sealed white contains two sealed swab cartoon box with Buccal swab collected from Mary Noreen Coleman deceased mother.

**[42]** PW; SOC Robert Henry Jr. also testified that:

**"On Tuesday 9th June, 2020 sometime at about 10:00 am while on duty at the Scene of Crime Office, I was requested by Inspector Julio Shal to further process an silver in color Nissan Altima which was park at the Ladyville Police Station which alleged involved in an homicide case of Desmore Bowman Deceased.**

**The vehicle was then process where several items was removed from the vehicle carpet from the back and front of the vehicle, the back passenger seat carpet from the trunk of the vehicle, seat belt from the front passenger side of the vehicle, head rest and both visor piece of material was cut off from the front passenger seat."**

**[43]** Exhibit "RH-31"; chain of custody form signed by the PW; SOC Robert Henry spoke to item 10; one sealed brown paper contains a seat belt collected from the front passenger seat with suspected blood on it.

**[44]** The question of whether the chain of custody was intact, which Mr. Neal suggested is the simple test, was a question of fact for me to consider. Hence, the position advanced by the defendant, that defects in the chain of custody cannot be resolved by an assessment of credibility is without authority. According to Romilly J, at para 65 in **R v Larsen**:

> "… If there is a gap in continuity and if the trier of fact is not satisfied beyond a reasonable doubt that substances taken from the accused were the substances analysed, the evidence may still be admissible but the weight given to the exhibit and the evidence would be affected ..."

Separate from the clear reference to "the trier of fact", there is evidently no path to a decision on applicable weight which does not go through an assessment of credibility.

**[45]** In any democratic criminal justice system, there is tension between the public interest in bringing criminals to book and the equally great public interest to ensure that justice is done to all. Courts must curtail excessive zeal by State agencies when preventing, investigating, or prosecuting crime. The Court's duty in this regard should not be seen as having sympathy for crime and its perpetrators. Nor does it mean a preference for '*technical niceties and ingenious legal stratagems*'. The Constitution demands a fair trial for each

accused. Ultimately fairness is an issue that the Court must decide upon each case's facts. The trial Judge is the person best placed to take that decision.[3]

**[46]** As to whether that death was caused by an unlawful act, it is the law that any homicide (the killing of a human being by another, is presumed to have been caused unlawfully unless it was accidental or it was authorised by law. P.W.; Dr. Mario Estrada Bran who conducted the autopsy, recalled the 16th of December 2019 at 4:00 p.m. he was at the Medical School located through Boom Road, conducted a post-mortem examination of Densmore Bowman remains, the body was identified to him by one Casilda Bowman, sister of the deceased. Casilda Bowman was able to identify the remains of Densmore Bowman by two tattoo marking in the name of Densha and Demaria that was still visible on the chest area and his dreads. He took notes at the post-mortem examination. PW; Dr. Mario Estrada Bran was shown a copy of the post-mortem report of Densmore Bowman and identified it by the name of the deceased, the time, the date and by his signature in his handwriting. Post-mortem of 16th December 2019 tendered and marked as **exhibit "ME-1"**. The cause of death was traumatic shock due to multiple chop wounds to the head, neck and limbs. Defence Counsel did not contest this element. This evidence taken as a whole has proved that this was a homicide. For that reason, since there is nothing to suggest that it was caused lawfully, I am satisfied that Densmore Bowman's death was caused unlawfully.

**[47]** The intent to kill is defined by the common law (or the Criminal Code) as either an intention to cause death of a person or knowledge that the act causing death will probably cause the death of some person. The question is whether whoever assaulted the deceased intended to cause death or knew that the

[3] **Key v Attorney-General, Cape Provincial Division, and Another** 1996 (4) SA 187 (CC) (1996 (2) SACR 113; 1996 (6) BCLR 788) at 195G – 196D-J paras 13 and 14 as quoted in **S v Engelbrecht** 2017 (3) SA 912 (SC) paragraph 30

manner and degree of assault would probably cause death. The specific intent to kill is a mental element that is difficult to prove by direct evidence. Courts usually consider weapon used (in this case a chopping implement is suspected to have been used) and the manner in which it was applied (several chop wounds were inflicted) and the part of the body of the victim that was targeted (to the head, neck and limbs of the deceased). The ferocity with which the weapon was used can be determined from the impact (the nature of the injuries is not classified or specified in this case). P.W.; Dr. Mario Estrada Bran who conducted the autopsy established the cause of death cause of death was traumatic shock due to multiple chop wounds to the head, neck and limbs. In this case they were contact wounds.

**[48]** The Court of Appeal in the case of **Joseph Kimani Njau v R (2014) eKLR,** the Court of Appeal held as follows:

> **"Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;**
>
> **i) The intention to cause death;**
>
> **ii) The intention to cause grievous bodily harm;**
>
> **iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.**
>
> **It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed……"**

## Direct and circumstantial evidence

**[49]** As can be seen from the summary above of the State's evidence, the State led no eyewitnesses to link the accused to killing the deceased. The evidence against the accused in part is what is called circumstantial evidence.

**[50]** I will first deal with circumstantial evidence. (1) Circumstantial evidence is not necessarily of less value that direct evidence. In certain circumstances, it can carry more weight than direct evidence. See in this regard, **State v Tshabalala** 1966 (2) SALR 297 (AD) at 299B – C. (2) Deductions are made from circumstantial evidence and therefore logical rules must be followed in order to avoid speculation. (3) The court must not consider each circumstance in isolation. In **Rex v de Villiers** 1944 (AD) 493 at 508 – 9, Davis AJ of Appeal was reported to have said the following:

> **"But I should not leave this point without dealing shortly with an argument pressed upon us by Mr M[…], that in a case depending on circumstantial evidence, 'the court must take each factor separately, and, each of them is possibly consistent with innocence, then it must discard each in turn'**

**[51]** This argument is fallacious. It is in the first place inconsistent with my brother Watermeyer in **Rex v Blom** 1939 (AD) at p 202:

> **'The proved facts should be such that they exclude every reasonable inference from them, save that one sought to be drawn.'**

It is not each proved fact that must exclude all other evidence, the facts as a whole must do so.

I then refer to the quotation of **Best Evidence** the 5th edition:

> **'Not to speak of greater number; Even two articles of circumstantial evidence- though each taken by itself weigh but as a feather, join them together, you will find them pressing on the delinquent with the weight of a mill-stone… It is of the utmost importance to bear in mind that where a number of independent circumstances point to the same conclusion, the probability of the justness of that conclusion is not the sum of a simple probabilities of those circumstances, but the compound result of them.'**

**[52]** "The court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt, which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way; the Crown must satisfy the court, not at each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence."

This is all still a quotation from **Rex v de Villiers** 1944.

**[53]** When reasoning by way of inference, there are: **"There are two cardinal rules of logic"**.

Which have to be followed, as set out by Watermeyer, Judge of appeal in **Rex v Blom** 1939 (AD) 188 at 202 – 203:

> **"(1). The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.**

**(2). The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether an inference sought to be drawn is correct."**

**[54]** Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective fact from which to infer the other facts which is sought to be established. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases, the inference does not go beyond a reasonable probability, but if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is merely speculation or conjecture.

**[55]** In other words the mere fact that the accused is found to be a liar does not necessarily mean he has committed the offences. I must then turn to deal with the further aspect as to the proof of motive and I refer here to the well-known minority judgment of Malan, AJA in **Rex v Mlambo 1**957 (4) SALR 727 (AD) where he is reported to have said the following about the proof of intent in such circumstances at 737 C to F:

**"Proof of motive for committing crime is always highly desirable, more especially so where the question of intention is an issue, Failure to furnish absolutely convincing proof thereof, however, does not present an insurmountable obstacle because even if motive is held not to have been established, there remains the fact that an assault of so grievous a nature was inflicted upon the deceased that there have resulted either immediately or in the course of the same night. If an assault "using the term in its widest possible acceptation is committed upon a person which causes death, either instantaneously or within a very short time thereafter and no explanation is given of the nature of the assault by the**

**person whose knowledge it solely lies, a court would be fully justified in drawing the inference that is was of such an aggravated nature that the assailant knew or ought to have known that death might result. The remedy lies in the hands of the accused person and if he chooses not to avail himself thereof, he has only himself to blame if an adverse verdict is given."**

Then at 738 a-d:

**"in my opinion, there is no obligation upon the crown to close every avenue of its escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised, that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused committed the crime charged. He must in other words, be morally certain of the guilt of the accused. An accused`s claim to the benefit of doubt when it may be said to exist, must not be derived from speculation, but must rest upon a reasonable and solid foundation created either by positive evidence or gathered from reasonable inferences which are not in conflict with, or outweighed by, the proved facts of the case. More over if an accused deliberately takes the risk of giving false evidence in the hope of being convicted of a less serious crime or even, perchance, escaping conviction all together and his evidence is declared to be false and irreconcilable with the proved facts, a court will, in suitable cases, be fully justified in rejecting an argument that notwithstanding that the accused did not avail himself of the opportunity to mitigate the gravity of the offence, he should nevertheless receive the same benefits as if he had done so."**

**[56]** In determining the issue of participation, this Court reminds itself of the requirement to examine all evidence closely, bearing in mind the established general rule that **"an accused person does not have to prove his innocence. And that by putting forward a defence like alibi or any other,**

**an accused does not thereby assume the burden of proving the defence except in a few exceptional cases provided for by law. It is up to the prosecution to disprove the defence of the Accused persons by adducing evidence that shows that, despite the defence, the offence was committed and was committed by the accused persons"**.- Refer to **Sekitoleko v. Uganda** [1967] EA 531**, Wamalwa & Another v. Republic** [1999] 2 EA 358 (CAK) and **Kato v. Uganda** [2002] 1 EA 101.

**[57]** In determining the participation of the Accused in the alleged crime, this court accordingly bears in mind the established principle of law that **"to find a conviction exclusively upon circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis that that of guilt".** See **Chard v. Republic** [2006] IEA 43 (CAK).

**[58]** Be that as it may, this court is also mindful of the established principle of decided cases that **"circumstantial evidence is often the best evidence. If evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with the accuracy of mathematics, it is no derogation of evidence to say that it is circumstantial evidence."** - Refer to **Thiaka v. Republic** [2006] 2 EA 362.

**[59]** In **Ahamad Abolfathi Mohammed and Another v. Republic [2018]** e KLR**,** the Court of Appeal stated as follows on reliance on circumstantial evidence:

> **"However, it is a truism that the guilt of an accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial**

**evidence in R v Taylor, Weaver and Donovan [1928] Cr. App. R 21: -**

**"It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial."**

**[60]** In the aforesaid case, the Court of Appeal set out the test to be applied in considering whether circumstantial evidence placed before a court can support a conviction. The court stated:

**"Before circumstantial evidence can form the basis of a conviction however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the Subject person, and to no other person, as the perpetrator of the offence. In Abanga alias Onyango v R Cr. App. No 32 of 1990, this court set out the conditions as follows:**

**"It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Subject; (iii) the circumstances taken cumulatively, should from a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else."**

**[61]** In this case, PW; Kazia Arnold, the mother of one of the children of the Defendant, to whom the confession was made, testified that:

**"I saw a missing report on the news of Densmore Bowman and then I sent my baby-father Hildebrandt Codd a text of Densmore Bowman's missing report, if I see this? His response was "yes, da puppy did a gi trouble suh I had to**

**calm her down". He said he didn't want to talk about it over the phone, that he would come in person to my house.**

**I recall the 6th December 2019, I was at home at 152 Yellowtail Street, Ladyville, Hildebrandt Codd came to my house, he never said nothing about the incident the whole day until about 7 7:30 the night on the 6th of December, he came to the back of the house and said come mek a tell yuh weh I do di bwoy, Hildebrandt Codd told me that he and Densmore Bowman was at a bar in the Market place in Belmopan, he said that Densmore Bowman told him "a mi gat you did live", he told Densmore Bowman "don't worry bout dat dog I dun forgive yuh fi dat" and they went and bar hop, the last bar they went to was Luck Entertainment at Roaring Creek Village. Hildebrandt told me that he spent his last $60 to get Densmore Bowman more drunker he said he drink 20 Belikin stout (Densmore Bowman). And then I asked Hildebrandt Codd what did you say to the dread guy in front of Lucky Entertainment, he said that he told the dread guy, watch what a going do to he right now, then he left from there; Lucky Entertainment and went up the highway between mile 24 and 26, he was with Andrew Cho and Densmore Bowman, he said that Densmore Bowman was in the front passenger seat and Andrew Cho was at the backseat, they drive up the highway and parked somewhere in the highway between mile 24 & 26 beside the Chinese Village. He said Densmore Bowman had his feet on the dash-board of the car, he said he grabbed his two feet and he tied it, Densmore Bowman said to him; "Pops nuh duh mi dis." He then said he chopped Densmore Bowman in his face, then Hildebrandt Codd said Densmore Bowman tried to run and him chop him on his feet, he said some of his toes came off, afterwards he said that he tried to cut Densmore Bowman's neck but it was too hard, so he cut it**

**from the back and he was still not dead, Hildebrandt said, he said he stab har inna di chest and him still neva dead. He then said he told Andrew Cho come put in a work bwoy and he said Andrew Cho performed like a real professional, I asked him Densmore Bowman had any tattoos on his body, he said yes, his daughter's name but I cut it out, he then naked Densmore Bowman, him cut off some of his dreadlocks, he then leave his body there a little bit off the highway, he said Alfredo Cho told him let's go move the body but the vehicle was giving him mechanical problems, so he leave the body there and Hildebrandt Codd returned back on Tuesday between 5 and 5:30 in the morning. He said when he reached there, the body had worms on it already decomposing, he still proceeded to move the body, dragged the body to a grave that was dug, by dragging the body, one of Densmore Bowman's hand came off, Hildebrandt Codd said that he buried Densmore Bowman's head beside of his body."**

**[62]** PW; Kazia Arnold further testified that:

**"I recall the 7th of December 2019 in the night, 1was at 152 Yellowtail Street at my home, Hildebrandt Codd asked me to go into his car to get a bag of funto for him, I went for the funto, when I went in the car for the funto I looked around because I was furious, when I saw what appeared to be blood in the seatbelt area and by the area by the door and I went back inside and I told Hildebrandt about it, bwoy a blood dis inna yuh car, he said nuh worry bout that, I going mek them give the car a thorough clean. He asked for some soap and water, I left him outside by the car, I went back inside to get dressed, on the 8th of December, the Sunday, me an him was going to Western Union, and I saw what appeared to be more blood on the ceiling of the car and in**

**the area of where you stick the seat belt inna. I asked him if he killed Densmore Bowman in the car, he said don't worry about the blood, he never answered the question. I done tell yuh dat I going to mek it get a good wash."**

**[63]** PW; Kazia Arnold also testified that:

**"The car I got funto out of is a gray Nissan Altima, it has a damage on the side of the bumper, left and the back. Witness shown exhibit "RH-24"; this is my baby father, Hildebrandt Codd's car. Witness shown exhibit "RH-26"; this is my baby father, Hildebrandt Codd's car, bumper which is damaged on the left. When I went for the funto in the car, it was parked outside my house by the bridge. All that Hildebrandt Codd told me, I did not force him, threaten him or bribe him to tell me what he told me. I also did not pressure him in any way to tell me what he told me. Witness points to Hildebrandt Codd in the dock."**

**[64]** When the conversation with PW; Kazia Arnold is evaluated objectively in its totality together with the reasonable inferences as required by our common law it clearly amounts to a confession in the wider sense in that the accused acknowledged that he committed or participated in the commission of the offence and admitted facts which, when scrutinized and laboriously pieced together, may lead to the inference of guilt on his part. If not a confession on murder, it would amount to a confession on one or more of the competent verdicts possible on a count of murder.

**[65]** Not only did the conversation with PW; Kazia Arnold amount to a confession in the wider sense as described before, it also amounts to an unequivocal admission of guilt setting out facts that would have amounted to a plea of guilty if given in a court of law on a charge of murder; If not a confession on murder,

it would amount to a confession on one or more of the competent verdicts possible on a count of murder.

**[66]** PW; Roy McCarthy testified that:

> **"I heard someone shouting to me and ask me if I wanted to wash a car, as I usually wash car for people because I have a small business, and how much I would charge to wash a car, I told the person that I charge $BZ 20.00. I have been seeing the person on and off for 2 years, I don't know his full name but I know him by his nickname "Papito", I agree to take the job and I got my equipment and I proceeded across the street where the vehicle was parked, there was also a person that I know as Andrew Cho, who was in the right passenger front seat with ajax wiping down, I don't know what he was wiping down, I told him that I was going to proceed to wipe down the car. At this time Andrew Cho gave me the ajax and a rag and I recall seeing some red looking stain on the right front passenger knob of the car but at first I thought that it looked like ketchup stain but I wasn't paying it full attention, when I put the rag in the bucket to rinse it out, it gave off a red looking colour. I continued doing cleaning, where there was high foul smelling stench, not like food but something decaying, I continue washing the back seat with the brush that I had, cleaning inside the vehicle taking up the mats where I saw some Belikin point bottle pieces, so I did all my cleaning, I also observed that the back bumper of the car was falling off, which I did amend with some tied wire to hold it up and after that I proceeded to wash the outside of the car, it was very dirty and had on white thick marl outside on the door. I continued washing the car and dried it."**

**[67]** PW; Roy McCarthy further testified that:

**"The brand that saw was a gray colour Nissan Altima Sedan. Witness shown exhibit "RH-25", this is the identical car that I washed for "Papito". Witness shown exhibit "RH-26", I know it because it is identical to the car I washed with the damaged rear bumper. Witness identifies person who he is known to him as "Papito" sitting in the dock."**

**[68]** From the evidence adduced by the prosecution, it is clear that the subject was the last person who must have been the last person to see and be with the deceased prior to his death.

**[69]** PW; Tiffany Cadle testified that:

**"I visited an establishment in Roaring Creek that is called "Lucky" establishment; at that establishment, I saw that they had video cameras within the establishment and outside, when I saw the cameras, I walked up to the bar area where there was a young Chinese girl and I asked her if I was able to see the video footage of the premises of the night of the 29th of November coming on to the 30th, at first she declined, but eventually she agreed, she sent me different snips of video from the night, in these videos I saw my brother who was there with two individuals that I later know them to be Andrew Cho and the other Hildebrandt Codd, my brother was extremely intoxicated, it was clear from the videos that he was unable to walk properly, my brother left the establishment in a car with the two individuals, Andrew Cho go into the back passenger seat, Hildebrandt Codd was the driver, my brother Densmore Bowman went into the passenger side of the car, the car then drove off heading towards Belmopan, when I saw the two individuals, I then went back to my brother's home where the guy "Hammer" was, I then paid "Hammer" 150 and I told him to please go and bring me Andrew Cho, "Hammer" left and he came back with Andrew Cho, I asked Andrew Cho if he can please tell me where my brother is. Based on the**

**information I received from Andrew Cho, I knew at that point that he was dead (her brother) and so I was no longer searching for my brother, I was searching for his body, I got a track for his phone it is called a ping, the last ping on his phone was picked up in mile 23-24, I knew then that my brother was in that area on the night of the 29th November coming on to the 30th, we went up there that day…"**

**[70]** The doctrine of last seen alive is based on circumstantial evidence where the law prescribes that the person last seen with the deceased before his death was responsible for his death and the accused is therefore expected to provide any explanation as to what happened. Having been placed at the scene of the incident as the person who was last seen with the deceased before she died, the subject herein has a duty to give an explanation of how the deceased met his death.

**[71]** In the Nigerian case of **Stephen Haruna v. The Attorney-General of The Federation** (2010) 1 iLAW/CA/A/86/C/2009 the court opined thus:

> **"The doctrine of "last seen" means that the law presumes that the person last seen with a deceased bears full responsibility for his death. Thus where an accused person was the last person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusion, there is no room for acquittal. It is the duty of the appellant to give an explanation relating to how the deceased met her death in such circumstance. In the absence of a satisfactory explanation, a trial court and an appellate court will be justified in drawing the inference that the accused person killed the deceased."**

**[72]** Similarly, in the Indian case of **Ramreddy Rajeshkhanna Reddy & Another v. State of Andhra Pradesh,** JT 2006 (4) SC 16 the court held that:

> **"Even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small, that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration."**

**[73]** In **Republic v E K** [2018] eKLR the Court held thus and I agree, concerning the last seen with the deceased doctrine:

> **"Regarding the doctrine of "last seen with deceased" I will quote from a Nigerian Court case of Moses Jua v. The State (2007) LPELR-CA/IL/42/2006. That court, while considering the 'last seen alive with' doctrine held:**
>
> **"Even though the onus of proof in criminal cases always rests squarely on the prosecution at all times, the last seen theory in the prosecution of murder or culpable homicide cases is that where the deceased was last seen with the accused, there is a duty placed on the accused to give an explanation relating to how the deceased met his or her death. In the absence of any explanation, the court is justified in drawing the inference that the accused killed the deceased."**

**[74]** In the circumstances of this case, it is my view that the subject's defence failed to offer any explanation as to how the deceased might have met his death. His defense, in my mind, amounted to a mere denial.

**[75]** There is no direct evidence of intention. Intention is based only on circumstantial evidence of the injuries. Defence Counsel contested this element. The intention of the accused being based entirely on circumstantial evidence, in order to find that the accused was actuated by an intent to kill at the time the Defendant assaulted the deceased, it is necessary that in a case depending exclusively upon circumstantial evidence, one must find before deciding upon conviction that the exculpatory facts were incompatible with the

innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. The circumstances must be such as to produce moral certainty, to the exclusion of every reasonable doubt. It is necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. I have examined the facts closely and have found the inference that the accused was actuated with specific intent to kill inevitable where the nature of the injury, its severity and area of the body on which it is concentrated is known. It appears to me rather to have been a discriminate assault targeted at causing death. In the circumstances this ingredient of the offence has been proved beyond reasonable doubt.

## Drawing of inferences

**[76]** In the present matter, it is common cause that none of the witnesses called by the Prosecution were eyewitnesses to the commission of most of the offences which the accused persons are charged with. Except for the statements made by accused 1 and 2 respectively, most of the State's case is based on circumstantial evidence. Where a court is required to draw inferences from circumstantial evidence it may only do so if the two 'cardinal rules of logic' set out in **R v Blom**[4] are satisfied. These rules provide that:

> (a) the inference sought to be drawn must be consistent with all the proved facts. If it is not, then the inference cannot be drawn, and,
>
> (b) the proved facts should be such that they exclude every reasonable inference from them save the one to be drawn. If they do not exclude other reasonable inferences, then there must be doubt whether the inference sought to be drawn is correct.

[4] 1939 AD 188.

**[77]** When a Court is required to draw inferences from circumstantial evidence, it may do so only if the premises are consistent with all the case's proved facts. The facts should also exclude every other reasonable inference. If the facts do not exclude other reasonable inferences, doubt exists whether such a conclusion is correct and that the Court can deduce its existence.[5]

**[78]** A Court must distinguish inference from conjecture or speculation. There can be no inference of a fact unless there is objective evidence from which to infer. In some matters, the factual finding can be concluded with as much practical certainty as if a witness observed it. In other cases, the inference does not go beyond a reasonable probability. In the absence of proved facts from which the Court is able to make the inference, the inference method fails, and what is left is mere speculation or conjecture.[6]

**[79]** Now, in order for the evidence of a witness to be accepted who said that he recognized an accused person by voice, to be cogent there must be evidence of the degree of familiarity the witnesses have had with the accused and his voice including the time the witnesses may have had to listen [to] the voice of the accused and the occasion when the recognition of the voice occurred must be such that such words used to make a recognition of that voice is safe to act on.

**[80]** I reminded myself that, sometimes people can be very convincing although they are mistaken when they say that they identify somebody by their voice on the telephone. And I have to be very careful in my assessment of the evidence because an honest witness can also be a mistaken witness. The

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[5] R v Blom 1939 AD 188 at 202 in fin; S v HN 2010 (2) NR 429 (HC) paragraph 57

[6] Coswell v Powell Duffryn Associated Collieries Ltd [1939] All ER 722 at 733 as quoted in S v Mtsweni 1985 (1) SA 590 (A) at 593E – G and approved and applied in S v HN 2010 (2) NR 429 (HC) paragraph 58

witness may honestly feel that the person they heard on the 'phone was John Brown, but in fact it turns out to be otherwise.

**[81]** So I must look on the evidence, the circumstances under which the identification of the voice was made. I must also look at the previous history of that person who heard the particular voice. The person who seeks to identify the person by voice, what opportunity that other person would have had to have heard the voice.

**[82]** I reminded myself that of the two persons who said they heard the accused; both had given evidence that they had spoken to and heard the accused on a telephone.

**[83]** In **R v Devlin** [1997] EWCA Crim. 739 delivered on March 14, 1 997, the English Court of Appeal also approached the matter of voice identification by reference to the Turnbull guidelines. In that case the victim of a robbery said that he recognized one of two masked robbers when he heard him shout, "money, money." He also said that he had the same build and body shape as the appellant and he subsequently identified him on a visual identification parade. The Court approached the initial evidence of recognition or identification as it would in a Turnbull case. It concluded that the hearing of the two words, "money, money" was the equivalent of a fleeting glance, that the identification was poor and that in all the circumstances the judge should have withdrawn the case from the jury.

**[84]** The relevant principles in relation to the way in which the Court should approach cases depending wholly or mainly on disputed visual identification (also pertinent to voice identification) are to be found in **R v Turnbull and others** [1967] 63 Cr. App. R. 132. The principles have been applied and considered in many subsequent cases. I do not feel it necessary however, to cite the whole of the well-known passage from the judgment of Lord Chief

Justice Widgery, which embodies those principles, of which I have of course reminded myself.

**[85]** The Lord Chief Justice, having dealt, in terms, now very familiar, with the need for caution and the dangers and so on and the way in which juries should be directed and the matters to which they Should be directed to have regard, said this:

> **"In our judgment when the quality" (that is to say the quality of their identification evidence) "is good as for example when the identification is made after a long period of observation, or in satisfactory conditions by a relative, a neighbour, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it: provided always, however, that an adequate warning has been given about the special need for caution. ... When, in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or a longer observation made in difficult conditions, the situation was very different. The judge Should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification"."**

**[86]** In **R v Junior Reid et al** Privy Council Appeals Nos: 14, 15 and 1 6 of 1988, and 7 of 1989, delivered July 27 1989, at page 8, their Lordships referred to the judgment of Lord Widgery, C.J., in R v Turnbull (1977) I Q.B. 224 and said:

> **"Their Lordships have no doubt that the direction of Lord Widgery, C.J. that 'when in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the judge should withdraw the case from the jury and direct an acquittal, unless there is other evidence which goes to support the correctness of the identification', applies with full force and effect in criminal proceedings in Jamaica."**

**[87]** I now turn my attention to the issue of voice identification. There is no legislation in Belize governing the admissibility of voice identification evidence hence the common law principles apply. In the English Court of Appeal case of **R v Gummerson and Steadman** [1998] Crim. L.R. 680, Lord Justice Clarke said:

> **"As we see it, unless and until it is thought appropriate to draft a code for identification of this kind, the matter can properly be dealt with by the careful application of suitably adapted Turnbull guidelines."**

**[88]** In Taylor et al the prosecution case against two of the appellants depended mainly on the evidence of one D.J. She heard a voice which she recognized to be that of Barrett saying:

> **"Shut up you mouth! Boy! You nuh hear me say fi stop the noise."**

She heard the voice of Hyde say:

> **"Pull the boy over deh so, Star! Draw him out a deh so."**

**[89]** Counsel for the appellants challenged the voice identification evidence given by the witness and argued that the identification was made in the most unsatisfactory circumstances and accordingly, was wholly unreliable. He further submitted that:

> **"The quality of the identification evidence was so poor that the learned trial judge, following the guidelines in R v Turnbull 63 Cr. App. Rep. 132 and Reid v R [1 989] 3 W.L.R. 771 (P.c.), ought to have withdrawn the case from the jury. It was akin to a 'fleeting glance' identification."**

Gordon, J.A., at page 108 of the judgment said:

> **"In order for the evidence of a witness that he recognized an accused person by his voice to be accepted as cogent there must, we think, be evidence of the degree of familiarity the witness has had with the accused and his voice and including the prior opportunities the witness have had to hear the voice of the accused. The occasion when recognition of the voice occurs, must be such that there were sufficient words used so as to make recognition of that voice safe on which to act. The correlation between knowledge of the**

**accused's voice by the witness and the words spoken on the challenged occasion, affects cogency. The greater the knowledge of the accused the fewer the words needed for recognition. The less familiarity with the voice, the greater necessity there is for mere spoken words to render recognition possible and therefore safe on which to act."**

The Court held that sufficient words were used by two of the applicants for the witness to have recognized their voices and in the circumstances refused to set aside the verdict of the jury.

**[90]** In **R v Clarence Osbourne** SCCA 67/91 delivered November 23, 1992 evidence of voice identification was challenged in a manner somewhat similar to the challenge in Taylor's case. The court per Carey, P. (Ag.), said:

> **''… Commonsense suggests that the possibility of mistakes and errors exists in the adduction of any direct evidence, in the sense of evidence of what a witness can perceive with one of his five senses. But that can hardly be a warrant for laying down that a Turnbull type warning is mandatory in every sort of situation where identification of some object capable of linking an accused to the crime or perhaps some attribute or feature of his speech capable of identifying him as a participant, forms part of the prosecution case.',**

**[91]** In both **Taylor** and **Osbourne**, the Court concluded that there is no need for the learned trial judge to give a **Turnbull** type warning where there is voice identification or recognition. However, I am of the view, that where the prosecution case is based solely on voice identification or recognition of the accused, I should be alert to the dangers of mistaken identification and stop the case where the identification is poor.

**[92]** The issue to be determined therefore in the instant case is whether there were sufficient words spoken by the defendant, in order for the PWs Kezia Arnold and Roy McCarthy to have recognized the defendant's voice in the instance where PW; Kazia Arnold, the mother of one of the children of the Defendant, to whom the confession was made to, testified that:

> **"I saw a missing report on the news of Densmore Bowman and then I sent my baby-father Hildebrandt Codd a text of Densmore Bowman's missing report, if I see this? His response was "yes, da puppy did a gi trouble suh I had to calm her down". He said he didn't want to talk about it over the phone, that he would come in person to my house.**
>
> **I recall the 6th December 2019, I was at home at 152 Yellowtail Street, Ladyville, Hildebrandt Codd came to my house, he never said nothing about the incident the whole day until about 7 7:30 the night on the 6th of December, he came to the back of the house and said come mek a tell yuh weh I do di bwoy, Hildebrandt Codd told me that he and Densmore Bowman was at a bar in the Market place in Belmopan, he said that Densmore Bowman told him "a mi gat you did live", he told Densmore Bowman "don't worry bout dat dog I dun forgive yuh fi dat" and they went and bar hop, the last bar they went to was Luck Entertainment at Roaring Creek Village. Hildebrandt told me that he spent his**

**last $60 to get Densmore Bowman more drunker he said he drink 20 Belikin stout (Densmore Bowman). And then I asked Hildebrandt Codd what did you say to the dread guy in front of Lucky Entertainment, he said that he told the dread guy, watch what a going do to he right now, then he left from there; Lucky Entertainment and went up the highway between mile 24 and 26, he was with Andrew Cho and Densmore Bowman, he said that Densmore Bowman was in the front passenger seat and Andrew Cho was at the backseat, they drive up the highway and parked somewhere in the highway between mile 24 & 26 beside the Chinese Village. He said Densmore Bowman had his feet on the dash-board of the car, he said he grabbed his two feet and he tied it, Densmore Bowman said to him; "Pops nuh duh mi dis." He then said he chopped Densmore Bowman in his face, then Hildebrandt Codd said Densmore Bowman tried to run and him chop him on his feet, he said some of his toes came off, afterwards he said that he tried to cut Densmore Bowman's neck but it was too hard, so he cut it from the back and he was still not dead, Hildebrandt said, he said he stab har inna di chest and him still neva dead. He then said he told Andrew Cho come put in a work bwoy and he said Andrew Cho performed like a real professional, I asked him Densmore Bowman had any tattoos on his body, he said yes, his daughter's name but I cut it out, he then naked Densmore Bowman, him cut off some of his dreadlocks, he then leave his body there a little bit off the highway, he said Alfredo Cho told him let's go move the body but the vehicle was giving him mechanical problems, so he leave the body there and Hildebrandt Codd returned back on Tuesday between 5 and 5:30 in the morning. He said when he reached there, the body had worms on it already decomposing, he still proceeded to move the body, dragged the body to a grave that was dug, by dragging the**

**body, one of Densmore Bowman's hand came off, Hildebrandt Codd said that he buried Densmore Bowman's head beside of his body."**

**[93]** PW; Roy McCarthy also testified that:

**"I heard someone shouting to me and ask me if I wanted to wash a car, as I usually wash car for people because I have a small business, and how much I would charge to wash a car, I told the person that I charge $BZ 20.00. I have been seeing the person on and off for 2 years, I don't know his full name but I know him by his nickname "Papito", I agree to take the job and I got my equipment and I proceeded across the street where the vehicle was parked, there was also a person that I know as Andrew Cho, who was in the right passenger front seat with ajax wiping down, I don't know what he was wiping down, I told him that I was going to proceed to wipe down the car. At this time Andrew Cho gave me the ajax and a rag and I recall seeing some red looking stain on the right front passenger knob of the car but at first I thought that it looked like ketchup stain but I wasn't paying it full attention, when I put the rag in the bucket to rinse it out, it gave off a red looking colour. I continued doing cleaning, where there was high foul smelling stench, not like food but something decaying, I continue washing the back seat with the brush that I had, cleaning inside the vehicle taking up the mats where I saw some Belikin point bottle pieces, so I did all my cleaning, I also observed that the back bumper of the car was falling off, which I did amend with some tied wire to hold it up and after that I proceeded to wash the outside of the car, it was very dirty and had on white thick marl outside on the door. I continued washing the car and dried it."**

**[94]** PW; Roy McCarthy further testified that:

**"The brand that saw was a gray colour Nissan Altima Sedan. Witness shown exhibit "RH-25", this is the identical car that I washed for "Papito". Witness shown exhibit "RH-26", I know it because it is identical to the car I washed with the damaged rear bumper. Witness identifies person who he is known to him as "Papito" sitting in the dock."**

**[95]** There is no doubt as to the importance of the guidance in **Turnbull** nor as to its application in principle to identification by voice recognition. In that context more detailed guidance has been given more recently by the English Court of Appeal in **R v Flynn and St John** [2008] 2 Cr App R 20. However, as has been emphasised on many occasions that "no precise form of words need be used so long as the essential elements of the warning are given to the jury": **Shand v The Queen** [1996] 1 WLR 67, 72.

**[96]** I find in the circumstances on the totality of the evidence and in the circumstances that a 20 seconds conversation between the Defendant and the PW; Kazia Arnold in which the Defendant confessed to having killed the deceased, Densmore Bowman, that would not amount to a "fleeting glance" conversation.

**[97]** The Court must not take each circumstance separately and give the accused the benefit of any reasonable doubt about the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and only then is the accused entitled to the benefit of any reasonable doubt if it exists. To put the matter in another way, the Prosecution must satisfy the Court, not that each separate fact is inconsistent with the innocence of the accused, but that all the evidence is beyond reasonable doubt inconsistent with his innocence.[7]

[7] R v De Villiers 1944 AD 493 at 508-9 as referred to in R v Sole 2004 (2) SACR 599 (Les) 665F-G

**[98]** Several circumstances, each individually very slight, may so account with and confirm each other to leave no room for doubt of what fact they tend to establish. Two circumstantial evidence items may not amount to much on their own, but they might prove much more if they are joined with the other piece of evidence. In **S v Reddy and Others** [8] the Court quoted Lord Coleridge,[9] where he made the following observations concerning the proper approach to circumstantial evidence:

> **'It is perfectly true that this is a case of circumstantial evidence and circumstantial evidence alone. Now circumstantial evidence varies infinitely in its strength in proportion to the character, the variety, the cogency, the independence, one of another, of the circumstances. I think one might describe it as a network of facts cast around the accused man. That network may be a mere gossamer thread, as light and as unsubstantial as the air itself. It may vanish at a touch. It may be that, strong as it is in part, it leaves great gaps and rents through which the accused is entitled to pass in safety. It may be so close, so stringent, so coherent in its texture that no efforts on the part of the accused can break through.**

**[99]** Once several independent circumstances point to the same conclusion, the probability of that conclusion's correctness is not the sum of those circumstances' simple probabilities but is the compound result of them.[10]

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[8] S v Reddy and Others 1996 (2) SACR 1 (A) at 8G -9E; See also S v Van Wyk and Another 2015 (4) NR 1085 (SC) at paragraph 74

[9] in R v Dickman (Newcastle Summer Assizes, 1910 - referred to in Wills on Circumstantial Evidence 7th ed at 46 and 452-60)

[10] S v Glaco 1993 NR 141 (HC) at 148C-D

## Post-Evaluation of the evidence

**[100]** In **S v Shackell 2001(2) SACR 185 SCA** it was held that " it is a trite principle that in criminal proceedings the prosecution must prove its case beyond reasonable doubt and that a mere preponderance of probabilities is not enough. Equally enough is the observance that, in view of this standard of proof in a criminal case, a court does not have to be convinced that every detail of the accused's version is true. If the accused's version is reasonably possibly true in substance the court must decide the matter on the acceptance of that version. It is indeed permissible to test the accused's version against the inherent probabilities. It cannot be rejected merely because it is improbable: it can only be rejected on the basis of inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly be true."

**[101]** I have heard that the Defendant has no previous convictions. Good character is not a defence to the charge but it is relevant in two ways. First, the defendant has given evidence. Defendant's good character is a positive feature which I should take into account in his favour when considering whether I accept what he told me. Secondly, the fact that the Defendant has not offended in the past may make it less likely that he acted as the prosecution alleges in this case. What importance I attach to Defendant's good character and the extent to which it assists on the facts of this particular case are for me to decide. In making that assessment I may take account of everything I have heard about the Defendant.

**[102]** In assessing the evidence, a court must in the ultimate analysis look at the evidence holistically in order to determine whether the guilt of the accused is proved beyond reasonable doubt. This does not mean that the breaking down of the evidence in its component parts is not a useful aid to a proper evaluation

and understanding thereof. In **S v Shilakwe**[11] at page 20, para [11], the Supreme Court of Appeal approved of the following dictum :

> **"But in doing so, (breaking down the evidence in its component parts) one must guard against a tendency to focus too intently upon the separate and individual part of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence led in the trial may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood from the trees."**

**[103]** It is acceptable in evaluating the evidence in its totality to consider the inherent probabilities. Heher AJA (as he then was) dealt with this aspect as follows:

> **"The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused's guilt."**

[11] 2012 (1) SACR 16 (SCA)

**[104]** The quote from the judgment of Malan JA in **R v Mlambo**[12] at 738 A and B is apposite:

> **'In my opinion, there is no obligation upon the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused. An accused's claim to the benefit of doubt when it may be said to exist must not be derived from speculation but must rest upon a reasonable inference which are not in conflict with, or outweighed by, the proved facts of the case. Moreover, if an accused deliberately takes the risk of giving false evidence in the hope of being convicted of a less crime or even, perchance, escaping conviction altogether and his evidence is declared to be false and irreconcilable with the proved facts; a court will, in suitable cases, be fully justified in rejecting an argument that, notwithstanding that the accused did not avail himself of the opportunity to mitigate the gravity of the offence, he should nevertheless receive the same benefits as if he had done so'.**

**[105]** I pause to mention that there are no eye-witnesses who actually saw the killing of the deceased by the accused. Hence, the Prosecution has relied to a certain extent on circumstantial evidence, the testimonies and version of the accused, as well as the objective medico legal evidence; in order to prove the allegations against the accused, and in an attempt to prove its case against

[12] 1957 (4) 727 (AD)

the accused. I am therefore required to objectively and in an impartial and balanced manner, consider all the evidential material in coming to a decision.

**[106]** It is trite that once a court is faced with circumstantial evidence it naturally flows that it is duly called upon to draw inferences from the evidence thus presented.

**[107]** "In reasoning by inference there are two cardinal rules of logic which cannot be ignored:

> (1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
> (2) The proved facts should be such, that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be doubt whether the inference sought to be drawn is correct."[13]

**[108]** Circumstantial evidence has on occasion been described as a chain, the links of which consist of pieces of evidence. This is not correct as it implies that the chain will be broken once one piece of evidence is rejected. It is better to compare it with a braided rope: as the strands break, the rope weakens and conversely, as strands are added, the stronger it gets. The gist of the matter is that one piece of circumstantial evidence may be inconclusive, but once other evidence is added, it gains probative force.

**[109]** The evaluation of circumstantial evidence must be guided by a test of reasonableness. The onus on the State is not that it must prove its case with

[13] S v Blom 1939 AD 188 at 202; See also S v Mtsweni 1985 (1) SA 590 (A) at 593

absolute certainty or beyond a shadow of a doubt. All that is required is such evidence as to satisfy the court and prove its case beyond a reasonable doubt. It is trite law that the accused is under no legal obligation to prove his innocence. The State must prove the guilt of the accused beyond a reasonable doubt.

**[110]** Having carefully considered the totality of the evidence and the mosaic of proof before me, I do not deem it necessary to traverse the evidence of all the witnesses that testified during the trial, for the sake of brevity and to avoid unnecessary prolix, as the issue to be determined is crisp and unambiguous. As such, the only issue that this court has to decide, is whether the accused was involved in the commission of the crime, as charged.

**[111]** Applying the principles on circumstantial evidence set out hereinbefore I find that the only reasonable inference that is consistent with the totality of all the proved facts and which excludes any other reasonable inference is that the accused was the assailant who on or about the 29th day of November 2019, between Miles 23 and 24 along the George Price Highway, killed Densmore Bowman with multiple chop wounds to the head, neck and torso regions of the body.

**[112]** In this case, PW; Kazia Arnold, the mother of one of the children of the Defendant, to whom the confession was made, testified that:

> **"I saw a missing report on the news of Densmore Bowman and then I sent my baby-father Hildebrandt Codd a text of Densmore Bowman's missing report, if I see this? His response was "yes, da puppy did a gi trouble suh I had to calm her down". He said he didn't want to talk about it over the phone, that he would come in person to my house.**
>
> **I recall the 6th December 2019, I was at home at 152 Yellowtail Street, Ladyville, Hildebrandt Codd came to my house, he never said nothing about the incident the whole**

**day until about 7 7:30 the night on the 6th of December, he came to the back of the house and said come mek a tell yuh weh I do di bwoy, Hildebrandt Codd told me that he and Densmore Bowman was at a bar in the Market place in Belmopan, he said that Densmore Bowman told him "a mi gat you did live", he told Densmore Bowman "don't worry bout dat dog I dun forgive yuh fi dat" and they went and bar hop, the last bar they went to was Luck Entertainment at Roaring Creek Village. Hildebrandt told me that he spent his last $60 to get Densmore Bowman more drunker he said he drink 20 Belikin stout (Densmore Bowman). And then I asked Hildebrandt Codd what did you say to the dread guy in front of Lucky Entertainment, he said that he told the dread guy, watch what a going do to he right now, then he left from there; Lucky Entertainment and went up the highway between mile 24 and 26, he was with Andrew Cho and Densmore Bowman, he said that Densmore Bowman was in the front passenger seat and Andrew Cho was at the backseat, they drive up the highway and parked somewhere in the highway between mile 24 & 26 beside the Chinese Village. He said Densmore Bowman had his feet on the dash-board of the car, he said he grabbed his two feet and he tied it, Densmore Bowman said to him; "Pops nuh duh mi dis." He then said he chopped Densmore Bowman in his face, then Hildebrandt Codd said Densmore Bowman tried to run and him chop him on his feet, he said some of his toes came off, afterwards he said that he tried to cut Densmore Bowman's neck but it was too hard, so he cut it from the back and he was still not dead, Hildebrandt said, he said he stab har inna di chest and him still neva dead. He then said he told Andrew Cho come put in a work bwoy and he said Andrew Cho performed like a real professional, I asked him Densmore Bowman had any tattoos on his body, he said yes, his daughter's name but I cut it out, he**

**then naked Densmore Bowman, him cut off some of his dreadlocks, he then leave his body there a little bit off the highway, he said Alfredo Cho told him let's go move the body but the vehicle was giving him mechanical problems, so he leave the body there and Hildebrandt Codd returned back on Tuesday between 5 and 5:30 in the morning. He said when he reached there, the body had worms on it already decomposing, he still proceeded to move the body, dragged the body to a grave that was dug, by dragging the body, one of Densmore Bowman's hand came off, Hildebrandt Codd said that he buried Densmore Bowman's head beside of his body."**

**[113]** PW; Kazia Arnold further testified that:

**"I recall the 7th of December 2019 in the night, 1was at 152 Yellowtail Street at my home, Hildebrandt Codd asked me to go into his car to get a bag of funto for him, I went for the funto, when I went in the car for the funto I looked around because I was furious, when I saw what appeared to be blood in the seatbelt area and by the area by the door and I went back inside and I told Hildebrandt about it, bwoy a blood dis inna yuh car, he said nuh worry bout that, I going mek them give the car a thorough clean. He asked for some soap and water, I left him outside by the car, I went back inside to get dressed, on the 8th of December, the Sunday, me an him was going to Western Union, and I saw what appeared to be more blood on the ceiling of the car and in the area of where you stick the seat belt inna. I asked him if he killed Densmore Bowman in the car, he said don't worry about the blood, he never answered the question. I done tell yuh dat I going to mek it get a good wash."**

**[114]** PW; Kazia Arnold also testified that:

**"The car I got funto out of is a gray Nissan Altima, it has a damage on the side of the bumper, left and the back. Witness shown exhibit "RH-24"; this is my baby father, Hildebrandt Codd's car. Witness shown exhibit "RH-26"; this is my baby father, Hildebrandt Codd's car, bumper which is damaged on the left. When I went for the funto in the car, it was parked outside my house by the bridge. All that Hildebrandt Codd told me, I did not force him, threaten him or bribe him to tell me what he told me. I also did not pressure him in any way to tell me what he told me. Witness points to Hildebrandt Codd in the dock."**

**[115]** PW; Roy McCarthy testified that:

**"I heard someone shouting to me and ask me if I wanted to wash a car, as I usually wash car for people because I have a small business, and how much I would charge to wash a car, I told the person that I charge $BZ 20.00. I have been seeing the person on and off for 2 years, I don't know his full name but I know him by his nickname "Papito", I agree to take the job and I got my equipment and I proceeded across the street where the vehicle was parked, there was also a person that I know as Andrew Cho, who was in the right passenger front seat with ajax wiping down, I don't know what he was wiping down, I told him that I was going to proceed to wipe down the car. At this time Andrew Cho gave me the ajax and a rag and I recall seeing some red looking stain on the right front passenger knob of the car but at first I thought that it looked like ketchup stain but I wasn't paying it full attention, when I put the rag in the bucket to rinse it out, it gave off a red looking colour. I continued doing cleaning, where there was high foul smelling stench, not like food but something decaying, I continue washing the back seat with the brush that I had, cleaning inside the vehicle taking up the mats where I saw**

**some Belikin point bottle pieces, so I did all my cleaning, I also observed that the back bumper of the car was falling off, which I did amend with some tied wire to hold it up and after that I proceeded to wash the outside of the car, it was very dirty and had on white thick marl outside on the door. I continued washing the car and dried it."**

**[116]** PW; Roy McCarthy further testified that:

**"The brand that saw was a gray colour Nissan Altima Sedan. Witness shown exhibit "RH-25", this is the identical car that I washed for "Papito". Witness shown exhibit "RH-26", I know it because it is identical to the car I washed with the damaged rear bumper. Witness identifies person who he is known to him as "Papito" sitting in the dock."**

**[117]** P.W.; Dr. Mario Estrada Bran who conducted the autopsy, recalled the 16th of December 2019 at 4:00 p.m. he was at the Medical School located on Boom Road and conducted a post-mortem examination of Densmore Bowman remains. He took notes at the post-mortem examination. PW; Dr. Mario Estrada Bran was shown a copy of the post-mortem report of Densmore Bowman and identified it by the name of the deceased, the time, the date and by his signature in his handwriting. Post-mortem of 16th December 2019 tendered and marked as **exhibit "ME-1"**. The cause of death was traumatic shock due to multiple chop wounds to the head, neck and limbs. Defence Counsel did not contest this element. This evidence taken as a whole has proved that this was a homicide.

**[118]** Chopping someone with a chopping implement in the manner the deceased was chopped and killed signifies a direct intention to kill. The accused directed his will to kill the deceased and deliberately accomplished what he intended and desired to achieve. He intended to, and killed the deceased.

**[119] DETERMINATION**

(1) Consequently, I find that the prosecution has proved all the essential ingredients of the offence against him beyond reasonable doubt. I accordingly **CONVICT** you **HILDEBRANDT CODD** of the Offence of Murder of **Densmore Bowman** that you are charged with.

(2) This matter is postponed to **21st December 2023** at **10:00 a.m.** for witnesses in mitigation and aggravation including submissions prior to sentence.

(3) The convict is remanded in custody.

Dated the 5th day of December 2023

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**RICARDO O'N. SANDCROFT**

**Justice of the High Court**