IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 0005/2021

BETWEEN

THE KING

and

OSCAR SELGADO

Defendant

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Ms. Cheryl-Lynn Vidal, S.C., Director of Public Prosecutions, with her
Mr. Dercene Staine for the Crown.

Mr. Adolph Lucas Sr. for the Defendant.

2023: October 3rd; 4th; and 11th.
November 6th; 8th; 23rd; and
December 1st; 6th; 19th.
2024: January 22nd; 23rd; 25th; and 26th.
February 1st; 7th, and 13th.
March 8th.

JUDGMENT

ABETMENT OF MURDER- JUDGE ALONE TRIAL-VERDICT.

[1] PILGRIM, J: Oscar Selgado ("the defendant") was indicted for the offence of abetment of murder, contrary to section 20(1)(a) read along with section 117 of the **Criminal Code**[1] ("the Code"). The trial by judge alone began with the arraignment of the defendant on 3rd October 2023 before this Court pursuant to section 65A(2)(c) of the **Indictable Procedure Act**[2] ("the IPA"). The indictment alleges that the defendant, on 7th February 2019, solicited the commission of the crime of murder by asking Giovanni Ramirez ("Mr. Ramirez") to kill Marilyn Barnes ("Ms. Barnes").

[2] The cases on both sides are closed, and after erudite and helpful closing submissions have been made it is now the Court's duty to render a verdict after a careful consideration of all of the evidence. It would be helpful to examine the legal framework of the Court's task.

The legal framework

[3] It would be helpful to firstly examine the elements of the crime of abetment of murder for which the defendant stands indicted.

[4] The definition of murder is found at section 117 of the Code:

> *"117. Every person **who intentionally** **causes the death of another person** by any **unlawful harm** is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mentioned." (emphasis added).*

[5] The Court is assisted in establishing the elements of the offence of murder by a decision of our Court of Appeal in **Peter Augustine v R**[3], per Carey JA:

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[2] Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.
[3] Criminal Appeal No. 8 of 2001.

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

[6] The elements of abetment are dealt with at section 20 of the Code:

"20.-(1) Every person who–

*(a) **directly or indirectly** instigates, commands, counsels, procures, **solicits** or in any manner purposely aids, facilitates, encourages or promotes **the commission of any crime**, **whether by his act, presence or otherwise**; or*

(b) does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of a crime by any other person, whether known or unknown, certain or uncertain, shall be guilty of abetting that crime and of abetting the other person in respect of that crime."

[7] The issue of abetment was considered by our local Court of Appeal in **DPP v Delita Chavez**[4] where Mottley P opined:

*"10. **Under section 20(1)(a) the offence is committed where a person directly or indirectly, instigates, commands, counsels, procures, solicits or in any manner purposely aids, facilitates, encourage or promote the commission of any crime** …. **The wording of section 20(1)(a) does not require a person to instigate command etc. another person… to commit a crime. The offence under this subsection is completed with the instigation, commanding counselling procuring soliciting etc. the commission of any crime. The subsection does not require that the crime must have in fact been committed before a conviction may be obtained under its provisions.***

11. The provision of section 20 (1) (a) is to be contrasted with the provisions of section 20 (1) (b). Under 20 (1) (b) the offence is committed by doing any act for the purpose of aiding facilitating encouraging or promoting the commission of a crime by any other person… It is

[4] Criminal Appeal No. 34 of 2004.

an essential ingredient of the offence under 20 (1) (b) that the aiding etc is the commission of a crime by another person.

12. In relation to 20 (1) (a) there is no requirement that the crime which it is alleged, was abetted, should have actually have been committed. That this is so, is clear from the provisions of section 20 (2) which states that, where the crime abetted has in fact been committed, in pursuance or during the continuance of the abetment, the person abetting shall be guilty of the crime abetted. Section 20 (3) provide for the punishment of a person who abets a crime where the crime has not been carried due to the circumstances prescribed in that subsection.

13. Two separate and distinct offences are created by section 20 (1)(a) and 1(b). ***Under 20 (1)(a) all that is required is for a person directly or indirectly to instigate etc, the commission of a crime. It is not necessary to show that the person directly or indirectly instigates any particular person to commit any particular crime. Under section 20(1(a) the offence is committed where a person directly or indirectly instigates the commission of a crime or where a person purposely facilitates etc the commission of a crime. There is no need that the offence instigated should in fact have been committed****.*

…

15. It is necessary to compare this requirement of section 20 (1)(a) and section 20 (1)(b). ***Under 20 (1)(a) the offence is the instigation etc of the crime. There is no need that any particular person be instigated to commit a crime. The use of the words "instigates, commands, counsels, procures, solicits" all import the concept that the offence under section 20 (1)(a) may be committed by words alone.*** *Under 20 1(b) the offence require that another person be aided or facilitated etc. Further the offence required that it must be an act done for the purpose of aiding etc. Words alone would not suffice under section 20 (1)(b)." (emphasis added)*

[8] The defendant, as noted above, is charged pursuant to section 20(1)(a) of the Code therefore he is charged for the instigation of **any** crime. The form of instigation charged is solicitation, so it would be

helpful to legally define that term. It is not defined in the Code, but the Court is assisted by the decision of the Supreme Court of New Zealand in **Sweeney v Astle**[5], per Stout CJ:

> *"**The word "solicit" is a common English word, and it means, in its simplified form, "to ask". In various English dictionaries this simple meaning is given, but other similar words are also used to explain other meanings it possesses, such as "to call for", "to make request", "to petition", "to entreat", "to persuade", "to prefer a request"**." (emphasis added)*

[9] The elements of abetment of murder in the context of this case, in the Court's view, require proof of the following:

i. The defendant directly or indirectly;

ii. Solicited, that is, asked for or requested. It is to be noted under the authority of *Chavez* that the crime can be committed by words alone; and

iii. The commission of any crime, there being no requirement that the crime solicited, actually occurred on the authority of *Chavez*. The evidence in this case alleges the crime of murder being the intentional killing of Ms. Barnes by unlawful harm, without justification or provocation.

The evidence

[10] In this case the Court heard from Ms. Barnes, Shanidi Chell Urbina, Keron Cunningham, Registrar General Trienia Young, Lionel Arzu, Gregory Cayetano, Wilfredo Ferrufino ("Mr. Ferrufino"), Commissioner of Police Chester Williams ("COP Williams"), Her Honour Tricia Pitts-Anderson, and the defendant in the main trial. The Court also heard the hearsay statement of Mr. Ramirez which was admitted into evidence as a witness who through fear of death was unwilling to give evidence, pursuant to section 105(2)(d) of the **Evidence Act**[6], after a voir dire was held[7]. The evidence on the voir dire was incorporated in the main trial with the concurrence of the parties[8] as a matter of convenience, pursuant

[5] [1923] NZLR 1198 at p 1202
[6] Chapter 95 of the Substantive Laws of Belize, Revised Edition 2020.
[7] Written reasons for the statement's admission were given by a ruling dated 6th December 2023.
[8] The parties so indicated for the record on 22nd January 2024.

to the guidance of the editors of the **Criminal Benchbook for Barbados, Belize and Guyana**[9] ("the Belizean bench book") and the decision of the apex court, the Caribbean Court of Justice ("CCJ"), in **Manzanero v R**[10]. On the voir dire the Court heard evidence from Justice of the Peace Andrew Godfrey, COP Williams, Mr. Ferrufino, the defendant and Marco Marin. The Court also heard the agreed evidence of Ignacio Cho.

[11] Ms. Barnes is a 68-year-old systems engineer. In February 2019 she lived in the top floor of a yellow house on Southern Foreshore with an orange terracotta roof. She testified that she had gone to the Ombudsman's office for assistance in 2013. She eventually was assisted by the defendant who was then an employee there. The matter was not resolved to Ms. Barnes's satisfaction. She eventually lodged a complaint against the defendant at the General Legal Council ("GLC"). She was given a notice to appear before the GLC, and did so on 14th March 2019, but the defendant did not. The matter was adjourned without the complaint ever being heard. Ms. Barnes had met the defendant several times at the Ombudsman's office. On one occasion she confronted him about an incident that had occurred at that office. This was before the complaint was made to the GLC.

[12] In cross examination Ms. Barnes indicated that the defendant never threatened her.

[13] Lionel Arzu testified that he was the Ombudsman of Belize from 2013-2020. The defendant was a member of his legal support staff from 2013-14. He stated that there was an allegation against the defendant by a male intern which was resolved with the signing of non-disclosure agreements by the parties involved. That agreement was kept in a manila envelope and placed in his workbag. Those documents disappeared from Mr. Arzu's bag without a trace.

[14] In cross-examination Mr. Arzu indicated that one Clarence Slusher, who worked at the office, and other persons had access to his office. He also did not tell his secretary or Mr. Usher about the missing file in 2013.

[15] Shanidi Chell Urbina testified that in 2019 she was the secretary of the GLC. It was part of her function to receive complaints about attorneys and place them before the GLC for their consideration. She dealt

[9] (February 2023) at p 772.
[10] [2021] 1 LRC 543 at para 37.

with the complaint of Ms. Barnes against the defendant. On 14th February 2019 the GLC convened a meeting in relation to that complaint and found a prima facie case against him. The complaint was set down for hearing on 14th March 2019. The notice for that hearing was sent to both Ms. Barnes and the defendant on 20th February 2019. Ms. Chell Urbina received letters from both the defendant and his counsel requesting an adjournment of that hearing on 8th March 2019. The letters from both were tendered in evidence without objection. She testified that as far as she was aware that complaint was never heard.

[16] The adjournment letter written by the defendant, SC1, contained his office number as 632-6699.

[17] In cross examination she testified that the details of Ms. Barnes's complaint to the GLC were, "Conducted himself in an unethical way. Told mistruths. Failed to produce. Legally damaged his client."

[18] Ignacio Cho's agreed evidence was that he was the Traffic Manager for the Traffic Department at the Punta Gorda Town Council in March 2019. His evidence was that the defendant had a white in colour Toyota 4 Runner registered in his name.

[19] Mr. Ramirez gave a statement to the police on 17th March 2019 which was tendered and marked as WF 1. He said in his hearsay statement that in February 2019 he had a criminal case and needed legal representation. He checked the telephone directory and called an Oscar Selgado at 632-6699, which was a cellular phone number. He placed this call on 6th February 2019 between 2-3 p.m. The Oscar Selgado he spoke with told Mr. Ramirez that he was busy and could meet him the following day at 4:30 p.m. Mr. Ramirez said that Oscar Selgado told him that he would be parked on the street in front of the complex building that leads to the river and that he would be in his white Toyota 4 Runner vehicle.

[20] Mr. Ramirez met Oscar Selgado at the time and place appointed and got into the passenger side of the vehicle where he met Selgado. The person gave his name as Oscar Selgado. This was the first time that he was meeting Selgado in person, but he had seen him more than five times at court in a black robe since 2014. He also saw him giving interviews on the news speaking about his cases including one with a person named "Bruce" who had received a life sentence.

[21] They drove in Selgado's car and Mr. Ramirez asked what would have been the cost to represent him in a firearm charge he had. Selgado gave a price of four thousand dollars ($4,000.00) to which Mr. Ramirez

responded that he could not afford that fee immediately but could pay in instalments. Selgado then said okay but he needed Mr. Ramirez to do him a favor and that he did not need to worry that he would represent him no matter what happened. Selgado said that a lady was trying to tarnish his reputation and he could not afford that because the Bar Association would dismiss him. He said the Chief Justice had a problem with him, but he did not explain what the problem was. He said that the allegation was with a young boy he had touched.

[22] Selgado then said that he wanted in his words "to get rid of her". He said that the case that the lady had was going to be heard on 14th March 2019. He went on to say that he was paying the lady, but she was constantly pressuring him, and he needed to get rid of her. Selgado then showed Mr. Ramirez a picture of the lady on his cellular phone, the picture was only of the face of the female, it was an elderly person maybe age 52 or 53 years.

[23] Mr. Ramirez stated that after Selgado showed him the picture of the lady, he, Mr. Ramirez, got his cellular phone and began secretly video recording their conversation. He said he did this because Selgado had taken it to another level, meaning that he, Mr. Ramirez, thought Selgado was serious about getting rid of the lady, which the former took as meaning to kill the lady. Mr. Ramirez put his phone in his left pocket with the speaker out and recorded. After he showed Mr. Ramirez the picture Selgado said her name was Marilyn Barnes.

[24] Selgado then asked Mr. Ramirez what he needed, and the latter responded by saying he needed a gun. Selgado asked for the cost of the gun. Mr. Ramirez set a price of one thousand five hundred dollars ($1,500.00) to which Selgado replied that he would get the money.

[25] While they were driving Selgado said that that he had stolen a file from the Ombudsman's office relative to the same allegation that the lady, Barnes, was pressuring him for. He said that he had destroyed the file, so the lady's allegation was like hearsay. They did not negotiate a price to kill Marilyn Barnes, but Selgado said that if Mr. Ramirez ever needed an attorney, he would represent him for free and whenever he needed money Selgado would give him money. Selgado gave Mr. Ramirez five hundred dollars ($500.00) in cash and said the money was for him to "lay low" and to not get into any trouble. Selgado then dropped Mr. Ramirez back where they first met. Selgado told Mr. Ramirez not to message him on WhatsApp or on any social media. He said that if Mr. Ramirez wanted to meet him then he should call

him to meet and that was how he wanted to communicate. The drive around the city that day lasted for about 45 minutes.

[26] Sometime on either the 15th or the 16th of February 2019, Mr. Ramirez called Selgado sometime around midday. Selgado said he would call back as he had court. Around 5 o'clock that evening Selgado called him back and they met up at their previous meeting spot. Mr. Ramirez told Selgado that he needed some money, to which he replied no problem. Selgado told Mr. Ramirez that he was taking him to see where Marilyn Barnes lived. Selgado said he needed her killed before the ending of February 2019 as the case was set for 14th March 2019 and if she was killed closer to the case then attention would be on him. Mr. Ramirez recorded this conversation as well.

[27] They drove on the Southern Foreshore and stopped in the vicinity of a large cream in colour building with an orange-in colour roof. Selgado said that Barnes lived in an apartment there but he, Mr. Ramirez, needed to find which one it was. They then drove back to the complex building where Selgado gave Mr. Ramirez five hundred dollars ($500.00) and said that was "so that I don't turn him in or call his name or to mention his name to anyone who would be involved." Mr. Ramirez reassured him that that would not happen. This trip lasted 30 minutes.

[28] There was no communication until 28th February 2019 when Selgado called Mr. Ramirez on his cellular phone number 634-9050 at about 3 p.m. and said he needed to meet him at 4:30 p.m. They met at the same complex building and as Mr. Ramirez got in the car Selgado said that the month was almost over and, "the lady no dead yet". Mr. Ramirez told him be patient as he had people to deal with, meaning people who would kill the lady. Selgado asked Mr. Ramirez how much he needed. Mr. Ramirez replied eight hundred dollars ($800.00). Selgado said that he would give him the money but to ensure that she was killed as the month of February finished and March is about to start. Selgado said that Mr. Ramirez should make sure that it was done by the end of the week. Selgado dropped Mr. Ramirez back to the complex and gave him eight hundred dollars ($800.00). Selgado told him "Don't fuck me" as he was depending on him. Mr. Ramirez also recorded this conversation.

[29] The next contact was when Mr. Ramirez called Selgado and asked for money. Selgado responded, "Money for what, you haven't finished the job". Mr. Ramirez told him that he had a video of him. Selgado laughed. Mr. Ramirez threatened that if he did not give him money then he, Mr. Ramirez, would send the

video to someone. Selgado laughed and hung up. Mr. Ramirez sent him one of the videos on WhatsApp. The video received 2 blue ticks. Immediately after Selgado called him on a "regular call", and asked why he was blackmailing him. Mr. Ramirez said that he needed money. Selgado said that he had already given him money and he did not do anything. Selgado told Mr. Ramirez that he was taking him lightly. Selgado asked why Mr. Ramirez was doing it. Mr. Ramirez told him, untruthfully, that his girlfriend, who was the Commissioner of Police's niece, had seen the video and was going to give it to the Commissioner. Selgado begged Mr. Ramirez not to give or show anyone the phone or videos and asked him how much he wanted for the phone and the video must be on the phone. Mr. Ramirez then told him he wanted one thousand dollars ($1000.00). Selgado said he did not have any money now but would have the money the following day.

[30] The following day, 8th March 2019, Selgado called Mr. Ramirez on his cellular phone with number 632-6699 around midafternoon and told him that he had the money and would meet him at 4:30 p.m. at the complex building. Selgado called and said he was busy but would come at 6 p.m. Mr. Ramirez called Selgado at 6 p.m. four times without success. Selgado called five minutes later and told him to meet him at their usual spot and that he was parked there. Mr. Ramirez went to the spot but did not see Selgado's car. Mr. Ramirez then called Selgado and asked him where he was, Selgado told him he was parked at the same spot. Mr. Ramirez said to him that he did not see his vehicle. Selgado told him to come out, but Mr. Ramirez noticed a tinted four-door blue Toyota Camry vehicle was parked up the street and then began driving slowly. This was while Mr. Ramirez was on the phone with Selgado, and he was telling him to come out. The movement of the vehicle appeared suspicious to Mr. Ramirez, and he left the area. Selgado kept calling Mr. Ramirez but the latter did not answer.

[31] Mr. Ramirez feared for his life. On 15th March 2019 around 9:00 a.m. he called COP Williams and spoke with him. The cellular phone that Mr. Ramirez used to make the video recordings was a blue Samsung. After he had recorded the conversations, the phone fell, and the screen cracked so he took the memory chip from out of the phone and placed it in the white Samsung Galaxy phone which he handed over to the police. There are eight different video clips on the memory chip with the footage. Mr. Ramirez accounted for the eight videos even though there were only three trips by saying that the recording was interrupted at times by incoming calls. Mr. Ramirez stated that the recordings on the phone that he

handed over to the police are the genuine recordings and he did not alter or tamper with the recordings in any way. He indicated that his statement was true and given of his own free will.

[32] Mr. Ramirez said that he had no intention of killing Marilyn Barnes and only wanted to get money from Selgado.

[33] COP Williams testified in both the main trial and the voir dire. In the voir dire he stated in chief that he spoke to Mr. Ramirez on 15th March 2019. Based on the information received he instructed Mr. Ferrufino to conduct an investigation.

[34] In cross-examination in the voir dire COP Williams testified that he heard Mr. Ramirez's name before this investigation but did not know him personally. He described Mr. Ramirez as street smart and would have spoken to him in Kriol. He accepted that Mr. Ramirez had a 2009 conviction for handling stolen goods which is an offence of dishonesty. He indicated that Mr. Ramirez is an affiliate of one of the gangs in Belize City.

[35] COP Williams further testified in cross examination that he was aware of a civil claim in which he was one of the defendants, but that matter did not go to trial. He said that some months after that matter the defendant and his car were taken to the Queen's Street Police Station in connection with an ammunition investigation. These were his answers in relation to how that investigation concluded:

> *"He claim (sic) that the ammunitions were planted in his vehicle. I gave him the benefit of the doubt and he was not charged.*
>
> *…*
>
> *Q. You're not happy about that? If I were not to be happy, he would be charged for the ammunition.*
>
> *Q. The charging of the Accused for keeping unlicensed ammunition, with your experience it would have been difficult to prove? Somewhat, My Lord. I say somewhat because if there was bad faith on my part or the police department, I could have simply directed that he be charged and come to court and defend himself."*

[36] It was suggested to COP Williams that this charge was instigated by him through Mr. Ramirez. COP Williams denied this saying that it was the furthest thing from the truth.

[37] COP Williams testified in chief in the main trial that he received eight WhatsApp audio recordings from Mr. Ramirez in their first encounter in 2019. He said that he did not still have those recordings. He said that over the years he changed several phones, and the information was lost. He testified that he identified the voices of both the defendant and Mr. Ramirez on the recordings. He said he was able to recognize the defendant's voice because he had known him for years as well as hearing his voice in several media interviews. COP Williams testified that when he was the officer commanding South Side Belize City between 2015 and 2017, he interacted with the defendant on numerous occasions. By numerous he explained that that would be on a weekly basis and that would be by way of phone or in person.

[38] The voice in the recording he recognized as the defendant's voice said that "Bitch" had to die. COP Williams said the voice he recognized as the defendant went on to say, "I have done a lot of good for people in society and now this bitch want (sic) to have me disbarred". He also heard the voice say later that this is the house where Marilyn Barnes resides. COP Williams testified that he listened to the recording two or three times, the last time being in 2019. He testified that he recognized the other voice as Mr. Ramirez who had been speaking with him at the time, and that Mr. Ramirez confirmed that it was his voice.

[39] He directed Mr. Ferrufino to retrieve the original recordings and preserve them.

[40] In cross examination COP Williams testified that he was not the investigator, so he did not prepare a transcript of the recording. He testified that his statement in this matter is dated 20th September 2023. He testified that in his statement he did not mention that he had received eight clips. He denied the suggestion that while he was commanding South Side that he had little or any interaction with the defendant. He testified that in his statement that he said he spoke with the defendant before but did not indicate the number of times they spoke. He testified that he did not say in his statement that he listened to the tape right after he got it, nor did he say he listened to the recording two or three times.

[41] COP Williams was re-examined. He explained why he omitted those things in his statement in this way:

"Because I was not going to be a part of the witness pool for this matter. My presence only became necessary when the witness became fearful and indeed, we had to invoke the witness in fear provision. Again because of the fact, I did not prepare a comprehensive statement per se and as I had said before while they are many things I could remember from the recordings I can't remember them too clearly so as not to mislead the court I choose to stick to only those facts that I could recall clearly."

[42] Mr. Ferrufino testified in both the main trial and the voir dire. At the voir dire in evidence in chief he testified that he was a retired Assistant Superintendent of Police. He was given certain instructions by COP Williams on 17th March 2019, and he became the investigator in this matter. As a result of those instructions, he met and spoke with Mr. Ramirez at the Queen's Street Police Station. He video recorded a statement with Mr. Ramirez in the presence of JP Godfrey. He indicated that he recorded exactly what Mr. Ramirez said to him in that statement. He said that Mr. Ramirez was calm and gave the information freely.

[43] Mr. Ferrufino was cross examined at the voir dire. He testified that Mr. Ramirez spoke in some English and Kriol when giving the statement. He said that he handed over the recording of the statement when he completed his file. He said that he did not check the directory to see if the defendant's number was there as Mr. Ramirez had claimed. He was shown two telephone directories for 2018 and 2019 and the defendant's phone number was not listed in either.

[44] In the main trial Mr. Ferrufino testified in chief that after he recorded the statement from Mr. Ramirez he was handed a white Samsung cellular phone. On 18th March 2019 he handed that phone to Corporal Keron Cunningham ("Cpl. Cunningham") to extract certain information. On 19th March 2019 he retrieved that phone from Cpl. Cunningham with a chain of custody form and a black memory chip. He said he viewed the extracted recordings which were audiovisual. He said that he "believed" there were around seven separate recordings. He said that they were of clear quality. He packaged the recordings which were on a compact disc ("CD") in a manila envelope with an exhibit label, the name of the defendant and the date 18th March 2019. He said the video portion of the recordings would show mainly the dashboard or a portion of a person's leg. It would also show scenery as if taken in a moving vehicle. He also marked and submitted the CD recording of the statement of Mr. Ramirez with his casefile.

[45] Her Honour Senior Magistrate Tricia Pitts-Anderson testified that a memory chip and CD, along with other CDs, were tendered in the preliminary enquiry among other items and Registrar of the Senior Courts Trienia Young also testified that no CDs on that file could be located after a search was conducted.

[46] Mr. Ferrufino further testified in chief that the CD of the audiovisual recording had two voices one of which he identified to be the defendant. Before he listened to the CD, he said he knew the defendant for about four to five years prior. He knew him from cases where Mr. Ferrufino had testified as investigating officer at least three times. Those court sessions were more than forty-five minutes. He also heard the defendant in conversation with other people at court more than four times. These conversations would be about two to three minutes each. He said that he was familiar with Mr. Ramirez's voice as he had heard his voice for over four and a half hours during the video recorded statement.

[47] He testified that he heard the defendant telling Mr. Ramirez that he wanted Marilyn Barnes dead, "I want that old bitch dead and it have to be before next month before the next general council date". He said that there were many more things said in the audio but those things he recited are what stood out to him. He said that he listened to the recording immediately after he received it from Cpl. Cunningham. He said that he did so because he wanted to confirm if what Mr. Ramirez told him was true. He said that that was the only time he listened to the CD.

[48] He further testified that he arrested and charged the defendant on 4th July 2019. On being cautioned the defendant remained silent.

[49] Mr. Ferrufino was cross examined in the main trial. He testified that he had given three statements, two of them being in 2019. In neither of the 2019 statements did he mention that he listened to the CD's. He said that it slipped him to mention it in his 2019 statements. He said that he prepared his third 2023 statement based on a request from the DPP's office. He said that he mentioned it in his third statement based on his recollection of the investigation. He testified that no identification parade was done in this matter. He also said that he did not prepare a transcript of what he had heard on the recording. He said that he had heard the defendant's voice on a tape recording before listening to the recording in this case, as he had heard his voice on countless media interviews. He said some of those interviews put the voice and face of the defendant together. He said that the audiovisual recording on the CD did not show

anyone's face. He said that he had indicated in his statement that he had also sent a copy of the recording to COP Williams to keep him abreast of the situation.

[50] In re-examination Mr. Ferrufino testified that he did not fabricate anything in his third statement.

[51] In the voir dire JP Godfrey testified in chief that he participated in the recording of a statement from Mr. Ramirez on 17th March 2019. He said that Mr. Ramirez had indicated that he was not beaten or threatened to give the statement. He said that the statement was video recorded, and it was read back to Mr. Ramirez who was given the opportunity to add, alter or correct anything in it. WF1 contains nine corrections with the initials "GR" attached to them. He said that Mr. Ramirez did not correct anything. JP Godfrey said the statement took about three to four hours to record and that Mr. Ramirez was calm throughout and made no complaints. JP Godfrey testified that he signed the statement, and the CD recording of the statement, along with Mr. Ramirez and Mr. Ferrufino.

[52] JP Godfrey was cross-examined. He testified that he has witnessed statements from persons who were witnesses and not suspects before. He said that Mr. Ramirez spoke in the English language. He indicated that the first time he gave a statement was in September 2023.

[53] Cpl. Cunningham testified in chief in the main trial that on 18th March 2019 he was handed a white Samsung cellular phone by Mr. Ferrufino through a chain of custody form and given certain instructions. He extracted eight video clips from the black SD card memory chip in the phone. He put those clips on a DVD/R disk which could not be altered after they were burnt and made copies. He marked them and handed them back to Mr. Ferrufino through a chain of custody form. He testified that before burning the disc, he did not interfere or alter the footage in anyway. The footage from those clips were also stored on a computer which became non-functional in 2022, and despite attempts by specialists to retrieve it, it could not be retrieved. In cross examination Cpl. Cunningham said that he did not give the recording to anyone else.

[54] Cpl. Gregory Cayetano testified in the main trial that he was a police prosecutor in Dangriga and had conduct of a case for prohibited possession of a firearm and ammunition against Mr. Ramirez. The allegation in that charge was from 2018. He said that the matter had commenced and there were three witnesses left to testify at the time he gave evidence. He was not cross examined.

[55] Magistrate Pitts-Anderson testified in evidence in chief that on 9th May 2020 she heard the preliminary enquiry into this charge against the defendant. It was heard without a consideration of the evidence. She said that she had ordered disclosure to be given to the defendant on 5th March 2020 inclusive of witness statements and discs. She testified that at no time during the preliminary enquiry did the defendant make any objection with regard to disclosure. The defendant was unrepresented. She further testified that CDs were tendered at the preliminary enquiry along with a black memory chip. She said that she later prepared and certified a list of those exhibits which was admitted in evidence as TP 1. She further testified that that bundle of statements and CDs were to be forwarded to the Registrar of the High Court. After she made checks, she could not find any copies of the exhibits when a check was later requested by her police prosecutor.

[56] Magistrate Pitts-Anderson was cross examined. She testified that three bundles of depositions would be sent to the High Court but the original statements with the original exhibits would be for the Registrar. She said that she ordered the prosecutor assigned to the court at the preliminary enquiry to hand over the disclosure to the defendant on 5th March 2020 via the court orderly before the end of that day. She could not say if he in fact received the exhibit. She testified that she looked in the envelope and saw that there was a disc, but she did not play it.

[57] Registrar Young testified in chief that she was handed the case file in this matter, and she felt what appeared to be CD cases in them. On 3rd March 2022 she handed the file with those cases still felt therein to Honourable Mde. Justice Susan Lamb. On 22nd February 2023 Registrar Young received certain information which caused her to search Justice Lamb's former chambers and the file itself. Registrar Young testified that she checked all the drawers in those chambers and the file, and no CDs were found.

[58] Registrar Young was cross-examined. She testified that she did not know the dates that the CDs went missing.

[59] The defendant testified in both the voir dire and in the main trial.

[60] The defendant testified at the voir dire that he is an attorney at law, called to the bar in 2013. He said that he worked at the Ombudsman's office in the year 2013 and since 2014 he has been in private practice. He said that he does not know Mr. Ramirez and has never communicated with him directly or indirectly. He said that he never asked Mr. Ramirez to kill anyone. He accepted that he knew Ms. Barnes

and had met her on several occasions while working at the Ombudsman's office and in hearings at the GLC. He accepted that he had a white Toyota 4 runner vehicle at the material time, but he never spoke to Mr. Ramirez in it. He testified that he did not pay Mr. Ramirez any monies to kill Ms. Barnes as he knew the allegations made by her were frivolous and he would be vindicated. He testified that consequently he had no motive to murder Ms. Barnes. He said that he had never been charged for any criminal offences. He also said that he had not been a defendant in any civil matter. He was also a graduate of the Royal Military Academy at Sandhurst in England and a former schoolteacher.

[61] The defendant testified that he was counsel in a civil matter ("the Tasher lawsuit") in which COP Williams had instructed the seizure of a tow head truck. COP Williams was one of several parties in the suit. The matter was sent with the consent of the parties to mediation, and it was settled.

[62] The defendant was cross examined on the voir dire. He accepted that 632-6699 was his phone number. He accepted that in 2013 he worked as a legal advisor in the Ombudsman's office. He accepted that he went to the lands department with Ms. Barnes in 2013. He denied that he was confronted by Ms. Barnes about an incident with an intern at the Ombudsman's office. He accepted that he had represented a Jason Bruce Lawrence who was convicted of murder. He accepted that he gave several interviews with the press as he had a cordial relationship with the media. He accepted that he received a bundle of documents in relation to the GLC complaint. He accepted that Senior Magistrate Pitts-Anderson had conducted the preliminary enquiry in his case. He testified that he could not recall what was tendered in the preliminary enquiry. He said that he got no recordings in his disclosure, "All that I get was a bundle ah paper." He said that he did not read his disclosure at the preliminary enquiry but only did so when the trial began in the High Court. He testified that he was not interested in finding out at the time why the police had charged him. He said that he was in a state of depression at the time of charge and not reading the statements was a coping mechanism. He also accepted that he had a civil matter where he was a defendant but that was subsequent to 2019. He testified that this charge is maliciously being pursued against him by COP Williams. There was this exchange:

> *"Q. Your view is that the commissioner engineered this entire case and this application because of a matter that when to mediation? My view is that the commissioner initiated this proceedings (sic) and continues - - this entire proceedings is (sic) initiated by the Commissioner of Police maliciously against me.*

…. I am saying that the commissioner is maliciously persecuting this - - putting the charge to the court and the DPP is prosecuting this matter based on the commissioner's malicious behaviour towards me, based on not only that matter that case that went to mediation but based on other facts that are not before this court that are not directly linked to this case.

Q. Were any of those facts put to the commissioner when he was on the stand? No, they were not. Like I said they are not relevant to this case.

Q. But aren't you saying they are relevant because there's a basis of his malice towards you? His malice was established in the mediation agreement that we had but there are other supporting factors which I have instructed my attorney are not relevant to the present voir dire."

[63] The defendant testified in chief at the main trial that he did not recall having numerous contacts with COP Williams as the senior officer commanding South Side Belize City. He said the most he could recall was when he was on a talk show with COP Williams sometime between 2015 and 2018. He accepted that he had cross-examined Mr. Ferrufino on limited occasions in court but he did not speak to him outside of court. He testified that he represented himself at the preliminary enquiry and did not get any CD. He did not query the non-disclosure because he knew disclosure would take place on arraignment at the High Court. He also indicated that he was charged in circumstances where he was taken from a court hearing where he was acting as counsel and taken straight to the magistrate's court where he was made to face this charge.

[64] The defendant was cross-examined. He testified that he could not recall signing for receiving disclosure. He said that he did not say anything about not receiving his disclosure because he knew disclosure would be given at the High Court. He said he was not concerned about the charge against him because it was a fabrication saying, "I wasn't concerned." He said that he did not ask for his disclosure at the High Court either. He said his emotional burdens caused him not to read the disclosure. He did not challenge that the file with what was felt to be CDs were handed by the Registrar to Justice Lamb. He indicated that he was innocent of this charge.

[65] Marco Marin testified in chief in the voir dire on behalf of the defendant. He said that he worked at Belize Telemedia Limited Digi as a Junior IT Application Specialist. He said he extracted call details pursuant to court orders. He described the process as follows:

> *"Normally when a call is done, the switch records the transaction which is called CDR (call details records). These records are inserted into our billing system which is saved for billing. The CDR has specific information like date, time, calling number, called number, duration, which are the ones that are mainly used for billing. These are saved on a data base. Oracle database. When we receive the court order, this data base is where we go and retrieve the information."*

[66] He said that the systems were functioning properly at the time he did the retrieval. He said that he did not find any call records between the number 632-6699, a number registered to the defendant, and 634-9050, a number that Mr. Ramirez said that he had used, between 6th February 2019 and 15th March 2019.

[67] In cross examination Mr. Marin testified that if calls were placed over social media like WhatsApp, it would not be recorded on their system.

Analysis

The Court's general approach

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

[69] The Court begins firstly by analysing the evidence on the Crown's case and if the evidence seems strong enough to consider a conviction it would consider the case for the defendant as is the required reasoning process noted by the CCJ in **Dionicio Salazar v R**[11]. The Court, if it accepts the case for the defendant,

[11] [2019] CCJ 15 (AJ) at para 35.

or has a reasonable doubt about whether it is true, must acquit the defendant. It is only if the Court rejects the defendant's case that it returns to the Crown's case and considers the totality of the evidence and determines whether to convict.

[70] The Court, in assessing credit and reliability, must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. Credit deals with the issue of whether a witness is truthful, and reliability deals with the issue of whether a witness, even if he is being as honest as he can be, is his evidence correct. The Court notes however, on the authority of the Belizean CCJ decision of **August et al. v R**[12] that it need not comb the record for inconsistencies or contradictions. The Court directs itself that if there are inconsistencies and discrepancies the Court must look to see if they are material and if they can be resolved on the evidence. The Court must consider whether inconsistencies or discrepancies arose for innocent reasons, for example through faulty memory or lack of interest in what is transpiring, or if it is because the witness is lying and trying to deceive the Court. Unresolved inconsistencies or discrepancies would lead the Court to reject that bit of evidence or all of the witness's evidence entirely. The Court must also consider the cumulative effect of those inconsistencies or discrepancies on a witness's credit and reliability. If the Court finds the evidence of a witness implausible it will reject either that witness's evidence entirely or that bit.

[71] The Court is assisted in the legal parameters of its fact-finding function by a recent decision of the Jamaican Court of Appeal in **Vassell Douglas v R**[13], per Fraser JA (Ag.):

> *"[102] Discrepancies and inconsistencies are not uncommon features in every case. Some are immaterial; others are material. The fact that conflicting statements exist in the evidence adduced by the prosecution does not mean, without more, that the acceptance of a witness' evidence as credible and reliable makes a conviction unsafe. In Willard Williamson, it was accepted by this court that "it is open to a finder of fact to accept some parts of a witness' evidence and reject other parts".*
>
> *[103] During a summation, a trial judge is expected to address conflicts arising in the evidence of a witness or witnesses, particularly where she made findings based upon her assessment of the credibility and reliability of the witnesses she had seen and heard. There is a plethora of judicial authorities providing guidance on the issue of what is required of a trial judge sitting without a jury. One of the earlier observations of this court on the proper approach of trial judges sitting without a jury is R v Junior Carey, (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 25/1985, judgment delivered 31 July*

[12] [2018] 3 LRC 552 at para 60.
[13] [2024] JMCA Crim 10.

1986, where Campbell JA, at page 8 had deemed the criticism levied by the appellant as unjustified as a trial judge in the Gun Court is not "obliged to take each piece of evidence, and viva voce minutely analyse it so that his analysis appears on the record". The authorities of Taibo (Ellis) v R [1996] 48 WIR 74 and Steven Grant v R [2010] JMCA Crim 77 make it clear that it is not customary for a trial judge to go through the evidence line by line. The trial judge ought to use his or her discretion to identify the evidence that needs to be scrutinized to ensure that a verdict, if founded on it, is safe. The approach enunciated in Oliver Johnson makes it clear that the court must look at the inconsistencies cumulatively in relation to the material issues to see if they made the Crown's case unreliable and tenuous.

…

[108] We have distilled from the foregoing authorities that in any trial, more so a bench trial, the judge is not required to identify all the inconsistencies or discrepancies that arise during the trial unless it is considered damaging to the Crown's case.

[109] It is also, well established that, a trial judge can appropriately reject portions of a witness's evidence and accept other parts of it. As was stated in Ashwood, the relevance however, of the impeached parts of the witness's evidence to the central issues to be determined by the court is crucial to an assessment of the overall credibility of the witness…

…

[113] A discrepancy arises where witness A and witness B, each gave different or contrary accounts as to the same aspect or aspects of an incident, or two or more witnesses for the same side give varying accounts of the same incident….

[114] Several factors can account for differences in the accounts given by witnesses to an event. Such factors include level of intelligence, power of observation and power of recall."

[72] The Court also directs itself that the credibility of a witness is not a seamless robe where one lie, or even several, automatically strips the witness of all believability. However, the telling of lies on oath is not a trifling thing. If the Court finds that any witness has intentionally testified falsely as to any material fact, it may disregard that witness's entire testimony or, may disregard so much of it as it finds was untruthful, and accept so much of it as it finds to have been truthful and accurate. How the Court decides on this may depend on its view of how material to the issue the lie is, and the reason, if any, for it. This is the Court's understanding of the CCJ decision of **James Fields v The State**[14] in relation to evaluating testimony involving intentional lies. The Court adopts their reasoning on fact finding in a judge alone trial as in one with a jury, and directs itself accordingly, per Saunders PCCJ and Anderson JCCJ:

[14] [2023] CCJ 13 (AJ) BB at paras 33-38.

"[33] The role of the jury is to evaluate the testimony of the witnesses and to determine what weight and reliability to assign to their statements. This role is crucial in the fact-finding process. In determining credibility, the jurors may have regard to the demeanour, consistency, bias or motive, prior inconsistent statements, corroborating evidence, and all the various factors a person will use in their daily life in order to assess and distinguish between truth and falsity. The fact that a witness has provided false information on one point under oath can impact the credibility of that witness and the weight given to their testimony. But once the case has been given over to the jury, it is the jury and the jury alone that has the responsibility to carefully consider the implications of the untruthfulness and evaluate how it affects the overall credibility of the witness' testimony on the essential question(s) in issue.

…

[35] In all the circumstances, a proper direction to the jury in relation to intentional lies may proceed along the following lines:

As judges of the facts, you alone determine the truthfulness and accuracy of the testimony of each witness. You must decide whether a witness told the truth and was accurate, or instead, testified falsely or was mistaken. You must also decide what importance to give to the testimony you accept as truthful and accurate. If you find that any witness has intentionally testified falsely as to any material fact, you may disregard that witness' entire testimony. Or, you may disregard so much of it as you find was untruthful, and accept so much of it as you find to have been truthful and accurate. How you decide on this may depend on your view of how material to the issue is the lie. Where there are different or conflicting accounts in the evidence about a particular matter, you must weigh up the reliability of the witnesses who have given evidence about the matter, taking into account how far in your view their evidence is honest and accurate. When doing this you must apply the same fair standards to all witnesses, whether they were called for the prosecution or for the defence. It is entirely for you to decide what evidence you accept as reliable and what you reject as unreliable."

[73] The case for the Crown to prove this charge rests primarily on the evidence of the hearsay statement of Mr. Ramirez and the secondary evidence of recordings coming from COP Williams and Wilfredo

Ferrufino. The evidence, if accepted, establishes a direct and repeated request from the defendant that Mr. Ramirez commit a crime, namely, intentionally causing the death of Ms. Barnes by unlawful harm without justification or provocation, to wit, murder her.

[74] The Court will review each plank of the case in turn.

A. The hearsay statement of Giovanni Ramirez

i. Is the Oscar Selgado he speaks of the defendant?

[75] The first question the Court must resolve is whether the "Oscar Selgado" that Mr. Ramirez is speaking about in WF 1 is in fact the defendant in light of the fact that there was no evidence of Mr. Ramirez pointing out the defendant on an identification parade or confrontation. There was also no in court identification as Mr. Ramirez's evidence was given by way of hearsay statement and he did not give viva voce evidence.

[76] A sub-question in this case is whether an identification parade should have been held in this case. The test in this jurisdiction for when an identification parade should be held was set out by the Court of Appeal in **Krismar Espinosa v R**[15], per Awich JA:

> *"[26] While bearing in mind fairness and transparency, it is important to note that, holding an identification parade is a very important step in the investigation of a crime. It is held when a police officer considers it to be useful in the investigation, and the suspect consents to participating in the parade; moreover, it must be held when a suspect has demanded that it be held."*

[77] The Court is also assisted by the decision of the Privy Council in in **France et al v R**[16] which was adopted by the local Court of Appeal in **Kevaughn Staine v R**[17], per Lord Kerr:

> *"[28]* ***It is now well settled that an identification parade should be held where it would serve a useful purpose****…In John v The State [2009] UKPC 12, (2009) 75 WIR 429,*

[15] Criminal Appeal No. 8 of 2015.
[16] 82 WIR 382.
[17] Criminal Appeal No. 4 of 2018 at paras 40-48.

addressing the question of how to assess whether an identification parade would serve any useful purpose, Lord Brown considered three possible situations: the first where a suspect is in custody and a witness with no previous knowledge of the suspect claims to be able to identify the perpetrator of the crime; the second where the witness and the suspect are well known to each other and neither disputes this; and ***the third where the witness claims to know the suspect but the latter denies this****. In the first of these instances an identification parade will obviously serve a useful purpose. In the second it will not because it carries the risk of adding spurious authority to the claim of recognition.* ***In the third situation, two questions must be posed. The first is whether, notwithstanding the claim by a witness to know the defendant, it can be retrospectively concluded that some contribution would have been made to the testing of the accuracy of his purported identification by holding a parade. If it is so concluded, the question then arises whether the failure to hold a parade caused a serious miscarriage of justice…****." (emphasis added)*

[78] The Court believes that this case falls in the third category in *France* and finds that there was no miscarriage of justice by the failure to hold an identification parade in this case. There is no evidence that the defendant demanded an identification parade, and the Court infers that the defendant being at that time an attorney of over six years call at the time of his arrest would know it was his right to demand one. The Court understands why the police would not have thought an identification parade to be useful as the description that Mr. Ramirez gave perfectly fit the defendant. The "Oscar Selgado" Mr. Ramirez spoke of had the same phone number, occupation, vehicle, knowledge of Marilyn Barnes, working at the Ombudsman's office etc. Mr. Ramirez stated that he was in the presence of "Oscar Selgado" for at least seventy-five minutes on their trips so that it could not be seriously argued that this was a fleeting glance scenario. The police would be justified in thinking that with that number of commonalities and the period Mr. Ramirez and "Oscar Selgado" spent together an identification parade would be "adding spurious authority to the claim or recognition" as discussed in *France*. Indeed, in this matter it is the case for the defendant that this charge is a product of a criminal conspiracy against him by COP Williams and Mr. Ramirez. This solidifies in the Court's mind the finding that in this case an identification parade would not have served a useful purpose and there was no miscarriage of justice.

[79] The Court is satisfied so that it is sure on all of the evidence that the "Oscar Selgado" Mr. Ramirez is referring to is in fact the defendant based on the commonalities between the two. The Court has derived considerable assistance from the English Queen's Bench decision of **Pattison v Director of Public Prosecutions**[18]. In that case the issue under consideration was proof that a person named in a conviction report as a disqualified driver was the defendant before that court. In the Court's view this situation is analogous to establishing the proof of the identity of a person mentioned by an unavailable witness in a hearsay statement. Newman J opined:

> *"[16] … **I am entirely satisfied that the identity of a person on a memorandum of conviction is capable of being proved by the same multiplicity of ways in which any other essential fact can be proved in a criminal case**.*
>
> *…*
>
> *[26] In my judgment the following principles can be distilled from the cases. (a) As with any other essential element of an offence, the prosecution must prove to the criminal standard that the person accused was a disqualified driver. **(b) It can be proved by any admissible means…(f) An example of such means is a match between the personal details of the accused on the one hand and the personal details recorded on the certificate of conviction on the other hand. (g) Even in a case where the personal details such as the name of the accused are not uncommon, a match will be sufficient for a prima facie case**." (emphasis added)*

[80] There are a number of commonalities between the "Oscar Selgado" mentioned by Ramirez in his statement and the defendant referred to in the paragraph preceding the last one which led the Court irresistibly to this conclusion. The Court also finds that in the circumstances described by Mr. Ramirez that he had ample opportunity to properly identify the defendant, despite warning itself that in visual identification errors can lead to miscarriages of justice, that even honest witnesses can be mistaken, and errors can be made even in cases of recognition. Those circumstances are namely (i) that on the first two trips they were together for seventy-five minutes at least; (ii) in day light; (iii) sitting next to each other

[18] [2006] 2 All ER 318.

in a car, which as a matter of human experience would not have been a great distance; and (iv) there was no evidence that the defendant was masked or had anything obscuring his face.

ii. Are the material parts of the hearsay statement true and reliable?

[81] The Court has approached the evidence of Mr. Ramirez with considerable caution. The first concern is his character. Mr. Ramirez has a conviction for an act of dishonesty, handling stolen property. The Commissioner of Police has testified that he is an affiliate of a criminal gang with a pending arms and ammunition charge. On the evidence in WF 1, if accepted, he dishonestly sought to extort the defendant and took several tranches of money under false pretences which only ended when he felt his life under threat. The Court must take his evidence with several pinches of salt and a wary eye.

[82] However, the Court notes that it may nevertheless rely on his evidence if, having taken into account the need for caution, it is sure that Mr. Ramirez is telling the truth on the material issues. The Court also notes that, generally speaking, persons who solicit others with a view to criminal activity do not solicit priests and archbishops to their cause. The Court must look at the evidence realistically and practically[19].

[83] The second concern is that his evidence is by way of hearsay statement. The Court notes that although Mr. Ramirez signed a formal declaration at the beginning of the statement that it was true and that he knew he could be prosecuted if he deliberately put something into the statement which was false, his statement was not made under oath or affirmation. The absence of sworn testimony is a matter that should cause the Court to treat Mr. Ramirez's evidence with great care.

[84] The Court has also not seen the manner and demeanour of Mr. Ramirez during evidence in chief and more importantly under cross-examination. There were several areas that could have been fruitfully explored in cross-examination such as accounting for the seeming discrepancy in terms of the call data records evidence of Marco Marin and the absence of the number of the defendant from two phonebooks when Mr. Ramirez said that he found the defendant's number in a directory.

[85] The Court, after approaching his evidence with considerable caution, finds on all of the evidence that Mr. Ramirez's evidence is both truthful and reliable.

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[19] **Supreme Court of Judicature of Jamaica Criminal Bench Book** ("the Jamaican Bench Book") at p 123.

[86] The Court is enjoined by authority when considering a hearsay statement to consider "the existence of a reason to be untruthful"[20]. The Court has considered all the evidence and has simply found no credible evidence of a reason for Mr. Ramirez to be untruthful. There is no evidence that Mr. Ramirez knew the defendant before this incident and the defendant's case is that he does not know Mr. Ramirez. There is therefore no issue of grudge. On the evidence there is no evidence of any inducement for his testimony, in fact there is evidence to the contrary. The unchallenged evidence of Gregory Cayetano, which the Court accepts because his evidence was neither inconsistent nor implausible, is that the arms and ammunition charge from 2018 is still pending with three more witnesses left to call. He did not receive the benefit from the Crown or COP Williams of having this matter terminated in exchange for his testimony. Mr. Ramirez is still in jeopardy for that charge. The evidence does not show what benefit Mr. Ramirez is getting from providing evidence in this trial. The Court appreciates that people lie for all sorts of reasons locked up in their heads, but the Court finds that the evidence does not reveal a reason for Mr. Ramirez to be untruthful.

[87] The feature of Mr. Ramirez's evidence that significantly inflates its probative value is his knowledge of peculiar facts about the defendant that reasonably viewed would not be public knowledge. The Court places no special significance on the fact that the witness knew the defendant's profession, his car, or his phone number. The Court however notes that the unchallenged and consistent evidence is that Mr. Ramirez gave his statement on 17th March 2019. This was three days after the disciplinary hearing against the defendant was set down on the unchallenged evidence of Shanidi Chell Urbina. The Court places special significance on the fact that by that time Mr. Ramirez had known:

i. That the defendant had a disciplinary hearing on 14th March 2019- This was a fact, that as a matter of human experience, would not have been broadcast in the media and there was not even a whiff of a suggestion in this case that it was. It raises the question of how a gang affiliate like Mr. Ramirez, who did not know the defendant before, knew this information other than by getting it from the defendant himself.

[20] *Belizean Bench Book* at p 489.

ii. That the complaint involved Ms. Barnes- Mr. Ramirez stated that a Marilyn Barnes was the person who made a complaint against the defendant. Ms Barnes gave evidence that she made the complaint. That evidence has not been challenged. Again, how does Mr. Ramirez know this.

iii. That Ms. Barnes lived in a building on the Southern Foreshore with an orange roof- Mr. Ramirez stated that he was contracted to kill a Marilyn Barnes who lived in an apartment in a large building with an orange roof on the Southern Foreshore. Ms. Barnes testified, and this was not challenged, that she lived at the top floor of a three-story building with an orange terracotta roof with persons living on the second floor. There is a discrepancy in that Mr. Ramirez describes the house colour as cream, but Ms. Barnes says that it was yellow. The Court resolves this discrepancy by noting that depending on shade and perception yellow and cream may not be far apart, and it may also be that in the context of what was happening Mr. Ramirez may not have been paying attention to what he may have considered was the minor detail of the colour of the house. The combination of this evidence makes the Court sure of the fact that Mr. Ramirez knew where Ms. Barnes lived. There is no evidence that Mr. Ramirez knew Ms. Barnes before. How did Mr. Ramirez come by this information?

iv. That there was a missing file at the Ombudsman's office- Mr. Ramirez stated that the defendant told him that he stole a file from the Ombudsman's office that concerned him. Mr. Arzu testified that a file regarding the defendant had gone missing from his bag. Regardless of who took the file it has not been challenged that a file concerning the defendant went missing from the Ombudsman's office. The Court accepted Mr. Arzu's evidence as it was plausible and consistent. This file contained a non-disclosure agreement, a matter which by its very nature would suggest that it would be treated with the greatest level of secrecy. This then begs the question of how a gang affiliate like Mr. Ramirez knew this information.

v. The nature of the allegation- Mr. Ramirez stated that the defendant wanted Ms. Barnes dead because she was pressuring him regarding the allegation about touching a young boy which was contained in the file in the Ombudsman's office. The evidence of Mr. Arzu is that the non-disclosure agreement signed at the Ombudsman's office involved the defendant and an allegation made by a male intern at that office. Ms. Barnes testified that she had confronted the defendant about an incident that took place at the Ombudsman's office. This fact was not challenged when she testified. The defendant only denied this, for the first time, when giving

evidence. This again begs the question how Mr. Ramirez came by this information other than through talking to the defendant.

[88] The overall account given by Mr. Ramirez in this case appears plausible to the Court. The Court accepts that the formal complaint made by Ms. Barnes did not specifically contain an allegation concerning the touching of anyone at the Ombudsman's office. However, the very wide grounds pleaded in Ms. Barnes's affidavit of "conducted himself in an unethical way" may have caused apprehension in the defendant about what she may say at the hearing particularly in light of the fact that Ms. Barnes had confronted him. The defendant by his own admission had been a person who had a cordial relationship with the media and from the manner, demeanour and thrust of his testimony the Court gets the impression that he was not a person who was unconcerned with image, as he had rattled off his accomplishments. The contracting of a desperate Mr. Ramirez who needed a lawyer for a serious charge may have presented an opportunity for the defendant. He can have his irritation dealt with if Ms. Barnes was killed, if not, and Mr. Ramirez went to the authorities no one would believe him because he is a convicted criminal and underworld figure. Weighed on the credibility scale, Mr. Ramirez's character against that of a Sandhurst trained and successful criminal lawyer, the defendant may have considered that no-one would believe Mr. Ramirez. That calculation was made without, of course, anticipating that Mr. Ramirez recorded the conversations.

[89] The Court accepts the evidence of Her Honour Senior Magistrate Pitts-Anderson, due to the clarity and consistency of her evidence, that this evidence was tendered at the preliminary enquiry:

> *"Manilla (sic) envelope with Pink Exhibit label bearing date 17th March 2019 and marked as containing 1 silver compact disc verbatim brand and marked Samsung cellular phone with signature of Cpl. 138 Keron Cunningham and a white envelope with a black memory chip."*[21]

[90] This demonstrates to the Court that, based on all of the evidence, that, whatever the content on it, a recording was in fact made and submitted as evidence in this matter. Though there was a discrepancy with the labelling in TP 1 in that the date of the marking was 17th March when Mr. Ferrufino said the CD was labelled 18th March. The Court resolves this discrepancy by finding that Mr. Ferrufino made an error probably caused by a lapse of memory after considering all of the evidence.

[21] Exhibit III, TP 1.

[91] Returning to the issue of plausibility, the Court notes the frankness with which Mr. Ramirez would have admitted that he never planned to kill Ms. Barnes but was, to use Caribbean parlance, 'on a money scheme' with the defendant. His reporting the matter to the police only after things went, again to use Caribbean parlance, 'sticky' with the Toyota Camry incident is internally consistent with his account.

[92] There are however potential discrepancies with the evidence of Mr. Ramirez on WF 1 and the evidence of Marco Marin and the directory evidence.

[93] The Court resolves the Marin issue by firstly noting that Marin's evidence was that calls placed on social media would not be reflected in the call logs. The Court observes that in 2019, as is the case now, as a matter of human experience, calls on social media, particularly WhatsApp, are common forms of communication. The Court takes judicial notice of the notorious fact that WhatsApp is an encrypted form of communication on social media. On the evidence in WF 1 the defendant had WhatsApp because one of the recordings was sent to the defendant via that means. The Court also notes the use of the phrase by Mr Ramirez that the defendant "called me on regular call". The Court finds that, on all of the evidence, this was a reference to calling through the regular phone utility and not through social media and the fact that this would stand out to him to use the words "regular call" is suggestive of the fact that their conversations were routinely via calls on social media. The Court observes also that the medium used by Mr. Ramirez for calls in the hearsay application was also WhatsApp. The Court notes that though there was an agreement to message on social media between Mr. Ramirez and the defendant, presumably not to leave an electronic trail, there was no rule against social media calls.

[94] There is however the evidence that there was at least one "regular call" between the parties. In this regard the Court notes that the evidence is that Mr. Ramirez had at least two Samsung cellular phones at the material time, one white and one blue where the data was transferred from one to the other. It may very well be that the regular call took place on that phone as Mr. Ramirez did not specify the number of the phone he received the "regular call" on. In any event, looked at globally particularly in light of Mr. Ramirez's special knowledge, these are not matters which destroy his credibility.

[95] The directory issue is considered by the Court in similar terms. There was no evidence as to what directory, nor of what year, was used by Mr. Ramirez. The Court is not clear that this is a discrepancy and again looking at the matter globally this is not a matter which destroys his credibility.

[96] The Court accepts the evidence of JP Godfrey that Mr. Ramirez gave the statement of his own will and freely. The Court also accepts the evidence of JP Godfrey supported by Mr. Ferrufino that WF 1 was videotaped. Indeed TP1, the exhibit sheet of Senior Magistrate Pitts-Anderson supports that fact, in that Exhibit XII speaks to the tendering of four discs tendered through Mr. Ferrufino but also signed by Mr. Ramirez. That CD is now lost on the evidence of Registrar Young which the Court accepts on the basis identified in its written ruling on the no-case submission[22]. The Court now has lost to it material that can assist in resolving the English versus Kriol contention made by the defendant in terms of the language used by Mr. Ramirez in giving the statement. The argument made by the defendant is because Mr. Ramirez in 2023 spoke in Kriol on a phone call he had with COP Williams in the fear application it means that he must have spoken that way in 2019 in a formal video recorded statement. In the Court's view, and as a matter of human experience, people may speak differently in different settings and in a formal video recorded statement Mr. Ramirez may adjust his speech patterns for the occasion. In any event the Court is of the view again that looked at globally this does not affect the credibility of the evidence in Mr. Ramirez's statement.

[97] It may be apposite, even at this point, in considering Mr. Ramirez's evidence to consider the defence case that his evidence is the product of a conspiracy with COP Williams. The Court rejects that contention out of hand. Again, as indicated above, there is no evidence of Mr. Ramirez being the beneficiary of a quid pro quo with COP Williams or the Crown, particularly as his firearms case appears to be proceeding as normal.

[98] The Court when looking at it from COP Williams's side of the equation the evidence of grudge and motive is weak. Now the Court appreciates that the defendant has no evidential burden to establish why a witness would lie. It is for the Crown to demonstrate a witness's credibility. However, if a motive to lie or fabricate is suggested as was done in the evidence of the defendant, then the Court is required to

[22] Dated 7th February 2024 at paras 20-26.

evaluate it. In this regard the Court relies upon the Trinidadian Court of Appeal decision of **Reed Richards v The State**[23], per Weekes JA, as she then was:

> *"23. It is important to note that it is not in every case that counsel is precluded from cross-examining an accused on or questioning a motive to lie. In the case of R v. Uhrig (unreported) Court of Criminal Appeal NSW, No 60200 of 1996 Hunt, C.J. recognised that there are two situations which may arise. The first situation, as explained by Priestly, J.A. at page 2 of Jovanovic, is the case where there is no direct evidence of an actual motive to lie, or evidence from which a specific motive to lie could reasonably be inferred,* ***the other case is where a motive to lie is asserted in relation to the evidence of the complainant or witness.***
>
> *24. In the former case, where there is no evidence of a motive to lie, to allow the question to be put to the jury "Why would the witness lie?" would run the risk that the jury may think it open to them to infer that because the witness had no apparent motive for lying that fact of itself showed the witness was telling the truth.* ***The second case, where there is a real issue in the case whether the witness had an actual motive to lie is one where that issue is a relevant factor in judging a witness's credit and the question may be asked****." (emphasis added)*

[99] One basis for the malice of COP Williams is the Tasher lawsuit in which the defendant was counsel that went to mediation. This matter had no seeming repercussions on the former's career as he was made Commissioner thereafter. The other matters the defendant very curiously, that adjective is used purposefully because the maximum sentence for this offence is life imprisonment[24], preferred to leave those matters a mystery saying, "based on not only that matter that case that went to mediation but based on other facts that are not before this court that are not directly linked to this case." The Court is baffled, particularly because the defendant is an attorney at law, at the reticence of the defendant to air these matters in the face of defending himself on such a serious charge. Again, the Court is not suggesting that the defendant has any burden to lead any evidence but as said above the Court has to examine the evidence of a motive to lie when it is suggested.

[23] Cr. App. No. 12 of 2008 paras 18- 30.
[24] Section 20(3)(a) of the Code.

[100] Indeed, the uncontested evidence, brought out in cross examination by the defendant's counsel, was that COP Williams had the defendant at his mercy on an ammunition charge and exercised his discretion not to charge him when if malice existed, he could have let him be charged and, to use Caribbean parlance, 'take him for a run'.

[101] Thus, the contention that COP Williams developed a conspiracy with Ramirez, gave him information about the defendant that COP Williams may not even himself have been privy to and had fake recordings made because of a matter that went to mediation and other unspecified things does not seem to the Court to be at all credible.

[102] The Court has for the reasons above indicated and owing to the support for Mr. Ramirez's statement from the evidence of Shanidi Chell Urbina, Lionel Arzu and Marilyn Barnes and the special knowledge it displayed found his evidence truthful and reliable. The potential discrepancies even viewed cumulatively do not shake the Court's view.

B. The secondary evidence of Wilfredo Ferrufino

i. Is he being truthful?

[103] The Court admitted the secondary evidence of Mr. Ferrufino of what he heard on the recording made by Mr. Ramirez on the basis identified in its written ruling on a no-case submission made in this matter[25]. The Court, as held in that ruling has found that the recordings tendered in this matter through Keron Cunnigham, whose evidence was not challenged while in the witness box, cannot be found after diligent search. The Court notes the decision of the High Court of Australia in **R v Butera**[26], in support of the admission of secondary evidence of audiotapes, per Mason CJ, Brennan and Deane JJ.:

> *"Of course, a conversation can be proved by the oral testimony of anyone who heard it but that is not the only means by which a conversation might be proved. The courts have now*

[25] Dated 7th February 2024 at paras 20-26.
[26] (1987) 76 ALR 45.

accepted tape recordings as evidence of the conversations or other sounds recorded on the tape.

…

The reason a tape recording of a conversation is admitted in evidence to prove what is recorded is simply that use of the technology of sound recording and reproduction adds "to our knowledge other data not discernible by the unaided senses, or can make more accurate and more usable the data already discernible"

…

Prima facie, the issue whether the recorded conversation took place should be proved by playing the tape in court ***if it be available****, not by tendering evidence, whether written or oral, of what a witness heard when the tape was played over out of court.*

…

If the tape is not available and its absence has been accounted for satisfactorily, the evidence of its contents given by a witness who heard it played over may be received as secondary evidence*. That evidence is not open to the same objection as the evidence of a witness who repeats what he was told out of court by another person who is not called as a witness. In the latter case the credibility of the other person cannot be tested; in the former case, assuming the provenance of the tape is satisfactorily proved, no question of its credibility can arise." (emphasis added)*

[104] The integrity of the recording to the point Mr. Ferrufino listened to it is established, on evidence that the Court accepts as true, by (i) Mr. Ramirez saying he made the recording and did not tamper with them; (ii) he handed the phone to Mr. Ferrufino who handed it to Cpl. Cunningham for extraction; (iii) Cpl. Cunningham testified that he did not tamper with it, this evidence was unchallenged and the Court accepted his evidence as it was clear and cogent; and (iv) the phone was handed back to Mr. Ferrufino the next day with the CD and memory chip.

[105] The Court will follow the guidance of the Jamaican Privy Council case of **Beckford v R**[27] and consider whether Mr. Ferrufino is a truthful witness and then if his recognition of the voice on the recording as the defendant is reliable.

[27] (1993) 42 WIR 291 at p 298.

[106] The Court found Mr. Ferrufino a truthful witness. His manner and demeanour were impressive and his evidence plausible. The only inconsistency in his evidence is the inconsistency by omission that he did not mention in his two 2019 statements that he had listened to the recording on the day he took the statement from Mr. Ramirez. He explains this omission as a slip which he corrected in his third statement. The Court finds that the evidence that he listened to the recording by Mr. Ramirez truthful. Mr. Ferrufino was the investigator assigned to this matter by the Commissioner of Police himself. It would only be logical that he would watch the recording. The Court as indicated above accepts Mr. Ramirez's evidence that a recording was made and the inferential support it receives from the evidence of Keron Cunningham and Senior Magistrate Pitt-Anderson that the record was produced. The slip or lapse by Mr. Ferrufino in placing that detail in his statement, in the Court's view, lay in the assumption, unfortunately misplaced, that the recording by Cunningham would be in existence at trial and that it would speak for itself and no secondary evidence was required by way of noting it in his statement.

[107] The Court is also impressed that there was no attempt by Mr. Ferrufino to gild the lily and he confined his evidence to what he could clearly remember.

[108] There was a discrepancy between Mr. Ramirez and Mr. Ferrufino in that the latter said there were eight clips and he said he "believed" there were seven. The Court views that discrepancy as the result of a memory failing on Mr. Ferrufino's part and not due to any dishonesty. There is also the discrepancy between Mr. Ferrufino's evidence and JP Godfrey that the former said Mr. Ramirez gave his statement in English and some Kriol and the latter said English, though he did not say exclusively so. The Court prefers the evidence of Mr. Ferrufino as his statement surrounding this issue was first given in 2019 while JP Godfrey first gave his statement in 2023.

[109] These discrepancies or inconsistencies do not individually or cumulatively shake the view of the Court that Mr. Ferrufino is a truthful witness.

ii. Is his voice recognition reliable?

[110] The Court approaches the voice identification by Mr. Ferrufino with a great deal of caution, not only because of the inherent weaknesses in that specie of evidence but also because of the unavailability of the actual recording and the length of time since the witness last heard the recording.

[111] The Court has warned itself in consideration of this evidence that voice identification evidence is even less reliable than visual identification. The Court warned itself that wrongful voice identifications have led to miscarriages of justice in the past. The Court warned itself that even an honest witness, or a number of them, may be mistaken in their identification by voice. This is so even when the witness/witnesses are very familiar with the known voice.

[112] The Court notes that voice recognition evidence of a lay listener correctly to identify voices is subject to a number of variables which require such evidence to be treated with great caution and great care having regard to, inter alia, these factors:

(a) the quality of the recording of the disputed voice;

(b) the length of time between the listener hearing the known voice and his attempt to recognise the disputed voice;

(c) the extent of the listener's familiarity with the known voice;

(d) the nature, duration and amount of speech which it is sought to identify; and

(e) the nature and integrity of the process by which the purported identification was made, in particular whether or not a voice comparison exercise in which the disputed voice is put with the voices of several others (similar to an identification procedure) was used.[28]

[113] The Court would consider these factors in turn:

(a) the quality of the recording of the disputed voice- He testified that the quality of the recording was very clear, both audio and video. As the Court found Mr. Ferrufino a truthful witness it accepts this evidence.

(b) the length of time between the listener hearing the known voice and his attempt to recognise the disputed voice- The witness heard the voice on 19th March 2019 and recognised it on that date according to his evidence which the Court accepts as true.

[28] Jamaican Bench Book at ps 230-231.

(c) the extent of the listener's familiarity with the known voice- The witness testified that he had been familiar with the defendant for four to five years before listening to the recording. He testified that he was cross-examined by him on three occasions for more than forty-five minutes. These are interactions in the Court's experience of the cut and thrust of criminal trial advocacy which would leave an indelible impression on the subject and help ensure that he remembers the voice of the defendant. The defendant admitted that he in fact had cross-examined Mr. Ferrufino. The Court again accepts the evidence of Mr. Ferrufino as it found him a truthful witness. The Court also accepts that he would have heard the voice of the defendant in interviews in the media. These circumstances lead the Court to accept the evidence of the witness that he is familiar with the voice of the defendant. (d) the nature, duration and amount of speech which it is sought to identify- The evidence of Mr. Ramirez with regard to the second trip is that he began to record as he got into the car and he estimated that drive to be about thirty minutes. In that drive they discussed that Ms. Barnes had to be killed, the passing over of hush money, the whereabouts of Ms. Barnes. The Court is of the view that there was sufficient discussion over a sufficiently long period for Mr. Ferrufino on the recording of the second trip alone to find that he had ample opportunity to recognise the voice of the defendant. (e) the nature and integrity of the process by which the purported identification was made, in particular whether or not a voice comparison exercise in which the disputed voice is put with the voices of several others (similar to an identification procedure) was used- There was no voice comparison done in this matter having regard to what the Court finds as an obvious fact that the CD recording was supposed to speak for itself at the time Mr. Ferrufino was listening to it. The issue of voice comparison did not arise. However, having regard to his familiarity with the defendant's voice and the length of the recordings, even considering the cautions above there is ample opportunity for Mr. Ferrufino to recognize the voice of the defendant.

[114] The concern of the unavailability of the actual recording is minimized by, as said above, the length, and clarity of the recording as well as the witness's familiarity with the defendant's voice. Mr. Ferrufino also had a special reason to pay attention to the recording, as he said in his testimony, that he was the investigator and he needed to confirm whether it supported the statement he had recorded from Mr. Ramirez. It is also minimized by the support of the hearsay statement of Mr. Ramirez which is in much the same terms as the audio recalled by Mr. Ferrufino. Though Mr. Ferrufino is recalling in 2024 what he heard once in 2019, even without a transcript, the Court finds that the occasion upon which he listened

to the recording would have been one which left a mark on his memory, as its contents would have been quite shocking and again, he was the investigator.

[115] The Court finds that the secondary evidence of Mr. Ferrufino to be reliable and truthful.

C. The secondary evidence of COP Williams

[116] The Court adopts the same process as it did in the case of Mr. Ferrufino. The Court finds that COP Williams is an honest witness. His manner and demeanour were impressive. His evidence was plausible and coherent. There were however discrepancies in his evidence. He indicated that the recordings were audio and not video as was the evidence of both Mr. Ramirez and Mr. Ferrufino. The Court also notes that the first time COP Williams put pen to paper to record anything about this matter was 2023. This is a matter where, unlike the investigator, he may not have been as focused on the recordings and progress of this matter. The Court notes the evidence of COP Williams in re-examination that he was never intended to be part of the witness pool in this matter and was essentially called to step into the breach to address matters that were unforeseen, the disappearance of the exhibits in this matter. In deference to the caution with which one must treat with issues of voice recognition and the absence of the recording the Court would not rely on COP Williams's secondary evidence. The Court wishes to clarify this is not an adverse finding on COP Williams's honesty and integrity but that pursuant to the English Queen's Bench authority of **Taylor v Chief Constable of Cheshire**[29], "When the film or recording is not available, or is not produced, the court will, and in my view must, hesitate and consider very carefully indeed before finding themselves made sure of guilt upon such evidence."

[117] The Court having found evidence upon which it may convict goes on to consider the case for the defence.

D. The Defence case.

[29] (1987) 84 Cr. App. R. 191.

[118] The Court notes that the defendant is a person of previous good character. He is a man who has gone 54 years on this earth without amassing a criminal conviction. The Court has taken this fact into consideration of the case in two ways. First, the defendant has given evidence. His good character is a positive feature of the defendant which the Court has taken into account when considering whether it accepts his evidence. Secondly, the fact that the defendant has not offended in the past may make it less likely that he acted as is now alleged against him.

[119] The Court however directs itself that good character is not a defence to a criminal charge but must be given appropriate weight when considering all the evidence. The Court has looked at all the evidence in the case and considered the defendant's good character in this context.

[120] The Court was not impressed by the manner and demeanour of the defendant while giving evidence. He seemed evasive and many of his answers were wholly implausible. The Court does not believe that a long-standing criminal defence attorney would not read his disclosure until just before his trial on a charge of abetment of murder where the maximum sentence is life in prison. The Court does not believe that he would make no objections with regard to the receipt of disclosure at the preliminary enquiry when the CD of the Mr. Ramirez recording was being tendered in his presence if that CD was not in fact given to him. The Court believes the defendant, for whatever reason, is feigning a loss of memory in relation to the existence of that CD. The Court, as said before, accepts the independent, consistent and coherent evidence of Senior Magistrate Pitts-Anderson that such a CD existed and was tendered in evidence in the presence of the defendant. His evidence that he was not interested in finding out why the police had charged him was simply unbelievable. The Court rejects the claim that depression caused him not to peruse his disclosure at the preliminary enquiry because, as a matter of self-preservation, he must have. The Court also notes that the depression explanation he gave does not sit consistently with his other evidence that he was not concerned about the charge because it was fabricated. The Court was not impressed when the defendant boldly asserted in his evidence in chief that he was never a defendant in a civil matter without qualification, which was unnecessary to establish his good character, and then quickly have to reverse and modify in cross-examination when the Broaster matter was put to him.

[121] The Court rejected entirely the evidence of the defendant. on this basis as well as the strength of the evidence against him. The evidence of the good character of the defendant is wholly outweighed by the evidence against him[30].

[122] The Court has already considered the evidence of Marco Marin above and found that there is no necessary discrepancy between his evidence and that contained in Mr. Ramirez's statement.

E. Conclusions

[123] The Court returned to the Crown's case and looked at the totality of the evidence. The Court is satisfied so that it is sure that Oscar Selgado directly solicited, that is requested, Giovanni Ramirez to commit a crime, namely the murder of Marilyn Barnes. The Court would note that on the evidence of the hearsay statement and its related supporting evidence alone, even in the absence of the secondary evidence of Wilfredo Ferrufino, the Court was satisfied so that it was sure of the guilt of the defendant.

Disposition

[124] The Court finds the defendant guilty of the charge of abetment of murder contained in the indictment. The matter is adjourned for a separate sentencing hearing as advised by the CCJ in **Linton Pompey v DPP**[31].

Nigel Pilgrim
High Court Judge
Dated 8th March 2024

[30] **Bally Sheng Balson v The State of Dominica** (2005) 65 WIR 128 at para 38.
[31] [2020] CCJ 7 (AJ) GY at para 32.