**IN THE SENIOR COURTS OF BELIZE**

**CENTRAL SESSION- BELMOPAN**

**IN THE HIGH COURT OF JUSTICE**

**(CRIMINAL DIVISION)**

**INDICTMENT NO. C21 OF 2023 BETWEEN:**

**THE KING**

**and**

**BRIAN CASTILLO**

**Before:**

The Honourable Madame Natalie Creary-Dixon, J

**Appearances:**

Mr. Riis Cattouse and Alford Humes, for the Prosecution

Mr. David Mckoy, for the Accused

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2025: September 26th, 29th

October 2nd, 10th, 21st

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**JUDGMENT**

**[1]** **NATALIE CREARY – DIXON, J: Brian Castillo:** (hereinafter "the accused") was indicted for the offence of murder, contrary to section 118 read along with section 117 of the Criminal Code, Cap 101 of the Substantive Laws of Belize (Revised Edition) 2020, ("hereinafter the Code") arising out of the stabbing death of Jennifer Archila and Nitzia Catzim( hereinafter referred to as "the deceased persons") on the 21st November 2021.

**[2]** Following a voir dire which concluded with the caution statement made by the accused being admitted as evidence in the main trial, the trial began by judge alone pursuant to section 65A (2) b of the **Indictable Procedure Act,** Chapter 96 of the Substantive Laws of Belize (Revised Edition) 2020.

**BACKGROUND**

**[3]** The prosecution alleges that at about 8:30 PM on November 21, 2021, the accused intentionally and without lawful justification killed his girlfriend, Jennifer Archila, and her daughter, 12-year-old Nitzia Catzim, by stabbing them and slitting their throats with a Knife at an apartment he had rented in San Ignacio Cayo District.

**THE PROSECUTIONS CASE**

**DR. LLOYDEN KEN**

**[4]** This medical expert who performed the autopsies on the two deceased persons reported as follows:

In respect of Jennifer Archila, 33 years old, there were multiple sharp force injuries to the neck, and multiple sharp injuries to the chest; also stab wounds to the lower back.

The deceased also had active defensive wounds to both hands, with stab wounds to the right palmar region. Dr Ken defined active wounds as the victim holding the weapon as opposed to passive wounds where the victim doesn't grab the weapon but covers their being with their hands. The cause of death was due to hypervolemic shock as a consequence of external exsanguination due to transaction of the left common jugular vein due to multiple penetrating stab wounds; injury to the neck due to a cut to the 4th

cervical bone, which he described as similar to cutting through the spinal cord using moderate to severe force given that the cut went through the cartilage to the bone.

**[5]** With respect to 12-year-old Nitzia Catzim, he observed a gaping wound at her throat, caused by using moderate force; he observed defensive wounds as well.

Blood samples were also collected and handed over to the Scenes of Crime Technician, William Wade.

**WILLIAM WADE**

**[6]** This Crime Scene Technician testified to receiving the blood samples from the postmortem conducted on the bodies of the deceased persons.

**SGT. ROSHINA VERNON.**

**[7]** This witness was one of the first responders on the scene. She testified that on the 21st of November 2021, she received a call about the stabbing of two females at an apartment on Zericote Street, Santiago Juan Layout, San Ignacio Town. She stated that she, along with PC Zetina, arrived at the scene of the incident to find two females on the floor of the apartment. The adult female, Jennifer Archila, was motionless, but the female child was gasping for breath. She observed what appeared to be stab wounds to her back and neck. The child was on her back with her eyes open and gasping for air. The 12-year-old child was taken to the hospital immediately but died shortly after. Moments later, a search was conducted and a knife was found by other officers at the scene.

**EUGENIO GOMEZ**

**[8]** Forensic Analyst and supervisor of the serologist section at the National Forensic Science Service, testified that he analyzed items found on the scene for traces of human blood. He informed the court that human blood was found on the handle of the knife and also the right boot taken from the accused. He could not say if the blood had been tested for alcohol concentration.

**OLGITA SUNTECUN**

**[9]** On the 21st of November 2021, she was in her room when she heard her neighbors fighting in the adjoining room. She then heard a child scream. When she went next door to enquire if all was well, a gentleman whom she identified as the accused, stuck his head through the door and told her that all was well, and she and her spouse could go back inside their apartment. Minutes later, she heard screams again and saw the accused leaving on his motorcycle with a male child.

**[10]** A few minutes later, she and her spouse discovered both females on the floor of the apartment, covered in blood. They shouted for Mr. Manuel, the landlord, who called the police. On cross examination, she said that the accused and the deceased woman might have been drinking that afternoon of the incident as she heard pint bottles and had seen the deceased woman with a bag of bottles that day.

**OSCAR QUIROZ**

**[11]** This officer processed and photographed the scene of the crime. He also packaged the exhibits to include the alleged murder weapon: a kitchen knife found on the scene.

**MANUEL GARCIA**

**[12]** Mr. Garcia, the accused man's former landlord, confirmed that he saw the bodies of the deceased in the apartment, and called the police. A few moments prior, he had asked that the accused remove his motorcycle that was blocking his path at the gate. The accused was notified by Nitzia and had removed his motorcycle.

**IRMA MENDEZ**

**[13]** The mother of the accused man's child recounted how she went to Melchor Guatemala to collect her son DM, who had been left there with one of his aunts.

**JESSICA ZUNICAL**

**[14]** The evidence of Ms. Jessica Zunical- the social worker who was present when the statement was taken from the minor child DM – was read into the record.

**KELSEY LOWTHER**

**[15]** Forensic analyst Kelsey Lowther also gave evidence on behalf of the Crown.

**SERGEANT ALEJANDRO RODRIGUEZ**

**[16]** This witness testified that on the 23rd of November 2021, he proceeded to the Western Guatemala Border where the accused was handed over to him. He was then taken to the Benque Viejo police station, where an interview was conducted and a caution statement recorded from the accused. He observed red substance on the boots of the accused, which he suspected to be blood. The boots were later handed over to him to be tested at the lab.

**[17]** On the 24th of November 2021, he officially arrested and charged the accused for the murder of Jennifer Archila and Nitzia Catzim.

**DM**

**[18]** 11-year-old DM, the son of the accused, was the sole eyewitness to the incident. He was seven years old at the time of the incident. On that night, he, his father and the deceased persons were at home alone. The deceased persons he referred to as "Jenny" and "Sol". The accused was drinking Corona with Jenny. He recounted that his father stabbed Jenny in her back and collar. Then he went to look for Sol in the bathroom and cut her throat. His father told him to pack his things, and they left on a motorcycle. They met two police officers on the way who did not detain them.

**THE DEFENCE CASE**

**[19]** The defendant gave sworn evidence; he had also outlined in his case management form that he would raise the following issues of fact at trial:

1. Provocation by the two deceased persons
2. Intoxication (to show that he could not form the intention to kill)
3. The defendant also indicated that they would raise the legal argument that the defendant was acting in self- defense.

The accused testified that on the 21st of November 2021 he was living on Ziricote Street, Santiago Juan Layout, San Ignacio Town with his common-law wife, Jennifer and her daughter Nitzia Catzim along with his son DM.

When the accused got home from work that afternoon, he saw his son in the corner of the door kneeling naked. He stated that he asked Jennifer what was the motive. He said DM told him that Jennifer had beaten him.; he did not do anything about it; he did not "put his hand on her". Both of them then left to take some food for their boss; thereafter they also bought beers, and they decided to buy another box of beers around 6pm or a little before 7pm. They left and returned to the room where they continued drinking the beers. He mentioned that Darwin was on his bed playing with his toys and Nitzia was on the bed on her computer. Thereafter, Jennifer got up and went to the table where the knife was on the stove, grabbed Darwin and put the knife to his throat. He said that he was sitting and got frightened when he saw what she was doing. He said that he told her to let go of the knife and why she had the knife at his son's throat. He stated that this was around 8:30pm when they had already finished drinking. He said that at this moment he saw her daughter Nitzia, got up and went to the bathroom. He used this opportunity to take away the knife from Jennifer. He mentioned that he put the knife at her throat the same way she did to Darwin. He told her, "The same way you feel with the knife at your throat was the same way my son feels when you have the knife at his throat". He went on to state that they started fighting because she wanted him to kill her and he would not do it. They continued to fight, and he cannot recall what else happened, as he blacked out, but he just saw Jennifer bleeding when she went on top of him.

**[20]** He stated that Nitzia was on his back, and he tried to push her off and that was when he realized that he had hurt her too. He recalled that the knife was in his hands on these

occasions that both Jennifer and Nitzia got hurt. He mentioned that when he saw Jennifer bleeding, the dizziness he felt left because he was frightened. The accused stated that he was frightened because of the amount of blood he saw and did not intentionally hurt Jennifer and Nitzia.

**[21]** He testified that he then told DM to let's go after seeing what he had done, and they went to his house in Benque. He recalled that before he left the house with Darwin, he remembered the girl came to his room and asked him if everything was ok. Lastly, the accused testified that he has never been charged with murder before and the only charge that he has prior to the date of his testimony is for burglary. He also stated that he cooperated with Sgt. Rodriguez, and he was telling the truth when he gave the caution statement to the police.

**THE CAUTION STATEMENT.**

**[22]** The Court noted that the caution statement mirrors the fine details of the accused man's sworn evidence given in Court, save and except for the following distinction:

1. In the caution statement, there's no implied or expressed sentiment that the accused did not know what he was doing during the entire incident. He said in his caution statement that Jennifer grabbed the knife and held it at his son's throat; he told her to put it down; her daughter left to go to the bathroom and she got distracted; that is how he managed to grab her and the knife and hold the knife at her throat. There was no mention of any" blacking out", such as he mentioned in his evidence in Court.

**ANALYSIS**

**[23]** This case turns on credibility. In particular, the credibility of the Crown's main witness, 11-year-old DM, the son of the accused, and the only eye-witness to the murders. Given the age of DM, I warned myself in the following terms before accepting his evidence:

**[24]** It is for me to decide whether he's reliable and has told the truth. The fact that the witness is young does not mean that his or her word is any less or any more reliable than that of an adult, and so I should assess his evidence in the same fair way as I assess any other evidence in the case. I bore a number of things in mind:

**[25]** A child does not have the same experience of life or the same degree of maturity, logic, perception or understanding as an adult. So, when a child is asked questions, he or she may find the questions difficult to understand, may not fully understand what it is he or she is being asked to describe, and may not have the words accurately or precisely to describe things.

**[26]** A child may be tempted to agree with questions asked by an adult whom the child may well see as being an authority, particularly in a setting such as this. Also, if a child feels that what he or she is asked to describe is bad or naughty in some way, this may itself lead to the child being embarrassed and reluctant to say anything about it or to be afraid to appear if you might get into trouble.

**[27]** A child may not fully understand the significance of some things that have happened at the time they happened, and this may be reflected in the way he or she remembers or describes them. A child's perception of the passage of time is likely to be very different to that of an adult. A child's memory can fade even in a short time when trying to describe events. Even after a fairly short period and the child's memory of when and in what order events occurred may not be accurate.

**[28]** A child may not be able to explain the context in which events occurred and may have particular difficulty when answering questions about how he or she felt at the time or why he or she did not take a particular course of action.

**[29]** All these things go to a child's level of understanding rather than his or her credibility, and so I should be cautious about judging a child by the same standards as an adult. None of these things mean that this is not is or is not reliable: that is a matter for my judgment.

**[30]** At the end of all these considerations, I found the child witness DM to be credible and reliable; - he was present at the scene and in a position to view the entire incident; that made him reliable. He recounted the events with clarity, childlike innocence, but an understanding of each question asked, and the response given.

**[31]** DM was consistent and unshaken on cross-examination. He also remembered the finer details of that night; for example, the fact that Nitzia got up and went into the bathroom and his father met her on her way back; what he was doing whilst the events were unfolding.

**[32]** The other Crown witnesses were also very credible and were unshaken in cross-examination. They appeared to be honest and forthright. That being said, the Court proceeded to analyze the evidence to see if the Crown had discharged its burden of proof beyond a reasonable doubt.

**THE LAW**

**ELEMENTS OF THE OFFENCE OF MURDER.**

**[33]** Section 117 of the code provides that:

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

**[34]** This provision is supported by a the case of **Peter Augustine v R [1]:**

*"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."*

**[35]** It follows from this that in order to convict the accused of murder, the Crown must prove to the satisfaction of this court, so that it is sure that:

1. Jennifer Archila and Nitzia Catzim are dead.
2. Death was caused by unlawful harm by the accused.
3. The accused intended to kill the deceased persons.
4. There was no legal justification for the killing of the deceased persons.
5. The accused was not provoked into killing the deceased persons.

**BURDEN OF PROOF.**

**[36]** The court has directed itself that the burden of proof in the elements of the offence lies on the prosecution. The accused is presumed innocent and has nothing to prove. The court has directed itself that the obligation is on the Crown to satisfy it so that it is sure that the accused committed the crime, and if there's any reasonable doubt, the court must acquit the accused.

The court has considered all the evidence with the intention of reaching a fair assessment of the evidence. The court may disregard, accept or reject a part or all of a witness's testimony. In considering the evidence of each of the witnesses, the Court has considered the cogency of the evidence of each witness. The court has also considered the inconsistencies and discrepancies in the evidence of the witnesses and whether they can be explained or resolved, whether they are major or minor.

[1] *Peter Augustine v R* (Criminal Appeal No 8 of 2001, Court of Appeal of Belize)

**Element No. 1:**

**[37]** **Jennifer Achilla and Nitzia Catzim are dead.**

There is no dispute that they are dead. This fact was confirmed by the evidence of Doctor Lloyden Ken, an anatomical pathologist, who testified that on the 26th of November 2021, he conducted an autopsy on Jennifer Archila. He testified that Jennifer Archila died due to hypervolemic shock due to external exsanguination due to transection of the left jugular due to multiple stab wounds. The doctor also testified that on that same date, the 26th of November 2021, he conducted an autopsy on Nitzia Catzim. He testified that she died due to a cut throat and multiple stab wounds to the neck. Additionally, evidence in support of the death of the deceased person was produced from Ms. Daniella Parades, the aunt of the deceased child. The Crown has produced sufficient evidence to discharge this burden.

**Element No. 2:**

**[38]** **Death was caused by unlawful harm by the accused.**

The accused man has admitted to wounding both deceased persons. The son of the accused provided eyewitness testimony that on the 21st of November 2021 in the Cayo district, he witnessed his father, the accused, with the use of a knife, kill both Jennifer and Nitzia. Both the accused and his son gave evidence that at the time Jennifer and Nitzia were killed, the only persons in the apartment were the accused, DM, Jennifer and Nitzia; further, the accused gave evidence that he took away the knife from Jennifer, they had a struggle, he blocked out momentarily and when he came to, he still had the knife in his hands and Jennifer was hurt. Similarly, he said that when Nitzia jumped on his back, he had the knife in his hand and was trying to push her off of him. Momentarily, he blacked out again, and when he came to again, he had the knife and Nitzia was hurt. There's no dispute that the accused was the person who inflicted the fatal injuries to the deceased persons on the 21st of November 2021.

**Element No 3:**

**[39]** **The accused intended to kill the deceased.**

The Court concedes that it is very difficult to prove intention, but the court is assisted by the Criminal Code.

This court first inferred an intention to kill by considering the provisions of sections 5 - 9 of the code.

**Section 5 of the code**

5(3) In relation to any person – "the question of intention" means the question whether the accused intended a particular result his conduct.

**Section 6 of the code**

6 (1) The standard test of intention is "Did the person whose conduct is an issue either intend to produce the result or have no substantial doubt that his conduct will produce it?'

**Section 9 of the code**

Section 9 of the court outlines that in answering the questions about, the court should consider the fact that the result was a natural and probable result of such conduct. However, if answered in the affirmative, it was not conclusive evidence of intention. The court is also instructed to decide the question above by reference to all of the evidence, drawing such inferences from the evidence that appear proper in the circumstance.

**[40]** The Court then returned to the first question under section 6 of the code: did the accused either intend to produce the result or have no substantial doubt that his conduct would produce it? From what can the court make this inference? For an answer to this question, I will first consider the evidence of the accused man in his caution statement and also in his sworn testimony in Court.

**[41]** The accused said that he did not even know how or that he had caused the fatal injuries. He said he blacked out at the time that the injuries were inflicted. He did not mean to hurt anyone.

**[42]** He also stated that he was "not in his five-senses" given that he was drunk. The accused asked the court to consider that he was so drunk that he would not have formed the mens rea to kill the deceased person. Was there such evidence to support that conclusion? It does explore the issues of his intoxication.

**[43]** Firstly, in the view of this Court, a defense of intoxication cannot coexist with an intention to kill. This is because if an accused was so intoxicated when he committed a murder that he did not know what he was doing, he would not have had the mens rea to commit that offence.

**[44]** The Privy Council case of **Sooklal & Francis Mansing v The State**[2], states that this test is not satisfied by evidence that the accuser consumed so much alcohol that he was intoxicated, nor is it satisfied by evidence that he could not remember what he was doing because he was drunk. The intoxication must have been of such a degree that it prevented him from foreseeing or knowing what he would have foreseen or known had he been sober.

Commented [ND1]: Please find and insert citation for this case

**[45]** In the case of **Attorney General for Northern Ireland v Gallagher,** the Court stated that if a man is charged with an offence in which specific intention is essential, for example murder, the degree of drunkenness required is reached when the man is rendered so stupid by a drink that he does not know what he is doing, In that case, the Respondent was an aggressive psychopath and prone to violent outbursts. This was particularly so if he had taken alcohol. He was frequently violent towards his wife. He had spent some time in a mental hospital for which he blamed his wife. On his release he went out and brought a bottle of

[2] Sooklal & Francis Mansingh v The State (Appeal No. 40 of 1998, Court of Appeal Trinidad and Tobago)

whiskey and a knife. He intended to use the knife to kill his wife and brought the whiskey as he knew that this would make him aggressive to the extent that he would be able to kill. He drank the whiskey and killed his wife with the knife and a hammer. He was convicted of murder and appealed to the Court of Criminal Appeal N.I on the grounds of a mis-direction. His conviction was quashed. The Attorney General appealed to the House of Lords on the grounds that the defence of intoxication was not open to him because before taking the drink, when there was no defect in his reason, he had clearly evinced an intention to kill his wife and any temporary derangement of his reason at the time of the killing was the result of his own voluntary act in taking the drink.[3]

**[46]** The issues addressed in that case included:

1. Whether intoxication could negate the necessary intent for murder, particularly where the defendant remembers and comprehends his actions; and

2. Whether premeditated, voluntary intoxication ("dutch courage") impacts criminal liability for murder.

**[47]** In upholding the conviction for murder in that case, the House of Lords held that voluntary intoxication does not negate intent for murder if the defendant is aware of and remembers his actions; further, that deliberate intoxication as an element of pre-meditated murder ("dutch courage") ,does not reduce criminal responsibility; that intoxication negates criminal liability only if it is so extreme that the defendant does not know what he is doing, as affirmed in **Director of Public Prosecutions v Bead[1920] AC479.** In fact, premeditated consumption of alcohol to facilitate the commission of murder does not provide a legal defence and indicates intent; in other words, where intent can be established, self-induced intoxication does not excuse or reduce murder liability where intent can be established.

[3] A-G for N. Ireland v. Gallagher [1963] — e-lawresources.co.uk

**[48]** The crown in the case at bar submitted that the accused, Brian Castillo, was able to form the required mental element when he killed the deceased persons; his actions were shrewd and calculated and there was overwhelming evidence that showed that the accused man's mind was working rationally at the time of the murders. The crown pointed to numerous occasions when the accused was thinking rationally and the effects of alcohol had no effect on his mind prior to killing the deceased persons; for example, the accused testified that when Jeniffer held the knife at his son's throat, he was able to wrestle the knife away from her when she got distracted after her daughter went to the bathroom. According to the Crown, this piece of evidence is very important to show that the accused was very calculated in his approach to taking away the knife. The Crown was of the view that a person who was so intoxicated that he did not know what he was doing, would not have had the proper faculty to be this strategic in his approach, and would not have been able to strategically wrestle the knife away to hold it to the deceased woman's throat. The Crown submitted that the accused clearly gave a detailed account of what transpired whilst he was drinking with Jennifer and even after killing the deceased persons. This Court concurs.

**[49]** The crown also referenced the following pieces of evidence to support the view that the accused was not so intoxicated that he did not know what he was doing at the time that he committed the murders:

i. The accused said that he placed a knife at Jennifer's throat and told her that "the same way you feel when the knife is at your throat, the same way my son feels when you have the knife at his throat. Not only does this statement show rational thinking by the accused but also, when asked in cross examination why he did not kill Jennifer as she wanted, the accused stated that "he know it was incorrect for her to put the knife at his son's throat and he felt incorrect to put the knife at her throat and that is why he did not do it.

**[50]** The crown suggested that this is a quintessential demonstration of someone operating rationally and in total control of his faculties. Again, this Court agrees.

ii. The accused had the presence of mind to thereafter conceal his actions and to tell the neighbour, Olgita, that everything was ok when she came across to inquire about the noise from his apartment.

iii. The accused told his son to pack his bag, waited for him and left the house on his motorcycle. The accused had the presence of mind to drive to Benque Viejo to his mother's house on the motorcycle. The Crown submitted that this is a means of transport that requires one to be focused when riding it; more so when one is riding with a small child. The accused crossed the western border safely with the child as there was no evidence of any accident or suggestion from the child in cross examination that they fell or any mishap occurred. There was nothing showing that the accused was so drunk that he was unable to operate the motorcycle whilst riding with his son. Once again, this Court concurs.

**[51]** A further exploration of whether the accused man was in his "five senses" such that he could be said to have intended the consequences of his actions, requires an examination of whether he was suffering from an abnormality of mind as defined under Section 118 of the Code Section 118 of the Code reads:

*where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind or an inherent causes or induced by disease or injury, a substantially impaired mental responsibility for his acts and omission in doing her being a part of the killing."*

**[52]** The accused provided no evidence that would assist or support a finding of diminished responsibility. No medical report was tendered to satisfy the court that the accused could not have appreciated his actions at the time; there was no suggestion from the crown's witnesses or the accused that he suffered from any permanent or temporary form of insanity at the time of the offence; on the contrary, the accused man's cumulative evidence

as to the defense is that he was drinking and at the time he caused the harm to the deceased persons, and he cannot recall what happened.

**[53]** The Court considered Section 26 of the Code which states that "a person accused of a crime shall be deemed to have been insane at the time he committed the act in respect of which he's accused, if he was prevented by reason of idiocy , imbecility or any mental derangement or disease affecting the mind from knowing the nature or consequence of the act in respect of which he's accused."
There was no such evidence presented before the court. There was no evidence from any of the witnesses to conclude that the accused was acting under any kind of delusion.

**[54]** Therefore, the Court inferred an intention to kill by considering that:

a) The accused was in his right mind when he inflicted the fatal wounds;

b) The doctor testified that Jennifer received a total of 6 stab wounds and five cut wounds to her neck, back and hand, including active defensive wounds. It was noted that most of the injuries were concentrated in the upper body area where vital organs and large veins are located, thus increasing the likelihood of death. The doctor also explained the depths of the injuries received to the neck in respect of both deceased persons;

c) The instrument used to cause the injury was a knife which penetrated the skin.; the knife is a dangerous weapon that can cause swift and deadly damage;

d) The degree of force used .as observed from the number and depths of the wounds and confirmed by the doctor, was moderate to severe;

e) Nitzia was pronounced dead shortly after arrival at the hospital, while Jennifer died before that;

f) DM gave sufficient and clear evidence as to the accused man's intention to kill her: he stated that she was in the bathroom and the accused went to look for her, and when she came out of the bathroom, he cut her throat.

**[55]** The Crown also submitted that the actions of the accused man immediately afterwards also speak to his intention to kill: with the two deceased injured and bleeding profusely inside the apartment, he calculatedly told the neighbor who came to inquire, that all was well and she could go back inside her apartment. The Crown then submitted, and rightfully, that it would have been a reasonable assessment of the accused that without immediate medical attention to the deceased persons, death would have been immediate and certain. He notified no one and he did nothing to assist. The accused told his son to pack his bag so that they could leave and make good their escape. The accused was stopped on his way to Benque by two police officers. Still, he said nothing to any of them about the incident. The accused went to his aunt's home in Benque and again did not do anything to assist the two persons left seriously hurt back at his apartment.

**[56]** The actions of the accused, according to the Crown, certainly do not depict a person who had unintentionally hurt the deceased persons. He knew that they were seriously hurt and instead of showing or acting in a manner that suggested that he did not mean to kill them, he calculatedly fled to Melchor. The Crown submitted that there's sufficient evidence produced by the witnesses at the trial to show that the accused had the requisite specific intention to kill the deceased persons. This Court concurs.

**Element No. 4:**

**[57]** **<u>The harm was without lawful justification.</u>**

The accused has raised the defenses of self-defense of his son and provocation by his girlfriend. He also wishes the court to consider that he was so intoxicated at the time of the incident that he did not know what he was doing and therefore could not have informed the mens rea for murder.

**[58]** This court considered the case of **Stephen Williams in the Court of Appeal of Belize, Court of Appeal 2023 Criminal Appeal No.13 of 2019,** in discussing the issue of self defence. In her dissenting judgment, President of the Court of Appeal, Honorable Madam Justice Hafiz- Bertram, outlined that:

*The justification of necessary force or harm is explained in common law. The trial judge reminded himself of the principles in **R v Palmer [1971] 1 All ER 1077**, where the Privy Council gave the classic pronouncement on the law relating to self-defence. Lord Morris, delivering the judgment of the Board, said:*

*"It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but may only do, what is reasonably necessary. But everything will depend on the particular facts and circumstances. Of these a jury can decide. It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack it would not be common sense to permit some action of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then immediate defensive action may be necessary. If the moment is one of crisis for someone in imminent danger he may have to avert the danger by some instant reaction. If the attack is all over and no sort of peril remains, then the employment of force may be by way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may no longer be any link with a necessity of defence….*

***If there has been no attack then clearly there will have been no need for defence.*** (Emphasis added)."

**[59]** According to Section 36 of the Code, use of force or harm is justifiable (extending in case of extreme necessity even to killing) and shall constitute a defence to any criminal charge

if used *for the prevention of or for the defence of himself or of any other person against treason; piracy; murder; manslaughter, negligence; robbery; burglary; except manslaughter by negligence, aggravated burglary; arson of a dwelling-house or vessel; rape; forcible unnatural crime; dangerous or grievous harm.* This Court submits that this provision is to be read, understood and applied in accordance with the Belize Privy Council case of decision of **Norman Shaw (2001) 59 WIR 115**. This case invited the trial judge to ask two essential questions:

(1) Did the appellant honestly believe or may he honestly believe that it was necessary to defend his son?
(2) If so, and taking the circumstances and the danger as the appellant honest, honestly believed them to be, was the amount of force which you used reasonable?

**[60]** Firstly, there's no evidence that Nitzia at any time posed a danger to DM. It is also difficult to see how she would pose a danger to the accused, such that he-armed with a knife-had to use such excessive force as to kill her. If she had jumped on his back, the force used to kill this wisp of a child would certainly have been excessive; slitting her throat and stabbing her would cause the claim of self-defense to fail for being an overly excessive response. However, DM's evidence does not support his father's claims that Nitzia jumped on his back; according to DM, his father went in search of Nitzia and slit her throat when she was coming back from the bathroom.

**[61]** The court prefers DM's version that Nitzia did ***not*** jump on the accused man's back, because had she done so, the Court believes that DM would have seen that and mentioned it in his evidence. DM appeared to remember the details of that traumatic night quite vividly; after all, it isn't every day that a child in particular, witnesses such a horrific ordeal. He did not appear to be selective in his memory, or unable to recall the major details of that night ; one would have expected him to'' cover up for his father and not reveal some of what happened that night, in an attempt to defend his father; he was old

enough and seemed intelligent enough to attempt this, but there is no evidence to support a finding that he did so.

**[62]** Nitzia's injuries also do not accord with the accused man's version of the events. From the demonstration he gave in Court of how he held the knife blade out and took swipes at her on his back, the forceful cut to her neck would not be explained.

**[63]** So, the next question in analyzing the claim of self-defense is whether the accused had to defend himself or his son from *Jennifer.* It does not escape notice that DM said that Jennifer did not have a knife at all, and it follows that he's also saying that she did not hold a knife at his neck, as stated by the accused. The court finds it difficult to believe that she did so; had she done so, then DM would not likely have forgotten such a traumatic incident; he would have remembered that she had a knife, and recounted that she held it at his throat. It is well-known that studies have revealed that severe trauma can cause faulty recollection, but DM appeared to recall most of the traumatic events of that night, and did not appear to have a selective or faulty memory. Even if she did hold a knife at his throat, the court found that after getting the knife from a drunken Jennifer, according to the accused, she would no longer have posed a threat to his son, such that he had to proceed to stab her and slit her throat. There is no evidence to support a finding that she posed a threat to the accused himself; neither did he speak of any injuries to his person from their "struggle". The Court will now address the second part of the equation, which is whether the degree of force used was commensurate with the attack. The answer is that killing both Jennifer and Nitzia amounted to unusually excessive force. There is no evidence that there was a need for the accused to defend himself or DM from the deceased persons. Consequently, his claim of self-defense fails.

**Element No. 5**

**[64]** **The accused was not provoked into killing the deceased persons.**

Was the accused provoked by either or both deceased victims, such that the charge of murder may be reduced to manslaughter? Firstly, provocation and an intention to kill are not at variance; they can co-exist. Citing **Julien v R (1970) 16 WIR 395** , the Court of Appeal in Trinidad, in the case of **Fabian La Roche v The State Criminal Appeal No. 32 of 2009** reminds the reader of a definition of provocation:

*"It may seem trite to repeat the definition so frequently cited from Archbold, Criminal Pleading Evidence and Practice (37th Edn), para 2498: 'Provocation is some act or series of acts done or words spoken by the deceased to the accused which would cause in any reasonable person and actually causes in the accused a sudden and temporary loss of self-control rendering the accused so subject to passion as to make him for the moment not master of his mind.'"*

**[65]** Provocation is a partial defence to murder only. Once there's evidence of provocation to be left to the jury, the burden is on the prosecution to disprove provocation to the required criminal standard.

The defense of provocation is dealt with in Sections 119 to 121 of the Code:

***119.*** *A person who intentionally causes the death of another person by unlawful harm shall be deemed to be guilty only of manslaughter, and not of murder, if there is such evidence as raises a reasonable doubt as to whether– (a) (b) he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in section 120 of this Act; or he was justified in causing some harm to the other person, and that in causing harm in excess of the harm which he was justified in causing he acted from such terror of immediate death or grievous harm as in fact deprived him, for the time being, of the power of self-control.*

**120.** The following matters may amount to extreme provocation to one person to cause the death of another person, namely–

"(a)…….

(b)..……..

(c)……..

(d) a violent assault or battery, or any sexual offence, committed upon the accused person's wife, husband, child or parent, or upon any other person in the care or charge of the accused person"…

***121.****-(1) Notwithstanding the existence of such evidence as is referred to in section 119 (a), the crime of the accused shall not be deemed to be thereby reduced to manslaughter if it appears, either from the evidence given on his behalf, or from evidence given on the part of the prosecution–*

*(a) that he was not in fact deprived of the power of self-control by the provocation;*

*(b) that he acted wholly or partly from a previous purpose to cause death or harm, or to engage in an unlawful fight whether or not he would have acted on that purpose at the time or in the manner in which he did act but for the provocation;*

*(c) that after the provocation was given, and before he did the act which caused the harm, such a time elapsed or such circumstances occurred that a person of ordinary character might have recovered his self-control; or*

*(d) that his act was, in respect either of the instrument or means used, or of the cruel or other manner in which it was used, greatly in excess of the measure in which a person of character would have been likely under the circumstances to be deprived of his self-control by the provocation*.

**[66]** As it relates to Section 120, I looked at the case of **Regina and Carol Dawson and Scott James Dawson referencing R and Dawson** which was very instructive in explaining how loss of control is to be interpreted. It states that there are three elements having regard to the issue of loss of control. First, there has to be evidence of a loss of control, there has to be a qualifying trigger. In other words, things were said or done, perhaps over a period of time in circumstances of an extremely grave character, which gave rise to a justifiable sense of being seriously wronged. The case goes on to say that unless the circumstances are extremely grave, normal irritation and even serious anger do not often cross the threshold into loss of control.

**[67]** The question is whether the actions of the deceased would cross this threshold and cause the accused man to lose his self-control. This would require the court to consider whether a reasonable man in the position of the accused would have been provoked by the circumstances which confronted him, and secondly, whether he would have reacted accordingly. If the Court concluded that the accused was or may have been provoked to lose his self-control, I have to next consider whether the reasonable man with the accused man's characteristics and placed in the accused man's situation would have reacted as the accused did by stabbing the deceased victims in the chest and slitting their throats.

**[68]** Who is a reasonable person for this purpose? He's a person of the same age and gender as the defendant. He's therefore a man comfortably in his twenties at the time of the attack; he's a person having the powers of self-control, which I would expect of an ordinary person. In this case, the reasonable person in this circumstance is a man whose girlfriend Jennifer Archila, had “wronged’ his son, DM, on three prior occasions and he did nothing about it; this was stated by the accused man in cross-examination. The Court considered this in analyzing the issue of provocation.

**[69]** In this case I considered that even if one argued that the action of having his son kneel down naked was provocative, the actions of the accused were unreasonable and extreme and therefore inconsistent with the defense of provocation.

**[70]** Although it's established that a temporary and sudden loss of self-control arising from an act of provocation is essential, it is less clear to what extent previous acts of provocation are admissible. Each case must be considered against the background of its own particular facts.

**[71]** Where the provocative conduct took place over a full-on period of time (on three prior occasions according to the accused), the cumulative effect culminating in a trivial act of provocation causing a loss of self-control may be sufficient. This Court understands that, even where provocative conduct took place over a long period of time (three prior occasions within a three month period, in the present case), this Court understands that for a defense of provocation to succeed, there must still be evidence that there was a sudden and temporary loss of self-control before the attack; how long after the provocative conduct , is not settled, but what is clear from case law, is that a sufficiently long cooling off period such as to allow time for reflection and planning, would negate a defense of provocation. This Court believes that the action of the accused man, even if considering the three prior occasions of provocative conduct, can best be described as considered, controlled retaliation, which is inconsistent with the loss of control in provocation. A three-hour period of cooling off is more than sufficient time for him to have aborted any cold, calculated thoughts of murder. The accused was “keeping score”. He waited and plotted; he calculatedly remained calm for hours after, said nothing to the deceased woman, went out to buy beers, drank with her, and then waited for the opportune time to kill her A reasonable person facing the “provocation” that he faced by seeing his son kneeling down naked, may have, as the accused said, “put his hands on her”. That, I would imagine, could be seen as a reasonable response; however, his response of slitting her throat and her daughter’s throat can best be described as unreasonable and extreme.

**[72]** The Court notes that there was no evidence to support a frenzied attack, which case law has shown has been taken as evidence of a loss of self-control. In fact, it does not escape the court's notice that the wounds inflicted on both victims, as evidenced in the postmortem report, were similar and precise. Both deceased victims had stab wounds to the chest and back and scapula region, and of course both had their throats slit. This is rather uncanny and could support an inference that the attack on both women were calculated and premeditated.

**[73]** This Court concluded that the deliberate act of slitting throats requires sustained action, not a momentary loss of control. This method of killing is a deliberate and violent method, which suggests pre-meditation and conscious choice, not uncontrollable passion. The provocative act would have been the fact that the accused came home to see his son kneeling naked, and I'm inclined to believe the accused and the neighbor that there was an argument despite the fact that DM said that they were not arguing. However, the accused does not mention an argument right before he says that she would have taken up the knife and held it at his son's neck. The Court believes that the argument that occurred, which the accused mentioned and that the neighbour heard, would have occurred prior when the accused came home and found his son naked; long before the vicious attack on the deceased persons began.

**[74]** Having found sufficient evidence to find a conviction, the court will now look at the case for the defense.

**[75]** The accused presented as an evasive witness. He had selective memory; for example, despite journeying to his mother's house from his apartment at least twice per month , he repeatedly said that he did not know how long such a journey would take ;he did not remember what happened immediately before the incident, but clarity came selectively thereafter for a short time for him to realize that he had hurt Nitzia and to make good his escape with his son. He could not recall what happened or how he cut Jennifer's throat,

but he remembered how he cut Nitzia minutes later and even how he was holding the knife; he did not recall smelling alcohol on Jennifer's breath that evening, but yet he told the court how intoxicated she was when she picked up the knife and put it at his son's throat.

**[76]** He was not in the presence of mind to recall exactly when he killed Jennifer; the drunkenness had not yet left', yet he said that in holding the knife at her throat he could not proceed to kill her because he knew it was wrong"; this runs contrary to his running narrative that he was not in his five senses at the time that he inflicted the fatal wound to Jennifer.

**[77]** The Court also noted that he could not account for the other injuries to the deceased persons; the accused man's version that he accidentally wounded the deceased victims, is not consistent with the injuries they received such as the gaping wound to their necks and the stab wound to the other parts of their bodies.

**[78]** This Court also considered that parts of the accused man's evidence were inconsistent with DM's evidence; for example, according to his son, Jennifer did not beat him. The accused, however, told us that his son told him that Jennifer had beaten him before putting him to kneel down. It is more likely that DM would have remembered if he had been beaten on that day; since he presented as an honest, forthright witness who remembered the horrific night vividly; the Court believes that he had not been beaten that night. The Court believes that the accused man may have lied about this to exaggerate Jennifer's actions that night; to make her actions seem more egregious and thereby deserving of the fate that was meted out to her.

**[79]** Another contradiction was that Jennifer did not have a knife that night. The accused told the Court that she had a knife which she held at his son's throat. His son said that she did not have a knife. The Court cannot see any reason that DM would lie to incriminate his father; rather, the expectation would be the opposite: that he would lie to save his father.

**[80]** Another major contradiction was that DM said that Nitzia was on her way back from the bathroom, when her throat was cut; the accused man told the Court that Nitzia jumped on his back. Again, for his honesty and the reason that the Court does not believe that he would lie to incriminate his father, the Court believes that the accused lied here to justify the fatal wound he inflicted on Nitzia; he could find no other justification for mortally wounding an innocent child.

**[81]** I also considered the fact that the accused man's caution statement omitted a critical element of his assertion in Court: his caution statement did not state that he was so intoxicated that he did not know what he was doing at the time he inflicted the injuries, or that he "blacked out" at any point, which was what he told the Court in his sworn evidence.

**[82]** Having admitted that what he said in the caution statement was true, the Court concluded that the accused was not so intoxicated when he committed the murders, that he did not know what he was doing.

**GOOD CHARACTER**

**[83]** Given that he gave sworn evidence, the court considered a good character direction. The law on good character direction is settled. In **Nevis Betancourt v The king**[4], the Court considered the rationale for a good character direction. The good character direction is relevant to the credibility of an accused person and to the issue of the likelihood or propensity that he would commit the offence in question. The standard direction should contain 2 limbs:

**[84]** The credibility direction, that is, that a person of good character is more likely to be truthful than one of bad character; and the propensity direction that such a person is less likely to

[4] *Nevis Betancourt v The King* [2024] CCJ 6 (AJ) BZ

commit a crime, especially one of the nature with which he is charged now. Considering the cogency of the prosecution's evidence, and the fact that the accused has previous convictions, a good character direction would not affect the final decision made.

**[85]** The Court next returned to the Crown's case and looked at the totality of the evidence. The Court is satisfied so that it is sure that Jennifer Archila and Nitzia Catzim are dead. The Court is satisfied so that it is sure that the deceased persons were killed by unlawful harm caused by the accused by stabbing them and sitting their throats. The court is satisfied so that it is sure that the accused intentionally killed the deceased persons. The Court is satisfied so that it is sure that the accused man's killing of the deceased persons was not justified, nor was it legally provoked.

**DISPOSITION**

**[86]** The court finds the accused guilty of the murders of Nitzia Catzim and Jennifer Archila as charged in the indictment. The matter is adjourned for a separate sentencing hearing in accordance with the guidance of the CCJ case of **Linton Pompey and the DPP [5].**

**POSTSCRIPT**

**[87]** This Court recommends ongoing counselling sessions for the minor witness DM. This recommendation is in accordance with Declaration 36 of the **Needham Point Declaration on Criminal Justice Reform**, to which Belize is a signatory. Declaration 36 outlines the importance of facilitating and enhancing victims, survivors and witness support services such as through adequate translation, interpretation, psychologists, psychiatrists and special measures.

**[88]** This is the Judgment of the Court.

Given this day of **December 2025**

[5] *Linton Pompey v The DPP* [2020] CCJ 7 (AJ) GY

Natalie Creary-Dixon, J
High Court Judge

By the Court Registrar