

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION- BELMOPAN

IN THE HIGH COURT OF JUSTICE

(CRIMINAL DIVISION)

INDICTMENT NO. C8 OF 2023 BETWEEN:

THE KING

And

RAHEEM VALENCIO

Before:

The Honourable Madame Natalie Creary-Dixon, J

Appearances:

Mrs. Cheryl-Lynn Vidal SC and Ms. Maria Santana, for the Prosecution

Mr. Arthur Saldivar, for the Accused

2025: July 8th, 9th, 29th

October 1st, 2nd, 15th

November 17th

December 16th

JUDGMENT

[1] **NATALIE CREARY-DIXON, J: Raheem Valencio** (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 shooting death of Jessie Escobar (hereinafter “the deceased ”) on the 5th September 2021, at the “Stop and Shop” establishment in the Branch Mouth area, Santa Familia ,Cayo District.

BACKGROUND

[2] The Prosecution alleges that at about 5:30pm on November 21st, 2021, the accused intentionally and without lawful justification, shot and killed civilian Jessie Escobar during a confrontation between Mr Escobar’s cousins and the police and soldiers on duty at the “Stop and Shop” establishment in the Branch Mouth area, Cayo District.

THE PROSECUTION’S CASE

JOSEPH CARILLO

[3] On the evening of September 5th, 2021, this witness along with the deceased and his other cousins, the deceased man’s spouse and three-year-old daughter, and a friend, stopped at the “Stop and Shop” establishment in Branch Mouth, Cayo District. Two (2) Belize Defence Soldiers, a private(the accused) and his supervisor as well as a police officer arrived on the scene soon after. Whilst the deceased and his spouse went inside the shop to purchase snacks for the deceased man’s three-year-old daughter, the witness stood outside the shop. An altercation developed between this witness, his cousin Jordelee and the police officer, who had told him to put on a mask. He said that the police was cursing and hit him in the face with a baton. The witness said he raised his left hand when the police attempted to hit his cousin also; it is at that point that the deceased came out of the shop and told ‘them’ to calm down. At that time, the witness had a bottle of Belkin beer in his hand, from which he had been

drinking. Jordelee was holding a plastic cup in one hand; so too was the deceased. No one else was speaking to the police or the soldiers.

The police officer was standing close to the deceased; he fired through the air; that was when the soldier pointed his rifle at the deceased and shot him. Before being shot, the deceased had put his hands in the air, as if in surrender. Just before he fired the shot, no one was saying anything to the soldier who shot the deceased. After that, the police was telling him, "next boxer".

He had not seen Jordelee move at all from where he was; he did not hear or see Jordelee threaten the police officer. He himself had moved only a little to the back at the time that the police hit him; he did not threaten the police or soldiers; he was only pointing at them and saying they are aggressive. When the deceased walked out of the shop, the soldier's gun was immediately pointed at him; no one was advancing towards the soldier at that point. He did not hear the deceased using any threatening words to the accused soldier. When the spouse of the deceased approached the soldier, he fired shots in the air.

- [4]** On Cross -examination, he admitted that the video didn't show the deceased raising his hands in surrender; he also admitted that the video showed that the deceased walked towards the soldier who had the gun pointed, even after he was told by the soldier to stop. He admitted that they had all been drinking that day, for about six (6) hours; however, he was not intoxicated.

Janine Pott

- [5]** The spouse of the deceased supported the evidence given by Joseph Carillo.

Sheryl Lee Lino

The forensic analyst who test fired the rifle assigned to the accused, found it to be in good working condition; she also provided information on the kill range of said rifle

(400 m) and the force needed to fire the weapon on the day in question (moderate to severe).

Corpl. Alexander Larry

Corpl Larry of the Belize Defence Force (“BDF”) was the armorer responsible for signing out weapons on the day of the incident. He recalled signing out an M4 carbine to the accused man on the day in question; he did not issue the accused with any non-lethal weapons for that day. He confirmed that BDF soldiers receive training in relation to weapons used in the BDF. He informed the Court that an M4 Carbine rifle has a kill range of 400 metre (“400m”), where 100 metre is the size of a football field. He went on to explain that this meant that when fired, anything within 400 m is an effective kill. According to the white card that soldiers should carry, the protocol is that a soldier is to keep his/her finger along the trigger guard unless his life or the life of his comrade or the life of a civilian is in danger.

Under cross-examination, he agreed that when an officer is being deployed for civilian duties, he does not get to choose the weapon he will carry. In answering the question asked by Counsel for the accused, this witness responded that, according to the white card, when an officer is in the field and his commander makes his weapon ready, the responsibility of the officer beneath him is **to wait for his command**. However, when under threat, “it depends on the situation; if his life is in imminent threat, then he can use his discretion.”

Sergeant Alejandro Rodriguez

The investigating officer also gave evidence on behalf of the Crown.

The following witness statements and documents were agreed and read into the record:

- i. Ermin Escobar identified the body of the deceased.
- ii. The postmortem report was tendered pursuant to Section 36 of the Evidence Act.

- iii. The cause of death was agreed to be hypovolemic shock, due to internal and external bleeding, due to vascular injuries, due to firearm injuries to the chest.
- iv. Filberto Pott took photographs of the crime scene and the deceased.
- v. William Wade- evidence of the crime scene investigator.
- vi. The report of crime scene technician Oscar Quiroz.
- vii. Eduardo Cano, the Justice of the Peace who witnesses the Notes of Interview, save and except for the sentence which indicated that the accused signed the document.

THE DEFENSE'S CASE

[6] The accused gave unsworn evidence that on September 5th, 2021, at about 7pm, he was at the “Stop and Shop” establishment located in the Santa Familia area, conducting a joint operation with his commanding officer Corporal Alcoser and PC Morales. The deceased, his spouse and child, along with his male cousin, arrived at the shop. The deceased greeted Corporal Alcoser (the accused man’s commander) before going into the shop with his spouse and daughter. His cousin remained at the entrance to the shop, where he was soon joined by another cousin. The deceased man’s cousin was told by the police to put on his mask; he did not fully comply as he pulled the mask under his chin. This led to a “conversation” between the individual and the police. Corporal Alcoser joined the “conversation”. Not long after, Corporal Alcoser jumped to the left in a defensive manner and cocked his rifle, causing the accused to do the same because of “believing and because of his training which showed that if your commander cocked his rifle or if one is under pressure or threat, the junior soldier-which he was, should make ready.”

He said he then proceeded to the front of the vehicle, which was parked in front of the shop, to move from directly beside his commander when the police fired a warning shot in the air. The accused said that he headed to the left side of the vehicle, when the deceased came out of the shop and was advancing towards the police; in

response, the accused said he stepped forward with his rifle raised and told the police to step back from the individuals.

In doing so, he said that the deceased, the same individual who had greeted the corporal, told the accused that he would “fuck him (the accused) up”. He said he and the police then took a couple steps back, when the deceased started to advance directly towards him. He said he then raised his hand in a stopping motion to tell him to stay back; he continued to advance towards the accused, in which the accused raised his hand again in a stopping motion. He then told the accused that he would take his rifle and kill him with it.

The accused said that he felt threatened and afraid for his life and the life of his commander. According to the accused, “the deceased approached less than a foot away from the nozzle of my rifle in which the police fired and instinctively I fired in the general direction of the individual whilst hopping a few steps backwards.” The police started shouting to the others “next boxer!” I continued to the left side of the shop where I lowered my rifle and saw an individual lying on the ground.’

Lt Corporal Lionel Oliviera

[7] This witness is a member of the Belize Defence Force and a Legal Officer focusing on policies and simulation training. His role is to conduct training from a legal perspective; this includes rules of engagement, a term that refers to the force’s governing doctrine that allows members to know how to operate with the civilian population, as well as when to open fire. The rules of engagement are outlined in the Belize Defence Force (Rules of Engagement in Peacetime) Regulations (“The Regulations”).

In response to the question “When a commanding officer on the field makes his/her weapon ready, what should the supporting officer/staff do?”, “the witness responded that “once the commanding officer gives a command to make ready-verbally or by his actions- that triggers the remaining members of the patrol to do the same.” That, he stated, is an automatic response due to training. “Cocking the gun” is acknowledged

as the sign of making the gun ready. There is a continuum, which transitions based on the level of the threat; it goes from the officer's presence, then it goes to verbal communication, verbal command; use of non-lethal means and then deadly means. It is situational. After watching the video of the incident, the witness responded that once the officer had fired the shot, 'we had already moved away from the officer's presence; the verbal communication was starting to occur and moving into verbal command. Shots fired is still a verbal command. The verbal command being given, the responsibility of the person holding the rifle then becomes "tricky", given that he has no non-lethal means of protecting himself, which would be the next stage of the continuum. He sees the civilian advancing towards the accused. The officer's next response, then boils down to the individual officer and whether or not they feel that their life is in danger of being harmed. "

Upon a perusal of the Regulations, he conceded that an officer may make his weapon ready no matter who else does so; and also, that the Regulations do not say that an officer has to make his weapon ready once his commander also does so. He informed that firing ranges are taught to soldiers in recruit training.

ANALYSIS

THE LAW: ELEMENTS OF THE OFFENCE OF MURDER

- [8]** 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 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."*

- [9]** This provision is supported by our Court of Appeal case of **Peter Augustine v R, Criminal Appeal No. 8 of 2001**:

“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.”

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

- i. Jessie Escobar is dead.
- ii. His death was caused by unlawful harm by the accused.
- iii. The defendant intended to kill the deceased.
- iv. There was no legal justification for the killing of the deceased.
- v. The defendant was not provoked into killing the deceased.

BURDEN OF PROOF

[11] The Court has directed itself that the burden of proving the elements of the offence of murder 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 is any reasonable doubt, the Court must acquit the accused.

[12] 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' 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.

[13] The Court has thoroughly assessed the evidence put forward by the prosecution and

the Defense to arrive at the verdict.

CREDIBILITY AND RELIABILITY OF CROWN WITNESSES

[14] The credibility of the main witnesses is especially important as it relates to any evidence not captured by the video evidence. The Crown's main witnesses -being Janine Pott and Joseph Carillo-presented as honest, forthright witnesses. They did not exaggerate the reality of that night, but rather recounted it in vivid, poignant details. The Court recalls that Mr Carillo gave evidence that was adverse to himself and his cousins(to include the deceased), when he admitted that they had been drinking for about six hours; this is not information for which he could have been challenged or contradicted by the video footage, yet he admitted it; this, to the Court, translates as an honest witness. The reliability of the witnesses on the scene was not in question given that they clearly saw the incident as it unfolded from start to finish, right in front of them.

[15] All of the Crown's witnesses responded to the questions asked of them unflinchingly. They were not discredited under cross-examination. The Court had no reason to disbelieve the evidence they gave.

DID THE EVIDENCE GIVEN PROVE THE ELEMENTS OF THE OFFENCE?

Element #1:

[16] Jessie Escobar is dead.

There is no dispute that Jessie Escobar is dead. This was confirmed by the evidence of the sister-in-law of the deceased who identified the body of Jessie Escobar at the postmortem. Secondly, Dr. Lloyd Ken who performed the postmortem confirmed the cause of death as hypovolemic shock due to gunshot wounds. Therefore, the Crown has proven that Jessie Escobar is dead.

Element #2

[17] His death was caused by unlawful harm by the accused.

The Court is required to consider:

- i. Whether the accused caused the harm; and
- ii. Whether the harm was unlawful/unjustified.

There is no dispute that the accused caused the harm. The accused has admitted to firing a shot “in the general direction of the deceased”. The video confirms that the accused man’s weapon was pointed at the deceased; he fired a shot at the deceased and immediately upon doing so the deceased fell to the ground, The Crown has proven this element of the offence.

Element #3

[18] The defendant intended to kill the deceased

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

[19] This Court inferred an intention to kill by considering the provisions of sections 5-9 of the Code. They will be analysed individually. The Court also inferred intention from all the evidence given in this case.

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 of his conduct.

Section 6 of the Code:

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

Section 9 of the Code

- [20]** According to this section, a court or jury, in determining whether a person has committed an offence shall ask the question whether the accused intended to produce a particular result by his conduct.
- [21]** Section 9 of the Code also outlines that in answering the questions above, 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 the evidence, drawing such inferences from the evidence as appear proper in the circumstances.
- [22]** So now, back to the question, 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? The Court concluded that the accused intended to produce the resulting death; he intended to kill the deceased.

This Court inferred an intention to kill by considering:

- (a) The location of the major injury: the chest area; where the major arteries are located, thus increasing the likelihood of death if one is shot in this area.
- (b) The instrument used to cause the injury -an M4 carbine rifle which has a kill range of 400m.
notably, the deceased was 3 feet away, which made death more than certain if he was shot with an M4 carbine rifle, ***in the chest, at such close range.***
- (c) The deceased died almost immediately.
- (d) The degree of force used was not slight.
- (e) There was no perceived threat to the life of the accused or his team or any civilian present.

The accused intended to kill Jessie Escobar.

Element #4

[23] That the harm was unlawful (without lawful justification)

The Court noted that the accused indicated in his case management form that he would be raising the defence of “inadvertence”. The Court accepted this as the defence of “accident”. Throughout the trial however, as evidenced specifically by the accused man’s unsworn evidence, the defence of inadvertence/accident was not pursued; there wasn’t sufficient - or any evidence - for this defence to be considered. The Court considered the statement of the accused that he fired out of fear, and instinctively; neither response supported a defense of accident or inadvertence.

The defense of provocation, although not raised, was considered by the Court given that the deceased kept advancing towards the accused and considering that the accused stated that the deceased told him he would take his gun and kill him with it. The Court considered that the actions of the deceased, coupled with a threat to kill the accused, did not meet the threshold for provocative conduct such that the matter ought to be reduced to manslaughter.

Our Court of Appeal in the case of Vildo Westby v R Criminal Appeal No 9 of 2020, is very helpful here. Bulkan JA. As he then was, outlined at paragraphs 37 and 36 that the defense of provocation:

[36] “ comprises: (i) an act or series of acts, (ii) which would cause a reasonable person to lose self-control, (iii) and actually causes the accused temporarily to lose his self-control, (iv) resulting in his retaliation against the provocateur¹. Further, as he proceeded to note, an intention to kill is not incompatible with this defence – provided that such intention arises

¹ Holmes v DPP [1946] 2 All ER 124

from the loss of self-control and not premeditation.² [37] This defense contains both subjective and objective elements. As to the former, the accused must have lost his self-control, and in deciding this, “evidence of any mental or other abnormality making it more or less likely that the defendant lost his self-control” is relevant and admissible.³ The objective element has two ingredients: firstly, an assessment of the gravity of the provocation, and secondly, measuring it against an external standard of self-control, that is to say, assessing whether the provocation was enough to make a reasonable man react as the accused did. Proportionality is thus a crucial aspect of this defence, in that there must be some correlation between the gravity of the provocation and the manner of retaliation.⁴”

This Court does not believe that the accused was faced with extreme provocation such that he lost his self-control; in fact, there is no evidence that he lost his self-control, and the reasons he gave for firing the fatal shot do not accord with a loss of self-control. In any event, his response to provocation of that nature would have been unreasonable; one would not expect that a reasonable soldier who had been trained to address hostile civilians would likely find this behaviour so extremely provocative that he would lose his self-control and proceed to kill the civilian. A claim of provocation would fail.

[24] In his unsworn statement, the accused raised the issue of self defense:

The accused said that he felt threatened and afraid for his life and the life of his commanders. According to the accused, ‘the deceased approached less than a foot away from the nozzle of my rifle in which the police fired and instinctively I fired in the general direction of the individual whilst hopping a few steps backwards.

[25] This Court hastens to add that a claim of self-defense is not at variance with an intention to kill; the two can co-exist.

² 14 Cleon Smith v R [2001] UKPC 27.

³ AG for Jersey v Holley [2005] UKPC 23 per Lord Nicholls at [5

⁴ DPP v Camplin [1978] 2 All ER 168 per Lord Diplock at 174.

[26] In considering the issue of self-defense, this Court considered the case of Stephen Williams v R in the Court of Appeal of Belize, A.D. 2023 Criminal Appeal No. 13 of 2019. In her dissenting judgment, President of the Court of Appeal The Honourable Madam Justice Hafiz-Bertram outlined that:

[48] 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).”

[27] According to the Code, to justify self-defence:

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

mentioned. ...

“36 (4) For the prevention of or for the defence of himself or of another person against any of the following crimes, a person may justify the use of necessary force or harm, extending in case of extreme necessity even to killing, namely – ... (c) Murder ...(k) Dangerous or grievous harm ...”

[28] The case of **Norman Shaw (2001) 59 WIR 115** from the Belize Court of Appeal is also instructive here. This case invited the trial judge to ask two essential questions:

1. Did the appellant honestly believe, or may he honestly have believed, that it was necessary to defend himself?
2. If so, and taking the circumstances and the danger as the appellant honestly believed them to be, was the amount of force which he used reasonable?”

The case explained the nature of the test and the considerations for the tribunal, at paragraph 19:

“it would be useful to clarify the elements of self-defence, particularly since considerable stress has been placed on the subjective nature of the defence. What seems to be often overlooked is that there is also an objective element to this defence, in that the response of the defendant to the attack or perceived attack must be “reasonable” in all the circumstances. This aspect was also reiterated in Norman Shaw, where Lord Bingham identified the two relevant questions to be asked, as follows: “(1) Did the appellant honestly believe, or may he honestly have believed, that it was necessary to defend himself? 17 (2) If so and taking the circumstances and the danger as the appellant honestly believed them to be, was the amount of force which he used reasonable?” 22 The first question clarifies that what matters in determining the need for defensive action is not only the actual situation, but also the facts as the defendant (honestly) believes them to be. However, the second question directs the tribunal of fact to determine the proportionality of the defendant’s response, and in judging the

reasonableness of the force used it is an objective standard which applies. Crucially, however, the second question need only be asked if the first question is answered in the affirmative.”

[28] According to the accused, he feared for his life because the deceased had said that he would take his gun from him and kill him with it; the deceased then kept advancing towards him, with a plastic cup in one hand and the other hand, an empty outstretched palm. The deceased came within 12 inches of the accused man; the accused had motioned to the deceased that he was to “stop” but the deceased advanced, nonetheless. Considering all these circumstances, could the accused have honestly believed that he needed to defend himself from this situation?

[29] To answer this question, the Court looked at what obtained on the scene; for example, what were the other civilians doing at the time that the deceased was advancing towards the accused? Were they also advancing? Could they be considered as threats to the accused and his team? The crown witnesses negate the statement of the accused that the deceased threatened to kill him, or that he said he would “fuck him up”. The video does not support the accused man’s version of the events; the video shows the deceased advancing with a cup in hand and nothing in the other. It is difficult to appreciate how the deceased would have been able to carry out his threat whilst holding a plastic cup in one hand and nothing in the other hand. The video also showed that none of the other civilians were approaching the accused when he fired the shot; the video does not show the deceased saying the words he is alleged to have uttered by the accused.

[30] Whilst the Court appreciated that the video did not support the accused man’s evidence of being confronted by an angry civilian, the Court also appreciated that the deceased, who was a heavy-set man, and a soldier, was advancing towards the accused even though he was told by the accused, to stop. In the mind of a young, (then) 21-year-old accused, would he think that his life was in danger and that he had to defend himself? From the video, the posture of the deceased does not support a finding that he had just uttered a threat and was about to carry it out; he is seen advancing-not boisterously-

with a cup in one hand and nothing in the other. He does not appear ready to disarm or hurt the accused; he exhibited no signs of one who had just issued a threat and was about to carry it out.

[31] The accused was in the much more advantageous position of being armed with a deadly weapon. As there is no evidence from the video or any of the witnesses to support the accused man's version of being confronted and threatened, the Court rejects this account of the accused.

[32] However, even if the Court had accepted that this was the accused man's honest belief, there is a second part of the equation to be answered in the affirmative if this defense is to succeed. The Court must consider whether, even if it was his honest belief that the deceased would have carried out his threat of disarming him and killing him with his own gun and he felt the need to defend himself, would the accused man's reaction have been deemed reasonable and commensurate with the threat?

[33] The accused said that he instinctively shot the deceased because the police fired a shot. Lt Olivera told the Court that it is the practice in the defense force for a junior officer to "make ready" his weapon, automatically, once his superior does the same. It goes without saying that this would be in the face of a hostile situation, facing hostile civilians.

[34] The Regulations govern the interaction between members of the Belize Defence Force and all civilians. It does not support the position that a soldier ought to make his weapon ready once his superior does so; rather, it specifically states at Rule 2(t), that an officer should "make his weapon ready *when ordered by his patrol commander; and when there is a likelihood of encountering hostile civilians*'...amongst other things. Noticeably, the accused was not ordered to make his weapon ready by his patrol commander; in fact, it was not even his patrol commander who opened fire initially; additionally, there is no evidence to support the conclusion that the civilians were hostile.

[35] The Court noted that ***even where civilians are hostile***, the Regulations prohibit firing

indiscriminately; an officer should: *(q) ensure that the force used to respond to a threat is proportional to the threat (a member of the Belize Defence Force **shall not fire at hostile civilians unless the threat of loss of life or serious injury is imminent**). (My emphasis).*

[36] Given that the accused asserted that he feared for his life and given that he reacted as one would to a hostile civilian, the Court was obligated to take an in-depth look at the accused man's defence, as well as the Regulations which guided his actions that day. The Court considered that even if such a practice existed and the accused was therefore labouring under the misinformation that he ought to have automatically made his weapon ready upon hearing another weapon being made ready, or, upon his commander making his own weapon ready, the Court noted that this practice would still require the officer to exercise discretion as to whether, if or when he should fire his weapon, having "made it ready"; this practice would still require the officer to make an assessment of the situation before firing. This was also confirmed by Corporal Larry who stated that "when under threat, it depends on the situation; if his life is in imminent threat, then he can use his discretion."

[37] On the day in question, the situation did not warrant the deceased being shot and killed; neither the deceased nor the other civilians posed a threat to the accused or the other officers. The response of the accused man was unreasonable.

[38] An analysis of whether the accused man's reaction was reasonable also requires the Court to consider the possible options open to the accused in the situation with which he was confronted.

[39] According to Lt Oliviera, when confronted with hostile civilians, *"there is a continuum, which transitions based on the level of the threat; it goes from the officer's presence, then it goes to verbal communication, verbal command; use of non-lethal means and then deadly means. It is situational. According to the video, once the officer fired a shot,*

we had already moved away from the officer's presence; the verbal communication was starting to occur and moving into verbal command. Shot fired is still a verbal command. The verbal command being given, the responsibility of the person holding the rifle then becomes "tricky", given that he has no non-lethal means of protecting himself, which would be the next stage of the continuum. He sees the civilian advancing towards the accused. The officer's next response, then boils down to the individual officer and whether or not they feel that their life is in danger of being harmed."

The Court also considered Regulations 2 (1) (n-z) which speak to "rules to be observed by soldiers when opening fire": (n) *when encountering an aggressive or provocative civilian, **warn the civilian of the possible results of his actions. (My emphasis).***

According to Lt Oliviera, the "warning shot from the police officer" would have been the verbal command/warning of the possible results of his action. This Court finds it unfortunate that the verbal command was replaced by a warning shot. There is no evidence that any of the officers on that day used actual words to give a verbal command; that might have served to control the situation and there might not have been a need for a warning shot at all.

[40] The court also paid attention to Regulation 2 (o):
(o) further to the warning referred to in paragraph (n), always attempt to disarm or disable the aggressive or provocative civilian if possible

This Court is of the view that this subsection highlights the stark reality that the civilians were unarmed. It supports the position then, that they ought not to be seen as "hostile civilians"; it would also mean that they ought not to have been dealt with as hostile civilians.

*[40] Of importance is Regulation 2 (p):
(p), an officer should "not fire warning shots over the heads of
civilians (the civilians may conclude that they were under attack, and they may respond in*

kind).”

If the accused was abiding by this section of the Regulations, then certainly he would have fired elsewhere but at the chest of the deceased, because this sub-section implores the officer to be very cautious when firing in the presence of civilians.

[41] The Regulations reiterate that an officer should only open fire when in danger of injury or loss of life:

“4(2) Every member of the Belize Defence Force may open fire against armed or hostile Civilians.

(a) When in danger of injury or loss of life.”

Given that the civilian was unarmed, the accused could have met the threat by shooting elsewhere. This is supported by the subsection that follows:

(r) fire observed warning shots in a safe area and direction, but not above the heads of civilians when the threat of loss of life or serious injury is imminent.

The Court observes that this subsection warns the officer to fire in a safe area and direction, **even where** there is a threat to life or serious injury. *“The general direction “of the deceased”, turned out to be in the chest of the deceased; this could hardly be considered “a safe area” as contemplated by the Regulations.*

Even where the civilian is hostile or aggressive, firing is a last resort; it is not the preferred means of addressing the situation; according to Regulation 2(s) *“if time and space permits, use other means of engaging an aggressive civilian, other than by lethal means.”*

[42] The Court accepts that it was most unfortunate and a colossal failure not to issue the accused with non-lethal means of engagement. The Court also accepts that the events unfolded rather quickly. That fateful night might have ended differently had that not

been the case. Nevertheless, this does not negate the fact that the accused ought to have been aware of the power imbalance between himself and the unarmed deceased. He ought to have been cognizant of the fact that he had no non-lethal means of engagement and hence he ought to act more cautiously.

[43] Conclusively, the Court appreciates that the events unfolded rapidly and there was limited time and space to respond; however, the Court is of the view that ,even if it was felt that the deceased was hostile, the reality was that he was an unarmed man facing a very powerful weapon; the onus was on the officer to respond cautiously; in addition, firing at his chest ought to have been the first response to a hostile civilian threatening the life of the accused and his team.

[44] The accused could have fired elsewhere as the policeman did, e.g. at the feet; he could have shouted a verbal command since his hand movements were not detected or obeyed; he could have continued hopping backwards ; he could have mixed the two: stepped backwards whilst giving a verbal warning to the deceased of the consequences of his actions. These actions are all supported by the Regulations. The truth is, hindsight is always 20/20, but it is also true that with authority comes responsibility; all officers had a responsibility that day, to preserve and protect against loss of lives; not only their own, but the lives of the civilians present.

[45] The Court is still at a loss as to why even a single shot was fired that day. The video - which presented a very clear picture of what happened that day - disclosed a situation that could have been diffused without a single shot being fired. With a ratio of three-armed men, to two unarmed youth, one man and his spouse and child -who were in the shop when the incident started-there was no need to escalate the situation to a warning shot.

[46] The Court also does not appreciate that the senior officers did not appear to do anything to diffuse the situation before it escalated into a fatal incident; especially since the deceased was known to the commanding officer.

Good character direction

[47] The Court considered the propensity limb of the good character direction since the accused gave unsworn evidence and has no prior convictions. However, having regard to the cogency of the prosecution's evidence, the good character of the accused does not affect the final decision made.

[48] 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 Jessie Escobar is dead. The Court is satisfied so that it is sure that the deceased was killed by unlawful harm caused by the accused, by shooting him. The Court is satisfied so that it is sure that the accused intentionally killed the deceased. The Court is satisfied so that it is sure that the accused man's killing of the deceased was not justified, nor was it legally provoked.

DISPOSITION

[49] The Court finds the accused guilty of the murder of Jessie Escobar as charged in the indictment. The matter is adjourned for a separate sentencing hearing in accordance with the guidance of the CCJ in Linton Pompey v DPP.⁵

POSTSCRIPT

[50] The Court supports consistent training of all soldiers and police officers on duty, in rules of engagement to be observed, when encountering all civilians.

⁵ Pompey v DPP, 2020

[51] In accordance with Declaration 36 of the Needham's Point Declaration which encourages the Courts to facilitate enhancement of victims/survivors and witness support services, through adequate psychologists and psychiatrists' services, the Court recommends that the child victim-the daughter of the deceased- and her mother and relatives who witnessed the incident, undergo counselling sessions to address any trauma resulting from this incident.

This is the Judgment of the Court.

Given this **16** day of **December 2025**

Natalie Creary-Dixon, J
High Court Judge

By the Court Registrar