IN THE COURT OF APPEAL OF BELIZE A.D. 2026

CRIMINAL APPEAL NO. 13 OF 2023

BETWEEN:

KAREEM MARTINEZ Appellant

AND

THE KING Respondent

Before:

The Hon. Mme. Louise Esther Blenman — Chief Justice
The Hon. Mme. Minnet Hafiz Bertram — President
The Hon. Mr. Peter I Foster, KC — Justice of Appeal

Appearances:

Mr. Bryan Neal for the Appellant
Mr. Javier Chan, Assistant Director of Public Prosecutions and
Ms. Maria Nembhard Santana, Crown Counsel, for the Respondent

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2026: March 17
June 11

JUDGMENT

Introduction

[1] **Hafiz Bertram, P.:** Mr. Kareem Martinez ('the Appellant') was convicted by Justice Moore ('the trial judge') sitting as a judge alone in the Southern District of the Supreme Court, on 21 April 2023 of the offence of manslaughter for the shooting death of Laddie Gillett ('Laddie'), a 14-year-old-minor. The Appellant was sentenced to 18 years' imprisonment. He appealed against his conviction.

[2] The case for the Crown was that on 14 July 2021, the Appellant who was then a Corporal of Police attached to the Placencia Sub Formation along with three other police officers responded to a 911 call from the security guard at the Placencia Beach Club Resort around 10:00 p.m. to investigate "suspicious persons". The Appellant and the three other police officers searched

around the Placencia Beach Club Resort premises for unknown suspects. Laddie of Chaa Creek Resort, San Ignacio Town and his best friend Thomas Palacio ('Thomas') were running North on the Placencia Beach towards the Chabil Mar Resort where they were both staying with family and attempting to reach there by 10:00 p.m. to avoid the COVID curfew then in force in Belize. Upon reaching through an alley at the corner of the premises of the Placencia Beach Club Resort, they encountered the team of police officers. Laddie and Thomas both turned around and started running back towards the direction they had come from when Laddie was shot to his back. The bullet exited his chest and was never found. A shell casing was found in the proximity of the scene. Thomas was detained for breach of the curfew and placed in the police mobile vehicle and taken to the Placencia Sub Formation. Laddie who was unresponsive was taken to the Placencia Poly Clinic. He was pronounced dead at 10.21 pm.

[3] The appeal challenges findings of fact made by the trial judge in the judge alone trial. The main contention is that the Appellant did not fire the fatal shot that killed the deceased. That he fired a warning shot in the air. The defence theory in the court below was that it was another police officer who shot the deceased.

[4] The Court heard the appeal on 17 March 2026 and reserved its decision. We now dismiss the appeal and our reasons are stated below.

The Prosecution's evidence

[5] The particulars of the indictment were that on 14 July 2021, the Appellant at Placencia Village, in the Stann Creek District, caused the death of Laddie Gillett by unlawful harm, by shooting him with a firearm. The prosecution presented evidence from 17 witnesses. The defence and the prosecution agreed for the statements of seven (7) witnesses to be read into the trial record as evidence, namely: Amy Miranda Faux, Emil Bradley, Dr. Sara Martinez Garcia, Jade Gayot, Sgt. Luis Rodriguez, Norman Leslie and Glenford Eiley. The witnesses who gave *viva voce* evidence were Scenes of Crime technician, Pablo Mai ('Mr. Mai'), Thomas, Devon Castillo ('Mr. Castillo'), security guard at the Placenia Beach Club Resort, SC Michael Miranda ('SC Miranda'), PC Isaiah Pop ('PC Pop'), and PC Claude Augustine ('PC Augustine'), Cpl Fermin Choco ('Cpl Choco'), Sgt Holly Vasquez ('Sgt Vasquez') the case investigator, Dr. Loyden Ken ('Dr. Ken') and Shyrlee Lino ('Ms. Lino') of the National Forensic Sciences Services ('NFSS') laboratory.

[6] PC Augustine was not a witness for the Prosecution initially but was called at the request of defence counsel. Also, PC Augustine and Ms Lino were recalled to give further evidence to assist the trial court. SC Miranda, PC Pop and PC Augustine and the Appellant were present on the scene along with Mr. Castillo, the security guard.

[7] Mr. Mai testified that he is a Crime Scene Technician and he processed the shooting scene where the incident occurred with Laddie. He conducted a search along with other police officers in the area and found a brass color spent casing. He labelled, photographed, collected and packaged the spent casing which was tendered as an exhibit. At about 25 yards away from the spent casing he found a digital camouflage facemask with an apparent blood stain on the ground which he labelled, photographed, collected and packaged. These items were handed over to Crime Scene Technician, Jeffrey Santos to transport to the NFSS Laboratory for analysis.

[8] Thomas testified that he visited Placencia Village and met his friend Laddie. They went to Chabil Mar Resort in Placencia. Later they met with friends Amy and Jade. Later Amy and Jade went back to their homes and he and Laddie then headed back to Chabil Mar Resort to sleep. At 10.00 pm they were on the alleyway that led to the beach. The plan was to go up the alley and walk on the beach to Chabil Mar. He and Laddie were walking along a fence towards the beach when they saw men in black, got scared, turned around and started to run. He testified that he was struck in the back with a hard blunt object. Then he heard a loud bang and he threw himself on the ground fearing he would be shot. After that, police officers stood over him with a flashlight and he was kicked in the ribs and held at gunpoint. Later he was handcuffed and taken to the Placencia Police Station.

[9] In cross-examination, he was unshaken. He denied that he, Laddie and a female tried to illegally enter upon the porch of the Beach Club. Also, that the security guard at the Club told them that the Club is private property. He also denied that he and Laddie rushed out of some bushes and started running in a violent manner towards the police officers. He further denied hearing the men in black say "Stop, police." The trial judge asked Thomas several clarification questions. He replied that he realised it was a gunshot he heard and he saw Laddie motionless about 15 feet from him.

[10] Mr. Castillo is a security officer at Placencia Beach Club. He testified that on 14 July, 2021, around 9:25 p.m. he saw three individuals, two males and one female, on the beach looking suspicious to his knowledge. They attempted to make their way on the Beach Club compound but not the

property. He said to them "Hey, this is a private property you guys shouldn't be here." The three individuals sped off and the he called the police for assistance. Four police officers responded and he recognised three of them, PC Augustine, PC Miranda and Cpl Kareem Martinez, the Appellant. He then went back to his routine patrol when he heard a loud blast which sounded like a gunshot. He then went to the location where he left the police officers. He observed one person on the ground and the other standing with the police officers. He assisted a police officer to take the person on the ground to the police mobile vehicle. Mr. Castillo further testified that he did not have a firearm on him.

[11] In cross-examination, he said he felt endangered that night when he saw the persons and as such called the police officers. When the police arrived the persons were away from the property.

[12] SC Miranda testified that on 14 July 2021, he was attached to Placencia Sub Formation. At about 10.15 p.m. he went with the Appellant, PC Augustine and PC Pop to check a report at the Maya Beach Club. They conducted searches in the area and saw two male persons running. Then he heard someone say "Stop." After that he heard a loud bang. He and the Security Guard picked up one person from the ground (Thomas) and escorted him to the police mobile vehicle. After that, he assisted PC Pop to pick up another person on the ground and he was taken to the Poly Clinic.

[13] In cross-examination, he testified that when he reached the Beach Club he saw two male persons running off the beach towards the roadside. This was off a dark area towards the road. When shown his statement by defence counsel, which was given to the police, he testified that he observed two male persons rushing out of some bushes and started running. He accepted that they were running away from them. Further, he testified that one of the police officers said "Stop". But he did not see anyone fire a weapon that night.

[14] He further testified that he did not carry a firearm on the evening of the incident. Also, he was not in a "scuffle" with either of the two individuals they encountered that evening nor did he see any of the other police in a "scuffle" with either of the two persons. He confirmed he heard a loud bang which sounded like a gunshot. He testified that after he heard the loud bang he saw one of the persons fall and was not moving. That person, Laddie was taken to the Poly Clinic. The other person was detained for breach of curfew.

[15] Cpl Choco testified that he is attached to the Placencia Crimes Investigation Unit. On the night of the incident he received information about a shooting. He then contacted his Deputy Mr. Eloy Coc and the Scenes of Crime Technician Pablo Mai. He went to the Poly clinic where he saw the victim, Laddie on a bed and he was motionless. Dr. Martinez informed him that Laddie was pronounced dead at 10:21 pm. He proceeded to do physical checks on the body of the victim where he observed an apparent single gunshot wound to the left side of his back and also an open wound to the left side of his chest. He learnt the male individual's name to be Laddie Gillett, a 14 year-old-minor of Chaa Creek Resort, San Ignacio Town.

[16] At 11.45 p.m. that night, he proceeded to the Placencia Police Station where he met Cpl Martinez, the Appellant, at the Station and requested him to hand over the firearm that he had in his possession and he checked the firearm. He testified that it is black in color Bersa brand, 9mm pistol with serial number G50009 containing 9 mm ammunition which he removed from the magazine. He kept the firearm in his office and the next morning the Appellant was summoned to the Placencia Police Station where he was informed that the firearm which was retrieved from him the night before will be packaged and sealed in his presence. At the time, Scenes of Crime technician Mr. Mai was present and he photographed the process of the packaging of the firearm. That firearm was handed over the next day to the NFSS Laboratory for analysis along with ammunition.

Recall of Cpl Choco in relation to the shell casing and sketch plan

[17] Cpl Choco was recalled to give evidence as to whether he went on the scene of the crime on 14 July 2021. He testified that himself, Mr. Mai, the Scenes of Crime Technician and the Appellant went to the Placencia Beach Club at the shooting scene. While on the scene, himself and his Deputy Detective Constable Eloy Cobb along with Mr Mai canvassed the area where the shooting occurred and during that process, a 9 millimeter expended shell, Aguila brand was found on the beach at about 11.45 p.m. He testified that they also found droplets of suspected blood and also a black and blue in color digital face mask. Mr. Mai labeled that expended shell as number one.

[18] He further testified that he did a rough sketch plan of his findings in respect of the shell casing, the droplets of suspected blood, and also the black and blue digital face mask. He said he started his measurements from the expended shell casing which was found on the beach to the droplets of blood and also to the digital mask. The sketch plan was drawn on the 15 of July 12:32 a.m. It

was admitted into evidence and marked as Exhibit "FC2". This sketch was useful to the trial judge when she visited the locus.

[19] Ms. Lino is a firearms examiner from the NFSS Laboratory. She testified about her analysis and conclusions regarding the exhibits submitted to the Laboratory in this case. She concluded that the pistol which was an exhibit in the case was a Bersa brand, Thunder 9 pro model, 9mm 5 caliber pistol with serial number G50009. She also examined nine rounds of ammunition which was in the gun box and concluded that five of the nine rounds were Aguila brand 9 millimeter caliber, three of the rounds were S&B brand 9 by 19 caliber, and the last round was a CBC brand 9 millimeter Luger caliber.

[20] Ms. Lino further testified that she test fired the pistol submitted using the provided magazine. This was done using ammunition from the laboratory and also from using one of the rounds that was submitted with the case. She said that:

> "After conducting the test firing in the firing range at the laboratory, I then collected the test fired bullets and cartridge cases. These test fired bullets and cartridge cases were then used for comparison analysis. Since there was no bullet submitted with this case, I only focused on examining the test fired cartridge cases to the submitted cartridge case, the Aguila brand expended cartridge case. .... After my comparison analysis was done, I found that the submitted cartridge case was fired from the submitted Bersa brand pistol. This was based on the similarities seen and the sufficient agreement of characteristics observed."

[21] In cross-examination, there was a question by defence counsel as to whether it was the pistol in evidence that fired upon Laddie,

> Q. Ms. Lino, you took special effort to mention that a slug or a bullet for a projectile was not submitted to you in this case and therefore you would not have examined it, none was submitted. The question is now in your conclusion that the submitted cartridge case was fired from the submitted weapon, that's your conclusion that the submitted cartridge case was in fact fired from the submitted weapon, but that does not prove, you will agree that that does not prove that that weapon was the weapon that was fired upon Laddie Gillett?
>
> A. I cannot say base on just cartridge cases alone.
>
> .....
>
> Yes, the expended cartridge case was indeed fired by the Bersa brand pistol based on the abundance of general characteristics as well as the individual characteristic which I observed under the microscope.

[22] Ms. Lino was recalled to give evidence because of what was stated by the accused in his unsworn statement. The Court needed assistance in relation to trajectory of bullets. The question asked by the Court is:

> Q. " ..... for someone to fire a firearm into the air. Is it possible for that bullet to then hit someone in their back as they are standing up, walking, running but not laying flat, standing up?
>
> A. If a gun is pointed upwards and fired in the air the bullet can travel several feet up but may be affected by gravity after a certain point and would allow the bullet to fall back to the earth.... After a certain point and the gravity would cause the bullet to fall back to the earth. Factors affecting it could be the position the person was firing the firearm and several environmental factors or climate differences which would affect the trajectory, for instance the wind. Studies have shown that a bullet that travels back downward after being fired in the air has a higher possibility of striking someone on the upper part of the body. And there is also a chance for the lower portion of the body to be hit as well.
>
> Court: I'm trying to understand how it coming down will hit you in the back ....
>
> A. Well, I can't speak to the angles but that would be a possibility for the bullet to hit someone in the back region..... I can only say that generally the bullet would hit victims on the upper extremities of the body.

[23] Mr. Selgado, the defence counsel also asked Ms. Lino questions and stated he is an expert in firearms though not giving evidence,

> Counsel: A person standing at six feet tall maximum height, six feet tall will not be hit by a firer who aims 10 feet off the ground and fires his weapon in that line of - - Victim at 90 feet.
>
> A. At 90 feet. I don't believe so.
>
> Counsel: Ms. Lino, if two firers holding a 9 millimeter pistol each fire simultaneously on a beach where the winds are gusty to 15 knots would it be possible for the explosion to sound as one? Two firers fire simultaneously where the winds are gusty 10 to 15 knots is it possible that the explosion will sound as one explosion rather than two?
>
> A. I can't give the likelihood. It's possible but I can't say how likely.
>
> Counsel: Well, it is possible.
>
> A. It is possible, yes.

[24] PC Augustine testified at trial at the request of the defence. He testified that he had no firearm at the scene and neither did he discharge a firearm during the incident. He denied that he had a 9

millimeter pistol on him when he went with Corporal Martinez and others to the scene of the incident at the Placencia Beach Club.

[25] He accepted that he gave a statement to the police about the incident and stated that he observed two male persons running in a violent way towards him and the other officers. He said that Miranda and the Security Guard caught up with one of the young men (Palacio) and after that he heard a loud bang whilst at the side of the building. The Appellant and Pop went over to render aid to Laddie, the other person on the ground. Further, he had not heard anyone at the scene say "Police Stop" and he did not recall saying so in his police statement. He recalled saying that after he was shown his police statement.

[26] He was recalled as a witness because defence counsel for the Accused was informed that PC Augustine told the police tribunal that he had signed for a firearm on the day of the incident. When he was recalled, PC Augustine said he would change his testimony. He said he carried a licensed personal firearm with him and not a police issued firearm. It was a CC Black 9 millimeter. He was then confronted with the fact that he had signed out a Department firearm, a 9 millimeter pistol with serial number AVNP236. He denied that the log book had his signature to sign out the weapon and he denied taking the police issued weapon to the scene. When confronted with his police statement he admitted that he signed and handed back the department firearm at 11:30 p.m. with the 10 rounds of ammunition. However, he denied taking the firearm to the scene. He said he left it at the station.

[27] PC Augustine disagreed with defence counsel that he fired his personal 9 millimeter pistol when he responded to the call for assistance.

The unsworn statement of the accused

[28] Mr. Martinez gave an unsworn statement. He said:

> "My name is Kareem Martinez. In respect to the matter before hand I must start by saying on the 14th of July, 2021, I was a Corporal of Police attached to the Placencia Police Station. Shortly after 9:45 p.m. whilst at Maya Beach Precinct, I received information of suspected persons on the beach at Placencia Beach Club and we were informed that one of the individuals - - I was informed that one of the individuals had what appears to be a firearm. .....Shortly after, we arrived at Placencia Beach Club where whilst there we met Devon Augustine also known to me as

"Danger."... Castillo also known to me as "Danger" who explained to us that there were a group of persons on the beach attempting to enter the deck of the Placencia Beach Club. However, the dog barked at them. He stated to them "Weh unu di do ya, this da private property." .... I asked if any of the male person was in possession of a firearm and he said he believe so. He then showed us the direction that the male persons went and we then proceeded to the area that led us to a fence beside the Placencia Beach Club close to the beach. That would be myself, PC Augustine, PC Pop, SC Miranda and the security guard. We searched along the fence on the beach side and found nothing unusual. We then turned around to proceed back to the Placencia Beach Club. Whilst approaching the end of the fence, the wooden fence, two male persons came running towards us aggressively. Upon noticing us the male persons then rushed back where they were immediately followed by the security guard and SC Miranda behind the first individual and PC Augustine and PC Pop behind the other. Whilst running I remained on the beach standing and walking to try to see what exactly was happening. I noticed PC Pop and one of the individuals got in a slight scuffle. `.....

And I saw a shining object in the hands of this person. I then turned away from the individual that was running, removed my police issued firearm and fired a shot into the air. That would be 10 feet off the ground into the air. .... I remained on the beach shortly after I was called by PC Pop. .... I then made my way over to PC Pop who was standing about 90 feet away from me. Upon reaching to where PC Pop was he was on his knees and he had an individual in his hand... I then asked him if the male person that he was holding was hurt and he said he didn't know..... I asked him to check. Whilst doing so I went over to the other group whereby another male person was on the ground also and PC Miranda and the security was around him. I removed that person and asked PC Miranda to escort him to the mobile and also asked PC Augustine to get the mobile. .... Was placed in the mobile and one was transported to the Placencia Police Station. Whilst on our way we called the diarist to inform her that we have an injured person on board the police vehicle to contact the Polyclinic. Which she did. And the other male person was transported to the Placencia Poly Clinic where shortly after arrival at the Placencia Poly Clinic he was pronounced dead by a doctor at that location. I then returned to the Placencia Police Station to wait for the OC of Placencia Police Station. ... The OC arrived and also Corporal Fermin Choco where Corporal Choco asked me to accompany him to the scene of the incident. We then proceeded to Placencia Beach Club, myself PC Choco and PC Cobb. .... And shortly after Corporal Choco asked me to leave and return to the station to write a report which I did. That's all."

The findings of the trial judge

[29] The trial judge reviewed the Prosecution's evidence and felt sure that each element in the offence of manslaughter had been proven. That is, Laddie Gillet is dead and that he died of harm and it was the accused that caused the harm to the deceased when he shot him in the back. The trial judge was also sure that when the Appellant shot the deceased he had no lawful justification to do so.

[30] The trial judge considered the case for the Prosecution, then the defence and his witness Irene Augustine, and later reverted back to the Prosecution. In assessing the unsworn statement of the Appellant, the trial judge gave it some weight and accepted portions of it. She did not give it great weight because she did not believe significant aspects of what the accused stated. Further, his unsworn statement differed from his Police Station Interview.

[31] The trial judge analysed the evidence and particularly Ms. Lino's testimony and concluded that "I do not believe the accused discharged his pistol in the air at all. I believe he shot towards the deceased and struck him in the back." Although the trial judge did not find the Appellant truthful in his unsworn statement, she did not convict him on that basis as he had nothing to prove. It was not her disbelief in the denials of the accused that lead her to convict him. It was her acceptance of the prosecution's evidence that made her feel sure of the guilt of the Appellant.

Grounds of Appeal

[32] The Appellant filed 8 grounds of appeal,

1. The Appellant's conviction is unsafe and cannot be supported having regard to the evidence and should be quashed.

2. The Appellant's conviction is unsafe because the prosecution failed to negative reasonable alternative explanations consistent with the Appellant's innocence in that at least one officer lied about being armed. None of the other weapons nor the officers hands were tested and the crime scene was left open to contamination and manipulation.

3. The Trial Judge misdirected herself by failing to adequately consider serious and material investigative deficiencies in the prosecution's case.

4. The Trial Judge failed to properly direct herself on the effect of material falsehood by a key eyewitness namely PC Augustine since his lie related to a material issue i.e. the presence of another firearm at the scene.

5. The prosecution of the Appellant amounted to unfair and unequal treatment before the law in that there were multiple officers present and no testing was done to exclude them from prosecution and the investigation was one-sided and unfair.

6. The Appellant was denied a right to a fair trial in that the learned trial judge descended into the arena and asked questions which tended to cure deficiencies in the prosecution's evidence and in the investigation and made conclusions adverse to the Appellant based on those questions.

7. The Trial Judge misdirected herself by placing the evidential burden of proof on the Appellant and treated his admission of the firing in the air as conclusive of his guilt.

8. The cumulative effect of investigative files, material witness dishonestly, absence of forensic testing, and failure to exclude alternative shooters renders the Appellant's conviction unsafe.

[33] The issues to be considered from the eight grounds in our view are the following:

(i) Whether the Appellant's conviction is unsafe and cannot be supported having regard to the evidence and should be quashed.

(ii) Whether the Prosecution negatived the existence of an alternative shooter;

(iii) Whether the Appellant was denied a right to a fair trial in that the learned trial judge descended into the arena to cure deficiencies in the Prosecution's case;

(iv) Whether the trial judge misdirected herself by placing the evidential burden of proof on the Appellant and treated his admission of the firing in the air as conclusive of his guilt.

Whether the Appellant's conviction is unsafe and cannot be supported having regard to the evidence.

[34] The Appellant under his ground 1 stated that the Appellant's conviction is unsafe and cannot be supported having regard to the evidence and should be quashed. From grounds 2 to 5 he referred to several reasons which will be considered under the general ground as to the safety of the conviction.

[35] This was a judge alone trial and the trial judge under the heading of 'Burden and Standard of Proof" at paragraphs [7] and [8] reminded herself that as she was sitting as a judge alone in the case, she was both the trier of fact and judge of the law. She directed herself that it was the Prosecution that has the burden of proof in the case and that the Appellant has nothing to prove. Further, that the Prosecution has to prove each element of the offence of manslaughter by providing her with evidence of such a quality that she can feel sure of the elements of the offence.

[36] The Prosecution had to prove four elements of the offence of manslaughter and the judge directed herself that in order for her to convict the Appellant of manslaughter, they were required to prove the elements so that she could feel sure of each one of them, namely: (1) that Laddie is dead, (2) that he died of harm, (3) that the Appellant caused the harm that resulted in the death of Laddie and (4) when the Appellant caused the death of Laddie he had no lawful justification to do so. The third element was challenged by the Appellant as according to his unsworn statement he shot into the air behind him and not towards the direction where Laddie and Thomas were running.

[37] The Prosecution witnesses included the three police officers who were present on the scene of the shooting along with the Appellant. The Security Guard, Mr. Castillo who made the call to the Placencia Police Station that there were suspicious persons around the area was also present on the scene as found by the trial judge. After the shooting, there were investigators and crime scene technicians who collected one expended shell casing close to the scene of the shooting. The forensic analysis by Ms. Lino matched that shell casing to the Appellant's gun. The judge considered all this evidence including the medical evidence which showed that Laddie was shot in the back and the bullet exited through his chest causing his death. That bullet was never found by the investigators. The trial judge also considered the case for the defence and his witness before reverting to the case of the Prosecution. She accepted the case for the Prosecution. She did not believe the Appellant's version as to how the shooting occurred that he shot in the air behind him and not in the direction where the two persons were running.

[38] This Court is satisfied that the trial judge approached her findings of facts as shown in **Salazar v R**[1] where the CCJ gave the following guidance,

> "As a rule the judge will consider the prosecution's evidence first. If that evidence seems strong enough to carry a conviction, the judge will consider the evidence of the defence. The judge will then look at the totality of the evidence to reach a final decision. It is there where the intercommunication and overlapping take place. It is after this polymorphic process that the judge needs to arrange his or her judgment in a logical order which will not always be able to reflect the complicated thinking process."

[39] The trial judge in a very detailed judgment did not shy away from criticising the police officers who gave evidence for the Prosecution. It was obvious that none of the three Officers present on the scene wanted to implicate the Appellant. All three of them testified that they heard the word 'stop' but could not say who said so. Also, that they heard **one gun shot** near them but could not say who did the shooting. At paragraph [23] the trial judge said "*I was left with the inescapable impression that each of the officers who testified for the Crown were attempting to distance themselves from possible wrongdoing, trying to implicate the accused as little as possible, and attempting to conceal their general conduct at the scene, which was less than exemplary."*

[40] At the end of the Prosecution's case, the trial judge was sure that it was the Appellant who shot Laddie. The evidence she considered for this element as to who shot Laddie was from Police Officers, PC Miranda, PC Pop, and PC Augustine who was on the scene and was called by the Defence, Thomas who was with Laddie, Crime Scene Technician Cpl Choco, and Ms Lino the firearms examiner.

Finding of facts from the evidence of three officers on the scene of shooting

[41] The trial judge accepted certain aspects of SC Miranda's evidence though he performed poorly as a witness. She accepted that SC Miranda who had a firearm on him did not discharge his firearm at any point during the incident. Further, the trial judge believed his evidence that there was no scuffle with the police officers, the security guard and either Laddie or Thomas. Also, she found his evidence credible that neither Thomas nor Laddie had anything in their hands as they ran away. Further, the

[1] [2019] CCJ 15 (AJ) [35]

trial judge found that he was credible when he testified that he heard 'one loud bang' during the incident.

[42] The finding of facts which the trial judge found credible from PC Pop's evidence was that he did not carry a firearm that evening and that he was not in a scuffle with Laddie or Thomas. Further, he did not see any of the other police in a "scuffle" with either of the two persons. Also, he too heard one shot but did not say who fired their gun. The trial judge expressed her dissatisfaction with his evidence although he confirmed certain key aspects of the evidence but "overall was less than helpful about the events of that night." The trial judge found it difficult to accept PC Pop's evidence that he could not tell from which direction the shot came. However, she stated that the version PC Pop told is consistent with the other police witnesses.

[43] The trial judge found that PC Augustine who was a very deceptive witness carried a firearm on the scene but that did not lead her to to conclude that he fired his gun that evening on the beach or that he shot the deceased, Laddie. The trial judge accepted that PC Augustine lied about not having a firearm but her finding was that he did not discharge the firearm.

[44] The findings of facts in summary relevant to the appeal from the three officers on the scene were that SC Miranda who had a firearm did not discharge it. PC Pop did not have a firearm. PC Augustine had a firearm but did not discharge it. All three officers heard only one shot.

[45] The Appellant contended that (i) his conviction is unsafe because the prosecution failed to negative reasonable alternative explanations consistent with the Appellant's innocence in that at least one officer lied about being armed and (ii) the trial judge failed to properly direct herself on the effect of material falsehood by a key eyewitness namely PC Augustine since his lie related to a material issue, that is, the presence of another firearm at the scene.

[46] We disagree. The trial judge addressed PC Augustine's lies in her judgment about not having a firearm. She found as a matter of fact that though he lied about having a firearm, he did not discharge it. The Court having reviewed the evidence in totality including that one shot was fired has no reason to interfere with the trial judge's finding of facts that none of the officers discharged a firearm although two of the three had firearms.

[47] The Appellant also contended that (i) None of the other weapons nor the officers hands were tested and the crime scene was left open to contamination and manipulation and (ii) The prosecution of the Appellant amounted to unfair and unequal treatment before the law in that there were multiple officers present and no testing was done to exclude them from prosecution and the investigation was one-sided and unfair.

[48] In our view, there was no miscarriage of justice or failure by the trial judge to consider that no other weapon was tested or that the other officers hands were not tested. In **Salazar** the CCJ stated the following in relation to the issue of directions to the tribunal of fact:

> "Equally, a judge sitting alone and without a jury is under no duty to "instruct", "direct" or "remind" him or herself concerning every legal principle or the handling of evidence. This is in fact language that belongs to a jury trial (with lay jurors) and not to a bench trial before a professional judge where the procedural dynamics are quite different … **As long as it is clear that in such a trial the essential issues of the case have been correctly addressed in a guilty verdict, leaving no room for serious doubts to emerge, the judgment will stand.** (emphasis added)."

[49] The trial judge considered the evidence that she had before her and found that only one shot was fired and it was the Appellant who fired that one shot, a shot he admitted to firing although he said it was in the air. We see no reason to interfere with that finding that one shot was fired which is supported by the evidence. In our view, the trial judge correctly addressed the essential issues in the case against the Appellant to find him guilty as charged.

One shell casing found on scene matched Appellant's gun

[50] The Appellant contended that the trial Judge misdirected herself by failing to adequately consider serious and material investigative deficiencies in the prosecution's case. He submitted there were gaps in the evidence that makes the conviction unsafe. No projectile or bullet slug was recovered. No proper ballistic evidence was put before the court. That Ms. Lino admitted she had only limited knowledge of angles and the way bullets travelled that would allow her to give evidence capable to support a conviction. In addition, Ms Lino said that even though the shell casing matching the Appellant's gun was recovered from the scene, it did not lead to the inexorable conclusion that his gun fired the fatal shot.

[51] The evidence analysed by the trial judge in relation to the shell casing were from Cpl Choco and Ms. Lino. Cpl Choco testified that he went to the Placencia Beach Club at the shooting scene with Mr. Mai, the Scenes of Crime Technician and the Appellant. While on the scene, himself and his Deputy Detective Constable Eloy Cobb along with Mr Mai canvassed the area where the shooting occurred and during that process, a 9 millimeter expended shell, Aguila brand was found on the beach at about 11.45

p.m. Later, Cpl Choco confiscated a firearm from the Appellant along with its magazine and ammunition and placed it in a gun box which he sealed and labelled. The weapon bore serial number G50009 and was a Bersa brand 9mm pistol. The gun box and its contents were taken by him to the NFSS laboratory for analysis. Cpl Choco's evidence assisted the trial judge in understanding the events surrounding the incident. He drew a sketch of the scene which was admitted into evidence and became very useful to the trial judge when she visited the locus.

[52] Ms. Lino the firearms examiner gave evidence about her findings on the analysis of the firearm and the shell casing. The conclusion was that the Bersa 9 mm pistol discharged the ammunition that left the shell casing. Her findings were, "…based on the abundance of general characteristics as well as the individual characteristics which I observed under the microscope."

[53] Mr. Neal argued that Ms. Lino's evidence did not lead to the inexorable conclusion that the Appellant's gun fired the fatal shot. It can be seen from the judgment of the trial judge that Ms. Lino's evidence was not considered in isolation. She was not present when that shot was fired and could speak only of her analysis which is that the one casing found on the scene matched the Appellant's weapon. As shown above, trial judge found on the evidence that only one gun shot was heard or fired and one shell casing was found. In the view of the Court, the combination of evidence from Cpl Choco and Ms. Lino along with the evidence from the other police officers on the scene were sufficient for the trial judge to conclude that it was the Appellant's gun that fired the fatal shot.

Medical evidence and visit to locus support Laddie's wound was 'distant range' wound

[54] The trial judge also considered the medical evidence from Dr. Ken who testified about the characteristics of the one gunshot wound which he described as a "distant range" wound. He said that a "distant range" wound is classified as more than 2 feet or 18 to 24 inches between the shooter and the target. The trial judge then discussed her visit to the locus, the distance where the shell casing was found and where the deceased fell and concluded Laddie's wound was a "distant range" wound. It was a finding which is supported by the evidence before the trial judge as Laddie was not shot at close range.

Conclusion on the third element by the trial judge.

[55] The Court having reviewed the evidence and findings of the trial judge agrees with her conclusion at [35] on the third element that the Appellant shot Laddie. The trial judge found that "Here, I have no reason to reject Ms Lino's findings that the empty shell casing found at the scene is consistent with other shell

casings from test firing the accused's weapon. The witness' evidence was of such a quality as to leave me without a doubt that the firearm assigned to the accused by the Department was discharged at the scene." The trial judge also noted that no other casing was found at the scene. Further, the trial also accepted the combined evidence of PC Miranda, PC Pop, PC Augustine and Devon Castillo "with respect to them hearing only one shot and none of them discharging a firearm." We see no reason to interfere with this finding by the trial judge which is supported by the totality of the evidence which the trial judge found to be credible.

Unlawful harm

[56] The trial judge then went on to consider the element of unlawful harm since she found that the Appellant shot the deceased and caused his death. To determine whether the Appellant was lawfully justified in doing so she considered all the circumstances surrounding the incident, that is, what happened before, during, and after the shooting. She advised herself on the statutory law on justification, that is, section 45 of the Criminal Code which is entitled "Justifiable Force and Harm." After that, she considered the evidence of Thomas who was with Laddie when he was shot. She also considered the evidence of Amy and Jade, two other teenage friends of Laddie.

[57] Thomas was found by the trial judge to be a thoroughly credible witness. He testified that himself, Laddie, Amy and Jade were socialising on and around the beach in Placencia. He and Laddie were walking along a fence towards the beach when they saw men in black, got scared, turned around and started to run. He testified that he was struck in the back with a hard blunt object. Then he heard a loud bang and he threw himself on the ground fearing he would be shot. After that, police officers stood over him with a flashlight and he was kicked in the ribs and held at gunpoint. Later he was handcuffed and taken to the Placencia Police Station for breach of the Covid curfew.

[58] In cross-examination, he was unshaken. He denied that he, Laddie and a female tried to illegally enter upon the porch of the Beach Club. Also, that the Security Guard at the Club told them this is private property. He also denied that he and Laddie rushed out of some bushes and start running in a violent manner towards the police. He also denied hearing the men in black say 'Stop, police.' The trial judge said Thomas was vigorously cross examined by the defence counsel and did not budge from his evidence. But, as any witness, he was not flawless and had memory deficits at points, which he admitted. The errors were however, immaterial as stated by the trial judge.

[59] The trial judge in assessing Thomas' evidence doubted anything at all was said such as 'Police stop' to indicate to Laddie and Thomas that the men they encountered were police. He knew they were police officers after the shooting. She also believed his evidence that there was no scuffle with the police officers which was confirmed by other Prosecution witnesses.

[60] The evidence of Amy and Jade confirmed that Thomas and Laddie were socialising with them on the beach. Amy's statement confirmed that Jade's residence is near the beach club and that she, Thomas and Laddie had passed near the club twice, that a dog barked and frightened her the second time which according to the trial judge added context to the events. Her statement also confirms part of the security guard's testimony that the three passed back and forth in front of the club and that the dog barked.

[61] Jade's statement was that she had saved birthday cake to share with her friends. Thomas, Laddie, Amy and her ate it while sitting on the beach. They were together 10 or 15 minutes before the curfew and parted ways before the curfew. She confirmed that Laddie and Thomas checked that Amy was alright and on her way home. Jade said Thomas and Laddie passed through the Beach Club area which she notes was a short distance to the Chabil Mar resort. Jade's statement also said that "shortly when the boys left from around my house I heard what sounds like a pop shot…" Jade's evidence, like Amy's, assisted the trial judge to explain what Laddie was doing almost immediately before the shooting.

[62] The trial judge also found Castillo's evidence to be crucial as his calls to the police began the chain of events leading to the shooting. He told the police he saw three individuals, two males and one female, on the beach looking suspicious to his knowledge. They attempted to make their way up on the Beach Club compound but not on the property. He said to them "*Hey, this is a private property you guys shouldn't be here.*" The three individuals sped off and the he called the police for assistance. Four Officers responded and he recognised three of them, PC Augustine, PC Miranda and Cpl Kareem Martinez. He testified that he went back to his routine patrol and then later he heard a loud blast which sounded like a gunshot. Then he went to the location where he left the police officers. He observed one person on the ground and the other standing with the police officers. He assisted a police officer to take the person on the ground to the police mobile vehicle. Mr. Castillo further testified that he did not have a firearm on him.

[63] In cross-examination, he said he felt endangered that night when he saw the persons and as such called the police officers. When the police arrived the persons were away from the property. The trial judge

found that he did not carry a firearm on his job as a guard and he testified he did not have a firearm in his possession that evening. The trial judge accepted that he was not armed on the fatal night. However, she believed only parts of Castillo's evidence. She said "..For example, he testified that he went on his duties when the police arrived and he did not accompany them. I do not accept this. Mr Castillo, like the police witnesses, was trying to create distance between himself and the shooting. I believe he was with the police when they encountered and chased the deceased and Thomas. I found much of Mr Castillo's conduct inexplicable and ultimately, it proved dangerous."

[64] The trial judge concluded that the evidence of all the witnesses for the Prosecution, even those who were not wholly truthful, supports that there was no lawful justification for killing Laddie. The trial judge had no doubt whatsoever that the Appellant was unjustified in shooting Laddie. We agree with the trial judge's finding. Thomas who was a credible witness proved that they were running away from the police officers trying to get to the Chabil Mar hotel where they were staying when Laddie was shot. They were not armed and not involved in any scuffle with the police officers.

The trial judge's assessment of the Defence

[65] The trial judge considered the case for the defence and found the version of the Appellant in relation to the shooting incredulous. At paragraph [79] she assessed the shooting itself and did not believe the accused's version. She said,

> "I do not believe the accused when he says he turned away from the deceased and the others as they ran and he fired his gun in the air. This would mean the accused thought the situation was serious enough that he was justified in discharging his weapon but considered it prudent to turn away from the unfolding dangerous activity. The account from the accused would also mean the bullet he discharged travelled backwards and downwards and outwards (or horizontally) 75 to 90 feet to strike the deceased in his back all in 6 seconds, the time the accused says it took the deceased to collapse."

[66] Nevertheless, as the trial judge was required to do, she continued to direct herself that the accused has nothing to prove to the court. She said, "Even as I do not give his statement great weight it does not mean that I may convict him as a consequence. It is the prosecution evidence that must make me feel sure of the guilt of the accused so I will revert to the Prosecution case after reviewing the testimony of the defence witness." She also considered Ms. Augustine's evidence, witness for the defence, but did not find it helpful.

Return to the Prosecution's case

[67] The trial judge after considering the case for the Defence returned to consider the Prosecution's case. She reviewed all the evidence from the Prosecution again. She found beyond a reasonable doubt that each element of the offence of manslaughter had been proven. The trial judge had no doubt, that the Appellant caused the harm to the Laddie when he shot him. Further, she felt sure that when he shot Laddie, he had no lawful justification to do so.

Conclusion on safety of the conviction

[68] In the view of the Court, the trial judge's assessment of the evidence of the Prosecution and the Defence cannot be faulted. It is detailed, sound and flawless. The Court is satisfied that no injustice had been done in this case. The totality of the evidence from the Prosecution which the trial judge found credible supports the Appellant's conviction. It is not unsafe and unsatisfactory and we see no basis to interfere with the findings of the trial judge. The ground of appeal on the safety of the conviction is therefore, dismissed.

Whether the Prosecution negatived the existence of an alternative shooter

[69] In the court below, the defence had a theory that there were two shooters. The trial judge addressed the theory of an alternative shooter at [38],

> [38] The defence submitted that besides the accused, another person on the scene fired his weapon during the incident and it was that person who actually shot the deceased. I considered the submission that someone other than the accused fired the fatal shot or any shot at all. The defence submission is that PC Claude Augustine was directly behind the deceased and it was Augustine who shot the deceased. The learned counsel theorized that PC Augustine fired his gun at the same time that the accused fired a warning shot in the air, making the sound of one explosion so that those present would not have been able to recognize that two shots had been fired by two different people. The learned counsel submitted further that Augustine retrieved the casing from his weapon in the dark and was not seen doing so. The theory however is not supported by any evidence. There were no strands of evidence from which I could draw the inference that Augustine shot the deceased. I would have to speculate to accept this scenario and I cannot do that."

[70] The Court agrees with the trial judge that there was no evidence from which she could have inferred someone else or PC Augustine shot Laddie. We cannot accept the Appellant's submissions that because Augustine lied it was open to the trial judge to conclude that it was him who shot Laddie. The trial judge found on the evidence that everyone on the scene heard one shot and there was one shooter.

Further, she assessed the description of the events and concluded that PC Augustine was physically closer than the Appellant to the other witnesses, including Thomas, Laddie's friend. The judge stated that if PC Augustine had fired his gun, she believed someone would have been seen it and the sound would have been closer to all of them. This led her to the conclusion that PC Augustine did not discharge his firearm. She stated that "I simply do not believe that PC Augustine drew and fired his 9 mm and Miranda, Pop, Castillo, Palacio and even the accused who was behind all of them did not observe it." The Court agrees with the trial judge's assessment of the evidence that there was only one shooter. The Prosecution's evidence proved beyond a reasonable doubt that there was only one shooter.

Whether the Appellant was denied a right to a fair trial in that the trial judge descended into the arena to cure deficiencies in the Prosecution's case.

[71] The Appellant says he was denied a right to a fair trial because the learned trial judge descended into the arena and asked questions which tended to cure deficiencies in the prosecution's evidence and in the investigation and made conclusions adverse to the Appellant based on those questions.

Section 65 (7) of the Evidence Act[2], provides that: "The Judge may, of his own motion at any stage of the examination of a witness, put any questions to the witness he thinks fit in the interest of justice."

[72] The Court agrees with the Crown that the Appellant has not submitted anything to support his argument that the trial judge descended into the arena and asked questions which tended to cure any deficiencies in the case for the Prosecution. The trial judge in our view as shown by the record put questions to the witnesses to clarify answers given by witnesses and asked questions in the interest of justice.

[73] The Court has reviewed the record and saw the difficulty which the trial judge encountered. Police officers testified in a low voice and gave answers which were not clear to the trial judge. On many occasions she had to ask clarification questions. Some of these questions were excessive but necessary. For instance when Ms. Lino was recalled to explain trajectory of bullets fired in the air. This was done in the interest of justice. The trial judge was the finder of fact and had to ensure that she understands the evidence before assessing it. The Court is of the view that the questions asked by the trial judge did not cause any unfairness to the Appellant. He has not shown that he was denied a fair trial by reasons of unfairness. The ground is without merit.

[2] Chapter 95 of the Substantive Laws of Belize (Revised Edition) 2020

Whether the trial judge misdirected herself by placing the evidential burden of proof on the Appellant and treated his admission of the firing in the air as conclusive of his guilt.

[74] The trial judge in this case is a very experienced judge. It is an unfair criticism to say that the trial judge placed the evidential burden of proof on the Appellant. It can be seen from the judgment of the trial judge that the evidential burden of proof was placed on the Prosecution.

[75] Further, she did not treat the Appellant's admission of firing in the air as conclusive of his guilt. The trial judge gave reasons why she did not believe his version of turning around, away from Laddie and Thomas, and firing in the air.

[76] At [81] and [82] she made it clear that the burden of proof is on the Prosecution. She said:

> "I am aware that even concluding that the accused is not being truthful in what he has said to the court. I cannot convict him on that basis. Accused persons may fabricate defences for reasons other than guilt. **Broadhurst v R**. So it is not my disbelief in the denials of the accused that lead me to the verdict in this trial. It is my acceptance of the prosecution's evidence.
>
> ..... as I considered the statement of the accused, I continue to direct myself that the accused has nothing to prove to this court. Even as I do not give his statement great weight it does not mean that I may convict him as a consequence. It is the prosecution evidence that must make me feel sure of the guilt of the accused so I will revert to the Prosecution case after reviewing the testimony of the defence witness".

[77] In the view of the Court, the trial judge did not place the evidential burden of proof on the Appellant. This is made pellucidly clear under the first ground of appeal where this Court analysed the trial judge's findings that it was the Appellant who shot Laddie and he had no lawful justification for doing so. The ground has no merit.

Disposition

[78] The Appeal against the conviction is dismissed.

Minnet Hafiz Bertram
President

[79] I concur.

Louise Esther Blenman
Chief Justice

[80] I concur.

Peter I Foster
Justice of Appeal