

IN THE SENIOR COURTS OF BELIZE

NORTHERN DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO.: N21 of 2024

BETWEEN

THE KING

and

EDITOR NOH

Accused

**Before:**

The Honourable Mr. Justice Raphael Morgan

**Appearances:**

Ms. Lavinia Cuello for the Crown

Mr. Leslie Hamilton for the Accused.

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2026: May 25<sup>th</sup>, 27<sup>th</sup>  
July 1<sup>st</sup>  
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**VERDICT – REASONS FOR DECISION – MANSLAUGHTER**

[1] **MORGAN, J.:** Editor Noh (“the Accused”) is indicted on one count of **Manslaughter contrary to section 108(1) read along with section 116(1) of the Criminal Code**<sup>1</sup> (“the Code”).

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<sup>1</sup> Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020

- [2] The indictment alleges in summary that the Accused on the 19<sup>th</sup> day of July 2021, at Xaibe Village, caused the death of Feliciano Tzul by unlawful harm, to wit, by physically assaulting him.
- [3] The trial began with the arraignment of the Accused on the 25<sup>th</sup> of May 2026 before this Court pursuant to section **65A (2) (e)** of the **Indictable Procedure Act<sup>2</sup> (the IPA)**.
- [4] At trial the Crown led the evidence of four viva voce witnesses. The Defence and the Crown agreed the evidence of eleven of the prosecution's witnesses. The Crown also relied on photographs taken at the scene by the Scenes of Crime Technician, and the caution statement and notes of interview given to the police by the Accused while in police custody.
- [5] At the close of the Crown's case, the Court advised the Accused of the three options available to him i.e. to remain silent, to give a statement from the dock or to give sworn evidence. The Accused was also informed that whichever option he chose to exercise, he was entitled to call witnesses. The Accused opted to give a dock statement and called no witnesses.
- [6] The Court then gave directions for the filing of written submissions and reserved its judgement.
- [7] The Court having considered the evidence and the submissions that were filed (the Defence having declined to submit closing submissions in writing after the Court extended the time for filing), now gives its verdict and reasons.

## **Facts**

### **Crown's case at trial**

- [8] **Amadeo Rodriguez** testified that on 18 July 2021 at approximately 7:00 p.m., he was drinking an alcoholic drink called "Chipilin" with Amador Novelo, Pauly, Editor Noh, Mauricio, and the deceased Feliciano Tzul (also known as Popien) outside Rufo's shop. Due to rain, the group moved to the Xaibe

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<sup>2</sup> Cap 96 of the Substantive Laws of Belize Revised Edition 2020

Community Center, where they continued drinking. Amadeo Rodriguez further indicated that he became heavily intoxicated and could not recall the events after they arrived at the community center or the time he left. He woke up the following morning at Pauly's house. While searching for Feliciano, he went to the community center and found the deceased in a seated position with his head down. After calling out to him and receiving no response, Amadeo Rodriguez concluded that Feliciano was dead. He subsequently informed Francisco Reyes and another person called Rufo that Feliciano was dead. He also indicated that no one else was present at the community center when he discovered the body. He was also able to positively identify the Accused in court describing him as chubby, approximately 5 to 6 feet tall, with a slightly lighter complexion. He indicated that he knew the Accused through the deceased and had seen him on previous occasions.

[9] Under cross examination Amadeo Rodriguez admitted to being a daily drinker who frequently consumed Chipilin from morning until evening. It was put to him that his memory was faulty as he suffered frequent blackouts at a place called Janelli's bar which he denied. Under cross examination he also maintained that he knew the Accused.

[10] **Artemio Noh** testified that he lives directly in front of the Xaibe Community Center. On 18 July 2021, while resting in his hammock in his room at around 8 am, he saw three men who he recognized as the Accused, another man whose last name was Cawich and the deceased enter the corridor of the community center. He saw that they began to drink. Around 4:00 pm that afternoon he stated that he observed the Accused making punching motions with both hands for approximately ten (10) minutes. He was unable to see what the Accused was punching due to the height of his louvre windows. He observed that the man he knew as Cawich was standing nearby, approximately three to four feet from the Accused. After making the punching motions for about 10 minutes, the Accused sat down and continued drinking with Cawich. Mr. Noh later saw the Accused and Cawich leave the area but did not see the deceased leave. On the morning of 19 July 2021, around 7:00 a.m., a man known as Bibo entered the corridor and later informed Mr. Noh that Feliciano Tzul was dead. In examination in chief Mr. Noh positively identified the Accused in court as the person he saw making the punching motions. He stated that he had known the Accused since birth, as the Accused's father is his cousin, and that he would see him regularly in the village. He indicated that the distance from his home to the community center was about 150 feet, the sun was out and there was nothing obstructing his view of the community center.

[11]**Mauricio Cawich** indicated that he is currently seventy-one years old and lives in Xabie village where the incident happened. He recalled the 18<sup>th</sup> of July 2021. On that day he stayed home and didn't go to his garden to do any planting. His wife was also at home, and she went to the shop to get something that morning. He asked her to get him a bottle of rum (Chipilin) while she was there. She brought the rum back and he drank at home until the number played at 10 am that morning. After the number played, he was still doing a few things around the home while taking a few drinks from the Chipilin that he had asked his wife to buy when he decided to take his bike and ride around the village. He was headed to the Chinese shop in the village and along the way he needed to pass by the community center. When he passed by the community center, he saw that there were three people there. While passing, he heard them call him by his name. He then noticed that they were the deceased (who was also his cousin), Amadeo Rodriguez and the Accused. He then went over to speak with his cousin. The deceased was seated on the cement floor in the community center along with the other two. They were drinking. Mauricio Cawich recalled that at time it was dark because it was drizzling that day. It was like around 4 in the afternoon. His cousin offered him a drink, and he declined, indicating that he already had something in his pocket which he had bought earlier. He also told the group that he couldn't stay long because if the police passed, they would arrest him for drinking in public. At that point the Accused answered and spoke to the deceased saying that they would not let Mauricio Cawich go because he had money on him. At that point in time, he had \$60.00 on him, \$50.00 in his right pocket and \$10.00 in his left pocket. His wife had given him \$50.00 so that he could buy something in the shop for her when he got there. He then quickly took out the \$10.00 from his left pocket so that they would be placated and not check him directly. Feliciano Tzul then took the \$10.00 and left to go buy rum at the Chinese shop. After the deceased brought back the liquor he set it on the floor and sat next to it. Then the Accused got aggressive and was attempting to prevent people from touching the liquor. The Accused then began to be aggressive towards Mauricio Cawich insulting him by calling him an idiot and implying that he knew who had killed one of his children years ago and was doing nothing about. At that point Mauricio Cawich attempted to leave and the Accused jumped in his way. Mauricio Cawich recalled that the Accused then began punching him in his face and kicking him. Mauricio put his hands up to shield his face during the assault. At that point in time, he was seated and didn't expect that the Accused would assault him physically. The other two persons there, the deceased and Amadeo Rodriguez did not intervene to stop the Accused. When the Accused was finished assaulting Mauricio Cawich, he then went to the deceased and began to hit him.

The deceased at that point was seated next to Mauricio. The Accused was hitting the deceased in the same places that he was hitting Mauricio Cawich earlier as well as kicking him in his ribs. While hitting him, the Accused was saying, "One, two, three, here it comes". While he was being beaten the deceased was just covering his face and groaning. Mauricio felt like he could not do anything himself as he was hurt. He got up, took his bike and left. He estimated that the beating of the deceased by the Accused that he saw lasted approximately 10 -15 minutes. He estimated that he had stayed at the community center for about an hour after getting there initially. The Accused was continuing to assault the deceased as he left. Mauricio Cawich made it to his daughter's home and stayed there trying to recover from the beating. His wife then came to his daughter's home at some point later and inquired what had happened. After she spoke to him, she then left to confront the Accused about what he had done.

[12]**Mauricio Cawich further testified** that the following day at around 7:00 am, a neighbour came to check him and told him that they found the deceased dead inside the community centre. He knew the deceased by other names such as Popien, Xiabi Bibo or Bibiano but mostly he knew him as Bibo. He further indicated that he knew the Accused since he was small for more than twenty years. He would rarely see him during that time because the Accused worked elsewhere while he worked in the bush. When he did see him, he would be going to work, sometimes he would be going to the shop, sometimes at the shop taking his soft drink. When he saw him at the shop, he would be like five feet away. The Accused is also his wife's nephew.

[13]Under cross examination, **Mauricio Cawich** admitted that he was drinking that day but denied that he was drunk as he would not have been able to ride his bicycle back. He accepted that before he got to the community ~~center~~ ~~he~~center he had been drinking. He further indicated that Chipilin is strong but not as strong as other rums such as Caribbean Rum as Chiplin is only 28 proof alcohol. He denied that he drank everyday as he cuts cane most of the time and is working. He takes his drinks when he can but generally, he is working.

[14]**Andy Noh** testified that in July 2021 he lived in Corozal Town. He indicated that he couldn't recall fully what happened on the 18<sup>th</sup> of July 2021 because it had been some years since the incident in 2021. After reading his statement before testifying he recalled that on that day, he was at home in Corozal Town when he got a call from his father requesting that he go to the mechanic that worked for them in Xaibe

Village. He then went to Xaibe Village with his wife and daughter. He further recalled that it was a cloudy and rainy day. After going to the village, due to the weather, he decided to go back to Corozal Town quickly. On his way out of Xaibe Village he recalled that it began drizzling and as he drove by the community center, he saw a crowd of people there who appeared to be intoxicated. He also saw a fight because in Xaibe it happened daily and almost every weekend with the persons who would get drunk. He recalled that he did see the Accused fighting with someone, but he couldn't say with whom he was fighting. The glimpse he had of the fight was very short because he just drove by for like three or four seconds while he was turning. He was only able to see what was going on through the front windscreen as all the other windows in his vehicle were tinted and he could not see through them. He was about 75 feet away when he saw the Accused. Initially he indicated that he could not identify the person whom he saw the Accused hitting but after refreshing his memory he accepted that the person he saw the Accused hitting was Popien and that the person while being hit was just laying down and unable to respond to the blows that were being inflicted. He indicated that he knew the Accused from ever since he could recognize persons. He was unable to give an exact time in terms of months or years. When they lived in Xaibe Village the Accused lived one block away from his house. He knew the Accused by face and identified the Accused in Court as the person he knows as Editor Noh. Under cross examination he maintained that he knew the Accused and that the time that he was able to view the Accused on that day was for a maximum of three to four seconds.

### **Agreed evidence**

[15] The parties also agreed to the following evidence:

- a) **Leidiana Cantun** – Scenes of Crime Technician – who visited the scene at the Xaibe Village Community ~~Center-on~~Center on the 19<sup>th</sup> of July 2021 and took photographs of the building, the deceased and the surrounding area. At the scene she took eight photographs which were admitted into evidence and tendered and marked as LC A 1-8. She also took photographs at the autopsy of the deceased, and those photographs were admitted into evidence and tendered and marked LCB 1-4.

- b) **Lidia Tzul** – wife of the deceased – indicated in her agreed evidence that she identified the body of the deceased at the Belize Medical School situated at the junction of the Philip Goldson Highway and Burrell Boom on the 22<sup>nd</sup> of July 2021. She identified the body as that of her husband Feliciano Tzul to Dr. Mario Estradabran.
- c) **Hilberto Trimenos** – indicated that on the 19<sup>th</sup> of July 2021 at around 5:30 am he was awoken by another villager who told him to go and check on Popien because he was motionless at the community center. He made his way back to the community center with Francisco Reyes where he observed the deceased in a seated position. He tried calling out to the deceased and he received no response. He then touched him on his right hand and his right foot, and he was cold to the touch. Francisco Reyes then called the police in his presence and 45 minutes later police arrived and took conduct of the scene.
- d) **Francisco Reyes** – indicated that about 6:15 am he was at the Xaibe community center talking on his cell phone when another villager by the name of Bibo arrived and five minutes later Bibo asked him to check on the deceased because he appeared dead. When Francisco Reyes went to check on the deceased he noticed that the deceased was in a seated position leaning over with his head towards the floor and he was bleeding through his nose. His body was also cold to the touch. Upon observing this, Francisco Reyes went to the home of another villager Johnny Trimenos who accompanied him back to the community centre. They confirmed that the deceased appeared dead and Francisco Reyes then called the police.
- e) **Rutilia Cawich** – wife of Mauricio Cawich – indicated that her husband Mauricio went to buy groceries at about 11:00 am at the Chinese store in the village. After noticing that he didn't return after a while she went to see him and she saw that he was holding his stomach. He also pointed out to her his hands, chest and ribs and indicated to her that the Accused had beat him up at the community center. She saw that his ribs and arm were black and swollen. Upon hearing what happened, she took her bicycle and went to confront the Accused who is her nephew. Upon reaching at the house of the Accused, she asked him why he beat up his uncle especially since he knew his uncle had just had an operation. At the time the Accused had a machete in his hand and was hitting it against the concrete in a threatening manner and indicating that he was going to "chop up Dogi madarass". She told him that she was going to report him, and he indicated

that he was not afraid of the police. She further indicated that she arrived at Editor's house at 5:00 pm.

- f) **Alvin Castillo** – indicated that on Tuesday 10<sup>th</sup> May 2022 he visited the Corozal Police Station to check for a video recording that Cpl James Mossiah indicated he had made of the Accused. He made a complete check of the computer in the Criminal Investigation Branch Office, Corozal Police Station and didn't find the video.
- g) **Doctor Mario Estradabran** – it was agreed that the postmortem was done on the 22<sup>nd</sup> of July 2021. It was also agreed that the cause of death was acute lung failure due to multiple blunt force trauma to chest and abdomen.
- h) **JP Cruz Majil** – indicated that she witnessed the interview of the Accused conducted by Cpl James Mossiah on the 23<sup>rd</sup> of July 2021. The interview was conducted at Corozal Police Station and began at 3:36 pm. The interview was video and audio recorded. The Accused was informed of the reasons for his detention and his rights and privileges. At the end of the interview, Cpl Mossiah invited the Accused to sign and thereafter she signed and placed her stamp. The interview was then read over to the Accused. The interview consisted of five pages and ended at 4:48 pm.
- i) **JP Miguel Ramirez** – indicated that he witnessed the caution statement of the Accused which was taken by Sergeant Manolo Cortez on the 23<sup>rd</sup> of July 2021. In his presence the Accused confirmed that he wished to give a caution statement and then proceeded to give a caution statement to Sergeant Cortez after being informed of his rights and privileges and being given time alone to speak with JP Ramirez. The caution statement was video and audio recorded. At the end of the caution statement the Accused signed the caution statement and JP Ramirez signed and stamped at the end as well.
- j) **Corporal James Mossiah** – indicated that he investigated the death of the deceased. He received information while on duty at the Corozal Police Station on the 19<sup>th</sup> of July 2021 that a body was found in the Xaibe Community Center. He made his way to the Xaibe Community Center and spoke to Francisco Reyes who pointed out certain things to him. Cpl Mossiah then

viewed the body of the deceased and called SCT Cantun to come to process the scene. After the processing of the scene, he continued investigations which led to the detention of the Accused after recording statements from Amadeo Rodriguez and Mauricio Cawich. He conducted an interview with the Accused on Friday 23<sup>rd</sup> July 2021 and on the 26<sup>th</sup> of July 2021 he charged the Accused with manslaughter in respect of the death of the deceased. He further indicated that the video recording of the interview was lost due to the malfunctioning of the CPU in Corozal Police Station on which the footage was stored.

- k) **Sergeant Manolo Cortez** – indicated that he took the caution statement from the Accused on the 23<sup>rd</sup> of July 2021 in the presence of JP Miguel Ramirez. The caution statement was audio and video recorded. At the end of the caution statement, the Accused, Sergeant Cortez and JP Ramirez all signed. The caution statement commenced at 5:47 pm and ended at 6:26 pm. In the caution statement the Accused admitted that he was drinking during the day with his uncle Feliciano Tzul but when he left him at the community center, he was alive. He also indicated that he had no reason to harm his uncle.
- l) **Corporal Sergio Pena** – indicated that he arrested the Accused initially on the 22<sup>nd</sup> of July 2021 for questioning in respect of the death of the deceased. He rearrested the Accused on the 26<sup>th</sup> of July 2021 for further questioning. On each occasion the Accused remained silent upon being arrested.
- m) **Sergeant Zamir Noh** – indicated that on the 23<sup>rd</sup> of July 2021 at about 4:30 pm he downloaded video footage showing the recording of an interview and a recording showing the recording of a caution statement with the Accused done on the 22<sup>nd</sup> of July 2021. He then assisted Cpl Mossiah to download the contents of the tablet onto the CPU at the CIB office. Sergeant Noh and Cpl Mossiah both then viewed the audio and video recording of the interview and caution statement. He recalled that on the 26<sup>th</sup> of July 2022 PC Castillo came to extract the downloaded videos, but the videos could not be found as the CPU malfunctioned and remained nonfunctional up to the time of trial.

## Case for the Defence at Trial

[16] As indicated previously the Accused opted to give a dock statement and called no witnesses. In his dock statement the Accused stated simply that he did not beat the deceased who was his uncle. He further indicated that when he left the Community Center everyone was alive and he did not know why anyone was accusing him of hitting anyone. He also spoke about the relationship that he had with his uncle indicating that his uncle used to stay at his home and eat at his house. He indicated that his uncle threw himself into drinking after the failure of his marriage. Throughout his short dock statement, he essentially maintained that he had nothing to do with his uncle's death.

## Law

### The Elements of the Offence

[17] Manslaughter is defined in **section 116** of the Code as follows:

- (1) Every person who causes the death of another person by any unlawful harm is guilty of manslaughter.**
- (2) If the harm was negligently caused, he is guilty only of manslaughter by negligence.**

[18] The Code therefore provides for two types of manslaughter, proactive harm manslaughter (section 116(1)) and negligent harm manslaughter/Manslaughter by Negligence (section 116(2)).

[19] Manslaughter under the Code is defined in similar terms to murder, as the actus reus of both offences is committed where unlawful harm is inflicted which causes the death of another person. Manslaughter however does not require the specific intention to kill, only the intent to engage in the conduct which inflicts the unlawful harm on the deceased. Murder, on the other hand, requires the specific intention to kill and can be reduced to manslaughter by any of the partial justifications specified under the Code.

### Manslaughter as defined by section 116(1)

[20] Based on section 116 therefore on a charge of **Manslaughter contrary to section 116(1)** (proactive harm manslaughter) the Crown must therefore prove the following:

- a) The victim is dead.

- b) The death of the victim was due to unlawful harm caused by the Accused.
- c) The Accused intended to engage in the act that caused the infliction of the unlawful harm.
- d) There was no lawful justification for inflicting unlawful harm on the deceased<sup>3</sup>.

## General Directions

**[21]** The Court has directed itself that the Accused is presumed innocent and has absolutely nothing to prove.

The Court also reminds itself that the obligation is on the Crown to prove beyond a reasonable doubt the guilt of the Accused i.e. the Crown must lead evidence so that the Court is sure of the guilt of the Accused. If there is any reasonable doubt the Court is duty bound to acquit him.

**[22]** The Accused in this case opted to give a dock statement. The Court is duty bound to consider it and to give it such weight as it thinks fit when deliberating on the evidence. The Court reminds itself that this is the Accused's right, however, the fact that he has not been cross examined may make his dock statement less cogent than sworn evidence. However, it is material which may be considered and may show the evidence in a different light.

**[23]** The Court is reminded of the approach suggested by our apex Court, the Caribbean Court of Justice (CCJ) in Dioncicio Salazar v R<sup>4</sup>. The Court will therefore consider the prosecution's evidence first. If the evidence for the Crown seems strong enough to carry a conviction, the Court then will consider the case for the Defence to see whether any reasonable doubt arises. If reasonable doubt arises or the Court accepts the case for the Accused, the Court must acquit the Accused. If the Court rejects the case for the Accused, the Court must still then return to the case for the Crown and consider the totality of the evidence before coming to a final decision.

**[24]** In considering the evidence, the Court must also assess the credibility and reliability of the witnesses. Credibility refers to a witness's honesty or sincerity. Reliability on the other hand is about the accuracy of the witness's testimony where the Court must scrutinize the witness' ability to observe, recall and recount events<sup>5</sup>. To properly assess credibility and reliability the Court must examine inconsistencies,

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<sup>3</sup> Title VI of the Code sets out lawful justification for the use of harm

<sup>4</sup> [2019] CCJ 15 (AJ)

<sup>5</sup> R v Kruk 2024 SCC 7 (Supreme Court of Canada) at para 146

discrepancies and any implausibility that arises on the evidence. The Court need not comb the record for inconsistencies or contradictions<sup>6</sup>.

[25] If there are inconsistencies and discrepancies, the Court must consider whether they are material and if they can be resolved on the evidence. The Court reminds itself that it must consider whether the inconsistencies or discrepancies arose for innocent reasons, for example through faulty memory or lack of interest in what is transpiring or if it is because the witness is lying and trying to deceive the Court. If there are any unresolved material inconsistencies or discrepancies this would lead the Court to reject that bit of evidence or all of the witness's evidence entirely. The cumulative effect of these inconsistencies or discrepancies on a witness's credit and reliability is also important for the Court's consideration. If the Court finds the evidence of a witness implausible it will reject either that witness's evidence entirely or that bit.

[26] The Court directs itself that the credibility of a witness is not a seamless robe where one lie, or even several, strips the witness of believability. This is not to say that the telling of lies on oath is a trifling thing. The Court further reminds itself that if a witness has lied about some bit of evidence, the evidence must be properly evaluated, taking into account that the witness told the lie and the reason for the lie. The Court may still convict if it is sure that the material parts of the evidence are true. The Court in that regard relies on the decision of the CCJ in **James Fields v The State**<sup>7</sup> in relation to evaluating testimony involving intentional lies.

[27] In addition to examining the general credibility and reliability of witnesses, the Court reminds itself that the Accused does not dispute that he was at the community center with the deceased and other people. He however says that at the time he left the community center his uncle, the deceased was alive. He therefore disputes the recognition evidence of the witnesses in so far as they purport to recognize him as the person who was beating the deceased at the community center. The Court also reminds itself that the case for the defence at trial is denial and fabrication, which places credibility at the forefront of the issues to be resolved. However, the Court does not find that this case falls into the category of exceptional cases where the Court should not direct itself in accordance with the guidance in **R v Turnbull**<sup>8</sup>. The importance of a Turnbull direction even in cases of recognition was recognized by the Privy Council in

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<sup>6</sup> August et al v R [2018] 3 LRC 552 at para 60

<sup>7</sup> [2023] CCJ 13 (AJ) BB at paras 33-38

<sup>8</sup> (1977) QB 224

**Pop v R**<sup>9</sup>, a case arising out of Belize, where the Privy Council approved the following statement of the law from the Board in **Shand v R**<sup>10</sup>:

'The importance in identification cases of giving the *Turnbull* warning has been frequently stated and it clearly now applies to recognition as well as to pure identification cases. It is, however, accepted that no precise form of words need be used as long as the essential elements of the warning are pointed out to the jury. The cases in which the warning can be entirely dispensed with must be wholly exceptional, even where credibility is the sole line of defence. In the latter type of case the judge should normally, and even in the exceptional case would be wise to, tell the jury in an appropriate form to consider whether they are satisfied that the witness was not mistaken in view of the danger of mistake referred to in *Turnbull*.' [Emphasis added].

[28] The Court must therefore consider carefully the circumstances of the recognition of each Accused as one the persons who inflicted unlawful harm on the deceased on the 18<sup>th</sup> of July 2021. The Court must look carefully at the circumstances of the recognition in deciding whether each witness is an honest witness and whether the recognition evidence can be relied on bearing in mind that a mistaken witness can be a convincing one. The Court further reminds itself even in cases of recognition of close friends and relatives mistakes can be made.

[29] The Court in assessing the evidence must also analyze the evidence dispassionately, clinically, fairly, within the boundaries of the law and with the aid of its human experiences and common sense<sup>11</sup> while avoiding myths and stereotypes.

[30] The Crown also relies on expert medical evidence to prove certain aspects of their case, particularly the following:

- a) The injuries allegedly received by Feliciano Tzul on the 18<sup>th</sup> of July 2021.
- b) The death of the deceased Feliciano Tzul; and
- c) The cause of death of Feliciano Tzul.

[31] The Court accordingly reminds itself that it is not bound to accept the opinion of the expert witness and is free to accept or reject the evidence of any expert in coming to any conclusions on the evidence. The Court also reminds itself of the fact that the medical evidence cannot answer the ultimate question in this

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<sup>9</sup> (2003) 63 WIR 18

<sup>10</sup> [1996] 1 ALL ER 511

<sup>11</sup> Kruk at paras 151-156

case which is whether the Accused is guilty of manslaughter in the death of the deceased Feliciano Tzual. Rather the medical evidence may provide light on those aspects of the case as highlighted above. The Court also reminds itself that in deciding what weight, if any, to attach to the expert's evidence, the Court may consider their qualifications, experience, credibility, and whether the opinion is based on established facts or assumptions.

### **Undisputed facts**

**[32]** On the Crown's case there are certain undisputed facts:

- a) The Accused lived in Xaibe Village.
- b) The Accused was at the Community Center in Xaibe Village on the afternoon of the 18<sup>th</sup> of July 2021.
- c) At some point on the 18<sup>th</sup> of July 2021 the Accused was with the deceased and other people from the village at the community center drinking.
- d) The deceased was discovered dead at the community center on the 19<sup>th</sup> of July 2021.
- e) The cause of death of the deceased was acute lung failure due to multiple blunt force trauma to chest and abdomen.

**[33]** The Accused disputes all other aspects of the Crown's case including that he was at the Community Center when the witnesses claim that he was there inflicting blows on the deceased.

### **Has the Crown led evidence to satisfy the elements of the offence?**

**[34]** The Court will now consider the Crown's case to see whether the Crown has led evidence strong enough to carry a conviction on the count of manslaughter as charged.

**[35]** As indicated above to prove the charge of manslaughter, the Crown must prove certain elements. The Court will now examine each element in turn to see whether the Crown has led evidence strong enough to carry a conviction on the charge of manslaughter (proactive harm manslaughter).

#### **a) The victim is dead**

**[36]** The Crown has led the following evidence to establish the death of the deceased:

- i. The Crown has led evidence from Hilberto Trimenos and Francisco Reyes that they both observed the deceased lying motionless at the community center on the morning of the 19<sup>th</sup> of July 2021. Hilberto Trimenos further indicates that he felt the body of the deceased and he was cold to the touch.
- ii. Cpl Mossiah also arrived at the scene and saw the body of the deceased and had the body transported to the hospital. Cpl Mossiah also transported the body that was found at the Community Center to the Belize Medical School Morgue on the 22<sup>nd</sup> of July 2021 for a postmortem to be conducted.
- iii. At the Belize Medical School Morgue Lidia Tzul identified the body that was found at the community center as that of her husband Feliciano Tzul on the 22<sup>nd</sup> of July 2021.
- iv. Dr. Estradabran indicated that a postmortem was conducted on the body of the deceased after which he determined the cause of death.

[37] This evidence, if accepted, can establish that the deceased is in fact dead. It is to be noted that there is no real dispute from the Accused on this element as he accepts that Feliciano Tzul is dead. The crux of the dispute in this matter revolves centrally around whether the Accused inflicted the harm on the deceased which resulted in his death.

**b) The death of the victim was due to unlawful harm caused by the Accused.**

[38] On this element the Crown must prove that the death of the victim was due to unlawful harm and that the unlawful harm was caused by the Accused. From the agreed evidence of Dr. Estradabran the Crown has led evidence that the cause of death of the deceased was acute lung failure due to multiple blunt force trauma to chest and abdomen. The Code defines **harm** in **section 96** as any bodily hurt, disease or disorder whether permanent or temporary. The injuries received by the deceased do amount to bodily hurt as it was multiple blunt force trauma to the chest and abdomen. The evidence of Dr. Estradabran therefore can establish, if accepted, that the injuries received by the deceased and which resulted in his death amounted to harm.

[39]The Crown must also prove that the harm was caused by the Accused and that there was no legal justification for the infliction of that harm. To prove that the harm was inflicted by the Accused, the Crown is relying primarily on the evidence of Amadeo Rodriguez, Artemio Noh, Mauricio Cawich and Andy Noh. The Court will therefore proceed to examine the evidence of each of these four witnesses to see whether the Crown has led evidence to establish this element of the offence.

[40]**Amadeo Rodriguez** indicates that he was drinking with the deceased and the Accused at the community center along with other villagers on the 18<sup>th</sup> of July 2021. He indicated that he got heavily intoxicated and could not recall the events of that day. In those circumstances other than placing the Accused as drinking with the deceased at the community center, his evidence does not assist with the question of whether the Accused inflicted the harm on the deceased which resulted in his death. The Court found Amadeo Rodriguez overall to be a credible witness at trial. He readily admitted to deficiencies in his ability to observe or recall anything from that day due to his intoxication and did not seek to embellish or volunteer any facts that didn't come from his memory. His evidence also finds support in the evidence of Artemio Noh and Mauricio Cawich who both indicate that Mr. Rodriguez was at the community center with the Accused and the deceased. The Accused himself also does not deny that he was there drinking with the deceased on that day.

[41]The Court derives more assistance from the evidence of **Artemio Noh** who testified that he lived directly in front of the community center. He further indicated that at around 8:00 am that morning he saw the Accused, the deceased and another guy named Cawich come to the community center and he saw them drinking. Around 4:00 pm that day he saw the Accused making punching motions for about 10 minutes, but he could not say if the Accused was hitting anyone when he was doing these punching motions. Sometime after he saw Cawich and the Accused leave, but he didn't see the deceased leave the community center. His observation of the Accused was made from 150 feet away; the sun was out and there was nothing obstructing his view. He further indicated that he had known the Accused since birth as the Accused's father is his cousin and he sees him regularly in the village.

[42]The Court found Artemio Noh overall to be a credible witness. Mr. Noh was able to recall in detail even four years later the incident which he witnessed. He was able to recall exactly who he saw, when and

even how close the Accused and Cawich were to each other. Further Mr. Noh accepted that he could only see the Accused making punching motions and could not say who or what, if anything the Accused was punching. The witness did not seek to embellish or augment his testimony in any way and remained unshaken under cross examination.

**[43]** The Court notes the length of the observation by Artemio Noh, ten minutes is a considerable time to have anyone under observation. Nothing emerged on the evidence that suggested Mr. Noh was distracted while observing the Accused making punching motions for those ten minutes. The Court further notes that Artemio Noh was very familiar with the Accused being a relative, having known the Accused all his life and seeing him regularly around the village. The Court also notes that the distance from which Artemio Noh made his observations was considerable being 150 feet and that as a matter of common sense the greater the distance between the viewer and the person being viewed, the greater the likelihood of a mistake being made in the recognition of the person. However, in this case the evidence of Mr. Noh finds considerable support in the evidence of Mauricio Cawich and Andy Noh who both place the Accused at the community center on the afternoon of the 18<sup>th</sup> making punching motions and striking the deceased. In all the circumstances therefore, the Court found Artemio Noh to be a reliable witness when he observed the Accused making punching motions on the afternoon of the 18<sup>th</sup> of July 2021.

**[44]** **Mauricio Cawich** is one of the two witnesses led by the Crown who purport to see the Accused striking the deceased at the community center. Mauricio Cawich testified that while he was drinking with the Accused and the deceased at the community center the Accused became belligerent verbally towards him and beat him up. After beating him up, the Accused then turned his attention to the deceased and struck him all over his body including the area of his ribs. Mauricio observed the beating of the deceased for about 10-15 minutes before he left to nurse his own wounds from being assaulted by the Accused. Mauricio testified that when he left the deceased was still being assaulted by the Accused.

**[45]** The Court overall found Mauricio Cawich to be a credible witness. Mauricio was able to recall in detail the events of what happened to him on the 18<sup>th</sup> of July 2021. He was able to recall the money that he had, what he was doing prior to and after meeting the deceased and the Accused and he was very honest about certain aspects of his evidence that may weaken his credibility. Mauricio admitted that he was drinking at home while working in his yard and that when he met the deceased and the Accused, he

began to drink some more. The Court notes however that his evidence as to the fact that he was there with the Accused and the deceased on that day finds support in the evidence of Artemio Noh who indicates that he saw the three of them drinking at the community center on that day. Artemio Noh also supports Mauricio Cawich's account that he was close to the Accused while the Accused was punching on the deceased as Artemio indicates that he saw Cawich about 3-4 feet away from the Accused while he was doing the punching motions for about 10 minutes. Mauricio's evidence also finds support from the evidence of his wife Rutilia Cawich who supports his account that he was injured after hanging out with the Accused at the community center and that she then confronted the Accused about what her husband alleged he had done and that the Accused displayed the same belligerent behaviour towards her. In all the circumstances therefore, the Court found Mauricio Cawich to be a witness of truth.

[46] Having satisfied itself that Mauricio Cawich was a credible witness, the Court went on to consider his reliability. The Court notes that his interaction with the Accused was for quite some time as he stayed with the Accused and the deceased drinking at the community center. The Accused and Mauricio also had a verbal exchange where the Accused insulted him about his inaction after the death of his child after which the Accused allegedly attacked Mauricio. After beating Mauricio, he then turned his attention to the deceased. This interaction was clearly in proximity and for a prolonged period. On the evidence, there is nothing that emerged either from the witness or from the objective items of evidence such as photographs that indicates that there was anything that obstructed his view of the Accused. In fact, at the time that the Accused was allegedly beating the deceased, Mauricio indicates that he was right next to the deceased giving him the opportunity to observe what the Accused was doing to the deceased. The Accused was also very well known to him as the Accused is his wife's nephew and he knew him since he was a child. The Court considered that there were potential weaknesses in the recognition evidence of the Accused as Mauricio did admit that he was drinking which may have affected his ability to properly observe who was doing what at the time in question and the overall situation was stressful and dynamic, having just been beaten he may have been more concerned with his own injuries rather than properly observing what the Accused was doing to the deceased. Despite these potential weaknesses the Court notes again that Mauricio's evidence finds support in the evidence of Artemio Noh and Rutilia Cawich with respect to the punching actions of the Accused and the fact that Mauricio was also injured respectively. Support also comes from the cause of death identified by Dr. Estradabran. Dr. Estradabran identified the trauma that caused death as centered around the chest and abdomen of the deceased

which supports Mauricio's testimony that the Accused was striking the deceased in the chest and face area. Considering his evidence in totality, the circumstances of his recognition of the Accused are sufficient to dispel in the mind of the Court the possibility of mistaken recognition and the Court found him to be a reliable witness.

**[47]** **Andy Noh** is the other witness who purports to see the Accused striking the deceased on the evening of the 18<sup>th</sup> of July 2021. Andy Noh indicates that he saw the Accused during a very small window of about three to four seconds while he was turning at an intersection on his way out of Xaibe Village. The Court found Andy Noh to be a credible witness. The Court noted that Mr. Noh was forthright about the fact that the incident was several years ago and his memory of the incident was not the greatest. When his memory was refreshed Mr. Noh was able to recall details about what he saw that day and he didn't seek to embellish the time that he saw the Accused on that day. He did seem a little reluctant at first to indicate that he saw the Accused striking the deceased but after having his memory refreshed, he accepted that he saw the Accused striking the deceased on that evening from the front windscreen of his vehicle. The Court notes that his evidence is supported by the evidence of Mauricio Cawich who also indicates that on that evening at the community center the Accused struck the deceased several blows about his body. Artemio Noh also offers some partial support as he observed the Accused making punching motions near to Maurico Cawich on that evening as well.

**[48]** The Court notes that there was a potential inconsistency on the evidence of Andy Noh where in his initial testimony at trial he says he saw a fight between the Accused and another person at the community center. When his memory was refreshed however he accepted that he told the police that he saw the Accused striking the deceased and the deceased was not responding to the blows being inflicted on him. The Court upon careful consideration did not find that there was an inconsistency as the witness in his examination in chief clarified what he meant by a fight. The witness indicated that he saw the Accused throwing punches, but he could not say at whom. It did not emerge during his evidence that he saw anyone throwing punches back at the Accused. Further when confronted with his statement he accepted that the person who was being punched was someone by the name of Popien (a nickname of the deceased) and that Popien was not retaliating. The Court therefore did not treat this as an inconsistency at all. Even if the Court is wrong on this issue, the Court would reject the evidence of the witness that he saw a fight and prefer the evidence of his statement to the police. The Court would adopt this approach

as the witness himself accepts that the incident was no longer fresh in his memory and that he had difficulty properly recalling what happened without the aid of his statement. The statement was also given contemporaneously to the incident, and the witness signed that statement as true and correct. The Court after careful consideration therefore found Andy Noh to be a credible witness overall.

**[49]** The Court also found Andy Noh to be a reliable witness overall. The Court notes that the length of his observation of the Accused was short, a matter of seconds. The Court notes that the distance between him and the Accused was about 75 feet which places him some distance away at the time of his observation. There was nothing which obstructed his view of the Accused, and he has known the Accused since they were children as they grew up in the same village and would see each other often. The Court notes that Andy Noh was in his vehicle with his family at an intersection and was turning the vehicle to head out of the village. These are circumstances which can potentially weaken the recognition of the Accused particularly as it was for such a short period of time as it could mean that the witness was not fully focused on observing the Accused. The Court again notes that his evidence finds strong support in the evidence of Mauricio Cawich who indicates that on that day the Accused was striking the deceased repeatedly and that the deceased was simply covering himself from the blows and did not respond. It is to be noted that Andy Noh also indicated that he saw multiple people there which also aligns with Mauricio's evidence that at the time the deceased began being beaten by the Accused and for some time during the beating there were several people there. After careful consideration and even allowing for the potential impact of the weaknesses identified above, the circumstances of the recognition of the Accused by Andy Noh are sufficient in this Court's mind to dispel the possibility of mistaken recognition.

**[50]** The Court notes that there is an evidential gap between the beating of the deceased by the Accused and his death. There is no evidence lead which indicates the exact time of death of the deceased as none of the witnesses for the Crown see the deceased at the time of his death. They only see him after. The Crown is therefore asking the court to make the inference circumstantially that as the cause of death was from multiple blunt force trauma to the chest and the abdomen and the Accused was said to have struck the deceased repeated blows to the chest and abdomen for a period of at least 10-15 minutes at the community center on the day before his body was discovered at the community center, the blows inflicted by the Accused were responsible for his death. The Crown is also asking the court to infer that the force used by the Accused to inflict the blows was considerable enough to result in the harm that caused his

death. The Court notes on that point that Mauricio Cawich does not say how hard the Accused was hitting the deceased however the Court gets an idea of how severe the beating was from the injuries suffered by Mauricio Cawich himself who indicates that he was so badly beaten that he had to stop by his daughter and nurse his injuries to his arm, his chest and other areas of his body. Rutilia Cawich also describes the extent of the injuries received by her husband. It is not speculative therefore for this Court to infer that the force used by the Accused to beat both Mauricio and the deceased was considerable. This can also be evidenced by the fact that the deceased was unable to fight back and concentrated on blocking the blows to minimize the impact.

[51] Looking at the evidence which the Court has led on this element there is considerable evidence, even allowing for the lack of direct evidence as to the time of death of the deceased and the exact force used by the Accused when striking him, which if accepted can prove that the Accused inflicted the harm on the deceased that caused his death.

**c) The Accused intended to engage in the act that caused the infliction of the unlawful harm.**

[52] On this element the Crown does not have to prove a specific intent akin to the elements of murder. As manslaughter is not a crime of strict liability the Crown is however still obligated to prove an intention to commit the offence. For **Proactive Harm Manslaughter** or **Manslaughter contrary to section 116(1)** the Crown must prove that the Accused intended to engage in the conduct which inflicted unlawful harm on the deceased. On the specific facts of this case since the unlawful harm was inflicted by the Accused striking the deceased with his fists and feet about the face and chest area, the Crown must prove that the Accused intended to engage in that conduct.

[53] The Crown to establish this element relied primarily on the evidence of Mauricio Cawich who indicates that after drinking for some time the Accused began to verbally and physically assault him for about 10 – 15 minutes. After beating him up the Accused turned his attention to the deceased and hit him for about 10 – 15 minutes before Mauricio left. The words attributed to the Accused while hitting the deceased are also important when deciding whether the Accused intended to hit the deceased all over the body. Mauricio indicates that when the Accused was hitting the deceased repeatedly, he kept on saying “One, Two, Three, here it comes” in between the blows. The circumstances therefore suggest that when the Accused was hitting the deceased he intended to do so, the blows were not accidentally inflicted but deliberate actions on the part of the Accused who intended to inflict blows on the body of the deceased.

[54]The Court notes that there is evidence emerging from most of the Crown's witnesses that alcohol was being consumed before the deceased was allegedly attacked by the Accused. The Court also notes that the evidence of the witnesses suggest that the Accused was under the influence of alcohol when he struck the deceased. The ingestion of this alcohol was voluntary by the Accused and to the extent that it may have impaired the decision making of the Accused, the Court is guided by the authority of DPP v Majewski<sup>12</sup> which provides that self-induced intoxication is not a defence to crimes of basic intent such as Manslaughter. In this case, if the evidence of the Accused's intoxication is accepted, that does not afford him a defence nor does it, in law, rob him of the ability to form the intention to inflict the blows on the body of his uncle Feliciano Tzul even if his possible state of intoxication prevented him from appreciating the full consequences of his actions.

[55]On this element therefore the Crown has led evidence, which if accepted, can establish that the Accused intended to engage in the actions that inflicted the harm on the deceased.

**d) There was no lawful justification for inflicting unlawful harm on the deceased<sup>13</sup>.**

[56]**Section 36** of the Code provides guidance on when force can be justified in the prevention of or defence against a crime. On the issue of lawful justification for the crime of Manslaughter, the Code provides *inter alia* in **section 36 (4)** that a person may justify the use of necessary force or harm, extending in cases of extreme necessity even to killing, in prevention or defence against the crime of Manslaughter.

[57]There is no evidence in the Crown's case which gives rise to a lawful justification for the use of force against the deceased by the Accused. The evidence that emerged from the Crown's witnesses allegedly shows an unprovoked attack by the Accused upon the deceased and after being attacked there is no evidence that the deceased tried to use force against the Accused to defend himself in any way. In those circumstances, lawful justification does not arise. To put it another way, the Crown has led evidence which if accepted, can establish that there was no lawful justification for the alleged actions of the

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<sup>12</sup> [1977] AC 443

<sup>13</sup> Title VI of the Code sets out lawful justification for the use of harm

Accused on the 18<sup>th</sup> of July 2021 when he struck the deceased repeatedly at the Xaibe Community Center.

**[58]** The Court notes that in the evidence of Andy Noh there is reference to a “fight” between the Accused and someone else, but when this evidence was further contextualized the witness clarified what he meant by a fight. The witness indicated that what he meant by a fight was that he saw the Accused throwing punches, but he could not say at whom. Nothing emerges from the evidence to indicate that the other person was throwing punches back at the Accused. In fact, the evidence from the witness is that the deceased was not responding to the blows as he accepted the veracity of what he told the police on that issue in his statement.

### **Has the Crown led evidence strong enough to carry a conviction?**

**[59]** Based on the foregoing analysis of the Crown’s case the Crown’s case is not perfect as there are shortcomings in each of the key witnesses. No witness is perfect however and the Court must look at all the Crown’s case holistically to see whether the evidence overall is strong enough to carry a conviction. As can be seen from the foregoing analysis the Crown’s case is a mix of direct and circumstantial evidence which the Court must carefully analyse and link together before it can be sure that the Accused is guilty of Manslaughter as alleged by the Crown. After carefully analysing the evidence for the Crown and the inferences that the Court is being invited to make, the Court finds that the Crown’s case is strong enough, if accepted, to carry a conviction against the Accused on the charge of Manslaughter and accordingly, will now go on to consider the case for the Defence.

### **Case for the Defence**

**[60]** The Accused opted to give a dock statement and call no witnesses. The Court reminds itself that this is the Accused’s right, however the fact that he has not been cross-examined may make his dock statement less cogent than sworn evidence. However, it is material which may be considered and may show the evidence in a different light.

[61]The Court reminds itself that the Accused has nothing to prove and even if the Court rejects the dock statement of the Accused this does not automatically mean that the Accused is guilty but rather that the Court must return to the case for the Crown to see whether the Crown has established beyond a reasonable doubt that the Accused is guilty.

[62]The Accused through agreed evidence on his case raised that he has no previous convictions thereby, in law, raising his good character. Good character is not a defense to a criminal charge, but a person's good character is always relevant to the Court's factual determination on the issue of guilt as their good character may make it more likely that they should be believed when they deny the allegations and may make it less likely that they have acted as alleged.

[63]Where a defendant gives sworn testimony and is of good character, he will be entitled to both the credibility and propensity limbs of the good character direction. In the instant matter however, the Accused's good character is raised only through the agreed evidence, and he did not give sworn testimony, and accordingly he is only entitled to the propensity limb of the Good Character direction pursuant to the judgement of our apex court the CCJ in **August v R**<sup>14</sup>. The Court therefore reminds itself that the fact that the Accused is of good character makes it less likely that he has acted as alleged in striking the deceased on the 18<sup>th</sup> of July 2021.

[64]The Accused through his dock statement raises the defence of denial and essentially also fabrication. The contents of his dock statement constitute a bare denial and a suggestion that he would not do anything to his uncle who he lived with and looked after since the dissolution of his uncle's marriage. The Court considered the dock statement of the Accused carefully and rejected it in its entirety. The Court rejected it based on the strength of the case for the Crown and is fortified in this approach by the advice of the Privy Council in **Bally Sheng Balson v The Queen**<sup>15</sup>.

[65]Having rejected the defenses of the Accused, the Court now returns to the Crown's case to determine whether it is satisfied beyond a reasonable doubt of the guilt of the Accused.

### **The Court's findings**

[66]Having considered the totality of the evidence, the Court is satisfied so that it is sure:

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<sup>14</sup> Ibid

<sup>15</sup> 2005 4 LRC 147

**a) Feliciano Tzul is dead.**

The Court accepts the evidence of Hilberto Trimenos and Francisco Reyes that on the 19<sup>th</sup> of July 2021 they observed the cold, lifeless body of the deceased Feliciano Tzul and that Francisco Reyes then called the police. The Court accepts the evidence of Cpl Mossiah that when he arrived at the scene the lifeless body of the deceased was in the verandah of the Xaibe Village Community Centre. Further, the Court accepts the evidence of Lydia Tzul that she identified the body of her husband on the 22<sup>nd</sup> of July 2021 to Dr. Mario Estradabran prior to a postmortem being conducted. The Court also accepts the evidence of Dr. Estradabran that he conducted a postmortem on the deceased on the 22<sup>nd</sup> of July 2021. The Court is therefore satisfied that Feliciano Tzul is dead.

**b) The death of the victim was due to unlawful harm caused by the Accused.**

The Court accepts the evidence of Dr. Estradabran that the cause of death of the deceased was acute lung failure due to multiple blunt force trauma to chest and abdomen. The Court further accepts the evidence of Mauricio Cawich that on the 18<sup>th</sup> of July 2021 he was seated next to the deceased when the Accused attacked the deceased striking about the face and upper body particularly in the rib cage repeatedly for a period of at least 10 – 15 minutes and continuing even after Mauricio Cawich left. The Court further accepts the evidence of Andy Noh that he saw the Accused beating up the deceased at the Xaibe Community Center and the deceased at the time of the beating was unable to respond to the blows that were being dealt by the Accused. The Court finds as a fact that injuries which caused the death of the deceased were in the same areas that the Accused was striking for a considerable period of time of at least 15 minutes. The Court therefore finds as a matter of fact and is satisfied so that it is sure that the blows dealt by the Accused to the deceased on the 18<sup>th</sup> of July 2021 caused the death of the deceased.

**c) The Accused intended to engage in the act that caused the infliction of the unlawful harm.**

The Court accepts as true the evidence of Mauricio Cawich who indicates that after beating him, the deceased then turned his aggressive intentions onto the deceased and beat him all over his upper body but particularly the Accused directed kicks towards the chest and rib area of the deceased. The Court further accepts as true the evidence of Mauricio Cawich that before some of the blows inflicted on the deceased the Accused repeatedly said, “One, two, three, here it comes.” The Court is therefore satisfied so that it is sure that the Accused intended to hit the deceased in his chest and to

kick him in his ribs. The Court is further satisfied that, if the Accused was intoxicated, he did so voluntarily by drinking alcohol and accordingly that does not prevent him in law from being able to form the intent to hit the deceased repeatedly in his chest and ribs.

**d) There was no lawful justification for inflicting unlawful harm on the deceased**

The Court accepts the evidence of Mauricio Cawich that the attack by the Accused on the deceased was unprovoked and the deceased did not fight back. The Court accepts the previous inconsistent statement of Andy Noh where he told the police that he saw the Accused striking the deceased at the community center and that the deceased was not fighting back. The Court is therefore satisfied so that it is sure that there was no lawful justification for the actions of the Accused on the 18<sup>th</sup> of July 2021.

**[67]** The Court therefore finds the Accused guilty of the sole count on the indictment of Manslaughter.

**Disposition**

**[68]** The Court finds Editor Noh guilty of Manslaughter as charged in the indictment. The matter is adjourned for a separate sentencing hearing as advised by the CCJ in Linton Pompey v DPP<sup>16</sup>.

**Raphael Morgan**  
**High Court Judge**  
**Dated: 6<sup>th</sup> October 2026**

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<sup>16</sup> [2020] CCJ 7 (AJ) GY at para 32.