

IN THE SENIOR COURTS OF BELIZE

NORTHERN DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO.: N31 of 2024

BETWEEN

THE KING

and

MYRON PALENCIA

Accused

Before:

The Honourable Mr. Justice Raphael Morgan

Appearances:

Ms. Lavinia Cuello for the Crown

Mr. Leeroy Banner for the Accused.

2026: May 11th, 12th, 13th, 15th, 18th,
June 11th, July 31st

VERDICT – REASONS FOR DECISION – ATTEMPTED MURDER

[1] **MORGAN, J.:** Myron Palencia (“the Accused”) is indicted on one count of Attempted Murder contrary to **section 18(2)** read along with **section 117** of the **Criminal Code**¹ (“the Code”).

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020

- [2] The indictment alleges in summary that on the 21st day of September 2022, the Accused attempted to murder Kenia Viamil at San Narciso Village, in the Corozal District.
- [3] The trial began with the arraignment of the Accused on the 11th of May 2026 before this Court pursuant to section **65A (2) (b)** of the **Indictable Procedure Act² (the IPA)**.
- [4] At trial the Defence and the Crown agreed to the evidence of nine of the prosecution's witnesses and the Crown called seven viva voce witnesses. During the presentation of the Crown's case, an application was granted to have one of the Crown's witnesses treated as hostile and another witness was called to prove the statement of the witness prior to the witness being cross examined by the Crown and the Defence. An application by the Crown pursuant to **section 123 of the IPA** to have the deposition of Justice of the Peace Cruz Majil read into trial was also granted without objection by the Defence and that deposition was read into evidence.
- [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 statement from the dock 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 now gives its verdict and reasons.

The Evidence

Crown's case at trial

- [8] **Kenia Villamil** testified that in September 2022, she resided in San Narciso Village, Corozal District. She lived there with her young son. Jessica, a close friend, and Orvin Taca were temporarily staying with her.

² Cap 96 of the Substantive Laws of Belize Revised Edition 2020

On the 21st of September 2022, Kenia, her son and Jessica travelled to Orange Walk Town to attend the September celebrations carnival. Orvin remained behind at the residence.

[9] Kenia testified that upon arriving in Orange Walk Town she contacted her sister, Neidy, and arranged to meet her. While walking towards her sister she observed a blue Palencia Trucking vehicle participating in the carnival procession. Kenia testified that she observed the Accused standing in the rear of the truck with Jostyn Serrano. According to Kenia, she attempted to withdraw into the crowd because she always tried to avoid the Accused, who was her former common-law husband. She stated that she did not want him to see her. She estimated that the Accused was approximately thirty feet away from her. She observed him holding a bottle of rum and dancing. According to Kenia, she had a clear view of him for approximately two to three minutes and at the time he was wearing khaki cargo pants and a red Tommy Hilfiger shirt. She stated that she remembered the clothing because she had purchased those items for him. Kenia testified that after meeting her sister, she spent the remainder of the afternoon with family and friends in Orange Walk Town. They visited the residence of her son's grandmother on Guadalupe Street, later stopped at a gas station and eventually spent time at Central Park before preparing to return home. According to Kenia, while preparing to board transportation back to San Narciso she received a message informing her that the Accused had gone to her residence, questioned Orvin about her and evicted him from the house.

[10] Kenia testified that upon arriving back in San Narciso she instructed Jessica to go home while she dealt with the situation herself. When she entered her residence, she observed that the doors and windows were open. She searched the residence but did not find the Accused. She, however, discovered that her blue beach cruiser bicycle was missing. According to Kenia, she had last seen the bicycle on her porch earlier that day before she travelled to Orange Walk Town. Kenia testified that she subsequently attempted to locate the Accused. She first contacted members of the Palencia family before deciding to unblock the Accused's telephone number and call him directly. According to Kenia, she asked him where he was and demanded the return of her bicycle. She stated that the Accused initially told her that he was in San Narciso but was evasive regarding his precise location. Kenia testified that she thereafter searched for the Accused at several places in San Narciso Village. According to her, following a series of telephone calls and messages, the Accused eventually told her to meet him behind the clinic.

[11]According to Kenia, she walked from her house to the highway and then towards the bus stop near the clinic where she met the Accused. Before reaching the bus stop, she observed the Accused waiting for her. She estimated that he was approximately thirty to thirty-five feet away. According to Kenia, there was a lamppost between the bus stop and the clinic, and the lighting was sufficient to allow her to recognize him. She stated that the Accused then led the way towards the rear of the clinic and she followed him at a distance of about two to three feet. At that time, he was wearing khaki pants, a sleeveless shirt and a maroon cap. According to Kenia, while near the clinic she told the Accused that behind the clinic was not an appropriate place to talk and that she had a house where they could talk instead. She testified that the Accused responded by saying "Que hacia esta puta sa macho en tu casa" which translated to him asking why another man was at her residence. Kenia stated that she explained that Orvin was merely a friend of Jessica. According to Kenia, the Accused also told her that his "poison" would be seeing her with another man. She testified that after this conversation she decided to leave the area. Kenia testified that when she attempted to leave, the Accused grabbed her and dragged her towards the rear of the clinic. According to Kenia, the Accused threw her onto the ground and pinned her between his legs while holding her hands. She testified that the Accused told her, "Por yo vino a esto" which she understood to mean "I came for this". According to Kenia, the Accused then looked towards Jostyn and told him to tell her why they were there. She stated that Jostyn indicated that the Accused had come there to kill her. Kenia testified that Jostyn was positioned approximately three to four feet away from her near the corner of the building. According to her, the Accused instructed Jostyn to watch whether anyone was approaching.

[12]Kenia testified that she began screaming after hearing this conversation. According to her, the Accused then began stabbing her. She felt several stab wounds to her chest and neck while she attempted to wrestle the knife away from him. She testified that because the Accused was on top of her, she was unable to free herself. According to Kenia, after stabbing her, the Accused placed the knife aside and began choking her. She stated that while choking her, the Accused's thumb entered one of the wounds in her neck and further opened the wound. Kenia testified that she also heard the Accused instruct Jostyn to take her cellular phone. She stated that before losing consciousness she felt as though she had been kicked. Kenia testified that when she regained consciousness, she found herself alone and covered in blood. She attempted to stand but was too weak to do so. According to her, she dragged herself towards the corner of the building so that someone might see her. She eventually heard people speaking nearby

and began calling for help. She stated that people approached with flashlights and asked what had happened. According to Kenia, she told them that her former common-law husband, Myron Palencia, had attacked her. Thereafter the police arrived and she was transported for medical treatment. She recalled first being taken to the Corozal hospital and thereafter to the hospital in Orange Walk Town.

[13]Kenia testified that the incident behind the clinic lasted approximately half an hour. She stated that although the area behind the building was dark, lighting from a nearby lamppost and other lights in the vicinity enabled her to see. She further testified that while stabbing her, Myron accused her of refusing to forgive him and referred to her in derogatory terms. According to Kenia, she sustained approximately fourteen stab wounds, including injuries to her chest, hand and neck. She stated that Jostyn remained nearby throughout the attack and repeatedly told her to remain quiet.

[14]Kenia testified that she had known the Accused for approximately five years and had lived with him for most of that period. She described him as a brown-skinned male of medium build with a slight belly and several distinctive tattoos. During the trial she identified the Accused in the dock as Myron Palencia.

[15]Under cross-examination, Kenia accepted that although she attempted to avoid the Accused at the carnival, she later unblocked his telephone number, contacted him repeatedly and searched several locations in San Narciso Village to locate him. She accepted that she eventually went alone to the bus stop and behind the clinic. Kenia maintained however that she was not seeking out the Accused because of any romantic interest in him but because she wanted the return of her bicycle. She testified that the Accused admitted that he had the bicycle and told her that he would return it. Kenia denied suggestions that she was jealous of the Accused, upset because she had seen him at the carnival or motivated by a desire to rekindle their relationship. She denied that she and the Accused spent time reminiscing about their former relationship. She also denied suggestions that an argument arose because of the Accused's infidelity. According to Kenia, her focus that night was recovering her bicycle. Kenia further denied suggestions that she attacked the Accused first, that she produced a knife, that she assaulted him out of jealousy or that the Accused was merely defending himself. She maintained that the Accused produced the knife, instructed Jostyn during the attack and repeatedly stabbed her. She denied that her allegations against the Accused were fabricated.

[16] During cross-examination, Kenia accepted that certain details she gave at trial, including her evidence that the Accused inserted his thumb into one of her wounds while choking her, were not contained in her statement to the police. She nevertheless maintained that the account she provided before the Court was true. Kenia also denied suggestions that she had previously attacked the Accused with a knife during their relationship and stated that the Accused had been violent towards her on prior occasions.

[17] **Cita Bacab** testified that in September 2022 she lived in San Narciso Village, Corozal District. Her residence was situated on the main road opposite the San Narciso Clinic. She described her home as a two-storey concrete structure enclosed by a fence made of concrete blocks and steel rods. She estimated that the distance between her home and the San Narciso Polyclinic was approximately one hundred yards.

[18] Cita recalled the night of the 21st of September 2022 at approximately 10:00 p.m., she was standing by the doorway of her home when she observed a female person walking along the road in the direction of the bus stop from the area of Escuela Mexico. She estimated that the female was approximately fifty feet away when she first observed her. She described the female as slightly chubby, approximately five feet in height, wearing short jeans and a floral blouse with her hair loose. According to Cita, she was able to see the female due to lights from her residence and the neighbours. Cita testified that she continued observing the female as she walked to the bus stop. She indicated that the bus stop was approximately seventy-five feet from her residence. She observed two males at the bus stop and saw the female speaking with one of them while the other remained nearby. According to Cita, she was able to see because the area was illuminated by her neighbors' lights and the lights from a nearby Chinese shop opposite the bus stop. She estimated that the female spoke with one of the males for approximately five minutes. Thereafter, the female and the two males walked in the direction of the old clinic and stopped near a window of the building. Cita indicated that she was able to see what appeared to be the reflection of a cellular phone. She estimated that they remained near the window for approximately five minutes before proceeding to the rear of the clinic.

[19] According to Cita, once the three people moved behind the clinic, she was unable to continuously observe them. She however stated that from time to time she observed persons peeping from around the corner of the building. This occurred on approximately three occasions during the period they were

behind the clinic. According to her, they were behind the clinic for about half an hour. After some time, she entered her home and turned off her lights. Shortly thereafter, she observed two males emerge from behind the clinic. She testified that the two males came out running, threw themselves onto the grass, stood up and then proceeded in the direction of Escuela Mexico. She contacted her son-in-law, Santos Alfaro. She then heard a female shouting from behind the clinic. She was standing on the road when she heard the female yelling "help, help me, call the ambulance". Santos contacted Police Officer Sierra around 11:05 pm and informed him that a woman was behind the clinic asking for help. Cita testified that they were initially afraid to go assist because they did not want to be blamed but after speaking to the officer, she proceeded behind the clinic to help. She stated that when they went to assist the female, they took flashlights with them. She observed a female lying near the corner of the building. The female was covered in blood and appeared to have sustained stab wounds to her chest, shoulders and neck. **Cita further testified that the female told her that it was her ex-husband, the Accused, Myron Palencia, who had done that to her and that he had stated that if she could not be for him, she would not be for anyone.** Cita estimated that she was approximately one yard away from the female when she spoke with her. Cita indicated that her sons-in-law Santos, Aiden and Abednego were also present when these words were spoken. She further testified that the female identified herself as "Colocha" and informed them that her child was asleep at the residence where she lived. Cita further testified that attempts were later made to contact 911 before the police eventually arrived and transported the female to the hospital. Thereafter she went to notify the owner of the residence where the female lived that she had been injured and that her child remained asleep inside. Upon returning home, she observed police officers taking measurements in the area.

[20] Under cross-examination, Cita stated that she lived downstairs. She accepted that the area behind the old clinic was dark but maintained she was able to observe people moving about the area due to illumination from the neighbors' lights. She also accepted that in her statement to police she referred to one person peeping from behind the building, although she maintained in her evidence before the Court that she observed 'persons' peeping from behind the clinic. Cita further accepted that she was unable to identify the persons she observed peeping from behind the clinic. She maintained however that the persons she observed peeping were the same persons who later emerged from behind the clinic and ran away. She also maintained that the injured female spoke with her and specifically identified the Accused

as the person who attacked her. Cita agreed that she did not tell the police what the female said. Cita indicated that prior to that night she did not know anyone by the name of Myron Palencia.

[21] Santos Alfaro testified that in September 2022 he resided at the home of his mother-in-law, Cita, in San Narciso Village, Corozal District. Santos recalled the night of the 21st of September 2022 at approximately 10:30 p.m., he had returned from Louisville Village with his wife and was standing in front of Cita's residence in the company of his brothers-in-law, Aiden and Abednego. They were discussing plans to celebrate his daughter's birthday. According to Santos, they remained in front of the residence for approximately fifteen to twenty minutes and during that period he did not observe anyone else in the area.

[22] Santos testified that sometime around 10:45 p.m. he received a telephone call from Cita. She asked whether he could hear a woman shouting. Santos initially replied that he could not. A short time later he received another communication from Cita concerning the same matter. Thereafter Santos, together with his brothers-in-law, got into a red pickup truck and proceeded towards the area from which the shouting was allegedly coming. According to Santos, he observed two people moving in a crouched position behind the clinic. He estimated that they were approximately ten yards away from him. Santos testified that 'it was not too clear' and there was only one lamppost in the vicinity so that he was unable to see their faces. He was however able to observe that they appeared to be two males, one taller than the other. He estimated that the taller male was approximately five feet ten inches in height, broad shouldered and of Mestizo appearance. Santos recalled that the taller male was wearing grey three-quarter pants while the other was wearing long jeans. Santos testified that they followed the two people for approximately ten minutes. The men were going in the direction towards Orange Walk. Santos then returned to Cita's home. He was standing in front of Cita's residence when he heard a female screaming and asking for help. Santos said he then contacted Police Officer Sierra and informed him of what was occurring. He testified that he did this so that there would be no misunderstanding concerning his own involvement in the matter. Following his conversation with Officer Sierra, Santos proceeded towards the area from which the cries were coming.

[23] Santos testified that when he approached the area behind the clinic, he observed a female lying on the ground near the corner of the building, she was lying on her back. He recalled that she was wearing a

floral sleeveless blouse and short jeans. He observed a pair of slippers about three yards away from the female as well as what appeared to be blood about two and a half feet near the slippers. He observed a stab wound near her neck and chest. Santos stated that the female appeared weak but was still speaking. **He indicated that Cita spoke with the female and asked her who had stabbed her. According to Santos, the female replied that it was her ex-husband, Myron Palencia.** Santos estimated that he was approximately three yards away from the female when she made this statement. Because the area was dark, Santos and the others used their phone lights to illuminate the scene.

[24] Under cross-examination, Santos accepted that although he had spoken with Officer Sierra, he did not tell him that the injured female had identified the Accused as her attacker. Santos explained that he simply did not think about relaying that information and that he was frightened by the female's appearance. Santos maintained however, that the female did tell Cita that the Accused was the person responsible for her injuries. He also stated that although he observed the two males moving away from the area of the clinic, he did not regard them as suspects at the time and consequently did not attempt to intercept them. Santos indicated that prior to that night he did not know anyone by the name of Myron Palencia.

[25] Jostyn testified that in September 2022 he lived in Buena Vista, Corozal District. On 21st September 2021, he travelled to Orange Walk with his mother, sisters, and aunt (known as Wendy) to watch a parade. During the parade, he encountered Myron, his former stepfather, and joined him in his truck. They participated in the parade and subsequently travelled to Santa Clara village for a mini parade. After the festivities, the witness returned to Buena Vista via his aunt's house. Whilst walking through the main street, he encountered Myron again, and they began walking together towards the direction of Corozal before obtaining transport to Santa Clara village.

[26] Jostyn and Myron stopped at a bus stop where they sat and talked. Myron received numerous telephone calls, many from someone named Kenia. Eventually, Myron arranged to meet at a clinic. A curly-haired woman, identified as Kenia (Myron's former partner), arrived at the bus stop and requested that Myron speak with her behind the clinic. Jostyn followed them. Initially standing approximately five feet away, Jostyn heard Kenia arguing with Myron. He then moved further away. He then testified to seeing shadows and believed he saw Kenia hitting Myron in the face. He then observed both individuals on the ground

fighting, with Kenia initially on top of Myron, and witnessed what appeared to be a stabbing motion from Kenia.

[27] Upon the witness giving this account of the incident between the Accused and Kenia, an application was made by the Crown for the witness to be deemed hostile and to have his inconsistent statements put to him through cross examination by Crown Counsel. This application was granted and his statement to the police was proved by the evidence of Cpl Gustavo Pech.

[28] **Corporal Pech** testified that he was attached to the Crime Investigation Branch (CIB) at Corozal Police Formation in September 2022. He recorded a statement from Jostyn Omar Gutierrez Serrano on 30 September 2022 at approximately 11:08 am inside the CIB department. After recording it, Corporal Pech read the statement back to Jostyn and his mother, who confirmed its accuracy. They were given the opportunity to add, alter, or delete any content, but both agreed to the statement as recorded. The four-page statement was then printed and signed by Jostyn on all pages, with his mother signing as a witness, followed by the signature and stamp of Senior Justice of the Peace Cruz Amparo Majil. The video footage was recorded in five segments due to its duration. Corporal Pech showed the footage to Jostyn, his mother, and the Senior JP in the conference room adjacent to the CIB office. After they confirmed it was accurate, he downloaded the footage to a desktop computer and burnt five grey Verbatim brand DVDs. Each DVD was labelled consecutively as "Statement 1 JOS" through "Statement 5 JOS". Jostyn signed each DVD after viewing the recordings on the computer. Corporal Pech translated the statement into English, noting that Spanish has been his first language since childhood. He certified the statement, confirming it was true to the best of his knowledge and belief. The Spanish statement was identified and tendered as exhibit GPA for identification. During cross-examination, it was established that Jostyn had been detained on 28 September 2022 for attempted murder. A Notice of Interview (NOI) was conducted on 29 September 2022, during which Jostyn initially denied being in San Narciso Village in 2022. The defence suggested that Jostyn was pressured by Corporal Pech and his mother to change his position and give a statement, and that he was told he would be charged unless he gave a statement. Corporal Pech denied these suggestions. The defence noted that the NOI was not provided for comparison with the statement. In re-examination, Corporal Pech clarified that Jostyn, and his mother were given options: to leave the station without giving a statement, to leave and return later, or to proceed immediately. They chose to proceed, and the statement was given of Jostyn's own free will.

[29] **Jostyn's** evidence resumed and during cross-examination of Jostyn by Crown Counsel, significant inconsistencies emerged between the witness' testimony in examination in chief and his police statement given days after the incident at Corozal Police Station. In his statement, the witness had said he saw Myron stab Kenia, that Kenia asked him for help, that he attempted to push Myron off but could not, and that Myron told him to take Kenia's phone. The witness claimed he felt pressured when giving his statement to police. He acknowledged signing each page of his Spanish-language statement but repeatedly stated he did not remember these details during testimony. The statement also indicated that Myron expressed remorse whilst walking back, saying he didn't know why he did that.

[30] After the incident, both the witness and Myron left the area, walking on a dirt road towards the highway in the direction of Buena Vista, passing Escuela Mexico. The witness' aunt Letty collected them in a black pickup truck, dropping Myron at his mother's house before taking the witness home. The witness was detained by police for two days on suspicion of attempting to commit murder. During cross-examination by defence counsel, the witness agreed he was pressured by police and stated that Kenia pulled out the knife first and attacked Myron. The witness acknowledged he loves Myron and does not want him to go to prison. He identified the accused in the dock as Myron.

[31] **Orvin Taca** testified that in September 2022 he had been residing for approximately three weeks at Kenia's residence in San Narciso Village, Corozal District. He described himself as a friend of Jessica, who was also staying at the residence. On the 21st of September 2022 Kenia, her son and Jessica travelled to Orange Walk Town for the carnival celebrations while he remained at the residence.

[32] Orvin recalled that at approximately 8:00 p.m. he was lying in a hammock inside the house when he noticed someone peeping through a window. He looked towards the window and observed the face of a male person looking inside. Orvin went outside and asked the individual who he was. According to Orvin, the individual did not identify himself but instead questioned what he was doing in the house and told him that he did not belong there. The individual also threatened to hit him. Orvin testified that the individual appeared aggressive and he therefore moved away from the house towards a nearby area where vegetables were sold. He subsequently observed the same individual descend from the house with a blue female-frame beach cruiser bicycle. He estimated that the person was approximately three to four

feet away from him. The area was illuminated by nearby lights, although Orvin accepted that the lighting was not particularly bright. According to Orvin, the individual warned him not to return to the house before leaving with the bicycle in the direction of the main road. Orvin further testified that the same individual later returned with the bicycle. He saw him leave the bicycle downstairs and go back up into the house. The individual then returned downstairs and again confronted him. According to Orvin, the individual threatened that he would hit him if he saw him around the house. Thereafter, the individual left the area with the bicycle using a road which Orvin described as dark.

[33] After the individual left, Orvin went to Jessica's mother's house where he obtained Kenia's telephone number from Jessica's younger sister. He then called Kenia and informed her that a man had come to the house, taken her bicycle and threatened him. Orvin described the individual as a brown-skinned male with a tattoo on his neck. According to Orvin, Kenia instructed him to remain at Jessica's residence until she arrived and indicated that she would deal with the situation when she returned. When Kenia later arrived, Orvin told her that the individual had taken her bicycle. Orvin testified that he remained at Jessica's residence and later went to sleep. Sometime thereafter he was awakened and informed that Kenia had been stabbed. He and Jessica walked towards the clinic where they observed police officers already present at the scene.

[34] Orvin estimated that the individual who came to Kenia's residence was in his presence on two occasions for approximately one minute each time. Although he accepted that the closest light source was some distance away, he maintained that he was able to observe the individual's appearance.

[35] Orvin recalled that on the 28th of September 2022 he was informed by the police that he would be participating in an Identification Parade but then the person refused. On the 29th of September 2022 he was again called by the police, and they picked him up in a police vehicle and took him near the Magistrate's Court along with a Justice of the Peace. He said he observed a number of persons walking towards the court building. According to Orvin, he recognized one of those individuals as the same person he had observed at Kenia's residence. He identified that person as Myron Palencia. Orvin testified that prior to the identification procedure he knew the name Myron Palencia because Kenia had told him the individual's name. He did not know how far away the person was but there was nothing obstructing his view when he made the identification. Orvin testified that the person had on a red shirt and blue jeans

and he was able to recognize him by a tattoo on his neck. He described the person he identified as being of medium build and approximately five to six feet in height. Orvin could not recall whether he had given a statement after. During the trial, Orvin maintained that the individual he observed at Kenia's residence on the night of the 21st of September 2022 was the Accused.

[36]Neidy Williams, who indicated that she now goes by the name Neidy Suazo, testified that in September 2022 she resided in Burrell Boom, Belize District. Kenia is her sister. She recalled travelling to Orange Walk Town on the 21st of September 2022 accompanied by her friend Karina and her son to attend the carnival celebrations. Prior to travelling, she contacted Kenia and encouraged her to come to Orange Walk Town so that they could meet.

[37]Neidy testified that after arriving in Orange Walk Town she spent the afternoon viewing the carnival parade with Karina and her son. During the afternoon, she exchanged several telephone calls and voice messages with Kenia while attempting to determine her whereabouts. At approximately 3:30 p.m., Kenia eventually joined her. Neidy testified that before Kenia arrived, she observed a blue ten-wheeler truck which she knew belonged to the brother of the Accused. She stated that she saw the Accused standing in the rear of the truck holding a bottle of rum. The Accused was approximately ten feet away from her and there was nothing obstructing her view. She estimated that she observed him for approximately five minutes. According to Neidy, after arriving, Kenia told her that she had earlier seen the truck and had hidden herself in the crowd to avoid being seen. Neidy testified that after meeting Kenia, they remained together for the rest of the afternoon. They watched the parade, visited Kenia's son's grandmother on Guadalupe Street, stopped at a gas station and later went to Central Park. While at Central Park, Neidy left Kenia with her son while she purchased food. When she returned approximately thirty minutes later, Kenia had already left. After telephoning her, Kenia informed her that she was waiting for transportation in Trial Farm. Neidy subsequently returned home to Burrell Boom with her son.

[38]Neidy testified that during the early hours of the 22nd of September 2022, at approximately 1:00 a.m., she received a telephone call from the Corozal Community Hospital. She was informed that Kenia had been admitted with multiple stab wounds. Neidy immediately attempted to contact members of her family and was eventually able to reach her brother. She later learned that Kenia had been transferred from the Corozal Community Hospital to the Northern Regional Hospital in Orange Walk Town. Neidy travelled to

Orange Walk Town together with her mother and arrived at the hospital at approximately 7:00 a.m. When she entered the emergency ward, she observed Kenia lying on a bed with what appeared to be multiple stab wounds and a medical tube protruding from the left side of her body. **According to Neidy, when Kenia saw her, she began crying and stated in Spanish, "Me quiso matar Myron," which Neidy translated as meaning "Myron tried to kill me."** Neidy estimated that she was approximately one foot away from Kenia when these words were spoken. Neidy further testified that later that day, after Kenia had been transferred from the emergency ward to the female ward, she again spoke with her sister. According to Neidy, she questioned Kenia about what had occurred and Kenia again told her that the Accused had tried to kill her. Neidy indicated that only she and her mother were present during this conversation.

[39] Neidy testified that she had known the Accused for approximately five years through his relationship with Kenia. During that period, she had seen him on several occasions, including family gatherings and trips. She described him as having short wavy hair, a mole and a slight belly. During the trial, she identified the Accused in the dock as Myron Palencia.

[40] **Sgt. Manolo Cortez** testified that in September 2022 he was attached to the Criminal Investigations Branch of the Corozal Police Formation. On the 26th of September 2022, Cpl. Gustavo Pech requested his assistance in revisiting the scene of the stabbing incident at San Narciso Village. Sgt. Cortez accompanied Crime Scene Technician Leidiana Cantun to the area behind the old clinic where photographs of the scene were taken. Sgt. Cortez further testified that on the 28th of September 2022, Cpl. Pech requested his assistance in conducting an identification parade involving the Accused who at that time was detained on suspicion of Attempted Murder. Prior to the procedure, Sgt. Cortez contacted Orvin and informed him that an identification parade might be conducted. He explained the process to Orvin, who indicated that he was willing to participate if required. Sgt. Cortez also contacted Justice of the Peace Lorena Martinez and requested her presence as an independent witness to the proposed identification procedure. According to Sgt. Cortez, he subsequently brought the Accused from the cell block to a conference room at the Corozal Police Station where JP Martinez was present. He informed the Accused that an identification parade was being requested by the investigating officer and explained the various forms of identification parade available, including a face-to-face parade involving eight persons of similar appearance. Sgt. Cortez testified that after the procedures were explained, the

Accused declined to participate in any form of identification parade. A statement recording that refusal was thereafter obtained from the Accused in the presence of the Justice of the Peace.

[41]Sgt. Cortez testified that following the refusal of the Accused to participate in an identification parade, arrangements were made for a group identification procedure. He informed Orvin of the Accused's refusal and explained the proposed procedure. He also requested the assistance of Senior Justice of the Peace Cruz Amparo Majil to witness the process. Sgt. Cortez recalled that on the 29th of September 2022, he met both Orvin and Senior JP Majil at the police station. Thereafter they travelled in a fully tinted police vehicle to Fifth Avenue in Corozal Town near the Magistrate's Court. Sgt. Cortez parked approximately fifty feet from the court building. He explained to Orvin that the person whom he had described to police may or may not be present in the vicinity and instructed him that if he recognized anyone, he should point out the person and describe him. According to Sgt. Cortez, while they were observing persons in the area, Orvin pointed towards a group of males walking in the direction of the Magistrate's Court and stated that one of them was the same individual who had come to Kenia's residence and threatened him. Orvin described the individual as wearing a red shirt, blue jeans and black slippers. Sgt. Cortez testified that Orvin then identified that individual as Myron Palencia. Sgt. Cortez looked towards the group and observed a male matching that description, whom he recognized as the same person who had earlier refused to participate in the identification parade, namely the Accused. Sgt. Cortez testified that the day was bright, visibility was good and nothing obstructed his view of the group. Following the identification procedure, he returned to the police station where he recorded a statement from Orvin. On the following day, the 30th of September 2022, he also recorded a statement from Senior JP Majil concerning the group identification procedure. During the trial, Sgt. Cortez identified the Accused as Myron Palencia.

[42]Under cross-examination, Sgt. Cortez accepted that no photograph was taken of the group identification procedure. He explained that no photograph was taken because it was a covert identification exercise. He denied that visibility was impaired by trees in the area and maintained that he was positioned near the entrance of Fifth Avenue with an unobstructed view. He further testified that the group of males identified by Orvin was approximately sixty feet away from the police vehicle when the identification occurred.

Deposition of Justice of the Peace Cruz Majil

[43]The deposition of JP Cruz Majil was read into evidence at trial pursuant to an application by the Crown under section 123 of the IPA. In her deposition JP Cruz Majil indicated that on the 29th of September 2022 she was asked to assist in a group identification parade by Sargeant Manolo Cortez. The group identification parade concerned a detained person. About 1:00 pm she arrived at the station and met Orvin Taca. She then learned the name of the detained person to be Myron Palencia who was detained for the crime of Attempted Murder. Sargeant Cortez, Orvin Taca and JP Majil then boarded a police vehicle and drove to the vicinity of the Corozal Magistrate's Court building where they parked. They were about 50 feet from the front of the Magistrates Court building. Sgt Cortez indicated to Orvin Taca that the person he identified as Myron Palencia may or may not be in front of the Magistrates Court building but if he was to see that person he should point him out and describe him. At about 2:54 pm she saw a group of men walking outside the building and Orvin Taca pointed out one of the men as the man who chase him from the house and wanted to fight with me. Sargeant Cortez asked him if he was sure and he said yes. Orvin Taca identified the man as wearing a red T-Shirt, long blue jeans and a pair of black slippers. Sargeant Cortez again confirmed from Orvin Taca that the man was the same person who he described was Myron Palencia. JP Cruz Majil then looked at the men and saw a man matching the description given by Orvin Taca.

Case for the Defence

[44]The Accused elected to give a dock statement and called no witnesses. The Accused stated that on the 21st of September 2022 he was living in Guinea Grass Village. While participating in the carnival parade in Orange Walk Town he was receiving repeated calls from an unknown telephone number. He stated that after the parade ended and he returned to his mother's residence in Buena Vista Village, he noticed that the same number had called him seventeen times. When he eventually answered, he discovered that the caller was Kenia. According to the Accused, Kenia asked him for the opportunity to explain things. He stated that he told her that he had nothing to discuss with her and ended the call. The Accused said that Kenia continued calling and when he answered again, she asked for an opportunity to see him one last time. He stated that Kenia repeatedly begged him to meet her and told him that she needed to speak with him. According to the Accused, he eventually agreed to meet her.

[45]The Accused said that he left his mother's residence, travelled by bus to San Narciso Village. After arriving at the bus stop, he notified Kenia that he was there, and she came walking to meet him. He stated that he asked her why she was so desperate to speak with him when he had already told her that their relationship was finished. According to the Accused, Kenia questioned why he was with 'this child' and insisted that they speak privately. He stated that Kenia repeatedly attempted to persuade him to return to her home and spend the night there. The Accused maintained that he refused and told her that he was just there to listen to what she had to say. He said that at one point Kenia hugged him and led him in the direction of the clinic. He stated that he told her that he did not want any problems and that if her new partner saw them together, he would end up in trouble. According to the Accused, Kenia continued insisting that he still wanted her and did not truly want another woman. The Accused stated that he again told her that their relationship was over and that she should allow him to live his life. The Accused said that when he attempted to leave the area, he stumbled on a rock. He stated that at that point Kenia produced a knife and placed it against his neck. According to the Accused, he told her that the matter did not need to go that far. He stated that when he attempted to push her away, he sustained a cut to his hand and another cut to one of his fingers. He said that "at that point it was my life or her life". He stated that after a struggle between them, they both fell to the ground and, "without wanting" to, he injured Kenia during that struggle. The Accused further stated that he was fearful for his life as that was not the first occasion on which Kenia had attacked him. He claimed that during the approximately five years that they were together, Kenia had previously attempted to kill him on three occasions. According to the Accused, Kenia became explosive whenever she believed he was involved with other women.

[46]The Accused stated that he was thirty-eight years old, the father of four children and had worked as a truck driver since the age of sixteen. He described himself as a hardworking man who had never previously been in trouble. He told the Court that although he had a weakness for women, he had never raised his hand against Kenia during their relationship. He stated that his parents had raised him not to strike women and maintained that he had never done so.

Agreed evidence

[47]The parties also agreed to the evidence of the following witnesses:

- i. **Leidiana Cantun** – Scenes of Crime technician (SCT) who visited the scene at San Narciso Clinic on the 22nd of September 2022 at night and on the 26th of September 2022 during the day. On each of those visits she took several pictures while processing the scene. The pictures taken on the 22nd of September 2022 were admitted into evidence and tendered and marked LCA 1-7. The pictures taken on the 26th of September 2022 were admitted into evidence and tendered and marked LCB 1-6. taking two sets of pictures while processing the scene.
- ii. **Dr. Jorge Luis Falcon** – General Surgeon on call on the 22nd of September 2022 at the Northern Regional Hospital. He received a call that a patient was being transferred from Corozal Community Hospital to the Northern Regional Hospital. She was identified as 35-year-old Kenia Viamil and she was presenting with multiple stab wounds to the chest and neck region. Upon physical examination she presented with 5 stab wounds to the neck, 1 stab wound to the left side of the jaw, 1 stab wound to lower side of jaw, 3 stab wounds to lower side of chest. One of the stab wounds to the left side of the chest penetrated the lungs and caused a hemopneumothorax and a chest tube had to be placed to drain the accumulated blood which amount to 700 – 800 millilitres of blood. These injuries were classified by Dr. Falcon as grievous harm. She required a blood transfusion of 2 units of blood as upon arrival she presented with generalized skin pallor, hypotensive, tachycardic and anaemic due to the loss of blood. She was discharged on the 26th of September 2022.
- iii. **Sargeant William Marrokin** – indicated that he received the first report of the stabbing on the night of the 21st of September 2022 and that a female stabbing victim was behind the San Narciso clinic. He then dispatched the Quick Response Team (QRT) to the scene to investigate. The QRT relayed information to him that the female was transported to the Corozal Community Hospital and her name was Kenia Viamil. At about 1:30 am on the morning of the 22nd of September 2022 he visited the scene along with Cpl Itza. He then called SCT Cantun who processed the scene. During the processing of that scene, he observed her photographing a red substance behind the clinic which appeared to be blood.
- iv. **PC Angelo Baso** – indicated that he received information from the Corozal police station of injured person at the back of the San Narciso Clinic. He went to the scene and saw a female who was dressed in a red and black blouse and blue short jeans pants laying face up with

multiple stab wounds and a red substance about her body. He then received instructions from Sergeant Marrokin to take her to the hospital. She was taken to the Corozal Community Hospital to receive treatment.

- v. **PC Angeli Cob** – indicated that he was on duty on the 26th of September 2022 he was at the station when Accused came to the station with his Attorney Leeroy Banner. He also assisted in video recording the interview with the Accused in the presence of Cpl Pech and JP Dima Samsorez.
- vi. **PC Angelo Briceno** – indicated that on the 22nd of September 2022 he received a directive from Sergeant Marrokin to issue medico legal forms for victim at CCH. He then visited the Corozal Community Hospital where he saw the victim.
- vii. **Justice of the Peace Dima Samsorez** – indicated that he witnessed the video recorded interview of the Accused on the 26th of September 2022. At the end of the interview two DVDs were recorded.
- viii. **Justice of the Peace Lorena Martinez** – indicated that she was contacted on the 26th of September 2022 by Sergeant Manolo Cortez to witness an identification parade in respect of Myron Palencia. When she arrived at the station she witnessed Sergeant Cortez explain the procedure to Myron Palencia and enquire whether he wished to participate. Myron Palencia declined to do so.
- ix. **Cpl Gustavo Pech** – indicated that he was assigned to investigate a stabbing incident that occurred on the night of the 21st of September 2022 which involved Kenia Viamil. During the course of that investigation he recorded several statements from different witnesses including Jostyn Serrano who was a suspect at the time, conducted a video recorded interview with the Accused where the Accused denied any knowledge of the stabbing of Kenia Viamil or being in San Narciso on the night of the 21st of September 2022 or knowing Jostyn Serrano. Corporal Pech eventually charged the Accused with Attempted Murder.

The Elements of the Offence

Attempted Murder

[48] An attempt to commit a crime constitutes any act or series of acts provided it is done with intent to commit the offence and goes beyond mere preparation³. The Code also provides that any provision of the Code with respect to intent, exemption, justification or extenuation, or any other matter in the case of any act, shall apply, with the necessary modifications, to the case of an attempt to do that act⁴.

[49] With respect to the elements of the offence, the Court of Appeal in **Peter Augustine v The Queen** gave the following guidance:

“An attempt to commit a crime is itself a crime. Before the accused can be convicted of this offence, it must be proved:

- (a) that he had the intention to commit the full offence and that in order to carry out that intention,**
- (b) he did an act or acts which is/are step(s) towards the commission of the specific crime,**
- (c) which is/are directly or immediately and not merely remotely connected with the commission of it; and**
- (d) the doing of which, cannot be reasonably regarded as having any other purpose than the commission of the specific crime.**

All the above must co-exist. Intention alone is not sufficient – it is no offence merely to intend to commit a crime. Doing of the acts alone without intention is not sufficient. Act(s) done must be something more than mere preparation for the commission of the offence.”

³ Attorney General's reference no 1 of 1992 [1993] 1 WLR 2741

⁴ Section 18(5) of the Code

[50] Additionally, **section 18(2)** of the Code provides that:

(2) Every person who attempts to commit a crime shall, if the attempt be frustrated by reason only of accident or of circumstances or events independent of his will, be deemed guilty of an attempt in the first degree, and shall (except as in this Code otherwise expressly provided) be punishable in the same manner as if the crime had been completed.

[51] The Code sets out how a court is to establish intent in sections 6 and 9. The Court is further guided by the judgment of our Court of Appeal in **Gareth Hemmans v R**⁵. In **Hemmans**, Hafiz-Bertram JA (as she then was) in delivering the judgement of the Court, indicated that a judge when considering the issue of intent must be guided by the considerations set out in the Code in sections 6 and 9. There is no need however for a judge to recite the provisions of section 6 and 9 in their judgement and the core task for the Court is to determine whether the Accused had the requisite intention after examining all the facts and circumstances disclosed on the evidence.

[52] As the Accused must have the intention to commit the full offence of Murder, it is helpful to appreciate what constitutes Murder under the Criminal Code. The statutory framework for the full offence of Murder is contained within the Code. Section 117 indicates as follows:

“...Every person who intentionally causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mentioned.” [emphasis mine]

[53] The Court of Appeal's decision in **Peter Augustine v R**⁶ provides guidance on the elements of the Murder as defined by the Code. In **Augustine** Carey JA indicated as follows:

“Murder is defined in the Criminal Code as intentionally causing the death of another without justification or provocation (section 111 Cap 101). It was essential to emphasize to the jury that the specific intent which the prosecution must establish on the charged against him was an intent to kill.”

⁵ Crim. App. 12/16

⁶ Crim Appeal no. 8 of 2001

[54]Section 96 of the Code helpfully defines harm and grievous harm as follows:

“Harm” means any bodily hurt, disease or disorder, whether permanent or temporary;

“Grievous harm” means any harm which amounts to a maim or dangerous harm as hereinafter defined, or ***which seriously or permanently injures health, or which is likely to injure health, or which extends*** to permanent disfigurement, or ***to any*** permanent or ***serious injury to any external or internal organ, member or sense;*** [emphasis added]

[55]Section 36 of the Code provides guidance on when force or the infliction of harm can be justified in the prevention of or defence against a crime. On the issue of lawful justification, 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 Murder or against dangerous or grievous harm.

[56] The Code does provide however that no force used in an unlawful fight can be justified under any provision of the Code. An unlawful fight is defined as a fight which a person engages in or maintains otherwise than in pursuance of some of the matters of justification specified in section 36.

[57]In **Norman Shaw v The Queen**⁷, the Privy Council considered the operation of section what was then section 35 (6) and gave the following guidance:

“Section 35(6) of the Criminal Code is intended to deny an accused the right to rely on self-defence if the force used by the accused was used in the course of an unlawful fight. If the prosecution seeks to rely on s 35(6), it is first necessary for the trial judge to consider whether there is any evidence fit for the jury's consideration that the act charged against the accused occurred in the course of an unlawful fight. If the judge finds that there is no such evidence, the matter will not be left to the jury. If the judge finds that there is some evidence fit for the jury's consideration, he should in the course of his summing-up (a) identify such evidence and invite the jury to consider it, (b) tell the jury what is meant by an unlawful fight (cf s 35(6)), (c) invite the jury to decide whether, on the facts as found, the act charged against the accused occurred in the course of an unlawful fight (as

⁷ (2001) 59 WIR 115

defined by the judge), and (d) direct the jury that the accused may not justify the act charged against him as self-defence if the jury conclude that it was done in an unlawful fight.”

[58] Shaw was a case in which one of the central questions for the jury to decide was whether the attack resulting in the death of the two victims was an act of revenge or an act of self-defence. The Board reasoned that if the jury believed that the shooting which resulted in the death of the two victims was an act of revenge then it was an unlawful fight, and the Appellant would have been precluded from relying on self-defence. If, however, the jury concluded that it was not an act of revenge then the Appellant would have been able to rely on the defence of self-defence at trial⁸.

[59] Once the Accused is not precluded from relying on self-defence by **section 36(6)** (if that issue arises), in Shaw the Board indicated that the Court must ask itself the following questions:

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

What the Crown must prove on a charge of Attempted Murder

[60] On a charge of Attempted Murder, the Crown therefore must prove the following:

- a) The Accused attempted to commit the offence of Murder by unlawful harm on the alleged victim, which went beyond mere preparation, and which was directed towards the commission of the offence of Murder.
- b) That he inflicted the unlawful harm with the intent to kill the alleged victim.
- c) There was no lawful justification for the actions of the Accused.
- d) That the completion of the offence of Murder was frustrated only by circumstances independent of the Accused's will.

⁸ **Shaw v R** *ibid* para 12

Analysis

[61] 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.

[62] 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.

[63] The Court is reminded of the approach suggested by our apex Court, the Caribbean Court of Justice (CCJ) in **Dioncicio Salazar v R**⁹. 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.

[64] 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 events¹⁰. To properly assess credibility and reliability the Court must examine inconsistencies, discrepancies and any implausibility that arises on the evidence. The Court need not comb the record for inconsistencies or contradictions¹¹. The Court notes that most of the evidence in this matter has been agreed and several salient facts are not in dispute. The Court will still look at each aspect of agreed evidence to see whether the Court finds the evidence credible and reliable and then ascribe weight accordingly.

⁹ [2019] CCJ 15 (AJ)

¹⁰ R v Kruk 2024 SCC 7 (Supreme Court of Canada) at para 146

¹¹ August et al v R [2018] 3 LRC 552 at para 60

[65] 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 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.

[66] 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, considering the fact 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**¹² in relation to evaluating testimony involving intentional lies.

[67] In addition to examining the general credibility and reliability of witnesses, this is a case which encompasses recognition evidence by Kenia Viamil as she stated she was familiar with the Accused as they were in a relationship for several years prior to this incident. The Court notes that at the time of the incident they were allegedly estranged but that does not negate the years of prior knowledge. The Court also notes that the Accused has not denied being present at the clinic on the night of the 21st of September 2022 nor does he deny stabbing Kenia Viamil but rather he states that it was done in self-defence. The Accused also does not deny that after stabbing Kenia Viamil he and Jostyn Serrano left the area of the clinic and went home. Further the other witnesses for the Crown that are close to the scene of the crime do not identify the Accused as one of the men that they saw that night. The issue that the Court must decide does not therefore centre around whether the Accused was the person who stabbed Kenia Viamil but rather under what circumstances the stabbing occurred. This presents a case where credibility is at the forefront of the issues to be resolved and not necessarily the reliability of the witnesses who place the Accused at the scene. The Court therefore finds that that this case falls into the

¹² [2023] CCJ 13 (AJ) BB at paras 33-38

category of exceptional cases where the Court need not direct itself fully in accordance with the guidance in **R v Turnbull**¹³.

[68] The Court in assessing the evidence must also analyse the evidence dispassionately, clinically, fairly, within the boundaries of the law and with the aid of its human experiences and common sense¹⁴ while avoiding myths and stereotypes.

[69] The Court notes that most of the evidence taken in this matter consists of agreed evidence between the parties. The Court again reminds itself that this evidence is just as much evidence as evidence that comes from witnesses that give testimony viva voce and the Court is free to attach as much weight to each item of agreed evidence as it sees fit. The Court is not bound to accept the evidence simply because it was agreed between the parties although the fact that it was agreed is a significant factor in deciding whether to accept it or not. However, as with all items of evidence the Court must carefully consider the credibility and reliability of the agreed witness' evidence before accepting it.

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

- a) The injuries allegedly received by Kenia Viamil during the altercation on the 21st of September 2022.

[71] The Court accordingly reminds itself that it is not bound to accept the opinion of the expert witnesses 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 case, which is whether the Accused attempted to murder Kenia Viamil. 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.

Hostile Witness direction

¹³ (1977) QB 224

¹⁴ Kruk at paras 151-156

[72] The court reminds itself that Jostyn Serrano was a witness who was treated as hostile after an application by the Crown. Initially when he gave evidence, he indicated that on that night he saw a fight between Kenia Viamil and the Accused where Kenia was on top of the Accused and he saw a stabbing motion. He also indicated that Kenia was the one who brought the knife on that night. The Court permitted the Crown to ask questions about his statement given to the police during the investigation which is markedly different from his account at trial. In his statement to the police, he indicated that Myron was the one who brought the knife on that night, Myron was over Kenya and made several stabbing motions towards Kenia's body, Kenia begged him to help her, and he tried to get Myron off, but he couldn't. He then saw Kenia stop moving and Myron came off her, wiped his hands in the grass and then left. While leaving Myron said he didn't know why he had just done that to Kenia. Jostyn offered as an explanation for the difference in between accounts that he was forced by the police to give that account to them.

[73] Jostyn is a witness who has changed sides. He has given one account in his statement and a different account in the witness box. One approach open to the Court would be to treat his evidence as completely unreliable and therefore worthless. If the Court comes to that conclusion, then Jostyn Serrano's evidence would be of no assistance. It is however open to the Court to reach a contrary view. The Court after careful consideration, including the explanation provided by Jostyn Serrano, can conclude that it can rely on the evidence that Josytn Serrano gave in the witness box at trial or it can reject it in its entirety and rely on the proven portions of the statement that he gave to the police. It is also open to the Court to accept some parts of his account given at trial while rejecting other parts and also to accept some parts of his account to the police while rejecting some parts. The Court must therefore consider the evidence (in trial and the proven inconsistencies) of Jostyn Serrano carefully before concluding that it can rely on any or all of it.

Res Gestae evidence direction

[74] There are several statements attributed to Kenia Viamil after the stabbing incident at the San Narciso Village. Both Cita Bacab and Santos Alfaro testify that they heard her say that Myron Palencia was the person who stabbed her on the night in question. This was shortly after Cita Bacab and Santos Alfaro had seen the two men walk away from the direction of Escuela Mexico. Kenia's Sister Neidy indicated that on the morning of the 22nd of September 2022 at around 7:00 am she met her sister on the ward at

the Northern Regional Hospital and Kenia told her Myron tried to kill her. These statements by Kenia Viamil were led as part of the *res gestae* by the Crown.

[75] The Court reminds itself that before relying on the statements made by Kenia Viamil, the Court must be sure that the statements have been reported accurately. The Court must also be sure that the statement was spontaneous and genuine and not the result of invention, distortion, malice or ill will. If the Court believes that it was genuine and spontaneous, it was not made because of a mistake as to the circumstances in/about which it was made. If the Court cannot be sure about these things, the statements must be ignored completely. If having considered these factors, the Court can be sure that they can rely on the statements, the Court must then decide what weight/significance they should attach to it bearing in mind any limitations revealed by the evidence.

Hearsay evidence of JP Cruz Majil

[76] When considering the deposition of JP Cruz Majil, the Court reminds itself that the statements made in the deposition of Cruz Majil have not been repeated on oath at trial nor have they been tested under cross examination. The Court is also acutely aware of the potential risk in relying on a statement made by a person or person whom the Court has not been able to assess and who has not been tested by cross examination. The Court will accordingly scrutinize this evidence with particular care. The Court will consider the deposition in the context of all the other evidence considering any discrepancies between the statement and the oral evidence of other witnesses in this case.

Post Offence Conduct direction

[77] The Crown has also led evidence that the Accused left the scene of the stabbing and left the alleged victim bleeding at the side of the clinic. The Accused also left the scene not using the same route by the bus stop but walked along a different route and went in the direction of Escuela Mexico. The Accused also did not make any report to the police but only turned himself in on the 26th of September 2022 when he heard that the police was looking for him. The Crown has led this evidence as evidence of post offence conduct indicative of a consciousness of guilt by the Accused.

[78] Post offence conduct is admissible evidence once it is relevant to an issue at the trial. The relevance or admissibility and use of the evidence of post offence conduct is a fact specific assessment by the trial judge first to determine whether the evidence can support the inference sought to be drawn. Before relying on the alleged post-offence-conduct in support of an adverse inference against the Accused, the Court must consider whether there are alternative explanations for the actions of the Accused. The post offence conduct will be irrelevant to a particular issue if the conduct is “equally consistent” with the proposed inference and the alternate inference, such that the conduct does not allow the trier of fact to choose between available inferences as a matter of common sense, experience, and logic. The Court must therefore carefully analyze the evidence of post offence conduct before it can rely on it as indicative of guilt.

Undisputed facts

[79] On the Crown’s case there are certain undisputed facts:

- i. Kenia Viamil and Myron Palencia knew each other for approximately five years prior to the stabbing on the night of the 21st of September 2022.
- ii. Jostyn Serrano is Myron Palencia’s stepson from a previous relationship and was acquainted with Kenia Viamil.
- iii. Myron Palencia was on a truck participating in the Orange Walk on the 21st of September 2022 along with Jostyn Serrano.
- iv. Sometime later that night Myron Palencia met Kenia Viamil along with Jostyn Serrano in San Narciso Village at the bus stop close to the San Narciso Clinic.
- v. After speaking for a short while, Kenia Viamil, Myron Palencia and Jostyn Serrano walked behind the clinic.
- vi. While behind the clinic, Kenia Viamil was stabbed multiple times.
- vii. Myron Palencia and Jostyn Serrano left the area behind the San Narciso Clinic.
- viii. Myron Palencia turned himself into the police on the 26th of September 2022 after which he was interviewed on the 27th of September 2022 and denied any knowledge of the stabbing of Kenia Viamil or being in San Narciso Village at the time of the alleged stabbing.

- ix. Myron Palencia refused to participate in an identification parade but was subsequently identified by Orvin Taca in a group identification procedure at the Corozal Magistrates Court on the 29th of September 2022.

[80] The Accused takes issue with the rest of the Crown's case, in particular, that he was the aggressor on the night of the 21st of September 2022, that he came there with a knife and the intention to kill Kenia Viamil because he was jealous of the fact that he saw another man in her home, pinned her down on the floor and stabbed her multiple times about her upper body including her chest and her neck.

[81] The Court's consideration will now turn to the question of whether the Crown has led evidence which is strong enough to carry a conviction on the charge of Attempted Murder.

Has the Crown led evidence to establish the elements of the charge of Attempted Murder?

[82] As indicated above to prove the charge of Attempted Murder, the Crown must lead evidence to establish the elements of the offence. 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 Attempted Murder.

- a) **The Accused attempted to commit the offence of Murder by inflicting unlawful harm on the alleged victim, which went beyond mere preparation, and which was directed towards the commission of the offence of Murder.**

[83] On this element the Crown must not just lead evidence that the Accused inflicted harm on the alleged victim but that the harm went beyond mere preparation and was directed towards the commission of the offence of Murder. To that end, the Crown has led the following evidence:

- i. **Kenia Viamil** – Kenia Viamil testified that on the night of the 21st of September 2022 she was stabbed multiple times by Myron Palencia behind the San Narciso clinic. She estimated that she received 14 stab wounds in her chest, neck and hands. She remembers losing consciousness and then regaining consciousness at which point she

crawled towards the corner of the building and started to shout so that someone would help her. She then received assistance from some persons. She was taken to the hospital where she was warded for 4 days and then discharged.

The Court found Kenia Viamil on this issue and overall to be a credible and reliable witness. She was emotional at times when giving her evidence and the Court was careful not to ascribe any undue weight to the displays of emotion. The Court noted however that there were no major inconsistencies or incongruities within her evidence that casted doubt on her credibility in the Court's mind. In fact, key portions of her evidence namely the fact that it was the Accused who stabbed her on the night in question and that Jostyn Serrano was present at the time of the stabbing was accepted by the Accused. Her evidence also finds powerful support from the evidence of Cita Bacab and Santos Alfaro as they support her evidence that she was at the corner of the clinic building when she called for help and a group of persons then came to help her. Cita Bacab also indicates that she saw one of the men peeping around the corner of the building as if to make sure that no one saw what was happening behind the clinic. This supports Kenia's account that while Myron stabbed her, Jostyn Serrano kept watch. Further, her credibility is bolstered by her consistent identification of the Accused as the one who stabbed her to Cita Bacab and that he had done it because he didn't want her with anyone else. A portion of this utterance was also heard by Santos Alfaro. The Court is satisfied that the utterance made to Cita Bacab by Kenia Viamil was an utterance made at a time when her mind was so dominated by the encounter that she just had with the Accused that it removes in the mind of the Court the possibility of concoction or distortion.

The Court notes that in her evidence Kenia Viamil stated that she was stabbed fourteen times which differed from the agreed evidence of Dr. Falcon who found that she presented with ten stab wounds. The Court however does not find that this diminishes the credibility of the witness in any capacity as it would be difficult for someone who is allegedly the subject of a vicious and traumatic attack to count to a nicety the number of blows that was inflicted on them. The Court also notes that there was no great disparity between the two numbers. Similarly, the Court does not think that the fact that details

were given in her evidence in chief about the Accused placing his finger in one of the stab wounds while stabbing her which were not given to the police diminishes her credibility. It is not uncommon for a witness to remember details of their experiences after giving their initial statement to the police and the fact that they have volunteered new details by itself does not make them untrustworthy. A court must still carefully evaluate the new information along with all the witnesses' evidence to determine whether they are worthy of belief. In this case, the Court does find that Kenia Viamil is a credible witness despite these inconsistencies.

The Court considered whether Kenia Viamil may have been motivated to paint the Accused in an unflattering light to cover the fact that she may have been the aggressor on that night in question and the Accused was acting in self defence when stabbing her. This basis for treating Kenia Viamil as having an improper motive turns on whether the Court accepts the initial evidence given by Jostyn Serrano at trial as there is no other evidential basis for it on the Crown's case. For reasons explained below the Court found that there was no evidential basis on the Crown's case for treating her as a witness with an improper motive.

- ii. **Jostyn Serrano** – In his statement to the police Jostyn Serrano indicated that on the night of the 21st of September 2022 he saw Myron Palencia over Kenia Viamil stabbing her multiple times. Kenia asked him for help, and he tried to get Myron off Kenia but he was unable to do so. Eventually he saw that Kenia lost consciousness and that she was bleeding. In his evidence in chief however Jostyn Serrano indicated that Kenia Viamil was the aggressor on that night in question, she was not dragged behind the clinic by the Accused, she brought the knife on that night and she was on top of the Accused at which point he saw stabbing motions. Jostyn indicated that he was forced to give that statement to the police and his mother and that the evidence he gave at trial was the truth.

Jostyn Serrano is therefore a hostile witness, and the Court must carefully look at his evidence to see whether it can rely on his evidence at trial or his statement to the police

or it cannot rely on him at all. The Court notes that Jostyn Serrano made the statement to the police when he was a young child at the age of 14. However, the Court notes that there were several safeguards present at the time that he gave the statement to the police. His mother was present as well as senior Justice of the Peace Cruz Majil. Further, the Court notes that Jostyn Serrano signed his statement as true and correct with liability for prosecution should he state anything false within. Also, the statement that he made to the police in terms of the stabbing is remarkably consistent with the account given by Kenia Viamil including her cry for help and her loss of consciousness. The Court considered whether Jostyn was motivated by self interest to avoid prosecution when giving his statement to the police as at the time that he gave the statement he was a suspect. However, the Court accepts the evidence of Corporal Pech that at the time of the making of the statement he was given the option of leaving without making a statement, returning to give a statement or proceeding and he along with his mother chose to proceed. The Court does not accept the explanation provided by Jostyn Serrano for resiling for his statement from the police and accordingly those portions of his evidence in chief which resile from his statement.

Upon cross examination Jostyn admitted to several inconsistencies between his evidence in chief and his statement to the police. **Section 73A** of the Evidence Act provides that where a witness admits to making a previous inconsistent statement or a previous inconsistent statement is proved by virtue of him being a hostile witness that inconsistent statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible and the Crown may rely on it to prove its case. In other words the Court can rely on the inconsistency for its truth. The section provides that the evidence is admissible, meaning that the Court must still exercise its exclusionary discretion if the proposed evidence is more prejudicial than probative or may affect the fairness of the trial. The Court considers in all the circumstances of this case that the inconsistencies adduced and established by the Crown are not more prejudicial than probative and can be relied upon by the Crown to prove their case. Further the Court after carefully looking at all of the circumstances including the circumstances of the making of the statement which contained the inconsistencies, the

fact that the witness signed the statement as true and correct, the fact that there were procedural safeguards provided to the witness at the time of the making of the statement and the support that the proven inconsistencies found in the evidence of Kenia Viamil, concludes that it can rely, when considering the totality of the evidence, on the inconsistencies adduced from the police statement of Jostyn Serrano to ascertain whether the case against the accused has been proven.

- iii. **Dr. Falcom** – Dr. Falcon indicated that he attended to Kenia Viamil at the Northern Regional Hospital and she presented with 10 stab wounds in total. Five of those stab wounds were to the neck and 3 to the left side of the chest. One of the stab wounds to the chest caused significant bleeding of 700 – 800 ml and required her to receive transfusion of 2 units of whole blood as upon admission she was anaemic, tachycardic, hypotensive and had generalized skin parlour. Dr. Falcom classified these injuries as grievous harm on the medico-legal form.

[84] If the Court were to accept the evidence led by the Crown, Kenia Viamil was stabbed by the Accused on the 21st of September 2022. There is also evidence that these stab wounds went beyond mere preparation and were directed towards the commission of the offence of murder due to the location of the stab wounds. The stab wounds were concentrated in areas that carried major organs such as the left side of the chest or blood vessels like the neck. A clear and unmistakable inference is that these wounds were not merely preparatory especially considering the wound that caused a hemopneumothorax, a serious and life-threatening wound, in the lungs which required drainage. It is also open to the Court to accept the evidence of Dr. Falcon that those injuries amounted to grievous harm.

b) That he inflicted the unlawful harm with the intent to kill the alleged victim

[85] On this element the Crown must lead evidence to prove that the Accused when inflicting the harm intended to kill Kenia Viamil. It is the task of the Court to see whether this element is satisfied having regard to the fact and circumstances of the case. Indicators of intention of can be the location of the wounds, utterances allegedly made by the Accused during or after the incident, the actions of the

Accused during the stabbing and even in certain circumstances post offence conduct which can show a consciousness of guilt.

[86] The Crown on this element has led the following evidence:

- i. **Kenia Viamil** – Kenya Viamil testified that when she met the Accused, he questioned her about the man that he had seen at her apartment. She explained to him that he was a friend of her friend Jessica who was staying with her. The Accused then told her that his poison would be seeing her with another man. The Accused then asked her to go behind the clinic to which she objected but followed him. When she told him she didn't think it was appropriate to speak there and turned to leave he dragged her down on the ground behind the clinic and told her this is what he came for. He then asked Jostyn what they came for and Jostyn told Kenya to kill her. He then told Jostyn to look and make sure no one was approaching. The Accused then began stabbing her about her neck and chest. The Accused also choked her after stabbing her while stabbing her and one of his fingers went into a wound on her neck and opened it up some more. He then instructed Jostyn to take her cell phone and then she lost consciousness. When she awoke, she had been left bleeding at the side of the clinic.
- ii. **Jostyn Serrano** – in his police statement which he disavowed, Jostyn indicated that he saw Myron stab Kenya, that Kenya asked him for help, that he attempted to push Myron off but could not, and that Myron told him to take Kenya's phone. After the stabbing they walked down a dirt road where they were collected by Myron's aunt and driven home.
- iii. **Cita Bacab** – Cita Bacab indicated that on that night she saw two men waiting by the bus stop and then saw a female approach them. After they were speaking for about five minutes, she saw them go behind the clinic. While they were behind the clinic she saw someone peeping around the corner and then after she went inside and turned off the lights, she saw the two men leave, dive into the grass and walk in the direction of Escuela Mexico. The Court found Cita Bacab overall to be a credible witness. Her evidence was plausible and cogent. Her evidence also finds support in the evidence of Kenya Viamil who indicates that after she spoke with the Accused for a while, they went behind the

clinic and that when the Accused attacked her, he asked Jostyn to look to see whether anyone was coming. Cita Bacab's evidence also finds support from Santos Alfaro who assisted her in responding to the distress calls that were heard coming from the clinic. The Court also notes that Cita Bacab readily admitted that there were deficiencies in her ability to identify exactly who the men were, but she was able to point her house out in the photographic exhibits and the distance from which she observed what was happening. The Court on an objective view found that from where her house stood, she could have been able to see the bus stop and the front of the clinic. The witness readily accepted that she could not see the back of the clinic. The Court also accepts that the interaction at that time of the night and around the darkness of the clinic made her pay closer attention to what was going on. In all the circumstances therefore, the Court found her to be credible and reliable overall.

- iv. **Santos Alfaro** – The Court also found Santos Alfaro to be credible and reliable overall. His evidence that he found Kenia Viamil bleeding behind the clinic is consistent with the evidence of other witnesses for the Crown. His frank admission that he didn't want to touch her for fear of being accused of the crime himself came across to the Court as truthful and added to his overall credibility. His evidence that he heard Kenia Viamil indicate that Myron Palencia stabbed her was also consistent with the evidence of Kenia Viamil and Cita Bacab. Similarly, his evidence that he saw two men making their way away from the clinic in the direction of Escuela Mexico is also consistent with the evidence of Cita Bacab.
- v. **Orvin Taca** – Orvin Taca indicated that he was at Kenia Viamil's apartment when a man came to the home, questioned him as to who he was and threatened him. He then saw the same man take a blue bicycle away. He then saw the man return with the blue bicycle before leaving again. He reported this to Kenia Viamil. He testified that the man was brown skinned with a tattoo on his neck. He spoke to him on the two occasions that he came for about one minute each time. While the closest light source was a distance away, he indicated that he was able to observe the features of the man. He later

identified that man as the Accused in a group identification exercise conducted at the Corozal Magistrate's Court.

The Court found Orvin Taca to be a credible and reliable witness. The Court notes that there were no major inconsistencies that arose under cross examination and that the witness readily admitted to deficiencies in the lighting at the time that he spoke to the man who came to the house and that it was a relatively short space of time (one minute each). His evidence also seemed plausible to the Court and consistent with the words attributed to the Accused by Kenia Viamil that the Accused questioned her who was the man in the house and further that his poison was seeing her with another man. The only man who was at Kenia Viamil's house, on the evidence, was Orvin Taca and the threatening of Orvin Taca by that man is consistent with the actions of a jealous lover. The Court further notes that Orvin Taca indicated that when he was speaking with the man the light source was some distance away, but the Court also notes that he spoke to the man twice and was able to speak to him for approximately one minute each time. The man was also close enough to threaten him. Orvin Taca was also able to point out the Accused as that man on a group identification exercise a few days later. While Orvin Taca was not familiar with the Accused the circumstances of their interaction is sufficient in the mind of this court to dispel the possibility of mistaken identification.

- vi. **Dr. Falcon** – The evidence of Dr. Falcon with respect to the location and number of stab wounds on the body of Kenia Viamil when she was admitted to the Northern Regional Hospital is equally applicable to this element.
- vii. **PC Angeli Cobb** – who indicated that the Accused surrendered himself to police four days after the incident on the 26th of September 2022 in the presence of his Attorney.

[87] If this evidence is accepted it is open to the Court to infer from all the surrounding circumstances and facts that the Accused intended to kill Kenia Viamil when he stabbed her. It is open to the Court to accept that the Accused became incensed when he saw Orvin Taca at her home and took her bicycle as a retaliatory step. This bicycle was then used to draw her to the clinic. The Accused stabbed her in her neck and her chest, one of the stab wounds was deep enough to cause serious injury to her lung requiring

a transfusion of two units of whole blood. She lost consciousness during the attack. The Accused told her this is what he came for and asked Jostyn to confirm that killing her is what they came to do. This inference that the Accused intended to kill Kenia Viamil is potentially bolstered by the fact that she was left to bleed out by the Accused after being dealt multiple stab wounds, the Accused sought to leave the scene after initially throwing himself down on the grass and attempting to not garner attention, via a dirt road, and not the main road where he had initially met her and he failed to report the incident to the police notwithstanding the fact that he knew he had left her seriously injured behind the clinic in San Narciso.

[88]The Crown has therefore led sufficient evidence, if accepted, to establish this element of the offence.

c) There was no lawful justification for the actions of the Accused

[89]Harm becomes unlawful if it is not justified within the parameters of the justifications specified in Title VI of the Code. One of these justifications raised under Part VI of the Code is Self Defence which is contained in section 36(4) of the Code. Self Defence is raised on the Crown's case by Jostyn Serrano in his evidence in chief. In his evidence in Chief Jostyn indicated that Kenia Viamil was the one who brought the knife on that night and that there was a scuffle between her and Myron. He then saw Kenya on top of Myron and saw a stabbing motion. While he does not specifically say that he saw Myron stab Kenya the logical inference that can be drawn from his evidence is that the injuries Kenia Viamil sustained was because of this attack and as a result of Myron Palencia defending himself from her initial attack.

[90]The Crown has led evidence however to counteract this narrative from the evidence of Kenia Viamil at trial and Jostyn Serrano's statement given to the police. Kenia Viamil indicated that on that night after arguing with the Accused and telling him that behind the clinic was not an appropriate place to talk she attempted to leave and he grabbed her and dragged her down on to the ground. Once he threw her to the ground and pinned her there preventing her from leaving. He then got the knife and began to stab her. She begged Jostyn to help and tried to push him off, but she could not. She eventually lost consciousness. This account is supported by the account of Jostyn Serrano given to the police, who told the police that the Accused had Kenia on the ground where he was stabbing her while Kenia was asking for help. He tried to get the Accused off but he couldn't. Eventually the Accused stopped and when they

were leaving on the dirt road, the Accused indicated that he did not know why he had done what he had done.

[91] The post offence conduct attributed to the Accused can also, if accepted, bolster the Crown's contention that they have led sufficient evidence to disprove self-defence. Circumstantially, the post offence conduct can show that the Accused's action evinces a consciousness of guilt which was inconsistent with someone who had committed harm in self-defence. The Court notes that the Accused did not attempt to seek help for Kenia even though she was seriously injured, he left by a dirt road and not the more well-lit main road and he failed to report the incident to the police only showing up to the police station in order to turn himself in as a suspect in her attempted murder. The Court reminds itself that before it can accept the post offence conduct as showing evidence of consciousness of guilt it must be sure that it is inconsistent with any other logical explanation for the Accused's actions. If it is, it is powerful evidence which goes directly towards disproving the justification of self defence raised on the Crown's case by the evidence of Jostyn Serrano.

[92] Should the Court reject Jostyn Serrano's account in evidence in chief and accept the evidence of Kenia Viamil and the evidence of the statement Jostyn made to the police it is open to the Court to find that the Crown has led sufficient evidence to satisfy this element of the offence.

d) That the completion of the offence of Murder was frustrated only by circumstances independent of the Accused's will.

[93] The Crown has also led evidence to satisfy this element of the offence. Kenia Viamil testified that once she regained consciousness, she dragged herself to the corner to the clinic so that she could call for help. Her cries for help alerted Cita Bacab who along with her sons-in-law one of whom was Santos Alfaro found her and contacted the police. They found her covered in blood. The police then took her for treatment, and she was eventually treated by Dr. Falcon for the various conditions she presented with when admitted. Kenia Viamil responded favourably to treatment and was discharged four days later.

[94] None of these actions are attributable to the Accused. On the Crown's case, it is Ms. Viamil herself who drags her body to an area where she can call for help and that help came from persons who lived nearby

and eventually the police. It is also the quick actions of Dr. Falcon at the Northern Regional Hospital which prevented her condition from deteriorating further. It can be also be inferred from the Crown's case that the Accused did not intend for her to get help as he stabbed her in a position behind the clinic away from the eyes of passersby on the road, left her in that position after stabbing her and made no attempt to get her any medical assistance despite the obvious severity of her injuries. It is therefore open to the Court to find that the Crown has led sufficient evidence to satisfy this element of the offence of Attempted Murder.

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

[95]Based on the foregoing analysis, the Court is of the considered opinion that the Crown's case is strong enough to carry a conviction. There are contradictions on the Crown's case particularly between the evidence Jostyn Serrano gives in his evidence in Chief and the rest of the Crown's witnesses but the Court at this stage is not looking at whether the Crown's case has been proved beyond a reasonable doubt. It is simply looking at whether drawing all the inferences most favourable to the Crown based on the evidence, the Crown's case is strong enough to carry a conviction, and it is. The Court will therefore now go on to consider the case for the Defence.

The Case for the Defence

[96]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.

[97]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.

[98]The Accused in his dock statement raises the issue of self-defence. He says that Kenia was behaving aggressively towards him and he attempted to leave. At that point he stumbled, and Kenia attacked him

by placing a knife to his neck. He said that he attempted to push her away and got cut on his hand and to one of his fingers. It is at that point that he became fearful for his life and a struggle ensued between them. They both fell to the ground and during that struggle he injured Kenia. He further stated that his fear was amplified or grounded by previous incidents between them where Kenia allegedly had tried to kill him.

[99] The Court must therefore ask itself the following questions:

- (a) Did the Accused honestly believe, or may he honestly have believed, that it was necessary to defend himself?**
- (b) If so, and taking the circumstances and the danger as the Accused honestly believed them to be, was the amount of force which he used reasonable?**

[100] The honest belief of the Accused is based on the circumstances alleged in his dock statement. The Court after scrutinizing the dock statement of the Accused rejects the dock statement of the Accused in its entirety. The Court did not find the Accused credible in his assertion that Kenia Viamil was the one who attacked him on the night of the 21st of September 2022. Firstly, the Court finds it illogical that in such a violent struggle which he asserts happened between himself and Kenia that the only injuries that he obtained were injuries to his hand and his finger. These injuries according to the Accused weren't even obtained while they were on the ground during the time he somehow managed to stab Kenia. They were obtained before. The locations of the injuries on Kenia Viamil are also not indicative of someone in a struggle who is simply lashing out haphazardly with a weapon to defend themselves. The locations of the wounds on Kenia Viamil suggest targeted attacks at her vital points including her neck and her left chest where her heart and her lungs are located.

[101] The Court also finds it inconsistent, on these facts, with a claim for self-defence that the Accused made no attempt to raise an alarm after he had stabbed Kenia Viamil nor did he attempt to get medical assistance for himself or Kenia while she lay bleeding on the ground. Instead, he along with Jostyn Serrano left the area via a dirt road which was not well lit and were picked up shortly after while leaving Kenia Viamil to bleed out on the ground behind the clinic. The Court accepts that it is not in every instance that a person who has injured someone in self defence will seek medical attention or assistance for themselves or the other person as the incident may have rendered them in shock or they may be fearful

that authorities would not accept their story. However, no such explanation arises on the Defence case and the methodical way in which the Accused departed from the scene, concealing himself and Jostyn Serrano suggests that he was not in shock in any way.

[102] The Court also notes that the knife was never recovered at the scene or at all. The logical inference being that the Accused took the knife with him when he was leaving. The Court notes that there are many reasons why an innocent Accused may remove evidence from the scene as for example they may think that the evidence paints them in a particular light or may cause them not to be believed when relating their version of evidence. However, when one couples the removal of the knife from the scene along with the failure to call for assistance either for himself or for Kenia Viamil and the manner in which the Accused and Jostyn Serrano left the scene, the removal takes on greater significance and diminishes the possibility that the Accused acted in self defence as he claims.

[103] Having rejected the dock statement of the Accused and found consequently that there was no honest belief that the Accused needed to defend himself, there is no need for the Court to ask itself the second question which deals with the commensurate nature of the response. The Court's consideration of that second question is conditional on a positive finding that there was in fact an honest belief on the part of the Accused or that there may have been an honest belief on the part of the Accused that he needed to defend himself.

[104] In any event, the Court also rejects the defence of self-defence based on the strength of the evidence for the Crown particularly the evidence of Kenia Viamil, Cita Bacab and Santos Alfaro. The Court is fortified in this approach by the advice of the Privy Council in **Bally Sheng Balson v The Queen**¹⁵.

[105] Having rejected the defence 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

¹⁵ 2005 4 LRC 147

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

- a) **The Accused attempted to commit the offence of Murder by inflicting unlawful harm on the alleged victim, which went beyond mere preparation, and which was directed towards the commission of the offence of Murder:** The Court accepts as true the evidence of Kenia Viamil that Myron Palencia stabbed her multiple times on the night of the 21st of September 2022 behind the San Narciso Village. The Court further accepts the evidence of Dr. Falcon that Kenia Viamil presented at hospital with stab wounds to her neck, face and jaw and that one of these stab wounds was severe enough that it caused injury to her lungs resulting in 700-800 ml of blood being drained from her lungs. The Court further accepts that Kenia Viamil needed to receive a transfusion of two units of whole blood because of those injuries. The Court further finds that these injuries amounted to grievous harm pursuant to section 96 of the Code. The extent of the injuries inflicted on the victim fortifies this Court in its finding that the harm was more than preparatory for the offence of Murder.
- b) **That he inflicted the harm with the intent to kill the alleged victim:** The Court accepts as true the evidence of Orvin Taca that a man came to the home of Kenia Viamil, questioned him, threatened him and took away a blue bicycle. The Court accepts the evidence of Kenia Viamil that she contacted the Accused to get her bicycle back and the Accused told her to meet him at the bus stop in San Narciso Village. The Court also accepts that she met the Accused at the bus stop and the Accused questioned her about who the man was at her home. The Court also accepts Kenia Viamil's evidence that he told her that his poison was seeing her with another man and that he tripped her and told her that he was there to kill her. He then instructed Jostyn Serrano to look around to ensure that no one was approaching. The Court accepts that the Accused then got the knife and stabbed her multiple times in her neck and chest. The Court also accepts as true that the Accused also choked her after stabbing her while stabbing her and one of his fingers went into a wound on her neck and opened it up some more. He then instructed Jostyn Serrano to take her cell phone and then she lost consciousness. When she awoke, she had been left bleeding at the side of the clinic. The Court also accepts the evidence of Cita Bacab that the Accused and another man initially ran from behind the clinic, throwing themselves in the grass and then making their way in the vicinity of Escuela Mexico. The Court also accepts Santos Alfaro's evidence which supports Cita Bacab's. The Court finds that the overall actions of the

Accused post the stabbing of Kenia Viamil raise the inexorable conclusion of a consciousness of guilt due to him stabbing her with the intention to kill her. The Court therefore finds that when considering all the facts and circumstances the Accused intended to kill Kenia Viamil when inflicting the stab wounds on her.

- c) **There was no lawful justification for the actions of the Accused:** The Court accepts as true Kenia Viamil's evidence and rejects the assertions of self defence made by Jostyn Serrano at trial and the Accused in his dock statement. In those circumstances, the Court finds that there was no lawful justification for the actions of the Accused.
- d) **That the completion of the offence of Murder was frustrated only by circumstances independent of the Accused's will:** The Court accepts as true Kenia Viamil's evidence that once she regained consciousness, she dragged herself to the corner to the clinic so that she could call for help. The Court also accepts as true the evidence of Cita Bacab and Santos Alfaro that her cries for help alerted Cita Bacab who along with her sons-in-law one of whom was Santos Alfaro found her and contacted the police. They also found her covered in blood. The Court accepts as true that the police then took her for treatment, and she was eventually given treated by Dr. Falcon for the various conditions she presented with when admitted. Kenia Viamil responded favourably to treatment and was discharged four days later. The Court therefore finds that the attempt made by the Accused to murder Kenia Viamil was frustrated only by circumstances independent of the Accused's will.

[107] The Court therefore finds the Accused guilty of the sole count on the indictment of Attempted Murder.

Disposition

[108] The Court finds Myron Palencia guilty of Attempted Murder as charged in the indictment. The matter is adjourned for a separate sentencing hearing as advised by the CCJ in Linton Pompey v DPP¹⁶.

Raphael Morgan
High Court Judge
Dated: 31st July 2026

¹⁶ [2020] CCJ 7 (AJ) GY at para 32.

