

**IN THE SUPREME COURT OF BELIZE A.D. 2021
(CRIMINAL SESSION)**

CENTRAL DISTRICT

INDICTMENT NO. Amended C48 of 2019

THE QUEEN

AND

MR. RAFAEL MENCIAS

- Murder

BEFORE The Honourable Mr. Justice Francis Cumberbatch

APPEARANCES Ms. Natasha Mohamed – Counsel for the Crown
Mr. Arthur Saldivar – Counsel for the Accused

DATES 7th, 12th, 13th, 15th, 21st, 26th, and 27th of July; 18th, 22nd,
29th of September 2021; 1st, 3rd, 9th, 11th, 15th, and 17th of
October 2021; 14th of December 2021; 7th of February
2022; 5th and 25th of May 2022; 9th and 16th of June 2022.

DECISION

{1} The Accused was indicted by the Director of Public Prosecutions for the offense of murder for that he on the 29th day of November 2017, at Cotton Tree Village in the Cayo district murdered, Hilton Wade Snr. (‘the Deceased’). At his arraignment, he entered a plea of not guilty, hence, a fully contested trial was held before a single judge pursuant to the provisions of section 65A of the *Indictable Procedure Act*.

{2} At the commencement of the trial Defence Counsel submitted that they are objecting to the admissibility of the statement under caution allegedly made by his client to the police whilst in custody. The grounds stated were that the Accused was beaten and tortured by a number of police officers whilst in custody. A *voir dire* was held to determine the admissibility of the impugned statement. In a written decision this Court found that the evidence of the Crown's witnesses has satisfied the burden of proof as set out in section 90(2) of the *Evidence Act*. Thus, I am satisfied to the extent that I feel sure that the statement was not obtained by means of force, threats, promises, and violence against the Accused and is admissible in evidence. I will return to the contents of this statement later on in this decision.

{3} After rendering my decision on the admissibility of the statement under caution the Accused informed the Court that he would like to change his lawyer. An adjournment was granted to enable him to retain new counsel. The Accused by that date had not retained new counsel and as such the Court set a new date to determine whether or not the Accused should be allowed to conduct his own defense which he is entitled to do under section 6(2) (d) of *The Constitution*. The Accused, however, on the adjourned date informed the Court that he will continue to be represented by Mr. Saldivar.

Summary of Facts

- {4} I will summarize the facts of this case. I must state, however, that in reaching my verdict I have considered all of the evidence in this case adduced by both, the Crown and the Defence.
- {5} Dr. Mario Estrada Bran, was deemed an expert in forensic medicine. He stated that on the 29th day of November 2017, he conducted a post-mortem examination on the body of Hilton Wade Snr. at the Karl Heusner Memorial Hospital morgue. The body was identified by Hilton Wade Jnr. and witnessed by PC 1270 Leon Ferguson.
- {6} The external examination revealed a total of 30 stab wounds located in various areas of the chest. The smallest of these was 25 mm in length whilst the largest was 50mm in length. There were contusions to the knees caused by the dragging of the body.
- {7} The internal examination revealed that the head was completely separated by irregular cuts. Some of the stab wounds penetrated the chest cage, the lungs, the aorta, and the right kidney.
- {8} The cause of death was exsanguination due to internal and external bleeding due to multiple stab wounds to the trunk. The doctor further opined that a

large sharp and pointed end instrument used with heavy force was used to inflict the injuries that caused death.

{9} The witness was not cross-examined.

{10} CPL John Mas testified. He stated that on the 29th day of November 2017, at around 6:10 a.m. he received information about an incident in Harmony Village. As a result, he and other police officers went to Harmony Village. On arrival at a small shed on the George Price Highway, he met uniformed police officers who pointed out to him a human head that was placed on a board about 2 feet from the ground which he identified as that of, Herman Wade, whom he had known for about a year. He caused the scene to be secured with yellow tape and the Crime Scene Technician Barrington Montero arrived shortly afterward.

{11} The scene was processed by the Crime Scene Technician and the human head was placed in a bag and taken to the morgue. He then went to Cotton Tree Village where he saw police officers around a cement bungalow opposite the primary school. Inside the bungalow, he saw a burnt mattress. About 20 yards from the structure he saw a human body without a head. The chest area was facing upwards. He saw what appeared to be several stab wounds on the chest

area. The scene was processed by the Crime Scene Technician after which he left the area.

{12} Under cross-examination, the witness stated that he took a good look at the face and recognized it to be Hilton Wade.

{13} **D/C 914 Reyes** testified. He said that on the morning of the 29th day of November 2017, at around 6:10 a.m. he received certain information from the Belmopan Police Station, and as a result, he proceeded to the entrance of Harmony Village where he saw a brown-skinned human head which he recognized to be Hilton Wade Snr. whom he had known for about two years prior to that date.

{14} He then went to Hilton Wade's residence at Cotton Tree Village and upon arrival at the bungalow, he observed smoke coming from the front windows. He went to the house and saw a mattress and other items in smoke but he did not find anyone in the house. A search was carried out and about 20 yards behind the house he observed a brown-skinned male person without a head. He also observed about 21 stab wounds to the body.

{15} Under cross-examination the witness said he was not the investigating officer, and that PC Martinez was the investigator. He could not recall if a knife or any shiny object was recovered from the scene.

{16} Barrington Montero testified that he is a Crime Scene Technician. On the 29th day of November 2017, at about 7:00 a.m. he visited the Cotton Tree Village located between miles 43 and 44 on the George Price Highway where he saw a human head on a bench under a bus shed. He photographed it and proceeded to an abandoned property opposite the primary school in the village. The interior of the building was burnt. Further checks were made and he saw the headless body of a human lying on the ground with what appeared to be multiple stab wounds. There was also what appeared to be suspected blood around the body. He took photographs of the location.

{17} On his return to his office at Belmopan he cut a piece of vinyl and foam from the seat of a motorcycle which he packaged and delivered to the National Forensic Science Services on the 8th day of December 2017, for analysis.

{18} At 1:35 p.m. on the same day he attended the post-mortem examination of the said body where he collected exhibits and photographed the body. He tendered into evidence photographs from the crime scenes and the body at the post-mortem examination.

{19} This witness was not cross-examined.

{20} PC 375 Miguel Martinez testified. He stated that at around 4:30 p.m. on the 29th day of November 2017, he arrived at the Belmopan Police Station where

he was briefed by CPL Carrillo about a possible murder at Cotton Tree Village. Sometime around 5:00 p.m. that day he and CPL Carillo visited the residence of the Accused at Cotton Tree where he was detained pending investigations for murder. He was cautioned and escorted to the Belmopan Police Station where he was given a copy of his acknowledgment form. As a result of investigations carried out, he formally arrested and charged the Accused on the 1st day of December 2017, with the murder of Hilton Wade. He cautioned the Accused who remained silent.

{21} Under cross-examination the witness said he did not cause to be examined any weapon or instrument used in the murder. He received a report from Crime Scene Technician Montero after he processed the crime scene. He was told of a red substance at the crime scene and on certain items. Those items were sent for analysis. He said it is true that nothing containing red substance sent for analysis connected the Accused to the crime scene.

{22} Re-examination was declined.

{23} That was the case for the Crown.

The Case for the Defence

{24} The Accused having been informed of his three choices chose to give sworn testimony.

{25} **Accused Sworn** - He stated that in the year 2017, he resided at Cotton Tree Village. At about 6:00 p.m. in the evening of the 28th day of November 2017, he spoke with one Martha Sarabia who invited him to church. She also gave him some food which he took to his house and ate and went to sleep. He was awake the next morning at around 5:30 a.m. He peeled oranges and golden plums. He packed his snacks, ate his breakfast, and left his house at 7:30 a.m. for the Cotton Tree Primary school in a pick-up driven by one Ezekiel. He remained at the school selling his snacks along with one Jamilette who was his business partner from around 8:30 a.m. to 3:30 p.m. Ezekiel picked him up and he returned home.

{26} Later that afternoon Officer Carillo and four other policemen arrived at his home. He said he knew PC Carillo because of a case he had before in Corozal when he was charged with murder and was sent to prison for ten years. He also stated that PC Carillo had beaten him and interrogated him in that case.

{27} The Accused testified that he did not know the Deceased. He said that Jamilette, Ezekiel, and two teachers knew where he was that day. He said on the 30th day of November 2017, at 3:26 p.m. whilst at the Belmopan police station he was beaten and tortured to give a statement. He did not do so of his own free will and he had given a recorded statement before that. He said he

knows nothing about the death of Hilton Wade Snr. and that he was living in Cotton Tree for three months before he was arrested. Between the years 2008 to 2010, he lived at Cotton Tree and left and went to Corozal, in that time he had never met Hilton Wade Snr.

{28} Under cross-examination the Accused stated that other people lived in the yard where he lived. There were four houses, one garage, and two kitchens and he stayed in one of those houses alone and had his own door to his house.

{29} After he saw Martha at 6:00 p.m. in the evening of the 28th day of November, he did not see her again until 5:45 a.m. on the 29th day of November, and between that time he remained in his house. He saw no one between 6:00 p.m. and 5:45 a.m.

{30} The Accused said he knows the church that Martha attends in Cotton Tree and it is about a 6 to 7-minute walk from where he lived. He is familiar with the More Tomorrow Road and from his house to the farm takes about 30 minutes on a bicycle. He has walked from his home to the highway which is about 150 feet estimated.

{31} The Accused denied going to Hilton Wade's house on the 29th day of November 2017 and stabbing him. He denied knowledge of the bus stop at Harmony Hill. He said PC Carillo as well as Officer Leon Ferguson and other

officers did beat and torture him. On the 29th day of November 2017, was the first time he saw Jamilette for the day.

{32} Re-examination was declined.

{33} The Defence called one witness.

{34} Martha Sanabria testified. She said she knows the Accused who is a friend of her children, and she has known him for nine years. She saw him every day and he lived with a family in the village. She remembers seeing him on the 28th day of November 2017. She last saw him that day at 9:00 p.m. This was at the house where he was staying. She said she saw him at 8:00 a.m. in the morning of the 29th day of November, cutting golden plums.

{35} Under cross-examination the witness said, the last time she saw the Accused on the 28th day of November, he was playing football and that was between 5:00 p.m. to 7:00 p.m. She also saw him at 9:00 p.m. She provides food to the Accused, and he usually rides a motorcycle that belongs to her husband. She said she saw him at 6:00 p.m. afterward she saw him at 9:00 p.m. She gave him food at 6:00 p.m. and after then she saw him at 9:00 p.m. when she returned from church.

{36} There was no re-examination and that was the case for the defense.

Closing Addresses

{37} At the close of the case for the Defence, Mr. Saldivar addressed the Court on the elements of the offense of murder. Counsel concedes that the head found by the police was identified as the Deceased and that the police later discovered the body. He stated that this coincides with what was said by the Accused in the statement under caution.

{38} On the question of the alibi raised by the Accused counsel submits that the witness Martha Sanabria testified that she saw the Accused at around 9:00 p.m. on the night of the 28th day of November 2017 and that she next saw him at around 8:00 a.m. on the following day. The Accused himself in his sworn testimony stated that he was at home from 6:00 p.m. on the 28th day of November 2017, at which time he had received some food from Martha Sanabria and that he did not leave his home until the next morning at around 7:30 a.m.

{39} Crown Counsel Ms. Mohammed submitted that the Crown's witnesses have proven all the elements of murder.

The Law

{40} As stated, aforesaid the Accused is indicted for the offense of murder contrary to section 106(1) of the *Criminal Code*. That section provides thus:

“106 (1) - Every person who commits murder shall suffer death”.

{41} Section 117 of the ***Criminal Code*** provides:

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

{42} The Crown must prove the following beyond reasonable doubt:

1. That the Deceased is dead.
2. That he died from unlawful harm.
3. That the unlawful harm was inflicted by the Accused.
4. That the Accused intended to kill the Deceased when he unlawfully caused harm to him.

Analysis and Verdict

{43} It is common ground that Hilton Wade Snr. is dead. His head was found and identified by the police at a bus stop on the George Price Highway and his headless body was discovered in the vicinity of his home in Cotton Tree Village.

{44} Dr. Mario Estrada Bran testified that he conducted a post-mortem examination, and his findings were that the cause of death was exsanguination due to internal and external bleeding due to multiple stab wounds to the trunk. He further opined that a large sharp and pointed end instrument used with heavy force was used to inflict the injuries that caused death.

{45} The Defense, in this case, is a complete denial and an alibi. Thus, there are no issues of justification such as self-defense arising for the Court's consideration. Accordingly, I find that the Crown has established that the death of the Deceased was unlawful.

{46} I now turn to consider whether it was the Accused who caused the death of the Deceased. In this regard, the Crown relies exclusively on the contents of a statement made under caution to the police by the Accused. This statement has been admitted into evidence aforesaid and reads thus:

STATEMENT

Name: Rafael Mencias **Age:** 29 yrs. **D.O.B:** 31/03/88 **Race:** Belizean

Recorded: CIB Office Belmopan **On (date):** 30/11/17 **At (time):** 3:26 p.m.

Name Rank and Number of Recording Officer: Norman Coye Sgt. #148

I, **Rafael Mencias**, at the time of my arrest was informed of the reason of my Arrest that I was arrested for the crime of Murder. I was informed that I could communicate without delay and in private with a legal practitioner of my choice.

Signed: Rafael Mencias
Justice of the Peace: Jose Garcia

I, **Norman Coye SGT. #148**, duly cautioned, **Rafael Mencias**, at the Crimes Investigation Branch office Belmopan Police Station on the 30th November, 2017, as follows: “you do not have to say anything if you do not wish to do so, but whatever you say may be taken in writing and given as evidence.”

Signed: Rafael Mencias
Justice of the Peace: Jose Garcia

I, **Rafael Mencias**, wish to make a statement. I want someone to write down what I say. I have been told that I need not to say anything unless I wish to do so, but, whatever I say may be given in evidence.

Signed: Rafael Mencias
Justice of the Peace: Jose Garcia

STATEMENT

On Monday 27th November 2017, I was stopped by Elroy Grinage who was by a Bus Stop who was in a white pickup. He told me that he had a hit for me. He said that he will pay me \$5,000.00BZ. I then asked him who the person is. He told me that on Tuesday he will show me who it is. On Tuesday the 28th of November 2017, at about 8:30 p.m. I walked up towards Elroy Grinage’s house where I met him by the gate and we were talking and he told me that as soon as his wife goes to sleep, he will take me where the person lives. I then went back to the bus stop and after a while, he came for me, and he took me through More Tomorrow Road, and we went in not far in the road and stopped and then we came out where he gave me a knife and a machete and lead me to a house that looks abandoned. At the time, I had on black pants with a red long-sleeve shirt with a rubber boot on my feet and he had on a grey shirt with long blue jeans pants and brown boots. We the reached the house where an old man who I do not know, the Elroy asked him that if he had any sower sap trees to sell. Then the old man said yes. He then asked the man to show him the trees and whilst the man was walking, he told me that this the man right here weh have to dead. Whilst the man was showing him some plants Elroy

had his phone flashing. I then take the knife and put it in my left hand which I then approach the person and began stabbing him. After that, the person dropped to the ground where Elroy told me to chop off his head, which I follow orders. After doing that I then held a foot and Elroy held a foot and we began dragging him into some bushes. He then went to his pickup and came back with a school bag with some shirt in it we then wrapped the head in some shirt where then I gave him back the machete and the knife where I then head back towards the pickup and I set it by the roadside and he put the machete and knife inside the back of the pickup and we the skidded off ad he dropped me ear to me house which he then told me to go and get my motorcycle and go dash the head up the road by the first white cut off. I then get my cycle which I take off back on More Tomorrow Road where I left the head and get the head and took it up the road and dash it where I was told to dash it. I then burned the bag and skidded off back towards home. I then stopped by the bump in front of the school where I then set the house on fire after that I took off. After that, I passed where Elroy lives and I blew. He then came out and told me that Saturday 2nd November 2017, he will give me the money. I then went home from there. I entered my yard which I then washed my clothes and hang them on the line. I must also say that Elroy Grinage is about 7 feet tall, with a brown complexion. I must also say that I got up at about 6:00 a.m. on Wednesday 28th November 2017, when I went to work and at about 4:30 p.m. on the same day Police came and pick me up at my house which they detained me for pending investigation for murder. I must say that Elroy also have a 9mm pistol, but he did not want to use that because that is licensed. That is all I have to say.

Signed: Rafael Mencias

Justice of the Peace: Jose Garcia

Questions to Accused:

Question No. 1: You mentioned earlier in your statement a bus stop. Where is this bus stop?

Answer: Cottontree Village

Question No. 2: Do you know where Elroy Grinage lives?

Answer: Cottontree Village

Question No. 3: How long did you know Elroy Grinage?

Answer: 30 years from I was a child he took me like a son to him.

Question No. 4: Do you know the man's name that you stabbed?

Answer: No.

Question No. 5: Did Grinage tell you why he wanted the man dead?

Answer: He told me that the chiney man the pay him to take the hit because that land that the man de pahn is for the chiney man.

Question No. 6: Did Grinage tell you who was this chiney man who hired him to take the hit?

Answer: No.

I, Rafael Mencias, the above statement had been read to me. I have been told that I can correct, add, or alter anything I wish. This statement is true; I have made it of my own free will.

Signed: Rafael Mencias
Norman Garcia, Justice of the Peace

This statement was recorded by me, Norman Coye SGT. #148, on the 30th of November 2017, in the presence of Justice of the Peace Mr. Jose Garcia, it was read over by Rafael Mencias the maker who certified it to be correct by signing at the end.

Signed: Norman Coye SGT. #148

I, Jose Garcia, Justice of the Peace, witnessed the recording of this statement taken under caution on Thursday the 30th November 2017, at the head National Crimes Investigation Branch office in Belmopan City Police Station. He made it of his own free will.

Signed: Jose Garcia, Justice of the Peace

{47} The statement discloses that the Accused and another person plotted to kill the Deceased sometime after 8:30 p.m. on the night of the 28th day of November 2017. They went to his home and under the guise of purchasing sour sap trees caused the Deceased to enter his yard to show them the trees for sale. Whilst he was doing so the Accused attacked him with a knife and inflicted stab wounds on him. After inflicting those stab wounds on the Deceased the Accused chopped off his head and he and another person dragged his body into some bushes. He thereafter took the Deceased's head and dashed it at a certain point of the road after which he returned to the scene of the killing and set the house on fire.

{48} He went home and washed his clothes and woke up at 6:00 a.m. the next morning and went to work. The Accused expected to receive the sum of \$5000.00 BZE for the 'hit'.

Alibi

{49} The evidence adduced by the Defence came from the Accused himself and his witness Martha Sanabria aforesaid. The sum total of the Accused's evidence is that he was at home alone from 6:00 p.m. on the night of the 28th of November 2017, until around 5:30 a.m. the following morning. His witness testifies that she saw him at 6:00 p.m. on the night of the 28th of November

2017. She stated under cross-examination that she saw him on a playing field between 5:00 to 7:00 a.m. playing football and that she saw him at 9:00 p.m. later that night on her way home from church.

{50} I have directed myself that as the Crown has the burden of proving the guilt of the Accused, he does not have to prove that he was elsewhere at the time. On the contrary, the Crown must disprove the alibi. Though I may conclude that the alibi was false, that by itself does not allow the Court to find that he is guilty though it is a matter to be taken into account. The Court should also bear in mind that an alibi is sometimes invented to bolster a genuine defense.

{51} There are certain glaring inconsistencies in the evidence of the Accused and his witness. He testified that he last saw Martha at around 6:00 p.m. on the night of the 28th of November 2017, after which he went to his home and stayed there all alone until 5:30 a.m. the next day.

{52} Martha however testifies that she saw the Accused playing football between 5:00 – 7:00 pm on the same night. She also said she saw him at 6:00 p.m. and later at 9:00 p.m. that same night. The Accused however in his testimony made no mention of seeing Martha at 9:00 p.m. that night nor did he state that he was playing football at the time when he saw supposed to be at home by himself. No explanation was proffered by the Defence on the inconsistencies

aforesaid. However, the Accused is contending that he was at home all night until around 5:30 a.m. the following day which also forms part of his alibi defense. Thus, I must return to the Crown's case to ascertain if their evidence can disprove the alibi defense raised herein.

{53} I will consider the facts disclosed in the statement to the police. I have already found that the Crown has proved affirmatively that the statement complies with the provisions of section 90(2) of the *Evidence Act* after having held a *voir dire* aforesaid. There has been nothing arising in the evidence during the main cause which is capable of casting doubt on my earlier findings to cause me to re-examine and/or recall my earlier ruling.

{54} I find the contents of the statement to be true, correct, and reliable. The details provided therein are supported by the evidence of the Crown's witnesses. CPL John Mas received information around 6:00 a.m. in the morning of the 29th day of November 2017, of the head of the Deceased at a shed on the highway. He visited the bungalow of the Deceased opposite the Cotton Tree School and found it burnt and still smoldering. He also found the headless body of the Deceased in the bushes on his property bearing numerous stab wounds as found by Dr. Estrada Bran who conducted a post-mortem examination on the body of the Deceased.

{55} Section 91(1) of the *Evidence Act* provides thus:

“Subject to the provisions of this section, where the voluntary nature of an Accused person’s confession or admission of guilt has been established beyond a reasonable doubt, such confession or admission shall be sufficient to warrant conviction without any confirmatory or corroborative evidence.”

{56} By virtue of the aforesaid provision the Court can without more find that the Accused caused the death of the Deceased on that fateful day once the Court is satisfied that the contents of that statement are true and correct and reliable.

{57} I find in the premises, that the Crown’s evidence has satisfied me to the extent that I feel sure that it was the Accused who killed the Deceased.

Intention

{58} The Court must now determine whether when the Accused inflicted harm to the Deceased he intended to kill him. Section 9 of the *Criminal Code* provides the applicable law for the determination of a person’s intent.

“9. A court or jury, in determining whether a person has committed an offense,

a. shall not be bound in law to infer that any question specified in the first column of the Table below is to be

answered in the affirmative by reason only of the existence of the factor specified in the second column as appropriate to that question; but,

b. shall treat that factor as relevant to that question and decide the question by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.”

{59} What is or is not a person’s intention is not easily ascertainable unless, of course, they disclose their intentions to you. The Prosecution must prove that the Accused had the requisite intention, that is, to kill the Deceased at the time of the alleged offense.

{60} The Crown is relying on the contents of the statement under caution given by the Accused. In that statement, the Accused states that he was contacted to carry out a hit, a term commonly used to describe the murder of a person for a price which in this case was \$5000.00. Thus, the Crown is contending that the purpose of the attack on the Deceased by the Accused was to kill him.

{61} In support of this contention, the Crown relies on the evidence of Dr. Estrada Bran of the numerous stab wounds found and the degree of force used to inflict the same which he described as a heavy force.

{61} I must direct myself, that I am not bound to infer that the Accused had the requisite intention to kill just from the fact that he inflicted numerous stab wounds to the body of the Deceased.

{62} So, when considering whether the Prosecution has proved to my satisfaction that the Accused had the necessary intention, I should draw such conclusions as I think right, and inferences as appear to be proper in the circumstances having considered all the evidence in this case.

{63} I find in this case that the agreement to carry out a hit on the Deceased, the force used in inflicting the numerous stab wounds discovered on the body of the Deceased, and finally the decapitation of the Deceased satisfies me to the extent that I feel sure that the Accused intended to kill the Deceased when he attacked him on that fateful night.

Verdict

{64} Accordingly, in the circumstances the Accused is found guilty of the murder of, Hilton Wade Snr.

Dated this **16th day of June 2022.**

Honourable Justice Mr. F M Cumberbatch
Justice of the Supreme Court
Central District