IN THE SUPREME COURT OF BELIZE, A.D. 2020
CRIMINAL JURISDICTION

CENTRAL DISTRICT

Indictment No. C42/2020

THE QUEEN

v.

STEPHEN MANZANERO **(FIRST ACCUSED)**
REGINALDO PATT **(SECOND ACCUSED)**

- **Attempted Murder**

BEFORE Honourable Justice Mr. Francis Cumberbatch

APPEARANCES Mr. Cecil Ramirez - Sr. Crown Counsel along with
Ms. Natasha Mohamed, Counsel for the Crown
Mr. Arthur Saldivar - Counsel for First Accused
Mr. Dickie Bradley – Counsel for Second Accused

TRIAL DATES 8th, 9th, 10th, 11th, 15th, 16th, and 25th of June, 2020; 14th, 28th, and 30th of July, 2020.

JUDGMENT

[1] The Accused are indicted by the Director of Public Prosecutions for the offense of attempted murder for that they on the 16th day of June 2017, at Santa Familia Village, in the Cayo District, attempted to murder Eliseo Bacab ('the virtual complainant") contrary to sections 18 and 117 of the ***Criminal Code***. To that indictment they both entered pleas of not guilty and

a fully contested trial was held by a judge alone pursuant to section 65A of the ***Indictable Procedure Act***.

Summary of the Facts

[2] The Crown's case turns on the evidence of the virtual complainant and Dr. Pineda. The virtual complainant states that on the night of the 16th day of June 2017, he was in the company of one, Emy Guerra, in Santa Familia Village, in the Cayo District. They went to the football field and engaged in acts of sexual intercourse on the bleachers at which time he was attacked by the First Accused who was armed with a knife and inflicted stab wounds to his head, neck, back, and other parts of his body.

[3] The virtual complainant further stated that he had seen the First Accused along with the Second Accused and one Armando Coleman together earlier that night. He saw them again when he was attacked, and the Second Accused held Emy Guerra by her neck and hair. After this incident, he went to the San Ignacio Hospital where he was seen by Dr. Pineda and treated for his injuries. He was hospitalized for a day then discharged.

[4] At the close of the Crown's case, Counsel for both Accused made submissions of no case to answer on behalf of their clients. The Court in a written decision ruled as follows:

Ruling

[5] The Court at this stage is required to determine whether or not there exists sufficient evidence in the Crown's case upon which a tribunal of fact well-directed could convict the Accused. The Court is not required at this stage to be satisfied to the extent that it feels sure of the strength of the Crown's case and the innocence or guilt of the Accused.

[6] I find that the case against the First Accused is of sufficient strength to call upon him for a defense. There is evidence of him allegedly stabbing the virtual complainant some 14 times some of which were in a sensitive area of the body, to *wit* the neck. The issues of self-defense and intention can be properly determined on a consideration of all the evidence in this case at the end of the day. Accordingly, I find that a case has been made out against the First Accused for the offense of attempted murder.

[7] As regards the Second Accused there is evidence that at all material times he was present with the First Accused whilst he allegedly interrupted the virtual complainant during a sexual encounter with one Emy. There is also evidence that this Accused allegedly grabbed the virtual complainant's paramour at the bleachers at or around the time when the attack by the First Accused commenced.

[8] Accordingly, I find that there is a likelihood of the Second Accused acting in concert with the First Accused in his alleged attack on the virtual complainant.

[9] The submissions are overruled and the Court calls on both Accused to lead a defense to the offense of attempted murder.

The Defence

[10] The First Accused elected to give sworn testimony and stated as follows.

He said that he lives in Santa Familia Village and remembers the 16th day of June 2017. On that day, he was having some fun with his friends and family. He left his girlfriend telling her that he was taking a circle with friends. They went to a Chinese store and had some beers and smoked marijuana. This lasted from around 7:30 p.m. to 8:30 p.m. They then went to the cemetery where they continued drinking beer and smoking weed for another half hour. They saw police patrolling and flashing lights towards the cemetery so they decided to leave and go to the football field. They were in a house where they started to relax after smoking weed. They ran out of weed and one of his friends said that he had some weed hidden by the riverside, so they went to the riverside. There is a pathway by the riverside and the friend told them he had hidden the weed around there. Whilst they

were searching for the weed they were making noise and laughing and a person came out of the bush cursing and threatening them saying what were we doing there. He had a machete in his right hand. They told him they were just looking for weed and he cursed and attacked them so they ran but he fell to the ground. The person lashed him on his back with the machete and on his leg on the right side so he told him to stop hurting him. The person did not want to stop so he managed to hold him and they struggled. The person was still holding the machete in his right hand. They both fell and the machete fell apart from him. The person continued with his aggression and went to pick up the machete so in fear for his life he remembered he had a pocket knife. The person came back with the machete and they struggled and during the process of the struggle, he inflicted stab wounds with the pocket knife which had a blade about three to three and a half inches long. They continued to struggle and fell again then the person ran towards the river. He called for help from his friends but nobody was there. He felt his hand wet with blood from the person who attacked him. Apart from his friends and the person who attacked him he did not see anyone else. He stated that he was not trying to kill anyone.

[11] The Accused said he went home and washed the blood off of him and that same day the police came to his home looking for him in an investigation for attempted murder. He was with his girlfriend at the time. When he was handcuffed he felt pain in his back and leg. He told the police about it but they said they were not there for that, only for an investigation for attempted murder. The police arrested his friends and took them to the river and beat them. They ignored his complaints that he was injured and continued to beat him. They were then taken to the station where he was told that he was to be charged for the attempted murder of Eliseo Bacab. He did not know Eliseo Bacab before. The police later took him back to the village and questioned him about a missing person. They never took him to the hospital or anywhere in respect of his injuries. He said after a while at the station he was taken to the hospital. He told the police that he was hurt by a person he learned was Eliseo Bacab and was in pain.

[12] Under cross-examination, the Accused said his friends were Reginaldo Patt and Armando Coleman. He does not recall which officer took him to the hospital. He agreed that he got hurt to the left side of his forearm and did not complain to the doctor about pain to his left shoulder. He complained to the doctor of pain to his abdomen and right leg and did not tell the policeman

who took him to the hospital he had pain in his right leg and did not complain to the police officer who took him to the hospital about swelling to the left side of his head. He told the doctor about the pain on the left side of his back and knee.

[13] He said when he fell to the ground the man hit him a hard blow with the machete but he cannot recall if that blow left any mark on his back but he knew that he was in pain. He cannot say if he got lashed with a machete on his back it would show as that was the first time he got lashed with a machete. He said when the doctor examined him he took off his shirt. He was born in Santa Familia Village but cannot say if it is a small or large village. He does not know Eliseo Bacab since he was a boy, but Eliseo Bacab did attack him on the 16th day of June 2017. Reginaldo Patt was with him to look for weed and when Eliseo Bacab attacked him his friends ran away. That was when he had the struggle with Eliseo Bacab. He denied making up a story to tell the Court. He said he told the Court the truth.

[14] Re-examination was declined. This Accused called no witnesses and that was the case for the First Accused.

[15] The Second Accused chose to make an unsworn statement from the dock. He said he is 21 years old and works at the Quality Feed Mill installing

cages. He said at the football field he did not know how Bacab got attacked. It happened fast and suddenly. He stated that he did not attack Bacab nor did he take part in any way. Emy, whom he knows well grew up in his village and was naked and did not have on any clothes. He told her to put on her clothes and run. He stated that he has never had any problem with the police and has never been to jail before.

[16] This Accused called no witnesses and that was his case.

The Submissions

The Crown:

[17] Mr. Ramirez for the Crown submits that the evidence of the First Accused that he was attacked by the virtual complainant is untrue and not credible. He went on to submit that his answers under cross-examination show that his allegations that he was attacked by the virtual complainant do not appear to be credible especially the claim that he received injuries when the virtual complainant lashed him in the back with a machete.

[18] Crown Counsel further submits that the Second Accused had the foresight of the attack by the First Accused on the virtual complainant. This he submits could be inferred from the fact that he moved from a small house at the football field to the bleachers where the virtual complainant and Emy were

engaged in sexual intercourse. Thus, Patt must have known or had the foresight that the First Accused would be engaged in an activity against the virtual complainant or Emy Guerra or both.

[19] Counsel further submitted that it cannot be true that this Accused told Emy Guerra to put on her clothes and run. In conclusion, Mr. Ramirez contends: '…..that the evidence adduced by the Prosecution on a whole meets the criteria as set out in the case of ***Peter Augustine v The Queen, Criminal Appeal No. 8 of 2001*** in that:

(a) That Stephen Manzanero had the intention to commit the full offense of killing Eliseo Bacab and that in order to carry out that intention, he

(b) Unleashed an unprovoked attack upon Eliseo Bacab inflicting upon him 14 injuries;

(c) The attack and injuries are directly and immediately connected with the intention to kill Eliseo Bacab;

(d) The attack and inflicting of 14 injuries upon Eliseo Bacab cannot reasonably be regarded as having any other purpose than to kill Eliseo Bacab; and,

(e) The activities by Stephen Manzanero were more than preparatory for the commission of the offense of killing Eliseo Bacab which was not successful because of the struggle put up by Eliseo Bacab.

[20] Reginaldo Patt: - the Prosecution submits that Reginaldo Patt is equally culpable as Stephen Manzanero based on the principle of joint enterprise enunciated in the case of ***Chan Wing – Siu v The Queen [1984] UKPC 27***.

Defense Submissions

Stephen Manzanero:

[21] Mr. Saldivar for this Accused submits that his client acted in self-defense. He submits that the law on self-defense is clear. A person is allowed to use reasonable force to defend himself from an attack. He relied on the *dictum* of Lord Morris in ***R v Palmer (1971) 1 AER 1077***:

> *"A person who is being attacked should not be expected to "weigh to a nicety the exact measure of his necessary defensive action".*
>
> ** If the jury thought that in the heat of the moment the defendant did what he honestly and instinctively thought was necessary then that would be strong evidence that only reasonable defensive action had been taken.*

** A jury will be told that the defense of self-defense where the evidence makes it raising possible, will only fail if the Prosecution shows beyond reasonable doubt that what the Accused did was not by way of self-defense."*

[22] Counsel contends that the Prosecution failed to prove beyond reasonable doubt that what the Accused did was not by way of self-defense.

[23] On the question of intention, Mr. Saldivar contends that the Prosecution invites the Court to infer that words attributed to the Accused by the virtual complainant are sufficient to establish an intention to kill. Those words being: ***"what he would do there no one would know about."*** According to Bacab, these were the only words spoken to him.

[24] It is submitted that these words on their own, do not establish that Stephen Manzanero had the intention to kill at the time of the incident. Further, it is settled law that where inferences are to be drawn, the inference most favourable to the Accused is the one to be adopted by the Court.

[25] Defense Counsel went on to submit that, the medical evidence of Dr. Fausto Pineda vitiates any assertion that by virtue of the number of injuries or the sensitive areas they were located, Stephen Manzanero had the intention to

kill or the specific intent to murder Eliseo Bacab, none of the stab wounds amounted to anything more than a classification of wounding.

[26] In conclusion, Mr. Saldivar contends that the Crown has failed to discharge its burden to prove beyond a reasonable doubt that his client attempted to murder the virtual complainant and they also failed to prove beyond a reasonable doubt that what he did was not done in self-defense.

Reginaldo Patt:

[27] Mr. Bradley for this Accused submits that Crown Counsel contended that his client had the foresight of Stephen Manzanero's attack on the virtual complainant. He contends that there is no evidence to support such a suggestion by Crown Counsel. He further contends that, the virtual complainant was suddenly ambushed whilst engaged in sexual intercourse on the bleachers of the football field and that there is no evidence to suggest that his client had the foresight or must have known that Stephen Manzanero would have been engaged in an activity against Eliseo Bacab.

[28] Mr. Bradley contends that even if it is accepted that his client held Emy by her hair and neck this could be taken as confirmation that she was not wearing any clothes. He submits that there is nothing unbelievable that with the sudden and shocking images of the attack on the virtual complainant

unfolding before his eyes his client was caught by surprise and did what any person would do in the circumstances that are to assist a helpless female.

[29] Counsel submits that there is no convincing evidence that his client was part of a joint enterprise to commit murder on the virtual complainant. Firstly, mere voluntary presence at the scene of a crime is not enough to prove complicity. Secondly, there is no evidence from the virtual complainant that there was any struggle between his client and Emy nor that his client by holding her prevented her from assisting the virtual complainant in his struggle with Stephen Manzanero.

[30] In conclusion, Mr. Bradley states that the Crown has not discharged the burden of proof against his client and has failed to prove beyond reasonable doubt that his client was part of a joint enterprise to kill Eliseo Bacab.

Analysis and Verdict

[31] The Crown must satisfy the Court to the extent that it feels sure as follows:

1. That the two Accused persons were involved in a joint enterprise to kill the virtual complainant;
2. That each Accused person intended to kill the virtual complainant;
3. That in pursuance of that joint enterprise they did acts with the sole intention of killing the virtual complainant;

4. That those acts are directly and not remotely connected with the commission of the offence of murder;
5. That those acts were not merely acts in preparation but acts immediately connected with the commission of the offence of murder.

[32] Section 18(2) of the ***Criminal Code*** provides thus:

> *"(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."*

[33] The Crown's case rests on the evidence of the virtual complainant and Dr. Pineda. The virtual complainant testified of being attacked by the First Accused who was armed with a knife and that during the course of that attack he struggled with the First Accused during which he received some 14 injuries to his body. Dr. Pineda testified that those injuries were seen by him when he examined and treated the virtual complainant on the 17th day of June 2017, at the San Ignacio Hospital. He found wounds to the posterior

neck area and also the left side of the neck. There were also wounds to the upper and lower areas of the back.

[34] In his sworn testimony, the First Accused admitted inflicting injuries to the virtual complainant but stated that was done in self-defense after he was attacked by the virtual complainant who at that time was armed with a machete.

[35] Section 36(4)(c)(k) of the ***Criminal Code*** of Belize, so far as relevant to this case, provides:

> *"(4) For the prevention of or for the defense of himself or of any other person against any of the following crimes, a person may justify the use of necessary force or harm, extending in case of extreme necessity even to killing, namely,*
>
> *(c) Murder*
>
> *(k) Dangerous or grievous harm."*

[36] In the decision of the Privy Council in ***Norman Shaw v Regina*** the Board in an examination of the application of the defense of self-defense stated thus in paragraphs 14 and 19 to *wit*:

"14. It was common ground between the parties to this appeal that, as pithily expressed in Smith and Hogan, Criminal Law, 9th Edition (1999) on page 253:

> *"The law allows such force to be used as is reasonable in the circumstances as the Accused believed them to be, whether reasonably or not. For example, if D believed that he was being attacked with a deadly weapon and he used only such force as was reasonable to repel such an attack, he has a defense to any charge of an offense arising out of his use of that force. It is immaterial that he was mistaken and unreasonably mistaken."*

19. In the opinion of the Board it was necessary for the trial judge to pose two essential questions (however expressed) for the jury's consideration:

> *(1) Did the appellant honestly believe or may he honestly have believed that it was necessary to defend himself?*

(2) If so, and taking the circumstances and the danger as the appellant honestly believed them to be, was the amount of force which he used reasonable?"

[37] I will consider and apply the directions approved by the Board in ***Norman Shaw v Regina*** aforesaid. In so doing, I will direct myself in the following manner:

[38] First of all, if the Court believes and accepts the evidence of the First Accused and finds it to be reliable and if I believe that he was or may have been acting in lawful self-defense I must acquit him. The Crown must prove his guilt and it is for the Prosecution to prove that he was not acting in lawful self-defense, not for the Accused to prove that he was.

[39] The Court must consider the matter of self-defense in light of the situation which the Accused honestly believed he faced. The Court must also consider if the Accused honestly believed it was necessary to use force to defend himself against the attacks or perceived attacks from the virtual complainant which in law he is entitled to do. I must also bear in mind that the Accused is under no duty to retreat and await the attack before taking defensive action.

[40] If after having considered the evidence I find that the Accused did or might have honestly believed that it was necessary to use force to protect himself from the attacks by the virtual complainant then I must go on to consider whether the type and amount of force were reasonable.

[41] In so doing I must also consider that a person who is under attack would react on the spur of the moment and cannot be expected to work out exactly how much force he needs to use to defend himself. On the other hand, if he goes over the top and uses force out of all proportion to the attack or more force than is really necessary to defend himself then the force would not be reasonable.

[42] If the Prosecution's case satisfies me to the extent that I feel sure that the force used by the Accused was unreasonable then he cannot be said to be acting in lawful self-defense and I must reject the defense of self-defense. If, however, I find that the force used was or may have been reasonable then I must acquit him.

[43] Before I come to make a finding on this defense, I must also consider the provisions of section 36(6) of the ***Criminal Code*** which provides thus:

> *"(6) No force used in an unlawful fight can be justified under any provision of this Code, and every fight is an unlawful fight in which a*

person engages, or which he maintains, otherwise than solely in pursuance of some of the matters of justification specified in this Title."

[44] Having considered this provision in ***Norman Shaw v Regina*** aforesaid the Board opined thus in paragraph 11:

"The provision is clearly intended to deny a defendant the right to rely on self-defense if the force used by the defendant was used in the course of an unlawful fight. Thus, if criminal individuals or gangs inflict violence on each other in the course of the unlawful conflict between them, or an innocent victim inflicts or threatens violence against a criminal aggressor, it is not open to either party in the first example or the criminal aggressor in the second to justify his conduct as self-defense. If the prosecutor seeks to rely on subsection (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 defendant 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, (c) invite the jury to decide whether, on what they find to be the facts, the act charged against the defendant occurred in the course of an unlawful fight as defined by the judge, and (d) direct the jury that the defendant may not justify the act charged against him as self-defense if the jury concludes that it was done in an unlawful fight."

[45] I have considered all the evidence in this case from both the Crown and the two Accused. I find that the virtual complainant was engaged in an act of sexual intercourse with one, Emy Guerra, and whilst having sex an incident occurred between him and the First Accused. This is supported by the unsworn statement of the Second Accused who said the attack on the virtual complainant was fast and sudden and Emy whom he knew was naked and did not have on any clothes, a not unusual feature of people having sex.

[46] The medico-legal form of the First Accused tendered into evidence reveals complaints of abdominal pain, pain to the left shoulder, and right leg. There was also mild swelling to the left forearm. I consider these injuries to be inconsistent with him being the victim of a machete attack with hard blows inflicted to his back with the said machete by the virtual complainant.

Moreover, I find that the purpose of the virtual complainant's presence at the football field that night in the company of a female companion was for sexual enjoyment in which he was engaged at the time when the incident occurred. Thus, I find it unbelievable that the virtual complainant in those circumstances would launch an attack on the First Accused with a machete as alleged. I must also bear in mind that this defense of self-defense proffered by the First Accused was never suggested, nor foreshadowed during the cross-examination of the virtual complainant by the Defense Counsel which I find to be astonishing.

[47] Indeed the thrust of the Defence Counsel's cross-examination was directed at establishing that the virtual complainant did not know his client prior to that event and that his identification of him was mistaken or untrue. It was against that background that the First Accused gave sworn testimony placing himself on the scene and alleging to be the victim of an attack by the virtual complainant armed with a machete.

[48] Accordingly, I do not believe the First Accused, when he stated that he was attacked by the virtual complainant and was forced to inflict the injuries found on the virtual complainant in self-defense. Moreover, I consider the defense of self-defense to be contrived as an afterthought.

[49] On further examination of the Crown's case, I believe and accept the evidence that the First Accused whilst armed with a knife attacked the virtual complainant and inflicted the injuries. I also find that the evidence of Dr. Pineda of the injuries seen by him during his examination of the virtual complainant was found to be in the neck, back, and chest areas to be supportive of the virtual complainant's testimony. In the circumstances, the Crown's evidence has satisfied me to the extent that I feel sure that when the First Accused inflicted injuries to the body of the virtual complainant he was not acting in lawful self-defense. Thus, I do not find that the First Accused honestly believed or might have honestly believed that it was necessary for him to defend himself.

Intention

[50] The Crown must satisfy the Court that when the First Accused inflicted the injuries to the virtual complainant he did so with the sole intention of killing 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."

[51] 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 required intention, that is, to kill the virtual complainant at the time of the alleged offense. They intend to do so by asking the Court to draw certain inferences from the evidence in this case more particularly the number of stab wounds inflicted by the Accused to the body of the virtual complainant.

[52] 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 several stab wounds on the virtual complainant. However, while those facts may be relevant to the question of the Accused's intent, I would have to take it into

account when considering all the evidence and all the inferences to be drawn from that evidence.

[53] So, when considering whether the Prosecution has proved to my satisfaction that the Defendant 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.

[54] The Crown is asking the Court to find that the fact that the virtual complainant suffered some 14 stab wounds is indicative of the intention of the First Accused to kill him. The Crown is also asking the Court to find that a remark allegedly made by the First Accused to the virtual complainant, to wit ***"what he would do there no one would know about."***

[55] Dr. Pineda testified that, when he saw the virtual complainant, he assessed the different wounds to ensure that major organs were not affected and those that wanted suturing were sutured. He further testified that an x-ray was done since most of the wounds were in the chest and neck area. However, that x-ray did not reveal any collapse of the lungs. The virtual complainant was admitted for antibiotic and pain management. The virtual complainant stated in his testimony that he was released from the hospital the next day.

[56] An analysis of the doctor's evidence discloses that he found no damage to major organs, the chest x-ray revealed that there was no collapse of the lungs, and the virtual complainant was admitted to the hospital for antibiotic and pain management. The doctor who was deemed an expert by the Court did not state an opinion on the severity of the injuries seen and whether any of them could be considered to be life-threatening. There is no evidence that any of the wounds were serious, and the virtual complainant testified that he was released from the hospital the next day. I find that had his condition been deemed serious his stay in the hospital would have been for a longer period and the treatment of his injuries would have been more intensive.

Verdict

[57] I find after having examined and taken into account all the evidence adduced by the Crown, that the Crown's case does not satisfy me to the extent that I feel sure that when the First Accused inflicted the injuries to the virtual complainant he did so intending to kill him. Thus, I find him to be not guilty of the offense of attempted murder. I am, however, satisfied to the extent that I feel sure that the First Accused inflicted wounds to the body of the virtual complainant.

[58] Accordingly, I find that pursuant to the provisions of section 136 of the ***Indictable Procedure Act CAP 96*** the First Accused is guilty of the offense of wounding.

Reginaldo Patt:

[59] I now turn to consider the case against the Second Accused. The indictment alleges that the two Accused were involved in a joint enterprise to kill the virtual complainant. The Crown's case as put forward by Mr. Ramirez is:

> ***"……that the Second Accused had the foresight of the attack by the First Accused on the virtual complainant. This he submits could be inferred from the fact that he moved from a small house at the football field to the bleachers where the virtual complainant and Emy were engaged in sexual intercourse. Thus, Patt must have known or had the foresight that the First Accused would be engaged in an activity against the virtual complainant, or Emy Guerra, or both."***

[60] Counsel further submitted that it cannot be true that this Accused told Emy Guerra to put on her clothes and run.

[61] The Second Accused in an unsworn statement from the dock denied that he knew of any plan to attack the virtual complainant and that the attack was

fast and sudden. He stated that he held Emy whom he knew and who was naked and told her to get her clothes and run.

[62] The only evidence offered by the Crown against this Accused is from the virtual complainant who stated that he was one of the other two persons who were with the First Accused when he was attacked and that he pulled Emy by her neck and hair when the First attacked him.

[63] An analysis of the evidence reveals that the virtual complainant stated that when he was struggling with the First Accused he called for one Armando Coleman and not the Second Accused to help him. Moreover, the First Accused in his testimony stated, that during the struggle with the virtual complainant he called for help from his friends but nobody was there.

[64] The Second Accused in his unsworn statement admitted holding Emy but states he did so because he knew her and that he told her to leave after he witnessed the sudden attack on the virtual complainant.

[65] The essence of joint responsibility for a criminal offense is that each Defendant shared a common intention to commit the offense and took some part in it, however great or small, so as to achieve that aim. Mere presence at the scene of a crime is not enough to prove guilt, but if I find that a particular Defendant was on the scene and intended and did by his presence

alone encourage the other Accused in the commission of the offense he is guilty.

[66] I find that though the Second Accused was present at the scene of the crime there is no evidence that satisfies me to the extent that I feel sure that this Accused participated in a joint enterprise with his co-Accused to attack the virtual complainant. Indeed I believe and accept the evidence of the virtual complainant that, the First Accused called upon Armando Coleman to help him. There is no evidence that Reginaldo Patt was called upon by his co-Accused to participate in the attack. I find that had he been part of the plan to attack the virtual complainant it is most likely that he and not Coleman would have been called upon by the First Accused to assist him in the commission of this offense.

[67] Moreover, there is no evidence that Emy was going to the assistance of the virtual complainant when she was held by the Second Accused from which it could be inferred that his act of holding her was to assist the First Accused in his attack on the virtual complainant.

[68] In considering the unsworn statement of this Accused, I must take into consideration that he said that he is 21 years old and was employed with the Quality Feed Mills. He has never been to jail before and has never had any

problems with the police. In the circumstances, I must take into consideration that he is a man of good character. Though this does not mean he could not have committed the offense for which he is indicted but it means that it is less likely that he would have committed this offense.

[69] I do not find the defense proffered by the Second Accused though unsworn to be incapable of belief in the circumstances of this case. It cannot be denied that the attack on the virtual complainant was swift and sudden. The evidence that Patt told Emy, whom he said he knew, to get dressed and leave does not appear to be unusual or impossible to believe. There is no direct or circumstantial evidence from the Crown case to the contrary.

[70] Accordingly, having considered all the evidence herein, the Crown has not satisfied me to the extent that I feel sure that Reginaldo Patt knew or had the foresight that the First Accused planned to attack the virtual complainant and was present there as a consequence thereof. In the circumstances, he is found not guilty of this offense and is discharged.

Sentence

[71] The First Accused was found guilty of the offense of wounding as stated aforesaid. Section 80 of the ***Criminal Code*** provides, that any person who

intentionally and unlawfully causes a wound to a person shall be liable to imprisonment for two years.

[72] It is common ground that this Accused person has been in police custody and on remand for this offense since the month of June 2017. This period of time spent on remand is in excess of the maximum sentence for this offense as enacted by Parliament. Thus in the circumstances, he is sentenced to time served. He is remanded to custody to stand trial for another offense.

Dated this **30th day of July 2020**.

_____

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