

IN THE COURT OF APPEAL OF BELIZE A.D. 2023

CRIMINAL APPEAL NO. 36 OF 2019

VALENTINE BAPTIST

Appellant

and

THE KING

Respondent

Before:

The Hon. Madam Justice Hafiz Bertram
The Hon. Madam Justice Minott-Phillips
The Hon. Mr. Justice Bulkan

President
Justice of Appeal
Justice of Appeal

Appearances:

The Appellant in person
Ms. Sheiniza Smith, Senior Crown Counsel, for the Respondent

2023: June 19
 October 24

JUDGMENT

[1] **HAFIZ BERTRAM, P:** On 6 July 2016, around 4.00 pm, in broad daylight, Devin Parham (the deceased) was shot six times whilst walking along Cemetery Road, Belize City. The injuries to his neck and chest were fatal. Just moments before the shooting he was walking with his cousin, Victor Parham (Victor). In his Police statement, Victor stated that he observed a brown skin complexion male person about five feet six inches in height wearing a green T-shirt who was on a bicycle, and acting suspiciously, put his hand in his right pants pocket. Upon seeing that, Victor ran away. As he was doing so, he heard what sounded like eight to ten gunshots. When he looked back, he saw the deceased lying on the road. He went back and observed the deceased was motionless and had injuries to the upper part of his body. Victor did not see the shooting and no one else did. Further, he did not testify but his statement given to the police was read into evidence without objection from defence counsel. The Prosecution proved its case of murder against the Appellant, Valentine Baptist, by way of circumstantial evidence.

- [2] Two policemen who were on mobile patrol pursued the person wearing the green T-shirt about 45 seconds after the shooting. He threw away a gun he had in his possession just before he was detained by the policemen and he gave his name as Valentine Baptist. The gun was retrieved by the police in his presence.
- [3] Shortly thereafter, the Crime Scene Investigators retrieved two slugs and seven (7) expended cartridges from the crime scene, near and under the body of the deceased. The forensic evidence proved the cartridges were from the gun that the Appellant had in his possession.
- [4] The Appellant was indicted on 13 June 2018 for the murder of the deceased pursuant to section 117 read along with section 106(1) of the Criminal Code.¹ It was alleged that on 6 July 2016, at Belize City, he murdered Devin Parham. He stood trial before Justice Colin Williams (the trial judge) commencing 3 December 2019 and on 11 December 2019, he was found guilty of murder. On 13 February 2020, he was sentenced to 30 years imprisonment less the remand period of 3 years and 5 months.
- [5] He appealed against his conviction by Notice of Appeal dated 30 December 2019. Since the Appellant had no representation, the Registrar of the Court assigned the matter to three counsel, on separate occasions, but they were unable to formulate any grounds of appeal. As a result, the Appellant informed the Court at a Case Management Conference that he would like to represent himself since he saw grounds of appeal in the record. He complied with the Case Management Order and filed written submissions to which the Crown has responded.
- [6] The grounds of appeal argued before the Court were that (a) The Appellant did not receive a fair trial and (b) The Prosecution did not prove that the Appellant shot and killed the deceased. The Court heard the appeal on 19 June 2023 and reserved its decision.
- [7] In the opinion of the Court, the Appellant received a fair trial as shown in the discussion under this ground. Further, the evidence led by the Prosecution which was properly analysed by the trial judge proved beyond a reasonable doubt that it was the Appellant who shot and killed the deceased.

¹ Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011

[8] The identity of the person who shot and killed the deceased was proven by circumstantial evidence, namely (a) Victor saw a person wearing a green T-shirt, acting suspiciously, put his hands in his pocket and Victor ran away. He heard gunshots and when he turned back his cousin lay dead on the road; (b) A person wearing a green T-Shirt was pursued by two Police Officers less than a minute after hearing the gun shots; (c) The person wearing the green T-shirt threw a gun he had in his possession over a fence; (d) The person with the green T-shirt was detained by the police and he gave his name as Valentine Baptist; (e) The scientific evidence from scientists at the National Forensic Science Laboratory proved that the gun which was retrieved by the Police Officers in the presence of the Appellant was linked to the crime scene. (f) The expended cartridges found near the body of the deceased was fired from the same gun. (A slug and a fragmented slug were also taken from the scene of the crime but because the slugs were damaged the analysis was inconclusive); and (g) The inescapable conclusion was whoever had the firearm shot and killed the deceased.

The case for the Prosecution

[9] The Prosecution called 14 witnesses to prove its case against the Appellant. These witnesses were Angel Baeza, Angella Wiltshire, Brian Lopez, Andrea Rosales, Andres Godfrey, Isaias Sanchez, Kaila Matus, Shyrlee Lino, Assistant Director of the National Forensic Services, Ebony Lyall Nicholas, Police Constable Miguel Martinez (PC Martinez), Corporal Rojelio Navarette, Victor Parham and Dr. Lloyd Ken, Pathologist.

[10] The trial judge in his judgment noted that there was substantial agreement between the Prosecution and Defence counsel on most of the issues. The only witnesses who were cross-examined were Police Officer Miguel Martinez and the Assistant Director of the National Forensic Services, Ms. Ebony Lyall-Nicholas who was deemed an expert in firearm forensics without objection. Further, the only other witness who gave viva voce evidence was the Pathologist Dr. Ken, but he was not cross-examined by the Defence. The evidence from the other witnesses was uncontentioned and formally tendered, pursuant to Part X of the Criminal Procedure Rules, read along with section 123 of the Indictable Procedure Act.²

² Chapter 96 of the Laws of Belize, Revised Edition 2011.

Victor Parham's evidence – p. 84 - 88 of the Record

[11] Parham did not testify but his statement given to the Police was read into evidence. He stated that he and his cousin Devin Parham were walking together on Cemetery Road and whilst passing the corner of Cemetery Road and Fuller's Alley, where there is a Chinese shop, he saw a young male person moving suspiciously. The male person was of brown complexion, slim built, about five feet six inches in height, wearing a green T-shirt. Parham stated that the male person was about eight feet away from them and he saw him from an angle of 45 degrees on his left hand side for about 15 seconds.

[12] He further stated that he and the deceased passed the male person at the corner of Fuller's Alley and Cemetery Road. Then suddenly, the said male person passed them riding his bicycle and entered Mortar's Alley and stood there with his bicycle. Whilst passing at the corner of Mortar's Alley and Cemetery Road, Parham watched the male person, who was on his bicycle to his left hand, and saw the person come off his bicycle. He saw him place his right hand inside his right pants pocket and upon seeing that and fearing for his life, he ran away. Whilst running he did not turn around to see if the deceased was running behind him and at the same time he heard about eight to ten gunshots.

[13] Upon reaching at the corner of Curassow and Cemetery Road, he turned around and saw the deceased was lying in the middle of Cemetery Road. He went back to check on the deceased and saw that he was lying motionless with gunshots to his upper body. He then proceeded back to the deceased's house where the police picked him up.

Police Constable Miguel Martinez

[14] PC Martinez testified that on the day of the incident he was on mobile patrol along with Corporal Navarette in a marked police vehicle. He was returning to the Raccoon Street Police Station located on Raccoon Street when he heard several gunshots coming from the direction of Cemetery Road. At the same moment when he heard the shots, he heard a transmission on the handheld radio that was in the police mobile. He then drove with Corporal Navarette into Welch Street and made a right turn on to Gibnut Street. He then made another right turn on to Dolphin Street and a left turn into Hickety Street.

[15] Whilst he was at the corner of Hickety and Bocotora Streets he asked a young male person if he had seen anybody running or on a bicycle and he pointed in a direction. He testified that "I observed a dark skin male person wearing a green shirt, who was riding on a bicycle on Bocotora Street towards the direction of Raccoon Street." The approximate distance between PC Martinez and the person wearing the green shirt was about 150 yards. The time that passed from when he heard the shots to when he saw the person with the green T-shirt was approximately 45 seconds. He then drove the mobile behind the male person wearing the green shirt who turned left into Raccoon Street and then into Berkley Street. He managed to catch up to the person wearing the green shirt who continued riding the bicycle and made a right turn into West Street and then a left turn into Warrior Street and another left turn into George Street. PC Martinez then noticed that the person with the green shirt dropped his black beach cruiser bicycle and ran into an unfenced yard on George Street. The person ran across going towards the direction to Plues Street.

[16] PC Martinez stated that at this time Corporal Navarette exited the police vehicle and ran towards the direction of Rocky Road. He continued driving the police vehicle and exited through West Canal. At this point he lost sight of the male person wearing the green T-shirt for about two minutes. He continued driving the police vehicle and when he reached the corner of West Canal and Dean Street he saw the person wearing a green T-shirt and a $\frac{3}{4}$ green pants walking on Dean Street in a westerly direction. PC Martinez testified that he got out of the police vehicle he was driving and started to walk behind the same person wearing a green T-shirt. He then saw when the person wearing the green T-shirt *"took out a black in colour handgun from his front part of his waist and threw it over a wall fence on Dean Street with his right hand."*

[17] He then approached the person wearing the green T-shirt and apprehended him. He was assisted by Corp. Jonathan Lopez and Police Constable Freeman Staine attached to the Special Patrol Unit, who were on duty in the area. They did so about 15 to 20 feet from the spot where the person threw the gun over the wall fence which was about five to six feet in height. Thereafter, he looked over the wall fence and he saw the black handgun on the ground inside the yard. He told the detained person that he saw him throw the gun over the fence. He instructed Corp Lopez and PC Staine to take the person with the green T-shirt inside the yard through the front gate. In the meanwhile, PC Martinez jumped the fence and retrieved the black in color metal handgun in the presence of the Appellant.

[18] PC Martinez then found out from the male person that his name is Valentine Orlando Baptist, the Appellant. Mr. Baptist was informed of the offence committed, that is, being in possession of an unlicensed firearm. He further testified that the Appellant along with the black in colour 9 mm Glock pistol was taken to the Scenes of Crime Office on Queen Street where the firearm was photographed in the presence of the Appellant by Crime Scenes Technician Lopez. The firearm was sealed by PC Martinez in a white gun box and he attached a chain of custody form to the gun box and handed it over to WPC Kaila Matus who is the Exhibit Keeper, to be forwarded to the National Forensics Laboratory in Ladyville for analysis. Thereafter, the Appellant was taken back to Raccoon Street Police Station where he was detained. PC Martinez requested that the Appellant hand over his clothes to him and he did so. The green T-shirt had some markings on it in Spanish, "Verdes" which is a fan football club shirt. The T-shirt and the ¾ grey pants were handed over to him and he thereafter handed that over to Sergeant Mark Humes. At that time, the Appellant was formally arrested and charged for the offence of kept firearm without a gun licence.

PC Rojelio Navarette – p. 79 -81 of the record

[19] PC Navarette in his statement stated that himself and PC Martinez were on mobile patrol on Iguana Street, heading to Iguana Street Police Station when shots were heard coming from the direction of Cemetery Road. PC Martinez then drove into Dolphin Street and then into Bocotora Street and saw a slim, dark skin male person wearing a green T-shirt who was riding on a black beach cruiser bicycle on the said Bocotora Street and made a left into Raccoon Street and kept riding towards an east direction. PC Martinez then started to drive behind the said dark skin male person wearing the green T-shirt. PC Navarette exited the police vehicle and decided to go on foot but lost sight of him. A couple of minutes later, he made his way towards Dean Street through George Street and upon reaching to Dean Street, he saw PC Martinez holding the same slim dark skin male person wearing the green T-shirt being handcuffed and saw PC Martinez holding a black in color 9mm pistol. He stated that the person that PC Martinez had detained is the same person that was riding on the said black beach cruiser bicycle on Bocotora Street. PC Navarette stated that PC Martinez then escorted the said male person to the Raccoon Street Police Station, along with the black, Glock, 9mm pistol. At the Raccoon Street Police Station, he learnt the person's name to be Valentine Orlando Baptist.

Angel Baeza – p. 5 – 7 of the record

[20] On 6 July 2016, whilst on duty, Detective Constable, Angel Baeza attached to Crimes Investigation Branch received information and proceeded to Cemetery Road, where he saw the motionless body of a dark complexion male person lying face down on the road in a red substance suspected to be blood. That person was identified as Devin Adolphus Parham, 19 years old, by his mother Andrea Rosales.

[21] He stated that Ms. Angela Wiltshire, Scenes of Crime Technician arrived at the alleged murder scene and conducted a walkthrough of the scene where 7 expended shells were found. The scene was photographed and processed. Two (2) .9mm Aguila brand expended shells and five (5) .9mm Winchester brand expended shells were retrieved about four feet from the body of the deceased. One (1) fragment slug was retrieved about seven feet from the body of Devin Parham and one (1) fragment 15 slug from underneath the body of Devin Parham. He stated that himself along with other Officers transported the body of the deceased to the Karl Heusner Memorial Hospital, Accident and Emergency Section. He then briefed Sgt Mark Humes, and handed over the case to him along with his report.

Angela Wiltshire – p. 7 – 11 of the record

[22] On 6 July 2016, Angela Wiltshire, Scenes of Crime Technician on the request of Police Corporal Detective Cassanova visited an area on Cemetery Road to process a scene. Upon her arrival, she met with PC Baeza. She inspected the crime scene and observed on the street the motionless body of the deceased. She “[o]bserved on the street and on the sidewalk, 7 x .9mm WIN, Aguila and Winchester brand expended shells, a piece of bronze color bullet fragment and a black in color slippers, after which I took several photographs. I then did my examination on the motionless body where I observed several injuries and when I turn over the body, I observed a bronze color bullet slug, lying in red liquid like substance suspected to be blood, on the ground. I thereafter took several more photographs. I proceeded to collect all 7 x .9 mm expended shells, fragment of a bullet slug, the bronze color bullet slug and blood swab from off the scene which I packaged each in their own individual envelopes and labelled. I handed over the black in color slippers to Police Constable Angel Baeza on the scene. I did a final walk through of the crime scene before handing it over to Police Constable Angel Baeza. I returned back to the Scenes of Crime Office, where I properly documented and sealed all items lifted from off the scene.”

[23] On 7 July 2016, Scenes of Crime Technician Wiltshire handed over to the to the National Forensic Science Service for analysis on a chain of custody form the following items:

- (i) 7 x small brown envelopes each containing a bronze in color .9 mm expended shells with markings WIN, Aguila and Winchester;
- (ii) 1 x small brown envelope containing a bronze color bullet fragment.
- (iii) 1 x small brown envelope containing two blood swabs.

[24] On 19 July 2016, she handed over to the Scenes of Crime Technician Brian Lopez on chain of custody form one small brown envelope containing a bronze color bullet slug recovered from off the crime scene for him to hand over to the National Forensic Science Service for analysis.

Police Constable Kaila Matus – p. 22 of the record

[25] PC Matus in her statement stated that she is the Records and Exhibits Safe Keeper. On 7 July 2016, she received from PC Martinez one white box sealed with red evidence tape, “[l]abelled as to contain one black glock 9mm pistol, serial number unknown with an empty magazine in case Police vs. Valentine Orlando Baptist.” The said exhibit was then secured in a metal locker in her office. On 7 July 2016, she visited the National Forensic Science Lab where she handed over the said exhibit for testing.

[26] On 16 November 2016, PC Matus revisited the National Forensic Science Lab where she received and signed for the said exhibit which was sealed with red and green evidence tape, along with a chain of custody form and a gray in color certificate consisting of two pages with Lab No. FOR16-1311F, dated October 7 2016, “[w]hich bears the seal of the National Forensic Science Service prepared and signed by Ms. Shyrlee Lino, MSC Forensic Analyst II, for Firearm Examiner concerning Valentine Orlando Baptist charged for kept unlicensed firearm with case Officer being PC 375 M. Martinez.”

Sergeant Mark Humes – Interview of Appellant – 17 – 22 of the record

[27] Sgt Humes in his statement which was read into evidence stated that on 6 July 2016, he took over the murder investigation of the shooting death of the deceased from Angel Baeza DC 1837, who briefed him and handed over his report. He then spoke to Victor Parham who gave him certain

information. Thereafter, he spoke to PC Martinez who gave him further information. He then proceeded to the Precinct Two Police Station cellblock where he met with the Appellant and informed him that he was being detained for questioning in the shooting death of Devin Parham.

[28] He further stated that on 7 July 2016, the Appellant was interviewed by him. The Appellant stated that he did not know the deceased or anything about his shooting. Further, he was not riding a bicycle on Cemetery Road on the previous afternoon. However, he said that he was at a Chinese shop at the corner of Amara Avenue and Allenby Street on the previous afternoon when he heard gunshots though not loud and he did not know the directions from which the gunshots were coming from. The Appellant acknowledged that he was pursued and caught by the police the previous day. It was after that interview with Sergeant Humes that the Appellant was charged for the murder of the deceased.

The three forensic Reports

First report on the 7 expended shells and two deformed bullets by Shyrlee Lino – p. 27 – 33

[29] Ms. Shyrlee Lino, Forensic Analyst (Firearm Examiner) did a primary examination on the seven shells, two bullets and the firearm. The first report prepared by her was tendered by consent and the conclusions reached by her of the expended bullets and cartridge cases after her analysis were:

“Conclusions:

- Five (5) WIN brand 9mm Luger caliber expended cartridge cases.
- One (1) Aguila brand expended cartridge case.
- One (1) S & B brand 9mm Luger caliber expended cartridge case.
- One (1) deformed 9mm caliber expended bullet.
- One (1) fragment from an expended bullet. ..”

Second report on the firearm

[30] The second report is in relation to the firearm which the Appellant complains about under his ground one. It was produced by way of notice of additional evidence and read into evidence. This second report was on the classification of the firearm and the function test of the firearm. The analysis results were:

“The gun box (see picture 1.0) contained the following: one (1) firearm with a black color metal slide and barrel with a plastic frame and pistol grip. It was Glock brand model 26, 9 by 19 mm caliber pistol with an obliterated serial number. The serial number was restored to be PYN200.

The pistol was test fired and the firing mechanism was found to be in good working condition (see picture 1.1).

Picture 1.0 – Gun box containing the Glock brand, 9 x 19mm caliber pistol.

Picture 1.1 – The Glock brand, model 26, 9 x 19mm caliber pistol and magazine. One Glock brand, black color plastic with black colour butt plate, 10 round capacity, 9mm caliber magazine. It was in good working condition (See picture 1.2).

Picture 1.2 – One Glock brand, 10 round capacity 9 mm caliber magazine.”

The conclusion reached by Ms. Lino was as follows:

“Conclusion:

The Glock brand 9 x19mm caliber pistol was in good working condition and was capable of firing:

One (1) 10 round capacity 9 mm caliber magazine in good working order. The test fire component were entered into the NFSS Integrated Ballistics Identification System (IBIS) for evaluation with other fired components in the system. If an association is determined with components from our laboratory cases, you will be notified by a laboratory report.”

Third Report – Comparison analysis using test fired bullets and cartridge cases from firearm

[31] The purpose of the third analysis was to microscopically compare the expended cartridge cases, bullet and fragment submitted from case 1 to the test fired bullets and cartridge cases from the submitted firearm from case 2. The Analysis results were as follows:

“Analysis results:

The seven (7) submitted cartridge cases from envelope DP #1 to 6 and 9 (designated as UC1a to UC1g) from case 1 were compared to each other and similarities were present. Corresponding striations were observed and there was sufficient agreement of individual characteristics present to determine that all seven cartridge cases were fired from the same firearm.

These cartridge cases were then compared to the test fired cartridge cases designated and TC1a, TC1b and TC1c from the Glock pistol from case 2. Similar class characteristics were present and corresponding striations were (sic) present. There was sufficient agreement of individual characteristics present to determine that the seven cartridge cases were fired from the Glock brand, model 26 9 mm pistol with serial number PYN200 (See picture 1.0 as a representative sample).

The bullet fragment and bullet from case 1 (designated UB1a and UB1b) from envelope DP #8 and DP #11 respectively were compared to the test fired bullets (TB1a, TB1b and TB1c) fired from the submitted pistol. There were class characteristics present which were similar to the rifling pattern from the test bullets of the Glock pistol, however there was not sufficient agreement present to determine if the bullet and fragment were fired from this pistol.

Picture 1.0:- Magnified view (20X) of the submitted case (UC1a) on left and the test fired case from the Glock brand pistol (TC1a) on the right showing individual features of the firing pin impressions.”

[32] The Conclusion reached on the comparison by Ms. Lino was as follows:

“Conclusion:

There were similar class and individual characteristic present to determine that the seven expended cartridge cases from case 1 were fired from the Glock brand pistol model 26, 9 mm pistol with serial number PYN200 from case 2.

The bullet and bullet fragment from case 1 consisted of a similar rifling pattern to that of the test fired bullets from the Glock pistol however, there were not sufficient agreement present to determine that the bullet and bullet fragment were fired from this pistol.

...”

Ebony Lyall-Nicholas – Firearm/forensic expert - p. 34 – 52 of the record

[33] Mrs Lyall-Nicholas testified that she is the Assistant Director for the Belize National Forensic Science Service and a Firearm Examiner. She was deemed an expert without challenge from senior counsel who represented the Appellant. She gave evidence to explain the three reports that were read into

evidence from Ms. Lino. She said she was familiar with all three reports and did peer review for Ms. Lino in 2016 and this involved reviewing her analysis and reviewing her final report. She testified that in the firearm section of the lab, it is required that a second analyst review the items that have been analyzed by the first analyst and to sign off on them as a quality control measure. When it comes to peer review for comparison, this is done blindly, meaning that the first analyst does not reveal to the second analyst their findings prior to the review. Further, if there is agreement at the end of the review, this is considered a confirmation of the results. However, if there is disagreement, a third analyst may be called in and if still agreement cannot be reached, the result may be marked as inconclusive.

[34] Mrs Lyall-Nicholas gave evidence as to how the serial number of the firearm was restored. She explained that Ms. Lino was able, through the use of chemicals, to restore the serial number of the pistol, which was found to be PYN200.

[35] She further explained to the court that a round of ammunition consists of (a) the front part which is the bullet that is ejected which goes into the target; (b) the remaining portion which is expelled from the gun is the cartridge case; and (c) the inside of the ammunition is the gun powder. She then explained the markings that are caused to the bullets and expended cartridges when the trigger is pulled. The indentation in the middle of a cartridge case is from the firing pin, hitting it when the trigger is pulled. When the bullet goes through the barrel of the firearm, there are markings that remain on it. The rifling from the inside of the barrel is impressed upon the bullet leaving the markings.

[36] Mrs Lyall-Nicholas also explained to the trial judge the reason for a test fire. She testified that as a part of the analysis the forensic expert has to do a function testing to determine if the firearm is able to fire or not. That by protocol they use three rounds of ammunition and collect the bullets and cartridge cases expended from the firearm. These are referred to as the test fires. They are used for entry into the IBIS System and for future comparison and analysis. The Glock was test fired, which was done using three rounds of ammunition. The cartridge cases from the rounds that were test fired in the Glock and the seven submitted cartridge cases found at the scene were microscopically compared.

[37] The peer review, meaning a review by Mrs Lyall-Nicholas, "revealed that all the submitted cartridge cases from case FOR16-1307F were fired from the firearm submitted in case FOR16-1311F. The bullet fragment submitted in FOR16-1307F showed similar characteristics to the test fired bullets from FOR16-1311F. However, there were insufficient markings to conclusively determine that it had been

fired from that pistol. She also looked over the firearm to confirm the identifying mark as stated in Ms. Lino's report.

Dr. Lloyd Ken – Pathologist p. 92 of the record

[38] Dr. Ken is a Pathologist and he conducted the post mortem on the deceased. He determined the cause of death was due to multiple perforating gunshot wound to the body. Dr. Ken observed gun shot wounds to the neck, left shoulder which exited through the chest and causing a collapse of the lungs, left lumbar region, right gluteus and left thigh. The gun shot wounds to the neck and chest were fatal.

The Defence

[39] The Appellant who was represented by senior counsel called no witnesses. He gave an unsworn statement from the dock after he was given the three options. He denied that he shot the deceased. However, as shown by his interview with Sgt. Humes, he accepted that he had a gun in his possession, the police chased him and he disposed of the gun. In his dock statement, he said that on 6 July 2016, the following happened:

“I was at the corner of Allenby Street and Amara Avenue about 4:15 pm at a Chinese shop, when I heard what sounded like gunshots. So I decided to turn around and look up the street towards Raccoon Street Police Station, when I saw a dark skin male person wearing a green T—shirt, no marking. The person name I cannot recall or, the person name I don't know, only face. He was riding towards me on a bicycle very fast. That's when he meet up to me, because I was the only one at the corner of the Chinese shop Euphrates, I mean Amara and Allenby Street. He shouted at me and said, “*boy ker this fi mi and just follow mi*”. I decided to follow him. Then I realized what he had gave me was a black object, a firearm. When I turn around, I notice that a police vehicle was coming from behind me; so I started to ride fast as well. I bend down West Street. Yeah, tek wah right turn on West Street, left on Warrior Street, left on George Street, right on Plues Street and run in an unfenced yard on Plues Street. Drop my bicycle and run on an unfenced yard on George Street. ... I started to walk on East Collect Canal, make a left on Dean Street. At the corner of Dean Street and East Collect Canal, the same dark object that the dark skin male person handed over to me . . . Handed to me at the Chinese shop where I was standing at the corner of Allenby and Amara

Avenue, I dash, I throw it, the same black in color object into a yard on Dean Street because I know it's an offence; that what when the police detain me and charge me for unlicensed firearm. That was it.”

The judgment of the trial judge

[40] The trial judge found that it was clear that the Prosecution proved that (a) Devin Parham was dead; (b) that his death was caused by harm; (c) that the harm was unlawful; and (d) that the person who shot Devin Parham, the deceased, multiple times intended to cause his death.

[41] The only live issue that was before the trial judge was whether it was the Appellant who unlawfully shot and killed the deceased. He carefully analysed the circumstantial evidence from the Prosecution and the dock statement of the Appellant and found that it was the Appellant who shot and killed the deceased. Accordingly, he found him guilty of murder. After a mitigation hearing, he sentenced him to 30 years imprisonment.

Grounds of Appeal

[42] The grounds of appeal are:

- 1) The trial judge erred in admitting into evidence the firearm alleged to be the murder weapon as the evidence tendered constituted a substantive breach of procedure.
- 2) The trial judge erred in failing to conclude that the Prosecution did not discharge its duty in proving beyond a reasonable doubt the 4th element of murder.

Ground 1: Admission into evidence of the firearm constituted a substantive breach of procedure

[43] The Appellant submitted that in the trial of this matter, the most substantial piece of evidence that the prosecution relied upon to prove the case against him was the firearm discovered in a yard on Dean street. He contended that the trial judge should not have admitted this evidence in relation to the firearm which allegedly was the murder weapon. The substantive breach of procedure complained about by the Appellant is his constitutional rights pursuant to section (3) and (6) the Belize Constitution, Chapter 4 of the Laws of Belize. He argued that:

“The principal issue in the trial with respect to the admission of the firearm is the manner and time that the comparison analysis of the firearm and the expended cartridges were tendered. The criminal procedures permits that at six months after first arraignment case files be submitted by the prosecution in its entirety at exactly six months two weeks after first arraignment the date is set for preliminary inquiry at P.1 the evidence is challenged for 1) invalidity 2) insufficiency 3) inconsistency after P. 1 an indictment date is set. After indictment a case management conference to determine which evidence will be used at trial and also to tender evidence at this latest stage, then a date is set for trial. It is highly unethical and prejudicial for evidence to be tendered at trial due to the fact that the defense must be given adequate time to prepare defense. The criminal procedure is a guarantee geared toward proper administration of Justice. This breach is in direct violation of the fundamental rights of the individual as it relates to an adequate defense. Reference this breach it can be found at page 29 line 8 to page 4 line 2. Even though counsel did not object the fact remains the late entry being a breach of established procedure did occur. The importance of a competent independent and impartial Judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of Justice. A Judges duty is essential.

[44] The Appellant further submitted that there are provisions for admission into evidence such as the aforementioned procedures and the time frame within which such evidence must be introduced. That at his trial, the procedure and time was not adequate and the defence could not have been prepared to challenge the new evidence at the time it was tendered. As such, his fundamental rights and freedom were violated as it relates to an adequate defence. Further, the trial judge had a discretion to exclude admissible evidence where its prejudicial effect outweighs the probative value.

[45] Ms. Smith in response submitted that the forensic reports were prepared in relation to (a) the firearm; (b) the shells and slugs in the matter and (c) the comparison report. One report analysed the expended shells and slugs; The second report analysed the firearm; and the third compared the shells and slugs to the firearm.

[46] Counsel submitted that the record in this matter shows that the firearm analysis report, FOR16-1311F, (Firearm report) which analysed the firearm only and which predated the comparison report was not disclosed to the Appellant prior to the trial. During the trial, the Prosecution through a

notice of additional evidence and without objection from counsel for the Appellant at the time, adduced the report on the analysis of the firearm.

[47] She further submitted that the report which analysed the expended shells and slugs as well as the comparison report, were disclosed to the Appellant in 2017 when the preliminary inquiry was held. For those reasons, Ms. Smith submitted that the late disclosure of the firearm report could not have caused any prejudice to the Appellant as he would have been in possession of the comparison report which made reference to the firearm analysis report.

No prejudice as Firearm Report produced at trial

[48] Ms. Lino gave three reports which were read into evidence, namely (a) First report on the 7 expended shells and two deformed bullets; (b) Second report on the firearm; and (c) Third Report – Comparison analysis using test fired bullets and cartridge cases from firearm. The Record at pages 43-45 and 47 confirmed that the firearm report was not part of the disclosure at the Preliminary Inquiry and the Prosecution was unable to give an explanation as to why that report was not disclosed. An application was made at trial by notice of additional evidence to disclose that firearm report. Mr. Sampson SC, senior counsel representing the Appellant at the trial had no objection to all three reports being tendered into evidence. Mrs. Lyall Nicholas gave evidence to assist in the explanation of all three reports and was cross-examined.

[49] The Court is of the view that there was no prejudice to the Appellant at trial as the Firearm Report was produced at trial. Further, the third report which was the comparison report was done using test fired bullets and cartridge cases from the firearm retrieved from the Appellant to compare to the cartridges and slugs received from the crime scene. The third report therefore, had all the particulars of the firearm. The Appellant acknowledged that he had the firearm which he threw over the fence.

Chain of custody of evidence from crime scene established

[50] Further, there is no issue in relation to the chain of custody of the evidence retrieved from the crime scene and the firearm which was in the possession of the Appellant. On 7 July 2016, two sets of sealed exhibits were delivered to the National Forensic Science Services Centre (Forensic Centre)

to be examined. The first exhibit opened by the examiner was FOR 16-1307F which consisted of 9 envelopes with the contents as follows:

- (a) Seven of the envelopes contained .9 mm caliber expended cartridge cases;
- (b) One envelope had an expended bullet of undetermined caliber; and
- (c) One envelope had deformed copper jacketed .9 mm expended bullet.

The Crime Scene Technicians retrieved the above 7 expended shells and 2 expended bullets from the place where Devin Parham was shot.

Glock .9m pistol

[51] The second Exhibit, FOR 16-1311F was a white gun box with a pistol type firearm and a magazine. This was the firearm retrieved from over the fence in the presence of the Appellant and found to be a Glock .9m pistol serial number PYN200.

Comparison analysis

[52] The seven expended cartridges/ shells were all found to have been fired from the Glock .9m pistol. The bullet fragments found on the scene could have been fired by the same Glock.

Conclusion

[53] For those reasons, the Court is of the view that the Appellant was not prejudiced by the late disclosure of the firearm report at trial. The third report, the comparison report had all the particulars of the firearm. The Court is satisfied that there was no injustice caused to the Appellant at trial. The forensic evidence proved beyond a reasonable doubt that the evidence found at the crime scene was linked to the firearm which the Appellant admitted he threw over the fence.

Ground 2: The trial judge erred in failing to conclude that the Prosecution did not discharge its duty in proving beyond a reasonable doubt that the Appellant was the person who murdered the deceased.

[54] The Appellant's contention under this ground is that the Prosecution did not prove beyond a reasonable doubt that on 6 July 2016, he shot and killed the deceased. He argued that:

[18] As it relates to the establishment of element number 4 of murder the prosecution depended upon circumstantial evidence, the testimony of Victor Parham was read into evidence on page 84 line 10 to page 88 line 11. Victor Parham gave a description of a male person of brown complexion, slim built, five feet six inches wearing a green T-shirt. This evidence is as close as describing the person of interest.

[19] In the testimony of Rojelio Navarette read into evidence on page 79 line 4 to page 81 line 9, Navarette gave description of a slim dark skin male person wearing a green – T-shirt. This evidence is as close as describing the person of interest.

[20] In the testimony of Miguel Martinez during examination in Chief by Ms. Lovell from page 54 line 15 to line 6 on page 72, to be more specific, the witness testifies giving a description of a dark skin male person wearing a green t-shirt on page 57 line 8. Throughout his statement he make reference to this male person on page 68 line 14 to page 69 line 8 the witness identifies the defendant Valentine Baptist as the male person wearing the green t-shirt.”

[55] The appellant argued that in analysing the circumstantial evidence the one thing that ties all three witnesses testimony together is a green shirt. Further, this particular piece of evidence is nothing but hearsay.

[56] He submitted that the evidence of identification by Miguel Martinez of him in the dock has no basis. He referred to Martinez testimony of a firearm being thrown over a fence by a dark skin male person wearing a green T-shirt. That it was this evidence which tied him to the firearm and later tied him to the shooting of the deceased.

[57] The Appellant argued that in proving that he killed the deceased, the prosecution had to weave all three testimonies identifying him as the person in the green shirt. In his written submissions he concluded as follows:

[25] In the conclusion of the entire argument I make reference to the statement of the court first on page 127 line 10 to line 20. “The issue is what evidence is there to say that the person who did it is Valentine Baptist”. Clearly the presiding Justice after the defense closed its case never saw or was not satisfied, that the prosecution discharged its duty beyond doubt.

[26] In fact I conclude this argument making reference to a statement from the Learned Counsel for the prosecution. In line 4 to 6 on page 130 in her closing address stated, "My Lord, that an inference available to the court is that, he thereafter pulled out a firearm and opened fire on Devin Parham." Clearly that statement has no basis, there was not a single person that identified Valentine Baptist as the shooter.

[27] The daunting task is left to the Judge to determine, note that even with the absence of evidence to support that Valentine Baptist inflicted the harm on Devin Parham that resulted in his death the court still convicted the accused.

[28] However the Judge has discretion to overrule Judgments made in the past. Where its prejudicial effects outweighs its probative values."

[58] Ms. Smith in response contended that the Prosecution's case in this regard relied primarily on circumstantial evidence which includes the following:

- (i) The evidence of Victor Parham that the person who shot and killed his cousin was a slim person, wearing a green T-shirt and riding a bicycle at the time;
- (ii) The evidence of PC Miguel Martinez was that within 45 seconds of hearing the shots he saw a dark skin male person wearing a green T-shirt and a $\frac{3}{4}$ grey pants riding a bicycle on Bocotora street towards the direction of Raccoon Street [p. 83 line 17-20]. The officer along with Rojelio Navarette commenced a pursuit behind the person in the green T-shirt and during the course of pursuing him observed that he threw a firearm over a fence on Dean Street. That person in the green T-shirt was apprehended on Dean Street and was identified as the Appellant; [72-95 of the record]
- (iii) The said firearm was confirmed by the forensic expert to be the firearm which fired the expended shells that were found near the body of the deceased;
- (iv) The evidence of PC Martinez who saw the Appellant riding away from the direction of the scene wearing a green T-shirt supported the evidence of Rojelio Navarette.

[59] Counsel further submitted that the evidence which described the shooter as wearing a green T-shirt was not hearsay evidence but direct evidence of the description of the shooter. As such, the trial judge had sufficient circumstantial evidence to link the Appellant as the person who shot and killed the deceased on 6 July 2016.

The law on circumstantial evidence

[60] The Appellant was of the view that the Prosecution failed to prove that he was the shooter because no one saw him shooting at the deceased. This is indeed so as no one saw him shooting. However, he was identified as the shooter by circumstantial evidence, pieces of evidence when linked together as in a chain, satisfied the trial judge that the Prosecution proved beyond a reasonable doubt that he shot the deceased and killed him. The Court cannot put it simpler than this for the benefit of the Appellant who is representing himself in this appeal.

[61] Circumstantial evidence is just as powerful as direct evidence. The CCJ in the case of **Gregory August and Alwyn Gabb v The Queen**³ (August) at [32] described the nature and value of circumstantial evidence as follows:

“[32] It is well established that it is “no derogation of evidence to say that it is circumstantial”. The nature and value of circumstantial evidence have been described as follows :

“Circumstantial evidence is particularly powerful when it proves a variety of different facts all of which point to the same conclusion...[it] ‘works by cumulatively, in geometrical progression, eliminating other possibilities’ and has been likened to a rope comprised of several cords:

‘One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a strong conclusion of guilt with as much certainty as human affairs can require or admit of.’”

[62] In **August’s** case, his conviction for murder was based on a tapestry of circumstantial evidence woven by the prosecution. Likewise in the appeal before us, the Appellant’s conviction was also founded on a tapestry of circumstantial evidence woven together. Each piece of the strand was woven together, to prove beyond a reasonable doubt that the Appellant was guilty of the crime.

³ [2018] CCJ 7 (AJ) (n 6, 7, 8 & 9)

The cogency of the evidence against the Appellant

- [63] The trial judge carefully examined the key pieces of evidence before him that linked the Appellant to the crime and concluded that it was the Appellant who shot and killed the deceased. This Court will now review those key pieces of evidence to determine its cogency.

The slim person wearing a green T-shirt

- [64] The evidence of Victor Parham was that the person who shot and killed his cousin, the deceased, was a slim person, wearing a green T-shirt and riding a bicycle at the time. That person approached himself and the deceased on Cemetery Road. Victor saw the male person pulled something from his pants and he fled. As he fled, Victor heard 8 – 10 gunshots and shortly afterwards he saw Devin lying on the road motionless. At that time he turned back, he did not see the person wearing the green T-shirt who was on the bicycle.

The pursuit of the person with the green T-Shirt by the Police Officers

- [65] The evidence of PC Miguel Martinez was that within 45 seconds of hearing the sound of gunshots, saw a dark skin male person wearing a green T-shirt and a $\frac{3}{4}$ grey pants on Bocotora Street towards the direction of Raccoon Street [p. 83 line 17-20] riding a bicycle away from the general area that he heard gunshots. PC Martinez and PC Navarette pursued the person in the green T-shirt.

The person with the green T-shirt threw firearm over a fence on Dean Street

- [66] During the pursuit of the person with the green T-shirt, PC Martinez and PC Navarette observed that he threw a firearm over a fence on Dean Street. That person in the green T-shirt was apprehended on Dean Street and was identified as the Appellant. [72-95 of the record]

Firearm retrieved and person in green T-shirt arrested

- [67] The person in the green T-shirt was arrested and the firearm retrieved in the male person's presence. The person wearing the green T-shirt gave his name as Valentine Baptist, the Appellant.

Appellant acknowledged he disposed of firearm over the fence

- [68] The Appellant admitted in an interview with Sergeant Humes that he was the person who ran from the police but only because he had an unlicensed firearm on him. Further, he acknowledged that he disposed of the firearm on Dean Street and that the police found the gun.

The forensic evidence on the gun, expended shells and bullets

- [69] The gun that was retrieved by the Police which the Appellant threw over the fence was sent to the National Forensic Science Service. It was found to be a Glock .9 mm pistol serial number PYN200.

- [70] Crime Scene Technicians recovered seven .9 mm expended shells and 2 bullets from where the deceased was shot. Those items were packaged and sent to the National Forensic Science Centre. The expended shells were all found to have been fired from the same pistol, a Glock .9 mm pistol serial number PYN200. Further, the tests show that the shells retrieved from around the body of the deceased were fired from the Glock, PYN200, and that the bullet fragments found on the scene could have been fired by the Glock.

Conclusion on the cogency of the evidence when weaved together

- [71] The above strands of evidence when woven together showed that the person with the green T-shirt was the Appellant. The Police Officers saw him throw the gun over the fence. The Appellant accepted he had a Glock .9 mm pistol serial number PYN200 which he threw over the fence and the police retrieved it. The forensic expert, Ms. Nicholas testified that the gun was a .9 mm pistol serial number PYN200. The tests on the shells retrieved from around the body of the deceased were fired from the Glock, PYN200, and that the bullet fragments found on the scene could have been fired by the Glock. As for the finding that “could have been fired by the Glock”, this does not weaken the case for the Prosecution. There was no need to prove this strand of evidence beyond a reasonable doubt. It was a strand in the chain of evidence which, taken together with all the other strands of evidence, prove beyond a reasonable doubt that the Appellant shot and killed the deceased. In the view of the Court, there was sufficient evidence linking the Appellant to the shooting of the deceased.

[72] The dock statement of the deceased that he was handed the gun by a person he does not know and ran from the Police because he thought the firearm was illegal was rejected by the trial judge. The judge said that narrative flies in the face of common sense and as such he did not believe him. We have no reason to interfere with the trial judge's rejection of the dock statement. It was a person in a green T-shirt who Victor saw put his hand in his pockets and thereafter he heard gunshots 8 to 10 gunshots. The Police Officers in less than a minute pursued the person in the green T-Shirt and saw when he disposed of the gun. That gun as shown by the forensic evidence was used to shoot the deceased.

[73] All the above strands of evidence adduced by the Prosecution, when woven together, or in other words, when the links of the chain of circumstantial evidence are put together, were sufficient in our view to point to the guilt of the Appellant beyond a reasonable doubt. The circumstantial evidence was strong enough to lead the trial judge to the inescapable conclusion that it was the Appellant who shot and killed the deceased and ultimately to find him guilty of the murder of the deceased. In the view of the Court, the trial judge correctly applied the law on circumstantial evidence as shown in **August** which he relied upon and concluded on the strong circumstantial evidence that the *"inescapable conclusion is that whosoever had the Glock, PNY200, is the person who shot at and killed Devin Parham."*

[74] The trial judge was persuaded by the evidence of the Prosecution that on 6 July 2016, the Appellant murdered Devin Parham, the deceased in Belize City. The trial judge said:

"The diligence of officer Martinez in pursuing the Defendant who was dressed in a green T-shirt less than a minute after hearing the sound of the gunshots; then recovering the firearm that the Defendant threw into the yard on Dean Street; and that firearm when examined and tested by the scientists at the National Forensic Science Laboratory was linked to the crime scene, makes the case against the Defendant compelling, coherent, convincing and conclusive. Valentine Baptist is guilty of murder."

Conclusion

[75] The Court is satisfied with the finding of the trial judge made on the circumstantial evidence that the Appellant is guilty of the murder of the deceased.

Order

[76] The Appellant's appeal is dismissed and his conviction affirmed.

Minnet Hafiz-Bertram

President

Sandra Minott-Phillips

Justice of Appeal

Arif Bulkan

Justice of Appeal