

IN THE SUPREME COURT OF BELIZE, A.D 2023

(CRIMINAL JURISDICTION)

CENTRAL DIVISION

INDICTMENT C24/2022

THE KING

v.

DAVID GONZALEZ

-

MURDER

Appearances:

Mr. Riis Cattouse, Crown Counsel for the Crown

Mr. Oscar Selgado and Mr. Leeroy Banner, both Counsel for the Accused

Hearing Date:

2023: May 15th ; May 16th ; May 17th;

Delivery Date:

2023: November 9th/10th.

Indictment read to Accused Person

Accused plead Not guilty

JUDGMENT

- [1]** SANDCROFT, J.: The accused was presented with the indictment and entered a plea of "Not Guilty."

The Prosecution's Case

- [2]** The Crown's case began with an opening statement. During the examination in chief, an application was made to read agreed evidence into the records. Several statements from various individuals were read into evidence, all of which were agreed upon by both the Crown and the Defence.

Examination-in-Chief of John Rudon

- [3]** John Edward Rudon, a witness with a Bachelor of Science Degree in Biology and specialized training in Ballistics and Firearms Identification, provided his background information. He has undergone specialized training courses related to firearms and ballistics, including training by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the United Nation's Regional Center for Peace and Disarmament in Latin America and the Caribbean (UNLIREC). He has been employed in his current capacity since January 2008 and has previously testified as an expert in firearms examination and ballistics in the Supreme Court.
- [4]** Rudon recalls conducting a firearm examination on July 26, 2021, in relation to the case involving David Gonzalez and the deceased Marisela Gonzalez. He made contemporaneous notes during the examination, which he could identify based on the unique laboratory number "FOR20-1229F" located on all three pages and his signature on each of them. He was shown a document, which he identified as the report he compiled after the firearm examination, and it was marked as "JR-1." This report is referred to as the "report of analysis." No objections were raised from the defence regarding his expertise in firearms examination and ballistics for the trial. The defense did not pose any questions during cross-examination, and there was no re-examination.
- [5]** Statement of P.C. Keir Morey, dated 11th of June 2021 read into evidence as agreed by

both the Crown and the Defence.

[6] Statement of Emmanuel Perriott, dated 12th of October 2020 read into evidence as agreed by both the Crown and the Defence.

[7] Statement of Corporal Djenn Cayetano, dated 15th of October 2020 read into evidence as agreed by both the Crown and the Defence.

[8] Statement of Maria S. Eiley, Justice of the Peace, dated 14th of October 2020 read into evidence as agreed by both the Crown and the Defence.

Examination-in-Chief of Zair Villatoro CST:

[9] Zair Villatoro, a Crime Scene Technician with 5 years of experience, testified that he created a report on January 21, 2021, regarding the death investigation of Marisela Gonzalez. He stated that he would recognize the report by identifying his signature, the information he personally wrote on it, and the fact that it consists of three pages. Villatoro was shown a document that he identified as the report he had written for the Marisela Gonzalez death investigation, and it was marked as "ZV-1" as an exhibit. The defence had no objections to this.

[10] Villatoro also mentioned that he had placed images on a DVD related to the case. He would be able to recognize the DVD by his handwriting and the information he added, including his name and signature. The DVD was shown to him and identified as the same one where he had burned digital images taken during the death investigation of Marisela Gonzalez. This DVD was marked as "ZV-2" and presented as an exhibit without objections from the defence.

[11] Exhibit "ZV-2" was played in court, displaying post-mortem pictures of the deceased Marisela Gonzalez. Villatoro further recalled taking pictures of a hard drive and placing them on the same DVD, which he could retrieve. All the images shown in court were from the DVD, related to the case. The defense did not pose any questions during cross-examination, and there was no re-examination.

Examination-in-Chief of PC Elian Robateau:

- [12]** Elian Robateau, Police Constable 2383 assigned to San Pedro Police Station since October 2020, recalled an incident on Monday, October 12, 2020, at 3:14 a.m. He received a phone call at the San Pedro Police Station from WPC Isoline Ramos of Ladyville Police Station, who provided specific information. After the call, Robateau made an entry (#5) in the personnel diary and instructed mobile patrols to be alert for a male individual.
- [13]** Robateau then used his personal cell phone to call a number he couldn't remember. A male person answered but had slurred speech. Robateau attempted to ask the caller various questions, but received no substantial responses. The conversation lasted approximately 2 minutes, after which he ended the call and informed his supervisor, Mikey Gillett. The defense did not pose any questions during cross-examination, and there was no re-examination.

Examination-in-Chief of Nestor Campos:

- [14]** Nestor Campos, a business owner and former police officer living in San Pedro, recalled events from October 12, 2020. He received a call at 9:43 a.m. from Mr. Alex Eiley, who provided specific information about an incident. Campos contacted Sergeant Woods and relayed the information to him. He rode his assigned motorcycle to the area specified by Mr. Alex Eiley.
- [15]** Upon reaching the area, Campos encountered Sergeant Woods and other police personnel who had cordoned off a section of the street near Marina Drive, where they found the lifeless body of a partially nude female lying face down. Campos then received additional information from Sergeant Allan Woods. While heading to the San Pedro Police Station, he received a call on his cell phone from Mr. David Gonzalez, who asked about his wife Marisela Gonzalez's whereabouts. Campos advised him to visit the police station and provide a formal report.
- [16]** David Gonzalez mentioned that he had a domestic dispute with his wife the previous day, and she had disappeared after jumping off a golf cart near the Boca Del Rio Bridge. At

the police station, Campos checked the station diary, sent a WhatsApp message for the detention of David Gonzalez, and subsequently detained him upon his arrival with Corporal Tyrell Tillett.

[17] During the detention, Campos informed David Gonzalez of the reason, cautioned him, served him with an acknowledgment form, and explained his rights. David Gonzalez remained silent during this process. Tyrell Tillett handed over a black CZ 9mm pistol, and Campos transferred it to Sergeant Woods. Campos identified David Gonzalez in the courtroom and indicated that he had known him for approximately four years.

[18] He had frequent phone and in-person contact with David Gonzalez, averaging two to three days a week, during which they would exchange words for a few minutes. Campos recognized David Gonzalez's voice due to their frequent conversations and had his cell phone numbers saved under variations of "David Gonzalez" on his phone.

[19] During the cross-examination, Mr. Campos confirmed that he was employed as an officer in the Crime Investigation Branch of the Police Department when he provided the statement about the murder investigation dated October 13, 2020. He acknowledged stating in the October 13, 2020 statement that he had known the accused for four years and had regular contact with the accused, approximately 3 to 4 times per week.

[20] Subsequently, the defence pointed out that the statement submitted to the police on October 13, 2020 did not contain any information indicating that Mr. Campos spoke with the accused, David Gonzalez, 3 or 4 times a week, to which Mr. Campos agreed.

[21] The defence then suggested that, as an officer in the Crime Investigation Branch, Mr. Campos did not create a written record of the alleged conversation he had with David Gonzalez, to which Mr. Campos concurred.

[22] The defence further suggested that Mr. Campos was denying the existence of any such conversation with David Gonzalez and that he only learned the details he mentioned in his October 13, 2020 statement after reading the station diary, to which Mr. Campos disagreed.

- [23]** When asked if he considered David Gonzalez his friend when he drafted the statement on October 13, 2020, Mr. Campos responded negatively. He was then asked to characterize the relationship between himself and David Gonzalez on October 13, 2020, describing it as primarily professional, indicating that he used to serve him with summonses.
- [24]** Regarding Mr. Campos's awareness of the deceased individual being Marisela Gonzalez, he disagreed with the suggestion that he already knew.
- [25]** Finally, Mr. Campos was questioned about why he didn't immediately contact David Gonzalez after reading the station diary, and he explained that it was because he had already informed David Gonzalez to come to the San Pedro Police Station to file a formal report. There was no re-examination of Mr Campos.
- [26]** Statement of Corporal Rogelio Carrillo, dated 3rd of December 2020 read into evidence as agreed by both the Crown and the Defence.
- [27]** Statement of PC Valentino Bol, dated 19th of February 2021 read into evidence as agreed by both the Crown and the Defence.
- [28]** Statement of PC Isolene Ramos, dated 13th of October 2020 read into evidence as agreed by both the Crown and the Defence.

Examination-in-Chief of Crime Scene Technician Jiro Sosa:

Jiro Sosa, a senior Crime Scene Technician, testified in court. He recalled creating a report on January 21, 2021, related to the accused David Gonzalez. He stated that he would recognize the report by the case information and his signature.

- [29]** Mr. Sosa was officially deemed an expert in processing crime scenes by the court. He mentioned that his initial report consisted of 17 pages. The court was presented with a document, which Mr. Sosa identified as the report he had created on January 21, 2021. He confirmed his signature on the document and all the information he had provided. This report was tendered and marked as exhibit "JS-1."

- [30]** Mr. Sosa explained that he stored the pictures from the crime scenes on a computer and burned them onto two DVDs. These DVDs were labelled with the case information and his signature. Each DVD was individually sealed in evidence bags, marked with yellow tamper-proof tape, and included a chain of custody. The court approved the tendering of these DVDs.
- [31]** Several clothing items were processed, all of which were identified by Mr. Sosa through their case information and his signature. These items included pants, towels, boxers, a kid's blouse, a shirt, a foot towel, and a T-shirt with various stains, which were sealed with yellow tamper-proof tape. The court allowed each of these clothing items to be marked as exhibits.
- [32]** Mr. Sosa also mentioned that the previous items were discovered in a garbage bin in San Pedro Town, all contained within a black garbage bag.
- [33]** Additionally, the court was shown Exhibit "JS-2," a DVD that was played for the court. Mr. Sosa discussed specific details within his report, highlighting a red substance on David Gonzalez's foot, which he referred to as item 3.
- [34]** He explained the use of blue light in crime scene processing, particularly in detecting substances like body fluids, hairs, fibres, bones, and drugs. He distinguished between fluorescence and absorption of light, noting that red stains often indicated blood.
- [35]** Mr. Sosa also talked about chemiluminescence, where chemicals produce light to indicate a reaction between the chemical and a substance on an object. This chemical was used to search for traces of blood, which, when detected, were swabbed for analysis to determine the substance.
- [36]** Furthermore, Mr. Sosa discussed the call history on David Gonzalez's phone, which included calls to Michael Garbutt and Michael's wife, indicating the timing and duration of these calls.
- [37]** During cross-examination, Mr. Sosa was asked if he agreed that the garbage bin was not

in David Gonzalez's yard and that the blue light that he used repeatedly in his evidence was capable of picking up other body fluids such as semen beside blood.

[38] Mr. Sosa confirmed that the garbage bin he mentioned in his testimony was not located in David Gonzalez's yard. He also acknowledged that the blue light he repeatedly referred to in his testimony was capable of detecting other body fluids, such as semen, in addition to blood. There was no re-examination of Mr. Sosa.

Examination-in-Chief of Michael Garbutt:

[41] Michael Garbutt, a tour guide with over 30 years of experience, testified that on October 12, 2020, at around 2:40 a.m., he received a call on his wife's phone. The caller was David Gonzalez, whom he had known for six years through his tour company, "Caribbean Adventures." Although they spoke more frequently during the high tourist season, they would have business-related conversations about 10-15 minutes on average. They mainly communicated over the phone, and when David visited Belize City, they would meet, and their interactions were usually more extended than 10 minutes.

[42] During the phone call in question, David Gonzalez, speaking in a slurred voice, mentioned BTB (Belize Tourism Board) and eventually confessed that he had shot his wife. Michael Garbutt recognized David's voice and told him he would call the police, to which David remained silent, and the call ended. Garbutt promptly called 911 and saved David's number in his phone contacts as "David Gonz."

[43] Garbutt was familiar with David Gonzalez's distinctive way of pronouncing words. The last conversation he had with David before that night's call was on October 11, 2020, which lasted about 40 seconds and was related to BTB's gold standards. David's number at that time was 6265309, and his wife's phone number was 6052016.

[44] In cross-examination, Mr. Garbutt was asked to confirm whether he was asleep when he got the call around 2:40 a.m. Michael Garbutt confirmed that he was asleep when he received the

phone call at approximately 2:40 a.m. Mr Garbutt was then asked about the phone call he received from David Gonzalez, wherein he explained that he answered his wife's phone because it was ringing, and his phone was off. When asked why he didn't record the conversation, he replied that he didn't know why. The defence questioned his decision to enter the number into his phone even though he recognized David Gonzalez's voice. Garbutt maintained that he didn't recognize the number, which is why he entered it.

[45] The defence suggested that he might not have recognized the voice because he was half asleep during the call. However, Garbutt disagreed and maintained that he could recognize the voice. The defence also questioned his previous statement to the police, where he mentioned having difficulty understanding the slurred words. Garbutt disagreed with the suggestion that he didn't speak with David Gonzalez that night or that the conversation was a product of his imagination.

[46] He affirmed that he considered David Gonzalez like a brother and disagreed with the suggestion that he didn't know where David lived. When asked if he visited David during the COVID-19 pandemic, he stated that he had not. The defence suggested that his recollection of the conversation was vague because he was in and out of sleep, but Garbutt disagreed, maintaining that he remembered the conversation.

[47] During the re-examination, Michael Garbutt recalled two crucial points from the phone conversation with David Gonzalez: the mention of "BTB" and the last 20 seconds when David said, "Can I trust you." He explained that in response, he sat up, asked why he should be trusted, and heard David say that he had shot his wife, followed by the question of her whereabouts. This prompted him to call the police.

Examination-in-Chief of Dr. Daniel Gonzalez:

[48] Daniel Benjamin Gonzalez, a medical doctor in San Pedro, provided his testimony on May 17, 2023. He mentioned that he practices obstetrics and gynaecology in Belize and is the owner of the Ambergris Hopes Clinic. His clinic has been in operation for 31 years. He has a son

named David Gonzalez, who was involved in the tourism business as a tour operator for his own company, Caribbean Adventures, in 2020. David lived in a house next to the clinic, and Daniel mentioned that David had a white vehicle that was sold by him. At one point, Mr. Woods called him to the police station in January 2021 to return some items that belonged to David, including an iPhone, keys to a 1994 Toyota vehicle, and the vehicle itself.

[49] In cross-examination, Dr Daniel Benjamin Gonzalez stated that he was not aware of the exact date when David acquired the van. He confirmed that David owned two other vehicles used as taxis and had a fleet of golf carts. The vehicle in question had a green license plate, indicating it was used as a taxi. David had the van rented out to drivers. When asked about the statement he gave to the police on January 14, 2021, he confirmed that he received a shattered iPhone from the police and signed the statement. The Defence had no further questions for him, and there was no re-examination.

Examination-in-Chief of Myra Guzman:

[50] Myra Guzman, the sister of Marisela Guzman Gonzalez, testified that she lived at David Gonzalez's residence in San Pedro, Belize, for approximately 3 1/2 years along with other family members. She worked as a salesperson at Caribbean Tours, which was owned by David Gonzalez.

[51] On October 12, 2020, she received a call from Sergeant Woods informing her about her sister's death. She immediately left for San Pedro and went to the police station. On January 1, 2020, after a night out at a club, David Gonzalez returned home without Marisela Gonzalez. When asked about her whereabouts, he claimed to have left her at the club with another family member, Esvin Guzman. Marisela later arrived home, and an argument between her and David ensued. The argument escalated, and David pointed a firearm at Marisela.

[52] Marisela eventually returned to the mainland (Stann Creek) for about a week. During this time, David frequently called her, and she later decided to return to his house. Myra did not accompany her.

- [53]** Myra was able to recognize various clothing items, such as shorts and a T-shirt, which belonged to David Gonzalez, as well as a towel that her sister had received from Ocean Tides Beach Resort. She also identified David Gonzalez's house and van.
- [54]** During cross-examination, the defence suggested that Myra stopped living at David Gonzalez's house in 2017, to which she disagreed. The defence questioned the timeline of when David Gonzalez moved into his new house, suggesting that Myra did not live with him in 2017, and she disagreed, mentioning that she moved in four months later.
- [55]** The defence suggested that the allegations regarding David pointing a gun at her sister did not occur in 2020 but in 2018, to which Myra disagreed. Myra acknowledged that she mentioned in her first statement that David was abusive towards her sister. She disagreed with the suggestion that her sister never begged her to stay with her in San Pedro. Myra also refuted the suggestion that she stayed with David Gonzalez because she was working with him or benefiting from him.
- [56]** The defence pointed out that she did not mention in her statements that David begged her to work for him. Myra confirmed that David left her sister alone when he returned home on January 1, 2020. She agreed that David was not with her and her sister when they went to Stann Creek District for a week. Myra did not mention in her statements that David took them there or was with them when they bought the pants at a second-hand store. She disagreed with the suggestion that David did not control her sister.
- [57]** According to Myra, to her knowledge, her sister never made any report against David. She confirmed that she did not see any police officer or scenes of crime personnel package Exhibit "JS-9" (pants). Myra did not give any statement describing the pants or put any marking on them to identify them. She agreed that she was not present when the item (pants) was packaged.

[58] The defence suggested that Exhibit "JS-16" (shirt) does not belong to David Gonzalez, and Myra disagreed. She acknowledged that the resort had more than one towel, and she did not see anyone package Exhibit "JS-5" (towel). Myra did not give any statement describing "JS-5" (towel) or put any marking on it to identify it. She agreed that she did not mark the towel, and therefore, she could not definitively identify it as the one her sister got from the Beach Resort.

[59] Similarly, due to the lack of markings, she could not assert that the shirt belonged to David Gonzalez or that the pants belonged to her sister. The defence had no further questions, and there was no re-examination.

Examination-in-Chief of Dr. Loyden Ken:

[60] Dr. Loyden Ken is a licensed medical practitioner and specialist in anatomical pathology. He performed a post-mortem examination on the body of Marisela Gonzalez on October 15, 2020, and created contemporaneous notes during the examination. These notes bear his signature, stamp, and the name of the deceased on each page. Dr. Loyden Ken's autopsy report, which provides details about the cause of death, was identified as exhibit "LK-1" and presented as evidence.

[61] The cause of Marisela Gonzalez's death was determined to be a single gunshot wound to the head. This wound was classified as a contact wound, indicating that the muzzle of the gun was in direct contact with the skin when the shot was fired.

[62] Additionally, the autopsy revealed various injuries and markings on the body, including contusions (bruises) on the right frontal and right palpebral regions of the head, as well as a right peri-orbital bruise near the right eye. Linear post-mortem friction abrasions were found on the chest, extending to the mammary region (breast area) and the right abdominal region, suggesting that they occurred after death and were caused by the skin being dragged over a rough surface. Superficial scratches were also observed on the anterior aspect of both thighs and legs, with more prominent scratches on the right side.

[63] Dr. Loyden Ken noted abrasions on the right lateral side of the neck, which were also post-mortem in nature. Multiple ant activities were observed on the anterior of the body. Additionally, fresh soft tissue haemorrhage was present in the lower para-vertebral region of the lower back. These findings provide insights into the condition of the body during the post-mortem examination and the injuries sustained by the deceased. The defense did not pose any questions during cross-examination.

[64] Dr. Loyden Ken was asked by the Court to describe the bleeding resulting from a perforated gunshot wound in the case of a contact wound. In such cases, the gunshot creates a blast inside the brain, perforating the skull and causing damage to brain tissue. The bullet and bone fragments exit the skull through the skin. The bleeding from this type of wound is described as acute and severe, characterized by a rapid and fast flow of blood. No additional questions were raised by the Court or the Crown regarding this matter.

[65] Dr Loyden Ken was asked by the defence if there would be blood everywhere. In response to the question, he explained that in cases of a contact gunshot wound to the head, the force generated within the brain would result in severe bleeding within the cranial cavity (skull). Some of that blood could potentially seep out, but this would depend on the size of the exit wound and the position of the body on the ground. The Defence did not have any further questions on this topic.

Examination-in-Chief of Sergeant Allan Woods

[66] Sergeant Allan Woods, currently attached to the Crime Investigation Branch at the San Pedro Police Station, testified about giving several statements and collecting various documents related to the investigation of the suspect David Gonzalez. He identified these documents, which included his statements and reports provided by forensic experts. Additionally, he pointed to David Gonzalez in the dock. The Defence did not raise any objections to the presentation of these documents.

Examination-in-Chief of PC Hector Blanco:

[67] Detective Corporal Hector Blanco testified that he gave a statement in the investigation of David Gonzalez on October 20, 2020. He also mentioned that he copied video footage onto a DVD related to the case, and if he saw the DVD again, he could recognize it based on the description, date, and his handwriting. The DVD was presented as evidence and marked as "HB-1," with no objections from the defence. There was no further question for the Crown, and the defence did not pose any questions during cross-examination.

Defence Case:

[68] Good afternoon, my name is David Augusto Gonzalez, I am a Belizean businessman, I born July 11 of 1988, I would like to start my defence explaining myself of my doings on October 11, 2020; on that day I wake up as every morning, kiss my wife Marisela Gonzalez, kiss my daughter Sofie Gonzalez, have breakfast with them and then I start my days work. I then drive around 8:30 my personal golf-cart to my company office: Caribbean Adventures, then I opened my office, I rent golf-carts, after I rent 6 of them and because it was Sunday, I decided to call it a day, I called my wife Marisela Gonzalez and asked her if she feel like going to the beach, she told me yes that she wish to go to the Secret Beach in San Pedro, I told her to go and get ready and changed our daughter to go to the beach, I then closed my office, drive my personal golf-cart back to my house and get my wife and daughter and then we start heading to Secret Beach, once we arrived at Secret Beach we choose our favourite restaurant and bar to have lunch and drink as always. We then had lunch and drinks with friends at the beach, we swim on the beach and in the afternoon, we decided to call it a day too, after the decision was made, we started driving back towards home, along the way on our journey towards home, I noticed that my wife Marisela Gonzalez had too many drinks, then she asked me to stop in San Pedro Town to continue our party, then I told her no, I have to work tomorrow and somebody have to take care of our daughter, she then argued with me and then started a fight, where she told me that she decided to stay in San Pedro Town by herself, then I take a decision to avoid an argument with her and because I have to work the next day, to take care of my daughter and allow her to stay in Town.

After giving her money and ask her to come back home earlier she then come out of the golf-cart at the bridge in San Pedro Town. I then keep driving with my daughter Sofie Gonzalez, went home, prepared dinner for my daughter and me, take a shower first then bathe my daughter and then I went to sleep with her. I then started watching television to kill some time or to spend some time to wait for my wife Marisela Gonzalez, watching television I fall asleep waiting on her. The next morning when I wake up, I noticed that my wife Marisela Gonzalez didn't come back home, I then tried to call her several times without the success of reaching her, I then take the decision, I just want to clarify that this is Monday October 12, to change my daughter and myself to get ready for work because I know that I had to collect the 6 golf-carts that I rent on Sunday October 11. Now then I take my private golf-cart with my daughter and I start my journey towards Caribbean Adventures, on my way to work I called my cousin Alicia Gonzalez and asked her to baby-sit my daughter during I work the morning shift. After driving my daughter to my cousin, then I start driving back to my office, after I reached I noticed that none of my employees have come to work. In due that I need a driver then I drive my golf-cart from my office towards Pescador Drive where I know the house of my employee Minor Ancona, after picking him up, then I drive back to my office to start collecting my golf-carts. During the morning while I was waiting for my golf-cart, two police officers come and tell me that I am wanted for questioning at the San Pedro Police Station, concerning the murder of my wife Maricela Gonzalez, they asked me for my license firearm which I respond that I have locked in my security safe in my private office in my company building. I then proceed to walk the two police officers towards my private office and handed them my licensed firearm. They proceed to escort me to the San Pedro Police Station where I find out that I was detained for the PI of the murder of my wife Marisela Gonzalez. I would like to clarify that in no such time I drive any of my three taxis.

I would like to clarify that after the possession of the taxi, Toyota Previa, white in colour, that it will show for Mr. Cattouse in your presence I do not who was the driver that worked that taxi. I would like to clarify that about Myra Guzman that she stop living in my property in 2017. I would like to clarify that in no such time I pulled out my licensed firearm to any human being, specifically to my beloved wife Marisela Gonzalez. I would like to clarify that in no such time in October 11 or October 12, I called Michael Garbutt. I would like to clarify that my I-Phone that

Allan Woods confiscate from me is not the same phone shown in this Court room from Mr. Cattouse. The reason why I know that I-Phone which was shown on the pictures is not my phone is because the screen that it was shown on Mr. Cattouse pictures are clear without any damages, the I-Phone that I handed to Mr. Woods it has a shattered screen at it was shown on the statement of my father Dr. Daniel Gonzalez that it was signed and stamped from a JP and sergeant Allan Woods, where it described that the actual I-Phone that he was returning to Daniel Gonzalez was a damaged I-Phone with a shattered screen. I do not tell Michael Garbutt anything concerning my private life, the reason is because such call never take place. I would like to give my point of view concerning the statements of Myra Guzman, they are untrue that's it concerning the statements and my whereabouts on October 11 and 12.

Your Honour, I am a law abiding citizen, on my 34 years I do not have any charges against my person, there is not any police reports against myself for domestic violence or aggressive behaviour, mi lord I do not even have a parking ticket. After being detained and charged for the murder of my wife, I was send to be remand at Belize Central Prison Kolbe Foundation, during my remanded time, I do not have a charge in prison also. I would like you to consider my innocence, I do not kill my wife. Thank you your Honour.

Findings & Discussions:

- [69]** I must identify only so much of the evidence as is necessary to help me to determine the issues in the trial. To determine what evidence must be identified, I must consider the following matters:
- a) The facts in issue and the complexity of the facts in issue
 - b) The length of the trial;
 - c) The complexity of the evidence;
 - d) The submissions and addresses of the parties;
 - e) The manner in which the judge refers to the way in which the parties put their cases;
- [70]** I do not need to read out all the evidence or to analyse all the conflicts in it. Instead, I must provide a fair and balanced explanation of the law, the issues and the respective cases of the prosecution and defence.
- [71]** Where there is a significant dispute about material facts, I should succinctly identify the pieces of evidence in conflict, to focus my attention on the issues that I have to resolve.
- [72]** Throughout these proceedings, the defendant is presumed to be innocent. As a result, I must find the defendant not guilty, unless, on the evidence presented at this trial, I conclude that the Prosecution has proven the defendant guilty beyond a reasonable doubt.
- [73]** In determining whether the Prosecution has satisfied their burden of proving the defendant's guilt beyond a reasonable doubt, I may consider all the evidence presented, whether by the Prosecution or by the defendant.
- [74]** The defendant is not required to prove that he is not guilty. In fact, the defendant is not required to prove or disprove anything. To the contrary, the Prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. That means, before I can find the defendant guilty

of a crime, the Prosecution must prove beyond a reasonable doubt every element of the crime including that the defendant is the person who committed that crime. The burden of proof never shifts from the Prosecution to the defendant. If the Prosecution fails to satisfy their burden of proof, I must find the defendant not guilty. If the Prosecution satisfies their burden of proof, I must find the defendant guilty.

[75] In this case, the prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift to the accused person and the accused is only convicted on the strength of the prosecution case and not because of weaknesses in his defence, (See **Ssekitoleko v. Uganda** [1967] EA 531). By his plea of not guilty, the accused put in issue each and every essential ingredient of the offence with which he is charged and the prosecution has the onus to prove each of the ingredients beyond reasonable doubt. Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent, (see **Miller v. Minister of Pensions** [1947] 2 ALL ER 372).

[76] The prosecution case depends (to a great extent) on circumstantial evidence rather than direct evidence. Direct evidence can take many forms, for example if there was a video recording of the defendant committing the crime, that would be direct evidence. Circumstantial evidence on the other hand simply means that the prosecution relies upon evidence of various circumstances relating to the crime which, when taken together, establish the guilt of the defendant because the only conclusion to be drawn from that evidence is that it was the defendant who committed the crime.

[77] I must decide whether all of the evidence has proved the case against him. A very distinguished judge expressed the test in this way over one hundred years ago.¹

"It has been said that circumstantial evidence is to be considered as a chain, and each piece of evidence as a link in the chain, but that is not so, for then, if any one

¹ Pollock CB in *R v Exall* [1866] 4 F & F 922 at 929.

link breaks, the chain would fall. It is more like the case of 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 conclusion of guilt with as much certainty as human affairs can require or admit of."

[78] However, circumstantial evidence must be examined with great care for a number of reasons. First of all, such evidence could be fabricated. Secondly, to see whether or not there exists one or more circumstances which are not merely neutral in character but are inconsistent with any other conclusion than that the defendant is guilty. This is particularly important because of the tendency of the human mind to look for (and often to slightly distort) facts in order to establish a proposition, whereas a single circumstance which is inconsistent with the defendant's guilt is more important than all the others because it destroys the conclusion of guilt on the part of the defendant."²

[79] For the accused to be convicted of murder, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

- (i) Death of a human being occurred.
- (ii) The death was caused by some unlawful act.
- (iii) That the unlawful act was actuated by malice aforethought; and lastly
- (iv) That it was the accused who caused the unlawful death.

[80] Death of a human being may be proved by production of a post mortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body. There is the post mortem report dated 15th October 2020 prepared by P.W. (Dr. Loyden Ken), who recalled performing a post-mortem on the body of a female identified as Marisela Gonzalez on the 15th of October 2020. Defence Counsel did not contest this element. On basis

² See R v McGreevy [1972] NI 125 where the leading authorities on circumstantial evidence are reviewed by Lowry LCJ and Lord Morris of Borth-y-Gest. Where there are circumstances which could be inconsistent with the guilt of the defendant, the trial judge must be careful to sum up the evidence in such a way as to bring this home to the jury with sufficient emphasis. See Hutton LCJ in R v Anderson pp 36-37 (NICA 21/9/1995 unreported).

of all that evidence, I am satisfied that it has been proved beyond reasonable doubt that Marisela Gonzalez is dead.

[81] As to whether that death was caused by an unlawful act, it is the law that any homicide (the killing of a human being by another, is presumed to have been caused unlawfully unless it was accidental or it was authorised by law. P.W.; Dr. Loyden Ken who conducted the autopsy established the cause of death as a single perforated gun-shot wound to the head. In this case it was a contact wound; that the muzzle of the gun was in contact with the skin when the shot was fired. The body of the deceased had contusions with a micro-laceration on the right frontal region, right palpebral region, points to his forehead, measuring 1.5x1cm. A contusion is a bruise, it also had a right peri-orbital bruise; points to the region of the right eye. There were also linear post-mortem friction abrasions that is linear scratches to the anterior of the chest extending to the mammary region; to the breast region, downwards to the right abdominal region; points to his chest to his stomach, post-mortem meaning after death and the friction abrasion they are created when the skin is being dragged over a rough surface and creates superficial scratches. Superficial scratches were located on the anterior aspect of both thighs and legs which was most evident on the right, there were also abrasions on the right lateral of the neck also post-mortem. Multiple ants activity on the anterior of the body. There was also a presence of fresh soft tissue haemorrhage to the lower para-vertebral region of the lower back. Defence Counsel did not contest this element. This evidence taken as a whole has proved that this was a homicide. For that reason, since there is nothing to suggest that it was caused lawfully, I am satisfied that Marisela Gonzalez's death was caused unlawfully.

[82] Malice aforethought is defined by the common law (or the Criminal Code) as either an intention to cause death of a person or knowledge that the act causing death will probably cause the death of some person. The question is whether whoever assaulted the deceased intended to cause death or knew that the manner and degree of assault would probably cause death. Malice aforethought is a mental element that is difficult to prove by direct evidence. Courts usually consider weapon used (in this case a gun is suspected to have been used) and the manner in which it was applied (a single gun-shot wound was inflicted) and the part of the body of the victim that was targeted (to the head of the deceased). The ferocity with which the

weapon was used can be determined from the impact (the nature of the injuries is not classified or specified in this case). P.W.; Dr. Loyden Ken who conducted the autopsy established the cause of death as a single perforated gun-shot wound to the head. In this case it was a contact wound; and that the muzzle of the gun was in contact with the skin when the shot was fired.

[83] The Court of Appeal in the case of **Joseph Kimani Njau v R (2014) eKLR**, the Court of Appeal held as follows:

“Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;

i) The intention to cause death;

ii) The intention to cause grievous bodily harm;

iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed.....”

Direct and circumstantial evidence

[84] As can be seen from the summary above of the State’s evidence, the State led no eyewitnesses to link the accused to killing the deceased. The evidence against the accused in part is what is called circumstantial evidence.

[85] I will first deal with circumstantial evidence. (1) Circumstantial evidence is not necessarily of less value than direct evidence. In certain circumstances, it can carry more weight than direct evidence. See in this regard, **State v Tshabalala** 1966 (2) SALR 297 (AD) at 299B – C. (2) Deductions are made from circumstantial evidence and therefore logical rules must be followed in order to avoid speculation. (3) The court must not consider each circumstance in

isolation. In **Rex v de Villiers** 1944 (AD) 493 at 508 – 9, Davis AJ of Appeal was reported to have said the following:

“But I should not leave this point without dealing shortly with an argument pressed upon us by Mr M[...], that in a case depending on circumstantial evidence, ‘the court must take each factor separately, and, each of them is possibly consistent with innocence, then it must discard each in turn’

[86] This argument is fallacious. It is in the first place inconsistent with my brother Watermeyer in **Rex v Blom** 1939 (AD) at p 202:

‘The proved facts should be such that they exclude every reasonable inference from them, save that one sought to be drawn.’

It is not each proved fact that must exclude all other evidence, the facts as a whole must do so.

I then refer to the quotation of **Best Evidence** the 5th edition:

‘Not to speak of greater number; Even two articles of circumstantial evidence- though each taken by itself weigh but as a feather, join them together, you will find them pressing on the delinquent with the weight of a mill-stone... It is of the utmost importance to bear in mind that where a number of independent circumstances point to the same conclusion, the probability of the justness of that conclusion is not the sum of a simple probabilities of those circumstances, but the compound result of them.’

[87] “The court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt, which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way; the Crown must satisfy the court, not at each separate fact is inconsistent with

the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence.”

This is all still a quotation from **Rex v de Villiers** 1944.

[88] When reasoning by way of inference, there are: **“There are two cardinal rules of logic”**.

Which have to be followed, as set out by Watermeyer, Judge of appeal in **Rex v Blom** 1939 (AD) 188 at 202 – 203:

“(1). The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.

(2). The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether an inference sought to be drawn is correct.”

[89] Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective fact from which to infer the other facts which is sought to be established. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases, the inference does not go beyond a reasonable probability, but if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is merely speculation or conjecture.

[90] In other words the mere fact that the accused is found to be a liar does not necessarily mean he has committed the offences. I must then turn to deal with the further aspect as to the proof of motive and I refer here to the well-known minority judgment of Malan, AJA in **Rex v Mlambo** 1957 (4) SALR 727 (AD) where he is reported to have said the following about the proof of intent in such circumstances at 737 C to F:

“Proof of motive for committing crime is always highly desirable, more especially so where the question of intention is an issue, Failure to furnish

absolutely convincing proof thereof, however, does not present an insurmountable obstacle because even if motive is held not to have been established, there remains the fact that an assault of so grievous a nature was inflicted upon the deceased that there have resulted either immediately or in the course of the same night. If an assault “using the term in its widest possible acceptation is committed upon a person which causes death, either instantaneously or within a very short time thereafter and no explanation is given of the nature of the assault by the person whose knowledge it solely lies, a court would be fully justified in drawing the inference that it was of such an aggravated nature that the assailant knew or ought to have known that death might result. The remedy lies in the hands of the accused person and if he chooses not to avail himself thereof, he has only himself to blame if an adverse verdict is given.”

Then at 738 a-d:

“in my opinion, there is no obligation upon the crown to close every avenue of its escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised, that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused committed the crime charged. He must in other words, be morally certain of the guilt of the accused. An accused’s claim to the benefit of doubt when it may be said to exist, must not be derived from speculation, but must rest upon a reasonable and solid foundation created either by positive evidence or gathered from reasonable inferences which are not in conflict with, or outweighed by, the proved facts of the case. More over if an accused deliberately takes the risk of giving false evidence in the hope of being convicted of a less serious crime or even, perchance, escaping conviction all together and his evidence is declared to be false and irreconcilable with the proved facts, a court will, in suitable cases, be fully justified in rejecting an argument that notwithstanding that the accused did not avail himself of the opportunity to mitigate the gravity of the offence, he should nevertheless receive the same benefits as if he had done so.”

[91] In determining the issue of participation, this Court reminds itself of the requirement to examine all evidence closely, bearing in mind the established general rule that **“an accused person does not have to prove his innocence. And that by putting forward a defence like alibi or any other, an accused does not thereby assume the burden of proving the defence except in a few exceptional cases provided for by law. It is up to the prosecution to disprove the defence of the Accused persons by adducing evidence that shows that, despite the defence, the offence was committed and was committed by the accused persons”**. - Refer to **Sekitoleko v. Uganda** [1967] EA 531, **Wamalwa & Another v. Republic** [1999] 2 EA 358 (CAK) and **Kato v. Uganda** [2002] 1 EA 101.

[92] In determining the participation of the Accused in the alleged crime, this court accordingly bears in mind the established principle of law that **“to find a conviction exclusively upon circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis that that of guilt”**. See **Chard v. Republic** [2006] IEA 43 (CAK).

[93] Be that as it may, this court is also mindful of the established principle of decided cases that **“circumstantial evidence is often the best evidence. If evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with the accuracy of mathematics, it is no derogation of evidence to say that it is circumstantial evidence.”** - Refer to **Thiaka v. Republic** [2006] 2 EA 362.

[94] In **Ahamad Abolfathi Mohammed and Another v. Republic** [2018] e KLR, the Court of Appeal stated as follows on reliance on circumstantial evidence:

“However, it is a truism that the guilt of an accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in R v Taylor, Weaver and Donovan [1928] Cr. App. R 21: -

“It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.”

[95] In the aforesaid case, the Court of Appeal set out the test to be applied in considering whether circumstantial evidence placed before a court can support a conviction. The court stated:

“Before circumstantial evidence can form the basis of a conviction however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the Subject person, and to no other person, as the perpetrator of the offence. In *Abanga alias Onyango v R Cr. App. No 32 of 1990*, this court set out the conditions as follows:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Subject; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

[96] In this case, PW5, the friend who the confession was made to, testified that:

“I was sleeping me and my wife, when we’re sleeping, I was awakened by phones ringing, I answered the phone, it was my wife’s phone, when I opened the call I was saying hello hello, it took a while, then I heard someone else on the other side of the call, the person was talking in a slurrish voice, I could not understand every word he was saying, as the conversation proceeded he started to talk about BTB, I then recognized the voice to be that of David Gonzalez. He was talking and I was between sleep and wake, I was trying to understand what he was saying, he continued like that until 20 seconds or so before the

call ended, within that 20 seconds he said in a very clear voice, “can I trust you?”, I sat up and asked why? He said he shot his wife, I asked where was her, he said in front of him, I told him that I was going to call the police, he remained quiet and I hung up the phone, I then proceeded to call 911 from my wife’s phone, during this time I was turning on my phone that was off and a lady answered the call and I told her certain things. I proceed to enter the number from my wife’s phone to my phone, the number popped as David Gonz, I saved David’s number as David Gonz. I saved the number from 6 years prior. I knew David Gonzalez from 6 years before, I was doing tours for his tour company; “Caribbean Adventures”. During the high season, I would speak to David Gonzalez every-day, during the low season twice a week. On average I would speak to him for business for 10-15 minutes. I would speak to him over the telephone. I would speak to him in person when he would come into Belize City. The clarity when I spoke to David Gonzalez would be clear and there would be nothing blocking my hearing. David Gonzalez would come into Belize City every 3 to 4 months, usually when he comes into Belize City, I would meet him at the Municipal Airstrip, our interaction would be more than 10 minutes the most. When he comes in, he would use one of my vehicles. The closest would be a foot when I saw David Gonzalez, the farthest would be 3 feet. The lighting condition would be daylight, nothing would be blocking my feet from seeing him, I saw him from his head to his feet. Witness points to David Gonzalez in the dock in a blue shirt. I recall my wife’s number being 6052016 at the time. I recall David’s number at the time being 6265309. David Gonzalez has a very distinctive way of pronouncing words according to me. Prior to that night in question, the last time I spoke to David Gonzalez on 11th October 2020, the conversation was for about 40 seconds, I spoke to him via telephone. The conversation was about BTB gold standards.”

[97] PW5 further testified that “two points I remember, BTB, the last 20 seconds when he said can I trust you and I sat up and asked him why and he said he shot his wife and I asked him where she was and he said in front of me and I proceeded to call the police.”

[98] PW4 also testified that:

“while I was headed to the police station I received a call on my cell-phone from Mr. David Gonzalez, he asked me if I was working and I told him yes. He asked me if I can check at the police station if his wife Marisela Gonzalez was detained, I told him to visit the police station and give a formal report. David Gonzalez also mentioned that he was enquiring of his wife’s whereabouts because on the day before, they were socializing in the Secret beach area where a domestic dispute started with Marisela Gonzalez accusing him of seeing another woman, he stated that in the evening around 4 o’clock they were heading back to their home located in the DFC area and whilst approaching the Boca Del Rio Bridge, Marisela Gonzalez jumped off the golf-cart and since then, he hadn’t heard of her. At the police station”

[99] PW4 further testified that:

“I knew David Gonzalez for about 4 years, I used to have eye-contact with him for 3-4 days during the week. I would say 2 to 3 days during the week, he would call me to serve some summonses for him, on average I would talk to David Gonzalez for 2 to 3 minutes. I could have recognized his voice due to the frequency we spoke on the phone and in person. I had David Gonzalez’s cellphone numbers recorded on my phone. I recall having his number saved as David Gonzalez with 1d at the end of David and the second number as David Gonzalez with a dd at the end.”

[100] From the evidence adduced by the prosecution, it is clear that the subject was the last person who must have been the last person to see and be with the deceased prior to her death.

[101] The doctrine of last seen alive is based on circumstantial evidence where the law prescribes that the person last seen with the deceased before his death was responsible for his death and the accused is therefore expected to provide any explanation as to what happened. Having been placed at the scene of the incident as the person who was last seen with the deceased before she died, the subject herein has a duty to give an explanation of how the deceased met her death.

[102] In the Nigerian case of **Stephen Haruna v. The Attorney-General of The Federation** (2010) 1 iLAW/CA/A/86/C/2009 the court opined thus:

"The doctrine of "last seen" means that the law presumes that the person last seen with a deceased bears full responsibility for his death. Thus where an accused person was the last person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusion, there is no room for acquittal. It is the duty of the appellant to give an explanation relating to how the deceased met her death in such circumstance. In the absence of a satisfactory explanation, a trial court and an appellate court will be justified in drawing the inference that the accused person killed the deceased."

[103] Similarly, in the Indian case of **Ramreddy Rajeshkhanna Reddy & Another v. State of Andhra Pradesh**, JT 2006 (4) SC 16 the court held that:

"Even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small, that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration."

[104] In **Republic v E K K** [2018] eKLR the Court held thus and I agree, concerning the last seen with the deceased doctrine:

"Regarding the doctrine of "last seen with deceased" I will quote from a Nigerian Court case of Moses Jua v. The State (2007) LPELR-CA/IL/42/2006. That court, while considering the 'last seen alive with' doctrine held:

"Even though the onus of proof in criminal cases always rests squarely on the prosecution at all times, the last seen theory in the prosecution of murder or culpable homicide cases is that where the deceased was last seen with the accused, there is a duty placed on the accused to give an explanation relating to how the deceased met his or her death. In the absence of any explanation, the court is justified in drawing the inference that the accused killed the deceased."

[105] In the circumstances of this case, it is my view that the subject's defence failed to offer any explanation as to how the deceased might have met her death. His defense, in my mind, amounted to a mere denial.

[106] There is no direct evidence of intention. Intention is based only on circumstantial evidence of the injuries. Defence Counsel contested this element. The intention of the accused being based entirely on circumstantial evidence, in order to find that the accused was actuated by malice aforethought at the time he assaulted his wife, it is necessary that in a case depending exclusively upon circumstantial evidence, one must find before deciding upon conviction that the exculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. The circumstances must be such as to produce moral certainty, to the exclusion of every reasonable doubt. It is necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. I have examined the facts closely and have found the inference that the accused was actuated by malice aforethought inevitable where the nature of the injury, its severity and area of the body on which it is concentrated is known. It appears to me rather to have been a discriminate assault targeted at causing death. In the circumstances this ingredient of the offence has been proved beyond reasonable doubt.

Drawing of inferences

[107] In the present matter, it is common cause that none of the witnesses called by the Prosecution were eyewitnesses to the commission of most of the offences which the accused persons are charged with. Except for the statements made by accused 1 and 2 respectively, most of the State's case is based on circumstantial evidence. Where a court is required to draw inferences from circumstantial evidence it may only do so if the two 'cardinal rules of logic' set out in **R v Blom**³ are satisfied. These rules provide that:

- (a) the inference sought to be drawn must be consistent with all the proved facts. If it is not, then the inference cannot be drawn, and,
- (b) the proved facts should be such that they exclude every reasonable inference from them save the one to be drawn. If they do not exclude other reasonable inferences, then there must be doubt whether the inference sought to be drawn is correct.

[108] When a Court is required to draw inferences from circumstantial evidence, it may do so only if the premises are consistent with all the case's proved facts. The facts should also exclude every other reasonable inference. If the facts do not exclude other reasonable inferences, doubt exists whether such a conclusion is correct and that the Court can deduce its existence.⁴

[109] A Court must distinguish inference from conjecture or speculation. There can be no inference of a fact unless there is objective evidence from which to infer. In some matters, the factual finding can be concluded with as much practical certainty as if a witness observed it. In other cases, the inference does not go beyond a reasonable probability. In the absence of proved facts from which the Court is able to make the inference, the inference method fails, and what is left is mere speculation or conjecture.⁵

³ 1939 AD 188.

⁴ R v Blom 1939 AD 188 at 202 in fin; S v HN 2010 (2) NR 429 (HC) paragraph 57

⁵ Coswell v Powell Duffryn Associated Collieries Ltd [1939] All ER 722 at 733 as quoted in S v Mtsweni 1985 (1) SA 590 (A) at 593E – G and approved and applied in S v HN 2010 (2) NR 429 (HC) paragraph 58

[110] Now, in order for the evidence of a witness to be accepted who said that he recognized an accused person by voice, to be cogent there must be evidence of the degree of familiarity the witnesses have had with the accused and his voice including the time the witnesses may have had to listen [to] the voice of the accused and the occasion when the recognition of the voice occurred must be such that such words used to make a recognition of that voice is safe to act on.

[111] I reminded myself that, sometimes people can be very convincing although they are mistaken when they say that they identify somebody by their voice on the telephone. And I have to be very careful in my assessment of the evidence because an honest witness can also be a mistaken witness. The witness may honestly feel that the person they heard on the 'phone was John Brown, but in fact it turns out to be otherwise.

[112] So I must look on the evidence, the circumstances under which the identification of the voice was made. I must also look at the previous history of that person who heard the particular voice. The person who seeks to identify the person by voice, what opportunity that other person would have had to have heard the voice.

[113] I reminded myself that of the two persons who said they heard the accused; both had given evidence that they had spoken to and heard the accused on a telephone.

[114] In *R v Devlin* [1997] EWCA Crim. 739 delivered on March 14, 1 997, the English Court of Appeal also approached the matter of voice identification by reference to the Turnbull guidelines. In that case the victim of a robbery said that he recognized one of two masked robbers when he heard him shout, "money, money." He also said that he had the same build and body shape as the appellant and he subsequently identified him on a visual identification parade. The Court approached the initial evidence of recognition or identification as it would in a Turnbull case. It concluded that the hearing of the two words, "money, money" was the equivalent of a fleeting glance, that the identification was poor and that in all the circumstances the judge should have withdrawn the case from the jury.

[115] The relevant principles in relation to the way in which the Court should approach cases depending wholly or mainly on disputed visual identification (also pertinent to voice identification) are to be found in **R v Turnbull and others** [1967] 63 Cr. App. R. 132. The principles have been applied and considered in many subsequent cases. I do not feel it necessary however, to cite the whole of the well-known passage from the judgment of Lord Chief Justice Widgery, which embodies those principles, of which I have of course reminded myself.

[116] The Lord Chief Justice, having dealt, in terms, now very familiar, with the need for caution and the dangers and so on and the way in which juries should be directed and the matters to which they should be directed to have regard, said this:

"In our judgment when the quality" (that is to say the quality of their identification evidence) "is good as for example when the identification is made after a long period of observation, or in satisfactory conditions by a relative, a neighbour, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it: provided always, however, that an adequate warning has been given about the special need for caution. ... When, in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or a longer observation made in difficult conditions, the situation was very different. The judge should then withdraw the case from the jury and direct an acquittal unless there is other evidence which goes to support the correctness of the identification"."

[117] In **R v Junior Reid et al** Privy Council Appeals Nos: 14, 15 and 16 of 1988, and 7 of 1989, delivered July 27 1989, at page 8, their Lordships referred to the judgment of Lord Widgery, C.J., in **R v Turnbull** (1977) 1 Q.B. 224 and said:

"Their Lordships have no doubt that the direction of Lord Widgery, C.J. that 'when in the judgment of the trial judge, the quality of the identifying evidence is poor, as for example when it depends solely on a fleeting glance or on a longer observation made in difficult conditions, the judge should withdraw the case from the jury and direct an acquittal, unless there is other evidence which goes to support the correctness of the identification', applies with full force and effect in criminal proceedings in Jamaica."

[118] I now turn my attention to the issue of voice identification. There is no legislation in Belize governing the admissibility of voice identification evidence hence the common law principles apply. In the English Court of Appeal case of **R v Gummerson and Steadman** [1998] Crim. L.R. 680, Lord Justice Clarke said:

"As we see it, unless and until it is thought appropriate to draft a code for identification of this kind, the matter can properly be dealt with by the careful application of suitably adapted Turnbull guidelines."

[119] In Taylor et al the prosecution case against two of the appellants depended mainly on the evidence of one D.J. She heard a voice which she recognized to be that of Barrett saying:

"Shut up you mouth! Boy! You nuh hear me say fi stop the noise."

She heard the voice of Hyde say:

"Pull the boy over deh so, Star! Draw him out a deh so."

[120] Counsel for the appellants challenged the voice identification evidence given by the witness and argued that the identification was made in the most unsatisfactory circumstances and accordingly, was wholly unreliable. He further submitted that:

"The quality of the identification evidence was so poor that the learned trial judge, following the guidelines in R v Turnbull 63 Cr. App. Rep. 132 and Reid v R [1 989] 3 W.L.R. 771 (P.c.), ought to have withdrawn the case from the jury. It was akin to a 'fleeting glance' identification."

Gordon, J.A., at page 108 of the judgment said:

"In order for the evidence of a witness that he recognized an accused person by his voice to be accepted as cogent there must, we think, be evidence of the degree of familiarity the witness has had with the accused and his voice and including the prior opportunities the witness have had to hear the voice of the accused. The occasion when recognition of the voice occurs, must be such that there were sufficient words used so as to make recognition of that voice safe on which to act. The correlation between knowledge of the accused's voice by the witness and the words spoken on the challenged occasion, affects cogency. The greater the knowledge of the accused the fewer the words needed for recognition. The less familiarity with the voice, the greater necessity there is for mere spoken words to render recognition possible and therefore safe on which to act."

The Court held that sufficient words were used by two of the applicants for the witness to have recognized their voices and in the circumstances refused to set aside the verdict of the jury.

[121] In **R v Clarence Osbourne** SCCA 67/91 delivered November 23, 1992 evidence of voice identification was challenged in a manner somewhat similar to the challenge in Taylor's case. The court per Carey, P. (Ag.), said:

"... Commonsense suggests that the possibility of mistakes and errors exists in the adduction of any direct evidence, in the sense of evidence of what a witness can perceive with one of his five senses. But that can hardly be a warrant for laying down that a Turnbull type warning is mandatory in every sort of situation where identification of some object capable of linking an

accused to the crime or perhaps some attribute or feature of his speech capable of identifying him as a participant, forms part of the prosecution case.'

[122] In both **Taylor** and **Osbourne**, the Court concluded that there is no need for the learned trial judge to give a **Turnbull** type warning where there is voice identification or recognition. However, I am of the view, that where the prosecution case is based solely on voice identification or recognition of the accused, I should be alert to the dangers of mistaken identification and stop the case where the identification is poor.

[123] The issue to be determined therefore in the instant case is whether there were sufficient words spoken by the defendant, in order for the PWs 4 & 6 to have recognized the defendant's voice in the instance where PW6, the friend who the confession was made to, testified that:

"I was sleeping me and my wife, when we're sleeping, I was awakened by phones ringing, I answered the phone, it was my wife's phone, when I opened the call I was saying hello hello, it took a while, then I heard someone else on the other side of the call, the person was talking in a slurrish voice, I could not understand every word he was saying, as the conversation proceeded he started to talk about BTB, I then recognized the voice to be that of David Gonzalez. He was talking and I was between sleep and wake, I was trying to understand what he was saying, he continued like that until 20 seconds or so before the call ended, within that 20 seconds he said in a very clear voice, "can I trust you?", I sat up and asked why? He said he shot his wife, I asked where was her, he said in front of him, I told him that I was going to call the police, he remained quiet and I hung up the phone, I then proceeded to call 911 from my wife's phone, during this time I was turning on my phone that was off and a lady answered the call and I told her certain things. I proceed to enter the number from my wife's phone to my phone, the number popped as David Gonz, I saved David's number as David Gonz. I saved the number from 6 years prior.

I knew David Gonzalez from 6 years before, I was doing tours for his tour company; "Caribbean Adventures". During the high season, I would speak to David Gonzalez every-day, during the low season twice a week. On average I would speak to him for business for 10-15 minutes. I would speak to him over the telephone. I would speak to him in person when he would come into Belize City. The clarity when I spoke to David Gonzalez would be clear and there would be nothing blocking my hearing. David Gonzalez would come into Belize City every 3 to 4 months, usually when he comes into Belize City, I would meet him at the Municipal Airstrip, our interaction would be more than 10 minutes the most. When he comes in, he would use one of my vehicles. The closest would be a foot when I saw David Gonzalez, the farthest would be 3 feet. The lighting condition would be daylight, nothing would be blocking my feet from seeing him, I saw him from his head to his feet. Witness points to David Gonzalez in the dock in a blue shirt. I recall my wife's number being 6052016 at the time. I recall David's number at the time being 6265309. David Gonzalez has a very distinctive way of pronouncing words according to me. Prior to that night in question, the last time I spoke to David Gonzalez on 11th October 2020, the conversation was for about 40 seconds, I spoke to him via telephone. The conversation was about BTB gold standards."

[124] PW4 also testified that:

"I knew David Gonzalez for about 4 years, I used to have eye-contact with him for 3-4 days during the week. I would say 2 to 3 days during the week, he would call me to serve some summonses for him, on average I would talk to David Gonzalez for 2 to 3 minutes. I could have recognized his voice due to the frequency we spoke on the phone and in person. I had David Gonzalez's cellphone numbers recorded on my phone. I recall having his number saved as David Gonzalez with 1d at the end of David and the second number as David Gonzalez with a dd at the end."

[125] There is no doubt as to the importance of the guidance in **Turnbull** nor as to its application in principle to identification by voice recognition. In that context more detailed guidance has been given more recently by the English Court of Appeal in **R v Flynn and St John** [2008] 2 Cr App R 20. However, as has been emphasised on many occasions that “no precise form of words need be used so long as the essential elements of the warning are given to the jury”: **Shand v The Queen** [1996] 1 WLR 67, 72.

[126] I find in the circumstances on the totality of the evidence and in the circumstances that a 20 seconds conversation between the Defendant and the PW 6 in which the Defendant confessed to having ‘shot his wife’, that would not amount to a “fleeting glance” conversation.

[127] The Court must not take each circumstance separately and give the accused the benefit of any reasonable doubt about the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and only then is the accused entitled to the benefit of any reasonable doubt if it exists. To put the matter in another way, the Prosecution must satisfy the Court, not that each separate fact is inconsistent with the innocence of the accused, but that all the evidence is beyond reasonable doubt inconsistent with his innocence.⁶

[128] Several circumstances, each individually very slight, may so account with and confirm each other to leave no room for doubt of what fact they tend to establish. Two circumstantial evidence items may not amount to much on their own, but they might prove much more if they are joined with the other piece of evidence. In **S v Reddy and Others**⁷ the Court quoted Lord Coleridge,⁸ where he made the following observations concerning the proper approach to circumstantial evidence:

'It is perfectly true that this is a case of circumstantial evidence and circumstantial evidence alone. Now circumstantial evidence varies infinitely in its strength in proportion to the character, the variety, the cogency, the

⁶ R v De Villiers 1944 AD 493 at 508-9 as referred to in R v Sole 2004 (2) SACR 599 (Les) 665F-G

⁷ S v Reddy and Others 1996 (2) SACR 1 (A) at 8G -9E; See also S v Van Wyk and Another 2015 (4) NR 1085 (SC) at paragraph 74

⁸ in R v Dickman (Newcastle Summer Assizes, 1910 - referred to in Wills on Circumstantial Evidence 7th ed at 46 and 452-60)

independence, one of another, of the circumstances. I think one might describe it as a network of facts cast around the accused man. That network may be a mere gossamer thread, as light and as unsubstantial as the air itself. It may vanish at a touch. It may be that, strong as it is in part, it leaves great gaps and rents through which the accused is entitled to pass in safety. It may be so close, so stringent, so coherent in its texture that no efforts on the part of the accused can break through.

[129] Once several independent circumstances point to the same conclusion, the probability of that conclusion's correctness is not the sum of those circumstances' simple probabilities but is the compound result of them.⁹

Evaluation of the evidence

[130] In **S v Shackell 2001(2) SACR 185 SCA** it was held that “ it is a trite principle that in criminal proceedings the prosecution must prove its case beyond reasonable doubt and that a mere preponderance of probabilities is not enough. Equally enough is the observance that, in view of this standard of proof in a criminal case, a court does not have to be convinced that every detail of the accused’s version is true. If the accused’s version is reasonably possibly true in substance the court must decide the matter on the acceptance of that version. It is indeed permissible to test the accused’s version against the inherent probabilities. It cannot be rejected merely because it is improbable: it can only be rejected on the basis of inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly be true.”

[131] In assessing the evidence, a court must in the ultimate analysis look at the evidence holistically in order to determine whether the guilt of the accused is proved beyond reasonable doubt. This does not mean that the breaking down of the evidence in its component parts is not a useful

⁹ S v Glaco 1993 NR 141 (HC) at 148C-D

aid to a proper evaluation and understanding thereof. In **S v Shilakwe**¹⁰ at page 20, para [11], the Supreme Court of Appeal approved of the following dictum :

“But in doing so, (breaking down the evidence in its component parts) one must guard against a tendency to focus too intently upon the separate and individual part of what is, after all, a mosaic of proof. Doubts about one aspect of the evidence led in the trial may arise when that aspect is viewed in isolation. Those doubts may be set at rest when it is evaluated again together with all the other available evidence. That is not to say that a broad and indulgent approach is appropriate when evaluating evidence. Far from it. There is no substitute for a detailed and critical examination of each and every component in a body of evidence. But, once that has been done, it is necessary to step back a pace and consider the mosaic as a whole. If that is not done, one may fail to see the wood from the trees.”

[132] It is acceptable in evaluating the evidence in its totality to consider the inherent probabilities.

Heher AJA (as he then was) dealt with this aspect as follows:

“The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused’s guilt.”

[133] The quote from the judgment of Malan JA in **R v Mlambo**¹¹ at 738 A and B is apposite:

‘In my opinion, there is no obligation upon the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no

¹⁰ 2012 (1) SACR 16 (SCA)

¹¹ 1957 (4) 727 (AD)

reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused. An accused's claim to the benefit of doubt when it may be said to exist must not be derived from speculation but must rest upon a reasonable inference which are not in conflict with, or outweighed by, the proved facts of the case. Moreover, if an accused deliberately takes the risk of giving false evidence in the hope of being convicted of a less crime or even, perchance, escaping conviction altogether and his evidence is declared to be false and irreconcilable with the proved facts; a court will, in suitable cases, be fully justified in rejecting an argument that, notwithstanding that the accused did not avail himself of the opportunity to mitigate the gravity of the offence, he should nevertheless receive the same benefits as if he had done so'.

[134] I pause to mention that there are no eye-witnesses who actually saw the killing of the deceased by the accused. Hence, the Prosecution has relied to a certain extent on circumstantial evidence, the testimonies and version of the accused, as well as the objective medico legal evidence; in order to prove the allegations against the accused, and in an attempt to prove its case against the accused. I am therefore required to objectively and in an impartial and balanced manner, consider all the evidential material in coming to a decision.

[135] It is trite that once a court is faced with circumstantial evidence it naturally flows that it is duly called upon to draw inferences from the evidence thus presented.

[136] "In reasoning by inference there are two cardinal rules of logic which cannot be ignored:

- (1) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.

(2) The proved facts should be such, that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be doubt whether the inference sought to be drawn is correct.”¹²

[137] Circumstantial evidence has on occasion been described as a chain, the links of which consist of pieces of evidence. This is not correct as it implies that the chain will be broken once one piece of evidence is rejected. It is better to compare it with a braided rope: as the strands break, the rope weakens and conversely, as strands are added, the stronger it gets. The gist of the matter is that one piece of circumstantial evidence may be inconclusive, but once other evidence is added, it gains probative force.

[138] The evaluation of circumstantial evidence must be guided by a test of reasonableness. The onus on the State is not that it must prove its case with absolute certainty or beyond a shadow of a doubt. All that is required is such evidence as to satisfy the court and prove its case beyond a reasonable doubt. It is trite law that the accused is under no legal obligation to prove his innocence. The State must prove the guilt of the accused beyond a reasonable doubt.

[139] Having carefully considered the totality of the evidence and the mosaic of proof before me, I do not deem it necessary to traverse the evidence of all the witnesses that testified during the trial, for the sake of brevity and to avoid unnecessary prolix, as the issue to be determined is crisp and unambiguous. As such, the only issue that this court has to decide, is whether the accused was involved in the commission of the crimes, as charged.

[140] Applying the principles on circumstantial evidence set out hereinbefore I find that the only reasonable inference that is consistent with the totality of all the proved facts and which excludes any other reasonable inference is that the accused was the assailant who around 2:00 a.m. on the 12th October 2020, killed his wife Marisela Gonzalez with a single gun shot wound to the head region.

¹² S v Blom 1939 AD 188 at 202; See also S v Mtsweni 1985 (1) SA 590 (A) at 593

[141] PW4 had testified that while he was headed to the police station he received a call on his cell-phone from Mr. David Gonzalez, he asked him if he was working and he told him yes. He asked him if I can check at the police station if his wife Marisela Gonzalez was detained, he told him to visit the police station and give a formal report. David Gonzalez also mentioned that he was enquiring of his wife's whereabouts because on the day before, they were socializing in the Secret beach area where a domestic dispute started with Marisela Gonzalez accusing him of seeing another woman, he stated that in the evening around 4 o'clock they were heading back to their home located in the DFC area and whilst approaching the Boca Del Rio Bridge, Marisela Gonzalez jumped off the golf-cart and since then, he hadn't heard of her.

[142] PW6 also testified that he recalled the 12th October 2020 at about 2:40 a.m., same address Eagle Gem Estate, Sand Hill. He was sleeping he and his wife, when we're sleeping, he was awakened by phones ringing, he answered the phone, it was his wife's phone, when he opened the call he was saying hello hello, it took a while, then he heard someone else on the other side of the call, the person was talking in a slurrish voice, I could not understand every word he was saying, as the conversation proceeded he started to talk about BTB, I then recognized the voice to be that of David Gonzalez. He was talking and I was between sleep and wake, I was trying to understand what he was saying, he continued like that until 20 seconds or so before the call ended, within that 20 seconds he said in a very clear voice, "can I trust you?", I sat up and asked why? He said he shot his wife, I asked where was her, he said in front of him, I told him that I was going to call the police, he remained quiet and I hung up the phone, I then proceeded to call 911 from my wife's phone, during this time I was turning on my phone that was off and a lady answered the call and I told her certain things.

[143] Elian Robateau, Police Constable 2383 assigned to San Pedro Police Station since October 2020, recalled an incident on Monday, October 12, 2020, at 3:14 a.m. He received a phone call at the San Pedro Police Station from WPC Isoline Ramos of Ladyville Police Station, who provided specific information. After the call, Robateau made an entry (#5) in the personnel diary and instructed mobile patrols to be alert for a male individual.

[144] PW2; Zair Villatoro, testified that all the pictures that were viewed by the Court were placed on the DVD by me. This is the phone that David Gonzalez had and opened for us, there was a call to Michael Garbutt (3), indication of a call to Michael Garbutt; 2 at 2:41 a.m. and one at 2:42 a.m. A call to a contact Michael Wife, outgoing call that lasted for 6 minutes.

[145] P.W.; Dr. Loyden Ken who conducted the autopsy established the cause of death as a single perforated gun-shot wound to the head. In this case it was a contact wound; that the muzzle of the gun was in contact with the skin when the shot was fired. The body of the deceased had contusions with a micro-laceration on the right frontal region, right palpebral region, points to his forehead, measuring 1.5x1cm. A contusion is a bruise, it also had a right peri-orbital bruise; points to the region of the right eye. There were also linear post-mortem friction abrasions that is linear scratches to the anterior of the chest extending to the mammary region; to the breast region, downwards to the right abdominal region; points to his chest to his stomach, post-mortem meaning after death and the friction abrasion they are created when the skin is being dragged over a rough surface and creates superficial scratches. Superficial scratches were located on the anterior aspect of both thighs and legs which was most evident on the right, there were also abrasions on the right lateral of the neck also post-mortem. Multiple ants activity on the anterior of the body. There was also a presence of fresh soft tissue haemorrhage to the lower para-vertebral region of the lower back.

[146] Shooting someone with a gun in the manner the deceased was shot and killed signifies a direct intention to kill. The accused directed his will to kill the deceased and deliberately accomplished what he intended and desired to achieve. He intended to, and killed the deceased.

[147] DETERMINATION

- (1) Consequently, I find that the prosecution has proved all the essential ingredients of the offence against him beyond reasonable doubt. I accordingly **CONVICT** you **DAVID GONZALEZ** of the Offence of Murder of **Marisela Gonzalez** that you are charged with.

- (2) This matter is postponed to **14th December 2023** at **10:00 a.m.** for witnesses in mitigation and aggravation including submissions prior to sentence.
- (3) The accused is remanded in custody.

Dated the 10th day of November 2023

RICARDO O'N. SANDCROFT
Justice of the High Court