

IN THE HIGH COURT OF BELIZE, A.D 2023

(CRIMINAL JURISDICTION)

CENTRAL DIVISION

INDICTMENT C64/2022

THE KING

v.

ERIC MIRANDA & JEFFREY CONTRERAS

-

MURDER

Appearances:

Mr. Riis Cattouse, Crown Counsel for the Crown

Mr. Arthur Saldivar, for Accused #1

Mr. Darryl Bradley, for Accused #2

Hearing Date:

2023: June 6th; June 7th; June 8th; June 9th

Delivery Date:

2023: November 2nd.

Indictment read to Accused

Accused Plead Not Guilty

JUDGMENT

[1]. **SANDCROFT, J.:** The incident occurred on November 18, 2020, at approximately 11:25 p.m., when Iran Isaac Jones and his girlfriend were sitting in his yard and playing music when his girlfriend alerted him to gunshots. After turning down the music, he heard two gunshots and told his girlfriend to go inside while he investigated.

[2]. Mr. Jones stated that he observed two dark-skinned males running towards him when he approached his gate, so he pulled back from his gate to the corner of his fence so he could have a better view. As soon as he saw the men running, he immediately recognized them as "Belly" and "Soljie", also known by the nickname "Blacka". At that time, Blacka or Soljie was holding a chrome pistol in his right hand.

[3]. Mr. Jones said it was the same one that he had earlier that night when both men entered his yard. They requested a stout from Mr. Jones, and he asked the shopkeeper to give them two stouts.

[4]. While the shopkeeper was getting the stouts, "Belly" then lifted up his shirt and showed Mr. Jones the same pistol firearm. Mr. Jones stated he warned him to refrain from playing with those objects in his yard because he recently came out of jail and does not wish to return. "Belly" laughed as he and "Soljie" turned toward the shopkeeper to receive the stouts, and both exited the yard and traveled towards the direction of Castle and Lancaster Street.

[5]. Approximately 20 minutes after the men left his yard, Mr. Jones and his girlfriend heard gunfire.

[6]. Further, Mr. Jones alleges that the chrome pistol was in Blacka/Soljie's right hand when the men passed by his gate, and that it was handed to a third individual identified as "Biggs" shortly afterwards. On the road, they ran toward the Gizmo Bernard house, which is a green and white board structure. and walked along Pitts Alley and New Road to the end.

[7]. When he arrived at the scene, it is alleged that the men had already begun running into Gizmo Bernard's yard. Mr. Jones then turned around from there and headed towards Castle Street where he encountered a blue police mobile. Mr. Jones stated that when he saw the

police mobile, he ran towards Lancaster Street, where Mr. Menzies lives, and upon reaching Lancaster Street, he found Mr. Menzies lying on the ground with a gunshot to his head.

[8]. According to him, he turned to the police and informed them that the incident took place right in this yard, and while the officers were requesting additional assistance, Mr. Jones said he noticed a phone on the ground ringing, which he alleges to have belonged to the deceased, so he handed the phone over to the officer at that moment.

THE CROWN'S CASE

Examination-in-Chief of Iran Jones:

[SWORN]

[9]. My name is Iran Isaac Jones. My occupation is fishing. I remember I was living at # 1 Pitts Alley in Belize City in November of 2020 I was fishing at that time. I remember Wednesday at 11:25 p.m. on November 18, 2020, I was sitting in my yard. Well when I was sitting in my yard, I was playing music and hencing with my girl she turned to me and told me that she heard loud gunshots and I didn't believe her, I lowered the music and I heard two gunshots and then I believe, I then told her to go inside while I go and check and see and when I step and reached to my gate I saw two dark skinned male persons running towards me, so I pulled back towards the corner of my fence so I could see who was running and when I saw them, I noticed that it was two persons that I know which I know as "Belly" and "Soljie" and another nickname as "Blacka", the same person I know as "Soljie" is "Blacka". At that time "Blacka" had a chrome pistol in his right hand and then when he passed me he stopped in front of "Biggs" and he stopped and handed "Biggs" something in his hand which is the chrome object which he had in his right hand.

[10]. They then run in the direction of Gizmo Bernard house on the road which is a green and white board structure, when I move from the gate I went to the end of Pitts Alley and New Road, when I reach there they were already running in Gizmo Bernard yard, then I tun back from there heading towards Castle Street then I saw a blue police mobile and then

when I see the mobile I run to Lancaster Street and when I reach Mr. Menzies house on Lancaster Street I saw him on the ground laying down with a gunshot to his head and then I turned to the police and told them it is right at this yard and then when the officers were calling for more back-up to come, then I noticed a phone on the ground ringing which was for the deceased, so I handed it over to the officer at that time.

[11]. When "Belly" passed my house, he was about 3 feet away from me, I had him in my view for about 6 seconds, the lighting condition was very bright when I saw "Belly" running by, the lamp post provided the light, it was right at the corner of the gate at the house where I lived. Witness points out from the edge of where he is standing to the back of the first row in the jury box. There were two lamp posts, the other one was at the corner, points from where he is standing to the wall at the back of the Courtroom. Nothing was blocking my view from seeing "Belly", I could see the whole of his body. I knew "Belly" from before that night from around a year. Within that year I would see "Belly" nearly every-day at Bernard house. I also know Bernard by the name Gizmo.

[12]. I know "Soljje" or "Blacker", he was about 5 feet away when he was passing my house. I had "Soljje"/ "Blacka" for the same 5 seconds that I was at my gate. The lighting condition was bright when "Soljje"/ "Blacka" passed my house, the light was coming from close at the gate from the yard that I lived. My view of "Soljje"/ "Blacka" was very clear; I saw him from his head coming down to his knee because I pulled back a little when he was coming after. I knew "Soljje" /"Blacka", that night they come in the yard that I live, "Belly" and "Soljje" before, then they asked me for a stout which I tell di shopkeeper in my yard to hand them two stout, at that while the shopkeeper was getting the stout, "Belly" then lift up his shirt and show me the same pistol firearm, then I told him to not play with those things in the yard that I live

because I lately come out of goal/jail, and I tell him that I don't want to go back. So "Belly" then laughed and tun away from me as he and "Soljie" received the stout, entering out the gate towards Castle and Lancaster Street and then me and my girl continued sitting there, when she told me that she heard the loud bangs.

[13]. I also heard loud bangs, this was about 20 minutes after "Soljie", and "Belly" came to my yard. I knew "Soljie" /"Blacka" prior to that night for about 7 to 8 months, I would see him on a daily basis; I would see him at Dion Gizmo Bernard house. Sometimes we talk and heng out on the corner of New Road, the witness points from where he is standing in the dock to where the prosecutor is, we would heng out because we were all friends from the same neighbourhood. Witness points to a black file holder on the Marshall's table to where he is standing in the witness box. He would be leaning on the fence, and I would sit on the fence, sometime the whole day and sometimes we would chill out and tek a likkle drink and smoke a little weed; when "Soljie"/ "Blacka" and I heng out it would be during the day, there would be nothing blocking my view from seeing him when we heng out, I would be able to see the whole of him. If I were able to see them again I would be able to identify them.

[14]. Objections by Mr. Arthur Saldivar and Mr. Darrel Bradley based on dock identification.

[15]. Witness points to "Soljie"/ "Blacka" wearing a long white pants in the dock.

[16]. Witness points to the front of a gray vehicle outside of the Court window to where he is giving evidence, about 50 feet away, when he saw "Biggs": I had "Biggs" in my view for about 1 or 2 seconds, the lighting condition was very bright because of the lamp post at the corner where he was standing. Nothing was blocking my view from seeing him standing over a silver and blue stunt bike and holding it. I can see the whole of him standing. Yeah I know

"Biggs" a couple months, but he never went to my yard that night, I knew for like about 4 or 5 months, I would see him only like from Thursday to Sunday, and a couple times he would come for the whole week and chill out at Gizmo Bernard yard. I would see him at Gizmo Bernard yard. The average distance would be 3 or 4 feet when I would see "Biggs" at Gizmo Bernard yard. I would have him in view in my sight on average like about 8, 9 hours. On those occasions I would have a clear view, I would be able to see his whole body. If I saw "Biggs" again I would be able to identify him.

[17]. Witness points to one known as "Biggs" in the khaki long pants in the dock.

[18]. As far as I know, they call he "Contreras" but I don't know his first name. About after 3 minutes when I heard the two gunshots I saw "Belly" and "Soljie" / "Blacka" pass by my house, "Soljie" / "Blacka" was wearing a black sleeveless jersey shirt with white stripes on the side and red short ball pants. "Belly" was wearing a dark gray DR shirt with a red sleeveless jersey shirt over it and a short ¾ blue jeans pants and a black and white slippers. When I saw them when they came by my residence, they were in the same clothing.

[19]. When they went together at Gizmo's yard, I did not see where they went after that. "Biggs", "Soljie" and "Belly" went in that direction to Gizmo's yard. The distance where I live, jump right after Pitts Alley and then you take a right and bend left to Lancaster Street.

Cross-Examination:

Question: You said to Stephen Peters, the first police officer that you saw: "a dark skinned slim-built male person who I only know as Tallest had ran in front of my yard seconds after the shots were heard in the area Lancaster."

Answer: I cannot remember saying any of that.

Suggestion: You said to Corporal Stephen Peters, the first police officer that you saw: “a dark skinned slim-built male person who I only know as Tallest had ran in front of my yard seconds after the shots were heard in the area Lancaster.”

Answer: I disagree with that.

Suggestion: That you told this same officer that you gave the phone to Corporal Stephen Peters “Da Tallest do it boss da Tallest”.

Answer: I disagree with that, I never said any of that, I did not sign any of that, I never talked to that officer, I only spoke to the officer in charge of the case and gave him the cell-phone.

Suggestion: That at no time did you mention to any police officer at the scene that you see any “Belly”, “Blacka” any “Biggs” to seeing them.

Examination-in-Chief of Corporal Genaro Samos:

[SWORN]

[20]. My name is Genaro Samos, Corporal of Police, I am currently posted at Crimes Investigation Branch, Precinct IV Police Station, Belize City, I have been an officer for 19 years and 11 months. In November of 2020, I was posted at Crimes Investigation Branch, Precinct III, Queen Street Police Station, Belize City, at the time I was a Corporal of Police. I recall the 19th of November, 2020 at 8:45 a.m., I was requested by Corporal Zair Pott of Crimes Investigation Branch, Precinct III, Queen Street Police Station, Belize City to view a video footage at the police camera room at the Raccoon Street Police Station, the footage to be viewed was of a police camera placed on New Road, Belize City, on arrival at the camera room, the footage was shown to me on the footage I saw a group of male persons, some were running and some were on bicycles, some of the male persons were coming out of an alley namely Pitts Alley and some of the male persons were coming from a residence which is located on New Road in front of a gas station. The group of male persons; those on

bike and those who were running contrary to traffic on New Road and then they took a right to Victoria Street, upon reviewing the footage, one of the male persons who was on a stunt bicycle dressed in a khaki shirt, black short pants had a dark in colour peak cap with black red and white design to the front and had a face mask on, the male person I could identify as one Jeffrey Contreras, I want to say that at the time I knew Jeffrey Contreras because weeks before when I was working night and evening duties, I had searched him and upon enquiring his name, he gave his name as Jeffrey Contreras, who gave his particulars at the time as Jeffrey Contreras 23 years old, born on the 26th of March 1998 of # 18 Iguana Street Belize City, I can describe Mr. Jeffrey Contreras at the time as clear skinned complexion, stout built, about 5 feet 10 inches in height, he had curly hair with plaits and the ends of the plaits came out of his cap. I searched for him more than one time the week before, approximately 4 to 5 times; between a span of 6 months before the incident in question. On those 4 to 5 times, I would have Jeffrey Contreras in my view for about 5 minutes, the average distance would be 2 to 3 feet, the lighting condition would be clear, and nothing would be blocking my view from seeing him; his face and his entire body. Upon identifying Mr. Contreras in the video, he was one of the male persons who came from Pitts Alley into New Road, upon exiting Pitts Alley into New Road, I saw him placing an object resembling a firearm from the right side of his waist, he then rode contrary to traffic on New Road and took a right into Victoria Street. I then informed Corporal Zair Pott that I recognized same male person as Jeffrey Contreras. If I were to see Jeffrey Contreras again, I would be able to recognize him, witness points to the accused Jeffrey Contreras in the dock sitting on the left. **Exhibit "EC-1"** shown to the Court.

[21]. That is the same footage that I saw, the person on the bike going to the front is Mr. Contreras. Witness points to Mr. Contreras, Jeffrey Contreras in the video footage 11:58-12:00. Witness points to Pitts Alley on the video footage. Contreras seen at 19:54/55-20:00 riding his bicycle and putting something in his right side.

Examination-in-Chief of Dr. Loyden Ken:

[SWORN]

[22]. I am Dr. Loyden Ken, I am a medical practitioner, I am licensed to practice in Belize since 2014, I currently practice at the National Forensic Science Service, I am a specialist, I am an anatomical pathologist since 2014. I graduated as a general doctor in 2007, as a family specialist in 2009 and as a specialist in anatomical pathology in 2013 from the Latin American School of Medicine in Cuba. I have testified in the Supreme Court before on many occasions and I have been deemed an expert by the Supreme Court in the field of anatomical pathology. Dr. Loyden Ken is deemed an expert in anatomical pathology. No objections from the Defence.

[23]. I recall performing an autopsy on the body of a male identified as Sean Kenrick Menzies on the 20th of November 2020 and I made notes during my examination, the notes were contemporaneous to my examination. If I were to see those notes again, I would be able to recognize them; it has the name of the decedent on each page, it has my signature and stamp on each page.

[24]. Witness shown a document which he identifies as his report in relation to Sean Kenrick Menzies; with his signature on each page, the name of the decedent and in his hand-writing.

Dr. Loyden Ken's autopsy report tendered and marked as exhibit "LK-1". No objections from the Defence.

[25]. The Cause of death was acute cranio-encephalic traumatic injuries due to single perforating gunshot wound to the head. Bullet entered from the left-side of the head and exited from the right-side of the head.

Examination-in-Chief of Justice of the Peace Andrew Godfrey: [SWORN]

[26]. My name is Andrew Patrick Godfrey, Justice of the Peace. I recall 24th of November 2020 at about 4:00 p.m., I recall attending the CIB Office at the Queen Street Police Station for the recording of a statement of Jayden Herrera to be taken. I witnessed the recording of the statement from Jayden Herrera. The statement was recorded by Corporal Kacey-Ann Requena, if I saw the statement that was recorded from Jayden Herrera, I would be able to recognize it by; it has his name on the top, his age and all his particulars followed by his signature at the top and at the bottom of the page, followed by my signature and my justice of the peace stamp.

Witness shown a document and identified it as the recorded statement he witnessed that Mr. Herrera gave. I see my signature at the top there followed by my stamp, my signature followed by my stamp at the bottom and on the second page; my signature followed by my stamp. Jayden Herrera's signature is at the top and at the bottom and on the second page. Corporal Kacey-Ann Requena's signature is on the second page. **Witness statement is marked for identification as "AG-1"**

Examination-in-Chief of Derrick McKoy:

[SWORN]

[27]. My name is Derrick McKoy, my current occupation is bodywork. I live in the district of Belize. I recall the 18th of November 2020, I was living at 26 Cleghorn Street in Belize City, North side. I recall the 18th of November 2020 at about 10:00 p.m., I went to purchase marijuana on New Road in front of the Puma Gas Station, I recall purchasing the marijuana on New Road at Gizmo's residence. After purchasing the marijuana, Jerry ask me fi piece a weed, after Jerry ask mi fi piece a weed, I give har the piece a weed, he started to roll the weed up, after we did si dung smoke we did deh under di first floor did smoke di weed, whereby Jeffrey Contreras entered the yard, whereby he stand 22 feet away behind the yard, wearing a gray DR shirt, black jersey pants, red and black fitted cap, whereby asked Jerry to buy a next \$5 weed from har, he seh he nuh got nuh more weed so he said he is going to get it from somebody else, afterwards I wait whereby I went to talk to Ciara Cadle, a female, when I went talk to her, I saw Jayden Herrera enter the yard, he did a wear a red shirt, black jersey pants along with a slippers with a red and blue Champion logo, meanwhile I was still talking to the young lady Ciara Cadle, while I look over my right shoulder towards the street side, I saw Eric on a 26 beach cruiser male frame at the corner of Pitts Alley and New Road whereby he wear a black basketball shirt with white stripes on the side, whereby he stand 35 feet away from where Ciara Cadle and I were, whereby Jayden Herrera and Jeffrey was talking behind the yard, whereby Jeffrey facial expression show anger, afterwards they move towards the front gate, whereby they stood 6 feet from me, whereby Eric went down by Pitts Alley, moments later he showed up back at the corner of Pitts Alley and New Road, whereby I look to Jeffrey's side I saw an up sided down L shape which resemblance a gun, whereby later Jeffrey Contreras and Eric went up Pitts Alley towards

Castle Street and Lancaster whilst still speaking to Ciara Cadle, I heard four loud bangs which sound like gunshots, after that Boonie who was standing in front of the gate seh guh home whereby he stood in front of the gate, a minute later after the loud bangs I saw Eric and Jeffrey Contreras exiting Pitts Alley heading up stop New Road whereby later Boonie, Delhart Dominguez, Rasheed Parham and KJ went up stop New Road which later then I grabbed my cell phone and slippers run towards Cleghorn Street, whereby I knock on the door of my cousin house, Marvin, opened the door whereby I went to sleep.

[28]. I saw Jayden Herrera enter the yard of Gizmo, residence on New Road. When Boonie said guh home, I was still at Gizmo's residence on New Road. When I heard the gunshots, Boonie was in front of the gate standing, he was six feet away from me. I saw the gun by his right side, witness points to the side where he saw the gun. I knew Jeffrey Contreras before the night in question, I knew him two weeks at election Maler. I would see him daily; I would see him on Victoria Street and at Gizmo's residence on New Road.

[29]. The average distance between us would be 6 feet, the general lighting condition would be bright, and nothing would be blocking me from seeing him from head to toe including his face. Prior to hearing the gunshots, I last saw Jeffrey Contreras about 2 to 3 minutes before the gunshots. He was at Gizmo's residence on New Road, he was talking to Jayden Herrera, he was 22 feet away from me. He was in my view for 3 to 4 minutes, the lighting condition was bright due to the lamp post light which would have been about 32 feet away from Jeffrey Contreras, there were other lamp posts in the area, 2, from where Jeffrey Contreras was from these 2 other lamp post would be 60 feet and 40 feet. The lamp posts were on. Nothing

was blocking my view from seeing Jeffrey Contreras, I could see from head to toe including his face. Grey DR and black jersey pants, black and red hat, same as I saw him before.

[30]. I saw Jeffrey Contreras exiting Pitts Alley on a 20-inch stunts chrome fork whereby his facial expression showed nervous riding up stop New Road, he was putting the firearm to his side, whereby Eric Miranda, was running behind Jeffrey Contreras. Jeffrey Contreras was dressed in a gray DR shirt, black jersey pants, black and red fitted cap, this was the same clothing he had on before the loud bangs. The distance between Jeffrey Contreras when he exited Pitts Alley on the bike was about 40 feet from me, in was in my view for a minute when I saw him, the lighting condition was bright, the lamp post light, 2 lamp posts, nothing was blocking my view from seeing him, I saw him from head to toe including his face.

[31]. This other person is Eric Miranda, I do not know him by any other name. I knew Eric Miranda before the night I heard the gunshots. I knew Eric Miranda a month prior to the night when I heard the gunshots. I would see him daily at Gizmo's residence. The average distance when I saw him on those daily occasions would be 8 feet and the average time I would have in my view would be a minute, the lighting condition would be bright and there would be nothing blocking my view from seeing him; head to toe, including his face. I saw him before on the same night at the corner of Pitts Alley and New Road, I had him in my view for 3 to 4 minutes, the average distance between us was 32 feet. The lighting condition was bright, 2 lamp post lights were providing the light. There was nothing blocking my view from seeing him from head to toe including his face.

[32]. The distance between myself and Eric Miranda, when I saw him running was about 38 feet, I had him in my view for a minute on that occasion. The lighting condition was bright, the lamp post light provided the light on that occasion, and nothing was blocking my view from seeing him from head to toe including his face. Jeffrey Contreras is Hispanic descent 5 feet 8 inches, chubby. Eric Miranda is dark skinned, have waves in his hair about 5 feet 10 inches, buff. Exhibit "EC-1" played for the Court.

I know Jayden Herrera by the name "Belly".

I saw Jeffrey Contreras and Eric Miranda riding towards Gizmo's residence. Di one a front is Jeffrey Contreras, the one in the black shirt #3 is Eric Miranda. Jeffrey and Eric Miranda exiting Pitts Alley up stop New Road, witness points to Jeffrey Contreras in the front, points to Eric Miranda in the black shirt, like NBA shirt. Witness points to Jeffrey Contreras sitting in the dock. Witness also points to Eric Miranda sitting in the dock.

Examination-in-Chief of Jayden Herrera:

[SWORN]

[33]. My name is Jayden Herrera, I am currently staying at the Hattieville Kolbe Foundation, I have been wrongfully accused for a crime I did not commit, that matter has not gone to trial as yet. The matter is not before this Court as constituted. I have been at the Hattieville Kolbe Foundation since January 4, 2021. I do not recall 18th of November 2020, I recall November of 2020, I was living at my grand-mother's residence at 102 George Street, I do not have any knowledge of this matter and I do not want to have anything to do with this matter. I do not recall giving a statement to the police on the 24th of November 2020, I do not recall giving any statement at all to the police. I do not know what the offence of perverting the course of justice is. I do not know how many years a person would get if convicted for the crime of perverting the course of justice. No, I do not know what the offense of contempt of court is.

I do not know how long a person can be sentenced for in the High Court for contempt. No, I do not understand how serious it is being before a Judge in the High Court. No, I do not recall giving a statement to any officer of the Belize Police Force.

Corporal Kacey-Ann Requena interposed.

Examination-in-Chief of Kacey-Ann Requena:

[SWORN]

[34]. My name is Kacey-Ann Requena, Corporal of Police. I am currently attached at Crime Investigations Branch, Precinct III located at the corner of King Street and West Street. I was attached to Precinct III Crime Investigations Branch in November 2020, I recall 24th November 2020 at about 3:45 p.m., I recorded a statement from Jayden Herrera, it was 2 pages long at the Precinct III Crime Investigations Branch Office from one Jayden Alexander Herrera in the presence of his mother Shawna Herrera and Justice of the Peace Andrew Godfrey, the statement was recorded verbatim and I read it back to the maker of the statement who verified it to be correct by his signature below the caption of the statement on the first page and at the end of the statement. Shawna Herrera who witnessed the statement, along with Justice of the Peace Andrew Godfrey, both signed beside Jayden Herrera's signature. I also placed my signature at the end of the statement. If I were shown a document, I would be able to recognize it. That is the statement I had recorded from Jayden Alexander Herrera on the 24th of November 2020, I saw my signature at the end of the statement. I did see the signature of JP Andrew Godfrey, yes it appears to be the signature of Jayden Herrera. Yes I saw the signature of Ms. Shawna Herrera on the statement. Witness has identified "AG-1" as the statement of Jayden Herrera.

Examination-in-Chief of Jayden Herrera [Cont'd]:

[SWORN]

[35]. Witness was allowed to refresh his memory. I was at my cousin's residence on New Road, my cousin is Gizmo, I was hanging out there with a female friend, her name is Kishany Neal, my other cousin Davon Marin, his girlfriend Felisha Jones, no one else was there. I was at Gizmo's for a couple minutes. I went home to 102 George Street as far as I remember, about minutes to 9, I stayed home with my grandmother and watched television, I went to sleep after, and I woke up the next morning around 9 or 10 in the morning. I am not departing from anything, you asked me a question and I said I did not recall; I do not remember. What I am telling you about is going home at 9 and being with my grandmother and watching television and going to sleep.

Question: Your nick-name is "Belly"?

Answer: I got no nick-name Sir.

Question: On the 18th of November you and Daevon Marin took Felisha home at around 9:00 a.m.

Answer: No Sir.

Question: At 10:00 p.m. you and Daevon Marin went back to Gizmo's house?

Answer: No Sir.

Question: While at Gizmo's house, you smoke a weed?

Answer: No Sir.

Question: There at Gizmo's house you met Boony?

Answer: No Sir.

Question: There you also met Jeffrey Contreras?

Answer: No Sir.

Question: And you met Eric Martinez?

Answer: No Sir.

Question: You also know Eric Martinez as Eric Miranda correct?

Answer: No Sir.

Question: Jeffrey Contreras said hall up let's go wid we?

Answer: I don't have a clue to what you are saying.

Question: You then went with Jeffrey Contreras who was riding a bike?

Answer: No Sir.

Question: Also accompanying you was Eric Martinez who was walking bare-feet?

Answer: No Sir.

Question: Jeffrey Contreras is a red-skinned person, thick in body.

Answer: I do not know.

Question: You know anybody by the name of Jeffrey Contreras?

Answer: No Sir.

Question: You know anybody by the name of Eric Martinez?

Answer: No Sir.

Suggestion: You know Eric Martinez as "Soljie"

Answer: No Sir.

Suggestion: And he is slim built, dark-complexion.

Answer: Don't know.

Suggestion: Jeffrey was wearing a gray shirt, dark pants and a red hat.

Answer: Don't know.

Suggestion: And Eric AKA as "Soljie" was wearing a blue shirt with a dark $\frac{3}{4}$ pants.

Answer: I don't know.

Suggestion: Jeffrey then took you to the corner of Pitts Alley and Castle Street.

Answer: I don't know.

Suggestion: Eric also accompanied you.

Answer: No, I do not have a clue what he is talking about.

Suggestion: Jeffrey then lifted up his gray shirt and pulled out a full chrome revolver from his waist.

Answer: I don't have a clue sir.

Suggestion: He then said, "the target is Rasta man".

Answer: No Sir.

Suggestion: He then handed over the gun to you and you put it in your pants waist.

Answer: No Sir.

Suggestion: You were afraid, you did not want to shoot anyone.

Answer: I don't know what you are talking about.

Suggestion: You then pretended to look around for "Rasta man".

Answer: No Sir.

Suggestion: But you did not find "Rasta man".

Answer: No Sir.

Suggestion: You only saw a red-skinned man standing behind his gate on Lancaster Street.

Answer: I don't know what you are talking about Sir.

Suggestion: You then returned to Jeffrey and said there was no sight of "Rasta man".

Answer: I don't know what you are talking about Sir.

Suggestion: Eric said: "I nuh going home unless somebody dead".

Answer: I don't know what you are talking about Sir.

Suggestion: You then took the gun out of your waist, and you handed it to Jeffrey.

Answer: I don't know what they are talking about Sir.

Suggestion: Eric then said "gimme the gun gimme the gun".

Answer: I don't recall that Sir.

Suggestion: Jeffrey then said "give "Soljie" di gun".

Answer: I don't know what he deh talk bout Sir.

Suggestion: You then handed the gun to Eric, and he took it from you.

Answer: I don't know weh he did talk bout Sir.

Suggestion: You then took two steps towards Pitts Alley on New Road where you immediately heard two loud bangs.

Answer: I don't know weh yuh deh talk bout Sir.

Suggestion: Then you heard 3 more loud bangs sounding like gunshots.

Answer: I don't know weh he talk bout Sir.

Suggestion: You then ran down Pitts Alley cross New Road and into Cleghorn Street, you turned left into a yard, jumped two fences and ran onto Victoria Street.

Answer: I don't know weh he talk bout Sir.

Suggestion: You look down Victoria Street looking in the direction up stop New Road where you saw Eric running and Jeffrey riding a bicycle.

Answer: I don't know weh he talk bout Sir.

Suggestion: You then heard Eric yell: "That dah fi Peto".

Answer: I don't know what he is talking about, worse I don't know who Peto is.

Suggestion: You then asked a person named "Tzul" "Boy, who bally deh I shot?"

Answer: I don't know weh he talk bout Sir.

Question: That is the statement that you gave against Jeffrey Contreras and Eric Miranda before your mother and Kacey-Requena?

Answer: No Sir.

Statement of Jayden Herrera tendered and marked as exhibit "JH-1".

CASE FOR THE DEFENCE:

Eric Miranda:

Accused chose to remain silent.

Case for the First Defendant.

Jeffrey Contreras:

Accused chose to remain silent.

Case for the Second Defendant.

FINDINGS & DISCUSSION:

[36]. I now turn to the fundamental principles of our law that apply in all criminal trials the presumption of innocence, the burden of proof, and the requirement of proof beyond a reasonable doubt.

[37]. Throughout these proceedings, the defendants are presumed to be innocent. As a result, I must find the defendants not guilty, unless, on the evidence presented at this trial, I conclude that the Prosecution has proven the defendants guilty beyond a reasonable doubt.

[38]. The fact that the defendants did not testify is not a factor from which any inference unfavourable to the defendants may be drawn.

[39]. The defendants are not required to prove that he is not guilty. In fact, the defendants are not required to prove or disprove anything. To the contrary, the Prosecution has the burden of proving the defendants are guilty beyond a reasonable doubt. That means, before I can find the defendants guilty of a crime, the Prosecution must prove beyond a reasonable doubt every element of the crime including that the defendants are the persons who committed that crime. The burden of proof never shifts from the Prosecution to the defendants. If the Prosecution fails to satisfy their burden of proof, I must find the defendants not guilty. If the Prosecution satisfies their burden of proof, I must find the defendants guilty.

[40]. What does our law mean when it requires proof of guilt "beyond a reasonable doubt"? The law uses the term, "proof beyond a reasonable doubt," to tell you how convincing the evidence of guilt must be to permit a verdict of guilty. The law recognizes that, in dealing with human affairs, there are very few things in this world that we know with absolute certainty. Therefore, the law does not require the State to prove a defendant guilty beyond all possible doubt. On the other hand, it is not sufficient to prove that the defendant is probably guilty. In a criminal case, the proof of guilt must be stronger than that. It must be beyond a reasonable doubt.

[41]. A reasonable doubt is an honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary doubt. It is a doubt that a reasonable person, acting in a matter of this importance, would be

likely to entertain because of the evidence that was presented or because of the lack of convincing evidence.

[42]. Proof of guilt beyond a reasonable doubt is proof that leaves me so firmly convinced of the defendant's guilt that I have no reasonable doubt of the existence of any element of the crime or of the defendant's identity as the person who committed the crime.

[43]. In determining whether or not the Prosecution has proven the defendant's guilt beyond a reasonable doubt, I should be guided solely by a full and fair evaluation of the evidence. After carefully evaluating the evidence, then I must decide whether or not that evidence convinces me beyond a reasonable doubt of the defendant's guilt.

[44]. Whatever my verdict may be, it must not rest upon baseless speculations. Nor may it be influenced in any way by bias, prejudice, sympathy, or by a desire to bring an end to my deliberations or to avoid an unpleasant duty.

[45]. If I am not convinced beyond a reasonable doubt that the defendants are guilty of murder (or manslaughter), I must find them not guilty of that crime. If I am convinced beyond a reasonable doubt that the defendants are guilty of murder (or manslaughter), I must find the defendants guilty of murder.

[46]. Though it was not an issue in this case, whether the defendants had been correctly identified as the person who committed the murder. I will still look at the identification of the accused and to some extent the identification parade conducted by the police.

[47]. The Prosecution has the burden of proving beyond a reasonable doubt, not only that murder was committed, but that the defendants are the persons who committed that murder.

[48]. Thus, even if I am convinced beyond a reasonable doubt that a murder was committed by someone, I cannot convict Eric Miranda and Jeffrey Contreras of that crime unless I am also convinced beyond a reasonable doubt that he is the person who committed that murder of Sean Menzies.

[49]. 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).

[50]. Case law has established that, **“the standard of proof required is not proof to absolute certainty. Nonetheless, the prosecution evidence should be of such standard as leaves no other logical explanation to be derived from the facts, except that the accused committed the offence”**. - Refer to **Woolmington v. DPP (Supra)** and **Miller v. Minister of Pensions (Supra)**.

[51]. In determining a case, the court has also to bear in mind the duty to evaluate all the evidence on record, both for the prosecution and the defence, and arrive at its own findings as to whether the offence for which the accused person was indicted has been proved to the required standard.

[52]. As has become apparent, I deemed it necessary to refer to the evidence as a whole in some detail. When analysing all of the evidence, both for the Crown and the accused, I will refer to the contentions made by Counsel for the Crown and the accused and will state my views and conclusions.

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

- (1) Death of a human being occurred.
- (2) The death was caused by some unlawful act.
- (3) That the unlawful act was actuated by malice aforethought; and lastly
- (4) That it was the accused who caused the unlawful death.

[54]. Murder is the unlawful and intentional causing of the death of another human being. See: **Criminal Law, C. R. Snyman 5TH Edition, Lexis Nexis 2008**. Causing the death means that there must be a voluntary act. The act is voluntary if the accused is capable of subjecting his bodily movements to his will or intellect.

[55]. The form of culpability required is intention. The test in respect of intention is subjective. This subjective mental state may however be inferred from the objective facts proved by the Prosecution. Awareness of unlawfulness is an integral part of this intention.

[56]. Death of a human being may be proved by production of a postmortem report or evidence of witnesses who state that they knew the deceased and attended the burial or saw the dead body. There is the postmortem report dated 20th November 2020 prepared by Dr. Loyden Ken a Medical Officer at the Karl Heusner Memorial Hospital, which was admitted

during the trial and marked as exhibit "LK-1". The body was identified to him by a relative by the name Mr. Menzies as that of Sean Kenrick Menzies.

[57]. 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.5-Dr. Loyden Ken who conducted the autopsy established the cause of death was acute cranio-encephalic traumatic injuries due to single perforating gunshot wound to the head. Bullet entered from the left-side of the head and exited from the right-side of the head.

[58]. Exhibit "LK-1" dated 20th November 2020 contains the details of his other findings which include the fact that the cause of death was acute cranio-encephalic traumatic injuries due to single perforating gunshot wound to the head. Bullet entered from the left-side of the head and exited from the right-side of the head. 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 Sean Menzies's death was caused unlawfully.

[59]. Malice aforethought is defined by the common law 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 (multiple injuries inflicted) and the part of the body of the victim that was targeted (to the head). The ferocity with which the blunt object was used can be

determined from the impact. P.W.5 who conducted the autopsy established that the cause of death was acute cranio-encephalic traumatic injuries due to single perforating gunshot wound to the head. Bullet entered from the left-side of the head and exited from the right-side of the head.

[60]. 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 that the deceased was shot, it is necessary that in a case depending to some extent 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 I have found the inference that the accused were actuated by malice aforethought inevitable where the nature of the injuries, their severity and area of the body on which they are concentrated is known. It appears to me rather to have been an indiscriminate assault rather and one targeted at causing death. In the circumstance, this ingredient of the offence has been proved beyond reasonable doubt.

[61]. The prosecution also had to prove that it is the accused men that caused the unlawful death. There should be credible direct or circumstantial evidence placing the accused at the scene of the crime as an active participant in the commission of the offence. The accused

men denied any participation. The accused denied participation in the commission of the offence. They had no duty to prove lack of participation. The burden lay on the prosecution to disprove his defence by adducing evidence which proves that he was the perpetrator of the crime.

[62]. I must be cautious when considering this evidence because experience has shown that any witness who has identified a person can be mistaken even when the witness is honest and sure that he/she is right. Such a witness may seem convincing but may be wrong. In a “recognition” case: This is true even though a witness knows a person well and says that he/she has recognised that person. The witness could still be mistaken.

[63]. In the following oft-cited passage in **R v Turnbull and others** [1976] 3 All ER 549, Lord Widgery CJ laid down what has been accepted as the appropriate guidelines a trial judge should follow in summing up to a jury, when the case against the accused is centred around the identification of the accused, which he alleges to be mistaken. At **pages 551 and 552**, he stated:

“First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition, he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is

done in clear terms the judge need not use any particular form of words.

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance?... Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence...

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger. In our judgment, when the quality 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.” (Emphasis added)

[64]. I can only rely on the identification evidence if I am sure that it is accurate. I need to consider carefully all the circumstances in which the accused men were identified.

[65]. So, I must ask myself:

- (1) For how long could the witnesses see the person they say were the accused men and, in particular, for how long could the witnesses see the persons' faces?
- (2) How clear were the witnesses' view of the accused men, considering the distance between them, the light, any objects or people getting in the way and any distractions.
- (3) Had the witnesses ever seen the accused men before the incident? If so, how often and in what circumstances? If only once or occasionally, had the witnesses any special reason for remembering the accused men?
- (4) How long was it between the time of the incident and the time when the witnesses identified the accused men to the police?
- (5) Is there any significant difference between the description the witnesses gave of the person and the accused men appearances?

[66]. I lowered the music and I heard two gunshots and then I believe, I then told her to go inside while I go and check and see and when I step and reached to my gate I saw two dark skinned male persons running towards me, so I pulled back towards the corner of my fence

so I could see who was running and when I saw them, I noticed that it was two persons that I know which I know as "Belly" and "Soljie" and another nickname as "Blacka", the same person I know as "Soljie" is "Blacka". At that time "Blacka" had a chrome pistol in his right hand and then when he passed me he stopped in front of "Biggs" and he stopped and handed "Biggs" something in his hand which is the chrome object which he had in his right hand.

[67]. I know "Soljie" or "Blacker", he was about 5 feet away when he was passing my house. I had "Soljie"/ "Blacka" for the same 5 seconds that I was at my gate. The lighting condition was bright when "Soljie"/ "Blacka" passed my house, the light was coming from close at the gate from the yard that I lived. My view of "Soljie"/ "Blacka" was very clear; I saw him from his head coming down to his knee because I pulled back a little when he was coming after. I knew "Soljie" /"Blacka", that night they come in the yard that I live, "Belly" and "Soljie" before, then they asked me for a stout which I tell di shopkeeper in my yard to hand them two stout, at that while the shopkeeper was getting the stout, "Belly" then lift up his shirt and show me the same pistol firearm, then I told him to not play with those things in the yard that I live because I lately come out of goal/jail, and I tell him that I don't want to go back. So "Belly" then laughed and tun away from me as he and "Soljie" received the stout, entering out the gate towards Castle and Lancaster Street and then me and my girl continue sitting there, when she told me that she heard the loud bangs. I also heard loud bangs, this was about 20 minutes after "Soljie" and "Belly" came to my yard. I knew "Soljie" /"Blacka" prior to that night for about 7 to 8 months, I would see him on a daily basis; I would see him at Dion Gizmo Bernard house. Sometimes we talk and heng out on the corner of New Road, the witness points from where he is standing in the dock to where the prosecutor is, we would heng out

because we were all friends from the same neighbourhood. Witness points to a black file holder on the Marshall's table to where he is standing in the witness box. He would be leaning on the fence and I would sit on the fence, sometime the whole day and sometime we woulda chill out and tek a likkle drink and smoke a little weed; when "Soljie"/ "Blacka" and I heng out it would be during the day, there would be nothing blocking my view from seeing him when we heng out, I would be able to see the whole of him. If I were able to see them again I would be able to identify them.

[68]. I had "Biggs" in my view for about 1 or 2 seconds, the lighting condition was very bright because of the lamp post at the corner where he was standing. Nothing was blocking my view from seeing him standing over a silver and blue stunt bike and holding it. I can see the whole of him standing. Yeah I know "Biggs" a couple months, but he never went to my yard that night, I knew for like about 4 or 5 months, I would see him only like from Thursday to Sunday, and a couple times he would come for the whole week and chill out at Gizmo Bernard yard. I would see him at Gizmo Bernard yard. The average distance would be 3 or 4 feet when I would see "Biggs" at Gizmo Bernard yard. I would have him in view in my sight on average like about 8, 9 hours. On those occasions I would have a clear view, I would be able to see his whole body. If I saw "Biggs" again I would be able to identify him.

[69]. As far as I know, they call him "Contreras" but I don't know his first name. After about 3 minutes when I heard the two gunshots I saw "Belly" and "Soljie" / "Blacka" pass by my house, "Soljie"/ "Blacka" was wearing a black sleeveless jersey shirt with white stripes on the side and red short ball pants. "Belly" was wearing a dark gray DR shirt with a red sleeveless jersey shirt over it and a short $\frac{3}{4}$ blue jeans pants and a black and white slippers. When I saw them when they came by my residence, they were in the same clothing.

[70]. In this case I have identification evidence and description evidence. Identification evidence is where a witness has identified a specific person by e.g., naming the person/pointing the person out (whether in the street or at an identification procedure). Description evidence is where a witness has given a description which may or may not be similar to the appearance or clothing of a particular person. However, the description alone does not identify that person, so it can only go to support other evidence, including evidence of identification.

[71]. The Court was urged to consider the discrepancies pointed out in the witness statements of some of the Prosecution Witnesses compared to their oral testimonies in Court and it seems apposite to repeat once again what has been stated in another jurisdiction in that respect. Mainga, J (as he then was) in the oft quoted case of **Aloysius Jaar**¹ said that:

“A court of law should be careful in discrediting a witness because his evidence in chief slightly departs from the statement a witness should have told the police, especially in this country where it is a notorious fact that the majority of the police officers who are tasked with the duties to take statements from the prospective witnesses and accused persons are hardly conversant in the English language and more so that police officers who take down statements are never called and confronted with the contradictions that an accused or a witness may have raised in cross-examination. It has been said more than once in this court that a statement made by an accused or

¹ Unreported Case No CA 43/2002 delivered on 19.12.2009.

**witness to a police officer is of skeletal nature and in evidence in chief
a witness may elaborate on the statement.” (emphasis provided)**

[72]. Also, that police officers tend to focus the statement on what they consider to be more relevant;² and what is set out in a police statement is more often than not simply the bare bones of a complaint and during oral testimony flesh is added thereto.³

[73]. The reason for the prohibition of the use of the statements made to the police during the course of the investigation for that purpose is that the police cannot be trusted for recording the statements correctly as they are often taken down in a haphazard manner, sometimes in the midst of a crowd and confusion, when witnesses are still in a state of shock, other emotional disturbances or similar circumstances in which omissions or inaccuracies are bound to occur. It is for that reason that it is now well established that where a police statement is used to impeach the credibility of a witness and such statement is proved to be contradictory to his or her testimony, the court will always prefer the witness' evidence which is tested by cross-examination (see **Chemonges Fred v. Uganda**, S. C. Criminal Appeal No. 12 of 2001).

[74]. Although statements made soon after the incident are generally considered to be more accurate because they are made when the memory is still fresh, the court must however, consider as well as the fact that oral accounts based on recollection of events which occurred under traumatising situations are susceptible to the unreliability, lapses and fallibility of human memory even when they are made soon after the incident.

² Simon Nakale Mukete v The State, (unreported) Case No CA 146/2003 delivered on 19.12.2005.

³ Hanekom v The State, (unreported) Case No 68/1999 (date of delivery unknown).

[75]. When the Court considers the evidence given by PWs against the case of the accused men, there are no material differences relating to place and time between their respective versions, which remain unexplained. It is further evident that the discrepancies in their evidence are bona fide mistakes made by them, and rather appear not to have been the making of fabricated evidence.

[76]. PW-18 gave evidence that: while I look over my right shoulder towards the street side, I saw Eric on a 26 beach cruiser male frame at the corner of Pitts Alley and New Road whereby he wear a black basketball shirt with white stripes on the side, whereby he stand 35 feet away from where Ciara Cadle and I were, whereby Jayden Herrera and Jeffrey was talking behind the yard, whereby Jeffrey facial expression show anger, afterwards they move towards the front gate, whereby they stood 6 feet from me, whereby Eric went down by Pitts Alley, moments later he showed up back at the corner of Pitts Alley and New Road, whereby I look to Jeffrey's side I saw an up sided down L shape which resemblance a gun, whereby later Jeffrey Contreras and Eric went up Pitts Alley towards Castle Street and Lancaster whilst still speaking to Ciara Cadle, I heard four loud bangs which sound like gunshots, after that Boonie who was standing in front of the gate seh guh home whereby he stood in front of the gate, a minute later after the loud bangs I saw Eric and Jeffrey Contreras exiting Pitts Alley heading up stop New Road whereby later Boonie, Delhart Dominguez, Rasheed Parham and KJ went up stop New Road.

[77]. PW-18 continued to say that: I saw Jayden Herrera enter the yard of Gizmo, residence on New Road. When Boonie said guh home, I was still at Gizmo's residence on New Road. When I heard the gunshots, Boonie was in front of the gate standing, he was six feet away

from me. I saw the gun by his right side, witness points to the side where he saw the gun. I knew Jeffrey Contreras before the night in question, I knew him two weeks at election Maler. I would see him daily; I would see him on Victoria Street and at Gizmo's residence on New Road. The average distance between us would be 6 feet, the general lighting condition would be bright, and nothing would be blocking me from seeing him from head to toe including his face. Prior to hearing the gunshots, I last saw Jeffrey Contreras about 2 to 3 minutes before the gunshots. He was at Gizmo's residence on New Road, he was talking to Jayden Herrera, he was 22 feet away from me. He was in my view for 3 to 4 minutes, the lighting condition was bright due to the lamp post light which would have been about 32 feet away from Jeffrey Contreras, there were other lamp posts in the area, 2, from where Jeffrey Contreras was from these 2 other lamp post would be 60 feet and 40 feet. The lamp posts were on. Nothing was blocking my view from seeing Jeffrey Contreras, I could see from head to toe including his face. Grey DR and black jersey pants, black and red hat, same as I saw him before.

[78]. I saw Jeffrey Contreras exiting Pitts Alley on a 20-inch stunts chrome fork whereby his facial expression showed nervous riding up stop New Road, he was putting the firearm to his side, whereby Eric Miranda, was running behind Jeffrey Contreras. Jeffrey Contreras was dressed in a gray DR shirt, black jersey pants, black and red fitted cap, this was the same clothing he had on before the loud bangs. The distance between Jeffrey Contreras when he exited Pitts Alley on the bike was about 40 feet from me, in was in my view for a minute when I saw him, the lighting condition was bright, the lamp post light, 2 lamp posts, nothing was blocking my view from seeing him, I saw him from head to toe including his face.

[79]. This other person, Eric Miranda, I do not know him by any other name. I knew Eric Miranda before the night I heard the gunshots. I knew Eric Miranda a month prior to the night when I heard the gunshots. I would see him daily at Gizmo's residence. The average distance when I saw him on those daily occasions would be 8 feet and the average time I would have in my view would be a minute, the lighting condition would be bright and there would be nothing blocking my view from seeing him; head to toe, including his face. I saw him before on the same night at the corner of Pitts Alley and New Road, I had him in my view for 3 to 4 minutes, the average distance between us was 32 feet. The lighting condition was bright, 2 lamp post lights were providing the light. There was nothing blocking my view from seeing him from head to toe including his face. The distance between myself and Eric Miranda, when I saw him running was about 38 feet, I had him in my view for a minute on that occasion. The lighting condition was bright, the lamp post light provided the light on that occasion, and nothing was blocking my view from seeing him from head to toe including his face. Jeffrey Contreras is Hispanic descent 5 feet 8 inches, chubby. Eric Miranda is dark skinned, have waves in his hair about 5 feet 10 inches, buff.

- (1) Exhibit "EC-1" played for the Court.
- (2) I know Jayden Herrera by the name "Belly".
- (3) I saw Jeffrey Contreras and Eric Miranda riding towards Gizmo's residence. Di one a front is Jeffrey Contreras, the one in the black shirt #3 is Eric Miranda.
- (4) Jeffrey and Eric Miranda exiting Pitts Alley up stop New Road, witness points to Jeffrey Contreras in the front, points to Eric Miranda in the black shirt, like NBA shirt.

- (5) The prosecution say that I can be sure that it is the accused men. The defence say that I cannot be sure of that, and that the quality of the footage/images makes it impossible/unsafe to make any comparison; or that comparison shows that these are two different people.
- (6) When I compare the accused men against the persons in the footage/photographs, I should look for any features which are common to both, and for any features which are different. By 'features' I mean both physical appearance and also other characteristics such as the way a person walks, stands, uses gestures and so on.
- (7) When making your comparison you must be cautious for the following reasons:
- (a) Experience has shown that when one person identifies another, it is possible for the person to be mistaken, no matter how honest and convinced they are. Also, the fact that several people identify a person does not mean that the identification must be correct. A number of people may all be mistaken, and I must have this in mind when I am making my comparison.
 - (b) Although I have been able to look at the accused men during this trial in good light, at a relatively close distance and without any obstructions or distractions, I did not know the accused men beforehand, so my ability to identify the accused men is not based on previous knowledge or having seen the accused men in several different situations before.

- (c) Defendants' appearances have/may have changed since the time of the incident, and I must not speculate about what the defendants looked like then.
- (d) The quality of the footage/photographs may affect my ability to make a comparison. I should take account of these points: relative position of camera(s) and persons photographed (in particular the person's face), distance, focus, colour/monochrome, constant/intermittent, lighting, obstruction(s). If I decide that the quality of the footage/photographs does not allow me safely to make any comparison with the accused men, I should not try to do so. However, if I am satisfied that the quality is good enough to allow me to make a comparison, I can study the footage/photographs for as long as I wish.
- (e) The footage/photographs that I have are only two-dimensional and so do not provide the same amount of information as someone at the scene would have. Seeing footage/photographs from the time of the incident is not the same as witnessing it for myself. Having said that, a person at the scene only sees the incident once, usually without any warning that it is going to happen; but I have had the advantage of being able to study the footage/photographs several times.
- (f) If I decide that the persons shown on the footage/photographs are similar to the accused men, even in several ways, this does not automatically mean that the person shown must be the accused men.

[80]. I must also bear in mind that this is only part of the evidence in the case.

[81]. If I am sure, having considered all of the evidence, that the persons shown on the footage/photographs are the defendants, I must then decide whether the defendants are guilty of the offence with which they are charged. If I am not sure that the persons on the footage/photographs are the defendants, I must find the defendants not guilty.

[82]. I also have evidence from three other witnesses who were at the scene at the time of this incident. PW-18 who also knows the accused men and who has watched the CCTV footage taken from the police station. PW-18 gave evidence that when he saw the footage he immediately recognised the person shown on it as the accused men; and that PW-18 confirmed this by studying the footage several times. The defence case is that although PW-18 knows the accused men and should be able to recognise the accused men, PW-18 is mistaken in his identification of the accused men as the persons shown on the footage.

[83]. I may consider PW-18's evidence in two ways:

- (1) First, it is evidence of PW-18's own identification of the accused men from the footage/photographs.
- (2) Secondly, I may also use PW-18's evidence to help me compare what I have seen of the accused men in court with the footage of the incident.

[84]. When considering PW-18's evidence I must be cautious for the following reasons:

- (1) Experience has shown that when one person identifies another, it is possible for the person to be mistaken, no matter how honest and convinced they are.
- (2) A person may be mistaken even when he/she could be expected to recognise someone because of previous knowledge of him/her. It has been

known for a person to be sure that he/she has seen someone, even someone he/she knows well, only to realise that he/she could not in fact have seen the person and that he was wrong.

- (3) Also, when I am making my own comparison, I must bear in mind that the fact that several people identify a person does not mean that the identification must be correct. A number of people may all be mistaken.
- (4) The quality of the footage may affect PW-18's – and my – ability to make a comparison. I should take account of these points: e.g., relative position of camera(s) and person photographed (in particular the person's face), distance, focus, colour/monochrome, constant/intermittent, lighting, obstruction(s).
- (5) The footage from the time of the incident is only two-dimensional and is not the same as seeing it for myself. Having said that, a person at the scene only witnesses the incident once, usually without any warning that it is going to happen; but PW-18 and I have had the advantage of being able to study the footage several times.
- (6) If I decide that the quality of the footage is not good enough for a fair comparison to be made, I must ignore PW-18's evidence and not embark on any comparison of my own.
- (7) However, if I am satisfied that the quality of the footage is good enough for a fair comparison to be made, then I must then decide whether, taking account of PW-18's evidence and my own observations, the accused men are the persons shown.

[85]. If, having considered all the evidence, I am sure that the persons on the footage are the defendants. I must then decide whether the defendants are guilty of the offence with which they are charged. If I am not sure that the persons on the footage are the defendants, I must find the defendants not guilty.

[86]. Now, in relation to discrepancy, and I will say that in most cases, the differences in the evidence of witnesses are to be expected. The occurrence of disparity in testimony recognizes that in observation, recollection, and expression the ability of individual varies. What do I mean by that, that their ability varies. I have seen and heard the witnesses and it is for me to say whether these discrepancies are profound and inexplicable or whether the reasons which have been given, if any, for these discrepancies are satisfactory and I bear in mind, that I am entitled to accept the evidence of one witness on a particular point and reject what another witness say [sic] on the same point, if I find one witness to be more reliable on that point.

[87]. I must consider what we call, term as inconsistencies and or discrepancies in the evidence of the witnesses. And I will now direct myself as to what these terms mean. I will look at the issue of inconsistency first. In most trials it is possible to find inconsistencies in the evidence of witnesses especially when the facts about which they speak are not of recent occurrences. So, I am going to bear in mind when I assess the witnesses that the incident took place in November of 2010, and the witnesses are giving evidence before me in July of 2023. So, I understand the span of time that would have past, so I bear that in mind.

[88]. Now these inconsistencies may be slight or serious, material or immaterial. If I find that these inconsistencies are slight or immaterial, I may think they don't really affect the credit of the witness, or the witnesses concerned. On the other hand, if I think that these

inconsistencies are serious or material, I may say that because of them it would not be safe to believe the witness or witnesses on that point or at all. It is a matter for me to say in examining the evidence whether there are any such inconsistencies, and if so, whether they are slight or serious, and bear in mind how I direct myself. And in examining these inconsistencies I should consider the witnesses [sic] level of intelligence and his or her ability to put accurately into words what he or he has seen, the witnesses [sic] powers of observation and any defects that the witness might have.

[89]. The previous statement does not constitute evidence on which I can act unless the witness has admitted that what was said on the previous occasion is the truth. However, if what was said previously conflicts with the witness' sworn evidence before me, I am entitled to take that inconsistency into account, having regard to any explanation the witness may offer for the inconsistency for the purpose of deciding whether the evidence of the witness ought to be regarded unreliable, either generally or on the particular point;

[90]. PW-1 under cross-examination by counsel, Mr. Arthur Saldivar:

Suggestion: At all times when you said you saw the persons running up from Castle Street, the fence was always between you and them.

Answer: I disagree.

Suggestion: The only reason you stooped down behind the fence, is because the fence would have obstructed your view.

Answer: I disagree.

Suggestion: That's a fabrication that you used to see "Blacka" on a daily basis.

Answer: I disagree.

Question: How many statements did you give in this matter?

Answer: I gave one official statement.

Question: In the statements that you gave, did you sign them?

Answer: I signed my statement.

Question: Did you give a statement on the 19th of November 2020?

Answer: Yes Sir.

Question: If you saw that document that you did on the 19th of November 2020, would you be able to recognize it?

Answer: Yes, by my signature.

Question: Witness show a particular document and is that your signature on the document?

Answer: Yes Sir.

Witness identifies the document as the statement that he gave on the 19th of November 2020.

Question: Do you see the words “ I really don’t see him on a daily basis, but just a few times for the week on New Road and Victoria Street”.

Answer: Yes mi lord.

Suggestion: That it is a fabrication that you drank beers and smoke weed with “Blacka”.

Answer: I disagree.

Question: Could you point to us in the statement where you and this person called “Blacka” socialized.

Answer: I don’t see where I told the police that in the statement.

Question: At any time on the 18th of November, did you own a chrome pistol?

Answer: No Sir.

Question: The person you say is “Belly” that when he lifted his shirt that all you saw was a hand?

Answer: I disagree.

Suggestion: That when you gave evidence that when “Belly” lifted his shirt and showed a pistol firearm, that that was a fabrication, recently made up.

Answer: I disagree with that.

Question: You would have indicated to the police about what “Belly” did?

Answer: Yes, I indicated that to the police, but they were interested in the shooting.

Witness: I told the police that I saw the handle of what looked like a firearm in my statement.

Suggestion: That the person you called “Belly” did not remove the item from his pants waist.

Answer: He never removed it.

Suggestion: At no time on the 18th of November in your yard did you see a firearm pistol in the person called “Belly” hands.

Answer: No Sir.

Question: It is the first time that you are making a claim about “Blacka” with the chrome pistol in his hand?

Answer: I disagree with that.

Suggestion: The person that you pointed out to this Court does not go by the name “Blacka” or “Soljie”.

Answer: I disagree.

Suggestion: The person you pointed out has never socialized with you, nor associated with you.

Answer: I disagree.”

[91]. If I find that it shows that he is making up the case, the police making up the case, because one say [sic] right and one say [sic] left, or it is a matter of human frailty honest mistake. So, that is how I judge the situation.

[92]. In the high court, Madondo J examined the common law rule pertaining to the admissibility of prior inconsistent statements: such statements are admissible to discredit the witness, but not as evidence of the facts contained in the statements. After an analysis of the position in a number of common law jurisdictions, the high court adopted the ruling of

the Canadian Supreme Court in **R v B (K.G.)**.⁴ Following **R v B (KG)**, a prior inconsistent statement was admissible as proof of its contents if five conditions are met:

“(1) the evidence contained in the prior statement is such it would be admissible if given in a court; (2) the statement has been made voluntarily by the witness and is not the result of any undue pressure, threats or inducements; (3) the statement was made in circumstances, which viewed objectively would bring home to the witness the importance of telling the truth; (4) that the statement is reliable in that it has been fully and accurately transcribed or recorded; and (5) the statement was made in circumstances that the witness would be liable to criminal prosecution for giving a deliberately false statement.”⁵

[93]. To these conditions, Madondo J added a sixth condition: the accused must be afforded the opportunity to cross-examine the person who made the statement. This new rule was required in recognition of what Lamer CJ in **R v B (K.G.)** characterised as ‘the changed means and methods of proof in modern society’.⁶

[94]. In **Rathumbu v S**,⁷ the Court also had occasion to consider the sworn statement of the appellant’s sister that incriminated the appellant. Ms. Rathumbu also recanted the contents of her statement when called to give evidence. She was declared a hostile witness and cross-examined on her sworn statement. The trial court relied upon the contents of the sworn statement and convicted the appellant. On appeal, this Court did not address the common

⁴ R v B (K.G.) [1993] 1 S.C.R 740.

⁵ Ibid at 746.

⁶ Ibid at 741.

⁷ Rathumbu v S [2012] ZASCA 51; 2012 (2) SACR 219 (SCA).

law rule as to the limited purpose for which a prior inconsistent statement could be used at trial.

[95]. As was rightly stated by **Banda, Ag J** (as he then was) in **Magombo and Phiri vs The Republic, 10 MLR 1**, the correct procedure to be followed on an application to treat a prosecution witness as hostile is that the prosecution must lay the proper foundation in support of the application. Where the prosecutor has in his possession a statement made by the prosecution witness on an earlier occasion which is in direct contradiction to the witness's evidence in court, he must show the statement to the court and ask leave to have the witness treated as hostile. The witness must be asked if he had made the prior statement and his attention must be drawn to the occasion when the statement was made, proving circumstances so as to sufficiently designate the occasion the statement was made and giving the witness an opportunity to see the statement and identify it. Once this foundation has been laid, the court may, in its discretion, grant leave and the cross-examining of the witness, with a view to discrediting him, can proceed.

[96]. If the person who made the statement is called to testify but denies making the statement, a different question arises: does the evidence to be admitted exist at all, and if so, is it attributable to the witness? That is a prior question that is settled not upon an application of the Evidence Act, which is predicated upon the evidence that is to be admitted, existing and being evidence attributable to a particular person. The court must first decide this question. In the face of a denial by the witness that they made the statement, other evidence will usually be required to settle the matter. If the court determines that a particular person made the extra-curial statement, it can then decide whether its probative value depends upon the credibility of the person giving evidence. In the present case, once the

trial court was satisfied that the two statements were made by Jayden Alexander Herrera, then their probative value depended upon his credibility as a witness called to give evidence at trial.

[97]. Where the witness confirms making the extra-curial statement, but denies its truthfulness, the witness is available to be cross-examined so as to test that denial. Here the probative value of the statement does depend upon the witness called to give evidence. The court may then attribute to the statement the evidential value it warrants after the witness who made the statement has been tested under cross-examination. So too, where the witness confirms making the extra-curial statement and its correctness, there seems little reason to exclude the statement if the evidence can then be tested under cross-examination.

[98]. On this analysis, where a witness denies making a prior extra-curial statement or has no recollection of doing so, there will have to be evidence before the trial court permitting it to rule that such a statement was made by the witness who has been called to testify. If it is not clear that the extra-curial statement was made at all, then it will not be possible to determine upon whose credibility the probative value of the evidence depends. The very existence of the evidence is not established, and this ends the question of its admissibility. If it is clear that an extra-curial statement was made, but it is not shown that it was made by the witness called to testify at trial, then the statement is clearly hearsay because its probative value depends either upon the credibility of a person not called as a witness or it cannot be ascertained upon whose credibility the statement depends. Once, then, the extra-curial statement is hearsay, its admission depends upon an application of s 3(1)(c).

[99]. In my view, the correct interpretation of the Evidence Act is that once a court has determined that an extra-curial statement was made by a witness called to testify, the extra-curial statement is not hearsay, and it may be admitted without determining whether it is in the interests of justice to do so by recourse to s 3(1)(c). Admitting the extra-curial evidence does not render the right to cross-examine nugatory. On the contrary, cross-examination of the witness must be given full rein to permit the trial court to determine whether the extra-curial statement has any value at all and, if so, what weight should be attached to it.

Evidence of Jayden Alexander Herrera:

[100]. “On Wednesday, November 18th, 2020, sometime after 9:00 pm, I left from my home on George Street alone and walked to Gion Bernards' house. I was wearing a red shirt and black $\frac{3}{4}$ Jersey pants. I crossed the Belchina Bridge, made a right turn into Cleghorn Street, and then a left to turn into New Road in order to reach Gion Brenards' house. Gion Bernard also known as “Gizmo” is family to my father Brian Herrera and I would normally go and visit his residence maybe two or three times for the week. I went there that day to hang out with a female friend, Kishany Neal, who is 16 or 17 years old. Gion Bernard's house is white in color board, upstairs and downstairs house. When I arrived there I saw Micheal Herrera and Trevor Gill were sitting in the downstairs house as the windows were open, which faced New Road. When I went upstairs, I knocked on Gion Bernard's room door and said “Giz” and I heard Gion Bernards's voice asked, “Everything blessed Jay?” I replied, “Yah I just di halla.” whenever I go to Gion Bernards' house I would knock at his room door and

greet him. I must mention that Gion Bernard, "Gizmo" is crippled from the waist down. When I went inside the house I saw in the hall Daevon Marin, sitting in the long sofa with his girlfriend Felicia Jones and Kishany Neal in a small sofa next to them. Deavon Marin is "Gizmo's" 15-year-old son. I sat in the next sofa and started to talk with Kishany Neal. At about 9:45 pm Deavon Marin and I then took Felicia Jones and Kishany Neal home. I know it was that time because I checked the time on my phone. When we left Gion Bernard was in his room and Micheal Herrera and Trevor Gill were the only ones left at the house. Felicia Jones lived on Victoria Street and Kishany Neal lived on Lovely Lane. about 10:00 pm Deavon Marin and I went back to Gion Bernards house. About 10:30 pm Gion Bernard left his house in his wheelchair by himself and said he was going to Berly Card's house. Deavon Marin and I then went back upstairs in the hall and smoked some weed. I don't recall the exact time but a tall slim-built, clear complexion young man I recognize to be Rasheed Parham also known as "Roach" came upstairs and sat in the hall and also started to smoke his weed. About 11:05 p.m., I went in the downstairs house. I know it was that time because I checked my phone to see the time. When I got down there I saw a young man I know only as "Boony Card", Christopher Sosa, Jeffery Contreras and Eric Martinez. They were all in the yard. I passed them and went into the house downstairs. A few minutes after Rasheed Parham came downstairs and was in the yard with them. They were talking but I did not hear what they were saying. I came out of the house and was standing in the yard when Jeffery Contreras asked me, "Hall up, lets go with we." I then went with Jeffery Contreras who was riding a bike and Eric Martinez who was walking bare feet. Jeffery Contreras, who I also know as "Jerry" is thick in body and red skin. His hair is divided in four with four thick drop plat hair. Jeffery was wearing a grey shirt and

black pants and a red hat. Eric Martinez who I also know as "Solji" is slim built, dark complexion, was wearing a dark blue sleeveless jersey shirt with a red $\frac{3}{4}$ pants. I did not know what they were going to do or where they were going. "Jerry" took us to the corner of Pitts Alley and Castle Street where i saw him lift up his grey shirt and pulled out from the front part of his pants waist a full chrome revolver and said to us, "The target is Rasta Man." "Jerry" then handed over the gun to me and I quickly put it in my pants waist. I must say that the area was properly lit as there was a lamp post light about 10 feet away from me. I was able to see the entire area clearly. I was afraid and I did not want to shoot anyone. Fearing for my own life I pretended to look around and I did not see any rasta man, I only saw one, red skin man standing behind his gate on Lancaster Street and I turned around and told "Jerry", "There was no sight of a Rasta Man."Eric then said, "I no gwain home unless somebody dead" I then took the gun out of my waist and was handing it to "Jerry" when Eric then said, "Gimme the gun, Gimme the gun." "Jerry" then said to me "Give Solji the gun asshole." I quickly handed over the gun to Eric who was very eager to take it from me. I then turned around with my back towards Eric and "Jerry" where I took about two steps on Pitts Alley towards, New Road direction then I heard two loud bangs first, which sounded like gunshots. Then I heard about three more. I then ran down Pitts Alley, crossed New Road into Cleghorn Street then I turned left into a yard and jumped two fence and ran onto Victoria Street. When I reached a yard where two male persons were in who I know as "X" and the other as "Evil", I looked down Victoria Street coming from up stop New Road, I saw Eric running and "Jerry" riding a bicycle. I heard Eric say, "That da fi Peto". Then Eric asked a brown complexion, red dreadlocks hair young

man who I know as “Tzul”, “Boy, who bally seh I shot?”. The next day I found out it was an innocent, hardworking man name, “Sean Menzies”

[101]. When the risk is of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him or her, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation, malice aforethought will be readily inferred. The nature of the assault, its duration and the type of weapons used betray the intent that death should result or foresight that death would probably result. Any of these states of mind constitutes malice aforethought. Although there is no direct evidence of intention, it can be readily inferred based only on circumstantial evidence of the nature and location of the injuries and the weapon used to inflict them. The prosecution has consequently proved beyond reasonable doubt that Sean Menzies' death was caused with malice aforethought.

[102]. The context of the prosecution evidence was such that the witnesses articulated a dichotomy pointing at the accused persons founded on the burden of proof of beyond reasonable doubt. As is evident from the above evaluation in the face of the proven facts, in my view all elements of the offence underlying the provisions of **section 117 of the Criminal Code** have been discharged by the prosecution to justify a conviction for the offence of murder.

[103]. I am satisfied that the prosecution has proved beyond reasonable doubt that it is the accused men who killed the deceased.

[104]. The accused men are accordingly found guilty on the charge of murder and are convicted of the charge on the count.

[105]. **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 **ERIC MIRANDA** of the Offence of Murder that you are charged with.

(2) Consequently, I find that the prosecution has proved all the essential ingredients of the offence against him beyond reasonable doubt. I accordingly **CONVICT** you **JEFFREY CONTRERAS** of the Offence of Murder that you are charged with.

Dated the 2nd day of November 2023

RICARDO O. SANDCROFT
Justice of the High Court