

**IN THE SUPREME COURT OF BELIZE, A.D 2022  
(CRIMINAL JURISDICTION)**

**Central Division**

**Indictment C57/2020**

**THE QUEEN**

**v.**

**JESSIE MEJIA**

**&**

**DARWIN PRADO**

**-**

**MURDER & ATTEMPT TO MURDER**

**BEFORE** the Hon. Mr. Justice Ricardo Sandcroft

Appearances: Mrs. Portia Staine-Ferguson, Crown Counsel for the Crown

Mr. Bryan Neal, Counsel for the Both Accused Persons

**Monday, 23<sup>rd</sup> May 2022**

Indictment read to Accused Persons

Each Defendant plead Not guilty

[1]. On the evening of January 23, 2018, at approximately 6:50 p.m., Athlee Lozano arrived home, but was later asked to spar with several of his friends and his younger brother, Camryn Lozano. At the time, they were hanging out in front of Ms. Anna Chi's house across the street when Athlee's older brother, Casey Lozano, the deceased, joined them.

[2]. It was sometime thereafter, as they were hanging out and socializing, when a loud noise was heard coming from the right of the cane patch next to Ms. Anna Chi's house, followed by sparks and a loud bang. Afterward, two men emerged from the cane patch, one wearing a grey hoodie and red shirt and the other in a black shirt and black rag tied to his head. They were believed to be Jessie Mejia and Darwin Prado, the accused, both of whom are well known to Athlee Lozano, for upwards of ten years.

[3]. When the men emerged, Athlee Lozano and his friends began running towards Compassion Lane. However, they paused at an intersection leading to the rear of his residence. The two accused stood in the middle of Compassion Road, next to two lampposts lights, approximately forty feet away from Athlee Lozano when he looked back for about four seconds. It was reported that they were pointing to the yard of his neighbor, Mario, where his two brothers had fled.

[4]. It is reported that Mr. Lozano and company started running towards Compassion Lane as soon as the men emerged but stopped at an intersection leading to the rear of his residence. After about four seconds of looking back, Mr. Lozano says that he observed the two accused standing in the middle of Compassion Road, near two lamppost lights which were approximately 40 feet away from him.

Apparently, they were pointing toward his neighbour, Mario's yard, where his two brothers had fled.

[5]. Upon seeing this, Athlee Lozano ran to his home. However, upon arriving, he only saw his little brother, Camryn Lozano. He decided then to call his elder brother on the phone to inquire about his whereabouts, but no one answered. His brother was later found lying on his back near his house, gasping for air and bleeding from what appeared to be a gunshot wound and bleeding.

[6]. Friends then assisted him in carrying his brother to the waiting police truck on Mirage and Compassion Lane. It was alleged that the deceased had been shot by the accused.

### **The Prosecution's Case**

[7]. The prosecution's case is that on January 23, 2018, at 6:50 pm, Athlee Lanzano went across the street to Ms. Anna Chi's house, where he was socializing with his friends and brothers.

[8]. Lozano subsequently heard a noise coming from the vicinity of Ms. Anna Chi's house, followed by sparks and a loud bang from a nearby cane patch. Two individuals emerged from the cane patch, one wearing a gray hoodie and a red shirt, and the other in a black shirt with a black cloth tied around their head.

[9]. Lozano and others stopped at an intersection leading to the back of their yard. Lanzo looked back for about four seconds and saw Jessie Mejia and Darwin Prado standing on Compassion Road. They were pointing toward the neighbour

Mario's yard where Lanzo's two brothers had run. The presence of two lamppost lights in Mario's yard allowed Lanzo to see them clearly.

[10]. Lozano estimated the distance between them and Jessie Mejia to be approximately 40 feet. The lighting condition was clear due to the presence of two lamppost lights, with a distance of about three to four feet between the lights and Jessie Mejia.

[11]. Lozano noted that nothing obstructed their view of Jessie Mejia. Jessie Mejia was described as wearing a black shirt with a red cloth tied around his head. The red cloth was tied in a way that covered his hair, placed in the middle of his forehead. Lozano mentioned having known Jessie Mejia for about ten years, and they were family friends.

[12]. Lozano and Jessie Mejia had been friends since childhood, and they saw each other almost every day. A few days before January 23, 2018, Lozano had seen Jessie Mejia while walking on Marage Road with his brother Casey Lozano, and Mejia had approached them and commented on a situation.

[13]. Lozano when questioned about the distance between himself and the accused Darwin Prado, estimated the distance between him and Darwin Prado to be about 40 feet, with clear lighting conditions due to two lamppost lights above him. He indicated that the distance between the lampposts and Darwin Prado was about four feet and nothing obstructed his view of Darwin Prado. Darwin Prado was described as wearing a gray hoodie and a red shirt. The gray hoodie partially covered his head, and Lozano could see his face more clearly when it moved back slightly. Lozano had known Darwin Prado for about 18 years as they attended the same primary school and saw him daily. The last time Lozano had seen Darwin

Prado was the day before the incident, at the corner of Marage Road and Park Lane, in the evening around 5:30.

[14]. Lozano, when asked to explained what he meant when he mentioned earlier, “*I look back for about four seconds....*”, testified that he meant that Jessie Mejia and Darwin Prado were pointing an object toward Mario's yard. Lozano could see sparks and hear loud bangs.

[15]. Lozano stopped at the location because Jessie Mejia and Darwin Prado were approaching in the direction of their yard. The loud bangs were fired in Lozano direction on the street.

[16]. During cross-examination, Mr. Lozano was tackled by the Defence about the accuracy of his recollection of events on January 23, 2018. The questions mainly focus on the details of his statement to the police, the details of what he saw during the incident, and his angle of view when he saw the individuals involved. Defence Counsel at the end of his cross-examination attempted to create doubt regarding Mr. Lozano’s account of the events.

[17]. On re-examination, Mr. Lozano was asked to explain the angle from which he witnessed the events on Compassion Lane. He describes his position and how he could see the faces and everything clearly due to the illumination from a lamppost. After this explanation, the prosecution and the defence both conclude their cases, no further witnesses were called, and both sides rest their cases.

## **Discussion and Findings:**

1. 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.
  
2. In evaluating the evidence, I may consider any fact that is proven and any inference which may be drawn from such fact. To draw an inference means to infer, find, conclude that a fact exists or does not exist based upon proof of some other fact or facts.
  
3. For example, I go to bed one night when it is not raining; when I wake up in the morning, I look out your window; I do not see rain, but I see that the street and sidewalk are wet, and that people are wearing raincoats and carrying umbrellas. Under those circumstances, it may be reasonable to infer, conclude, that it had rained. In other words, the fact of it having rained while I was asleep is an inference that might be drawn from the proven facts of the presence of the water on the street and sidewalk, and people in raincoats and carrying umbrellas.

4. An inference must only be drawn from a proven fact or facts and then only if the inference flows naturally, reasonably, and logically from the proven fact or facts, not if it is speculative. Therefore, in deciding whether to draw an inference, I must look at and consider all the facts in the light of reason, common sense, and experience.
5. 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. This is actually a right that is entrenched in our Constitution. It still remains the duty of the prosecution to discharge its burden of proof beyond reasonable doubt. It is for the prosecution to prove the guilt of the accused persons and this burden, except in a few situations never leaves the prosecution throughout trial. The standard of proof required for the prosecution to discharge this burden is what is commonly referred to as 'Proof Beyond Reasonable Doubt. The court will therefore acquit an accused if satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to his guilt in respect of the offence charged.
6. Denning J made a notorious statement as far as the concept of 'beyond a reasonable doubt' is concerned in **Miller v Minister of Pensions**,<sup>1</sup> also

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<sup>1</sup> [1947] 2 ALL ER 372:373H.

reflecting that the burden of proof required in a criminal case is a high one, and, significantly, defining these concepts by utilising the concept of ‘probabilities’:

**‘That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course if it is possible but not in the least probable’ the case is proved beyond a reasonable doubt, but nothing short of that will suffice’.**

This definition has been referred to constantly by the English courts as well as Belizean courts until this day.

7. The law presumes that persons charged with a crime are innocent until they are proven, by competent evidence, to be guilty. To the benefit of this presumption the defendants are all entitled, and this presumption stands as their sufficient protection, unless it has been removed by evidence proving their guilt beyond a reasonable doubt.
8. It is not meant by this that the proof should establish their guilt to an absolute certainty, but merely that I should not convict unless, from all the evidence, I



believe the defendants are guilty beyond a reasonable doubt. Speculative notions, or possibilities resting upon mere conjecture, not arising or deducible from the proof, or the want of it, should not be confounded with a reasonable doubt. A doubt suggested by the ingenuity of counsel, or by your own ingenuity, not legitimately warranted by the evidence, or the want of it, or one born of a merciful inclination to permit the defendants to escape the penalty of the law, or one prompted by sympathy for them or those connected with them, is not what is meant by a reasonable doubt. A 'reasonable doubt,' as that term is employed in the administration of the criminal law, is an honest, substantial misgiving, generated by the proof, or the want of it.'

- 9.** 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.
- 10.** In determining whether the Prosecution has satisfied their burden of proving both defendants' guilt beyond a reasonable doubt, I may consider all the evidence presented, whether by the Prosecution or by the defendant. In doing so, however, remember that, even though the defendant did not introduce evidence, the burden of proof remains on the Prosecution.

- 11.** The fact that the defendants did not testify is not a factor from which any inference unfavorable to the defendants may be drawn.
- 12.** The defendants are not required to prove that they are not guilty. In fact, the defendants are not required to prove or disprove anything. To the contrary, the Prosecution has the burden of proving that 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 crimes. 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.
- 13.** 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 Prosecution 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.

- 14.** A reasonable doubt is an honest doubt of both defendants' 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.
- 15.** Proof of guilt beyond a reasonable doubt is proof that leaves me so firmly convinced of both of the defendants' guilt that I have no reasonable doubt of the existence of any element of the crime or of both the defendants' identity as the persons who committed the crimes.
- 16.** In determining whether or not the Prosecution has proven both the defendants' guilt beyond a reasonable doubt, I should be guided solely by a full and fair evaluation of the evidence. After carefully evaluating the evidence, I must decide whether or not that evidence convinces me beyond a reasonable doubt of both the defendants' guilt.
- 17.** 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.

- 18.** If I am not convinced beyond a reasonable doubt that the defendant is guilty of a charged crime, I must find the defendants not guilty of that crime. If I am convinced beyond a reasonable doubt that the defendants are guilty of the charged crimes of murder and attempted murder, I must find the defendants guilty of those crimes.
- 19.** As a judge of the facts, I alone determine the truthfulness and accuracy of the testimony of each witness.
- 20.** I must decide whether a witness told the truth and was accurate, or instead, testified falsely or was mistaken. I must also decide what importance to give to the testimony I accept as truthful and accurate. It is the quality of the testimony that is controlling, not the number of witnesses who testify.
- 21.** If I find that any witness has intentionally testified falsely as to any material fact, I may disregard that witness's entire testimony. Or, I may disregard so much of it as I find was untruthful, and accept so much of it as I find to have been truthful and accurate.
- 22.** There is no particular formula for evaluating the truthfulness and accuracy of another person's statements or testimony. I bring to this process all of my varied experiences. In life, I frequently decide the truthfulness and accuracy of statements made to me by other people. The same factors used to make those decisions, should be used in this case when evaluating the testimony.

**23.** Some of the factors that you may wish to consider in evaluating the testimony of a witness are as follows:

- (a) Did the witness have an opportunity to see or hear the events about which he or she testified?
- (b) Did the witness have the ability to recall those events accurately?
- (c) Was the testimony of the witness plausible and likely to be true, or was it implausible and not likely to be true?
- (d) Was the testimony of the witness consistent or inconsistent with other testimony or evidence in the case?
- (e) Did the manner in which the witness testified reflect upon the truthfulness of that witness's testimony?
- (f) To what extent, if any, did the witness's background, training, education, or experience affect the believability of that witness's testimony?
- (g) Did the witness have a conscious bias, hostility or some other attitude that affected the truthfulness of the witness's testimony?
- (h) Did the witness show an "unconscious bias," that is, a bias that the witness may have even unknowingly acquired from stereotypes and attitudes about people or groups of people, and if so, did that

unconscious bias impact that witness's ability to be truthful and accurate.

- 24.** I may consider whether a witness had, or did not have, a motive to lie. If a witness had a motive to lie, I may consider whether and to what extent, if any, that motive affected the truthfulness of that witness's testimony.
- 25.** If a witness did not have a motive to lie, I may consider that as well in evaluating the witness's truthfulness.
- 26.** I may consider whether a witness hopes for or expects to receive a benefit for testifying. If so, I may consider whether and to what extent it affected the truthfulness of the witness's testimony.
- 27.** I may consider whether a witness has any interest in the outcome of the case, or instead, whether the witness has no such interest. I am not required to reject the testimony of an interested witness, or to accept the testimony of a witness who has no interest in the outcome of the case.
- 28.** I may, however, consider whether an interest in the outcome, or the lack of such interest, affected the truthfulness of the witness's testimony.
- 29.** I may consider whether a witness made statements at this trial that are inconsistent with each other. I may also consider whether a witness made previous statements that are inconsistent with his or her testimony at trial.

- 30.** I may consider whether a witness testified to a fact here at trial that the witness omitted to state, at a prior time, when it would have been reasonable and logical for the witness to have stated the fact. In determining whether it would have been reasonable and logical for the witness to have stated the omitted fact, I may consider whether the witness' attention was called to the matter and whether the witness was specifically asked about it.
- 31.** If a witness has made such inconsistent statements [or omissions], I may consider whether and to what extent they affect the truthfulness or accuracy of that witness's testimony here at this trial.
- 32.** The contents of a prior inconsistent statement are not proof of what happened. I may use evidence of a prior inconsistent statement only to evaluate the truthfulness or accuracy of the witness's testimony here at trial.
- 33.** I may consider whether a witness's testimony is consistent with the testimony of other witnesses or with other evidence in the case.
- 34.** If there were inconsistencies by or among witnesses, I may consider whether they were significant inconsistencies related to important facts, or instead were the kind of minor inconsistencies that one might expect from multiple witnesses to the same event?
- 35.** In this case I have heard the testimony of police officers. The testimony of a witness should not be believed solely and simply because the witness is a

police officer. At the same time, a witness's testimony should not be disbelieved solely and simply because the witness is a police officer. You must evaluate a police officer's testimony in the same way you would evaluate the testimony of any other witness.

**36.** I should evaluate the testimony of an expert witness just as I would the testimony of any other witness. I may accept or reject such testimony, in whole or in part, just as I may with respect to the testimony of any other witness.

**37.** In deciding whether or not to accept such testimony, I should consider the following:

- the qualifications and believability of the witness;
- the facts and other circumstances upon which the witness's opinion was based;
- [the accuracy or inaccuracy of any assumed or hypothetical fact upon which the opinion was based;] the reasons given for the witness's opinion; and
- whether the witness's opinion is consistent or inconsistent with other evidence in the case.

**38.** An issue in the case is whether the defendants have been correctly identified as the persons who committed the charged crimes.



- 39.** The Prosecution has the burden of proving beyond a reasonable doubt, not only that the charged crimes were committed, but that the defendants are the persons who committed those crimes.
- 40.** Thus, even if I am convinced beyond a reasonable doubt that the charged crimes were committed by someone, I cannot convict the defendants of those crimes unless I am also convinced beyond a reasonable doubt that they are the persons who committed those crimes.
- 41.** Our system of justice is deeply concerned that no person who is innocent of a crime be convicted of it. In order to avoid that, I must consider identification testimony with great care, especially when the only evidence identifying the defendants as the perpetrators comes from one witness. Because the law is not so much concerned with the number of witnesses called as with the quality of the testimony given, the law does permit a guilty verdict on the testimony of one witness identifying the defendant as the person who committed the charged crime. A guilty verdict is permitted, however, only if the evidence is of sufficient quality to convince me beyond a reasonable doubt that all the elements of the charged crimes have been proven and that the identification of the defendants is both truthful and accurate.
- 42.** With respect to whether the identification is truthful, that is, not deliberately false, I must evaluate the believability of the witness who made an

identification. In doing so, I may consider the various factors for evaluating the believability of a witness's testimony that I listed a few moments ago.

**43.** With respect to whether the identification is accurate, that is, not an honest mistake, I must evaluate the witness's intelligence, and capacity for observation, reasoning, and memory, and determine whether I am satisfied that the witness is a reliable witness who had the ability to observe and remember the person in question.

**44.** Further, the accuracy of a witness's testimony identifying a person also depends on the opportunity the witness had to observe and remember that person. Thus, in evaluating the accuracy of identification testimony, I should also consider such factors as:

(a) What were the lighting conditions under which the witness made his/her observation?

(b) What was the distance between the witness and the perpetrator?

(c) Did the witness have an unobstructed view of the perpetrator?

(d) Did the witness have an opportunity to see and remember the facial features, body size, hair, skin colour, and clothing of the perpetrator?

- (e) For what period of time did the witness actually observe the perpetrators? During that time, in what direction were the witness and the perpetrators facing, and where was the witness's attention directed?
- (f) Did the witness have a particular reason to look at and remember the perpetrators?
- (g) Did the perpetrator have distinctive features that a witness would be likely to notice and remember?
- (h) Did the witness have an opportunity to give a description of the perpetrators? If so, to what extent did it match or not match the defendants, as you find the defendants' appearance to have been on the day in question?
- (i) What was the mental, physical, and emotional state of the witness before, during, and after the observation? To what extent, if any, did that condition affect the witness's ability to observe and accurately remember the perpetrators?

**45.** Did the witness ever see the person identified prior to the day in question? If so, how many times did the witness see that person and under what circumstances? To what extent, if any, did those prior observations affect the

witness's ability to accurately recognize and identify such persons as the perpetrators?

- 46.** I should consider whether there is a difference in race between the defendant and the witness who identified the defendant, and if so, I should consider that some people have greater difficulty in accurately identifying members of a different race than in accurately identifying members of their own race, and therefore, I should consider whether the difference in race affected the accuracy of the witness's identification.
- 47.** If, after careful consideration of the evidence, I am not satisfied that the identity of the defendants as the persons who committed the charged crimes has been proven beyond a reasonable doubt, then I must find the defendants not guilty of that charged crime.
- 48.** 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 is right. Such a witness may seem convincing but may be wrong.
- 49.** In a “recognition” case: This is true even though a witness knows a person well and says that he has recognised that person. The witness could still be mistaken. 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 Darwin Prado and Jessie Mejia were identified.

**50.** So I must ask myself:

- For how long could Athlee Lozano see the person he says were the defendants and, in particular, for how long could he see the persons' faces?
- How clear was Mr. Lozano's view of the persons, considering the distance between them, the light, any objects or people getting in the way and any distractions.
- Had Mr. Lozano ever seen the Defendants before the incident? If so, how often and in what circumstances? If only once or occasionally, had Mr. Lozano any special reason for remembering the Defendants?
- How long was it between the time of the incident and the time when Mr. Lozano identified the Defendants to the police?
- Is there any significant difference between the description Mr. Lozano gave of the person and the Defendants' appearance?

**51.** I should also think about whether there is any evidence which, if I accept it, might support the identification. In particular I should consider;

**Q. If that camera did not have a flash, there would be no light in this photo?**

**A. Yes, there would be light.**

**Q. There would be little light without the camera light?**

**A. No, I disagree.**

**Q. You said in your evidence that the area of the alleged shooting was poorly lit?**

**A. Yes.**

**Q. Because it was poorly lit you had to use your flash?**

**A. Yes sir.**

**Q. When you say poorly lit, it is because there are few lamp posts light in the area?**

**A. Yes sir.**

**52.** I will also have to look to see if there are any weaknesses in any of the identification evidence, or if there is any evidence which, if you accept it, might undermine the identification evidence. In particular, I should consider;

**Q. Now, when you first heard the loud bangs coming from the cane patch, you knew that it was gunshots?**

**A. Because of the sparks and the bangs, yes, we suspected it was gunshots.**

**Q. And you were frightened naturally when you heard the gunshots?**

**A. Not really frightened. I have a training degree from Brigade Security to stay in composure under any circumstances.**

**Q. So you weren't frighten but you run, you broke weh, that's what you want us to believe?**

**A. No one will stand there and get shot.**

**Q. So when this person first embark from the cane patch you didn't see their faces?**

**A. No sir.**

**Q. And when you did see them, it was for four seconds?**

**A. Yes sir.**

**Q. Today you said that they was a light from the lamp post lights.**

**A. Yes sir.**

**Q. But didn't you say in your statement it was 12 feet away?**

**THE COURT: In which statement did he say 12 feet away?**

**Q. In the statement of March 3, 2019, didn't you say it was 12 feet away?**

**A. I don't recall that statement sir.**

**53.** In this case there has been identification evidence. Identification evidence is where a witness has identified a specific person by e.g. naming him / pointing him out (whether in the street or at an identification procedure).

**54.** 'It is generally recognised that evidence of identification based upon a witness's recollections of a person's appearance is dangerously unreliable

unless approached with due caution. The Appellate Division in *S v Mthetwa*<sup>2</sup> laid down:

**“Because of the fallibility of human observation, evidence of identification is approached by the Courts with some caution. It is not enough for the identifying witness to be honest. The reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; his opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused’s face, voice, build, gait and dress; the result of identification parades, if any; and of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors, or such of them as are applicable in a particular case, are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities.”**  
**(At 768, per Holmes JA)**

The average witness’s ability to recognise faces is poor, although few people are prepared to admit that they have made a mistake. .... And it follows that “a witness’s honesty and own conviction as to the correctness of his or her identification can never be allowed to take the place of an independent enquiry into the reliability of the identification itself.<sup>3</sup>” (Emphasis provided)

**55.** The judicial officer must therefore scrutinise evidence of identification closely in order to be satisfied that the witness in fact has a recollection of the person concerned which goes beyond a mere impression. In doing so, the

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<sup>2</sup> 1972 (3) SA 766 (A).

<sup>3</sup> *S v Miggel* 2007 (1) SA 675 (C) at 678e citing *S v Mlati* 1984 (4) SA 629 (A) at 632H-I.



objective circumstances attending the observation of the person and the state of mind of the observer are critical.

**56.** Judicial experience has shown that evidence of identity should, particularly in criminal cases, be treated with great care. Even an honest witness is capable of identifying the wrong person with confidence. Consequently, the witness should be thoroughly examined about the factors influencing his or her identification, such as the build, features, colouring and clothing of the person identified. An early identification before the trial (which is admissible as an exception to the rule prohibiting previous consistent statements) lends credibility to the evidence. Particular care should be taken if the only evidence connecting the accused with the crime is that of a single identifying witness; then the cautionary rule relating to single witnesses should also be taken into account.

**57.** I am 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? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.

**58.** Whether a warning is given and the terms of any warning given are matters of judicial discretion.<sup>4</sup> In **Stone**<sup>5</sup> the Court of Appeal reiterated the need to examine the particular circumstances of the case before reaching a judgment as to the terms in which the requirement for caution should be expressed.<sup>6</sup> A possible starting point, drawing on **Turnbull**<sup>7</sup> is to warn the jury of the special need for caution before acting on the disputed evidence, and to explain the reason why such caution is required. Where the jury is advised to look for supporting evidence, the judge should identify the evidence which is capable

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<sup>4</sup> Laing v The Queen [2013] UKPC 14 at para.8 citing Lord Taylor CJ in Makanjuola [1995] 1 WLR 1348 at p.1351.

<sup>5</sup> [2005] EWCA Crim 105.

<sup>6</sup> The content of the warning is a matter for the judge's discretion in the light of the evidence, the issues and the nature of the particular taint on the evidence of the impugned witness: Muncaster [1998] EWCA Crim 296; L [1999] Crim LR 489.

<sup>7</sup> [1977] QB 224.

of supporting that of the witness;<sup>8</sup> if there is none, the jury should be directed to that effect.

**59.** I remember that the witness Athlee Lozano testified that:

**“Then shortly after I heard a noise to the right of the cane patch by Ms. Anna Chi’s house, then sparks and a loud bang came from the direction of the cane patch. Then two individuals jumped out, one in a grey hoodie and a red shirt and the other in a black shirt and a black rag tied on his head. We then began running to Compassion Lane.**

**And:**

**We stopped at an intersection that leads to the back of my yard, which then I looked back for about four seconds and saw Jessie Mejia and Darwin Prado standing in the middle of the road, Compassion Road, pointing towards my neighbor Mario yard where my two brothers ran, where there were two lampposts lights so I saw them clearly there.**

**60.** Sometimes it will be sufficient simply to direct myself to approach the evidence of Athlee Lozano with caution. If so, I should also note that I may nevertheless rely on that evidence if, having taken into account the need for caution, I am sure that he is telling the truth.

**61.** Where there is no independent supportive evidence, it may be appropriate to remind my jury mind of that fact, and possibly to suggest that I may have

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<sup>8</sup> B (MT) [2000] Crim LR 181.

wished for such evidence. In that event I should also note that I may nevertheless rely on the evidence of Athlee Lozano if, having taken into account the need for caution and the absence of any independent supportive evidence, I am sure that he is telling the truth.

**62.** Where there is potentially independent supportive evidence, that evidence must be identified, adding that it is for me to decide whether I accept that evidence and if so whether I regard it as supportive. If I conclude that there is independent supportive evidence I may take this into account when assessing Athlee Lozano's evidence, but it does not mean that he is bound to be telling the truth. On the other hand, even if I conclude that there is no independent supportive evidence, I may still rely on the evidence of Athlee Lozano if, having taken into account the need for caution and the absence of any independent supportive evidence I am sure that he is telling the truth.

**63.** Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made. 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' case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger."

**64.** It is true that some discrepancies between the testimony of state witnesses and their witness statements and between different versions of witnesses were pointed out by Mr. Neal. It is not strange that witnesses, when testifying, differ from one another in certain areas. Several reasons may come to the fore to explain these discrepancies and it does not necessarily mean that they deliberately lied to the court. Contradictions per se do not lead to the rejection of a witness' evidence, as it may simply be indicative of an error. Nestadt JA in *S v Mkhole*<sup>9</sup> stated the following in this regard:

**'... it is stated that not every error made by a witness affects his credibility; in each case the trier of fact has to make an evaluation; taking into account such matters as the nature of the contradictions, their number and importance, and their bearing on other parts of the witness' evidence . . . no fault can be found with his conclusion that what inconsistencies and differences there were, were 'of a relatively minor nature and the sort of thing to be expected from honest but imperfect recollection, observation and reconstruction'. One could add that, if anything, the contradictions point away from the conspiracy relied on.'**

**65.** I remember that the witness Kareem Young testified that:

**Q. You cannot identify these men/shooter on January 23, 2018 because of the hoodie and face covering you never got to see the shooter's face?**

**A. No sir; none of them because I ran in a separate direction.**

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<sup>9</sup> 1990 (1) SACR 95 (A) at 98f - g.

66. There is a plethora of authorities dealing with the dangers of incorrect identification. The locus classicus is **S v Mthetwa** 1972 (3) SA 766 (A) at 768A, where Holmes JA warned that: “Because of the fallibility of human observation, evidence of identification is approached by courts with some caution. In **R v Dladla** 1962 (1) SA 307 (A) at 310C-E, Holmes JA, writing for the full court referred with approval to the remarks by James J – delivering the judgment of the trial court when he observed that: ‘one of the factors which in our view is of greatest importance in a case of identification, is the witness’ previous knowledge of the person sought to be identified. If the witness knows the person well or has seen him frequently before, the probability that his identification will be accurate is substantially increased ... In a case where the witness has known the person previously, questions of identification ..., of facial characteristics, and of clothing are in our view of much less importance than in cases where there was no previous acquaintance with the person sought to be identified. What is important is to test the degree of previous knowledge and the opportunity for a correct identification, having regard to the circumstances in which it was made”

67. **Osman v Attorney General Transvaal** 1998 (4) SA 1224 (CC); **S v Boesak** 2000 (3) SA 381 (SCA) at 396; **S v Chabalala** 2003 (1) SACR 143 (SCA) para 21. The high court held that, in view of the direct and credible

evidence against him, the appellant's failure to testify in his own defence resulted in the prima facie case against him becoming conclusive. It is correct that the absence of any rebuttal in these circumstances was damning. Although an accused person's right to silence is guaranteed in the Constitution, this does not absolve an accused of the need for an honest rebuttal, if the situation, and evidence, demand it.

**68.** Our law recognizes that two or more individuals can act jointly to commit a crime, and that in certain circumstances, each can be held criminally liable for the acts of the other. In that situation, those persons can be said to be "acting in concert" with each other.

**69.** Our law defines the circumstances under which one person may be criminally liable for the conduct of another. That definition is as follows: When one person engages in conduct which constitutes an offense, another is criminally liable for such conduct when, acting with the state of mind required for the commission of that offense, he or she solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct.

**70.** Under the aforementioned definition, mere presence at the scene of a crime, even with knowledge that the crime is taking place, (or mere association with a perpetrator of a crime,) does not by itself make a defendant criminally liable for that crime.

**71.** In order for the defendant to be held criminally liable for the conduct of another/others which constitutes an offense, I must find beyond a reasonable doubt: (i) That he/she solicited, requested, commanded, importuned, or intentionally aided that person [or persons] to engage in that conduct, and (ii) That he/she did so with the state of mind required for the commission of the offense.

**72.** If it is proven beyond a reasonable doubt that the defendant is criminally liable for the conduct of another, the extent or degree of the defendant's participation in the crime does not matter. A defendant proven beyond a reasonable doubt to be criminally liable for the conduct of another in the commission of a crime is as guilty of the crime as if the defendant, personally, had committed every act constituting the crime.

**73.** The Prosecution has the burden of proving beyond a reasonable doubt that the defendants acted with the state of mind required for the commission of the crimes, and either personally, or by acting in concert with another person, committed each of the remaining elements of the crimes.

**74.** When evidence is being substantiated, which substantiation is independent of the evidence being substantiated, it is 'corroborated'.<sup>10</sup> Corroboration is, however, to be regarded as nothing but an aid or measure in the process of

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<sup>10</sup> S v Bergh 1976 4 SA 857 (A):864G and S v Khumalo 1991 4 SA 310 (A):327I-328C.



evaluating evidence in aspects such as credibility, truthfulness and consistency, rather than an additional requisite in bridging the barrier of proof.<sup>11</sup>

75. Corroboration is described by **DPP v Kilbourne**,<sup>12</sup> as follows:

**‘The word ‘corroboration’ is not a technical term of art, but a dictionary word bearing its ordinary meaning ... Corroboration is therefore nothing other than evidence which ‘confirms’ or ‘supports’ or ‘strengthens’ other evidence ... It is, in short, evidence which renders other evidence more probable. If so, there is no essential difference between, on the one hand, corroboration and, on the other, ‘supporting evidence’ ...’**

76. In practice corroboration is ordinarily found in viva voce evidence, but it is not restricted thereto. All kinds of evidential material may serve as corroboration. Documentary and real evidence may thus also constitute corroboration.<sup>13</sup> In relying on such evidence the court will have to look at other aids to determine its reliability. Once there is corroboration for the evidence of a single witness, for instance, such a witness is not a single witness anymore.

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<sup>11</sup> S v Van As 1976 2 PH H205 (A).

<sup>12</sup> 1973 ALL ER 440:447H.

<sup>13</sup> S v Sikosana 1960 4 SA 723 (A).

77. Corroboration may also be found in admissions by the accused, albeit in conduct or words. Here the accused corroborates himself by means of admissions.<sup>14</sup> The version of an accused may also corroborate that of state witnesses, if it tends to confirm their versions.

78. Whenever corroboration is present it would be easier to conclude that the required standard of proof has been satisfied, although not formally required by law, as a court cannot base its findings on unreliable evidence. The court would thus, when evidence is suspect, evaluate such evidence carefully and seek whether it is corroborated by other evidence.

79. It was held in **S v Sauls**<sup>15</sup> that there is no rule-of-thumb test or formula to apply when it comes to the consideration of the credibility of a single witness. The trial court should weigh the evidence of the single witness and should consider its merits and demerits and, having done so, should decide whether it is satisfied that the truth has been told despite shortcomings, defects or contradictions in its evidence. In **S v Webber**<sup>16</sup> the court went one step further where it was found that the evidence of a single witness should not necessarily be rejected merely because the single witness happens to have an interest or bias towards the accused, the correct approach being to assess the intensity of

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<sup>14</sup> See *S v Mjoli* 1981 3 SA 1233 (A).

<sup>15</sup> 1981 3 SA 172 (A):180E.

<sup>16</sup> 1971 3 SA 754 (A):758H.

the bias and to determine the importance thereof in the light of the evidence as a whole.<sup>17</sup>

**80.** The demeanour of a witness impacts on his credibility. It includes aspects such as a witness' behaviour in the witness-box, the character and personality of the witness and the impression which they create.<sup>18</sup> Schmidt and Rademeyer<sup>19</sup> add that the aspect of whether a witness can be believed, which includes aspects such as, whether his/her evidence is consistent throughout, whether his/her evidence is corroborated by other witnesses and whether his/her evidence seems to be the truth, is to be viewed in the light of all the circumstances.

**81.** Le Roux<sup>20</sup> mentions the following important factors which may also play an important role in evaluating the demeanour of a witness:

- (1) Convincing, as opposed to unconvincing
- (2) Calm, as opposed to moody
- (3) Respectful, as opposed to arrogant
- (4) Direct, as opposed to evasive manner of answering questions
- (5) Logical nature of evidence, as opposed to illogical description of events

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<sup>17</sup> Schwikkard and van der Merwe 2005:519.

<sup>18</sup> Schwikkard and van der Merwe 2005:502.

<sup>19</sup> 2006:104.

<sup>20</sup> 1992:47.

- (6) Openness, as opposed to embarrassed
- (7) Trustworthy, as opposed to untrustworthiness
- (8) Honest, as opposed to dishonest
- (9) Assistances in furnishing information, as opposed to unwillingness to furnish information
- (10) Objective, as opposed to a prejudiced nature of evidence
- (11) Clear evidence, as opposed to unclear evidence
- (12) Independent, as opposed to involved in the dispute due to some or other interest the witness has in the case.

**82.** Care must thus be exercised that a finding is not solely based on the demeanour of a witness alone, although it is clear that demeanour may sometimes even play a decisive role in determining the credibility of a witness.

**83.** In addition to the demeanour of the witness one should be guided by the probability of his story, the reasonableness of his conduct, the manner in which he emerges from the test of his memory, the consistency of his statements and the interest he may have in the matter under inquiry.

**84.** Although an accused in a criminal case has a constitutional right to remain silent in terms of the Constitution of Belize, the failure to testify may, depending on the circumstances of each case, have the effect that a prima facie

case which is left uncontradicted, becomes of such weight when evaluating the weight thereof, that it becomes proof beyond a reasonable doubt. The underlying principle is that a party endangers itself that the version of his/her opponent will be believed if he/she does not present evidence on a fact in dispute.<sup>21</sup>

**85.** However, in **Meyer v Kirner**<sup>22</sup> it was held that the evidence of one party would normally, in the absence of any contradictory evidence, be accepted as being prima facie true, but that it does not follow that because the evidence is uncontradicted, therefore it is true as the evidence may be so improbable in the light of all the evidence that it cannot be accepted.

**86.** In **S v Oosthuizen**<sup>23</sup> it was held that where statements by different witnesses are contradictory, the contradiction in itself proves only that one of the statements is erroneous. It does not prove which one and that it therefore follows that the mere fact of the contradiction does not support any conclusion as to the credibility of either of the witnesses. Seemingly, a long list of contradictions (save for when they are material contradictions) between witnesses is not necessarily a sign of their untrustworthiness.

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<sup>21</sup> Brand v Minister of Justice 1959 4 SA 712 (A).

<sup>22</sup> 1974 4 SA 90 (N):96C-D.

<sup>23</sup> 1982 3 SA 571 (T):576C.

**87.** The cautionary rule for single witnesses is formulated in **S v Sauls**<sup>24</sup> in that there is no rule of thumb, but that the trier of fact will weigh his/her evidence, consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the evidence or contradictions in the evidence, the trier of fact is satisfied that the truth has been told.

**88.** I found the evidence of the witness, Athlee Lozano satisfactory in a number of respects. The factors which contributed to this credibility finding were:

(a) Then shortly after I heard a noise to the right of the cane patch by Ms. Anna Chi's house, then sparks and a loud bang came from the direction of the cane patch. Then two individuals jumped out, one in a grey hoodie and a red shirt and the other in a black shirt and a black rag tied on his head.

(b) We stopped at an intersection that leads to the back of my yard, which then I looked back for about four seconds and saw Jessie Mejia and Darwin Prado standing in the middle of the road, Compassion Road, pointing towards my neighbor Mario yard where my two brothers ran, where there were two lampposts lights so I saw them clearly there.

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<sup>24</sup> 1981 3 SA 170 (A):180E.

(c) At that time what was the distance between you and Jessie Mejia, at the time you said you saw him for about four seconds? A. About 40 feet.

Q. And at the time, what was the lighting condition like?

A. It was clear because there were two lamp post lights.

Q. Did .....; what would you say was the distance between the lamp post lights and Jessie Mejia at that time?

A. Approximately three to four feet.

(d) Q. Was anything blocking your view of him, Jessie Mejia?

A. No Ma'am, nothing was blocking my view of Jessie Mejia.

Q. How was he dressed?

A. In a black shirt and red rag tied on his head.

Q. You're saying red rag was tied, how do you mean it was tied on his head?

A. It was tied covering his hair, something like in the middle of his forehead.

Q. Did you know Jessie Mejia prior to 23<sup>rd</sup> January 2018?

A. Yes, I know Jessie Mejia for about ten (10) years.

Q. How did you know him?

A. They were all family friends.

(e) A. We were friends from small.

Q. How often did you see him?

A. Almost every day.

(f) Q. Before that day, when was the last time you saw Jessie Mejia prior to 23<sup>rd</sup> January n2018?

A. Couple days before when me and my brother was walking on Marage Road.

A. Casey Lozano. He rode up behind us and said, “dis dah how ah ride up pan the bwai out dah side”. Like noon; in the afternoon.

(g) Q. I will move on to Darwin Prado. What was the distance between you and Darwin Prado when you saw him for four seconds?

A. It was about 40 feet.

Q. And what was the lighting conditions at the time?

A. It was clear. The two lamp post lights were above him.

Q. What was the distance between the two lamp posts and Darwin Prado at that time?

A. About four feet.



Q. Was anything blocking your view of Darwin Prado at that time?

A. No, nothing was blocking my view at that time.

Q. How was he dressed, Darwin Prado?

A. Grey hoodie and red shirt.

Q. This grey hoodie, could you tell us how it was?

A. It was partly above his head when he was running, the hoodie went back a little so I could see his face clearer.

Q. Before that day, did you know Darwin Prado?

A. Yes, I know Darwin Prado for about 18 years. We went to the same primary school.

Q. How often would you see him?

A. Everyday. He lives four houses from me.

Q. Before that day, when was the last time you saw Darwin Prado?

A. The day before.

Q. Where did you see him?

A. At the corner of Marage Road and Park Lane. I was walking home and he was riding bike in opposite direction of me.

Q. And at that time what time of the day was that?

A. It was in the evening about 5:30.

(h) Q. You said earlier, “I look back for about four seconds....”, what do you mean by pointing?

A. They were pointing an object towards Mario’s yard. I could see the spark and I hear the loud bangs.

(i) Q. So if these persons were coming, why did you stop there?

A. They were going to that direction so I stop.

Q. What direction?

A. Towards my yard in my neighbor Mario’s yard.

Q. What direction were you in, in relation

A. Right hand side of Mario’s yard about 40 feet from Mario yard.

Q. So these loud bang, what directions were the loud bangs fired?

A. They were fired at my direction in the street.

**89.** I found the evidence of Athlee Lozano single eye-witness to be credible. This is against the background of some contradictions in the evidence of his evidence and some contradictions, if they can be properly called contradictions, between this eyewitness and two of the other prosecution

witnesses. These are regarded as insignificant insofar as the overall finding of credibility is concerned.

**90.** The aforementioned view is supported by **Sithole v The State**<sup>25</sup> where it was observed that not every error made by a witness will affect his/her credibility. Theron AJA, referring to **S v Safatsa**,<sup>26</sup> further states in the **Sithole-case**<sup>27</sup> that it does not follow that two witnesses must be regarded as untruthful or unreliable simply because there are differences in their observation as experience has shown that two or more witnesses hardly ever give identical accounts of the same incident<sup>28</sup> referring specifically to the difference between material and non-material (detailed) aspects of the incident.<sup>29</sup>

**91. S v M**<sup>30</sup> further supports the importance of probabilities in the evaluation of evidence where Cameron JA states that the totality of the evidence must be weighed, not in isolation, but whether in light of the inherent strengths, weaknesses, probabilities and improbabilities on both sides, the case weighs so heavily in favour of the prosecution that any reasonable doubt about the accused's guilt is excluded. **Haslam v The State**,<sup>31</sup> by mouth of Theron AJA

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<sup>25</sup> 183 [2006] SCA 126 (RSA).

<sup>26</sup> 1988 1 SA 868 (A):890F-G.

<sup>27</sup> [2006] SCA 126 (RSA):[8].

<sup>28</sup> See also *S v Bruinders* 1998 1 SACR 432 (SE):439E-F.

<sup>29</sup> In this regard see the remarks made by Muller JA in *S v Magerman* 1981 1 PH H 17 (A) and Diemont JA in *S v Nyembe* 1982 1 SA 835 (A):842G. In the last-mentioned case, amongst other things the presiding judge stated that he is always surprised that witnesses can, or think they can, after a passage of weeks or months, recollect what route they travelled and at what time they reached their venue and that he is not surprised that they contradict one another.

<sup>30</sup> 2006 1 SACR 135 (SCA):183H-I.

<sup>31</sup> [2007] SCA 33 (RSA):[23].

further supports the ‘probability theory’, by stating, before he makes his finding, that his view is that ‘there is nothing improbable in the explanation by the appellant’ (emphasis added).

**92.** Evidence of a single eye-witness need not be satisfactory in every respect as it may safely be relied upon even where it has some imperfections, provided that the court can find at the end of the day that, even though there are some shortcomings in the evidence of a single eye-witness, the court is satisfied that the truth has been told.

**93.** Circumstantial evidence can sometimes be more compelling than direct evidence. A court is always enjoined to examine all the evidence; it must neither look at evidence implicating the accused in isolation to determine whether there is proof beyond reasonable doubt, nor should it look at exculpatory evidence in isolation to determine whether an accused’s version is reasonably possibly true. The correct approach is to consider all the evidence “in light of the evidence of the case In drawing inferences from circumstantial evidence it is trite law that:

(a) The inference sought to be drawn must be consistent with all proven facts; and

(b) Secondly, the proven facts must be such that they exclude every other reasonable inference. (Emphasis supplied.)

This Court must therefore review the evidence cumulatively with a view to determining what the inferences may be drawn with regard to the conduct of the appellant, whether these inferences are consistent with proven facts (evidence that is relevant and admissible as discussed above) and finally, whether the proven facts exclude every other reasonable inference.

**94.** Circumstantial evidence is that which establishes the fact to be proved only through inference based on human experience that a certain circumstance is usually present when another certain circumstance or set of circumstances is present. Indeed, flight from the vicinity of crime most often is inconsistent with innocence. However, in a case depending exclusively upon circumstantial evidence, the court must find before deciding upon conviction that the exculpatory facts are 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 responsibility for the offence from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.

95. It is trite law that a court is, under appropriate circumstances, entitled to draw adverse inference where an accused person consciously desists taking the stand to put his version of the case.
96. **S v Auala** 2010 (1) NR 175 where the following citation was quoted with approval: “The fact that an accused person is under no obligation to testify does not mean that there are no consequences attached to a decision to remain silent during the trial. If there is evidence calling for answer and an accused person chooses to remain silent in the face of such evidence, a court may well be entitled to conclude that the evidence is sufficient in the absence of an explanation to prove the guilt of the accused”. Whether such a conclusion is justified will depend on the weight of the evidence **S v Boesak** 2001 (1) SA 112 (1 December 2000); 2001 (1) SACR1; 2001(1) BCLR 36 (CC).
97. It is such a state of the proof as fails to convince my judgment and conscience, and satisfy my reason of the guilt of the accused. If the whole evidence, when carefully examined, weighed, compared, and considered, produces in my mind a settled conviction or belief of the defendants' guilt,-such an abiding conviction as I would be willing to act upon in the most weighty and important affairs of my own life,-I may be said to be free from any reasonable doubt, and should find a verdict in accordance with that conviction or belief.

**98.** The evidence on the charge of attempted murder established that Mr. Lozano was shot at by the accused men was not established beyond a reasonable doubt by the prosecution.

**99.** There being no other evidence which could point to attempted murder, this court is of the view that the evidence led on this charge does not prove the charge of attempted murder.

**100.** In my considered view, the prosecution made out a prima facie case requiring the accused men to take the court into their confidence and to testify. In the present case the accused men were the only other persons who could inform the Court regarding the incident and the circumstances. They opted to remain silent.

**101.** In view of this, the following order is made:

**1 Count one: The accused Jessie Mejia and Darwin Prado are guilty of murder of Casey Lozano.**

**2 Count two: The accused Jessie Mejia and Darwin Prado are guilty of murder of Marlon Spain.**

**3. Count three: The accused Jessie Mejia and Darwin Prado are not guilty of attempt to murder of Athlee Lozano.**

Dated the      day of July, 2022

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**RICARDO O. SANDCROFT**  
**Justice of the Supreme Court**