

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 077/2016

BETWEEN:

THE KING

and

KEYREN TZIB

Defendant

Appearances:

Mr. Glenfield Dennison, Crown Counsel for the King

Mr. Darrell S. Bradley with him Ms. Kimberly Wallace Counsels for the Defendant

2023: January 17; 18; 19; 25; 26;
March 13.

JUDGMENT

Background

- [1] **NANTON, J.:** The Crown has indicted the Accused for one count of attempt to murder contrary to **Section 18 read along with Sections 107 and 117 of the Criminal Code**¹ for an offence which is alleged to have occurred on 6th April 2015.
- [2] On 23rd October 2023 the Accused filed an application for a permanent stay of the indictment or for the indictment to be quashed/dismissed on the basis that the inordinate and inexcusable delay in bringing this matter to trial made it impossible for the Accused to receive a fair trial. In a written judgement delivered on 11th December, 2023 and annexed to this judgment, the Court ruled that although the delay was regrettable, the Defence had failed to demonstrate serious prejudice to the extent that a fair trial was no longer possible.
- [3] The trial by judge alone began with the arraignment of the Accused on 17th January, 2024 before this Court pursuant to **Section 65 A (2)(b) of the Indictable Procedure Act.**²
- [4] The Crown's case is that the Accused, a Coast Guard Seaman, shot Virtual Complainant Kurt Hyde in the head while on a Coast Guard vessel returning from San Pedro to Belize City. The shooting occurred in the presence of several persons who were on-board the vessel.
- [5] At the close of the case for the Crown, Counsel on behalf of the Accused made a submission of no case to answer. The Court heard the submissions of both sides and overruled the no case submission by oral ruling, which was followed by a brief written judgment which is annexed to this judgment.

¹ Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2003

² Cap. 96 of the Substantive Laws of Belize (Revised Edition) 2020.

- [6] The Court informed the Accused of the three options available to her i.e. to remain silent; to give a statement from the dock; to give evidence under oath. The Accused made a statement from the dock and called two witnesses.
- [7] In her statement from the dock the Accused stated that the gun accidentally discharged and that she had no intention of harming Mr. Hyde. Two witnesses were called by the Defence and testified as to the Accused's mental history and status.
- [8] The parties gave closing addresses in writing which were carefully considered by the Court. The Court expresses its gratitude to the parties for their erudite submissions.

Elements of the Offence

- [9] The elements of the offence of attempt to murder are laid out by our Court of Appeal in **Peter Augustine v R**³ per Carey J.:

An attempt to commit a crime is itself a crime. Before the Accused can be convicted of this offence, it must be proved;

- (a) that he had the intention to commit the full offence and that in order to carry out that intention, he
- (b) did an act or acts which is/are step(s) towards the commission of the specific crime, which
- (c) is/are directly or immediately and not merely remotely connected with the commission of it, and
- (d) the doing of which, cannot be reasonably regarded as having any other purpose than the commission of the specific crime.

All the above must co-exist. Intention alone is not sufficient - it is no offence merely to intend to commit a crime. Doing of the acts alone without intention

³ Crim App 8/01

is not sufficient. Act(s) done must be something more than mere preparation for the commission of the offence.

Summary of Crown's Case

- [10] The Crown called three live witnesses: Port Authority Officer Delon Castro and BDF Captain Noel Lanza, who were both present on the vessel when the shooting occurred, and medical expert Dr Luis Hernandez who treated the Virtual Complainant for injuries associated with a gunshot wound to the face. The statements of 9 witnesses with appropriate redactions (due to inadmissibility) were admitted into evidence by agreement pursuant to **Section 106 of the Evidence Act.**⁴ The evidence of deceased witness Tyrone Young was tendered pursuant to **Section 123 of the Indictable Procedure Act** following a ruling of this Court on its admissibility.

Locus in quo

- [11] Before the close of the Prosecution's case, Counsel for the Crown invited the Court to visit the locus in quo. Counsel submitted that the photographs which had been tendered into evidence did not give a sufficient impression of scale and distance. Defence did not object to the Counsel's submission. The Court acceded to this request which enabled the Court as fact-finder to understand and follow the evidence.
- [12] The Court wishes to note that it had first confirmed that the structural nature of the vessel had remained the same since the date of the incident. The Court also had an in-court discussion with both Counsel in advance of the viewing to set out the

⁴ Cap 95 of the Substantive Laws of Belize (Revised Edition) 2020

parameters of the visit. The Court ruled that the visit was for viewing purposes only and that no questions would be asked.

- [13] The Coast Guard vessel was docked at a location proximate to the Court building and all parties attended: the Crown, Defence Counsel and the Accused. The Trial Judge attended, accompanied by the Court's Marshall and Stenographer. No witnesses attended the visit. The Court embarked on the vessel firstly and made its own observations which would be referenced in the Court's analysis. Thereafter, Counsel on behalf of the Crown and the Defence were allowed to embark. No evidence was received at the view.

Delay

- [14] The Court in its assessment of the evidence in this case has considered that there has been an almost 9 year delay between the commission of the alleged offence and the trial. This delay is unsatisfactory. The Court notes that the passage of time is bound to affect memory and has in this case. For instance both Crown witnesses Lanza and Castro expressed difficulty recalling specific details such as the seating arrangements on the boat.

- [15] Another instance of the effect of the delay in this matter is the unavailability of the video recorded interview that was conducted with the Accused at the time of arrest. The Court recognises that the video recorded interview may have assisted the Court in its assessment of the Accused's reaction when first taxed with this offence. The absence of that video is therefore a factor that the Court has taken into account in assessing the evidence advanced on behalf of the Crown and the Defence.

Presumption of Innocence

- [16] The Court has directed itself that the Accused is presumed innocent and has absolutely nothing to prove. The Court has directed itself that the obligation is on

the Crown to satisfy the Court so that it is sure of the guilt of the Accused and if there is any reasonable doubt the Court is duty bound to acquit her.

Assessing Evidence

- [17] The Court has considered all the evidence with the intention of reaching a fair and dispassionate assessment of that evidence. The Court notes that in assessing credit and reliability it must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. The Court notes that if there are inconsistencies and discrepancies the Court must look to see if they are material and if they can be resolved on the evidence. Unresolved inconsistencies or discrepancies would lead the Court to reject that bit of evidence or all of the witness's evidence entirely. The Court must also consider the cumulative effect of those inconsistencies or discrepancies on a witness's credit and reliability. If the Court finds the evidence of a witness implausible it will reject either that witness's evidence entirely or that particular bit.
- [18] The Court also directs itself that the credibility of a witness is not a seamless robe where one lie, or even several, strips the witness of all believability. The Court in this regard relies upon the decision of the English Court of Appeal of **R v Fanning and Ors**⁵. The Court notes that if a witness has lied about some bit of evidence, the evidence must be properly evaluated, taking into account the fact that the witness told the untruth and the reason for the lie, and may still convict if the Court is sure that the material parts of that evidence to be true.
- [19] The Court is guided by the CCJ decision of **James Fields v The State**⁶ which states:

“Where there are different or conflicting accounts in the evidence about a particular matter, you must weigh up the reliability of the witnesses who have given evidence about the matter, taking into account how far in your view their evidence is honest and accurate. When doing this you must apply the same fair standards to all witnesses, whether they were called for the prosecution or for the Defence. It is

⁵ [2016] 2 Cr. App. R. 19 at para. 27

⁶ [2023] CCJ 13 (AJ) BB

entirely for you to decide what evidence you accept as reliable and what you reject as unreliable.”

- [20] The Court is assisted in the legal parameters of its fact-finding function by a recent decision of the Jamaican Court of Appeal in **Vassell Douglas v R**⁷, per Fraser JA (Ag.) *“We have distilled from the foregoing authorities that in any trial, more so a bench trial, the judge is not required to identify all the inconsistencies or discrepancies that arise during the trial unless it is considered damaging to the Crown’s case.”*
- [21] The Court begins firstly with analyzing the evidence on the Crown’s case, and **if** the evidence is strong enough to consider a conviction; it would consider the case for the Accused, as is the required reasoning process noted by our Apex Court, the Caribbean Court of Justice (hereinafter “the CCJ”), in **Dioncicio Salazar v R**⁸.

Analysis of Evidence

Dr Louis Hernandez

- [22] Dr Louis Hernandez was deemed an expert by this Court. He treated the VC for a gunshot wound injury to the side of his face. It was his opinion that the bullet was possibly shot from a short distance, and that the bullet did not develop its final speed which could explain the nature of the injury. He stated that the expansion wave of the bullet opened a path separating the tissue and the main vessels that go to the brain and the face and that created a dissection separating all the tissues until the bullet hit the mandible and deviated a little bit to the center and hit the zygomatic bone. He said that specific pathway explained why the VC only suffered from neurologic symptoms for a short time and no other damage than the minor bleeding. Dr Hernandez commented at various points in his evidence on the very strange

⁷ [2024] JMCA Crim 10.

⁸ [2019] CCJ 15 (AJ)

scenario, which he characterized as medically unexplainable that the patient did not have major bleeding or much neurologic damage despite the type of weapon used, the close range and the fact that it was a bullet to the head. He classified the harm as the worst type of harm and that the shot was life threatening.

- [23] Dr Louis Hernandez is one of 4 expert witnesses called in this matter (2 for the Crown and 2 for the Defence) whose evidence related to information with special subject matter knowledge that is outside the scope of this Court's general knowledge, understanding and experience. He has been deemed qualified to do so and the Court, after special consideration, has accepted his testimony as true and his opinion was sound. The Court also notes that his testimony was unchallenged.

Delon Castro

- [24] Delon Castro is a Port Authority employee who was onboard the vessel on the 6th April 2015. He described the vessel as having 4 single seats and two long ones on each side. The VC Hyde was the captain of the vessel and he was standing at the helm of the boat in the right front portion of the cabin. Castro said that he was seated on the left side of the vessel. The Accused was 2-3 feet beside him on the opposite side.

- [25] He said when they were about to dock the Captain had pulled the throttle back to slow down the vessel. The boat rocked a bit not badly but just with the motion of the waves as it slowed down. At that same time he observed the Accused with the rifle in her hand pointing it forward straight ahead of her. Her left hand was holding the front of the weapon. The butt of the gun was on her shoulder and her right hand was on the trigger portion. The witness said that before he could do or ask anything he heard a loud bang and then he saw the captain drop forward. He said he grabbed the gun down and called out for someone to get the gun. He said that a soldier whose name he could not recall and who was seated behind him in the cabin retrieved the weapon. He did not hear any sounds of the rifle being readied or the

magazine being loaded. After he heard the bang he heard the Accused said the words "*focker yo*".

[26] In cross examination Castro said that although his ears started to ring after the loud bang he could still hear. He was refreshed from his statement in which he had said to the police that he was seated directly behind the Captain. He accepted that the statement was given closer in time to the incident and he accepted that what was in the statement was true. He explained that when he saw the photographs it brought back his recollection of where he was. He denied the suggestion that he did not see the Accused pointing the weapon forward. He accepted that he had never said in his statement that he yelled out for someone to get the gun but explained that he was still shaken up and probably never tell the police it like that, but he did mention it because he did not know how to disarm a weapon.

[27] The Court accepts Delon Castro as an honest witness. The Court observed the witness' demeanour and manner in giving his evidence and formed the view that he was honest and transparent in giving his testimony. At times when he could not recall an answer or was uncertain he clearly stated so. When shown the photographs and asked questions on the seating arrangement it was evident that the witness was confused and he expressed that to the Court. The Court takes into account the delay of almost 9 years between this incident, and when this witness testified, when considering the inconsistency between what he had said and accepted in his statement and what he said in Court. While the Court rejects this witness' evidence in Court that he was on the opposite side of Hyde, the Court accepts that in his accepted previous statement he had said that he was seated directly behind Hyde which would have placed him on the right side of the vessel. This also makes sense as he mentioned that he could only see Hyde's upper body since the chair blocked the lower portion. It makes sense that the witness was seated behind Hyde. This accords with the account of all other witnesses- Hyde, Lanza and Tyrone Young. The Court does not believe that the witness was deliberately lying or trying to mislead the Court when he said otherwise, but accepts

that he was confused and may have forgotten. This is not unusual considering the passage of time. In any event the Court wholeheartedly accepts Castro's testimony that the Accused sat directly across from him. The Court draws from its own visit of the vessel and observed how close the seats were to one another approximately two feet apart. Castro therefore was the closest to the Accused at all relevant times and in the best position to observe her.

Noel Lanza

- [28] Captain Noel Lanza is a Captain in the Belize Defence Force (BDF). He is second in charge of the Special Operations and Tactics Unit. The witness gave a full exhaustion of his military training and training in weapon use and his experience as a training officer with the BDF. Without objection, he was deemed an expert in relation to military, firearms training and operations procedures in Belize.
- [29] He said that he was tasked by BDF as Patrol Commander for a joint military operation in San Pedro. He met the Accused on that operation, but did not have much interaction with her then. On 6th April, 2015 he was onboard the vessel returning to Belize City.
- [30] He said that the vessel had 4 seats, the driver was on the right side and the Accused was on the left side of the vessel. He said that he was in one of the bench seats to the right of the vessel and the Accused was seated directly across from him. Port authority personnel Castro was seated in front of him. He was shown the photographs and stated that as he watched the photographs it felt a little different. He said that his answers about the seating arrangements were to the best of his recollection.
- [31] He said that he noticed that the Accused was seated and that she was holding the pistol grip with her right hand with her finger running along the trigger guard. He said that stood out to him because there was no apparent threat and that is a defensive

posture that is adopted to enable a quick response to a threat. At that time, he could see the right side of her body.

[32] He said that he was looking out the window and noticed that they were approaching the Headquarters. He looked back and saw the Accused was standing almost in the aisle with the weapon in a threat ready position, which he described as what a marksman would apply to engage a shot. He said that her head was tilted in alignment with the weapon and she was looking through the front and back aperture while squinting her eyes, something which he said some persons do depending on their level of training when they are about to take a shot. He said that the butt of the weapon was in her shoulder and the weapon was pointed at the direction of Hyde's head. He said he saw her close her eyes to take aim and that is when he jumped from his seat and launched at her.

[33] While in the process of launching at her, he heard the bang and he saw the weapon recoil. He said that he pulled down the weapon and pressed the magazine release catch and discharged the magazine. He said that the Accused was a little resistant but he managed to twist the weapon from her arm, and he looked around and saw that Hyde was on the ground bleeding. He said that someone whose name he cannot now recall assisted him to take the weapon and he heard the Accused say to him "*he has a weapon*" and that is when he noticed that the VC had his 9 mm pistol holstered on his leg. At that time the VC had gotten back up and was asking what had happened. He then took the pistol out the VC's holster and someone took control of the vessel.

[34] According to his weapons training expertise he stated that a firearm should never be pointed at someone unless the intention is to shoot and that they are trained that every weapon is to be treated as if it is loaded. He said that the state of the weapon i.e. whether it is loaded or not is determined by the Patrol Commander. In some units the weapon is loaded and a round in the chamber, so, that all you need to do to fire is take off the safety and pull the trigger. It is his opinion that the Accused's

weapon was already loaded and made ready as the safety lever was on. He said that if a round has not been chambered then the safety lever could not come on. He said that he did not hear the sound of the weapon being cocked because the weapon was already on safe and thus had already been “cocked” or made ready.

[35] He said that the wear and tear of some weapons may result in the weapon firing even with the safety on; however, he stated that the person holding the weapon would still have to pull the trigger.

[36] The witness was cross examined at length about the seating positions on the boat and whether the Accused was seated across from him in one of the two benches. He accepted that it was possible that she was not seated directly across from him. He denied the suggestion outright that she was seated across from Castro. He said that he was 100 percent sure they were across from each other but his mind was hazy as to where exactly he sat. *“I know I was seated by the window I know she was across from me and I know that Castro was in front me I was a bit hazy she was directly across from me. Castro was in front of me and she was directly across from me.”*

[37] The witness denied the suggestion that the Accused was in front of him, and thus at no point would have been facing him and that her back would have been to him.

[38] He said he did not see when she stood up, but when he turned back from looking out the window, she was already standing. He said that she was about 6 feet away from him but that was an estimate and she could have been closer.

[39] It was suggested to him that he did not attempt to lunge before he heard the bang. He said that human reaction takes time to process, he said that he could not say the exact time but he knew that he saw her aim, saw her finger on the trigger and when he noticed she was going to shoot he lunged. It was while he was starting to move he heard the bang.

[40] The Court observed the demeanor and manner of this witness while he gave evidence. As is the case with Castro there was a discrepancy with this witness' evidence in relation to the seating arrangement. Unfortunately, he was not refreshed from his statement to the police. The witness admitted that his memory was hazy and that he could not recall exactly where he was seated. He was certain that he was behind Castro- a fact which this Court readily accepts based on its support from other evidence- and that the Accused was on the left side of the vessel. The Court has already accepted that the Accused sat directly across from Castro- the Court therefore rejects this witness' testimony that the Accused sat directly across the aisle from him. Rejecting that bit of his evidence; however, does not mean that the Court has rejected this witness' evidence in its entirety. The witness was demonstrably confused when he was shown the photos and acknowledges that he was giving evidence 9 years post incident. The Court finds that this discrepancy was due to a lapse in memory and not a deliberate attempt to mislead the Court. The Court finds that even though the Accused was not seated directly across from this witness, based on the size of the boat and the distance between the seats, as observed by the Court itself, once the Accused was standing Lanza would have had a full view of her upper body from waist up. Therefore, his view of her was not compromised because she was not directly across from him. In those circumstances the Court accepts the remainder of this witness' testimony as true and finds as a fact that he did observe what he said he did. The Court also finds that his evidence is substantially corroborated by the agreed evidence in this case, by the evidence of Tyrone Young and by that of witness Castro.

[41] It is only due to his specific training that Lanza, unlike Castro, was able to give a name to the stance that the Accused took i.e. the threat ready position and to explain what his opinion on that stance met. It is worth noting, that the exact positioning of the Accused's body that he describes aligns with the description given by Castro. Lanza was just a bit more detailed and understandably so, he is a trained military

officer while Castro is a layperson who admitted a lack of experience with weapons. The Court therefore accepts this evidence as fact and relies on same.

Hearsay statement- Tyrone Young

- [42] The Court has approached the evidence of Tyrone Young with caution as this evidence comes by way of two hearsay statements. The Court notes that although the statements each contain a declaration that these statements were true to the best of the deponent's knowledge and belief, they were not made under oath. The absence of sworn testimony is a matter that should cause the Court to treat Mr. Young's evidence with care. The Court has not seen the manner and demeanour of Mr. Young during evidence in chief and he has not been cross-examined. There were several areas that could have been fruitfully explored in cross-examination, such as the apparent discrepancy in the accounts of the Crown's witnesses relative to the seating arrangements and the inconsistency by this witness between his first and second statements as to whether, he saw the Accused pointing the firearm in Hyde's direction.
- [43] The Court, after approaching his evidence with considerable caution, finds on all of the evidence that Mr. Young's evidence is both truthful and reliable. The Court finds that his evidence is substantially consistent with the evidence of the live witnesses and the agreed evidence.
- [44] The Court also considered that while the passage of time may have affected the memories of the Crown's witnesses, the first statement of Tyrone Young was taken on the same day of the incident when presumably the events would have been fresh in his mind. His second statement was taken a mere 4 days post incident. For these reasons the Court considered the evidence to be reliable and capable of belief.

[45] Tyrone Young said that the Accused was seated on the port (left) side of the vessel in one of the chairs. He was standing at the back door area of the cabin on the boat which is closer to the stern of the boat. When they were about 100 yards from shore the boat had started to slow down. He noticed the Accused stood up and was holding her weapon pointed downwards. He said, he then heard a loud bang and turned around and saw the Accused with her rifle pointed in the firing position towards the direction of the boat captain. He saw Captain Lanza pulled the weapon downwards to point to the ground and took it away from her. He said that he was standing about 5 feet away from the Accused and nothing blocked his view of her. He said that when they docked he approached the Accused and asked her why she did it and she did not say anything. He said that the entire time that he had spent with the Accused in San Pedro she did not appear to have anything bothering her.

[46] In his second statement the witness stated the seating arrangements as follows: there are four single seats with two on each side of the vessel, which face the front of the boat, and then two longer seats on either side facing each other. The first seat on the right hand side was for the boat captain Hyde, behind him sat Castro and behind Castro was Lanza. Standing beside Hyde was Dorch and on his left was Lambey. Behind them Barrientos sat in the first seat and then Tzib sat behind him. Behind Tzib was another Coast Guard Officer whose name he could not recall.

[47] He said that he and the Accused had the same weapon and amount of ammunitions, as none of them had fired their weapons during the operation on San Pedro. He said that during the ride he saw the Accused seated with her weapon resting between her legs with the nozzle pointing toward the ground, and the magazine loaded in the weapon resting on her right leg. Upon approaching the coast he saw her stand and mention something to Lambey. After a couple seconds, after hearing her talking he saw her raise her weapon in the direction of Hyde. She had the weapon held with both hands and the stock was in her grip and the pistol grip was in her right hand. He said he didn't think she was pointing at Hyde, because he could not see through the sight of the rifle to see what she was pointing at. He did

not hear her ready the weapon as to put a round in the chamber. He said at the same time he turned to look through the back door then heard a loud bang. When he turned around he saw Lanza taking away the weapon from the Accused.

- [48] The Defence contended in its closing address that the witness only mentioned that he saw the Accused pointing the firearm in the direction of Hyde in his second statement. The Court disagrees. In both statements the witness stated that he saw the Accused pointing the firearm in Hyde's direction, the inconsistency is that in his first statement the witness said he saw her pointing the firearm **after** he heard the loud bang whereas in his second statement he said that he saw the Accused pointing the firearm in the direction of Hyde **before** he heard the bang. The Court notes that because the witness is now deceased there is no explanation proffered for this apparent inconsistency. The Court considers that the timing of when he saw the Accused pointing the gun towards Hyde is not material to the Court's determination of the facts in issue. The witness' evidence is consistent that the Accused pointed the weapon in the direction of Hyde, and that she held it in the manner described. This evidence is also consistent with the evidence of other witnesses.

Agreed Evidence

- [49] **Kurt Hyde** is the Virtual Complainant in this matter. He said that he was the captain of the Coast Guard vessel and tasked with transporting the military personnel from San Pedro to Belize City. He said that he was about 300 metres from shore when he slowed the vessel down in preparation to dock. He was standing on the right hand side of the vessel behind the steering wheel. He said he looked behind him and saw that Port Officer Castro was seated behind him in the single chair, and that behind Castro was a BDF soldier whose name he could not remember. On his left stood Dorch, and then Lambey to his left. In the single seat behind them was Barrientos, and behind him was Tzib, the Accused. He said when he looked forward

he heard a loud bang and after which he passed out. When he came to he noticed that he was bleeding on the left side of his face and head.

[50] **Marlon Flores** was seated at the rear of the vessel near the engines. Upon approaching the Coast Guard Base Dock in Belize City, he heard a loud bang. He saw Captain Lanza holding female officer Tzib, who was holding a rifle. Lanza was holding the stock of the rifle and was pointing it downwards. He said that Lanza disarmed the female Coast Guard Officer, took out the rifle and handed it to him. This witness cleared the weapon and a bullet jutted out of the chamber. He said that the female Coast Guard said that the driver still had his side arm. Lanza then disarmed the driver.

[51] **PC Shannon Middleton** was on board the vessel standing outside at the back near the engine. The witness heard a loud bang. PC Flores handed over to him an M-4 Carbine rifle along with a magazine containing ammunition.

[52] **Sherett Ciego** arrested the Accused, told her of her constitutional rights and cautioned her.

[53] **Eric Cob** is the Coast Guard Armor and handed over an M-4 Carbine rifle to the Accused, which she signed for. He said that when a weapon is returned or signed back in the weapon must be cleared by the person who is returning the weapon. He said that he would only accept the weapon, if he was satisfied as to the serviceability and cleanliness of the weapon.

[54] **Paul Garcia** states, that when the Accused boarded the vessel she was in possession of the M-4 Carbine rifle that she had signed for when she had arrived at San Pedro. He was aware that while they were on operation no rounds had been fired.

[55] **Estelita Ack** is the exhibit safe keeper. On June 22nd 2015 she visited the National Forensics Science Lab where she received and signed for a white in colour rifle gun

box sealed with evidence tape labelled as to contain a black in colour M-4 Carbine and two grey in colour magazines containing live round ammunitions.

[56] **Police Constable Sheldon Williams** is the investigator in this matter. On Monday 6th April, 2015 he met and cautioned the Accused. He said that the Accused agreed to give a video recorded interview which was conducted in the presence of Justice of the Peace Ann Linn. He subsequently charged the Accused for offences arising out of this incident.

[57] The report and photos of **Crime Scene Technician Jason Reneau** were tendered pursuant to **Section 36 (5) of the Evidence Act**. These photos were marked as **JR 1-14 A-C**.

Actus Reus: Discharge of Firearm

[58] It is not in dispute that the Accused discharged the firearm which shot the VC in the head. Live witnesses Lanza and Castro both identify the Accused as the shooter as well, as witnesses Tyrone Young and agreed witness Marlon Flores. The Accused herself in her statement from the dock stated that she fired the weapon albeit accidentally.

[59] Dr Louis Hernandez testified that the VC suffered life threatening injuries caused by a close range gunshot wound to the face. Dr Hernandez classified the injuries as harm of the worst type, and his opinion was that the injuries were permanent in nature. His evidence was that a person who received such an injury would not survive without medical intervention.

[60] There is thus no dispute that the Accused committed an act which directly caused life threatening injuries to the VC. The main issue in this case therefore, is whether the mental element has been proven i.e. whether the Accused intended to kill the VC.

Mens Rea: Intention to kill

[61] The Court refers to **Section 6 of the Criminal Code** which lays out the test for intention:

(1) The standard test of intention is–

Did the person whose conduct is in issue either intend to produce the result or have no substantial doubt that his conduct would produce it?

[62] The Court notes that intention is a state of mind that can only be resolved by inference or an admission by the Accused. In this case the Accused stated in her statement from the dock that she accidentally discharged the firearm and did not intend to harm the VC. In cross examination it was put to the two prosecution witnesses that the boat had been rocking at the time that the shot was fired. The issue of accident was therefore raised as a live issue for this Court's determination.

[63] The learned authors of **Archbold, Criminal Evidence Pleading and Practice 40th Edition**, states at para 598a:

*“The Accused either by cross-examination of the prosecution witnesses or by evidence called on his behalf or by a combination of the two must place before the courts such material as makes [the Defence] a live issue fit and proper to be left to the jury. But once he has succeeded in doing this it is for the Crown to destroy that Defence in such a manner as to leave in the juries mind no reasonable doubt that the Accused cannot be absolved on the grounds of the alleged [facts constituting the Defence] per Edmund Davies LJ, in the **R v Gill**, 1968 47 Cr App R 166 at 171 As long as the issue has been raised the manner in which it was raised is inconsequential“.*

[64] The burden of disproving accident lies with the Crown. It is the Prosecution's burden to prove that the harm caused was not as a result of an accident. Accident means that the act complained of, the actus reus, was not intended by the Accused-

Montez and the Queen⁹. At paragraph 36 of the Belize Court of Appeal case of **R v. Anderson**¹⁰ it was said that *“there was evidence which raised issues of accident and self-Defence, which it was the undoubted obligation of the prosecution to negative.”* The offence of attempt to murder is a crime of specific intent and so accident is specifically linked to the lack of intention to kill. Accident is a complete Defence and renders a Defendant not guilty of the charge. The absence of accident or negating of that evidence is an essential factor for the Prosecution to establish the offence of attempt to murder.

[65] The Court understands that if the gun went off accidentally, or if I am unsure about whether the gun went off accidentally, then the Crown would not have proven its case to the required standard. The act would not be that of the Accused at all; it would not be a deliberate or voluntary or intentional act and I would have to acquit the Accused.

[66] The Crown has led the following evidence, which this Court has accepted, and which inferentially satisfies this Court beyond a reasonable doubt that the Accused acted deliberately and formed an intention to kill.

(a) The Court concludes from the uncontested evidence of Dr Louis Hernandez that death was a probable and natural consequence of firing an M-4 Carbine at the head of the VC. The Court notes that it is not bound to infer an intention to kill from the mere fact that death was a natural and probable result of the Accused’s act; however, the Court has considered this fact as relevant to the question of intent.

(b) The Court also considers that the Accused, a member of the Coast Guard would have appreciated that the natural and probable consequence of pulling the trigger of an M-4 Carbine at close range in the direction of the VC’s head was a dangerous act and one that could have no purpose other than death.

⁹ Criminal App 12 of 2015

¹⁰ Criminal Appeal No. 3 of 2011

- (c) The Court accepts the expert evidence of Nurse Bennett, who assessed the Accused some 7 days after the incident and concluded that the Accused would have appreciated the consequences or results of her actions.
- (d) The Court accepts as a fact that at the time of docking, the Accused stood up and pointed the firearm in the direction of the VC. This fact comes from the agreed evidence of Marlon Flores, the live evidence of Lanza and Castro and evidence of deceased witness Tyrone Young. All of these witnesses were consistent on this point. Although, there was an inconsistency on Tyrone Young's evidence as outlined above, his evidence was clear that the Accused had stood up and pointed the firearm in Hyde's direction. This evidence was supported by the testimony of the live witnesses and importantly by the agreed evidence of Flores.
- (e) The Court accepts as a fact that the Accused held the weapon in the manner described by live witnesses Lanza and Castro- butt on shoulder, left hand to the front of the gun and right hand on the trigger. The Court accepts the evidence of Captain Lanza that this was a threat ready position i.e. that she held the weapon pointed forward, that she aligned her head with the weapon looked through the front and back aperture and squinted her eyes. From this evidence the Court draws the inference that the Accused before firing the shot took aim. The Court notes that there was some challenge to whether the Accused was in the same row as Lanza or in front of him and whether he could have seen what he alleges to have seen if her back was to him. Having visited the locus in quo the Court observed the distance and proximity of the seats on that vessel. The vessel was small and from its own observations the Court concludes that even if the Accused was in the seat to the front left of Lanza and across from Castro- once she stood up with a firearm pointed in the way described (by both Lanza and Castro) he would have been able to see the placement of her hands,

head, and the weapon. Therefore while the Court has not accepted Lanza's evidence on where the Accused was seated the Court accepts his evidence that he observed her stance.

- (f) The evidence from all witnesses was that no one on the vessel heard the rifle being loaded or being made ready. The irresistible inference drawn therefrom is that the firearm had been loaded prior to the boarding of the vessel. Captain Lanza testified that some unit commanders have policies where the firearms should be armed and ready to fire. The Court draws the inference that it was not unusual that the Accused's weapon would have been armed and loaded prior to boarding.
- (g) The Court accepts the uncontested evidence that the Accused fired a shot from her M-4 carbine which struck the head of the VC.
- (h) The Court accepts the evidence of Castro that the Accused uttered the words "*focker yo*" when the shot was fired. The Court finds this particular piece of evidence to be cogent and compelling and completely inconsistent with an individual who did not intend to discharge a firearm. The Court accepts the witness' evidence that notwithstanding the ringing in his ear he could still hear.
- (i) The Court accepts the evidence of Lanza that the Accused resisted a little when he was disarming her. The Court finds the Accused's reaction to be inconsistent with an individual who had accidentally discharged their firearm.
- (j) The Court accepts the evidence of Lanza and the agreed evidence of Marlon Flores that the Accused when disarmed mentioned that the VC was still armed. As a matter of common sense and human experience this is not the type of response that would be expected of an individual who has just accidentally discharged their firearm causing visible harm.
- (k) There is evidence that the boat was rocking: the evidence of Castro was that the boat rocked in the usual manner of the waves. The Court is not persuaded by the suggestion that the boat's rocking could have

caused the Accused to accidentally discharge in the manner described. As the trier of fact the Court concludes that a rocking boat could not have given the Accused the required momentum to raise her firearm upright and pull the trigger of the weapon. Some force would have been required that cannot be explained by someone off-balancing due to the ordinary sway of a docking boat. The Court notes that the Accused is a trained seaman and it is highly unlikely that the usual rocking of a boat while docking would cause the Accused to react in that manner. It is noteworthy that the “rocking” did not affect anyone else on the boat in the slightest. While the result *may* have been conceivable if the shot was fired downwards the fact that the firearm had been raised and pointing forward dispels any such notion.

- (l) The Court rejects the Accused’s contention that she was not used to handling firearms in light of the agreed evidence of Paul Garcia that the Accused, a member of the Coast Guard had been assigned this very firearm throughout the operation at San Pedro and that no rounds were fired during that operation.
- (m) The Court finds that while the Crown has not advanced any evidence of specific testing of the firearm the Crown has tendered the agreed evidence of witness Eric Cob who is the Coast Guard Armor and handed over the M-4 Carbine rifle to the Accused, which she signed for. He stated that he would only accept the weapon if he was satisfied as to the serviceability and cleanliness of the weapon. There is also evidence from Lanza and the agreed evidence of Flores that weapon was cleared properly after the shooting. There is no evidence that would support the contention that the firearm was not working properly.

[67] The Court finds that the evidence of an intention to kill must often be inferred from surrounding circumstances and the Court finds that the Crown has proven such an intention to kill to the standard that this Court feels sure.

[68] I reject the Defence of accident on the basis of the implausibility of the act occurring in the manner described by the Accused in her dock statement as well as on the basis of this Court's finding (above) that there is cogent and compelling evidence coming out of the Prosecution's case that the Accused formed an intention to kill. An intention to kill negates the explanation of accident.

[69] The Court, having found evidence that may result in a conviction, following the guidance in Salazar, then considers the case for the Accused. The Court, if it accepts the case for the Defendant, or has a reasonable doubt about whether it is true, must acquit the Defendant. It is only if the Court rejects the Defendant's case that it returns to the Crown's case and considers the totality of the evidence and determines whether to convict.

[70] The Court observes that the Accused has nothing to prove as the burden remains on the Crown to prove the guilt of the Accused beyond a reasonable doubt throughout this trial.

Good Character

[71] The Court has considered that the fact that the Accused has no previous convictions may make it less likely that she acted as the Prosecution alleges in this case i.e. that she intentionally shot the VC with an intent to kill. The Court has considered the authority of August¹¹ in coming to the conclusion that the Accused is not entitled to a good character direction as to credibility where she has not given sworn testimony.

Dock Statement

[72] In her statement from the dock, the Accused stated that on 6th April 2015 she was then 25 years old. She stated that she had no intention of harming Mr. Hyde on that

¹¹ [2018] CCJ 7 (AJ)

day and that the gun had gone off accidentally when she had stood up and the waves were rocking the boat. She stated that at that time she had little experience in firearms as she had merely worked as an administrative clerk at that time. She indicated that she was very sorry that it happened, but that she had no intention for it to happen. She also indicated that she had no previous convictions.

[73] The Court is of the view that the good character of the Accused is displaced by the strength of the evidence against her outlined above¹². I find that her act in raising the firearm and pointing it in the direction of the VC and shooting is not consistent with accident but was a deliberate act. I cannot simultaneously believe the Crown's case and that of the Accused. The Court rejects the dock statement of the Accused.

[74] I direct myself that because I do not believe the Accused does not mean that I may convict her on that basis. Having concluded that she is not being truthful in her dock statement when she says that the firearm discharged accidentally, I remind myself that persons Accused of criminal offences may lie for reasons other than guilt such as to bolster what she may think to be a weak case. Disbelieving the Accused does not translate into acceptance of the Prosecution's case. Above all, it is the Crown that must prove its case against the Accused to the standard that I must feel sure of her guilt.

Witnesses for the Defence

Ingrid Bennet

[75] Ingrid Bennet is a registered nurse working with the Ministry of Health and Wellness. After completion of her registered nurse program, she studied Psychiatric Nurse courses where she learned how to diagnose mental health conditions. She is currently the Mental Health Supervisor for the Central District. The witness was deemed an expert in Specialized Nursing particularly in mental health.

¹² See *August* at para. 50

- [76] She treated the Accused continuously from 2011 to 2019. In 2011 she treated the Accused for anxiety and depressive disorder. She stated that the Accused was having difficulties coping at work particularly in relation to an allegation of rape.
- [77] On 14th April, 2015 (7 days after the offence) Ms. Bennet again assessed the Accused in relation to a Court order and prepared a report based on her findings. Her conclusion was that the Accused was having dissociative thoughts, which she described as being an inability to see herself and displaced herself from her behaviour. She stated that she diagnosed the Accused with Post Traumatic Stress Disorder (PTSD) based on this assessment.
- [78] The witness stated that prior to this evaluation she recalled the Accused as being someone with good self-control and who always presented as calm. She said that as time progressed she observed that the Accused became more withdrawn. She stated that persons confronted with trauma may feel trapped, lose self-control.
- [79] She stated that the Accused had been on SSRI Selected Serotonin Reuptake Inhibitors, which was prescribed to balance the levels of serotonin-so that the person remains stable.
- [80] She said that during her treatment of the Accused she did observe psychotic episodes. She explained that psychosis is characterized by hallucinations and delusions. Hallucinations have to do with the five senses, while delusions refer to a belief in things that are not real. In the case of the Accused she had hallucinations. She said that these developed after 2015.
- [81] She said that since she commenced treatment on the Accused in 2011 to 2017 the symptoms of PTSD had become more significant. She stopped treating the Accused around 2018 or 2019.

- [82] In cross examination the witness stated that in 2011, when she had first started treating the Accused she would see her at 6 week intervals. She stated that the Accused had been treated prior to 2011, but not by her. She could not say definitively if she in fact saw the Accused every 6 weeks as sometimes patients missed their scheduled appointments.
- [83] She said that PTSD is a type of anxiety. She clarified that the psychosis experienced by the Accused was observed sometime after her 2015 evaluation report. She stated that her report on 14th April, 2015 did not include psychosis because the Accused was not experiencing psychosis at that time. She said that although the Accused was not experiencing psychosis she was experiencing symptoms of PTSD.
- [84] She agreed that the change in diagnosis to PTSD was made after this incident on the boat. She said that the feeling of being trapped and fearful came about after this incident based on her discussion with the Accused.
- [85] Prior to the April 2015 report there were times when the Accused was functional and there were times that she was not.
- [86] She said that persons being treated with the level of anxiety that the Accused was being treated for in 2011 are capable of forming thoughts correctly and capable of understanding actions and consequences. In her opinion she stated that the Accused should have been able to understand actions and consequences and that she would have been able to understand the consequences of pulling the trigger.
- [87] In re-examination, she clarified that by consequences she meant the result.

Crystal Humes

- [88] Crystal Humes is a Clinical Psychologist with a Bachelor's of Science Degree in Psychology and a Masters in Clinical and Health Psychology. She is currently in her

third year of a Doctorate in Clinical Psychology. She has been a registered Clinical Psychologist with the Ministry of Health Services for the past 6 years. As a Clinical Psychologist she diagnoses and treats mental health disorders. She was deemed an expert in Clinical Psychology.

- [89]** She conducted a psychiatric evaluation on the Accused on 23rd October 2023. She interviewed her and performed a screener, which is designed to identify the presentation of specific symptoms which are specific to a disorder. She explained that the screener is a standardised tool, which generates the results after information is inputted. After the initial screener, PTSD was identified as the most pronounced presentation.
- [90]** On 9th November, 2023 she conducted a further evaluation with the use of a standardized tool for PTSD. At that assessment she diagnosed the Accused as having severe PTSD. She used the Diagnostic and Statistical Manual of Mental Health Disorders- referred to as the DSM 5 which outlines the classification for PTSD.
- [91]** In order for a diagnosis of PTSD to be made symptoms must be present for at least one month, and they must cause significant stress and impairment and the symptoms must not be better explained by another mental health disorder.
- [92]** Ms. Humes stated that the Accused's symptoms were reported to be severe, because they were significantly intense and resulted in significant distress and impairment of conditions and frequency. Based on her assessment the Accused had been experiencing these symptoms since 2011.
- [93]** She explained that the diagnostic tools have validity scales which can determine if the person is trying to present themselves in a favourable manner, or if the person is lying, or if the symptom presentation is not consistent with PTSD.

- [94]** She stated that if a person with PTSD is confronted with a memory or flashback there would be a change in physiological arousal activity and the individual may react to that trigger. She said that impulse control within a memory flashback is significantly impaired. Based on her assessment being on the vessel journeying to Belize City triggers and the combination of sights sounds smells can serve as triggers – the occurrence of the flashback would create a response.
- [95]** She explained that trauma affects the brain as it changes how we think or perceive situations or how we behave. In her view, the Accused would have had significant impairment in terms of her functioning which is a marked symptom of PTSD. She stated that if an individual suffering with PTSD experiences an intrusive thought in the form of a memory they can respond reactively to that and they are not able to control their behaviours. In the case of PTSD the stress response system remains activated so, an individual with PTSD is functioning under constant threat of violence, fear or anxiety.
- [96]** In cross examination she clarified that PTSD is a form of anxiety; however, there are other forms of anxiety that are not PTSD. She agreed that some of the symptoms do overlap however the screener assesses for a number of disorders to diagnose the most pronounced disorder.
- [97]** She said that the presentation of symptoms by the Accused are consistent with her having PTSD in 2011, which persisted until her diagnostic evaluation in 2023. She said that she can conclusively state that the Accused had PTSD from 2011.
- [98]** When asked whether she would expect a Psychiatric Nurse Practitioner to treat the Accused and not diagnose her with PTSD, she said that it was possible as it may be outside the nurse's scope.
- [99]** She said that medication should help person experiencing symptoms of PTSD, but that a treatment plan should include medication and therapy. A treatment plan

should help to bring the person to a balanced state or a state of increased functioning to target the source of the trauma in order to reduce the symptoms.

[100] She said that PTSD is treatable but not curable. She said that it was possible for someone on medication and going to therapy every six weeks to still experience PTSD.

[101] She said that there were also symptoms present with psychosis when she conducted the screener in 2023, but that she could not say whether symptoms of psychosis were present in 2015.

[102] In the Accused's case, she said 3 incidents of trauma were identified- childhood trauma, general threat of disaster, and an experience of rape prior to 2011. She said, she was made aware of a traumatic event on a boat but that the Accused's symptoms of PTSD would have presented prior to that event. She said it is likely that the traumatic event on the boat would have added to her presentation of symptoms.

[103] She clarified that while some of the Accused's symptoms were consistent with acute stress disorder all of her symptoms were consistent with PTSD, and not acute stress disorder which is why the diagnosis of PTSD was made.

[104] The witness' opinion was solicited from the evidence that Psychiatric Nurse Practitioner found the Accused to be suffering from anxiety and depression. The witness stated that it was likely that the Accused was experiencing symptoms of anxiety and depressive disorder as well as PTSD. She explained the likelihood of co-morbidity, which she defined as the presence of more than one mental disorder at the same time. She said that some symptoms common to PTSD are also common in depression such as hyper vigilance and hallucinations. It is therefore, possible that these presentations could have been present at that point of evaluation. When she

conducted the screener, she said that the Accused had symptoms consistent with depression, paranoia and suicidal thoughts.

[105] It was suggested to the witness that her diagnosis based on the screener was not more accurate than the diagnosis made by Nurse Bennet in 2011. The witness stated that the practice has been to use clinical judgment to diagnose patients. She stated that, she conducted a clinical interview which involves going through a checklist and then the diagnostic tools are supposed to help to take out that bias or human error. She said that the Diagnostic Tool is fairly new because the tool is expensive. She said that while using clinical judgement is acceptable; the gold standard is that the diagnosis should be based on clinical expertise and the use of standardized tools designed to ensure the validity and the reliability of the results of the assessments. She stated that when diagnostic tools are not used, it is possible to misdiagnose some of the symptoms. The diagnostic tool rules out other presentations.

[106] She stated that she did not assess for the level of impairment, but she did assess significant impairment and that the Accused had started exhibiting symptoms of PTSD one month after the rape occurred.

[107] She stated that PTSD, generalized anxiety disorder, bipolar disorder and major depressive disorders are all abnormalities of the mind, which she defined as anything that deviates from normal behaviours and causes significant distress.

Is the Defence of Insanity Available?

[108] The defendant relies on the Defence of insanity. **Section 26 of the Criminal Code** provides:

A person accused of a crime shall be deemed to have been insane at the time he committed the act in respect of which he is accused—

(a) if he was prevented by reason of idiocy, imbecility or any mental derangement or disease affecting the mind, from knowing the nature or consequences of the act in respect of which he is accused;

(b) if he did the act in respect of which he is accused under the influence of a delusion of such a nature as to render him, in the opinion of the jury, an unfit subject for punishment of any kind in respect of such act.

[109] The Belize Court of Appeal case of R v Patten¹³, said, at page 5 of the judgment, that the M’Naghten Rules do not form any part of the laws of Belize and *“the law on insanity is that stated in section 23 of the Criminal Code and we must seek to find a proper interpretation thereof”*. The Court went on to say that in carrying out this difficult task one is confronted by the possible interpretation that under Section 23(b) the jury is vested with full power to decide whether or not an Accused who is suffering from any kind of delusion whatsoever may be found insane. We do not think that this is the intention. The delusion must be of such a nature as would render him *“an unfit subject for punishment of any kind”*. ***It seems to us that a person would be an unfit subject for punishment only if because of a delusion resulting from some disease affecting the mind he cannot properly be considered to have any mental responsibility for his actions. If the jury should be of the opinion that such is the case they are entitled to find the Accused insane.***

[110] There are two limbs of the insanity Defence. The Defendant has to prove on a balance of probabilities that:

(a) she was labouring under a disease affecting the mind, and that this disease made her incapable of knowing the nature or consequences of her actions, OR

¹³ Criminal Appeal No. 5 of 1976

(b) that the defendant was operating under a delusion the nature of which makes her unfit for punishment of any kind.

[111] The proof of insanity lies with the Defence to be satisfied on a balance of probabilities- **R v Patrick Reyes**¹⁴. It is a question of fact to be determined by this Court.

Disease of the Mind

[112] The evidence from both experts is that the Accused suffered from PTSD, which is an abnormality of the mind based on the accepted testimony of Crystal Humes. The Court notes that the Crown did not seek to rebut or challenge the expert evidence advanced by the Defence by calling another expert. They merely challenged some portions of the witness' evidence through cross examination. In its closing address, the Crown readily accepted that the Accused suffered from PTSD but challenged the applicability of the second part of **Section 23** (a) i.e. whether the Accused was incapable of knowing the nature and consequences of the act.

[113] It is clear that the Accused had mental health challenges prior to this incident and from as early as 2011. She had been on routine treatment as an out-patient with the Mental Health Services and throughout the period 2011-2018/19 she was under the care and treatment of Nurse Bennet. Her diagnosis during that period was firstly anxiety and depressive disorder and in 2015 she was diagnosed by Nurse Bennet with PTSD.

[114] A live issue in this Court's consideration is whether the Accused was suffering from a disease of the mind when this incident occurred. After consideration of the totality of the evidence advanced by the Defence, the Court accepts as a fact the evidence of Crystal Humes that the Accused did in fact suffer from PTSD from as early as 2011 and specifically in 2015. The Court finds that Ms. Humes conducted a far more

¹⁴ Cr App No 5 of 1999 (Belize Court of Appeal)

detailed assessment of the Accused by use of specialised diagnostic tools designed for that purpose. The Court also finds that the process of assessment conducted by expert Nurse Bennet although closer in time, was limited to the extent that she used no standardised tools, but instead formed her conclusion based on interviews and the presentation of symptoms. Her assessment did not rule out comorbidities, nor did it have any validity tests in place for ruling out bias and human error.

- [115] The Court also notes that Nurse Bennet’s diagnosis that the Accused (pre- incident) with anxiety and depressive disorder was not necessarily inconsistent with a diagnosis of PTSD. The Court accepts the uncontested evidence of both experts that the symptoms of PTSD may be consistent with symptoms of generalised anxiety as PTSD is a form of anxiety.
- [116] The Court has considered that Nurse Bennet had more opportunities to assess the Accused – and the timing of her assessments were more proximate to this incident than the assessment of Ms. Humes in 2023. In this regard, the Court notes that on her closest examination of the Accused in 2015 she did conclude a diagnosis of PTSD.
- [117] Having thoroughly analysed the testimony of both experts, the Court finds that it is more probable than not, that the Accused had already been suffering from PTSD at the time of this incident and quite possibly since 2011. The Court accepts the evidence of Ms. Humes that her diagnosis would more than likely have persisted from 2011 until 2023.
- [118] The Court also notes that the degree of the Accused’s PTSD was reported to be severe, because they were significantly intense and resulted in significant distress and impairment of conditions and frequency. The Court applying the test in **R v Sullivan** accepts that PTSD is a disease of the mind as it affects the mental faculties of reason, memory and understanding. This evidence is also borne out of the evidence accepted from Ms. Humes.

- [119] The second question is whether this disease made her incapable of knowing the nature or consequences of her actions.
- [120] Nurse Bennet assessed the Accused on 14th April 2015, seven days after the incident. She had been treating her since 2011 on a relatively routine basis. While her diagnosis differed from that of Ms. Humes on the time that the Accused was diagnosed with PTSD, which the Court has examined above- the Court finds that her ability to observe the Accused over a significant period of time makes her opinion on this second question to hold significant weight. The Court considers that Ms. Humes only examined the Accused in 2023, seven years after his incident occurred. The weight of her opinion on the actual state of mind of the Accused must therefore be weighed against this fact. It was also noted that Ms. Humes was never specifically asked about the ability of the Accused to understand the nature and consequences of her actions on 6th April 2015. On the other hand, Nurse Bennet who was so tasked stated that the Accused should have been able to understand actions and consequences, and that she would have been able to understand the consequences of pulling the trigger. In re-examination she clarified that by consequences she meant the result.
- [121] Even accepting Ms. Humes' testimony that the symptoms of PTSD can include flashback, dysregulation and significant impairment caused by triggers there is no evidence that on the day of the incident the Accused had in fact experienced any of those symptoms. The expert witnesses spoke only to her general diagnosis and not to a specific experience on the boat. Ms. Humes also said that there were times the Accused was functional and there were times that she was not.
- [122] The contention by the Defence that the fact that the incident was "out of character" for the Accused does not substantiate the Defence of insanity. It is not sufficient that the Accused suffered from a disease of the mind, and that she acted out of character. To establish insanity the Defence must prove on a balance of probabilities

that the disease of the mind prevented her from knowing the nature and consequences of the act with which she is accused i.e. attempted murder. The evidence already accepted by this Court in fact proves the contrary.

Delusion

- [123] With regard to (b) there has similarly been no evidence advanced that at the time of the commission of the act the Accused suffered from a delusion. Delusion is not defined in the Code but can be given its ordinary meaning. Oxford's English Dictionary defines a delusion as anything that deceives the mind with a false impression; a deception; a fixed false opinion or belief with regard to objective things which is a false belief. The delusion must be of such a nature that would render her an unfit subject for punishment of any kind.
- [124] In the case of Patten, the Trial Judge had given examples of delusions- killing a man believing him to be a wild animal, killing a man believing him to be attacking you, killing a man because superior orders you to do so. This of course, is a non-exhaustive list, but supports the contention that a delusion is a false belief or belief that is something is true, which is actually false or unreal.
- [125] The evidence of Nurse Bennett was that during her treatment of the Accused she did observe that she experienced psychotic episodes. She explained that psychosis is characterized by hallucinations and delusions. Hallucinations have to do with the five senses, while delusions refer to a belief in things that are not real. In the case of the Accused she had hallucinations. She said; however, that these developed after 2015. Her evidence was that in her examination of the Accused on the 14th April 2015, immediately post incident, she did not find any symptoms of psychosis.
- [126] The assessment of Ms. Humes is silent on whether the Accused specifically suffered from a delusion at the time this act was committed. She said that there were also

symptoms present with psychosis when she conducted the screener in 2023, but that she could not say whether symptoms of psychosis were present in 2015.

- [127] The Defence has thus not proven on a balance of probabilities that the Accused suffered from a delusion rendering her unfit to be punished. Paragraph b is thus inapplicable.

Diminished Responsibility

- [128] **Section 18(5) of the Code** states that any provision of this Code with respect to intent, exemption, justification or extenuation, or any other matter in the case of any act, shall apply, with the necessary modifications, to the case of an attempt to do that act.

- [129] **Section 118 of the Code** states:

Where a person kills or is a party

(1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omission in doing or being a party to the killing.

(2) On a charge of murder, it shall be for the Defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section would be liable whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question

whether the killing amounted to murder in the case of any other party to it.

- [130] Although the Court finds Defence Counsel's contention that diminished responsibility applies to the offence of attempted murder to be a finely crafted argument, which at first blush seemed compelling, the Court finds itself unable to agree for the simple reason that diminished responsibility, as is provocation, are not complete defences but are limited defences, which essentially mitigate against the rigours of the offence of murder by a conviction of the lesser offence of manslaughter. The Court finds, as a matter of practicality, that such a result could not be held to be applicable to the offence of attempted murder. There is no statutory guidance as to what the effect of such an application would be in a jurisdiction that has a very detailed and prescriptive Criminal Code.
- [131] The Court finds merit in the (arguably obiter) dicta in **R v Good** which addressed a specific ground of appeal that the Trial Judge did not properly direct the Jury on the defence of diminished responsibility. Although in that case, unlike the case at bar, there was no evidence capable of amounting to diminished responsibility and so the direction was a moot point, the Court of Appeal held that it was doubtful that the defence of diminished responsibility could apply to the offence of attempted murder. This Court adopts a similar conclusion.
- [132] The Court wishes to state that the approach in England where it is recognised that if an Accused has a mental abnormality amounting to a diminished responsibility, the appropriate course is to convict of attempted murder, and thereafter to mitigate the sentence to reflect same, is the approach that is more consistent with the principles applicable in Belize than the Scottish approach, which has been advanced by Counsel in **Her Majesty's Advocate v Gareth Kerr**. The sentencing range for attempted murder is wide enough that account can be taken of such a factor in the sentencing process.

Disposition

- [133] The Court has rejected the case for the Accused, for the reasons given above.
- [134] The Court having considered all the evidence, and the cases for the Crown, and the Accused is satisfied so that it is sure of the guilt of the Accused. The Court is satisfied so that is sure and accepts the Crown's case that the Accused attempted to murder the VC on the 6th April, 2015.
- [135] The Accused is found guilty of and the matter is adjourned for a separate sentencing hearing as advised by the CCJ in Linton Pompey v DPP¹⁵.

Candace Nanton

High Court Judge

Senior Courts Belize

Dated 13th March 2024

¹⁵ [2020] CCJ 7 (AJ) GY at para 32