

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

(Criminal Jurisdiction)

Central District

Indictment C3/2024

THE KING

V

EARL BAPTIST

**Appearances:** Mr. Riis Cattouse for the Crown  
Mr. Leroy Banner for the Accused

**Trial Dates:** 17<sup>th</sup> and 19<sup>th</sup> June 2024

**Judgment delivered:** 27<sup>th</sup> June 2024

### JUDGMENT

#### Introduction

[1] **SYLVESTER J.** By an indictment proffered by the office of the Director of Public Prosecutions, the accused, Earl Baptist was indicted for the offence of murder of Leslie Gillett. The particulars of the indictment are that **EARL BAPTIST** on the 21<sup>st</sup> day of January 2022 at Burrell Boom village, in the Belize District, in the Central District of the High Court, murdered Leslie Gillett.

[2] The offence of murder is defined at Section 117 of the Criminal Code, Chapter 101 of the Laws of Belize, Revised Edition 2003 as follows:

*“Every person who intentionally causes the death of another person by any unlawful harm is guilty of murder,*

*unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse...”*

- [3] On the 20<sup>th</sup> day of March 2023, the accused was committed to stand trial before the Supreme Court for the crime of murder.
- [4] The accused’s trial was conducted without a jury, pursuant to the provisions of **Section 65A of the Indictable Procedure Act, Chapter 96 of the Laws of Belize, as amended by Act No. 5 of 2011**. The above enactment prescribes that accused who are committed to stand trial for murder after the 1<sup>st</sup> of August 2011, pursuant to section 65A (2), must be tried before a Supreme Court Judge sitting alone, without a jury.
- [5] On the 17<sup>th</sup> day of June 2024, the Accused was arraigned, pleaded not guilty and his trial commenced for the offence of murder.

**Overview of the Prosecution’s Case: [Pith and Substance- Video Identification by Sgt. Rollington Fuller**

- [6] The crux of the prosecution’s case is that the accused, armed with a firearm, together with another unknown assailant, attended at the deceased’s shop, pretending to purchase items through a wired mesh. While the deceased was handing the items to the accused, the accused and the other assailant, opened fire on the deceased killing him instantly. The gravamen of the prosecution’s case was that Sgt. Fuller’s ability to identify the accused was based on him having had numerous dealings with the accused on prior occasions, and despite the fact that the accused in the video was wearing a COVID 19 mask, and a black stocking overing his head, all the other features of the accused were properly identified by Sgt. Rollington Fuller’s viewing of the video recording that was retrieved from the crime scene by Santiago Perez. The video recording was in colour, since the incident occurred in broad daylight and the accused on more than one occasion looked up at the



camera. His distinguishing eyes, parts of his head, face and gait were well known to Sergeant Fuller. Therefore, he was not mistaken, neither could it have been a fleeting glance, there was therefore no ghastly risk that can attend upon the accused. In essence, the prosecution's case, which was submitted with tremendous force, was that the accused neither alleged there was a doppelganger, nor he had an identical twin.

### **Overview of the Defence Case:**

- [7] The accused led a defence of alibi; in other words, he asserted in his unsworn testimony that he was not the shooter. That at the material time of the shooting he was in Belize City at the Fisheries in North Front Street, with his father Shadrick Baptist and common-law wife Shenell Harris. In his statement to the police, he stated he was with his 'Pa', however in his statement from the dock he clarified it was his father Shadrick Baptist, and common-law wife in whose company he was, at the material time. The defendant did not call any alibi witness. The defence posited the view that there are many persons who look like the accused and therefore there are no distinguishing features, that would enable Sergeant Fuller to identify the accused. Further, the mere fact that Sergeant Fuller seemed to have possibly identified the other shooter as Jordan Burns Waite, for the first time in court, when he viewed the video, this should go to his discredit. However, in his written statement in January 2022, he could not identify the other shooter. This further solidifies the defence stance that, he was mistaken. That the police failed to examine the accused's alibi when he notified them during the investigation that he was in the presence of his, 'Pa'. In sum the defence alleges the prosecution has not satisfied the court to the extent that it can feel sure of the guilt of the accused, or that he was the shooter.
- [8] The gravamen of the defence case was that the identification of the accused by Sergeant Fuller, was inaccurate in material particulars as he could not properly see the face of the shooter in the recording, neither were there any distinguishing features, marks or other glaring factors that could have differentiated the person in the video from anyone else

who is of similar height, build and skin colour. Further, that it was dangerous for a police officer to identify someone under those circumstances, the face was partially covered by a COVID 19 mask, with a black stocking covering the head albeit in broad day light. And the fact that only on the day of the trial Sergeant Fuller was able to say that the other shooter was Burns Waite, when in his statement in January 2022, he didn't know who the shooter was, further crystallised his submission, that the prosecution has failed to prove its burden beyond a reasonable doubt, to make the court feel sure the accused was the shooter.

- [9] As the trier of the facts and law, there are five elements which must be proved by the Prosecution to make me feel sure of the guilt of the Accused.

#### **Elements of the Offence of Murder**

- [10] In order to convict the accused of murder, the Crown is required to prove five elements so that I feel sure of the accused's guilt namely:

- (a) that Leslie Gillett (hereinafter referred to as the deceased) is dead  
and
- (b) that Leslie Gillett died of harm,
- (c) that the Accused inflicted the harm which resulted in the death of  
Leslie Gillett,
- (d) that when the Accused inflicted the harm, he did so with the  
specific intention to kill Leslie Gillett, and
- (e) that when the Accused inflicted harm on Leslie Gillett he did so  
without lawful justification.

#### **Leslie Gillett is Dead and Died of Harm**

- [11] There is no dispute in the evidence presented by the prosecution to prove that Leslie Gillett is dead. The evidence of Dr. Roque Blanco confirmed that the deceased died from gunshot wound. The common-



law wife of the deceased Ginevva Joseph also witnessed the autopsy and identified the deceased as Leslie Gillett.

### **Burden and Standard of Proof**

- [12] In a Judge alone trial, I am the Judge of both the facts and law and as such I shall direct myself throughout my deliberations and keep in the foremost of my mind that the prosecutor has the burden of proof in this case and that the accused stands innocent before me<sup>1</sup>. The accused has nothing whatsoever to prove. However, it is the prosecution that has the duty to prove each element of the offence of murder, beyond a reasonable doubt to the extent that I am sure before I can convict the accused of the offence of murder.
- [13] I am further guided by the legal principle that the prosecution must prove each element of the offence by providing me with evidence of such a quality that I can feel sure of the respective elements. Ultimately, if I am sure of each element and I have no reasonable doubt, then I am certain of the guilt of the accused and I am duty bound to convict. If, on the other hand, the prosecution fails to make me feel sure and I have a reasonable doubt of any of the elements of the offence I will be obliged to acquit the accused of murder.

### **The Evidence**

- [14] The prosecution elicited the evidence from twelve (12) witnesses to prove its case against the accused. A total of four (4) witnesses gave sworn testimony and were cross-examined, and eight (8) witnesses were agreed by the defence and prosecution and their statements were read into the evidence pursuant to **Rule 10 of the Criminal Procedure Rules 2016 along with section 106 of the Evidence Act, Cap. 95 of the Substantive Laws of Belize Revised Edition 2020.** One (1) witness namely John Rudon, was sworn and testified virtually pursuant

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<sup>1</sup> Nervais v Queen [2018] CCJ 18 par. 48-49

to section 186 of the **Senior Courts Act 2022** with agreement of both the defence and prosecution.

[15] The Prosecution's case rests solely on the video identification evidence of the accused by Sergeant of Police Rollington Fuller. The case is partly circumstantial in that at the time of the shooting the deceased was not seen in the video however, immediately thereafter, the deceased was found motionless, with numerous projectile injuries, inside Mathilda's shop where the CCTV recorded the shooting.

[16] Since the prosecution's case rests substantially on the video identification of the accused by Sergeant Rollington Fuller, I will paraphrase his evidence including his cross-examination. The other prosecution witnesses will then be examined. Thereafter the court will embark upon a legal analysis of various aspects of the evidence, as the trier of the law and facts, to seek to come to a reasoned conclusion in obedience to the **Electronic Evidence Act** Chapter 95:01 of the Substantive Laws of Belize, Revised Edition 2011, the Turnbull guidelines and authorities that would assist in my deliberation.

**The Prosecution's Evidence (Star Witness - Sergeant Rollington Fuller)**

[17] The evidence of Sergeant Rollington states that, his regulation number is #1749, and he is currently attached to the Gang Intelligence Investigation and Interdiction Unit (GI-3), Intelligence and Deportee Section (IDS). He has been attached to the GI-3 department from its inception in January 2021. Previously he was attached to the anti-gang task force, which was established on April 1<sup>st</sup> 2018, and prior he was attached to Crime Investigation Branch (CIB) support unit. He has been a police officer for the past ten (10) years.

[18] In January 2022, he was a police constable. His main duties at the GI-3 unit, was sourcing information about active criminal gangs, which said information was then analysed for intelligence purposes and for the investigation of criminal gangs and their members. This also included the interview and processing of deportees entering Belize.



- [19] That on Saturday January 22, 2022, around 1:30 pm he visited the Crime Investigation Branch office at Ladyville police station on the request of Corporal Santiago Perez who informed him about a murder which occurred on Friday January 21<sup>st</sup> 2022, at about 5:27pm, and requested his assistance in viewing a video footage and possibly identifying two persons in the video.
- [20] While viewing the video, he observed it was multi coloured, the time of the day was bright and clear as if it was an evening setting, the setting in the video appeared to be a store in an open area. He saw that the channel stamp was on the left top corner, which had channel six (6) and the center had the date, 21/1/2022 with the time 5: 27: 57 at the top middle. He observed a Hispanic descent male person wearing white sleeveless shirt, with a camouflage design face mask, covering his mouth and nose area, he appeared to be purchasing items. A couple minutes after, he saw two male persons walking off the street and stood where the Hispanic male person was standing.
- [21] One of the male persons was of dark complexion slim built, wearing a dark coloured T shirt, with apparent stain design all around it. The male person also had a black face mask covering his nose and mouth area, he also had a black stocking on his head, covering an average height dreadlocks design hairstyle. The male person also had a narrow face with large full eyes. At three minutes and fifty-nine seconds (3.59) into the video, he immediately recognised the male person as Earl Baptist. The second male person was of brown complexion, medium built wearing a grey T-shirt and a blue face mask covering his mouth and nose area. This person also had a dark baseball design peak cap and he had it dipped very low covering his eyes. He was not able to recognise the second person. He then saw Earl Baptist take out an apparent Belize currency note from his left front pocket with his left hand. He was wearing a wristwatch on his left hand. He then placed the currency note through a small window, apparently purchasing an item. A couple minutes after that, he took out a dark object from his front pants waist with his left hand, pointing it through the small window, where he saw red and orange flares and smoke, consistent in what appears to be firearm shots. He then saw at the same time, the other male person mentioned, who was wearing the grey T- shirt, with the blue face mask

covering his nose and mouth area, with the dark colour baseball design peak cap, dipped low covering his eyes, also had an object in his right hand and pointing through the window, and he saw red and orange flares and smoke.

[22] He posited that what allowed him to identify Earl Baptist, was that the video footage was bright and clear, and nothing obstructed his view from seeing him clearly. He has known him before. The lighting condition in the video was bright and clear. He saw his upper body structure, and his large full eyes. He has known Earl Baptist, approximately four years prior to viewing the video. He would see him bi-weekly, while conducting routine patrols in the Police Street Holy Emmanuel also which is known as Barber Harris, and around M and Y Street. There were occasions he conducted overt and covert surveillance and Earl Baptist would be about ten (10) feet in distance. He would see his entire face, body structure, his own unique walk, and he would be in his view for several hours. During his routine patrol, he would exit his mobile and walk up to Earl Baptist and others in the vicinity of # 6632 Police Street, where he would warn them about loitering, he would be about two [2] feet in distance when talking to them, and nothing will obstruct his view from seeing Earl Baptist's entire face and body structure clearly. Normally, this would last for about three (3) to five (5) minutes. He would normally see him with a black stocking on his head and with a face mask as it was the time of **COVID 19 pandemic**.

[23] When he saw the video, Earl Baptist was wearing a dreadlocks design hairstyle. Sometimes he might have it in afro, or in several buns. On the occasions when he would see him bi-weekly, he would be ten feet (10) in distance. Most of the times it's during the day settings or afternoons. He would see him for about three to five minutes in his view on average and nothing would be blocking his view. He would see his entire body structure and his face clearly.

[24] He would have conversations with him about getting a job and they would usually have interactions, as most of the time Earl Baptist would be seen, hanging out with other persons, during work time. He also conducted searches at his residence being # 9137 M and Y Street. The last time he saw Earl Baptist before the video footage was about a month ago. He would be on routine police patrol, where in those areas,



he would go at a slow pace in the police truck on those occasions he would see his entire face and body structure. Nothing would be blocking his view from seeing him clearly; the lighting condition on those occasions would be clear and bright. He could not recall what hairstyle he wore on those occasions, but most of the time he would have a black stocking on his head. He further testified that he would be able to recognise Earl Baptist and pointed to the accused stating that is Earl Baptist, dark complexion, wearing white shirt and large full eyes in court.

- [25] The video of the shooting incident was played in court, and he was able to identify the store setting, multi coloured bright and clear, channel 06 at left corner, date stamp 21/1 /22 and time being 5:27:57, the Hispanic male person with white colour sleeveless shirt. Earl Baptist with full eyes, dark T- shirt with stain design, hand watch on his left hand, taking out the currency and the object with flares and smoke. He confirmed this was the same Earl Baptist he spoke about as can be seen on the video, which is bright and clear enough and nothing is obstructing his view from seeing his entire face clearly.

#### **Cross-Examination of Sergeant Rollington Fuller**

- [26] In cross-examination Sergeant Rollington Fuller states that, he could still make out the person's face despite wearing a stocking. He can still see the entire face with the face mask. The video was stopped at the time 5:25: 58, and he said, in that still photo he cannot see the right side of the face. (Video was again stilled at 5:27:58). He disagreed that he was not being honest when he said he could have seen the entire face. The last time he saw Earl Baptist prior to viewing the video, was one month. He had him in his overt and covert surveillance and was keen in observing his appearance. He cannot recall exactly his hairstyle but most of the times he would have the black stocking on top of his head.
- [27] He couldn't recall the hairstyle he had one month prior to the video. He would usually change his hair style, and he would notice the black stocking on his head, he cannot tell the hair design, but it appears as dread locks. He disagreed that at no time Earl Baptist had dreadlocks and he could be mistaken. He asserted, he had numerous 'run ins' with Earl Baptist and others. He had detained him during the state of emergency, and he is not aware that Mr Baptist is suing the state in

relation to the state of emergency, so far, he has not gotten any *sub poena*.

[28] He further testified that when he viewed the video, he was alone, at Ladyville. That he had warned Earl Baptist about loitering on #6632 Police Street, and he would normally see him with a black stocking and face mask. He disagreed that he wasn't sure who was in the footage, he said he 'strongly' disagreed. He confirmed in repeated questioning that he could identify Earl Baptist and he emphatically stated that he had previous interactions with him, with the face mask and the stocking on his head, but he could not recall dates. He disagreed that he did not know Earl Baptist for four (4) years, and he confirmed that there were countless days he stopped and searched Earl Baptist. He cannot recall the dates, but he believed it was about a month before viewing the video. He usually sees him bi-weekly, but he doesn't keep the same hairstyle. He disagreed the angle of the video the person face was dark, the full eyes were not clear enough and he could not recognise the shooter. He concluded it was clear enough to recognise the shooter.

[29] For the first time in cross-examination, he said the other person in the video with the gun looked like, 'Jordan Burns Waite', the way he walks and his body structure. He agreed that he said in his second statement he could not identify the second shooter, however he remained adamant that the second shooter **could be** Jordan Burns Waite, by the way he walks and body structure. He didn't tell anyone the second shooter **could have been** Jordan Burns Waite, his whole face was covered up, as shown on the video. He maintained he was not telling lies.

#### **Evidence of Corporal # 1517 Santiago Perez**

[30] Corporal Santiago Perez testified in examination-in-chief that he was posted at the Belmopan Head Quarters at the National Compstats Office. That on January 22<sup>nd</sup> 2022, he assisted Sgt. # 839 Rene Cu, in retrieving video footage from a black DVR ZOSI brand, which was at the CIB office. He extracted the video footage from that DVR, and he saved them on the white USB flash drive. He saved and secured the video on a black dell precision tower 2420, with US tag number 5286 which was assigned to him.



- [31] He stated on that same day January 22, 2022, while reviewing the video footage at the Ladyville police station, PC Rollington Fuller (now Corporal) who was attached to GI-3 Unit visited the station along with other officers from the GI-3 Unit, He informed PC Fuller that a murder had occurred on January 21<sup>st</sup> 2022 at the Burrell Boom village, at Matilda's shop. He also informed PC Fuller that the suspect was captured on a surveillance camera. He requested PC Fuller's assistance in identifying the suspect. After he reviewed the footage, he managed to identify one of the suspects.
- [32] On the 26<sup>th</sup> January 2022, he took the same video he retrieved on the 22<sup>nd</sup> January 2022 and he burned the video footage on a Maxcell DVR disc. He burned the videos and thereafter he labelled the disc, wrote Belize Police Dept on it, video footages from Matilda's shop and the date of extraction, IT personnel name, which was his signature. Thereafter he placed the DVD in a yellow envelope, and handed it over along with a change of custody to Sgt. # 839 Rene Cu.
- [33] On the 24<sup>th</sup> January 2022, himself and Sgt. Cu visited Ice Cold Store Burrell Boom Village, and requested the assistance of Mr. Leo Chin, in viewing his video surveillance camera. With his assistance he extracted two (2) videos from a DVR and he saved it on a USB flash drive.

#### **Cross-Examination of Santiago Perez**

- [34] The cross-examination of Santiago Perez confirmed that he received the password to access the DVR. He disagreed Mr. Cu and Ms. Joseph did not give him the password to the DVR. That when Mr. Fuller viewed the video images, he was accompanied by other officers from the Gang Intelligence Unit. He did not put in his statement how long they would have viewed the video footages. He disagreed the video footage could have been edited. He examined the DVR after it got to the police station, it was part of his job. That it is not possible that someone could have tampered with the video recording.

#### **Evidence of Sgt. # 839 Rene Cu**

- [35] Sgt. Cu testified that he is an Inspector of Police currently attached to Precinct One police station, Eastern Division. In January 2022, he was

posted at Ladyville Police Station, at that time he was Sergeant of Police. On the 21<sup>st</sup> January 2022, he received information of a shooting incident that had occurred at Matilda's shop in the Burrell Boom Village Belize District, wherein Detective Constable, Jamaal Escalara and Corporal Dorian Chee responded to said report.

- [36] On the 22<sup>nd</sup> January 2022, he visited the Ladyville Police Station, and took over the investigation of the shooting incident where Leslie Namaan Gillet had been murdered. He received information that Detective Constable, Jamaal Escalara had retrieved the DVR system from Matilda's shop, as a result he requested the assistance of IT technician Cpl. Perez, so that the video footage could be retrieved. He then requested Sgt. Rollington Fuller, attached to GI-3, to view the video footage to assist, in their investigation.
- [37] After Sgt. Rollington Fuller viewed the video and he received certain information, he relayed the information to all foot and mobile patrols, to be on the lookout for Earl Baptist, as he is wanted in the investigation of the murder of Leslie Namaan Gillet.
- [38] On the 10<sup>th</sup> March 2022, he received information that Earl Baptist had been detained in Belize City. That on the 11<sup>th</sup> March 2022, he visited the Ladyville Police Station, where he met Earl Baptist, and informed him that he intended to conduct an interview, he got in contact with a Justice of the Peace and the interview was conducted. After the interview he swore to an information and complaint and formally arrested and charged Earl Baptist with the offence of murder.

**Cross-Examination of Rene Cu:**

- [39] Sgt. Rene Cu testified that he conducted an interview with Earl Baptist on March 11<sup>th</sup>, 2022. When he asked him where he was on Friday 21<sup>st</sup> January 2022 between the hours of 5:30 pm and 6:30pm, his answer was, "*with my Pa*". The next question was, "*Where were you and you Pa?*" His answer was, "*We were back ah 'fisheries' with my Pa*". That is based on the interview, Earl Baptist told him he had an alibi. That he had a positive duty to investigate the alibi. That is when he was referring to the word, "*Pa*", he didn't know who "*Pa*" is or who he was referring to. That he could have enquired from him what "*Pa*" and "*back ah fisheries*"



meant but he refused to answer the other questions. He said he didn't know in local parlance when someone said they are by fisheries, it meant, North Front Street.

- [40] Further, he did not hurriedly charge Earl Baptist without looking into his alibi, he mentioned someone he called "Pa" but didn't say who he meant by "Pa". He attested that there are a lot of young men in that area who do not necessarily look like him, but most of them are dark-skinned young men. He never found out the name of the second shooter in the video. He denied, going to find or speak to "Pa" the accused's father.

### **Evidence of John Rudon BSc**

- [41] The witness testified that he is a Qualified Firearm Examiner employed with the National Forensic Science Laboratory of Belize in excess of sixteen (16) years. He holds a Bachelor of Science degree from the University of Belize. He has specialised training in ballistic and firearm examination, which he obtained from attending a three (3) year training programme in 2014, 2016 and 2017, from the International Forensics Laboratory and training centre in Indianapolis, Indiana. He testified in the High Court before and was deemed an expert in ballistics and firearm examination. He was deemed an expert in Ballistics and Firearm examination, by this court without objection.
- [42] That during the month of January 2022, he received a number of sealed envelopes containing, expended cartridges, suspected slugs, suspected fragments, numerous rounds of ammunition, one firearm, one empty magazine, and a gun box containing one firearm. On the 3<sup>rd</sup> day of February 2022, he performed an examination in relation to Leslie Gillett, it had the unique laboratory number, FOR 22-0090F. He would be able to recognise the report if he sees it again, by the unique laboratory number located on all the pages and his signature, which is located on all the pages. His analysis report was tendered into evidence and marked "JR1".
- [43] He concluded that the firearm was capable of firing, there were live rounds of ammunition, the fragments were from an expended bullet of

undetermined Caliber and the expended cartridge cases were determined to have been fired from an unidentified 9mm Caliber firearm.

- [44] There was no cross-examination of John Rudon by the defence.
- [45] The evidence of the ensuing eight [8] witnesses hereunder were agreed evidence and therefore they did not testify but their evidence was read into the record, including that of Geniva Joseph.

#### **Evidence of Geniva Joseph**

- [46] The testimony of Geniva Joseph states that on the 28<sup>th</sup> of January 2022, she witnessed the post-mortem examination and identified the body of her common-law husband, Leslie Gillett. Further, on the 21<sup>st</sup> of January 2022, she assisted CIB officers, in retrieving the video footage, from Matilda's shop, by providing the password for the DVR.

#### **Evidence of CST Robert Henry**

- [47] Crime Scene Technician, Robert Henry's evidence shows that on Monday 31<sup>st</sup> January 2022, he was asked by CST, Angella Wiltshire attached to Belize City Scenes of Crime unit to transport some items she had collected, from a post-mortem examination and a package sealed referencing a shooting scene at Burrell Boom village. The items were eight sealed white envelopes, which contained bronze slugs and copper fragments and four ziplock bags which contain post-mortem blood and vitreous fluid, collected from the deceased's body.
- [48] On the 22<sup>nd</sup> January 2022, Sgt. Rene Cu requested that he revisit the alleged homicide scene for the purpose of taking daylight photographs. He attended and took five (5) photos of the crime scene. The photos were tendered and marked "RH1-5".

#### **Evidence of PC # 80 Dorian Chee**

- [49] Corporal of Police Dorian Chee's #80, evidence states that on Friday 21<sup>st</sup> January 2022, at about 6:00pm, he along with ASP. Jose Mendez



proceeded to an alleged homicide scene in Burrell Boom village, at Matilda's shop. There he met PC. Jamal Escalera, who briefed him. The front of the shop was closed, and perimeters were secured by police officers. He observed the deceased motionless on the floor in a pool of suspected blood. There appeared to be several apparent gunshot wounds to his body with several expended shells around him. A firearm was found tucked behind the pants waist of the deceased. The crime scene was processed, and he briefed Brian Lopez who photographed the scene, and he retrieved the firearm loaded with ammunition from the pants waist of the deceased and a slippers from the driveway of the shop, and handed it to him. He thereafter packaged it in a gun box and secured it in a metal file cabinet which is locked, and he is the only one who had access to the Crime Investigation Branch office. On Monday 14<sup>th</sup> February 2022, at 9:45 am he handed over the packaged weapon and slippers to Sgt. #839 Rene Cu via a Chain of Custody form.

#### **Evidence of DC # 2211 Jamaal Escalera**

- [50] Jamaal Escalera states that on Friday 21<sup>st</sup> January 2022, at about 5:30 pm, he was at Ladyville police station, where he got information of shots being fired at Burrell Boom village. Acting on the information he visited the said location where he met Geniva Joseph. He was directed inside Matilda's shop. Upon arrival Geniva Joseph identified her common-law husband, motionless, face down in what appeared to be blood. He also observed several expended shells around the body of Leslie Gillett. The area was cordoned off and the CST officer Brian Lopez was contacted, who arrived, photographed and processed the crime scene. The following was found and retrieved from the crime scene, 16 Aguilar .9 mm expended shells and 3 S & B .99 mm shells, six slugs, 2 fragments and 2 blood swabs were collected. The DVR system was then removed from the shop upon agreement with Geniva Joseph. The body of Leslie Naaman Gillett was then transported to the Karl Heusner Memorial Hospital (KMH).

#### **Evidence of PC # 1467 David Gongora**

- [51] The evidence of PC. #1467 David Gongora states that he reported for duty on Thursday, 10<sup>th</sup> March 2022, at 5:30 am where he was briefed

for an operation to be conducted within the Martin's area. It consisted of three (3) units namely, Mobile Interdiction Team [MIT], Special Patrol Unit (SPU) and the Gang Intelligence, Investigation and Interdiction Unit (GI-3). At 5:45 am information was received that Earl Baptist who was wanted in connection with a murder in Ladyville village was seen at the Baptist resident of # 6632 Police Street, Belize City. The three teams went to the location where Earl Baptist was apprehended. He was running with what appeared to be a firearm. He was caught and escaped again due to the boisterous behaviour of the crowd that had gathered, however he was recaptured a second time by the MIT team of officers. At 6:15 pm he was placed under arrest and cautioned, after much resistance from the family members of Earl Baptist.

#### **Evidence of Leo Chen**

- [52] Leo Chen states that he is a Chinese businessman residing in Burrell Boom village and owner of "Ice Cold Shop", situated in Burrell Boom Village Belize District. He stated he is not giving any statement in relation to allowing the police to retrieve information from his DVR system as he is fearful for his life, and he doesn't want to be involved in anything.

#### **Evidence of Dr. Roque Blanco**

- [53] Dr. Roque Blanco testified that he is a licensed Forensic Medical Examiner, with License # 0043/20. He is employed with the National Forensic Science Services at Ladyville Village, Belize District. On Friday, 20<sup>th</sup> January 2022, at 9:00am at Central American Health Science University Morgue, located at 13 ½ miles Phillip Goldson Highway he conducted a post-mortem examination on the body of Leslie Namaan Gillett. Upon conclusion he concluded the cause of death as hypovolemic shock due to internal and external exsanguination due to multiple gunshot wounds, with manner of death being, homicide.

#### **Evidence of Angella Wiltshire**

- [54] The evidence of Angella Wiltshire was sworn to virtually and she testified that on January 28<sup>th</sup>, 2022, at about 10:25 am on the request of Sgt. # 839 Rene Cu accompanied her to the Belize Medical College



located in Burrell Boom to witness a post-mortem examination. Upon her arrival the deceased was identified by Geniva Joseph the common-law wife of the deceased, as Leslie Namaan Gillett. She took ten (10) photographs of the deceased, and injuries were observed on the face and back of the deceased. Vitreous fluid and fragments were collected from the deceased's body. The ten photographs were tendered and marked "AW1-10".

### **Law and Analysis- Video Evidence and Identification**

[55] The reception of video evidence in a criminal trial is prescribed by the **Electronic Evidence Act Chapter 95:01 of the Substantive laws of Belize** (hereinafter called the Act). It gives the court the power to admit video recording, upon the person who is seeking to rely upon it proving its authenticity and that it was not tampered with. The relevant section of the Act enables the reception of video recorded evidence to be used in court for identification purposes. This has a dual function, either identification at the time when the recording was retrieved, by someone who knew the assailant or anytime thereafter by someone who can properly identify the person/s on the recording/s.

[56] The relevant parts of the Act are sections 3- 6 and state as follows:

*"3. Nothing in the rules of evidence shall apply to deny the admissibility of an electronic record in evidence on the sole ground that it is an electronic record.*

*4. – (1) This Act does not modify any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.*

*(2) A court may have regard to evidence adduced under this Act in applying any common law or statutory rule relating to the admissibility of records.*

5. *The person seeking to introduce an electronic record in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.*

6. (1) *In any legal proceeding, subject to subsection (2) of this section, where the best evidence rule is applicable in respect of electronic record, the rule is satisfied on proof of the integrity of the electronic records system in or by which the data was recorded or stored.*

(2) *In any legal proceeding, where an electronic record in the form of a printout has been manifestly or consistently acted on, relied upon, or used as the record of the information recorded or stored on the printout, the printout is the record for the purpose of the best evidence rule.”*

[57] There was neither any dispute by the defence in the admissibility of the video recording evidence nor any challenge either to its tampering, storage or its retrieval. There was cross-examination by the defence in relation to the method of retrieval, however Ms. Geniva Joseph's, agreed statement confirmed that she was the sole person who had the password for the DVR and she provided it to the police officer who confirmed same. The electronic record was admitted without the defence's challenge and subject to the court's discretion pursuant to section 11 of the Act which states as follows:

11.(1) *Unless otherwise provided in any other law, an electronic record is admissible, subject to the discretion of the court, if the parties to the proceedings have expressly agreed at any time that its admissibility may not be disputed.*

(2) *Notwithstanding subsection (1) of this section, an agreement between the parties on admissibility of an electronic record does not render the record admissible in a*



*criminal proceeding on behalf of the prosecution if at the time the agreement was made, the accused person or any of the persons accused in the proceeding was not represented by an attorney-at-law.*

- [58] With the increase in the use of video footages in proving identification of suspects useful guidance has been provided, to guide the courts when deliberating in that volatile area of the law. There are four circumstances in which, subject to a sufficient warning, the jury could be invited to conclude the accused committed the offence based on a photographic image from the scene of the crime which is admitted into evidence. This guidance was provided in **Attorney General Reference (No. 2 of 2002) [2022] EWCA Crim 2373[2003] 1 CR App R 21<sup>2</sup>** Rose LJ:

*“19. In our judgment, on the authorities, there are, as it seems to us at least four circumstances in which, subject to the judicial discretion to exclude, evidence is admissible to show and, subject to appropriate directions in the summing-up, a jury can be invited to conclude that the defendant committed the offence on the basis of a photographic image from the scene of the crime:*

- (i) where the photographic image is sufficiently clear, the jury can compare it with the defendant sitting in the dock (Dodson and Williams);*
- (ii) where a witness knows the defendant sufficiently well to recognise him as the offender depicted in the photographic image, he can give evidence of this (Fowden and White, Kajala v Noble, Grimer, Caldwell and Dixon and Blenkinsop); and this may be so even if the photographic image is no longer available for the jury (Taylor v Chief Constable of Chester);*

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<sup>2</sup> Criminal Bench Book page 232 [Identification Evidence]

- (iii) *where a witness who does not know the defendant spends substantial time viewing and analysing photographic images from the scene, thereby acquiring special knowledge which the jury does not have, he can give evidence of identification based on a comparison between those images and a reasonably contemporary photograph of the defendant, provided that the images and the photograph are available to the jury (Clare and Peach);*
- (iv) *A suitably qualified expert with facial mapping skills can give opinion evidence of identification based on a comparison between images from the scene, (whether expertly enhanced or not) and a reasonably contemporary photograph of the defendant, provided the images and the photograph are available for the jury..."*

[59] There is a plethora of authorities, wherein police officers have used video recordings, still images, recordings and photographs to identify suspects which led to successful convictions, and hence the law has developed, while at the same time providing sufficient safeguards to ensure the accused is guaranteed a fair trial as enshrined in section 6. of the Constitution of Belize. The reception of video recordings into evidence is subject to the court's discretionary power to exclude it in circumstances where its prejudicial value outweighed its probative effect. In **Reg. v. Fowden & White [1982] C.L.R 588**, a police officer and a store detective were allowed to identify an accused in a video film, where the appellant was charged with theft. On appeal the court ruled that the prejudicial value outweighed its probative effect in that, the identifying witness knew the accused from a similar shoplifting case one week later, and the defence was deprived from testing the accuracy of the identification without causing embarrassment. The court opined at p.589 as follows:



*“The evidence should not have been admitted as the prejudicial value outweighed its probative effect, because the identifying witness knew the accused from a similar shoplifting case a week later, and accordingly the defence were deprived from testing the accuracy of the identification without causing prejudice and embarrassment.”*

[60] In **Fowden’s case**, the court made it clear that, there was no difference between, identification via video recording, photograph or tape recording. At page 589 it was stated thus:

*“There was no difference in principle between a video film and a photograph or tape recording. Although it was not strictly necessary to decide the point the court was of the opinion there was no reason in principle why the Crown should not be able to identify a witness who knows someone to look at a photograph and give evidence to the effect that he knows the person, and it is the accused.”*

[61] In **Reg v. Grimer [1982] C.L.R 674**, a security officer was able to identify an accused who had stolen a cologne from a shop via a video recording. The security had known the assailant socially for many years and so was able to identify him. The jury saw the video and the accused was convicted and appealed on the ground that the trial Judge erred in admitting the video. The court exposted at p. 674 as follows:

*“That there was no distinction between the evidence of a man who looked at a video tape (provided there was no challenge to the validity of the tape itself) from that of a bystander who observed the primary facts, saw someone with whom in the past he was acquainted and could say so to the jury”.*

[62] In **Taylor v Chief Constable of Cheshire [1986] 1 WLR 1479**, the evidence of the prosecution consisted of evidence from a witness who saw the video recording of the events alleged to constitute the offence. However, the recordings were not available at the time of the trial, having been inadvertently erased. The witness was able to give *viva*

voce evidence as to what he had seen on the video and the accused was convicted. The appellant's appeal was dismissed, and Ralph Gibson L.J stated the legal position succinctly at p. 1486 par. E, as follows:

*“For my part I can see no effective distinction so far as concerns admissibility between a direct view of the action of an alleged shoplifter by a security officer and a view of those activities by the officer on the video display unit of a camera, or a view of those activities on a recording of what the camera recorded. He who saw may describe what he saw because, as Ackner L.J. said in **Kajala v. Noble**, 75 Cr.App.R. 149 to which I have referred, it is relevant evidence provided that that which is seen on the camera or recording is connected by sufficient evidence to the alleged actions of the accused at the time and place in question. As with the witness who saw directly, so with him who viewed a display or recording, the weight and reliability of his evidence will depend upon assessment of all relevant considerations, including the clarity of the recording, its length, and, where identification is in issue, the witness's prior knowledge of the person said to be identified, in accordance with well-established principles.”*

*Where there is a recording, a witness has the opportunity to study again and again what may be a fleeting glimpse of a short incident, and that study may affect greatly both his ability to describe what he saw and his confidence in an identification. When the film or recording is shown to the court, his evidence and the validity of his increased confidence, if he has any, can be assessed in the light of what the court itself can see. When the film or recording is not available, or is not produced, the court will, and in my view must, hesitate and consider very carefully indeed before finding themselves made sure of guilt upon such evidence. But if they are made sure of guilt upon such evidence, having correctly directed themselves with reference to it, there is no reason in law why they should not convict. Such evidence is not, in my view, inadmissible because of the hearsay principle. It is direct evidence of what was seen to be happening in a particular place at a particular time and, like all direct evidence, may vary greatly in its weight, credibility and reliability.*



[63] In **John Bowie v James Mackenzie Tudhope (1986) S.C.C.R. 20**, the appellant was tried summarily for assault and robbery committed in a shop. The incident was recorded by a video camera, and two police constables who knew the appellant, identified him on the recording as one of the men seen committing the offence. The appellant was convicted and appealed. His appeal was dismissed. The court followed the authority of **Fowden's case** (supra) as an accurate statement of the law.

[64] In **Darryl Dickens v. Regina [2020] EWCA Crim 1661**, in July 2010, Richard and Megan Deakin were living at 2 Meadway Road, CCTV had been installed in the property as a security measure, due to a break-in in 2008. On 5 July 2010, Megan Deakin rose early, and CCTV footage shows her dealing with the rubbish and putting her daughters into a motorcar. While helping her youngest daughter into the car, she became aware of a black Corsa motorcar pulling up at the curb. It was moving quite slowly, and it made a noise as it drove over a drain cover. She saw a man in the driving seat who appeared to be talking to someone, but she could not tell whether there was another person in the motorcar or if he was speaking on the telephone. She had the man in view for a few seconds although it seemed to her to have been more in the order of 30 seconds. Her line of sight was through the rear side window of the motorcar. She first saw the side of his face and then he turned to look directly at her. She said she would never forget his face. On 6 July 2011 she described him during a video interview in the following way:

*“The driver I saw the side of his face, he had darkish hair, I’m struggling with the sort of Asian, he wasn’t white, he wasn’t black, he wasn’t Indian, aged 20, hair was quite short, dark brown eyes.”*

She also noticed he had bushy eyebrows, although she did not mention this feature to the police when providing her initial description. Following the incident, she did not immediately indicate to the police that she had

noticed the black Corsa car; when questioned early on she said she had not seen a car of this description. She viewed the CCTV footage on 21 October 2010. On 7 June 2011, she attended Rugeley Police station to participate in a video identification procedure during which she was shown images of a number of men. She picked out the person at number 4 (the appellant) as the driver of the black Corsa car. The appellant was convicted, and the court was of the view that Ms. Deakin watched the film twice, which took some 5 ½ minutes. Thereafter, she asked to see the whole film again and asked the officer to pause on certain images. She viewed it for a further 15 minutes, asking the officer to pause it at various images, thereafter, identifying the appellant as #4. This evidence was accepted.

- [65] Finally, in **Reg. v. Maqsud Ali [1966] 1 Q.B. 688**, the recording of a murder was tendered into evidence against two accused based on admissions recorded in Punjabi dialect on a tape recorder concealed in a room in a police station. The evidence was tendered through translators who had listened to the tape and a transcript of their translations. The evidence was ruled to be admissible, at page 701, Marshall J. opined:

*“For many years now, photographs have been admissible in evidence on proof that they are relevant to the issues involved in the case and that the prints are taken from negatives that are untouched. The prints as seen represent situations that have been reproduced by means of mechanical and chemical devices. Evidence of things seen through telescopes or binoculars which otherwise could not be picked up by the naked eye have been admitted, and now there are devices for picking up, transmitting, and recording, conversations. We can see no difference in principle between a tape recording and a photograph. In saying*



*this we must not be taken as saying that such recordings are admissible whatever the circumstances, but it does appear to this court wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and the voices recorded properly identified; provided also that the evidence is relevant and otherwise admissible, we are satisfied that a tape recording is admissible in evidence. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. There can be no question of laying down any exhaustive set of rules by which the admissibility of such evidence should be judged."*

**Analyzing the Video Identification of Rollington Fuller, was it the Accused who Inflicted the Fatal Harm That Caused the Death of Leslie Gillett**

- [66] The video identification evidence of Rollington Fuller, was descriptive and detailed, him having known the accused prior. He has demonstrated and elicited cogent evidence identifying the accused, whom he had known for approximately four (4) years prior to the incident. I would itemise the various parts of his identification of the accused, that he has said convinced him that he is sure the shooter was the accused. I am also mindful as the trier of the facts that the Turnbull guidelines, (which would be dealt with later) must take center stage in this type of identification of the accused.
- [67] The salient parts of the evidence of Sgt. Fuller, including how he was able to satisfy his identification of the accused will be enumerated hereunder:

- i. He is a police officer for ten (10) years. He was attached to the Crime Investigation branch (CIB) and Gang Intelligence Investigation and Interdiction Unit (GI-3).
- ii. He viewed the video; it was bright and clear and in coloured.
- iii. There was a male person whom he immediately recognised as Earl Baptist three minutes and fifty-nine seconds into the video. The male person also had a narrow face with large full eyes.
- iv. That Earl Baptist was dark in complexion, slim built, wearing a dark coloured T-shirt, with apparent stain design all around. He also had a black face mask covering his nose and mouth area, he also had a black stocking on his head, covering an average height dreadlocks design hairstyle.
- v. He also identified him by his unique walk and would normally see him with a black stocking on his head.

**[68]** The following are the previous encounters, conversations and circumstances which have led Sgt. Fuller to the conclusion that he feels sure that the assailant in the video, was one of the shooters whom he identified as the accused, Earl Baptist:

- i. He has known the accused four (4) years before the date of the video.
- ii. He would see him bi-weekly, while conducting routine patrols in, Police Street, Holy Emmanuel which is known as Barber Harris and around M and Y street.
- iii. On occasions when he conducted overt and covert surveillance, Earl Baptist would be about ten (10) feet from him, he would see his entire face, body structure, his own unique walk, he would be in his view for several hours.
- iv. He would walk up to him about two (2) feet, and have conversations with him on # 6632 Police Street, where he would speak to him about loitering and getting a job.



- v. On these occasions he would see his entire face and body structure, for about three (3) to five (5) minutes.
- vi. He also conducted searches at his residence, at #9137 M and Y street. He would also see him while on routine patrol, the vehicle would be driving slowly so he would see his entire face and body structure, nothing would be blocking his view from seeing him clearly the lighting condition on those occasions were clear and bright.
- vii. He also identified the accused while at the dock, and while the video was played (Exhibit SP1) as the shooter in the video.

**[69]** I have sought to analyse the evidence of Sgt. Fuller, and I pay particular attention to the fact that, he had no reservation in identifying the accused. He had known him for numerous years, with multiple interactions, conversations and sightings of the accused. He was so familiar with the accused that the habitual black stocking, large full eyes, gait, height, colour and general body structure were well known to Sgt. Fuller. There was no reason proffered as to why Sgt. Fuller, would make up a story on the accused, however it was inferred in cross-examination that he could have been mistaken, as is normal with even persons whom we know very well. This is theory that I accept, that mistake can be made in relation to persons we well know. On the contrary, where there is a recording, that can be played repeatedly, in colour, in broad day light, despite the covid mask which covered just portions of the face, even with a covid mask, an identification can be made. The court takes judicial notice that during Covid 19, involuntary optical adjustments would have been made, to identify persons with Covid masks, as body physique, height, gait and general demeanour would have had to replace, identification by, mouth, lower face and nose as identifying features. This would even be easier with persons whom we are acquainted with. In this case, the accused was no stranger to Sgt. Fuller, they had a relationship of continuous interaction, by virtue of Sgt. Fuller's job.

[70] It was suggested to Sgt. Fuller by the defence that he said the other assailant was, Jordan Burns Waite. However, in his statement in January 2022, he said he didn't know who the second shooter was. I observed that his answer was, it could have been, Jordan Burns Waite. This solidifies my belief that Sgt. Fuller is a truthful witness. In that he was not certain it was Jordan Burns Waite and therefore, he didn't indicate he knew who it was however, because he was sure it was Earl Baptist, from inception he had no reservation with his identification.

[71] Despite, the above this is not the end of the matter. For where the identification of an offender depends wholly or in major part on the identification evidence of a witness video identification, the evidence must be subject to the Turnbull guidelines. In **Taylor v Chief Constable of Cheshire [1986] 1 WLR 1479**, at p. 1488 par. H, McNeil J explained the position thus:

*“Where the identification of an offender depends wholly or in major part on the evidence of a witness describing what he saw on a video display unit, contemporaneously with the events which he describes, or which a tribunal of fact sees from the recorded copy of that display, or what a witness says he saw on a recorded copy of that display, whether or not that copy is available to be seen by the tribunal of fact, and any combination of one or more of those circumstances, that evidence is necessarily subject to the directions as to identification evidence laid down in **Reg. v. Turnbull [1977] Q.B. 224**, and juries will be directed, and justices must direct themselves, to approach the evidence in accordance with that authority.*

*The matter is more complicated because the tribunal of fact has to apply the Turnbull direction first of all to the camera itself, that is to say, as to its position, its opportunity for viewing that which it depicts, to the video display unit or recorded copy, and the witness. In other words, each of the three has to be subjected to the Turnbull test.”*

[72] I have taken notice, and I am convinced that the retrieval of the video footage was not tampered with, its opportunity and positioning for



viewing was visibly perfect, in that Santiago Perez retrieved, packaged and stored the video recorded footages. Having observed the footages, they were in colour, crisp and clear save and except the covid 19 mask that was situated on the lower part of the assailant's face. The footages were clear and depicted an evening scene. Having stated that the footage was clear, I am mindful that I must warn myself of the danger of mistakes that can be made with identification, including with someone well known, as the Judge of the facts I have examined the quality of the identification evidence above and that of Sgt Fuller and I am directed by the law on identification. This means that in a case which hinges on identification, I must direct myself in accordance with the **Turnbull**<sup>3</sup> guidelines. In that classic case, the general guidance is as follows:

*“Whenever the case of an accused person depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting in reliance on the correctness of the identification. He should instruct them as to the reason for that warning and should make some reference to the possibility that a mistaken witness could be a convincing one and that a number of witnesses could all be mistaken.”*

[73] So first, I warn myself, as trier of the facts, of the inherent difficulties in identification evidence and consequently the special need for caution before relying on such evidence. The reason there are inherent difficulties in identification evidence and thus a special need for caution in relying on such evidence, is that mistaken identity is not uncommon. In fact, mistaken identification has been shown to occur and have resulted in miscarriages of justice. It is well known that persons may look alike and when a case relies on identification the possibility of error on the part of one or more witnesses must be taken into account to

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<sup>3</sup> [1977] QB 224

prevent miscarriages of justice. I further direct myself as the trier of fact, in accordance with **Turnbull**, that a convincing witness could be a mistaken witness and that a number of convincing witnesses could all be mistaken.

[74] The **Turnbull** guidelines say that besides the general warning, the Judge should also point out to the trier of facts the weaknesses in the identification or recognition evidence so as to determine the quality of that evidence. The judge should explain why something is a weakness which may cast doubt on the reliability of the identification. **Turnbull** states that the trier of facts must review the witness' ability to observe the person he or she is identifying—the lighting, the distance from which the observation occurs, the length of time to observe, if any obstructions were present, if there are any inconsistencies or discrepancies in the identification, is there supporting evidence and did the witness know the person prior to the incident, and if so, under what circumstances.

As the Judge of the facts, I must also look at whether the observation was made under difficult conditions<sup>4</sup>.

[75] In examining the testimony of Sgt. Fuller, in relation to the lighting it was broad daylight, and the recordings were in colour, the shooting incident was therefore being replayed before our eyes as a movie. In relation to the distance of the cameras from the accused, it is evident the camera was above his head, that the occasions when he looked up his eyes were staring into the camera, which made the identification much more possible. The length of time the incident lasted was approximately two minutes on average per video recording, as there were two recordings, one showing the assailants walking to Matilda's shop and the other the shooting. Sgt. Fuller was able to recognise the accused from the first moment he saw the video and has never changed his position as to his conviction of the identification of the shooter. Lastly, the accused was well known to Sgt. Fuller by their many interactions and conversations, within proximity to each other.

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<sup>4</sup> Wade et al v. R. No. 28 of 2001



[76] I accept that Sgt. Fuller identified the accused as the assailant on the video recording, and I am satisfied with his evidence, in that he was credible and not shaken in cross-examination. He was consistent, polite and never wavered in his conviction that it was the accused he identified in the video.

[77] Having satisfied myself that Sgt. Fuller has properly identified the accused Earl Baptist, through his many interactions and video footages I am satisfied to the extent that I feel sure that Earl Baptist, was indeed one of the assailants who shot the deceased.

### Circumstantial Evidence

[78] The prosecution's case rests in a very small way on circumstantial evidence, in that in the video recording despite the shooters and shooting were clearly visible, throughout the recording, the deceased was not seen. However, the evidence of Corporal of Police Dorian Chee and DC. Jamaal Escalera confirmed that they attended at Matilda's shop and saw the lifeless, bullet ridden body of the deceased. There is therefore a direct nexus to the shooting in the video and the body found behind of the counter in the shop. The defence did not dispute this either. However, for completeness as the trier of both the law and the facts I am compelled to properly marinate the facts to the extent that I feel sure of the elements of the offence proven.

[79] Circumstantial evidence has been described as strong as direct evidence when different pieces of evidence viewed together lead to one inescapable conclusion. In the matter of **People (DPP) v. Cumberton** [2020] IECA 136 a recent reiteration of the law on circumstantial evidence, was stated at par. 126 thus:

*“Circumstantial evidence is in no way inferior to direct evidence. Both may serve to prove the existence of a fact in issue. However, in terms of the ultimate issue in a criminal case, while no one piece of circumstantial evidence may be sufficient on its own to justify an inference that the accused is guilty of the crime with which he has been charged, the cumulative effect of several pieces of circumstantial evidence may, in an appropriate case, justify such a conclusion. It is often said with respect to circumstantial evidence that ‘many strands may make a rope’.”*

[80] Having directed myself on the above I am satisfied to the extent that I feel sure that the person who was apparently shot in the video albeit not seen, was indeed the deceased, Leslie Namaan Gillett.

**Expert Evidence- John Rudon BSc & Dr. Roque Blanco**

[81] That John Rudon BSc was deemed an agreed expert in Ballistics and Firearm examination, and his evidence was agreed and therefore unchallenged. In essence, he confirmed that the nine (9) expended cartridge cases, after testing was fired from the same unidentified 9mm caliber firearm, and a second set of nine (9) expended shell casings were fired from a second 9 mm caliber firearm, the six (6) expended bullets were identified to be fired from the same caliber and finally an additional three (3) expended bullets were fired from a second unidentified 9mm caliber firearm.

[82] The second agreed expert witness was Dr. Roque Blanco, who confirmed the deceased died from hypovolemic shock due to multiple gunshot wounds and deemed the death a homicide.

[83] I would therefore direct myself in relation to expert evidence and how it should be treated.

**Expert Evidence:**

[84] I direct myself that I must determine if I accept the expert evidence and what weight I should reasonably attach to it if I do accept it. The testimony of an expert should be within his or her area of expertise. The testimony of an expert should be assessed in the same manner as the testimony of a non-expert witness, meaning I am not compelled to accept the expert's testimony because it is from an expert. I may accept or disbelieve all, none or part of the testimony of an expert just as with



any other witness. While the expert opinion is not binding on me, I should “not simply cast aside expert evidence without some cogent reason<sup>5</sup>.”

- [85] The expert opinion must be based on facts that are in evidence and if the testimony is not based on facts, I should give the expert opinion less weight. I therefore accept as a fact and accept both experts’ testimonies, both in relation to the ballistic testing by John Rudon and the cause of death of Dr. Roque Blanco. From the above combined testimony which I accept I would, thereafter, examine the intention to kill, as a separate element of the offence.

#### **Intention to Kill the Deceased**

- [86] Having concluded that the accused caused the harm to the deceased, I turn my attention to whether he intended to kill the deceased when he armed himself with a firearm, aimed it through the wire mesh of Matilda’s shop window and appeared to open fire relentlessly on someone behind the counter, which I have concluded was the deceased.

- [87] Intention to kill is the *mens rea* for murder in Belize, **Section 117 of the Criminal Code**. The law guides the trier of fact to look at all the surrounding circumstances in an incident to determine the intention of the accused. **Section 9 of the Criminal Code** says, that to determine if an accused person intended to produce a particular result by his conduct, it must be decided by reference to all the evidence, drawing

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<sup>5</sup> Stockwell 1993] CrApp R. 260

such inferences from that evidence as appear proper in the circumstances. I have directed myself in this regard in deliberating on the element of intention. Further, I am mindful that I am not bound to infer an intention to kill from the mere fact that death was in my opinion a natural and probable result of the action of the accused. This is, however, a fact that is relevant to the question of intent and I would have to take it into account when considering all the evidence and the proper inferences to be drawn from that evidence.

[88] I considered the following factors in deliberating on the element of intention to kill in this case: the deceased was shot multiple times, with the accused posing as a customer of the shop, and when as it appeared on the video that the items were being handed to the accused, it is then he and the other assailant unleashed a torrent of bullets on the deceased.

[89] In the circumstances of the killing as described by the prosecution's eyewitness Sgt. Rollington Fuller, and other witnesses including the experts witness, I have no doubt that the element of intention to kill has been proven by the Crown to the requisite standard, that I am sure, there was an intent to kill.

**Whether there was any Lawful Justification to Harm the Deceased**

[90] I now apply my mind to whether there is any lawful justification by the accused to kill Leslie Gillett. This shall be dealt with briefly as there was no evidence there was any lawful justification, neither, provocation, self-defense or any other defenses immediately before the shooting of Leslie



Gillett. I have concluded that there was not any evidence to support any lawful justification for the killing of Leslie Gillett. Neither was any suggested by the accused, since he ran an alibi defense.

[91] In deliberating on whether there existed any partial excuse or lawful justification for the killing, I first reviewed the relevant sections of the Criminal Code section 119 which states:

*"119. A person who intentionally causes the death of another person by unlawful harm shall be deemed to be guilty only of manslaughter, and not of murder, if there is such evidence as raises a reasonable doubt as to whether,*

*(a) He was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in section 120 of this Act; ...*

*120. The following matters may amount to extreme provocation to one person to cause the death of another person, namely,*

*(a) an unlawful assault or battery committed upon the Accused person by the other person, either in an unlawful fight or otherwise, which is of such a kind either in respect of its violence or by reason of words, gestures or other circumstances of insult or aggravation, as to be likely to deprive a person, being of ordinary character, and being in the*

*circumstances in which the Accused person was, of the power of self-control;*

*(b) the assumption by the other person, at the commencement of an unlawful fight, of an attitude manifesting an intention of instantly attacking the Accused person with deadly or dangerous means or in a deadly manner.*

*(c) an act of adultery committed with or by the wife or husband of the Accused person, or the crime of unnatural carnal knowledge committed upon the Accused person's wife or child;*

*(d) a violent assault or battery, or any sexual offence, committed upon the Accused person's wife, husband, child or parent, or upon any other person in the care or charge of the Accused person;*

*(e) anything said to the Accused person by the other person or by a third person which were grave enough to make a reasonable man to lose his self-control."*

**[92]** I reviewed the evidence to determine whether there was evidence in this trial that the accused was provoked, defending himself, was assaulted or whether any of the above circumstances existed, and found none.



- [93] Based on the foregoing, the Prosecution has proven the final element of murder, that is, that the accused had no lawful justification to cause the deceased any harm. I do not have a scintilla of doubt about this.
- [94] Upon examination of the prosecution's case I am obliged to look critically at all the evidence in the round to determine whether the facts as I find it, leads me to the conclusion, so that I am sure of the accused's guilt<sup>6</sup>. In other words, the cumulative effect of the evidence led when taken holistically, leads me to the inescapable conclusion that the Accused is guilty of murder.
- [95] Having analysed the Crown's evidence since it is strong enough to afford a conviction, I would now consider the case for the accused, as is the direction given from our final appellate court, the Caribbean Court of Justice in **Dioncicio Salazar v. R**<sup>7</sup>. This I will do in the ensuing sections.

### **The Defence case**

- [96] As the judge of the facts, I have the duty to cogently, accurately and faithfully consider the defence's case, as I did the prosecution's case, however I am cognisant that the defence had no witnesses save and except his short-unsworn testimony. Further, he has nothing to prove as he stands innocent until proven guilty by this court, and that I most revert to the defence case.
- [97] At the close of the prosecution's case, I informed the Accused of the three rights he is entitled to as an Accused person in a criminal case in Belize; he can remain silent, give an unsworn statement or give sworn or affirmed testimony. I also explained to the Accused how the court would view whichever option he exercised-not holding it against him if he chose to exercise his right to be silent; considering the content of any unsworn statement and giving it whatever weight I thought the statement was due; and treating sworn or affirmed evidence as all other

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<sup>6</sup> R v. Nelson (1977) Crim. L.R 234 Appeal # 17 of 2012

<sup>7</sup> [2019] CCJ 15 par. 35

sworn evidence, that is accepting what I believe and rejecting what I disbelieve.

The Accused elected to exercise his right to provide unsworn testimony in the trial.

### **Testimony of the Accused**

- [98] The accused gave a very short statement, he stated that, on the day of the incident in 2022, he was at Fisheries at North Front Street with his common-law wife Shenell Harris and father, Shadrick Baptist, from 5- 6 pm. He was near sight with his father and common-law wife.
- [99] He further stated he never had dread locks hairstyle, and on the day of his preliminary inquiry at the lower court before Magistrate Sharon Fraser, he recalled it was February 3<sup>rd</sup> she was made aware of his alibi witnesses. That all the allegations, against him are untrue, he didn't shoot or harm anyone, and he was wrongfully accused.

### **Alibi of the Accused**

- [100] The accused's case is that he was elsewhere at the material time of the shooting, however he has failed to provide any of his alibi witnesses to support his defence of alibi. He indeed mentioned to the police officer during the police interview that he was with his 'Pa' which when translated meant his father, he confirmed same before this court. The defence made heavy weather about the police not investigating further and finding the accused's father to confirm his alibi. The police having not gone further to speak to the accused's father, the accused was under a duty if he so wished to provide those witnesses to confirm his alibi.
- [101] The defence is basically asserting that at the time of the murder he was elsewhere and in company with his family. I did not find the essential aspects of the testimony of the accused credible. Below, I directed myself on how to deal with the evidence of the accused, once disbelieved.



### **Deliberation on Whether the Accused Harmed the Deceased**

[102] Based on the totality of the prosecution's evidence, and particularly the exceptionally good quality of the identification evidence, I have no doubt the accused caused the harm that killed the deceased. I have examined the alibi of the accused coupled with the manner in which he gave his testimony, and I am satisfied that the accused is untruthful and the prosecution's evidence against him is overwhelming. The Crown has proved beyond a reasonable doubt that the accused was at the scene and that he shot the deceased when he claimed to be elsewhere, thereby disproving his alibi.

As mentioned earlier in this judgment, the standard of proof in a criminal case is that I must feel sure of each element in order to convict. I am sure, with no reasonable doubt, that the Accused inflicted fatal harm on the deceased.

### **Defence Submissions and Assessment of the Testimony of Accused- Alibi [Prosecution Must Negated Beyond a Reasonable Doubt]**

- [103] The defence given by the accused was that he was not present at the scene, and he raised an issue of self-proclaimed alibi.
- [104] On an examination of the defence's case solely, without examining the identification and expert evidence presented by the prosecution, the accused's evidence has been totally discredited. But this is not the end of the matter. Since, I must direct myself on the issue of lies as people are known to tell lies for innocence and other reasons.
- [105] As I understand it, the theory proffered by the accused is that he did not kill the deceased and he was at a different location. The witness who identified him was either mistaken or untruthful. However, there was not

a shred of evidence in this trial adduced to support the theory that someone other than the accused killed the deceased. Consequently, I can find no merit in the defence's submission that supports his alibi. The prosecution has therefore negated the defence of alibi beyond a reasonable doubt.

[106] I note that the eyewitness cogently identified the accused whom he has known for years, with numerous encounters. The evidence against the accused was overwhelming.

[107] With respect to the testimony of the accused, having concluded that he is not being truthful, I direct myself that I cannot convict him on that basis. I direct myself that accused persons may fabricate defences and alibis for reasons other than guilt. Most importantly, the Prosecution has the burden of proof and thus it is their evidence that must make me feel sure of the guilt of the Accused. I remind myself of the **Lucas** directions.

#### **Lucas Direction**

[108] In this case, I believe that the accused deliberately lied about his whereabouts on the day of the incident, and I further believe that he lied about not harming the deceased. I direct myself that it has been shown that persons may lie not because they are guilty, but for other reasons (for example, to bolster a weak case, to protect someone, out of panic, or to cover up disgraceful behaviour<sup>8</sup>). Thus, it is not the lies of the accused that lead me to conclude he is guilty. It is because I believe the prosecution's evidence that I have reached the conclusions above mentioned.

#### **Good Character**

[109] The good character of the accused in this trial was not raised in the typical way that it is raised in trials, but rather indirectly, but in my view, sufficiently to trigger good character directions. There was no evidence proffered that the accused had any prior conviction. Even though there was no evidence that the Accused had no previous convictions of any

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<sup>8</sup> R v. Lucas [1981] 2 ALL ER 1008



sort, I have determined that I will direct myself on the law of good character.

[110] Good character is not a defence. The two limbs of good character are credibility and propensity. The accused gave unsworn testimony and thus is entitled to the second limb which supports the lack of propensity that the accused committed the crime with which he is charged. This means that because the accused has good character, he is less likely than otherwise might be the case to commit the crime with which he is charged. I have taken the propensity limb of good character into consideration in assessing the likelihood he committed the offence. I have done so after directing myself that merely because an accused has no previous criminal record does not mean he is a person of good character<sup>9</sup>. In this case, there is no evidence of previous reprehensible conduct by the Accused, so I do not find him to be a person of bad character.

[111] The authority of **Teeluck v. State**<sup>10</sup> provides guidance on the propensity limb of good character and also that the jury should be directed to determine the weight to give it. The second propensity limb means that good character may make it less likely that the Accused acted as alleged and so particular attention should be paid to the fact. What weight is to be given to the propensity limb is a matter for the fact-finding tribunal, either the judge or the jury.

[112] Furthermore, after giving the accused the benefit of good character, that he would not have the propensity to lie or offend the law, I give little weight to his good character. This is so because the previous good character of the accused does not alter my acceptance of the prosecution's evidence and the inevitable conclusions that evidence has led me to adopt.

### **Revert to the Prosecution's Case**

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<sup>9</sup> Nigel Hunter and Others v R (2015) EWCA Crim. 631 at paragraph 74

<sup>10</sup> [2005] UKPC 14

[113] At this point in my deliberations, I return to the prosecution's evidence. As already noted, the Crown's case has convinced me so that I am sure that the deceased is dead and that he died of harm. Moreover, primarily the evidence of the eyewitness, Sgt. Rollington Fuller in conjunction with the circumstantial evidence of Dr Roque Blanco and John Rudon the ballistics, gun and cartridge found in Matilda's shop, convince me beyond a reasonable doubt that the accused killed the deceased.

As for the *mens rea* element, the Crown made me sure based on the use of the gun, pointing it to the wire mesh of the shop and the shooting at the deceased that the accused intended to kill the deceased. Finally, the Crown negated, beyond a reasonable doubt, the existence of any lawful justification and or defence for the accused to have harmed the deceased. The prosecution has proven each element of the offence so that I am sure that the accused murdered Leslie Gillett.

### Verdict

[114] Based on the prosecution's evidence and taking all other evidence into consideration, the crown has satisfied me that I am sure that the Accused had the specific intent and did unlawfully and intentionally kill the deceased, Leslie Gillett, without lawful justification.

Therefore, I find the accused guilty of murder.

[115] The court is reminded of the guidance from our apex court the Caribbean Court of Justice in the matter of **Linton Pompey v. DPP [2020 ] CCJ 7 [par. 32]** and the methodology to be followed when passing sentence. The sentencing is therefore adjourned for a separate hearing. At such time the court will examine the mitigating and aggravating factors, including mental health or psychological assessments, victim impact statements, also, prison and other reports can be advanced and will be considered holistically. By virtue, thereof the court orders the following:

- Social inquiry report of the Accused.
- Police criminal record/s report of the Accused.



- Prison report of the Accused.
  - Victim impact statement.
  - Psychiatric assessment of the Accused.
- [116]** The matter is adjourned to the 15<sup>th</sup> July 2024, for the receipt of the reports and submissions by the Crown and Defence, for sentencing.

Dated Monday 27<sup>th</sup> June, 2024

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**Derick F. Sylvester**  
**Justice of the Supreme Court**