

IN THE SENIOUR COURTS OF BELIZE
CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT
IN THE HIGH COURTS OF JUSTICE

Indictment No. C45 of 2020

Between:

The Queen

and

[1] **Richard Hyde**

Defendant

Appearances:

Mr. Cecil Ramirez S.C.C., counsel for the Queen.

Mrs. Emmerita Anderson, counsel for the Defendant.

Dates:

Trial Dates:	2024: January 24
	February 2, 13, 19, 26
	March 19
	April 12
	May 6, 17
	June 20
	July 4
Judgment Date:	2024: July 12

DECISION

[1] **MR. FRANCIS M CUMBERBATCH; J:** Mr. Richard Hyde, the Accused was indicted by the Director of Public Prosecutions for the offence of murder in that he on the 11 day of May 2018, at Belmopan City in the Cayo District, murdered Louis Fuentes Mongul ('the Deceased') contrary to sections 106(1)¹of the **Criminal Code** CAP 101 of the Substantive Laws of Belize (Revised Edition) 2011.

[2] On that indictment he entered a plea of not guilty, hence, a fully contested judge alone trial was held pursuant to the provisions of section 65 A of the **Indictable Procedure Act**² CAP 96 of the Revised Edition of the Laws of Belize 2011.

The Facts

[3] I will for ease of reference summarise the evidence adduced at this trial by the witnesses for the Crown and the Defence. However, in arriving at my verdict I will do so after having considered all of the admissible evidence in this trial.

Evidence of Ismael Antonio Shackron Rivas – Father of the Deceased

¹ CAP 101 of the Substantive Laws of Belize Revised Edition 2011 section

106.- **(1)** Subject to sub-section **(2)**, a person who commits murder shall be liable, having regard to the circumstances of the case, to– (a) suffer death; or (b) imprisonment for life.

² **Indictable Procedure Act** CAP 96 of the Revised Edition of the Laws of Belize 2011

65A.- **(1)** Notwithstanding anything contained in this Act, the Criminal Code, the Juries Act or any other law or rule of practice to the contrary, every person who is committed for trial or indicted, either alone or jointly with others, for any one or more of the offences set out in sub-section (2) shall be tried before a judge of the court sitting alone without a jury, including the preliminary issue (if raised) of fitness to plead or to stand trial for such offences. **(2)** The offences referred to in sub-section (1) are– (a) Murder, (b) Attempt to murder, (c) Abetment of Murder, and (d) Conspiracy to commit murder. **(3)** In an indictment charging an accused person with any of the offences specified in sub-section (2), no other count for an offence not referred to in the said sub-section shall be added.

[4] He testified that on the 11 May 2018, he visited the morgue of the Karl Heusner Memorial Hospital where he recognized the body of his son the Deceased at the morgue present were the doctor and police officers.

[5] Under cross-examination this witness said that before he went to the morgue at the hospital, he did not see his son.

Evidence of CST Kadajah Thimbriel

[6] Testified that she is a Crime Scene Technician, and, on the 11 May 2018, she visited the National Forensic Science Services Laboratory where she delivered exhibits on behalf of Mr. Barrington Montero of exhibits of Louis Alfredo Mongul. These contained "EXH. LM1 to LM20" and attached to it was a chain of custody from which she signed. She could identify the chain of custody form by her name, signature, and the date that it was submitted. She tendered four forms for the "EXH. LM1 to LM20".

[7] Under cross-examination, the witness said she did not retrieve "EXH. LM15 to LM18", she only dropped them off and she is not sure who retrieved those exhibits. She said she handed over those exhibits to the Exhibits Keeper Mr. Rene Moh now deceased, and she did not retrieve those exhibits after she dropped them off.

[8] There was no re-examination of this witness.

Evidence of CPL Javier Alvarez

[9] He testified that on the 11 May 2018, he reported for duty at the Belmopan Police Station at around 1:00 a.m. and was detailed to Mobile Patrol with CPL Coc. At around 3:00 a.m. he received a call and was given certain instructions. He then visited the Western Regional Hospital where he met a Hispanic male named Dennis

Monterroso, with a small cut on the left side of his nose and a large cut on the left side of his head. He issued him with a medico legal form.

[10] He made checks on a second bed where he observed the Deceased with what appeared to be a stab wound under his left arm. He was then asked to remain outside because his condition was critical. At about 3:00 a.m., Dr. Godoy told him something.

[11] Under cross-examination, this witness stated that he did not get back the medico legal form from Dennis Monterroso, nor did he take a statement from him. CPL Coc remained outside awaiting him. He said he gave two statements one on the 12 May in which he spoke of Monterroso and one on the 17 April 2019, when he spoke of the Deceased.

[18] There was no re-examination of this witness.

Evidence of PC 1214 Mr. Jose Uh.

[19] He testified that he recalls 11 May 2018, at about 2:05 a.m., he together with PC Carrillo and PC Cantun performed special duties at the La Cabana nightclub in Belmopan. He along with PC Cantun were in the process of closing the nightclub when they were at the entrance ensuring that the patrons exited the establishment. At that time, the proprietor approached them and requested their assistance outside of the establishment. He seemed hesitant so he and Cantun accompanied him.

[20] Whilst outside the establishment, he saw two Hispanic males one of whom he recognized as the bartender of La Cabana whilst the other who's unknown to him running behind a male of Creole descent one who he has known for five years as Richard Hyde. As he saw this, he commenced running behind them and he saw the two Hispanic males caught up with Richard Hyde. As he got to about 15 to 20 feet

of them, he saw Hyde throwing punches at both males. Before he could have gotten to them to find out what the situation was Hyde ran away from the two Hispanics. He headed towards the A&L Nightclub.

[21] He ran towards Hyde, and he tried to stop him as he got close, he looked back and started to throw punches at him, and he managed to avoid him. He continued running and he drew his pistol and fired in the air and yelled 'Police stop'. Richard Hyde stopped and grabbed him by the shoulder. He informed him that he will be detaining him for robbery that just occurred at La Cabana. Hyde uttered, 'Boss you know me. You always go to the meat shop where I work. Please give me a run'. He said he cautioned Hyde and at that moment PC Cantun came running and told him that it is two Hispanic males that have been stabbed. Immediately, he saw Hyde throw something to the ground which he asked Cantun to retrieve. Cantun showed him it was a brown scabbard. Cantun also showed him a knife which he said he retrieved from the scene where the two Hispanic males had been stabbed. Hyde informed him that he was drunk and wanted to go home, he does not want to get into any problems.

[22] At the same time, the police mobile arrived, and he handed over the Accused to CPL Coc. He then walked back over to La Cabana where he saw Hyde throwing punches to the two Hispanic males. He said he saw a large substance of what appeared to be blood. He said he learned that the two Hispanic males had been transported to the Western Regional Hospital in Belmopan. He along with Cantun visited the hospital where he learned that the Hispanic male who was the bartender at La Cabana nightclub had passed away. He said the lighting conditions where he saw Hyde throwing punches at the two Hispanics was clear and he was directly

under a lamp post which was on. He identified the Accused as the person whom he had detained.

[23] Under cross-examination, this witness said the establishment was about to close and the patrons were exiting. He was about 100 feet from where the Hispanic males was seen chasing the Creole person. He said there was about three to four lamp posts in that area, and he stated that PC Cantun handed over a knife and scabbard to CPL Coc that same morning. It was at the time that the mobile came with CPL Coc, and it was the same time he handed over the Accused.

[24] He said when he visited the hospital that morning, he did not see the bartender he learned that he had died. When PC Cantun retrieved the item from Hyde he was standing beside him about six feet away. He said he could not tell the court who exactly stabbed the Deceased.

[25] There was no re-examination of this witness.

Evidence of PC 1448 Rosendo Cantun

[26] He testified that on the 11 May 2018, he was attached to the Police Technology Unit in Belmopan. At about 2:05 a.m., he was working on special duty at the La Cabana nightclub. The same time after 2:00 a.m., he and PC Carrillo and PC Uh was closing the nightclub when he saw the bartender and the proprietor rush out of the establishment. He met them by the door and as they passed, they asked for assistance because somebody had been robbed. He saw PC Uh rushed behind them when he followed. They were about 20 to 25 feet from him, and he noticed three persons struggling directly beneath a lamp. He said he had a clear view as the lamp was on. As PC Uh was reaching behind him he saw the bartender running

back towards La Cabana uttering words in Spanish. He rushed to where he saw PC Uh behind a male person trying to detain him.

[27] He was about 10 to 15 feet away he reached under the lamp where the struggle happened and noticed a knife with a black handle and silver blade. At that time, he noticed a lot of persons approaching the same place and so he picked up the knife. And as he looked, he saw PC Uh struggling with a person. The male person was throwing punches at us, so he ran to assist. Before he reached Uh, about 5 feet away from him he noticed the person stopped escaped and ran towards the E&L Nightclub.

[28] He continued to say that at the same time he heard a loud bang like the sound of a gunshot. He and PC Uh managed to detain the person and he heard Uh talked to the person by the name Richard. He carried out a search and he noticed a knife cover dropped directly from the person. Nothing incriminating was found on him. When the search was finished, he noticed the mobile had arrived and the male person who they detained was handed over to CPL Coc.

[29] This witness stated that all along he had the knife and scabbard which was shown to PC Uh. And after handing over the person to CPL Coc, he also boarded the mobile and proceeded to the Belmopan Police Station. He said at the station he boxed the knife in an official box which he labelled, sealed, signed and placed his initials on as "RC". The box was handed over to the scenes of crime personnel. He said he was contacted by PC Uh and is not sure of the length of the box. It appeared to be about one foot. This is the box, and it was marked for identification. He said the person who he saw PC Uh speaking with inside the club was also inside the

mobile and at the Belmopan Police Station. He said that on the 11 May 2018, he was wearing his No. 1 uniform.

[30] Under cross-examination this witness stated he gave a statement on the 11 May 2018, and he could recognize it by his signature. He admitted that he stated in that statement that he saw PC Uh running towards two persons. PC Uh made the third person. He said he does not have in his statement that PC Uh referred to the person he was talking to as Richard. When he found the knife, PC Uh and the Accused were about 20 feet away he had the knife and the scabbard. He said when he collects exhibits from the scene the standard procedure is to protect the evidence, to retrieve and to protect. Protect is to have at least one more person knowing you have such an item and for them to view it physically. Only the retrieving officer is to sign. He does not think it is mandated for them to box the evidence in the presence of the Accused.

[31] He never let the Accused see what he was boxing. And at no time did he show it to the Accused. PC Uh was present when the man was placed into the vehicle. He continued that the evidence was turned over to the Crime Scene Technician and at that time that it was Mr. Montero. He said, Mr. Montero would have handed over a chain of custody form which both of them would have signed. He said when he gave the knife to Mr. Montero it was already boxed. And he and Mr. Montero would have signed the form. The witness said he does not recall what time he got to the station. He had the knife in his possession for two hours and apart from PC Uh at the scene no one else had seen the knife. During the time he had the knife he had it in his hands, and the time mentioned includes time travelling and boxing.

[32] He said he did not show the scabbard to the person at the station; he showed it to PC Uh at the scene in the presence of the Accused. He said he did not show it to the Accused. He did not say what colour the scabbard was only the knife was boxed. I will refer to this witness testimony in greater detail later in this judgment.

Evidence of CST Barrington Montero

[33] He testified that he was a retired crime scene officer, and he stated his qualifications and experience. He said that about 3:50 a.m., on the 11 May 2018, he received a call to process a scene near the La Cabana Nightclub. He said that on his arrival to that location he noticed that the lighting was limited to streetlamps and his flashlight. He noticed a trail of blood on the street from an unpainted structure. The trail of blood led from a portion Sultana Street down towards the nightclub. He discovered two buttons on the street at that location.

[34] As a result he used marked tags labelled two through to fourteen, marking several blood stains along the street leading towards the nightclub. He took photographs of his findings collected the button which were packaged and sealed with a chain of custody form, and he handed them over to CST Thimbriel. He also collected thirteen cotton swabs from sections of the street with suspected blood. These were packaged, labelled, sealed and handed over to CST Thimbriel with a chain of custody form.

[35] Whilst processing the scene he heard that a male person had received stab wounds and was transferred to the hospital and had succumbed to his injuries. He stated that the matter then became a homicide, and he was introduced to a male individual from whom he collected a shirt, pants, and a pair of white tennis shoe without laces. He packaged these items and handed them over to CST Thimbriel.

- [36] Whilst at the Belmopan Police Station, CIB office he took a photo of a single injury on the palm of the alleged suspect. At 11:20 p.m., he was requested by CPL Mateo Carrillo, to take photos of the Deceased at the postmortem examination conducted by Dr. Loyden Ken at the Western Regional Hospital morgue. He also collected blood samples and vitreous fluid which he handed over to CST Thimbriel for transportation to the lab. He also tendered into evidence 25 photographs.
- [37] The witness also stated he collected a shirt, pants, and tennis shoe without laces from the Accused. These were packaged and sent for analysis to the National Forensic Science Services Laboratory the button was sent to the lab for comparison. These were all tendered into evidence.
- [38] Under cross-examination the witness said photo 5C only shows one button in the photo log there is no photo of the other button. He said he tendered two buttons but could not say which one is in the photo 5C or if the other button was a common button. He said he had seen the shirt, and he will say it was a dress shirt and it is a common style for men to wear. He looked at photo 22C and said he did not see what appeared to be blood on the shirt in that photo and from the photo it seems that no buttons were missing from that shirt. He says that photo 2C is a daylight photo it is not at the main entrance of the La Cabana it shows the side. Photo 1C was taken between 3:50 a.m. to 5:00 a.m., at 3:50 a.m. it was not dark as at 2:00 a.m. that photo shows two lights and there was no light by the unpainted concrete building. He looked at photograph 19C and said that he did not take a full body photo of the person whose palms are in the photograph.

[39] He stated that CPL Carrillo instructed him to take a photograph of the hand, and he stated that he cannot remember if CPL Carrillo requested him to photograph any other person than the Deceased at the hospital.

[40] Under re-examination said that from photo 2C he could not determine if there was a lamp on the post in photo 2C.

Evidence of INSP Mateo Carrillo

[41] He testified that in May 2018, he was CPL71 attached to CIB Belmopan. On the 11 May 2018, he visited Sultana Street in Belmopan and spoke with CST Barrington Montero who told him certain things. As a result of the information, he received from Montero he visited the Western Regional Hospital where he saw a male Hispanic person identified to him as Alfredo Mongul, 23 years old his date of birth is the 26 October 1995.

[42] A Salvadoran bartender suffering from a cut wound to the inner upper arm. He went to the Belmopan Police Station where he met a male Creole person who identified himself as Richard Hyde 36 years old. He informed Hyde that he was detained pending investigation into the stabbing of Alfredo Mongul. He revisited the scene where he met Mr. Montero once again and whilst at the scene he received information that Alfredo Mongul had passed away. He returned to the Belmopan Police Station where he spoke with Hyde once more and informed him of his constitutional rights, cautioned him, confirmed that he understood what was told to him. He then went on to tell Hyde that Alfredo Mongul had passed away and he was detained for murder. He asked him if he had anything to say but he remained silent.

- [43] He escorted Richard Hyde to the CIB office accompanied by Mr. Montero, and he asked Mr. Montero to collect his clothing and footwear as he observed it contained red substance suspected to be blood. He contacted Dr. Estrada Bran and made arrangements for a postmortem examination. On that same day the father of the Deceased presented him with a Salvadoran ID card with the Deceased date of birth which is the 23 October 1994.
- [44] He requested officer Dwayne Joseph to witness the postmortem examination of the body. At the end of the examination Joseph submitted a report along with a cause of death certificate. He then issued Richard Hyde with acknowledgements form explaining his rights in custody and formally arrested and charged him for murder.
- [45] Under cross-examination this witness said that he was not the investigator in this matter at the Sultana Street at 2:50 a.m., nor was he on duty that night at the Belmopan Police Station. He received a call whilst off-duty at home. He was not in the La Cabana that night and did not hear that there was an altercation. He was informed that Richard Hyde was there pending investigation into a stabbing incident. There were other persons detained as well. He was not aware that PC Alvarez testified that he visited another person involved in the incident at the hospital with injuries.
- [46] He said when a person's clothing is taken, he will be provided with another set of clothing. He did not ask Mr. Montero to take a buccal swab, and he is not aware of any special procedure for the removal of a suspects clothing. He said he did not conduct an ID parade during the investigation he stated that he was at the scene with Mr. Montero around 2:50 a.m.; the second time was around 3:20 a.m. to 3:30

a.m., when he visited the scene, but he is not sure when he left the scene the second time.

[47] He said he visited the Western Regional Hospital and the Belmopan Police Station and spoke to the Accused within 30 minutes. He made notes on the matter and transferred them to his investigation diary. Today he refreshed his memory from his report, and he did not speak to CPL Alvarez that night and he does not know the other person to whom CPL Alvarez gave the medico legal form. No one brought this to his attention that two persons were injured that night.

[48] There was not re-examination of this witness.

Expert Evidence of Dr. Loyden Ken – Anatomical Pathologist

[49] He testified after giving the court his qualifications and experience he was deemed an expert in Anatomical pathology. He stated on the 11 May 2018, at around 11:50 a.m., he conducted a postmortem examination on the body of the Deceased. He opined that the cause of death was hypovolemic shock as a consequence of external exsanguination - exsanguination due to the complete transection of the left brachial artery and vein as a consequence of a cut wound to the medial aspect of the left arm. Hypovolemic shock is due to blood loss.

[50] Under cross-examination the doctor said he also did an internal examination. The external examination was to determine the identity and evidence of the injuries. When he examined the body, he reported his findings: the Brachial Artery carried a lot of blood to the left arm, the forearm, the fingers, the left upper extremities but it does not go through the heart. Both arteries and veins were severed. Blood flows out and in this case, it would be spurting out because it involves an artery and a large vein. Blood loss would cause a person to go into shock and it must be at least

two litres. If someone compresses the area it would take more time, if there is no compression the loss of two litres of blood occurs quickly and the person would be unconscious within 15 seconds. The person would be able to run or walk for a distance.

[51] The witness said that *trace evidence* is evidence of skin under the nails, hair, or clothing from the suspect. The victims clothing will have a lot of blood and the person in close proximity to the victim would have blood on their clothing. A superficial cut was received under the clothing. A cut to the right collar bone it was just a cut of the skin it was not a scratch from a fingernail.

[52] There was no re-examination of this witness.

[53] I will consider this witness evidence in greater detail later on in this judgment.

Evidence of PC Kent Reyes – Major Crimes Unit

[54] He testified and stated that in May 2018, he was a police constable attached to Major Crimes in Belmopan Police Station. He said on Monday 11 May 2018, he received a packaged with a chain of custody form from PC Cantun who had that package in his possession.

[55] When he received it he was at the Major Crimes Unit. He continued that on 25 July 2018, he took the sealed package along with the chain of commands form to the National Forensic Science Services Laboratory. He stated that he would be able to identify the chain of command form because it has his initials and the logo of the lab on a white sheet of paper. At this stage the court upheld the objection of Defence Counsel on the admissibility of this package and did not allow the Crown to have the same admitted into evidence.

[56] This witness was not cross-examined.

**Forensic Evidence – Eugenio Gomez, Forensic Analyst and Supervisor
Serology Unit National Forensic Science Services Laboratory**

- [57] He testified that he is a Forensic Analyst and also the Supervisor of the Serology section of the National Forensic Science Services Laboratory. He stated that his report should be dated the 30 October, and the button should be included in the comments section. He said that the case synopsis was done after serology examination was submitted; whereby items submitted were evaluated for potential DNA evidence with lab reference **FOR18-05838**. Items taken for DNA were - a sealed manilla envelope containing an FTA card with blood from the Deceased labelled **K1**; a sealed white envelope labelled **Q1** containing one blood swab from the outside of the right tennis shoes from the suspect; a sealed white envelope labelled **Q2** containing one blood swab from the outside of the left tennis shoe of the suspect.
- [58] He went on to say that he sealed the package and labelled the items placed them in a suitcase and he travelled to the Cayman Islands Forensic Laboratory. And on that same day handed them over to the DNA Expert of the lab one Angela Tanzillo-Schwartz.
- [59] A report dated the 12 December 2019, was emailed to him by the DNA expert said that the FTA card is specifically designed to create a stain from liquid blood sample. It is chemically treated to preserve the DNA of the stain. The items usually remain at the DNA lab and a sample sent out and can be returned upon request. He stated that he did not personally receive an email from the DNA report, but it was sent to the lab.

[60] Under cross-examination he said that Belize does not have a database with DNA findings. **K1** marking was done by him and a serological test was done on that. It was done for potential DNA that is why he sent it to the lab. The witness went on to say that the National Forensic Science Services Laboratory has its own exhibit manager who receives exhibits. Exhibits are kept in the exhibit room and given a lab reference number and kept until requested by an analyst for analysis. There is an internal chain of custody form to show movements of exhibits. That was not submitted with his report. If there was a request for urgency it would be assigned right away. He said that he does not receive exhibits brought to the lab nor does he store exhibits.

[61] The number **K1**, **Q1**, and **Q2** were not numbers given when the exhibits were lodge. The chain of custody form which shows it was lodged and signed out to him. He could not say what was the number on the package when they were brought to the lab. He stated that liquid blood is refrigerated in the package in which it came, the same way it was received the same way it was stored. It could be stored between 2 to 8 degrees centigrade. And the lab has a refrigerator that reaches those temperatures.

[62] Dried blood could be stored at room temperature or under air conditioning. It is stored in a different area of the exhibit room. He said he did a swab of the tennis shoe which he sent to the lab, before he did so someone else had extracted blood from the shoe. He said it is not true that after the first extraction the strength is degraded. He said the substance on the shoe was swab quantity and the colour on the shoe was not bright red. In this case, he cannot say if the substance was wet or dry when it arrived.

[63] The witness stated that the comments on the report meant that the blood could have gotten there by other means, and it is also possible that it could have gotten there at another time. He did not get a chance to review the report from the Cayman Island Laboratory. He went on to state that he was not a part of the investigation, nor did he visit the crime scene. He would not know if the pink substance on the shoe was placed there. He said it is possible for someone at the crime scene to transfer the substance to the shoe. He did not receive a swab from the Accused. He stated that he sent instructions to the DNA Analyst, but he did not send a copy of those instructions to the court. He did not ask for specific population groups and he does not know what specific population group means. He is not trained to do DNA analysis, and he does not have to leave an exhibit to thaw before using it. He cannot speak about specific population groups because that is not his field.

[64] There was no re-examination of this witness.

DNA Analysis Evidence - Angela Tanzillo-Schwartz, Expert Forensic DNA Specialist, Cayman Island Laboratory

[65] She testified at length stating her qualifications, training and experience and that she has served as a Forensic DNA Analyst for over two decades and that she has the ability to determine donors on a mixed stain of two or more persons. This witness was deemed an Expert Forensic DNA Specialist. This witness went on to testify at length the contents of her report during her examination-in-chief and her extensive cross-examination by Defence Counsel herein.

[66] **That was the case for the Crown.**

[67] At the close of the Crowns case the court gave the Accused his **Three Choices:**

1. **He can stand where he is and say absolutely nothing that is**

his right and no one can hold that against him.

- 2. He can stand where he is and give an unsworn statement and no one can question him, that is his right and no one can hold that against him.**
- 3. He can come to the witness dock and give evidence, whereas, the Crown may ask questions, his lawyer can ask him questions and the Court can also ask questions.**

The Accused was also informed of his right to bring witness' to give evidence on his behalf.

The Accused after consultation with his counsel chose to make an unsworn statement.

Evidence of the Accused - Unsworn Statement

[68] He said I am 41 years old. My date of birth is 14 September 1982. I take my mind back to the year 2018, I was at the La Cabana nightclub with friends. I entered the club and was searched with a metal detector. I had a few drinks inside the club and went outside to where the vehicle was parked. When I exited the club going to the vehicle a group of persons was coming behind us. At that time, I was running down the street and I heard a loud bang like a gunshot. I was approached by an officer and searched, nothing illegal was found on me. The officer told me he will be taking me to the Belmopan Police Station, him and I went through a little struggle because I did not want to go. The police mobile was also coming up the street and another officer intervened. I was handcuffed, one held me by the hands, and another held me by the feet and placed me in the police mobile.

[69] On Saturday morning at about 10:00 a.m., I was charged with murder something I have no knowledge about. I have been incarcerated to the Belize Central Prison. Upon my incarceration, I have completed two major rehabilitation programmes; ARC and IRC and I stand here fully rehabilitated, and I am asking this court for justice and the opportunity to be back with my family and loved ones. Once again, I did not stab anyone that night or any other night.

[70] **No other witness was called for the Defence.**

CLOSING SUBMISSIONS

Crown – **Mr. Cecil Ramirez S.C.C.**

[71] Mr. Ramirez, in his written submissions concluded thus: The evidence in this case shows that Louis Mongul is dead and that the cause of death is stab wound with a knife. He further contends from the circumstantial evidence referred to in his submissions it was the Accused who stabbed the Deceased. By the evidence of PC Cantun, it can be inferred that the Accused intended to stab the Deceased. And the evidence of the DNA Specialist, places the Accused at the crime scene.

Crown submits that the evidence of PC Cantun and PC Uh indicates, that the Accused stabbed the Deceased unlawfully and that there is no evidence adduced at no time during the trial that the Deceased attacked the Accused.

Defence – **Mrs. Emmerita Anderson**

[72] The Defence Counsel submits that the Crown did not prove certain essential elements of the offence of murder. Mrs. Anderson contends as follows: the Crown did not establish a nexus between the person who was injured at the La Cabana Nightclub on the 11 May 2018, as the person who was seen on the hospital bed by

PC Alvarez; and, that the Deceased who Dr. Ken performed a postmortem are one and the same person, who was injured at the club that night.

There is no evidence that the Accused is the person who inflicted harm on the Deceased and that that harm was unlawful.

There is no forensic evidence linking the Accused to the crime and that the Crown did not adduced evidence to prove that the Accused had the specific intention to cause harm to the Deceased.

The Law

[73] As stated aforesaid the Accused is indicted for the offence of murder contrary to section 106(1)³ of the **Criminal Code**. That section provides:

“Any person who commits murder shall suffer death”.

[74] Section 117⁴ of the **Criminal Code** provides:

‘Any person 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 as in the next following section mention’.

[75] The Crown must prove the following beyond reasonable doubt:

1. The Accused is dead.
2. He died from unlawful harm.
3. The unlawful harm was inflicted by the Accused.
4. The Accused intended to kill the Deceased when he unlawfully caused harm to him.

³ CAP 101 section 106 of the Substantive Laws of Belize Revised Edition 2011.

⁴ CAP 101 section 117 of the Substantive Laws of Belize Revised Edition 2011.

Discussion and Analysis

[76] It is common ground that the Accused has denied being involved with the death of the Deceased. Indeed, he has stated that he has no knowledge of this matter. Hence, matters of self-defence, provocation, and accident have not arisen here. As stated, aforesaid, the Crown's case is based on circumstantial evidence. Indeed, its witnesses who testified of being at or the vicinity of the area where the Deceased was injured stated that they did not see the Accused, stab the Deceased.

[77] Thus, it is common ground that there is no direct evidence that the Accused stabbed the Deceased causing him to incur the injuries specified by Dr. Ken, who performed the postmortem examination on the body.

[78] The Crown relies on the following to prove its case against the Accused:

1. That the Accused is seen throwing punches at the Deceased.
2. That a knife was found on the scene where the two Hispanic persons had been stabbed.
3. A knife scabbard was found by the police after it fell from the person of the Accused.
4. The sole of the Accused footwear had blood stains as found by the DNA Analyst to match that of the Deceased.

[79] In her submission, Defence Counsel, takes issue with the testimony of the Crown witnesses: i. that he was able to see the Accused involve in a dispute between him and another man by the streetlight. ii. Scenes of Crime officer Mr. Montero stated thus, he noticed a trail of blood on the street from in front of the wooden unpainted structure the drip of blood led from apportion of Sultana Street near the nightclub. He also discovered two buttons on the street as a result he used markers, from 1

and 2 to 14 marking several blood stains on the street leading to the nightclub. Photo 2C which is a daylight photo shows a post with no lamp attached thereto. In answer to Crown Counsel in examination-in-chief he stated that he could not determine from the photograph if there was a lamp on that post.

[80] After having carefully considering, the Crowns evidence adduced in this trial I make the following findings:

1. There is no evidence as to where when and by whom the Deceased was stabbed.
2. The circumstances surrounding the transportation of the Deceased and Monterroso is unknown.
3. The evidence of the two Crown witnesses who purports to have seen the two Hispanic men running on Sultana Street is contradictory and inconsistent.

[81] PC Uh testified that whilst outside the establishment he saw the two male Hispanic persons, one of whom he recognized as the bartender at the club and the other Hispanic person is unknown to him. He said he saw them running behind a Creole male person who he has known for five years as Richard Hyde. He said as I saw this, I began running towards them where I saw the two male Hispanic persons caught up with Richard Hyde. As I got closer, I saw Richard Hyde throwing punches to both male persons and before I could have gotten to them to find out what the situation was Richard Hyde ran away from the two male Hispanic persons and headed towards the E&L Nightclub.

[82] PC Cantun on the other hand stated thus, at about 2:00 a.m., PC Carrillo, PC Uh, and myself were closing the nightclub at the same time I saw the proprietor and the

bartender of the nightclub running towards myself and PC Uh who was by the door, they asked us for assistance as someone had been robbed. PC Uh rushed out behind the two persons, the bartender and the proprietor, I followed behind PC Uh right away I then noticed three persons struggling below the lamppost I had a clear view as the light was on. As PC was reaching them, I saw a short person was struggling a short person whom I recognize as the bartender in the establishment pass me running back towards the La Cabana uttering some words in Spanish.

[83] On cross-examination he said I continued to follow and notice PC Uh running towards the person who were struggling. He said it was two and when PC Uh reached there it was three persons struggling, so PC Uh made the third person who was struggling. He said yes that happened in front of him. The questions were asked:

Q. So, it is not correct when you say that it was three persons struggling?

A. It is what I saw ma'am.

Q. The three person you saw struggling in your statement it says two, so, what is it you want the court to believe that you saw two persons struggling?

A. That is what I said at that moment but then it was made three persons when PC Uh arrived.

[84] The court is now faced with evidence of PC Uh who said that he saw three persons struggling under a streetlight and they were throwing punches. Whilst PC Cantun says he saw two persons struggling and when PC Uh arrived that then it became

three persons. So, according to PC Cantun, PC Uh was one of the three persons seem to be involved in a struggle beneath the lamppost.

[85] The force of the testimony of the two police officers is extremely contradictory on a critical part of the Crowns case, that is, the circumstances surrounding the stabbing of the Deceased. This becomes most egregious when they both claim to be present when the activities of the two Hispanic males running from the La Cabana Nightclub up the street commenced up to when the struggle and the punches thrown occurred.

[86] I will now consider the evidence of PC Alvarez who stated that he visited the Western Regional Hospital where he saw two injured men connected with this incident. He met the Hispanic man named Dennis Monterroso who had a small cut on the left side of his nose and a large cut on the left side of his head he issued him with a medico legal form. He made checks on the second bed when he observed the Deceased with what appeared to be a stab wound on his left arm. Most surprisingly, however, he did not take a statement from Monterroso even though he issued him with a medico legal form, no reason was proffered for this officer's reluctance or refusal to inquire what had transpired for him to suffer the injuries he observed and who inflicted those injuries to him and the other person who was on the bed next to him.

[87] Moreover, there is no evidence that Monterroso was requested to attend an ID parade in which the Accused was the suspect to see if he could identify him or anyone else who was involved in the incident, as the person who inflicted the injuries on him and the Deceased and the fatal injury to the Deceased.

[88] The Crown is also relying on the DNA evidence of the Analyst whose findings are that the DNA on the swabs from the sole of the Accused footwear match that of the

Deceased. In this regard, the court considers the evidence of CST Montero who testified that he saw a trail of blood on the street from the front of unpainted building, the drip of blood led from a portion of Sultana Street near the nightclub. He also discovered buttons on the street. And he used several markers to mark the blood stains on the street leading towards the nightclub. He also collected thirteen cotton swabs from sections of the street with suspected blood.

[89] There was blood at various parts of the roadway which can be transferred to the footwear of anyone who stepped in it. This evidence was considered with the evidence of Dr. Ken, the Anatomical Pathologists, who performed a postmortem examination on the body of the Deceased and who said in his testimony, that the blood would start spurting out from the body of the Deceased and he expects a significant amount of the ground from where the Deceased started bleeding and wherever, his body moved to he expects blood to be there as well.

[90] In considering, Dr. Kens evidence I took into consideration the findings of the trail of blood from in front of the unpainted building to the La Cabana Nightclub. In doing so, I took into consideration the evidence of PC Cantun who said I had a clear view that night as PC Uh was reaching them I saw one of the persons struggling one of the short persons who I recognize to be the bartender in the establishment pass me running back towards the entrance of the La Cabana Nightclub entrance uttering some words in Spanish.

[91] I find therefore, that this Deceased was running towards the club on the street and was the source of the trail of blood observed by CST Montero and that is keeping with the evidence of Dr. Ken who said that blood would be seen wherever the

Deceased was. I further find that anyone who was on foot on that part of the road as described by Mr. Montero would have blood on the outer sole of their footwear.

[92] I must consider as well that there was no sign of blood or what appeared to be blood on the clothing of the Accused. Once, again I must consider the evidence of Dr. Ken who opined:

Q. Doctor, the level of injury described would the victims clothing have a lot of blood on it?

A. Yes.

Q. And what of persons in close proximity of them?

A. There is a possibility.

Q. Would it be because the blood was spurting out?

A. Yes, there is a possibility. I cannot say if it is strong, but I will say it is a possibility.

[93] I will now turn to examine the effects of the alleged findings of a knife found at or around the scene of the struggle by PC Cantun and the scabbard recovered by him. The scabbard was never tendered into evidence before this court. The Crown sought to tender a box purporting to be a knife found by PC Cantun on the scene. PC Cantun testified that he placed the knife in the box which was labelled and sealed in the absence of the Accused without showing him the knife at all. He first stated that this box was handed over to scenes of crime officer Montero for transmission to the lab. This box did not appear on the list of exhibits submitted to the lab on the 11 May 2018, by CST Thimbriel on behalf of Officer Montero.

[94] The court in the circumstances, allowed the box to be marked A for identification but did not allow it to be tendered into evidence. The Crown produced another witness

one Kent Reyes, who testified that on the same day 11 May 2018, while stationed at the Belmopan Police Station he received a seal box from PC Cantun together with a chain of command document which he transported to the lab on 25 July 2019.

[95] The court denied the Crown's application to have the box marked A to be tendered into evidence after having heard submissions from Defence and Crown Counsel. No, acceptable explanation was offered by the Crown as to how this box which PC Cantun said under oath was given to Montero on the 11 May 2018 for transmission to the lab ended up in the possession of Kent Reyes on the same day and was submitted to the lab some two months later for testing.

Verdict

[96] I find that after having considered the Crown's case, particularly the significant inconsistencies in the evidence of the two police officers who claimed to have witnessed an event of two persons struggling on the road cast reasonable doubt on the reliability of these witnesses' testimony. Indeed, the testimony of one of these officers, PC Cantun, is that PC Uh was one of the three persons involved in the struggle that night.

[97] I, further find that the failure of the investigating officer to cause an ID parade to be held to determine if Monterroso the other injured person involved in this incident is able to identify the Accused or anyone else who inflicted the fatal injury to the Deceased to be most detrimental to the Crown's case. The investigator in his testimony aforesaid appears to be totally unaware of the existence of this person, even though PC Alvarez had issued him with a medico legal form. Moreover, no witness statement was taken from him to clarify what had occurred that night.

- [98] The mishandling of the knife that appeared to have been found at the place where the struggle took place and the unexplained absence of the scabbard which allegedly fell from the person of the Accused does not enhance the Crown's case. Indeed, their absence is detrimental thereto.
- [99] This investigation was not thoroughly and efficiently conducted. The Crown's evidence falls woefully short of what the required threshold is to ground a conviction of the Accused. Thus, after considering all of the admissible evidence adduced by the Crown, and the unsworn statement of the Accused, I find that the Crown's case does not satisfy me to the extent that I feel sure of the guilt of the Accused.
- [100] Thus, in the circumstances, the Accused is found not guilty for the offence of murder for which he is indicted.

Hon. Mr. F M Cumberbatch

Justice of the High Courts