

murdered Eduardo Manuel Perez Sanchez ('the Deceased') contrary to the provisions of section 117¹ read along with section 106²(1) of the *Criminal Code* CAP 101 of the Substantive Laws of Belize (Revised Edition) 2020. At his arraignment the Accused entered a plea of not guilty, hence, a full judge alone contested trial was held pursuant to the provisions of section 65A of the *Indictable Procedure Act*³ Chapter 96 of the Substantive Laws of Belize 2020 as amended.

The Facts

- [2] I will summarize the facts of this case. I must state, however, that in reaching my verdict I will do so after having considered all of the admissible evidence in this case adduced by both the Crown and the Defence.
- [3] **CPL Mark Arzu** testified. He stated that in August 2015, he was attached to the Police Training Academy where he did guard duty and border

¹ CAP 101 of the Substantive Laws of Belize Revised Edition 2020 section

117. 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 as in the next following sections mentioned.

² CAP 101 of the Substantive Laws of Belize Revised Edition 2020 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.

³ *Indictable Procedure Act* CAP 96 of the Substantive Laws of Belize Revised Edition 2020 section 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.

patrol. On Friday 28 August 2015, at around 5:00 p.m. he took over guard duty at the Police Training Academy and was supposed to work until 2:00 a.m. on the 29 August. At about 2:00 a.m., he was handing over guard duty to PC 1818 Garcia and whilst doing so he looked through the window towards Forest Drive and saw a male person who he recognised as CPL Wagner who he had known for about 11 years due to the fact that he was also a member of the Special Patrol Unit. CPL Wagner was passing beside the window at the guard hut. He then jumped the barrier and was waving a 9 mm pistol towards him and PC Garcia. He and Garcia were in the guard hut he was standing, and Garcia was sitting. CPL Wagner then placed the gun in his waist and told me 'Boy Zu you have to be careful in this guard hut.' I asked him why and he said I was watching you and this young man quite a while. I also have to be alert'. He then stated to him and Garcia that 'them boy want to kill me', so he asked him which boy and he said PC Guzman and some other men. CPL Wagner told him he was that he was behind Quality in some bushes from around 9:00 p.m. He said he got in contact with Belmopan police officers, and they should have picked him up. They didn't arrive so he found his way to the Academy. The witness said CPL Wagner told him and Garcia that he was picked up in a white car by PC Guzman and some other guys. They went to the Westar Gas Station. That is when they met some Hispanic guys. One of the Hispanic guys accompanied him and Guzman in the same white car. They all took off. CPL Wagner stated that after a while they were in Young Gal Road

and the car came to a stop. At this time the Hispanic person was sitting in the middle back seat of the car. Wagner said he was sitting on the right side of the back seat and the other young man was sitting on the left side of the back seat took a bottle and burst it on the Hispanic person's head. **Thereafter the said young man placed a hoodie over the said Hispanic male person's head and whilst doing so he broke the Hispanic male person's neck. He said the young man then took the Hispanic person out of the vehicle. CPL Wagner stated that he also got out of the vehicle and shot the young man in his head** (*Emphasis added*) because he believed the man was already dead due to the fact that his neck was already broken. CPL Wagner said the other young man and he went back into the vehicle, and they headed towards Belmopan. Whilst passing through Camalote village he wants to stay home due to the fact that he lived in Camalote. He said Pc Guzman told him he cannot stop. The next thing he stated was that they were behind Quality Road. The young man in the back seat with CPL Wagner told him to hand over his weapon to him. Wagner said the young man is his neighbour. Wagner stated he told the young man he cannot hand over his weapon to him. He stated that he took the magazine out of without the young man seeing and handed the weapon to him. CPL Wagner said at this time the said young man who is his neighbour placed the weapon to his temple but due to the fact that it had no magazine when the young man pulled the trigger the weapon did not go off. CPL Wagner said he quickly snatched the weapon from the

young man, put the magazine back in it and placed the weapon at PC Guzman's head and told him stop the vehicle. When the vehicle came to a stop Wagner said he came out of the vehicle and the vehicle sped off. He fired several shots at the vehicle and ran into some nearby bushes. Wagner said whilst in the bushes he saw the vehicle driving up and down as if they were looking for him. He then got in contact with Belmopan police, but they didn't show up. This is how he arrived at the Police Training Academy. No specific time of the incident was given besides CPL Wagner saying he was in the bushes from around 9 o'clock. He didn't say if it was morning or night. To the best of his knowledge this is all that was told to him at the Police Academy.

- [4] The witness went on to say that the handing over process involves all articles in the building which he had taken over and which he is now handing over to the other person. At that time, CPL Wagner was a member of the police department. and was attached to the Prime Minister as a bodyguard to his wife. He said whilst in the hut he was sitting on a seat around a desk, PC Garcia was sitting in front of him and CPL Wagner was on the right-hand side in front of them and was about 2 feet away from him. He went on to state that there were bright lighting conditions in the room and CPL Wagner was speaking to him for about 10 to 15 minutes in the room. He was able to see his entire body, and nothing obstructed his view of him. The Accused was identified as CPL Ryon Wagner.

[5] He said when the Accused was speaking in the guard hut, he had no difficulty in hearing what he said. When the Accused entered the guard room, he was not aware that someone was shot in Young Gal Road. When the Accused arrived, he was not aware that he was a suspect in any crime. He said he did not caution the Accused. Whilst speaking to him he didn't believe anything he heard. He said he was not on the scene and didn't see a dead body and had no idea that an incident had occurred. He didn't arrest the Accused because at that time he did not believe anything he heard, and there was no report at the moment. He didn't inform him of his constitutional rights due to the fact that there was no report of anything made.

[6] The witness continued that after the Accused spoke to him, he remained in the guard hut. He handed over duties to PC Garcia and left the room and went home. When he went home the Accused was speaking in the guard hut and PC Garcia was there.

[7] **Under cross-examination.** The witness said the Accused gave him the name of someone who wanted to kill him namely PC Guzman. He said he knows PC Guzman as a police officer in Camalote Village. He's not his friend but he knows him and some of his relatives. He said when the Accused was speaking to him, he appeared nervous, his speech was slurred as if he was intoxicated. He spoke in a normal tone. He knew someone named Hyde had been shot. If someone told him about committing a crime, he will consider that to be hearsay. He said he knew

the Accused for quite a while, and he was a trained person, so he didn't believe anything he said. When the Accused arrived, he said he was sitting writing in a diary and his face was not directed towards the diary. He denied that he had been lying in court and that he fabricated what the Accused told him. He said the gun the Accused had was black in colour. He cannot recall refusing to give a statement when approached by the police and denied that he was threatened with interdiction before he gave a statement. He denied that he lied when he said the Accused told him he has to be careful and that he was watching him and Garcia for a long time. He disagreed that the Accused said to him "boy Zu you can't be doing this because they just killed Hyde and a girl through the road.

- [8] The witness said he does not have a police notebook in his possession and cannot say if he had one at around 2:00 a.m. on the 29 August 2015. He said he was in possession of a police notebook issued to him by the police dept. and has to carry it when he is on duty. The notebook is for information concerning policing of crimes and to refresh his memory at times. If there is no report of an incident, he cannot consider it police business. He said he is not saying the Accused's confession is not police business. He said he didn't believe anything he was saying, and he had no knowledge there was an incident that took place. He said if he had written down what he the Accused said he is not sure that he would have had that notebook up to now, but he cannot say no.

- [9] **Under re-examination.** This witness said he was aware that someone named Hyde was shot at Roaring Creek.
- [10] **CPL 1880 Devon Garcia.** Testified. He said in August 2015, he was a PC attached to the Training Academy Special Patrol Unit. He recalls the 29 August 2015, about 1:45 a.m. he was detailed to work guard duty at the training academy and at about 1:45 a.m. was awaiting PC Arzu to hand over. Whilst doing so he sat on a chair in front of the Diarist desk facing Forest Drive. He was reading a text on his phone when a male person, slim built of fair complexion, small moustache 5' 7" dressed in a grey T-shirt and black pants entered the guard hut holding what appeared to be a 9 mm glock in both hands. The person pointed the firearm at both him and PC Arzu and said long time I been watching the two of you smoke a cigarette. You can't sleep at the guard hut you have to stay alert. He said he remained silent in fear of his life as this is the first time he is seeing this person. He said the guard hut was well lit with fluorescent bulbs and nothing obstructed his view. PC Arzu asked him if he knew who the person was and told him the person is CPL Wagner from the Special Patrol Unit to the security of the Prime Minister's wife. He said CPL Wagner then slammed the pistol on the Diarist desk and said they just tried to kill me. He slammed a black cell phone on the desk and said he was trying to call **Belmopan Police Station for assistance, but nobody assisted him. He said Wagner took out 3 black magazines from a black pouch and slammed them one by one on the Diarist table and**

said he met PC Guzman at Westar where he offered him a ride and he said, yes. Wagner said when he got into the car there were 3 other persons with PC Guzman. He said Guzman passed a glock to one of the male persons in the back seat and placed the hood on the Spanish man head and broke his neck as instructed to do by Guzman. Wagner said they stopped at Young Gal Road and throw out the Spanish man and he got out of the car because he suspected the man was still alive and shot him in the head. *[Emphasis added]* When they were making their way out one of the male persons touched him asking for his firearm. Wagner said he gave the male person his firearm with no magazine in it. He stated that the male person pointed the firearm at his head and pulled the trigger, but the gun snapped. Using his training he retrieved the firearm from the person inserted the magazine and pointed it at Guzman's head and ordered him to stop the vehicle which he did. Wagner said he got out of the car and fired shots at the vehicle that's why the magazine was empty. Wagner said he jumped into the bushes and made his way into the guard hut at the academy. He said when they find the Spanish they won't find any ID because PC Guzman got it. There were 2 other Spanish males, but they won't find them because they gone in another vehicle with the guns.

[11] This witness was not cross examined.

[12] **Dr. Estrada Bran** testified. He was deemed an expert in the field of forensic medicine by the court without objection from the Defence. He

stated that on the 1 September 2015, at around 1:00 p.m., he performed a postmortem examination at the Karl Heusner Memorial Hospital mortuary. His findings in his external examination consisted of an irregular orifice 16 mm by 17 mm located at the left side lateral area of the head showing brain tissue. The wound was a contact type wound. He also found an irregular star shaped orifice located at the right occipital region with exit characteristics. There were also multiple contusions located on the face. There was also an abrasion to the right upper area of the anterior outer arm.

[13] The internal examination revealed that the entry wound took a direction from left to right, forwards to backwards and upwards to downwards disrupting soft and bony tissues and fracturing the base of the skull with massive brain damage. There was an exit through the right occipital area. Otherwise, the rest of the organs were normal.

[14] The doctor opined that the cause of death of the Deceased was traumatic shock due to massive injuries due to gunshot wound to the head contact type. He defined contact type as occurring when the muzzle of the gun was in direct contact with the target. He went on to state that the Deceased did not have a broken neck.

[15] **Cross-examination.** Under cross-examination the witness stated that he could not tell what kind of bullet entered the orifice. He stated that the shooter was close to the Deceased, less than 32 inches away when the shot

was fired. Based on the direction of the entry and exit wounds the shooter could not have been behind the Deceased or above the Deceased.

[16] There was no re-examination.

[17] **Herbert Usher** testified that he lived at Young Gal Road, Teakettle Village. He remembers the 29 August 2015, at about 5:40 a.m. he was going to work. On leaving his house to go to work in a truck he saw a person lying on the roadside on the right hand, so he stopped. He came out of the truck and saw the person face down with a rag tied around his face and that he was not breathing so he called his boss. He then called the police. The police came to the place.

[18] **Under Cross-Examination** This witness said he has been a caretaker for around 12 years, and this is the first time he is giving evidence in a murder trial. He said he gave a statement to the police, and they read it over to him and he signed it. He can't remember if it was only him and the police in the room. He said he did see a person lying on his face. He could not say if the place where he saw the body lying on the road was 2 miles in. All he knows is that he saw a body on the road. He did not see anybody else, nobody else was there. The only person he met there was the police. He said that the rag he saw around his face was a black rag.

[19] There was no re-examination.

[20] **CPL Dion Guzman** testified. He stated that in August 2015, he was attached to the Belmopan Police station and at that time he was a police constable. He recalls Friday 28 August 2015, at around 11:00 p.m. he was

at the Westar Gas Station with his friend Bertram Bermudez and cousin Belhem Guzman. Whilst there they were by Bermudez car drinking a beer Bermudez showed him a person standing behind a car under a gas pump speaking to 2 male Hispanics. He said he recognised the person to be Ryon Wagner who was also a police officer at the time. He also noticed some tension between Wagner and the male Hispanic persons, so he decided to walk over to where they were standing to see what the issue was about as he was a fellow police officer. On reaching where they were standing, he heard Wagner speaking in Spanish to one of the male Hispanics. He asked what the problem was, and Wagner said one of the persons didn't have papers meaning he was not Belizean and didn't have permission to be in Belize. Wagner asked him to assist in taking the person to the Belmopan Police Station for him to be detained pending an immigration offence. He said he informed Wagner that he didn't have a vehicle and was with his friend Bermudez and his car was parked about 50 feet from the gas pump. He said whilst standing by the car where Wagner and the 2 persons were, he noticed that he had a black 9 mm firearm in one of his hands pointed towards one of the Hispanics and was speaking in Spanish to that person. The witness continued that whilst he, Wagner was speaking he was about 2 feet away from him and smelled alcohol from Wagner's breath. He then walked away from Wagner to where Bermudez was parked. As he was about to enter the front passenger seat Wagner arrived behind him and asked for assistance to take the person to

Belmopan Police Station. He said at first, they were hesitant to assist him, however, Wagner opened the back right side door and placed the Hispanic person in the middle of the back seat, and he also entered demanding that they assist him. After demanding that they assist him Bermudez decided to assist him since it was his vehicle. They drove off heading east to the George Price Highway. As they were about to reach the highway from the parking lot in the gas station Wagner had a change of mind and in an aggressive manner pointed the firearm at him and the driver and ordered the driver to take a right turn on the highway instead of a left turn to Belmopan. He said they were hesitant to abide by what Wagner was saying but they turned right because he was pointing the gun in an aggressive manner. After taking the right turn hard rain came down and Wagner instructed them to drive, and he would direct them where to stop. Whilst driving he heard the Hispanic man who was in the back seat moaning as Wagner was hitting him and at the same time speaking to him in Spanish. They continued driving on the George Price Highway through Camalote Village and Wagner asked him for a shirt to place over the Hispanic's man head because he did not want him to see where he was going. The witness said in fear he took off a grey T-shirt he was wearing and which had markings 'party all day, party all night'. Whilst passing through Camalote Village they reached a junction of Young Gal Road where Wagner directed them to turn and continue driving until he said stop. They drove for a while a far distance from the highway to where they

stopped. It was still raining heavily and after driving for about 10-15 minutes Wagner ordered the driver to stop the vehicle in a dark area. When they stopped Wagner exited the vehicle and took the Hispanic person. Shortly after he heard what sounded like a gunshot. Wagner quickly re-entered the vehicle alone. The witness said he asked him in a fearful manner why he did what he did. Wagner replied that he just frightened the person. At this time the witness said he was scared and frightened because of what had happened to the Hispanic person. Wagner then directed them to leave the area and take him to Belmopan. Whilst coming towards Belmopan Wagner said to them, they must not say anything because they know what he is capable of, and he knows where they live and their families. He said whilst in Belmopan City on the Hummingbird highway somewhere behind Quality Foods and Shanghai Gas Station the back door opened, and Wagner jumped out. He said he looked back but Wagner who was seated behind him. They made a complete stop but saw no sign of Wagner in the area. He said they decided to make their way to Camalotte as his wife and son were the only ones at home and he was still scared and frightened by what Wagner said that he knew where they lived. He said he was not armed that night and that the lighting conditions at the gas station pumps were bright. He said he was in Wagner's presence at the gas station for about a minute and he was able to see his face and hands and he had known Wagner for about 3 years prior to August 2015. He said he got to know him personally as a police officer

then Wagner had built a house on the same street where he was living at Camalotte Village and would see him coming and going to work. He said there was no obstruction between him and Wagner at the gas pump and the car was parked about 50 to 60 feet from the pump. He said where the car was parked was not well lit. When the car door was opened a light came on and he was able to see Wagner and the Hispanic person enter the car. He noticed Wagner sitting behind him on the passenger seat on the right side. Belhem Guzman was seated on the left side passenger seat behind the driver. He stated that from the time they left the gas station and stopped at Young Gal Road the vehicle did not stop anywhere else. He said Belhem Guzman was still in the vehicle when Wagner took the Hispanic man out of the car at young Gal Road, and he knew this because when the door was opened the light came on. Bermudez was still in the driver's seat when the vehicle stopped on Young Gal Road, and he remained seated in the front passenger seat. He said Bermudez did not exit the car when it stopped on Young Gal Road neither did Belhem Guzman. The witness then identified the Accused as Ryon Wagner.

[21] **Under Cross-Examination.** The witness said that as far as he could recall when he saw the Accused at the gas station that was the first time, he saw him on the 28 August 2015. He said he was at Belmopan before he went to the gas station. He said he did not stop at Uncle's restaurant before going to the gas station. He did not stop at Ok restaurant before going to Westar. He did not receive 6 beers from a friend and did not stop at Westar to drop

off. He said that the Accused did not enter the car before he saw him at the gas station and disagreed that he was in the car before the Accused entered. He said he wanted to see what was happening with the Hispanic and the Accused because the Accused was a fellow officer. He said he did not participate in the searching of the Hispanic men. He said when the Accused entered the car he did so without permission and disagreed that he offered him a ride. He also denied that after the Accused was already in the car Bermudez offered him a ride to the station. He said he offered no help to the Hispanic male person because he was scared and neither him nor Bermudez had cell phones. He said they did not stop any place before the Accused came out of the car. He said he went home shortly after the Accused left the vehicle somewhere between Quality Foods and Shanghai Gas Station. He said he passed Roaring Creek Police Station but did not make a report because he was scared. Neither him nor his cousin nor Bermudez went back to the crime scene at 5:30 a.m., on the 29 August 2015. He denied shooting the Hispanic male person. He said at the time it was raining, and he was not sure if the lights were turned off and he cannot recall if the windows were tinted. He said he could not see who shot the Hispanic person. He could only say what the Accused told him, and he was frightened. He cannot say he saw Wagner shoot the Deceased.

[22] There was no re-examination.

[23] **Wenceslado Teul** testified. He stated that he was a Crime Scene Technician since the year 2010 and told the court of his qualifications and

experience. He said on Thursday 1 September 2015, between 1.00 p.m. and 2:30 p.m., he was at the Karl Huesner Memorial Hospital mortuary where he witnessed Dr. Estrada Bran conduct a postmortem examination on the body of the Deceased. He said he observed what appeared to be gunshot wounds to the left temple and the back of the head of the Deceased. He also observed abrasions to the face of the Deceased. He took photographs of the aforementioned injuries and collected blood samples from the body of the Deceased from Dr. Estrada Bran. He sealed and packaged the samples and delivered them to the exhibit keeper at the National Forensics Science Services. He also printed 6 photographs taken at the postmortem examination and tendered same into evidence at the trial.

[24] This witness was not cross-examination.

[25] **Barrington Montero** testified. He stated that in August 2015, he was a Crime Scene Technician for 14 years and was attached to the Belmopan Police Station. He continued that at about 6.30 a.m., on the 29 August 2015, at the request of SGT Victorin he visited the Young Gal Road in Teakettle Village Cayo District and at the intersection of Young Gal Road and Dream Valley about 300 yards on the feeder road was a male individual lying on the right side of the road in blue jeans long pants and blue T-shirt, with brown boots and a black T-shirt wrapped around his head. He said he removed the T-shirt and saw a red substance suspected to be blood. He also noted an apparent gunshot wound to the face of the

Deceased. He placed marker # 1 near the body and photographed his findings. He later collected blood swabs which were later packaged for analysis purposes. After processing the scene, the body of the Deceased was removed by the police. He returned to his office and at about 11:40 a.m., he returned to the scene where SGT Victorin pointed out a spent 9 mm cartridge and a live 9 mm round. These items of evidential value were collected and packaged for ballistic analysis. The blood swabs, live round and empty casing were handed over to the National Forensic Science Services on the 31 August 2015. He said he went on to process the white car for possible latent fingerprints, but no readable prints were recovered. The photos taken were tendered into evidence.

[26] **Cross-Examination.** This witness said he saw a black T-shirt wrapped around the head of the Deceased. He said he didn't know one Hubert Usher. He said when he went to the scene no one was there apart from the body. No readable prints were found in the car.

[27] **ASP Octavio Victorin testified.** He said in the year 2015, he was an INSP attached to the Roaring Creek Police Substation. On Saturday 29 August 2015, at about 9:15 a.m., he started an investigation with reference to a body found on the Young Gal Road Teakettle. A team of police officers and himself started the investigation by visiting the Westar Gas Station where he spoke with the proprietor to see camera footage from the gas station. The camera was not in working condition, so he saw no footage. Thereafter him and the team of police officers went to Young Gal

Road about 1 ½ miles when they arrived at the scene. There he received information from a police officer and based on information received he aligned the officers across the road and slowly started walking towards the junction. Just before they reached the junction on his left hand, he saw a live 9 mm round gold in colour Aguila. Thereafter, he turned the team to an area where he saw red substance suspected to be blood and tried to do a reconstruction of the scene. He then positioned the police officers in a circle and started making the circle smaller. It was then PC Leonard Coh alerted them of his findings. He said he saw a 9 mm shell gold colour primer painted red S&B brand. He communicated with Scenes of Crime Montero who arrived shortly after to process the scene and package the live round and shell. Investigations were continued and statements were handed over to him. He said he learned that two persons were detained at that time in the computer room at the Belmopan Police Station and that their names were Dion Guzman and Ryon Wagner. Thereafter he received a statement from Guzman. He got copies of all the statements and submitted them to Mr. Martinez the Deputy Head of Central Investigative Branch and to Mr. Jones the Legal Adviser.

[28] The witness stated that on the 31 August 2015, he received instructions from Mr. Martinez to proceed with charge of murder for Ryon Wagner. He informed Wagner that based on the statements received and instructions from the Deputy Head of Central Investigative Branch he will

be charged with murder. He served him with a copy of the charge, read it to him, cautioned him, and he said he understood the charge.

[29] The witness continued that on the 1 September 2015, he visited the Karl Heusner Memorial Hospital morgue where he met Dr. Estrada Bran and Darwin Perez who identified the body of the Deceased and was his coworker and recorded a statement from Perez. Dr. Estrada Bran certified the cause of death of the Deceased. He identified the Accused as Ryon Wagner.

[30] **Cross-Examination.** The witness stated that he arrived at the gas station at around 10:06 a.m. to 10:08 a.m. After he visited the gas station, he went to the Young Gal Road at about 10:30 to 10:45 a.m. He said he did not look at the time. When he got there the Scenes of Crime officer was not there. He said that the live round and shell were from a 9 mm gun. He said he did get evidence of the Accused as the author of the crime from statements. When he got to the scene the body was not there. The live round was about 35 feet from where he saw the red substance. He said Dion Guzman was not charged.

[31] **Bertram Bermudez.** This witness commenced his testimony by stating that he could not remember the events of the night of the 28 August 2015. He admitted seeing his signature on his statement to the police but could not say if the contents were given by him to the police. The Crown sought and was granted an adjournment to allow the witness to refresh his memory on the contents of his statement. On his return to court this

witness continued to deny knowledge of the contents of his statement to the police and an application was made by the Crown to have him deemed an adverse witness. The court held a *voir dire* to determine if this witness was an adverse witness and whether his statement to the police should be admitted into evidence pursuant to the provisions of section 73 A of the *Evidence Act*⁴.

[32] The Crown called the witness ASP Patt who testified that that the contents of the statement signed by the witness were dictated to him by the witness. He was not cross-examined by Defence Counsel.

[33] The court was satisfied that the statement was indeed dictated to the police by the witness and as such the witness was thereafter deemed an adverse witness and the Crown was allowed to cross-examine him on the contents of his statement.

[34] During the cross-examination after looking at the statement again the witness stated that he could remember what he told the police but not everything. He recalls that they left the bar in Roaring Creek where they got beers and went to the Westar Gas Station where they sat in the car and drank beers. When they left the gas station it was him, Dion Guzman, his brother Belhem Guzman and another guy in the car. They drove to Camalote, but he cannot remember where in Camalote they went to.

⁴ CAP 95 Evidence Act Section 73 of the Substantive Laws of Belize Revised Edition (2020)
73A. Where in a criminal proceeding, a person is called as a witness for the Prosecution and—
(a) he admits to making a previous inconsistent statement... ...

- [35] The statement contains details stated by him to ASP Patt of occurrences after he left the Westar Gas Station.
- [36] It is clear that the witness has admitted giving a sworn statement to the police which is supported by the evidence of ASP Patt. However, in giving his testimony he has declined to testify as per his statement on the occurrences that took place after he left the Westar Gas Station. In the circumstances, I find that the statement “EXH.A” made by him and proved by virtue of section 71 of the *Evidence Act*⁵ is admissible and may be relied on by the Crown to prove its case.
- [37] **ASP Patt** testified. He read the statement made by the witness Bertram Bermudez into the record. The statement was tendered into evidence.
- [38] **Cross-examination** I don’t know that the witness said he didn’t say a number of things in the statement. He said this is the first time he has read a witness statement in court. He said he did not ask Bermudez if anybody threatened or promised him anything to give a statement. He said in his view he looked comfortable. He said he did not ask him how long he was

⁵ CAP 95 Evidence Act Section 71 of the Substantive Laws of Belize Revised Edition (2020)

71.– (1) A witness under cross-examination may be asked whether he has made any former statement relative to the subject-matter of the cause or matter and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion and, if he does not distinctly admit that he has made that statement, proof may be given that he did in fact make it. (2) The same course may be taken with a witness upon his examination-in-chief, if the judge is of opinion that he is adverse to the party by whom he was called, or that his memory is in good faith at fault and permits the question.

out that night. He said he doesn't recall if he asked the witness if he was tired or sleepy or if he had any drinks. He could see he drank some beers.

[39] **Re-examination** The statement of Bermudez was tendered into evidence. He said Bermudez did not appear to be tired or under the influence of alcohol at the time when he dictated the statement to him.

[40] During the course of the trial the statements of the following witnesses were read into evidence to *wit*:

1. Darwin Antonio Perez
2. INSP Aaron Gamboa
3. Maribel Antonio Linares
4. Hermes Morales
5. SUPT Amin August
6. W/CPL 540 Linneth Lopez

[41] There was no objection from Defence Counsel.

[42] Crown Counsel sought the court's leave to close its case without calling the following witnesses listed at the back of the indictment namely:

1. Number 2 Belhem Guzman
2. Number 5 CPL 261 Benedict Castillo
3. Number 7 CPL 540 Linneth Lopez
4. Number 12 Chantelle Pascasio
5. Number 14 Sinqwest Martinez
6. Number 18 ASP Gerald Jones.

[43] There was no objection from the Defence nor did the Defence request the attendance of the witnesses to be cross-examined. Accordingly, leave was granted to the Crown to close its case without calling the aforementioned witnesses.

[44] At the close of the Crown's case, the court gave the Accused his three choices namely that; i. he could stand where he is and remain silent, ii. he could remain in the dock and make an unsworn statement in which case he will not be questioned by anyone, or iii. that he could give sworn evidence from the witness stand in which case he may be cross-examined by Crown Counsel Ms. Mohammed. After due consultation with Counsel the Accused chose to give sworn testimony.

Defence

[45] **Accused sworn.** The Accused said he was 42 years old and a CPL of police. Around 7:00 p.m., on the 28 August 2015, he was socialising at Lucky's bar. He left Lucky's bar and walked for about 150 yards from the bar which is situated in Roaring Creek towards Garbutt Gas Station. He said he was picked up in a white car near a speed bump. He got in the car, and it drove off towards the Westar Gas Station and stopped. He said he saw 2 guys he didn't know get out of the vehicle and Guzman from the front passenger seat. Three of the four people got out of the vehicle. He stayed in the vehicle sitting in the back seat. He saw PC Guzman went towards the gas pump having a conversation with a male individual and he also saw Belhem Guzman who he did not know and whose name he got to learn went towards

the same vehicle that PC Guzman was standing by at the gas pump. PC Guzman came back to the vehicle accompanied by an unknown male. He was not sure about the texture or culture of the person who was either black or brown skinned. He said the person was placed inside the vehicle where he was sitting. Shortly Guzman and the driver entered the vehicle and that would make it 5 persons in the vehicle. He said they drove off in a western direction and turned off on a feeder road driving slowly. He was not sure of the name of the feeder road. He stated that whilst they were driving, he saw Belhem Guzman consuming a beer and he hit the male person in the head with the bottle. The other PC Guzman was sitting in the front passenger seat. The other Guzman was sitting to the far left in the back seat. He said he was sitting on the right. In the middle was the unknown person he saw enter the vehicle. That was the same person who was hit on the head. Immediately after the person was hit on the head Dion Guzman who was in the right front seat gave a black shirt to Belhem and the shirt was placed on the unknown person's head completely over his face. Shortly after that they came to a stop. Guzman opened his door, the front door and said he was taking a urine break. Thereafter the driver came out and the vehicle engine was cut off and there were no lights. Then Belhem exit the vehicle, held the man at the back of his neck or shirt and he was still sitting in the vehicle. He continued and said the driver was standing by the driver's door and he saw PC Guzman coming back to the vehicle then Belhem returned, and the driver got into the vehicle. He did not see where PC Guzman went because

the place was dark. He said he saw Belhem come back without the man. He asked him where he was. He said he had nothing to do with the car coming off the highway onto the feeder road. He said he was a passenger. When they turned around heading back on the road while passing Camalote Village on the main road he said he was begging them, pleading with them to exit the vehicle. He said he heard PC Guzman say to Belhem that they don't trust him and that he might open his mouth against them. He said that was when he realised that they may have done something wrong. They continued to head towards Belmopan and PC Guzman told him they were going to La Cabana and that's when he realised, they turned off onto another feeder road in Belmopan City. Whilst driving slowly on the feeder road Belem started to pat him on his side. Then he told him he wanted his gun. He said he took out his firearm and took out the magazine and handed it over to him then he heard PC Guzman say to off the man meaning me. He said the weapon was pointed towards his temple and it snapped. He managed to recover his weapon from Belhem and pointed it at PC Guzman and told them to stop the vehicle because he would not allow them to kill him. He managed to exit the vehicle and ran into the nearby bushes. It was raining hard and from where he ran, he saw them looking up and down to see if they could see him. He remembered hearing 3 or 4 shots fired in the area where he was. He stayed there for quite a while and made a phone call to his supervisor and was told to go to the Police Training School for support. He had the magazine for the gun in his lap under a bag. He said he

replaced it in the weapon. He said the man he saw PC Guzman held by the scruff of his neck was the first time he saw that man. He did not do anything to hurt that man, and he had nothing against him. He had no reason for wanting him dead. He said he did not tell anyone he shot the man, and he did not shoot the man.

[46] **Under Cross-Examination**, the Accused said that August 2015, he was in the police force for almost 13 years. He received special training and was attached to the Dragon Unit. His supervisor was SNR. SUPT Jeffrey Gabriel. He said he called him that night on his cell phone and was told by him to go to the Police Academy for support and he went there. He said he went to the academy and met Mark Arzu who was in the company of another officer and both of them were in the booth. He could not recall how long he had known Arzu, it could be 3 years. He said there was one issue he had with Arzu, but they had resolved it. He could not recall how long he spent in the area where he was before he went to the academy. His supervisor did tell him to go to the academy. He said he did not tell Mark Arzu in the company of another officer that he shot a man. He did not direct the driver to turn off the on to the feeder road. He said that PC Guzman did say to the others to off the man meaning him. He doesn't know if that was put to Guzman in cross-examination. He said he did not exit the vehicle with the Spanish man and shot him. He was sure that when he left the Academy it was sometime after 2:00 a.m. He was taken by another police officer. He was taken home and remained there until around 9:00 a.m., when

Mr. Aaron came to his home that morning. He said he told Ms. Castillo that someone placed a gun to his head. He said he told him at the guard gate what happened to him. He said when they came out of Young Gal Road PC Guzman said let's go to La Cabana. Guzman was not driving the vehicle, but he was the man commanding it. He said he could not recall how long he remained at the Academy, but he didn't spend long.

[47] The Defence called one witness.

[48] **Shirlino Lino.** This witness testified that she was a firearms examiner attached to the National Forensic Science Services. After stating her qualifications and experience in this field the court deemed her an expert as a firearms examiner. There was no objection.

[49] The witness stated that on the 21 August 2018, she received a sealed gun box bearing lab reference **FOR 15-1670F**. She was requested to do a re-examination of the items in the gun box and a sealed envelope labelled as containing ammunition and another envelope labelled as containing a cartridge case. She opened the gun box and discovered that it contained a glock 19 pistol 9 mm calibre serial number **CHF975**. The next item was a glock 9 mm 10 round capacity magazines.

[50] The witness test fired the pistol using bullets the magazine provided and determined that the magazine and pistol were in good working condition. The 3 test fired bullets and 3 test fired cartridge cases were collected and placed in test fired envelopes for later comparison. The witness stated that she also analysed the additional items received and then she opened the last

envelope which contained a S&B 9 mm expended cartridge case. She then compared the 3 test fired cartridge cases fired from the glock pistol submitted to the single S&B cartridge case she received. Having done so the witness stated that she discovered that having looked at the individual characteristics there were several features of the submitted cartridge case that did not correspond to the features seen on the 3 test fired cartridge cases. She determined that the submitted cartridge case was not fired from the submitted pistol and that no other pistol was submitted for investigation in this case.

[51] **Cross-Examination.** The witness stated that the Aguila is a popular brand of ammunition.

[52] There was no re-examination.

[53] That was the case for the defence.

Submissions

Crown's Case

[54] Crown Counsel in her written submissions relied on the evidence of CPL Mark Arzu and CPL Devin Garcia both of whom testified that the Accused whilst appearing to be under the influence of alcohol admitted shooting the Deceased. The Crown also relies on the testimony of CPL Dion Guzman who stated that he was present when the Accused whilst armed with a gun took the Deceased out of the car they were in and shortly thereafter heard what appeared to be a gunshot. The Deceased did not return to the car with

him. The statement of the witness Bermudez which was tendered into evidence also forms part of the evidence on which the Crown relies.

Defence Submissions

[55] Mr. Elrington S.C. for the Accused contends that the court must take into account that the Accused was under the influence of alcohol when considering the evidence of both CPL Arzu and CPL Garcia. These witnesses have testified that when the Accused allegedly told them he shot a man he was clearly under the influence of alcohol. Hence, there must be doubt as to the veracity of what the Accused allegedly stated as his client was not capable of recalling the events of that night to give a reliable confession. Senior Counsel went on to contend that his client's alleged state of intoxication would prevent him from having the mental capacity to form the requisite intention for the charge of murder.

[56] Defence Counsel further submitted what he considered to be a troubling issue was the evidence that the service pistol of the Accused was tested, and it was found that it was not the firearm that fired the spent shell found at the scene. Senior Counsel further submitted that the service firearm of PC Guzman was not taken into possession by the police nor were checks made on the other occupants of the car to ascertain whether or not they possessed firearms.

[57] He contends that the evidence of the Crown was incomplete and highly unreliable. Thus, he submits that the court cannot in the circumstances find

that it was the Accused who shot the Deceased that night which resulted in his death.

The Law

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

“106 (1) - *Every person who commits murder shall suffer death*”.

[59] Section 117 of the *Criminal Code* provides:

“117 - *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 as in the next following sections mentioned*”.

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

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

Analysis of the Evidence

[61] It is common ground that the Deceased is dead as a result of traumatic shock due to massive injuries due to gunshot wound to the head contact type. The thrust of the Defence case is that the Accused was not the shooter on that fateful night notwithstanding the fact that he was one of the passengers in

the car with the Deceased at Young Gal Road where the body of the Deceased was found. Thus, the issue to be determined from the outset is whether it was the Accused who allegedly discharged his service pistol at the Deceased thereby causing him to die as aforesaid.

[62] The Crown's case rests on the testimony of Dion Guzman who testified that the Accused took the Deceased from the car at Young Gal Road, and he heard what sounded like a gunshot. He did not see the Accused shoot the Hispanic man, however, he returned to the car without him. He said the Accused told him in response to a question asked by him that he only scared the man, he didn't shoot the man.

[63] The Crown also relies on the evidence of CPL Arzu ad Garcia who testified that the Accused told them of an incident involving himself, PC Guzman, and a Hispanic man who he shot. It is common ground that at the time when he made the alleged confession he was under the influence of alcohol.

[64] INSP Victorin conducted what he described as an intensive search of the area where what appeared to be bloodstains were present and found a S&B spent 9 mm shell and a live Aguila 9 mm round of ammunition. This was collected by Scenes of Crime Officer Montero and was eventually handed over to the National Forensic Science Services for examination which was conducted by Ms. Shirlene Lino.

[65] The case for the Defence is a complete denial of the shooting of the Deceased. Indeed, in his sworn testimony the Accused stated that the unknown Spanish man who was placed in the vehicle was taken from the

vehicle by Belhem Guzman, PC Guzman and the driver had also exited the vehicle. They all returned except the unknown Spanish man.

[66] Defence Counsel also contends that the fact of the Accused being under the influence of alcohol at the time when he allegedly shot the Deceased would militate against him being capable of forming the requisite intention to kill.

[67] I have carefully considered the evidence from CPL Arzu and CPL Garcia, more particularly the admission they say was made to them by the Accused about shooting a man that night. I do not find that the admissions of guilt allegedly made by the Accused to CPL Arzu and Garcia were made as a result of oppression. Having considered the circumstances under which the admissions were made aforesaid I accept the reasons given by CPL Arzu and CPL Garcia for their failure to caution the Accused or to tell him of his rights to be acceptable in the circumstances. Thus, I find that they did not act in contravention of the provisions of rule 5.1 of the *Commissioner of Police Rules*⁶ 2015.

[68] I accept that the Accused did make the admission of shooting the Deceased. Though he was under the influence of alcohol he was quite capable of finding his way to the Police Academy to be picked up as directed by his superior officer. He went to the guard hut and of his own free will related a story to the two officers thereat. At that time, he was of a higher rank than

⁶ Commissioner of Police Rules page 5 section 5 **Caution and Significant Statements:**

5.1 "The normal caution must be administered in any case where there are grounds to suspect that a person has committed, or is about to commit, an offence and on any event before any questions (or further questions if the answer is provided the grounds for the suspicion) are put to him for the purpose of obtaining evidence which may be given to a court in a prosecution"... ..

both of them and in addition he was armed with his service pistol and magazines of ammunition. He was also relating an incident which according to the evidence of Bermudez in his statement and PC Guzman did indeed occur. I have also taken into consideration that there is neither hint nor suggestion that what was said was as a result of oppression. Moreover, there is no evidence or suggestion particularly in respect of CPL Garcia that there was a history of bad blood between him and the Accused as a result of which he has fabricated this evidence against him. Accordingly, I find the evidence of the admission made by the Accused that he had shot a man to be admissible and reliable.

[69] The evidence of Shirlene Lino states that the spent shell found by the police at the scene of incident was not fired by the service pistol of the Accused. However, the bullet that entered the head of the Deceased was not recovered, hence, no tests could be carried out to ascertain whether it was fired by the service pistol of the Accused. Moreover, there is no evidence that the bullet from that spent shell was the bullet that caused the death of the Deceased as stated by Dr. Estrada Bran in his testimony. This spent shell was discovered from the scene which was not secured when SOC expert Montero left it after carrying out an initial examination thereof. There is no evidence that the scene was secured between the time he left and his return at around 11:40 a.m., when he was shown the spent shell by INSP Victorin or at all. Therefore, I find that the spent shell was found in an unsecured

spot to which the public had access and there is no evidence as to how long it was there before it was seen by INSP Victorin.

[70] Thus, in the circumstances, I do not find the fact that the spent shell found at the scene was not fired by the service of the Accused to be of any significance in this trial.

[71] I believe and accept that the Accused was in the car driven by Bermudez on that fateful night and that the Deceased and PC Guzman were also occupants therein. It is common ground that the Accused had in his possession whilst in the car his 9 mm service pistol and magazines of ammunition. There is no evidence that any other person in that vehicle was similarly armed or at all.

Intention

[72] As stated aforesaid, Defence Counsel also contends that the fact of the Accused being under the influence of alcohol at the time when he allegedly shot the Deceased would militate against him being capable of forming the requisite intention to kill.

[73] Section 27(4) of the *Criminal Code*⁷ CAP 101 provides thus:

“(4) Voluntary intoxication shall be taken into account for the purpose of determining whether the person charged had formed any specific intention in cases where a specific intent is an essential element in the offence charged”.

⁷ CAP101 of the Substantive Laws of Belize Revised Edition 2020

[74] The Court must now determine whether when the Accused inflicted harm to the Deceased he intended to kill him. Section 6 of the *Criminal Code*⁸ provides thus:

“6(1) The standard test of intention is, Did the person whose conduct is in issue either intend to produce the result or have no substantial doubt that his conduct would produce it?”

[75] Section 9 of the *Criminal Code*⁹ provides the applicable law for the determination of a person’s intent.

“9. A court or jury, in determining whether a person has committed an offence,

- a. shall not be bound in law to infer that any question specified in the first column of the Table below is to be answered in the affirmative by reason only of the existence of the factor specified in the second column as appropriate to that question; but,*
- b. Shall treat that factor as relevant to that question and decide the question by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.”*

⁸ CAP101 of the Substantive laws of Belize Revised Edition 2020

⁹ CAP101 of the Substantive Laws of Belize Revised Edition 2020

What is or is not a person's intention is not easily ascertainable unless, of course, they disclose their intentions to you".

[76] The Crown must prove that the Accused had the requisite intention to kill the Deceased when he shot him at Young Gal Road on that fateful night.

[77] The Crown is relying on the evidence of Dr. Estrada Bran who described the entry wound of the bullet to the head of the Deceased to be contact type aforesaid.

[78] I believe and accept the evidence of Dr. Estrada Bran that the shooter fired a contact type shot to the head of the Deceased. I further find that the Accused held his pistol closely to the head of the Deceased before firing to ensure that the bullet entered the head of the Deceased to cause the disastrous consequences observed by Dr. Estrada Bran aforesaid. In my opinion this is powerful evidence as to what the Accused's intentions were when he shot the Deceased.

[79] So, when considering whether the Prosecution have proved to my satisfaction that the Accused had the necessary intention, I should draw such conclusions as I think right, and inferences as appear to be proper in the circumstances having considered all the evidence in this case. After having done so I find that the actions by the Accused of firing a contact type shot at the head of the Deceased he clearly intended to kill him notwithstanding the fact that he was under the influence of alcohol at that time.

Verdict

[80] The Crown's case has satisfied me to the extent that I feel sure of the death of the Deceased and that his death was as a result of unlawful harm. The issues of provocation, or accident self-defence did not arise at any stage during this trial, hence, I say no more about them.

[81] I believe and accept the evidence that the Accused was armed that night with his service pistol. I also believe and accept the circumstantial evidence from CPL Guzman that the Accused took the Deceased from the car after which he heard what sounded like a gunshot and the Accused returned to the car alone. I find that the evidence discloses that the only person armed with a firearm that night was the Accused. Thus, I accept the circumstantial evidence from CPL Guzman that the Accused had shot the Deceased when he took him out of the car. In support of this conclusion is the evidence in the statement of Bermudez that he saw the Accused point the gun at the extreme upper part of the Deceased's body and heard a loud bang and saw the Deceased drop to the side of the road. This evidence is further supported by the admission made to CPL Arzu and Garcia that the Accused said he shot the man in his head. The evidence of these witnesses is supported by the findings of Dr. Estrada Bran who performed a postmortem examination on the body of the Deceased aforesaid and found the entry wound of the gunshot to be to the left side of the head.

[82] I do not believe and accept the evidence of the Accused that he did not shoot the Deceased and that it was Belhem Guzman who took him out of the car and returned without him. Nor does his testimony leave me in reasonable doubt about the veracity of the Crown's case aforesaid.

[83] Accordingly, the Accused is found guilty of murder as indicted.

Hon. Mr. F M Cumberbatch

Justice of the High Courts