

**IN THE SUPREME COURT OF BELIZE, A.D. 2019  
CRIMINAL JURISDICTION**

**SOUTHERN DISTRICT – STANN CREEK**

Indictment No. S14/2018

**THE QUEEN**

**V**

**MR. ELMER JAVIER CARILLO**

**BEFORE:** Honourable Justice Mr. Francis M. Cumberbatch

**APPEARANCES:** Mr. Cecil Ramirez - Sr. Counsel for the Crown  
Mr. Arthur Saldivar - Counsel for the Accused

**TRIAL DATES:** 1<sup>st</sup>, 22<sup>nd</sup>, 25<sup>th</sup>, and 30<sup>th</sup> of July 2019; 26<sup>th</sup> September, 2019  
3<sup>rd</sup> and 15<sup>th</sup> October, 2019; 15<sup>th</sup>, 18<sup>th</sup>, 20<sup>th</sup>, 25<sup>th</sup>, and 26<sup>th</sup>  
November, 2019; 2<sup>nd</sup>, 4<sup>th</sup>, and 17<sup>th</sup> December, 2019

**JUDGMENT**

**Introduction**

[1] The Accused was indicted by the Director of Public Prosecutions for the offence of murder contrary to *Section 106(1) of the Criminal Code* for that he on the 20<sup>th</sup> April, 2017 murdered Carlos Pop Xol ('the Deceased') at Jalacte Village in the Toledo district. This Court conducted a trial at which the Crown called a number of witnesses.

[2] The Crown's case turned on the contents of a confession statement allegedly given by the Accused to the police on the 28<sup>th</sup> July. The Court conducted a *voir*

*dire* to determine the admissibility of that statement pursuant to the provisions of **Section 90 of the Evidence Act**. At the conclusion of that hearing, the Court found that the statement was freely and voluntarily given in compliance with the provisions of **Section 90 of the Evidence Act**. That statement was read into the record and comprised the only evidence adduced by the Crown of an altercation between the Accused and the Deceased on that fateful day.

[3] The Crime Scene Technician, one **Erwin Choc**, testified for the Crown. He stated that he visited a scene at Jalacte Road on the 20<sup>th</sup> April, 2017. Upon arrival, he observed a male body lying face up which was later identified to be the Deceased. He observed what appeared to be a number of stab wounds on the chest and back of the body. He photographed the body and it was transported to the morgue.

[4] This witness was cross-examined and stated *inter alia* that he did not take a head to toe measurement of the body nor did he cause the Deceased to be weighed. However, he accepted that the Deceased was not slim built. He stated that the area where the body was found was capable of sustaining footprints. However, he took no photos of the Deceased's shoe soles nor did he take any photos of footprints to determine what the Deceased was doing at the time of the incident. He also took no photographs of the scene showing any disturbance that indicated a struggle. He took no photos to show if the Deceased walked or was dragged to where the body was found.

[5] Under re-examination this witness testified that he is not trained to determine what a person is doing at a particular place by taking photos of shoeprints. He is trained to determine whilst looking at a scene if there was a

struggle. He made no determination of how the body came to be where it was when it was shown to him.

[6] **Dr. Mario Estrada Bran** was also called as a witness. He was deemed an expert as a doctor of medicine and a forensic scientist. He testified that he carried out a post mortem examination on the body of the Deceased on the 21<sup>st</sup> April, 2017, and found that the cause of death was exsanguinations as a result of multiple stab wounds to the body of the Deceased. I will return to the evidence of this witness in greater detail later in this decision.

[7] At the close of the case for the Crown, Defence Counsel submitted that his client should not be called upon to provide a defence. The thrust of Mr. Saldivar's submission was that his client was relying on the defence of self-defence and that the Crown has not provided any evidence to negative this defence, hence, it stood unchallenged. In the circumstances, his client ought not to be required to provide a defence.

[8] Mr. Ramirez for the Crown contended, however, that the presence of 13 stab wounds to the body of the Deceased are indicative of the unreasonable amount of force used by the Accused and reveals that he had the intention to kill. The Court rejected the submissions of the Defence and accepted Crown Counsel's submission. As a consequence, the Court overruled the submission and called for a defence.

[9] The Accused after having been told by the Court of his three statutory choices elected to remain silent. He did not call any witnesses.

## **Submissions**

[10] The Crown more or less relied on and repeated their submissions at the close of their case in response to the submissions of Mr. Saldivar. Mr. Ramirez urged the Court to find that the Accused inflicted 13 stab wounds to the Deceased in keeping with his intent to kill him. As a consequence, the Court should find the Accused guilty of the offence of murder.

[11] Mr. Saldivar for the Accused submitted that his client acted in self-defence. He referred the Court to certain passages in the statement under caution and further contended that the Crown has not adduced any evidence to negative self-defence. In the circumstances, Mr. Saldivar submits that a verdict of not guilty of murder should be entered.

### **Analysis and Verdict**

[12] 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.

[13] The Court is satisfied to the extent that it feels sure that Carlos Pop Xol is dead. I believe and accept the evidence of Det/C 1195 Antonio Pop who saw his lifeless body on the 20<sup>th</sup> April, 2017, and that he was declared dead later that day at the Punta Gorda Hospital. The Scenes of Crime officer, Erwin Choc, also testified to seeing his dead body that evening at Jalacte Village Toledo. This was supported by the evidence of Dr. Estrada Bran who performed a post mortem examination on the Deceased.

[14] I am also satisfied to the extent that I feel sure that the Deceased died from unlawful harm. I accept the evidence of Dr. Estrada Bran that there were 13 stab wounds to the body of the Deceased two of which were serious, and that the cause of death was exsanguination due to external bleeding from multiple stab wounds. Dr. Estrada Bran went on to state that he was unable to form an opinion about the degree of force used to inflict the stab wounds because the wounds were inflicted in soft tissue areas and did not damage any hard tissue such as bone. As such the degree of force could not be determined. He opined that the wounds were not self-inflicted and the majority of the stabs were located at different areas. He also ruled out the suggestion that the wounds were accidentally inflicted.

[15] Under cross-examination the doctor testified that at times the Deceased was facing the person stabbing him and at times he had his back turned towards that person. The wounds were of varying length and depth. The fatal stab wounds were those to the heart and lungs and these were caused during a struggle. He further stated that the length of the wounds had to do with the different movements during a struggle.

[16] The statement under caution given by the Accused is relied on by the Crown to prove that it was the Accused who caused the death of the Deceased by unlawful harm. ***Section 91(1) of the Evidence Act*** provides:

*“Subject to the provisions of this section, where the voluntary nature of an Accused person’s confession or admission of guilt has been established beyond reasonable doubt, such confession or admission shall be sufficient to warrant conviction without any confirmatory or corroborative evidence.”*

[17] That statement discloses that the Accused inflicted injuries to the Deceased during an altercation between them. However, the Crown must prove to my satisfaction that when he did so he intended to kill the Deceased.

### **Intention**

[18] Section 9 of the Criminal Code 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.”*

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

[20] The Prosecution must prove that the Accused had the required intention, that is, to kill the Deceased at the time of the alleged offence. They intend to do so by asking the Court to draw certain inferences from the evidence in this case more particularly the number of stab wounds inflicted by the Accused to the body of the Deceased.

[21] I must direct myself that I am not bound to infer that the Accused had the requisite intention to kill just from the fact that he inflicted several stab wounds to the Deceased. However, while those facts may be relevant to the question of the Accused's intent I would have to take it into account when considering all the evidence and all the inferences to be drawn from that evidence.

[22] So, when considering whether the Prosecution have proved to my satisfaction that the Defendant 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.

[23] The statement under caution reads thus:

**STATEMENT**

**Name:** Elmer Javier Carrillo **Age:** 25 yrs. **D.O.B:** 19/8/91 **Nat:** Nationalized Belizean  
**Recorded at** Punta Gorda Police Station **Date:** 29/7/17 **(Time)** 2:39 p.m.  
**Name, Rank, and Number of Recording Officer:** Guido Wright Sgt. 982

I, Elmer Javier Carrillo, was informed by Sergeant 982 Guido Wright, that I am being arrested for murder. Sgt. 982 Guido Wright informed me that I have the right to communicate privately and without delay with a lawyer of my choice or with a family member.

**Signed:**  
**Witness:**

I, Elmer Javier Carrillo, was put under caution by Police Sgt. Guido Wright as follows: "You are not obliged to say anything unless you wish to do so but what you say will be taken down in writing and given in evidence."

**Signed:**  
**Witness:**

I, Elmer Javier Carrillo, understand that I do not have to say anything unless I want to but what I say shall be given in evidence. I want Sergeant 982 Guido Wright to write what I have to say. What I am giving is of my own free will.

**Signed:**  
**Witness:**

On Tuesday night I was talking to my wife telling her that the next day I would arrive to see the child at the house as I wanted to make sure that both she and the children were well because the previous weeks I had received threats where they told me that among my family, one of us had to die. I do not know what the motive is. On Wednesday I arrived in Jalacte with the fear that the police would arrest me because my wife had told me that she was going to make a report against me so that I would not go near her or the children. What I was interested in was to know if my son was fine. I arrived at the house on Wednesday and I realized that there is no one in the house. So I decided to go cut my hair and then I went to board the bus in Punta Gorda. I arrive at a bus stop waiting for the bus, when I see a man coming directly towards me. The man sat next to me and told me that one of my family has to die. When he told me that, I did not know who the person was, so I decided to walk. I realized that the man was coming after me and he had something between his waist. I continued walking fast when I realize that the man came attacking me with a knife. I grabbed him by the hand where he had the knife and we started to struggle when we suddenly fell into a ditch. I fell on top of him when I realize that with his same hand and my weight the knife was stabbed on the side of his body. He kept fighting with me when he hit me in the face with his hand and there my red cap fell off. After taking away the knife from him, I wanted to run away when I wanted to get up to run away he grabs me by the neck with his hand and with his feet he presses mine so that I do not get up and he pulls me over him and that's when he gets stabbed with the same knife in his chest. It was then when I managed to get up and I ran out because I was bathed in blood and scared about what happened. I went to my house bathed in blood not knowing what happened to him. I decided to take a bath and went to my parent's house because I was afraid that someone else or he would come back to my house. I decided to come walking at night to Punta Gorda where I arrived at Punta Gorda and that day I had to attend Court. Seeing that there was no Court on that day, I decided to go and buy some things to take home and I arrived at my parent's house about one in the afternoon, still afraid that they would do something to my family and children. The next day on Saturday the police arrived and detained me for that case. I did not know if he was dead at that moment until Saturday when the police arrested me I found out that he had died. It was not my intention to kill him. When we kept struggling he grabbed me by the neck and that's when the knife stabbed him through his rib. My intention was not to kill him.



**Signed:**  
**Witness:**

The following questions were put to Elmer Javier Carrillo:

Question: What date on a Wednesday do you mean you went to Jalacte?

Answer: That was on April 19, 2017.

Question: What is the name of the man who attacked you with the knife?

Answer: I do not know what the man's name is, it was the first time I saw him.

**Signed:**  
**Witness:**

The statement was made by me, I knew that I did not have to say anything unless I wished to do so and what I said was of my own free will. Nobody promised me anything or forced me to say anything. I had the opportunity to add, correct, or remove what I want from the statement that I was read over by Sergeant 982 Guido Wright in the presence of Justice of the Peace Mrs. Veronica Garcia. The statement is correct and was given of my own free will.

**Signed:**  
**Witness:**

Statement was taken by me at the Punta Gorda Police Station on the 29/7/2017 in the presence of the Justice of the Peace Veronica Garcia. It was read over to maker who certified everything correct and true by signing his name at the end of each page of the statement thereafter the Justice of the Peace Mrs. Veronica Garcia signed as witness.

**Signed:**

I, Veronica Garcia, a Justice of the Peace, witnessed the caution statement made by Elmer Javier Carrillo to Sergeant 982 Guido Wright. Elmer Javier Carrillo was not threatened or forced to give the statement. Elmer Javier Carrillo was not promised anything to give the statement under caution. Elmer Javier Carrillo gave the statement of his own free will.

**Signed:**

[24] A consideration of the contents of this statement leads me to conclude that what the Accused was saying is that prior to this fateful altercation he had received threats of death. On the day of the altercation the Deceased told him one of his family members has to die. He walked away from him but realized that the man followed him and at that time that man was armed with a knife and attacked him. He went on to speak of a struggle with the man and him which involved the knife. He specifically stated that after the Deceased attacked him with a knife they started to struggle. After he took away the knife from the Deceased he tried to run away but the Deceased grabbed him by the neck and prevented him from doing so. The struggle continued and the Deceased was stabbed.

[25] The Accused stated that it was never his intention to kill the Deceased. He did not know his name and this was the first time they met.

[26] There is no doubt that what the Accused is saying is that whatever injuries were inflicted by him to the body of the Deceased was done in self-defence during a struggle.

[27] *Section 36(4) of the Criminal Code of Belize*, so far as relevant to this case, provides:

*“(4) For the prevention of or for the defence of himself or of another person against any of the following crimes, a person may justify the use of necessary force or harm, extending in case of extreme necessity even to killing, namely: –*

*(c) Murder*

*(k) Dangerous or grievous harm.”*

[28] In the decision of the Privy Council in *Norman Shaw v Regina*, the Board in an examination of the application of the defence of self-defence, stated thus at paragraphs 14 and 19 to wit:

*“14. It was common ground between the parties to this appeal that, as pithily expressed in Smith and Hogan, Criminal Law, 9th Edition (1999) at page 253:*

*the law allows such force to be used as is reasonable in the circumstances as the Accused believed them to be, whether reasonably or not. For example, if D believed that he was being attacked with a deadly weapon and he used only such force as was reasonable to repel such an attack, he has a defence to any charge of an offence arising out of his use of that force. It is immaterial that he was mistaken and unreasonably mistaken.*

...

...

...

...

*19. In the opinion of the Board it was necessary for the trial judge to pose two essential questions (however expressed) for the jury’s consideration:*

*(1) Did the appellant honestly believe or may he honestly have believed that it was necessary to defend himself?*

*(2) If so, and taking the circumstances and the danger as the appellant honestly believed them to be, was the amount of force which he used reasonable?”*

[28] I will consider and apply the directions approved by the Board in *Norman Shaw v Regina* aforesaid. In so doing, I will direct myself in the following manner:

First of all, if the Court believes and accepts the contents of the statement under caution and finds it to be reliable and if I believe that he was or may have been acting in lawful self-defence I must acquit him. The Crown must prove his guilt and it is for the prosecution to prove that he was not acting in lawful self-defence, not for the Accused to prove that he was.

[29] The Court must consider the matter of self-defence in light of the situation which the Accused honestly believed he faced. The Court must also consider if the Accused honestly believed it was necessary to use force to defend himself against the attacks or perceived attacks from the Deceased which in law he is entitled to do. I must also bear in mind that the Accused is under no duty to retreat and await the attack before taking defensive action.

[30] If after having considered the evidence I find that the Accused did or might have honestly believed that it was necessary to use force to protect himself from the attacks by the Deceased then I must go on to consider whether the type and amount of force was reasonable.

[31] I must also consider that a person who is under attack would react on the spur of the moment and cannot be expected to work out exactly how much force he needs to use to defend himself. On the other hand, if he goes over the top and uses force out of all proportion to the attack or more force than is really necessary to defend himself then the force would not be reasonable.

[32] If the Prosecution's case satisfies me to the extent that I feel sure that the force used by the Accused was unreasonable then he cannot be said to be acting in lawful self-defence and I must reject the defence of self-defence. If, however, I find that the force used was or may have been reasonable then I must acquit him. However, before I come to make a finding on this defence I must also consider the provisions of **Section 36(6) of the Criminal Code** which provides thus:

*“(6) No force used in an unlawful fight can be justified under any provision of this Code, and every fight is an unlawful fight in which a person engages, or which he maintains, otherwise than solely in pursuance of some of the matters of justification specified in this Title.”*

[33] Having considered this provision in **Norman Shaw v Queen** aforesaid the Board opined thus at paragraph 11:

*“...The provision is clearly intended to deny a defendant the right to rely on self-defence if the force used by the defendant was used in the course of an unlawful fight. Thus, if criminal individuals or gangs inflict violence on each other in the course of unlawful conflict between them, or an innocent victim inflicts or threatens violence against a criminal aggressor, it is not open to either party in the first example or the criminal aggressor in the second to justify his conduct as self-defence. If the prosecutor seeks to rely on subsection (6) it is first necessary for the trial judge to consider whether there is any evidence fit for the jury's consideration that the act charged against the defendant occurred in the course of an unlawful fight. If the judge finds that there is no such evidence, the matter will not be left to the jury. If the judge finds that there is some evidence fit for the jury's consideration, he should in the course of his summing-up (a) identify such*

*evidence and invite the jury to consider it, (b) tell the jury what is meant by an unlawful fight, (c) invite the jury to decide whether, on what they find to be the facts, the act charged against the defendant occurred in the course of an unlawful fight as defined by the judge, and (d) direct the jury that the defendant may not justify the act charged against him as self-defence if the jury conclude that it was done in an unlawful fight. ...”*

[34] I have considered all of the evidence adduced by the Crown in this case, more particularly the contents of the statement under caution, the evidence of Dr. Estrada Bran, and the evidence of the Crime Scene Technician, Erwin Choc.

[35] It is common ground that there is no eye witness evidence of the altercation between the Accused and the Deceased. The only version of the events that took place arises from the contents of the statement under caution, the evidence of Dr. Estrada Bran, and the Crime Scene Technician, Erwin Choc.

[36] The Accused speaks of receiving death threats to his family prior to the day of this incident. He details the events of that day commencing with a direct threat to him and his family from the Deceased who he had not known prior to that day. This is unchallenged in the Crown’s case.

[37] He goes on to relate the events of an attack on him by the Accused who by that time was armed with a knife and the ensuing struggle between them which culminated with the death of the Deceased.

[38] The Accused states that he unsuccessfully tried to escape from the Deceased and that they were involved in a struggle during which time the Deceased was stabbed.

[39] Dr. Estrada Bran whose evidence I believe and accept could not provide an opinion of the force used to inflict the fatal wounds. However, he opined that the injuries to the heart and lung were inflicted during a struggle. Indeed he went on to attribute the varying lengths of the injuries to the struggle which he believed took place between the Deceased and the person with whom he had the altercation. I find this crucial piece of evidence is supportive of the version of the altercation provided by the Accused in his statement and not of the assertions of Crown Counsel aforesaid.

[40] In the circumstances, I am satisfied to the extent that I feel sure that the Accused honestly believed that it was necessary to defend himself from the attack of the Deceased.

[41] I further find that during the course of the struggle between him and the Deceased the Accused did not use more force than was necessary to defend himself. I further find that the number of stab wounds cannot be attributed to excessive force or more force than was reasonable. The unchallenged evidence is that the Deceased attacked and continued to attack the Accused even when he attempted to escape from his clutches. I believe and accept the version of the Accused that they were locked in a struggle. Hence, in such a situation there is always the likelihood of several injuries inflicted to one or both parties in that struggle. The Crown has not adduced any or any sufficient evidence to negative this possibility.

[42] Thus, the Crown's evidence has not satisfied me to the extent that I feel sure that the force used by the Accused in defending himself was more than was reasonable in the circumstances.

[43] I have also considered the provisions of Section 36(6) of the Criminal Code that is whether or not the Accused and the Deceased were engaged in an unlawful fight. In so doing, I have applied the principles stated by Lord Bingham in the *Norman Shaw* decision aforesaid. Having done so, I find that the facts and circumstances of this case do not take it within those parameters and accordingly, I do not find that the Accused was involved in an unlawful fight with the Deceased that fateful day.

[44] I have considered all the evidence in this matter including but not limited to the assertions by the Accused in his statement under caution that he did not intend to kill the Deceased. I find that I am not satisfied to the extent that I feel sure that the Accused intended to kill the Deceased on that fateful day.

[45] Thus, in the circumstances, I am satisfied to the extent that I feel sure that the Accused acted in lawful self-defence when he inflicted injuries to the Deceased thereby causing his death. Accordingly, I must return a verdict of not guilty of murder.

Dated on **Monday 20<sup>th</sup> day of January, 2020.**

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Honourable Justice Mr. Francis M. Cumberbatch  
Justice of the Supreme Court