

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

SOUTHERN DISTRICT

Indictment No. S17/2018

THE QUEEN

V

MARCO SUAZO

BEFORE: Honourable Justice Mr. Francis M. Cumberbatch

APPEARANCES: Mrs. Janelle Thomas-Shorter – Sr. Counsel for the
Crown
Mr. Javier Chan - Counsel for the Crown

Mr. Oscar Selgado - Counsel for the Accused

TRIAL DATES: 18th, 20th, 21st, 26th, and 27th March, 2019.
1st, 2nd, and 8th April, 2019.
6th May, 2019.

JUDGMENT

Introduction

[1] The Accused was indicted by the Director of Public Prosecutions for the offence of murder for that he on the 3rd day of June, 2016, at Dangriga Town in the Stann Creek District, murdered Narcisus John Rodriguez, ('the Deceased').

[2] To that indictment the Accused entered a plea of not guilty and a trial was conducted by a single Judge pursuant to the provisions of *Section 65 A of the Indictable Procedure Act CAP 96 of the Substantive Laws of Belize*.

[3] The Crown called a number of witnesses, the first being **Naomi Gamboa**. This witness testified that on the night in question she was employed as a Special Police Constable. At around 11:00 p.m., she and a friend were at the Havana Night Club on Havana Street Dangriga. Whilst having a conversation she noticed a tall dark slim dreadlocks person enter the game room of the club. She realized that person had a firearm in his waist and as such she ran away from where she was. Whilst running she heard one gunshot. She stopped and stood some distance away where she heard three more gunshots. She continued standing where she was to await the departure of the person from the game room. When she returned, she saw one John Rodriguez lying on the ground looking lifeless and covered with blood.

[4] Under cross-examination the witness stated that she was a security guard at the club that day hence she was required to be alert at all times. Thus, she saw the dreadlocks man carrying a firearm. She said she saw his face clearly. Ever since that incident she has never seen that person again. She stated that the Accused is not the person she saw that night.

[5] **PC 294 Kaden Morgan** testified that he detained the Accused on the 25th of July, 2017, whilst attending the Dangriga Magistrate's Court. In the presence of his mother and a Social Worker, he informed him that he was being detained for the offence of murder. He cautioned the Accused and told him of his Constitutional Rights to which the Accused remained silent. He then took the Accused to the Dangriga Police Station where he was placed in a holding cell.

[6] Under cross-examination this witness stated that the person he knew as Marco Suazo had a wide face, low cut hair, was of medium build, and his height was approximately 5feet 5 inches (5'5").

[7] **Carlton Rodriguez** testified that he identified the dead body of his brother, the Deceased, to Dr. Estrada Bran at the Karl Heusner Memorial Hospital on the 6th of June, 2016. He was not cross examined.

[8] **Martin Rodriguez** testified that in June of 2016 he was attached to the Dangriga Police Station as a Crime Scene Technician. In that capacity and at the request of Inspector Ferrufino he visited the Havana Club at around midnight on the 4th of June, 2016. He did a walkthrough of the scene and found a 9mm shell. He also observed a dark red substance suspected to be blood, and a hole in a wall inside of the building.

[9] At the back of the building close to the restroom he saw the body of a male person which was identified as the Deceased. He took photographs of the scene and the inside and outside of the Havana Club. On the 6th of June, 2016, he took photographs of the body of the Deceased at the post mortem examination at the Karl Heusner Memorial Hospital. He also received a container with urine from Dr. Estrada Bran, a tube of blood, and a piece of metal suspected to be a slug removed from the body of the Deceased; all of which he took to the Forensic Lab for analysis.

[10] Under cross-examination the witness stated that he did not lift any prints from the spent shell he found at the crime scene. He also stated that he did not place any markings on the shell he found and that he cannot identify it if he sees it on its own.

[11] **PC 939 Wynmark Alvarez** testified that on the 6th of June, 2016, he retrieved the body of the Deceased from the Southern Regional Hospital morgue and escorted same to the Karl Heusner Memorial Hospital morgue for a post mortem examination to be performed. This was done by Dr. Estrada Bran during which he saw the doctor retrieve a slug from the area of the neck of the Deceased and handed over same to the Crime Scene Technician, Martin Rodriguez.

[12] Under cross-examination he stated that he saw what appeared to be a slug. He does not know if it was a slug.

[13] **Inspector Alfonso Alban** was tendered for cross-examination by the Crown.

[14] Under cross-examination he stated that on 7th of June, 2016, he conducted two identification parades in which the Accused was the sole suspect. The first witness was Naomi Gamboa. He told her that the procedure is that the suspect may or may not be on the parade. He then asked her based on her report to the police to see whether or not the suspect was in the group. He said that the witness said words to the effect that she cannot identify anyone from the group on the parade.

[15] On that same day he conducted another parade which was attended by the witness Maria Rash. The Accused was present as a member of the group on the parade. He explained to the witness that the suspect may or may not be on the parade. She was unable to identify anyone on the parade.

[16] **Inspector Ferrufino** testified that in June of 2016, he was attached to the Criminal Investigation Branch of the Dangriga Police Station and on the night of the 3rd of June, 2016, he received information of a shooting at the Havana Club. He proceeded to that location together with the Crime Scene Technician, Martin

Rodriguez. On arrival at the club, he saw the body of the Deceased on the floor of the club in the area of the restrooms in a pool of blood. He appeared to be dead.

[17] During an examination of the scene with the Crime Scene Technician he saw an expended shell from what appeared to be a 9mm bullet in the region of the entrance of the club. The scene was processed by the Crime Scene Technician after which the body was removed to the Southern Regional Hospital where Dr. Casey pronounced the Deceased dead.

[18] Sometime around 2:30 a.m., on the 4th of June, 2016, the witness states that he received certain information which caused him to proceed to a certain residence in Dangriga Town where a search was conducted and the Accused was discovered. He detained him for the murder of the Deceased and cautioned him. The Accused responded that he had no involvement in any murder. His aunt, one Dorla Ramirez, was also present at the time. He informed the Accused of his Constitutional Rights and took him to the Dangriga Police Station. At around 9:30 a.m., he obtained the services of a social worker and in her presence, he interviewed the Accused who denied involvement in the murder and as a result he released him from custody.

[19] On the 6th of June he contacted two witnesses who agreed to participate in an identification parade. As a result, he located the Accused and in the presence of his aunt, asked him if he was willing to participate in an identification parade to which he agreed. On speaking with the witnesses they appeared to be in fear hence he decided to have the parade conducted at Precinct 3 using a one way mirror. As a result of what occurred at the parade the Accused was released.

[20] The officer continued his investigations and the name Oscar Williams came to his attention. On the 20th of June, 2016, he met with Oscar Williams and a statement was recorded from him by video at the Belmopan Police Station. After

having read the contents of that statement he decided to charge the Accused with murder. This was done on the 25th of July, 2016, in the presence of his aunt.

[21] Under cross-examination this witness stated that he had seen the statement of Maria Rash stating that she would be able to identify the person she saw as the shooter on the 3rd of June, 2016. He said he had also seen the statement of Naomi Gamboa who said she would be able to identify the person she saw with a firearm on the same night. He further stated that no firearm was recovered during his investigations and that there was no forensic evidence such as fingerprints, blood specimens, or electronic imagery to link the Accused with this crime.

[22] The witness stated that Oscar Williams gave his statement after he promised him that he would not be prosecuted as a result of what he might have said in that statement. He further stated that Oscar Williams was not placed on an identification parade as a suspect to be viewed by either Maria Rash or Naomi Gamboa. Apart from his own statement no witness stated they saw him at the club on the 3rd of June, 2016.

[23] **Oscar Williams** testified that he knew the Accused for about three years prior to the 3rd of June, 2016. He also stated that he used to date the Accused's sister at one time. On that day, the Accused approached him while he was visiting his girlfriend in Lakeland Dangriga. It was around 10:00 p.m. to 11:00 p.m. He said when the Accused approached him, the Accused pulled a gun from out of his pocket. He said it was a black and grey 9mm gun. The Accused told him he was going to rob the Chinese and asked if he wanted to go with him. He replied, "all right I'm riding too." He stayed with his girlfriend for about another hour and a half then he went with the Accused to rob the Chinese. This was around 11:30 p.m.

to 11:45 p.m. He said they went to the Havana and two other persons were with them, one was Mark Gamboa and the other was one Shepherd.

[24] The Accused and Shepherd walked into the game shop whilst he stood across the street. They each returned with beers and he said it looked like they didn't get through, so he walked in behind them. At that time the Accused pulled the gun from his pocket and told everybody don't move. He said the Chinese lady jumped behind the counter, people started to go to the back and he saw the gun light up. When he saw that, he ran out of the shop. He saw the Accused with the gun but he himself did not have a gun.

[25] The witness was shown photographs of the Havana Club which he recognized and identified places in the club where the Chinese lady was sitting, where the Accused was and where he was. He said that he did not see anyone else in the club with a gun that night. Besides the Chinese lady there were other persons in the club. He identified the back area of the club in one of the photographs.

[26] Under cross-examination the witness stated that he did witness a shooting at the Havana club on the 3rd of June, 2016. He said he was there with the people at the place. He said he made no report to the police and that it was true that Inspector Ferrufino offered him immunity from prosecution if he gave the police a statement.

[27] The statement he gave to the police on the 21st of June, 2016, was written by them and he signed it. The evidence he gave is what he read from his statement he gave to the police on the 21st of June, 2016. He said when he gave the statement he was concerned for his safety and that he would not be arrested and charged by the police and that what he said to the police in that statement was true.

[28] The witness stated that prior to the 3rd of June, 2016, he resided in Dangriga town. He admitted giving the police 70 Antelope Street, Belize City, as his address.

[29] He said whilst he was outside the Havana Club scoping the place, he did see a female security guard standing at the entrance. He did not know her. He does not know Mark Gamboa by any nickname. He did not notice a female cashier at the bar.

[30] He disagreed that his evidence is untrue and disagreed that the Accused was not with him at the Havana club or at any time on the night of the 3rd June, 2016. He denied that Mark Gamboa was never with him and that he had shot the Deceased on the night of the 3rd of June, 2016. He disagreed that he gave a statement to the police and removed himself from blame to prevent being charged. He denied that he did not see the Accused with a 9mm or any type of firearm that night. He admitted that he told the police in his statement that the Accused said, "everybody freeze... nobody move." He disagreed that the difference between what he told the police and what he said in evidence was because he was not telling the truth.

[31] The witness stated that Mark Gamboa remained outside and he really doesn't know Shepherd well. The police never requested him to attend an identification parade so he never pointed out the Accused at an identification parade. He said today is the first time he is seeing the Accused since he was arrested and charged for murder. He said at no time did he see a person shot at the Havana Club. He didn't know of it until the next day. He did not see anyone else with a firearm at the club that night. He agreed that he ran after he heard the shot so he does not know what happened in the club afterwards.

[32] Under re-examination the witness said he gave the statement to the police.

[33] **Det/Cpl Buddan** testified that on the 21st of June, 2016 at the request of Inspector Ferrufino, he recorded a statement from Oscar Williams about a shooting incident at Dangriga Town. He said he recorded the statement electronically whilst Oscar Williams narrated it to him. At the end of the statement, he read it to Oscar Williams and told him he could add, alter, or delete anything in his statement. He said it was true and correct so he invited Williams to sign his statement which he did on the top and bottom of each page. The witness said he electronically wrote the endorsement which he signed. He said the statement consisted of two pages.

[34] Under cross-examination the witness said he did not know Oscar Williams before he recorded the statement. He asked Williams if he wanted to read the statement but Williams requested him to read same. He stated that he doesn't know if Williams was able to read and write and he did not request to write his statement so he asked him if he was satisfied with him writing it and he said yes. He said he did not come up with the idea of asking Williams to write his own statement. Under re-examination the witness stated that it is not the usual procedure for a witness to write his own statement.

[35] **Dr. Estrada Bran** testified. The Court deemed him an expert in forensic medicine. He stated that on the 6th of June, 2016, he performed a post mortem examination on the body of the Deceased. He opined the cause of death to be exsanguination due to rupture to the vascular plexus of the neck due to gunshot wounds to the face.

[36] The Crown sought leave of The Court to close its case without calling the witness Maria Rash who could not be contacted. Defence Counsel had no objections stating that the absence of this witness would in no way prejudice the

case for the Defence. The Court accepted the submission and no more would be said about that witness in this judgment. That was the case for the Crown.

[37] At the close of the Crown's case, I called upon the Accused to lead his Defence and gave him the usual three choices together with the right to call witnesses irrespective of which choice he made. The Accused chose to make an unsworn statement.

[38] **Marco Suazo Unsworn:** At no time I was at the Havana Club. At no time I was anywhere near the Havana Club. On the 3rd of June, 2016, I was never in contact with Oscar Williams and I was not found with any firearm.

[39] The Accused called no witnesses. That was the case for the Defence.

Submissions

[40] Crown Counsel, Mrs. Thomas-Shorter, in her written submissions repeated the evidence of the Crown's witnesses. She submitted thus on the evidence of Naomi Gamboa:

[41] *"6. Notwithstanding that the Crown relies on Ms. Gamboa's testimony, the Crown submits that for the reasons before, she may be a mistaken witness:*

1. She testified that she saw a man with dreadlocks holding a gun. There is no evidence that there was any dread man in the area that night. Furthermore, none of the other witnesses were cross-examined on this point;

2. Ms. Gamboa said that she heard a total of four shots but Mr. Williams in his testimony said that the accused fired a single shot. Moreover, the Crime Scene Technician stated that he did a walkthrough of the scene and he found one 9mm expended shell; and

3. *She did not witness anyone firing shots. Her evidence is that she ran away as soon as she saw the person pulling out a firearm from his waist.*”

[43] Crown Counsel also referred The Court to the *dictum* of the Privy Council in *John v The State of Trinidad and Tobago 2009 UKPC 12* at paragraphs 14, 25, 30 & 31 on the questions of identification and the evidence of Oscar Williams.

[44] The Court was also addressed on the law as it applies to identification, corroboration, and the intention to kill. Crown Counsel submitted that the Crown has proved the guilt of the Accused beyond reasonable doubt for the offence of murder.

[42] On the question of the weight of the evidence of Oscar Williams she contended as follows:

[45] *“There are several points that can be taken from Oscar Williams’ evidence:*

1. *He is a credible witness. Learned Defence Counsel tried hard to shake his evidence but he proved to be an unshaken witness;*

2. *He did not deny that he agreed to participate in an illegal act with the accused. From very early in his testimony he made that statement;*

3. *He was not a mistaken witness;*

4. *He said that the only person whom he saw with firearm was the accused, no one else;*

5. *It was only the accused whom he saw firing that firearm inside the Havana Club;*

6. *He admitted that it was not until the following morning he became aware that someone was shot;*

7. When it was put to him that the only reason he gave a statement to the police was because he wanted to escape from the charge of murder, he disagreed;

8. He admitted that he agreed to give a statement to the police after he was offered immunity from Inspector Ferrufino, and;

9. Lastly, the evidence shows that Williams cooperated fully with the Police, even at the point when he was called to testify, he displayed cooperation and he has not adverse to the Crown.”

[46] The written submissions of Defence Counsel could be summarized thus:

[47] “Summary:

The defence submits that the evidence on a whole and at the highest is tenuous and cannot support a conviction. More importantly is that the evidence is not enough to identify the defendant as the person who shot and killed the deceased at the Havana Club on 3 June 2016.

In every case of identification, the Prosecution MUST PROVE BEYOND REASONABLE DOUBT THAT THE PERSON CHARGED WAS THE ONE THAT COMMITTED THE OFFENCE. There can be no circumvention of the rules of evidence nor can there be a short cut to the fair trial of the accused. The pivotal witness for the Crown was Oscar Williams who puts himself on the scene of the crime and admitted having been part of a plan to commit a crime.

Except for his own words Williams could not independently prove the defendant was with him at the relevant time in Havana Club. The defence is not merely contending Williams was there, it is contesting that the defendant was there at the material time when the crime occurred.

Neither of the women present described a person fitting Williams's description as a person they saw entered the night club at the relevant time.

Both witnesses Maria Rash and Naomi Gamboa stated they would be able to recognize the man they saw with the gun if seen again, however, both were unable to identify the defendant in a group ID parade shortly after.

The Crown did not bring Mark Gamboa or Shepherd to corroborate Williams's testimony.

There is no forensic evidence linking the defendant to the crime scene. The Privy Council in Eiley, Savery, and Polonio v The Queen (2009) UKPC 40 held at paragraph 49, "A judge enjoys a discretion to exclude evidence if the circumstances in which it has been obtained are such as to render its admission contrary to the interests of justice. One circumstance where it may be appropriate to do so is where the witness has received an inducement to give evidence for the prosecution that will render the evidence suspect ... such promises when made to an accomplice to a crime, have been described as distasteful."

It is humbly submitted that the evidence of Oscar Williams was self-serving and not truthful. It was given 18 days after the events allegedly occurred and the witness had ample time to concoct his statement. It is for these reasons that I humbly submit the defendant cannot be convicted safely on the evidence which the Crown led during the trial. I therefore pray for his acquittal."

Analysis and Verdict

Analysis

[48] There is no doubt that this case turns on the evidence of the witnesses, Naomi Gamboa and Oscar Williams. In making a determination of the evidence of

these witnesses I have considered all of the evidence in this case including the unsworn statement of the Accused. I have also considered the submissions of counsel on both sides aforesaid.

[49] The witness Naomi Gamboa stated that she saw a tall dark-skinned dreadlocks person enter the gaming room of the Havana Club with a firearm in his waist. She said that she saw him going in and out of the club at least three times and because she was alert she saw his face clearly. There is no evidence as to the following:

1. The lighting conditions at the time;
2. How long was he under her observation, and how far away was she from him;
3. Did she know him from before that night, if so, for how long? and;
4. At what stage did she see he had a firearm in his waist?

[50] There is no evidence as to whether it was on the first, second, or third time she saw this man that she saw the firearm in his waist. If it was on one of the two previous occasions, one wonders why she did not accost him or report his presence to the Dangriga Police Station.

[51] What is evident is that at some stage this witness ran away from the club and whilst running she said she heard four gunshots. She cannot say who fired the gunshots and cannot say if anyone was with him at the time when the gunshots were fired. Nor could she say the circumstances leading up to the shooting of the Deceased.

[52] I accept the evidence of the Crime Scene Technician and Inspector Ferrufino who visited the scene that same night and found just one spent shell. Though not impossible, I consider it most unlikely that if four gunshots were fired only 1 spent

shell would be recovered at the scene. In the circumstances, I do not find her evidence to be reliable; hence, I am not prepared to infer that it was a tall dark-skinned man with dread locks who was the shooter that night.

[53] I have considered the provisions of *Section 92 (3)(b) of the Evidence Act* to wit:

“(3) Where at a trial on indictment-

...

(b) An alleged accomplice for the Accused gives evidence for the Prosecution,

The judge shall, where he considers it appropriate to do so, warn the jury of the special need for caution before acting on the evidence of such person and he shall also explain the reasons for the need for such caution.”

[54] I have also considered the *dicta* of the board in *John v The State of Trinidad and Tobago* and in *Francis Eiley et al v The Queen* aforesaid. Having done so, I find that emerging from the principles enunciated by the Board in the decisions aforesaid and from the relevant legislation herein is that whilst the testimony of an accomplice who has been granted an immunity is not an ideal manner for the Crown to prove its case such evidence is not *per se* inadmissible provided that the tribunal of fact is duly warned or as in the case at bar warns itself of the inherent dangers of convicting on the uncorroborated evidence of such an accomplice.

[55] The reasons therefore are obvious. Human nature being as it is there is every likelihood that Oscar Williams having been arrested by the police in connection with this matter would be prepared to avoid serving a long prison term for murder with its attendant consequences. Hence, he may not be averse to concocting a story

on the Accused to implicate him provided that he is assured that he too would not be engulfed by the jaws of the prison for whatever he has done.

[56] Accordingly, I have considered the evidence and the law aforesaid and I find that this witness who said he knew the Accused quite well prior to this incident and in whose company he was on that fateful night is in an excellent position to recognize him, hence, the need for an ID parade would be unnecessary. He also gave evidence of dating the sister of the Accused and of visiting the residence of the Accused in Belize City at a certain period of time. Accordingly, I find that in the circumstances a dock identification is admissible herein.

[57] More importantly, however, he gave details of the events on that night leading up to the discharge of the firearm by the Accused after which he says he exited the scene. I find his evidence of the scheme of events that night to be convincing. I have also considered the evidence of the manner in which he gave his statement to the police and I am satisfied to the extent that I feel sure that that statement was not concocted by the police and that he was either forced or induced to repeat its contents in court.

[58] The finding of only one spent 9 mm shell by the Crime Scene Technician who said he did a walkthrough of the scene that night is also supportive of the testimony of Oscar Williams. Thus, in the circumstances, after having given myself the requisite warnings and exercise of due caution, I find the evidence of Oscar Williams to be true and reliable.

Verdict

[59] 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.”

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.”

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.

[60] I am satisfied to the extent that I feel sure that the Deceased is dead. I believe and accept the evidence of his brother Charlton Rodriguez who visited the morgue at the Karl Heusner Memorial Hospital on the 6th June, 2016, where he identified the dead body of his brother Narcissus John Rodriguez to Dr. Estrada Bran, who thereafter performed a post mortem examination on the body of the said Deceased.

[61] I am also satisfied to the extent that I feel sure that the Deceased died from unlawful harm. I accept the opinion of Dr. Estrada Bran that the Deceased died from exsanguination due to external bleeding of the vascular plexus of the neck as a result of a gunshot wound to the face.

[62] The Crown's case must be of such strength that The Court is satisfied to the extent that it feels sure of the guilt of the Accused before it could convict. To satisfy that burden, the Crown relied on the testimony of the witnesses called, particularly, that of Oscar Williams Jr. This witness was the sole eye witness who

testified to seeing the Accused at the scene of the crime, armed with a firearm which he discharged during a robbery of the Havana Night Club.

[63] I am not, for reasons which I will disclose later in this judgment, satisfied that he was an accomplice to murder, though he was present at the scene of this killing in company with the Accused and others. Notwithstanding the foregoing, I directed myself to exercise due care and caution in considering the evidence of Oscar Williams, as he may be a person with an interest to serve. He was on the scene of the offence and agreed to accompany the Accused to commit the offence of robbery. He was also aware that the Accused was armed with a firearm. Though he was not charged with this offence he was granted immunity from Prosecution by the Director of Public Prosecutions in exchange for his testimony. I have also considered that he may be singing for his supper.

[64] I have carefully and cautiously considered the evidence of Oscar Williams, I have observed his demeanor and the forthright manner in which he gave his evidence and answered questions under cross-examination. I have also considered all the evidence in this matter; I believe and accept his version of the events on that fateful night. In the circumstances, I am satisfied to the extent that I feel sure that it was the Accused who discharged a round from the firearm he carried which caused the death of the Deceased.

[65] I now turn to the question of intent. Did the Accused intend to kill the Deceased when he shot him on the night of 3rd June, 2016?

[66] *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.”

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

[68] The Prosecution must prove that the Accused had the requisite 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.

[69] 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 a fatal gunshot wound 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.

[70] 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.

[71] The testimony of Oscar Williams reveals that he was approached by the Accused that night to accompany him to rob the ‘chiney’. From that evidence, I am able to infer as coming from the lips of the Accused, that notwithstanding the presence of a firearm that the plan that night was to commit robbery.

[72] Indeed the witness went on to testify that upon entering the Havana Club the Accused pulled the gun from his pocket and yelled ‘nobody nuh move’. At this stage, he saw the patrons head towards the back of the room and saw a Chinese lady jump behind the counter. He heard a loud bang and saw the gun light up. Prior to that, the witness testified that the Accused and another person had entered the shop and came out with beers and said, “So because they went with the intention to rob the place so they look like they didn’t get through so I just walk in behind them.”

[73] I find that there is an abundance of evidence from which it could be inferred that the Accused went to rob and used the gun to scare the patrons and owners into submission. I cannot disabuse my mind of the fact that the Accused was just 16 years old at that time and his use of the gun that night may be more out of youthful exuberance rather than the intention to kill the Deceased. Moreover, there is no evidence of a confrontation between the Accused and the Deceased prior to the shooting.

[74] Accordingly, I am not satisfied to the extent that I feel sure that when the Accused discharged a round from his firearm that he intended to kill the Deceased. Accordingly, I do not find that the witness Oscar Williams was an accomplice to murder. I find, however, that he was an accomplice to robbery. As stated aforesaid, I am satisfied to the extent that I feel sure that it was the Accused who entered the

Havana Night Club on that fateful night and discharged his firearm which resulted in the death of the Deceased.

[75] Thus, pursuant to the provisions of Section 126 (1) of the Indictable Procedure Act I find the Accused, not guilty of murder, but guilty of manslaughter.

Dated this Monday 6th day of May, 2019.

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