

IN THE SUPREME COURT OF BELIZE, A.D 2018
(CRIMINAL JURISDICTION)

Central Division

Indictment No: C122/2013

The Queen
V
Anthony Forbes
William Vasquez
Clinton Tyrone Harris

BEFORE: Honourable Mr Justice Colin Williams

APPEARANCES: Mr Kileru Awich for the Crown
Mr Nigel Ebanks for the 1st Defendant
Mr Simeon Sampson, SC, for the 2nd and 3rd Defendants

Heard On: Tuesday 25th September 2018; Wednesday 26th September 2018;
Friday 28th September 2018; Monday 1st October 2018;
Wednesday 3rd October 2018; Thursday 4th October 2018;
Friday 26th October 2018.

JUDGMENT

1. The three Defendants, Andy Forbes, William Vasquez and Clinton Tyrone Harris also known as Clinton Tyrone Fitzgibbon Harris, stand indicted for the murder of Joseph Myers (also known as 'Chino'). The Indictment was initially laid on the 30th of August 2013 and amended on the 25th of September 2018 to include in relation to the Third Defendant, "*also known as Clinton Tyrone Fitzgibbon Harris*".
2. The allegation is that the three Defendants "*on the 15th day of June 2013 in Belize city, in Belize District in the Central District of the Supreme Court, murdered Joseph Myers.*" The offence of murder is "*contrary to section 117 read along with section 106 (1) of the Criminal Code Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2003.*"
3. All three Defendants pleaded not guilty and the matter was conducted as a judge alone trial, without a jury. Section 65A of the Indictable Procedure Act, Chapter 96 of the Substantive Laws of Belize, (Revised Edition) 2003, as amended by Act No: 5 of 2011 and Statutory Instrument No: 79 of 2011. Benjamin, CJ, in the Belizian case of The Queen v Nicoli Rhys, Indictment C29/2012 delivered on the 15th February 2013, distilled

from the authorities that: *“the judge sitting alone as both the arbiter of the law and tribunal of fact must identify the issues of law impacting the factual issues and state with clarity his thought process in drawing conclusions.”*

4. The offence of murder is defined in section 117 (1) of the Criminal Code as:
“Every person who intentionally causes the death of another person by any unlawful harm is guilty of murder, unless the crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mention.”
5. It is the Prosecution which has the burden of proving to the Court, so that the Court feels sure, that the Defendants or any one of them, whether acting singly or jointly, murdered Joseph Myers. It is the Prosecution which must prove that:
 - i. Joseph Myers is dead;
 - ii. That he died as a result of unlawful harm;
 - iii. That the unlawful harm that caused the death was inflicted with an intention to kill;
 - iv. That the Defendants, Andy Forbes, William Vasquez and Clinton Tyrone Harris inflicted the unlawful harm with intention to kill and at the time had no lawful excuse for doing so.

Proof of Death

6. Proof of Joseph Myers’ death comes from the following sources: he was last seen alive socializing sometime after 6:00 p.m. Friday, 15th June 2012 in the verandah at the Living Hope School prior to an incident there. Three days later, on the 18th June 2012, his sister, Keisha Coye identifies his body the morgue at the Karl Heusner Memorial Hospital shortly before 2:00 p.m. to a police officer and the pathologist, Dr Mario Estrada Bran. Dr Estrada Bran conducted a post mortem examination of that body. There is no doubt that Joseph Myers is dead.

Did Joseph Myers Die From Unlawful Harm?

7. Harm is defined in section 96 of the Criminal Code as *“any bodily hurt, disease or disorder, whether permanent or temporary.”* Unlawful harm is defined in section 97 of the Criminal Code as: *“Harm which is intentionally or negligently caused without any of the justifications”* which are provided for in sections 30 to 43 (Title VI) of the Criminal Code.
8. Dr Estrada Bran spoke of the results of his post mortem examination, which addressed the injuries to the Joseph Myers’ body as well as causation. Dr Estrada Bran was deemed an expert in the field of forensic medicine and the practice of post mortem examinations. This was based on his medical qualifications and training as well as his experience. Although Dr Estrada Bran was deemed an expert, his evidence – even though not challenged by any of the Defendants – must also be evaluated and assessed just as in the

- case of any other witness. His expert opinion evidence is accepted that: *“the cause of death of Joseph Raymond Myers was exsanguination due to internal bleeding due to gunshot wounds to chest and abdomen. Exsanguination is internal bleeding as a consequence of bullet passing through the vessels of the right lung and vessels... abdominal injuries such as kidney and pancreas.”*
9. The pathologist found that there were *“five orifices by projectile or firearm... three entries; two exits.”* According to the doctor, entry wound numbered 2 proved to be fatal. That was a 9 millimeter in diameter orifice *“which is located on the posterior aspect of the right axilla region.”* That is in the area of the armpit. Dr Estrada Bran explained that the *“entry wound took [a] direction from right to left, upwards to downwards and backwards to forwards, entering the chest cavity through the sixth intercostal space – chest area – wounding middle and lower lobe of the right lung, diaphragm muscle, right kidney, head of the pancreas, loop of duodenum area, entering from the abdomen up to the left lateral muscles and below the skin where the slug landed and retrieved.”*
 10. The evidence from Elvis Olivera, and the Maskall brothers - Fenton and Danny - was that on the evening of the 15th June 2012, Joseph Myers was socializing with friends, drinking rum, when he was shot. According to Danny Maskall, *“I heard a loud gunshot. When I heard the gunshot, I saw Joseph Myers drop.”* The unchallenged testimony of Dr Estrada Bran was that Joseph Myers after being shot *“would have just a few movements then get incapacitated”* and would have died in less than an hour of being shot.
 11. Joseph Myers did not die from natural causes. There is no suggestion that his injuries were self-inflicted. More importantly, there is no evidence that any of the statutory justifications enumerated in Title VI of the Criminal Code were present and available to whomsoever fired the shots or otherwise participated in the shooting of Joseph Myers. He was not, for example, attacking anyone which may have justified the use of force when he was shot, neither was anyone under any lawful authority to do so or to prevent him from committing a crime. It was this shooting which caused the injuries that lead to his death. It is therefore established that Joseph Myers died from unlawful harm.

An Intention to Kill?

12. What was the intention of the person or persons who shot Joseph Myers? Could one say that in stealthily approaching the area where Joseph Myers was, firing several bullets from a gun and shooting Myers in his chest that the person or persons responsible intended to kill him?
13. The fact that Joseph Myers died having been shot may be indicative of the shooters intention, but it is not conclusive. The assessment of a person’s intention is first addressed at section 6 of the Criminal Code, where the standard test of intention is formulated this question:
“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?”

14. Then, at section 9, further statutory guidance is provided with reference to ‘*Proof of Intention.*’ The fact that the result was a natural and probable result of a person’s conduct is a consideration. But it goes on to note that the court (or jury) “*shall decide the question by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.*” The co-joined effect of sections 6 and 9 of the Criminal Code has been judicially determined to mean that a tribunal of fact is not entitled to glean intention from the natural and probable result of the conduct of the accused in isolation, but there must be a complete examination of all the evidence to ascertain the inference that flows from it.
15. In order to prove murder, the Prosecution must satisfy the forum of fact, so that the forum feels sure, that there was an intention to kill when the unlawful harm was inflicted. The factors to be considered include: the fact that Joseph Myers is dead; the nature of the attack that resulted in his death; the type of instrument used during the attack; things said and done at the scene by the persons carrying out the attack. If gunmen launch an attack on persons at night; the gun men are dressed in black clothing; they approach the area other than at the entrance; they pounce upon the unarmed victim with guns drawn, opening fire almost immediately and without saying anything, shooting the victim multiple times including a shot to his chest; they pursue the colleagues of the victim who are scattering and running for cover; the gunmen continue to shoot at the other colleagues of the victim, injuring those others; and one of the gunmen exhorts another to shoot one of the persons in that person’s head, then it is reasonable to conclude that the attackers had an intention to kill.

The Crown’s Case

16. The Prosecution’s case rests primarily on the eyewitness testimony of three witnesses: Elvis Olivera, Fenton Maskall and Danny Maskall. Sometime after 6:00 p.m. on the 15th June 2012, Olivera, the Maskall brothers and the deceased Joseph Myers were among a group of persons drinking and socializing on the premises of the Living Hope School. They had relocated to a part of the veranda on the lower level, having moved from an abandoned building close by about five minutes after the Second Defendant, William Vasquez, passed by in a taxi. Ten minutes after moving, two persons dressed in black came from behind the school to where the group of men were socializing; those persons had firearms pointed at the group of men who were socializing and they opened fire. Myers was shot and killed and some of the other persons present, Olivera and Fenton Maskall received gunshot injuries as well. The two shooters who came to the front where the group was were the First Defendant Andy Forbes and the Third Defendant, Tyrone Harris. The Third Defendant was to the back of the building; he too was armed.
17. After the shooting started, the group dispersed in different directions. Olivera ran to the back of the building and jumped over the railing and landed on his back. The Second Defendant William Vasquez jumped over the railing and landed on Olivera’s chest. The Second Defendant struck Olivera in the head with a gun. Both the First Defendant Andy

Flowers and the Third Defendant Tyrone Harris also came to the back of the building and jumped over the railing. Andy Flowers, pointed the gun he had to Olivera's head and pulled the trigger, but no bullet came out. Andy Flowers told Tyrone Harris to shoot Olivera in his (Oliver's) head. Olivera tried to wrestle away the gun from Tyrone Harris. He fought off the men and ran under a house. He was later treated for a gunshot injury to his upper leg.

18. Fenton Maskall, who also ran to the back of the school after the shooting started, recognized the First Defendant, Andy Flowers, and the Third Defendant, Tyrone Harris, as the persons with guns. He too was shot and he jumped over the railing and rolled under the school building where he waited until he heard the sound of the sirens from the police vehicles.

Identification

19. Olivera and the Maskall brothers all identify the First and Third Defendants, Andy Forbes and Tyrone Harris, as being the gunmen who approached the group of men at the front of the school building. Olivera is the only person who identifies the Second Defendant, William Vasquez, as being armed at the back of the building. The Crown cannot make a case against all three Defendants without Elvis Olivera's evidence; he is the only person who places all the Defendants at the scene.
20. Central to the Crown's case is the issue of identification. Identification of the three Defendants as being on the scene that night must be approached with the utmost caution. A number of factors could have impacted on the witnesses being able to identify who any of the assailants were that evening. The first factor is the time of day; dusk had already set in. The incident occurred around 6:30 p.m. on 15th June 2012, and although daylight is longer at that time of the year, the sun had already set. Then the quality of the lighting – there were references to street lights and a light in the building. The dark colour of the clothing worn by the men could have also helped to disguise their true identity. There is the length of time the witnesses had the persons under observation; there was not a lot of time for observation, since when the two gunmen approached the group of men from behind the building they already had their weapons drawn and they opened fire. The eyewitnesses all ran and this would have impacted how much time they would have had the attackers under observation. Then there was the quite natural panicked situation. With bullets being discharged from the gun of assailants, there is very little time and opportunity to stand and observe as would obtain in other circumstances. The eyewitnesses were all in harm's way and were seeking to escape.
21. This was a "*recognition*" case, in which Olivera and the Maskall brothers knew and were quite familiar with the three Defendants for a considerable period of time. This was not one of those "*identification*" cases where witnesses are trying to identify someone whom they observed doing something and the witness is not familiar with those whom they seek to identify. Nevertheless it must be remembered that in cases of "*recognition*", that mistakes do occur even when it comes to close relatives and family friends.

22. In considering the testimony of the various witnesses who said that they recognized one or the other of the three Defendants, consideration will have to be given to a number of factors, including the quality of the lighting, how long the witnesses have known the persons whom they recognized, how often they see that person, the last occasion prior to the incident that they saw the person, how long they had the person under observation, from what distance did this recognition take place, were there any special circumstances, reasons or factors for the witness to have been able to recognize the persons; whether anything which impeded any of the witnesses recognition of the persons, how soon after the incident the witnesses would have said they recognized the persons and what the witnesses would have said in describing those persons.

Testimony of Elvis Olivera

23. As stated earlier, the Prosecution cannot make out a case against all three Defendants without the testimony of Elvis Olivera.
24. In relation to the First Defendant, Andy Forbes: Olivera said when he first saw Andy Forbes, the First Defendant was about 10 feet away. He said *"I did not know at the time who the person that were coming around the building were. When they were about 10 feet away is when I know who the persons were.... He was face on coming towards me. I saw him for 5 to 6 seconds. There were no obstructions."* He explained that he encountered the First Defendant again, when he ran to the back of the building and jumped over the railing: *"After Andy jump over the railing I was able to see his whole body because he jump right dey. He bin face direct to me."* Olivera said he saw the First Defendant on that occasion for a further 4 seconds *"before he reach me."* He said: *"Andy was about 2 feet away from us when he landed after he jump the railing."* The "us" Olivera was referring to when Andy Forbes landed was himself and the Second Defendant as he earlier said that *"Andy was right there coming too when William landed on my chest."* Olivera said he had further opportunity to recognize the First Defendant at the back of the building when they came into direct contact with each other. He said: *"Andy Forbes did point pon me with the gun and the gun snap on my head. The gun click like it nah bin got in any bullet."* And later he said: *"Andy bin dey right dey. He bin tell Tyrone 'shot um with a shot to he head'".* Olivera spoke of the lighting conditions to the front of the school: *"It been light nice when I first saw Andy from the veranda."* With regard to the lighting at the back of the school, he said: *"The lighting was good after I jump over the railing because a lamp post light bin dey right there."*
25. In relation to the Second Defendant, William Vasquez, Olivera said that he first saw when Vasquez, whom he also knows as 'Billy', pass in a taxi about 15 minutes before the shooting started. He said that when fleeing the shooting from the front, he jumped over the railing for the veranda to the back of the school. It was at the back of the school that he next saw when the Second Defendant, William Vasquez, jumped over the railing as well and landed on his (Olivera's) chest: *"When I bin jump the veranda, he bin end up an jump the veranda too, pon top ah me. He bin got a gun in ah he hand too and he bin start*

ah whop me in ah my head. That is when the fight start.” He claims it was a black 9 mm the Second Defendant had. Olivera said that: *“William landed on my chest. I was able to see his whole body when he landed on my chest. He was facing me, I dey pon my back look up, William Vasquez looking down towards me. Nothing was obstructing my view.”* He said: *“When William Vasquez was on my chest I shove he off.”* In cross examination it was put to him that the Second Defendant was not out there at all that night; he insisted that William Vasquez *“was out there.”* He went on to say *“I never see when he fire, I only feel when he land on me.”* Olivera did not say how long he had the Second Defendant under observation; but he said there was light from a lamp post and referred to the proximity of the Second Defendant during the close encounter.

26. In relation to the Third Defendant, Clinton Tyron Harris, Olivera knows him as ‘Fabby’. Olivera said he first saw the Third Defendant when Harris was about 9 – 10 feet away in the company of the First Defendant. *“They were within hand reach of each other.... They were running towards us. They bin got ah got ah gun in ah dey hand.”* Olivera said: *“He and Andy bin dey side to side. He was facing towards us. I was able to observe Tyrone same 5 – 6 seconds. There were no obstructions. Lighting was good.”* Olivera also spoke of seeing the Third Defendant at the back of the school building: *“I jump up and start to fight with Tyron.... The fight with Tyrone lasted for a minute or two. I was able to see Tyrone’s full body, he was facing towards me. No obstructions. We were face to face with each other, been fighting for the gun”.* He knew the Third Defendant for his whole life from in the neighborhood.
27. A truthful witness may be a mistaken witness and a mistaken witness may be a very convincing witness. What has to be determined is whether or not after assessing a witness’s testimony, the witness is considered to be reliable and credible. This would include looking at the testimony given carefully not just for internal logic and consistency, but how does it compare with the totality of the evidence; and evaluating the witness’s overall demeanour, including how does the witness fare under cross examination.

Corroboration

28. The Crown relied on the testimony of the Maskall brothers generally to corroborate Elvis Olivera’s testimony and Danny Maskall specifically in relation to when the deceased received the fatal injury.
29. Fenton Maskall said that the First Defendant was about 10 feet away when *“Andy raise—I can’t say left hand or the right hand, but face is nothing strange—with a firearm pointed at me after a couple shots ring off.”* He went on to say *“No obstruction preventing me from seeing Andy from then to now. We meet eye to eye.”* Later on he said: *“When shot fire, I stumble, after that, seconds later, Andy raise his hand he said ‘You ah dead too, asshole’.* All I could do is put on speed, meaning running.” The school’s verandah had a light and there was a lamppost. He knew the First Defendant well. As he said: *“Me and Andy grow up in the same area in Pen Road and up to that*

time not an enemy or anything of me.” Fenton Maskall said that when he was running to the back of the building, he recognized “the person shooting from the next side was Tyrone.” He said that: “While running, his whole face I could see. I had to come in close contact in order to turn. It is not a big railing. In order to turn you have to get in close contact with he. I saw his face, good enough seconds, so I could recognize is Tyrone that I de run into. No obstruction preventing me from seeing his whole fact. It was clear enough so I do not need to guess. Aint no speculation. I guarantee that I see Tyron.”

30. Danny Maskall said while he was on the school’s verandah, he heard gunshots. Joseph Myers fell. He looked towards the source of the gunshots: *“When I look in that direction I saw Andy Forbes and Clinton Harris shooting at us.”* He pointed out the distance between himself and Andy Forbes that he described as 6 – 7 feet, but estimated at 15 – 18 feet in court. He said he first saw the First Defendant’s face for about 5 seconds. He said after he jumped over the verandah, *“I did have a better look... two of them over that side there. And they just keep on firing.”* He said that *“Right underneath where we stand up the building did have one light. Nothing was preventing me from seeing Andy Forbes face clearly. I grow up together with Andy Forbes.”* While he did not see the Second Defendant, William Vasquez on the scene during the shooting, the said that while they were in the abandoned building he saw Vasquez pass in a taxi; he then told everyone to move from that building to the school. According to Danny Maskall, he and the Third Defendant, Tyrone Harris grew up together and Harris used to be *“In and out ah fu we house.”* He recognized Harris when he was with the First Defendant and was able to see his face clearly for 5 seconds; there was a light overhead.

Contradictions

31. There were aspects of the evidence where there were apparent contradictions between the evidence coming from different witnesses. For example, both Elvis Olivera and Fenton Maskall ran to the back of the school building and jumped over the railing. While Olivera spoke of encountering the Second Defendant, and there being a fight with him, Fenton Maskall did not see William Vasquez at all. Maskall did say however that after he jumped over the railing, he rolled under the building and he turned facing the building. Maskall also spoke of *“one person shooting from one side, another person shooting from the other end, so it is real hard for the person to get out from in there.”* Both Olivera and Danny Maskall placed the two gunmen together when they arrive on the scene. When Fenton Maskall spoke of the persons shooting from either end, he however seemed to be referring to as he fled, since before that he said: *“Upon reaching the next end, I recognized the person shooting from the right hand side of the building towards the persons in the yard.”* Then after it, Fenton Maskall spoke of Olivera running towards the end from the left hand side to the back and he said: *“The person shooting from the next side was Tyrone.”* Olivera, for his part said: *“Tyrone bin jump the next side. Andy was right there coming too when William landed on my chest.”* It seems that the shooting

- from either end does not refer to the initial attack, but the direction the shooters proceeded in as persons ran.
32. In assessing the contradictions and how they impact on the case, it is necessary to bear in mind that witnesses have varying and different powers of observation, retention, recall and ability to describe. Also, what must be considered is whether a witness may have any special reason for remembering something as for example if someone is in direct combat with a person as opposed to being only an observer and even turning one's back on what is happening.
 33. What has to be determined is whether or not the contradictions remain unexplained and if so, do they have the effect of undermining the cogency of the Prosecution's case.

Previous Inconsistent Statement

34. The Defence sought to highlight previous inconsistent statements as well as pointing to witnesses saying things in court which they did not include in their original statements to the police. Some of these concerned Elvis Olivera in particular. They included what he said to the police about the number of persons that he saw coming with guns and the type of hand guns the assailants had. Of particular interest to the First Defendant is the words attributed to him by Olivera that Andy Forbes "*bin tell Tyrone, 'shoot ah with a shot to he head'.*" The witness insisted that he told the police so, but it was not included in his statement. In relation to that occasion behind the school when the words were said to have been used, Fenton Maskall said that he was under the building and he heard "*kill ah, kill ah*" but he was not sure who said it as he could not recognize voices after all the gunshots. In relation to Danny Maskall, he agreed that there was nothing in his original statement to the police about seeing Joseph Myers drop.
35. The Prosecution's case is one of joint enterprise. To link the First and Third Defendants as acting in concert is straightforward if the testimony from the eyewitnesses that Forbes and Harris were the persons discharging shots at the front of the building.

Joint Enterprise

36. The Prosecution is relying on a series of common sense conclusions to associate the Second Defendant with the enterprise. It commences with the fact that the decision to relocate from the abandoned building to the school yard was made immediately after William Vasquez passed by in the taxi. Then, while the shooters were to the front and persons running away to seek safety, he was to the back of the building which was a natural escape route from what was happening in the front. Added to that, he was armed. And further, he engaged one of the persons who sought to flee the shooting, jumping on Olivera's chest and hitting him with a gun.
37. It is settled law that person's may participate in the commission of an offence in various ways, whether as principal or accessory. Here, the Prosecution in its submissions has relied on the restatement of the law of joint enterprise in Regina v Jogee [2016] UKSC 8;

[2017] AC 387. In particular, the Prosecution is relying on the ‘*parasitic accessory liability*’ where their Lordships said that “*the mental element in assisting or encouraging is an intention to assist or encourage the commission of the crime and this requires knowledge of any existing facts necessary for it to be criminal.*”

38. The Prosecution’s view is that William Vasquez was strategically located at the exit route to the back in the event that the targeted person or persons tried to escape. Further, his presence at the scene would have fortified those who were to the front carrying out the shooting.

Caution Statement

39. As part of the Prosecution’s case, against the Third Defendant, a caution statement that he gave to the police after he was charged was tendered. That statement was given by Tyrone Harris after he informed the police that he was willing to give a statement but wanted to speak with his friends first. After having been given an opportunity to speak with the two other Defendants, Tyrone Harris putting himself and another person on unnamed friend on the scene.
40. Two of the things which emerge as a consequence of Tyrone Harris’ caution statement is affirming the correctness of the identification of him as one of the persons being on the scene. In the body of the statement there is corroborates the evidence from Elvis Olivea that the gun was placed to his head but when attempts was made to fire it, nothing happened.

Defence Case – Andy Forbes

41. Andy Forbes gave sworn evidence in his own behalf. His defence was one of alibi. He was working a construction site. About 5:00 p.m. after collecting his pay he went home. He was cooling off before taking a shower, but never took the shower. He watched television with his six children then when he went out on his verandah, he saw his cousin, William Vasquez. There is no fence between their properties. He went over and sat with the Second Defendant and another person socializing. He joined them in having a drink and talking. Around 6:30 p.m, Jason Arnold came where they were and asked if they heard any shots. The First Defendant said “no”. Police came to the yard, ask to conduct a search and then took them Queen Street Police Station.
42. His witness, Jason Arnold, said that he signed off work at the National Fisherman Cooperative about 6:30 p.m. He was taking his girlfriend home on a motor cycle. While passing the basketball court he heard some gunshots. He then took her took his girlfriend to William Vasquez’s house. He saw the First and Second Defendants there. He did not interact with either of the Defendants. He got a phone call and went to the Karl Heusner Memorial Hospital because his cousin, Kenya Brown got shot (in the same incident in which Joseph Myers was killed).

43. The alibi witness destroyed the First Defendant's case. First of all, he never left his work until 6:30 p.m., which was after the incident had occurred. He said the journey to Vasquez's home took him 15 – 20 minutes. Although he said he heard gunshots while riding pass the basketball court, it could not have been gunshots in the present matter, since by the time he got to Vasquez's residence, his cousin who was shot in the incident was already at the hospital. He also made it clear that he did not speak to either Forbes or Vasquez; but Forbes earlier said that the witness had asked whether they heard gunshots.
44. Also, on the question as to where the police met Andy Forbes, I believe Sergeant 285 Robert Martinez when he said: "*After making checks, I notice that Andy Forbes was under Vasquez's house.*" Sergeant Martinez's testimony on that point was not doubted by the First Defendant when the officer was in the witness box.

Defence Case – William Vasquez

45. William Vasquez gave sworn testimony. He said that on the 15th June 2012 he stopped working at 5:00 p.m. He went home; his common law wife and three children were at home, but she left for work. He said that he never left his home from the time he got until when the police came to his house and took him to the police station.
46. His testimony and responses under cross-exam sought to deny that he was in a taxi close to six o'clock; deny that he was at the Living Hope School; deny that he was responsible for the death of Joseph Myers. He provided an alibi. He also established that up to June 2012, he had never been convicted of any offence. The Prosecution did not challenge that. He was therefore entitled to a full '*good character*' direction, in particular with regard to credibility.
47. Although eventually under cross examination William Vasquez acknowledged that Andy Forbes was at his (Vasquez's) house when the police arrived, there was not much similarity between his testimony and that of Andy Forbes as to what transpired during the critical times of 6:00 p.m. and 6:30 p.m. Vasquez does not mention any other adults being present, neither does he speak about having drinks.
48. In evaluating the Second Defendant's evidence, I am unable to believe his evidence about being at home from since in the afternoon and being at home with the children. His alibi is not believed.

Defence Case – Tyrone Harris

49. The Third Defendant exercised his right to silence. That is his constitutional right and there is nothing wrong with him doing so. He is saying to the Prosecution: prove your case against me.
50. Although the alibis for the First and Second Defendants are rejected, it does not mean that they can be convicted for giving a false alibi. The Prosecution still bears the burden of proving its case so that the fact finding forum is sure of their guilt.

Verdict

51. In this matter, I have no difficulty in accepting Elvis Olivera as a reliable witness of the truth. The Prosecution, through his testimony and supporting evidence, has satisfied me, so that I am sure that the two persons whom Elvis Olivera saw with guns drawn approaching the group were Andy Forbes and Clinton Tyrone Harris. I believe his testimony as well that William Vasquez was also armed and present on the scene, towards the back of the school building. I believe his testimony as well that at the back of the building Andy Forbes said to Tyrone Harris to shoot Olivera in his head.
52. The prosecution has satisfied me, so that I am sure, that the three Defendants, Andy Forbes, William Vasquez and Clinton Tyrone Harris are guilty of the murder of Joseph Myers.

**Colin Williams
Supreme Court Judge**