REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CRIMINAL DIVISON

CR 105/2015

THE STATE

v

QUINCY MARTINEZ A/C BOOKIE

FOR

MURDER

Before the Honourable Justice Ramsumair-Hinds

Date of delivery: Tuesday 26th May 2020

APPEARANCES:

Mrs Stacy Laloo-Chong and Ms Forrester for the State

Mr Raphael Morgan, instructed by Mr Kyle Fortune for the Prisoner

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JUDGEMENT

INTRODUCTION

1. The Prisoner Mr Quincy Martinez, also called Bookie, is before me in a Judge Alone Trial (JAT) on a charge of Murder. His trial commenced on Friday 15th May 2020 and I heard the last witness on Tuesday 19th May 2020.

2. My written judgement follows. I first outline the trial process, itself a novel approach in this jurisdiction, before turning to the analysis and verdict.

THE HYBRID TRIAL PROCESS – A Fusion of Electronic and In-Person Hearings

3. The Covid-19 pandemic has forced us to prioritize public health over all else. Judicial operations have been changed as a result of both the various Public Health Regulations and the Covid-19 Emergency Directions issued by the Honourable Chief Justice. The latter took effect on Monday 16th March 2020 and have since been superseded by the Practice Direction published on Friday 15th May 2020, which extends the applicable period to 15th June 2020 [1] . Not only are in-person appearances expressly discouraged, but there is emphatic encouragement for all categories of Judicial Officers to make use of telephonic and video technology for ALL hearings. Less than 2 weeks later, the Practice Direction on Hearings by Electronic Means was published[2] and took effect from 27th March 2020. Shortly thereafter, on 21st April 2020, the Honourable Chief Justice issued a Practice Guide on Electronic Hearings.

[1] Published in Trinidad and Tobago Gazette, Vol. 59, No. 71
[2] Published in Trinidad and Tobago Gazette, Vol. 59, No. 59

4. Those Directions and Guides provided a platform for improved service delivery and continued access to justice in spite of the general stay-at-home Regulations and Covid-19 best practices to 'flatten the curve' and survive a health crisis. Those Directions merely pierce the veil to allow a peek at the efficiency of the machinery that drives the Vision and Mission of this Judiciary. They publicly provided guidance and direction about an internal court management capacity and in this regard I singularly applaud our IT Unit. It is also with no small measure of gratitude that I applaud our Chief Medical Officer Dr Roshan Parasram, whose stoic resolve and firm advice informed the national response. As I speak today, our twin island Republic has not a single confirmed case of the virus.

5. It is against this backdrop that the Prisoner Quincy Martinez sought his access to justice. He has been incarcerated for 12 years and his matter was docketed to me last year. He elected to have a JAT on the 20th February 2020. There is a flexibility with JATs, there being no need to summon a jury pool or find an available courtroom fitted with a jury box, and so I fixed the earliest date after 20th February, which was 20th April, 2020. With the Covid-19 Emergency Directions by then in effect, it seemed that the Prisoner would have to wait yet longer for his trial. Frankly, I did not think that was fair, in the circumstances as a whole. I deemed the matter fit for hearing and of my own motion, fixed it for hearing by electronic means.

6. For some, the view has been that the use of electronic means in the Criminal Division should be limited to case management, remand adjournments and bail, steering quite clear of the main event of the criminal trial. That thinking has slowly been replaced by an appreciation that the use of electronic means has great potential to mitigate several hindrances to the trial process. Such hindrances include, but certainly are

not limited to, the unavailability of a witness who ordinarily resides in another jurisdiction.

7. Though the capacity has existed, electronic means has infrequently been used in the criminal trial process and even then, only with the express agreement of both Prosecution and Defence. The preference has always been to afford the Prisoner the opportunity to 'confront' his accuser directly in open court, with the entrenched position that 'open justice' required all parties to be convened in one physical location.

8. That narrow perspective has since been challenged by ordinary logic. For example, in a case where a purported identification witness could not immediately return to the jurisdiction in order to give evidence against a Prisoner, then already incarcerated for more than 18 years without the possibility of bail on a capital charge, rather than incur the hardship of further delay, when faced with a potential Section 15 C application[3] from the State to tender the witness' statement and the option that the Court could arrange for the witness to testify using electronic means, the position of Defence Counsel, unsurprisingly, was that the more desirable option would be to have the opportunity to test the witness through cross examination, even by live link video[4]. Fortunately, Defence Counsel in that matter is also on record in the case at bar. I invited him to share his experience, which might amount to considerably more than the collective tentative efforts of the more timid of his colleagues. He can attest to the audio and video quality, his ability to cross-examine via electronic means in this matter as well as the former, the Court's ability to manoeuvre

[3] Section 15C of the Evidence Act, Chap 7:02 – Admissibility of first hand hearsay statements in criminal proceedings

[4] ***The State v Kevon Benoit a/c Kevon Nurse***, CR 97/2001, October 2019

through exhibits by using the platform's screen-sharing functionality, even marking same electronically, the presence of media virtually, the collaboration with Prisons so that Instructing Counsel could speak with the Prisoner and overall, his and his client's opinion on the fairness of the proceedings. The State can do likewise. Our Court Reporting Unit listens remotely for quality assurance purposes and I have seen the reports of my virtual sittings. With respect, perhaps the time has come, and I am sure that it is not just in this jurisdiction, for Counsel to re-tool by investing in increased bandwidth from reliable service providers.

9. A trial management conference was held electronically on the 23rd April 2020 and with the assistance of Counsel for both sides, the strategy for the hearing was developed. All parties shared the same perspective, that is, the health and safety of all court users must be balanced with a need to provide the Prisoner with unimpeded access to justice, as far as possible. Directions were issued based on those discussions. They are attached as Appendix 1. Those Directions stipulated deadlines for the careful management of exhibits, witness location and trial time, with an emphasis on using electronic means.

10. There were two departures from those Directions. We made full use of judicial time when Defence Counsel's cross-examination of the eye-witness ended an hour earlier than anticipated and immediately took another witness. Secondly, this verdict was originally expected to be delivered at the Hall of Justice. However, that is not possible as the Commissioner of Prisons immediately put the Prisoner into quarantine at the Santa Rosa facility after the in-person hearing last Monday. The fact is this, stakeholder collaboration and cooperation has been the key to the success of this trial. It is not that the Prisoner is ill. Rather, the

Commissioner of Prisons cannot simply trust that in exposing his charge to us, yes us, the free public, that the Prisoner would return uninfected to MSP. The Prisoner has since been quarantined at Santa Rosa because by taking him to the Hall of Justice for an in-person hearing, we might have infected him. Out of respect for what must be a heavy mandate to keep inmates safe, I will not interfere. May I boast that, the sudden shift from MSP to Santa Rosa did not impede our trial timetable. The trial continued the very next day and the Prisoner appeared electronically from the Santa Rosa Facility. On that day, we took the evidence of two State witnesses electronically, both of whom who were subject to cross-examination. The State closed, the Prisoner elected to remain silent, tendered a Formal Admission which he was able to see me mark electronically and closed his case. We also did the Ensor Hearing.

11. That realization of hardship to the Prison Authority has caused me to question in hindsight the need for that in-person hearing at all. My preference would have been and so long as there is a public health threat involved in gatherings, especially where there is little open ventilation, my preference will be that trials should be conducted electronically. At the trial management conference, one of the considerations raised was the Prosecution's ability to ask the eye-witness to properly point out the man who he had told the police in July 2008 was the shooter. I refer of course to the ritualistic scanning of the room on the invitation of the Prosecutor to point out "the man" if he sees him present. Having heard the parties, who both agreed that this was not feasible on our preferred VC platforms[5], I conceded that one sitting would be conducted in-person at the Hall of

[5] Microsoft Teams allows the 'pinning' of a Participant or more than one; Pexip focuses primarily on the speaking Participants, while others are seen as thumbnails. Other platforms, such as Zoom, may have helpful options in this regard.

Justice, in order to receive the evidence of the purported eye-witness. It was felt, at the time of the case management hearing, that fairness dictated against an electronic hearing, bearing in mind that identification was the main live issue in the case at bar.

12. Anyone present at that in-person hearing witnessed the depreciation of that ritual when its raw value was exposed in a matter of seconds. In that courtroom, where the number of persons was restricted, where those present were distanced and masked, in accordance with Covid-19 best practices for safety, as the witness took the new oath (holy books no longer necessary), I immediately stopped the proceedings and put the witness out of court and hearing. Though he had not yet started to testify, we knew the reason why he was there and why Counsel felt he should be taken in-person. Yet, all users of the Court at that time were masked, as they should be. Even as I took the views of Counsel on how to give effect to this ritual, its worth further diminished. It is not merely that this is a JAT. Indeed, I think the point is of graver significance in a jury trial. We eventually decided to all remove our masks, sit even further apart, the Prosecutor would get to the 'event' as quickly as she properly could, the witness would again step out of Court and we could all then properly sanitize our hands and don our masks once again. There was no small measure of anxiety in that courtroom. The record will reflect that I announced the futility of the attempt to conflate the worth of the in-court 'identification' to me, a judge sitting alone, as I invited Counsel to look around the room and observe that, apart from Court staff near me, the two Court and Process police officers donned in white and the Marshal's Assistant who would escort the witness inside, the remaining 5 persons in the courtroom were: 4 robed Attorneys-at-Law and the Prisoner sitting just behind Defence Counsel. The

charade nevertheless unfolded as we planned, yielding an in-court identification that amounted to no more than the witness saying, "I see the man who committed the crime here today who I pointed out to the police 12 years ago."[6]

13. Frankly, there have been many appellate decisions openly criticizing (first-time) dock identifications as being inherently dangerous and likewise deprecating in-court identifications (those cases where there was some prior support) as being of little-to-no value.[7] According to Weekes JA (as Her Excellency then was) in ***Akim Carter and Clinton Otis John v The State***[8]:

> "Our understanding then, of a "dock identification", properly so-called, is that it is an identification of the accused in Court, which is unsupported by any previous identification by the witness. In ***Edwards v The Queen*** (2006) UKPC 29, the Privy Council distinguished between 'first time' dock identification, which will ordinarily be unacceptable, and cases in which a witness who has previously identified the defendant as the offender or suspected offender repeats this identification by pointing to the defendant in court. Whilst clearly less objectionable, the Board's view was that this was nevertheless, "*an undesirable practice*" and that "*other means should be adopted of establishing that the defendant in the dock is the man who was arrested for the offence charged.*"[9]

[6] ***Mark France and Rupert Vassell v The Queen*** [2012] UKPC 28 (Jamaica)

[7] ***Cartright*** (1914) 10 Cr. App. R.; ***Max Tido v The Queen*** [2011] UKPC 16; ***N.C. v Her Majesty's Advocate*** [2012] HCJAC 139; ***Terrell Neilly v The Queen*** [2012] UKPC 12; ***Mark France and Rupert Vassell*** above [4]

[8] Cr. App. No. 32 of 2005

[9] Italicized emphasis is Her Excellency's. Added emphasis mine.

14. In a Canadian decision delivered in November 2019, Dennis Galiatsatos J.Q.C. was required to assess identification evidence in circumstances where the Prosecutor, whether by strategy or mere oversight, simply did not invite the eye-witness to point out the Accused in the dock and addressed it this way:

> "In fact, in-court identifications are renowned for being of little-to-no value as reliable identification evidence … Per Kerans JA in ***R v Nicholson***, "… that the Crown often relies upon such evidence should not permit us to think that a dock identification is an essential ritual to a criminal trial. The onus upon the Crown is to prove that the crime alleged has been committed and that the Accused is the perpetrator. **This last, like any fact in issue, can be proved in many different ways**" … For all these reasons, the lack of in-court identification is neutral in the case at bar."[10]

15. The reception of evidence was completed on Tuesday 19th May 2020. By virtue of the new **section 42B (1)** of the **Criminal Procedure Act**, I was time-bound to deliver a verdict before the expiration of 14 days, "when the case on both sides is closed." On the issues involved in this particular matter, though it is a capital charge, there was no difficulty in returning a decision in a much shorter time frame.

16. With respect to the procedure involved in JATs, Parliament has left the process of modification and adjustment to the Courts. The record will reflect that, with the agreement of Counsel for both sides, I directed that we hold an Ensor hearing in the usual manner regarding their invitations

[10] ***R v Giraud*** [2019] Q.J. No. 10415, a decision of the Court of Quebec (Criminal and Penal Division, District of Montreal) (emphasis mine)

on how I ought to direct myself. This we did immediately after the Defence closed its case. I then gave them an opportunity to make use of their statutory right to "sum up the evidence" in writing with a deadline of 48 hours. After all, this was a 3-day trial involving uncomplicated issues. On the due date, both sides requested an extension of time of an additional 2 hours, though only Defence Counsel supplied a reason. I granted both sides an extension of 4 hours.

17. I will continue to encourage practitioners in the Criminal Division, whether for the State or Defence, to adjust their modes of operation in order to give full effect to the overriding objective of the Criminal Procedure Rules. I have found, more often than not, that the perception of the absence of sanctions has resulted in flagrant disregard for deadlines, particularly with respect to Directions issued by the Criminal Master charged with case management of matters calendared to me. I see very little evidence of respect for deadlines and quite frequently, repetition of identically worded Directions with little compliance and yet hardly ever a request for an extension of time. If the Criminal Procedure Rules are to bear similar fruit to that which obtains in the Civil Division, this culture cannot persist. In this trial, for example, though both sides were given two hours more than they asked, the State filed late and unfortunately did not provide an explanation. With respect, this gentle rebuke serves as a sanction, one which I hope I need not repeat in future.

18. My emphasis on adherence to the Rules is not without purpose. In fact, robust case management with active and responsive participation from both sides has once again proved that criminal trials, like all other contentious legal battles, are best handled when focus can be zeroed in on

only that which is in dispute. This particular trial involved 14 State witnesses. With respect to the evidence of 10 of the 14, there is no dispute. Good use of section 37A of the Criminal Procedure Act focused attention in this case on contentious matters and thus a JAT on a capital charge required only 3 hearing dates.

GENERAL DIRECTIONS

19. The law does not require me, as a judge sitting alone, to detail every single relevant legal proposition, nor to review every fact and argument on either side[11], notwithstanding **sections 42B (2) and (3)** of the Criminal Procedure Act.

20. The purpose of my written reasons here is to provide a safeguard to both sides and to the public that there has been a fair trial.

21. I need not decide every single disputed fact, only those that I find to be necessary in determining the issue on the Indictment.

22. I am acutely aware that the burden of proof is on the Prosecution and that the standard of proof is that I must be satisfied so that I am sure. I pause to make a point. The point is this: when compared to the alternative, whether unanimous or majority, whether twelve or nine, there is to my mind a clear advantage to the requirement that the fact-finder in a JAT MUST explain a conclusion that the Prosecution came up to proof.

23. It is entirely up to me to determine what evidence I choose to accept as having worth and to apportion the weight it deserves. I can accept or reject

[11] ***R v Thompson*** [1977] NI 74 (CA, NI).

any part of the evidence which I received. As it relates to individual witnesses, I can accept or reject their evidence, in part or whole. Weighing up an individual witness is itself an interesting exercise, so too, the case as a whole. It is frankly impossible to set out in writing the precise sequence as the scale tilts and settles. My best efforts to lay bare my thoughts are detailed below.

24. There is testimony from expert witnesses in this trial and I must not substitute my lay-person's views for those of the experts, who possess particular technical and scientific qualifications. Nevertheless, I am free to accept or reject, in part or whole, even this expert opinion evidence.

25. Certainly, when there are inferences of equal weight, I shall give precedence to the one most favourable to the Prisoner.

26. In this particular matter, some documents were quite helpful, while others served either no purpose or may have led to some confusion.

27. The evidence of 10 State witnesses was received by Formal Admission. I have not had the benefit of seeing and hearing those witnesses myself, but note that no challenge has been mounted against that evidence. I add no extra weight to the fact that the evidence is in writing or that it has been agreed to. I will consider the evidence in the round and attach weight as I find necessary.

28. I wear two hats. By way of example, when I was first asked to allow the Defence to adduce Bad Character evidence with respect to State witness Ukomo Samuel, that consideration was addressed purely in my capacity as

judge of the law[12]. The question as to what weight should attach to that evidence, if any, is answered in my capacity as judge of the facts. I emphasize that it is only at this point in the trial process that I judge facts, as it relates to the ultimate issue on the Indictment.

29. There is one count on the Indictment, that is Murder. The Prisoner is alleged to have murdered Otym Abdul Claverie on Saturday 29th March 2008 at D'Abadie in the County of St George.

30. Murder is the unlawful killing of a person, with the intent to kill or cause grievous bodily harm. The State's burden is to prove to the requisite standard the following:

a) That the Prisoner committed an act or acts that resulted in the death of Otym Abdul Claverie and

b) That at the time the Prisoner committed the act(s), he intended to kill Otym Abdul Claverie or to cause him grievous bodily harm.

31. In assessing whether the Prosecution has satisfied me that the Prisoner murdered Otym Abdul Claverie, I considered all of the evidence tendered in the trial. I avoided speculation, but gave myself the liberty to draw conclusions on the evidence before me. Great care was taken to scrupulously avoid all biases and prejudices. I note that much of the Interview Notes contained talk of this gang and that gang in Maloney Gardens. Frankly, I set all that aside as it had no direct bearing on what I was asked to decide. I will say that I appreciate the fact that Counsel did not waste time to cosmetically edit the Notes, with the obvious

[12] Ultimately, no ruling on the matter was required. The State did not mount an objection and in fact, the evidence was agreed and tendered as a Formal Admission: CE 11

appreciation that as a judge sitting alone, I am already equipped with the committal bundle.[13] I repeat, I impugn those references myself as being of no probative worth to the issue on the Indictment and easily disabuse my mind of them.

THE CASE FOR THE PROSECUTION

32. On the morning of Saturday 29th March 2008, Otym Abdul Claverie was at Building 13, Apartment 1-3, North Maloney Gardens, D'Abadie. A number of other persons were in the apartment at that time as well. One of those was Otym Claverie's brother Ukomo Samuel. The brothers did not reside there ordinarily.

33. That morning they were asleep in the apartment's back bedroom. Ukomo Samuel testified that he was roused from sleep around 8:00 or 9:00am by a commotion outside the apartment. He saw Otym get up and walk towards the apartment's front door and step just outside. He was essentially an arm's length behind and stopped at the front door itself. From that vantage point, he said he saw the Prisoner, whom he knew only as "Bookie", standing approximately 10 feet away. This view, he said, was unobstructed and lasted approximately 15-20 seconds. Within that time, he heard his brother say, "Dan, stop calling up mi name in yuh mout'!" He said that the Prisoner retorted, "Yuh hold meeting to get mi partner kill. Ah not taking dat!"

34. Ukomo Samuel told the Court that it is after that exchange of words, he saw the Prisoner use his right hand to draw from the right side of his waist,

[13] It is worth mentioning that, especially in JATs, thought should be given to the possibility that matters regarding admissibility of potentially prejudicial material can or perhaps should be addressed by another judicial officer, specifically the Criminal Masters.

"a dark coloured nines". The Prisoner pointed the firearm in the brothers' direction.

35. He said that he immediately ran back inside the apartment, heading to the back bedroom, with his brother right behind him. As he ran, he heard one loud explosion. He next heard a "thud" and looking back, he saw Otym Claverie in a kneeling position in the living room area. He was 3-4 feet from his brother at the time. He said that he also saw the Prisoner then standing at the apartment's front door, some 8-10 feet from him and 6-7 feet from his brother at that time. His view was unobstructed. He said he saw the Prisoner point the firearm downward at his kneeling brother and fire 3 shots. He said he could see smoke from the firearm. This observation of the Prisoner at the doorway lasted 3 seconds and after firing the 3 shots, the Prisoner ran off, heading west.

36. Ukomo Samuel said that he ran out of the front door and headed in the same direction. This pursuit lasted 5 or 8 seconds and during that time, he could only see the person's back. He said that he saw the Prisoner run to the carpark and enter the front passenger seat of a Nissan B-15. He could not see the driver, only his "silhouette". A man with a rastafarian hairstyle jumped into the passenger seat immediately behind the driver and the car drove off.

37. Ukomo Samuel then returned to the apartment and observed that his brother was injured, bleeding from his arm and having difficulty breathing. He made some phone calls, the first to his brother's driver, the next to his own driver and a possible third call to his mother. He walked out of the apartment to make those calls, as the reception was poor. His efforts to

get a driver to take the injured man to hospital were unsuccessful and in anger, he broke his phone. A female occupant of the apartment used a towel to wrap the injured Otym Claverie's arm. Ukomo said he returned to his brother, checked for a pulse and found none. He began to cry.

38. Some time after, police came to that location and began their investigations. PC Samuel was tasked as the primary investigating officer. The scene was processed by WPC Wilson, photographs taken by PC Austin, the body removed and interviews conducted. A post-mortem examination was conducted by Forensic Pathologist Dr Hughvon des Vignes, who observed 3 gunshot wounds to the body of Otym Claverie and concluded that they were the cause of death.

39. Three months later, on Saturday 28th June 2008, the Prisoner was arrested by Sgt Martinez, who informed the Prisoner that he was a suspect in this particular murder investigation. The Investigating Officer PC Samuel met the Prisoner the next day, that is Sunday 29th June 2008, told him of the investigation, informed him that he was a suspect and cautioned him.

40. On Monday 30th June 2008, PC Samuel, in the presence of PC Sobie, told the Prisoner that he (Samuel) had information that he (the Prisoner) had information which could assist in the investigation. He told the Prisoner that he wished to conduct an interview, asked if he had any objections, told him of his rights and privileges and the Prisoner made no requests. PC Samuel did not then caution the Prisoner. Between 1:35 and 3:00pm, PC Samuel interviewed the Prisoner and PC Sobie made contemporaneous notes. Later that same Monday, between 8:00 and 10:05pm, PC Samuel recorded the first statement from Ukomo Samuel.

41. The next day, Ukomo Samuel returned to the Arouca Police Station and pointed out the Prisoner in a Verification Exercise conducted by Inspector Lawrence. Following this, the Prisoner was charged.

THE CASE FOR THE DEFENCE

42. The Prisoner did not give evidence. He exercised his right to stay silent and called no witnesses. I make no adverse findings against him for that election. Indeed, he is presumed to be innocent and remains so, until and only until, I am sure that he is guilty. He has nothing to prove.

43. He did advance a defence in a number of ways. His case was put to the Prosecution witnesses. Of course, what is put is not evidence, but rather it is the response that may have evidential worth. The Interview Notes of 30th June 2008 were admitted without challenge and present certain responses for my consideration.

44. No issue of good character was raised on his behalf, and rightly so.

45. The case for the Defence is that the State's evidence against him, specifically, the evidence of Ukomo Samuel is a fabrication. In support of his invitation to treat Ukomo Samuel as an unreliable witness, he tendered on his case, a Formal Admission with respect to Ukomo Samuel's dismissal from employment for reasons of dishonesty.

ANALYSIS AND FINDINGS

46. As I stated much earlier, this case is relatively uncomplicated. Frankly, it stands or falls on the strength of one witness.

47. There is no dispute that Otym Abdul Claverie was shot and killed in the apartment in question on the morning of Saturday 29th March 2008.

48. The State says that Otym Claverie was roused from sleep, walked out the apartment and had a verbal exchange with the shooter, who then drew a firearm, pointed at him and fired one shot just outside the apartment. Otym Claverie ran back inside the apartment and the shooter stood at the doorway to the apartment, pointed the firearm at Otym Claverie, then in a kneeling position, and fired three more shots.

49. There is absolutely no forensic or scientific evidence identifying the shooter. Even the questionable Interview Notes, taken without cautioning him that as a suspect, he had a right to silence, are of no probative worth. There is but one witness who identifies the shooter as the Prisoner and who gave the account of Otym Claverie's demise at the hand of the Prisoner. That is Otym Claverie's younger brother, Ukomo Samuel. If I believe to him to be credible and then test his accuracy and find him to be reliable, then the State would have established both elements of the offence of Murder.

50. The State contends that I am able to find Ukomo Samuel to be honest, credible and reliable. They suggest that the Pathologist's observations with respect to location and trajectory of the gunshot wounds tend to support the account. They urge me to find that the quality of the identification evidence is good and therefore reliable. Have they met their burden to the requisite standard? The Defence contends that reasonable doubt must arise.

51. The assault on the State's case appears two-fold. First and primarily, the Defence challenges the truthfulness of the witness who purports to put the smoking gun in the hand of the Prisoner. Secondly, the Defence contends that the identification evidence is inadequate by ***Turnbull***[14] standards. Credibility and reliability are often intertwined, but to be sure, they are fundamentally different principles. The former relates to truthfulness, veracity and integrity, while the latter involves accuracy and correctness.

52. The law is clear that there is a formula and I will apply it as I must. I can only rely on identification evidence that is accurate. Experience has shown that honest, sincere, well-meaning witnesses may be mistaken. This is even so in situations where the person 'identified' is someone the witness knows quite well. It is because of this risk of injustice as a result of human error, that I must exercise extreme caution in examining the surrounding circumstances of the purported 'identification/recognition', being particularly alert to weaknesses that undermine its quality. There are a number of questions a fact-finder usually asks in assessing the QUALITY of the evidence, such as lighting conditions, length of the observation period, the distance between the witness and the person, whether there were obstructions, impediments and/or distractions, was the person known before, in what capacity, was there any special reason for remembering him, how much time elapsed between the incident and the subsequent identification to the police, whether there are any disparities between the original description and the actual appearance and whether there is any supporting evidence. All these factors go to the QUALITY of the identification evidence.

[14] ***Turnbull*** [1977] QB 224

53. However, those considerations arise only AFTER the initial question: Is this purported eye witness honest[15]? That list of rigorous interrogations to test the quality of the evidence takes place **as an addition** to credibility because of the ghastly risk of honest and convincing yet, mistaken identifications.[16]

54. The first question for me then is this: Do I believe Ukomo Samuel to be a witness of truth? The State acknowledges that there are inconsistencies, discrepancies and omissions in his evidence, but urges me to find that they do not go to material issues and that in spite of them, I can still find Ukomo Samuel credible. Where a witness is confronted with frailties such as these, he may provide an explanation, which might very well be plausible and ultimately cause no real harm to his overall credibility. The law does permit me to reject part of a witness' evidence and accept other parts. If I believe him to be honest, sincere and credible, then I must go beyond his subjective certainty and test his evidence for reliability, accuracy and correctness. It is possible for guilt to be established by an imperfect witness.

55. It is therefore important for me to frontally address the challenges to Ukomo Samuel's credibility. There are 15 areas of concern, though not all equally weighted. In fact, some did not trouble me at all. I prefer to list them separately according to effect, with the understanding of course that weighing his evidence up is not a disjointed stoic exercise.

[15] Archbold 2020, para 14-17
[16] ***Oakwell*** (1978) 66 Cr. App. R. 174

56. The following 5 matters did not, by themselves, cause harm to his credibility. They either were unimportant to me or the explanations seemed plausible and I accepted them.

a. The question whether the car he observed leaving the carpark was a B14 or B15. That made no difference to me.

b. The complexion of the Prisoner. Ukomo Samuel agreed in Court that the Prisoner is a little darker-complexioned than him and admitted to having previously said that the shooter was "about his complexion". I was not troubled by this difference, based on my own powers of observation regarding their respective 'shades'.

c. Though he testified that when he went to the Arouca police station for the Verification Exercise, the officers were not in uniform, he admitted that he previously said they were in uniform. I did not particularly care for the manner in which he responded when challenged by Counsel, but I accept that although his answers were not based on actual memory, I did not think he was lying. He explained which variation was the truth thus:

> *"One of them sir, or maybe both. Sir, I just didn't go into details of what they actually had on … ah just say dey was in uniform. They coulda be a police pants and a jersey, a police shirt and a plain pants, a police hat and a jersey and pants."*

d. Last Monday, Ukomo Samuel provided me with his address at the time of the incident. He accepted that this was the first time he has given this particular address and in fact, admitted that he did not tell the truth in both his statement to the police and in the Magistrates' Court. His explanation is that he was living with his newborn child and the child's mother and did not want to expose

them to any harm by disclosing that address. That explanation seems plausible and by itself, did not subtract from his creditworthiness.

e. The witness named a number of persons who lived in the apartment in 2008. When challenged by Counsel that he had excluded some of those names on a prior occasion, he replied that it was not important at the time. Assessing the overall case, the distinct impression I formed was that the occupancy of the apartment was quite fluid. This issue did not disturb me.

57. The following 6 matters were not as simple and did cause me some disquiet with respect to the credibility of Ukomo Samuel.

a. Who were the other persons in the apartment at the time of the shooting?

At trial, in evidence in chief, he said the persons present with him at the time were Otym, Azizi, Akila, Roberta and Kedar. Under cross-examination, he was confronted with a prior inconsistent statement that he said Roberta was not present. When pressed, he maintained that Roberta was not present, though he had said she was during his evidence in chief. This particular issue of Roberta's presence or absence was significant, when juxtaposed with the fact that PC Samuel noted in the Station Diary that the last person to see Otym Claverie alive was a Roberta Beggs.

b. Who was present in the back bedroom that morning immediately prior to the shooting?

At trial, he said it was he, Otym and Azizi in the room. Confronted with having previously said the room was occupied by only two persons, namely him and his brother, Counsel for the Defence gave

the witness an opportunity to explain the difference. This was the exchange:

"Do you want to explain?"

"No, go ahead. Go ahead. Go ahead. The floor is yours."

That kind of response did not inspire confidence in the speaker's veracity.

c. When was the last time prior to the incident that he had seen the Prisoner?

At trial, the witness said he saw him just one week before. He acknowledged that this was the first time that he was ever saying this. I did find this to be a material omission, especially having regard to the importance attached to his evidence involving recognition evidence, not merely identification.

d. When did he first give a statement to the police?

At trial, he said that he gave his first statement on Monday 30th June 2008 (3 months after the incident). This was supported by the evidence of the Police Complainant. However, he was confronted with having said on a prior occasion under oath that he gave his statement just one week after the shooting. This was his response:

"When I said that how I gave it a week after, apparently it wasn't true, Ma'am."

e. Did he break his phone?

This seemed inconsequential at first. Though he said it at trial and for the first time ever, and of course, it is possible for a witness to omit some details which they deem marginally important, I found that his actual response was unsatisfactory.

"So, when you left out the breaking of the phone in 2008, that didn't happen?"

"Maybe, maybe not."

f. Was he told that 'Bookie' was in custody before the Verification Exercise?

At trial he said that the Complainant called him to the station to "come and identify someone". He accepted having said on a prior occasion that the officer told him that the person they had in custody was Quincy Martinez. Again, identification being the main live issue, this disparity was of concern.

58. The next 3 issues were of even graver significance to credibility.

a. Whether the witness actually saw the driver of the car.

Ukomo Samuel said last Monday that he could not see the driver. In fact, he clearly communicated that he could only see the "silhouette". He was confronted with a prior inconsistent statement about having seen the driver and naming the driver as "Milk". The exchange under cross-examination was quite harmful to his credibility:

"In 2008, you could have seen the driver?"
"Yes, Sir"

"Earlier when you said you could not see the driver, that wasn't true was it?"
"Yeah, yes … yes it was true. Ah didn't see the driver face, but ah saw the silhouette of the person who was driving the car."

"Okay, so you didn't see the driver's face?"
"No."

"So, you can't be sure it was Milk?"

"Yes."

"So, without seeing his face, you could be sure?"
"No, I can't be sure, but I assume that it was Milk, 'cause it's his vehicle."

"So, without being able to properly identify somebody, you tell the police you see them?"
"Yes."

The witness purportedly identified and named someone based on assumption.

b. Whether the witness spoke to the police on the day of the shooting.

When allowed to refresh his memory from the Deposition at the committal proceedings about whether he said he never spoke to the police on the day of the shooting, the witness conceded and reaffirmed what he said in his evidence in chief, that is, that he first spoke to PC Samuel on the 30th June 2008. This was particularly detrimental because the Investigating Officer said that it was Ukomo Samuel who gave him the name (alias) and address of the Prisoner at the crime scene itself. In fact, PC Samuel said that he had that information, that is the name/alias and address, and that it came from Ukomo Samuel on the date of the shooting noted on his prescribed Homicide Sheets. PC Samuel said further that he had this information from Ukomo Samuel prior to the Prisoner's arrest on 28th June 2008. Yet, Ukomo Samuel said the first time he spoke to PC Samuel was on the 30th June 2008, 3 months after the incident and 2 days after the Prisoner's arrest, not before.

c. The clothing worn by Otym Abdul Claverie at the time of his death.

> The witness testified that his brother was wearing a black three-quarter jeans and a black jersey with a white skull and bones print when he was shot. This information came from the cross-examination. It is in direct contradiction with the evidence of more than one police officer, the observation of the Pathologist and the photograph SA 2. Those witnesses and the photograph clearly indicate that the Deceased was clad only in boxers, that is underwear, at the time police arrived. PC Samuel went further to indicate that there was no such shirt at the scene.

59. A major challenge to the truthfulness of Ukomo Samuel was the evidence of bad character. This was admitted as a Formal Admission and revealed that he had been employed at Amalgamated Security Services in 2017 and was terminated for stealing in 2018 (albeit after the shooting incident). This evidence affected my assessment of the witness in two ways. Definitely, it carried some weight in undermining his credibility, which is of course of substantial importance in the circumstances of this case as a whole. I found it peculiar and deeply troubling that, even when confronted with a document which he acknowledged was from the Company's Human Resource Department, he nevertheless maintained that he had not been dismissed.

60. Had I moved on to a full Turnbull interrogation of the identification evidence, certain weaknesses would have weighed on my mind, including but not limited to the extent to which Ukomo Samuel really knew the Prisoner. However, that exercise is not necessary. I find that I am unable to believe that Ukomo Samuel is an honest and credible witness. Truth remained a moving target throughout his testimony.

61. There are other issues with this case, including but not limited to an assessment of the failure of the police to caution the Prisoner on the 30th June 2008 before the Interview, having already told him on the 28th and 29th that he was a suspect; the clear discrepancy between PC Samuel and another police witness regarding whether the police had a first description of the shooter; the discrepancy between the Crime Scene Investigator WPC Wilson and the Photographer PC Austin about the location of one of the spent shells, all of which made for an untidy police investigation.

62. Be that as it may, this case rested entirely on the credibility of Ukomo Samuel. State Counsel attempted to persuade me that there was something of value supporting Ukomo Samuel to be found in the Interview Notes. It is obvious from the type of questions put to the Prisoner, that the police had some information. However, that interview took place hours before Ukomo Samuel said he gave his first statement. I see it … the bald attempt to fit ill-matched puzzle pieces together. It did not succeed.

63. Ukomo Samuel's evidence was fraught with frailties, conjecture, speculation, assumption and a host of inconsistencies and discrepancies. On the one hand, he spoke based on assumption. On the other, he deliberated told a lie about an address out of a desire to protect his child. There was a moment in this trial when SA 2 was placed in is hand. His grief, seeing the photograph of his Deceased brother, was evident. Ukomo Samuel suffered loss that day. Condolences aside, I did not believe him to be truthful.

64. There is no other evidence connecting the death of Otym Abdul Claverie to the Prisoner.

VERDICT

97. Having outlined my reasoning, I state my finding that the Prisoner Mr Quincy Martinez a/c Bookie is not guilty of the murder of Otym Abdul Claverie on the 29th March 2008. He is therefore discharged.

Justice Ramsumair-Hinds

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JUDGE