

THE EASTERN CARIBBEAN SUPREME COURT  
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CASE NO. ANUHCR2022/0050

BETWEEN:

THE KING

-and-

JEFFREY DANIEL

**Appearances:**

Mr. Paulio Williams and Mrs. Shannon Jones-Gittens for the Crown

Mr. Wendel Alexander and Mr. Wayne Marsh for the Defendant

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2023: November 2<sup>nd</sup>  
November 29<sup>th</sup>  
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**JUDGMENT**

- [1] **BAKRE J:** By an Indictment filed on 25<sup>th</sup> March 2022 the Defendant Jeffrey Daniel was charged with the offense of murder contrary to the common law. The particulars of the offense are as follows:

***JEFFREY DANIEL*** on the 21<sup>st</sup> day of May 2021 at Newfield in the Parish of Saint Phillip in Antigua and Barbuda, murdered ***EMMANUEL ROBINSON ROBERTS*** also known as ***DAVID ROBERTS***.

- [2] The Defendant was arraigned on 6<sup>th</sup> May 2022 and pleaded not guilty to the sole count on the Indictment.
- [3] The prosecution called thirteen (13) witnesses to advance their case.

- [4] At the end of the prosecution's case Defence Counsel Mr. Alexander made a no case submission arguing that the Defendant had no case to answer. This submission was rejected on 13<sup>th</sup> November 2023 and the trial proceeded.
- [5] The Defendant at the start of his case opted to give an unsworn statement from the dock and called one witness.
- [6] Trial of this matter concluded on 15<sup>th</sup> November 2023 with counsel for the Crown and Defendant giving their closing addresses to the court.
- [7] The court must now give a decision having regard to the evidence presented at trial, the submissions of Counsel for the parties and the law.

### **The Offense**

- [8] **Blackstone's Criminal Practice 2024** described Murder as "when a [person] ... unlawfully killeth ... any reasonable creature in *rerum natura* under the King's peace, with malice aforethought". It therefore follows that the Crown must establish the following elements to prove the offense of murder:
  - 1. Someone died;
  - 2. The Defendant killed the person;
  - 3. He intended to cause death or serious bodily harm to the deceased; and
  - 4. The Defendant was not acting with any legal justification at the time of the killing.
- [9] As in any criminal case, the burden of proof rests squarely upon the Crown. The Crown must also prove the case beyond reasonable doubt.
- [10] The Defendant is under no obligation to prove his innocence.

### **Jurisdiction of the Court**

- [11] This case is being tried by a judge alone pursuant to the ***Criminal Proceedings (Trial by Judge Alone) Act No.8 of 2021 (as amended by the Act No. 5 of 2023)*** at Section 5(1). Pursuant to the legislation the Defendant filed a Certificate of Confirmation of Legal Advice on the Decision to elect Trial by Judge Alone on 28<sup>th</sup> October 2023. Accordingly, on 30<sup>th</sup> October 2023 this court ordered the trial was to proceed by judge alone.

## **Background**

[12] The case for the Crown is that on the 21<sup>st</sup> of May 2021 around midnight the Defendant went to the home of the now deceased Emmanuel Roberts in Newfield to see his ex-girlfriend Jehmina Jackson. Mr. Roberts was awakened by Ms. Jackson who brought the Defendant's presence to his attention. Upon realising that the Defendant was in the yard, Mr. Roberts went downstairs, armed himself with a cutlass and went outside to confront him. The men were heard shouting at each other and there was a scuffle. After the scuffle the Defendant was seen with the cutlass in his hand.

[13] Mr. Roberts never returned home that night. The next morning, he was found dead at his garage a few meters away from the yard. The evidence of the pathologist was that he died from loss of blood from a laceration to the chest which also broke two of his ribs.

[14] The Defendant was arrested and subsequently arraigned for the murder of the deceased.

[15] The Defendant admitted to engaging in a fight with Mr. Roberts at his home in Newfield but denied killing him. He said that during the fight he disarmed Mr. Roberts and threw the cutlass into some bushes and thumped him.

## **Evidence for the Prosecution**

### ***Jessica Roberts***

[16] Mrs. Jessica Roberts is the widow of the deceased.

[17] Mrs. Roberts testified that on 16<sup>th</sup> May 2021 at around 9:00pm she was at home with her husband when the Defendant entered their yard. He was asking for her daughter Jehmina. She said her husband asked the Defendant why he wanted to speak with Jehmina, she also said that Jehmina did not wish to speak with the Defendant.

[18] On 21<sup>st</sup> May 2021 Mrs. Roberts and her husband were at home together in their bedroom upstairs. Jehmina was also in the house. Jehmina came to her bedroom and told her husband that the Defendant was in the yard. Her husband then went downstairs and after some time Mrs. Roberts heard a commotion. She heard her

husband say, "*me tell you nah come back in me yard*". She also said she heard chopping sounds. All this time she remained in bed. She then heard a sound and went downstairs and through the back door to check on it, outside she saw the Defendant standing in the yard with a cutlass in his hand. She recognised the cutlass as her husband's cutlass.

[19] She said she saw the Defendant dropped the cutlass and walked towards a tank in the yard to wash his head and he said, "*the man chop me nah*". Mrs. Roberts said that when she saw this, she closed the door and that at this time she did not see her husband.

[20] Mrs. Roberts said that she then went back upstairs and that Jehmina told her to call the police which she did. About half an hour to an hour later the police arrived. She still had not seen her husband up to this point. When the police came Mrs. Roberts went outside to speak with them and brought their attention to the cutlass the Defendant dropped on the ground. The police questioned Mrs. Roberts about the incident between her husband and the Defendant, took the cutlass with them and left the property.

[21] After the police left Mrs. Roberts went back to bed and at around 5:30am/6:00am Jehmina came over to her bedroom and told her to call the police again as Mr. Roberts still had not returned to the house. Mrs. Roberts called the police and she had a conversation with them. Afterwards, she returned upstairs and waited for her husband to return home.

[22] In the morning she and Jehmina went and searched outside for Mr. Roberts. They went out to the entrance of the yard where she saw one of her husband's slippers and a trail of blood. They continued to walk towards Mr. Roberts' garage which is near their house and upon entering, Mrs. Roberts saw her husband kneeling beside the car with one of his hands on the car. She approached him and checked his pulse but could not feel anything, she then realised that he was dead.

[23] Upon coming to this realisation, she became distraught. Others who were nearby heard her crying and ran down to see what had happened. Mrs. Roberts then called 911 and an ambulance arrived at the scene and took Mr. Robert's body away.

[24] On 17<sup>th</sup> June 2021 she went to identify her husband's body at the Holberton Hospital.

[25] On cross examination Mrs. Roberts said that she had seen the cutlass before in her house and that it was very sharp. She said that during the commotion neither she nor her daughter went downstairs to check on what was happening. She also said that she did not look outside when she heard the chopping sounds.

***Jehmina Jackson***

[26] Ms. Jackson is the stepdaughter of the deceased and an ex- girlfriend of the Defendant.

[27] She said that on 16<sup>th</sup> May 2021 at about 9:00pm she came home from a church service and that her mother and stepfather were at the house when she arrived. She went to bed and then heard someone coming up a ladder which led to her bedroom window. The Defendant, her ex-boyfriend, was climbing the ladder. Her mother and stepfather became aware that the Defendant was on the ladder and her mother told her to call the police which she did.

[28] She said that when the police arrived the Defendant was no longer at the yard.

[29] Ms. Jackson explained that she and the Defendant were in a relationship for nine years and broke up three years prior to May 2021 because he refused to stop drinking. She said that 16<sup>th</sup> May 2021 was the first time the Defendant came to the house since their relationship ended.

[30] On 21<sup>st</sup> May 2021 at around midnight Ms. Jackson was laying in her bed when she heard her stepfather's car window shatter and the alarm go off. The car was parked in front of the house in the yard.

[31] She said that she woke her stepfather and that he took his cutlass and went outside, she then heard scuffling between the two men while she remained upstairs. She heard the Defendant say, "*wah you knock me for?*" After a few minutes she went downstairs and looked through the door where she saw the Defendant washing blood off his face at the pipe.

[32] The police were called, came to the house and spoke to her mother but she was unable to hear the conversation between them. The Defendant was not present when the police arrived. The police then left, and her stepfather had not returned to the property at this point.

[33] She said that in the morning she still did not see her stepfather. She walked up the main road from her house and approached the nearby garage where she saw her stepfather in a kneeling position and bent over, he was leaning on a truck parked in the garage. He had blood all over him. A call was made to 911 and an ambulance subsequently came. Her stepfather was checked and pronounced dead.

[34] On cross examination Ms. Jackson said she did not see any injuries on the Defendant when she saw him washing blood off his face after the scuffle. She also indicated that the scuffle lasted for a long while and in excess of fifteen minutes.

***Otis Archibald***

[35] Mr. Archibald is a Corporal of Police and was attached to the Freetown Police Station in May 2021.

[36] His evidence is that on 16<sup>th</sup> May 2021 he was on duty at the Freetown Police Station when he received a phone call from the 911 Department, Ms. Jackson was on the line and reported that there was a trespasser at her home in Newfield, she identified the trespasser as her ex-boyfriend Jeffrey Daniel.

[37] Corporal Archibald said that following the call he and another officer, Constable Terry, proceeded to Ms. Jackson's home and that on arrival they identified themselves to Mrs. Roberts and Ms. Jackson and carried out searches in the area surrounding the house. During the search he did not find the alleged offender or the Defendant. Following this he returned to the police station and made a note of the report.

[38] On 21<sup>st</sup> May 2021 sometime after midday Constable Archibald was on duty at the Freetown Police Station when personnel from the Forensic Evidence Recovery Unit (FERU) arrived. He opened a security vault as a result of a request made by the FERU personnel and they handed a cutlass with a white cloth around the handle to a Corporal O'Garro. Corporal O'Garro placed the cutlass into a brown paper bag and he (Corporal Archibald) then placed a mark on the bag containing the cutlass for future identification.

***Jamie Williams***

[39] Mr. Williams is a Police Constable and was stationed at the Freetown Police Station in May 2021.

[40] His evidence is that on 21<sup>st</sup> May 2021 he was at the Freetown Police Station when he received a phone call from Jessica Roberts. He said that he and one Corporal Nelson responded to the call. He said they met Mrs. Robert's at the entrance of her house and that she told them that her husband and a young man were fighting in the yard. According to Constable Williams Mrs. Roberts reported that while she was

looking on she saw her husband run to the black water tank, wash his hands and face and then run out of the yard, she also reported that her husband had a cutlass in his hand at the time. He said that Mrs. Roberts showed him where the cutlass was dropped on the ground in front of her yard.

[41] Constable Williams took the cutlass into his possession, showed it to Corporal Nelson and then placed it into a bag. He and Corporal Nelson drove west in search of the Defendant and Mr. Roberts without success. After this the officers returned to the police station and made phone call to the Mount Saint John Medical Centre (MSJMC) to request that they be informed if anyone presented themselves with injuries.

[42] On the same morning at around 5:00am he received a call, Mrs. Roberts was on the line and indicated that her husband was found in Newfield. As a result, he and Corporal Nelson went to a garage west of Mrs. Robert's house where they saw Mr. Roberts on the ground. Photographs of the scene were taken, the crime scene was processed and the body was subsequently removed.

#### ***Corporal Nelson***

[43] He was with Jamie Williams and gave evidence in the same line.

#### ***Collin Hope***

[44] ASP Collin Hope gave evidence that he visited Freetown police station with respect to the incident and requested for the station movement diary. He said he requested for and got a certified copy of the extract. He tendered the extract as Exhibit CH1.

Under cross examination, he said he cannot recall if there was an earlier report of trespass on the property.

#### ***Inspector Theodore Horne***

[45] He gave evidence that upon a report on the incident, he visited the garage where the Deceased's body was found.

[46] He narrated how he traced and arrested the defendant through his mother and at his workplace. He said he cautioned and arrested the Defendant and took him to custody. He identified the Defendant. Exhibit TH1 was tendered through him.

***Egan Anthony***

[47] Mr. Anthony is a Senior Sergeant of Police.

[48] In May 2021 he was stationed at the Langford's Police Station and was attached to the Serious Crimes Unit.

[49] He said that on 22<sup>nd</sup> May 2021 he was on duty at the Langford's Police Station where he and a Constable George conducted an interview with the Defendant. The Defendant's attorney Mr. Wendell Alexander was present.

[50] During the interview the Defendant was shown a cutlass with what appeared to be blood on it and the Defendant identified the cutlass as the cutlass Mr. Roberts had during the altercation at his home. The interview conducted with the Defendant was recorded on a police interview form which was tendered as **Exhibit "EA1"**.

***Dr. Sabharmathi Saravanaperumal***

[51] Dr. Saravanaperumal is a District Medical Officer.

[52] Her evidence is that on 21<sup>st</sup> May 2021 she went to Newfield where she saw the body of Emmanuel Robinson Roberts. She said that his right hand was on the car near to the body and that he was in a leaning position and face down. She was unable to examine the site of the injury as police informed her that the position of the body could not be changed at that time.

[53] Dr. Saravanaperumal observed *rigor mortis* in the body and declared Mr. Roberts dead at 9:05am on 21<sup>st</sup> May 2021.

***Alpheus O'Garro***

[54] In May 2021 Sergeant O'Garro was attached to the Forensic Evidence Recovery Unit.

[55] He said that on 21<sup>st</sup> May 2021 he visited the crime scene at Newfield for the purpose of recovering any forensic evidence that was present.

[56] He conducted a walk-through of the crime scene and made notes of his observations. During the walk through he observed a red substance on an asphalt road which appeared to be blood, the red substance led from the gate of the deceased's yard in an eastward direction, the trail led to a shed which had a pick-up parked inside and a car. He observed a man in the fetal position with his left hand bent under his body and his right hand resting on top of the car.

[57] He took photos of the body and processed the crime scene by placing identification numbers at the things he observed during the walk-through. He also recovered several exhibits at the scene and at about 11:45am the body was removed and taken to the Barnes Funeral Home.

[58] After this Sergeant O'Garro returned to the Langford's Police Station where the Defendant was being held in custody. He observed bruises on different parts of the Defendant's body including his face, chest, arms and back. The bruises were photographed by a Corporal Haywood who was the Crime Scene Photographer.

[59] On 22<sup>nd</sup> May 2021 he was given a cutlass by Corporal Archibald at the Freetown Police Station. He said that on 25<sup>th</sup> May 2021 at about 3:10pm he was on duty at FERU where Constable George handed over the cutlass which was given to her previously on 22<sup>nd</sup> May 2021. He placed the cutlass into an evidence bag and observed Corporal Archibald placing his signature on the said evidence bag which was sealed. Sergeant O'Garro said that the bag was then photographed and placed into secure storage at FERU. He said he signed the bag and then gave it to Constable George and that when he saw the bag again on 25<sup>th</sup> May 2021 the bag was in the same condition as it was sealed.

[60] The cutlass was entered into evidence as **Exhibit "AO1"**.

[61] On cross examination Sergeant Haywood said that he observed bruises on the Defendant, but that the Defendant did not have any wounds or cuts to his body.

### ***Corporal Rafique Haywood***

[62] Mr. Haywood is a Corporal of Police and in May 2021 he was attached to the FERU. He has training and extensive experience in crime scene investigation.

[63] On 21<sup>st</sup> May 2021 while at the crime scene he observed the blood trail which led to the garage where the body was found.

[64] He took photos of the scene and observed a wound to the left side of the deceased's chest which he also photographed. Corporal Haywood also photographed the cutlass that was taken from the scene and photographed the Defendant.

[65] On 17<sup>th</sup> June 2021 Corporal Haywood attended a post-mortem examination of the deceased at the Holberton Hospital done by a Dr. Lester Simon. He photographed the body of the deceased while he was there.

[66] The photos taken at the crime scene and at the post-mortem examination were uploaded to a secure network at the police headquarters and several CDs of the photos taken were labelled and signed by Corporal Haywood. The CD containing the photos of the crime scene were entered into evidence as **Exhibit "RH1"** and shown to the court at trial.

### ***Dr. Lester Simon***

[67] Dr. Simon is a pathologist at the Mount Saint John Medical Centre.

[68] He performed the post-mortem examination on the deceased at the Holberton Mortuary on 17<sup>th</sup> June 2021. He prepared a post-mortem examination report containing the findings of his examination.

[69] In his report Dr. Simon states that there were large amounts of blood all over the body from the chest to the feet. He noted that there was a laceration to the left upper chest measuring 14x5x3cm and that there was a laceration to a major blood vessel on the left side of the neck. Additionally, two of the deceased's ribs were fractured. The cause of death was found to be a massive loss of blood caused by a laceration to the chest.

[70] Dr. Simon stated that a sharp object and severe force were used to inflict the injury found to the deceased's chest.

[71] On cross examination Dr. Simon was questioned about whether the position of the deceased's body would have been a factor leading to his death after sustaining the laceration, in response he stated that the position of the body would not have been an important factor, and that death would depend on the extent of the injury suffered.

### ***Amethyst George***

[72] Ms. George is a Corporal of Police, she was stationed at the Langford's Police Station and attached to the Serious Crimes Unit. On 21<sup>st</sup> May 2021 she and Constable Francis interviewed the Defendant following the incident with the deceased in Newfield. The interview was recorded by Constable George on a Police Interview Form which was entered into evidence as **Exhibit "AG1"**.

### ***Exhibit "EA1"***

[73] **Exhibit "EA1"** is the Question-and-Answer Interview conducted by police with the Defendant on 22<sup>nd</sup> May 2021. In the interview the Defendant explains that on the night of 20<sup>th</sup> May 2021 he left home at about 9:30pm and went to Newfield on his bicycle. He was going to visit Ms. Jackson at her home. When he got there, he saw the deceased standing outside with a cutlass in his hand and asked him for Jehmina. Having received no response, he turned to leave when the deceased attacked him. The Defendant said that a fight ensued and that he got the cutlass away from the deceased and threw into the bushes.

[74] **Exhibit "EA1"** is the Question-and-Answer Interview conducted by police with the Defendant on 22<sup>nd</sup> May 2021. In the interview the Defendant explains that on 16<sup>th</sup> May 2021 he went to Jehmina's home to see her, he said he climbed a ladder that leads to her bedroom window that night to see if she was there and that her parents shouted at him when they realised he was on the roof. Mrs. Roberts asked him to leave the premises at that time.

[75] On the night of 20<sup>th</sup> May 2021 he left home at about 9:30pm and went to Newfield on his bicycle. He was going to visit Ms. Jackson at her home. When he got there, he saw the deceased standing outside with a cutlass in his hand and asked him for Jehmina. Having received no response, he turned to leave when the deceased attacked him. The Defendant said that a fight ensued and that he got the cutlass away from the deceased and threw it into the bush and then went to wash his face.

[76] When asked whether he consumed any alcohol on 20<sup>th</sup> May 2021 the Defendant answered "no", he also denied that he used illegal drugs.

### **The Case for the Defendant**

#### ***The Defendant's Unsworn Statement from the Dock***

[77] At the end of trial the Defendant opted to give an unsworn statement from the dock.

[78] He said that on 16<sup>th</sup> May 2021 he went to visit Jehmina Jackson at her home in Newfield as she was his friend. He had been to Jehmina's home several times before and that on that night he was only trying to get her "digits" to communicate with her.

[79] His account of the events of 21<sup>st</sup> May 2021 was that at 10:35pm that night he arrived at Jehmina's home in Newfield where he saw Mr. Roberts standing in the yard with a cutlass. The Defendant approached Mr. Roberts and asked if Jehmina was inside the house, he received no response. As the Defendant turned to leave Mr. Robinson grabbed his shirt and began to beat him with the cutlass. Both men fell to the ground and a scuffle ensued. The Defendant said that during the fight he disarmed Mr. Roberts and threw the cutlass aside, he also struck Mr. Roberts twice with his fists. After this the Defendant went to wash his face by a pipe in the yard as there was blood by his forehead, he saw Mrs. Roberts and Jehmina while he was at the pipe and asked them for a cloth to put on his head, neither of them responded. The Defendant said that he used his own shirt to tie his head and then went home after midnight.

[80] That is the extent of the statement given by the Defendant. He provided no explanation as to how Mr. Roberts sustained the laceration to his chest.

### ***Dario Hughes***

[81] The sole witness for the Defendant was Mr. Dario Hughes.

[82] The Defendant and Mr. Hughes were friends. On 20<sup>th</sup> May 2021 the two were drinking and smoking together with some other men. Later in the night Mr. Hughes saw the Defendant playing football at the football field in Piggotts Village, he was "falling down" because he was "nice". He said that after drinking he left the Defendant just before 11:00pm that night and went home.

[83] On the morning of 21<sup>st</sup> May 2021 at around 6:00am he saw the Defendant again and he was acting normally, the Defendant said nothing to him about the incident which occurred on the night before.

[84] Under cross examination the witness was asked whether he could ride a bike for a long distance in the dark while drunk, in response he said no. He also stated that he would be able to play football if he drank to the point of being, in his words, "nice".

## ***Closing Arguments***

[85] Both Counsel addressed this court at the end of the trial. I will now go through their submissions.

### ***Defendant's Closing Speech***

[86] Counsel for the Defendant Mr. Alexander in his closing arguments submitted that the prosecution failed to prove its case to the requisite standard.

[87] Counsel raised the defence of accident and argued that the court must ask itself whether the actions of the Defendant were intentional. He asked the court to find that the actions of the Defendant were not willed, deliberate or intentional.

[88] Counsel said that the fight between the Defendant and the deceased arose from circumstances where the Defendant was attacked by the deceased who at the time was armed with a sharp cutlass. The evidence before the court from Mrs. Roberts was that she heard chopping sounds and that the inference could be drawn that those were the sound of the deceased hitting the Defendant with the cutlass. He argued that the evidence shows that the Defendant received several blows and that the two men fell to the ground in a struggle, in the process the deceased got cut and the question to be determined is whether the cut sustained by the deceased was intentional inflicted by the Defendant or whether it happened during the struggle by accident. He reminded the court that the Defendant maintains that he did not cut the deceased and that he does not know how the deceased got injured. Counsel argued that the court must conclude that the Defendant did not have the intention to kill and that if he got injured this was by accident during the struggle between the two men.

[89] Mr. Alexander also posited that a Defendant need only raise a defence *prima facie* and that it was for the prosecution to disprove beyond a reasonable doubt that the injury, if inflicted by the Defendant, was not done by accident. He submitted that the prosecution has a duty to negative the defence to the requisite standard and that they were not able to do this.

[90] Counsel said that the court has no evidence that the Defendant intended to kill the deceased. He also pointed out that this was a peculiar case where no one else can speak to factual account of what happened except the Defendant who was involved in the fight. He argued that the Defendant at best was a mere trespasser to the

deceased's property and that when he went the deceased's home, he had no intention to fight with anyone.

[91] Counsel argued that the defence of accident is available to the Defendant despite the fact that the Defendant was an uninvited visitor to the deceased's property.

[92] He also said that an examination of the Defendant's lengthy interview with police, which lasted more than four (4) hours, shows that the Defendant was never able to say how the deceased got cut.

[93] Counsel argued that the court can look to the actions of the Defendant after the incident to see whether he had the requisite intent. The Defendant asked Mrs. Roberts and Ms. Jackson for a cloth to tie his head, he went to work the next morning, Counsel said that this behaviour is not consistent with someone who went to the deceased's home with the intent to kill or inflict grievous bodily harm. Counsel also argued that the evidence shows that the Defendant did not know he injured the deceased and that the court can look at all the surrounding circumstances to form a complete impression.

[94] As it relates to the defence of self defence counsel referred to the court to the cases of **Palmer v R [1971] A.C. 814** and **R v Beckford [1987] 3 All ER 425** in support of his submission that a man can use reasonable force in self-defence. Counsel further argued that the **Constitution of Antigua and Barbuda, Cap 23 at section 4(2) (a)** provides that a killing is justifiable if a person used reasonable force in the defence of his person.

[95] Counsel said that the learning from **R v Palmer (supra)** goes on to state that the Defendant must be judged as believed them to be and that on the issue of self-defence one cannot weigh up the niceties of the actions of the Defendant on the spur of the moment. He says that the evidence before the court is that the deceased who was armed with a cutlass attacked the Defendant when the Defendant was not armed. The Defendant was then heard saying "*wah you knock me for?*" indicating that the deceased attacked first and was the aggressor.

[96] Counsel also argued that had the police responded promptly they could have arrived at the property in twenty minutes and before the scuffle ended.

[97] Counsel turned the court's attention to the Defendant's question and answer interview, which was conducted by Senior Sergeant Anthony, that is **Exhibit "EA1"**. He specifically points out question 56 which shows that he had been invited to the deceased's home by Ms. Jackson following their breakup. He also pointed the court to questions 74, 75, 80, 89 and 115-131 the answers to which document the Defendant's explanation of the struggle between himself and the deceased which he argued supported the defence of self-defence.

[98] Counsel also highlighted an inconsistency in the evidence given by the prosecution witness as it relates to the date the Defendant was seen climbing onto the ladder leading to Ms. Jackson's bedroom window. He stated that the Defendant climbed the ladder leading to Ms. Jackson's window on 16<sup>th</sup> May 2021 and not on the night of 21<sup>st</sup> May 2021 as Ms. Jackson stated in her evidence.

[99] In conclusion Counsel submitted that the case is one built on circumstantial evidence and that where the strands do not lead the court to one conclusion then it would be difficult to prove the offense, he also argued that unless the proper inferences can be drawn then the court should have no difficulty in finding the Defendant not guilty.

### ***Prosecution Closing Speech***

[100] At the start of his address Mr. Williams for the Crown indicated that the Crown relies on their submissions on the no case submission which was heard earlier in this trial.

[101] Counsel went on to say that the prosecution has discharged its evidential and legal burden in that the ingredients for murder have all been established. He argued that the evidence taken all together leads to one inescapable conclusion, namely, the Defendant chopped the deceased. Counsel argued that the severity of the wound shows the necessary intent as two of the deceased's ribs were fractured and a major artery in the neck was ruptured.

[102] Counsel pointed the court to question 120 of **Exhibit "EA1"** which he says demonstrates that the Defendant felt that the deceased and Mrs. Roberts were preventing him from seeing Jehmina that night after he rode his bicycle for more than an hour in the night to see her. Counsel argued that the Defendant was not acting with any legal justification when he injured the deceased, and that self-defence was not raised either on the Crown's case and the Defendant's case, Counsel noted that in the Q & A the Defendant states that he did not hit the deceased with the cutlass, he also noted that it was never put to any of the witnesses nor the Defendant that he was defending himself at the time of the incident. Counsel posits that the Defendant retaliated against the deceased after he got a hold of the cutlass as in the Defendant's own words, he got the "over hand" and took the cutlass from deceased, at which point, says Counsel, he would have had no fear of the deceased.

[103] As for the evidence of Dario Hughes that the Defendant was drinking on the night of the incident Counsel posited that intoxication is not a defence.

[104] Counsel briefly addressed the court on the issue provocation to say that it is a partial defence and that to rely on that defence the subjective condition must be established that the Defendant, if he was a reasonable man, would have acted as he did in the circumstances of the incident on 21<sup>st</sup> May 2021.

[105] Mr. Williams also commended the prosecution witnesses as witnesses of truth. On the other hand, he noted that the Defendant's testimony was not tested he also stated that the Defendant's reason for going to the deceased's yard was to get Ms. Jackson's "digits" indicating that there was no communication between the two prior to 21<sup>st</sup> May 2021, contrary to what the Defendant told the court.

[106] Counsel queried whether the Defendant can be believed as there are inconsistencies in his account of the night in question. Counsel noted that the Defendant told police that he did not drink on 20<sup>th</sup> May 2021, yet his own witness Mr. Hughes told this court that the two of them drank two boxes of wine on that night. He also noted that the Defendant's position is that he threw the cutlass into some bushes after disarming the deceased, the evidence from prosecution witnesses however is that the accused was seen with the cutlass in the deceased's yard when he returned to wash his face and the evidence of Constable Williams is that he retrieved the cutlass from the front of the deceased's yard.

[107] Counsel for the prosecution asked the court to apply common sense to the matter before it, he said that the Defendant had ample time to leave the deceased's yard given the length of the struggle, he also said that the Defendant did not have any injuries which showed that he was rolling around on the ground, the deceased however had such injuries as documented by the pathologist.

[108] Counsel also stated that the defence of accident does not arise on the case before it. In the circumstances Mr. Williams asked the court to return a verdict of guilty and noted that in the alternative the court could convict on the lesser offense of manslaughter.

## ANALYSIS

[109] I wish to address two inconsistencies in the evidence as a preliminary issue:

1. The date the Defendant climbed the ladder leading to Ms. Jackson's bedroom: Ms. Jackson has said that this occurred on the night of 21<sup>st</sup> May 2021, Defence Counsel in his closing address informed the court that this is incorrect, and that Defendant climbed the ladder on 16<sup>th</sup> May 2021. The court has looked at **Exhibit "EA1"** wherein the Defendant explains that he climbed the ladder on 16<sup>th</sup> May 2021. The Q & A being a record of events reported shortly after the

Defendant's visits to the deceased's home, the finding of the court is that the Defendant was on the ladder on 16<sup>th</sup> May 2021.

2. The evidence of Constable Williams that Mrs. Roberts reported she saw her husband run to the black water tank, wash his hands and face and then run out of the yard with the cutlass in his hand: Having examined the accounts from Mrs. Roberts, Ms. Jackson and the Defendant himself it is clear that Constable Williams' account cannot be what transpired, the evidence from the other Crown witnesses is that the Defendant was washing his face at the tank, Mrs. Roberts and Ms. Jackson both said they saw the Defendant with the cutlass in his hand and the Defendant himself said that he took the cutlass from the deceased. This contradiction in my view is not material as the evidence is merely a report of what the constable was allegedly told, it is contrary to even the account of the Defendant that he went to wash his face by the tank.

**Element 1: Someone died.**

[110] The first and second witnesses gave evidence of how they discovered the body of the deceased in the morning when they went in search of him after he left the house in the night to confront the Defendant.

[111] Some of the other witnesses are the police officers that either visited the scene where the deceased was later found dead or investigated the case. There was also the evidence of the doctor that pronounced the deceased dead and that of the pathologist that gave evidence on the cause of death after the post-mortem examination.

[112] Mrs. Roberts also gave evidence that she identified the body of the deceased at the morgue.

[113] Clearly the element of the offence relating to the death of the deceased was proved by the prosecution and same was not controverted by the defence.

[114] I am convinced that the prosecution proved that the deceased died.

**Element 2: The Defendant killed the deceased.**

[115] On whether the death was caused by the Defendant, this court has considered the case presented by the prosecution and the Defendant. The Defendant's presence

at the scene, his prior altercation with the Deceased, and his actions on the night in question are undisputed. These are undisputed facts presumed admitted.

[116] As stated earlier, the Defendant and the deceased were last seen together in a scuffle. The evidence of the first and second witnesses of the prosecution was that the Defendant was seen subsequently washing blood off his face and holding the cutlass that the deceased left the house with, he even requested for cloth to stop the bleeding on his face.

[117] The deceased was later found dead from loss of blood resulting from laceration on the chest hours after the scuffle. The pathologist who gave evidence for the prosecution said from his experience sharp object and severe force were used to inflict the injury.

[118] In the instant case there is no direct evidence, as there are no other eyewitnesses except the Defendant to narrate what transpired at the scene and what led to the death of the deceased. The evidence of the Defendant is that he merely thumped the deceased, but the deceased was found dead with a cut on his chest, the Defendant was the last to be seen with the deceased. The Defendant was seen with the sharp cutlass the deceased had left the house with washing blood off his face.

[119] It is now clear that in many criminal cases, direct evidence is not easily found and, in such cases, circumstantial evidence may be relied upon. In **Halsbury's Laws of England (Volume 27(2021) at paragraph 453** it states:

***“Since many crimes are committed in secrecy, it is inevitable that, in a criminal trial, direct proof of guilt is often lacking, and a great deal of the evidence is indirect or circumstantial. ‘Circumstantial evidence’ is evidence of one or more facts (such as motive, opportunity, or fingerprints left at or near the scene of the crime) from which other facts (which may be the facts in issue, or secondary or collateral facts) may then be inferred or deduced.***

***A single strand of circumstantial evidence may carry little weight, but when combined with other such evidence the cumulative effect may become very strong. In the absence of evidence directly proving the facts in issue, the Defendant may even be convicted solely on circumstantial evidence: in a case of murder, for example, there may be a conviction notwithstanding that the body is never found, provided that there is sufficient circumstantial evidence to convince the jury that the facts cannot be accounted for on any rational hypothesis other than murder.”***

[120] Circumstantial evidence may be relied upon to convict a defendant where all available pieces of evidence are clubbed together to form a complete chain of events which beyond any reasonable doubt points to the guilt of the Defendant. (See **McGreevy v DPP [1973] 1 All ER 503.**)

[121] The prosecution has presented a case built on circumstantial evidence. No direct evidence places the cutlass in the Defendant's hands at the time of the fatal injury. However, the testimony of Ms. Jackson and Mrs. Roberts, combined with the pathologist's findings, create a compelling narrative of the Defendant's culpability.

[122] Circumstantial evidence that is strong, compelling, cogent, unequivocal and irresistibly points to the guilt of the Defendant as seen in this instance, can sustain a charge against a defendant.

[123] The circumstances of this case are clear and unassailable that the Defendant is the one that caused the death of the deceased. This court is unable to resist the only conclusion that the death of the deceased was caused by the Defendant that was last seen with him in a scuffle and shortly after, seen with the cutlass that the deceased went to confront him with. The first witness also gave evidence that she heard "chopping sounds" while the scuffle was going on.

[124] From the pictures of the Defendant showing the cuts on him, those could not be chopping as they looked more like mere cuts.

[125] I am convinced beyond doubt based on all the prevailing circumstances that the Defendant inflicted the laceration which led to the loss of blood and the eventual death of the deceased.

[126] It is my respectful view that the prosecution proved beyond doubt that the Defendant caused the death of the deceased.

**Element 3: The Defendant intended to cause death or serious bodily harm to the deceased; and**

**Element 4: The Defendant was not acting with any legal justification at the time of the killing.**

[127] Having decided the first two elements of the offence, the crux of this case then lies in determining whether the Defendant's actions constituted murder. The legal

definition of murder necessitates the establishment of *mens rea* (the intention to kill or cause grievous bodily harm) and *actus reus* (the unlawful killing of another).

[128] This court while considering the third element of the offense of murder will also examine the defences available to the Defendant i.e. whether he had any legal justification for doing what he did.

[129] It is now trite that in murder trials, the onus is on the prosecution to prove the case beyond reasonable doubt by establishing all the elements of the offence and the court is enjoined to look at the case presented to consider every conceivable defence open to the Defendant.

[130] It cannot be over emphasized that this is a judge alone murder trial, and the court is both a court of law and the tribunal of fact and therefore acts in the position of a jury in the consideration of the facts presented. The court should continually advise itself that consideration of the law must be viewed along with the facts as presented.

[131] The case of the Defendant is that he never struck the deceased with the cutlass and that when the deceased continued to beat him with the cutlass which gave him cuts all over his body; he wrestled the cutlass from the deceased and threw it into some bushes. He however admitted that he gave the deceased a thump.

[132] The evidence of the pathologist that examined the deceased is that the deceased died of loss of blood from a laceration. He also stated that the deceased had two ribs on his chest broken. The pathologist said the injury was inflicted with a sharp object and severe force.

[133] The case of the Defendant that he did not strike the Defendant seems irreconcilable with the facts as presented by the prosecution. From the circumstances of the case, the deceased died after the scuffle with the Defendant. There was the use of a sharp cutlass during the scuffle that involved only the Defendant and the deceased. The deceased died of loss of blood arising from laceration. However, the Defendant said he did not strike the deceased but only thumped him, he said despite the cuts inflicted on him, he only wrestled the cutlass and threw it away and then thumped the deceased. This court has refused to accept this version of the events.

[134] The defences urged on the court by Defendant's counsel are accident and self-defence. One should ask, are these defences available to a Defendant who denied the act of killing the deceased? Is it consistent to deny the act and on another note say, **"even if my client did it, it was an accident or in self-defence"**. One stops to wonder if the submissions are not at variance with the position presented by the Defendant himself.

[135] A similar scenario was before the court **R v Bonnick [1977] EWCA Crim J1021-6** where the defendant on a charge of wounding asserted his innocence and claimed that he was not present at the time the offense was committed, the evidence presented to the court demonstrated otherwise and confirmed the defendant's presence at the scene. In light of this the defendant counsel advanced the defence of self-defence. The court noted that:-

***“Common sense indeed rebels against allowing a defendant to say on his oath “I was not there and did not do it” and through his Counsel “I did it but I was acting in self-defence” It might indeed be thought to confuse judgment and hinder justice if Counsel were to be encouraged, in the proper discharge of their duty to do their best to ensure that their clients are not improperly convicted, to raise defences so completely contrary to their instructions.”***

[136] It is convenient to believe that there must first be an admission of the act of killing the deceased before a defence of accident or self-defence may be considered. This is however not the position of the law in a murder trial. The Defendant is presumed innocent and must be availed with all possible defences whether canvassed by him or not (See **R v Hopper 1914-1915 All ER Rep 914** and **Von Starck v R. [2000] W.L.R. 1270**).

[137] I recognize the fact that this is a murder case, and the entire burden is on the prosecution to prove beyond reasonable doubt the fact that Defendant is liable as charged. The Defendant is not duty bound to prove or even say anything. Notwithstanding the conflict between the defendant's case and the submission of his counsel, the court is enjoined to see any conceivable defence based on the case presented by the prosecution that will avail the Defendant.

[138] Notwithstanding that the Defendant did not admit that he struck the deceased, the court will still consider the facts as presented by the prosecution as it is duty bound to look at all available defences to see if any of them will avail the Defendant in the circumstance.

[139] The fact before this court is that the deceased, a sixty-two-year-old man had gone out to confront the Defendant, a twenty-two-year-old young man with a sharp cutlass after warning him to stay off his yard. The testimony of Mrs. Roberts was that she heard the Defendant say, *“wah you knock me for”*. These testimonies are to the effect that there was an argument between the deceased and the Defendant which resulted in a scuffle.

[140] The position of the counsel for the Defendant is that if the court looks at the circumstances, it can be inferred that there was an accident because when the

deceased attacked the Defendant, in the bid to wrestle the cutlass from the deceased, they both fell on the ground and if there was a cut arising from the fall, it would have been an accident.

[141] The Defendant was the only eyewitness to the event. The extent of the injury on the chest of the deceased was a deep laceration described by the pathologist as 14x5x3cm wound which could have been caused by the application of a sharp object. Also, the pathologist stated that the laceration must have been as a result of a severe force to have broken two ribs.

[142] It is my understanding that for the defence of accident to avail a Defendant, certain elements must be present. It must be clear that the act was an accident (that it was most unexpected in the situation) and that there were no criminal intentions. The act was done in the course of doing a lawful act and in a lawful manner and must have been done with caution. The defence of accident was explained by Barrow JA in **Sherfield Bowen v The Queen Criminal Appeals No. 4 of 2005**) where he stated as follows:

*“[49] As the trial judge mentioned in his direction, the word accident is used in the criminal law in different ways. One way in which it is used, in a case of homicide, is to refer to a death that the defendant causes, in the course of performing a lawful act, without intending to kill. In this sense, accident is used to refer to an unintended consequence. Another way in which accident is used is to refer to a death that the defendant causes by doing an action that he did not intend to do. Used in this sense, accident refers to an involuntary or unintended action. It follows, in this latter situation, that the consequence was also unintended.*

*[50] In both senses accident is used to refer to the absence of intention. If the jury is satisfied that a killing was an accident in either of those senses, it must return a verdict of not guilty of murder. This is because murder is a crime of specific intent. The basic definition of murder is that the defendant unlawfully and intentionally killed a human being. The crime is not committed unless it is proved that the defendant possessed the intention to kill.”*

[143] It is difficult to conclude that this was an accident without clearer evidence of what led to the deep laceration that caused the loss of blood leading to the death of deceased.

[144] The extent of the injury to the deceased does not reflect that such a laceration that resulted with the breaking of two ribs could be a result of a fall during a struggle.

The testimony of the pathologist does not lend itself to the possibility of such a laceration in the process of a fall during a struggle of that nature.

[145] It is also clear that the act of trespassing on the property of the deceased despite being warned does not show that whatever scuffle that ensued which led to the eventual death of the deceased was as a result of a lawful act.

[146] I hold that the defence of accident will not avail the Defendant in the circumstances of this case.

[147] Self-defence is considered when the Defendant has used force to protect himself, family or property. If successful, it is a complete defence to the charge of murder (See **Section 8 of the Offences Against the Person Act, Cap 300**).

[148] In this instance, the deceased engaged the Defendant in a scuffle on the premise that he trespassed on his property despite being warned. The deceased had confronted the Defendant with a sharp cutlass and as stated by the Defendant, he was beating on his body with the cutlass which gave him several cuts on several parts of his body including his face. The prosecution presented the photographer who took the photograph of the Defendant shortly after the incident. The photographs showed marks on several parts of the Defendant's body. The photographs contained in a compact disc was tendered and marked as **Exhibit "RH1"**. The first witness also gave evidence that she heard chopping sound while the scuffle was on. From the evidence before the court the cuts on the Defendant were not chops but cuts. The only thing that looked like a chop was the laceration on the deceased.

[149] The testimony of the Defendant himself was also that the cuts were as a result of being beaten with the cutlass. He said when the beating got serious; he wrestled the cutlass out of the Deceased's hand in rage, threw it into the bush and thumped him. The court has stated that the version of what happened after the cutlass was wrestled from the deceased as given by the Defendant cannot be believed in view of subsequent events. He was seen with the cutlass later and the Defendant died of laceration.

[150] In the circumstances, the only reasonable conclusion open to the court is that the Defendant struck the deceased with the cutlass as suggested by the prosecution. The issue is, was this done in self-defence based on the facts presented? It was undisputed that the Defendant was confronted by the deceased with a sharp cutlass and was beaten with the cutlass which led to cuts on Defendant's body.

[151] Now, for the defence of self-defence to avail the Defendant, two elements must be present. The first is that it must be clear that the act was done in defence of the

Defendant to physical or imagined threat and that the degree or proportion of force used was not excessive in the circumstance (See **Palmer v R (supra)**). It is usually expected to be a last resort in the face of life-threatening danger.

[152] In this case, the Defendant was being beating by the deceased with a cutlass. Clearly from **Exhibit "RH1"** he was not being struck with the cutlass because the cuts as seen on his body were injuries inflicted from the beating. It is clear from the photographs the amount of force used by the deceased on the Defendant. It is thus the duty of this court in the circumstance to determine whether there was a life-threatening situation in the circumstance.

[153] It is also a duty of this court to determine if the amount of force used in the circumstance was or was not excessive.

[154] In the consideration of this defence suggested by the Counsel to the Defendant, this court looks at the beating as presented by the parties. Even the Defendant stated that he was merely being beaten with the cutlass. He said he was beaten all over his body and his face. It is my understanding based on the evidence and exhibits that the deceased who was also enraged (considering the trespass) had all the opportunity to strike and seriously injure the Defendant with the sharp cutlass that he had on him in the dark with which he was able to beat the Defendant on several parts of his body. He never did but only beat him on several parts of his body, his arm, leg, side and once on the face as reflected in the photograph.

[155] It is clear that the deceased who had gone out with a sharp cutlass to confront the Defendant who was trespassing on his property in the middle of the night was also enraged, but he controlled his anger and did not strike the Defendant but continued to beat him with the cutlass. Clearly if the deceased had shown the propensity to kill or cause the Defendant grievous harm, the injuries on the defendant would have been worse than that seen in the pictures.

[156] It is my respectful view that there was no life-threatening situation for the Defendant to have reacted with a deep laceration on the deceased as seen in the course of the evidence.

[157] The evidence of the pathologist, Dr. Simon is that the laceration was in a diameter of 14x5x3cm wound it was a deep cut that resulted in the breaking of two ribs on the deceased's chest. Under examination, the witness also stated that the injury must have been caused by a forceful strike on the chest of the deceased.

[158] For self-defence to avail a Defendant in a case of murder, the two elements above stated must cohabit. In this instance, based on the facts presented, it is clear that it

was most unreasonable for the Defendant to have used the amount of force used against the deceased which eventually resulted in his death.

[159] I wish to note here that even if the Defendant's version of events is believed the defence of self-defence still would not be available to him as according to the Defendant, he fought the deceased and managed to wrestle the cutlass away from him, at that point he was not in any danger.

[160] I cannot see how the defence in this instance will avail the Defendant. It is the law that where the threat offered is disproportionate with the force used in repelling it, the defence will be unavailable. The necessity of the occasion did not demand such self-defence, thus the defence cannot avail the Defendant. See **R v Clegg [1995] 1 AC 482**. I hold that the defence of self-defence failed in this instance, and it is discountenanced.

[161] This court at this moment will go further to consider the defence of provocation (See **Section 12 of the Offences Against the Person Act, Cap 300**). Even though the Defendant did not urge the defence of provocation on the court, this court should advise itself on all possible defences that may avail the Defendant given the facts as presented.

[162] In **R v Duffy (1949) 1All E.R 932**, provocation was defined as:-

***“some act, or series of acts done by the dead man to the Defendant which would cause in any reasonable person temporary loss of self-control rendering the Defendant so subject to passion as to make him or her for the moment not master of his/her mind”***

[163] It is important to note that there are three elements of provocation. This is set out by the Privy Council in **Lee Chun-Chuen v. R. (1962) 3 WLR 1461 at 1468**. Where the following observation were made:-

***“Provocation in law consist of three main elements- the act of provocation, the loss of self-control, both actual and reasonable and the retaliation proportionate to the provocation. The defence cannot require the issue to be left to the jury, unless there has been produced a credible narrative of events suggesting the presence of these three elements. They are not detached. Their relationship to each other particularly in point of time, whether there was time for passion to cool is of the first importance”.***

[164] In my view, the point being made here is that the provocative incident is only one of the three constituent elements of the defence.

- [165] In **Mancini vs. DPP (1942) AC 1**, the House of Lords held that aiming a blow with a fist maybe provocation in that instance but that it was not right to have replied with the use of a dagger as that is disproportionate. It was agreed that in such a case, it was right not to leave the issue of provocation with the jury.
- [166] In the instance at hand, the Defendant stated in his Question-and-Answer **Exhibit “EA1”** that he acted in rage when the deceased beat him with the cutlass and he saw that it was getting serious. It was the case of the Defendant that he wrestled the cutlass and threw it away and then thumped the deceased. I have ruled that this version of the events cannot be believed in view of all the prevailing circumstances and have come to the inevitable conclusion that the cutlass was used on the deceased. The issue here is whether the realizations that the scuffle was getting serious, and the rage referred to were enough in this instance to avail the Defendant in a defence of provocation.
- [167] I have stated above the three elements that should cohabit for the defence of provocation to avail a Defendant. Firstly, where a man in defence of his property and family confronts a trespasser, even with a cutlass but decides to beat the trespasser with the cutlass rather than strike him, would that amount to an incident to which the trespasser may be provoked to retaliate? The deceased had confronted the Defendant with a cutlass sharp as it maybe, to ward him off his premises but continued to beat him with the cutlass rather than strike him. The Defendant said he acted in rage rather than leave the premises as he was told. In my view, I see nothing provoking in the act of the deceased who was acting in defence of his property and family. There is no evidence of such either from the defence or the prosecution to show what could have provoked the defendant.
- [168] The Defendant sought to give evidence of momentary loss of control when he said he was enraged upon realizing it was getting serious. Again, I cannot see what in the instance could have caused a loss of control in a situation where he could have walked away from the act of trespass. In all the circumstances depicted in the evidence before the court, the Defendant had no reason to have lost control.
- [169] He responded to the beating and cuts on his body with a strike which caused a deep laceration resulting in the break of two ribs on the deceased. This clearly was disproportionate to the act of the deceased.
- [170] I see none of the elements of provocation present in the instance case to have availed the Defendant and I so hold that the defence of provocation is in appropriate here.

[171] The counsel for the Defendant in his closing address suggested to the court that it should consider the intervening factors and hold that the chain of causation was broken between the time the deceased and the Defendant engaged in a scuffle and the time the Defendant died. He canvassed the principle of *novus actus interveniens*.

[172] The learning in the case of **The People (Director of Public Prosecutions) v Stephen Davis [2001] 1 IR 146** is that an accused may be guilty of murder where the court can be satisfied beyond a reasonable doubt that the injuries were the sole or principal cause of death, put another way, it is sufficient “if the injuries caused by the applicant were related to the death in more than a minimal way.”

[173] In the instance case, the defence counsel had cross examined the police officers who gave evidence that they were at the premises of the deceased upon receiving the report of the scuffle based on the phone call from the prosecution’s second witness, Ms. Jackson. They said they were on the premises to respond to the distress call and confirmed upon cross examination that they actually searched the whole area after they left the yard and found nothing. I am unable to see anything in evidence that suggests a break in the causation of death in this instance. I have narrated extensively the events of the night as presented by the prosecution; I cannot see anything that may amount to a break in the chain to warrant the consideration of the principle of *novus actus interveniens*.

[174] In the circumstances of this case, it is my respectful view that Defendant cannot be availed by any of the above stated defences. It is clear that both the *actus reus* and *mens rea* were present in the commission of the offence. The Defendant acted in this instance with a clear intention to cause grievous bodily harm to the deceased. The subtle suggestion of intoxication or lack of the requisite state of mind was destroyed when the Defendant’s only witness admitted that an average man in the Defendant’s standing would not have been able to ride a bicycle from Piggotts to Newfield (which is quite a distance) in the dark if he was actually intoxicated, after the amount of alcohol he suggested they had earlier that day.

[171] Clearly from the totality of the evidence adduced and from the circumstances of the case, the act was done wilfully and unjustifiably. I am satisfied that the prosecution has proved its case beyond reasonable doubt against the accused on the charge of murder.

[175] I have no hesitation in holding that the Defendant is guilty of the offence of murder of the deceased.

**Tunde A. Bakre**  
High Court Judge

By the Court

A handwritten signature in blue ink, appearing to read 'Tunde A. Bakre', is written over a horizontal line. The signature is stylized with loops and a long tail.

Deputy Registrar