P.C.
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Judgment
48
1964

IN THE PRIVY COUNCIL

No. 19 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF RHODESIA AND NYASALAND

BETWEEN :-

RICHARD MAPOLISA (Accused) ... Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL No. 19 of 1964

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RECORD OR PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

E X H I B I T S

NOT TRANSMITTED TO PRIVY COUNCIL

Mark	Description of Document
"2A"	Exercise Book
"2B"	Four Notes
"3"	Fountain Pen
"4"	Blanket
"5"	Plan and Key
"6"	Bottle
"7"	Cloth and Wire
"8"	Gallon Tin
"9"	Photographs of the Scene
"10"	Pliers
"11"	Ink Bottle
"12"	Piece of Wire
"13"	Photograph of Exhibit "2B"
"14"	Phial of Petrol
"15"	Photographs
"16"	Tests on Ink

IN THE PRIVY COUNCIL No.19 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF RHODESIA AND NYASALAND

BETWEEN :-

RICHARD MAPOLISA (Accused) ... Appellant

- and -

THE QUEEN ... ... Respondent

RECORD OF PROCEEDINGS

In the High Court of Southern Rhodesia

No.1

Indictment

No. 1.

INDICTMENT

IN THE HIGH COURT OF SOUTHERN RHODESIA

Thomas Arnoldhus Theron Bosman, Esquire, Attorney General of our Sovereign Lady the Queen, within Southern Rhodesia, who prosecutes for and on behalf of Her Majesty, presents and gives the Court to be informed :

THAT RICHARD MAPOLISA, an African driver and hawker residing at Salisbury in the Province of Mashonaland South in Southern Rhodesia (hereinafter called the accused) is guilty of the crime of Contravening paragraph (a) as read with paragraph (c) of sub-section (1) of section 33A of the Law and Order (Maintenance) Act, 1960, as amended.

IN THAT upon or about the 28th June, 1963, and at or near Salisbury in the Province of Mashonaland South aforesaid, the accused did wrongfully and unlawfully and without lawful

In the High Court of Southern Rhodesia

No.1

Indictment continued

excuse, by the use of petrol or some other inflammable liquid, set or attempt to set on fire a building or structure, that is to say, a house at 99, Silcox Avenue, Houghton Park, Salisbury, and thus the accused did commit the crime of Contravening paragraph (a) as read with paragraph (c) of sub-section (1) of section 33A of the Law and Order (Maintenance) Act, 1960, as amended.

Wherefore upon due proof and conviction thereof the said Attorney General prays the judgment of the Court against the said RICHARD MAPOLISA according to law.

Attorney General.

IN THE HIGH COURT OF SOUTHERN RHODESIA

SALISBURY CRIMINAL SESSIONS. SEPTEMBER 16,17, 18, 19 and 20, 1963.

Salisbury Criminal Sessions.

BEFORE THE HONOURABLE MR. JUSTICE HATHORN, A.C.J.

AND MESSRS. A.G. YARDLEY & H.A. CRIPWELL, ASSESSORS.

R E G I N A

vs

RICHARD MAPOLISA

Charge: Contravening paragraph (a) as read with paragraph (c) of section 33A (1) of the Law and Order (Maintenance) Act, 1960, as amended.

Mr. R.R. Horn of Counsel for the Crown.

Mr. H.G. Wheeldon of Counsel for the Accused.

Interpreter : A.I. Sibanda.

MR. HORN: The accused has not yet pleaded.

Indictment put to the accused.

ACCUSED: I understand this charge. I plead Not Guilty. I am not the person responsible.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions.

ASSESSORS SWORN

Mr. Horn outlined the facts of the case

No.2

Evidence for the Crown.

No.2

EVIDENCE FOR THE CROWN

Detective T.B. McIlveen

EVIDENCE OF DETECTIVE T.B. McILVEEN

Examination

THOMAS BRIAN McILVEEN, duly sworn and examined

BY MR. HORN: Are you a detective in the C.I.D. stationed at Salisbury? - That is correct.

At about 7.30 p.m. on the 29th June last did you charge the accused in this case with the crime of contravening section 33A (1)(a) as read with paragraph (c) of that sub-section of the Law and Order (Maintenance) Act ? - I did.

Did African Detective Sergeant Hode act as your Interpreter? - He did.

Did the accused appear to be in his sound and sober senses? - He did.

Was he properly warned and cautioned through your interpreter? - He was.

Can you say if the accused himself understands English? - The accused himself does understand English. I charged the accused in English, but it was interpreted, in addition, in Shona, by African Detective Sergeant Hode.

Notwithstanding his knowledge of the English language? - That is correct.

Did the accused freely and voluntarily without being unduly influenced thereto in any way, make a statement in reply to the charge? - He did.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions.

Evidence for the Crown.

No.2

Detective T.B. McIlveen

Examination continued

(To Court): The Crown tenders the statement made.

MR. WHEELDON: No challenge.

BY MR. HORN: Did you record the accused's statement as interpreted to you? - I did.

You then had it read back to him? - I did.

Did he adhere to it and sign it? - That is correct.

Is that the statement which was Exhibit A at the Preparatory Examination? - It is.

Do you produce that as an exhibit in these proceedings? - Yes.

(Statement put in as Exhibit 1)

Before you read out the reply to this charge, under the Law and Order (Maintenance) Act, as particulars, did you allege that this occurrence had taken place at 99, Silcox Avenue, Houghton Park, Salisbury, on the 28th June, 1963? - I did so.

Will you read out the accused's reply to the charge? - (Accused's reply read to the Court).

There is just one point; at the top of page 2 the letters K.B. appear. Do you know what was meant by that? - Kaffir Beer.

Now this was on Saturday evening when you charged the accused, but that Saturday morning, at 5.15 a.m., did you go to 49, Zororo Lines, in Highfields? - I did.

Was anybody with you at the time? - African Detective Sergeant Hode accompanied me to this house.

Would you describe the place and what happened when you arrived, at this address? - It was still dark when I arrived. I knocked on the front door, which is the only door to this residence. The door was opened by the accused, and I entered the room. I informed the accused I was arresting him.

I do not want you to go any further at

this stage, merely that you were arresting him. Did you inform him of the charge on which he was being arrested? - I did.

Would you describe these quarters please? - 49, Zororo Lines is a corrugated tin house. These are temporary structures and were put up by Highfields T.M.B. due to the shortage of houses and I think at a later stage these will be replaced by a more permanent type of residence.

What I am getting at is, was this part of a larger building, these quarters that you have described, or separate? - No, it was one single room.

The whole building consisted just of one room? - That is correct.

With one door in it? - One door. This one room was partly divided into two by a hardboard partition. This hardboard partition was hung from the roof and it reached from one wall till about the middle of the room. One side of the partition was used as a bedroom, and the other side as a dining room and kitchen.

How was this room furnished on either side of the partition at that time? - In the dining room side of the partition there was a table and four dining room chairs. There were two plastic verandah chairs. There was a small sideboard, a small stool, and there was a rack containing china or delft ware. In the bedroom portion of the room there was a single bed, and a wooden box, a cardboard box, upturned beside the bed, which served as a bedside table, and a small suitcase. There were two old cycles dismantled.

Was there any clothing in either of these rooms? - There was some clothing hanging on lines near the bed in the bedroom portion of the room.

This bed which you have described, was this a bedstead with a bed made up on it, or a bed made up on the floor? - This was a bedstead with a mattress.

Did the bed shew any signs that it had been slept in? - It did shew signs of being slept in, and the accused was not dressed.

BY HATHORN, A.C.J.: Were there any other

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Detective T.B. McIlveen

Examination continued

people in the building? - The accused was the sole occupant of the building.

BY MR. HORN: Were there any indications that you could see at that time or subsequently, when I believe you returned to this building, that it was occupied by anybody other than the accused? - None whatsoever.

After having arrested the accused and informing him what you were arresting him for, what did you do then? - I warned and cautioned the accused and told him to get dressed, and told him I wished to search the house.

At that time did he appear to be in his sound and sober senses? - He was.

Would you describe what happened thereafter? - I then commenced to search the building, starting with the bedroom portion. On the cardboard box I have mentioned, which acts as a bedside table, I found a blue exercise book. I saw it bore the name of the accused on the front cover.

Did you take possession of this exercise book? - I did.

Will you have a look at that please, I think it was Exhibit M at the preparatory examination. There appears to be in that exercise book a note inside the cover. What can you say about that exercise book? - It bears the accused's name on the front cover, and inside the front cover there is a paragraph of writing in ink.

Would you read out that paragraph, please? - ".... general hokoyo to support ZNP I am appel to the individual to be a member of ZNP forget RF baby. Now conform to our constitution principles and policy of the party and its self Rules. Now thanks g hokoyo.

Basopo Lapo. "

BY HATHORN, A.C.J.: Did you take possession of this? - I did.

Where did you find this? - I found this placed on top of the cardboard box.

Is this the exercise book to which you

have already referred? - It is.

(Exercise book put in as Exhibit 2)

BY MR HORN: In the same folder, which was part of Exhibit D at the preparatory examination, there are four notes. Did those come into your possession at any stage? - They did.

Would you describe please how they came into your possession and what happened to them thereafter? - I was handed these notes by Detective Inspector Thorne at the C.I.D. offices.

When would that be? - I was handed these on the early morning of Friday, the 28th June.

That is the day before the arrest of the accused? - That is correct.

What did you do with these notes when you received them from Detective Inspector Thorne? - I took them to the C.I.D. studio and caused them to be examined for finger-prints.

And then? - I later collected them from the studio and took them to Doctor Thompson, the police forensic scientist.

And later did you receive them back from Doctor Thompson? - I did.

Are those the notes you referred to; there are four notes there? - These are the notes.

Are they in the same condition as they were when they were handed to you by Detective Inspector Thorne or have certain alterations or interferences been noted? - There are a few pinkish coloured signs, but these are due to the liquid which is put on them when testing for finger-prints. Otherwise these notes are the same.

(To Court): I would like to produce these at this stage as a further exhibit. Might I suggest that in view of the fact that they are with the exercise book they be called Exhibit 2A at this stage?

HATHORN, A.C.J.: They are all attached?

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Detective T.B. McIlveen

Examination continued

MR HORN: They are all attached to that folder, yes, my Lord.

HATHORN, A.C.J.: I think you had better call the exercise book Exhibit 2A and the four notes Exhibit 2B.

(Exercise book re-named as Exhibit 2A and the four notes put in as Exhibit 2B)

HATHORN, A.C.J.: Presumably you will be proving something more about the notes?

MR HORN: Yes, indeed, I will. (To witness) These notes, the four of them, do those differ in their wording in any respect as far as you can see? - The wording of these four notes is identical.

Will you read out the wording at the top? - "General Hokoyo to support ZNP. I am appel to the individual to be a member of ZNP. Forget RF baby. Now conform to our constitution principles and policy of the party and its self Rules. Now thanks. This is general hokoyo.

Basopo Lapo".

To go back to the morning of the 29th, apart from the exercise book which you found on this cardboard box, did you find anything else in the quarters? - On top of the same cardboard box beside the exercise book I found a black fountain pen.

Did you take possession of this pen? - I did.

Do you see that fountain pen? - At the time I took it there was some ink in the fountain pen.

Is that the fountain pen you have referred to? - This is the pen.

(Pen put in as Exhibit 3)

You say there was some ink in the fountain pen at the time you took it? - There was.

I believe there is no ink in the fountain pen now ? - I cannot be sure of that. (Witness shakes the pen down). No.

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There does not appear to be any ink? - No.

What did you do with that fountain pen after you had taken possession of it? - I later handed it to Doctor Thompson.

And later did you get it back from him? - I did.

When you handed it to him did it have ink in it? - It did.

Was it the same ink it had in it when you took possession of it on the morning of the 29th? - It was.

Apart from that what did you take possession of? - In a wooden box which was beside this cardboard box and further from the bed, I took some old clothing and a torn blanket.

In particular did you take possession of the blanket? - I did.

Is that the blanket which was produced at the preparatory examination? - It is.

Do you produce it as a further Exhibit in this Court? - Yes.

(Blanket put in as exhibit 4)

How did the condition of the blanket at the time you took possession of it on the 29th compare with its condition today? - The blanket is in the same condition today, but there are a few pins and pieces of red paper which were not in the blanket when I took possession of it.

What did you do with the blanket after you had taken possession of it? - I handed this to Doctor Thompson.

Did you subsequently receive it back from him? - I did.

- Were these red flags you have mentioned on the blanket when you received it back from Doctor Thompson? - They were.

Did you take anything else from the bedroom portion? There was an exercise book in which

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certain writing was; there was a fountain pen with ink in it; was there any ink in these premises? - I took possession of a bottle of ink which was on the floor beside this wooden box.

What did you do with that bottle of ink? - I handed this bottle of ink to Doctor Thompson.

Did you receive it back from him or not? - I did receive it back from Doctor Thompson.

And I believe you have it in your possesss- ion, and will be able to produce it, if necessary? - That is correct.

I believe this Exhibit has not yet arrived from the C.I.D. offices? - It has not.

(To Court) On a point of explanation, this Exhibit and a couple of other exhibits which were taken possession of, were not produced at the preparatory examination, but I have given instructions that they be made available for this Court.

(To witness) Now, going into the living room portion, did you find anything there of interest? - I found a pair of pliers.

Where were these pliers? - They were on top of a sideboard I have mentioned.

Would that have meant that they were out of sight or not? - No, they were in sight.

Similarly, I believe you took possession of these pliers and you have them in your possession and will be producing them later? - That is correct.

Did you take anything else from the living room? - I took possession of three pieces of sisal or string from this section of the building, and also a small piece of wire.

Whereabouts was this? - One piece of string was tied to an iron or steel beam in this portion of the room. The other two pieces of string were curled into small balls, and were on the rack near the door which contained the delft. The small piece of wire was about less than 1/16 of an inch in diameter and this was attached to a cycle chain which was looped to the support in the

front door and acted as a measure of securing the front door.

Did you take possession of this string and this wire? - I did.

I believe that similarly to the other exhibits you have mentioned, you will be producing these at a later stage? - Yes, my Lord. In the bedroom portion of the room I also took possession of a pair of white gym shoes. They were underneath the bed.

You can produce these if necessary? - I can.

What happened to the piece of wire and the pieces of string that you have mentioned? - They were handed to Doctor Thompson.

All three pieces of string and the piece of wire? - That is correct.

Subsequently did you receive anything back from Doctor Thompson? - I received the piece of wire back from Doctor Thompson but the pieces of string have been mislaid. I did not have these back from the police lab.

All three pieces of string? - That is correct.

After you had conducted this search, did you return with the accused with Detective Sergeant Hode to the C.I.D. offices? - I did.

I believe at about 4 o'clock that afternoon, as a result of a report, from one of your African Detectives, you again saw the accused? I did.

Before we go on to that, did you return to those quarters at all later that morning? - Yes, about 8.15 a.m. I went back to those quarters with the accused.

This is the 29th? - That is correct.

That is Saturday? - That is correct. I returned to these quarters because my first search had been carried out during the hours of darkness and I wished to see if there was anything I had overlooked.

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Examination continued

Did you take possession of anything of any significance in this case on the second occasion? - No, my Lord.

Did you then return again with the accused to the C.I.D. offices? - That is correct.

Now I think you said at about 4 o'clock that afternoon, you saw the accused again? - I did.

What did you do or say to the accused when you saw him at about 4 p.m.? - The accused started to speak to me. I stopped him and warned and cautioned him and then told him to carry on.

Did he appear to be in his sound and sober senses at the time? - He did.

And whatever he said to you thereafter, I believe that extended over some time, did he say freely and voluntarily, without being unduly influenced in any way? - He did.

Was Detective Sergeant Hode your interpreter again? - He was.

(To court): The Crown proposes to lead evidence of various statements and indications made by the accused during the course of about the next hour or two. I suggest, my Lord, that it might be relevant or easier to find out if any of these statements or indications are challenged, and if not, the witness can proceed to outline what happened in the next hour or two.

MR WHEELDON: There is no challenge, my Lord.

BY MR. HORN: What did the accused say to you? - He told me that he wished to shew me a house in Houghton Park that he had petrol-bombed.

And what happened then? - I told the accused that I would take him out to this place and he could shew me if he wished to. I then took the accused out to Houghton Park Service Station in a police vehicle.

What happened when you got to the service station? - I had gone to the service station in

a vehicle along with the accused, and I made a rendezvous with another vehicle containing African Detective Sergeant Hode at this service station. Sergeant Hode got into the vehicle with myself and the accused, and the three of us sat in the front seat. It was a police Vauxhall. I again warned and cautioned the accused and on indications made by him, I proceeded along the Beatrice Road, travelling out of town as far as the intersection of Beatrice Road and Salisbury Drive.

Just before you go on, was anybody acting as your interpreter when you saw the accused at about 4 o'clock that afternoon, when he told you that he wanted to make indications to you? - Yes.

Who was acting as interpreter then? - African Detective Zondayi.

And who acted as interpreter when the accused said he had petrol-bombed a house? - African Detective Zondayi.

When you met up with Hode at the service station and then followed a certain route along the Beatrice Road until Salisbury Drive, at whose instruction did you follow this particular route? - The accused's.

For what, if anything, did he indicate this route that you followed? - He wished to take us to the intersection of Salisbury Drive and the Beatrice Road, to look for a brown paper bag which he said he had dropped at the intersection of Salisbury Drive and Beatrice Road as he was running away from the scene. On his instructions we stopped at this intersection and searched the immediate surroundings for this paper bag, but we were unable to find it.

Is this a very lonely spot or is it well frequented? - This is a short cut into Highfields from the Beatrice Road into Highfields African Township, and is very well used by pedestrians, cyclists and motorists.

So this paper bag could not be found. What happened after that? - Then the accused said he wished to shew us the road he had taken to the scene; and we proceeded back

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along the Beatrice Road travelling towards town, that is, in a northerly direction, and on the accused's indication we turned right into the road which runs past Houghton Park Service Station. I believe it is Astron Avenue. We proceeded east in this Avenue and turned right again into Silcox Avenue. We proceeded south in Silcox Avenue until the accused told us to stop. At this stage it was getting dark, dusk, or even a little darker than that.

This place at which you stopped, have you subsequently found out what place that was in Silcox Avenue? - No.99, Silcox Avenue.

Do you know who lived there at the time? - At the time I did not know who lived there but I now know that Mr Bonham his wife and two children reside at that address.

The accused wanted to shew you the road he had taken to the scene. Did he indicate the road as being from the service station or where the turn-off was or the place where the paper bag had been dropped? - The accused said he dropped the paper bag on his return trip. He said he had come from Highfields on foot, went along Salisbury Drive till he met the Beatrice Road, then turned towards town and walked along Beatrice Road in the same direction as we travelled in the police vehicle, and he had taken the same direction as we had travelled on the police vehicle to 99, Silcox Avenue.

So is it correct that the route that he started to indicate to you or the route he indicated to you that he had taken to get to the scene, started at the intersection of Salisbury Drive and Beatrice Road? - That is correct.

And then you went along Beatrice Road and turned right again? - That is correct.

What happened when you arrived at this address, 99, Silcox Avenue? - The accused indicated a front lounge window as the window through which the bomb had been thrown. He also indicated a spot near a small young sapling which was outside the hedge and between the hedge and the tarred road in Silcox Avenue. He said this was the spot where Cyprian had

taken the bomb from the bag. He then indicated a further spot approximately 15 yards from this place and on the opposite side of the tarred road.

As what? - He said that this was the spot where he had stood while Cyprian threw the bomb.

Just before you go on with this, I believe that subsequently you prepared a plan and key of the scene? - I did.

Is that the plan and key, which was Exhibit B at the preparatory examination? - It is.

Was this prepared as a result of your own observations and as a result of indications made to you on this occasion by the accused? - That is correct.

You produce that plan and key as a further exhibit? - I do.

(Plan and key put in as Exhibit 5)

Will you explain the plan please by reference to the key? - You hold the plan with the key furthest from your body. You can see at the top of the plan some bush land is indicated. In this bush land there are no houses. Coming down the plan towards your body you can see the tarred road known as Silcox Avenue indicated; and running at right angles to this there is another tarred road known as Burston Close. This is on the right hand side of the diagram. Then, coming further down the plan, a small drain is shewn, and still further down there is a grass verge. That is a grass and sand verge. The grass is very sparse on this verge. Then, further down the plan is the house itself and the rest of the grounds of 99, Silcox Avenue are indicated. The grounds of this house are bounded on three sides by a fence and a hedge, the hedge being planted beside the fence. On the other two sides it is bounded by a fence. This fence is wire mesh.

Just to avoid confusion, you regard the property as being a five sided property? - That is correct. The house itself can be seen, and room A is the lounge; room B is a bedroom

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occupied by the complainant's son.

HATHORN, A.C.J.: Well, I think that is hearsay.

BY MR HORN: The room appeared to be a bedroom? - Yes. Room C appeared to be a bedroom, and room D was a bedroom, and E is the bathroom/P.K., and F is the kitchen. The kia, servants' quarters, at the rear can be seen at the rear of the plot. The criss-cross pattern which is in front of the lounge windows, is a raised stoep. The front of this stoep is 18 feet from the hedge at the front of the building. This stoep is 7½ feet wide. The house is 40 feet long and 22½ feet broad.

It is a rectangular house? - That is correct. The windows are shewn, and you can see there are two windows in the lounge, the front and the rear, and there is one window in each of the bedrooms and one window in the bathroom/P.K., and one window in the kitchen. It will also be seen that opening out from the house there are two doors, a door from the lounge to the outside grounds, and a door from the kitchen to the outside grounds. The other doors shewn in the diagram are all doors joining the interior portions of the house. At a spot X in the diagram - this spot indicates a sapling which I have mentioned previously.

This the sapling at which the accused said Cyprian had stood when he took the bomb from the paper bag? - That is correct. The point marked Z is the point indicated by the accused as the place where he stood when Cyprian threw the bomb. At Silcox Avenue the plot can be entered through a set of double gates which can be seen on the left hand side of the plot.

I believe you made a note of the measurements of the various windows. Could you deal with those? - The front lounge window measured five feet by eight feet, that is complete. At each side of the front lounge window there were two casement windows, and the measurement of the centre pane was three foot ten inches by four foot nine inches. The bedroom ....

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BY HATHORN, J: Need we have all these measurements, Mr. Horn?

MR HORN: I do not think that the measurements of the other windows are really very relevant. Perhaps we could leave it out?

(To witness) Would you deal with the height of the hedge and fence now? - The hedge measures four foot six inches and the fence measures three feet in height.

How far is Z from the hedge? - Fortyeight feet six inches from the hedge, taken in a straight the shortest possible distance from point Z to the hedge.

How far is it from X to the lounge window, the front lounge window, looking out on to the stoep? - The point X will be seven and a half feet plus 18 feet. I am sorry I cannot make out this measurement at the foot of the copy of my plan, but I would estimate the distance from the hedge to the tree to be four feet.

That would make it about 30 feet? - Yes.

Would it be possible from what you saw to throw an object such as a petrol bomb into the lounge window from that place? - Perhaps not from point X with any certainty, but certainly from the hedge directly in front of the window, if the person stood at the hedge he could easily throw a petrol bomb through this window.

You say the accused indicated that he had been standing at point Z when Cyprian had thrown the petrol bomb through the window, while Cyprian was standing at the sapling. Were you able to examine the lounge window at the time the accused made this indication, which was on the Saturday? - I did examine the window then.

What was its condition then? - The pane had been replaced, the window was complete.

When the accused indicated this window to you it was not damaged in any way? - It was not.

Could you say where the Beatrice Road is, and the other roads you have mentioned are, in relation to the plan? - Yes, Silcox Avenue runs

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in a north to south direction; the Beatrice Road runs parallel to Silcox Avenue in a north to south direction, and on the side of the diagram further away from the place marked "bush".

In other words it is on the western side? - That is correct.

And it runs parallel to Silcox Avenue? - Yes.

Are there any other roads between Beatrice Road and Silcox Avenue? - Yes, there are. There is a small clump of houses, a small estate of European-owned houses between the Beatrice Road and Silcox Avenue. Silcox Avenue is the last Avenue in this small group of houses. There are many Avenues between it and the Beatrice Road.

This is the end built-up portion of Houghton Park, is it? - That is correct.

What happened after the accused had indicated this to you? - I then went to the front door of this house, as it was my first time to be there, and asked the occupants what the number was.

We need not go into that. After that, what happened? Were any further indications made by the accused, or any statements made by him? - No, my Lord.

Did the accused indicate this place where it is said he had thrown away a paper bag when he was running away. Did he indicate at that time or at any subsequent time the route he had taken when running away? - Sorry, after the accused indicated the spot where he was standing when Cyprian threw the bomb, he then indicated, or he pointed out, to a site in Silcox Avenue, indicating a dirt path which runs from Silcox Avenue, on to the Beatrice Road, as the route taken by him and Cyprian when they were making their getaway from the scene.

Does this dirt path you mention come out anywhere where the accused alleged the bag had been dropped? - It does. It comes out the opposite side to the Beatrice Road where accused alleged the bag had been dropped. It comes out on the eastern side of the Beatrice

Road, but very near the spot where the accused said the brown paper bag was dropped.

Going back to the day before this visit, the 28th, you have already mentioned that Detective Inspector Thorne handed you certain notes which now form Exhibit 2B. Did he hand you anything else at the same time? - Yes, he handed me a bottle containing liquid and at the top of this bottle there was a piece of material and it was secured by a small piece of thin wire around the neck of this bottle.

Apart from the wire around the bottle, was there anything that you can recall? - There was a small piece of string.

You see this bottle now before the Court? - Yes.

What can you say about that bottle? - This is the bottle handed to me by Detective Inspector Thorne with the piece of cloth, the string and the wire which was secured round the neck.

When the bottle was handed to you was the cloth and the string and the wire secured round the neck? - They were.

This small piece of string and the piece of wire here, can you say anything about that? - This is the piece of wire that secured the cloth and the piece of string that secured the cloth around the neck of the bottle. In fact this particular piece of string looks more like the exhibit as part of the cloth that was round the neck.

What can you say about this cloth in that envelope there? - This cloth was secured round the neck of this bottle with this piece of wire.

How did the string come into it? - That piece of string - they were all secured round the neck of this bottle, but as you can see they were burnt and slightly frayed and parts of them were hanging loosely round the neck of this bottle.

Was the string actually used to tie the cloth around the bottle, or did the string happen to be a component part of the cloth? -

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No.2

Detective T.B. McIlveen

Examination continued

It just happened to be a component part of the cloth. This piece of wire was actually what secured the cloth to the neck of the bottle.

And is that bottle in the same condition as it was when it was handed to you, except, of course, that now the material and the wire have been removed? - That is correct.

You produce the bottle as a further Exhibit, and the cloth and the wire as further exhibits?

(Bottle put in as Exhibit 6)

(Cloth and wire put in as Exhibit 7)

What did you do with the bottle when it was handed to you by Detective Inspector Thorne? - I took this bottle to Doctor Thompson at the police laboratory.

When you handed it to him was it in the same condition as it had been when Detective Inspector Thorne handed it to you? - It was.

The tin here appears to be approximately a one gallon metal container. Can you say anything about that? - This tin was taken from 49 Zororo Lines in my presence by Doctor Thompson.

When was that? - I cannot recall the date; I think it is probably the 1st of July, about two days afterwards. I think the following Monday, the 1st of July.

Where was it taken from? - It was taken from underneath the bed.

Can you say if that had been there on the occasion of our previous searching? - Yes, my Lord. This and two other gallon tins were underneath the bed in the bedroom portion of the house, together with an old typewriter.

When this tin was taken possession of on the Monday morning, as you recollect, can you say what was inside the tin? - There was a small drop of petrol or a small drop of some liquid in it. It smelt like petrol.

What about the other two tins, was there anything in them? - They were empty.

How is it that you did not take possession

of this tin on your earlier search? - I checked all these tins in my early search, my first search, and I did notice a small amount of liquid at the bottom of this tin and I assumed it to be petrol. The reason I did not take possession of it was I did not think Doctor Thompson would say much more than that it was petrol and would not be able to compare it with any other types of petrol. So I did not think it was necessary to take possession of this tin.

Were there any appliances in this house for which petrol would have been used, such as stoves? - There was a primus stove.

Do you know if petrol is used in a primus stove? - I think more commonly they use paraffin.

Do you know if petrol is cheaper than paraffin? - Paraffin is cheaper than petrol.

(Gallon tin put in as Exhibit 8)

Cross-Examined

Cross-Examination

CROSS-EXAMINED BY MR WHEELDON: Detective McIlveen, were you aware that certain footprints were found at the spot that you have marked X on the plan, Exhibit 5? - I am aware of that fact.

Did you see these footprints yourself? - No, my Lord.

You did not see them at all? - I did not see them at all.

BY HATHORN, A.C.J.: Was your first visit to the house on the Saturday afternoon? - My first visit to this house was when the accused took me there on the Saturday evening.

BY MR WHEELDON: You say you found some ink in 49, Zcroro Lines. What sort of ink was it? - The bottle did not have a label. I thought it looked a blue ink of some sort.

Now the warned and cautioned statement, Exhibit 1, suggests that a man called Cyprian had suggested this petrol bombing, and accompanied the accused? - That is correct.

And you have told the Court that when the accused made indications to you at 99, Silcox

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No.2

Detective T.B. McIlveen

Cross-Examination continued

Avenue, he pointed out where he had stood and where Cyprian had stood? - Yes.

And when he was making these indications before that stage he was also speaking of where Cyprian and he had gone? - That is correct.

So that when you speak in your evidence of various spots the accused said of the route he had come from Highfields by, he said in that instance: "Cyprian and I"? - That is correct.

And similarly, when you say that he said he wanted to shew you the house in Houghton Park that he had petrol bombed, he did make it clear that Cyprian was the man who had actually thrown the bomb? - He did.

You say you also took possession of a pair of what you described as white gym shoes. Would those be commonly known as tackies? - Yes.

Did you compare the mark made by those gym shoes with any other footprints or marks you found at the spot? - I didn't find any marks. I did take some soil samples at the scene.

To see whether there was any soil on the accused's footwear which was the same? - Is that right? - That is correct.

What was the result of your tests? - I did not carry out the tests personally.

I imagine that when you were taken to the scene by the accused, very shortly after that you must have realised that there had been footprints at the spot X? - When I saw the surface of this spot X I did not think myself there would be any footprints left there by anyone, because it is a dry loose sandy and grassed surface. I had a report made to me previously that there was a footprint at the scene. That is the only reason that I know that there may have been a footprint.

You did not then look? - I looked at the scene but it was dark when I reached the scene. When the accused made indications I looked at the scene in daylight when I was taking the measurement of the spot itself.

After indications were made, is it not

correct that you took the accused straight back to the Harare Police Station? - After the indications were made I took the accused back to my offices, the C.I.D. offices, at the main station.

Where did the accused spend that night? - I charged the accused, and the accused was detained at Harare Police Station.

Re-examination.

RE-EXAMINED BY MR HORN: You said in answer to my learned friend that the accused indicated, at the time that he told you that he had petrol bombed a house in Houghton Park, you understood that Cyprian was involved in this case. How did you understand at that stage that Cyprian was involved in this as well as alleged by the accused? - When the accused said that he had petrol bombed a house in Houghton Park he did say that native male Cyprian was with him.

BY HATHORN, A.C.J.: Did you understand him to say that he himself had thrown the petrol bomb or that Cyprian had done it? - When he spoke of this petrol bomb he always said that Cyprian had thrown the petrol bomb.

(Witness stepped down)

No.3

EVIDENCE OF DETECTIVE SERGEANT HODE.

HODE, duly sworn and examined (in English)

BY MR HORN: Are you a Detective Sergeant in the C.I.D. stationed at Salisbury? - I am.

On the 29th June this year when Detective McIlveen charged the accused with contravening section 33A(1)(a) of the Law and Order (Maintenance) Act, did you act as interpreter? - I did.

Did you truly and faithfully and to the best

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Evidence for the Crown.

No.3

Det/Sgt. Hode Examination continued

of your ability interpret everything that passed between Detective McIlveen and the accused on this occasion? - Yes, my Lord.

Will you have a look at the Charge Sheet, Exhibit 1. Can you say if that is the Charge Sheet statement for which you acted as interpreter on that occasion? - It is.

And is the accused's statement as recorded there, as far as you are aware, a correct interpretation of what he said in his own language? - Yes, my Lord.

Do you know if the accused understands English? - He understands English.

Did you also act as interpreter for Detective McIlveen earlier that day when the accused was arrested at 49, Zororo Lines? - Yes.

And did you act as interpreter later that day when certain indications were made in the vicinity of 99, Silcox Avenue, Houghton Park? - Yes.

I believe that you there met Detective McIlveen at the service station in the Houghton Park area that afternoon? - Yes, my Lord.

Can you recall what the first indication was that the accused made thereafter? - The first indication, it was between Beatrice Road and Salisbury Drive.

What did he indicate there? - He indicated to us that is where he had thrown the paper bag he was carrying the bottle in.

And did he indicate to you the route that he had taken to go to this address 99, Silcox Avenue? - Yes.

And when you arrived at that address, what did he indicate to you, or say to you? - He indicated to us where he was standing and the house.

Did he say anything about something or somebody called Cyprian? - He mentioned him.

What did he say about Cyprian? - He said he gave the bottle of petrol to one called Cyprian, and then he remained with the paper bag.

He gave the bottle to Cyprian and kept the paper bag; and then what did Cyprian do with the bottle? - He said he had thrown it at a house, No.99 Silcox Avenue.

Will you have a look at the plan, please, Exhibit 5. There is point X that represents a small tree.

HATHORN, A.C.J.: Is this in dispute, Mr. Horn? There has been no cross-examination about this?

MR HORN: That is the tree, I have not yet led proper evidence as to the interpretation. That is the only object.

HATHORN, A.C.J.: Yes, very well.

BY MR HORN: Would you refer to the point X and the point Z on the plan. X is the spot where there is a small tree and Z is the spot where the accused allegedly says he stood. Are those spots indicated by this accused as being the spot, first of all, where Cyprian was, and also where he, the accused, was. Are those the spots indicated by the accused as to where he and Cyprian were standing? - Yes, my Lord.

NO CROSS-EXAMINATION.

(Witness stepped down)

No.4

EVIDENCE OF DETECTIVE INSPECTOR C.G.THORNE

CHRISTOPHER GORDON THORNE, duly sworn and examined

BY MR HORN: Are you a Detective Inspector in the C.I.D. stationed at Salisbury? - I am.

At about one a.m. on the 28th of June, this year, did you go to an address known as 99 Silcox Avenue, in the Houghton Park, area? - I did so.

What happened when you arrived there? - I went to this house, I went to the front of the house. I observed a hole in the window of the lounge. I went inside to the lounge and I saw on the carpet of the lounge a burnt hole. I went outside the lounge, I went to the lawn, and

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No.4

Det./Insp. Thorne

Examination continued

on the grass near to the verandah I saw a bottle. Round this bottle was tied some material, cloth.

BY HATHORN, A.C.J.: This was outside? - This was outside. And there was some wire attached to the top of the bottle, which held the cloth to the bottle.

BY MR HORN: Did you take possession of the bottle? - I did so.

Subsequently did you hand this bottle in the condition in which you had found it to Detective McIlveen? - I did so.

Would you have a look at the bottle, Exhibit 6, and the cloth and wire, Exhibit 7. Can you say anything about those exhibits? - This is the bottle.

And the cloth and wire, Exhibit 7? - This is the wire and the cloth that was attached to the bottle.

There appears to be some charring of the cloth and some scorching of the top of the bottle. Was that there when you took possession of the bottle? - It was.

Having found and taken possession of the bottle, what did you do? - I smelt the bottle and the smell emanating from the bottle appeared to be that of petrol. I then went outside the hedge surrounding this property and on the verge, between the road and the hedge, I observed two damp spots in the ground. I smelt the ground at this point, and the small appeared similar to that coming from the bottle.

About how long were these damp spots? - They were about six inches by four inches.

Did you see anything else at that place? - Approximately one foot away from one of these damp spots was a used match.

Will you have a look at the plan, please, Exhibit 5. Can you indicate where approximately on the plan it was that you saw these damp spots which smelt to you similar to the bottle, and the match? - Looking at the plan, to the left of point X.

Now, point X indicates a small sapling which is growing about four feet away from the edge. Where in relation to the hedge and the sapling was the damp patch? - It was approximately six feet away from the sapling.

Down towards the gate? - Towards the gate.

About how far from the hedge? - I should say about four feet.

And where was the match in relation to the tree? Was that nearer or further away? - It was nearer the tree.

What did you do then? - I saw Constable Beunk at the scene. He handed me four pieces of paper which I took possession of and later gave them to Detective McIlveen.

Will you have a look at Exhibit 2B, please? What can you say about those four pieces of paper which are Exhibit 2B? - These are the papers I received from Constable Beunk.

What did you do with them? - I later handed them to Detective McIlveen.

They appear to have pink discolouration on them, were they in that condition when you handed them to him? - They were not, they have been tested for finger-prints.

Later did you cause photographs to be taken of the scene as you saw it that morning at one a.m.? - I did.

Are these the photographs which are Exhibit C at the preparatory examination? - Yes.

(Put in as Exhibit 9)

Would you just go through each photograph? - Photograph No.1 is the front of the house, 99 Silcox Avenue, shewing the lounge window, also the window which looks into Room B, also the window partly cut off, which looks into Room C, and also the front door.

Does that apply to the rooms as marked on the plan, Exhibit 5? - That is so. Sergeant Goodhead is standing on the front stoep indicating the smashed front window pane. Photograph No.2. shews a close-up view of the front lounge window through which the petrol bomb was thrown. The pane can be seen smashed. Photograph No.3 is taken from inside the lounge looking out towards Silcox Avenue. A smashed pane can be seen on the carpet, where petrol bomb landed and burst.

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No.4

Det./Insp. Thorne

Examination continued

That is, of course, as a result of a report made to you, presumably by the complainant, Mr. Bonham? - That is so.

And this small patch here near the bottom of the photograph is the burnt patch? - That is so.

Is that the state in which you found the lounge when you arrived there at 1 a.m. ? - That is so.

Cross-Examination

Cross-Examined

CROSS-EXAMINED BY MR WHEELDON: Mr. Thorne, did you also find close to the tree, at X on the plan, footprints? - I did not observe any, my Lord.

But from what you say I imagine you concluded that the petrol bomb had been thrown from approximately this point, the match, and what you took to be petrol stains on the ground? - That is what I thought.

No re-examination.

(Witness stepped down)

No.5

Constable Beunk

No.5

EVIDENCE OF CONSTABLE W. BEUNK

Examination

WILLIAM BEUNK, duly sworn and examined

BY MR HORN: Are you a Constable in the B.S.A.P. stationed at Salisbury? - I am.

I believe on the 28th of June this year, at about 12.20 a.m. as a result of a report received you went to No. 99 Silcox Avenue, Houghton Park? - That is correct.

Approximately what time did you arrive at the scene? - Approximately 12.20 a.m.

It was 12.20 when you arrived there? - That is so.

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No.5

Constable Beunk

Examination continued

What happened when you arrived there? - I arrived at the scene and went into the property and saw the householder.

Did he make a report to you? - He made a report to me.

As a result of this report that he made to you, what did you do? - I went outside and tried to find the place from which the petrol bomb had been thrown which I had seen in the garden, it was not in the yard. I then proceeded to the verge of Silcox Avenue and there I saw where the petrol bomb had been thrown from.

What was it that you saw there that led you to this conclusion? - I found two damp spots on the ground, both smelling of petrol, and also a number of footprints around these petrol spots.

Did you see anything else at the scene, or near the scene, where you saw the two damp spots? - I put my dog down to track from these spots and the dog indicated to me one match. He then indicated some letters.

Where was this match in relation to the damp spots? - Approximately 18 inches from the main damp spot, from the margin of the damp spot. And the letters were approximately 2 paces from these damp spots.

Were you there when Detective Inspector Thorne arrived? - I was.

Do you know if he observed these damp spots? - I indicated them to him.

And the match? - The match I indicated too.

Now, these notes that you have mentioned, where abouts were they? - They were lying on the sandy soil next to the tree, a young tree that was more of a shrub than anything else. They were lying next to that on the northern side of the tree.

On what side of the tree were the damp spots and the match? - Also on the northern side.

All on the northern side? - All on the northern side.

How did you progress, the damp spots, and

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No.5

Constable Beunk

Examination continued

then the match and then the papers, or in some other order? - It was the damp spots, the match and then the papers.

So the papers were nearest the small tree you have mentioned? - Yes.

Will you have a look at the plan, Exhibit 5. Point X has been described as a small sapling. Would that be the same shrub to which you are referring? - That is correct.

What did you do when you found these notes, or rather, when these notes were found, in what condition were they? - The notes were four in number. One was lying open, the other three were still folded together. They were in perfect condition.

And when you say "folded", how were they folded? - In half.

And one was lying upon the other? - One was lying upon the other.

Were they all together? - The one lying open, its one corner was touching the others.

And the other three which were folded, were they lying on top of each other or what? - The folded ones were lying like this (demonstrated by witness) The corner of the open one was lying on the top. They were lying virtually on top of one another.

These footprints that you saw that you have mentioned, where were they in relation to the place where the damp spots were, and the match and notes were? - There were numerous footprints all around the damp spots between the shrub and where the damp spots were, all coming from the same imprint of a shoe. And also there was a footprint on the edge of the damp spots. These footprints were going in all directions; in other words, as if somebody walked around in that area; and then the footprints went south from the tree.

Could you follow them thereafter? - I followed them visually.

How far did you follow them visually? - Visually at that time I followed them to the intersection of Burston Close and Silcox Avenue.

You say all these footprints were of a particular

pattern? - That is correct.

I believe that you have seen the shoes or tackies which were allegedly taken from the accused's quarters? - I have not seen them.

You have not seen them? - I have not seen them.

In view of the fact that you have not seen them, I wonder if you would give some idea of the pattern? - It was a very small diamond-shape, approximately 1/16th of an inch in size. I would think they came from a pair of sand shoes.

You mean over the whole of the sole and the heel? - Over the whole of the sole and the heel.

What did you do with these pieces of paper that you found at the scene? - I took possession of the papers and placed them in an envelope for safe keeping, and when the C.I.D. detail arrived I handed them to him.

Will you have a look at the notes which are Exhibit 2B. What can you say about them? - These are the notes I found.

You say you noticed when you came in that there was a bottle, I think you said, lying in the front of the house? - That is correct.

Was this bottle interfered with in any way at all till the C.I.D. arrived? - On my instructions nobody touched it.

Were you the first policeman on the scene? - I was.

HATHORN, A.C.J.: Are you going to suggest that these footprints were made by the shoes found in the accused's quarters?

MR HORN: No, I am not, my Lord. I have just seen the shoes now. I did not know what the pattern was on the bottom of the shoes. That is why I asked this witness whether he had seen them.

HATHORN, A.C.J.: That is quite a different pattern.

MR WHEELDON: These appear to be bars straight across the bottom of the sand shoes.

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No.5

Constable Beunk

Examination continued

MR HORN: Perhaps I could just put this to the witness?

HATHORN, A.C.J.: We need not burden the record with exhibits which are not relevant.

MR HORN: The Crown admits that the sand shoes taken possession of by the police at accused's quarters on the morning of the 29th of June, are of a dissimilar pattern to the pattern described by the witness.

Cross-Examination

Cross-Examined

CROSS-EXAMINED BY MR WHEELDON: Constable Beunk, I think you have given this evidence, but I justwant you to confirm it. The footprints you saw apparently were all made by the same pair of shoes? - They were.

Re-Examination

Re-Examined

RE-EXAMINED BY MR HORN: Is the position that there were no other footprints there whatsoever? - There were no other footprints whatsoever.

BY HATHORN, A.C.J.: In that area? - In that area. Any other footprints which might have been there were overlaid by the diamond pattern.

BY MR YARDLEY: Where was the bottle? - The bottle which I took to be a petrol bomb when I first saw it was lying on the lawn directly outside the front of the door. It would be east from the front door.

Was there any sign of charring on the lawn? - There was charring on the lawn. I also observed that, when I went into the house the first time, I saw a hole in the front window. I also saw a charred carpet.

BY MR CRIPWELL: Do you know anything about the point Z on the plan? - Sorry, that would be on the tarred road, Silcox Avenue.

You did not go there? - I did not.

(Witness stepped down)

Further hearing adjourned to Tuesday 17th September.

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No.5

Constable Beunk

Re-Examination continued

TUESDAY, 17th SEPTEMBER, 1963

17th September 1963.

SECOND DAY OF TRIAL.

THE COURT re-ASSEMBLED AT 10 A.M.

MR HORN: If the Court so allows and my learned friend has no objection, I would like to recall Detective McIlween at this stage, to testify to exhibits which were not available yesterday for production, and in regard to a conversation that he had with the accused when he arrested him on the morning of the 29th.

HATHORN, A.C.J.: Yes. I take it you have no objection?

MR WHEELDON: No objection.

EVIDENCE LED FOR THE CROWN CONTINUED

No.2.

Evidence of Det. McIlveen (Recalled)

No.2

Det. McIlveen Recalled

THOMAS BRIAN McILVEEN, under former oath,

BY HATHORN, A.C.J.: While I think of it, Detective McIlveen, approximately how far is it from the accused's house in Highfields, 49 Zororo Lines, to 99, Silcox Avenue? - I would estimate it to be about two miles. Zororo Lines is a line of houses in Highfields which are nearest the Beatrice Road.

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No.2

Det. McIlveen Recalled continued

I only wanted to get an approximate distance? - About two miles.

Yes.

BY MR HORN: You mentioned yesterday that you took possession of some wire and some pliers, and a bottle of ink when you searched the quarters in which you found the accused on the morning of the 29th? - That is correct.

Are those the objects, first of all the pair of pliers? Yes, these are the pliers. 10

(Pliers put in as Exhibit 10)

And is this the bottle of ink? - This is the bottle of ink.

(Ink bottle put in as Exhibit 11)

And is this the piece of wire ? - This is the piece of wire.

(Wire put in as Exhibit 12)

Would you just retain the piece of wire and have a look also at the cloth and wire, Exhibit 7, in particular the wire. I wonder if you would 20 hand up the wire of Exhibit 7 and the wire in Exhibit 12 to the Court (Two pieces of wire handed to Court.) The Crown cannot allege that this is the wire, the Crown merely says that the wires are similar.

HATHORN, A.C.J.: They appear to be the same type of wire, appear to be similar in all respects. You have seen them, Mr. Wheeldon?

MR WHEELDON: Yes, I have my Lord.

BY MR HORN: When you arrested the accused I 30 think you said earlier in your evidence that you warned and cautioned him at that time? - I did.

Did he appear to be in his sound and sober senses at the time? - He was.

When you found the exercise book, Exhibit 2 A, did you say anything to him in that regard? - When I saw the note on the inside of the front cover, I asked the accused was this his.

Before you go on, did he reply to that, did

he say anything in reply to your question? - He did.

BY HATHORN, A.C.J.: What was your question? - I showed him a note from inside the front of the exercise book and said was this his.

BY MR HORN: And did he reply to that? - He did.

The Crown tenders the statement so made.

MR. WHEELDON: No objection.

BY MR HORN: What was said in that regard? - The accused said that he had made this copy of the note intending to give them to the Sergeant in the special branch.

Further Cross-Examined

CROSS-EXAMINED BY MR WHEELDON: Just one point about the wire that you found. I am afraid I forget what your evidence was yesterday as to where you found this small piece of wire, Exhibit 12? - I found the small piece of wire attached to a bicycle chain which served as a method of securing the front door of this building.

Did you notice also that there was a wire of a similar type which was used apparently partly to secure the roof of the building, which is corrugated iron, to the walls? - I did take possession of a piece of wire from the side you mention, but the wire is a lot thicker. That was a different wire.

The wire that you saw attached to the bicycle chain was still capable of being used. It did not look as though it had been cut off, or couldn't you say? - I could not really say. It was twisted round the cycle chain and the two ends were twisted together.

BY HATHORN, A.C.J.: I think what counsel wanted to know was, did the bicycle chain still operate as a means of securing the door? - It did.

Is that not your point?

MR WHEELDON: That is so.

NO RE-EXAMINATION.

(Witness stepped down)

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Evidence for the Crown.

No.6

Det/Ins.Hollward Examination

No.6

EVIDENCE OF DETECTIVE INSPECTOR HOLLWARD

DAVID LESLIE ROMAINE HOLLWARD, duly sworn and examined

BY MR HORN: Are you a Detective Inspector in the C.I.D. stationed at Salisbury? - I am.

What are your duties at present? - I am a photographer and also a learner handwriting examiner.

How long have you been learning in this field? - Since March this year.

To what extent has your learning taken you? - I have prepared comparison sheets for approximately half a dozen cases.

Have you read anything on the subject? - The textbook I have used is "Suspect Documents" by Harrison.

Is that a recognised authority? - It is recognised as an authority.

And what is the extent of the work you have done? For instance, in your examination of handwriting over the last few months, is there any differentiation in the type of handwriting that you have been called upon to examine? - Yes, a variety of types of handwriting.

In those cases in which you do not feel that you are able to demonstrate any similarity, what do you do? - I then refer to my officer in charge, suggesting that an expert be called upon if required from South Africa or Northern Rhodesia.

I believe that on the 29th of July this year you received from Detective McIlveen a blue exercise book? - That is correct.

Would you have a look at Exhibit 2A. Is that the exercise book? - That is the exercise book.

I believe you also received at a later stage four notes? - These are the four notes.

Are those the notes, Exhibit 2B? - Yes.

What steps did you take in connexion with those two exhibits? - I photographed these documents and prepared two and a quarter times enlargements, and from these I made certain extractions of similarities.

And did you mount the results of your photography on a number of pieces of cardboard which have been joined together? - I did.

Is that the end result of your efforts? - This was what I prepared.

(Put in as Exhibit 13)

HATHORN, A.C.J.: Are there no copies of this?

MR HORN: Unfortunately it is not an exhibit which can be reproduced. I am just wondering about the best way in which this witness can possibly demonstrate to the Court.

HATHORN, A.C.J.: The first thing, if we saw the exhibit it might be helpful.

MR HORN: Yes, my Lord. I hand this in for examination.

(Exhibit given to Court)

(To witness): It might make it easier if I just mention at this stage, I believe that you have lettered the exhibits or photographs in a certain way? - I have.

And I understand that "U" is the specimen and "W", "X", "Y", "Z" are the four notes? - That is so.

And you have taken as the first extraction the word "general" from all five documents? - That is correct.

And you have also extracted the word "hokoyo" from each document? - Correct.

And the word "support" from each document? - Yes.

And the word "appel" spelt A P P E L ? - Correct.

And the word "individual"? - Correct.

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Det/Ins.Hollward Examination continued

And the word "constitution"? - Yes.

Also the word "principles"? - Correct.

And the word "party"? - Yes.

And the word "self"? - Correct.

And the word "thanks"? - Correct.

And that you have indicated on that exhibit the origin of each of these words which you have taken out and enlarged? - I have.

HATHORN, A.C.J.: Have you seen this?

MR WHEELDON: Yes, my Lord.

HATHORN, A.C.J.: You understand the evidence?

MR WHEELDON: Yes, my Lord. I might say I disagree with my learned friend that that could not have been copied. I would also suggest it certainly should have been copied. However, I have seen it, and I have no objection.

BY MR HORN: Just referring to these ten words which you have taken extracts for, I wonder if you would explain to us whether any points of similarity occur on any of these words? - First of all the overall style of formation of the letters throughout all the documents appear to me to be similar, and then extract one, I have used the word "general"; in particular the letter "r", it will be seen that it is raised above the other letters.

I wonder if perhaps you could fold that in two and indicate, holding up the exhibit, what letters you refer to.

HATHORN, A.C.J.: I think we must examine these afterwards. If he will indicate what particular similarities he wishes to draw attention to. I understand you don't tender his evidence as the evidence of an expert, who gives an opinion.

MR HORN: My Lord, I tender his evidence on the basis on which handwriting evidence is usually given.

HATHORN, A.C.J.: That is, pointing to

similarities?

MR HORN: Pointing to similarities. On this basis, as I understand the law, similarities must be demonstrated to the Court and agreed. That is the end result of the assistance which the expert or near-expert gives as to whether the handwriting is or is not similar.

(To witness): Will you continue? - The letter 'r' is raised in all cases. And the formation of the 'a' at the end of "general". The actual formation of the letter 'a' in particular. Number two example is the word "hokoyo", the formation of the 'H'; in particular the formation of 'k' and the 'oyo' at the end.

What is it about the letter 'k'? - The 'k' is an upward stroke with very separated strokes forming the right-hand side of the letter 'k'. The stroke comes down, makes a "kink", and then goes through to the next letter.

So is the letter 'k' actually broken into two sections? - It is broken into two sections. Example three is the word "support", particularly the formation of the letter 's', and again the raised 'r' appears and the formation of it.

What is the formation of the 's', the characteristic to which you draw attention? - The actual style of the formation of the letter is characteristic throughout. In example "Y", it is not quite so; it is more a round 's'. But in the other examples you can see that it has been elongated.

What about the 't' and the 'p'. Is there anything of any significance with regard to those letters? - The 'p's throughout are of the same style. The loops do appear to the 'p's in "X", "Y" and "Z", but in "W" the loop is there but it has gone on top of the other part, and does not actually look as though there is a loop. The stroke has come up on the same lines so the loop does not really appear.

And the 't'? - The 't' - it is noticed that the 'T' does not actually cross the upward stroke of the letter, but is separated, goes past.

BY HATHORN, A.C.J.: The cross of the 't'? -

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It does not actually cross the upright of the letter. Example four is the word "appel", or I presume it is the word "appeal" incorrectly spelt; and in all cases it has been spelt in exactly the same way "appel". Again we have the same style of formation of the 'p's as in the previous example in "support".

And example number five? - The word "individual", the most characteristic letter in the word is the 'v', which is raised in the same manner as the 'r' in previous examples.

And example six? - The word "constitution". The formation of the 's' is the same right through. The 't's with the crosses not crossing the upward stroke also stand out.

And example seven? - Example seven is the word "principles". Here again we have the raised 'r', the similar type of 'p', the similar type of 'c', and 's', which has appeared before.

And the word "party"? - In the word "party" again we have the same styled 'p'; the raised 'r' appears, and the crossing of the 't' is similar as in the other cases. But it will be noted that in "Y" the 't' is actually crossed on the upward stroke.

And the word "self"? - The word "self". In the word "self" we have the characteristic 's' and 'f' is also of a similar styled formation throughout.

And the word "thanks"? - Example ten, in this case we have the 't' with a large loop on the upward stroke, and in each case has been crossed across the upward stroke, except in example "Z", where the 't' has been forgotten to be crossed altogether. In each case the 't' goes through to the 'h' which also has a loop, and we again have the characteristic 'k' as in the "hokoyo" example.

Can you give any explanation as to why in this particular word "thanks", the letter 't' should be for the most part crossed, and in other words uncrossed? - My view is that being the first letter of the word there has been more attention paid to that letter.

One further point, are you able on the limited experience you have had, to give any opinion as to whether or not the writing on the exercise book is

the same as that in the notes, and again whether in each of the notes the writing therein is the same?

HATHORN, A.C.J.: I do not think you ought to lead that evidence.

MR HORN: With respect, his opinion might be that it is not the same. He might be asked to give some opinion. Obviously the weight to be attached to his opinion depends on his ability to demonstrate his opinion to the Court in the first place, and his experience in the second place. It is a matter which goes to the weight of the evidence and not to the admissibility.

MR WHEELDON: I have no objection to the question, my Lord.

HATHORN, A.C.J.: Very well.

THE WITNESS: On making up this comparison chart of ten examples from the specimens, and the four suspect documents, I am of the opinion that they have been written by the same person.

BY MR HORN: All of them? - All five documents.

Are there any marked dis-similaries which you feel you should draw attention to or not? - I did mention the examples where they were not quite the same, but the overall effect in my limited experience is that they are the same.

NO CROSS-EXAMINATION.

(Witness stepped down)

No.7

No.7

R.P. Blackmore Examination

EVIDENCE OF RONALD PERCIVAL BLACKMORE

RONALD PERCIVAL BLACKMORE, duly sworn and examined

BY MR HORN: Are you a director of Blackmore Agencies (Private) Limited in Salisbury? - I am.

Is that a business which deals *inter alia* with photography? - No, my Lord.

Have you had any experience in the field of photography and/or handwriting? - I have.

I believe that you were a member of the C.I.D.

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R.P. Blackmore Examination continued

until fairly recently? - That is so.

Have you had any experience in the field of handwriting? - I had three years' experience whilst in the C.I.D.

And have you ever been called upon to prepare exhibits similar to that prepared by Mr Hollward and comment thereon? - I have. In several instances I have given evidence in the Magistrate's Court as an expert, in Salisbury and other centres.

I believe that you had an opportunity of examining exhibit 13, which is the last document consisting of photographs of an exercise book, and four notes, and certain extracts of words therein? - I have.

Did you hear Inspector Hollward giving his evidence? - I did.

Would you have a look at the exhibits. Can you say what your opinion is regarding whether or not the same hand wrote all four notes, and what is written on the exercise book cover, and, if you agree with the last witness, whether you base it on the same factors that Mr Hollward did or whether there are other factors or other dissimilarities which you feel you should point out? - From my experience I am satisfied that the handwriting in each of the documents and on the exercise book was written by the same person. I agree with the points that Inspector Hollward made.

Are there any further points which you feel you ought to make, either in regard to similarities, or dissimilarities in the letters? - There is just one thing I would like to point out, and that is the general flow of the writing is consistent with the person having written it slowly. Certain upstrokes are shaky in outline, and in most of the words the letters are all joined together.

If you are copying something from a piece of paper, writing it on to another piece, can you say if one's handwriting tends to be slower or the same as normal speed? - It tends to be slower in my opinion.

NO CROSS-EXAMINATION.

BY HATHORN, A.C.J.: I do not understand why

you say that, because the letters are joined, that indicates that the words were written slowly? - No, there was another point I was making.

It is the evidence of shakiness that suggests it was written slowly? - Yes.

What was the point about the letters being joined? - Another point of comparison.

Merely that the letters were all joined? - Yes. In some handwriting the words are broken into various parts, but in this case all the letters are joined together.

(Witness stepped down)

No.8

EVIDENCE OF INSPECTOR ZONDAYI

ZONDAYI, duly sworn and examined (in English)

BY MR HORN: Are you a Detective in the C.I.D. stationed at Salisbury? - That is so.

On Saturday the 29th June last were you on duty in the Salisbury C.I.D. offices? - I was.

Did you see the accused on that day? - I did see him.

Were you present at about 4 o'clock in the afternoon when the accused made a report to Detective McIlveen concerning this case? - Yes, I was.

Did you interpret what the accused said to Detective McIlween? - I did.

And did you do that to the best of your skill and ability? - Yes.

Can you recall at this stage what it was that the accused said in connexion with this case at that time to Detective McIlveen? - Yes, I can.

What did he say? - The accused told me that he wanted to make some indications about the place where the crime was committed. Then I took the accused to Inspector McIlveen myself and handed him to Detective McIlveen on which he took another Sergeant Hode.

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Det. Zondayi Examination continued

No.3.

Sgt. Hode Examination (recalled)

Did Sergeant Hode go from this C.I.D. office to the scene? - Yes, my Lord.

Did you interpret anything between the accused and Detective McIlveen? - What I interpreted was only that the accused had said that he wanted to go and indicate the place where the crime was committed.

NO CROSS-EXAMINATION.

(Witness stepped down)

No.3.

EVIDENCE OF SERGEANT HODE (recalled)

HODE, duly sworn and examined (in English)

BY MR HORN: You have previously given evidence in this case? - Yes, my Lord.

Early on the morning of Saturday the 29th of July were you present when the accused was arrested at 49 Zororo Lines? - I was.

Did you act as interpreter to Detective McIlveen, between Detective McIlveen and the accused on that occasion? - Yes.

During the course of searching of his quarters, can you recall if the accused said anything to Detective McIlveen in connexion with the exercise book, Exhibit 2A. There appears to be some writing inside one of the covers? - I remember what he said to Detective McIlveen. He said these notes he wanted to send them to Detective Sergeant Harvey of the C.I.D.

You mean what is written on the notebook? - What is written on the exercise book.

NO CROSS-EXAMINATION.

BY HATHORN, A.C.J.: Could I just see the exhibit. (To witness) These notes start "general Hokoyo". Whose name is that? - It is a threatening name, it is a name.

What does the word mean? - "Hokoyo" is threatening, a threatening word, threatening someone.

Is "hokoyo" a word in Shona? - Yes, in Shona.

Is it a Shona name, do you know anybody called "hokoyo"; is it a name? - It is a name, not a name of someone, but only a name. If you want to do something to someone you say "hokoyo".

What is it the equivalent of in English, what would you say - "look out"? - You can say "look out", or "careful".

"Beware"? Yes, beware.

These notes finish with this word "basapo lapo"? - "Basopoplapo" is "beware".

Are those words Shona words? - "Basopop lapo" is not a Shona word.

Anything arising out of that?

COUNSEL: Nothing arising.

BY HATHORN, A.C.J.: While we are on this I would just like to hear what the Court interpreter says, how he interprets the word "hokoyo". In the context, Mr. Interpreter "general hokoyo to support ZNP", what is the meaning of the word?

INTERPRETER: "Be careful", I mean "beware".

HATHORN, A.C.J.: Is it a kind of threat?

INTERPRETER: It is. Even if it is not a threat when you say something dangerous, say where there is an electric installation, you can say "hokoyo", which means "beware, you are liable to get yourself electrocuted".

HATHORN, A.C.J.: And "basopo lapo"?

INTERPRETER: "Be careful there."

HATHORN, A.C.J.: And is that Shona?

INTERPRETER: No, kitchen kaffir.

(Witness stepped down)

No.9

EVIDENCE OF JOHN WILLIAM THOMPSON

JOHN WILLIAM THOMPSON, duly sworn and examined

BY MR HORN: Doctor Thompson, are you the forensic scientist to the British South Africa

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J.W. Thompson Examination continued

Police stationed at Salisbury? - Yes.

I believe you are a B.Sc. and Ph.D? - Yes.

Are you a fellow of the Royal Microscopical Society? - Yes.

Are you qualified to carry out examinations involving skill in physics and chemistry? - Yes, my Lord.

I believe that on the 1st of July this year, Detective McIlveen handed you certain objects in your laboratory in connexion with this case? - Yes.

Among other things did he hand you a bedspread or a large piece of material, which is Exhibit 4 in this case? - Yes.

That is the bedspread or piece of material? - Yes.

Did he also hand you a glass bottle containing liquid, and is that the glass bottle, Exhibit 6? - Yes.

When he handed you the glass bottle did it have any attachments? - There was a piece of cloth on top.

By what was the cloth tied on? - By wire.

Will you have a look at the cloth and wire, Exhibit 7, is that the cloth and wire? - Yes.

Did he also hand you four notes which are at present Exhibit 2B? - Yes.

Did he also hand you a fountain pen which is at present Exhibit 3? - That is the one, yes.

When he handed you the fountain pen was there any ink in it? - There was.

I believe that on the 2nd of July you went to a house, No.49 Zororo Lines in Highfields, together with Detective McIlveen? - Yes.

Can you recall approximately what time of day or night it was? - 11.15 a.m.

And did you take possession there of a tin, which is Exhibit 8? - Yes.

Was there anything inside the tin? - There was

a small quantity, about five cc of petrol.

Did you remove this petrol? - I did.

And did you put it into a small phial? - Yes.

Is that the phial containing the petrol? - Yes.

(Phial put in as Exhibit 14)

And I understand that you conducted certain tests on these articles which you yourself had taken possession of or had received from Detective McIlveen? - Yes.

Did you make notes at the time you conducted the test? - I did.

Did you subsequently incorporate those into Affidavit Form? - I did.

I believe you have the affidavit with you? - I have.

(To court) The witness obviously from time to time will have to refer to his notes, if there is no objection.

MR WHEELDON: No objection, my Lord.

BY MR HORN: Doctor Thompson, will you tell us first of all about the test which you conducted on the last piece of material, Exhibit 4, in relation to the piece of cloth which forms Exhibit 7? - This material is part of a bedspread. It is made of what is known as a composition fibre, that is second-hand or previously used fibre, which are woven into cloth. As a result of this it has a very wide variety of different sorts of fibres present in it, and the distribution of these fibres is not uniform, it differs from place to place.

There are a number of red flags attached to this exhibit. Did you affix those flags? - Yes.

I wonder if you could tell us what significance if any is to be attached to the places where the flags are attached? - This is the point from which a portion of the bedspread has been torn away.

About what size portion would you say had been taken away? - About 30 inches by 7 inches, I should think.

It is a long rectangular part out of one side?

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J.W. Thompson Examination continued

- Yes. In this area there are marked by these flags here what is known as double faults, that is two threads are woven together.

How many should be woven together? - Over the rest of the cloth there is only one, but at these points we have two.

Are these faults which extend throughout the whole length? - Throughout the whole length. This is the width. Now in the cloth wrapped or tied on to the petrol bottle itself, there were also three double faults present in the whole of the cloth.

HATHORN, A.C.J.: That is ....?

MR HORN: In Exhibit 7, my Lord.

WITNESS: And I had not counted these double ones here because it is right up on to the tear. This material frays rapidly and this one won't be present. So there are only three double faults missing, or in the piece missing, or in the piece torn out. There are three double faults in this material here. (Pointing to spot on exhibit).

BY HATHORN, A.C.J.: Do these double faults reproduce themselves ever so often? - No, they are irregular. That is why I have marked them out here. They are irregularly distributed. Round this particular double fault here I took out the various foreign fibres present.

Which double fault were you describing? - This one (witness indicates on exhibit).

That is the double fault nearest to the torn edge?

MR HORN: Actually I think it is the top one.

WITNESS: This is the piece torn out like that (indicating on exhibit).

BY HATHORN, A.C.J.: It is nearest the middle? - Nearest the middle.

And it is about two inches away from the torn edge? - This double fault runs right away across the width of the cloth.

It is right across? - Yes.

Not just one spot, it is on a line? - Yes, on a line running right across the cloth.

BY MR HORN: Does that apply to the other two double faults? - Yes, all these are the same. They are double faults which run right the way across.

And you say you found three double faults in the piece of material which was wrapped round the top of the bottle? - Yes.

How do they compare with the faults in the material, Exhibit 4? - The best method of comparing them is to take out the foreign fibres which are present. There is a wide range of foreign fibres such as green wool, red wool, blue wool, red cotton, pink cotton and so on. All the kind of fibres which you can get out of various places; the kind of fibres here and on the corresponding piece missing, correspond, but they do not match up anywhere else.

I just want to be clear. The double faults on the blanket, Exhibit 4, and the double faults in the charred pieces of material, Exhibit 3, were they in any way in corresponding positions? - No, these were in three pieces.

BY HATHORN, A.C.J.: You are referring to Exhibit 7, the charred bit? - Yes, this charred bit from the bottle. That is in three pieces, and each piece contains double faults in it.

BY MR. HORN: It is not possible to lay them out side by side? - It is possible to deduce the position of this. The distance between these two double faults and this is less than this distance here (witness indicating on cloth) and the size of this piece of cloth is such that you cannot fit it into this side. (Demonstrates on exhibit).

BY HATHORN, A.C.J.: What you are saying is that the distance between the three double faults which are opposite the torn bit is less than the distance between the surround of this and the edge of the torn-off bit? - That is correct.

BY MR HORN: Perhaps it would be easier if you could spread the blanket out and illustrate on the table. (Witness lays exhibit on table), and illustrate whether you can fit any of the charred pieces of material? - No, you cannot.

Or indicate where you say they come from? - This material has lost some of its original charring, and it was too big to go in this gap here (demonstrating on exhibit). So the assumption was that it fitted in this way (indicating on exhibit).

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BY HATHORN, A.C.J.: Fitted in the place where there was no double fault? - This double fault matches up with this one here (indicating on exhibit).

We had better put it this way, that in this gap which you say is about 30 inches long, there are three double faults opposite the torn-off part? - Yes.

One is in the middle? - Yes.

And let us pretend it is in the uppermost of the points of the compass. To the south of that there is one about three inches away, and then there is another. The third double fault is how far away?

MR HORN: Approximately six or seven inches, I would say.

BY HATHORN, A.C.J.: Now one of those pieces of cloth, because of its size, you say you could only make it correspond with the most northerly of the double faults? - Yes, my Lord, and taking out the foreign fibres present, the foreign fibres here match up with the foreign fibres which come out here? (Indicated on exhibit).

MR HORN: That is out of the most northerly? -

BY HATHORN, A.C.J.: The foreign fibres out of the charred piece match up with the foreign fibres in the most northerly of the double faults? - Yes, my Lord, and they do not match up elsewhere.

BY MR HORN: Only in the charred piece? - In this charred piece here there are two colours of cloth, the darker pattern and the lighter pattern. The torn material has come across the joint; there is the pattern of the lighter material on the torn-off piece. Here, on this piece of charred cloth, there is a lighter and darker coloured portion.

BY HATHORN, A.C.J.: So you think it came right away from the cloth? - That came out from the cloth, and the foreign fibres - there are nine different types of foreign fibres in this portion here - the coloured portion, and they match up with this coloured portion here (indicated on exhibit).

In the light coloured portion there are nine coloured fibres and they match up with that fault? - Nine different types of fibre.

BY MR HORN: In other words, are you saying they only match up at the place where the tear was? - Yes.

Any further comparison with the other piece? - No, that is all.

There seems to be one red flag on one of these? - Simply to mark the double fault here.

So, have you another piece of the double fault? - Yes, there are three double faults present. (Indicated) This one is slightly difficult to see, but it is present.

On the most southerly, is there another piece of charred material with the double fault which lines up with that most southerly double fault? - There is a piece of double fault on this piece of material here (indicated on exhibit).

What about a type of fibre that you have extracted; how do they compare? - I did not match those up, because it is a long job picking up the fibres, and this lot matched up and this lot matched up. (indicated on exhibit).

I believe that in attempting to demonstrate this double fault you have referred to, or this type of thing, you have had certain photographs taken? - Merely to illustrate what a double fault is.

Are those the photographs which were exhibit K at the preparatory examination? - Yes.

(Put in as Exhibit 15)

Would you just indicate on the photograph by reference to the note at the side what it is you are pointing out? - In Photograph number one the double fault is marked running from A to B, with the pins actually sticking into the double fault, and the other threads are just single threads.

BY HATHORN, A.C.J.: What is this a photograph of? - Of the actual charred material.

That is of the charred material, the biggest piece? - Yes.

About which you have just given evidence comparing with the most northerly of the double faults? - Yes, my Lord.

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BY MR HORN: And the second photograph? - It illustrates another double fault in one of the other pieces of charred cloth running from C to D, with the pins sticking in it. Actually you can see it more clearly just below the head of the pin, the two threads woven together, just to the right of the pin.

In other words these little cross fibres appear to have jumbed two instead of one? - Yes.

You say that extends right through the material? - Yes.

You have not matched those up? - No.

And the result of your research into these fragments of the material, Exhibit 4, can you give any opinion as to the origin of those fragments, Exhibit 7, that is to say, where did they come from? - It is very unlikely that you will find a similar piece of cloth with the matching fragments in it; and to find two different pieces of cloth from the same piece of material, both matching, the odds are extremely long against that having come as an accident.

Are you able to give an opinion or accept that it comes from Exhibit 4? - My opinion is that it did come from Exhibit 4.

The Court took a short adjournment and re-assembled at 11.20 a.m.

JOHN WILLIAM THOMPSON, under former oath

BY MR HORN: Just before proceeding to your next test, there are two matters which I would like to take you back to about the blanket. First of all you mentioned that the foreign fibres which you extracted from each of the double faults in the charred material and the blanket, Exhibit 4, appeared to correspond. How did you undertake that test? - By means of a comparison microscope. With the comparison microscope it is possible to put, say, two fibres on to separate slides and then optically bring them together. So you can see the two fibres at the same time. It is therefore possible to compare textures and colours. The human eye can see colour very accurately and distinguish between a great many different shades of red, yellow and others. By means of a comparison microscope it is possible to compare the fibres colour for colour and thickness for thickness; and they all corresponded.

You mentioned the foreign fibres and the three double faults in each of the pieces of material; what about the foreign fibres elsewhere in the blanket in the double faults? - I compared the foreign fibres in the middle double fault with the corresponding small piece of material, and also went along the whole of the length of the large piece of material looking for similar fibres; for instance, there was an irregularly green dyed wool fibre near the middle fault; I could not find that anywhere else.

And did you conduct any tests with any specific pieces, I was going to say, weave or material threads, rather in the charred piece and in the blanket, Exhibit 4? - I tested the amount of twist in the cotton threads running lengthwise known as the woof.

In each piece of material? - In each piece of material, and the twist was 10½ turns per inch in both cases; and there is considerable variation in the twist of cotton.

Does that assist you at all in coming to your conclusion as to whether or not the charred pieces came from the uncharred blanket, Exhibit 4? - Yes, it forms a view I stated that they both came from the same piece of material.

You mentioned that you received this fountain pen which contained ink, and also you received the notes, Exhibit 2B, from Detective McIlveen. What tests, if any, did you carry out on those objects? - In order to examine the inks, one of the best methods of doing this is by means of a process known as chromotography. Basically the process is this. A small spot of the ink is placed on a strip of filter paper. The extreme bottom edge of the paper is placed in a suitable solvent. The solvent seeps up the paper or creeps up the paper by capilliary action. Some of the constituents of the ink are strongly absorbed on the paper and they do not move. The less strong components of the ink move up with the solvent. By this means the ink is separated into its component parts. I gathered together all the available blue-black inks in Salisbury.

You mean sold under different trade names? - Sold under different trade names.

Yes? - There are 16 of them. I treated them in this manner. When the various components have been

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J.W. Thompson Examination continued

separated out they are also examined under ultra violet light, most of them fluoresce, they fluoresce with different colours, so you can get even further distinguishing characteristics. By this means I could clearly distinguish between the pen ink on the note and the other purchased inks. But the ink in the fountain pen and one particular make of ink, blue supra ink, were all the same.

Are you saying this blue supra ink was in the pen and that blue supra ink had been used to write the note that you took a sample from? - Yes.

How did you take a sample from the note in order to establish its type? - The standard test for this is to put on a solvent with a faint hypodermic. You put a series of drops of solvent on the "1" of the note. Actually you can see the "1" on this particular letter here. I have taken the ink off here (indicating on note).

BY HATHORN, A.C.J.: Referring to the tops of the three notes? - Yes, that is right, this one here, the "1".

Yes, that is the "1" of "basopo lapo" which is on the top of the four notes of Exhibit 2B which appears to be smudged.

BY MR HORN: That allows you to get the ink off the note? - That is right.

And you followed the same procedure that you have already described? - Yes. Technically it is practically impossible to make a successful lot of dye exactly the same. You always get a variation between one lot of dye and the next lot. For this reason, batches of ink vary, even from your blue supra ink you would get an appreciable variation from one batch to the next batch. And the fountain pen ink and the note ink corresponded exactly, but there were minor variations between that and the blue supra ink.

This blue supra ink sample you got commercially? - Yes.

Would the fact that any other ink had been in the pen and the pen had been refilled from the supra ink, would that affect it in any way? - It could.

Would you demonstrate to the Court which of these three tests you say shewed the spot of ink on the piece of paper, the ink from the pen and the supra ink? - They are labelled on top, ink from the note,

from the pen and the blue supra ink. I have separated out the rest on the basis of the kind of dot which was left. These are completely simple inks and they leave no black dot.

BY HATHORN, A.C.J.: All the constituents are carried up by the solvent? - Yes, they are all carried up. Incidentally they make very good fountain pen inks. These are darker dots here and these are paler dots here. (Indicated on exhibit).

BY MR HORN: You mentioned that there is possibly some variation. Is that perhaps because the ink on the extreme left of the three examples does not come to exactly the same height in each case? - No, it is a matter of fluorescence. They are slightly different.

(Put in as Exhibit 16)

BY HATHORN, A.C.J.: And the bottle of ink that you were given, Exhibit 11, had no relation to the ink in the pen or the note? - No.

You have seen these, Mr. Wheeldon?

MR WHEELDON: Yes, my Lord.

BY MR HORN: Did you at any stage carry out any tests on Exhibit 11, which was a bottle of ink allegedly found at the accused's quarters? - That was no relation.

That was a dissimilar ink and at least it is not blue supra ink? - No.

BY HATHORN, A.C.J.: There is a mark by one of these columns in Exhibit 16. Is all that ink? - Yes.

BY MR HORN: In other words the ink in the pen is different from the ink in the bottle? - Yes.

Did you also carry out a test on the liquid in the bottle, Exhibit 6, and the liquid which you took from the tins, Exhibit 8, and put it to into a small phial which is Exhibit 14? - Yes.

What test did you carry out on these liquids, and what was the purpose of your tests? - To determine the nature of the liquid in each case. It smelt like petrol, it burnt like petrol. Petrol has a very wide boiling range. It starts

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No.9

J.W. Thompson Examination continued

boiling around 70 degrees and goes up to 200 degrees. At the right boiling range I tested the reflective index of the various fluids, and it was definitely petrol.

In the bottle and in the phial? - Yes.

Cross-Examined

Cross-Examination

CROSS-EXAMINED BY MR WHEELDON: Would you just look at the blanket which is Exhibit 4. When you took possession of it it was in that tattered and torn state? - Yes.

And apart from where a piece is torn out, there are also other holes? - Yes, the only thing I did was to take out ten of these cotton threads.

What would you say the measurements of the whole piece of material are? - A shade under seven feet by six feet six inches.

NO RE-EXAMINATION.

(Witness stepped down)

No.10

B.J. Bonham Examination

No.10

EVIDENCE OF B.J. BONHAM

BRIAN JAMES BONHAM, duly sworn and examined

BY MR HORN: Do you live at No.99, Silcox Avenue, Houghton Park, Salisbury? - Yes.

For how long have you been living there? - Close on six years.

For what purpose are these premises at 99, Silcox Avenue used? - Residential.

And who owns the house? - I do.

Do you know the accused? - No, I don't.

Does anybody live in the house? - Yes, my wife, two children and myself.

How old are your children? - A boy and girl, the girl is seven and the boy is nine.

Will you have a look at the plan please, Exhibit 5. That purports to shew the premises at 99, Silcox Avenue. Does that correctly reflect the premises there? - Yes.

Do you remember the night of the 27th/28th June last? - Yes.

On that evening where were you and your family? - All in bed.

When did you retire to bed? - Approximately quarter past eleven.

And where were the various members of your family sleeping? - My son in the bedroom marked "B", my wife and myself in bedroom "C" and my daughter in bedroom "D".

Is it possible to get out of the house without going through the lounge? - No.

Would you have a look at the photographs, please, Exhibit 9. Do those photographs shew various scenes in your house at 99, Silcox Avenue? - Yes, they do.

The first photograph shews, I believe, the front of your house? - Yes.

There is a Detective in a white coat near by the window. Is that your lounge window? - Yes.

And there is a door, is that the front door? - The front door.

There is a window to the left of that, is that the window of bedroom "B"? - Yes.

And there is another window further on, is that in bedroom "C"? - Yes.

They appear to be barred, but there is no bar in the middle one? - No.

Would it be possible to get out by breaking the window? - By breaking it, yes.

BY HATHORN, A.C.J.: Are there burglar bars on

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No.10

B.J. Bonham Examination continued

the windows that open? - Yes.

Is that the pattern that one sees? - That is the pattern, the diamond shape.

BY MR HORN: On this evening, the evening of the 27th of June last, approximately what time did you and your wife retire to bed? - 11.15.

Were your children already in bed? - They were in bed at seven o'clock.

When you retired to bed, I see there appear to be some curtains in the lounge, were those drawn or not? - Yes, they were drawn.

BY HATHORN, A.C.J.: Closed or open? - Closed.

BY MR HORN: And when you went to bed was everything intact, no broken windows? - No, nothing broken at all.

Were you woken up at night? - I was woken up by my wife.

At what time? - 12.15 a.m.

That would have been on the 28th? - Yes.

When she woke you, would you describe what you saw and did? - Well, I got out of bed and looked into the lounge, and there was a light coming from the lounge. I could see, looking from the window, I went down to the lounge and saw this bomb burning.

BY HATHORN, A.C.J.: Which window did you look out of first? - My bedroom window.

BY MR HORN: Was it first you looked out of the bedroom window and you noticed the light coming from the lounge? - I noticed it before getting out of the bed.

You went to the lounge and saw a bomb burning on the carpet - Yes.

Can you describe it? - It was a bottle wrapped in brown paper, just like a brown paper parcel, on the ground.

Was it actually brown paper or just material? - The bottle was in that brown paper.

Completely enclosed in brown paper? - Yes.

So you could not see, or could you see, what was inside the brown paper? - No, not really, I could not see.

What did you do when you saw the brown paper thing burning on floor? - I called to my wife to tell her there was a petrol bomb on the carpet, and I opened the door and threw it on the lawn, and informed the police.

Did the police arrive immediately? Approximately between 20 and 25 past twelve.

Did anybody interfere with the bomb once you had thrown it out of the room? - No.

When the police arrived they saw it? - Yes, they came into the garden.

Was that the only bomb around your premises that evening? - Yes.

What happened to the paper around the bottle which you say was burning? - Well, it was all burnt and the bottle was visible.

What did the bottle look like? - Just an ordinary bottle.

Did you notice if it had anything tied around it? - I did not see that as I took it out. But they brought it in to me to shew it had a cork and some wick in it.

When you say "cork", what do you mean? - Into the neck of the bottle, a sort of screw to it.

Will you have a look at the exhibits 6 and 7. Can you say anything about that bottle and those pieces of material? - This is the bottle I threw on to the lawn.

And the pieces of material? - These were all round it.

Round the top - Yes.

You say the paper bag in which the bottle was, was burning? - About how high were the flames? - I should say about three feet high.

Did you smell anything particularly at the time? - Not really, no.

After you had thrown the bomb outside what did

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No.10

B.J. Bonham Examination continued

you do about the inside of your house? - I put the fire out on the carpet.

Was it still burning? - Yes.

If you look at photograph No.3 in Exhibit 9, you will see that the window appears to be broken and there appear to be pieces of glass on the floor and also a mark near the bottom of the picture near the carpet. Is that mark the place where the bottle was burning? - Yes.

And the glass, does that come from the window? - Yes.

Was that window broken when you came into the lounge and found the bomb burning on the carpet? - Yes, it was.

BY HATHORN, A.C.J.: When you first came into the room, what was burning, could you tell? - I saw all these flames on the carpet and until I picked it up ....

You speak of the brown paper burning? - The brown paper - the bottle was wrapped in brown paper, and the brown paper was burning.

When you picked it up, what did you pick up? - I picked up the whole thing, the bottle as well.

And the brown paper? - Yes.

And threw it out of the door? - Threw it out of the door and on to the lawn.

Did it carry on burning there? - It carried on burning, yes.

NO CROSS-EXAMINATION.

BY MR. CRIPWELL: Did you get burnt when you threw it out? - Slight burns on my hand.

(Witness stepped down)

MR. HORN: The witness that I had expected to call in this case is not here at the moment. I also wish to recall Constable Beunk and Detective Inspector Thorne, and I feel it may be advisable for the Crown to lead further evidence as to the question of the bomb being wrapped up in brown paper.

HATHORN, A.C.J. : I take it you have no objection? -

MR. WHEELDON: No objection.

MR. HORN: I also wish to call a witness, one Sylvester Makoni. This witness has been very elusive and he has only been located this morning at Umtali. Instructions have been given for him to be put on the train, which means he will be here by tomorrow morning, and it will be my intention at a later stage to ask the Court's indulgence for a postponement in this matter until tomorrow morning, so that this witness's evidence can be heard. His evidence, in my submission, is extremely important and as I say he is available. He would have been here earlier if we had found him earlier.

HATHORN, A.C.J.: I think you should proceed with what evidence you have got.

MR. HORN: My difficulty is that this witness and Inspector Thorne and Constable Beunk will be available shortly but they are not available at the moment. I expect they will be available in a few minutes.

HATHORN, A.C.J.: Perhaps we had better take an adjournment.

MR. HORN: I apologise to the Court for the inconvenience.

The Court adjourned at 11.50 a.m. and re-assembled at 12.30 p.m.

EVIDENCE LED FOR THE CROWN CONTINUED

No.11

No.11

J.M. Bonham Examination

EVIDENCE OF JANE MURIEL BONHAM

JANE MURIEL BONHAM, duly sworn and examined

BY MR HORN: Are you the wife of the previous witness, Mr. Bonham? - Yes.

And do you live with him at his house at 99, Silcox Avenue, Houghton Park? - Yes.

Were you living there with him on the night of the 27th/28th of June this year? - Yes.

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No.11

J.M. Bonham Examination continued

After you retired to bed that night, I understand about 11.15 p.m., were you woken at all during the night? - Yes, I was woken about a quarter past twelve in the morning with a loud crash. I lay there just a few seconds wondering what it could be. I looked and saw a light shining in the lounge. I immediately woke my husband up.

Did you make a report to him? You told him something? - I woke him.

And then what did you do? - He got up; I was too frightened.

You mentioned that you heard a crash. Can you say what sort of a crash this appeared to be? - Of glass breaking.

Were you able to tell in your state of just being woken up where it had come from? - No.

NO CROSS-EXAMINATION.

(Witness stepped down)

HATHORN, A.C.J.: There is just one question I wanted to ask Mr. Bonham. Could he be recalled?

No.10

B.J. Bonham Examination (recalled)

No.10.

EVIDENCE OF BRIAN JAMES BONHAM (recalled)

BRIAN JAMES BONHAM, under former oath,

BY HATHORN, A.C.J.: When you found the bottle burning in the lounge, was it standing up or lying down? - It was lying down.

Are you able to say whether the bottle was corked or closed, or was it open, the neck of the bottle? - It was closed at the time.

Could you see how it was closed? - Not really, no.

What makes you think that it was closed? - Well, when I picked it up and threw it, the contents stayed in the bottle.

Did not spill? - No.

And the brown paper round it, how much of it was alight? - Practically all of it.

And was it just brown paper on its own or was it in any way moist? - It felt wet when I picked it up. It was flaming quite a lot.

No questions arising out of that.

(Witness stepped down)

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No.10

B.J. Bonham Examination (recalled) continued

No.4

EVIDENCE OF INSPECTOR C.G. THORNE (recalled)

Insp. C.G. Thorne Examination (recalled)

CHRISTOPHER GORDON THORNE, under former oath,

BY MR. HORN: You have given evidence previously and you told us that you arrived at 99, Silcox Avenue, Houghton Park, at about 12.20 a.m. on the 28th, and that you saw a bottle with some rag around the top of it secured by a piece of wire. When you saw the bottle was it on the lawn the first time you saw it? - It was.

Was there anything around the bottle or in that vicinity apart from the rags secured by the wire on the bottle itself, as far as you could see? - As far as I can remember approximately two feet away there was some burning paper.

Can you say what type of burning paper this was or not? - It was newspaper as far as I can remember.

You say it was burning paper. Do you mean only some of it had been burnt and the rest not? - The majority of it had been burnt.

Apart from this newspaper was there any other burnt paper either among the burnt newspaper or in the vicinity? - Not that I remember.

The paper that had actually been burnt, can you say what that paper had been, presumably it was just charred pieces? - It was only charred pieces at that time. I cannot say.

Further Cross-Examined.

Further Cross-Examination

CROSS-EXAMINED BY MR. WHEELDON: We have just had evidence that this bottle, when it was picked

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No.4

Insp.C.G.Thorne

Further Cross-Examination continued

up by Mr. Bonham was wrapped in brown paper that was burning, and that he threw it outside with the bottle. Is it possible that your recollection is faulty? Was it in fact brown paper that you saw which was charred? - As far as I can remember it was newspaper.

Is it possible you are mistaken in this regard? - I don't think so.

NO RE-EXAMINATION.

BY MR. YARDLEY: Did you see any signs of burnt brown paper anywhere? - No, I did not.

BY MR. CRIPWELL: Can you recall if the bottle had a cork, or was corked in any way? - It had a metal cap on the top.

Was it whole, it was not perforated? - It was not perforated.

BY HATHORN, A.C.J.: Are you able to say positively that there was no brown paper, burnt brown paper, on the lawn? - I did not observe any.

Was some paper completely burnt? - Yes, there were charred remains of paper there, what appeared to be paper.

But the newspaper that you saw? - That was very small fragments left; the majority of it was charred.

BY MR. HORN: Have you had any experience in what is commonly known as petrol bombs? - No, this is my first occasion.

(Witness stepped down)

MR. HORN: Again I must ask the indulgence of the Court. I would like to recall Detective McIlveen on the question of the pattern of the sand shoes.

HATHORN, A.C.J.: I take it you have no objection:

MR. WHEELDON: No objection?

MR. HORN: I also wish to ask this question through the Court to the witness of the effect of throwing a bottle filled with petrol.

HATHORN, A.C.J.: Yes, very well, you may ask the question.

No.2

EVIDENCE OF DETECTIVE McILVEEN (recalled)

THOMAS BRIAN McILVEEN, under former oath,

You have previously given evidence? - That is correct.

We have heard from Constable Beunk that at the scene near a small tree were some shoe prints with a diamond-shaped pattern. We have also heard that sand shoes found in the accused's quarters did not bear that pattern. Were any checks made regarding the footwear of the person Cyprian mentioned by the accused in his statement? - There was. Every known member of Z.N.P. had his footwear checked to see if there was a diamond type pattern.

Was Cyprian a known member? - He was.

Were any shoes or tackies or anything of that nature found in Cyprian's house bearing such a pattern? - There was not.

Have you had any experience of the effect of throwing a bottle filled with petrol and set alight on the premises at which it was thrown? - I have. I have been attached to the Law and Order (Maintenance) section since it was formed a year and a half ago. I have had occasion to visit many scenes where a petrol bomb attack has taken place. I have also taken part in three demonstrations by various members of the public where petrol bombs made by myself were thrown into a disused building.

What is the object of putting petrol in a bottle and then sealing the bottle and then setting alight to the rag or paper around the bottle and throwing it into the premises, perhaps through a window. How would that set alight to the premises? - The petrol bomb made of a bottle partly filled with petrol is more effective than one filled right up to the stopper. This is because the bottle is shaken and excites the vapour on top of the liquid. This is then thrown and the bottle usually breaks and you immediately have petrol vapour in the surrounding area, and if the cloth at the neck of the bottle is lit then it will catch the vapour and the petrol.

Do you necessarily have to have a hole pierced through the top of the bottle to get this effect? -

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That is not so. I have visited scenes with petrol bombs made with bottles with a hole pierced through the top, and I have also visited scenes where the partly filled bottles of petrol have been thrust in first and the bottle lit afterwards and also seen where petrol bombs similar to this one have been used.

BY HATHORN, A.C.J.: Which went off? - Yes, my Lord.

BY MR WHEELDON: No questions.

BY HATHORN, A.C.J.: You speak of a bomb constructed in this way, that is to say, with a cap on the bottle with petrol inside and some inflammable material lit on the outside? - Yes, my Lord.

You say that in your experience if that bottle is broken the flames outside will of course ignite the petrol that is scattered as a result of the bottle breaking? - That is correct.

Do you know what happens from your experience if the bottle does not break but the flames go on burning outside? - What has happened in my experience is where the bottle has not struck something hard, its fall has been cushioned and the bottle has remained intact, the bottle will continue to burn and the petrol usually seeps out of the cork or whatever fixture is meant to secure the top. If it were completely secured and the heat did not break the bottle, I would suggest that as soon as the wick burnt out it would stop. But if the heat breaks the bottle then the petrol inside would continue to burn.

Is there any likelihood of a bottle dealt with in that way exploding as opposed to the glass cracking with the heat? - There is no chance of it exploding, not in my experience, there is no chance of it exploding. Explosions usually occur when two, what we call exciters, have been thrown in first, and there is petrol vapour in the room before the third petrol bomb is thrown in and you get a loud explosion then.

In the present instance this petrol could have spread all over if the bottle had broken? - Or if the neck was not completely secured, if the top was not completely secured, and could seep out, and like the candle burning, the petrol did not just burn as it came out of the bottle.

Or possibly, if I understood your evidence, if the surrounding heat cracked the glass, then the bottle would break and the petrol would escape? - Yes, my Lord.

NO QUESTIONS BY COUNSEL.

(Witness stepped down)

BY MR. HORN: The other witness I hoped to have here has been off duty and cannot be here until 2 o'clock. The other witness, Sylvester Makoni, will be here tomorrow, and I would ask for an adjournment to suit your Lordship and Gentlemen either to this afternoon to take Constable Beunk's evidence and then deal tomorrow morning with the other witnesses' evidence; or if it is more convenient, simply until tomorrow morning when both these witnesses will be available.

HATHORN, A.C.J.: Have you any objection to the postponement, Mr. Wheeldon?

MR. WHEELDON: No, my Lord.

FURTHER HEARING ADJOURNED TILL 18TH SEPTEMBER.

WEDNESDAY, 18TH SEPTEMBER, 1963

18th September 1963.

THIRD DAY OF TRIAL

THE COURT RE-ASSEMBLED AT 10 A.M.

BY MR. HORN: Before I call the witness, I understand that my learned friend is prepared to make two admissions at this stage of the proceedings. The first is that the accused's age is 29; and the second is that Cyprian mentioned in the accused's statement, Exhibit 1, denies any involvement in this offence. Can that be recorded?

HATHORN, A.C.J.: May we record those admissions?

MR. WHEELDON: That is so my Lord.

HATHORN, A.C.J.: There is one other point. There is a reference to Z.N.P. The witness, Detective McIlveen, referred to Z.N.P. members. I think I have a fair idea of what Z.N.P. stands for, but I think it is something which ought to be covered by evidence or by an admission. I do not know whether you are prepared to make an admission as to what it stands for?

MR. WHEELDON: Yes, I am.

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HATHORN, A.C.J.: And it stands for ....?

MR. WHEELDON: Zimbabwe National Party.

HATHORN, A.C.J. : Is it a political party?

MR. WHEELDON: My learned friend is calling witnesses who will lead evidence on this.

MR. HORN: There will be further evidence on this.

HATHORN, A.C.J.: Very well.

EVIDENCE LED FOR THE CROWN CONTINUED

No.5

EVIDENCE OF CONSTABLE BEUNK (recalled)

No.5 Constable Beunk Examination (recalled)

WILLIAM BEUNK, under former oath,

BY MR. HORN: You have previously told us that you went to the scene at about 12.20 a.m. on the 28th, that is to 99, Silcox Avenue, and that on your arrival there you saw what you took to be a petrol bomb lying on the lawn outside the front door? - Yes.

When you saw what you took to be a petrol bomb, in what condition was it? - It was a bottle with the top closed on it. It had cloth tied around the neck of the bottle. This cloth was charred and still smouldering. The lawn where it was lying was smouldering, and there was also some paper which had been charred lying about two feet away from it.

Can you say what this charred paper appeared to be, what sort of paper it was? - To the best of my recollection I think it was newspaper.

Can you say if there was any brown paper at the scene, burnt or unburnt? - I did not see any brown paper at all.

To Court: I have no further questions to put to this witness. It might, however, be proper for me to draw the Court's attention to the fact that adhering to the top of the bottle are what appear to be very small pieces of paper, what appears to be newspaper. There may also be an alien piece of paper, but I do not feel justified in saying anything about that.

HATHORN, A.C.J.: There is some printing I can see, some marks, of printing. That is Exhibit 6.

MR. HORN: Yes, my Lord.

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No.5

Constable Beunk

Examination (recalled) continued

BY HATHORN, A.C.J.: Was any of the paper alight? - No, my Lord.

MR. WHEELDON: No questions.

BY MR YARDLEY: Was there a lot of charred paper about, was there a great deal of it? - There was charred paper a few feet away from the bottle. The lawn where the bottle was lying was charred, and there was quite a lot of charred cloth lying next to the bottle.

BY MR. CRIPWELL: How light was it at this time? - It was at night, but I got my illumination from a Hunter's Police Lantern.

That you were carrying? - That I was carrying.

BY HATHORN, A.C.J.: Are you able to be any more explicit as to the quantity of paper? - I would think that it was probably a quarter of a sheet, of a newssheet, a half page.

And the quantity of charred paper, the burnt paper? - I have taken that into consideration. I am putting it into the square.

That is what you are describing? - Yes. If the charred paper was uncharred and the unburnt paper was in one piece, they would probably be about two feet by two feet.

But it was not in one piece like that? - No.

It was in bits? - It was in bits and pieces.

Semi-burnt? - Semi-burnt, and some unburnt, lying at an angle to the bottle.

(Witness stepped down)

No.12

No.12

S. Makoni

Examination

EVIDENCE OF SYLVESTER MAKONI

SYLVESTER MAKONI, duly sworn and examined (in English)

BY MR. HORN: Is your home at Chaza kraal at Mrewa? - Yes, sir.

You know the accused in this case? - Yes, sir.

For how long have you known him? - From January this year.

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No.12

S. Makoni Examination continued

Are you a member of any political party or any organisation? - I was a member of Z.N.P. from which I resigned in May.

Z.N.P., what does that stand for? - It is standing for the organisation of political movement trying to fight against government, so that it can be independent.

What do the letters Z.N.P. stand for? - The Zimbabwe National Party.

Do you know if the accused was a member of any political party or organisation? - I believe he was a member of Z.N.P. and he was a driver in the organisation.

BY HATHORN, A.C.J.: He was employed as a driver? - Yes, sir.

BY MR. HORN: At about what time, what period, was this, when was it that he was employed as a driver? - I started to know him from January when I met him in the organisation driving vehicles for the Party.

Do you know a man by the name of Edson Sambo? - Yes, sir.

Do you know if he is a member of any political party? - I believe he was the general secretary of Z.N.P.

And Patrick Matimba? - Yes.

What position, if any, did he hold? - He was president of the Zimbabwe National Party.

Do you know a person called Simon Duffield Beni? - yes.

Was he a member of any political party or organisation? - I do not know, but he was friendly with Sambo and Matimba.

BY HATHORN, A.C.J.: Just a moment. You said what the objects of this Party were. I did not hear what you said, would you just repeat what this Party stood for, what it wanted to do? - The main object was to achieve Independence under African management.

BY MR. HORN: Do you remember a Friday this year, towards the end of June, Friday the 28th of

June? - Yes, my Lord.

Do you remember that day and date, or is it simply because I say that day and date that you remember? - I remember that it was the 28th of June.

On that day, which was in fact a Friday, where did you go in the evening, in the late evening? - I left Highfields for the Harare General Hospital at something past five, and I met Matimba there at six o'clock.

At the hospital, you met Matimba there? - Yes, at Harare hospital.

BY MR. HORN: Was he sick in hospital or was this just a place where you met him? - He was not sick, but we made an appointment of meeting there.

When you met Matimba there about what time was it? - It was six o'clock.

Was anybody else present when you met Matimba there? - I saw Richard Mapolisa arrive at the spot.

Is that the accused? - the accused.

What happened when Richard Mapolisa arrived at the spot? - I heard Richard Mapolisa talking to me and Matimba in a group.

What was he saying? - He said he had thrown out a bottle bomb at Hampton Park in a lodging room of a European house.

You say "Hampton Park"? - Yes.

Whereabouts in Hampton Park? - In a European house, I think it was in the dining room.

In the dining room of a European house? - Yes.

Did he say when he had done that? - Yes, he threw it on Thursday evening.

Did he say how he came to throw the petrol bomb in this place? - He told me he left Highfields, going to Hampton Park in the evening, and then as he approached he threw out a petrol bomb into the lounge room of the European's house. He threw it. After throwing the petrol bomb, he ran away, about some 100 yards, and then he felt his heart burning very much, when he fell down for

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No.12

S. Makoni Examination continued

a while. He left the place and went to Highfields, that is when we met the following morning, and that is when we met at the General Hospital, Harare Hospital.

So you met him again on the following morning at the General Hospital? - Yes.

Who do you say he met at the General Hospital the following morning? - I personally and Matimba and Sambo, we met the accused at the General Hospital.

Was this in the morning? - This was in the evening, at 6 p.m.

BY HATHORN, A.C.J.: You said something about at the hospital in the morning, as I understood you? - No, it was p.m.

Did the accused say anything to you about the hospital or are you telling us what took place at the hospital? What did the accused say at the hospital? - The accused told me that he had thrown a petrol bomb.

And then he ran and had fallen down for a bit, and then he got up; and what did he say he did after he got up? - Then he moved to Highfields.

Is that all he told you about it? - About his throwing of the petrol bomb?

Yes? - Yes, that is all.

BY MR. HORN: You have mentioned that Patrick Matimba, yourself, Simon Bene, were present? - Yes, sir.

After the accused had told you about this, the three of you at the hospital, what did you do then? - Then Matimba and Simon Beni were talking to their girl-friends.

If you have any difficulty in expressing yourself or understanding the questions, do not hesitate to ask for the interpreter. Do you understand? - I think that would be necessary.

Would you prefer the interpreter? - Yes, sir.

(Witness interpreted)

BY MR. HORN: After Matimba and Simon Beni went

off, you think with their girl-friends, what happened then? - They were standing there and later said that they intended to go and see the Matron.

And what happened to the accused? The accused remained standing there with me.

And then? - After they had gone away, we remained there standing for a short time, and later saw them coming back together.

After that? - They eventually followed a small boy who had been sent to go and collect a jersey from Simon Beni's quarters. I do not know the name of this small boy.

When did you leave the hospital? - I do not know the exact time. We left the hospital somewhere in the region of 7 p.m.

You say "we" left the hospital. Who do you mean? - I left with one Mapolisa, Simon Beni and Matimba.

And where did you go? - When we left the spot we parted company. They were moving in the direction of the married quarters of the Hospital compound, and we left in the direction of the nurses' home, and we eventually met further ahead.

Who met further ahead? - Simon Beni, Matimba. I had gone with Richard Mapolisa. Simon Beni and Matimba had gone in a different direction.

BY HATHORN, A.C.J.: But you later met them again? - Yes, later we all met, including the small boy who had been sent out. We saw him coming.

BY MR. HORN: Where did you go after that? - We saw a taxi-cab passing. On instructions from Matimba we stopped this taxi. We got in this taxi; the taxi drove us up to the intersection of Birmingham Road and Highfields Road, where we went to board a 'bus to Highfields.

Is there a 'bus terminus there? - Yes, there is a 'bus stage there.

On the way to this 'bus stage, while you were walking along, or while you were in the taxi, did you have any occasion to speak to the accused further in regard to this escapade of the previous night, or did he say anything further in that

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regard? - Not at the time, until when we got off this vehicle.

What happened when you got off the vehicle? - Matimba told us that he intended to see us at 2 o'clock on Saturday the 29th.

Yes? - I was then shewn a white paper with lines.

By whom? - By Mapolisa, the accused.

What did this white paper with lines have on it, if anything? - There was some writing on the paper. I do not know the whole contents of the paper. I only remember the top part of the paper and the bottom part.

What do you remember about the top part? - In the top part there was written "basopo lapo", which means "be careful there".

And the bottom part? - "General hokoyo".

Have you any recollection as to what the substance of this note was, what it was about, not necessarily what exactly it said, but what it was about? - I merely think that this document was just there to intimidate, or to frighten.

Is that what you think, because of what you believe to have been in the note, or was that some sort of unfounded belief? - That is just my belief, it is not that I found this on the document.

So, is the position that you have no recollection what the gist of the notes was? - No, I have no recollection.

I beg your pardon, what the gist of the note was? - No.

About how big was this note, can you recall? - About 3½ inches by six inches.

Have a look at the notes, part of Exhibit 2B, can you say anything about those notes? - These are the notes that I saw.

When you say "these are the notes", you have only mentioned one note. You have mentioned a note on white paper. What do you mean when you say "these are the notes"? - It is just an error on my part. I should have said that the note I saw was

similar to these notes before the Court.

In those notes before the Court there is a reference to R.F. Do you know what "R.F." stands for? - I do not know.

BY HATHORN, A.C.J.: How many notes did the accused shew you? - One.

And you said that the note you saw had "basopo lapo" on the top and "general hokoyo" at the bottom? - Yes.

I think on the notes that are before you there, it is the other way about? - That is so. I believe I was mistaken. I did not put these words in their correct place. I still remember that the two words were contained in the note I saw.

BY MR. HORN: When the accused showed you this note, did he say anything? - I remember the accused telling me that he dropped one of the notes similar to those before the Court at the spot where he threw the petrol bomb.

Did you have any further conversation with him in regard to this petrol bomb? - No, my Lord.

This was on Friday evening, the 28th of June; when was the last time before Friday evening the 28th of June that you had seen the accused? - The last day I saw him was on that Friday.

But when was the last time before that Friday on which you saw him? -

BY HATHORN, A.C.J.: The previous occasion on which you saw him? - I remember it was Tuesday.

BY MR. HORN: Was this a Tuesday sometime before this Friday or the Tuesday preceding the Friday, or what was the position? - It was the Tuesday preceding the Friday we met.

Can you recall what date it was on that day. It does not matter if you cannot? - (Witness pausing).

Do not worry about it. I withdraw the question. On that Tuesday, where and when did you see the accused? - I saw him at hut No. 3995 owned by Edson Sambo.

What time did you see him? - I saw him in the morning, that was before 8 a.m.

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BY HATHORN, A.C.J.: Whereabouts was this hut 3995? - It is in New Highfields, at a section called New Canaan.

BY MR. HORN: Was there anybody else present at this address besides you and the accused when you saw him there? - I found Matimba and Edson Sambo there.

You say this was before 8 a.m. ? - Yes.

What happened after you had arrived at the house? - I found them preparing for Sambo to go to the Magistrate's Court, and after the Magistrate's Court he was going to visit in the High Court.

Who was this? - Edson Sambo was supposed to go to the lower Court.

And then? - We both got into Sambo's vehicle for the hospital, where we collected Beni.

Who both got on the vehicle? - Mapolisa and Matimba, all of us.

You got on to Sambo's vehicle and where did you go? - We went to the hospital.

Went to the hospital? - From Harare hospital we collected Beni. So we all drove to the lower Court.

What happened after you had been there? - We entered the Court, there was a case against Sambo, so we were going to listen when Sambo was being tried.

After that, what happened? - From there we got into the vehicle which had remained with Matimba, and we drove to the High Court.

Yes? - Upon our arrival here, Matimba and Richard remained in the vehicle and then they left for the "Daily News". Edson Sambo and I and Beni came to the High Court. Beni left us in the High Court.

Did you see the accused again after he had left with Matimba going to the "Daily News" as you believed? - Yes, I saw him again.

When was that? - I later saw him that same afternoon.

Where did you see him? What were the circumstances in which you saw him? - Richard Mapolisa and Matimba, they came and collected us; we were at the High Court.

Yes? - They took us to a point at the intersection of Salisbury Street and Manica Road. We were dropped there because there was a vehicle belonging to the Zimbabwe National Party which needed repair.

Yes, carry on? - Richard Mapolisa and I remained at this spot where the vehicle was with instructions to remove the starter of the vehicle, because they wanted it to be repaired there.

What happened after that? - We remained there the rest of the day and we were collected at sunset.

By whom? - Matimba and Edson Sambo came to collect us.

And then where did you go? - We were taken to a point at Machipisa where the two of us were dropped off.

You and whom? - Richard Mapolisa and I. From there we parted. I went to my own quarters and he left in the direction of his quarters.

Was that the last time before the Friday evening, when he told you people that he had petrol bombed this house? - No.

When next did you see him after the Tuesday night? - I saw him on Wednesday and Thursday.

On both days? - Yes, I did.

Can you recall on any of these occasions, the Tuesday, the Wednesday or the Thursday, the accused was carrying anything with him? - I remember on Wednesday there were two bottles in which petrol was to be put in order to prepare a petrol bomb.

Who had them? - The accused had these two bottles.

Was this on the Wednesday? - Yes, on the Wednesday.

What sort of bottles were these, do you recall? - One was similar to those containing Mazoe Crush, and the other appeared to be a Johnny Walker whisky bottle.

Was there actually petrol inside these bottles when the accused had them? - There was no petrol in

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the bottles, but the accused and I had been given money.

How much? - One pound each.

By whom? - By Patrick Matimba.

For what? - With which to buy petrol.

For what purpose? - For petrol bombing.

You say this was on the Wednesday. Where were you when this took place? - It was given to us when we were at Harare Hospital at about 6 o'clock.

On Wednesday evening? - Yes, on Wednesday evening.

What was given, the money or the bottles, at that time? - We were given the bottles and money together.

What did you and the accused do after you had been given the money and the bottles? - We all left for Highfields.

Who all? - I am referring to the two of us. The accused and I left for Highfields.

Where did you go to? - We arrived at a service station which is situated at Highfields, it is situated in the Lusaka section of Highfields.

What did you do there? - We bought petrol from this service station.

What did you put the petrol into? - In a gallon tin.

Where did you get the tin from? - Richard Mapolisa went to collect it from his quarters.

How do you know he went to collect it from his quarters? - He told me he was going to get a gallon tin in which to put petrol.

And when he returned with this tin, what was done? - The petrol was bought.

And then? - After buying petrol we went to a place called Zororo, or near this place called Zororo, and Richard poured petrol into the bottles whilst I was going.

At what place? - We were at a place called Zororo. When we arrived at this place Zororo, at

that stage I entered the toilet, and the accused remained pouring petrol into the bottles.

Do you know where the accused lived? - No, I did not.

You say the accused said he was going to his quarters, and then he came back with a gallon tin. You see the tin here, which is Exhibit 8. Can you say anything about that? - It was at night time, and I am unable to tell the Court the type of tin. It was a gallon tin like the one before the Court.

You cannot say that that is the tin? - No, I cannot.

This bottle here, Exhibit 6, how would you describe that, what sort of bottle would you say that was? - This was for petrol bombing.

Yes, I know. You have described two bottles so far? - This is a brandy bottle.

You would not call that a Johnny Walker whisky bottle? - I am not in a position to say whether this bottle is for brandy or for Johnny Walker whisky.

How does this bottle compare with a Johnny Walker bottle which you have already mentioned, which was handed to you and the accused by Matimba? - They are alike.

After the petrol had been poured into the bottle, was there any left in the tin, do you know? - I do not remember whether any petrol remained in the tin, I have no idea.

Who poured the petrol into the bottles? - Richard Mapolisa.

Cross-examined

Cross Examination

CROSS-EXAMINED BY MR. WHEELDON: How do you come to be giving evidence in this Court? - Well, I was in company with these people when they were perpetrating this thing. That is why they called me.

When did the police first see you about the evidence that you have been giving in Court? - They saw me on the 9th of July.

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Were you taken into custody? - Yes, I was placed in detention cells for two days.

And you were asked questions about petrol bombing, were you? - Yes.

Did you deny that you knew anything about the petrol bombing at first? - Are you referring to the petrol bombing performed by Mapolisa?

HATHORN, A.C.J.: I think your question is a little bit confusing. I do not know whether you mean the fact itself, or some particular act?

BY MR. WHEELDON: When you were first taken into custody by the police, what questions were they asking you? - They wanted to know who had petrol bombed a certain place at Houghton Park.

At first did you admit that you knew who had done this, or did you just deny that you knew anything about it? - I admitted that I knew something about it, and that the person responsible was Mapolisa.

Straight away? - Yes. I had denied the knowledge at first.

For how long did you deny knowledge? - I believe for about three hours.

Why was it that you eventually admitted knowledge? - I realised that I would put myself into trouble, experience great trouble; when I knew the person responsible it was better for me to reveal.

Did the police tell you that you would not get into trouble yourself if you gave evidence against whoever did the offence? - No, they did not.

But you were admitting to the police that you knew all about the petrol bombing, and you had actually heard Mapolisa refuse to admit that he had done it? - May the question be repeated?

MR. HORN: I am going to object. I am not surprised the witness has difficulty. At what stage is my learned friend referring to?

HATHORN, A.C.J.: I do not think there is any objection.

MR. HORN: The witness said he denied knowing anything for about three hours, and then he told the

police that he did know something about it, and what he did know. My learned friend's question was prefaced by the word "but", which, with respect, seems to me to suggest that there is something odd about the witness's answer?

HATHORN, A.C.J.: I think perhaps it would be better if you broke it into two. It is somewhat of a mouthful.

BY MR. WHEELDON: As your Lordship pleases (To witness) You admitted to the police that you knew all about the petrol bombing, both before it was done and after it was done? - Yes.

Didn't you think you would get into trouble? - No, I didn't think that I would put myself into trouble. Come what may, I was not prepared to hide anything and I decided to reveal what I knew about it. I was just fatalistic.

(The Court took a short adjournment and re-assembled at 11.20 a.m.)

SYLVESTER MAKONI, under former oath (interpreted)

CROSS-EXAMINATION BY MR. WHEELDON CONTINUED: You have given evidence about two bottles that were filled with petrol on the Wednesday before the 28th of June. Is that correct? - There were three bottles and not two.

Well, you said on one occasion two, and on another occasion three. I will come back to that. Was this Wednesday the same occasion on which you were instructed to go and petrol bomb a Mr. Chinamano's house? - No, that was on Tuesday when we attended Sambo's trial.

On that occasion you say you were instructed to petrol bomb Chinamano's house? - Yes.

Did you have a petrol bomb on that occasion? - I was given a bottle containing petrol. This bottle was a Mazoe Crush bottle.

HATHORN, A.C.J.: I think I had better intervene. Are you going to make suggestions the answers to which may incriminate the witness?

MR. WHEELDON: Nothing that is not already known to the police.

HATHORN, A.C.J.: Yes, but not known to the Court. I think I ought to warn the witness that

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he is not obliged to give any answers which may incriminate him.

MR. WHEELDON: With respect, if the only information in regard to which I question him is already known to the police ....

HATHORN, A.C.J.: Yes, but it is a question of proof. They may know a whole lot but they cannot prove it. But they might be able to prove it from what they know plus what this witness might answer.

MR. WHEELDON: With respect, I submit it can make no difference because this appears as evidence given by this witness at the preparatory examination.

HATHORN, A.C.J.: Even so, I think it is proper that I should.

MR. WHEELDON: As your Lordship pleases.

HATHORN, A.C.J.: Will you explain to the witness that he may refuse to answer any question if the answer to the question would incriminate him in any way. Do you understand that?

WITNESS: I do.

HATHORN, A.C.J.: All other questions you must answer.

BY MR. WHEELDON: Did you in fact petrol bomb Mr. Chinamano's house? - No.

Did you agree at the time you were instructed that you would petrol bomb his house? - Yes.

Why was that? - I agreed because I wanted to persuade them so that I get my money. I had not had my pay from January until his arrival.

BY HATHORN, A.C.J.: Whose arrival? - Until the arrival of Matimba. He arrived towards the end of May.

What money do you mean? - He promised to pay us £2.10s.0d. per week.

To do what? - We were organisers in his Party, and were responsible for enrolling new members.

BY MR. WHEELDON: If you had refused to petrol bomb Chinamano's house, what do you think would have happened to you? - I thought he would not place

reliance on me. I had seen that this man is a deceitful type of a person.

Did you consider that there was a possibility that you might yourself be petrol bombed if you refused to petrol bomb Chinamano's house? - No, my Lord, I did not think of that particular aspect.

Was this Wednesday the first day you had seen petrol bombs? - No, I first saw them on Tuesday when we were instructed to go and petrol bomb Chinamano's house.

That was the one given to you? - Yes.

And apart from that, had you seen any at all? - No.

So you saw one on Tuesday that was given to you? - Yes.

And then on Wednesday you say there were either two or three in the possession of the accused? - There were three.

But apart from those four, you never saw any petrol bombs at all? - No.

Before or since? - No.

You have given evidence that you were in the presence of the accused when there were two petrol bombs or two bottles, one Johnny Walker whisky and one Mazoe Crush bottle? - These bottles were given to us at a certain house where they were taken by Beni. They were taken from a house by one person. They were outside a certain house, not inside.

Were you given instructions in regard to the use of these bottles? - No... yes, we were given instructions.

What were your instructions as opposed to the accused's? - He said we ought to go and petrol bomb so that people would realise that we are fighting for our country and that would cause them to help us.

Which of these bottles did you take? - I took the Johnny Walker whisky bottle.

BY HATHORN, A.C.J.: Would you just describe what you call a Johnny Walker whisky bottle. What is it like, what kind of bottle, what is its shape? - The bottle I refer to is a Johnny Walker bottle,

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it is a bottle similar to the bottle on the table, and a bottle similar to that containing Covo cooking oil.

Are they round bottles or are they some different shape from that? - They are round.

BY MR. WHEELDON: Is not the Johnny Walker bottle, the whisky bottle, square? - I have no recollection, I do not remember its exact shape.

Why do you call it a Johnny Walker whisky bottle if you don't know what a Johnny Walker whisky bottle looks like? - Looking at the bottle before the Court, I would regard it as a brandy bottle. That is why I called the bottle given to us as a Johnny Walker bottle.

In any event you say on this Wednesday you took the bottle that is similar to the one before the Court and you left the accused with the Mazoe bottle. Is that right? - Yes.

BY HATHORN, A.C.J.: And the third bottle? - I have no clear recollections of the third bottle. I believe it was of a similar type to the one before the Court. It was a long bottle.

And who took it? - That was taken by me.

So you had two bottles and the accused one? - Yes.

BY MR. WHEELDON: And are you sure that the bottle he had was a Mazoe Crush bottle? - The bottle he took that day was a Mazoe Crush bottle. I cannot say that I am sure, but I remember that he took a Mazoe Crush bottle on that day.

And the only time you saw him with the bottle was after that had been filled up at Zororo Lines?

MR. HORN: With respect, that is a most misleading question. The witness has already said when he first saw the bottles, and how they then took the bottles to the service station and filled them with petrol.

MR. WHEELDON: The filled bottle is what I meant, the bottle containing petrol.

HATHORN, A.C.J.: Well, put it.

BY MR. WHEELDON: The only occasion on which you saw the accused with the bottle containing petrol

was the occasion that you have described after it had been filled up on the Wednesday? - These bottles were given to us on Wednesday and filled with petrol the same day.

BY HATHORN, A.C.J.: The question put to you is that the only occasion on which you saw the accused with a bottle that had petrol in it? - Yes, and on Tuesday again when we had received instructions to go and petrol bomb Chinamano's house.

BY MR. WHEELDON: That was the occasion when you had a bottle with petrol in it? - Yes.

BY HATHORN, A.C.J.: Not the accused? - Both of us, accused had one and I had one.

BY MR. WHEELDON: Is it correct that on that occasion the accused had instructions to petrol bomb Mr. Nkomo's house? - No, I do not know that such instructions were given to him; I did not hear that.

Subsequent to that did you hear him say that he had not petrol bombed Nkomo's house as instructed? - I have no recollection.

But did you hear him making a report that he had not done the petrol bombing that he had been instructed to do?

MR. HORN: With respect, might I ask how this is relevant to the present offence. Is it to shew that the accused is a person of good character?

HATHORN, A.C.J.: Something or other Mr. Wheeldon is trying to establish in regard to what the accused said.

MR. HORN: In that regard it would be hearsay.

HATHORN, A.C.J.: Oh, no. What the accused said.

MR. HORN: How can this witness give evidence ....

HATHORN, A.C.J.: Of what the accused told him?

MR. HORN: Of something which is not relevant to this trial.

HATHORN, A.C.J.: I do not see it.

MR. HORN: My point is, is it relevant to this

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trial whether or not the accused said he had or had not petrol bombed Mr. Nkomo's house, and with respect I fail to see the connecting link.

HATHORN, A.C.J.: What do you say, Mr. Wheeldon?

MR. WHEELDON: I want to lead this evidence to establish that on the occasion of which the witness now speaks on the Tuesday on which he says the accused was also given a petrol bomb, that the decided offence was not committed, that the accused did not carry out his instructions in the same way as this witness did not carry out his instructions.

HATHORN, A.C.J.: Is that relevant?

MR. WHEELDON: I submit it will be.

HATHORN, A.C.J.: Very well.

MR. HORN: I must submit ...

HATHORN, A.C.J.: Mr. Horn, I must let this cross-examination go on at the moment. I am assured by Mr. Wheeldon it will be relevant and until I am satisfied that it is not relevant I do not see that I can exclude it.

MR. HORN: As your Lordship pleases.

HATHORN, A.C.J.: You may renew your application at a later stage.

BY MR. WHEELDON: I just want to make quite sure you understand the question. You say that on the Tuesday you were given a petrol bomb to petrol bomb Chinamano's house, and the accused was given a petrol bomb to carry out some object that you were not aware of?

MR HORN: I must object. That was not the witnesses evidence. He says they were both instructed to petrol bomb Mr. Chinamano's house.

HATHORN, A.C.J.: Perhaps you had better clarify. I do not recall what the witness said. Perhaps you had better put it this way. (To witness) On the Tuesday you were given a bomb and told to bomb Chinamano's house? - Yes.

The accused was given a bomb and what instructions was he given, - I do not know what instructions he received. He was the person who was caused to leave the vehicle before me.

BY MR WHEELDON: I understand that subsequent to this you made a report to Matimba that you had tried to burn Chinamano's house, but the match failed to light? - No, I did not say it in that way. I wanted to please Matimba. When I got up to him I said: "I have set Chinamano's vehicle on fire." I wanted to please him.

You said you had done that? - Yes.

And on that same occasion is it correct that the accused made his report and said that he had failed to petrol bomb the house which he had been assigned? - I have no idea about that.

What do you mean, you have no idea? - By that I meant I have no recollection, I do not remember it.

Is it possible that he said that? - It is possible that that did happen. I believe he must have told Matimba himself in my absence.

You say you never heard that? - No, what I say is I do not remember anything about it. It is possible that I heard it, but I do not remember it.

Just before we go on, on what day was it that you made your own personal report? - It was Wednesday, when these bottles were then given to us.

I just want to remind you of something you said at the preparatory examination on page 69, towards the bottom of the page. After the accused asked you about your reported attempt to burn Chinamano's car, he said then to you: "Did you not hear me making a report that I had failed to petrol bomb the house to which I had been assigned during your presence?" Your reply recorded to that question is: "That is correct." - May that be repeated.

BY HATHORN, A.C.J.: I am going to put it this way. Do you remember the accused cross-examining you in the Magistrate's Court? - I do.

According to the record, the last question that was put to you by the accused was this: "Did you not hear me making a report that I had failed to petrol bomb the house which I had been assigned to during your presence?" Do you remember that question being put to you by the accused, it was, in fact the last question he put to you? - I do remember.

Well,now, according to the record your reply to

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that question was : "That is correct." In other words, according to this record you said to the magistrate that you did hear the accused making a report that he had failed to bomb this house he had been told to? - That is what I have said, that I have no recollection, no clear recollection.

Well, did you admit this before the magistrate, and have you now forgotten it? Is that what your evidence is? - That is what it should be.

(To Mr Wheeldon): I understand his answer to be that he must have said that to the magistrate, but he has now forgotten it.

MR WHEELDON: Yes, my Lord.

BY HATHORN, A.C.J.: If you said that to the magistrate, would that have been correct then? - That is correct. Now I understand the question. I did not understand the question before.

MR WHEELDON: I wonder if that makes any difference to the answer?

HATHORN, A.C.J.: You had better clear it up, Mr. Wheeldon.

BY MR WHEELDON: You said you now understand the question. What is your answer to it then? - I see it is true that that question was put to me by him.

BY HATHORN, A.C.J.: And you agree that you heard him making the report that he had failed to petrol bomb the house he had been told to? - To whom was he making this report?

I do not know, but you say that was the question you answered before the magistrate. You said you heard him making the report; apparently it is put to you today that the report was to Matimba? - May the question be repeated. My Lord, my mind is confused. I am baffled. I would ask your Lordship to stop from cross-examining me at this point, that I will come at a later stage when my mind is then settled and composed. At the moment I am confused and baffled.

Are you feeling ill? - No.

I do not understand. Perhaps I can put the question more simply.- It appeared as if I do not know what I am saying, that is why I ask your Lordship to postpone this hearing till tomorrow.

(To Mr Wheeldon): I am in your hands in this regard. Do you want to go on with this cross-examination at this stage?

MR WHEELDON: Yes, I do.

HATHORN, A.C.J.: Then I think I must continue. You appreciate that it may be contended against you that any confusion that arose is attributable to the reason given by the witness.

MR WHEELDON: I am not aware that any reason has been given by the witness.

HATHORN, A.C.J.: He says his mind is in a state of turmoil. At all events I am in your hands.

MR WHEELDON: As your Lordship pleases (To witness) Sylvester the question is quite a simple one. It is recorded by the magistrate at the Magistrate's Court that the accused asked this question: "Did you not hear me making a report that I had failed to petrol bomb the house to which I had been assigned to during your presence?". Your reply to that question as recorded is: "That is correct." Do you admit that you heard the accused making the report that he had failed to petrol bomb this house? - I have no clear recollection. It is possible that this did occur.

Perhaps I can refresh your memory and at the same time that the accused made this report, he said: "I do not know how to operate a petrol bomb"? - No, my Lord, I do not know anything about that.

Is it also possible he said that at the same time that he made his report? - No.

Is it not correct that when the accused reported about the Houghton Park petrol bomb he said that another man had been with him? - Yes, I heard him saying so during the preparatory examination.

When he made the initial report on Friday the 28th, did he not say that at that time? - No, I did not hear it.

HATHORN, A.C.J.: Mr Wheeldon, Houghton Park is a new name to me. Is this area where Silcox Avenue is situated known as Houghton Park?

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MR WHEELDON: I am sorry, my Lord, the witness said Hampton Park. In fact it is Houghton Park.

HATHORN, A.C.J.: Silcox Avenue is in Houghton Park?

MR WHEELDON: Is in Houghton Park.

HATHORN, A.C.J.: And the witness has spoken of Hampton Park?

MR WHEELDON: Hampton Park.

WITNESS: I do not know the correct pronunciation of that part of the town. It is a town situated along the Beatrice Road past the African cemetery as one is travelling in the direction of Beatrice.

HATHORN, A.C.J.: Is it on the left or the right of Beatrice Road? - On the left.

I think it is clearly the same place.

MR WHEELDON: Yes, my Lord. (To witness) When he made the report about the place you call Hampton Park, is it not correct that he then said that somebody else had been with him? - Yes, I heard him saying so at the Magistrate's Court.

BY HATHORN, A.C.J.: No, the question asked you is, when you heard him reporting that he had thrown this bomb, reporting to Matimba, did he not say that somebody else was with him at that time? - No, my Lord, I believe I have already told the Court that I did not hear him tell Matimba that he was in the company of someone else. The first time I heard of that was during the preparatory examination.

BY MR WHEELDON: When the report was made to Matimba it was outside the hospital, was it? - Yes.

And you were with Simon Beni, is that correct? - I was present. That was before the arrival of Beni.

The accused will say when he made his report you were speaking to Simon Beni, some distance from where he was speaking to Matimba? - That was before Beni came. He repeated when Beni had then arrived.

And on the repetition, is it correct that you were speaking to Beni some distance away from where he was speaking to Matimba? - It is the other way around. When he made his first explanation the three of us were standing together before the arrival of Beni, and when Beni came he repeated it is in the presence of the four of us.

That will be denied and the accused will say that he reported that he had been accompanied by another person who actually threw the petrol bomb? - It may be denied. I personally did not hear the accused saying that he was accompanied by someone at the time.

With regard to this note that had "basopo lapo" and "hokoyo" written on it, you say the accused said to you that he dropped a note similar to this at the spot where he threw the petrol bomb? - Yes.

He said he dropped one? - Yes.

You are quite sure about that? - I remember what was told to me. Yes, I am sure.

Would you look at Exhibit 2B...

INTERPRETER: The witness is saying that he is indisposed and asks if he be allowed to sit?

HATHORN, A.C.J.: Yes, give him a chair. (Chair given to witness)

BY MR WHEELDON: Would you look at Exhibit 2B please. When you were first shewn those notes you said these are the notes that I saw? - Yes, that is what I said.

What did you mean when you said that? - It was a mistake on my part when trying to explain. I was referring to one note.

How could you make a mistake like that? - In Shona when one is referring to one particular note you will often, when trying to put it into English, having said "letters" when in fact you are referring to one particular letter.

I do not understand that answer? - If you think in Shona and are trying to translate the word ... into English it is letters. You will then use the word letters instead of the word letter.

Do you mean you had difficulty in expressing yourself in English? - Yes.

But at that stage the interpreter was already interpreting for you? - Yes, that is so, but I made a mistake in the manner I uttered the words.

Why do you say that the note you saw was similar to those notes? - Well, because the note I saw is

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similar to those notes before the Court.

In what way is it similar? - The writing on the note is similar and the opening and closing words are all the same, and the type of paper, the kind of paper. By that I am referring to the colour of the paper.

You say the colour of the paper was the same? - Yes.

What colour would you describe the paper on which those notes are written? - This is bluish, it is not clear.

It is not clear, but it is bluish.

HATHORN, A.C.J.: I do not know whether they are affected by the container?

MR WHEELDON: Would you like to take them out of the folder? -

HATHORN, A.C.J.: Can they be taken out?

MR HORN: They cannot be taken out without some violence being done.

HATHORN, A.C.J.: It is quite transparent, the cover, I do not think that there is any advantage in taking it out.

BY MR WHEELDON: Didn't you tell the Court that the paper the accused shewed you was white?

BY HATHORN, A.C.J.: You mean this morning?

MR WHEELDON: Yes, my Lord.

WITNESS: Yes, I said so because when I saw these papers it was at night time.

BY MR WHEELDON: When you saw what papers it was at night time? - It is a mistake again on my part when I say "papers". I meant when I saw the "paper".

It was at night time? - Yes, it was after dark.

By what light did you see it? - Where I was a light was thrown by a street light.

So that looked white to you and these looked blue to you, but you say they are the same colour? -

MR HORN: With respect, the witness says no such thing.

HATHORN, A.C.J.: He said very nearly that.

MR HORN: He said the letter he saw was at night under street lights.

HATHORN, A.C.J.: I think it is a perfectly fair question.

MR WHEELDON: The question could be put again but I have forgotten its exact wording, may it be read from the record?

(Question read from record)

So that looked white to you and these looked blue to you, but you say they are the same colour? - Yes.

BY MR WHEELDON: Tell me, how was it that you were involved with Matimba and the Z.N.P. during this week of June of this year? - I was attached to the Umtali branch. I received information that Matimba had arrived from where he had gone, and at the time as a person who was no longer interested in the Party I went to see Matimba. I went there specifically to get money. I was under the impression that I would get money for the period I had worked, because I had worked for a considerable period without pay.

As a person who was no longer interested in the Party, why did you undertake to do the bombing? - My Lord, when I admitted, I did not intend fully to perform the act. I merely did so in order to deceive Matimba. He had deceived us for a considerable time and had not given us any money for a considerable time, so I thought I had better pay lip-service to him.

The accused will agree that he was given £1 by Matimba on the Tuesday. You say that he was a driver for the Z.N.P.? - Yes, he used to drive vehicles for the Z.N.P., there were other drivers also.

When you drove with him, did he have a tin similar to that one, Exhibit 8, and two other tins in which he carried spare petrol in that vehicle ? - I never travelled with the accused in a vehicle.

I thought you said you had in your evidence? -

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I said he was a driver who used to drive for the Z.N.R. He joined the Z.N.R. before me. He stopped from driving after having been involved in an accident in which he received an injury upon his head, and the other person he was driving.

This £1 he was given he said he was given because some relative of his was staying with him and he needed money to entertain them? - It is possible that he received money from Matimba for entertaining his relatives during my absence. What I am referring to is this particular pound given to him in my presence and I also received the same amount. This was given him specifically to buy petrol for petrol bombs.

Was not the pound given to you in order for you to go to Umtali. Is that not the reason you asked for a pound? - I did not ask Matimba, I asked Matimba to give me money for the service I had rendered.

BY HATHORN, A.C.J.: The point is, was not this pound given to you so that you could go to Untali? - No, my Lord.

BY MR WHEELDON: You say you were also given a pound to buy petrol? - Yes.

On what day was that? - Wednesday. With your Lordship's permission I have already told the Counsel and the Counsel reiterates that question. Does this appear that the Counsel did not understand what I have already told the Court?

HATHORN, A.C.J.: There is no need for you to ask questions like that. If questions are improperly put, I will stop them. Just answer the question.

BY MR WHEELDON: How many petrol bomb attacks were you supposed to make when you were given this pound? - When the money was given to us the instructions were we were to use this money in buying petrol, and the rest of the money we would use in boarding 'buses.

To go where? - To travel, to go to the hospital and other places where we intended to go.

For what reason? - In going to the hospital we would go there in order to go and meet Matimba about this petrol bombing. Then other journeys we would travel to go wherever we intended to go.

So, it is the truth that at that stage you were employed by the Party for this work? - No, when this incident occurred that is this petrol bombing, I was no longer working for the Party.

But you were being paid money to purchase petrol and to go about Party business? - Yes, I have already told the Court that I wanted to deceive him. This was a mere artifice on my part because he had deceived me for a considerable time.

You say that on the first of July you were taken into custody by the police? - Yes.

At what time? - 4 p.m.

Where were you taken then? - I was found in one of the beerhalls at Highfields.

I said where were you taken after your arrest? - I was taken to Machipisa police station.

What happened there? - I was placed in the cells. The following day, the 2nd of July, I was conveyed to the main charge office in Railway Avenue in town.

Were you there questioned? - They did question me for some time because I was argumentative, and they said it was rather late, and I was placed in the cells at the main charge office.

Was that on the first or the second? - That was on the second, that is when I was conveyed from Machipisa cells to the main charge office. So the following day, the 3rd. I made my statement to the police. After I had made my statement I was then told by the police that I was no longer an accused person; I should become a witness because I witnessed when the action was performed.

So it was on the third of July that you finally made a statement? - Yes, it was on the third July. That very day after making the statement, I went to spend the night at the C.I.D. quarters at Makapusi camp. I believe they were not satisfied that the statement I made was a correct one. I was kept at the C.I.D. quarters on Thursday night, and Friday, at about 4, I was then released.

At what time on the 3rd did you make your first statement? - I made the statement in the morning. I do not remember what time it was; I believe it was

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between nine and ten; this statement took almost a whole day.

Is it correct that you were questioned for three hours before making this first statement? - Well, yes, when they questioned me I told them what I intended to say and they said that was incorrect, they were also argumentative, and at first I was reluctant to tell them the whole story. When eventually I told them they took some time; this discussion took a considerable time.

So, do I understand you correctly, when you made a statement about the petrol bombing, that you say the accused said he had done, you would make a statement and the police would say: "No, that is not correct", and then ask you more questions?

HATHORN, A.C.J.: I think you should leave the second part. He disagreed, I thought, with your first proposition?

MR WHEELDON: As your Lordship pleases.

WITNESS: When they questioned me it appeared as if the police thought I was there telling them an untruth. That is what brought about this argument, and the questioning stopped for some time and resumed again. It was at that stage that I was then eventually taken to Sergeant Crowe, who recorded a statement.

BY MR WHEELDON: How many people were interrogating you? - It is hard to say the number. It was in the morning when all members of the police were also reporting for duty, a large number of them, I cannot say how many.

Who were interrogating you? - Two.

BY HATHORN, A.C.J.: The argument, on which day did that take place? - The first argument was when I arrived from Machipisa.

That was on the Tuesday? - Yes.

And when did you decide that you were going to tell the police all you knew? - When I arrived here I had decided to tell them the whole truth, but the police were not satisfied, were not sure that I was going to tell them the truth.

That is when you arrived at the main charge office? - Yes.

BY MR WHEELDON: Did you change your story a large number of times while you were being questioned? - The first day I didn't.

You didn't what? - I didn't change my story.

Did you deny all knowledge of it? - Even the second day there was never an occasion when I changed the story. At first I had denied all knowledge of this incident.

For how long? - For about three hours.

Were you being questioned all that three hours? - It was not continuous questioning. Whenever they questioned me if I had given them a reply they would wait for some time. It was intermittent.

BY HATHORN, A.C.J.: The three hours that you say you were questioned, was that at the main charge office, or was this at Machipisa the day before? - I was not questioned at Highfields. All questioning took place at the main charge office.

And for the first three hours you denied, did you? - Yes.

And then you told them what you know? - Yes.

And was that on the Tuesday that you first told them what you knew? - I intended to tell them what I knew on Tuesday. They then said it was rather too late; they intended to close and they said they would carry on the next day.

That is when your statement was recorded? - The statement was recorded the following day.

BY MR WHEELDON: I would put to you that the accused will deny that he ever was with you on the day you say there were three bottles of petrol which were filled up, that was on the Wednesday, you said. He will say that when he made a report to Matimba he reported that he had accompanied the man who had thrown a petrol bomb at the house in Houghton Park? - The version I gave before this Court is a correct one and a truthful one.

Re-Examined

RE-EXAMINED BY MR HORN: You said that at some stage or another the police said that what you

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were telling them was incorrect. Was that when you were denying any involvement in this case or after you had admitted knowing something about it? - My Lord, I intended to tell them what I knew, but it appeared as if the police thought I was denying and that I was going to mislead them, that is what brought about an argument.

Did you say in your cross-examination in this Court that the police told you that you were not telling the truth, that what you had said was not correct? - I said the police were not certain about me. They said what I was telling them was untrue.

What was it that you were telling them that they said was untrue? - Because when I arrived at the charge office they accused me of being the person who was responsible for the petrol bombing of this house at Houghton Park. They actually said to me "we heard that you were the person who was responsible."

And what was your reply to that? - I told them that I had not petrol bombed the house at Houghton Park.

What was it that the police said was untrue? - Well, the police thought I was telling them an untruth when I said that I had not petrol bombed this house at Houghton Park, because they were under the impression that I was the person responsible.

Is that the only thing that they said was untrue, or were there other things in your statement which they said were untrue as well? - There were many questions put to me by the police. that is not the main one. There are many other questions of which I have no recollection.

I am trying to understand what it was that the police said was untrue that you told them? - Well, the argument was because the police said I was the person that petrol bombed, or I took part in the petrol bombing. When I told them that I did not take part, that is what brought about the argument.

You said the accused stopped driving for Z.N.F. when he was injured in an accident. When was that? - In the early part of January.

And while in the various times that you went around in Edson Sambo's car and came to the Magistrate's Court, and went to the Harare hospital,

was the accused ever driving on those occasions? - No, Sambo was driving.

What was Matimba's reaction when you told him that you had not managed to set alight to Chinamano's car? - He did not say anything, save saying make a second attempt.

You say that you agreed to petrol bomb Chinamano's house or car, or whatever it was, because you thought you would get pay if you agreed to that. Why did you think you would get pay if you agreed to bomb Chinamano's place? - Because the instructions were as follows : people would move from house to house intimidating people so that they would get cards for the Z.N.P., and that he would go to petrol bomb houses of people which were grouped together so that it appeared in the newspaper, that members of the Z.N.P. attacked a certain place. He said things like that, intimidate people or put them into bodily fear, causing them to go and join the Party. If we have a large number of members then this will make us to have money, so whenever the occasion arises to go to the outside countries whenever I happen to go outside, those other places would then give us money because they would then be certain that my Party is fighting for the country.

Do you know if the accused was employed in any capacity by the Z.N.P. between January, when he could no longer drive, and June, when this incident took place? - From the time that the accused was involved in an accident in January I was personally in Umtali and I had to remain in Umtali all the time.

When you came back to Salisbury in June do you know in what capacity the accused was associated with Matimba?- I came in May, my Lord.

Well, in May, do you know in what capacity the accused was associated with Matimba? - I do not know in what capacity he was in the Party but he appeared to be one of those who knew about the membership cards and enrolled new members.

You say you and the accused were each given a pound on the Wednesday evening, and you went to a service station? - Yes.

Who paid for the petrol at the service station that was put into the gallon tin? - Both of us paid for the petrol.

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You each had a pound, did you? - Yes.

How did you both come to pay for the petrol? - Upon our arrival at the shopping centre I remember using this pound I had for buying mealie meal. I bought some mealie meal.

And how much money did you pay towards the petrol? - I gave him 1s.0d.

And the accused? - The accused paid sixpence.

And how much petrol did you buy? - One shilling and sixpence worth of petrol.

(To Court): With the Court's permission I would like to put a series of questions not arising out of the cross-examination, and relating to whether or not this witness knows a person referred to as Cyprian.

HATHORN, A.C.J.: I think you had better tell Mr. Wheeldon the line of your questioning, and then he will have a chance of considering it during the adjournment.

The Court adjourned for lunch and re-assembled at 2.15 p.m.

HATHORN, A.C.J.: Have you discussed that matter?

MR HORN: I understand that, subject to my learned friend's right to cross-examine, he has no objection.

HATHORN, A.C.J.: Very well, then.

SYLVESTER MAKONI, under former oath

BY MR HORN: Do you know a person called Cyprian? - I do.

When did you first meet Cyprian? - I knew Cyprian the first days I became a member of Zimbabwe National Party.

About what month would that be? - In January of this year.

Was he a member of this Party or not? - He was a member of that party.

In May, when you came back to Salisbury, can you say if he was still a member then? - I am unable to

explain but I remember when Patrick returned we met in this hut, No. 3995.

Whom do you mean by "we"? - I am referring to Cyprian, myself, the accused, George Harry Maxwell, Wanda Wanda and Geoffrey Magai.

Did Cyprian to your knowledge at any stage cease to be a member of this organisation? - I do not know whether he had ceased or not.

What position, if any did he hold in the Party? - I am not quite sure of the exact position he held in the Party, but I recall that he was on the National Council of the Executive of the Harare Branch.

At the time you say Matimba was giving you and the accused instructions to go and petrol bomb various places, where was Cyprian when those instructions were given, round about this time. Was he involved at all? - I do not know exactly where he was. I merely assumed that he must be in Highfields in his quarters, because he did not attend any of these meetings.

Do you know why he did not attend any of these meetings? - I do not know why he did not come. I never had occasion or cause to find out from him why it was that he did not come.

When was the last time that you saw Cyprian then? - On Monday, following the 28th.

Before that, when did you last see him? - I had seen him some days before that when I arrived from Umtali.

Was this in May? - Yes.

Did you not see him since this occasion that you saw him in May, did you not see him between that time and the Monday after the 28th? - I used to meet him in the beer hall.

Did you ever see him in connexion with any Party business? - No, I did not, with the exception of that particular Monday on which day we met, with all the people whose names I have enumerated.

That is soon after you got back from Umtali? - Yes.

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S. Makoni Re-Cross-Examination

Re-Cross-Examined

CROSS-EXAMINED BY MR WHEELDON: I just want to get this clear. You say you saw Cyprian in connexion with Party business on a Monday? - Yes.

Was that the Monday following the 28th of June? - Yes, the same week.

There is one question which perhaps I should put to this witness, not arising out of the re-opened examination.

HATHORN, A.C.J.: Have you any objection.

MR HORN: No objection.

BY MR WHEELDON: You said that the accused stopped driving after an accident in January of this year. The first question is, is it not correct that the accident was in December of last year? - I do not remember correctly, because when I joined Z.N.P. the accused had just been involved in this accident. When I first joined the Party I was running a dry-cleaners' business in Old Highfields, and I was merely a henchman.

The second question is, is it not correct that he started driving again for the Z.N.P. during May and June this year? - No, he was not driving in May and June.

Can you be absolutely sure of this, because you were not a member of the Party yourself, you say? - The other one was not in working order. There was some mechanical defect. There was only one vehicle running, that is the one owned by Sambo, and as such I was able to see the people who did the driving.

The accused will say that he did, in fact, drive during May and June for the Z.N.P.? - If he did so, I personally did not see him driving.

And it is possible that he did so, because you don't always see the driver of Z.N.P. vehicles? - It is possible.

NO RE-EXAMINATION.

BY HATHORN, A.C.J.: At the time you joined Z.N.P. were you living in Salisbury? - I was.

And did you at the same time that you joined,

become employed as an organiser? - No.

When did you join them? - I joined towards the end of December.

And then when did you become an organiser? - I do not remember the exact date, it could be the 15th of January, around that date.

And when were you sent to Umtali? - About the 24th or 25th January.

And how long did you stay in Umtali? - I was there from that date until the end of May. If I had time and occasion I did visit Salisbury, but I was staying in Umtali.

You say you were employed at £2.10s.0d. per week? - That is what was told me.

And were you paid any part of that salary? - No.

And when do you consider that you stopped working as an organiser? - I became disinterested in April, and then resigned in May.

In May did you resign from the Party or did you resign from your employment? - I started resigning from my employment.

Did you actually tell somebody you were stopping being an organiser? - I didn't think it fit to tell them that I was resigning at a certain date, because I thought they would keep on persuading me to carry on, that the President is coming, and you will get money on a certain date. So I did not think it fit to tell anyone.

And did you actually resign from the Party? - Yes, my Lord, I gave my resignation through the Press.

When was that? - That was in May.

Were you seeing Matimba and the other senior people in the Party regularly during June, or only on rare occasions? - Sambo and Matimba, I did not see those two regularly, but the other members of the Party I would see them if I had occasion to go to the beer hall, or meet them in the town, whenever I had occasion to go to town.

I want to ask you about the time you were

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S. Makoni Re-Cross-Examination continued

arrested. I think you said you were arrested on Monday the 1st of July? - Yes.

Was anyone else arrested apart from you and the accused in connexion with this case? - One Abdul was, whose surname I do not know, he comes from Northern Rhodesia.

Anyone else? - And three juveniles who were arrested before us. One is Geoffrey Magai, Maxwell Wanda Wanda, and George Harare. And finally Patrick Matimba himself was arrested also at the same time. I believe there were many others who were arrested and later released.

What I really wanted to know was about Cyprian. Do you know if he was arrested? - I met him in the beerhall and he addressed me as "uncle". He said ....

I do not want to hear what he said. You don't know, of your own knowledge, whether or not he was arrested? - No, I do not know of my own knowledge, save what he told me in the beer hall.

Now you told us that on the Wednesday evening you and the accused were given three bottles and money and you bought petrol, and you filled the bottles with petrol, or you put some petrol into the bottles? - Yes.

I do not recall whether you said that you heard the instructions that were given to the accused as to what he was to do with his petrol bottle? - If your Lordship is referring to the incident on Wednesday?

Yes? - What he merely said is "here is the petrol and bottles, you must make some petrol bombing, these bottles are for petrol bombing."

Were you given any instructions as to what you were to do with the petrol bombs that you had? - We were not instructed where to take these petrol bombs. He merely said that we are fully aware of how to operate these things. There was no need for anybody to be told what to do.

That is what you were told by Matimba? - Yes.

Was the accused present when that was said? - He was present, he heard that.

Now the place that you put petrol into these

bombs, you say it was near the Zororo Lines. Could you be a little more explicit? - It is the spot which is between the Lusaka section of Highfields and the Zororo section of Highfields. That spot is near a mazanje tree, and near this tree is where the petrol was poured into the bottles.

Was this a public place? - It is a public place, but at the time one could take cover because of the grass which was about three foot six inches or four feet high.

And what happened after you had put the petrol in the bottles that evening? - We parted company, he left in the direction of his quarters and I went to my own hut.

And how many bottles did you take and how many bottles did he take? - The accused took one and I took two.

I cannot remember if you said you saw him on the Thursday the next day? - Yes.

Where was it that you saw him on the Thursday? - At the Harare General Hospital.

And did the accused on that occasion make any reference to petrol bombs or anything of that sort? - No.

Then you met him again on the Friday and that was when he told you that he had thrown this bomb? - Yes, that is what I heard him saying in that report.

Did he say on that occasion why he had thrown the petrol bomb? - I do not remember, and I do not think he did say why he threw the petrol bomb. This action was done because of the instructions which we had already received from the President. I believe that is why he proceeded to take the action.

Is there anything else arising out of the questions?

No questions by Counsel.

BY MR YARDLEY: What happened to your two bottles of petrol? - I placed one on the ground, and held one in my hand. I hit the one on the

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ground and broke the two bottles.

Where? - Near Highfields beerhall, and an anthill where there is a figtree near that spot.

When? - That very night we had filled these bottles with petrol.

BY HATHORN, A.C.J.: And who took the gallon tin that contained the petrol? - Accused took the tin with him, it was his tin.

(Witness stepped down)

MR HORN: Your Lordship was asking this witness questions relating to the arrest of Cyprian. The evidence is available if your Lordship wishes to hear it.

HAYTHORN, A.C.J.: I do not think it is of great importance.

MR HORN: As your Lordship pleases.

CASE FOR THE CROWN CLOSED

HATHORN, A.C.J.: Mr. Wheeldon, I must put to you the statutory questions. Have you any witnesses you wish to call?

MR WHEELDON: No witnesses other than the accused himself.

HATHORN, A.C.J.: The accused elects to give evidence?

MR WHEELDON: That is so.

Evidence for the Defence

No.13

R. Mapolisa (Accused) Examination

EVIDENCE FOR THE DEFENCE

No.13

EVIDENCE OF RICHARD MAPOLISA (Accused)

RICHARD MAPOLISA, (accused), duly sworn and examined

BY MR WHEELDON: You are the accused in this case? - I am.

Evidence has been given of a statement you made to the police, Exhibit 1, which was interpreted to you? - Yes.

Are the facts contained in that statement correct? - Yes.

In all respects? - No, most of the words of the statement are not correct.

Now reference was made to a man called Cyprian in that statement? - Yes.

Did you see Cyprian on the night of the 27th/28th June? - Yes.

Did you go anywhere with Cyprian? - Yes.

Where did you go? - To Houghton Park along the Beatrice Road.

Where in Houghton Park did you go to? - From Highfields we passed through a police station situated in Old Highfields, and we joined the Beatrice Road near the Makabusi River, and we travelled along the Beatrice Road towards the town. When we reached a certain service station we then turned into this town, facing Waterfalls, as if we were crossing through the town. I was then told to turn to the right.

By whom? - By Cyprian.

Yes? - We had travelled along the road; we were now going into darkness. I knew that most Europeans kept dogs. I then told him "As we are going in this direction we will meet dogs and we will be bitten by dogs." He then told me to walk in the grass. As we were walking along, when we had reached a certain spot he said: "Wait here". I then said: "What has happened to you?" He said: "Keep quiet, do not speak up." He then asked me to give him the paper bag. I handed the paper bag to him with both hands. He took out the bottle from the paper bag. I realised that since this bottle contained petrol his intention was to throw this bottle into this house. I then thought of a plan to put him out. I told him that I was coughing and that if I remained here I will cough. He then told me to move away.

Before you took the bottle out of the paper bag, did you realise that he was going to throw this bottle at a house in which people lived? - No, I did not.

What happened then? - When I had moved a short distance I stopped and looked backwards to see him striking a match; and he threw the bottle. I

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heard the noise of the cracking of the bottle and the glass. I, who was standing some distance away, took to my heels. He also ran, coming in the direction I was running. Before we got on to the Beatrice Road he told me that no one is going to spend the rest of his night in his quarters, we had better spend the rest of the night in the bush.

BY HATHORN, A.C.J.: That is, were you to spend the rest of the night in the bush or both of you? - Both of us, my Lord. I then said there was no reason for me to spend the rest of the night in the bush when I owned my own room. If anything happened, come what may, I would go and spend the rest of the night in my own quarters. From that day that I went home I did not meet him again. The next time I met him was then on Saturday.

BY MR. WHEELDON: Before you go on, Sylvester has given evidence that on Friday evening the 28th of June at the Harare hospital you made a report to Patrick Matimba that you had thrown a petrol bomb through a dining room window in Houghton Park? - He is lying on that particular part, because he was far from us. Even if he heard that we had thrown a petrol bomb at a European house, he did not hear how it started or have any knowledge of its origin.

What report did you make, if any? - When I reached where Matimba was I asked him if it was he, Matimba, who had sent Cyprian to collect me from my quarters. Matimba said: "What is the matter?" I said: "We went to Houghton Park to throw a petrol bomb." Matimba became incensed and said: "Why have you done that?" I tried to explain. He then said: "Keep quiet, I do not want to hear what you are going to say." He then moved to the spot where Sylvester and Simon Beni, the two of them, were.

What had you wanted to explain? - I wanted to explain to him because Cyprian had come to my quarters to collect me. I wanted to know from him whether it was he who had permitted him to come and collect me, because the day the conference was held he was told to go outside.

BY HATHORN, A.C.J.: Who was told to go outside? - Cyprian.

BY MR WHEELDON: Sylvester Makoni has given evidence that on the Wednesday before these events you and he were given three bottles and a pound

each and instructed to buy petrol with the pound, amongst other things, and fill those bottles and start petrol bombing. Is that correct? - That is incorrect. It was just a concoction of his imagination.

Were you with him at all that evening? - Wednesday evening, the evening you referred to when the money was given to us, I deny that completely. The money was not given to us on Wednesday.

BY HATHORN, A.C.J.: The question was were you with him on that evening? - Yes, I met him at the hospital that evening.

BY MR. WHEELDON: Were you given bottles that evening? - I saw no bottles; I do not even know what sort of bottles they are.

Did you purchase petrol that evening? - No, my Lord, we did not purchase petrol that evening. When we got to Machipisa we parted company. I did not even see where his quarters are.

Did you have a tin (have a look at the tin Exhibit 8) with you on that evening? - I did not have a tin of that size with me, but I have three tins of this type in my quarters.

What did you use them for? - I am a driver for the Z.N.F. and these tins were brought when the vehicles came, and each time I am going out driving I use these tins for petrol and oil.

Is it correct that you were given a pound by Patrick Matimba? - It is.

On what day was that? - On Tuesday.

For what purpose was that? - My brother-in-law and my wife had visited me. That is why I borrowed the money. When he gave this pound Makoni happened to be with me. He then said he would not give me a pound alone; he thought of giving a pound to Makoni and a pound to me, because Makoni was grousing over his property which was said to be in Umtali.

Makoni has also given evidence that you shewed him a white paper with lines on it which included the words "basopo lapo" and "general hokoyo"? - He saw this paper on Friday evening after this row with Matimba. When I took out money from my pocket at the 'bus terminus to buy a ticket he saw this

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paper and asked what paper it was. As he began to read I snatched the paper away from him because I did not want him to read it through, because that particular paper I wanted to go and shew to Matimba with the report that I had been asked to drop it.

Makoni said that you told him that you had dropped a piece of paper similar to this at the spot where the petrol bomb had been thrown? - That was just a figment of his imagination.

You say you deny telling him that? - I deny it.

Did you in fact drop a note of this sort at the spot where the petrol bomb was thrown? - I did not drop anything.

Did you have a note of that sort with you when the petrol bomb was thrown? - No, my Lord, I was no longer having any of those notes with me.

Where were those notes? - They were with the owner, Cyprian. I had handed them to Cyprian.

How many? - I had handed him eight copies. The copy from which I had drafted was the ninth copy.

And where did the copy that you had with you that Makoni saw come from? - That was on a white sheet of paper similar to the one before the Counsel.

BY HATHORN, A.C.J.: The question is, where did that copy come from? - From those particular letters.

You said you handed over all the copies to Cyprian? - Yes, when I had made those copies, I then copied the contents of this note in the exercise book which had remained in my quarters.

You have not explained where the paper came from which Sylvester saw in your hand? - This was now Friday, my Lord. As I have said before, I had copied the contents of these notes on an exercise book. From this exercise book I then wrote out a copy which Sylvester read that I eventually snatched away from him. When I had taken the copy from him I did not put it back in my pocket. I moved a short distance and tore the note into pieces.

BY MR. WHEELDON: Sylvester has also said that on the Wednesday evening you were given instructions to go out petrol bombing generally. I think you

have denied that that was so? - I deny that.

When you first saw Cyprian on the night of the 27th of June was it as a result of pre-arranged meeting or not?

HATHORN, A.C.J.: That was the Thursday night.

BY MR. WHEELDON: Thursday night? - No.

Had you been expecting him? - Yes, when I went to my quarters I expected to see the person who had promised to come there.

What person was that? - Cyprian.

Had he said why? - When he did come he said why he had come.

Why was that? - He had come to collect me so that we go to perform an action.

What action? - I asked him what action it was and then he said to me: "Come outside and see what I have brought." There was a bottle there. I opened the door, I went outside to find a bottle outside. I picked up this bottle. I thought it was paraffin or some liquid. I said to him: "What is this for?". He then said: "Have you forgotten my remark when I said we were going to take action." I then asked him where he got the money with which to buy petrol since he wanted half a crown from me. He then said I would never know anything because he had many friends. I then said: "With regard to the action you are talking about, I am indisposed. I have a headache and cold." He persisted that I should go with him, and he said he had come specifically in order to go out with me.

Was it true that you had a headache and cold? - No, I was trying to put him off. I wanted him to leave me.

Why was that? - I noticed that he was trying to pull me into things that I did not know.

You say he insisted. What happened then? - I said, "Friend, look, I have not had my meal. It is better that I go to Machipisa for some food". At that stage he then asked me if I had a torn shirt. I told him that I did not have a torn shirt, I owned only two shirts. I said: "If you want something in the form of rags, I have got some

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underpants which are worn out and are on the bicycle." I said: "There is no woman in this house. It is owned by us, you should know what to do. I am going to Machipisa, you remain here."

Did you go to Machipisa? - I did not reach Machipisa itself, I went to a spot where this tricycle was. I bought bread and came back. I then told him I had been to Machipisa and he told me that he had finished preparing. He brought four sheets of writing paper and asked me if I could copy. I told him that the fountain pen I had had no ink. When I did say so, I had ink in my house. I thought if I did say so he would say : "Seeing that you have no ink we had better stop from doing it." He then asked me to give him my fountain pen. He walked out with it. He was out for a short time, a period of about 15 minutes. He came back and gave the fountain pen back to me. I started to write the notes. We made about eight copies. As I was writing I gave them to him. He placed them in his pocket. He then said : "Let us go." We set off, and I put on my tackies.

Before you go on, when you returned from your trip to get food, you say that Cyprian said he had finished preparing. Did you see what preparations he had made? - I noticed the bottle that was visible had been wrapped up in a Khaki paper. I noticed that the rag appeared to be that of my underpants used for tying the neck of the bottle. I did not know that anything had been taken from my quarters besides the underpants.

Evidence has been given that a piece of rag was, in fact, tied round the bottle. That came from a blanket which was in a box next to your bed? - I noticed that when I got to the police station. It is true that I have got a box where I keep things that I do not use.

Did you know that that had been used? - No.

From what you have said it appears you knew that a petrol bomb was to be thrown that night and that you were reluctant to go with Cyprian. Why was it that you in fact went with him? - I did not know that the target to be petrol bombed was a European house. So I went there ignorant.

Apart from that, would you have gone willingly with him? - Still I was reluctant to go.

Why was that? - I noticed that I was putting myself into difficulty or danger.

Why did you in fact go? - When things are in such a situation, if one does not go you will be regarded as being an informer if anything cropped up.

What would the result of that be? - Some plan may be contrived and in another way you may be killed.

Cross-Examined

CROSS-EXAMINED BY MR. HORN: Can Cyprian write? - I do not know if he can.

How long have you known him? - From the time he joined the Party last year.

When was that? - I do not remember whether it was in October or November.

Do you know what standard of education he has reached? - I do not know. He used English in general conversation, but I do not know what standard of education he has reached.

Have you ever seen him writing? - Yes, I have seen him writing articles to send to the Press, the Daily News.

Is he a journalist of sorts? - He writes articles.

On his own? - Yes.

What do you mean when you say you don't know if he can write or not? - Because when he came to me and invited me to write for him I did not understand what he meant by so saying.

Just answer the question. Why did you tell me that you did not know whether Cyprian could write or not and you have just told us that he used to write articles for the newspaper? - My Lord, it is just a slip of the tongue on my part. It is like a person who is walking in a public thoroughfare who stumbles.

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On a very small stone. Well, can he write? - He can.

When he asked you to write this note eight times, didn't he shew you a specimen, or did he dictate it to you? - He dictated it to me, he was reading it to me to write.

From what? - He was dictating from the other paper that he had brought.

Did he bring a paper with this message written out and then dictate it to you from that? - Yes.

Why didn't he just let you copy it out? Why did he dictate it? - I don't know. I thought he wanted to get them done in quicker time, because what he said to me was that he was tired, he could have made out those copies by himself at his quarters, and because he was tired he wanted me to help him so that we could do them in a shorter time.

Did you believe him? - I did.

He was so tired that he could not write out these eight copies himself, but he was not too tired to go scouting round the town to see if he could find ink for your pen so that you could write them out yourself. Is that the position? - He related this to me, that he was tired and asked me to help him with writing out these copies, after he had already been out to look for ink.

Why should he ask you to write them out in the first place? - I don't know why.

You are not as well educated as he, nor can you write as quickly or as well as he? - I do not know what is meant.

Just answer the question? - I am not educated, I don't know the meaning of it in that context.

Why should this man who can write quickly and who was well educated apparently if he writes articles for the newspaper, why should he ask you, who is not well educated and cannot write quickly and well, why should he ask you to write out these things? - Many Africans, those who are illiterate, when they have to write a letter, would look to someone else to write a letter for him when he himself is illiterate. I do that too myself at times.

I see. He wanted to use you as a sort of

secretary? - That is what I do not really understand.

So you can give no explanation as to why he should want you to have written these notes? - No, I cannot give any explanation because I don't know anything about it.

It must have struck you as very odd when he came with this request for you to write those papers out, didn't it? - it did.

Did you know what it was that he wanted you to write out on that piece of paper before he started dictating to you after he had got the ink for the pen? - When he left for ink I did not have occasion to read it, because he had taken the note with him. I did not know what I was going to write.

Why were you so reluctant to write it out for him? - Because of the contents of the note I realised that the words contained in the note were not good.

But you told us that you did not know what he wanted you to write when he wanted you to write out? - When he returned, he then said : "Here are the papers I want you to write down." I am going to dictate to you what I want you to write down." I then asked him to hand me the note which he had in his hand to write from, which I did.

Before you sent him off on this expedition to look for ink for the pen, why were you reluctant to write something for him if you did not know at that stage what he wanted you to write? - At the time I did not read the contents of the chit; what I concluded from the bottle I had seen was, that this would lead us into trouble.

Why did you think he wanted you to write something in connexion with the bottle? - Because when he brought these papers he said he wanted to write some words, the contents of these sheets and he brought the papers to me, and he said wherever we are going to throw this bottle we will also leave this chit.

Are you making this up as you go along? - No, I am repeating before this Court what happened that day.

I suggest to you that you are in fact making it up because Cyprian did not come to your quarters

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that night and you did not accompany Cyprian to throw a petrol bomb, and that you are either involving Cyprian to get your own back on him for some reason or another, or in order to shield some person who might well have accompanied you? - I have nothing against Cyprian. I do not even know where his room is. Nor does he know where my home is and there is no reason why I should hate him.

What do you mean, he does not know where your home is? - Well, if he knew my home this would imply that there must have been something that occurred between us in the past.

You mean by your home, the kraal where you come from? - Yes.

Well, is it not correct you were very surprised when Cyprian came to you and asked you to accompany him on this escapade? - Yes.

You knew at that time that he was going to throw - or before you left your quarters with him at any rate - you knew that he was going to throw this petrol bomb somewhere? - As we walked along I had that in my mind, that he was going to petrol bomb somewhere. As I was walking along I was lagging behind at times. He asked me why it was I was lagging behind. I began to tell him I was not feeling very well.

Didn't you arrive at 99, Silcox Avenue first? - We arrived together.

Well, you say you were lagging behind. Was this right from the start? - As we set off from my quarters, walking in the direction of town.

You were behind him all the time? - Yes.

Didn't you tell the police in your statement that you left the house to go together, meaning your hut, Cyprian was carrying the bottle and walking a little behind you. Didn't you tell the police that? - I believe at that particular part the police were wrong.

When did you realise they were wrong about this? - There was never an occasion when I walked in front or when he was ever behind me.

When did you realise that the police had made a mistake about what you had said? - I realised it when this statement was read out to me. I then noticed that that particular part was wrong.

You mean the day the police read the statement back to you before you signed it? - When the statement was read out to me I pointed out the mistake that Cyprian was never behind me, and the police said that because I had told them that when we set off for the cocktail bar Cyprian was behind me. That is why it is included in the statement.

Didn't you object to this? - I objected.

And they refused to change it, did they? - They refused to change it.

Well, when the statement was produced at the Magistrate's Court, why didn't you point out to the police when you were given an opportunity of cross-examining that they had misrecorded you? - I did not challenge this statement before the magistrate. When that particular part was read I thought they were referring to an incident when we were proceeding towards the cocktail bar, when he remained behind me, because I walked in front. I thought in that statement I was referring to that particular time when we were proceeding to the bar.

When you left your house together with Cyprian who was carrying the petrol bomb? - The owner.

Who was the owner - Cyprian.

Where did you go from your house? - From there we went to the cocktail bar.

What was the time? - We had no watch with us as to when we got into this bar. We were there for about 15 minutes, bought some beer; we did not finish drinking the beer. I was not drinking, he was drinking, but at that moment we saw the lights were being put on and off to give warning that the bar was about to be closed.

What time does it normally close? - I am a teetotaller, I do not know when the beerhall is closed; the bar is closed at ten.

What was the next thing you did when the lights were flashed on and off? - At that stage the lights were flashing on, someone came and spoke to me who was asking about his wife, and after a short conversation with this person we then left the bar.

Carry on? - When we got to the point opposite Gwanzura, he then picked up the bag and carried the bag himself.

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Where did this bag come from? - When we entered this cocktail bar this bag had been hidden in a grass verge at a spot between the beerhall and the Gwanzura stadium.

Where did the bag come from? - The bag, we had bought the bag from Chinamano's grocery.

When was that? - When we set off from home before entering the bar.

Why did you buy a bag? - He said as we were walking along : "It is now after dark; there may be police patrolling the village. If we walk about in a public thoroughfare having something under the armpit we would never know what questions one has to meet whenever one comes across a policeman." I produced fivepence from my pocket. He gave me one penny, and I bought a paper bag. This bottle was then placed in the paper bag and then he carried it.

Wasn't it already in a brown paper bag? - It was already in brown paper, wrapped in Khaki paper.

So it just looked like a parcel, it could not be distinguished as a petrol bomb or anything of that nature? - Yes, my Lord, but the manner in which the bottle was carried, it was carried under the armpit.

BY HATHORN, A.C.J.: You say that before you put it in the brown paper bag the bottle was wrapped in brown paper? - Yes, my Lord, it was wrapped up in khaki paper.

BY MR. HORN: Was it wrapped up in this khaki or brown paper when you came back from buying the bread at the tricycle? - Yes, it was wrapped up during my absence when I went to buy bread at the tricycle.

So you don't know exactly how the petrol bomb was made up? - I did not.

How did you know that he had used your old underpants? - I noticed that the parcel was tied with this piece of cloth, the rag.

How do you mean? - The bottle was wrapped up in khaki paper. Then this rag belonging to my underpants were used to tie the parcel.

And then the brown paper parcel just wrapped was put into a paper bag when you purchased it? - Yes.

You said, I think, that you were surprised when Cyprian came to you with this obvious intent of going to petrol bomb somewhere? - I was.

Why were you surprised? - Because I do not understand the reason why this action was going to be taken. There must be a reason for taking action.

Well, was there any reason for the other action being taken which you were instructed in by Matimba? - That is why I didn't take any action.

Why not? - I had discovered that it was shedding innocent blood for no reason.

You felt very strongly about this, did you? - Yes.

Well, why were you surprised when Cyprian came? - I was not actually surprised by his coming. What surprised me was when I saw the bottle, because when he spoke about the action he said we should go to the President in order to get the money. I then noticed that the kind of action which he was referring to was different, had changed. There are things that one would do impulsively; so otherwise it happened on an impulse.

What do you mean, it happened on an impulse? - It did not even occur to me to get a plan or ask him how we were going to operate, how we were going to put into effect. It did not occur to me.

But hadn't you previously been instructed to go round petrol bombing places? - No, I had not been instructed to go petrol bombing.

Hadn't Matimba instructed you and Sylvester on Wednesday, or thereabouts, to go and petrol bomb. Sylvester was supposed to go and burn at Chinamano's place? - I do not know that. I know that to have occurred on Monday night. We were merely invited to go to Sambo's hut. We got there very late, about eleven or twelve midnight. Even when we were given the petrol at a spot where the vehicle stopped, yet I did not know what to do with the petrol.

So you were given petrol for a petrol bomb? - Yes.

When? - On Monday night.

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Were you instructed to go and petrol bomb any specific place? - Yes.

BY HATHORN, A.C.J.: What were you instructed to do? - Certain house which Nkomo was alleged to be putting up, I was told when I got to this house that I should throw this petrol bomb through the window. I was told to break the window, pour the petrol then strike a match. I realised that it would not benefit me in any way by so doing. I took this bottle to a market situated in the Lusaka section of Highfields and I took the petrol to a dustbin and broke the bottle. On Tuesday I went to the hospital and said: "I failed to petrol bomb that place" and he said, "Well you have done well, and you noticed that you were unable to do it."

Who said you had done well? - Matimba said so.

BY MR. HORN: Who gave you instructions to go there in the first place? - It was he who had given me the instructions so I did not know what he meant when he said those words.

BY HATHORN, A.C.J.: What were the words he used? - He said: "As you have failed to ignite you have done a good thing that you managed to leave the house."

BY MR HORN: Were you ever given any other instructions to petrol bomb any place? - From that day I was never told anything about petrol bombing.

Well, why were you surprised when Cyprian came to you with his idea of going petrol bombing, if in fact the leader of your Party had already given you instructions to petrol bomb? What was so unusual about this request? - Well, I was surprised. That is what led me to go and ask him if he had been instructed to come and call me, when I had failed to petrol bomb this house. He should have asked me for an explanation with regard to my failure.

I do not understand you at all. Why were you surprised when Cyprian came to your house intent on petrol bombing? - I was surprised because this was the second time this incident had been brought to me.

You said earlier you were surprised because you had no idea that anything could have happened. Was that not true? - Repeat your question. I do not understand.

You said earlier that you were surprised when he came out with a request like this, because this was something which was alien to your way of life, or words to that effect? - Yes, because it was something that one would never familiarise himself with. Even if instructions were to be given to me I would still be surprised, because it is not a thing in common usage.

Weren't you perhaps surprised because Cyprian had been expelled from this meeting which you had attended earlier? - It was common knowledge. On one occasion I was expelled from a meeting. I returned to that and I was accepted.

But Cyprian did not, did he? - I do not know the places that the President did go, it is possible that he may have met the President somewhere.

Yes, but it was a fact that after Cyprian was expelled from this particular meeting you never saw him at any of the meetings of your Party? - We did not hold any other meetings; individuals used to meet with the President.

Why was Cyprian told to leave the meeting? - I was surprised to hear them say : "Cyprian, go outside, because whatever we are going to discuss here you would take our discussion and inform the police." These words were uttered by Sambo. I was not certain because Sambo is such a person, whenever he is in good books with anybody, he would then accuse you of being a police informer.

Keep to the point. The fact is that Cyprian was expelled from this conference because he was believed to be a police informer? - Yes.

Is it not a fact that thereafter he did not have anything to do with the Zimbabwe National Party? - Yes, he carried on organising in town. He did not take that into consideration. He assumed that it was a daily occurrence. Even if he had taken it into consideration that he had been expelled from the Party, we others knew that he had not been expelled at all.

Was not Matimba there when he was told to leave the meeting because he was a police informer? - Matimba was there.

And he sanctioned this expulsion? - Yes.

Isn't it a fact that at these meetings that you

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had up at Harare hospital thereafter in the evenings, Cyprian did not attend? - Because we were not convening a proper meeting. We used to meet two or three at the hospital. It is hard to say how many met at one time at the hospital after that.

But is it not a fact that thereafter you never saw Cyprian at a meeting at the hospital or conversing or having anything to do with Matimba or Sambo or any other member of the Party? - We used to meet him.

Who used to meet him? - We did not meet at the meetings at the Harare hospital.

Just answer the question. Is it correct that after Cyprian was expelled from this particular conference, you never saw him in company with any of the senior people of the Zimbabwe National Party or at any of the meetings which you held at the hospital. Is that not a fact? - That is correct.

And you believed, did you not, that he had been expelled from the Party? - I did not believe it in my heart.

What do you mean, you did not believe it in your heart. Did you half believe it? - I did not believe it at all.

Why didn't you believe if it he was never seen in association with other Zimbabwe National Party people any more? - The reason why I say I did not believe it is this. Chibota who happened to be at that conference, I have never met him at the hospital. Kezito, who was there that day, I did not see him at the hospital.

But they were not expelled from the conference, were they? - Yes, they were not.

You mean "no, they were not"?

BY HATHORN, A.C.J.: When was it that Cyprian was expelled? - I do not remember the date that this conference was held.

What month, approximately? - It was June.

Was that early in June? - No, that was towards the middle of June.

BY MR. HORN: Is the position that you

suspected or believed that Cyprian was a police informer? - No, I did not.

Even though he had been accused and expelled from the conference for that very reason? - I did not believe it.

When you saw him at the police station on Saturday morning, then you think he was a police informer, the Saturday morning you were arrested? - When I was arrested I then believed that he was a police informer, because he came and indicated me as being the person. He merely said to the police: "This is the man," and he went out.

And it was after that that you made your statement to the police which has been read out? - Yes, because I had seen that was the man who had been with me.

Further hearing adjourned until Thursday the 19th September.

19TH SEPTEMBER, 1963

19th September 1963.

FOURTH DAY OF TRIAL

THE COURT RE-ASSEMBLED AT 10 A.M.

EVIDENCE FOR THE DEFENCE CONTINUED

RICHARD MAPOLISA, under former oath,

CROSS-EXAMINATION BY MR. HORN CONTINUED: You say that when you saw Cyprian at the C.I.D. office on the Saturday morning, he came into the office where you were and pointed at you and said you were the man who had done it, and you then thought that he was an informer, and thereafter when you made your statement you said that he was with you, is that correct? - No, my Lord, that is not so. I had already made this statement when Cyprian came to indicate me as being the person who was responsible for the petrol bombing. The position was the police did not believe me. They believed my story after Cyprian had indicated or pointed me out.

BY HATHORN, A.C.J.: I understood you to say yesterday that you made your statement after Cyprian had said "that is the man"? - What I meant was I had already made the statement. They did not want to write it down as they did not believe me, but after Cyprian had said "this is

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the person", they then began to write it down.

BY MR. HORN: But you said this was on the Saturday morning that Cyprian came into the office, didn't you? - Yes.

And it was not till Saturday afternoon at about 4 o'clock that you made indications to the police, and it was not until about seven o'clock in the evening when you made your statement?

HATHORN, A.C.J.: Just a minute. Making a statement implies, I think, a written statement. You told the police.

MR. HORN: May I phrase the question in a different way?

HATHORN, A.C.J.: I only want you to differentiate between telling them and making a statement. What he is saying now is he told the police that he was with Cyprian; they would not believe him until Cyprian came and as a result of that they believed him, and they then took the statement. What time was the statement?

MR. HORN: 7 p.m.

HATHORN, A.C.J.: On the Saturday?

MR HORN: Yes, my Lord. (To witness) Was it immediately after Cyprian was brought in and indicated you as the man that they then took this written statement? - No, not immediately. I was upstairs. I was then taken downstairs. At that moment I was assaulted. There was a lapse of time.

Who assaulted you? - Well, it was not one particular man who assaulted me; many of them did so. I do not know their names. Had they been here I would have been able to point them out to the Court.

So after you had said you were not there with Cyprian, and after Cyprian had come in, is that the position, you were then taken downstairs and assaulted? - Before Cyprian said, "this is the man," I was assaulted. They said I was lying against Cyprian.

So then they brought Cyprian in, did they? - Yes.

And about what time was that? - It was in the morning. They were not certain because they kept on saying to me: "Tell us the truth". I kept on repeating the same story, and later in the evening

they then decided that a statement should be recorded.

I suggest to you that the circumstances in which you saw Cyprian were these. That as you were coming out of Detective McIlveen's office you saw Cyprian being taken down the passage some distance from where you were? You turned round to Detective McIlveen and said: "Who is that man?" meaning Cyprian. Is that not so? - No, I do not remember that.

Is it possible that happened? - No, the person I asked about was one Chihota.

Did you see Chihota walking down, and say: "Who is that man? - Yes.

I suggest to you that you are lying, that it was Cyprian that you saw at that stage, and that is why you decided that at a later stage you would implicate him? - No, that is not so. What I said is what is correct.

HATHORN, A.C.J.: Mr. Horn, are you suggesting that this took place before or after the written statement was recorded?

MR. HORN: Before the written statement was recorded.

HATHORN, A.C.J.: I think you had better make that clear.

BY MR. HORN: I suggest that this took place before the written statement was recorded? - Yes, before the statement was recorded I was asked. I told them the same story that was later written down.

I suggest to you that you did not mention Cyprian in connexion with this matter until after you had seen him in the passage when you were coming out of Detective McIlveen's office? - If Detective McIlveen said so, he would be telling a lie.

If in fact Cyprian was brought into the office and pointed you out as the person who had taken part in this thing, can you suggest why the police did not call him as a witness to implicate you? - I would not know.

Because he was no longer any use as an

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informer, because you knew he was an informer on your story? - My Lord, it was he, Cyprian, who came to my quarters to collect me, and I was with him when the action was taken. So after I had received this assault I decided to tell the police the truth.

Were you not telling them the truth before you were assaulted? - Yes, during the journey from my quarters on the vehicle I admit attempting to deny the allegation, but upon our arrival I didn't.

What did you mean when you said after you had been assaulted you decided to tell the truth. You mean to say by that that it was only after you were assaulted that you implicated Cyprian? - When I was taken I was accused of having set the petrol service station on fire, which is situated along the Beatrice Road. I denied all knowledge of that petrol service station, and when I denied that I told what had happened, that it was Cyprian who had petrol bombed this house.

Was this the first time you told them that Cyprian had petrol bombed the house after you were assaulted - Yes.

Why did you say earlier that you told them that Cyprian had petrol bombed the house and they assaulted you because they did not believe you, and then Cyprian was brought in? - No, my Lord, I did not say it in that way as put to me by Counsel. The position is if I may make it clear, they accused me of having set the petrol service station on fire, and assaulted me. I told them that I did not know anything about it unless if they had referred to a residential house in Houghton Park, where Cyprian petrol bombed, and when he did so, he was in my company. That is what I tried to explain, but that was after I had been assaulted to confess that I had set the petrol service station on fire.

Did you confess after you told them that Cyprian was involved in the petrol bombing at Houghton Park? - Yes. They assaulted me and said I was lying against him. They told me that they had arrested Cyprian and Chihota, and that they had them in the cells and said to me, if I was confronted with him would be admit. That was the question put to me. I told them that if he had sense in his mind he would have to admit it, and later explained to them that when a person is involved in a crime everyone has a tendency to deny it. I said to them I personally do not deny what I saw and what I did when he travelled. Then they said "hit him he will reveal the truth."

They did that after Cyprian had indicated that you were the man, that he was with you. Why should he then deny that when he gave evidence at the preparatory examination? -

MR. WHEELDON: I think that was the evidence, I do not think it was ever said by the witness that Cyprian had admitted that he was the man who was with the accused.

HATHORN, A.C.J.: I think, Mr. Horn, perhaps you had better get from the witness first exactly what he says Cyprian said to the police.

BY MR. HORN: What was it exactly that Cyprian said when he was brought into this office where you were? - When Cyprian was brought into the office he said he did not know me, that he had never been to my quarters. When he was confronted with me I questioned him. I said: "Do you deny visiting me, did you not spend a night in my hut on one occasion?" Cyprian said I was lying that he did not know anything.

BY HATHORN, A.C.J.: Is this what Cyprian said to the police? - This was a discussion between me and Cyprian in the presence of the police at the charge office. Cyprian was then taken outside. I was then assaulted and asked to tell them the truth. I was then taken downstairs and they said: "If he is downstairs he may tell the truth." I reiterated the same thing. I do not know whether it was between three and four that I was downstairs or later. I thought it was in the evening when I was later taken downstairs and there a statement was recorded.

Were you only confronted with Cyprian on this one occasion upstairs when Cyprian denied being involved in this case? - Yes.

And the whole tenor of your evidence here this morning was that it was after Cyprian had said that he was in fact involved in this case that the police believed you and then took a statement from you? - Yes.

Well what would have caused them to believe you if Cyprian in fact denied what you said the position was? - I don't know.

BY HATHORN, A.C.J.: Well now, I understood that you said yesterday afternoon ....

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Cross-Examination continued

MR. HORN: If I may assist. My recollection is that Cyprian came into the office where he was, pointed at him and said: "This is the man".

MR. WHEELDON: This was immediately before the adjournment yesterday afternoon.

BY HATHORN, A.C.J.: He told the police "I was the man. I made the statement later." I understood you to say yesterday; and this morning, at the start of your evidence this morning, you mentioned that what made the police believe you was that Cyprian came in and said that you were the man? - Yes, my Lord.

But then you now say that Cyprian disagreed entirely with what you said in your statement? - Yes.

Are not those two entirely inconsistent? - My Lord, when I told the police that I was with Cyprian, that it was Cyprian who was responsible, Cyprian was brought in. When he came in he said: "Yes, this is the man who committed the crime," and then he was taken out.

BY MR. HORN: Is that all he said? - Yes, my Lord, I should make it clear Cyprian was brought twice to me. On the first occasion he was brought after I had told the police that Cyprian was with me. He was brought in and he said: "This is the person who was responsible." Then he went out. He was later brought in when we had an argument.

You have to keep on changing your evidence to cover up your inconsistencies. You said earlier that you were only confronted with Cyprian once. Or didn't you say that? - Well, in reply to Counsel's question the other occasion he did not speak to me. He merely pointed me out to the police. It was only on one occasion that he was confronted with me when I had a discussion with him.

Did you tell Sylvester on the Friday night, that is the Friday night before your arrest, that you had run away from this place and you had fallen down after you had run a hundred yards with your heart beating fast? - Not at all.

Did you tell anybody that? - Not at all.

Did that happen? - It did not happen.

Have you any idea where Sylvester got this from? - Probably it was just a plan that he devised to escape crimes that he had committed himself.

How would his telling the Court that you told him that you had run away for a hundred yards and fallen down with a pain in your chest help him to escape the consequences of his crime? - I do not know the thoughts he was harbouring in his mind that he told the police.

Did you tell Sylvester anything about your escapade with Cyprian? - I did not tell him anything.

Were you angry because Cyprian had got you out of bed and taken you along with him? - I was angry, yes.

Why didn't you complain to these people who were there, Sylvester among others, that that had been the position? - No, I had nothing to do with Sylvester. I wanted to go and see the President to ascertain whether he did so on instructions from the President.

But you went home in a taxi together with Sylvester, didn't you? And at one stage Matimba and Beni went off to see their girl friends, or something of that nature, and you were along with him, weren't you? - No, it was not the two of us who went by taxi.

BY HATHORN, A.C.J.: You were alone with Sylvester for a time? - Yes, there was an occasion that we stood; we were standing apart from each other for some time. We did not exchange any conversation.

BY MR. HORN: Why not? - Because I was still incensed.

Would not that have been a good reason for you to unburden yourself to him? - No, I would not have unburdened to him unless I had seen the President.

But you had seen the President? - Yes, I eventually saw the President as we were going away. It was at that stage that the four of us got into a taxi. We arrived at the 'bus terminus, we got off; Makoni and I got off and they remained in the taxi.

And then what did you and Makoni do? - We did not do anything.

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You did not do anything? Just stayed there in suspended animation? Where did you go? - We boarded a 'bus for Highfields.

And did you get off the 'bus together at Highfields? - Yes, we got off the 'bus together. We parted company; I left in the direction of my own house so he went to his house.

So you were together with him for some considerable time after you had reported to the President? - Yes.

Why didn't you tell him about this? - There was nothing that I would have told him. It was not a matter that I would tell anybody.

Did you at any stage indicate to Cyprian that you were not willing to go with him, I mean positively indicate to him apart from making excuses? - Yes, I did, because I told him that I was indisposed when in fact and in truth I was not.

But did you ever say to him: "I do not want to accompany you on this venture?" or words to that effect? - No, I did not say that to him.

Why not? - My Lord, I was under the impression that he might have been sent by the President, because he insisted on wishing to go with me.

Why should that mean that he was sent by the President? - The person would not have persisted if it had nothing to do with him.

But he in fact was not sent by the President, was he? - Yes, he was not.

BY HATHORN, A.C.J.: He was not sent by the President? - He was not sent by the President.

BY MR. HORN: So it was only the fact that he was persisting that made you think he was sent by the President? - Yes.

Why didn't you say to him that you were so sick that you could not go with him? - I did. He said we will go together only.

So you did in fact tell him that you were too sick to go with him? - He said: "If you are suffering from a cold it does not matter, you will

have plenty of time to sleep."

Didn't you meet him earlier in the afternoon, and didn't he start discussing these matters then, and didn't you say to him: "Don't discuss it now. Come to my quarters this evening." - Yes.

BY HATHORN, A.C.J.: I do not know what "yes" means. There are three questions in one.

BY MR. HORN: You met him in the afternoon earlier? - Yes.

He told you then that he wanted to take action that night? - Yes.

And you said: "Let us not discuss it here, come to my house tonight"? - That is correct.

If you were so reluctant to take action, why did you tell him to come to your house that night? - I did not know if the action he meant was this action which was eventually taken. At that time everyone wanted money. At one time we grouped together and discussed that we should go and see the President so that we should get money as we had no money.

Just a moment. What action did you think he wanted to take when he met you in the afternoon and spoke of action being taken? The action was that we should go to the President and be given money.

What was wrong with discussing it with him that afternoon if it was an innocent matter like that? - Because I was hurrying for something I intended to prepare.

What? - My young brothers who intended to go to school, I had the keys for the house and I had delayed getting there. As I was too late, it was on Friday, that is one thing, and they wanted the key in order to go home on Friday.

Don't talk nonsense. This was on Thursday, wasn't it? - Yes, on Thursday I had the keys for the house. If I was away the children would not have the keys for the house.

What children? - My younger brothers were

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Cross-Examination continued

attending school at Highfields.

Did they live in this house of yours with you? - Yes.

All the time? - They fed at this house and slept at my auntie's house.

Why don't they feed at your auntie's house? - My auntie is employed at a Lytton tobacco company.

When were you expecting your young brothers to go back to your home? - I expected them to come at 4 o'clock.

When was this that you met Cyprian then? - It was at 8 p.m.; I expected them to come there at six.

In the afternoon. What time was it that you met Cyprian? - I had no watch on me, I assume it must have been 3 o'clock.

What were you doing at the Mamuka Service Station at that time in the afternoon? - I got off a lift which had carried me going to Jerusalem on my way home.

Is Mamuka Service Station on your way home to Jerusalem? - That is not so.

What were you doing there then? - I was coming from town.

You just said you were coming from Jerusalem? - No, it is not so. The car that gave me a lift was proceeding in the direction of Jerusalem. The car negotiated a bend; there is a bend there; that is why I got off at that point.

Was that the nearest point on your route that you could have got off, I mean the nearest point to your house? - Yes.

And it was just coincidental that you met Cyprian at the service station? - Yes.

How long would it have taken you to discuss this action with him? - It would take us about an hour.

Is that all that Cyprian said that he wanted

to discuss with you? - At that stage he spoke about the action.

What action did he say? - That is when I said to him: "If you want to speak about action, come home."

But he had already asked you for 2s.6d. to buy petrol? - That was after we had spoken about action.

BY HATHORN, A.C.J.: Did you associate the petrol with the action? - Yes, I realised that this action was now associated with petrol. That is why I did not give him the money.

BY MR. HORN: Is that the only reason why you didn't give him the money? - Yes.

What did you tell him? - I said to him: "I have no money, I have got only one shilling with me."

When you realised the action he contemplated was an illegal action concerning petrol, if, in fact, you did realise that, why didn't you tell him he had better not come to your house after all? - It did not occur to me to say so. I thought of telling him that I had no money on me and I went away.

Were you cross, or anxious, at that stage because Cyprian was suggesting action of this nature? - Yes, I was anxious. I noticed that he was saying something which was untoward.

Why didn't you go to Matimba then and ask him if he had sent Cyprian and told him that this action should be taken? - I didn't tell him about it.

BY HATHORN, A.C.J.: Why didn't you go to Matimba and find out? - (Witness pauses for some time) I eventually went to Matimba in the evening. I arrived to find him discussing with many other people.

BY MR. HORN: When was that, what time? - That was on Thursday, at 6 p.m.

Then why didn't you ask him when you found him there in a matter of this importance? - Because he was with many others I did not get

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the chance to tell him the story.

Who was he with? - He was with another person whose name I do not know who owns a Fairlane car.

Who else? - And Simon Beni was the third party.

Just the three of them? - Just the three of them.

What do you mean when you say that he was with many other people and you could not interrupt him? - Well, according to native custom, "three", are they not called "many"?

INTERPRETER. Probably I am to blame. He said what I meant by "many" was three, according to native custom. It may be I am to blame for interpreting "many others" when he meant three.

BY MR. HORN: But you had gone all the way from your house to the place where Matimba was with the express purpose of asking him whether he had given instructions to Cyprian, because you realised that this was a very serious matter. You got there and found him talking to two other people and then you decided not to tell him anything at all. And then you went back home, is that right? - After they had spoken he did not have time or chance to talk to us.

To "us". Who is "us"? - Sylvester Makoni and I. I was with Sylvester Makoni. It was at that stage that he eventually called a taxi and we got into a taxi.

Wait a minute. Did you get into the taxi with Matimba and the others? - Yes, the four of us got into the taxi.

Why didn't you tell him in the taxi? - My Lord, this is a thing that cannot be discussed in the presence of many people. The taxi driver was there and the others; it needed for him himself to be alone.

BY HATHORN, A.C.J.: Did the taxi incident take place on the Friday: We are now speaking about Thursday. - We got on to the taxi on two occasions.

BY MR. HORN: Well, what happened after you had driven in the taxi? - We got off at the 'bus terminus.

Who? - Sylvester and I.

And all this time you didn't say to Matimba: "Please, I must see you alone, it is urgent," or anything like that? - I didn't speak after I had seen that he was busy.

BY HATHORN, A.C.J.: What happened after you got off at the 'bus terminus? - We boarded a 'bus for Highfields.

BY MR. HORN: What time did you arrive back at your home? - I had no watch on me. I think that was before 7 p.m.

Did you, in fact, go straight to Matimba's place from the service station or did you go home first? - I went home first, because I had the keys to the house.

What did you do when you got home? - I got home and sat down, I then thought of going to see Matimba to the hospital.

Did you go to see him at the hospital? - Yes, I eventually saw him at the hospital.

But wasn't the whole purpose of these meetings at the hospital for you and Sylvester and Simon Beni and Matimba to discuss matters affecting the Party? - No, I disagree.

Didn't you meet Sylvester and Matimba at the hospital on Monday night? - Not at the hospital.

Where did you meet him then? - On Monday evening I was called at Sambo's house.

Did you see Matimba and Sylvester there? - I did.

And was that the night you got instructions to petrol bomb Nkomo's house? - Yes.

That is the night you were given the Mazoe bottle with petrol in it? - Yes.

Then you saw Sylvester and Matimba again,

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did you not? On Tuesday night? - Yes.

Where was that? - At the hospital.

And you saw them again on the Wednesday night, did you? - Yes.

At the hospital? - Yes.

And on Thursday night of course? - Yes.

And Friday night? - Yes.

Every night you people used to meet and discuss matters affecting the Party, didn't you? - Yes.

I cannot understand why you didn't tell Matimba about this action on the part of Cyprian that was worrying you then? - There was no time on Thursday.

All right. Did Cyprian ever make any threats to kill or harm you if you did not accompany him? - No, he did not.

Why did you think that you might be petrol bombed or even killed if you did not accompany him? - Because it is an established fact among African political parties.

BY HATHORN, A.C.J.: What is established? - About African political parties if a thing is suggested, that we are going to hold a meeting or organise a certain party, if one refuse to go there, he will be assaulted.

BY MR. HORN: Or you may have just been reprimanded? Not often.

But that might just have happened to you instead of your being assaulted. Is that not so? - That is not so.

But on Tuesday night when you told Matimba that you had failed to do what you were supposed to do with the petrol bomb, he had been pleased, hadn't he? - He was.

Why did you think his attitude would change so suddenly? - Whose attitude would change suddenly? Matimba's, or whose?

Matimba's? - Matimba is the leader. He understands that he would not force a person, fearing that that person would reveal it.

Therefore, there is even more reason for you to believe that you would not come to any harm? - Yes.

Sylvester did not think he was going to get into trouble if he did not throw this petrol bomb? - Yes.

Why should you, especially in view of your evidence here? - I do not understand what you are trying to get from me.

Trying to establish that you are not truthful when you say that you feared you would be killed if you did not go with Cyprian. Is that direct enough? - Yes, that is. Cyprian is an organizer who worked with me. When anything goes wrong among the organizers it is not the President who has to say something about it. It is seen by the organisers themselves, who would then say that one is not taking things in the correct way.

But Cyprian had been expelled from the meeting, had he not, and you had had nothing further to do with Cyprian. What do you mean, you were an organiser with him. You were not at that time, were you? - My Lord, a statement to say that he had been expelled would be a statement made by him. As far as we were concerned we knew that he was still a member of the party.

The Court took a short adjournment and re-assembled at 11.25 a.m.

RICHARD MAPOLISA, under former oath

CROSS-EXAMINATION BY MR. HORN CONTINUED: I just want to get this one point clear. Do you say that Cyprian did not make any threat to kill or harm you in any way and your fear was as a result of something in your own mind? - The second point was, I thought as I had refused I would be expelled from the party.

Well, he did not make any threats to kill or harm you? - No.

Your fear as to what might happen to you

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was merely as a result of your mental processes? - Yes.

In fact he did not even indirectly threaten to harm you; he did not suggest that you may be harmed if you did not.

You say that Sylvester Makoni was given a pound to go to Umtali? - Yes.

When was he going? - He was supposed to leave for Umtali that very night or the following day.

He didn't go, did he? - He didn't.

Do you know why not? - I don't.

Do you know why Matimba should give him a pound just like that to go to Umtali? - I don't know.

Were you being paid a salary? - Yes, but at that time I was not. I had not been given anything.

In other words you were owed a salary but you had not been paid, is that the position? - Yes.

And did the same apply to Sylvester, as far as you know? - Yes.

Can you suggest why all of a sudden Matimba should give you a pound to entertain your relatives, and give Makoni a pound to go to Umtali? - Matimba well knew that we were his followers. That is why he thought of giving us money.

Did he forget to pay you your salaries? - Well, we should say so, yes.

Why did you meet Matimba and Sylvester at the hospital on Wednesday night? - Always I was in the habit of travelling from town where cars are being repaired. We wanted to see him, every time we went there, and we expected him to give us money.

Why did you go there on the Monday night, why did you go to Sambo's house on Monday night? - I found a letter in my quarters to say that I should go to Sambo's house at 10 p.m.

And you did so? - Yes.

And instead of getting money you got a petrol bomb? - Yes.

Why did you go to the hospital on Tuesday night - Matimba had said that anyone who wanted to see him should go to the hospital and see him the following day.

What did you want to see him for? - To report to him what one would have done. That evening he said anyone who wants to see me should come and see me tomorrow at the hospital, to tell me what you have done this evening.

Did you at the same time ask him for the pound? - I reminded him of the pound.

Just one pound? - Yes.

Is that all you said to him: "Would you help me with a pound," or words to that effect? - Yes.

Why didn't you mention the rest of your outstanding salary? - I thought as a person who was fully aware that he had got people to pay, he might have a fixed and specific time to pay us.

So you got a pound on Tuesday night? - Yes.

Did you think that was the specific time you were going to be paid, on Tuesday nights? - It is best known by him.

You said you thought he was fixing a specific time for people to be given money? - Yes.

What specific time are you referring to?- He said at the time that he had not started paying anybody any money, and said that he wanted to change money. He had foreign money, money he had, and he wanted to change it into currency for paying out.

Why did you come and see him on Wednesday? - He had called us to come.

How had he called you to come? - He said to me: "Tomorrow if you get the motor car come and tell me here at six o'clock."

Come and tell him what? - Whether the car had been repaired or not, that is, whether the car

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was then in good working order or not.

For what purpose did you go to see him on Wednesday? - I was going to tell him about the vehicle.

Is it not correct that you went to see him about money? - No.

Why did you say that was why you had gone to see him on Wednesday night?

HATHORN, A.C.J.: I do not think he said that.

MR. HORN: I have a recollection, I may be wrong. I do not want to put the question if your Lordship has doubts about it.

HATHORN, A.C.J.: Certainly he did not say just now that he went on Tuesday for the money, no, that was Monday.

MR. HORN: On Monday, as a result of a note; I decided what to report what had happened on Monday night.

HATHORN, A.C.J.: And then got the pound?

MR. HORN: And then got the pound. But right at the beginning I asked him if he went on Wednesday to get the money.

HATHORN, A.C.J.: Ask him.

BY MR. HORN: Didn't you tell us earlier that the reason you went on Wednesday night was to get money? - If I did say so it was a mistake on my part.

HATHORN, A.C.J.: At what stage?

MR. HORN: Right at the beginning, at the beginning of a series of questions as to why he went to these various places on the various nights.

HATHORN, A.C.J.: Is it a matter of very great importance? It does not seem to be.

MR. HORN: Yes, my Lord. (To witness) Before you saw Cyprian on Thursday afternoon, were you intending to go and see Matimba that night as well? - I was not going to the hospital that day.

So that was the sole reason why you went to

see Matimba on the Thursday, to tell him what Cyprian had suggested? - Yes.

And on Friday, why did you go to him? - Because I was incensed; I went there to inquire.

And you asked him if he had sent Cyprian, did you? - I did.

And you mentioned to him that you were asking him this because Cyprian had come and you had then accompanied Cyprian to Houghton Park, and then you told him that "we" meaning you and Cyprian had thrown a petrol bomb? - Yes.

Why did you say "We threw a petrol bomb" if you did not associate yourself with Cyprian's actions? - Because we had travelled together at the time.

You did not say "we travelled together". You said: "We threw a petrol bomb". - If that is what is recorded it is a mistake. Your Lordship will appreciate that it does not require two persons to throw a bomb.

Just a moment. In your evidence-in-chief you said: "I said to Matimba 'we threw a petrol bomb'" In cross-examination just a minute ago you agreed that you said: "We threw a petrol bomb." Then I asked you a further question and you tried to explain why it was that you said: "We threw a petrol bomb." - Yes.

Do you now say that it was a mistake on your part, you didn't mean to say: "We"? - What I had to do was to answer what has been suggested to me. I did not have a chance to say two things at one time.

Just answer this one question being put to you. Why did you say "we" in your evidence-in-chief and in your cross-examination and then try to explain why you had said "we", if that was .....

HATHORN, A.C.J.: I do not understand the question I am afraid. (To witness) Why did you say "we threw a petrol bomb"? - My Lord, my words to Matimba were: "He came to my quarters and collected me. We went together to Houghton Park and we threw the petrol bomb." But in fact it requires one person only to throw the bomb, not two of us. It was one particular time.

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I think the point being put to you is that by using "we", you were completely associated with Cyprian when the bomb was thrown? - Well, my Lord, one person threw the bomb. We were together, which means we did it in conjunction, because I was with him.

BY MR. HORN: You agree then, do you, that you were a party to his actions? - I was with him, but I moved away from the spot where he was.

Do you agree that you were a party to his action? - As an offence, I would be regarded as a party, because these things were done in my eyes, I saw them.

But at no stage have you regarded yourself as responsible for the petrol bomb, have you? - No.

Then I cannot understand why you used the phrase "we petrol bombed the house" or "we threw a petrol bomb"? - I wanted him to know that I went there with him.

Would he not know that from the other things you had told him? - No, he would not have known.

What was this tin which had petrol in it doing in your room? - There were two tins left in my room.

What was this particular one doing in your room? - That tin was just there with the other tin.

For what purpose? - To carry petrol when travelling by car, and oil.

Why didn't you keep the tin in the car? - It is common knowledge that if one leaves things in a car they will be taken.

In the boot, locked? - This car was at a garage under repair.

When did you take the tin out of the car? - On Monday when I took the motor vehicle from where it was to a garage for repair, I then removed the tin.

When was the car returned, having been repaired? - It is not returned up to this day.

And how was it that you had to take the tin? - It was on the car, and the person would use the tin when travelling by this car. It was a property which was used by me.

Didn't you stop driving after your accident in December? - I had stopped at that time because the vehicle was being used by someone.

Who? - It was being used by one Kezito and Chihota.

How did you come to start driving, or using it again? - This particular vehicle, I removed it from where it had been stationary to a garage as we wanted the starter to be repaired.

Is that the only time you handled the car after these people had taken over the car? - At times I used it. If I had occasion to use it, I would use it.

After you had written the eight notes which you say Cyprian dictated to you, what was the very next thing that you did? - After having written these eight notes I then wrote the contents of these notes on the exercise book.

Was Cyprian there? - Yes.

What was his reaction when you took a copy of this note? - When I made a copy of the contents of these notes on the exercise book, I said to him: "I am writing this to see whether my handwriting is still good, or whether I am still able to write calligraphy.

See what? - A good handwriting.

And did he accept this reason? - He kept quiet; he did not speak to me.

He did not object to you writing this out? - No, he did not.

In fact, why did you write this out on your exercise book? - I wrote this down because I wanted to go and shew Mr. Matimba at daybreak the next day.

Well, did you? - I went there and was abused, and then did not shew him.

You went where? - I went to the hospital and was abused there, I was insulted.

By whom? - By Matimba.

BY HATHORN, A.C.J.: When was this? - That

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was on Friday.

What time? - 6 p.m.

BY MR. HORN: Not in the morning? - No.

Did you take your exercise book with you to shew him? - I had written the contents of the exercise book on a plain white paper.

Why did you do that? - The exercise book was a big thing.

So? - My intention was to tear the exercise book after copying out this, but I did not do so.

Why didn't you just take the exercise book with you? - It occurred to me to copy out what was written in the exercise book on a sheet of paper.

Why did it occur to you to copy it out? - The exercise book belonged to a schoolboy, because this exercise book had been used by a schoolboy or a child, who had written his work in the exercise book.

But it is full? - Yes.

Well, why couldn't you have taken the exercise book with you? - Well, I did not think of carrying a heavy thing rather than a lighter thing.

This is very heavy to carry, difficult to manage all the way up to the hospital? - It was heavy for me to carry it in this manner to the hospital.

I suggest to you that why that is written in the inside front cover of the notebook is because that was written by you on Matimba's instructions when he told you to go and petrol bomb places, and to leave notes like those at those places? - I did not hear this at that time.

Did you hear it at all? - That had been arranged or prepared at the conference but at that particular moment I had nothing to do with it.

So, at the conference which you attended, Matimba told the people who attended the conference to write down messages which should be left at the various places which were petrol bombed? - That is correct.

Did you write that note down then? - No,

not that day.

Why not? - What could I have written down?

You say that Matimba instructed you people who attended the conference to write down the note? - Yes, he did say that.

BY HATHORN, A.C.J.: Did he tell you what was to be put in the note? - He merely instructed them to write "Z.N.L." That was all.

BY MR. HORN: I suggest to you that he instructed you to write what was written in your notebook and that you did, in fact, take down in your notebook what he instructed you to write, and that is why those words are written in the notebook, Exhibit 2A? - I disagree with you.

I still cannot understand why it was necessary for you to go to all this extra trouble of writing the note out again on another piece of paper, instead of taking the notebook along. Do you seriously say that the notebook was too heavy to carry - I still say so.

When you got there that evening at 6 o'clock how did it come about that you were abused? - I called Matimba away from the others, took him a short distance away, and asked him if he had instructed or sent Cyprian to come and collect me to go to Houghton Park, where a petrol bomb was thrown. He then explained: "I had not said that. I do not understand it. What has caused you to do that?" I said: "I thought he was told by you or instructed by you, that is why I have come to ask you about it." He became angry and said "I do not want to hear what you are going to tell me. I do not want to hear what you are talking about."

So, didn't you shew him the note that you had so carefully written out? - No, I did not.

Why didn't you want Makoni to see what was in the note? - It was not supposed to be seen by Sylvester. I had written it out specifically to show it to Matimba who is the President.

Why should not Sylvester see it. He was one of your regular people who came and met every night at this place? - It was an important matter that could not be shewn to every person.

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Who, or what, is "general Hokoyo"? - I don't know.

Ever heard the phrase before? - No, I have not.

What about "Z.N.I."? - I have heard of Z.N.P.

Have you? What is it? - Zimbabwe National Party.

That is your party? - Yes.

And "R.F."? - I think R.F. means Rhodesian Front.

BY HATHORN, A.C.J.: You know what that means? - I do not know what it means. I just know that R.F. stands for Rhodesian Front.

What is the Rhodesian Front? - The meaning of the word is that Rhodesia itself is in front of everything.

No, no. What does it stand for? - That is the present Government.

BY MR. HORN: You presume, do you, that these notes that you wrote out were drafted by Cyprian? - Yes.

And Cyprian is a person who is a sort of free-lance journalist. He writes articles for the newspapers and he is well educated? - Yes.

You think that a person as well educated as Cyprian, who writes as often as Cyprian does to your knowledge, would speak English like this: "General hokoyo to support Z.N.P. I am appel to the individual to be a member of Z.N.I. Forget R.F. Baby Now conform to our constitution principles and policy of the Party and its self Rules. Now thanks. This is general hokoyo." This educated man wrote that, did he, did he conceive that? - I do not know his standard of education.

You remember Sylvester gave evidence at the preparatory examination. Do you recall his saying at the preparatory examination, as he said in his evidence in this Court, that you said that you had thrown a petrol bomb, and you did not mention Cyprian. Do you recall him giving that evidence? - Yes. I overheard him giving that evidence.

Do you recall him saying that you and he were

both given a pound and that the pound was to buy petrol and for 'bus fares and so on? - He said so.

At the preparatory examination as well? - Yes.

You recall him saying at the preparatory examination as well as in this Court, that you showed him a note which you thought to be similar to these notes, Exhibit 2B, and that you said that you had dropped a note like that at the scene? - Yes, he gave that evidence.

And you also asked him in cross-examination a number of questions, did you not? - I did.

According to my copy of the record, you did not ask him any questions contradicting his evidence on those three points? - I was putting questions to him. I was told that he was a Crown witness and that I should not put such questions to him, so those questions were omitted, were not written down.

What, you were told that, because he was a Crown witness .....- I would not ask him questions of that nature.

Did you try to ask him, did you, try to contradict him on those three points? - Yes, I contradicted him.

What do you mean? You mean that you were not allowed to contradict him if you did in fact? - I wanted to explain what it was.

Did you or did you not put questions to him contradicting his evidence on those three points? - I did.

Were they interpreted to him, or rather, were they interpreted into English, as far as you could make out? - It was.

And did he answer the questions that you put to him on those points? - Will you please repeat to me the three points you are referring to?

That he said the purpose of the pound that you and he had received was firstly, to buy petrol; secondly, that you said to him that the note which you shewed him you had left a copy of it at the scene where you had thrown the petrol bomb; and thirdly, that he said he heard you saying that you had thrown a petrol bomb, not Cyprian. Now we will start again. Did you ask him any questions to

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contradict him on those three points? - I did.

And those questions were translated, were they? - Yes.

He gave you answers maintaining his position, presumably? - Yes.

And you asked him questions on each of these three points? - Yes.

Can you explain why none of that appears on the record of the preparatory examination? - I do not know why.

When I originally put this to you you started to suggest that you had been prevented from asking these questions? - I said so.

Why? - The Court said I should not ask him any difficult questions because he was a mere witness.

Notwithstanding that, however, you were able to put these questions to him? - Yes.

Also when you made your statement to the police which was recorded on the Saturday evening, at the top of page two, after you had bought a paper bag, you say: "We put the bomb in this bag." "We" meaning you and Cyprian obviously? - Yes.

Why did you say "we put the petrol bomb into the bag"? - I was holding the bag open when he placed the bomb in it. That is why I say "we".

Why were you assisting him in this way? - Because I had been travelling with him when he was holding this parcel. I did not know where we were going.

Did you have any idea to what use this petrol bomb was going to be put? - I did not know where this petrol bomb was going to be used.

BY HATHORN, A.C.J.: Did you know the bomb was going to be used? - Yes, I did realise that.

BY MR. HORN: Did you have any ideas against which premises, which type of premises, it was going to be used? - No, I did not know of the target.

BY HATHORN, A.C.J.: What sort of premises did you think it was going to be used on, what kind of

premises? - We were walking in Highfields. I thought he must have thought of some place or premises in Highfields.

BY MR HORN: And when you walked along the Beatrice Road and turned off to the right, what did you think then? - I was just watching. I said I did not know where we were going.

BY HATHORN, A.C.J.: Well, where did you think the bomb was going to be thrown? - I was merely following to see what place he was going to reach or stop at.

BY MR. HORN: You had no thoughts on the matter of your own? - No.

Why did you think that you were in danger? You said in evidence-in-chief that you were reluctant to go with him as you were putting yourself in danger. What danger? - Well, I anticipated the danger from the petrol, that danger would be brought about by this petrol.

What sort of danger? - The danger was that this petrol bomb would be thrown in a house where there is a family and the family would die.

You appreciated that that might happen, did you? - Yes.

Notwithstanding that, you did not raise your voice once to refuse to go with him? - No, I did not do so.

You had ample opportunity if you had really not wanted to accompany him? You could have given him the slip, once when you went out of the house to get some food, secondly, when he went out to get some ink, and thirdly, when you were even walking along the road? - Your Lordship would appreciate that there are times when a person is sometimes possessed by an unknown spirit. This occurred to me in a way that is difficult to explain.

Do you mean perhaps that you were possessed by an evil spirit and that you agreed with what he was doing? - I was just inhabited by Satan.

BY HATHORN, A.C.J.: The point is that you did have three opportunities when you could have got away from him, if you had wanted to? - Yes, my Lord, that is why I told him I was sick.

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BY MR. HORN: When you say you were inhabited by an evil spirit, do you mean that this spirit got into you and told you not to try to get away from him but in fact on the contrary to assist him? - This caused me to follow where he was going.

Knowing that it was wrong? - Yes.

Was Cyprian wearing shoes? - Yes.

What sort? - It was at night time. I do not know whether they were brown or they appeared brown. They were sort of shoes that have no shoelaces. One would slip them on. They are similar to slippers.

And you don't know what the pattern was? - No, my Lord.

You said at the beginning of your evidence-in-chief that most of the words that you said to the police, most of the words in your statement to the police, are incorrect? - That is so.

For instance, what words are incorrect? - You appreciate we had an argument here seeing that I was walking in front and Cyprian was walking behind.

Is that all? - I do not remember other words in the statement.

As being wrong? - Yes.

What did you mean by "most of the words in your statement are incorrect"? - If there are two or three words one would regard that as many words "most of the words." With your Lordship's permission, may I ask the Counsel, because there is a word that I told the police, as to whether that word is in the statement?

BY HATHORN, A.C.J.: What word are you talking about? - I told the police that Cyprian inquired from his companion as to whether his companion had seen his wife; at night time when we were at a cocktail bar. I want to know whether that sentence is in this statement.

BY MR. HORN: No, that does not appear to be in the statement? - That is why I said some of these words puzzled me, some were written down and some were not written down.

Did you perhaps tell the police, and did they

perhaps forget to write it down, that you were in fear, that if you did not accompany Cyprian you might be killed? - No, I did not.

Why didn't you tell them that? - It occurred to me not to make an elaborate statement.

It occurred to you not to make an elaborate statement? - Yes.

Why was it, when Cyprian came to your house, as you say he did, that you gave him a free hand to help himself to whatever he needed to make the petrol bomb up? Why did you adopt this attitude if in fact you did not want him to take this action? - I did so because I noticed that he was persistent in doing what he intended to do.

Just because he was persistent? - Yes.

Why didn't you tell him, "I am sorry, I have no material here which will help you to make a petrol bomb; why don't you go and get some from your own house?" - That did not occur to me.

Can you suggest why he did not make up the petrol bomb himself at his own house instead of coming to you? - He said there were many people in his house, that is why he came to mine.

Did you tell the police (it is recorded that you did) that when you came back after buying food, you said you went to Machipisa, but you told us, in fact, that you did not go to Machipisa, but when you came back he shewed you the bottle, did you say that "he shewed me the bottle"? - Not that I shewed him the bottle.

No, that he shewed you the bottle after you came back? - He shewed me a bottle before I went out.

When you came back didn't he shew you the bottle? - The bottle was then on the table., it had been prepared.

Did you say then to the police "he shewed me the bottle which now had paper, an old paper, and underpants wrapped round the neck and secured with thin wire"? - I agree with that.

He actually shewed you the bottle in that condition? - Yes.

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You told us earlier that when you came back he had already wrapped up the bottle in brown paper, and all you could see was something wrapped up in a piece of brown paper. You see the point? - My Lord, I thought I made myself clear, that the bottle was shewn me before I set off to Machipisa. In fact I did not enter the Machipisa store, this tricycle .....

HATHORN, A.C.J.: Don't worry about the tricycle? - I came back to find the bottle now prepared, wrapped up, and it was placed on the table. He then said: "I have finished preparing it." That is why I said in my evidence that I was shewn. I saw it and he told me that he had finished.

BY MR. HORN: But you did not see how the bottle was made up. You did not see that it had old paper and underpants round it, or that it was secured with wire? - No, I think there I was misunderstood. The bottle was wrapped up in paper, a rag of underpants tied round the bottle, and the neck was tied with a piece of wire.

How could you see the wire? - I touched the bottle and I felt the wire in my hand.

You mean underneath the paper? - No, the wire was inside the paper. Outside the paper I felt the wire. The moment I touched the wire the wire pricked me, perforated the paper and pricked my finger. I felt the wire and the edge where the wire touched.

I suggest to you that your statement and evidence to the effect that Cyprian accompanied you on this venture is a complete fabrication, and that you went to this place yourself, or, if not by yourself, with some other person other than Cyprian? - I disagree.

And that even if it was Cyprian that you went with, he did not have to persuade you merely so hard as you would have us believe? - Well, I have told the Court that I did not go with any other person besides Cyprian.

Re-Examination

Re-Examination

RE-EXAMINED BY MR. WHEELDON: You were asked whether you did not raise your voice at any stage to Cyprian, to refuse to go with him, and you replied, no, that you did not raise your voice.

Why was it that you did not? - I did not want to raise my voice because we were among the people.

You could have spoken to him quietly, could you? - I did. I tried to speak to him in a low voice saying: "Friend, I do not want to go."

And what was the reaction? - "I have got to collect you, so we will go together as I have already told you during the day."

It was put to you that you did not put questions to Sylvester about your report to Matimba on the night of Friday the 29th? - Yes.

Did you call Matimba as a witness for yourself before the magistrate at the preparatory examination? - I did.

Did you ask him any questions about the report you made on that Friday evening? - I did.

What questions did you ask? - I asked him if I had not told him that I was with Cyprian that night, that Cyprian came to collect me from my quarters and we left together for Houghton Park where we threw a petrol bomb. I asked him if it was he, Matimba, who had told him.

It was put to you, from something you said in your evidence that Cyprian was a free-lance journalist. Did any newspaper, as far as you know, pay him for anything that he wrote? - No.

What do you mean when you said he wrote articles, did you mean letters or things that appeared in the body of the newspaper? - It was common practice, whenever we are holding meetings in our offices, everyone was to write an article for the press. It was not that all those articles would be published. One may be published and the other not. I used to write articles myself.

What was your standard of education? - Standard 3.

What is the Shona word for "difficult" - (Witness pauses). It would be easier for me to speak English and it would be very difficult for me to translate English into Shona. I can hardly translate some words, although I speak Shona (To Court) Perhaps it is really a question for the interpreter, and it is a question which I would like to ask the interpreter.

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HATHORN, A.C.J.: Yes, I think you had better.

MR. WHEELDON: (To interpreter): What I want to know is whether there is one Shona word that could mean either difficult or heavy?

INTERPRETER: No, "difficult" is kunetsa, and "heavy" is kurema.

BY MR. WHEELDON: Now, with regard to Cyprian, you say that he was accused by Sambo as being a police informer? - Yes.

Had this happened before? - No.

Had Sambo ever made any accusations before this about other people? - Maybe.

I just want to get this quite clear, because there is some uncertainty about it. After Cyprian had been accused by somebody, did he, or did he not, continue to work for the Z.N.P.? - He continued to work for the Z.N.P.

Do you know whether Matimba was aware of this or not? - Matimba is the leader. I would not know whether he was aware of it or not.

Would not know, you mean, you, the accused, would not know whether Matimba was aware of it or not? - Yes.

INTERPRETER: With your Lordship's permission, I should have added that the word "heavy" today in the normal Shona spoken in town, there is a tendency to confuse the word to mean anything which is hard for a person to say. He would call it "heavy" instead of "difficult"; not heavy in the sense of weight. The meaning I gave was heavy in the sense of weight. I do not know in what sense that may be used figuratively and be confused for some other meaning.

HATHORN, A.C.J.: Would you like to put some further questions as a result of that?

MR. WHEELDON: No, my Lord, that really covers the point I was trying to make.

HATHORN, A.C.J.: Was this in respect of the notebook?

MR. WHEELDON: That when it was the accused

said it was heavy to take he might have meant that it was difficult to carry because of its size and the nature of what it contained.

HATHORN, A.C.J.: I think you ought to get that on the record. This is a matter of argument at the moment.

MR. WHEELDON: I am not sure that I understood what the interpreter said.

HATHORN, A.C.J.: I understood him to say you may get confusion in the use of the word, and the word "heavy" may be used in the figurative sense as being "difficult." Is not that what you said?

INTERPRETER: That is what I said.

MR. WHEELDON: I do not want to put this in the form of a leading question.

HATHORN, A.C.J.: Perhaps the interpreter could be asked. You recall the cross-examination about him carrying the notebook?

INTERPRETER: Yes, my Lord.

HATHORN, A.C.J.: The answer was that it was "heavy". Can you remember what word was used?

INTERPRETER: I translated it when the witness said "heavy" in the sense of weight. He said "kurema". That was the word used. It was heavy in the sense of weight.

HATHORN, A.C.J.: The learned Assessor, Mr. Cripwell, says he understood it to mean it was a nuisance to carry.

INTERPRETER: That is not what I remember, but I would not dispute.

HATHORN, A.C.J.: I think you could put it to the witness what he meant. Have it reiterated.

MR. WHEELDON: As your Lordship pleases.

(To accused): When you were speaking of carrying the notebook to the hospital, did you mean that it was too heavy in weight?

HATHORN, A.C.J.: I do not think you can put it that way. I think you should ask him what he

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meant. (To witness) What was the reason that you did not take the exercise book? - The exercise book is a large one. It was a thing which would be difficult to carry in the sense that if I board a 'bus to where I am going I thought it will be inconvenient for me; it might come out of my pocket and remain in the 'bus.

MR. HORN: In view of the change in meaning, might I be given an opportunity to cross-examine further on this point?

HATHORN, A.C.J.: I do not think so, Mr. Horn. That is a legitimate ground for comment.

MR. HORN: I do not want to make an issue of it. It is just a matter, which was, as I understand it, misinterpreted.

HATHORN, A.C.J.: No, I do not think so. I did not understand that at all.

MR. HORN: I would not have put a question to the witness "do you say the notebook was heavy" unless it had been interpreted at a previous stage that the notebook was heavy. It would otherwise be a ridiculous question to put.

HATHORN, A.C.J.: If Mr. Wheeldon has no objection?

MR. WHEELDON: I have no objection.

The Court adjourned for lunch and re-assembled at 2.15 p.m.

RICHARD MAPOLISA, under former oath

MR. HORN: I have reconsidered my application. I do not wish to persist with it.

HATHORN, A.C.J.: Have you concluded your re-examination?

MR. WHEELDON: I have, my Lord.

BY MR. CRIPWELL: Did you hear your Counsel say that your age was 29? - I told the Counsel.

That is your age then? - Yes.

We have heard a lot about somebody named Cyprian. How big is he? - I would not know his age?

How big is he? - He is taller than I am, heavy built.

Would he be as big as the African constable standing there? - No, my Lord, the policeman is a youngster.

I am not talking about age, I am talking about size. - The African constable is a little bit shorter.

So there was really no need for me to imagine that you were frightened of Cyprian? - My Lord, I would not compare the strength of a person and compare his height and build. It is true that I was afraid of him.

You were afraid of him? - Yes.

Why was it then, when you had the opportunity to run away from doing this thing, that you did not run away? - I was fatalistic at that stage.

You said you accepted the statement of yours in part? - Yes.

You agree that you went to the cocktail beer-hall and had some beer? - Not that I drank some beer myself but that he did.

Do you drink beer? - I don't.

Can you tell us how much you are in arrear with your wages from the Z.N.P.? - From December till the present day.

At how much a week? - £5 per week.

And all you had received was that £1 you have told us about? - Only.

BY HATHORN, A.C.J.: How was it that Sylvester knew that a paper or papers like those notes that you read out had been left at the scene of the crime? - He was fully aware that the procedure was at all the places where action was taken a paper should be left.

Since the instructions were merely general that the paper with Z.N.P. on it should be left there, how was he able to describe the kind of paper that was left there unless you told him about it? - I do not know how he thought about it.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions.

Evidence for the Defence

No.13

R. Mapolisa (Accused)

Re-Examination continued

In your statement to the police you said this: You were dealing with this question of the petrol and I will read you several sentences. I wanted to walk away, but he, that is Cyprian, stopped me and asked me for 2s.6d. to buy some petrol. - Yes.

"I told him that I only had one shilling of my own and I was keeping that"? - Yes.

"I left him and he told me he would come to the house later"? - Yes.

"I went home"? - Yes.

"I waited at my house until just before 8 p.m. and then he arrived"? - Yes.

I read that to mean that from the time you went home until he arrived you waited at home? - If your Lordship will read along the statement I believe it will tell your Lordship that I was lying in bed.

That is right. You said: "I heard him knock at the door. I opened the door and let him in." - Yes.

"He was not carrying anything"? - Yes.

"He wanted to know why I had gone to bed as he had informed me earlier that he wished to take action"? - That is correct.

Now I read that to mean that after you left Cyprian you went home, you waited at your house until he came, when he found you in bed? - Yes.

Is that correct? - I had waited for him. When I discovered that it was late I retired to bed.

Well then, why was it you did not say to him that after you got home you had decided to go and see Matimba and ask him questions about what Cyprian was asking you to do? - I did go to Matimba. As I have said before, I did not have a chance to tell him. Secondly, when he had spoken of petrol I did not know what use this petrol was required for.

What I am wanting to know is, why you did not in this statement - I read this statement to mean that when you got home you waited at home and then went to bed and then Cyprian arrived. There was not a single word about going to see Matimba? - I have already told your Lordship that there are

other words and sentences that I said which were omitted from this statement. May I elaborate on it, with your Lordship's permission?

Yes? - I told the police that at 6 o'clock I set off from my quarters to go to Harare hospital. If that did not appear on the statement it is one of the sentences that were omitted.

Did you tell your Counsel that that is what you had said in your statement and that it had been omitted? - My Lord, if I omitted to tell my Counsel, I believe I forgot to tell him. May I elaborate again?

Yes? - Your Lordship would appreciate wherever a writing is made in pencil it would differ when one is trying to explain that colloquially. The oral version can only be the same or similar to a written statement when one had a copy read over and over. That is all.

You have told the Court that when Cyprian mentioned petrol and wanting action, that was in the afternoon, before you went home, that you knew that the petrol and the action were to be associated? - I thought the petrol and action are things that are associated. That is why I refused to give the money.

Then when he came and brought the bottle, he brought the bottle which had petrol in it, did he not? - Yes.

And then he asked you for materials to make a wick? - Yes.

Now, at that stage did you know what he wanted to make? - I did not exactly know what it was that he was going to do, because he said he wanted to prepare a bottle. I did not understand the preparation.

Didn't you realise that he wanted to make a petrol bomb? - From looking at it I realised that this must be a petrol bomb.

Of course you had seen one before. You had had one on Monday night yourself, had you not? - That is why I thought of it at that stage that that must be a petrol bomb.

That was before you went out to buy food? - Yes.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions.

Evidence for the Defence

No.13

R. Mapolisa (Accused)

Re-Examination continued

And did you at that stage realise that action meant using the petrol bomb? - Yes.

If you wanted to dissociate yourself from it, why did you come back to your house at all, why didn't you disappear? - That is what I have already told your Lordship, that things happen. I did not know that things were going to happen in that way. They happened in a way I did not understand. I was trying to make some plan to evade it, but did not do so.

Then, after you got back, he went away and got some ink and put it in your pen? - Yes.

Did you know that he wanted you to write? - He introduced a paper and said he wanted to write some more papers because he wanted more notes.

Did you know that the notes were to have anything to do with the action you were supposed to take? - I was just thinking of it, because it came to my mind that this is what had been mentioned in the meeting. That is why I did not ask him about it.

While he was away you could have disappeared too, could you not? - May the Court pardon me. On that particular part this appeared like water, it would be no use crying over spilt water.

If you did not want to take part in any action that night you could have gone away while he was having your pen filled? - Yes, I could have done so, but that did not occur to me. It occurred to me after the action had already been taken.

After you left the cocktail bar you carried the parcel with the bottle in it, did you not?- No.

Did you not carry the bottle at any time? - After we had crossed a stream that runs into the Makabusi River, after crossing that stream, I then carried the bottle.

You knew at that stage that this bottle was going to be used to bomb a house or a building? - Yes, I was thinking of that; I thought that that was what it was for.

And if you did not want to use it, could you not have thrown the bottle on the ground and broken it and pretended that you dropped it accidentally? - That is what I have already said, that a person would then think of what one could have done, after the

thing had already happened. It is not a fore-thought.

When you got to this house at which the bomb was actually thrown, did you know what sort of building it was? - From where he stood I later visited the house in company with the police, and I noticed that that room through which the bomb was thrown must be a dining room.

But before the bomb was thrown, what did you think this house was used for, or this building? - I knew that that was a residential house.

I want to ask you about this notebook, Exhibit 2A. In cross examination I understood you to say that you did not carry the notebook to Matimba to shew him what was written inside it. You made another copy of what was in the notes because the notebook was too heavy? - I have already told the Court that one word in Shona would have two words in English.

Yes, well, you see, we have heard from the interpreter there is a word in Shona meaning "heavy" and there is a word in Shona meaning "difficult". And after this had been put to you, the first time at any rate, Counsel finally said to you something to this effect: "Do you seriously want the Court to believe that this book was too heavy to carry?" - What I meant by heavy, I did not mean that the weight was heavy for me to carry; I meant it would be inconvenient; say, if I put it in my pocket, it might fall out of the pocket.

(To Counsel): Is there anything arising out of that?

BY MR. WHEELDON: One point. (To witness) I think you said in your evidence earlier that you snatched away the note from Sylvester? - Yes.

Do you know whether he was able to see any part of it? - Yes, he did read part of it. He was reading the sentence where Z.N.P. is written when I snatched the note away from him.

MR. HORN: No questions arising, my Lord.

(Witness stepped down)

CASE FOR THE DEFENCE CLOSED

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions.

Evidence for the Defence

No.13

R. Mapolisa (Accused)

Counsel addressed the Court.

Further hearing adjourned to 2.30 p.m. on September 20, 1963.

Certified that the above is an accurate transcript of my notes in these proceedings.

(Signed) L.A. MARSHALL.

Official Court Recorder.

Judgment

No.14

Judgment

20th September 1963

FIFTH DAY OF TRIAL, 20th SEPTEMBER, 1963.

THE COURT RE-ASSEMBLED AT 2.30 p.m.

No.14

J U D G M E N T

HATHORN, A.C.J.: The unanimous verdict of the Court is that the accused is guilty. Let the accused be seated and I will give the reasons.

It is not in dispute and it was amply proved that a lighted petrol bomb was thrown through the window of Mr. Bonham's residence, 99, Silcox Avenue, Houghton Park, early on the morning of Friday the 28th June. Nor is there any doubt the thrower of the bomb is guilty of contravening section 33A (1) of the Law and Order (Maintenance) Act, 1960, as amended.

The circumstances are such that the thrower, at any rate, is liable to the mandatory death sentence in terms of paragraph (c) of section 33A (1). The accused admits that he was present at the time the bomb was thrown, but alleges that Cyprian was the prime mover and the thrower of the bomb. He also admits that there was a common unlawful purpose between him and Cyprian, but alleges that he was subjected to sufficient compulsion to relieve him of criminal responsibility.

It is first necessary to consider the value to be placed on the accused's evidence. The account he gave in evidence was substantially in

accordance with the statement, Exhibit 1, which he made to the police on Saturday afternoon the 29th June, the day on which he was arrested.

The accused is a quiet-spoken, mild kind of person. He is not well educated but he is by no means a fool. We were invited by his Counsel to find that he was unintelligent, but that is far from the case. He is, in fact, quick-witted and an extremely plausible person.

We are unanimously of the opinion that his evidence is entirely unreliable. He left us with an unfavourable impression, and he had a propensity for altering his evidence when cornered in cross-examination. There were also improbabilities in his evidence.

The most obvious occasion when he altered his evidence was in the course of his cross-examination when dealing with the events of the Thursday afternoon. Up until this stage, his statement to the police and his evidence had been that, after Cyprian had asked for money to buy petrol, he went home and waited there for Cyprian to arrive, which Cyprian did at about 8 o'clock in the evening. In the course of his cross-examination he indicated that he was dissatisfied with the possibility of getting into trouble over Cyprian's proposal, and also that he wanted to take this matter up with Matimba, the President of Z.N.P. When asked why he had not tried to see Matimba that afternoon, he paused for an appreciable period of time during which it was obvious that he was thinking what he should say. He then came out with the evidence that he had gone home and then gone to see Matimba, which he did, but had failed to find an opportunity of discussing the point with him. This was a most marked piece of fabrication and one which was patently obvious to all of us.

The evidence that he failed to speak to Matimba is also improbable. If he had, in fact, gone to see Matimba on this very important matter, it is improbable in the extreme that he would not even have asked to have had a few words privately with him.

Further, our clear impression was that the question as to how he got home after that was simply a repetition of how he had got home on the Wednesday afternoon, and that this was done

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions.

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Judgment

20th September 1963

continued

because he could think of nothing else to say at the time.

This point alone is sufficient ground on which to base an unfavourable finding as to the accused's credibility.

On another occasion he clearly changed his evidence. This relates to his evidence about Cyprian being at the Police station. The accused's evidence shortly before the adjournment on Wednesday afternoon seemed to us to mean quite clearly that he only saw Cyprian on one occasion at the police station and that was when Cyprian told the police that the accused was the man. When pressed on this the next day he seemed, clearly to us, to invent a second occasion on which he said he saw Cyprian at the police station.

In other respects, too, his evidence was unsatisfactory.

It seems to us to be improbable in the extreme that Cyprian, who was suspected of being a police informer and had been expelled on that ground, from the meeting held a couple of weeks before, would have taken such a part in the affair as the accused says he did. It is to be observed that the accused had, in the circumstances, a strong motive for seeking to implicate Cyprian falsely. It also seems to us to be improbable that the accused and Sylvester would have been given a pound each for the purposes testified to by the accused.

Taking all the circumstances into account, we are completely satisfied that the accused was an entirely unreliable witness.

The next question to consider is whether the Crown has proved beyond reasonable doubt that the accused was the person who actually threw the bomb.

In addition to the accused's evidence on the point, there are two features that seem to us to leave room for reasonable doubt. The first is the presence of footprints, which have not been connected with the accused, which were found in the region of point "X" on the plan where the damp patches and the notes, Exhibit 2B, were found. There is also the fact that the ink with which the notes were written is similar to the ink found in his pen but dissimilar to that found in the ink

bottle in his room. The latter may be sheer coincidence, but their combined effect tends to shew that a second person may have been present at the time the bomb was thrown.

In view of that possibility, it seems to us that there is also a reasonable possibility that the accused did not actually throw the bomb, and it is not safe, in our view, to rely on Sylvester's evidence to displace that possibility. Whether the second possible person was Cyprian or some one else, it is impossible to say. Nor is it necessary to come to a conclusion on this point.

On the allegation that the accused was compelled to commit the crime, we have no hesitation in rejecting the accused's evidence. The point about the ink lends support to the accused's evidence that he was trying to put the other possible person off, and he may have been reluctant to take part in the crime. But to say that he committed the crime because he feared repercussions from his Party or its members is plainly false. Apart from the view we have formed of the unreliability of the accused's evidence, on his own shewing there had been no repercussions from either his or Sylvester's failure to carry out their respective missions on Monday night. Indeed, the very fact that on the Friday afternoon Matimba was angry with him when he reported the attack tends to shew that the accused may have been acting without the knowledge of his leaders. There was thus no reasonable ground for him to have feared that the repercussions he says he feared might be forthcoming.

Further, if he was so fearful of such repercussions and was so reluctant to take part in the crime, he had ample opportunity of breaking the bottle on the way to the scene of the crime under the guise of an accident.

That the accused and the possible second person had a common unlawful purpose admits of no doubt, and, subject to the point of law discussed next, it follows that he is properly convicted of the crime charged.

Mr. Wheeldon, for the accused, contended that if, as we have found, the Crown has failed to prove that the accused actually threw the bomb, the provisions of section 33A (1) in respect of the

In the High Court of Southern Rhodesia

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Judgment

20th September 1963

continued

compulsory death sentence do not apply. It is necessary to quote the relevant extracts from section 33A (1). They are as follows :

"33A (1). Any person who, without lawful excuse, the proof whereof lies on him -

(a) by the use of petrol .... sets or attempts to set on fire any ..... building .... shall be guilty of an offence and

(c) shall be sentenced to death where such offence was committed against any person or in respect of

(i) any building or structure used for residential purposes and not owned, occupied or leased by the person convicted of the offence, whether or not at the time of the commission of the offence any other person was present in such building or structure; .....

(d) in the case of any other offence under this section shall be liable to imprisonment for a period not exceeding twenty years."

The contention is that the provisions of section 33 A(1)(a) refer only to a principal not to an accessory whose liability for the offence depends upon the principle of a common unlawful purpose. On this basis the contention is that paragraph (d) applies.

An immediate difficulty presents itself here. The circumstances of the present case clearly fall within paragraph (c) (i). There is thus no room for the operation of paragraph (d), which relates to "any other offence." These words are not very apt but clearly must be read as meaning any other kind of offence under the section, that is to say, any offence other than the kind of offence described in paragraph (c). I pointed this out to Mr. Wheeldon. Appreciating the point, he amended his argument and contended that the verdict therefore should be one of not guilty, or, in the alternative, a verdict of guilty and a sentence imposed under paragraph (d).

He further contended that, although the law

regards a principal and accessory as guilty of the same crime, the punishment may vary, and he referred to R. v. Brett & Levy, 1915, T.I.D., 53 at 58. It followed from this, he said, that clear words must be found to alter that principle. These words, he said, were not present in the section. He also suggested that the distinction between a principal and an accessory seemed to lie in the theory that an accessory was "regarded" as being a principal.

I cannot accept this contention.

The background in which the section must be interpreted is the principle that in law the principal and accessory commit the same crime. There is ample authority for this proposition. In Brett & Levy's case (supra) Wessels, J. is reported at p. 58 as follows :

> "The Dutch criminalists considered the principals and accessories, both before and after the fact, as guilty of the same crime, and only distinguished in the punishment meted out to them."

And at page 59, having considered various authorities, he is reported as follows :

> "I have been unable to find a single authority for the proposition that the Dutch Courts drew a distinction between the principal thief and the accessory or that they were indicted for different crimes."

An accessory is properly indicated as though he were a principal, see section 144 (2) of the Criminal Procedure and Evidence Act (Cap. 28) and R. v. Parry, 1924, A.D. 402 at 404. This case is also authority for the same proposition as that referred to in Brett & Levy's case.

Mr. Wheeldon sought to distinguish common law offences from statutory offences in this respect, but this is not a legitimate distinction unless there is something in the statute to that effect.

In R. v. Peerkhan & Lalloo, 1906, T.S. 798, at 802/3, Innes C.J. dealt with this point and also the main point taken by Mr. Wheeldon. The argument was rejected and the rule was stated at page 803 in the following terms :

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continued

"The true rule seems to me to be that the common law principles which regulate the criminal liability of persons other than the actual perpetrators should apply in the case of statutory as well as common law offences, unless there is something in the statute or in the circumstances of the crime which negatives the possibility of such application."

That passage was adopted in the case of S.B. Tommy & Ors. v. R. 1931, N.P.D. 317 at 319, where reference was also made to R. v. Jackelson, 1920, A.D. 486. In Jackelson's case the appellant, a white man, had been convicted of contravening a section in a statute prohibiting coloured persons from being in possession of intoxicating liquor. The appellant had been convicted because he had aided and abetted a coloured man to possess liquor. In spite of the fact that it was impossible for the appellant to commit the crime as principal, the Court held that as he had been an accessory he was properly convicted of the offence.

Mr. Wheeldon would not accept the proposition that there was a parellel to be found in murder cases based on the provisions of section 346(1) of the Criminal Procedure and Evidence Act, which make it compulsory for the Court to pass the death sentence on a person convicted of murder unless there are extenuating circumstances. The provisions apply whether the convicted person is principal or accessory.

The distinction sought to be drawn by Mr. Wheeldon was based on the provisions about extenuating circumstances. I can see no such distinction. However that may be, the cases decided in South Africa before 1935, when the proviso about extenuating circumstances was first introduced, are clearly parallel. In R. v. Ngcobo, 1925 A.D., 372 at 376, Peerkhan's case was followed, and it was held that an accessory had properly been convicted of murder and sentenced to death.

The other cases referred to by Mr. Wheeldon are clearly distinguishable.

I hold, therefore, that the compulsory provisions of section 33 A (1) (c) (i) apply in this case, and that I am thus obliged to pass the death sentence there provided for.

I take it you have nothing to say, Mr. Wheeldon?

MR. WHEELDON: No, my Lord.

HATHORN, A.C.J.: The Legislature has seen fit to take away from the Court any discretion in a case such as the present. I am therefore obliged to pass sentence of death on you.

REGISTRAR: Mr. Interpreter, tell the accused he has been duly convicted of the crime of contravening paragraph (a) as read with paragraph (c) of sub-section (1) of section 33 A of the Law and Order (Maintenance) Act, 1960, as amended. Ask him if he has or knows of anything to say why sentence of death should not be passed upon him according to law.

THE ACCUSED: The only reason I can give is I am not the perpetrator of this crime.

HATHORN, A.C.J.: The sentence of the Court is that you be returned to custody and that sentence of death be executed upon you according to law.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions.

No.14

Judgment 20th September 1963 continued

No.15

HIGH COURT ORDER

No.15

High Court Order 20th September 1963

At Salisbury on the 16th day of September, 1963. Before the Honourable Acting Chief Justice Mr. Justice Hathorn and Assessors, Messrs. Yardley & Cripwell.

Mr. Horn of Counsel for the Crown.

Mr. Wheeldon of Counsel for the defence.

THE PRISONER, being arraigned and charged with the crime of:

Contravening paragraph (a) as read with paragraph (c) of Section 33 A (1) of the Law and Order (Maintenance) Act, 1960, as amended

PLEADED: Not guilty
16.9.63

VERDICT: Guilty
20.9.63

SENTENCE: Sentenced to death.
20.9.63

M. D'Enis.
Assistant Registrar

In the High Court of Southern Rhodesia

No.16

Particulars of Trial

Regina versus Richard Mapolisa

September 16-20 1963.

No.16

PARTICULARS OF TRIAL - REGINA versus RICHARD MAPOLISA

1.	Age and occupation of appellant.	29 years. Driver and Hawker.
2.	Date of trial and sentence.	September 16-20, 1963
3.	Place and Court of Trial.	Salisbury Criminal Sessions, High Court of Southern Rhodesia.
4.	Before whom tried	The Honourable Acting Chief Justice Hathorn and Assessors, Messrs. Yardley & Cripwell
5.	Charge	Contravening paragraph (a) as read with paragraph (c) of section 33 A (1) of the Law and Order (Maintenance) Act, 1960, as amended.
6.	Plea	Not guilty
7.	Verdict	Guilty
8.	Sentence	Sentenced to Death
9.	Name of counsel for the Prosecution.	Mr. Horn.
10.	Name of counsel for the defence.	Mr. Wheeldon.
11.	Was the appellant defended in forma pauperis ?	Yes
12.	Were any Exhibits put in at the trial?	Yes.
13.	Was any statement by Appellant read and not marked as an exhibit?	No.
14.	Was the appellant bailed before trial? If so, with how many sureties and in what amounts?	No
15.	What orders (if any) were made for the restitution of property?	None

F.D. HAYWARD.
REGISTRAR.

IN THE FEDERAL SUPREME COURT
APPELLATE JURISDICTION - CRIMINAL

BETWEEN : RICHARD MAPOLISA Appellant
- and -
THE QUEEN Respondent

In the Federal Supreme Court

No.17
Notice of Appeal

26th September 1963.

No.17

NOTICE OF APPEAL

I, RICHARD MAPOLISA, the abovenamed Appellant, having on the 20th day of September, 1963, been convicted by the High Court of Southern Rhodesia, sitting at Salisbury, of a contravention of Section 33A (1)(a) of the Law and Order (Maintenance) Act, 1960, as amended, and having been sentenced to death:

DO HEREBY GIVE NOTICE that I intend to appeal to the above Honourable Court for an order varying and/or reducing the said conviction and sentence on the following grounds:

Against Conviction:

The trial Court erred in holding that I associated myself with the crime actually committed, in that I only became aware that the petrol bomb was to be thrown at a dwelling house and that there might be danger to human life, just before it was thrown.

LEAVE GRANTED BY SUPREME COURT ON 11.12.63 TO ADD FURTHER GROUND OF APPEAL

FURTHER GROUND OF APPEAL.

That in terms of Sec. 33A of the Law and Order (Maintenance) Act, 1963, an accessory cannot be convicted at all of the offences set out in the section.

Against sentence:

The learned Judge erred in holding that he had no discretion to pass a sentence other than the death sentence.

DATED AT SALISBURY this 26th day of SEPTEMBER, 1963.

(Signed) Richard Mapolisa
APPELLANT

In the Federal Supreme Court

No.18

Judgment of the Federal Supreme Court.

11th December 1963

No.18

JUDGMENT OF THE FEDERAL SUPREME COURT.

IN THE FEDERAL SUPREME COURT AT SALISBURY

Criminal Appeal No. 143 of 1963.

BETWEEN: RICHARD MAPOLISA Appellant

- and -

THE QUEEN Respondent

Before : Clayden, C.J., Quénet, F.J. and Blagden, A.F.J.

The 11th day of December, 1963.

J U D G M E N T

Clayden, C.J.:

The appellant was convicted in the High Court of a contravention of s. 33A (1) of the Law and Order (Maintenance) Act 1960 as inserted by s. 4 of Act No.12 of 1963. The charge set out that the appellant did "by the use of petrol or some other inflammable liquid set or attempt to set on fire" a house. To do either of these acts is an offence under s. 33A(1) (a). The appellant was sentenced to death by virtue of paragraph (c) of subsection 1, which provides that a person guilty of an offence under paragraph (a) or (b) "shall be sentenced to death where such offence was committed" inter alia "in respect of any building ... used for residential purposes ...." The basis of the conviction was that there had only been an attempt to set the house on fire, for it had not caught fire when a petrol bomb was thrown into it, and that the appellant had not himself thrown the petrol bomb but was a socius criminis of the thrower of the bomb in that he had accompanied and helped in the offence which he had a common purpose with the thrower to carry out.

In the main this appeal is concerned with the proper construction of s. 33A(1). But it was initially argued that the trial Court was wrong in finding that the appellant took part in a common venture to burn a house, because his intention was

not directed to any type of building, and because prior to the actual throwing of the bomb he had dissociated himself from the venture, as was shown by several acts indicating disinclination to help at earlier stages and a final separation from the thrower at the house. There is no substance in these submissions. They were all carefully considered by the trial Court. The appellant had knowledge that the petrol bomb might be used against a residence on his own admissions, and before the bomb was thrown it was obvious that it would be used in respect of a house; and then the appellant, on the version most in his favour, gave the petrol bomb to the thrower. It was proved that he knew well what would happen. He was given full credit for earlier acts which might show disinclination to take part in the venture, and this was used in his favour to hold that it was not proved that he himself threw the bomb. His evidence that he did what he did through fear was quite disbelieved, and there is no reason to interfere with that finding. Assuming that he was taking part reluctantly he still did take part; he carried the bomb knowing that it would be used, and he handed over the bomb when he knew that it was to be used. Although he went a little apart at the time of the offence he did not go away. There is no indication that he abandoned his purpose, and his fellow criminal, so as to escape criminal liability. On the ground of appeal based on fact the appeal cannot succeed.

On the legal issues involved in the case the Court is indebted to Mr. May and Mr. Sithole for re-arguing the case for the appellant at the request of the Court.

The arguments based on s.33A(1) are two. It is urged that on a proper construction of the sub-section the Legislature only intended that the actual perpetrator of the crimes set out, and not any socius criminis, should commit an offence. And so the appellant should be acquitted. In the second place it is urged that even if a socius criminis to the chief offender does commit an offence under paragraph (a) or (b) the minimum sentence, sentence of death, laid down by paragraph (c), does not apply to such an offender, for in regard to offenders of that type there is discretion as to punishment.

Before I deal with the construction of

In the Federal Supreme Court

No.18

Judgment of the Federal Supreme Court.

11th December 1963

continued

s. 33A (1) it is necessary to say a little of the basis of liability of the socius criminis in relation to statutory offences. He is not made liable by statute; he is liable by reason of the common law. In Rex v. Peerkhan and Lalloo 1906 T.S. 798, Innes C.J., at 802, said:

> "But it was argued that when the legislature makes that a crime which was not a crime before, then no man can be convicted of the statutory offence who does not himself actually perpetrate it, and thus bring himself within the strict words of the statute."

The learned Chief Justice went on at p. 803:

> "The true rule seems to me to be that the common law principles which regulate the criminal liability of persons other than the actual perpetrators should apply in the case of statutory as well as common law offences, unless there is something in the statute or in the circumstances of the crime which negatives the possibility of such application."

That case was accepted as correctly laying down the law for Southern Rhodesia in Rex v. Kazazis 1925 C.P.D. 166 at 169, an appeal from this country.

It was urged before us that the socius criminis is liable by reason of the provisions of s. 366A (2) of the Criminal Procedure and Evidence Act. It provides:

> "(2) Any person who -
>
> (a) conspires with any other person to aid or procure the commission of or to commit; or
>
> (b) incites, mitigates, commands or procures any other person to commit:
>
> any offence, whether at common law or against any law, shall be guilty of an offence and liable on conviction to the pubishment to which a person convicted of actually committing the offence at common law or against such law would be liable."

Subparagraph (a) was suggested as the provision which refers to the criminal liability of the socius criminis. I have no doubt that it does not; it refers to what is known in the criminal law as conspiracy to commit an offence.

Apart from any construction based on the reasons for the enactment of the provisions of sub-paragraph (a), which first came into statute law in the Roman Dutch law by s.15 of the Riotous Assemblies and Criminal Law Amendment Act No.27 of 1914 of South Africa, it is clear from cases after that Act that the liability of the socius criminis was still based on the common law. It is only necessary to refer to a case such as Rex v. Cilliers 1937 A.D. 278 at 285 to show this. See also the cases referred to in Chenjera v. Regina 1960 R. & N. 67 at 74. And so it seems to me that s. 366A (2)(a) has no bearing on the criminal liability of the socius criminis. The basis of liability of the socius criminis is as set out in the case of Peerkhan and Lalloo (supra), though that case does contemplate that there may be "something in the statute or the circumstances of the crime" which negatives the ordinary application of the common law principles.

In regard to whether s. 33A did intend that the socius criminis should be liable, the argument which is put forward is the following. Apart from the actual commission of a crime by a person there can be criminal liability in regard to it by reason of attempt, because there is conspiracy to commit it, or incitement to or a procuring of it, or because a person is liable as socius criminis. Section 33A mentions one of these possible grounds for liability, and the mention of that one shows that the Legislature intended that the others should not be grounds for liability, on the principle "expressio unius est exclusio alterius".

There are I consider two reasons not to apply that maxim in the way suggested. In the first place "attempt" is a method of committing a crime, and the other types of liability relate to the persons who commit the crime, the conspirator, the inciter, and the aider. Mention of a lesser type of crime does not seem to me to show an intention to exclude persons liable because of different types of participation. Then complicated arguments have been addressed to us to show why the Legislature saw fit to insert in s. 33A the words "attempt to set on fire". It seems to me that a very probable reason was that a minimum sentence, at first imprisonment and later death, was being provided, and the Legislature may well have decided to make it quite clear to persons that they might be

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liable to those sentences although they did not succeed in setting on fire. There was liability for an attempt by reason of ss. 238 (1) and 366A (1) of the Criminal Procedure and Evidence Act; but it was complicated for the potential criminal to understand what he risked by his acts if he was left to apply those sections. And so in certain language he was told.

I consider that there is nothing in the wording of s. 366A which would indicate that a socius criminis was not to be liable under section 33A(1).

The next matter to be considered is whether the socius criminis who does commit an offence under s. 33A (1) (a) must, if the circumstances set out in paragraph (c) are present, be sentenced to death.

At the outset it must be made clear that this is not a case in which punishment has to be imposed by reason of s. 366A of the Criminal Procedure and Evidence Act. That section introduces the words "liable .... to the punishment". We are not here concerned with the question whether, when such words have to be relied upon to punish, there is discretion to go behind a minimum pubishment laid down for the principal offender. There are many conflicting decisions in the question, some of which are set out in S. v. Nshangase 1963 (4) S.A. 345. Another important case is R. v. Bedhla 1929 T.P.D. 277.

Nor is this a case, such as was Regina v. Mackenzie 1952 S.R. 57, also cited as R. v. M. 1952 (2) S.A. 674, in which an accused, associated with a crime, is convicted of another crime at common law. That case was decided before s. 366A was enacted. It was an offence under a statute to procure a woman to have unlawful carnal knowledge with a person. The only punishment was imprisonment. The appellant was charged with "inciting" another so to procure a woman. It was held that inciting another to commit a crime was itself a crime at common law, that for a crime at common law the Court was free to impose any penalty, and so it was not obliged to imprison, but could fine the offender. To be a socius criminis in a crime is not a separate crime at common law. As explained above the socius criminis commits the very crime with which he becomes associated. And so no separate discretion in regard to punishment is to be found outside

the crime which is committed, either by reason of the word "liable" in a statute, or by reason of a common law discretion as to punishment flowing from a separate offence.

But it is urged that because s. 33A (1) speaks of "a person who sets or attempts to set on fire" it did not intend that the person who was a socius criminis, the "person who aids another to set or attempt to set on fire", should be liable to the same penalty as the person it specifically mentions. It seems to me that this argument is not made the stronger because there is a minimum sentence. Offences under statutes are normally set out in terms that a person who does something commits a crime. And by common law the socius criminis of that person is regarded also as doing that thing. He does it by helping to do it, or by making common purpose with one who does it.

On principle I can see no possible basis to come to any conclusion other than that the socius criminis is liable to the minimum penalty laid down if his crime falls within the conditions determined for that minimum penalty. He commits the offence not as an ancillary offender, but by "his own part in the transaction coupled with mens rea". He who assists another to set fire to a house commits the crime of setting fire to a house, and the same is true of the attempt.

Reliance was placed on Rex v. Brett and Levy 1915 T.P.D. 53 at 58. Wessels J., after citing R. v. Pearkhan and Lalloo, said:

> "The Chief Justice said that 'In our criminal courts men are convicted for being socii criminis without being specially charged in the indictment as such. They are so convicted under ordinary indictments charging them with having actually committed the crime.' The Dutch criminalists considered the principals and the accessories, both before and after the fact, as guilty of the same crime, and only distinguished in the punishment meted out to them. See Damhouder Crim. Praktijk Nispen's Tr. c. 106 c. 121 and 122; original Latin Ed. c. 135, 136."

No doubt normally the socius criminis is more lightly punished than the principal offender. But that happens when the crime which he has committed, the same crime as that committed by the principal

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offender, does not have by law a minimum punishment laid down for it. When it does I can see no reason to incorporate a discretion where the Legislature has provided none.

For these reasons I consider that the arguments submitted on behalf of the appellant in regard to sentence also are not well founded.

The appeal must be dismissed.

(SGD.) J. CLAYDEN.
Chief Justice.

I agree

(SGD.) V. QUÉNET.
Federal Justice.

I agree. for J.R. BLAGDEN (SGD.) J. CLAYDEN.
Acting Federal Justice.

DELIVERED at SALISBURY this 16th day of December, 1963.

M.A.A. May, Q.C., with him E. Sithole for the Appellant.

R.H. Christie, Q.C., with him M.R. Tett for the Respondent.

No.19

Federal Supreme Court Order

16th December 1963.

No.19

FEDERAL SUPREME COURT ORDER.

Before: Clayden, C.J., Quénet, F.J. and Blagden, A.F.J.

The 11th and 16th days of December, 1963.

Upon hearing Mr. M.A.A. May, Q.C., with him Mr. E. Sithole of counsel for the appellant and Mr. R.H. Christie Q.C., with him Mr. M.R. Tett of counsel for the respondent and having perused the documents filed herein.

IT IS ORDERED that the appeal be and it is hereby dismissed

BY THE COURT.

GIVEN under my hand and the seal of the Court this 16th day of DECEMBER, 1963.

(SGD.) R.D.M. DAVIDSON,
REGISTRAR.

Order issued 16th DECEMBER, 1963.

No.20.

In the Privy Council
No.20
Order granting special leave to Appeal to the Privy Council
26th February 1964

ORDER GRANTING SPECIAL LEAVE TO APPEAL TO THE PRIVY COUNCIL

AT THE COURT AT BUCKINGHAM PALACE

The 26th day of February, 1964.

P R E S E N T

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
LORD STEWARD
MARQUESS OF LANSDOWNE
LORD BRECON
MR. SECRETARY RAMSDEN
MR. DEEDS
SIR CYRIL SALMON

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 13th day of February 1964 in the words following viz.:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Richard Mapolisa in the matter of an Appeal from the Federal Supreme Court of Rhodesia and Nyasaland between the Petitioner and Your Majesty (Respondent) setting forth that the Petitioner desires to obtain special leave to appeal in forma pauperis to Your Majesty in Council from the Judgment of the Federal Supreme Court of Rhodesia and Nyasaland dated the 16th December 1963 dismissing his Appeal against conviction and sentence of death by the High Court of Southern Rhodesia at the Salisbury Criminal Sessions on the 20th September 1963 on an indictment charging the crime of contravention of paragraph (a) as read with paragraph (c) of sub-section (1) of Section 33A of the Law and Order (Maintenance) Act 1960 as amended: And humbly praying Your Majesty in Council to grant him special leave to appeal in forma pauperis to Your Majesty in Council from the Judgment of the Federal Supreme Court of Rhodesia and Nyasaland dated the 16th December 1963 or for further or other relief :

In the Privy Council

No.20

Order granting special leave to Appeal to the Privy Council

26th February 1964

continued

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar on behalf of the Respondent Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Federal Supreme Court of Rhodesia and Nyasaland dated the 16th day of December 1963 :

"And Their Lordships do further report to Your Majesty that the proper officer of the said Federal Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of Southern Rhodesia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

(SGD.) W.G. AGNEW.

EXHIBITS.

1.

Exhibit 1

Charge Sheet

29th June 1963.

WATERFALLS C.R. 107/6/63 Exhibit 'A'.

CHARGE SHEET

I, THOMAS BRIAN McILVEEN, detective in the Criminal Investigation Department, stationed at Salisbury, do hereby certify that I have this 29th day of June 1963 :

Charged: RICHARD MAPOLISA - male adult native - with the crime of contravening paragraph (a) of sub-section (1) of section 33A as read with sub-paragraph (i) of paragraph (c) of sub-section (1) of section 33A of the Law and Order (Maintenance) Act 1960 as amended.

I said to him:

RICHARD MAPOLISA, you are charged with the crime of contravening paragraph (a) of sub-section (1) of section 33A as read with sub-paragraph (i) of paragraph (c) of sub-section (1) of section 33A of the Law and Order (Maintenance) Act 1960 as amended in that upon or about 12.45 a.m. on the 28th June 1963 and at or near 99 Silcox Avenue, Houghton Park, Salisbury, you did wrongfully and unlawfully and without lawful excuse by the use of petrol, benzene benzine, paraffin, methylated spirits or other inflammable liquid, set or attempt to set on fire, a building or structure in the nature of a house, that is to say the said 99 Silcox Avenue, then and there used for residential purposes and not owner occupied or leased by you, and then and there being occupied by Brian James BONHAM, Joan Muriel Bonham, Trevor Michael Bonham and Lynda Mary Bonham, Europeans there being.

I must warn you that you are not obliged to say anything in answer to this charge but that anything you do say will be taken down by me and may be used in evidence later in Court.

The said RICHARD MAPOLISA elected to make the following reply:

"I understand the charge and caution. I wish to say this. On Thursday afternoon the 27th June, 1963, I met CYPRIAN at Mamuka Service Station. He told me that he had been looking for me at my

Exhibit 1

Charge Sheet
29th June
1963.
continued

house. I asked him why he wished to see me and he replied that he wanted him and I to take action. I said don't let's talk of this here - come to my house. I wanted to walk away but he stopped me and asked for 2s.6d. to buy some petrol. I told him that I only had 1s.0d. of my own and I was keeping this for food. I left him and he told me he would come to the house later. I went home. I waited at my house until just before 8 p.m. and then he arrived. I heard him knock the door. I opened the door and let him in. He was not carrying anything. He wanted to know why I had gone to bed as he had informed me earlier that he wished to take action. I told him that I was late and was coughing from the cold and that was why I had retired to bed. He told me to get dressed and I did so. He told me to go to the door and that I would find a bottle of petrol just outside. I did so and saw the bottle just outside my door. I picked this up and brought it into the house. I asked him if it was benzine and he said it was petrol. I asked him where he got the money for the petrol and he replied that he had got the petrol from a friend. I told him that I was hungry and wanted to eat first before we took action. He asked me if I had any old clothes so that he could make a wick for this bottle. I told him that he knew the house well and that just to look around for old clothes. I then left the room and went to Machipisa for some food. I was away for about 40 minutes and when I returned he told me that he had the bomb made. He showed me the bottle which now had paper and an old pair of underpants wrapped round the neck and secured with thin wire. I saw that the pliers I usually keep on top of the wardrobe were now sitting on top of the table and guessed that CYPRIAN had used these to cut the wire at the top of the bomb. CYPRIAN brought out some papers. He showed me a letter he had drafted and told me to write some more. I did so and I wrote 8 copies of the same passage and handed these back to CYPRIAN. I wrote these with my own fountain pen. At first this pen had no ink and CYPRIAN left the house for about 30 minutes with this pen and returned with it full of ink. We left the house together. CYPRIAN was carrying the bottle and walked a little behind me. On arrival at Machipisa I went and bought a paper bag. We put the bomb in this bag, hid the bag in the bush near the Cocktail beerhall and went in and had some K.B. When the beerhall closed we left and collected the bag and walked by the dust road which runs near the Police Camp and leads to the Beatrice Road, and into the Beatrice Road. CYPRIAN was carrying the bag at this stage. Just before we

Exhibit 1

Charge Sheet
29th June 1963.
continued

reached the Beatrice Road he gave me the bag to carry. We turned towards town and walked towards the European houses at Houghton Park. CYPRIAN led the way and we went to Silcox Avenue. I stopped him at one stage and told him my shoes were making a noise. He then told me to keep quiet and stand still. He then took out the bottle from the paper bag. I told him that I felt that I was about to cough at any minute. He told me to move away from the hedge. I did so, and stood about 15 yards away from him. I saw him light the wick and throw the bottle. I started to run and he followed me. We ran back on to the Beatrice Road and I turned right into Salisbury Drive and towards the Township. He continued running on the Beatrice Road out of town. I went straight to my room. At the corner of Beatrice Road and Salisbury Drive I threw away the paper bag. I did not see CYPRIAN again until Saturday morning at the C.I.D. Offices.

Certified that the above statement was made by me whilst in my sound and sober senses. It was made freely and voluntarily and has been read back to me. I adhere to it in full and sign my name hereto.

(Signed) RICHARD MAPOLISA.

Recorded by: T. BRIAN McILVEEN. Witness/ Interpreter: A/D/Sgt. HODE. Witness A/D/Sgt MBANGA. At the C.I.D. Offices, Salisbury. On the 29th June, 1963, at 7 p.m. Language used Shona/English.

IN THE PRIVY COUNCIL No.19 of 1964

ON APPEAL

FROM THE FEDERAL SUPREME COURT
OF RHODESIA AND NYASALAND

BETWEEN :-

RICHARD MAPOLISA
(Accused) Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

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Solicitors for the Appellant

Charles Russell & Co.
~~COWARD, CHANCE & CO.~~ 37 Norfolk Street
~~St. Swithin's House,~~ Strand,
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