

16 of 1977

IN THE PRIVY COUNCIL

No. 33 of 1976

O N A P P E A L
FROM THE COURT OF APPEAL OF BARBADOS

B E T W E E N :

DAVID ADOLPHUS WALTON

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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1.

IN THE PRIVY COUNCIL

No. 33 of 1976

O N A P P E A L
FROM THE COURT OF APPEAL OF BARBADOS

Between:

DAVID ADOLPHUS WALTON

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

No. 1

In the
Supreme Court

Indictment

—
No. 1

BARBADOS

Indictment
(undated)

THE QUEEN

v.

DAVID ADOLPHUS WALTON

THE SUPREME COURT
(High Court)

10 David Adolphus Walton is
charged with the following offence:

STATEMENT OF OFFENCE

Felony

Murder

PARTICULARS OF OFFENCE

David Adolphus Walton, on the
2nd day of February, 1974, in the parish of St.
Michael in this Island, murdered Cynthia Allder.

Sgd.) C.A. Rocheford,
Registrar.

(Sgd.) C. Straughn Husbands
Director of Public Prosecutions.

20

2.

In the
Supreme Court

No. 1

Indictment
(undated)
(continued)

1974

APRIL SITTING

OF

THE SUPREME COURT
(High Court)

THE QUEEN

V.

DAVID ADOLPHUS WALTON

Indictment for

Murder.

10

Witnesses:-

1.	Irene Allder		
2.	Audrey Quintyne		
3.	Colin Braithwaite	(P.C.)	
4.	FitzHerbert Bostic		
5.	Oswald Taitt	(Sgt.)	
6.	George Phillips	(P.C.)	
7.	Ronald Branch		
8.	Randolph Welch		
9.	Oliver Broome	(Sgt.)	20
10.	Winston Craig	(Cpl.)	
11.	Mervyn Holder	(Insp.)	
12.	Stephen Catlyn		
13.	Arthur Ashby	(Dr.)	
14.	Hugh Franklyn	(Sgt.)	
15.	Herbertson Arthur	(Cpl.)	
16.	Kasturirangan Saranathan	(Dr.)	
17.	Anita Bradshaw		
18.	Margaret Watson		
19.	Cyril Stephen Nelson	(F.R.C.S.)	30
20.	Frederick Clare	(Dr.)	
21.	Grafton Lewis	(Sgt.)	
22.	Dennis Bailey	(F.R.C.S.)	

No. 22

3.

No. 2

Proceedings

Wednesday 16th October, 1974.

Remanet
No.22 of 1974.

In the
Supreme Court

No. 2

Proceedings
16th October
1974

THE QUEEN

Vs.

DAVID ADOLPHUS WALTON

Felony: Murder

10 Arraigned: Pleads not guilty.

Mr. Alleyne for accused.

Mr. Belgrave, Director of Public Prosecutions and
Mr. Durant for the Crown.

Accused informed of his rights.

Sworn together.

Indictment read to jury. Accused given into charge.

No. 40 Owen Holder selected foreman.

Mr. Belgrave opens.

No. 3

20

Colin Braithwaite

Prosecution
Evidence

No. 3

30

Colin Braithwaite, S.S.:- I am Police Constable
618 attached to Criminal Records Office, Central
Police Station. Duties include taking of photo-
graphs at scenes of alleged crime. On 2 February
1974 I went on duty to Waterforde Road, St.
Michael. Arrived there about 9.30 p.m. I met
Sergeant Lewis who spoke to me. And I saw motor
car M.8862 parked on left side of said road
facing Bridgetown. I took photographs and on my
return to Criminal Records Office I developed the
film used and kept the negatives in my possession
from which I later made enlarged photographs.
Negatives and photographs produced at Magistrate's

Colin
Braithwaite
Examination

In the
Supreme Court

Prosecution
Evidence

No. 3

Colin
Braithwaite
Examination
16th October
1974
(continued)

Court. Exhibit "A1-6". These are negatives. [Admitted in evidence]. And this is album containing photographs Exhibit "B1-6". [Admitted]. No.1 taken standing on Waterford Road, St. Michael and shows cart road leading to the Belle Plantation. Canes can be seen on both sides of the road and a sign post with a sign can be seen to the left.

No.2 taken standing on Waterford Bottom Road looking towards Bridgetown and shows where car M.8862 parked on said road and cart road seen in Photo No.1 can now be seen in the left foreground. 10

No.3 closer view of said car taken standing on said road and looking in said direction and also shows canes on both sides of road and a bridge to left side of car.

No.4 taken standing on said road looking in opposite direction and shows motor car M.8862 near said bridge and canes seen in Photo No.3. No.5 taken looking through the open left front door of motor car M.8862 and shows what appears to be blood on seat. A bag and other articles can also be seen on the seat. Photo No.6 taken looking through the open right front door of the said car and shows an empty cartridge case on the floor near the seat of the car. 20

Cross-
examination

XXD:- Other policemen at scene when I spoke to Sergeant Lewis. There were a number of other persons apart from police. I did not know any of the other persons apart from police. I do not know Anita Bradshaw. I do not know FitzHerbert Bostic. I do not know Ronald Branch or Randolph Welsh. I do not know Stephen Catlyn. I do not know Margaret Watson. I was not responsible for taking any sample of what appeared to be blood stains. 30

No Re-examination.

No.4

Irene Allder
Examination
16th October
1974

No. 4

Irene Allder

Irene Allder, S.S.:- I live at Waterford Housing Area. Cynthia Allder. She was my daughter. She used to live with me. She was 16 years. She had child. A year. Roy Quintyne father of child. 40

Roy Quintyne is in country at his mother. Child is (sic) In the
 with me. Leroy Allder. Roy Quintyne live at Parris Supreme Court
 Hill, St. Joseph. His mother's name is Audrey
 Quintyne. I last saw my daughter alive - date of Prosecution
 child's birthday - I saw my daughter the day before Evidence
 child's birthday alive. She was at me. She
 appeared to be well. She went at Roy Quintyne
 mother. To Audrey Quintyne's home at Parris Hill, No. 4
 St. Joseph. She went for the little boy's birthday Irene Allder
 cake. I left home around 9 o'clock. That's when I Examination
 last saw her. I returned home about 4 o'clock the 16th October
 evening. I did not see Cynthia then. Someone 1974
 spoke to me later that evening. Around 8. The (continued)
 following day I went to Jackson with little boy.
 I went to hospital the Sunday morning. I saw my
 daughter's body there. At hospital. In Mortuary.
 I saw Dr. Ashby I identified body to Dr. Ashby.
 The Monday. I do not know accused. I do not know
 anybody by name of David Walton. The last day I
 saw my daughter was a Saturday.

XXD:- My daughter was 16 going to 17. She born in
 October. Would have been 17 this October. Not
 sure. I would have to check.

Cross-
 examination

No. 5

No.15

Audrey Quintyne

Audrey
 Quintyne

Audrey Quintyne, S.S.:- I live at Parris Hill,
 St. Joseph, have son Roy Quintyne living with me
 now. Was not living with me on 2nd February
 this year. He was living in Carrington Village.
 I know Cynthia Allder. He was father of child
 from her. Leroy Allder. His birthday was 3rd
 February. 1 year on 3rd February this year. I
 was in Bridgetown on Saturday 2nd February this
 year. I returned home about 1.30. I saw Cynthia
 Allder at my home. She appeared well. She leave
 my home about 25 minutes after 5 the evening. I
 took her to the bus stop. I went to bus stop with
 her. Bus stop at Parris Hill. I gave her birthday
 cake for child and some potatoes and fruit and
 another cake. While at bus stop I saw Mr. Stephen
 Catlyn coming from direction where his mother lives.
 In his car. He stopped and I speak to him. Cynthia
 did not do anything. She got into car. He drove
 off in direction of Bridgetown with Cynthia in car.
 No one else in car. Cynthia sitting in front of
 car beside Mr. Catlyn. I saw her next in coffin.

Examination
 16th October
 1974

In the
Supreme Court

I know Catlyn for quite a long time.

Prosecution
Evidence

No.5

Audrey
Quintyne
Examination
16th October
1974
(continued)

Cross-
examination

XXD:- No questions.

No.6

No. 6

Stephen
Catlyn

Stephen Catlyn

Examination
16th October
1974

Stephen Catlyn, S.S.:- I live at Deacons Road, Deacons Farm, St. Michael, Salesman at Bottling Co. My mother is alive she lives at Parris Hill, St. Joseph. Rita Catlyn. On 2nd February this year I visited my mother. I used my car M.8862. I left up there about 5.30 or so with view to driving back to town. I know Audrey Quintyne. I saw her. She was by bus stop at bottom of Parris Hill. A young lady with her. Cynthia Allder. I stopped. I was at road junction. Natural stop. Audrey Quintyne spoke to me. I gave lift to other lady. Cynthia Allder. She got in my car in front seat. She had parcels. These placed in back of car. I had seen Cynthia Allder before. No one in car with me before. I picked her up to give her lift. She the only person in car with me when I pulled off. I drove straight down and came to Waterford Bottom. On reaching Waterford Bottom I saw a motor car which had stopped. Two women from that car - I saw them, they were by side of car that had stopped - the younger lady signalled me to stop. I stopped. In front of car that was stationary. About 50 to 60 ft in front of car. Car that was stationary was S.134. The younger woman she walked towards the car. She spoke to me. I opened the left rear door for her. She got in. The other lady also walked towards car and got in back seat. Young lady sat in right rear, and the older lady sat in left rear. I saw driver of car S.134. I

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see him now sitting in dock. Accused. He was in his car. He also walked towards my car. He got to car just before the last lady that got in closed door. He spoke to me. He asked me where I was going. I said "to town." He said "give me a lift," the older lady she spoke. He was at the car door. She said "What lift do you want". What he would do with his car. He did not reply. I said "man close the door and let me go on where I am going." I saw movement from his right shoulder. I am speaking about accused. And I saw his hands pointing in my direction. I realized it was gun that was being pointed at me. And I heard an explosion. I felt a burning in the upper part of my neck - the left part of my neck. I said "Oh my Lord this man shoot me." I got out of my car and I ran in the direction from which I came - back up Waterford Road to Hothersal Turning. I saw car coming and I signalled him to stop. I got into car. Mr. Bostic driving car. FitzHerbert Bostic. I spoke to him. He drove me to Queen Elizabeth Hospital. He was alone. I was bleeding from my neck. I went to Hospital. I was treated in Casualty and detained in Ward A3. I remained there 4 weeks and 2 days. Mr. Bailey performed operation on me. On my neck. I don't remember date. I am alright now so far. Bostic came down Waterford Road, Station Hill. He drove past car S.134 and my car. When I passed in Bostic's car I saw two women and accused in struggle. I heard two explosions. I heard the one that went into my neck first. When I heard second I was on my way running. When I was signalled to stop and I stopped, Cynthia Alder was alive and well. I saw her in Casualty, she was brought there when I was there. She appeared to me dead. Exhibit "B" No.2 - Car parked on road. I recognise Waterford Road. Seems to be my car. Exhibit "B". Exhibit "B" No.3. I see my motor car. A Morris Oxford. No. 4 photographs of same car from front.

In the
Supreme Court

Prosecution
Evidence

No. 6

Stephen
Catlyn

Examination
16th October
1974
(continued)

XXD:- I had never seen accused before this day. I had not seen before this day either of two ladies who flagged me down and got into back seat of car. I did not say anything to the younger lady after the accused came up to car. I did not say anything to other lady after accused came up to car. The conversation I have spoken about was all the conversation as far as I remember. You could say accused spoke in ordinary tone of voice when he asked me where I was going. That was all he said.

Cross-
examination

In the
Supreme Court

—
Prosecution
Evidence

No. 6

Stephen
Catlyn

Cross-
examination
16th October
1974
(continued)

He was at the back left rear door. I was still looking at him when I answered him. I had not switched off the engine that I remember. I did not rev up the car or do anything of that nature. I would say that my tone of voice was an ordinary tone of voice when I told him to shut the door and let me go where I was going. I was not in any way abusive or aggressive towards him. There was not as far as I remember any attempt to close the door after the second lady got into car. From the position he was in, it appeared as if he wanted to enter the car. I was looking at accused at time of first explosion. It was a bright evening. First indication that he had gun was movement from the shoulder. He was in position something like this [demonstrates] and he went something like this [demonstrates]. I did not see his hand go in a pocket or anything of that nature. I don't know if he had anything in his hands when he first came to the car. In the shoulder movement, it seemed as if he was taking something from his pocket. I do not know anything about guns. I probably have heard of a cocking of a gun. I don't know what it means. I don't remember hearing any clicking sound or noise after the shoulder movement. I was running away from the car when I heard second explosion. I don't know exactly how far I was from car. Within a minute or two before I got into Bostic's car but I can't be sure about the time. When I got out of my car accused still by the rear door and the ladies still sitting in car. I did not observe what was happening until I passed in Bostic's car. When I passed in Bostic's car the accused and the two ladies were at the rear of my car.

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No Re-examination.

No. 7

Randolph
Welch

Examination
16th October
1974

No. 7

Randolph Welch

Randolph Welch, S.S.:— I live at 43 Culloden Road, St. Michael. I work at Acme Manufacturing Co., St. Michael. 2nd February this year about 5.45 p.m. I was in car along Waterford Bottom. Car driven by Ronald Branch. St. Elmo Holder also in car. Only person in car apart from two of us. Car passed down Waterford Bottom. I saw two cars parked on left hand side of road. When I got by cars I saw

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some people in road. Two women and one man. It was a scuffle going on at time. Between younger of women and man. Man is the accused. They were by side of car and the man seem to be trying to get the lady into the car. He was holding her. They were scuffling. The older of women spoke to me. She asked us to help her. He would have heard. Our car had stopped and Branch and I got out of car. It was at this stage that the lady asked for help. 10 The older lady had flagged us down. I asked her if she knew the young man. She replied that he was trying to kill the young girl and to help her. I repeated the question. She then said the young lady was her daughter. She kept repeating help. Nobody tried to help at that point. Myself and Branch eventually went and separated the two people. At that time they were at side of cane ground the man had his back to the ground, the young lady's back was to his tummy and his hands were round her neck. He had her in a sort of lock like that. 20 [Demonstrates]. Her face rather distorted. Her eyes bulging like. I spoke to the young man and told him not to bring himself in trouble. I and Branch released his hands from girl's neck. I took him to car at back S.134. I asked him if this was his motor car. He did not answer. I told him to sit down and cool off. He immediately got into car and drove off. Alone. I looked in front. I can't remember number of this car. 30 There was a young lady in front seat of car. Left front. I noticed her head was leaning back and a white substance coming from side of her mouth. When I went round to side of car I notice there was blood in seat. I saw blood coming from wound behind the head. Her head. I lifted her from car and put her into Branch's car. I spoke to Branch and we drove off. The young lady with whom he was scuffling, she got in car as well. We went to Hospital and girl taken to Casualty. 40 Young lady with whom he was scuffling walked into Casualty. Other girl went in on stretcher. I saw injured girl on following Monday 4th February at Mortuary. At 2.30 in afternoon. Appeared to be dead. Exhibit "B" No.3 - the road looks familiar. I don't recognize anything else in the photograph. No.4 I can't recognise anything in photograph. I can't remember if I saw anything looking like that car. Number of Branch's car M.2238. I don't remember number or sort of car. 50 I don't know either of parties before that afternoon.

In the
Supreme Court

—
Prosecution
Evidence

No. 7

Randolph
Welch

Examination
16th October
1974
(continued)

In the
Supreme Court

Prosecution
Evidence

No. 7

Randolph
Welch

Cross-
examination
16th October
1974

XXD:- I saw another car in sight. Ahead of me. Travelling. Do not recall number of that car. I saw that car stationary. Nearly opposite the two cars. Parallel. When I reached scene all parties in standing position. While I was there they fell to the ground. I did not see any gun while I was there. I did not at any time hear the accused say anything. Accused appeared to be very angry. He said nothing at no stage. He did not struggle with me when Branch and I released his hands from round the girl's neck. Had much difficulty in releasing the arms. They were firmly locked. I asked Branch to take the girl away and I took him in that direction. Indicates. He did not seek to go towards the girl again when I was taking him in other direction. I held him. I held him up until time we reached car S.134. I alone lifted girl out of car. I alone lifted her into Branch's car. When I reached car she was in half sitting, half lying position. I did not examine the car. I did not look around it.

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No Re-Examination.

No. 8

Ronald Branch

Examination
16th October
1974

No. 8

Ronald Branch

Ronald Branch, S.S.:- 23 years old. Live at Two Mile Hill, St. Michael. I work at Acme Manufacturing Co. Grazettes. I know Randolph Welch. He works there. I own motor car M.2338. Once owned it. February 2 this year I was driving it along Waterford Road going towards Combermere. Welch and St.Elmo Holder in car with me. I passed along Waterford Bottom. I saw 2 cars parked in Waterford Bottom. On left side of road in direction of town. I saw 3 persons. 2 ladies and a gentleman. Accused. They were standing alongside the 2 parked cars. I stopped. A struggle was going on and more or less one of the ladies rushed for help. She flagged me down. I stopped car. Got out. Mr. Welch got out. Holder got out. Struggle going on - all locked together. Three of them. One of the ladies separated. The one that put up hand. Accused had other woman holding round her neck. She was the younger of the two women. We tried to free the girl. From the struggle. Mr. Welch held on one hand, I the other, the accused hands.

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Eventually the girl was released. Accused and girl were in the gutter. Lying. They were in that position when we released her. He walk off and got in car S.134 and drove in direction of town. Nobody with him when he drove away. I saw girl more or less sitting in one of parked cars. I don't remember number of car in which she was sitting. Her head backwards, her mouth open and her eyes closed. I noticed blood in the region of her back. Blood coming from the side of her neck. She was taken out of car. Mr. Welch lifted her out of car, put her in my car and I drove her to Queen Elizabeth Hospital. Young lady got into my car. Injured girl taken into Casualty. Other girl walked in. Older lady left behind. Exhibit "B" No. 4 I saw something - car looking like this. From which took injured girl.

In the
Supreme Court

Prosecution
Evidence

No. 8

Ronald Branch

Examination
16th October
1974
(continued)

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XXD:- Struggle going on when I reached scene. Accused and younger lady fell in gutter. I was not in my car when they fell to gutter. I had got out of car. I don't quite remember if they were facing each other. Accused did not say anything. After accused hands released, he walked off by himself and went to car. Girl got into my car and went to hospital. I can't remember if she went straight to my car. I can't remember escorting her to my car. Welch lifted girl from one of cars into my car. Welch did not walk with accused to his car S.134 as far as I remember. I can't remember how accused looked when he was on ground struggling.

Cross-
examination

No Re-Examination.

No. 9

Anita Bradshaw

No. 9

Anita
Bradshaw

Anita Bradshaw, S.S.:- I live at Prospect, St.James. I have daughter Margareta Watson. She lives there with me. She is 19 years old. I know accused David Walton. I have known him from the time he was child. About 12 to 14 years. He and my daughter girl friend and boy friend. About 3 years. He accustomed visiting Margareta at my home. Saturday 2nd February this year. Went to Garrison. Work at Queen Elizabeth Hospital. Left work about 3.30. Got to Garrison between 4 to 4.30. Left Garrison before races finish. Remained there about

Examination
16th October
1974

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In the
Supreme Court

—
Prosecution
Evidence

No. 9

Anita
Bradshaw

Examination
16th October
1974
(continued)

an hour and a half. Left Garrison between 5 and 6. We left by David's car. Car of accused. Accused in car when we got to it. Margaret and I got into front seat. He drove car away. On our way to St. George. By David's grandmother. He said he was going there. Things we won at races David had taken to car. We did not go to David's grandmother. He said he did not think his grandmother would be home. He went in another direction and was heading for home. Passed along Waterford Bottom. When we get - after he swing at cart road which led to Waterford Bottom, Margaret told him to stop. She told him he was driving fast as he was coming through cart road. They were not quarrelling as they were driving along cart road. He stopped. She turned off the car and she told me to get out. She had the keys in her hand. She got out of car. I got out first. I took the keys from her after I got out of car. I gave keys to David. He was in his car. Driver's seat. Before I left car I asked accused if he knew he and Margaret were having noise, why they pick me up. He said no, they had no noise. After we got out of car Margaret walked in front of me, while I was talking to David. I saw car coming down towards road going towards Bridgetown. I saw Margaret flag car. It stopped. Driver of car and lady sitting to front. /Driver of car there - Mr. Catlyn/. Girl in car in front seat. I did not speak to Mr. Catlyn. Margaret spoke to him. Margaret got into back seat and called me. I got in. After I got to car he was behind me. I heard his voice and I saw him. He was at car door. Same door through which I and Margaret got in. Margaret got in back seat. To right side. I sat to left. Accused asked Mr. Catlyn where he was going. He said to Bridgetown. Accused said to drop him in town too. I spoke to accused. I asked him what he would do with his car. He said he was going to leave it up there. I told him that that would not make sense. I told accused to drive hom, we would catch the bus and come home. Accused started to get in car. From the left side. I asked him what stupidity he doing. I turned to get out of the car. I heard two explosions from a gun. I did not see gun at that time. After. It was in hands. I heard Mr. Catlyn say "Oh God, I get shoot". I think David still in car. Catlyn got out and went towards country walking. Margaret still in car. Sitting. David get out and went round to right hand side of car.

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He take out Margaret. He opened door. He was
 trying to get her in his car. She was pulling back.
 I don't know if he was pulling her. The two of
 them start struggling. They got up and fall on
 cane bank. David had his hands in Margaret neck.
 As if he was choking her. I saw Margaret had her
 hands around David. She was facing him. Her hands
 behind David's back. At that time I saw gun. It
 was in one of four hands. I took the gun and I
 10 threw it in the canes. The left hand side of the
 road. They fell down after I threw away the gun.
 About 5 minutes after I threw away the gun, he had
 his hands around her neck. After I took away gun,
 he was still trying to get her in car. A car
 stopped. I spoke to someone in car. They went
 and part the two of them. They take his hands and
 took him off her. He went towards his car. I did
 not see him after. Car S.134. I missed him and
 20 car. Mr. Catlyn's car still parked. Girl in car.
 I looked in car after. I saw girl. As if she was
 sleeping. She was propping against car door.
 They took out of car and took her away in their
 car. My daughter went to Hospital in same car.
 I did not remain there till police came. I went
 to Police Station District "A". I made report.
 I accompanied police back to Waterford Bottom the
 same night. I search for the gun. And the police
 search for the gun. A gun found in the canes.
 It was pointed out to me. A police pointed it out.
 30 I was in canes. When I saw gun it was in canes.
 I do not know police officer who found it. If I
 see him I could recognize him. I put my signature
 on gun. On the handle. I wrote my name on the
 piece of paper and it was put on gun. I tried to
 mark it with ice pick. I did not succeed.
 Exhibit "D" I can't say whether this is gun. It
 does not have on initials I put on it. Exhibit "E"
 - I see "A. Bradshaw" on it but the last time in
 Court I could not see "A. Bradshaw.". I did not
 40 have on my glasses last time in court. I did not
 hear anything else after I heard explosions. I
 did not see accused with gun before or after
 explosions. I saw accused hand towards Margaret
 head but I can't remember how it was. Exhibit "B"
 No. 4 I recognise Mr. Catlyn's car. Exhibit "B"
 No. 5 I see handbag. I don't know whose it is. I
 don't know if he had anything to drink at the
 Garrison. I visited him since he was at prison.
 About twice. Last time a good time. I don't know
 50 if Margaret visits him.

In the
Supreme Court

—
Prosecution
Evidence

No. 9

Anita
Bradshaw

Examination
16th October
1974
(continued)

In the
Supreme Court

—
Prosecution
Evidence

No. 9

Anita
Bradshaw

Cross-
examination

16th October
1974

XXD:- I could not see "A. Bradshaw" as clearly as it is now. I don't know if it is my hand writing. I did not look at gun closely. At Garrison accused decided he was going to pass by his grandmother. He drove towards grandmother. He was around Charles Rowe Bridge when he decided she would not be there then. When he was coming through cart road, he said he was not sure where he was. He said car only going at 25 to 30 miles. In reply to a suggestion that he was going fast. At no time was there any quarrel. He used to visit my home. Relationship between him and my daughter very good. Quarrels between them sometimes. He had not beaten her nor had they fight in my presence. I was at work once when David rang and told me the two of them had a noise. I have never heard her accuse him in his presence of beating her. Once he came and told her he was sorry that he didn't know what he had done and quickly the two of them made it up. She never tell me what he was talking about. To my knowing he was the only boy friend my daughter had. To my knowing she had no close friendships with other men. She works. At Wildey. Not working before this incident. That quarrel the only one I know of. They never used to tell me. She never said why she was taking out switch key. When car stopped after coming out the cart road, it had only just come out the cart road. She did not say anything to him when she got out of car. I don't remember what he said when I heard his voice behind me as I was going to Catlyn's car. He was in car sitting down and I took keys from her and put them in car. I don't know if they dropped or not into his hands. When I entered car I did not attempt to close door. He was at door. After I asked him what foolishness he doing and what would he do with his car, I don't recall Catlyn saying anything. Accused did not say anything. My words asking what foolishness he doing and what he would do with his car, were the last words in car before explosion. Neither accused nor Catlyn had raised voice in anger. Girl in front beside Catlyn she did not speak. My daughter did not speak. Both explosions quick behind one another. When second explosion, Catlyn still in car. After second explosion, Mr. Catlyn got out and went off. Accused came round to the rear side of car. Throughout this time I did not see anything in accused hand. Accused looked calm. Kind of calm when he was trying to

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take her to car and she was pulling away from him. I was facing country when I threw gun to the right hand side. When I went back with police and I was shown object, it was in same direction as that in which I had thrown gun.

No Re-examination.

In the
Supreme Court

—
Prosecution
Evidence

No. 9

Anita
Bradshaw
Cross-
examination
16th October
1974
(continued)

No. 10

Margareta Watson

No.10

Margareta
Watson

10 Margareta Watson, S.S.:- I live at Prospect St. James, with my mother Anita Bradshaw. I 20 years old. I know accused. Was my boyfriend. About 8 years. I have not visited him in prison. I guess my mother visited him. I know Yvette Cyrus. One of his girlfriends. She has a child for him. I have no children for him. Saturday 2 February this year. I went to races alone. I saw David there. About 3.30, quarter to four. I saw my mother. About 4 o'clock. I can't remember exact time I left Garrison. Left between 5 and 6. In 20 his motor car. My mother left too. We were sitting in front seat. He drove car. Had some Guinness and juice we won at Garrison. David took them to the car. When next I saw him he was in car. He was sitting down. Alright. I don't know if he was drinking liquor. Left Garrison and set out for home. Said he wanted to go to his grandmother in St. George. After he left Garrison. He did not visit his grandmother. Said he did not think she was home. Car was at 30 Charles Rowe Bridge when he said he don't think his grandmother was home. He said he was going home and he turned off road. Ended up Waterfords Bottom. Through cart road. We did not have any noise or argument. I spoke to him about his driving before he got into the cart road. I asked him why he was taking that road. He said his petrol tank was empty and he was taking short cut. I stop car at Waterford Bottom. I turn off engine. I had keys in my hand. My mother took 40 them from me. She put them in the car. I can't

Examination
16th October
1974

In the
Supreme Court

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Prosecution
Evidence

No.10

Margareta
Watson

Examination
16th October
1974
(continued)

remember whether he was in car or outside. I was outside of car. I went to gentleman's car that had stopped. It was going in direction of Station Hill. Mr. Catlyn. Car stopped because I stopped it. I spoke to Mr. Catlyn. I got into his car. I opened door. Back door to left side. My mother got in too. A lady was in car. Sitting in front seat. I didn't know her condition when I got in car. Accused came to Mr. Catlyn's car. Back. Same side. He came and asked him how far he was going. Something like that. Mr. Catlyn tell him he was going to town. Accused said he wanted to go to town. I think my mother spoke to accused. I can't remember what she said, I think Mr. Catlyn spoke to accused. I can't recall what. Accused outside of car when Mr. Catlyn spoke to him. I heard two explosions and I hear Mr. Catlyn say he got shoot. He got out of car, and stopped another car and got into it. He went back from car - walked in direction he was coming from and stopped car. I saw him in car. I saw Catlyn in car that passed. A man was driving car. Another car passed, one car stopped. I don't know why it stopped. I got out of Catlyn's car after he left. David came round to the door I was at - right side - and pulled me out. He opened it - he opened door and pulled me out. He did not say anything to me. I do not know what he was trying to do to me or where he was trying to take me. I did not have a gun. I did not see anything in his hands. I did not see gun in car that afternoon. He had me holding around my neck I was holding him. Because he was trying to pull me from the car. When he got me from car, we were in road. After he got me out of car he was holding me round my neck. My mother was outside of car too. I don't know if my mother threw a gun in the canes. I held accused around his waist. Because I was trying to get him to let me go. I pulled his hands from off me and I pushed them behind him. I don't know what he was trying to do to me. His hands were removed from round my neck. I don't know by whom. I was lying down on a bunch of grass when they were removed. I don't know how I got there. I became unconscious. I guess because he had his hands around my neck. I don't know what became of David. I left Waterford Bottom by car. I walked to car. I was not unconscious then. When I got in car, girl from Catlyn's car in that car. She was laying down. Appeared to me to be injured. I saw blood on her neck. I don't know if

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blood on her neck when I got into Catlyn's car.

Adjourned at 12.45 p.m. Jury permitted to separate under caution.

Resumed at 2.03 p.m. Jury all present.

In the
Supreme Court

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Prosecution
Evidence

No.10

10 Margareta Watson (still on oath):- Went to races about 1 o'clock. Accused was at home. When I went to races. Relationship between us as usual, good. No problems. No jealousy. We did not have any argument. He was acting funny. He said he could not remember the road. That is why I took the keys out of car. I can't remember if my mother spoke to him. She could have said that if I and accused were going to have noise, why did he take her. No I don't think I spoke to him for driving fast. I intended to leave accused in Waterford Bottom and go home. He was acting funny. I did not like the way he was acting. We had disputes. I don't know how many. Not a lot. I don't know. Anything. Yvette Cyrus. Yes. 20 I know Yvette Cyrus. I suppose he was courting her at same time he was courting me. Child from him. - I don't know how old it is. I know where accused grandmother lives. I been there with him. Mrs.Hunte. She lives in St.George. Round Charles Rowe Bridge.

Margareta
Watson

Examination
16th October
1974
(continued)

30 XXD:- He expressed jealousy on his part. I have not had any other boy friend but him. No other close male friend. I did not go to Cinema with other boys. I have never done anything that should cause him to show jealousy. He has beaten me on some occasions before this incident. True to say that on occasions when he beat me he expressed subsequently total absence of knowledge of having beaten me. He usually said he didn't know what happened. I continued the friendship. I continued to be friendly with him because apart from occasions when he would beat me, he was a nice chap. I have knowledge that he suffered from black outs. Sometime ago - before incident - he 40 complained of insomnia - having difficulty in sleeping. He has complained of very severe headaches. He lived near me. Same district. I never asked him about burning new curtains his mother had made. I have passed Waterford Bottom with him before this day. On way to Prospect where both of us lived. On several occasions. On these occasions he had no difficulty in knowing the road to Prospect. I believed him then that

Cross-
examination

In the
Supreme Court

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No.10

Margareta
Watson

Cross-
examination
16th October
1974
(continued)

he did not know the road. Catlyn and I did not have any conversation after accused came up to door. I did not hear Catlyn abuse accused or say anything in aggressive manner to him. Young lady sitting beside Catlyn did not say anything at any time. I can't remember accused saying anything else - after asking Catlyn for lift. I don't know at what stage Catlyn left car - whether after first explosion or after both. At no time did I see accused with gun. When he pulled me out of car he was not saying anything. I can't say that he appeared angry. When I recovered consciousness, he was not there. 10

Re-examination

RE-XD:- Last time accused beat me, I can't remember. I can't remember the second last time. He did not beat me on afternoon of 2nd February 1974. He used to beat me with his hand. I did not seek medical attention at any time for beatings. I was not afraid of him. I loved him. I don't know meaning of insomnia. He complained to me of difficulty in sleeping. He has slept at my house whole night. Not regular. I don't know how many times a week. He complained more than once difficulty in sleeping. I didn't see him after 2nd February, 1974. He used to suffer from headaches. He attended Hospital and Dr. Hardial. I went with him. I can't remember exact date when he last went for treatment for headaches. Accused had black outs. Happened already when I was with him. Twice in my experience. I can't remember exact time. I did not write out time. He complained of his eyes getting cloudy and then fell down. I can't remember how long he was down. He did not do anything. Gentleman next door gave him water. Mr. Hinds. He never had a black out after he beat me. I know his mother. Alive. I don't know if she ever treated him for black outs. I never discussed it with his mother. If he had asked me to marry him I would have. 20 30

No.11

Herbertson
Arthur

Examination
16th October
1974

No. 11

Herbertson Arthur

Herbertson Arthur, S.S.:- I Corporal of Police attached to District "A" Station. On 2nd February this year I saw Anita Bradshaw at District "A" Station. She made statement to me. I accompanied her to Waterford Bottom arriving there about 6.10 p.m. She made a further statement to me and I saw 40

that motor car M.8862 was parked on left side of Waterford Road with the front of it facing the city. As result of statement she made I went into field of canes also on left side of Waterford Road going towards City and after searching I found a .25 pistol in the same field of canes. Anita Bradshaw was present. She looked at the pistol and made a further statement to me. It was a right arm Italian made pistol automatic with a white bone handle. Serial number 89796. The action of the gun was cocked. There was an empty .25 shell in the breach of the gun. It was after I pulled back the breach the empty shell came out. I took the magazine from the gun and saw that it contained four live rounds of .25 ammunition. I smelt the gun. There is a strong smell of cordite. Anita Bradshaw also in canefield. Also present during examination. I kept gun and ammunition in police custody. About 7 p.m. I went to Queen Elizabeth Hospital. I saw Sergeant Taitt there and I had a conversation with him. I returned to Waterford Bottom 9.30 p.m. Same night. There I saw Station Sergeant Lewis. The photographer P.C. 618 Braithwaite accompanied me. I had conversation with Sergeant Lewis. I took measurements. I observed cart road behind motor car M.8862. 28 ft. from the rear of car to where gun was found. 191 ft from rear of car to cart road. Cart road leads to the Belle Plantation. Later that night I returned to District "A" Station with Anita Bradshaw. Anita Bradshaw wrote her name on two pieces of paper. I wrote my initials on both pieces. One of the pieces of paper was stuck on to the gun. While the second piece was stuck on to the magazine. Exhibit "D" - I recognize this as gun I found in field of canes on 2nd February this year. By Serial number 89796. Piece of paper I stuck on not here now. Exhibit "E" - this is magazine I removed from same gun. Piece of paper on it. The initials "H.A.". Name A. Bradshaw written on it. Exhibit "B" No. 3 this photograph shows motor car M.8862 parked on left side of Waterford Road. Car parked in this exact position when I first saw it on 2nd February. Gun found about here in that field of canes. Indicates by pointing to photograph. There were 4 live rounds of .25 bullets in magazine when I examined it. Exhibit "F1 - 3". These three live rounds look similar to the four rounds which I removed. Exhibit "G" and "G1". This seems part of same live round removed from gun on 2nd February - top

In the
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Prosecution
Evidence

No.11

Herbertson
Arthur

Examination
16th October
1974
(continued)

In the
Supreme Court

Prosecution
Evidence

No.11

Herbertson
Arthur

Examination
16th October
1974
(continued)

Cross-
examination

part and bottom part. Exhibit "H". This shell looks similar to the one I found in the breach of the .25 gun. These articles kept in police custody. At 11.30 a.m. on 4th February 1974 I handed the .25 pistol, the magazine, the 4 live rounds of .25 ammunition and the .25 shell to Inspector Holder at Central Police Station and we had a conversation. Same gun I found in field of canes that evening.

XXD:- I was not involved in interviewing accused at any time. I did not check his car S.134. The breach of the gun was pulled back and the empty shell was blocking it from either going forwards or backwards. That is what I meant when I said the action was cocked. I am not really familiar with that type of gun.

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No.12

Grafton Lewis

Examination
16th October
1974

No. 12

Grafton Lewis

Grafton Lewis, S.S.:- I am Station Sergeant of Police attached to Criminal Investigation Department, Central Police Station. About 8.30 p.m. 2nd February this year I went to Waterford Bottom Road St. Michael accompanied by Anita Bradshaw of Crusher Site Gap, Prospect, St. James. She made statement to me. On arrival at Waterford I saw motor car M.8862 parked on the left side of the road facing Station Hill, St. Michael. Corporal Arthur and Constable 618 Brathwaite joined me at Waterford Bottom Road about 9.30 p.m. same night. I spoke to Constable Brathwaite. He took photographs. I assisted Corporal Arthur in making measurements. I examined motor car. I saw some stains resembling blood stains on back of front seat on the left. I saw a .25 spent cartridge on the floor of motor M.8862 in front of the driver's seat. Exhibit "B" No.6 - I see spent cartridge on floor in front of driver's seat. Car M.8862. I took possession of spent cartridge and on 5th February I handed it over to Inspector Holder. Exhibit "J" - this is said .25 spent cartridge which I found in front of car and handed to Inspector Holder.

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XXD:- No questions

In the
Supreme Court

Prosecution
Evidence

No.12

Grafton Lewis

No. 13

No.13

George Phillips

George
Phillips

Examination
16th October
1974

George Phillips, S.S.:- Constable No.446
attached to Holetown Police Station. On 2 February
this year about 7.16 p.m. I was on duty. In
Police Motor Car MF 940 along Vuaxhall Road, St.
James. I was travelling in northerly direction.
I saw motor car S. 134 ahead of me going in the
said direction. When it got by Holetown Police
Station it turned left into station yard and
stopped in front of the Superintendent's office.
I turned in behind the said car. I stopped and
got out and went back to Driver of S.134. The
accused was driver. Lady sitting in back seat of
car with child. When I got to side by accused he
said. "I heard the police is looking for me." I
then asked him if he knew what they are looking
for him about. He said "All I know is I went on
the Garrison with my girl friend and her mother.
While there I drank about three or four Guinness
Stouts. After drinking these stouts I started to
feel badly and I told my girl I was going into
the car and lay down. While walking across the
pasture I kicked something in the grass and on
turning round and searching in the grass I saw it
was a gun. I took it up, carry it to the car and
place it under the driver's seat where I sit.
About half an hour afterwards my girl friend and
her mother came and got into the car. I drove off
and decide I was going for a drive before I go
home. When I got in Waterford I stopped the car.
My girl friend and her mother thought I was going
to do something funny. And they got out the car.
I don't know what happened after that." After
that I asked him to accompany me to the station
office. When he got into the station office I
spoke to Sergeant Broome who was in charge at the
time. Sergeant Broome, accused and I drove to
Crusher Site Road, Prospect, St. James where
Sergeant Broome spoke to Corporal Craig and

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In the
Supreme Court
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Prosecution
Evidence

No.13

George
Phillips

Examination
16th October
1974
(continued)

Cross-
examination

Detective Constable Layne. Sergeant Broome got out of car and I drove on to District "A" Station Hill with accused, Corporal Craigg and Constable Layne.

XXD:- Accused told me it was a gun, not a gun with a wood handle. I remember giving evidence in preliminary enquiry before Magistrate Springer. I now remember telling Magistrate that he said a gun with a wood handle.

No.14

Oswald Taitt
Examination
16th October
1974

No. 14

Oswald Taitt

Oswald Taitt, S.S.:- Sergeant of Police attached to C.I.D. 2nd February this year. I went to Queen Elizabeth Hospital. I saw Dr. Saranathan. He had conversation with me. I spoke to Stephen Catlyn. I also spoke to Corporal Arthur. I went to District "A" about 8.35 same night. I saw accused. Corporal Craigg with him. I told accused that Corporal Craigg and I were policemen in plain clothes, and that I was carrying out investigations surrounding the death of Cynthia Allder who died after a shooting incident which occurred on Waterford Bottom Road the same date in which he was involved. I cautioned the accused. The accused said "I found a gun at the Garrison this evening when I went for my girl friend Maggie and her mother. And when I got to Waterford Bottom bringing them down I stopped and Maggie and her mother got out and stopped a car with a man and a woman in it and get in. I went to the car and fire off some shots in it and I ain't know who get shoot." I told the accused it was intended making a written record of what he had said and that he could write it himself or get someone to write it for him. Accused told me to write the statement. I wrote down caption on statement form after which I read it over to accused and also gave it to him

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to read. The accused looked at it and signed his name. I then wrote down what accused said on some statement form after which I read it over to him and also gave it to him to read. Accused looked at it and I told him he could make any corrections alterations or additions he wished. He said he had none to make and he signed his name. I then dictated a certificate which the accused wrote out himself on the said statement form after which he signed his name. Corporal Criagg and I also signed our names on the said statement form. No violence used. No promises held out. Did not promise him anything. Corporal Craigg did not promise him anything.

In the
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Prosecution
Evidence

No.14

Oswald Taitt

Examination
16th October

1974

(continued)

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No objection to the admission of the statement

Exhibit "C" - produced and read.

2.2.74 about 7.15 p.m. I formally charged accused with murder of Cynthia Allder. I cautioned him. He made no reply. I gave him copy of charge and informed him of his rights as a prisoner. He made no request. He was calm. On 4.2.74 about 2.45 p.m. I went to mortuary at Queen Elizabeth Hospital and I was present when Dr. Ashby performed post mortem examination on dead body of Cynthia Allder. I saw Dr. Ashby remove bullet from body of girl. He put it in container and gave it to me. I handed it over to Inspector Holder.

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Exhibit "K" - this is same bullet. Exhibit "M" - this is container it was in.

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XXD:- I did not make three attempts at writing statement for accused. I wrote one statement. Not true that another Police Sergeant, apart from Craigg, entered room when statement being recorded. Not true that Sergeant entered, looked at statement and said that was not good enough. No one came into room when statement being recorded. No one said to accused "You went to the car and fired off some shots." Accused said "I went to the car and fired off some shots." Not true that I put these words into accused mouth after Sergeant suggested that is what happened. He said "I ain't know who got shot." He never said that he did not know what happened after his girl friend and her mother got out of the car. Corporal Arthur had already made statement to me. I never asked accused what he had

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Cross-
examination

In the
Supreme Court

Prosecution
Evidence

No.14

Oswald Taitt

Cross-
examination
16th October
1974
(continued)

done with the gun. I never told accused that I would carry him to closet, and that when I finish with him, he would tell me more than he wanted. Accused did not tell me that was not what he had told me, when I gave him statement to sign. He never told me he did not wish to sign because it was not what he had told me. I did not speak to Police Constable George Phillips that evening before I saw accused.

No Re-Examination.

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No.15

Winston Craigg

Examination
16th October
1974

No. 15

Winston Craigg

Winston Craigg, S.S.:- Corporal of Police attached to Criminal Investigation Department Central Police Station. On 2nd February this year I was attached to Holctown Police Station. About 7.30 p.m. that date I was at Crusher Site Road, St. James at home of accused. Police Constable Layne was there with me. Police van MF 940 arrived. Sergeant Oliver Broome in charge. Van came with Police Constable Phillips and accused. Sergeant Broome gave me certain instructions. I left in said vehicle with accused, Constable Layne and Constable Phillips and went to District "A" Police Station, I was present at District "A" that night when Sergeant Taitt told accused we were policeman in plain clothes and were investigating death of Cynthia Allder who had died as result of shooting incident that day. And that he was suspected of being involved and cautioned him. Accused said "I found a gun at the Garrison this evening when I went for my girl friend Maggie and her mother and when I got in Waterford Bottom bringing them down I stop and Maggie and her mother got out of the car and stop a car with a man and woman in it and get in. And I went to the car and fire off some shots in it but I ain't know who get shoot," Accused made statement which was recorded in writing by Sergeant Taitt. Accused signed it. Sergeant Taitt signed it. I signed it. Accused given chance to make corrections or alterations. No violence use, no threats made, no promises or inducements held out. Nobody but accused suggested to Sergeant Taitt what he should write. This is statement Exhibit "C". I was present when accused

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was charged. 11.15 p.m. same night by Sergeant Taitt. He did not say anything. He was told of his rights. He made no request.

In the
Supreme Court

Prosecution
Evidence

No.15

Winston Craig

Examination
16th October
1974
(continued)

Cross-
examination

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XXD:- Accused did say so that he went to car and fired off some shots but he don't know who get shoot. No other person present at any time when we were interviewing accused. Another Sergenat not present. No person said to accused "you went to car and fire off some shots," only one statement was taken. Two statements not discarded before that. Accused never said that what was on state- ment was not what he had said. I don't know whether at that stage the gun had or had not been found. Sergeant Taitt never asked the accused anything.

Adjourned at 3.55 p.m. Jury permitted to separate under caution.

Resumed at 17.10.74 at 9.09 a.m.

Jury all present

17th October
1974

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No. 16

No.16

Oliver Broome

Oliver Broome

Examination
17th October
1974

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Oliver Broome, S.S.:- Sergeant of Police attached to Central Police Station. 2nd February this year I was attached to Holetown Police Station. About 7.15 p.m. that day I was at Holetown Station Office. I saw Constable Phillips there and in his company accused. Constable Phillips made statement to me. I asked accused what was his name and his business at Station. I was dressed in plain clothes. Accused said "My name is David Walton and today I was at the Garrison with my girl friend drinking some Guinness and I started to feel bad and I told her I was going in the car to lie down. And while I was going across the pasture my foot hit something

In the
Supreme Court

Prosecution
Evidence

No.16

Oliver Broome

Examination
17th October
1974
(continued)

and when I look down I saw that it was a gun. I took it up and put it on the seat of the car and that is all I remember." I asked him if he would accompany me to District "A" Police Station to assist investigation of a matter. He said O.K. I got into motor car MF 940 along with accused. It was driven by P.C. 446 Phillips. On my way I stopped at Crusher Site, Prospect, St. James. I saw Corporal Craigg and Constable Layne. I spoke to Corporal Criagg. I got out of car. Corporal Craigg got in along with Constable Layne and they drove off which accused to District "A" Police Station.

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XXD:- No questions.

No.17

Hugh Franklyn

Examination
17th October
1974

No. 17

Hugh Franklyn

Hugh Franklyn, S.S.:- Sergeant of Police attached to Central Police Station. On 20th February this year I went on duty to Queen Elizabeth Hospital about 11.45 a.m. I spoke to Dr. Clare. He handed me a sealed jar containing a .25 bullet. Jar was transparent. I took the sealed jar containing the bullet to Central Police Station. I handed the sealed jar containing the bullet on next day to Inspector Mervyn Holder of Criminal Records Office. Exhibit "N" - this is jar. Exhibit "L" looks similar to bullet handed me by Dr. Clare. Similar to one I handed to Inspector Holder.

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XXD:- No questions.

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No.18

Cleveland
Husbands

Examination
17th October
1974

No. 18

Cleveland Husbands

Cleveland Husbands, S.S.:- I live at No.28 Walcott's Avenue, Bay Land. I am employed by Lynches at Modern High School as driver. I know Frederick Clare. Married to one of Lynches. Doctor. Used to live at Modern High School - residence in there. I remember 12th June this year. I drove Dr. Clare, his wife and mother-in-law to Seawell Airport about 8 o'clock in morning.

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He left airport in B.W.I.A. aircraft bound for Bahamas. I drove back Mrs. Lynch only to Modern High School. Still working there. Have not seen him since. Still away. Dr. Clare's wife still out of Island.

XXD.:- No questions.

In the
Supreme Court

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Prosecution
Evidence

No.18

Cleveland
Husbands

Examination

17th October
1974
(continued)

No. 19

Mervyn Holder

No.19

Mervyn Holder

Examination

17th October
1974

10 Mervyn Holder, S.S.:- Inspector of Police attached to Criminal Records Office. I have experience in use of firearms. I have made practical study of firearms. And I have had specialized training abroad in U.K. in this field. 19 years experience. I have been giving evidence in Courts of this Island and in Caribbean in connection with this type of matter. On 4th February this year Corporal Arthur handed me certain items. I made note. On 20 6th February Sergeant Taitt handed me a certain item. I made a note of that. On 21st February Sergeant Hugh Franklyn handed me a certain item. I made a note of that. I carried out tests on several Exhibits so received. I made notes of my findings. I have notes with me now. Corporal Arthur handed me one .25 right arm pistol and one .25 magazine with 4 rounds of ammunition in it. And one .25 cartridge case. I kept them in custody. I can identify them. No. on gun 89796. Exhibit "D" this is the gun Corporal Arthur handed me. Admitted. Exhibit "E" this is magazine. 30 Admitted. Exhibit "A" - this is empty cartridge case. Admitted. Exhibit "F" 1-3 these are three of four live rounds of ammunition which Arthur gave to me. Admitted. I carried out test on pistol. I recovered the bullets and cartridge cases. I compared these among themselves. I found that the gun consistently repeats its markings. I compared the bullets and cartridge cases with the cartridge case and the bullets submitted to me and I found significant similarities in the bullet submitted 40 when compared with the bullet from my test -

In the
Supreme Court

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Prosecution
Evidence

No.19

Mervyn Holder

Examination
17th October
1974
(continued)

sufficient to indicate to my mind that they were discharged from the same gun. Exhibit "D". I have also found significant similarities between the cartridge case submitted and the cartridge cases from my test. Also sufficient to indicate to my mind that these were discharged from the same gun. Exhibit "J" - this is .25 cartridge cases handed me by Sergeant Lewis. Admitted. I compared it with cartridge cases which I recovered from my test and I find significant similarities between this cartridge case and the ones from my test sufficient to indicate in my mind that they were discharged from right handed .25 pistol. Exhibit "D". My opinion cartridge discharged from that gun. One of live rounds of ammunition handed me by Corporal Arthur fired by me in pistol. Exhibit "D". Exhibit "G" and "G1" this is it. Two pieces bullet and cartridge case. Cartridge "G" and bullet "G1". Admitted. Sergeant Franklyn gave me jar with bullet. I carried out test on the bullet. "Exhibit I" this bullet Sergeant Franklyn handed me. Exhibit "N". This is container. Admitted. In my opinion that was discharged from the right handed pistol Exhibit "D". I examined the gun and I found that it was a 6.35 self loading pistol. It bore a legend "Made in Italy" and some Italian proof marks. It carried an extractor in the position of 9 o'clock. If one imagined that the breach face was similar to a clock. It had a firing pin which also acted as ejector. I fitted the .25 magazine into this pistol and it fitted precisely. This magazine had a capacity to carry seven cartridges. During my test I found that the gun occasionally jammed. What happens is that the extractor does not take the empty case that has just been fired from the chamber. As a result when the moving part of the gun having gone to the rear after firing returns forward and picks up the topmost cartridge from the magazine it finds the chamber still blocked by this empty cartridge case. When pistol jammed, one has got to take the empty cartridge case from the chamber - before it can fire again. During my test the gun did jam. I found that it jammed after firing two shots. That is not to say that each time it would jam after two shots. Quite possible and it has sometimes fired three and at other times one before jamming. Exhibit "E" magazine can be fitted into magazine chamber of Exhibit "D".

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I received .25 bullet from Sergeant Taitt. 6th February. Exhibit "K" - this is the bullet. In my opinion this bullet was discharged from the gun. Exhibit "D". Exhibit "M" - this container contained bullet. Exhibit "K" was in Exhibit "M". /admitted/.

In the
Supreme Court

Prosecution
Evidence
No.19

Mervyn Holder

Examination
17th October
1974
(continued)

Cross-
examination

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XXD.:- When you put magazine with cartridges into gun, before one can be loaded in chamber, the slide must be pulled to the rear. When let go the cartridge will be loaded into the chamber. This applies in respect of first cartridge. A click would be heard when first cartridge loaded. After this just general noise.

RE-XD.:- Safety Catch on gun. When gun loaded and safety catch on, it will not discharged. I tested this.

Re-
examination

No. 20

Kasturirangan Saranathan

No.20

Kasturirangan
Saranathan

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Kasturirangan Saranathan, Aff.:- Registered Medical Practitioner attached to Queen Elizabeth Hospital. Attached there on 2nd February this year. I examined on that day young lady Cynthia Allder. Around 6.10 p.m. She was brought in dead. I pronounced her dead. I saw injury on body. There was punctured wound on right side of neck. No other injuries. One inch below mastoid bone on right side. Body removed. It was a punctured wound due to a gunshot. Same day I examined a patient Stephen Catlyn. Around same time. He had gun-shot wound on left side of neck. I treated him. He was admitted to ward. Same day examined Margaret Watson. Her general condition quite sound. Fully conscious. Answering questions. She was excited and emotionally upset. She said she was strangled by the person. She was admitted to ward for observation.

Examination
17th October
1974

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XXD.:- No questions.

In the
Supreme Court

No. 21

Arthur Linton

Prosecution
Evidence

No.21

Arthur Linton

Examination

17th October
1974

Arthur Linton, S.S.:- Assistant Superintendent of Police attached to Central. On 15th March this year I was present in District "A" Magistrates Court presided over by Mr. C.R.C. Springer. I heard witness Dr. Frederick Clare give sworn testimony in this case. Accused present and then represented by an attorney-at-law who cross-examined the witness. I heard his Worship read back deposition to the witness, saw the witness sign it. I also saw His Worship sign it. I know Magistrate's signature. Exhibit "O" - this is deposition.

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XXD.:- No questions.

No.22

No. 22

Cameron Hinds

Cameron Hinds

Examination

17th October
1974

Cameron Hinds, S.S.:- P.C. 353. Attached to Immigration Department Central Police Station. I am keeper of Records of persons arriving in and departing from Barbados by sea and air. I checked records. Dr. Clare left Barbados on 12th June 1974 by B.W.I.A. flight 400 9 a.m. for Miami. Further check with records reveal that he has not returned to Barbados since day of departure.

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XXD.:- No questions.

Application for deposition of witness
Dr. Clare to be read.

No objection by defence.

Application allowed. Deposition.
Exhibit "O" read.

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No. 23

Arthur Sinclair Ashby

Arthur Sinclair Ashby, S.S.:— Registered Medical Practitioner. I live at Passage Road, St. Michael. On 4th February this year I carried out post mortem examination on body of Cynthia Allder. Body identified by her mother, Irene Allder. Externally there was an abrasion of lateral commissure of right eye. /Indicates/, and two abrasions on lateral commissure of left eye. And a small punctured wound which was oozing blood on right side of neck just an inch below mastoid process. In the head there were petechial haemorrhages - very small haemorrhages - of white matter of the brain. And in second cervical vertebrae of neck a bullet was extracted from the bone. It had lacerated the spinal cord. This bullet was handed to Sergeant Taitt. The chest and abdomen were normal. And death was due to transection of the spinal cord from a bullet wound of the neck. I chiselled out the bullet. Embedded in body of vertebrae. Exhibit "K" - this is bullet. Flattening caused by chiselling. Death would have been instantaneous. Abrasions around face superficial.

XXD.:- No questions.

No. 24

Proceedings

Three other witnesses on back of indictment Doctors Bailey and Nelson and FitzHerbert Bostic. Bostic out of Island.

Mr. Alleyne states that the defence does not wish any of these witnesses .

Crown closes case.

In the
Supreme CourtProsecution
Evidence

No.23

Arthur
Sinclair Ashby

Examination

17th October
1974

No.24

Proceedings

17th October
1974

In the
Supreme Court

No. 25

Prosecution
Evidence

Statement of Accused

No.25

Accused informed of his rights.

Statement of
Accused

Elects to make a statement.

17th October
1974

"I told Sergeant Taitt that what happened was cloudy in my mind and I did not remember what happened after my girl friend and her mother left the car. I did not tell Sergeant Taitt that I went to the car and fire off some shots and I don't know who get shoot. The statement Sergeant Taitt said I signed is not exactly what I told him. I told him the same as I told Phillips. I did not describe things happening after Maggie and her mother left the car. I am now taking tablets prescribed by the doctor. Before this incident occurred my girl friend accused me of beating her which I didn't recall doing. I suffered in the past from severe headache, black outs, sleeplessness and loss of memory. My mother told me she caught me burning her new curtains last December. She showed me the remains of them. I do not recall burning them. That is all I have to say."

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Defence
Evidence

No. 26

No.26

Patricia Bannister

Patricia
Bannister

Patricia Bannister, S.S.:- I am a Psychiatrist attached to the Mental Hospital, Barbados. I have seen David Walton on several occasions. I made notes of occasions. I saw him on 11th April - first time I saw him was at prison on 9th April. I saw him again on 11th April. Then I saw him on 16th June, 24th July, 31st July, 17th August, 24th August, 8th October. After I took history and I did an examination on him and I found him to be extremely anxious. He did not tolerate frustration well. He did not tolerate stress. He became confused if he was stressed or pressured. He showed paranoia. Extremely suspicious and interpreting internal stimuli as coming from outside of himself. He showed some loss of memory for certain events. And the conclusion I formed was that he suffered from an extremely immature personality. The history on which I based these

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Examination

17th October
1974

conclusions spanned from childhood. State of para-
 noia would have existed for years. I don't think
 the McNaghten rules apply here. I would say that
 from his personality structure he would not have
 been responsible wholly. I would not say there
 was any damage or injury to his brain. Pretty
 normal during first few years of life. I would
 say that his development has been retarded in
 certain respects. I refer to the mind here. I
 10 would refer to his condition as abnormality of
 mind. In my opinion this would substantially
 impair his responsibility for his acts. My feeling
 is that his emotions at level of a 3 year old. I
 referred him to the psychologist for further
 tests. He has had quite a severe psychotic break-
 down while in prison and he has been on medication
 for that since 31st July. Certain reactions of
 his - when he is having the reaction he would.
 20 Certain behaviour which he would exhibit from
 time to time after which he would not remember the
 events. Burning of new curtains typical of what
 could be done and forgotten. Or the beating of
 someone. Or letting off of a firearm. In my
 opinion not a violent person but reacts in a
 primitive fashion to real or imagined provocation
 in an attempt to protect what he thinks is
 threatened. He may build up an enormous rage
 where he is not responsible for subsequent actions
 and after such an outburst it is likely he will
 30 not remember the details.

XXD.:- First time I saw accused on 9th April.
 Never saw him before or treated him before. Takes
 very little pressure to take him off normal course.
 Must be some pressure to make him act like that.
 What you have read to me (accused statement) sounds
 rational and coherent. Sounds from person of
 average intelligence. His emotional levels at
 3 years old. He is not emotionally grown up. His
 personality is immature. Personality disorder.
 40 Mental disorder includes personality disorder.
 Mind a much broader term. Includes brain and
 other things. The unconscious. He is suffering
 from a disease of the mind. No particular word for
 it. I would say he could be certified. I feel he
 should spend a long time in Mental Hospital. He
 needs treatment. He is not within the McNaghten
 Rules test of insanity. I find out he suffers
 from loss of memory. I would put some things to
 him. At end of interview he would get confused and
 50 not recall them. I heard about burning of curtains

In the
 Supreme Court

Defence
 Evidence

No.26

Patricia
 Bannister

Examination

17th October
 1974

(continued)

Cross-
 examination

In the
Supreme Court

Defence
Evidence

No.26

Patricia
Bannister

Cross-
examination
17th October
1974
(continued)

from him and other persons. He told me he suffered from sleeplessness. I knew from him. He told me about blackouts. He never had a black out in front of me. I have taken history from him, his mother and father. He told me he had found himself beating his girl friend and thought he had only hit her. Remember hitting his girl friend once and choking his mother. He told me he had left for the Garrison after taking tablets for head ache. He went to collect his girl friend and her mother from races. They were not ready and as he felt badly he sat in the car. He drank about 4 guinness. After which he went to call his girl friend and her mother. On returning to car his foot kicked an object which he thought was a gun. He picked it up and put it in his pocket. Before setting out he put the gun under the seat. This was to prevent his girl friend seeing it as it would frighten her and cause an argument. They went via a roundabout route to Waterford. This was because his head was turned. During the drive he had on one or two occasions to push the gun under the seat. The girl friend asked what he had there and he said nothing. He drove slower and slower and finally stopped the car to urinate. Thereupon his girl friend switched the car keys and she and her mother left the car and flagged down a passing car. He took the gun from under the seat and held it in the palm of his hand and went to the car to show the girl friend what he had been hiding. His girl friend grabbed his hand and the gun went off. He didn't remember anything else until he heard somebody shouting "why you don't let go the girl you going let this girl put you in trouble." He found two men holding his hands. He found he had a bad head ache. He got up went to his car and drove away. His child's mother advised him to go to the police. That is what he told me about the incident. He told me this between 9th and 11th April 1974. He could have forgotten details of shooting incident. He had psychotic breakdown. A very severe mental illness in which he was out of touch with reality. Depressed and hearing voices. My discipline very close to that of Mr. Browne. Stress would bring on breakdown. Awaiting a murder charge would bring it on. Being in prison would. We talked about the incident on 2nd February. Last time I saw him he was quite well. Very difficult to determine whether person malingering. Two things can happen. Person can malingering. A person can suffer from illness

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which is like madness but it can be detected. I would say he is not malingering.

No Re-Examination.

In the
Supreme Court

Defence
Evidence

No.26

Patrica
Bannister
Cross-
examination
17th October
1974
(continued)

No. 27

Lawrence Blair Bannister

No.27

Lawrence
Blair
Bannister

Examination
17th October
1974

10 Lawrence Blair Bannister, S.S.:- Registered
 Medical Practitioner - Parochial Medical Officer.
 Offices at Perry Gap, Roebuck Street. Prison
 Medical Officer. I see prisoners at Glendairy
 Prison. In that capacity I have seen accused on
 number of occasions. On 7th February 1974 at
 Glendairy Prison he complained of pains around
 waist and vomiting. I treated him appropriately.
 On 21st February I saw him again, he complained of
 headache. This time I gave him parmate tablets.
 Tablets I would normally give to person I thought
 was depressed. On 18th April I saw him again.
 This time I gave him some tablets to be used
 during day and night. These also for depression.
 20 6th June I saw him again this time I gave him a
 different type of tablet partly for depression,
 and some other tablets for a psychosis. Next
 time 20th June this time I gave him similar
 treatment but a bigger dose. And I requested he
 see a psychiatrist. On 3rd July I saw him
 again. I repeated treatment of 20th June. I
 saw him again on 5th September. At that time
 he was receiving treatment I would normally have
 given to psychotic. This treatment I think was
 being given by people at Mental. I recommended
 30 him seeing psychiatrist because of his apparent
 anxiety and his depression and because he was
 not responding as well as I would have liked to
 my treatment.

XXD.:- First time I saw this man was when he was
in prison awaiting trial for murder. Not my

Cross-
examination

In the
Supreme Court

Defence
Evidence

No.27

Lawrence
Blair
Bannister

Cross-
examination

17th October
1974
(continued)

No.28

Richard
Browne

Examination
17th October
1974

patient previously. I would have remembered. He is not first person awaiting trial on charge of murder whom I have treated. Some of such persons exhibit anxiety and depression. I would treat them for these symptoms. Similar to the one I gave him. I have never noticed that anxiety increases as trial gets nearer.

No. 28

Richard Browne

Richard Browne, S.S.:- I am Clinical Psychologist attached to Mental Hospital, Barbados. I know accused. I saw him on three occasions. Accused was referred by Dr. Patricia Bannister for psychological evaluation. I saw him on Wednesday 19th June, Friday 21st June and Thursday 27th June all in 1974. Patient David Walton referred for diagnostic evaluation. At that time he was being held at prison on charge of murder. On Bender Gestalt no features of confusion or dis-orientation were evident. His performance indicated average intellectual ability. On the progressive matrices his score was also indicative of average intellectual ability. The test also indicated good observational ability and clear thinking. Even though his concentration and tolerance seemed to decrease as the test progressed. From the protocol on the thematic apperception test I would describe him as having an inadequate personality enhanced by emotional immaturity and a low tolerance level.

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Cross-
examination

XXD.:- I mean by low tolerance level I mean he got vexed quick. Would get vexed more easily than the average person. Result of insecurity in early childhood. I would expect that he would get vexed if he thought somebody was taking away his girl friend. He would react in an extraordinary way. And he would also react with lesser provocation. An emotional disorder. It would affect his thinking

to the extent I indicated before. But not his intelligence. I was in court when he gave an unsworn statement. It struck me as coming from a man with a clear mind - who can remember things. What he told me about the shooting incident, similar to what I heard Dr. Bannister relate to Court as what he had told her. But I did not make a note.

No Re-Examination.

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Case Closed.

Adjourned at 11.58 a.m. Jury permitted to separate under caution.

Resumed at 1.30 p.m. Jury all present.

No. 29

Defence Counsel's address

Mr. Alleyne addresses.

Defence "diminished responsibility" - manslaughter.

Not contending that accused did not have gun or that gun not used in killing girl.

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Mr. Belgrave addresses.

Adjourned to 9.00 a.m. on 18.10.74. Jury permitted to separate.

Resumed at 9.06 a.m. on 18.10.74. Jury all present.

Mr. Belgrave concludes address.

Mrs. Maxwell sworn to take summation.

Summation commences at 9.32 a.m.
concludes at 10.49 a.m.

Jury retire under sworn Marshall at 10.50 a.m.

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Return to Court at 11.15 a.m. All present.

In the
Supreme Court

Defence
Evidence

No.28

Richard
Browne

Cross-
examination

17th October
1974
(continued)

No.29

Defence
Counsel's
address

17th October
1974

18th October
1974

In the
Supreme Court

No. 30

No.30

Verdict, Allocutus and Sentence

Verdict,
Allocutus and
Sentence

Foreman asked whether Jury reached verdict on
which all agreed.

18th October
1974

Yes. Guilty of Murder.

Allocutus: Nothing.

Sentence - Death passed.

No.31

No. 31

Summation

Summation

18th October
1974

BARBADOS.

18th October, 1974.

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THE QUEEN

Vs.

DAVID ADOLPHUS WALTON

SUMMATION

BY

HIS LORDSHIP, MR. JUSTICE D.A. WILLIAMS

Mr. Foreman, Ladies and Gentlemen of the Jury:

The accused David Adolphus Walton is charged
with murder. This offence is in law a felony.
He is charged that on the 2nd February, 1974, in
the parish of Saint Michael of this Island he
murdered Cynthia Allder.

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The burden of proving that he did this offence
is on the Prosecution. When the case commenced
the burden was on the Prosecution to prove his
guilt, and right throughout the case the burden
has remained on the Prosecution. Such a burden
of proving that a man killed in a criminal case
never shifts from the Prosecution.

Every man who is charged with a crime is
presumed to be innocent and he cannot be found

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guilty of a crime unless his guilt is proved by the Prosecution. And the standard of proof is proof beyond all reasonable doubt. This is the standard to which the Prosecution must aspire. Put another way, the evidence led must make the Jury certain of the guilt of the accused before there can be a verdict of guilty against the accused. This is a high standard, but a high standard is always applicable where the Crown has to prove an issue in a criminal case. The burden of proof is on the Crown, and the standard of proof is proof beyond all reasonable doubt.

In the
Supreme Court

—
No.31

Summation

18th October
1974

(continued)

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One of my functions is to give you directions as to the law which is applicable in respect of the matter which is before you, and you should follow the directions which I give to you on matters of law. I am here to direct you on law and you must follow the directions which I give to you, but you must remember at all times in the course of your deliberations that you are the sole judges of fact. Questions of fact are for you to determine. So when you consider the witnesses who have given evidence, whether or not you believe a particular witness, that is a matter for you to determine.

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Everyone is entitled in the course of his address to express opinions, I may express opinions in the course of my summation, but these are only the opinions of the persons who express them, they do not bind you. You are free to form your own views and your own opinions. Persons have given evidence in this case as expert witnesses, that is, persons who have been trained in a particular field of study, or profession, or a particular discipline, and they have given you their opinions as experts, and these opinions should be treated with respect, but they are only opinions and they cannot bind you. You must consider the opinions expressed by these persons but in the last resort they do not bind you, you are free to reject if you wish. You are here to determine questions of fact, so that when a person gives an opinion on a particular discipline you must pay due regard to it, but in the last resort it does not restrict you in determining your views on the matter. You must decide the issues on the evidence led in Court regard to anything you may have heard outside. You must decide them fairly without any bias and without sympathy for the accused or for any person who may have been thrown into grief or mourning because of the incident. You must give due

In the
Supreme Court

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No.31

Summation

18th October
1974

(continued)

consideration to the statement made by the accused and you may attach to it whatever weight you think fit. Witnesses were called for the Defence and you must not approach their evidence in any manner different from the way in which you assess the evidence for the Prosecution. It is not because they are defence witnesses that you should treat them differently. You must consider their evidence in the same high standard as you consider the evidence led by the Prosecution. Though as I have told you before you are not bound to accept the evidence of any Doctor or any expert, if you find that it does not assist you. Before I turn from this aspect of the matter, I will tell you that you must, of course, reach a true verdict according to the oath you have taken.

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Turning to matters of law. I will give you the traditional definition of murder, which goes back to a great Common Law Lawyer, Lord Coke: "Where a person of sound memory and discretion unlawfully kills any reasonable creature in being and under the Queen's peace with malice aforethought, either express or implied, death following within a year and a day".

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On an Indictment for murder the Prosecution must prove the following:-

- (a) That death was a result of a voluntary act on the part of the accused.
- (b) Malice on the part of the accused.

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Malice here means an intention to kill or an intention to do really serious bodily harm.

So that in order to prove that the accused murdered Cynthia Alder, the Prosecution must prove that her death was the result of a voluntary act on his part, and that when he did the act he intended to kill someone, not necessarily Cynthia Alder, but someone; or to do really serious bodily harm to someone, not necessarily Cynthia Alder, but someone.

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The same issues do not arise in every trial for murder. Let me explain what I mean. I have told you that the killing must be unlawful. Thus if the killing is in reasonable self-defence or in

reasonable defence of some other person in respect of whom the accused has a duty to protect, it will not be murder. And an issue can arise on the evidence whether or not the killing was in reasonable self-defence. Nothing like that arises in this case, so that you will not concern yourselves with self-defence. Or the killing may be in respect of provocation, which is essentially some matter arising suddenly and causing the accused to lose self-control and to resort to violence, and an issue can arise on the evidence, in some cases, which makes it necessary for the Jury to consider this doctrine of provocation, but again no such matter arises in this case.

In the
Supreme Court

—
No.31

Summation

18th October

1974

(continued)

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Again the question of an accused's insanity within the McNaughton Rules can arise, and if it arises, it can be determined by the Jury. The McNaughton Rules are the rules which have traditionally been the test of insanity in law. I will tell you from what came out in the evidence that they do not arise in this case. Reading from paragraph 34 of the 38th Edition of Archbold:-

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"The Jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing of the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it that he did not know what he was doing was wrong."

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There is no evidence at all in this case which is sufficient to rebutt the presumption of sanity within the McNaughton Rules, so that you must proceed on the basis that he is sane within the legal definition of sanity. He does not come within the legal definition of insanity as described in the book. Dr. Patricia Bannister, the Psychiatrist, who gave evidence for the defence said that she did not think that he could be said to be insane within these Rules. So here again no issue arises and he must be presumed to be sane within the law.

In the
Supreme Court

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No.31

Summation

18th October
1974

(continued)

The first question to which you will address your mind whether the evidence has made you sure in your minds that the accused killed the girl Cynthia Allder? I have to put this question to you because no where in his evidence or in any statement of his, which has been given in evidence, has he admitted killing the girl. So although Counsel for the Defence has said in the course of his address that he was not contending that the accused did not have the gun, and that he was not contending that the gun was used in killing the girl, it is a criminal matter and I must still tell you that before there can be a conviction for murder or manslaughter the evidence led in support of the case must make you sure in your minds that the act of the accused caused the death of the girl, and that if the evidence does not induce this state of certainty in your minds the accused is entitled to a verdict of not guilty. In other words, if after considering all the evidence you reach the conclusion that he did not kill Cynthia Allder, or you are left in a state of doubt about it, you must return a verdict of not guilty.

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In my view - but it is only my opinion, which does not bind you - you will have little doubt whatever in coming to a conclusion that he did kill the girl. That the girl died from a bullet discharged from the gun Exhibit D. My view is that you will have little doubt that his act caused the girl's death, but you have to determine the facts.

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First we had the evidence of Stephen Catlyn, whom you may well think was an excellent witness. He said that in returning to town on the 2nd February, 1974, he gave the young lady, Cynthia Allder, a lift, and then he was flagged down in Waterford Bottom Road, and he played the part of a good Samaritan on that evening, and stopped again to give some other persons who were flagging him down a lift. He told you that the girl got in the back seat of his car, and that her mother followed, and then the accused came to the car door asking for a lift. That the older lady asked the accused what he wanted a lift for and what he was going to do with his car. Then he told you that he told the accused to close his car door and let him go about his business. And he told you that he saw a movement from the right shoulder

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of the accused and I quote: "I saw his hand pointing at me and I heard an explosion. I felt a burning in the upper part of my neck, to the left part of my neck, and I said: 'Oh my God, this man shoot me'. I got out of my car and I ran in the direction from which I came, in the direction of Hothersal Turning." He told you of his signalling a car to stop and of his being taken to the Hospital. He told you later of hearing two explosions, the first one being the one of the shot which hit him. He said when he heard the second explosion he was on his way running, and that at the time when he stopped his car in Waterford Bottom with Cynthia Allder beside him she was alive and well.

In the
Supreme Court

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Summation

18th October
1974

(continued)

The case for the Crown is that the second explosion came from the same gun that shot Catlyn, and that it was in that second explosion which took place that Cynthia Allder was shot. That the accused fired the shot from the gun, and that he had an intention to kill or to cause some serious bodily harm. For this the Crown in relying on the evidence of Catlyn. There is also the evidence of Anita Bradshaw, the older lady. She said that she heard Catlyn say that he got shoot, and that he got out of the car and went toward the country walking. That the accused then went to Margaret at the right side of the car and the two of them were struggling. She said that at the time she saw the gun. She did not say in whose hand she had seen it, she said that there were four hands and that she took the gun and threw it into the canes. She said earlier in her evidence that she heard two explosions.

Next we had the evidence of Margareta Watson. She said that she heard two explosions, and that she heard Catlyn say that he had got shot. That he got out of the car, stopped another car and got into it. She said that the accused came around the car to the side where she was and pulled her out of the car, and then he had her holding around her neck. She said that she did not have a gun, and that she did not see the accused with a gun. The Crown is saying that the girl Margareta did not have a gun, and that the gun which Anita Bradshaw said that she threw into the canes came from the accused. That it contained four shots, plus the one which shot Catlyn, and another which caused the death of Cynthia Allder.

In the
Supreme Court

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No.31

Summation

18th October
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(continued)

Dr. K. Saranathan told you of his being employed at the Queen Elizabeth Hospital, and of his seeing and examining the girl, Cynthia Alder, who was brought in dead about 6.10 p.m. on the 2nd February, 1974. The Crown is also relying on the evidence of Dr. A.S. Ashby, who told you that on the 4th February, 1974, he performed a post mortem examination on the body of Cynthia Alder, which was identified to him by her mother, Irene Alder. He told you of certain abrasions of her face, and of a small punctured wound, which was oozing blood on the right side of her neck, which was one inch below the right mastoid process. He also told you of other findings, and of extracting a bullet from the second cervical vertebra of the spine, which severed the spinal cord. He told you that he handed the bullet to Sgt. Taitt. And that death was due to transection of the spinal cord from a bullet wound in the neck, and that death would have been instantaneous. Sgt. Oswald Taitt told you of taking the bullet, Exhibit K, from Dr. Ashby and giving it to Inspector M. Holder.

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Inspector Mervyn Holder gave evidence and told you of his experience. He said that he had experience in the use of various kinds of fire-arms and with the different type of ammunitions used in these types of firearms, and that he made a practical study of it. That he had specialised training in the United Kingdom and had had nineteen years experience in this type of work. He told you of the bullet which Sgt. Taitt handed to him, and he said that in his opinion the bullet had been discharged from the gun, Exhibit D, which Cpl. Arthur had handed to him. Cpl. H. Arthur in his evidence told you of seeing Anita Bradshaw at the District 'A' Police Station on the 2nd February, 1974, when she made a statement to him. He accompanied her to Waterford Bottom and there she made a further statement to him, following which he made a search of a field of canes and found this gun, Exhibit D, which he said he later handed to Inspector Holder. Inspector Mervyn Holder had also given evidence of receiving a bullet from Sgt. Hugh Franklyn and carrying out tests in relation to this bullet. He said that, in his opinion, the bullet, Exhibit L, was discharged from the same gun, Exhibit D. Sgt. Hugh Franklyn in his evidence had said that Dr. Clare had handed him the bullet in a sealed jar on the 20th February, 1974, and that he had handed it to Inspector Holder the next day.

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I would just digress for a moment to refer to Dr. F. Clare's deposition which was read to you. The deposition disclosed that he was an intern at the Queen Elizabeth Hospital. That on the 20th February, 1974, he was present in the Operating Theatre and saw a bullet removed from the neck of Stephen Catlyn by Mr. Bailey, the Surgeon, and that he handed this bullet to Sgt. Franklyn. His deposition was read out after formal proof that he was no longer in the Island. The law makes provision for the deposition of persons who gave evidence at the Preliminary Hearing to be read, where such witnesses are dead, or have left the Island or are too sick to travel. It is in such circumstances that the deposition of this witness are read to you, after the proper foundation had been laid, he having left the Island. It is customary to remind the Jury that in approaching such evidence they should proceed with caution, because they did not see the witness and no opportunity was afforded to test the evidence in their presence. Such a caution is normally given, but you should bear in mind that this deposition was admitted in evidence and read without objection from the defence.

Going back to what I was talking about, the case for the Crown is that Catlyn saw the gun being pointed at him by the accused, after the shoulder movement which he described, he heard an explosion and he left the car. Then he heard a second explosion. And the Crown is saying that this second explosion was caused when the accused fired the shot which killed Cynthia Allder. The evidence of Inspector Holder showed that the bullet which was removed from the neck of the girl by Dr. Ashby was fired from the gun, Exhibit D, and that the bullet which was found in Catlyn was also fired from the gun, Exhibit D. For this the Crown is relying on the evidence of the firearms expert and the Police witnesses, and the evidence that the girl Margareta Watson did not have a gun, that the gun which Anita Bradshaw took from hands was taken from the accused, and had contained the shot which killed Cynthia Allder and the one which injured Catlyn. The Crown is saying that these circumstances show clearly that it was the accused who shot Cynthia Allder.

I will read a passage on circumstantial evidence, which is sometimes read to the Jury, because

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no one has said that they saw the accused actually shoot the girl. So therefore the Crown is relying on circumstantial evidence of the kind which I have just described to you. Reading from paragraph 1141 of the 38th edition of Archbold:-

"Circumstantial evidence is receivable in criminal as well as in civil cases, and indeed, the necessity of admitting such evidence is more obvious in the former than the latter; for in criminal cases, the possibility of proving the matter charged by the direct and positive testimony of eye witnesses, or by conclusive document, is much more rare than in civil cases, and where such testimony is not available the Jury are permitted to infer from the facts proved, other facts necessary to complete the elements of guilt or establish innocence. It must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference." 10 20

The Crown seeks therefore to rely on circumstantial evidence to prove that the accused killed Cynthia Allder. This is a matter for you to determine, but you may well feel that there is no question whatever about it. That the evidence shows clearly and convincingly that he shot Cynthia Allder. 30

Before I turn to what is the essence of this case, I must tell you that the onus is on the Prosecution to prove not only that the accused did the unlawful act, but that it was not accidental. I put this to you because of the statement of the accused about which evidence has been given: "That he went with the gun in the palm of his hand to Catlyn's car to show his girl-friend what he had found, and she grabbed at his hand and the gun went off". This is hardly likely to impress you at all, it certainly does not impress me. I only let you know that because if you feel that there was an accident or if you are left in doubt about it, your verdict must be not guilty. I do not think that you are likely to reach any such 40

conclusion, because you are intelligent people. Catlyn spoke of a deliberate shot, and there was not one shot, there were two shots and all the other persons heard them - the girl and her mother. There is evidence that the gun was jammed, a suggestion of an attempt to fire another shot. And the statement which Sgt. Taitt gave, if you accept that this statement was made by the accused. The statement about his squeezing the trigger and the shots went off. So I do not think that you are likely to reach a conclusion that there was anything accidental in what happened.

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The essential issue in this case relates to the defence which has been provided by the law of this Island in a recent Act of the Legislature with regard to "Diminished Responsibility". Reading from the new section 3A, subsections 1, 2 and 3 of the Offences Against the Person (Amendment) Act, 1973, which has been inserted in the Offences Against the Person Act, 1868 - 5:

- (1) Where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party of the killing.

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On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

- (3) A person who but for this section would be liable, whether as principle or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

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I will read a passage from Archbold, as to the standard of proof. Paragraph 2472:

"Where the defence of diminished responsibility is raised, it must be pointed out to the jury that the burden of the defendant of establishing that defence is not as heavy as that which

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rests on the prosecution to establish guilt, and if the jury are of opinion that the balance of probability is in favour of the defence, they should return a verdict of manslaughter, but that if they cannot find in the evidence material to justify the conclusion that the balance of probability is in favour of that defence, it is their duty to return a verdict of murder."

I have to read two cases to explain certain aspects of this doctrine of "diminished responsibility". I will read first of all a fairly long passage from *The Queen vs. Byrne* - 44 Criminal Appeal Reports, pg. 251:-

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"Before the passing of the Homicide Act, 1957, a person who killed or was party to a killing could escape liability for murder - as for any other crime requiring mens rea - if he showed that at the time of the killing he was insane within the meaning of the McNaughten Rules, that is, 'that he was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act that he was doing, or, if he did know it, that he did not know that he was doing wrong.' If established this defence negatives mens rea and the accused was and is still entitled to a special verdict of "guilty of the act but insane" at the time of doing that act, which is an acquittal of any crime. The test is a rigid one: it relates solely to a person's intellectual ability to appreciate:

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(a) the physical act that he is doing and:

(b) whether it is wrong.

If he has such intellectual ability, his power to control his physical acts by exercise of his will is irrelevant.

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The ability of the accused to control his physical acts by exercise of his will was relevant before the passing of the Homicide Act, 1957, in one case only, that of provocation. Loss of self-control on the part of the accused so as to make him for the moment not master of his mind had the effect of reducing

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murder to manslaughter if: (i) it was induced by an act or series of acts done by the deceased to the accused, and (ii) such act or series of acts would have induced a reasonable man to lose his self-control and act in the same manner as the accused acted. Whether loss of self-control induced by provocation negated the ordinary presumption that a man intends the natural ordinary consequences of his physical acts, so that in such a case the prosecution had failed to prove the essential mental element in murder (namely, that the accused intended to kill or to inflict grievous bodily harm) is academic for the purposes of our consideration. What is relevant is that loss of self-control has always been recognised as capable of reducing murder to manslaughter, but that the criterion has always been the degree of self-control which would be exercised by a reasonable man, that is to say, a man with a normal mind."

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It is against that background that this section 3A(1) corresponds to the section which I have just read to you about diminished responsibility. And now the passage which I will now read will be the one which relates to this question. What I have just read is the introduction.

" To satisfy the requirements of the subsection the accused must show:

- (a) that he was suffering from an abnormality of mind;
- (b) that such abnormality of mind:- (i) arose from a condition of arrested or retarded development of mind or any inherent causes or was induced by disease or injury; and (ii) was such as substantially impaired his mental responsibility for his acts in doing or being a party to the killing.

"Abnormality of mind" which has to be contrasted with the time-honoured expression in the McNaughten Rules "defect of reason", means a state of mind so different from the ordinary human being's that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities

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in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with that rational judgment. The expression "mental responsibility for his acts" points to a consideration of the extent to which the accused's mind is answerable for his physical acts, which must include a consideration of the extent of his ability to exercise will power to control his physical acts.

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Whether the accused was at the time of the killing suffering from any "abnormality of mind" in the broad sense which we have indicated above is a question for the jury. On this question medical evidence is, no doubt, of importance, but the jury are entitled to take into consideration all the evidence including the acts or statements of the accused and his demeanour. They are not bound to accept the medical evidence, if there is other evidence, if there is other evidence which in their opinion conflicts with the medical evidence and outweighs it. Abnormality of the mind whether it arose from a condition of arrested or retarded development of the mind or any inherent causes or was induced by disease or injury, does, however, seem to be a matter to be determined on expert evidence.

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Assuming that the jury are satisfied on the balance of probability that the accused was suffering from "abnormality of mind" from one of the causes specified in the explanation of the subsection, the crucial question nevertheless arises: was the abnormality such as substantially impaired his mental responsibility for his act in doing the killing? This is a question of degree and essentially one for the jury. Medical evidence is, of course, relevant, but the question involves a decision not merely whether there was some impairment of the mental responsibility of the accused for his acts, but whether such impairment can properly be called "substantial", a matter upon which the jury may differ from doctors."

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The Queen against Lloyd - 50 Criminal Appeal Reports Pg.67 - As to the meaning of the word "Substantial".

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10 "There is no scientific precise test. That cannot be and never can in human conduct, otherwise we should not need juries or anybody, and if you will allow me to say so, I think you should look at it in a broad common sense way and ask yourselves, having heard what the doctors have said, having made up your minds about it, knowing what this man did, knowing the whole story: "Do we think looking at it broadly as common sense people there was a substantial impairment of his mental responsibility in what he did? If the answer to that is yes, then you find him not guilty of murder, but guilty of manslaughter. If the answer to that is no, there may be some impairment, but we do not think it was substantial, we do not think it was something which really made any great difference, although it may have made it harder to control himself, to refrain from crime then you would find him guilty as he is charged in the only charge to this indictment."

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30 The question therefore is was the accused at the time, that is, on the 2nd February, 1974, suffering from an abnormality of mind? And was the abnormality such as to substantially impair his mental responsibility for his act in doing the killing?

 The Defence relies essentially on Dr. Bannister, the Psychiatrist, but before I go any further to deal with her evidence, I will read the statement which the accused gave in this Court:-

40 "I told Sgt. Taitt that what happened was cloudy in my mind, and that I did not remember what happened after my girl-friend and her mother left the car. I did not tell Sgt. Taitt that I went to the car and fired off some shots, and that I did not know who got shot. The statement which Sgt. Taitt said that I signed is not exactly what I told him. I told him the same as I told Phillips. I did not describe things happened after Maggie and her mother left the car. I am

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now taking tablets prescribed by the Doctor. Before this accident occurred my girlfriend accused me of beating her and which I did not recall doing. I suffered in the past from severe headaches, blackouts, sleeplessness and loss of memory. My mother told me that she caught me burning her new curtains last December. She showed me the remains of them and I did not recall burning them. That is all I have to say."

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One of the things which you will have to decide is whether these things which he has spoken about, the severe headaches, the blackouts, sleeplessness and loss of memory, indicate that something was wrong with his mind, or whether they are being feigned for the purpose of evading his responsibility for what he has done.

Dr. Patricia Bannister's evidence was that she was a Psychiatrist attached to the Mental Hospital. She said that she saw the accused on several occasions, all after the incident on the 2nd February, 1974. In all, I think she said there were eight occasions, starting from the 9th April, 1974. She said that she took a history from him, and from his father and mother. She said that he did not tolerate frustration well: translated in the language of ordinary people this means: that he likes having his own way. She said that he did not tolerate stress, and that he became confused if he was stressed or pressured. That he showed paranoia, which could have existed for many years. She explained what she meant, that he was extremely suspicious and he interpreted internal stimulae as coming from outside of himself. And that he showed some loss of memory for certain events. Her conclusion was that he had an extremely immature personality. That there was no disease or injury of the brain, but that there was an abnormality of the mind which, in her opinion, substantially impaired his responsibility for his actions. She said that his emotions were at the level of a three year old. She said that he was not a violent person, that he reacted in a primitive fashion to real or imaginative provocation in an attempt to protect what he thought was threatening him. That he may build up to an enormous rage to the point where he is not responsible for his subsequent acts, and that after such a build-up it is likely that he would not remember details. She

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was cross-examined and said that there was no injury to the brain, but that there was a mental disorder. That a mental disorder includes personality disorder, which in her view would mean that he was suffering from a disease of the mind. She could not find any particular kind for it, and she went on to say that he had a psychotic breakdown, and said that he was out of touch with reality. This happened after the incident of 2nd February, 1974. She spoke of his being depressed and hearing voices. At the end of her cross-examination she said that it was difficult to determine whether a person was malingering, and her conclusion was that he was not malingering.

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The second witness for the defence was Dr. L.B. Bannister, Medical Officer of the Prison, who told you of treating the accused on various occasions. The first time was on the 7th February, 1974 and again on the 21st February, 1974. He said that on this occasion he gave him tablets for headache. On the 18th April, 1974, he saw him again and gave him tablets to rest. He next saw him on the 6th June and prescribed a different type of tablet for him. He saw him again on the 20th June and gave him the same treatment but a bigger dose, and recommended that he should see a Psychiatrist. On the 30th July, 1974, he repeated the same treatment. On the 5th September he was receiving treatment which was given by the Psychiatrist. He said that he recommended him to see a psychiatrist because of his apparent anxiety and depression.

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The third witness for the accused was Mr. Richard Browne, Clinical Psychologist of the Mental Hospital. He said that he saw the accused three times, that he gave him some kind of examination on each occasion, and that these occasions were all in 1974. He said that there were no features of confusion or disorientation, and that his performance indicated an average intellectual ability on the test of facts. On another test average intellectual ability was also indicated, and good observative ability and clear thinking, although his concentration and tolerance seemed to lessen as the test progressed. He diagnosed an inadequate personality, which was evidenced by the emotional immaturity and a low tolerance level. He explained low tolerance level to mean that he got vexed very quickly. He said that he got vexed more quickly than the average person and

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and tended to react in an extraordinary way, and that he would also react to a lesser provocation than the ordinary person would. He said that there was an emotional disorder which would affect his thinking to the extent which he indicated but not his intelligence.

The girl Margareta Watson had given evidence in which she said that the accused used to complain of headaches, that he used to have blackouts, and that at one of the blackouts she was present and he fell on the ground. That she shouted for a neighbour, Mr. Hinds. She said that the accused used to beat her and tell her afterwards that he did not remember doing it.

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The first question you will have to consider in respect of this defence of diminished responsibility is: Did he have a disease of the mind? According to Dr. P. Bannister, yes, he did have a disease of the mind, in her view. But she said that she could not name the disease, that there was no particular name for it, but it arises from an arrested or retarded development of the mind, and it produces in her opinion, an abnormality of the mind. A question which you will obviously ask yourselves is: Was he feigning or malingering and trying to make his way out of something which he did by pretending about things. Or is there a genuine illness? If you think there is a genuine illness and that he is not malingering, although Dr. Bannister admits that it is difficult to tell - you heard me read a passage to you which sets out all these exceptions - you will have to consider all the evidence in the case and come to a conclusion, not only on the Doctors evidence, but on all the evidence in the case.

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I will at this stage remind you of the various statements which have been put in evidence as having been made by the accused. P.C. Phillips told you what the accused told him at Holetown Police Station:-

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He said that he went to where the accused was and the accused said that he heard that the Police were looking for him, and he asked the accused if he knew what the Police were looking for him about, and the accused said: "No, all I know is I went to the races with my girlfriend and her mother, and while

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10 there I drank about three or four Guinness
Stouts, and after drinking these stouts I felt
badly and I told my girl that I was going into
the car and lie down until they come. While
walking across the pasture, I hit something in
the grass. I turned around and search in the
grass and I saw a gun with a wood handle. I
took it up and carried it to the car with me
and placed it under the seat where I sit.
About half-an-hour afterwards, my girlfriend
and her mother came and got into the car and I
drove off. Before going home, I decided to go
for a drive and when I got by Hothersal
Turning, I stopped the car. My girlfriend
thought that I was going to do something
funny so she and her mother got out of the
car and run. I don't know what happen after
that." He then asked the accused to accompany
him into the station office and he did so.

20 Now, both Sgt. Taitt and Cpl. Craig deposed
to oral statements made by the accused, after
caution, and the first one given was: "I found a
gun at the Garrison this evening when I went for
my girl friend Maggie and her mother, and when I
get to Waterford Bottom bringing them down, I
stopped and Maggie and her mother got out and
stopped a car with a man and a woman in it and
get in and I went to the car and fire off some
shots in it. I ain't know who get shoot." The
30 accused is saying that he never gave this last
statement to the Police officers. That the
statement he made to P.C. Phillips was the same one
that he made to these two police officers. It is
your functions, Mr. Foreman and members, as a body
responsible for deciding facts to determine which
version you accept. Exhibit C was produced by
Sgt. Taitt and was admitted without objection. I
will read it to you. This is the statement which
Sgt. Taitt and Cpl. Craig say was taken from the
40 accused after caution:

" Today I went to the Garrison for my
girl-friend Maggie Watson and while I was
at the Garrison I found a white handle
black gun and I hid it under the front seat
of my car S.134 and I pick up Maggie and
her mother Miss Bradshaw and bring them
down, and I was going up at my grandmother
and when I get to Charles Rowe Bridge
Maggie mother said that she was hungry and

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I turn off and come down to Waterford's Bottom and as I swing out of the cart road and was coming towards Combermere I stop the car and Maggie took out the switch keys and ask me what I had under the seat, but I would not tell her because I know if she knew it was a gun she would be frighten, because when I drink we does quarrel and I hold maggie hand to get the switch keys and her mother get out of the car and said she was going to catch a bus, and Maggie get out too and a car came down with a man and a woman in it and Maggie and her mother stop it and get in it. So I took up the gun, put it in my right hip pocket and went to the car that Maggie and her mother get in and as I was about to get in the car with them I took the gun from my hip pocket with my right hand and I squeeze the trigger and shots went off. I didn't went to hurt the two people that were in the car that pick up Maggie and her mother, nor I don't know what became of the gun, but I went and get back in my car and drove down by my child mother, Yvette Cyrus, in Rick Gap, and tell her what happen and she tell me to go to the Police Station and I went."

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Sgt. Oliver Broome gave evidence of a statement made by the accused. He said that the accused told him:

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" My name is David Walton and today I was at the Garrison with my girl-friend drinking some Guinness, and I told her that I was feeling badly and that I was going in the car and lie down, but when I was going across the pasture my foot hit something and when I picked it up, I noticed that it was a gun. I went to the car and put the gun under the seat and I lie down in the car. That is all I can remember."

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Dr. Patricia Bannister also told you about what the accused told her in connection with the incident. The witness Richard Browne said that what Dr. Bannister said in regard to what the accused told her was essentially the same as what the accused had told him. She said that he told her that he had left home for the Garrison, after taking tablets for a headache, to collect his

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10 girl-friend and her mother from the races. That they were not ready and as he felt badly, he sat in the car and drank about four Guinness, after which he went to call his girl-friend and her mother, and on returning to the car his foot touched an object which he saw was a gun, and he picked it up and put it in his pocket. Before setting out he put the gun under the seat. This was to prevent his girl-friend seeing it as it would frighten her and cause an argument. She said that he told her that they went via Waterfords because his head was turned, and that during the driving he had on one or two occasions to push the gun under the seat, and that his girl-friend asked him what he had there and he said nothing. That he drove slower and slower and finally stopped the car to urinate, whereupon the girl-friend snatched the car keys and she and her mother left the car and flagged down a passing car. He took the gun from under the seat and held it in the palm of his hand and went to the car to show his girl-friend what he had been hiding. His girl-friend grabbed his hand and the gun went off. He said that he did not remember anything else until he heard somebody shouting: "Why you don't let go the girl? You going to let this girl put you in trouble? He found two men holding his hands, and he found that he had a bad headache. He got up and went to the car and drove away. His child's mother advised him to go to the police.

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One of the matters which you will have to determine is, was he merely pretending that he knows nothing after his girl-friend and her mother got out of car, or is the speaking the truth? You will have to ask yourselves if he made up what Dr. Bannister said that he told her? Is he pretending or has he lost his memory genuinely? His girl-friend said that he beats her and does not remember that he did it. He said that he was told that he burnt his mother's curtains and that he knows nothing about it. Dr. Bannister said that he would get vexed and not remember anything. He said that he gets blackouts. Dr. Bannister said that she could not support this. His girl-friend said that he once had a blackout in her presence. One question which you will have to ask is: Is he really having disease of the mind which produces abnormality, or is he malingering? The different things that he has told you about himself, the

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loss of memory, insomnia, headaches and blackouts, are these symptoms of mental illness? These are things you will have to take into consideration, bearing in mind what I have told you before that you are here to determine facts and to decide what happened. You must consider his defence of diminished responsibility, and decide if he did have an abnormality of the mind, whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury, and whether this abnormality of mind was such as to substantially impair his mental responsibility for his act. You will have to consider all the evidence in the case. You may well think that there was no motive whatsoever for the killing. There was evidence of two explosions and two shots fired off, and then evidence of the gun having been jammed. And apparently on the evidence, both of these persons who were shot, Catlyn and the girl, were strangers to him. Then the evidence of Welch and Branch arriving on the scene and seeing the accused with his hands around the girl Margareta's neck. There was evidence from one of these witnesses that the girl's face was distorted and her eyes bulging. Also evidence of Anita Bradshaw that the accused had his hands around Margareta's neck as if he was choking her. You would have to ask yourselves: what caused him to behave like that? Could they have had a quarrell? This was denied by the girl and her mother, although the mother did say that she asked him why did he pick her up if he knew that they were having a noise. Did they have a noise, and was that the reason for his behaving like that? Did the action of the girl in taking the switch keys from the car set him off? Was it the drink that he had taken at the Races responsible? and the fact that she was going off in the car with another man?

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Whatever it was that caused him to behave as he did, was his behaviour so strange, unreasonable, and inexplicable, so outside the realm of what is normal, as to confirm the view of Dr. Bannister that he had an abnormality of mind such as substantially impaired his mental responsibility for what he did? Or was he merely behaving like a spoilt young man with a violent temper seeking to have his own way. Mr. Browne explained it as a low tolerance level. Dr. Bannister said that he did not tolerate frustration well. Was he seeking

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to have his own way and resorted to the outrageous behaviour, which was spoken about in this Court, and discharged the firearm in the car in which his girlfriend was going off?

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10 If in respect of this defence of diminished responsibility you are of the opinion that the balance of probability is in favour of this defence, you should return a verdict of guilty of man-
slaughter. But if you cannot find in the evidence material to justify a conclusion that the balance
of probability is in favour of that defence, it is your duty to return a verdict of guilty of murder. That is assuming that you are sure in your minds that the act of the accused caused the death of the girl, that his act was not accidental, and that he intended to kill her or to cause really serious bodily harm. In this connection, of course, you will also consider the evidence of Sgt. Taitt, who produced the statement which I have read to you
20 just now. The last bit stated: "I did not want to hurt the two people that were in the car that pick up Maggie and her mother." He is saying that he did not want to hurt the people. You can come to a conclusion and a sure conclusion that you are sure that he killed the girl, but if you are not satisfied beyond all reasonable doubt that he had an intention to kill or to cause really serious bodily harm, then your verdict will be guilty of manslaughter. That is, guilty of unlawful killing
30 without malice aforethought. I do not think there is very much more assistance I can give you.

40 The law states that a verdict of guilty of murder or a verdict of not guilty must be unanimous. A majority verdict of guilty of manslaughter may be returned in certain circumstances, but these circumstances have not as yet arisen, so that when you retire I must ask you to reach a verdict upon which you are all agreed. Should the time come when it is possible for me to accept a majority verdict of manslaughter, I must give you a further direction. I now ask you to retire to consider your verdict. There are many exhibits in the case and if you wish any of them or all of them, you can just ask for them.

	QUESTIONS	ANSWERS	In the Court of Appeal
	1. Did the Judge before whom you were tried grant you a certificate that it was a fit case for appeal?	NO	— No.32
	2. Do you desire the Supreme Court to assign you legal aid? If your answer to this question is "Yes", then answer the following questions:-	NO	Notice and Grounds of Appeal 23rd October 1974 (continued)
10	(a) What was your occupation and what wages, salary or income were you receiving before your conviction?	-	
	(b) Have you any means to enable you to obtain legal aid for yourself?	-	
20	3. Is any solicitor now acting for you? If so, give his name and address.	CALVIN C. ALLEYNE Chambers, Coleridge Street, Bridgetown, St.Michael.	
	4. Do you desire to be present when the Court considers your appeal?	YES	
	5. Do you desire to apply for leave to call any witnesses on your appeal? If your answer to this question is "Yes", you must also fill in Form 22 and send it with this notice.	No	
	GROUNDS OF APPEAL OR APPLICATION:		
30	(1) Under all the circumstances of the case the verdict is unsatisfactory.		
	(2) The Learned Trial Judge erred in that he		
	(a) misdirected the jury; and		
	(b) omitted to give necessary directions to the jury		
	during the course of his summing-up.		

In the Court
of Appeal

No.32

Notice and
Grounds of
Appeal

23rd October
1974
(continued)

IN THE SUPREME COURT OF JUDICATURE
APPELLATE JURISDICTION

(Territory) BARBADOS

Criminal Appeal No.18 of 1974

DAVID ADOLPHUS WALTON

V.

THE QUEEN

GROUND OF APPEAL: Particulars of Alleged
Misdirection.

Following are particulars of alleged misdirection referred to in the Appellant's Notice of Appeal:- 10

1. IN REVIEWING the evidence for the defence the Learned Trial Judge misquoted chief defence witness Dr. Patricia Bannister at page 20, lines 16 and 17 in saying the witness had said: "translated in the language of ordinary people this means: that he likes having his own way." 10
2. THE LANGUAGE of the Learned Trial Judge at page 29, lines 3 to 8 was an implied direction to the jury that the things therein mentioned were the only things upon which the defence relied to establish disease of the mind. 20
3. THE LEARNED TRIAL JUDGE did not adequately put the case for the Appellant when, after listing things the Appellant said about himself the Learned Trial Judge posed to the jury at page 38, line 20: "Are these symptoms of mental illness?" It is contended that in this way it was to be inferred that those were all being relied on and if those symptoms alone were not then the Appellant would be guilty of murder. 30
4. THE LEARNED TRIAL JUDGE did not put the defence adequately to a degree that the inadequacy amounted to inaccuracy at page 40 lines 9 to 14. This in conjunction with page 20 lines 16 and 17 ignores the complete language of the doctor. 40

5. THE LEARNED TRIAL JUDGE misdirected the jury when he said at page 8, line 12: "You must decide the issues on the evidence led in court regard to anything you may have heard outside".
6. THE LEARNED TRIAL JUDGE failed to give adequate directions when in considering the question of the opinion of experts, page 7 line 23, page 8 lines 1 to 12 and page 9 lines 2 to 5. The Learned Trial Judge omitted to add, in substance, in this context, that the verdict must be founded on evidence and to differ from the opinions of the medical expert there must be facts which would entitle them to do so.
7. THE LEARNED TRIAL JUDGE wrongly withdrew from the jury consideration of provocation, page 10 line 19.
8. THAT, NOTWITHSTANDING the general instructions to the jury that the facts were for them to decide, the Learned Trial Judge in summation on the question of Accident expressed his views too strongly in suggesting that if they, the jury, were intelligent they would agree with him, the judge.
9. THE LEARNED TRIAL JUDGE did not give a balanced review of the evidence for the defence in saying (a) page 33 line 5 that Dr. Bannister admitted it was difficult to tell whether the Appellant was malingering without adding that the doctor was satisfied the Appellant was not; and (b) page 38 lines 14 and 15 Dr. Bannister said that she could not support this.

It is contended that this is too free a gloss on the doctor's evidence that he had never had a black out in front of her, page 82 line 19.

C. C. ALLEYNE

(Signed) C. C. Alleyne

Attorney-at-Law for the Appellant

In the Court
of Appeal

—
No.32

Notice and
Grounds of
Appeal

23rd October
1974

(continued)

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In the Court
of Appeal

No. 33

Judgment

No.33

Judgment

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

12th March

1976

COURT OF APPEAL

No. 18 of 1974:

DAVID ADOLPHUS WALTON Petitioner

vs.

THE QUEEN Respondent

Before the Honourable Sir William Douglas, Chief Justice, the Honourable Mr. Justice L.I. Worrell, Puisne Judge and the Honourable Mr. Justice D.F. Johnson, Puisne Judge (Acting)

10

1976, March 12th.

Mr. Calvin Alleyen for the Appellant

Mr. John Husbands, S.C., Director of Public Prosecutions and Mr. G. Husbands, for the Respondent.

JUDGMENT

The Appellant was convicted in the High Court for the murder on the 2nd of February, 1974 of Cynthia Allder, a young woman aged 16 years.

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On the afternoon of that day the Appellant went to the races at the Garrison. There he met his girl-friend, Margaret Watson, and her mother, Anita Bradshaw. They left the Garrison between 5 and 6 p.m. The Appellant set out to drive home by way of St. George where his grandmother lives. He later changed his mind about visiting his grandmother and set off towards Waterford Bottom through a cart road. Nearing the main Road, Margaret Watson told the appellant to stop the car. He did so and she and her mother got out, leaving the appellant sitting in the driver's seat of his car. They saw a car travelling towards Bridgetown and Margaret Watson flagged it down and she and her mother got into the back seat of that car which was being driven by Stephen Catlyn, who was on his

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way from Parris Hill, St. Joseph, to Bridgetown. The deceased was a passenger in the front seat of Mr. Catlyn's car.

In the Court
of Appeal

No. 33

Judgment
12th March
1976
(continued)

10 Before Mr. Catlyn could move off with his new passengers, the appellant came to the car and asked for a lift to town. At this point Anita Bradshaw asked the appellant what he would do with his car and told him it would not make sense to leave it there. The appellant then drew a gun and fired two shots at close range one of which inflicted a wound on Mr. Catlyn's neck and the other of which killed the deceased young woman. A struggle then ensued between the appellant and Margaret Watson and witnesses who came up in another car described how the appellant was holding her around the neck to the extent that her face was distorted and her eyes were bulging. The witnesses were able to release Margaret Watson and the appellant then got back into his car and drove off.

20 Later that day the appellant drove to the Holetown Police Station and there spoke first to Constable Phillips. He said -

30 "All I know is I went on the Garrison with my girl friend and her mother. While there I drank about three or four Guinness stouts. After drinking these stouts I started to feel badly and I told my girl I was going into the car and lay down, while walking across the pasture I kicked something in the grass and on turning round and searching in the grass I saw it was a gun. I took it up, carry it to the car and place it under the driver's seat where I sit. About half an hour afterwards my girlfriend and her mother came and got into the car. I drove off and decide I was going for a drive before I go home. When I got in Waterford I stopped the car. My girl friend and her mother thought I was going to do something funny. And they got out the car. I don't know what happened after that."

40

Later that evening Sergeant Taitt recorded a written statement by the appellant after caution. The statement reads -

"Today I went to the Garrison for my girlfriend Maggie Watson and while I was at the Garrison I found a white handle black gun and

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of Appeal

—
No.33

Judgment

12th March
1976

(continued)

I hid it under the front seat of my car S.134 and I pick up Maggie and her mother Miss Bradshaw and bring them down, and I was going up at my grandmother and when I get to Charles Rowe Bridge Maggie mother said she was hungry and I turn off and came down to Waterford's Bottom and as I swing out of the cart road and was coming towards Combermere I stop the car and Maggie took out the switch keys and ask me what I had under the seat, but I would not tell her because I know if she knew it was a gun she would be frighten, because when I drink we does quarrel and I hold Maggie hand to get the switch keys and her mother get out of the car and said she was going to catch a bus, and Maggie get out too and a car came down with a man and a woman in it and Maggie and her mother stop it and get in it. So I took up the gun, put it in my right hip pocket and went to the car that Maggie and her mother get in and as I was about to get in the car with them I took the gun from my hip pocket with my right hand and I squeeze the trigger and shots went off. I didn't want to hurt the two people that were in the car that pick up Maggie and her mother, nor I don't know what became of the gun

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20

In his unsworn statement from the dock, the appellant denied telling Sergeant Taitt about going to the car and firing shots and said that he gave Sergeant Taitt the same account as he gave Constable Phillips. He also said that before the incident he suffered from severe headaches, blackouts, sleeplessness and loss of memory.

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The Defence called Dr. Bannister, a Psychiatrist at the Mental Hospital in support of the defence of diminished responsibility. She saw the Appellant on eight occasions between the 9th of April, 1974 and the 8th of October, 1974. Her findings are that the Appellant was extremely anxious. He did not tolerate frustration well. He did not tolerate stress. He became confused if he was stressed or pressured. He showed paranoia. He was extremely suspicious and interpreted internal stimuli as coming from outside of himself. He showed some loss of memory for certain events. The doctor comes to the conclusion that he suffers from an extremely immature personality,

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that his development had been retarded in certain aspects and that he has abnormality of mind which substantially impairs his responsibility for his acts. The doctor puts his emotional levels at those of a three-year-old, and states that he is suffering from a disease of the mind and that, indeed, he could be certified.

In the Court
of Appeal

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No.33

Judgment

12th March
1976

(continued)

10 The Prison Medical Officer treated the appellant for depression, and later for psychosis. The Clinical Psychologist at the Mental Hospital, Mr. Browne, applied various tests in which the appellant exhibited no features of confusion or disorientation. One test indicated good observational ability and clear thinking, although his concentration and tolerance seemed to decrease as the test progressed. Mr. Browne found him to be of average intellectual ability and describes him as having an inadequate personality, emotional immaturity and a low tolerance level.

20 Apart from the doctors and the psychologist, evidence as to the mental condition of the appellant was elicited from Margaret Watson and other witnesses. Margaret Watson says that before she left the appellant's car he was acting funny, and that she did not like the way he was acting. She also says that prior to the 2nd of February, 1974 he had, on occasions, beaten her and subsequently expressed total absence of knowledge of having done so. She says he complained to her, before
30 the incident, of insomnia and very severe headaches, and on two occasions she says she witnessed his having a black-out. There is also evidence given by Anita Bradshaw that the appellant looked calm when he was trying to take Margaret Watson to the car and she was pulling away from him. On the other hand, Randolph Welch, who helped to free Margaret Watson when the appellant was holding her around her neck, says that he appeared to be very angry.

40 Learned Counsel for the Appellant draws attention to divers passages in the learned trial judge's summation and argues that these amounted to misdirection. We have examined each of these passages and save for one instance to which further reference will be made below, we find no merit in the complaints advanced in respect of the summation. The learned trial judge read the provisions of the Offences against the Person

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of Appeal

—
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12th March

1976

(continued)

(Amendment) Act, 1973 in regard to the defence of diminished responsibility, and dealt with the burden of proof where this defence is put forward. He then read portions of the judgment in Reg. v. Byrne, 44 Cr.App. R. 251 and dealt fully with the question of abnormality of mind. It was at this point that the trial judge directed the jury that they were entitled to take into consideration all the evidence, including the acts or statements of the appellant and his demeanour, and that they were not bound to accept the medical evidence if there was other evidence which in their opinion conflicted with the medical evidence and outweighed it. He then went through the medical evidence as to the mental condition of the appellant.

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The more substantial ground argued on behalf of the appellant is that the verdict is unreasonable or cannot be supported having regard to the evidence. Counsel relies on that portion of the judgment in R. v. Matheson /1958/ 2 All E.R. 87 where Goddard C.J. said at page 90 -

20

"If then there is unchallenged evidence that there is abnormality of mind and consequent substantial impairment of mental responsibility and no facts or circumstances appear that can displace or throw doubt on that evidence it seems to the court that we are bound to say that a verdict of murder is unsupported by the evidence."

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But it must be noted that Goddard, C.J. in Matheson's case drew attention to another category of cases when he observed -

"..... but we recognise that there may be cases where, on the issue under s.2 of the Homicide Act, 1957 /the equivalent of Section 3 of the Offences against the Person (Amendment) Act, 1973/ evidence of the conduct of the accused before, at the time of and after the killing, may be relevant considerations for the jury in determining whether the accused has discharged the onus of proving such abnormality of mind as substantially to impair his mental responsibility for his acts."

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12th March
1976

(continued)

evidence when tested by the prosecution established that the appellant is a person of average intelligence, but of inadequate personality, emotional immaturity and with a low tolerance level. In this state of the evidence a direction was required of the trial judge as to how the jury should approach the medical and other evidence on the question of the appellant's mental condition.

This the learned trial judge did by reading the statute, by defining its terms and also by directing the jury in the language used in the judgment in Reg. v. Lloyd, 50 Cr.App. R. 67 viz:-

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"There is no scientific precise test. That cannot be and never can in human conduct, otherwise we should not need juries or anybody, and if you will allow me to say so, I think you should look at it in a broad common sense way and ask yourselves, having heard what the doctors have said, having made up your minds about it, knowing the whole story: 'Do we think looking at it broadly as common sense people there was a substantial impairment of his mental responsibility in what he did? If the answer to that is yes, then you find him not guilty of murder, but guilty of manslaughter. If the answer to that is no, there may be some impairment, but we do not think it was substantial, we do not think it was something which really made any great difference, although it may have made it harder to control himself, to refrain from crime, then you would find him guilty as he is charged in the only charge to this indictment."

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This is, in our view, a proper direction where on the evidence the main issue is whether there was a substantial impairment of the appellant's mental responsibility for his acts. On this issue the appellant's conduct on the 2nd of February and the conflicting statements given by him to the police and to the doctor had to be considered, because it was open to the jury to conclude on the basis of that conduct and those statements that whatever the abnormality of mind he may have been labouring under, it did not substantially impair his mental responsibility for his act. The jury rejected the defence of diminished responsibility and

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10 Firstly, on the question of whether there is in this case unchallenged evidence of abnormality of mind and consequent substantial impairment of mental responsibility, regard must be had to the cross-examination of Dr. Patricia Bannister by counsel appearing for the Crown at the trial. On reading the appellant's statement to the doctor, Counsel elicited the opinion that it sounded rational and coherent and seemed to emanate from a person of average intelligence. The doctor was asked about the appellant's emotional immaturity and went on to say that a mental disorder includes personality disorder and on that basis expressed the opinion that the appellant was suffering from a disease of the mind. On being questioned about the appellant's loss of memory the doctor, who had testified in chief to the appellant showing "some loss of memory for certain events", said that she put some things to him and at the end of the interview he would get confused and not recall them. Cross-examination disclosed that the doctor was told about sleeplessness and about having black-outs by the appellant himself. Then Counsel brought out all that the appellant had told the doctor about the events of the 2nd of February, 1974. The doctor gave in evidence what amounted to a very detailed account by the appellant of his movements that day, differing from the statement he gave to the police in that he told the doctor that his girl-friend

20 grabbed his hand and the gun went off. Counsel then posed the question of whether the appellant's mental condition had worsened since the events complained of at the trial. The doctor frankly stated that the appellant's psychotic breakdown while he was in prison could have been brought on by the stress of awaiting trial or just by being in prison. Finally, in cross-examination the doctor was asked about whether the appellant was malingering. She admitted that it is very difficult to tell if a person is malingering but she gave it as her opinion that the appellant was not a malingerer.

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In the Court
of Appeal
—
No.33
Judgment
12th March
1976
(continued)

50 In contrast to the above, in Matheson's case there was no challenge to the opinions expressed by the medical witnesses. The prisoner's mental development in their opinion was that of a boy of ten and they were all satisfied that his mind was so abnormal as substantially to impair his mental responsibility. Further, they gave reasons which led them to form that opinion. Here, the medical

there being matter before them to support their finding, we cannot say that the verdict is unreasonable nor can we say that it is unsupported by the evidence.

In the Court
of Appeal

—
No.33

Judgment

12th March
1976
(continued)

10 In the course of his submissions learned
Counsel for the appellant referred to a passage in
the summation in which the jury were told that the
appellant said he gets black-outs and that Dr.
Bannister said she could not support this. In
fact, all Dr. Bannister said in evidence was that
the appellant never had a black-out in her presence.
The trial judge went on to remind the jury of other
evidence that the appellant used to have black-outs.
We do not consider, looking at the summation as a
whole, that the jury would have interpreted the
judge's words as meaning that the doctor was
contradicting the appellant as to his having had
black-outs or as having any meaning other than that
20 by her whether or not the appellant had had black-
outs before. In the circumstances we do not
consider this passage a mis-direction on the facts.

In the result, the appeal will be dismissed
and the conviction and sentence affirmed.

(Sgd.) W. R. Douglas
Chief Justice.

(Sgd.) L.I. Worrell
Puisne Judge

Dudley Johnson
Puisne Judge (Ag.)

In the Privy
Council

—
No. 34

Order
granting
Special Leave
to Appeal in
forma
pauperis to
Her Majesty
in Council
5th November
1976

No. 34

Order granting Special Leave to
Appeal in forma pauperis to Her
Majesty in Council

AT THE COURT AT BUCKINGHAM PALACE

The 15th day of November 1976

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 26th day of October 1976 in the
words following viz.:-

10

"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 David Adolphus Walton in the
matter of an Appeal from the Court of
Appeal of the Barbados Supreme Court
between the Petitioner and Your Majesty
Respondent setting forth that the
Petitioner prays for special leave to appeal
in forma pauperis from a Judgement of the
Court of Appeal of the Barbados Supreme
Court dated the 12th March 1976 which
dismissed the Appeal of the Petitioner
against his conviction in the Barbados
High Court of murder: And humbly praying
Your Majesty in Council to grant the
Petitioner special leave to appeal in
forma pauperis against the Judgment of the
Court of Appeal of the Barbados Supreme
Court dated the 12th March 1976 and for
further and other relief:

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"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 and in opposition
thereto Their Lordships do this day agree
humbly to report to Your Majesty as their
opinion that special leave ought to be

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granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Court of Appeal of the Barbados Supreme Court dated the 12th March 1976:

In the
Privy Council
—
No.34

Order
granting
Special Leave
to Appeal in
forma
pauperis to
Her Majesty
in Council

5th November
1976

(continued)

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"And Their Lordships do further report to Your Majesty that the authenticated copy of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as 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 executed that the same be punctually observed obeyed and carried into execution.

20

Whereof the Governor-General or Officer administering the Government of Barbados for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

N. E. LEIGH

O N A P P E A L
FROM THE COURT OF APPEAL OF BARBADOS

B E T W E E N :

DAVID ADOLPHUS WALTON

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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