

IN THE PRIVY COUNCIL

No. 37 of 1977

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O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

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B E T W E E N :

DENNIS REID

Appellant

- and -

THE QUEEN

Respondent

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RECORD OF PROCEEDINGS

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O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

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B E T W E E N :

DENNIS REID Appellant

- and -

THE QUEEN Respondent

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RECORD OF PROCEEDINGS

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No. 1

INDICTMENT

In the Home  
Circuit Court

No.1  
Indictment  
dated 13th  
October  
1975

10

THE QUEEN v. DENNIS REID

In the Supreme Court for Jamaica  
In the Circuit Court for the Parish of Kingston

IT IS HEREBY CHARGED on behalf of Our Sovereign  
Lady the Queen:

Dennis Reid is charged with the following  
offence :-

STATEMENT OF OFFENCE

Murder.

20

PARTICULARS OF OFFENCE

Dennis Reid, on the 6th day of April, 1975, in

In the Home  
Circuit Court

No.1  
Indictment  
dated 1<sup>st</sup>  
October 1975

the parish of Saint Andrew, murdered  
Fedlan Walsh.

.....  
for Director of Public Prosecutions,  
13th October, 1975

No.2  
Proceedings  
dated 5th  
May 1976

No. 2  
PROCEEDINGS

HOME CIRCUIT COURT,  
KINGSTON, JAMAICA.

WEDNESDAY, 5th May, 1976

10

R E G I N A v. DENNIS REID MURDER

COURT COMMENCED: 10.12 A.M.

CROWN ATTORNEY: May it please you M'Lord,  
before the court is Dennis Reid. In this  
matter Mr. Roy Taylor appears for the accused,  
Mr. Soares and myself for the crown. We are  
at the moment waiting on jurors from Court I,  
M'Lord, to proceed.

HIS LORDSHIP: We don't have enough?

CROWN ATTORNEY: We have not got enough,  
twelve M'Lord, but there are some jurors in  
Court I which we will get in a short while.  
Why was I brought in.

20

CROWN ATTORNEY: I didn't send for you, M'Lord,  
I was wondering why you were brought in.

HIS LORDSHIP: Are your witnesses here?

CROWN ATTORNEY: Yes, M'Lord.

In the Home  
Circuit Court

HIS LORDSHIP: As soon as the jurors come,  
let me know, please.

No.2  
Proceedings  
dated 5th  
May 1976

CROWN ATTORNEY: Yes, M'Lord.

His Lordship leaves - 10.15 a.m.  
His Lordship returns - 10.23 a.m.

REGISTRAR: Dennis Reid, you are charged with  
the offence of murder, the particulars are that  
you, Dennis Reid, on the 6th day of April,  
1975 in the parish of St. Andrew, murdered  
Fedlan Walsh. How say you, guilty or not guilty?

ACCUSED: Not guilty.

REGISTRAR: The names that I am about to call are  
the names of the jurors who are about to try your  
case. If therefore you wish to challenge them or  
any of them, you must do so as they come to the  
book to be sworn and before they are sworn your  
objection shall be heard.

EMPANELLING OF JURY - (10.25 a.m.)

52.	Mr. Frederick Bariffe	Challenged by Defence
69.	Mrs. Olga Golding	Challenged by Defence
24.	MR. GLADSTONE BECKFORD	SWORN - FOREMAN
2.	MR. BYRON ALLEN	SWORN
64.	MRS. DOROTHY BLACKMAN	SWORN
30.	Miss Monica Bartlett	Challenged by Defence
46.	MR. WINSTON BAYLISS	SWORN
44.	MR. ROBERT BERRY	SWORN
47.	MR. KENNETH BYLES	SWORN
40.	MR. HAROLD ADAMS	SWORN
62.	Miss Valerie Campbell	Challenged by Defence
16.	MR. BASIL BROWN	SWORN
3.	MR. HAROLD AARONS	SWORN
48.	MRS. ALICE ARCHER	SWORN
57.	MR. CHARLES BACQUIE	SWORN
51.	Miss Merlene Bolt	Challenged by Defence
66.	MR. ORVILLE COPE	SWORN

All Sworn - 10.40 a.m.

REGISTRAR: Members of the jury, please confer  
among yourselves, and select a Foreman. It can  
be a lady also.

Foreman selected please stand. (Mr.  
Beckford stands)

In the Home  
Circuit Court

No.2  
Proceedings  
dated 5th  
May 1976

Members of the jury you have selected  
Mr. Beckford to be your Foreman and so say  
all of you?

A: Yes.

REGISTRAR: Mr. Foreman and members of the jury,  
the prisoner at the bar, Dennis Reid, is  
charged with the offence of murder. The  
particulars are that he, Dennis Reid, on  
the 6th day of April, 1975, in the parish  
of St. Andrew murdered Fedlan Walsh. To  
this indictment he has pleaded not guilty,  
and it is your charge, having heard the  
evidence to say whether he be guilty or  
not guilty.

10

P R O C L A M A T I O N

HIS LORDSHIP: Now, this is a Gun Court trial,  
so please clear the court. I am afraid  
you all will have to leave, this is a  
Gun Court trial, it is taking place in  
camera.

20

(Courtroom cleared)

CROWN ATTORNEY ADDRESSES MEMBERS OF THE  
JURY: 10.44 to 10.52 a.m.

Prosecution  
Evidence

No.3  
Sadie Samuels  
Examination

No. 3

SADIE SAMUELS

(Miss Sadie Samuels called and sworn)

EXAMINATION-IN-CHIEF OF MISS SADIE SAMUELS  
BY CROWN ATTORNEY

CROWN ATTORNEY: Now, I am going to ask you to  
speak loud for me, you see, the reason  
being that the jurors are trying the  
case and they must hear, the lady and  
gentleman at the back, they must hear,  
this man is on trial, he too must hear  
what is happening, this gentleman is  
defending him, so he must hear what you  
are saying.

30

A: Yes sir.

CROWN ATTORNEY: Speak loud for me, please.

(Dr. Badhoo enters)

Sorry, M'Lord, that is the doctor, may he be allowed to stay in court?

HIS LORDSHIP: Is he in a hurry, the doctor, I never like to take the doctor first.

10 CROWN ATTORNEY: Sorry, M'Lord, I spoke with my friend and he agrees, subject to what Your Lordship says, that we take the doctor after the evidence-in-chief of this witness. May he be allowed to stay in court?

HIS LORDSHIP: Yes.

CROWN ATTORNEY: Is your name Sadie Samuels?

A: Yes.

Q: Turn this way, look across. What work do you do?

A: I am a domestic.

20 Q: Speak loudly for me, please. Now in April of last year where were you working?

A: Walsh's Beach Club.

Q: As what, Miss Samuels?

A: Waitress.

Q: Do you remember about 1.00 o'clock in the morning or some time thereafter on the 6th of April last year?

A: Yes sir.

Q: Where were you, Miss Samuels?

30 A: In the restaurant by the club.

Q: Now, I want you to give me an idea of the premises. What is on these club premises? You say a restaurant that is where you were. What else?



In the Home  
Circuit Court  
Prosecution  
Evidence  
No.3  
Sadie Samuels  
Examination

- A: The restaurant the bar.
- Q: The bar is where, the front, back or side?
- A: At the front.
- HIS LORDSHIP: The restaurant is to the side  
or the night club?
- A. Well, to the side, and there is a kitchen
- CROWN ATTORNEY: And there is a kitchen on those  
premises?
- A: Yes.
- Q: Where is this kitchen in relation to the restaurant 10
- A: Beside the bar and the restaurant.
- Q: To the back or to the front of the bar?
- A: To the front.
- Q: Of the bar?
- A: Of the bar.
- Q: Is the front of the bar to the road or to  
a yard or what?
- A: To the road.
- Q: And is this road the road that leads from  
Kingston to Bull Bay? 20
- A: Yes.
- Q: So the kitchen leads to the road?
- A: Yes.
- Q: Now, facing the road, you see, is there  
anything to the side of the bar and the  
restaurant?
- A: A drive-in is at the side of the restaurant.
- Q: On the Kingston side or the St.Thomas side?
- A: Kingston side. 30

Q: Can one get from the restaurant to the kitchen?

A: I beg pardon?

Q: Can one leave from the restaurant and go into the kitchen?

A: Yes.

Q: How would you get to go into the kitchen?

A: How would I get in the kitchen?

HIS LORDSHIP: How you get in there?

10 A: A door is at the kitchen.

HIS LORDSHIP: A door leading from the restaurant into the kitchen?

A: Yes.

CROWN ATTORNEY: Can one get from the restaurant to the bar?

A: Yes.

HIS LORDSHIP: Without going outside can you get from the restaurant into the bar?

A: Yes.

20 CROWN ATTORNEY: By a door?

A: Yes.

Q: And the door leading to the kitchen and the bar - leading to the bar faces where?

A: The drive-in

HIS LORDSHIP: Faces the drive-in?

A: Yes.

CROWN ATTORNEY: The door to the kitchen and the bar faces the drive-in?

A: At the side.

30 Q: One door or two doors?

In the Home  
Circuit Court  
Prosecution  
Evidence  
No. 3  
Sadie Samuels  
Examination

- A: Two doors.
- Q: Two doors to the side facing the drive-in?
- A: Yes.
- Q: Can one leave the restaurant and get to the drive-in?
- A: From the restaurant.
- Q: Restaurant to the drive-in?
- A: Yes.
- Q: How do you get from the restaurant to the drive-in?
- A: A door is at the side and you can come out of the restaurant to the drive-in.
- Q: Now, this bar, restaurant and kitchen, is it on the ground floor, top floor or what?
- A: Is it on the what?
- Q: The building, is it upstairs and downstairs, or what, or just downstairs alone, the entire club?
- A: It is a upstairs and downstairs.
- HIS LORDSHIP: Bar, restaurant and kitchen, is it upstairs or downstairs?
- A: The bar, the restaurant and the kitchen is downstairs.
- CROWN ATTORNEY: Now, you said you were there on the morning of the 6th of April, 1975, exactly where in the restaurant were you?
- A: I was sitting in the restaurant at the side door round a table.
- Q: What side door:
- A: At the side door of the restaurant.
- Q: Where this door leads to?
- A: The drive way.

10

20

30

Q: Were there any lights on the premises?

A: Yes.

Q: Where you had light?

A: Beg your pardon?

Q: Where did you have those lights?

A: The lights were in the bar, in the kitchen, in the restaurant and in the driveway.

Q: All electric lights?

10

A: Yes.

Q: Now, the doors, that is the door from the restaurant to the kitchen, the door from the restaurant to the bar, and the door from the restaurant to the driveway, were they open or closed or what?

A: They were open.

Q: Half open, quarter open or wide open?

A: Wide open.

20

Q: Now, while you were sitting there did anything happen?

A: Yes.

Q: What happened?

A: I saw two gunmen came in, two man came in.

Q: Did you notice that they had anything with them?

A: Yes.

Q: What?

A: One had a gun and a mask over his face.

HIS LORDSHIP: One had a gun and a what?

30

A: A mask over his face.

HIS LORDSHIP: Had a gun and a mask over his face?

In the Home  
Circuit Court

Prosecution  
Evidence  
No.3  
Sadie Samuels  
Examination

A: Yes sir.

HIS LORDSHIP: One.

A: One just go straight through.

HIS LORDSHIP: And the other one what?

A: Go straight through.

HIS LORDSHIP: You said two men came in?

A: Yes, one had a gun and a mask over his face  
and the other one go straight through.

CROWN ATTORNEY: Did he have anything?

A: The one that go straight through?

10

Q: Yes.

A: Well, I really didn't take any notice.

HIS LORDSHIP: Could you speak up for me please.

CROWN ATTORNEY: When you say he went straight  
through, went straight through to where or  
in what direction?

A: Entering into the bar.

HIS LORDSHIP: Was that the one with the mask;  
one didn't have any mask?

A: The one that enter into the bar.

20

CROWN ATTORNEY: You say you didn't notice if  
he had anything in his hand?

A: No.

Q: Now, the one with the mask who remained in  
the restaurant, what did he do?

DEFENCE ATTORNEY: M'Lord, I don't think she has  
told you that he was in the restaurant.

HIS LORDSHIP: She said one went straight through.

CROWN ATTORNEY: What happened to the one with  
the mask?

30

A: He stick me up and say, 'don't move'.  
Q: And you said you were in the restaurant?  
A: I was in the restaurant.  
Q: Did he remain where you were all the while?  
A: No.  
Q: How long did he remain there for?  
A: Just a few minutes.  
10 Q: Did he go anywhere after the few minutes?  
A: He enter into the bar.  
HIS LORDSHIP: Leaving you where?  
A: In the restaurant standing up.  
CROWN ATTORNEY: After this masked man entered the bar, did you remain where you were before.  
DEFENCE ATTORNEY: M'Lord, I did hear her say he entered the bar, did she change that and say he entered the restaurant?  
20 HIS LORDSHIP: He entered the bar leaving her standing in the restaurant.  
DEFENCE ATTORNEY: M'Lord, can you ask her to speak up a little.  
HIS LORDSHIP: Miss Samuels, speak a little louder for me. The man told you, 'don't move', did you move?  
A: No, I stand up.  
HIS LORDSHIP: You stand up there you say, after a few minutes he left you standing in the restaurant and entered the bar?  
30 A: Yes.  
CROWN ATTORNEY: Could you see where the other man was at that time?

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No.3  
Sadie Samuels  
Examination

A: No.

Q: When he left to go in the bar did he still have the gun in his hand?

A: Yes.

HIS LORDSHIP: What about the mask?

A: Well, he didn't have it on at the time, only the gun.

HIS LORDSHIP: When the mask came off?

A: When he stand where I was.

10 HIS LORDSHIP: Tell us about that?

CROWN ATTORNEY: While he was sticking you up?

A: Yes.

Q: The mask came off. How it come to come off?

A: While he was sticking me up.

Q: Did it drop off or he took it off or what?

20 A: Well, he must be took it off, I don't know, but when he stick me up it wasn't on his face, he enter in with it.

HIS LORDSHIP: I see. He entered with the mask, but when he stick you up, he said, 'don't move', it wasn't on his face, you didn't see when he removed it?

A: No.

CROWN ATTORNEY: When he was without the mask how near was he to you?

A: Beg your pardon?

30 Q: About how near was he to you when he was without the mask?

A: About like I and this gentleman?

HIS LORDSHIP: Speak up for me please. How far

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No.3  
Sadie Samuels  
Examination

was he from you when he said, 'don't move'?

In the Home  
Circuit Court

A: He was very near.

Prosecution  
Evidence

HIS LORDSHIP: Show us.

No.3

Sadie Samuels

A: About like I and this gentleman here.  
(pointing to Clerk)

Examination

10

CROWN ATTORNEY: And what was his position in relation to you, in other words, to the side, his side to you or where of his body was turned to you?

A: When he stick me up?

Q: Yes.

A: I was facing the kitchen.

HIS LORDSHIP: Where was he in relation to you, what part of him was turned to you?

A: His front, his face.

20

CROWN ATTORNEY: Was this when he was without the mask? Was this at the time when he was without the mask?

A: Yes.

Q: Now, after he went into the bar, did you hear anything?

A: Yes.

Q: What did you hear?

A: Gunshots.

Q: Coming from what direction?

A: From the bar.

30

Q: Did you do anything after hearing the gunshot.

A: I run into the kitchen.

Q: In the kitchen did you hear anything?



In the Home  
Circuit Court

Prosecution  
Evidence  
No. 3  
Sadie Samuels  
Examination

A: Gunshots.

Q: From what direction?

A: The bar.

Q: Did you continue to hear gunshots in the kitchen?

A: Yes.

Q: All the while...

A: I heard gunshots.

HIS LORDSHIP: More than one?

A: More than one. That was the time it started.....

10

HIS LORDSHIP: Speak up.

A: That was the time it started.

Q: Speak up.

A: That was the time the shots started to fire, so I heard it more than once while I was in the kitchen.

Q: Did you remain in the kitchen all the while?

A: I run out, I came out of the kitchen.

20

Q: How long were you in the kitchen before you came out, about?

A: About a few minutes.

Q: What?

A: About a few minutes, I didn't stay much long.

Q: When you came out the kitchen, did anything happen?

A: As I enter out the kitchen he was right at the door, held my hand.

30

Q: Who was right at the door?

A: The gunman.

HIS LORDSHIP: That is the first one that came in?

A: The one that stick me up.

HIS LORDSHIP: Was where?

A: Right at the kitchen doorway.

CROWN ATTORNEY: Was the kitchen door still open?

A: Yes.

10

Q: What about the lights in the kitchen and the restaurant at that time?

A: Lights were there.

Q: On or off?

A: On.

Q: Both in the kitchen and the restaurant?

A: Yes.

Q: And when he stuck you up by the kitchen door how near was he to you?

A: Very near.

Q: About, point out for me?

20

A: About like here to here, near to me.

Q: Right in front of you at the kitchen door?

A: Yes.

Q: What about the gun, did you see him with it, did you see him with the gun still?

A: Yes.

Q: What about the mask?

A: No, I didn't see the mask.

Q: And what part of his body was to you?

30

A: My back was facing the kitchen and his face was facing me.

In the Home  
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Examination

HIS LORDSHIP: His face was to you?

A: Yes, and my back to the kitchen.

HIS LORDSHIP: Speak up, speak up.

CROWN ATTORNEY: And you were looking where?

A: In the restaurant.

HIS LORDSHIP: Turn this way.

CROWN ATTORNEY: You were looking where?

A: I were looking in front.

HIS LORDSHIP: You were looking in front?

CROWN ATTORNEY: Speak up.

10

A: While my back were there and I was looking  
by the door.

HIS LORDSHIP: You were looking toward where?

A: Out.

HIS LORDSHIP: To the driveway side?

A: Yes.

CROWN ATTORNEY: Do you see that man here today?

A: Beg your pardon?

Q: Do you see that man here today?

A: Yes.

20

Q: Where is he?

A: Over there. (Pointing to the dock)

HIS LORDSHIP: That man. (Accused stands)

A: Yes sir.

CROWN ATTORNEY: Did he say anything to you at  
that time when he came up to the kitchen?

A: Yes.

Q: What did he say to you?

A: Take off your pants.

Q: What did you do?

A: I started pulling the trousers front.

Q: What did you do when he said take off your pants?

A: I started to pull the pants.

Q: You started pulling your pants front?

A: Yes.

10

Q: Did you remain where you were while you were pulling the pants front?

A: Yes.

Q: Did you take off your pants?

A: Yes.

Q: You took it off?

A: Yes sir.

Q: And what did the accused, that man do after you had taken off your pants?

A: Beg your pardon?

20

Q: While you were taking off your pants what did the accused man do?

A: He pointed the gun at me and held my hand.

Q: And held what?

A: And hold my hand.

Q: Was that while you were taking off your pants?

A: Yes.

Q: After you had taken off your pants did he do anything with you?

30

A: No.

In the Home  
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Examination

Q: What happened after you had taken off your pants?

A: A man from out of the bar, rushed from there to the restaurant, where I was standing to the back of the restaurant.

Q: Take your hand from your mouth please, the members of the jury must hear.

HIS LORDSHIP: After you took off your pants the man rushed from the bar to the back of the restaurant.

10

A: And he let go my hand now and run.

CROWN ATTORNEY: Run in what direction?

A: To the side of the restaurant, the side door.

HIS LORDSHIP: To the side door. Leading where?

A: Through the back to the drive-in at the back.

HIS LORDSHIP: Let go your hand and run through the side door.

A: And then I run upstairs.

20

HIS LORDSHIP: And then you run what?

A: I run upstairs to my escape.

HIS LORDSHIP: What about the other man, did you see him at all?

A: No, I didn't see him after.

HIS LORDSHIP: From he went into the bar you never saw him again? From he went straight through you never saw him again?

A: No.

CROWN ATTORNEY: Did you remain upstairs for the rest of the time?

30

A: Yes, leaving the pants down there.

HIS LORDSHIP: You left your pants downstairs?

A: I go up with my pure panty alone  
with my blouse.

Q: Did you ever come downstairs back?

A: Yes, I came downstairs after but is  
a good while after everything mash up.

HIS LORDSHIP: After everything what?

A: After shots and everything like that  
finish up, everybody run....

HIS LORDSHIP: You came back?

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Examination

10

A: I came down after.

CROWN ATTORNEY: Did you know one Mr. Fedlan  
Walsh?

A: Yes.

Q: When you came downstairs that morning  
did you see him?

A: Yes.

Q: Where you saw him?

A: In the bar.

Q: What position?

20

A: At the side laying down in blood, to  
the counter.

HIS LORDSHIP: To the counter?

A: Lay down in blood.

CROWN ATTORNEY: How did he appear to you?  
How did Mr. Walsh appear to you.  
As if he is dead or something like that?

A: Yes, he was dead in a pool of blood.

HIS LORDSHIP: Speak up. He appeared dead?

A: Yes.

30

HIS LORDSHIP: In a pool of blood?

A: Yes.

In the Home  
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Evidence

No. 3  
Sadie Samuels

Examination

CROWN ATTORNEY: Was he the owner of the premises?

A: Yes.

Q: Now, tell me this. When the mask was not on the accused's face until the time he went into the bar, how long was that, about how long?

A: You mean when..

Q: The first time in the restaurant....

A: The first time that he enter.

10

HIS LORDSHIP: To when he went through to the bar?

A: To when he went into the bar.

HIS LORDSHIP: Is that what you asked her?

CROWN ATTORNEY: Yes sir.

A: About a couple of minutes, he didn't stay long.

DEFENCE ATTORNEY: M'Lord, I can't hear.

HIS LORDSHIP: You are being asked, Madam, you say he came into the bar with a mask and say, 'don't move' and he stuck you up there for a while, and then move into the bar; how much time he spent with you before he moved into the bar?

20

A: Just a few minutes.

CROWN ATTORNEY: And about how long, what time elapsed from the time he came out the kitchen and held your hand until the time he ran through the side door?

A: About what time?

30

HIS LORDSHIP: Yes, from he hold your hand, from he tell you take off your pants to when he run, how long was that?

A: Less than five minutes because it wasn't long.

HIS LORDSHIP: Less than five minutes because it was not long. You must keep your voice up, you see.

In the Home  
Circuit Court

CROWN ATTORNEY: Now, on the 24th of April last year did you attend an identification parade?

Prosecution  
Evidence  
No.3  
Sadie Samuels  
Examination

A: Yes sir.

Q: At the Half Way Tree Police Station?

A: Yes.

10 Q: There did you point out anyone?

A: Yes sir.

Q: Who you pointed out?

A: That man. (pointing to accused)

Q: As what man?

A: Beg your pardon?

HIS LORDSHIP: As who?

A: The one that stick me up in the bar out there.

20 HIS LORDSHIP: Did you know him before that night?

A: No.

(Examination-in-chief ends -  
11.26 a.m.)

CROWN ATTORNEY: M'Lord, at this point could we take the doctor?

HIS LORDSHIP: About how many shots you heard fired that night, can you give us an idea?

A: I heard about five.

30 Yes, alright. Just sit down for me.

(Witness stands down - 11.27 a.m.)

(Dr. Victor Budhoo called and sworn)



In the Home  
Circuit Court

No. 4

DR. VICTOR BADHOO

Prosecution  
Evidence

No.4  
Dr. Victor  
Badhoo

Examination

CROWN ATTORNEY: Your name please sir?

A: Victor Badhoo

Q: And you are a registered medical  
practitioner?

A: That is correct, sir.

Q: And Medical Officer for Gordon own?

A: That is correct.

Q: Now, on the 7th of April last year did  
you perform a post mortem? 10

A: Yes sir.

Q: On the body of a male person?

A: That is correct, sir.

Q: And that body was identified by?

A: One Sylvia Hamilton.

Q: On external examination.....

HIS LORDSHIP: Identified as who?

A: As Fedlan Walsh.

Q: On external examination what were your  
findings, doctor? 20

A: There was a bullet entrance wound with a  
small amount of scorching at the edges,  
about the middle of the upper part of the  
back of the neck.

HIS LORDSHIP: Just show us where.

A: (Indicating) Back of neck, entrance. There  
was a corresponding exitwound on the  
right side of the neck about two inches  
lower. 30

HIS LORDSHIP: Where?

A: (Indicating) Entrance, exit. There was a second bullet entrance wound above the right eye (indicating) with a corresponding exit wound just below the right eye. (indicating) The right eyeball was damaged and both right eyelids were contused.

In the Home  
Circuit Court

Prosecution  
Evidence  
No.4  
Dr. Victor  
Badhoo

HIS LORDSHIP: How....

Examination

10

A: Entered here (indicating) and left there (indicating) downward.

HIS LORDSHIP: The track of the bullet was downwards?

20

A: That is correct. There was a third bullet wound over the right deltoid muscle here (indicating) the track of the bullet was traced into the chest between the third and fourth ribs, and it was traced through the lower part of the right lung, through the thoracic spine.

HIS LORDSHIP: That is?

A: (indicating) Right from here and came through here (indicating) and through the upper part of the left kidney, through the back here (indicating) This bullet was recovered under the skin in the left loin (indicating)

HIS LORDSHIP: In the left loin.

A: Just under the skin in the left loin.

30

HIS LORDSHIP: What was the track of this bullet, the direction of this bullet?

40

A: The bullet entered the left deltoid, it entered the chest between the third and fourth ribs, entered through the lower part of the right lung through the spine, through the left kidney, and was found under the skin. The track was down obliquely downward and slightly backwards. Approximately two pints of blood were found in the right chest cavity and the right lung was completely collapsed.

In the Home  
Circuit Court

Prosecution  
Evidence  
No.4  
Dr. Victor  
Badhoo  
Examination

CROWN ATTORNEY: And in your opinion, doctor,  
death was due to what?

A: In my opinion death was due to shock  
from haemorrhage within the chest caused  
by a bullet wound.

Q: Which bullet wound, first, second or third?

A: Bullet wound three.

Q: Now, the first bullet wound, doctor, you  
said there was a small amount of scorching.  
Did you form any opinion as to what could  
have caused that scorching? 10

A: The scorching in my opinion was due to the  
bullet as well as some smoke, as well  
as hot gases, as well as some flame.

HIS LORDSHIP: From what?

A: From the gunshot.....

HIS LORDSHIP: How would that scorching have  
come about, doctor?

A: The scorching, Your Honour. A scorch  
like it is usually found when a bullet  
is discharged within six inches of a body. 20

(Examination-in-chief ends  
12.37 p.m.)

HIS LORDSHIP: That first bullet, doctor,  
the track of that was more or less  
horizontal, the first bullet through the  
neck?

A: No, Your Honour, it was downward. In fact  
all three bullet wounds were downward.

DEFENCE ATTORNEY: No cross-examination.

CROWN ATTORNEY: May the doctor be released?

HIS LORDSHIP: Yes.

CROWN ATTORNEY: Thank you, doctor.

(Witness stands down - 11.38 p.m.)

SADIE SAMUELS (RE-CALLED)

In the Home  
Circuit Court

Prosecution  
Evidence

No.5

Sadie Samuels  
(re-called)

Cross-  
Examination

CROSS-EXAMINATION OF SADIE SAMUELS BY  
DEFENCE ATTORNEY

CLERK: You are still on your oath.

HIS LORDSHIP: Speak up loudly for me you hear, this is a very important part of your evidence.

10 DEFENCE ATTORNEY: Miss Samuels, is there a side gate where this drive-in or parking lot is?

A: No.

HIS LORDSHIP: Side gate from where, where the customers enter?

DEFENCE ATTORNEY: Where the customers enter the bar?

A: Enter the restaurant.

20 HIS LORDSHIP: You are asking if there is a side gate to the drive-in: you mean from the road or from where?

DEFENCE ATTORNEY: Let me ask. The drive-in or driveway, you sometimes refer to it as a garage, correct?

A: Yes.

Q. Now, is there any side gate out there at all out by this area that you call the garage, is there any side gate there?

A: No.

30 Q: You told us you were in the restaurant by the door?

A: Yes.

Q: Were you alone?

In the Home  
Circuit Court

Prosecution  
Evidence

No.5

Sadie Samuels  
(re-called)

Cross-  
Examination

A: No.

Q: Who was with you?

A: Another worker was with me.

HIS LORDSHIP: Turn this way for me. Who?

A: Another worker was there.

HIS LORDSHIP: One or two?

A: One.

HIS LORDSHIP: Another girl?

A: Yes.

DEFENCE ATTORNEY: What is her name?

10

A: I don't remember her name, sir.

Q: Was she called by any pet name or anything that you remember?

A: She did call by a pet name, but I don't quite remember the name.

Q: Do you know whether this other person who was with you, this woman, this girl, whether she also attended the identification parade that you spoke of?

A: No, I don't know if she went.

20

Q: I beg your pardon.

A: I don't know if she went.

Q: Now, while you were at this side door in the restaurant, were you standing, sitting, lying or what?

A: I was sitting.

Q: Well, in relation to this door that you told us of, this door of the restaurant that you were sitting by, how were you seated?

30

A: The chair were like this and I was sitting down like this (indicating) and the door is beside.

HIS LORDSHIP: On your left or on your right?  
The door was to the right?

In the Home  
Circuit Court

A: On the left.

Prosecution  
Evidence

HIS LORDSHIP: The door was to your left.

No.5

Sadie Samuels  
(re-called)

DEFENCE ATTORNEY: You were nearer to the  
door?

Cross-  
Examination

A: Yes.

Q: So your side was to the door?

A: Yes.

10 Q: But, were you sitting at a table or  
something?

A: I were sitting on a chair.

Q: You were at a table or anything?

A: Yes.

Q: You were at a table and the door was  
to the side?

A: To the side.

Q: I see.

20 A: But I didn't sit fully around the table,  
you know, I didn't sit fully around the  
table, I sit, you know, at the side like  
this to the door.

Q: Was this - was Princess - was this  
Princess - do you recall whether her name  
was Princess?

A: Princess.

Q: Is that what they call her?

A: Yes.

Q: Is that what you call her?

30 A: That is what we call her, I don't know the  
other name.

Q: What was she doing, sitting, standing or what?

In the Home  
Circuit Court

Prosecution  
Evidence  
No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

A: She was sitting.

Q: And where was she sitting?

A: In the restaurant on a chair.

Q: How far from you was she sitting?

A: Not far, because she didn't directly sitting around the table, she was sitting near.

Q: But how close to you, show me?

A: About like over there and I here.  
(indicating)

10

Q: You would say about a yard from you.

HIS LORDSHIP: About a yard from you, about three feet from you. She wasn't actually at the table where you were but she was near to you?

A: No, but she was near.

DEFENCE ATTORNEY: Now, you said that two men came, and I believe you said that you saw one of them with a gun?

A: Yes.

20

Q: And I think you also said that the one who had the gun, he was wearing a mask?

A: Yes.

Q: Now, the chair that you were sitting on, you say, was actually how far from this open doorway that you said led out into this garage or parking area?

A: The garage is here, (indicating) about like this to the side, that is the door to the garage and I was sitting here.

30

HIS LORDSHIP: You were sitting with your left side to the door?

DEFENCE ATTORNEY: Would that, M'Lord, be about a yard and a half?

HIS LORDSHIP: Right against the door, I interpret it to be right against the door.

DEFENCE ATTORNEY: Move away so that His Lordship can see. She has put the chair where she was seated, she says the rail is the door. The chair is about a yard to where the door is

In the Home  
Circuit Court

Prosecution  
Evidence  
No.5

Sadie Samuels  
(re-called)

HIS LORDSHIP: Yes, alright.

Cross-  
Examination

DEFENCE ATTORNEY: Would you please move forward a bit so that the jury also can see? (witness moves forward)  
Now, as I understand it, you are saying that two men came up and one without stopping went straight through into the bar, that is what you have said is that correct?

10

A: Yes.

Q: The other one who you said stopped is the one with the mask, stopped close by where you were?

A: Yes.

20

Q: Now, remember you told us that the one with the mask, the one who stuck you up subsequently afterwards he went into the bar?

A: Yes.

Q: Now, before going into the bar did he come into the restaurant at all?

A: No.

30

Q: So then, while he stuck you up, I take it from what you have said that you stood outside in the parking area while he stuck you up; I take it from what you have said, that he stood outside in the parking area and after that he left and went into the bar, is that correct?

A: What did you say?

40

Q: I said that I take it that from what you said that the picture is that since he never entered the restaurant before going into the bar, that he stood outside in the parking area while he was sticking you up and subsequently



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Circuit Court

Prosecution  
Evidence  
No.5  
Sadie Samuels  
(re-called)  
Cross-  
Examination

went into the bar?

- A: He wasn't outside in the parking, he was.....
- Q: Where was he?
- A: The restaurant.
- Q: You have just told me that he didn't come into the restaurant?
- A: He did not stick me up outside in the parking, it is in the restaurant, so the parking is outside.

10

HIS LORDSHIP: Speak up.

DEFENCE ATTORNEY: Did you tell me a moment ago that the man with the - who stuck you up did not enter the restaurant before he went into the bar, did you say that a moment ago?

- A: No.
- Q: Miss Samuels, you do realise that you have taken an oath to speak the truth, don't you, you do appreciate this?
- A: Yes.
- Q: Do you still say that you never told me a moment ago that the man who stuck you up did not enter the restaurant before going into the bar, do you still say that? I give you a second chance.
- A: He did not stick me up outside in the drive-in; in the restaurant as he enter through the door, in the restaurant, and I sitting at the table.
- Q: You now say that in fact he entered the restaurant before going to the bar?
- A: He did enter the restaurant before going to the bar, as he entered through the door he stick me up.
- Q: He stuck you up?
- A: Yes, and after he went into the bar.

20

30

HIS LORDSHIP: Through which door?

A: The door to the bar

HIS LORDSHIP: Leading from where?

A: From the restaurant into the bar.

HIS LORDSHIP: What you are saying then, as he entered through the door into the restaurant he stuck you up and afterwards he entered the bar through the door from the restaurant?

10

A: Yes.

DEFENCE ATTORNEY: I understand you to say that only one of the two men who came up spoke to you, is that correct?

A: One spoke to me, not two.

Q: One spoke?

A: Yes.

Q: And he said, 'don't move'?

A: Yes.

20

Q: Now, at the spot where you were sitting was any light there?

A: Yes.

Q: What kind of light?

A: Bright light.

Q: Well, this other girl who was sitting some little distance from you, what was she doing while the gun was pointed at you?

A: She ran.

Q: She ran?

30

A: Yes, disappear.

HIS LORDSHIP: Disappear?

A: Yes.

In the Home  
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Evidence  
No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

In the Home  
Circuit Court

Prosecution  
Evidence

No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

HIS LORDSHIP: That is Princess?

A: She didn't get the full of it like me  
for I couldn't move now.

Q: How long after Princess ran was it before  
this man who was sticking you up went into  
the bar?

A: Yes?

Q: How long after she had run was it before  
this man went into the bar?

A: I don't get the understanding what you say. 10

Q: I understand you to say the man came up,  
stuck you up and immediately Princess  
ran away?

A: Yes.

Q: So he is there sticking you up, Princess  
is gone, disappeared, you say?

A: Yes.

Q: Now, how long after she had disappeared  
did he enter the bar?

A: Few minutes after. 20

Q: A few minutes?

A: Yes.

Q: Now, from where you were sitting, close  
to the doorway, were you able to see  
into the bar inside.

A: Yes.

Q: And while this was going on you were  
being stuck up and you were sitting  
there, did you see Mr. Walsh?

A: No.

Q: You couldn't see him from where you were  
sitting?

A: No.

Q: You couldn't tell what he was doing?

In the Home  
Circuit Court

A: No.

Prosecution  
Evidence

Q: Now, after the man left you and went into the bar, that is the man who had been sticking you up, the one who you said had on the mask, after he left you and went into the bar, what did you do?

No.5  
Sadie Samuels  
(re-called)

A: Ran into the kitchen.

Cross-  
Examination

10

Q: Was this before any shots were fired? When you actually ran was it before any shots were fired?

A: Yes.

Q: Well, when you got up from this stool, this chair, you said to run, were you able to tell what was going on in the bar, did you look into the bar?

HIS LORDSHIP: When she...?

DEFENCE ATTORNEY: When she got up from this chair and ran to the kitchen.

20

HIS LORDSHIP: I don't think she was seated, I didn't get that impression, she was standing after she was stuck up. Isn't that what you said?

A: Yes.

HIS LORDSHIP: When the man came in you were seated?

A: No, I was standing.

HIS LORDSHIP: At first?

A: Yes.

30

HIS LORDSHIP: When he said 'don't move', what happened?

A: I was standing at that time, I jump up.

DEFENCE ATTORNEY: I don't have that evidence at all. I do not have that at any stage she was standing.

In the Home  
Circuit Court

Prosecution  
Evidence

No.5

Sadie Samuels  
(re-called)

Cross-  
Examination

HIS LORDSHIP: 'The man with the gun and mask  
stick me up and say 'don't move'. After  
a few minutes he entered the bar leaving  
me standing in the restaurant. I could  
not see the other man.'

DEFENCE ATTORNEY: But she never told us at  
any stage when she got up.

HIS LORDSHIP: Well, she didn't say so in so  
many words, but I don't gather that she  
remained seated at that stage. She was  
seated when he came in. At what stage  
did you stand up?

10

A: In front of him.

HIS LORDSHIP: You stand up before he say 'don't  
move', or after he say 'don't move'?

A: When he say 'don't move'.

HIS LORDSHIP: You stood up?

A: Yes.

DEFENCE ATTORNEY: So then he told you not to  
move but in spite of that you stood up,  
is that it?

20

A: I say I was standing. I was standing and  
him saying 'don't move' to both of us.

HIS LORDSHIP: Turn this way for me.

DEFENCE ATTORNEY: Perhaps I am misunderstanding.  
I don't want to be unfair to you, you see.  
Did I understand you to tell His Lordship  
that when the man said to you 'don't move',  
you stood up, that is what you told His  
Lordship?

30

A: Yes, when he said 'don't move' I was  
standing before him, I stood up and stand  
before him.

Q: What you are saying if I understand you  
correctly is that you were actually  
standing at the time when he told you not  
to move, is that it?

A: Yes.

Q: That is not what you told the judge.

A: I was sitting and.....

Q: Never mind.

HIS LORDSHIP: You were sitting and what?

A: I was sitting and he was entering  
and say 'don't move', and I jump up.

HIS LORDSHIP: And stand before him?

A: Yes.

10 DEFENCE ATTORNEY: So it is now the other  
way around. You were sitting he  
came in and said 'don't move', and  
then you jumped up?

A: Yes.

Q: Is that the situation?

A: Yes.

Q: Alright - how far - what I would like  
to know is this: you told me that when  
the man left you and went into the bar  
you ran to the kitchen?

20 A: Yes.

Q: Did you look into the bar before going  
into the kitchen?

A: No.

Q: So you can't tell us where Mr. Walsh  
was when you ran into the kitchen?

A: No.

30 Q: Now, at this drive way, this drive in  
that you call it, the same place you  
call the garage, were there any - does  
it have any lights in it?

A: Yes.

Q: Well, on that occasion when these men came  
up, was the garage light or was it dark?

In the Home  
Circuit Court

Prosecution  
Evidence  
No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

In the Home  
Circuit Court

Prosecution  
Evidence

No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

A: You mean....

Q: Was it lighted or was it dark?

A: Light.

Q: It was lighted?

A: Yes.

Q: Lights were on in the garage?

A: Yes.

Q: It wasn't dark?

A: No.

Q: Now, is there an entrance from the bar,  
you step from the bar into the garage?  
Is there an entrance from the bar right  
into the garage?

10

A: No.

Q: Where you were sitting, was the light  
bright or not?

A: Bright.

Q: What sort of light, bulb or like this?  
(indicating courtroom lights)

A: Bulb.

20

DEFENCE ATTORNEY: Now, the kitchen that you  
spoke of, that you ran to, is it at the  
back of the building there?

A: Yes.

Q: Now, at the back where you were, what was  
the condition of the lighting there, was  
it bright light, or was it very poor  
light or what?

A: Bright light.

Q: At the back where you were there was bright  
light?

30

A: Yes, where I was.

Q: Did you subsequently give a description of any of the two men to the police?

In the Home  
Circuit Court

A: No.

Prosecution  
Evidence  
No.5

Q: Let us deal with them one at a time. Can you tell us how this man who stuck you up with the gun, the man who you said had been wearing the mask how he was dressed apart from the mask?

Sadie Samuels  
(re-called)

Cross-  
Examination

10

A: Light khaki pants and black shirt.

HIS LORDSHIP: That is the man who had the gun?

A: Yes.

DEFENCE ATTORNEY: What about the other man, the man you say just walked straight pass and go into the bar, what about him, can you say how he was dressed?

20 A: I don't remember.

HIS LORDSHIP: Turn around.

A: I don't quite remember.

HIS LORDSHIP: You don't remember how the other one was dressed?

A: No.

DEFENCE ATTORNEY: You know Miss Samuels, let us deal with the question of the mask. As I understand it, you are saying that two men came in, and when they came up one was masked, correct?

30

A: Yes.

Q: You subsequently - I believe it was His Lordship or Crown Counsel, to one of them - said that the mask - I believe it was His Lordship - that the mask came off his face after a time?

A: Yes.



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Circuit Court

Prosecution  
Evidence

No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

Q: Now, was it after he had stuck you up  
with the gun that the mask came off?

A: Yes.

HIS LORDSHIP: After he said 'don't move',  
the mask came off?

A: Yes, off his face.

DEFENCE ATTORNEY: Now, I gather, and please  
correct me if this isn't so, but I  
gather that when this man was sticking  
you up he was about a yard or so, I think,  
from you, is that correct? Will you  
show us then to be on the safe side, show  
us how far he was from you when he was  
sticking you up, when he said 'don't  
move'?

10

A: About here. (indicating)

HIS LORDSHIP: About where?

A: About, close.

DEFENCE ATTORNEY: I would make that about  
two feet, M'Lord.

20

Q: Was he in fact facing you?

A: Yes.

Q: And how ere you looking, was your face  
towards him?

A: Yes.

Q: At the time, I believe you have made  
us understand, you sprang to your feet,  
you jumped to your feet, I believe that  
is what you finally said, that you jumped  
to your feet after he told you 'don't move'.  
You jumped to your feet after he told  
you 'don't move'. (no answer) You said that is  
right? You have to think about that  
again Miss Samuels?

30

HIS LORDSHIP: You jumped to your feet after  
he said 'don't move'?

A: Yes, I jump.

DEFENCE ATTORNEY: We spent three or four minutes on that. Alright. Now, when you jumped to your feet, did you face the man who was standing two feet from you with the gun pointing at you, you faced him?

A: Yes.

Q: At that time you said he had on the mask?

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Circuit Court

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Evidence  
No.5  
Sadie Samuels  
(re-called)

Cross-  
Examined

10

(No answer)

Don't change that again. Didn't you say that? Didn't you tell His Lordship that it is after he said 'don't move' that the mask came off? Have you got to think about it?

A: Yes.

Q: I beg your pardon?

A: Yes.

Q: So at that time he had on the mask?

20

A: Yes.

HIS LORDSHIP: Turn this way please.

DEFENCE ATTORNEY: One hand was holding the gun, I take it?

A: Yes.

DEFENCE ATTORNEY: Was the other hand doing anything?

A: No.

Q: Were you looking directly at the man who was sticking you up?

30

A: Yes.

Q: All the time?

A: Yes.

Q: Well, how did the mask come off?

In the Home  
Circuit Court

Prosecution  
Evidence

No.5

Sadie Samuels  
(re-called)

Cross-  
Examination

HIS LORDSHIP: How did the mask come off?

A: Well, I was so frightened that I didn't really see how fast him move to take it off, I was so frightened.

DEFENCE ATTORNEY: I am sorry I can't hear you, my hearing isn't very good I know, speak a little louder for me.

HIS LORDSHIP: What she said was, 'I was so frightened I don't see how fast he move to take it off'. What you mean by that, you didn't see when it come off?

10

A: No, I didn't see when him take it off.

DEFENCE ATTORNEY: The position then is this. I am sorry but I have just got to get it clear. He was standing before you with a mask one minute and then the next minute the mask disappeared?

A: Yes.

Q: That is the position, you never see him move it, it fall off or anything?

20

A: No.

Q: What kind of a mask was it?

A: White.

Q: I didn't ask the colour Miss Samuels, will you help us a little more than that. What type of a mask?

A: I don't understand you.

Q: Cloth or what?

HIS LORDSHIP: It was white. Was it cloth?

A: Yes.

30

HIS LORDSHIP: What part of the face did it cover? We have that it was white and it was cloth. That was what he was getting at.

A: Across here (indicating)

DEFENCE ATTORNEY: Across the ridge of his nose?

A: Yes.

Q: Under his eyes?

A: Yes.

Q: White mask.....

HIS LORDSHIP: So, well, did it cover from here down? (indicating)

A: From the nose.

HIS LORDSHIP: Here (indicating) and you could see from here up? (indicating)

A: Yes.

10 DEFENCE ATTORNEY: Did he have on any hat?

A: No.

Q: Now, you told us that he was there with you just a short period, I think you actually said just a few minutes or something like that?

A: Yes.

20 Q: Now, how long after he stuck you up - well, let us put it this way: at what stage did you notice that the mask had disappeared, was it when he was moving off to go to the bar or was it before that?

A: Well, I don't know how him took it off.

Q: That is not what I asked you. What I am asking at what stage did you notice that the mask had disappeared, was it as he was moving off to go to the bar?

30 A: That is what I say, I don't know how him took it off because I was so frightened.

Q: I am not asking how it came to disappear. Listen carefully, what I am asking you is this: when did you first become aware, when did you notice that the mask had disappeared, was it when he was moving off to go to the bar?

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Prosecution  
Evidence

No.5

Sadie Samuels  
(re-called)

Cross-  
Examination

In the Home  
Circuit Court

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No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

A: Yes.

Q: I take it from what you have said that when he left you to go to the bar he left you behind him and you ran to the kitchen?

A: Yes.

HIS LORDSHIP: He turned his back to you to go to the bar?

A: I beg your pardon?

HIS LORDSHIP: Did he have to turn his back to you to go to the bar?

10

A: Yes.

Q: And then you ran?

A: Yes.

DEFENCE ATTORNEY: Well, Miss Samuels, the first time that you mentioned anything about any of the two men being masked was today, wasn't it?

A: I did mention it, it was mention but the man say he didn't need of it.

20

HIS LORDSHIP: In the court at Half Way Tree?

A: Yes, but he said he didn't need of it.

HIS LORDSHIP: The judge say he didn't need of it?

A: Yes.

DEFENCE ATTORNEY: When you told him that one of them had a mask?

A: Yes.

HIS LORDSHIP: Would you like to sit down?

A: Is alright, sir.

30

HIS LORDSHIP: Not at Half Way Tree, I said at Half Way Tree. Did you mention it at Gun Court when you gave the evidence there?

A: I mentioned it somewhere but I don't remember if it is the Gun Court or where, but they say they don't need of it.

HIS LORDSHIP: I am sorry, I put it to her that it was at Half Way Tree but I am mistaken, the preliminary was not held at Half Way Tree, it was at Camp Road.

10 DEFENCE ATTORNEY: And what she said, M'Lord, she mentioned it was somewhere, she doesn't remember whether it was Half Way Tree or where.

Q: The judge you say didn't have any need of it, that is correct?

A: Yes.

Q: I take it that at the prelim you gave evidence before the judge in this matter before?

A: Yes.

20 Q: And that is the judge who told you that he didn't have any need of it?

A: Yes.

Q: That was the first time you were mentioning it then?

A: Yes, that was the first time.

Q: As a matter of interest, Miss Samuels - is it Miss Samuels or Mrs. Samuels?

A: Miss.

30 Q: As a matter of interest will you tell me why you didn't mention it to the police?

A: Why I didn't do what?

Q: Why you didn't mention it to the police?

A: They didn't ask me.

Q: The reason you didn't tell the police

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Examination

that one of the men had on a mask  
was because they didn't ask you, is  
that it?

A: I don't quite remember but I know I  
mentioned it.

Q: You have just said - I asked you why  
didn't you mention it to the police  
because you said the first time you  
mentioned it was at the preliminary  
trial. The answer was 'they didn't ask  
me'. Do you mean the reason you didn't  
tell the police about the mask was  
because the police didn't ask you?

10

A: Yes.

Q: I assume that they asked you if you  
could describe the men who had come to  
the club, did they do that, they did  
that?

A: Yes.

Q: Were these men taller than you.

20

A: One tall and one not as tall.

HIS LORDSHIP: Turn this way and speak up.

A: One tall and one not as tall.

DEFENCE ATTORNEY: But were they both taller  
than you?

A: One tall just like me and one not as tall  
as me.

Q: How tall are you, do you know your height?

A: No.

Q: You recall that you gave evidence at the  
preliminary enquiry in this matter before  
another judge, you said that?

30

A: Yes.

Q: And when you gave that evidence you did  
what you did today, you swore to speak  
the truth, you took the Bible and swore

on oath to speak the truth, is that correct?

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A: Yes.

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Evidence

10 Q: And the judge wrote down the evidence which you gave after you had sworn to speak the truth, the judge wrote down what you said, and after you had finished giving your evidence, he told you that he was going to read it over to you and that you could make any corrections or alterations or additions that you might want to make, isn't that so?

No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

A: (nods affirmatively)

HIS LORDSHIP: Don't nod your head, speak, yes or no. He read it over to you?

A: Yes.

20 DEFENCE ATTORNEY: And after he read it over to you you signed the pages of what he had written there and what he read over as being correct?

A: Yes.

30 Q: Now, did you say this at the preliminary enquiry - this M'Lord would be in typescript page 4, first page of her evidence, and I am starting to give her the background, I am starting at line 3, 'most daylight'. Did you say at that preliminary enquiry, 'most daylight I was at the back where the restaurant is, I sat at a table', did you say that?

A: Yes.

Q: 'There is a bar in front of the premises, a garage at the side, the customers drive-in'?

A: Yes.

Q: Persons can enter the restaurant from the garage?

A: Yes.

40 Q: Now, did you say this, 'I sat beside



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Sadie Samuels  
(re-called)

Cross-  
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the side gate with another woman  
called Princess'?

A: Yes, not as near as I am though.

Q: 'I saw two gunmen came in', did you  
say that?

A: Yes.

Q: They said to both of us, 'don't move'  
did you say that?

A: Yes.

Q: 'They entered through the gate by which  
we sat, that is the side', did you say  
that? 10

A: Yes.

Q: Now, did you say, 'there is a soft  
light right where we were sitting'?

A: Bright light.

Q: Did you say, 'there is a soft light  
where we were sitting'?

A: No, it is a bright light there.

Q: What I am asking you..... 20

HIS LORDSHIP: Did you tell the judge, 'there  
is a soft light'?

A: No, it is a bright light.

HIS LORDSHIP: What you said?

A: A bright light was there.

HIS LORDSHIP: Let me see it. (Deposition  
handed to His Lordship)

DEFENCE ATTORNEY: May I have a look at it.  
(Deposition handed to Defence Attorney  
and Crown Attorney) 30

A: Bright light was there.

DEFENCE ATTORNEY: M'Lord, may the deposition  
be shown to her at this stage?

HIS LORDSHIP: Yes.

DEFENCE ATTORNEY: The gentleman is going to show you a signature, look at that signature. (Shown to witness) Is that your signature?

A: Yes sir.

DEFENCE ATTORNEY: Show her the section dealing with soft light. (Shown to witness) Please show her the particular sentence that I put to her a while ago, just that. (Shown to witness)

10

HIS LORDSHIP: You see it there?

A: Yes, 'there was a soft light'.

DEFENCE ATTORNEY: Do you agree that that is what you told the judge?

A: Yes.

HIS LORDSHIP: You agree now you said soft?

A: Yes, because, I didn't remember so far.

20

DEFENCE ATTORNEY: Was that the truth, was it a soft light?

A: Yes, it was a soft light.

Q: Did you further say, 'there were other lights towards the back of the restaurant'?

A: Yes.

Q: 'There were bright lights in the bar at the front'?

A: Yes.

30

Q: Now, as I understand, Miss Samuels, what you said here today is that you saw one man with a gun and that man stuck you up?

A: Yes.

Q: Did you say at the preliminary enquiry,

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'each man had a gun in his hand',  
didn't you? Miss Samuels, is that  
what you said, 'each man had a gun  
in his hand'?

HIS LORDSHIP: You remember if you said that  
at the prelim?

A: I don't remember.

DEFENCE ATTORNEY: Please show her. (Deposition  
shown to witness) Is that your signature  
at the foot of the page?

10

HIS LORDSHIP: She has identified the signature.

DEFENCE ATTORNEY: It may be a different page,  
M'Lord.

HIS LORDSHIP: It doesn't matter, it is the  
same deposition. You see it there?

DEFENCE ATTORNEY: Alright Mr. Clerk, thank  
you. Do you agree that at the preliminary  
enquiry you said each man had a gun in  
his hand?

A: Yes.

20

Q: Well, was that true?

You don't know if it is true?

HIS LORDSHIP: What is your answer?

CROWN ATTORNEY: The witness hasn't answered.

HIS LORDSHIP: We have not heard your answer.

DEFENCE ATTORNEY: She hasn't answered at all.  
You see in the deposition each man had  
a gun in his hand?

A: Yes.

Q: Did you say that at the preliminary enquiry?

30

A: I don't quite remember you know.

HIS LORDSHIP: Speak up.

A: I don't quite remember if I did say that,  
I don't know.

HIS LORDSHIP: You don't remember if you said that?

(No answer)

DEFENCE ATTORNEY: She doesn't recall if she said that. Alright. Do you recall that you told me specifically that when the man came up with the gun, Princess ran?

A: Yes, she disappear.

10 Q: And the man stuck you up, correct?

A: Yes.

HIS LORDSHIP: No, not Princess ran....

DEFENCE ATTORNEY: She says it is correct, M'Lord, and that is how I understand it.

HIS LORDSHIP: What you are putting to her is that Princess ran and he stuck her up.

20 DEFENCE ATTORNEY: And she says that is correct.

A: Yes, she disappear.

Q: And the man stuck you up?

A: Yes.

HIS LORDSHIP: What she said earlier on, 'When the gun was pointed at me Princess ran and disappear, she did not get the full force of it like me, I could not move.'

30 DEFENCE ATTORNEY: M'Lord, I am talking about cross-examination, I am so sorry.

HIS LORDSHIP: This is cross-examination I am reading.

DEFENCE ATTORNEY: Well, she now says, M'Lord, when the men came up Princess ran and the man stuck her up, is that correct?

A: The same thing what he read.

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(re-called)

Cross-  
Examination

Q: I understand it to be the same. At what stage did Princess run?

A: At what stage? She disappear, I don't know what stage.

HIS LORDSHIP: Had the man spoken before she run or she run after he spoke?

A: After.

DEFENCE ATTORNEY: Now, did you say at the preliminary enquiry, 'guns were pointed at me and the other girl'?

10

HIS LORDSHIP: Where is this now?

DEFENCE ATTORNEY: That is the very next sentence after the one I read, 'Each man had a gun in his hand'. Did you say, Miss Samuels, 'guns were pointed at me and the other girl'?

A: Yes.

Q: But you have told us about one gun. Did the gunman who stuck you up have two guns?

A: One gun.

20

Q: Could you explain how it is that you said that 'guns were pointed at you and the other girl'?

A: Well, you see, I was there and she was there - she wasn't there.....

Q: I know, she ran, what I am asking you is, can you explain why you said 'guns', g-u-n-s?

HIS LORDSHIP: Why you say guns, meaning more than one? Did you see more than one gun?

30

A; No, one gun I saw.

HIS LORDSHIP: What he wants to know, why you use the word 'guns' meaning more than one?

A: It is just the one gun, him must be don't put me speech in the proper way.

HIS LORDSHIP: Maybe you were speaking like

how you speaking now. You must speak up. You saw only one gun?

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A: Yes, because me don't really know how the 's' go on to it.

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Sadie Samuels  
(re-called)

HIS LORDSHIP: You don't know what?

A: How the 's' go on to it.

Cross-  
Examination

HIS LORDSHIP: How the 's' go on the gun.

DEFENCE ATTORNEY: Why you say guns were pointed at both you and Princess?

10 HIS LORDSHIP: That is what she said.....

DEFENCE ATTORNEY: I am asking her, M'Lord  
.....

HIS LORDSHIP: She say she didn't say it, she say she don't know how the 's' get on it.

DEFENCE ATTORNEY: Why did you speak of any gun being pointed at Princess?

A: She was in there too.

Q: You say she ran away?

20 A: Is by pointing it affect she too.

Q: I see. You have said quite specifically, both to Crown Counsel and myself that one man, I am repeating perhaps for the third time, one man went straight into the bar and left one man there with you. Now, did you say at the preliminary enquiry the 'men kept on looking' - first sentence, 'guns were pointed at me and the other girl', you have said that you said that; 'men kept on looking, they then entered the bar'. Sorry, I was looking on the original. 'Men kept on looking, they then entered the bar'.

30

HIS LORDSHIP: No. Let me see the deposition.

DEFENCE ATTORNEY: I checked the original, that is why.....

(Deposition handed to His Lordship)

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Evidence

No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

Did you say that, Miss Samuels?

HIS LORDSHIP: What you are saying, 'men...

DEFENCE ATTORNEY: I am just asking her whether she said, 'men kept on looking, they then entered the bar', did you say that at the preliminary enquiry?

A: Both of them came.

Q: No, no. What you said?

HIS LORDSHIP: You see, it depends on what you see there. What I see there is what I have in the copy here, 'Man kept on looking'. 10

A: Yes, they were looking.

HIS LORDSHIP: What is your emphasis on, 'man' or 'men'?

DEFENCE ATTORNEY: The whole sentence. 'They' means more than one.

HIS LORDSHIP: The sentence doesn't start with 'men', it starts with 'man'.

DEFENCE ATTORNEY: I was really putting what I myself saw in the original. 20

HIS LORDSHIP: That is what I am saying I see too, 'man', not 'men'.

DEFENCE ATTORNEY: Very well, M'Lord. I for my part see men.

HIS LORDSHIP: And I see man.

DEFENCE ATTORNEY: Very well, M'Lord, that is understandable. 'They then entered the bar'. Did you say men or man - 'they kept on looking', they then entered the bar', did you say that? 30

A: Yes, they went into the bar.

Q: Well, can you explain to us how it is that here on about three different occasions you have said one man stayed with you and one man went to the bar?

A: I mean one go to the bar and one stop....

10

Q: You have admitted that you said at the preliminary enquiry that men or man kept on looking and they then entered the bar. Can you explain to us how it is that here you gave us a different picture. You say one man just went straight into the bar, no business of stopping or anything like that, just went straight into the bar and after that the other one went there after he had stuck you up and so on?

A: Yes, one went in there and one stay.

20

Q: Why did you say at the preliminary that men or man kept on looking and they entered the bar - then they entered the bar - that is the important thing, why did you say that, can you explain that?

A: I mean that one entered the bar and one stick me up, that is how I mean, they are looking still.

HIS LORDSHIP: One entered and one stick you up and after the other one entered the bar?

A: Is only two of them enter the bar.

30

HIS LORDSHIP: One entered the bar and one stuck you up and after a few minutes, as you said, he also entered the bar?

A: Yes.

DEFENCE ATTORNEY: Did you say, 'I did not know what happened when they entered the bar', did you next say that? Did you say that at the preliminary enquiry, did you say that?

A: I don't remember.

40

HIS LORDSHIP: You say you don't know what happened when they entered the bar?

A: No, I don't know. Only the gunshots were fired.



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Prosecution  
Evidence

No.5

Sadie Samuels  
(re-called)

Cross-  
Examination

DEFENCE ATTORNEY: Did you say, 'people were in the bar, Mr. Walsh was at the bar side with a glass drinking', did you say that?

A: Yes.

Q: But you specifically told me, I think on two occasions, two or three occasions, that you didn't see Mr. Walsh, you couldn't say what he was doing, you said that here today.

10

HIS LORDSHIP: What is the answer, did you tell the judge at the preliminary, 'Mr. Walsh was at the bar side with a glass drinking'?

DEFENCE ATTORNEY: She said yes sir.

HIS LORDSHIP: Now, you told us today that you couldn't see Mr. Walsh inside the bar....

DEFENCE ATTORNEY: And she doesn't know what he was doing.

HIS LORDSHIP: Which is correct?

20

A: After I came downstairs back he was there.

DEFENCE ATTORNEY: After you came back downstairs.

HIS LORDSHIP: We are not talking about after you came back downstairs.

DEFENCE ATTORNEY: After you came back downstairs Mr. Walsh was already shot and already dead.

HIS LORDSHIP: Did you tell the judge that people were in the bar?

DEFENCE ATTORNEY: You told us from where you were in the restaurant you could not see Mr. Walsh in the bar?

30

A: That is what I told you, I don't quite remember.

HIS LORDSHIP: You don't quite remember which is correct then?

A: Yes, he was there drinking.

HIS LORDSHIP: Mr. Walsh was in the bar drinking?

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A: Drinking.

Prosecution  
Evidence

HIS LORDSHIP: You could see?

No.5  
Sadie Samuels  
(re-called)

A: After we came down.

Cross-  
Examination

HIS LORDSHIP: We are talking about before the shooting up. Did you see him in the bar drinking?

A: Yes.

10 DEFENCE ATTORNEY: He was there when the man - men came in the bar, could you see him there?

A: That time I was in the kitchen.

HIS LORDSHIP: No, no. Listen to me. You saw Mr. Walsh in the bar drinking you say?

A: Yes.

20 HIS LORDSHIP: When the men entered the premises and one of them said, 'don't move', could you see Mr. Walsh at that time?

A: No, before he was there drinking.

HIS LORDSHIP: Yes.

30 DEFENCE ATTORNEY: Do you recall when you were giving evidence-in-chief crown counsel asked you when you had pulled your trousers, you said you pulled your trousers after you came out the kitchen door and the man held your hand; crown counsel asked you where is the man, you say is the accused. Asked if he did anything and you said no.

A: If he was what?

Q: Whether he did anything and you said no, correct? This morning?

A: I said I pull my trousers front and he held the gun.

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Evidence

No.5

Sadie Samuels  
(re-called)

Cross-  
Examination

Q: And then he asked you if the man did anything and you said no, is that right, you remember that?

A: Yes.

Q: Now, did you say at the preliminary enquiry, 'I took off my pants and he started to pull his trousers front'?

HIS LORDSHIP: Did you say this, 'I took off my pants and he started to pull his trousers front'? You said that?

10

A: Yes.

DEFENCE ATTORNEY: Did you say, 'he said 'open your legs''?

A: Yes, but I did not remember.

HIS LORDSHIP: You said that but did not remember?

A: Because I was so frightened.

DEFENCE ATTORNEY: And did you next say, 'a man came out bar and ran to the back of the restaurant'?

20

A: Yes.

Q: What you told us today was that a man walked from the bar to the back of the restaurant? Well, before that, did you say at the preliminary enquiry the accused 'released his hold on my hand and I ran upstairs'?

A: After pulling the pants, yes.

Q: Did you say that at the preliminary enquiry?

A: What did you say?

30

Q: 'Accused released hold on my hand and I ran upstairs'?

A: Yes.

Q: 'I did not see where accused went', did you

say that at the preliminary enquiry,  
did you say that Miss Samuels?

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A: I don't quite remember.

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Evidence

Q: Please show her for me. (Deposition  
shown to witness) Do you agree that  
you said that at the preliminary  
enquiry, 'I did not see where the  
accused went'?

No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

A: It is there.

10 Q: Did you say that?

HIS LORDSHIP: Did you say it?

A: Yes sir.

DEFENCE ATTORNEY: What you have told us  
here Miss Samuels, a man came from  
the bar to the back of the restaurant.

20 HIS LORDSHIP: Rushed. 'After I took off  
my pants a man rushed from the bar to  
the back of the restaurant and accused  
let go my hand and ran through the side  
door to the driveway, and then I ran  
upstairs for my escape'. That is  
what you told us today.

A: You see, I can't remember everything,  
but whatsoever I say.....

DEFENCE ATTORNEY: Is there any reason why  
you said at the preliminary enquiry  
that you didn't see where the accused  
went?

A: Sir?

30 Q: Is there any reason why at the preliminary  
enquiry what you were saying is that  
you didn't see where the accused went,  
you didn't say he ran away, you didn't  
say after you ran upstairs?

A: That is what I say, I don't quite  
remember everything.

Q: Miss Samuels, let me cut a long story  
short. I am suggesting to you, you know,

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Evidence

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(re-called)

Cross-  
Examination

Miss Samuels that this accused man was not one of the men there that night, that is what I am suggesting to you.

HIS LORDSHIP: What you have to say to that?

A: Well, is that man that I saw.

DEFENCE ATTORNEY: Do you agree with me that you could be mistaken when you say that he was one of the men, do you agree that you could be mistaken?

A: Could be as well as not.

10

HIS LORDSHIP: You could be as well as not.

DEFENCE ATTORNEY: Now, it was suggested to you at the preliminary enquiry that the accused man was not there that night; it was suggested to you that he was not there that night, correct? Well, let me fill you in. Was it suggested to you that he was not there that night and you said you don't know what to say?

HIS LORDSHIP: Were you at the prelim?

20

DEFENCE ATTORNEY: M'Lord, the deposition....

HIS LORDSHIP: I am talking about the inflection of your voice.

DEFENCE ATTORNEY: I don't understand you, M'Lord, I can only put the words as I see them, I can't put an inflection of voice. Did you say at the preliminary enquiry when it was put to you that the accused man was not there that night, 'I don't know what to say', did you say that at the preliminary enquiry?

30

A: No, I don't remember saying that.

CROWN ATTORNEY: (Speaks to Defence Attorney)

DEFENCE ATTORNEY: Yes, Mr. Parkin, I will accede to your request after she has seen it. It is towards the end of cross-examination, almost at the end, just before re-examination

(Deposition shown to witness)

HIS LORDSHIP: You see it there, the answer,  
'I don't know what to say'?

In the Home  
Circuit Court

A: I don't remember saying it.

Prosecution  
Evidence

HIS LORDSHIP: You see it there but you  
don't remember saying it?

No.5  
Sadie Samuels  
(re-called)

A: I don't remember saying that.

Cross-  
Examination

HIS LORDSHIP: Yes. Are you almost  
through with her?

10 DEFENCE ATTORNEY: I don't know M'Lord,  
I might be completely through as  
well as I mightn't be. I will tell  
you on resumption, M'Lord.

HIS LORDSHIP: We'll take the adjournment  
until 2.00 o'clock. Don't discuss  
the case with anybody or be seen in  
company with anybody who has anything  
to do with this case.

DEFENCE ATTORNEY: (Luncheon adjournment 1.05p.m)  
(on resumption at 2.11 p.m) jury roll-call-  
all present

20 Q: Miss Samuels, you recall earlier this  
morning you told my learned friend  
for the crown that at the time when  
the man held you, after you had come  
out of the kitchen to the time that  
he ran, was less than five minutes?  
It was not a long time, it was less  
than five minutes; you remember saying  
that?

A: Yes.

30 Q: Would it have been, say, half a  
minute, thirty seconds; half a minute?

A: About that.

Q: And during that period there, when he  
was holding you, which you said could  
have been about half a minute, you  
were, I think you told us you were  
engaged in loosening the buttons of  
your trousers?

A: Yes.

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Evidence

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Sadie Samuels  
(re-called)

Cross-  
Examination

Q: I imagine that in attending to that you were obliged to look at your trousers while you were pulling the buttons? Were you doing that then, you were in fact looking at them when you were pulling the buttons?

A: Yes.

Q: How long would you say it took you to get those buttons undone and the trousers off? You told us you took off your trousers, how long would you say it took you to undo the buttons and take your trousers off?

10

A: No answer.

Q: Well?

A: Just that he told me to take it off.

HIS LORDSHIP: Speak up, please.

A: As he said, "Take it off" I just hurry and pull it, didn't stay any time.

Q: All right.

20

A: I had to do it so fast that I didn't spend much time.

Q: Now, this morning you told me that one of the two men was taller than you were? Than you are, and the other was shorter than you are?

A: One is taller. About the same like me, that is what I told you.

Q: Beg your pardon?

A: One is just tall the same like me; one is shorter.

30

Q: One is just tall same like you?

A: One is just tall the same like me.

Q: And the other one is a little shorter, you said?

A: Yes.

Q: Eh?                   A; Yes.

Q: Now, I recall your saying you didn't know what your height was, you said you didn't know your height? My Lord, I am sorry to take up time with this, but I assure you it won't take much time. Could you allow her to come down, sir, that her height may be taken, it's important?

In the Home  
Circuit Court

Prosecution  
Evidence  
No.5  
Sadie Samuels  
(re-called)

Cross-  
Examination

10

HIS LORDSHIP: Is it that important, Mr. Taylor?

DEFENCE ATTORNEY: I beg your pardon?

HIS LORDSHIP: Is it that important to have her measurement taken?

DEFENCE ATTORNEY: Yes, My Lord.

HIS LORDSHIP: Go on. Who is going to do it?

DEFENCE ATTORNEY: I will ask one of the officers to do it.

HIS LORDSHIP: You have anything to measure it?

20

DEFENCE ATTORNEY: Yes, a tape.

(Witness leaves witness box and is measured by police officer)

DEFENCE ATTORNEY: Take off your shoes.

HIS LORDSHIP: No, let her take the shoes.

DEFENCE ATTORNEY: No, My Lord, it won't take any time. (Witness takes off shoes)

WITNESS: I can't stand up on the concrete.

30

DEFENCE ATTORNEY: I will give you something to stand on. (Defence attorney gives the witness a file jacket). Five foot seven.

HIS LORDSHIP: Five foot what?

DEFENCE ATTORNEY: Seven inches.

HIS LORDSHIP: Without shoes?



In the Home  
Circuit Court

Prosecution  
Evidence

No.5

Sadie Samuels  
(re-called)

Cross-  
Examination

DEFENCE ATTORNEY: Without shoes.

Q: I take it, of course, that you were wearing shoes on the night that this accident happened, is that correct?

A: Yes.

Q: And were you wearing shoes with heels such as you now have on?

A: No. Not as tall as these.

Q: I beg your pardon?

A: Not as tall as these heels.

10

Q: Your shoes had heels?

A: Yes.

Q: About one inch heels or two inch?

A: About two inches.

Q: Now, you told us of the man who held you up at the kitchen door which is the same man who had the gun, who stuck you up in the first place?

A: Yes.

Q: Now, was he the shorter or the taller of the two men?

20

A: The shorter.

Q: The other man, you say, was just about your height?

A: Yes.

DEFENCE ATTORNEY: My Lord, I apply at this stage to tender the deposition in evidence on the basis of her answer in relation to the question of her saying when it was put to her that the man, the accused, was not there that night, and the answer as shown by the deposition was, "I don't know what to say." She has told us here that although she sees it in the deposition, she does not recall saying it.

30

HIS LORDSHIP: Well, that is a different thing from saying she didn't say it.

In the Home  
Circuit Court

10 DEFENCE ATTORNEY: No, the particular section, section eighteen of the Evidence Law, which deals with this specifically says that if the witness does not specifically admit that she said it, the document can be placed in evidence, and she has not specifically admitted it. What she has said is that she does not recall saying it and on that basis I am applying for the deposition to be put in evidence to show that she did in fact say so.

Prosecution  
Evidence  
No.5  
Sadie Samuels  
(re-called)  
Cross-  
Examination

20 HIS LORDSHIP: I don't agree with you, Mr..... The witness says she does not remember saying it. The purpose of putting in the deposition is to contradict the witness, as I understand it.

DEFENCE ATTORNEY: Yes.

HIS LORDSHIP: Now, if you want to contradict the witness, the witness must have said she did not say it and she has not said she didn't say it; she says she sees it here but she doesn't remember saying it.

DEFENCE ATTORNEY: My Lord.....

30 HIS LORDSHIP: In any case, if the deposition were to go in, Judges differ on this, but my policy is that the deposition would be read from start to finish.

DEFENCE ATTORNEY: Yes, My Lord, and I agree with you that that is the proper course, that is how I understand it.

40 HIS LORDSHIP: If a witness says she doesn't recollect saying a thing that is in the deposition, then the deposition can't be put in to contradict something that she doesn't recollect.

DEFENCE ATTORNEY: My Lord, I believe I can satisfy you on that by referring to what it specifically says.

In the Home  
Circuit Court

Prosecution  
Evidence

No.5

Sadie Samuels  
(re-called)

Cross-  
Examination

HIS LORDSHIP: What?

DEFENCE ATTORNEY: I think I can satisfy you  
as to that without any difficulty by  
referring you to the particular section.

HIS LORDSHIP: Is it really necessary to  
pursue this, Mr...?

DEFENCE ATTORNEY: My Lord, I shall....

HIS LORDSHIP: In the light of her answer,  
what she has already answered here, her  
proper answer, I could be as well as I  
couldn't be; is it necessary to pursue  
this?

10

DEFENCE ATTORNEY: Your Lordship, I think it is.

HIS LORDSHIP: You are finished. Any  
re-examination? You are finished with  
the cross-examination?

DEFENCE ATTORNEY: Yes, My Lord.

Re-  
Examination

RE-EXAMINED BY CROWN ATTORNEY:

CROWN ATTORNEY:

Q: Now, Miss Samuels, to this gentleman....

20

A: I beg your pardon?

Q: I am just going to repeat something you  
said; the question asked by this gentleman  
and the answer you gave.

A: Yes.

Q: He suggested to you that the accused man,  
that man, was not there on the 6th of  
April, 1975, and you said, "Well, is  
that man I saw."

A: Yes, sir, yes.

30

Q: He then asked you again, do you agree you  
could be mistaken and to that you said,  
could be as well as could be not.

A: Yes.

Q: What do you mean by that?

DEFENCE ATTORNEY: Objection. Don't answer that. As Your Lordship has just a moment ago remarked, she has clearly answered to that question, there is no ambiguity. Counsel for the crown is allowed to cross-examine to clear up ambiguity. The evidence, as Your Lordship has said by inference, there is no ambiguity in that answer, and I submit, My Lord, that counsel for the crown could not properly ask her to clarify what admits of no clarification.

In the Home  
Circuit Court  
Prosecution  
Evidence  
No.5  
Sadie Samuels  
(re-called)  
Re-Examination

10

HIS LORDSHIP: Counsel for the crown is entitled to re-examine on anything which arises out of cross-examination and he is entitled to put the question. Yes? Repeat the question. What do you mean when you say I could be as well as I could not; that is what you are being asked.

20

A: Well, he tried to show me that he is not the one I saw, that is the reason why I said it. I know is the one I saw, for his understanding and my own, he is trying to show me that he is not the one, that is the reason why I said it.

HIS LORDSHIP: Yes.

CROWN ATTORNEY:

30

Q: Again, to my learned friend you said, I was looking at my trousers while pulling it, did you look at your trousers throughout the entire time that the accused was holding you up by the kitchen door?

40

A: I was looking off and on by looking down and looking up, looking all around, not exactly have my eyes down on it; at one stage pulling it looking down and looking up, look all around. Because I was so scared I couldn't hold down my head just looking down I had to look all around me.

CROWN ATTORNEY: No further re-examination.

PROCEEDINGS

Prosecution  
Evidence

No.6  
Proceedings  
dated 5th  
May 1976

DEFENCE ATTORNEY: My Lord, may I renew my application for the admission of the deposition?

HIS LORDSHIP: What?

DEFENCE ATTORNEY: May I renew my application for the deposition to be tendered?

HIS LORDSHIP: What is the section you are relying on, Mr.....?

10

DEFENCE ATTORNEY: Section 18 of the Evidence Law.

HIS LORDSHIP: Read it let me see.....

DEFENCE ATTORNEY: I have not got it. (Book handed to defence attorney). I am sorry, it's not section eighteen, it's section sixteen. It reads: "If a witness upon cross-examination as to a former statement made by him relative to the subject matter of the cause and inconsistent with his present testimony, does not distinctly admit that he had made such statement proof may be given that he did in fact make it. Before such proof can be given, circumstances of the supposed statement sufficient to designate a particular occasion must be mentioned to the witness and he must be asked whether or not he has made such statement." I contend that this witness has not distinctly admitted that she made the statement. Indeed, she has said, "I do not recall making it."

20

30

HIS LORDSHIP: What is the inconsistency here? The statement must be read: "If a witness upon cross-examination as to a former statement made by him relative to the subject matter of the cause and inconsistent with his present testimony....." What inconsistency has she said here with what is in the deposition, even if it should be read? She was asked here, Do you agree you could be mistaken? I could be as well as I could not. She was asked if she said

40

at the preliminary examination when she was asked: I put it to you that this man was not there that night, and her answer is, I don't know what to say.

In the Home  
Circuit Court

Prosecution  
Evidence

No.6

Proceedings  
dated 5th  
May 1976

10 DEFENCE ATTORNEY: She was asked whether she said, I don't know what to say, and her answer was, I don't remember. The depositions were then shown to her. When that was done, she said, I see it here, yes, but I don't remember saying that. Therein lies the inconsistency and therein I contend is found the basis for this application, because she.....

20 HIS LORDSHIP: What you mean by something she said? She said she had no recollection of it. She has not denied it and you can't contradict her about she said she didn't make it. The purpose of this section is to contradict the witness. "Demanding how and when....." not that the marginal note is any...well, you know the principles as to marginal note. But the marginal note reads, "How and when witness's evidence may be contradicted." What is being contradicted, she has not said....if she had come out and said, I didn't say that, then there would be ground to read the deposition. But, I see no ground to read it here when she said she had no recollection - what is her word.. "I don't know what to say, I see it here but I don't remember saying that."

30  
40 DEFENCE ATTORNEY: So that it is established that these words appeared in the deposition, My Lord, that is the first thing, as to having been said by her. The second thing is that she has not distinctly admitted that she said so. That section, I contend section sixteen was searching to provide a means of establishing that the witness did in fact say that which she contends she does not recall having said. That, I submit, is the reason why it says, "If a witness does not distinctly admit...." this witness has not distinctly admitted that.

In the Home  
Circuit Court

Prosecution  
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HIS LORDSHIP: Then, Mr. Taylor, you think that saying, even if the man said, I don't know what to say, the import of it is any different from her saying here today, I could be mistaken as well as I could not be?

DEFENCE ATTORNEY: My Lord, it's not a question of that, but they are accumulative, My Lord. You see, I will be contending that she says, Well, I don't know what to say, and in addition she says, I could be mistaken as to.....

10

HIS LORDSHIP: I am still doing to have to tell the jury that what she has said here is the evidence, have I not go to do that, not what she said on an earlier occasion, and that what she said on an earlier occasion are only matters which will go to test her credit.

DEFENCE ATTORNEY: Question of credit, and her credit, My Lord, is all important in this case.

20

HIS LORDSHIP: All right, if you want it read and you think it is going to advance your case, I will allow it.

DEFENCE ATTORNEY: I am much obliged to you, My Lord. I would like to have them tendered.

HIS LORDSHIP: Well, it is going to be read from start to finish.

30

DEFENCE ATTORNEY: It has to be, My Lord, there is no alternative.

HIS LORDSHIP: Finish with the witness?

DEFENCE ATTORNEY: Yes, My Lord.

HIS LORDSHIP: Read the deposition to the jury.

REGISTRAR: "Sadie Samuels, duly sworn on her oath saith as follows: Dressmaker. Saturday 5th April, 1975, I worked on that day by Walsh's Beach Club as a waitress. I went to work at 5.30 p.m. About 1.00 a.m. Sunday morning 'most daylight, I was at the back where the

40

10 restaurant is. I sat at a table, There  
is a bar in front of premises, a garage  
at side that customers drive in. Persons  
can enter restaurant from the garage  
(parking lot). I sat beside the side  
gate with another woman called Princess.  
I saw two gunmen come in. They said to  
both of us, "Don't move." They entered  
through the gate by which we sat. There  
is a soft light right where we were  
sitting. There were other lights towards  
back of restaurant. There were bright  
lights in the bar at the front.

20 Each man had a gun in his hand. Guns  
were pointed at me and the other girl.  
Men kept on looking. They then entered  
the bar. I did not know what happened  
when they entered bar. I heard gun shots  
being fired in the bar. People were in  
the bar. Mr. Walsh was at the bar side  
with a glass drinking.

30 Accused is one of the two men who came  
in the premises and said "Don't move" and  
went towards bar. When I heard shot I  
ran into the kitchen. I heard shots  
being fired while I was in the kitchen.  
I came out the kitchen. Accused attacked  
me with the gun. He held my hand and  
pointed gun at me. He said to me, "Take  
off your pants." I took off my pants and  
he started to pull his trousers front.  
He said, "Open your legs." A man came  
at bar and ran to the back of restaurant.  
Accused released hold on my hand. I ran  
upstairs. I did not see where accused  
went. I was so frightened.

40 Sometime afterwards I came down and I  
saw Mr. Walsh's body lying by the bar.  
I saw blood at his side and mouth.

On 24/4/75 I went to an identification  
parade at Half Way Tree police station.  
There from a line of men I identified the  
accused as one of the two gunmen that  
entered the restaurant and bar on the  
morning of the 6th of April, 1975. When  
accused held my hand and I took off my  
trousers he was before me about half minute.

"Cross-Examined: Garage has no light, it is dark



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inside garage. I sat where entrance of bar meets garage. Where I sat light was not bright. First time I saw men was when they spoke to me. The bar was about six yards from where I sat. From time men spoke until time they left and went to bar about fifteen minutes passed - a short time not so short. When they went to bar I was left at the door. When I heard gunshots I was in the kitchen. I did not see what was going on in the bar. I would say the next thing I knew, man came and held my hands. At back where I was, lighting was very poor. I did not describe man who held my hand to police. Police did not ask me. Accused had on a black shirt and a lightish colour khaki trousers. That was first time I was seeing man. I saw accused for a short time that night. I gave description of other man to police. He had on a black suit. I did not see him that much.

10

20

Q: I put it to you this man (pointing to accused) was not there that night.

A: I don't know what to say.

Q: Do you agree with me you could be mistaken?

A: I could.

Re-Examined: Light was in area of kitchen. Where accused held my hand bright light. Door was open. As I stepped out he held my hand. I saw his face."

30

HIS LORDSHIP: Yes, next witness.

No. 7

SYLVIA HAMILTON

In the Home  
Circuit Court

Prosecution  
Evidence

No.7

Sylvia Hamilton  
Examination

SYLVIA HAMILTON: SWORN: Time: 2.42 p.m.

EXAMINED BY CROWN ATTORNEY:

CROWN ATTORNEY:

Q: Your name is Sylvia Hamilton?

A: Yes.

Q: Could you speak a little louder for me,  
please. And you are a cashier?

10 A: Yes.

Q: In April you used to work at Walsh's  
Beach Club?

A: Yes, sir.

Q: Do you know one Mr. Fedlon Walsh?

A: Yes, sir.

Q: On the 7th of April last year, did you  
attend the Kingston Public morgue?

A: Yes, sir.

20 Q: Where a post mortem examination was being  
performed by Dr. Budhoo

A: Yes, sir.

Q: On the body of a male person?

A: Yes, sir

Q: Who you identified that body as whom?

A: Yes, sir.

Q: Who was that male body?

A: Fedlon Walsh

Q: You identified that body as Fedlon Walsh?

In the Home  
Circuit Court

Prosecution  
Evidence  
No.7  
Sylvia Hamilton  
Examination

A: Yes, sir.

DEFENCE ATTORNEY: No cross-examination

HIS LORDSHIP: Thank you madam.

No.8  
George Hanson  
Examination

No. 8  
GEORGE HANSON

INSPECTOR GEORGE HANSON: SWORN

EXAMINED BY CROWN ATTORNEY

CROWN ATTORNEY:

Q: Your name, please sir?

A: George Hanson, sir.

10

Q: Rank and station?

A: Inspector of Police, stationed at Cross  
Roads police station in the parish of  
St. Andrew.

Q: On the 24th of April last year, did you  
conduct an identification parade?

A: Yes, sir.

Q: Where and for what purpose?

A: It was held in the female section of the  
Half Way Tree lock up.

20

HIS LORDSHIP: In the female?

A: Yes, sir, female section.

HIS LORDSHIP: Yes.

A: Yes, sir, it was held so that witnesses  
would come there.....

HIS LORDSHIP: Yes.

A: ....and try to identify someone....

HIS LORDSHIP: Yes.

A: ....who shot Mr. Fedlon Walsh at  
Walsh's Beach, Eight Miles, Bull Bay,  
on the 6th of April, 1975.

In the Home  
Circuit Court

Prosecution  
Evidence  
No.8

George Hanson  
Examination

CROWN ATTORNEY:

Q: Who was the suspect?

A: The suspect was Dennis Reid, sir.

10 Q: Did you speak to him before the  
parade?

A: Yes, sir.

Q: What did you say, sir?

A: I told him that he could call a  
relative, a friend or his attorney  
to watch the parade on his behalf.

HIS LORDSHIP: You told him what the parade  
was for?

20 A: Yes, sir. He had scars on his forehead  
and I had those scars covered, sir.

CROWN ATTORNEY:

Q: You told him he could have a relative  
or anybody, did he make any request?

A: Yes, he asked for his attorney to be  
present.

Q: He named the attorney?

A: Yes, sir.

Q: Whom did he name?

A: Mr. Patrick Atkinson, sir.

30 Q: Did you start to hold an identification  
parade?

A: Yes, sir.

In the Home  
Circuit Court  
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Evidence  
No.8  
George Hanson  
Examination

Q: How many men were.....

HIS LORDSHIP: Mr. Atkinson attended?

A: Yes, sir, Mr. Atkinson attended. There were nine men including the suspect, sir.

CROWN ATTORNEY:

Q: Anything about these nine men?

A: They were all of similar age, height, colour and general appearance, sir.

Q: You said the accused had a scar on his face, what you placed on the accused?

10

A: Adhesive tape, sir

Q: What of the others?

A: They were taped in a similar position, sir.

Q: Did you say anything to the accused when these men were placed on the parade?

A: Yes, sir.

HIS LORDSHIP: In the presence of Mr. Atkinson?

A: Yes, sir, I told him that he could change his clothing with anyone on the parade, sir, and that he could choose any position he wanted in the line.

20

CROWN ATTORNEY:

Q: Did the accused do anything when you said that?

A: He changed his shirt with Arnel Brown, one of the persons on the parade, sir.

Q: He did anything else?

A: And he chose the number two position in the line from my left.

HIS LORDSHIP: As you face the parade?

30

A: Yes, sir.

CROWN ATTORNEY:

Q: After he had done that, did you say anything to the accused?

A: I asked him if he was satisfied with the arrangements, sir. He said, yes, sir.

Q: And after that, what next happened?

A: A witness was sent for, sir.

Q: Is that witness Sadie Samuels?

10 A: Yes, sir.

HIS LORDSHIP: Where was she?

A: She was out of sight of the parade, sir.

HIS LORDSHIP: Could she have seen what arrangements were being made for the parade?

A: No, sir.

CROWN ATTORNEY:

Q: When she came, did you speak to her?

20 A: Yes, sir, I asked her....

Q: Could the accused hear what you said to her?

A: Yes, sir, he could hear.

HIS LORDSHIP: You asked her.....

A: ....her reason for being there, sir.

HIS LORDSHIP: What you asked her?

Q: She said, Walsh's Beach Club hold up. I told her to walk along the line of men and if she sees the person touch him and say something.

30

CROWN ATTORNEY:

Q: This was said in the presence of the accused?

In the Home  
Circuit Court

Prosecution  
Evidence  
No.8  
George Hanson  
Examination

- A: Yes, sir. She walked along the line of men, pointed at the suspect and said, this is the one that I saw.
- Q: Did the accused man say anything?
- A: No, sir, he did not say anything.
- Q: What of the witness, Sadie Samuels, after she pointed out the accused, what did the witness do?
- A: After she pointed out...she signed a form sir, and she was sent off the parade. 10
- Q: Did you say anything to the accused after Sadie Samuels left?
- A: Yes, sir. I asked him if he was satisfied with the parade.
- Q: Did he say anything?
- A: He said, yes, sir.
- Q: You then dismissed the parade?
- A: Yes, sir.
- Q: You gave Detective Inspector some information?
- A: Detective Brown, it was. 20
- Q: Detective Brown?
- A: Yes, sir.

Cross-  
Examination

INSPECTOR GEORGE HANSON:

CROSS EXAMINED BY DEFENCE ATTORNEY:

DEFENCE ATTORNEY:

- Q: Inspector, you did say that the men were of similar height, age, colour, etc.?
- A: Yes, sir
- Q: Well, were the men measured before holding of the identification parade, were the heights taken? 30
- A: Yes, sir.

Q: And was this done while they were bare-footed or with shoes on?

In the Home  
Circuit Court

A: I am not certain, I am not certain if they were bare-footed or they had on shoes.

Prosecution  
Evidence  
No.8  
George Hanson

Q: This wasn't the first identification parade that you were holding, was it? Is this the custom to take the measurement of all the persons who form the line on an identification parade?

Examination

10

A: Yes, sir.

Q: And this is the custom to do so while they are bare-footed?

A: Yes, sir.

Q: So, might we assume in this case the proper thing was done and that their heights were taken while they were bare-footed?

20

A: Yes, sir, it was being taken.

WITNESS: Inspector of Police stationed at Cross Roads.

Q: Yes Inspector, what was Reid's height, the suspect on the parade? What was his height measured to be?

A: About 5 feet eight.

HIS LORDSHIP: You made notes at the time? You have your notes here?

A: It is on the form, sir.

30

Q: A list was compiled of the height of the various persons who comprised the parade, is that correct?

A: It was done on the Parade Form, sir.

(Parade Form shown to witness)

Q: The Parade Form contains a list of the names and heights of the persons who comprise the parade?



In the Home  
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George Hanson  
Examination

A: Yes, sir.

HIS LORDSHIP: Would you like to refresh  
your memory from the form?

A: Yes, sir.

HIS LORDSHIP: (To Mr. Taylor). You have  
any objection?

MR. TAYLOR: None at all, sir.

HIS LORDSHIP: What was the height of the  
accused from the form?

A: Dennis Reid, 5 feet eight inches, sir.

10

MR. TAYLOR: 5 feet eight inches?

A: Yes, sir.

Q: Apart from Dennis Reid, I understand  
you to say there were eight other  
persons who made the line-up for the  
parade?

A: Yes, sir.

Q: One was Demond Nugent?

A: Yes, sir.

Q: And what was his height taken to be?

20

A: Five feet six inches, sir.

Q: There was Arnold Brown?

A: Yes, sir.

Q: And his height was five feet ten inches?

A: That is correct, sir.

Q: There was Newton Johnson?

A: Yes, sir.

Q: His height was five feet nine inches?

A: Yes, sir.

Q: There was Donald Gooden?

30

A: Yes, sir.  
Q: His height was five feet five and a half inches?  
A: Yes, sir.  
Q: There was Donald Shaw?  
A: Yes, sir  
Q: His height was five feet eight and a half inches?  
A: Yes, sir.  
10 Q: There was Cecil Mullings?  
A: Yes, sir.  
Q: What was his height?  
A: Five.....  
Q: Five feet seven and a half inches?  
A: Yes, sir.  
Q: And there was Tasman Nelson?  
A: Yes, sir.  
Q: His height was what?  
A: Five feet seven inches, sir.  
20 Q: Finally, there was Opher Moore?  
A: Yes, sir.  
Q: What was his height?  
A: Five feet six inches, sir.  
Q: So that Inspector, as a matter of fact, apart from Arnold Brown who was five feet ten, Newton Johnson who was five feet nine and Donald Shaw who was five feet eight and a half, apart from those, I say the accused man would be the  
30 tallest person on the parade?  
A: Yes, sir.

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Examination

In the Home  
Circuit Court

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Examination

Q: You spoke of covering this scar on the  
accused man's forehead?

A: Yes, sir.

Q: I believe you said you used a plaster?

A: Adhesive tape, sir.

Q: Adhesive tape for this purpose?

A: Yes, sir.

Q: And I understand you to be saying that  
there was only one scar that you covered  
on his face?

10

HIS LORDSHIP: Where, what part?

A: It was on his forehead, sir.

MR. TAYLOR: There was one scar that you covered?

A: I believe so, sir.

Q: Now, I take it, Inspector, that the reason  
for covering this scar was that it would  
be an obvious mark, distinguishing the  
suspect from the rest of the persons on  
the line-up?

A: Yes, sir.

20

Q: M'Lord, may the accused man be escorted  
to stand near the box so that the Inspector  
can take a good look at his face? I  
have some questions to ask him about that.  
I need him to look at his face and  
answer the questions asked.

HIS LORDSHIP: Inspector can't see it from there?

MR. TAYLOR: No, what I want to ask him about,  
unless his eyes are much better than  
mine, he wouldn't be able to say. There  
is a distinct difference between the  
distance between the Inspector and the  
distance between the person who walked  
along the line and the suspect on the  
line.

30

HIS LORDSHIP: Bring him up. Let's move on,  
anything to let us move on.

(Accused man brought near to witness box)

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MR. TAYLOR: Inspector, please take a good look at his face. Now, is there a scar to the right side of his lips, his mouth?  
(Witness looks at accused man's lips)

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Examination

A: Yes, there is a little scar.

10 Q: And is there even more obviously a scar under his right eye? I don't believe you have to look too carefully. Is there a scar on his right eye?

HIS LORDSHIP: Show us. Just put your finger on the scar on the right side of his lip.  
(witness indicates scar)

MISTER TAYLOR: And a scar under his right eye?  
(witness indicates scar)  
Inspector, is the answer yes or not?  
20 I know you pointed it, but I want your to answer it.

A: Yes, there is a scar under his right eye.

Q: Now, please, I would like the accused man to open his mouth.

HIS LORDSHIP: Before he does that, will you show me the one on his forehead that you covered?  
(Witness indicates scar on accused man's forehead)  
30 Turn around, let me see it. Yes, what else you want now, Mr. Taylor?

MR. TAYLOR: I just want him to open his mouth so that Inspector can look at it.  
(Accused man opens his mouth)  
Does the accused man have a space, a marked pronounced space between - rather in front of his upper layer of teeth as if two or more teeth are missing?

40 A: Yes, sir.

HIS LORDSHIP: When he opened his mouth first you didn't see it, Inspector?

In the Home  
Circuit Court  
Prosecution  
Evidence  
No. 8  
George Hanson  
Examination

A: No, sir.  
(Accused man opens his mouth a second time)  
(Accused man returns to dock: 3.13 p.m.)

MR. TAYLOR: The scars on his lip and under his eye, do they appear to you to be old scars?

A: Yes, sir.

Q: Now, I believe there was some five or so other witnesses who were called on that parade?

10

A: Yes, sir.

HIS LORDSHIP: How many?

A: Five.

HIS LORDSHIP: Five others or five including Miss Samuels?

A: Five including Miss Samuels, sir.

MR. TAYLOR: What are the names of those persons, those five other persons?

A: I don't remember all of them now, sir.

Q: Can you recall the names of any of them? Was one Mr. Edwin Smart?

20

A: I don't remember, sir.

Q: You know Mr. Edwin Smart?

A: No, sir.

Q: Did you give evidence at the preliminary enquiry?

A: Yes, sir, I did.

Q: Did a gentleman by the name of Edwin Smart give evidence there?

A: I don't know, sir.

30

Q: You are obliged, I believe, to keep a record of all that transpires on that identification parade and all the persons

who attend, is that correct?

In the Home  
Circuit Court

A: Yes, sir.

Prosecution  
Evidence

Q: And I assume you conducted a proper parade?

No.8

A: I think so, sir.

George Hanson  
Examination

10

Q: In accordance with proper procedure you would have made a record of the names of the persons who came on the parade in order to attempt to identify the suspect?

A: Yes, sir.

Q: What are the names of those persons who so attended?

HIS LORDSHIP: You have the names?

A: Yes, sir.

HIS LORDSHIP: Where?

A: In my notebook, sir.

HIS LORDSHIP: He has them in his notebook Mr. Taylor.

20

MR. TAYLOR: There is a form provided for noting down the names of those persons, is there not?

A: Yes, sir.

Q: And I take it you would have filled in those forms?

A: Yes, sir.

Q: Would you like to refresh your memory from it?

A: Yes, sir.

30

HIS LORDSHIP: Refreshing his memory as to the names of the witnesses? Are those the forms in respect to the parade?

A: Yes, sir.

In the Home  
Circuit Court  
Prosecution  
Evidence  
No.8  
George Hanson  
Examination

HIS LORDSHIP: Would you like to refresh your memory as to the names of the other witnesses?

A: Yes, sir.

HIS LORDSHIP: What are their names?

A: Delores Williams, Monica Edwards, Nerissa Wallace, Errol Hutchinson.

HIS LORDSHIP: They are the other four plus Miss Samuels who attended this parade?

A: Yes, sir.

10

HIS LORDSHIP: How many parades you held in respect of this accused?

A: One, sir.

MR. TAYLOR: I take it, Inspector, that none of these persons pointed out the accused man, he was then the suspect, as being in any way involved with Francis' murder?

A: They did not, sir

Q: And of course I take it that all of them went through the same routine that Miss Samuels went through?

20

A: Yes, sir.

(Mr. Taylor sits)

CROWN ATTORNEY: No re-examination, M'Lord.

3.20 p.m.

Call Detective Brown for me, please.

No.9  
Detective  
Corporal  
Brown  
Examination

No. 9  
DETECTIVE CORPORAL BROWN

DETECTIVE CORPORAL BROWN: SWORN. EXAMINED BY  
CROWN ATTORNEY

30

3.21 p.m.

WITNESS: Detective Brown, M'lord, Acting

Corporal of police, now stationed at Spanish Town in the parish of St. Catherine.

In the Home  
Circuit Court

Prosecution  
Evidence  
No.9  
Detective  
Corporal Brown  
Examination

Q: April of last year where were you stationed?

A: Stationed at Bull Bay in the parish of St. Andrew, sir.

Q: At about 8.30 in the morning of the 6th of April last year, did you receive a report?

10

A: I did, sir.

Q: As a result of that report, did you go anywhere?

A: Yes, sir.

Q: Where did you go?

A: I proceeded to Walsh's Beachview Club at Eight Miles, Bull Bay, in the parish of St. Andrew.

Q: There, what did you see?

20

A: Before the club I saw a large crowd gathered. In this crowd I saw one Edwin Smart. He was bleeding profusely from his right shoulder.

Q: Did you enter into the bar of this club?

A: I did, sir.

Q: There what you saw?

A: I saw the body of deceased Fedlan Walsh.

HIS LORDSHIP: Where?

30

A: In the bar section of the club, M'lord.

HIS LORDSHIP: On the floor?

A: On the floor, sir.

HIS LORDSHIP: He was dead?



In the Home  
Circuit Court

Prosecution  
Evidence  
No. 9  
Detective  
Corporal Brown  
Examination

A: He appeared dead, M'lord.

CROWN ATTORNEY: Did you search this bar?

A: Bar, sir?

Q: Yes.

A: I did, sir.

Q: You noticed anything about the bar in your search?

A: I found four pieces of cartridge under an amusement machine in the bar section, and also another piece of cartridge to the northern wall.

10

HIS LORDSHIP: Of the bar?

A: Yes, M'lord.

CROWN ATTORNEY: Anything else?

A: The entire portion of the bar was disturbed. The tables and chairs were irregularly placed.

Q: Do you know Detective Inspector Sweeney?

A: Yes, sir.

Q: Was he your senior officer at the time?

20

A: Yes, sir.

Q: You made a report to him?

A: I did, sir.

(Crown Attorney sits) 3.25 p.m.

HIS LORDSHIP: Any cross-examination?

MR. TAYLOR: Just one question, M'lord.

Cross-  
Examination

DETECTIVE CORPORAL BROWN: CROSS-EXAMINATION  
BY MR. TAYLOR

Q: You mentioned Edwin Smart?

A: Yes, sir.

30

Q: Edwin Smart gave evidence at the preliminary enquiry into this matter?

A: I don't know, sir.

Q: Did you give evidence?

A: I did, sir.

Q: You got a statement from Edwin Smart?

A: I didn't, sir.

Q: You know whether a statement was taken from Edwin Smart?

10 A: I know that a statement was taken.

Q: I take it you established that Edwin Smart was shot in the incident which occurred in the bar at Mr. Walsh's Club?

A: Yes, sir.

Q: I am much obliged, thank you.

(Mr. Taylor sits)

HIS LORDSHIP: Yes, thank you. Any re-examination?

20 CROWN ATTORNEY: No re-examination, M'lord. Call Detective Inspector Sweeney for me, please.

No. 10

KENNETH SWEENEY

DETECTIVE INSPECTOR SWEENEY: SWORN  
EXAMINED BY CROWN ATTORNEY

Q: Your name is Kenneth Sweeney?

A: Yes, sir.

In the Home  
Circuit Court

Prosecution  
Evidence

No.9  
Detective  
Corporal Brown

Cross-  
Examination

No.10  
Kenneth Sweeney  
Examination

In the Home  
Circuit Court

Prosecution  
Evidence

No.10

Kenneth Sweeney

Examination

Q: You are a Detective Inspector of  
Police?

A: Yes, sir.

Q: You are stationed at....?

A: C.I.D. Headquarters now.

Q: In April of last year, were you  
stationed at Elletson Road Police  
Station?

A: Yes, sir.

Q: Now, on the 6th of April last year, did  
you receive a report? 10

A: Yes, sir.

Q: As a result of this report did you go  
anywhere?

A: Yes, sir.

Q: Where did you go?

A: To Walsh's Beach Club at Eight Miles,  
Bull Bay, on the St. Thomas Road.

Q: There you learnt certain things?

A: Yes, sir. 20

Q: You started your.....

A: Investigation.

Q: And on the 25th of April last year, did  
you arrest the accused?

A: Yes, sir.

Q: Charged him with?

A: Murder of Fedlan Walsh.

Q: Cautioned him?

A: Yes, sir.

Q: Did he say anything? 30

A: Yes, sir. He said, "A don't have anything a say, sir."

In the Home  
Circuit Court  
Prosecution  
Evidence  
No.10  
Kenneth Sweeney  
Examination

DETECTIVE INSPECTOR SWEENEY:  
CROSS-EXAMINATION BY MR. TAYLOR

Cross-  
Examination

10

Q: Now Inspector Sweeney, you said that when you cautioned the accused he said, "A don't have anything a say." What were the words of the caution you administered to him? What did you tell him?

A: He is not bound to say anything. Whatever he says maybe taken down in writing and be given in evidence.

Q: Those were the words?

A: Yes, that is what I told him.

Q: Now, I take it you were the person in charge of investigating the killing of Mr. Walsh?

A: Yes, sir.

20

Q: Now, prior to arresting and charging the accused man Reid on the 25th, had you spoken to him?

A: Yes, sir.

Q: Would that have been on the 23rd of April, two days prior to your charging and arresting him?

A: Yes, sir.

30

Q: And on the 23rd of April, did you tell him that you were investigating the murder of Fedlan Walsh?

A: Yes, sir.

In the Home  
Circuit Court

Prosecution  
Evidence

No.10  
Kenneth Sweeney

Cross-  
Examination

Q: And that he would be placed on an identification parade?

A: Yes, sir.

Q: And in fact you know he was placed on an identification parade two days after.

A: The 24th.

Q: The day after?

A: Yes, sir.

Q: And of course after the identification parade you arrested him?

10

A: Yes, sir.

Q: And charged him. You did not arrest him on a warrant?

A: No, sir.

Q: So I take it there was no warrant out for him in respect of this charge?

A: No, sir.

Q: I take it Inspector Sweeney that when you saw him on the 23rd it was at Half Way Tree?

20

A: Yes, sir.

Q: And I take it that you were also aware at that time when you saw him on the 23rd at Half Way Tree that he had in fact been taken into custody at Matilda's Corner on the 17th of April?

A: I don't know what day he was taken into custody. My investigation led me to Half Way Tree.

Q: Well, did you ascertain that he had been in custody approximately a week, six days before you spoke to him at Half Way Tree on the 23rd?

30

A: No, sir, I did not ascertain that.

Q: You know, of course, Inspector Sweeney, when you spoke with Reid on the 23rd that he was in fact at the time an escapee from prison?

In the Home  
Circuit Court

Prosecution  
Evidence

No.10

Kenneth Sweeney

Cross-  
Examination

HIS LORDSHIP: Wait, don't answer that. Is this necessary?

MR. TAYLOR: Yes, M'lord, very necessary.

HIS LORDSHIP: Very necessary to your case?

MR. TAYLOR: Yes, M'lord.

10 HIS LORDSHIP: Very well, answer the question.

A: Yes, sir.

HIS LORDSHIP: When you saw him at Half Way Tree you knew he was an escapee from prison?

A: Yes, sir.

MR. TAYLOR: And I take it that you knew that he had in fact run away from the St. Catherine District Prison on the 14th of February?

20 A: I don't remember the date now, sir. I know he escaped from prison.

Q: And at some time you knew when he had escaped from prison, I take it?

HIS LORDSHIP: Don't remember the date he is supposed to have escaped from St. Catherine District Prison?

A: I don't remember now, sir, what date or what prison.

30 HIS LORDSHIP: What date did you put to him Mr. Taylor?

MR. TAYLOR: 14th of February.

HIS LORDSHIP: You are suggesting to him that - do you know that it was the 14th of February? It is being suggested to you by defence counsel that he escaped on the 14th of February, 1975. Do you know that it is so?

In the Home  
Circuit Court

Prosecution  
Evidence  
No.10  
Kenneth Sweeney  
Cross-  
Examination

A: I am not quite certain, sir.

MR. TAYLOR: M'lord, I would like the witness to look at a newspaper clipping; just to look at it just for a moment.

HIS LORDSHIP: What is that? No, wait a moment. What is that you are showing the witness?

MR. TAYLOR: A newspaper clipping.

HIS LORDSHIP: What is that for?

MR. TAYLOR: I just want him to look at the newspaper clipping, M'lord. 10

HIS LORDSHIP: I don't want you to show him something that the jury is not supposed to see.

MR. TAYLOR: M'lord, I have nothing to hide from the jury.

HIS LORDSHIP: It is not a question of not wanting to hide anything from the jury, it is a question of what is admissible and what is not admissible. I am not speaking of it from the point of your duty, I am thinking of it from the point of my duty of keeping inadmissible evidence from the jury. 20

MR. TAYLOR: I appreciate that. At this stage all I am asking is to ask the Inspector to look at a newspaper clipping.

HIS LORDSHIP: Just look at it, say nothing.

(Witness looks at clipping)

MR. TAYLOR: Inspector it is correct, is it not, the one sometimes sees pictures of persons who have escaped from prison in the various newspapers? 30

A: Sometimes, sir.

Q: And it is also correct that one sometimes sees pictures of such persons on television?

A: Not to my knowledge, sir.

Q: You do not know of that?

In the Home  
Circuit Court

A: No, sir, I have never seen any on television.

Prosecution  
Evidence

Q: Well, put it this way: the police, when persons escape from prison, are the persons responsible for publicising descriptions of them, photographs and so on, in the various news media?

No.10  
Kenneth Sweeney

Cross-  
Examination

A: Yes, sir.

10 Q: And I take it that you are aware that in the case of Dennis Reid his photograph was published in the various news media?

A: Well, to be frank, is now I notice that it came out in the paper.

HIS LORDSHIP: No, give back Mr. Taylor that paper.  
(Newspaper clipping returned to Mr. Taylor)

20 The question is, do you know that his photograph was published in any of the newspapers, Daily News, Star, Gleaner, or whatever newspaper is published in Jamaica.

MR. TAYLOR: And on television.

A: I don't know about television.

HIS LORDSHIP: Do you know if his photograph was publicised in the newspapers as an escapee?

30 A: I know his description was, sir, but I am not certain about the photograph.

MR. TAYLOR: M'lord, I would like the Inspector to identify this clipping that I put to him a while ago.  
(Newspaper clipping shown to Crown Attorney)

HIS LORDSHIP: Is that a newspaper you have there, Mr. Taylor?

MR. TAYLOR: A clipping from a daily newspaper.



In the Home  
Circuit Court

Prosecution  
Evidence

No.10

Kenneth Sweeney

Cross-  
Examination

HIS LORDSHIP: A clipping from a daily newspaper?

MR. TAYLOR: A photograph of a clipping from a daily newspaper.

HIS LORDSHIP: You can prove it in other ways, if you wish Mr. Taylor, but not this way, by putting a photograph of a clipping from some newspaper to the witness. No, we can't allow that.

MR. TAYLOR: M'lord, the copy there identifies the name of the paper, the date and every relevant detail. 10

HIS LORDSHIP: I don't know if you can do it that way. You see, this is a criminal trial, Mr. Taylor.....

MR. TAYLOR: M'lord, I fully appreciate that.

HIS LORDSHIP: .....not a civil case where you can side track the rules of evidence. (His lordship shown newspaper clipping) I won't allow this. You have to get it in evidence. 20

MR. TAYLOR: The problem is that the particular newspaper in which I am interested would be over a year old and it is only the Institute that.....

HIS LORDSHIP: That is not admissible, Mr. Taylor, not in these days when so many things can happen, so many false documents prepared.

MR. TAYLOR: Your Lordship is not suggesting that - would not suggest that I would prepare a false document. 30

HIS LORDSHIP: No, you are not the only man concerned with the preparation of this case, Mr. Taylor. I was almost sold a bogus ticket for Championships; couldn't identify the difference. Anyhow, what we have so far from the Inspector - you know his description was publicised in a newspaper? 40

A: Yes, sir.

HIS LORDSHIP: You don't know whether his photograph was?

A: No, sir.

HIS LORDSHIP: If you want me to give you an opportunity for the Inspector to ascertain this from the C.I.D. Headquarters, I will allow you.

10 MR. TAYLOR: M'lord, I would be most grateful for this. In fact it would solve my problem, M'lord, because the Inspector knows the particular date now that is being referred to, and even if the C.I.D. could provide him with the newspaper clipping, he could, I am sure, ascertain that what I am suggesting was so, by reference elsewhere.

20 HIS LORDSHIP: I don't want to inhibit you in your defence in any way, but I must stick to the rules of evidence.

MR. TAYLOR: You are in no way inhibiting me.

HIS LORDSHIP: You are stationed at C.I.D. Headquarters?

A: Yes, sir.

HIS LORDSHIP: Is it possible to ascertain from the C.I.D. Headquarters if his name and photograph was publicised in any Daily?

30 A: Should be able to, sir, but I don't know about the copy of the paper.

HIS LORDSHIP: Well, somebody must have had to authorise it?

A: Yes, sir.

HIS LORDSHIP: What I want to know, if it was authorised and if the instructions were carried out.

A: Yes, sir.

MR. TAYLOR: As well as the television and

In the Home  
Circuit Court

Prosecution  
Evidence

No.10  
Kenneth Sweeney

Cross-  
Examination

In the Home  
Circuit Court

Prosecution  
Evidence  
No.10  
Kenneth Sweeney  
Cross-  
Examination

radio too, M'lord, he could ascertain  
that too.

HIS LORDSHIP: No, he has definitely ruled  
out the television.

A: I said I never saw any on television,  
so I don't know.

MR. TAYLOR: But he could find out. M'lord,  
I am not feeling so well. I would  
really appreciate an adjournment at  
this stage. We are only losing twelve  
minutes at this stage. Anyhow, if you  
can get the Daily that can be put in  
evidence - the Daily Gleaner, M'lord,  
sorry.

10

HIS LORDSHIP: It must be the proper thing.  
If you can get a copy of whatever Daily  
you are saying it was published in, it  
can be put in, but whatever you are  
saying there it must be something the  
jury can see.

20

MR. TAYLOR: I could get a copy of it.

HIS LORDSHIP: All right, would you try, and  
I can appreciate it is very important  
to your defence.

MR. TAYLOR: Yes, M'lord.

HIS LORDSHIP: And I give you permission to  
speak to the Inspector about it.

MR. TAYLOR: I am much obliged to your Lordship.  
I will speak to him about it.

HIS LORDSHIP: Take the adjournment now then.  
(To jury): Remember the warning.

30

THURSDAY morning, May 6, 1976

Court resumed at 10.08 a.m.

Jury Roll Call answered.

HIS LORDSHIP: Yes.

KENNETH SWEENEY, INSPECTOR OF POLICE,  
CROSS-EXAMINATION BY DEFENCE ATTORNEY  
CONT'D

In the Home  
Circuit Court

Prosecution  
Evidence  
No.10  
Kenneth Sweeney

Cross-  
Examination

Q: Inspector Sweeny?

A: Yes.

Q: Have you ascertained that reports and descriptions of the accused Dennis Reid were circulated in the various news media?

10 A: Yes, sir.

Q: Newspaper, television, radio?

A: Radio sir.

HIS LORDSHIP: On radio and what?

A: Television.

Q: And specifically, did you ascertain that photographs of the accused man Dennis Reid were published in the newspaper?

A: Yes sir.

20 HIS LORDSHIP: Were published in what?

A: In the newspaper.

HIS LORDSHIP: Which newspaper?

A: The Daily News sir.

HIS LORDSHIP: Of what date?

A: The 19th sir.

HIS LORDSHIP: Of?

A: February sir.

HIS LORDSHIP: 1975?

A: Yes sir.

30 Q: In other words, the fact that he had escaped from prison was widely publicised?

In the Home  
Circuit Court

Prosecution  
Evidence  
No.10  
Kenneth Sweeney

Cross-  
Examination

A: Yes sir.

HIS LORDSHIP: Did you ascertain when he  
escaped?

A: On the 14th of February sir.

HIS LORDSHIP: From?

A: The St. Catherine District Prison sir.

Q: And were you able to ascertain that his  
photograph also appeared on television  
as well?

A: Well, it was sent to television but my  
information from Headquarters is that  
they don't know the date on which it  
was shown.

10

Q: I am much obliged to you sir.

HIS LORDSHIP: Were you able to ascertain the  
date he was taken into custody?

Q: I am much obliged, M'Lud. Were you able  
to ascertain that he was taken into  
custody at Matildas Corner on Thursday,  
the 9th of April, 1975?

20

A: No sir, I did not make any enquiry about  
the exact date he was taken in custody.

Q: Thank you.

HIS LORDSHIP: On the 7th of April was he in  
custody or at large?

A: He was at large.

DEFENCE ATTORNEY: M'lud, I think the incident  
was on the 5th - the 5th or early morning  
of April.....

HIS LORDSHIP: On the night of the 6th to the  
7th was he at large?

30

A: Yes sir.

HIS LORDSHIP: Thank you. Any re-examination?

No. 11  
PROCEEDINGS

In the Home  
Circuit Court

Prosecution  
Evidence

No.11  
Proceedings  
dated 6th  
May 1976

CROWN ATTORNEY: No re-examination, M'Lud.

HIS LORDSHIP: Thank you. Yes?

10 CROWN ATTORNEY: May it please M'Lud, in  
view of the cross-examination of this  
witness and what this witness has  
said, M'Lud, at this stage I am  
applying to recall the witness Sadie  
Samuels.

HIS LORDSHIP: On which aspect - on the  
aspect of what?

CROWN ATTORNEY: The publication. Nothing  
was ever put to this witness under  
cross-examination re that aspect.

HIS LORDSHIP: Any objection, Mr. Taylor?

20 DEFENCE ATTORNEY: M'Lud, my friend has  
said that nothing was put to the  
witness on this matter. I will submit,  
M'Lud, he has thereby removed any ground  
for the grant of his application.

30 HIS LORDSHIP: It is highly desirable that  
this witness be called and this put to  
her because this information which the  
inspector has given under cross-  
examination was something peculiarly to  
the knowledge of the defence, and nothing  
was put to her about this either in  
examination-in-chief or cross-examination,  
and it is desirable that she be called.  
And I am glad to see that she is not  
in Court now. Call the witness.

DEFENCE ATTORNEY: As Your Lordship pleases.

SADIE SAMUELS (RE-CALLED)

---

HIS LORDSHIP: Yes.

Q: Miss Samuels, did you ever see any photographs of the accused, or pictures of the accused in any newspaper, or on television anytime between the 19th of February last year, and the 24th of April last year?

A: No.

10

Q: Did you hear of any description of the accused anywhere between the 19th of February and the 24th of April last year?

A: Pertaining to him?

HIS LORDSHIP: Yes, the description of him?

A: Yes, up by where I was living.

HIS LORDSHIP: And when this was?

A: When?

HIS LORDSHIP: When?

20

A: At the same time.

HIS LORDSHIP: Speak up for me please.

A: In the same time when the killing go on out there, in that same time.

HIS LORDSHIP: Before or after?

A: After.

HIS LORDSHIP: You told us that the first time you saw him was on this night?

A: Yes, 8th.

HIS LORDSHIP: When is the next time you saw him after the night of the 8th?

30

A: Well, I didn't saw him after.

HIS LORDSHIP: You saw him on the parade?

A: Yes.

HIS LORDSHIP: Between the night of the incident and the parade did you see him at all?

A: No, I didn't see him until the parade.

HIS LORDSHIP: You told us that you have never seen any photograph of him either in any newspaper or television?

10 A: No sir.

HIS LORDSHIP: Would you like to ask any questions on this?

DEFENCE ATTORNEY: Yes, M'Lud.

SADIE SAMUELS, CROSS-EXAMINED BY DEFENCE ATTORNEY:

Q: Miss Samuels, tell me, the men who came to the club that night.....

HIS LORDSHIP: Could you speak a little louder for me.

20 Q: I am sorry, M'Lud, the acoustics are horrible in this Court.

HIS LORDSHIP: I know, that is why we have to fight against it.

Q: Did the men who came in the Club that night have on shoes?

A: The one that stick me up had on no shoes.

Q: What about the other men?

A: I didn't take any notice of them.

30 Q: Now do you - can you read at all?

A: I beg your pardon.

Q: Can you read at all?

In the Home  
Circuit Court

Prosecution  
Evidence

No.12  
Sadie Samuels  
(re-called)

Examination

Cross-  
Examination



In the Home  
Circuit Court

Prosecution  
Evidence  
No.12  
Sadie Samuels  
(re-called)

Cross-  
Examination

A: No.

HIS LORDSHIP: You can't read? You should be ashamed about it. If you can't read you must go to JAMAL classes.

Q: Can you read?

A: Yes, but nuh so well - some of the big words.....

Q: Well, did you ever read the newspaper?

A: Sometimes.

Q: Gleaner, Star news?

10

A: Sometimes, not regular, but when I get the chance to take a look.

Q: Do you ever watch the television?

A: Yes.

Q: You watch television?

A: Yes.

Q: Now, can you recall specifically - well, let us put it this way: On the various occasions when you read the newspapers you sometimes see pictures of people in them?

20

A: Yes.

Q: Can you recall specifically anyone's picture which you saw in the papers between the 19th of February and the 24th of April last year?

A: I don't really remember.

Q: Of course not. I take it that you listen to the radio?

A: Yes.

30

Q: Like most of us?

A: Yes.

Q: And you used to listen to the radio in

1975, February, March, April, last year - you used to listen to the radio then?

In the Home  
Circuit Court

Prosecution  
Evidence

No.12

Sadie Samuels  
(re-called)

Cross-  
Examination

A: Yes, I listen to the radio.

Q: Can you recall any specific news item which you heard on the radio between the 19th of February last year and the 24th of April?

A: Pertaining to what?

10 Q: Anything, any specific news item between the 19th of February and the 24th of April last year?

A: I would like to find out....

20 HIS LORDSHIP: Can you recall any specific item of news you heard on the radio between the 19th of February last year and 24th of April - can you remember any specific news item you heard over that period pertaining to anything, can you remember?

A: No, I don't quite remember.

Q: And I take it Miss Samuels that you couldn't remember either whose picture you saw on television during the 19th of February and the 24th of April last year either? Isn't that so?

A: No, I don't really remember.

30 Q: Of course not. I am much obliged sir.

CROWN ATTORNEY: No re-examination, M'Lud.

HIS LORDSHIP: Yes, thank you Madam, sit down. Yes?

PROCEEDINGS

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CROWN ATTORNEY: There is another witness on the back of the indictment, M'Lud, which the prosecution does not intend to call. I have so informed my friend.

HIS LORDSHIP: Yes.

CROWN ATTORNEY: The witness is here and available, M'Lud. That, may it please you M'Lud, Mr. Foreman and members of the jury ....

10

DEFENCE ATTORNEY: M'Lud, I am applying that as it is the usual custom in cases of this sort that Counsel decides he is not calling a witness they usually put them up for cross-examination, once the name is on the back of the indictment, and I would have expected that the Counsel for the Crown would put him up for cross-examination, although he does not himself wish to elicit any evidence from him. The usual course is to put the witness for cross-examination, and I ask that this course be adhered to.

20

HIS LORDSHIP: No, the Crown has one of two courses open to it. If the witness is on the indictment and the Crown feels it is necessary to put up the witness for cross-examination, so it may do. If the Crown feels that the witness can't take the case any further, then the other duty which the Crown has is to advise you and to make him available to you if you wish to call him, which is the course the Crown has adopted. I presume that the Crown must know what witnesses they wish to call, what witnesses they wish to include as part of their case, and I presume that the Crown would have called the witness if he would take the case any further.

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40

DEFENCE ATTORNEY: M'Lud, it is quite clear that the Crown does not wish to call Mr. Smart. The proper course, and this is the course which is followed with any

witness on the indictment where the Crown does not wish to call any witness who is on the indictment, they must put him up for cross-examination M'Lud, unless the other side indicates he does not wish to cross-examine.

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Defence  
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10 HIS LORDSHIP: That is not the only course open to the Crown. The Crown has the witness here available for you if you wish him.

DEFENCE ATTORNEY: That obtains if the witness gave evidence at the preliminary examination and the name is not on the indictment.

HIS LORDSHIP: It might be a careful drafting of the indictment. The witness is here.

20 DEFENCE ATTORNEY: Once the Crown puts the name that it proposes to call the witness, that is the purpose of putting the name on the indictment, otherwise when a witness' name is not put on the indictment.....

30 HIS LORDSHIP: If the name is not on the indictment the Crown has no duty towards you. It is only if the name is on the indictment, then it is the Crown's duty to say that man's name is on the indictment, I am not calling him. He is here and available if you wish to call him. And, beyond that the Crown's duty is at an end.

DEFENCE ATTORNEY: If his name is not on the indictment.

HIS LORDSHIP: That is in Archbold you know Mr. Taylor.

DEFENCE ATTORNEY: Yes, M'Lud.

HIS LORDSHIP: I can send for it and show it to you.

40 DEFENCE ATTORNEY: I abide by the Court's ruling. My understanding is once the name is on the indictment, if the Crown decides he is not calling the witness,

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then the Crown must put up the witness for cross-examination. Where the name does not appear on the indictment then the defence might call the witness. Once he places the name on the indictment he precludes Counsel for the defence from interviewing the witness.

HIS LORDSHIP: That is why you are told that the witness is available to you. When were you told?

10

DEFENCE ATTORNEY: Mr. Parkin indicated to me yesterday that he might not be calling the particular witness. I assumed that if he decided not to call him in the normal course, he would put the witness up for cross-examination.

HIS LORDSHIP: He is perfectly right to adopt the course he has taken.

DEFENCE ATTORNEY: Your Lordship, please.

HIS LORDSHIP: That is your case, Mr. Parkin?

20

CROWN ATTORNEY: That, may it please you M'Lud, is the case for the prosecution.

DEFENCE ATTORNEY: M'Lud, at this stage I wish to make a submission of no case to answer. M'Lud, I respectfully submit that where in any trial identification of the prisoner depends exclusively upon the testimony of any witness, the character of such a witness for truth, honesty and intelligence is of paramount importance. Acceptance, M'Lud, of a witness' identification of the prisoner necessitates as a prerequisite thereto, assessment of the opportunity afforded the witness for observing the wrong-doer. Such opportunity includes the time available for making that observation, it includes the sufficiency or otherwise of the lighting, the position of the witness in relation to the person whom he proposes to identify. And also, M'Lud, matters such as the witness' power of observation as evidenced by any description that he might have given to the police, and the consistency M'Lud, in the narrative that he has given of the actions and movement of the person

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he proposes to identify are also important.

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10 In the instant case, M'Lud, the sole witness who purports to identify the prisoner has given conflicting evidence on every aspect of the incident material to the assessment of reliability of her identification of the accused. That in her deposition she states that about fifteen minutes elapsed between the time the two men whom she said came to the club first spoke to her and the time they left and went to the bar. In her evidence here she stated that one of them never stopped at all, he went straight through to the bar while the other one remained with her for a few minutes. In her deposition she states that there is a soft light where Princess and herself were sitting. That the garage had no lights and it was dark inside. That where she sat the light was not bright. That at the back where one of the men held her hands the lighting was very poor. Here, M'Lud, she, on all matters of lighting, on the important question of identification stated in so many words that the lighting was bad. Here, she has said that there was a light, a bright light where Princess and herself were sitting. That there were lights in the garage and inside the garage it was bright. That at the back where the man held her hands the lighting was bright.

30  
40 In other words, she has given evidence on the question of lighting - a matter vital to the question of assessing the reliability of the identification she purports to make. She has given evidence here in distinct contradiction to the evidence which she gave in respect thereto at the Preliminary Enquiry.

50 In her deposition M'Lud, she claimed that she was sitting beside the side-gate where the entrance of the bar - and that is the sitting aspect of this part of the evidence - where the entrance of the bar meets the garage. Here, M'Lud, she

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stated that she was sitting near to a door a yard or so inside the restaurant, and that there is no direct or immediate entrance to the bar from the garage. Distinctly contrary to what she has said before. And, again, on a matter most pertinent to the assessment of the reliability of her identification, the question of her position vis-a-vis that of the person whom she purports to identify.

10

In her deposition further she said 'a man came out of the bar and ran to the back of the restaurant, and the accused released hold on her hand and she ran upstairs and she didn't see where the accused went to'. In evidence here, M'Lud, she said that 'the accused let go her hand and ran through a side-door to the driveway. She saw where he went'. Not only did she see where he went but he went leaving her where she was standing; and then after he had run through this door into the driveway, she ran upstairs to make her escape.

20

M'Lud, there are other major inconsistencies in her evidence which I need not go into at this stage; suffice it to repeat, M'Lud, that on all - I think it is reasonable and fair to put it this way - that on all or several major aspects of the evidence relating to assessment of her identification she has turned about; she has contradicted herself. M'Lud, perhaps most significant the witness has stated quite unequivocally that she could be mistaken in her identification of the accused as being one of the wrong-doers who went to Mr. Walsh's club on the night.

30

HIS LORDSHIP: Could as well as could not.

40

DEFENCE ATTORNEY: Yes, M'Lud, and this is the reason why I said she has stated quite unequivocally 'could or could not' which was an answer to Your Lordship.

HIS LORDSHIP: No, no, she said it in one statement.

DEFENCE ATTORNEY: It matters not, M'Lud, whether it was said to you or me.

HIS LORDSHIP: Sometimes when a Judge is making notes he particularizes in question and answer.

"Q: Do you agree you could be mistaken?

A: I could as well as not."  
It is here, verbatim.

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10 DEFENCE ATTORNEY: It doesn't really matter, M'Lud. It doesn't need any explanation either. Where a persons says, it might be or might not be, there is a question of doubt. The English language admits of no equivocation on that matter. It might be or it might not be. It could be, or it could not be. That, M'Lud, in any language is an expression of uncertainty, an expression of doubt. And, I respectfully submit that this is unequivocally an admission on her part that she, herself, is not sure that  
20 the man she purports to identify as the accused man - that the man she purports to identify as one of the person who came to the club is the accused. And it is an accepted principle of Law that a submission of no case to answer may properly be made and upheld when the evidence adduced by the prosecution has been so discredited incross-examination, or is so manifestly unreliable that no  
30 reasonable jury, properly directed, could convict upon - could safely convict upon it. Your Lordship, of course, appreciates that this principle of Law was stated by Lord Parker, former Chief Justice of England in Vol.1 of 1962 AER, at p.448.

40 I submit, M'Lud, that the evidence pertinent to the assessment of the reliability of the identification of the prisoner has been discredited in cross-examination, and that the sole identifying witness' evidence that she could be mistaken in her identification of the prisoner renders that identification manifestly unreliable. And I respectfully invite your Lordship to rule that there is here no case to answer.

HIS LORDSHIP: Yes, well, I agree with you Mr. Taylor that the evidence in this case turns solely on the identification of



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the accused by one and only one witness,  
but to ask me to rule at this stage -  
to rule there is no case to answer, is  
to ask me to say, I don't accept the  
evidence.

Where there is no evidence to go to  
the jury, or where the evidence has been  
discredited that it is unfit to go to  
the jury, then it is my duty to take it  
away from the jury. And where there  
is evidence to go to the jury, I can't  
take it from them. It is a matter for  
them to decide whether they are going to  
accept the evidence of the lady, Sadie  
Samuels, that that man is one of the  
two men who entered Walsh's Club that  
night. It is entirely for them.

10

I think there is a case to answer.

DEFENCE ATTORNEY: In the circumstances, M'Lud,  
may the accused man be called upon.

20

HIS LORDSHIP: We don't usually do it when he  
is represented. When he is not represented  
by Counsel we inform him of his rights.  
When he is represented by Counsel as  
experienced as you are, Mr. Taylor, we  
don't call upon him.

DEFENCE ATTORNEY: Yes, M'Lud, Dennis Reid will  
give a statement from the dock. You will  
notice, M'Lud, that I have not opened to  
the jury, because, actually, I propose  
to call two witnesses. There is some  
uncertainty at this stage to their  
availability.

30

HIS LORDSHIP: They are not here?

DEFENCE ATTORNEY: No, M'Lud.

HIS LORDSHIP: What steps have you taken to  
bring them here?

DEFENCE ATTORNEY: I advised the Registrar to  
issue subpoenae to both witnesses. This  
was yesterday, and the reason for the  
tardiness in that regard was two-fold.  
In the first instance I had not anticipated  
that this matter would have been able to  
be proceeded with because of another case  
engagement I had in No.1 Court, M'Lud,

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10

which is a matter which would have lasted at least the entire week. more to the point, M'Lud, it was only yesterday it became necessary to consider calling one of those witnesses as a result of what emerged in cross-examination of the sole identifying witness in this case. And immediately after Court I conveyed to the Registrar my desire to have this witness called, and the purpose is to rebut something that the witness has said, and I couldn't have anticipated it before hand. That witness is in parts of Portland, M'Lud. And I understand that personal contact with him has not been made although someone who is close to him, professionally, and in his professional capacity  
.....

20

HIS LORDSHIP: Are you going to get the witness here, Mr. Taylor?

DEFENCE ATTORNEY: It would appear that there is no likelihood for him to be here before tomorrow, M'Lud.

HIS LORDSHIP: I meant to enquire of you if you had any witnesses. I thought better of it because it might have been pre-mature, and experience sometimes teaches you not to be pre-mature.

30

You know where this witness works, and where he can be found, and all that sort of thing?

DEFENCE ATTORNEY: There is no mystery to it, M'Lud. I intend to call the Resident Magistrate who did the prelim. I have been advised by the police officers that they are unable to get in touch with him.

40

HIS LORDSHIP: You have put in the deposition. You are calling Mr. Gordon? I think you are aware, you know, that the Court of Appeal has made certain comments about this practice of calling the Resident Magistrate.

DEFENCE ATTORNEY: When it is not necessary to do so M'Lud. In fact, I, myself was involved in one of the appeals where

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Defence  
Evidence  
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that was stated. However, in this particular case the Resident Magistrate is not being called in respect of anything which is stated in the deposition. You will recall that the witness specifically said, M'Lud, that the Resident Magistrate when she mentioned to him about one of the men being masked. The Resident Magistrate told her that he had no need of that. He had no need of that evidence. He did not want to hear it. M'Lud, certainly you appreciate the importance of that.

10

HIS LORDSHIP: If you want to call him I cannot tell you not to call him, Mr. Taylor. Who is the other witness?

DEFENCE ATTORNEY: The other witness is Dr. Percival Henry.

HIS LORDSHIP: Where can he be located?

DEFENCE ATTORNEY: I have spoken to him. When I spoke to him on the telephone he said he has not yet received the subpoena, and he will act when he receives the subpoena. He considers it to be a nuisance to come to court. He has patients to attend to. But he did say that the police are always able to contact him.

20

HIS LORDSHIP: Ask them to contact him and tell him to come, we won't keep him long. Where is his office?

30

DEFENCE ATTORNEY: His office is in Derrymore Road, and his home is in Red Hills, Belvedere Road, M'Lud. I spoke to him on the telephone this morning.

HIS LORDSHIP: You have his telephone number?

DEFENCE ATTORNEY: Yes, M'Lud, the entire number to be called from Kingston - 0944-2214. I have not got his number at work. He was in Court yesterday.

40

HIS LORDSHIP: If you had told me that, I would ask him to come back today.

DEFENCE ATTORNEY: That is in Court 6, M'Lud.

I had no knowledge of it. M'Lud, I respectfully ask that we go as far as we can today. The accused man is here and we could have him give his statement and, perchance, the doctor might be here at that time.

In the Home  
Circuit Court

Defence  
Evidence  
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HIS LORDSHIP: Yes, try and get word to him now, Mr. Taylor. Ask the policeman to telephone him.

10 DEFENCE ATTORNEY: I have done that already, M'Lud.

HIS LORDSHIP: I don't want this case to go over until next week.

CROWN ATTORNEY: Mr. Gordon telephoned my office this morning, and he wanted to know if a subpoena was issued for him, and that he had certain fixtures for today.

20 HIS LORDSHIP: He is in Buff Bay Court today.

CROWN ATTORNEY: I sent a message to Mr. Gordon to await a telephone call to say whether he will be needed or not.

HIS LORDSHIP: Well, send the telephone call to him and ask him to be here at 2.00 o'clock. Tomorrow will be Hope Bay Court for him. You try and contact the doctor.

No.14

30 Statement of Accused Dennis Reid

Defence  
Evidence  
No.14  
Statement of  
Dennis Reid  
dated 6th  
May 1976

HIS LORDSHIP: Yes, Mr. Reid, where do you live?

A: 1b Lower York Street.

HIS LORDSHIP: What work you do?

A: Apprentice welding.

HIS LORDSHIP: Now, what is it you have to say? Speak up clearly and loudly.

In the Home  
Circuit Court

Defence  
Evidence

No.14  
Statement of  
Dennis Reid  
dated 6th  
May 1976

A: My name is Dennis Reid. Since 1972 I was serving sentence at the Saint Catherine District Prison. While I was at the General Penitentiary two of my front teeth were knocked out by a fellow prisoner. On the 14th of February, 1975 I ran away and was hiding at a relative home, near August Town area. I hardly ever leave the premises where I was staying. And I never left August Town area before the night of Thursday, 17th of April, 1975 when I was captured, because my photograph was published in all newspapers, and shown on television, and my description was given on the radio. On the night of April 17, 1975 I went seeking my mother as I need a few things very badly.

10

On my way back to August Town the taxi in which I was travelling was stopped by the police at Matildas Corner, and the driver, myself, a woman, and another passenger were held and taken to the Matildas Corner Police Station. I was transferred to Halfway Tree Police Station afterwards. And about a week afterwards I was told that I would be put on an identification parade in connection with a charge of murder. Five or six persons came to look on us on the parade, and one of them, a woman, I believe she is the one who gave evidence here, pointed me out. I was subsequently charged with murder. I am not a saint but I have never killed anybody. If I had not escaped from prison they could not have said I did anything. That is all My Lord.

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No.15  
Proceedings  
dated 6th  
May 1976

No.15

PROCEEDINGS

DEFENCE ATTORNEY: Well, M'Lud, here it is. This is as far as I can take the matter.

40

HIS LORDSHIP: What about the doctor? I asked that the doctor be contacted and asked to come. I want to know if he is

coming then I can tell the jury when to return; or if he is not coming then I can tell the jury to come back at 2.00.

In the Home  
Circuit Court

Defence  
Evidence  
No.15  
Proceedings  
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May 1976

DEFENCE ATTORNEY: The police are attempting to locate him, M'Lud.

HIS LORDSHIP: He has no phone at his office?

10 DEFENCE ATTORNEY: Yes, M'Lud, and the police are also exploring that matter.

HIS LORDSHIP: Have you been able to contact Mr. Gordon.

CROWN ATTORNEY: I have not had any word from Mr. Soares as yet, M'Lud.

DEFENCE ATTORNEY: M'Lud, perhaps it might be helpful if Your Lordship took a short adjournment and allow me a few minutes.

20 HIS LORDSHIP: Well, adjourn for fifteen minutes so that we can find out if Mr. Gordon can be here at 2.00 o'clock, and if the doctor can be here this morning. If Mr. Gordon cannot be here until 2.00 o'clock then you may well leave the doctor until tomorrow morning too.

30 DEFENCE ATTORNEY: M'Lud, I have every hope we will finish by tomorrow. Wouldn't it be better to ensure that we finish as early as possible tomorrow.

HIS LORDSHIP: Mr. Gordon's evidence won't take ten minutes.

DEFENCE ATTORNEY: And the doctor won't take ten minutes.

40 HIS LORDSHIP: So we are losing the rest of the day and we will continue tomorrow. I will adjourn for fifteen minutes. If the doctor can come now I will take him now. Let me know what is the position with the doctor and Mr. Gordon by half-past.

In the Home  
Circuit Court

Defence  
Evidence  
No.15  
Proceedings  
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May 1976

A D J O U R N M E N T taken at 11.15 a.m.

Court resumed at 11.54 a.m.

Jury roll call answered.

DEFENCE ATTORNEY: We have had partial success  
M'Lud. The doctor assures me that he  
will be here at 2.00 o'clock. There has  
been some difficulty in reaching Mr. Gordon,  
the lines are busy, and efforts are still  
being continued, and we hope that we will  
be able to get him here at 2.00 o'clock. 10  
If he is not here at 2.00 o'clock the  
evidence will not take much time and in all  
event we will not be able to conclude  
this matter until tomorrow. I ask that  
Your Lordship adjourn until 2.00 o'clock.

HIS LORDSHIP: We will adjourn until 2.00 o'clock.  
You can take a leisurely lunch and be  
here at 2.00 o'clock.

Defence  
Evidence  
No.16  
Dr.Percival  
Henry  
Examination

No. 16

DR. PERCIVAL HENRY

20

DR. PERCIVAL HENRY: SWORN: EXAMINED BY MR. TAYLOR

Q: You are Dr. Percival Henry?

A: Yes, I am.

Q: Registered medical practitioner?

A: Yes, I am.

Q: You live in Red Hills?

A: Yes.

Q: And you have offices where, doctor?

A: 8 Glenmuir Road, Kingston, and Halfway Tree  
police station.

30

Q: In October of 1972, were you the medical officer attached to the General Penitentiary, Kingston?

In the Home  
Circuit Court

A: Yes, I was.

Defence  
Evidence  
No.16

Q: And in that capacity, did you have occasion to attend to Dennis Reid, the accused man?

Dr.Percival  
Henry

A: Yes, I attended Dennis Reid, yes, on the 2nd of October, 1972.

Examination

10 Q: The 2nd of October, 1972?

A: Yes, sir.

Q: What was the complaint?

A: He complained, he had an oral problem. There was a problem with his mouth and he was complaining of pain in the mouth.

Q: What did you ascertain was the cause of the complaint?

20 A: Yes, on examination I noted that one upper canine, which is the front teeth you would call it, on the right was knocked out.

Q: Did you administer any treatment in respect of that?

A: Yes, I did.

Q: What?

A: I administered hydrogen peroxide to the mouth and I gave him antibiotics.

30 Q: And what was the purpose of the hydrogen peroxide?

A: That was to remove the little clots of blood that were present around the socket of the area.

Q: Doctor, did you not--because of that missing tooth, there was approximately half inch space left between the remaining teeth?



In the Home  
Circuit Court

Defence  
Evidence  
No.16  
Dr. Percival  
Henry  
Examination

- A: Yes.
- Q: And was this space obvious when he spoke?
- A: Yes, quite obvious.
- Q: Did you notice anything about his mouth when he spoke, anything else?
- A: I think the upper lip tended to shift a little to the left side.
- Q: Could you say what the probable cause of this was?
- A: Well, it could, it is possibly tied up with the missing denture with the missing tooth and there is also a slight possibility of damage to the facial nerve. Slight possibility of a mild damage to the facial nerve which supplies the mouth.

10

(Mr. Taylor sits)

CROWN ATTORNEY: No cross-examination, m'lord.

MR. TAYLOR: I am much obliged to the doctor. M'Lord, that is all that I desire from this witness. May the doctor be released?

20

HIS LORDSHIP: Yes.

No.17  
Proceedings  
dated 6th  
May 1976

No. 17

PROCEEDINGS

MR. TAYLOR: Thank you, doctor. M'lord, as you are aware, we are hoping that the Resident Magistrate, Mr. Gordon, will be with us shortly. I understand, M'lord, that Mr. Gordon is expected shortly. I understand that he has been contacted and that he promised to be here as speedily as possible. I appreciate the inconvenience caused by these stops and starts but there is nothing that one can do.

30

CROWN ATTORNEY: M'Lord, there is a witness by the name of Edwin Smart, who is available for the defence if the defence wants him. I am wondering if my friend would inform the court whether he is going to use him and if not, could we release him.

In the Home  
Circuit Court

Defence  
Evidence  
No.17  
Proceedings  
dated 6th  
May 1976

HIS LORDSHIP: Are you calling Mr. Smart?

10 MR. TAYLOR: M'lord, I had hoped to be able to cross-examine Mr. Smart.

HIS LORDSHIP: Are you calling him? He is here.

MR. TAYLOR: No, M'lord.

HIS LORDSHIP: He would like to leave if he is not going to be called.

MR. TAYLOR: No, M'lord, I am not calling Mr. Smart.

20 HIS LORDSHIP: Well, members of the jury, Mr. Gordon has left Portland. We can't allow him to come and we have adjourned so I am afraid I have to ask you just to be patient, once more to be patient. Stick around the precincts of the court so that as Mr. Gordon comes we can hear his evidence.

Court rises 2.15 p.m.

Resumes 2.58 p.m.

Jury Roll Call, all present.

HIS LORDSHIP: Yes, Mr. Taylor?

30 MR. TAYLOR: M'lord, I am calling Mr. U.D. Gordon next.

UEL DENNIS GORDON: SWORN: EXAMINED BY MR. TAYLOR

A: Uel Dennis Gordon, Resident Magistrate.

Q: Mr. Gordon, in August of last year, you held a preliminary enquiry in respect of one Dennis Reid who was charged with murder, is that correct?

A: I could answer by referring to the deposition that I took.

10

MR. TAYLOR: M'lord, may he?

HIS LORDSHIP: Yes.

A: Yes, I held a preliminary enquiry. It commenced on the 7th of August at the Gun Court.

MR. TAYLOR: During that enquiry, a witness by the name of Sadie Samuels, gave evidence, is that correct?

A: Yes, she did.

Q: And, of course, her evidence, as is customary, was reduced into writing by you?

20

A: Yes, it was.

Q: And I assume that in the ordinary course of things that is usual, you invited her at the termination of her testimony to make any alterations or corrections or additions that she might wish to while you read her deposition over to her.

A: What I did, before I read the depositions to her, I told her that she should listen very carefully because I was going to read to her what she had said, what I had reduced into writing and if there was any mistake in it she should correct me, as she heard the mistake that the correction should be made there and then, and then I

30

proceeded to read the deposition to her and at the end she was invited to sign and initial any areas that had been corrected.

In the Home  
Circuit Court

Defence  
Evidence

No.18

Uel Dennis  
Gordon

Examination

Q: And she did so.

A: The record shows that she did. I did not witness her signing but it was given in the well of the court and it was signed under the supervision of the officer of the court, the police officer of the court.

10

Q: Now, Miss Samuels has given evidence in this trial and in the course of that evidence she stated that one of the two men who she said was involved in the matter under trial was wearing a mask at the time. She in fact described a mask.

A: Would you repeat that please?

20

Q: She said that one of the men who she has identified as the accused man was at the time wearing a mask and she has described the mask in detail. She said it was a white mask made of cloth and so on. She stated how the mask was affixed to the face of this man who she says is the accused. Now, she was asked in cross-examination why it was that at the preliminary enquiry she made no mention of the mask. You have there the depositions of Sadie Samuels?

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A: I do.

Q: Will you satisfy yourself that there is no mention of any mask in the deposition, Mr. Gordon?

A: It would take a minute or two.

Q: Yes.

A: There is no mention of any mask there.

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Q: When it was suggested to her that this was the first occasion on which she was making mention of any mask in connection with this case, she said that that was not so. She said that at the preliminary

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enquiry she mentioned the mask to the judge who held the preliminary enquiry and the judge said that he had no need of it, of that evidence. Did you Mr. Gordon - well, did you tell her that you had no need of any evidence that she was giving in that preliminary enquiry?

A: Emphatically no.

Q: Specifically, did you tell her that you had no need of any evidence relating to a mask in connection with her evidence in that matter?

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A: I did not.

HIS LORDSHIP: You remember the case, Mr. Gordon?

A: I can't say I remember it as a case, I can only recall - I remember the facts from what I see on the deposition.

HIS LORDSHIP: Having read it, did you consider that evidence relating to a mask would be important?

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A: Well, as a Resident Magistrate and as an officer of the Court, I know identification in matters of this sort is extremely important and I would not have done anything to prevent evidence which would redound to the benefit of the accused or any accused person from being given in court. I have to be satisfied that a prima facie case was established before I commit the accused and if the identification was not satisfactory then I would have been obliged to so rule that no prima facie case had been established. If you will permit me, m'lord, it will be observed that at the trial the accused was represented by counsel who cross-examined the complainant, this witness, and in some areas I reduced the evidence, the questions and answers in question-and-answer form.

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HIS LORDSHIP: To cut a long story short, if she

had mentioned anything about the mask....

A: If she had mentioned it, I would have recorded it.

HIS LORDSHIP: Any questions?

CROWN ATTORNEY: No questions, m'lord.

MR. TAYLOR: M'lord, may Mr. Gordon be excused with my thanks, for coming here at such short notice.

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HIS LORDSHIP: Yes, if I were Mr. Gordon I would not want to be in Kingston either. We appreciate your coming, Mr. Gordon.

(Witness withdraws)

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MR. TAYLOR: M'lord, that concludes the evidence for the defence. All that is left at this stage, m'lord, is for me to address the jury. I have had no indication from counsel for the crown that he will not insist on his right to address last. I take it then that I am expected to address before he does.

HIS LORDSHIP: I don't know if there is any insistence, matters follow the usual course.

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MR. TAYLOR: Well - m'lord, it is now twelve minutes past three and I expect that my address will be between thirty to forty five minutes. It is quite clear that the matter cannot be concluded this afternoon. Unfortunately, we have to return tomorrow, my learned friend has

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to address and your lordship has to sum up to the jury. In the circumstances, m'lord, I would propose an adjournment at this stage and I apprehend that we would be through by one o'clock tomorrow, which is a Friday, and everybody wants to get away early on a Friday. I would ask your Lordship to adjourn at this stage and we will start tomorrow with addresses since we have to be here.

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HIS LORDSHIP: Yes, I was just thinking Mr. Taylor, that the time utilised this evening is time gained tomorrow.

MR. TAYLOR: That is so, m'lord, but I did indicate to your lordship in this matter that I am not as well as I should be and the strain of a day's work like this tells on me at this time of the afternoon. I am on antibiotics and I get tired and perhaps not as coherent as I would like to be. That really is the basic reason why I make the application, fully appreciating, as I say, that we still have to return tomorrow, so that I would submit that nothing will be lost.

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HIS LORDSHIP: Yes, all right.

Well, members of the jury, we would not have concluded the case this evening anyhow and I hope we will be able to conclude it by the adjournment tomorrow. We will take the adjournment now until ten o'clock tomorrow morning.

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3.14 p.m.

FRIDAY 7th May, 1976

Resumption: 10.07 a.m.

Jury Roll Call, all present.

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Mr. Roy Taylor addresses 10.08 a.m. to 10.39 a.m.

Crown Attorney addresses 10.39 a.m. to 11.16 a.m.

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SUMMING UP

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HOME CIRCUIT COURT II  
KINGSTON

7th May, 1976

REGINA v. DENNIS REID - MURDER

SUMMING UP OF HIS LORDSHIP MR. JUSTICE ROBOTHAM

10 Mr. Foreman and members of the jury, the indictment charges the accused man of having murdered Fedlan Walsh on the 6th of April, 1976.

20 The crown's case briefly is that on the early morning of the 6th of April, 1975, Walsh's Beach Club which is situated at Eight Miles along the St. Thomas Road was open for business. It has a bar, a restaurant and a sort of drive-in, and at about one o'clock in the morning two men entered this bar, one of which was the accused man, according to the witness Sadie Samuels. She says she was seated at the door leading from the drive-in to the entrance of the restaurant and that of the two men this accused had a gun in his hand, and as they entered the accused stopped by her, pointed the gun at her and told her, 'don't move', whilst the other went into the bar.

30 She says that when he entered he had a mask over his face but at some stage the mask fell off before he left where he was with her and she was able to recognise him by lights which were on in and around the club, the restaurant, the bar and the kitchen, and she says, after having held her at gun point for a little while he himself left her and went into the bar, and she ran into the kitchen. While she was in the kitchen she heard gunshots coming from the direction of the bar and as she was about to come out of the kitchen she was confronted again by this accused man who had the gun in his hand and again he told her to drop her pants and she took off her pants, and then he told her to open her legs and just as that stage somebody rushed out of the bar and

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the accused man with the gun ran out of the premises and she ran upstairs.

After a while she came back down and she saw Mr. Walsh dead on the floor of the bar.

The doctor told you that Mr. Walsh died from gunshot wounds and that he had three gunshot wounds on his body.

The accused man apprehended on or about the 17th of April, and on the 23rd of April an identification parade was held at Half Way Tree, on that parade the witness Sadie Samuels pointed out the accused as the man who came into the bar that night with the gun.

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Now, the crown's case, members of the jury - the crown is not in a position to say which of these two men fired the gun or fired the shots which killed Mr. Walsh. The crown's case is based on what is known as law relating to common design about which I have to direct you in due course. The crown is saying that the two men entered the bar for the purpose either of killing or causing greivous bodily harm or of robbing the bar and that whilst this was going on Mr. Walsh was shot and killed.

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The defence on the other hand is saying that he is not the person at all who ent to this drive-in on the early morning of the 6th of April. He is saying that Miss Samuels is mistaken when she says that he was one of the two men who entered the bar on the morning of the 6th of April. They are further saying that the identification parade was not fairly held because there was too great a disparity in the height of the men; but even if the identification parade was fairly held he is still saying she is mistaken because on the morning of the 6th of April he was no where in the vicinity of the St. Thomas Road at all.

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He went on further and he told us that he was an escaped convict, having escaped from the St. Catherine District Prison in February 1975, and his picture was published in the newspapers, and his description was published

in the newspapers and his picture was also placed on television. It was because of this very reason, knowing that all these publications had been made about him why he never, hardly ventured, he used the word hardly, ventured out of the August Town area. By implication he is further saying that it is because of these numerous publications of his photograph which led Miss Samuels into the trap of identifying him as one of the persons who was out there on the night in question. He is saying she is mistaken, he is not the person at all on the night in question he was nowhere near the St. Thomas Road in the vicinity of Walsh's Club.

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His defence, I would venture to say, members of the jury, amounts to what in law is known as an alibi. He is saying that on the night in question he was not out there, he was at August Town, so he could not have committed the offence, and, you cannot convict where an alibi is raised in a case of this nature unless you reject his alibi.

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So, on that brief outline of the crown's case and the defence' case, members of the jury, you will see that the major issue in this case is one of identity. There are other issues for you to decide as judges of facts, but this issue of identity is such a major issue that the other issues fade into insignificance. When the time comes you are going to have to be satisfied that Miss Samuels is making no mistake that when she says that this man was one of the two men who entered the bar on this night in question, because Miss Samuels in her own mind, members of the jury, may be quite sure that this is one of the two men, but the matter doesn't end there; you have got to be satisfied in your own mind that she is making no mistake.

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My duty is to tell you what the law applicable to the case is, and that is the law you will have to apply to the facts such as you find proved. You must take the law from me as I give it to you, but you are the sole judges of fact. My only duty in relation to the facts is to remind you of the evidence which has been given and to make such comments as I might find reasonable or necessary or that may be of assistance to you

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in arriving at your verdict. You are at liberty however to discard any comment which I might make if it does not happen to coincide with your views because you are the sole judges of the facts and you would only be able to act upon any comment which I make, if I do happen to make any, if you agree with it. If you do not agree with it then you will discard it and substitute your own view. And the same applies to anything said to you by counsel for the crown or by counsel for the defence. If anything they have said appeals to you, you may act upon it, if it does not, you will discard it in the same way you discard anything or any comment which I might make which you do not agree with and substitute your own view of the facts.

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Now, under no circumstances, members of the jury, are you to allow any outside consideration to enter into your deliberation at all. You are not to be swayed by any sympathy or any prejudice. You are not to be swayed by anything you may have read about this case, or anything you might have heard about it, or anything you might know personally about it. You are to put aside all outside considerations and decide the case solely on the evidence you have heard in this case.

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Now, the conduct of the defence was such, members of the jury, that it was necessary to bring out that this accused man had escaped from the Saint Catherine District Prison. Normally, under normal circumstances such a fact would never have come out for your consideration at all, but it was necessary for the purposes of the accused's defence to have brought that out. You know that he was not doing exactly a short term, because his own statement from the dock is that he was there from 1972; but you don't know what offence he committed and you don't know what is the length of the term he was doing. But regardless of what offence he had committed for which he was sentenced and regardless of what sentence he is doing, you are not to allow that to prejudice your minds at all. You might very well know or have heard it said that a lot of the crimes which are committed in the Corporate Area and indeed in Jamaica are committed by people who have escaped from prison. You might have heard that said. You might even have said it yourself. But all that,

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members of the jury, you are not to allow to prejudice you in this case. You must face this case squarely within the confines of the evidence which you have heard in the case and in particular squarely within the confines of the evidence of the witness Sadie Samuels who is the most vital witness in this case.

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In most trials it is always possible to find variations in the evidence given by various witnesses or in the evidence given by one witness at different stages of her evidence, we refer to them as inconsistencies or contradictions. This is particularly so when the events are not of very recent occurrence and in this particular case you will bear in mind that the offence was committed on the 6th of April, 1975, the preliminary examination was held on the 7th of August 1975, and you are now having the trial here on the 6th and 7th of May, 1976. Some of the discrepancies may be slight, some of them may be serious. If they are slight, you might think they do not really discredit the particular witness. On the other hand, if they are of a serious nature, then you may well say you cannot believe the witness on that particular point. It is for you to say whether or not you can reconcile these discrepancies or contradictions, or whether you regard them as so serious as to cast doubt on the credit of the particular witness; and in doing all this you must take into account the intelligence of the witness, or her powers of observation, the speed with which the particular incidents might have taken place and the passage of time which may have elapsed between the incident and the trial had here now and you must decide what evidence you are going to accept and what you reject. You may accept a part of the witness' evidence and reject the rest, or you may accept the whole of the witness' evidence, or if you are satisfied that he or she is such an untruthful witness, you may reject the whole of his or her evidence.

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Now, following on this, members of the jury, you have heard much said in this case about the contradictions between what she told you in the trial here and what she told the Resident Magistrate at the preliminary examination which was held at the Gun Court on

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the 7th of August, 1975, and nobody can dispute the fact that there are contradictions between what she has said here and what she told the Magistrate at the Gun Court. In that respect the deposition was put in by counsel for the defence to highlight these discrepancies, or inconsistencies, or contradictions, or whatever you might want to call it, and it was read to you; and when we come to deal with that particular aspect of it, I will draw to your attention the more important ones; but the deposition was put in evidence and when you retire to consider your verdict, if you want to take it, and you can read the Judge's writing, you can have it and you can study it. But I must tell you this: if you find a witness giving evidence to a certain effect in this court and on an earlier occasion that witness said something, whether sworn or unsworn, which is in violent conflict, violent conflict, sharp conflict with what the witness has told you at this trial, then the first consideration is this: that what the witness has said at this trial is the evidence by which you are to be guided, not what was said at the preliminary examination. It is what is said at this trial that is the evidence that you are to act upon; not what she said at the Gun Court. But where you have been shown that on an earlier occasion at the Gun Court she said something different to what she is telling you here today and that is established to your satisfaction, then you would be entitled to regard her evidence in this court with grave suspicion and in an extreme case you would be entitled to disregard it all together. Of course, if you were to adopt the extreme view and disregard her evidence all together, then that would be an end of the case, because an end of her evidence means an end of the case; rejection of her evidence means a rejection of the Crown's case. But you will bear in mind, members of the jury, that it is what she has said here that is the evidence that you are to be guided by, not what she said on an earlier occasion, and the fact that she said something different on an earlier occasion is something which goes to test her credit. That is, it goes to establish just how much of her evidence here today you can believe, bearing in mind that on an earlier occasion she had said different. That is what it means.

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In every criminal case, an accused is always presumed to be innocent until the Crown has proven him guilty by your verdict. He is never required to prove his innocence. The burden rests on the prosecution throughout and it never shifts. Before you can convict the accused, the Crown must so satisfy you by the evidence that you can feel sure of his guilt. There is no duty on him to prove his innocence, but he may, during the conduct of his case attempt to do so. If he succeeds in this, then he is not guilty. If it leaves you in a state of doubt, then equally he is not guilty. But even if he should fail in his attempt, that does not mean that you automatically have to say that he is guilty. You would still have to go back, members of the jury, and consider all the evidence which has been given in the case and consider the statement which he himself has made from the dock and say whether on the overall picture you are so satisfied by the evidence that you can feel sure of his guilt; and it is only when you are so satisfied that you can properly say that he is guilty. In any other case your verdict would have to be one of not guilty.

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Now, a very important part of your functions in this case, members of the jury, and that function assumes even greater dimensions in this case, is to examine the demeanour of the witnesses who gave evidence before you. The whole case, as I have told you, and you will forgive me to be emphasizing it because it is so important, rests on the evidence of Miss Samuels. Therefore, you look at the manner in which she gave her evidence and say whether you can accept her as a witness of truth or not. You and each of you in your daily affairs have people come to you from time to time and relate to you a story about an incident which you did not witness and when that person has concluded telling you the story you say to yourself, you know, I accept every word of what she has said - she may have taken you in, but you accept it - I accept every word that the person has said, or I don't believe one word of it, or I reject it out of hand, or I accept it with a grain of salt; and the manner in which you arrive at your conclusion is purely from the manner in which the incident was told to you.

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So, it is for you to examine the manner in which this young lady gave her evidence, and say how she impressed you; how she stood up to cross-examination; how was her general behaviour; her demeanour; how did she impress you under oath, as a witness of truth? Or did she impress you as somebody you cannot rely on? You must consider her demeanour and say what you make of it.

Another part of your function is to draw inference from proved facts. Nobody saw when the bullets were discharged from the guns into Mr. Walsh. Where direct evidence is not available you are entitled to infer from the facts proved other facts necessary to complete the evidence of the element of guilt - his guilt or innocence. You are entitled to draw on those reasonable inferences from proved facts only if you are quite sure it is the only reasonable inference which can be drawn from any given set of facts. And if there are two or more inferences which can be drawn on any given set of facts, any one of which is in favour of the accused, and any one of which is against him, then, you should draw the inference which is in favour of the accused.

In this case members of the jury, you will be required to draw inference as to how Mr. Walsh was shot. The same thing applies to the interpretation of the witness' answer. Sometimes a witness gives an answer which is capable of more than one interpretation. Well, you are the judges of the facts and you will have to say what interpretation you are going to put on the answer which the witness has given. But, as with inference, if there are two or more interpretations which can be put on any given answer, anyone of which is in favour of the accused, and any one of which is against him, you must give him the benefit of the interpretation which is in his favour provided both are reasonable; then you should give him that reasonable interpretation which is in favour of the accused.

Now, you have heard evidence in this case that there were two men who entered into these premises on the night in question, and there is no direct evidence as to which one discharged the shots which killed Mr. Walsh. There is

evidence from Miss Samuels that she saw only one person with a gun, and that one person whom she said she saw with the gun was the accused man. There is also evidence from her that when she was in the kitchen she heard about five shots; and there is evidence from the doctor that he found three bullet wounds on Mr. Walsh. So, now, how do these two people fit into the picture? If two or more persons agree or join together to commit an offence and to use violence if it becomes necessary to cause the death or greivous bodily harm, and that offence is committed, then each person who takes an active part in the commission of the offence is guilty of the offence. Such a person, however, cannot be convicted unless he is present aiding, and abetting, and assisting in its commission. It is not necessary that each person should be actually present and see the offence committed. It is the intention in Law if he is near enough to give such assistance if the occasion arises.

Let me give you an illustration which is unconnected with the facts of this case, members of the jury. If three people decide to break into your house, and one removes the louvre blades and goes in and takes out your radio, in the night, and hands it to the second one standing under the window; and the second one takes it; and there is the third man in the get-away car waiting down the gate; and the radio is put in the car, and the second man gets in the car, also the first man who removed the louvre blades and went into the house goes into the car and all of them drive away, then not only the one who removed the louvre blades and took out the radio be guilty of burglary, but the one standing outside waiting to receive it would be also guilty of burglary, and the one waiting outside the gate playing his part to get away would also be guilty of burglary even though he never left the car seat, because the common purpose of all three was to break and enter your house and steal the goods. Each one who plays his part at carrying out the burglary would be guilty of burglary.

If two people decide to rob a man and one holds him up while the other one searches



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his pockets and takes out his \$100.00, the one who held him up would also be guilty of robbery with aggravation even though he never took the \$100.00 from the man's pocket.

If these people who entered the club on the night in question, if their intention was to kill or cause serious bodily harm, it wouldn't matter who fired the shot which killed Mr. Walsh, if their intention was to enter and rob, and assist one another in the course of the robbery, and use violence even to the extent of causing death or greivous bodily harm, it wouldn't matter who fired the shot.

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The evidence from Miss Samuels is it is only one person she saw with the gun and that one person was the accused; and she heard five shots while she was in the kitchen. The doctor said three bullet injuries were found on Mr. Walsh's body. The Crown is asking you to draw the inference that it was the accused who fired the shots which killed Mr. Walsh. But, based on the doctrine of common design, members of the jury, even if it was not he who had the gun, but the other man, and the other man shot and killed Mr. Walsh, then his criminal responsibility would be the same.

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While we are dealing with this question, members of the jury, of common design, let me say this, if two or more persons join together to commit an offence, and the intention was to rob, not kill, or cause serious bodily harm, there is this direction in law which I must give you and which I give you now before I forget it: Where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought (expressed or implied) as is required for a killing to amount to murder when not done in the course or furtherance of another offence. Malice aforethought here, members of the jury, means intention to kill or cause serious bodily harm. What our Law is saying is that other offence must be ignored for the purposes of the murder which you are now trying and the circumstances and only the circumstances surrounding the actual killing must be considered.

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So, even if you should find the purpose here was to rob and hold up the bar and the

persons in the bar, you are to ignore the circumstances of the robbery and confine yourselves purely to the murder which you are trying here now.

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10 Now, when you are dealing with a case of this nature, members of the jury, where the question of identification is so important, any directions by me would be regarded as incomplete if I did not deal specifically with the question of identification, and direct you on how you should approach it. Identification is the vital issue in this case, so you have to look at all the circumstances surrounding the identification of this accused man by Miss Samuels and you have to look at all the weaknesses which may exist in it.

20 When you come to consider her evidence on identification, you must examine the length of time that she had to see what the accused man was doing. You must examine the relative positions in which they were from time to time and you must examine the distance which they were apart from each other and last but by no means least, you must look at the quality of the light which was there at the time to assist in the identification of the witness. If you think there is any weakness in the identification parade, you must also look at that. Counsel for the defence is asking you to say in this case that there was a weakness in the identification because of the disparity in the heights of the men.

30 Now, an identification parade, members of the jury, is usually held where the suspect was not known to the witness beforehand. So it is out of a sense of justice and fair play why the accused man is put on an identification parade amongst other people to see if the witness can pick him out and in arranging identification parades, care must be taken to exclude any suspicion of unfairness or risk of erroneous identification through the witness's attention being directed to the suspect in particular instead of indifferently to other persons on the parade. So care must be taken to see that there is no vast disparity between suspect and the other people on the parade. The whole

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purpose of the parade, members of the jury, is to test the ability of the witness to fairly and adequately recognise her assailant on the night of the incident. So before we come to deal with the evidence, members of the jury, you will bear this direction in mind on the question of identification, and as we go through the evidence, you look at the various bits of evidence which can assist you in coming to a conclusion whether or not this woman is making a mistake: length of time, relative position, distance apart and quality of the light. As we go through it, I will do my best to assist you in whatever way I can.

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Now, murder, members of the jury, is what the gentleman is charged with and that offence is committed where one person by a deliberate or voluntary act, intentionally kills another. In order to amount to murder the killing must be the result of a deliberate or voluntary act, that is to say, it must not have been by accident and it must be intentional, that is to say, the act which results in death must have been done or committed with the intention either to kill or to cause grievous bodily harm.

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The crown must prove to your satisfaction the death of the deceased named Fedlan Walsh. They must also prove that it was the accused who killed him or caused his death by a voluntary and deliberate act and that he intended either to kill the deceased or to inflict serious bodily harm upon him and this intention has to be proved like any other ingredient, members of the jury, but intention is not capable of positive proof and the only practical way of proving a person's intention is by inferring it from his words or by his conduct. In the absence of evidence to the contrary, you are entitled to regard the accused as a reasonable man, that is to say, an ordinary, responsible person capable of reasoning and in order to discover what his intention was, in the absence of any expressed intention, you look at what he did, if you find he did do it, and ask whether as an ordinary, responsible person, he must have known that death or serious bodily injury would have resulted from his actions. If you find that he must have known, well, you will

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infer that he intended the result and that would be satisfactory proof of the intention required to establish the charge of murder.

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10 So, members of the jury, intention is something that you have to infer from the surrounding facts and if a person, whoever it is, puts three bullets in a man, what could be his intention but to cause death or grievous bodily harm? Of course, the Crown must prove that the killing was unprovoked and that it was not done in circumstances which amount to self defence. In this case, neither provocation nor self defence arises, and there will be only two possible verdicts which will be open to you - guilty of murder or not guilty of any offence at all. Now, let us go through the evidence, members of the jury. We have to do it in some detail, especially - well the evidence of Sadie Samuels has to be done in some detail, let us put it that way.

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30 She tells you that she is a domestice and in April of 1975, she was working as a waitress at Walsh's Beach Club. On the 6th of April, at about 1 o'clock in the morning she was in the restaurant by the club and she described the set up of this club. She says there is a restaurant and a bar. The bar is in front. The restaurant is to the side of the bar. There is a kitchen beside the bar and the restaurant and the front of the bar is to the road leading to Bull Bay. The kitchen is also to the road. There is a drive in at the side of the restaurant on the Kingston side and one can walk from the restaurant to the kitchen through a door, and there is also a door leading from the restaurant to the bar. There are two doors to the side facing the drive in, one facing the drive in, leading to the bar and one to the restaurant. It is an upstairs place and the bar, restaurant and kitchen are on the ground floor. At about one o'clock in the morning she was seated in the restaurant by a table at the side of the door leading out to the drive in. She says lights were on in the bar, in the kitchen, in the restaurant and in the drive in. There was electric light. She says the communicating doors to the kitchen and to the bar were open. Well, there

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was light in the bar, light in the kitchen and she says there was light in the restaurant and the doors to these other places were open. Whilst seated there, she saw two men come in, one had a gun and a mask over his face. The other man went straight through into the bar. He had on no mask. She did not notice if he had anything in his hand. The man with the gun and the mask stuck her up and said "don't move". After a few minutes he entered the bar, leaving her standing in the restaurant. She could not then see the other man. When the man entered the bar he had on the mask on his face but when he said "don't move" he did not have on the mask. She did not see when the mask was removed or how. When he said "don't move" he was about three feet away - that was the distance apart, away from her. His face was turned to her when he spoke and he was then without the mask. Later on, she contradicts herself on this. After he went in the bar, she heard gunshots coming from the bar. She had run into the kitchen. She heard more than one gunshot. She came out of the kitchen after a few minutes and as she left the kitchen the man that stuck her up was right at the kitchen doorway. Lights were on in the kitchen and the restaurant. She says he was right in front of her with the gun and he had on no mask and his face was turned towards her and her back was to the kitchen and she was looking towards the drive in. That man she says was the accused in the dock. The accused told her to take off her pants and she started pulling her trousers front still standing in the same position.

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She took off the pants and he was pointing the gun at her and holding her hand while she was taking off her pants. After she took off the pants a man rushed from the bar to the back of the restaurant and the accused let go her hand and ran through the side door leading to the restaurant and then she ran upstairs and escaped. She says he ran out through the side door leading to the restaurant and she ran upstairs.

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So, members of the jury, up to this point, if you accept her evidence what have we got? That he came in first and he spoke to her, 'don't move'. He had the mask and the mask fell off, so he goes into the bar and then he

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comes back out now and he confronts her at the kitchen door and he tells her to pull off her pants, and she is pulling off her pants, and you can judge how long that would take for her to pull the zip or button or whatever it is, and step out of the pants, and he is standing before her holding her hand, and this man rushes out of the bar and he lets go her hand and goes. She says this time now there is light at the kitchen door and there was light in the kitchen, so you might very well ask yourselves, members of the jury, are you to assess her opportunities to see whoever this man was by means of one light or by the accumulation of lights which were around the place, in the bar, in the kitchen and in the restaurant.

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She says she never saw the man who entered the bar after she first saw him go in.

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She remained upstairs leaving her pants downstairs and after everything was finished she came down and when she came down she saw Fedlan Walsh lying down by the counter in a pool of blood. He appeared to be dead, she says. The accused spent just a few minutes with her before going into the bar. From he told her to take off her pants to when he ran less than five minutes because it was not long.

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On the 24th of April she attended an identification parade at the Half Way Tree Police Station and there from a line of men she pointed out the accused as the man who stuck her up in the bar on the night of the 6th of April. She says she did not know him before that night. She heard about five shots fired that night while she was in the kitchen.

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Cross-examined, members of the jury she says there is no side gate to the drive-in. The drive-in is sometimes referred to as a garage. She said she was not alone in the restaurant. Another girl who we subsequently discovered her name was Princess was also there. She does not know if this girl went on an identification parade. She was sitting in the restaurant on a chair near to the doorway. The doorway is on her left. She was

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seated at the table, but not fully at the table. Princess was sitting in the restaurant also on a chair about three feet away from her. She said she saw two men, one man had a gun, he was the accused, he was wearing a mask, the chair was about one yard from the doorway. One man went straight into the bar without stopping, the man who stuck her up did not come into the restaurant before going into the bar, he was not outside when he stuck her up, he was in the restaurant when he stuck her up.

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So, there you have her contradicting herself right there. She says first of all that the man did not come into the restaurant, and when she was further pressed she says he did come into the restaurant when he stuck her up, and when she was asked if she didn't say a short while before that he did not come into the restaurant, she says she did not say it. Well, in fact she did say it and it is recorded. So that is one contradiction or discrepancy in her evidence at that stage.

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She says as the man entered through the door in the restaurant he stuck her up, and after he entered the bar through the door leading from the restaurant. Only one man spoke, 'don't move(. Now, she was asked this question, 'At the spot where you were sitting any lights were there?' Her answer was yes. The next question was what kind of light and she said bright lights. Later in cross-examination, members of the jury, she was questioned as to whether she had not said at the preliminary examination it was soft light - I will wait until I come to that, but bear it in mind now, but she was saying where she was sitting there were bright lights.

30

She says when the gun was pointed at her Princess ran and disappeared, she did not get the full force of it like her. She, Miss Samuels, could not move. Princess ran as the man stuck her up. A few minutes passed before he entered the bar after Princess ran. From where she was seated at the doorway she could see into the bar but she says she did not see Mr. Walsh in the bar, she could not see him from where she was sitting. There was another contradiction on this when we come to deal with it.

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10 After the men left and went into the bar she ran into the kitchen. She ran before the shots were fired. When the man said, 'don't move', that was when she stood up. When he said, 'don't move', she stood up and 'stand straight before him'. She did not look in the bar before she ran into the kitchen and she says she cannot say where Mr. Walsh was. Lights were on at the drive-in or garage. It was light when the men came in, it was not dark. There is another contradiction with what she said at the preliminary examination, I am going to deal with them altogether shortly.

20 There was no entrance from the bar to the garage; where she was sitting the light was bright. It was a bulb. The kitchen is to the back and the light to the kitchen was bright.

30 They did not give a description of the two men to the police. The man with the gun had on a light khaki pants and a black shirt. She does not remember how the other man was dressed. The mask came off his face after he stuck her up. Now, here she says, members of the jury, the mask was on the man's face when he stuck her up but earlier on she had said that when the man entered the bar he had the mask on his face but when he said don't move he did not have the mask on his face. Here you have another contradiction. I point these things out to you, members of the jury, you are the judges of fact, you must decide whether they are slight or whether they are important and whether they are slight or important how you are going to deal with them.

40 When he said, 'don't move', he was about two feet away from her and facing her. She was facing him. She says she jumped up to her feet after he said 'don't move' and faced him. He had on no mask then, one hand was holding the gun, the other hand had nothing in it. She was looking directly at him. She was asked how did the mask come off and the answer was, 'I was so frightened I did not see how fast he move to take it off.'

One minute he was before me with the mask



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and the next minute he had on none. She says it was white and made of cloth and across the bridge of his nose. She could see from his nose up and he had on no hat. Now, it is true, members of the jury, that she said, she admitted that she did not mention anything about any mask at the preliminary examination and she gave her reason for that: that the Resident Magistrate said that he didn't want to hear about that. I will deal with that a little further on, but here now she is saying that the man had on a mask. So bear in mind that it is evidence which you have heard in this court, which I told you you are to be guided by. You have to examine this evidence, the fact that he had on a mask when she saw him first and that the mask was across the bridge of his nose, so his face would have been covered from the middle of his face down; but she had an opportunity to see from here up. So he had on this mask at some stage and it fell off at some stage, therefore you take it into consideration, whether she had sufficient opportunity at that time to notice his face, bearing in mind at the same time that this is not the only opportunity which she says she had, because he confronted her again when she came out of the kitchen, when she was told to draw off her pants and that time he had on no mask. So you don't look at the opportunity in isolation. She says she noticed he had on no mask, but she does not know when he took it off. She noticed the mask had disappeared when he was moving off to go into the bar. As he turned his back to go into the bar she ran. She was asked if today was not the first she was telling about mask and she says she was mentioning it to the Judge at the preliminary examination, but the Judge said he did not want to hear it. That was when she was giving evidence at the preliminary enquiry. She did not mention it to the police, because the police did not ask her.

Now, she was asked to describe the men. She says one was tall and one was not as tall as her; one was as tall as her and other one about her height. She does not know her height. She was measured and she was five feet five without her shoes; and then questions were directed to her, members of the jury, by counsel for the defence about what she said at the

10 preliminary examination. She admitted  
having given evidence at the preliminary  
examination, that it was read over to her  
and the necessary foundation was laid to  
put the statements in her deposition to  
her. She was asked if she did not say this  
at the preliminary, "There was a soft  
light right where we were sitting". Her  
first answer was that she said there was  
a bright light, then she was shown the  
deposition and she was shown where she  
did say in it, "There was a soft light  
by where we were sitting"; and then when  
she saw that, she said that is what she  
told the Judge, the light was a soft  
light. Well, I don't know if a soft light  
is necessarily a dull light, but she did  
say here that it is a bright light and  
at the preliminary examination she said  
it was a soft light. I know that I like  
to study by a soft light as against a  
harsh light; but the emphasis here is  
that soft and bright; at the preliminary  
she said soft, here she said bright. So  
that is one contradiction of what she  
said at the preliminary and what she said  
at the trial. She was asked again if at  
the preliminary examination she did not  
say that each man had a gun in his hand.  
30 She said that she sees it in the deposi-  
tion but she does not remember saying it;  
but it is there, "Each man had a gun in  
his hand." Here she tells you only one  
man had a gun in his hand. That is  
another contradiction. She was asked if  
she did not say at the preliminary  
examination, "Guns...." plural, "....guns,  
(meaning more than one), was pointing at  
me and the other girl." Her answer to that  
40 was, "I only saw one gun with the gunman."  
It is just one gun she saw. She does not  
know how it has come on it, guns, as is  
written here. She was further asked if she  
did not say at the preliminary examination  
Mr. Walsh was at the bar side drinking.  
Here she told you she could not see Mr. Walsh  
at the bar. That also is in the deposition,  
"Mr. Walsh was at the bar side with a glass  
drinking." She was asked if she had said  
50 that. She said Mr. Walsh was at the bar  
side with the glass drinking and she did  
say it at the preliminary examination. She  
says he was there before drinking, but when

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the men entered the bar she did not actually see him. So she is there explaining that, members of the jury. Mr. Walsh is the proprietor. She did say this at the preliminary, Mr. Walsh was at the bar side drinking. She had seen him there before, but when the men actually got in the bar she could not see him. How often people come to your house, members of the jury, and say, where is your wife? You say she is in the bathroom. She says, in the kitchen fixing some flowers; and when you go upstairs she is not there in the bathroom - that is where you left her, but she is not there, she is in the kitchen fixing flowers. She was asked if she did not say at the preliminary examination, "He took of my pant and he said, 'open your legs'." Now, she did tell you here that she was told to take off her pants and that she took off the pants, but that she didn't tell you, because when Mr. Parkin for the Crown asked her if she said anything else she said no. She never mentioned anything about his saying, 'open your legs.' But when it was put to her in the cross-examination she said yes, she remembers saying that at the preliminary and that he did say so. She was further asked if she did not say at the preliminary examination, "I ran upstairs. I did not see where the accused went." When she gave evidence yesterday, she told you he went through the side-door. Well, she says of this, she does not remember everything that she said at the preliminary examination. It was suggested to her that the accused was not the man she saw in the night in question at all. She says, "the accused is the man I saw." Then this question was put to her, which I took down in question and answer, members of the jury :-

"Ques.: Do you agree you could be mistaken?"

"Ans. : I could be as well as not."

Now you, members of the jury, have got to say what you are going to make of this answer. Is she expressing doubt that this is one of the men that she saw there? because if you find, you know, that she is in doubt about the identity of this man, then you could not convict him at all. You can only convict him if you are quite sure in your mind that she is making no mistake when she says that this accused man was one of the two who entered the bar that night. So you have to say what you are going to make of this statement

10 when the question is put to her, "Do  
you agree you could be mistaken", and her  
answer was, "I could be as well as not";  
and in deciding what you are going to make  
of it, you must also bear in mind the  
answer she gave in re-examination when  
she was asked what she meant by this  
answer. She was asked, "What do you mean  
when you say could be as well as not?"  
and her answer to counsel for the Crown  
was, "He, (meaning Mr. Taylor for the  
defence), he tried to show me he is not  
the one I saw. That is the one I saw and  
I know it is the one I saw. That is the  
man, That is the reason that I said it."

It was further put to her at the  
preliminary examination, she said - this  
question was put to her:

20 "Q. I put it to you that this man (pointing  
to the accused) was not there that  
night?" And her answer was:

"A. I don't know what to say." It was  
shown to her and she said she sees it  
there but she does not remember saying it.  
I will read the whole of it to you: "Q. I  
put it to you that this man (pointing to  
the accused) was not there that night?  
A. I don't know what to say. Q. Do you  
agree with me you could be mistaken?  
30 A. I could." So she said she does not  
remember saying that, but as I said it is  
in the deposition.

40 Now, further in her examination,  
members of the jury, she was asked if when  
she was unbuttoning and taking off her pants  
if she was looking down at the pants all  
the time. She says she was looking off and  
on and looking all around while she was  
pulling the trousers. She was so scared  
she was looking all around. And at this  
stage Mr. Taylor applied for the lady's  
deposition to be put in evidence and high-  
lighted the various discrepancies which  
appeared in it as against what she said  
here today.

There is one important one I did not  
tell you about, and that is the question  
about lights. Now, at the trial here she

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told you that lights, a bright light was at the doorway where she was sitting. She says that lights were on in the garage. At the preliminary examination she said the garage had no lights. It was dark inside the garage. I sat where the entrance of the bar each the garage - where I sat the light was not bright. Here she says it was bright. She said from the time the men spoke until the time they left and went in the bar about fifteen minutes elapsed. Here she said five minutes, less than five minutes. And later on when she was recalled she said it could be half minute. At the preliminary examination she said fifteen minutes. I have already told you about the one where she said 'each man had a gun in his hand'. Today she says one man had a gun in his hand. The other one, Mr. Walsh was at the bar with the glass drinking, that was in the deposition. She said here, she could not say where he was, but she explained that. So, those are some of the most important ones, members of the jury.

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As I have said, it is in the evidence if you want to take it with you when you go to consider your verdict you can take it and study it if you want to, but remember it is the evidence which she has given here which is the evidence on which you are trying this case; and the fact that she has said something different on another occasion goes to her credit as to what of her evidence you can believe here today.

30

Dr. Victor Badhoo said that he is a medical officer for Gordon Town. On the 7th of April he performed a post mortem examination on the body of Fedlan Walsh. The body was identified by Sylvia Hamilton, who gave evidence to that effect. On external examination there was a bullet entrance wound with a small amount of scorching at the edges, about the middle of the upper part of the back of the neck. There was a corresponding exit wound on the right side of the neck about two inches lower. There was a second bullet entrance wound above the right eye with a corresponding exit wound just below the right eye. The right eye-ball was damaged and both eye-lids were contused. There was a third bullet wound over the right deltoid muscle. The track of the bullet was traced into the chest between the third and fourth ribs, and it was traced through the lower part of the right lung,

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10 through the thoracic spine, and through the upper part of the left kidney. The bullet was recovered from just under the skin in the left loin. The track of the bullet was downwards and slightly backwards. About two pints of blood were found in the right chest cavity and the right lung was completely collapsed. Death was due to shock from haemorrhage within the chest caused by the bullet wound which passed through the kidney - wound entry number three. The scorching which he found surrounding the first bullet wound which was on the upper part of the back of the neck was caused by smoke and hot gas, and flame from the gunshot. And it is usually found when a bullet is discharged within six inches from the body. All three bullet wounds, the track was downwards.

20 Now Inspector George Hanson told you he conducted identification parades on the 24th of April in the female section of the Half Way Tree lock-up for witnesses to try and identify someone who shot Mr. Walsh on the 6th of April, 1975. The accused was the suspect. Before the parade was held the accused was told he could call a relative or friend or Attorney to represent him on the parade. He had a scar on his forehead and the scar was covered up. The  
30 accused asked for Mr. Patrick Atkinson, Attorney-at-Law to be present to represent him on the parade. There is no evidence from the Inspector that Mr. Atkinson objected to anything on the parade. Nine men of similar appearance, colour and height and general appearance including the accused appeared on the parade. The other men were taped on the forehead in the  
40 presence of Mr. Atkinson. He told the accused he could change his clothes on the parade with any of the men. He changed his shirt with No.2 and he selected - he changed his shirt with Arnell Brown and selected No.2 position on the left as he faced the parade. He asked the accused if he was satisfied and he said yes.

50 Witness Sadie Samuels was sent for. She was out of sight and contact with the parade. She came and in the accused's presence

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she was asked the reason for her being there, and she said Walsh's Beach hold-up. He told her to walk along the line of men and if she sees the person she is to touch him and say something. And she walked along the line and pointing to the accused said, "This is the one I saw". The accused said nothing. She signed the form and she was sent off the parade.

The accused was asked by the Inspector if he was satisfied with the parade, and he said yes. Subsequently, he gave Detective Brown some information.

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Cross-examined he said the height of the men was taken. He was not certain if they were measured. The custom is to measure them care-footed. He is not sure it was done in this case. The height of the accused was 5ft. 8ins. There were eight others in the line and he tells you Desmond Nugent was 5ft. 6ins.; Arnold Brown 5ft. 10ins.; Newton Johnson 5ft. 9ins.; Donald Gordon 5ft. 5½ins.; Donald Shaw 5ft. 8½ins.; Cecil Mullings 5ft. 7½ins.; Tasman Nelson 5ft. 7ins.; and Oliver Moore 5ft. 6ins.

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Now, when you examine that, members of the jury, and break it down, there are nine men on the parade - three were shorter and four were taller than the accused and one was the same height as the accused.

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MR. TAYLOR: One was the accused. Not the same height as the accused - nine men, eight besides the accused.

HIS LORDSHIP: Three were shorter, four were taller - that is seven. One was the same height as the accused, that is eight, and there was the accused, that is nine. That is the breakdown of the parade. He says the scar on the accused's forehead was covered. It was only one scar. The reason for covering the scar was that it was an obvious scar among other persons in the line up and the Inspector wanted to be fair so he covered what he thought was an obvious scar. The accused was called up and the Inspector was asked to look at his face if there were not other scars on the face and after scrutiny he says there was a little

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scar to the right side of the accused's mouth. There was another one under his right eye. He says he has no teeth in his upper gum. This was after he was asked to open his mouth. The first time he opened his mouth we couldn't see whether he had teeth but when he was asked to open his mouth again and what you call, lifted the muscle of his lower upper lip, you could see that he had a space. Now, this space in the accused's upper gum, members of the jury, has been the subject of comment by counsel for the defence. The doctor from the penitentiary was called to tell you that this space was in his lip from 1972 or thereabout when he had to treat him at the penitentiary when it was knocked out and you are being asked to say that one would have thought if this witness was able to identify this man at all that she would have made some reference to the missing tooth but I don't know - it is a matter for your consideration - but remember the only evidence we have of what the accused is alleged to have said is: Don't move, pull down your pants, open your leg.

Now, the scars, the inspector continued, on the lip and on the eye appear to be old scars. Now, he says five witnesses including Samuels were called on the parade. The names of the other four were Delores Williams, Monica Edwards, Norissa Wallace and Errol Hutchinson. They and Miss Samuels made up the five who were called on the parade and of the five of them the only one who pointed out the accused was Miss Samuels herself.

Now, members of the jury, as counsel for the defence quite rightly pointed out to you, if the fact that these witnesses were called on the parade means that they must have been present it is a reasonable assumption that they must have been present at the club on the night of this incident and you are being asked to say whether if these other four could not point him out and they were present on the night in question, how is it that Miss Samuels could point him out? Those are all matters for your consideration.



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Mention was made of Mr. Smart, who gave evidence at the preliminary examination and who was not called at the trial. There is nothing wrong with counsel for the crown not calling Mr. Smart at the trial here and it is noticeable here that Mr. Smart was not called on the identification parade at all. So you might very well say again it is another reasonable assumption that Mr. Smart could not identify anybody. So if that is the position, where would Mr. Smart have taken the case, how much further?

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Herman Brown, an acting corporal of police, told you that on the 6th of April, he was stationed at Bull Bay and at about 2.30 he went to Walsh's Beach Club at Eight Miles. He saw a large crowd before the club and in this crowd he saw one Edwin Smart bleeding profusely from his shoulder. He entered the club and saw the body of Fedlan Walsh on the floor. He searched the bar and picked up four pieces of cartridges under an amusement machine and another piece of cartridge in another part of the bar. The entire bar was disturbed. Tables and chairs were all over the place. He knows Detective Sweeney. He made a report to Detective Sweeney.

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Cross-examined, he said he does not know if Smart gave evidence at the preliminary, but he did establish that Smart had been shot in the incident at the club.

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Kenneth Sweeney, Inspector of Police, attached to the C.I.D. headquarters told you that on the 6th of April, he got this report and he went to Eight Miles and on the 25th of April, he arrested the accused for murder, cautioned him and he said, "I don't have anything to say". He need not - well, he was asked by counsel for the defence to recite the words of the caution and he recited it. Part of it is that he is not obliged to say anything. That is so. He is perfectly entitled to remain silent or to say he has nothing to say when he is charged with this offence. He is quite within his rights.

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Cross-examined, he said that he was in charge of the investigations. He has spoken to the accused prior to the 23rd of April. He told

him he was investigating the charge of murder and that he would be placed on an identification parade. He saw him at Halfway Tree on the 23rd. He does not know what day he was taken into custody. He does not know if it was on the 17th of April. His information led him to Halfway Tree. When he saw the accused at Halfway Tree he knew he had escaped from prison. He doesn't remember the date he escaped from prison. He is not sure if it was the 14th of February. He agrees that sometimes pictures of persons who have escaped from prison are publicised in the newspapers. He has never seen it on television. The police sometimes advertise photographs in the various news media. He knows the description of this accused was publicised in the newspaper but he does not know if the photograph was and we took the adjournment at this stage, members of the jury, for the inspector to apprise himself of the facts here and the cross-examination continued the following morning and he was able to tell you that he had ascertained that reports of the description of the accused had been circulated on the radio and television. A photograph of the accused had been published in the "Daily News" on the 19th of February. Now, watch the table of dates. He escaped on the 14th of February. The picture is published on the 19th of February and the incident at the club is on the 6th of April and the identification parade is on the 23rd of April.

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He says he escaped from prison on the 14th of February from the St. Catherine District prison. The photograph was sent to the television for publication but he did not actually see it on television. The accused was taken into custody at Matilda's Corner. He does not remember what date he was taken into custody but he was on the 6th of April at large.

Now, the witness Sadie Samuels was recalled at this stage, members of the jury, because up to when Mr. Sweeney gave evidence there was no suggestion put to her that she had received any aid in identifying this man

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at all. So when this came out in the evidence of Mr. Sweeney, it was only right and proper, and I allowed it, that the witness should be recalled for this to be put to her and remember I even commented at the time that I was glad she was not in court when Mr. Sweeney was giving his evidence because she was outside and she was sworn and she was asked these questions:

"Q: Did you ever see any photographs of the accused or pictures in any newspaper or on television anytime between the 19th of February and the 24th of April? 10

A: No, sir.

Q: Did you hear of any description of the accused anywhere between the 19th of February and the 24th of April?

A: Yes, up by where I was living.

Q: When? 20

A: In the same time when the killing go on out there.

Q: Before or after?

A: After. "

She said between the killing and the parade she had not seen the accused anywhere and she had not seen any photograph of him either on the television or in a newspaper.

She was further cross-examined now and she says the man that stuck her up came in without shoes. She did not take any great notice of the other man. She says she can read, but the big words she cannot read so well. Sometimes she reads the newspapers but not regularly. When she gets a chance she takes a look at it. She watches T.V., she sees pictures sometimes when she reads the papers. Between the 19th of February and the 23rd of April she does not really remember the picture of any one specific that she saw. She listens to radio. Between the 19th of February and the 24th of April she cannot recall any specific news item she heard on the 30 40

radio nor whose picture she saw on television.

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10 So, you are being asked by counsel for the defence to bear this in mind, members of the jury, that that man's description was circulated and his picture was publicised and people could have seen it and by that they could have been facilitated in pointed him out. In other words they are asking you to say that this young lady - she hasn't said so because she specifically said she did not see any photograph, but they are asking you to say that since it was in the paper then there is a distinct possibility that this might have assisted her unconsciously or consciously to say that this man was one of the men at Walsh's Beach Club on the morning in question.

20 But you saw the girl, members of the jury. If she was assisted by this photograph, it would mean that she would have seen the photograph on the 19th of February when it was published, remembered his face on the 6th of April and when she saw him at the club as she says and still remembered it on the 23rd of April when she saw him on the parade. You are the judges of fact, you must say what you make of all this  
30 evidence.

That was the case for the crown.

40 At this stage Mr. Taylor submitted that there was no case for the accused to answer, and I overruled his submission and said there was a case to answer. The fact that I said that there is a case to answer does not in any way affect your functions. Where there is no evidence it is my duty to take the case from you, but where there is evidence, what weight and view you are going to attach to such evidence is a matter for you and I cannot usurp your functions, so my ruling that there is a case to answer merely means that there is something for you to consider and the verdict in the final result is still yours.

The accused made a statement from the dock.

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dated 7th  
May 1976

He could have gone into the witness box and given sworn evidence and be cross-examined like any other witness or he could have remained there and said nothing at all. It is the crown who must prove the case against him, or, he could have done what he did, elect to make an unsworn statement from the dock, but I must tell you that unsworn statement which he made from the dock is not evidence which could have been tested by cross-examination, nevertheless you must take it into account and give to it such weight as you think fit in deciding whether the crown has made out the case against him or not.

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He tells you that he is an apprentice welder and he lives at 1B Lower York Street since 1972. He was serving a sentence in the St. Catherine District Prison. While there at the General Penitentiary two of his front teeth were knocked out and on the 14th of February he ran away, living at a relative's home near August Town. He says he hardly left the premises where he was staying, never left the August Town area before the night of the 17th of April; so he says he never left August Town before the night of the 17th of April, so if that is so he couldn't have been in Bull Bay on the night of the 6th.

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He says on the night of Thursday the 17th of April he was captured because his photograph was published in all the newspapers and shown on television and his description was on the radio. On that night he went seeking his mother as he needed a few things very badly. On his way back to August Town the taxi was stopped at Matilda's corner, and the driver, himself and a woman and another passenger were held up and taken to the Matilda's Corner Police Station. He says he was transferred to Half Way Tree after and about one week afterwards he was told he would be put on an identification parade in connection with the charge of murder. Five or six persons came to look at him on the parade and he believes the one who gave evidence, Miss Samuels pointed him out. He says he was subsequently charged for murder. He says he is not a saint, and you won't hold that admission against him either, but he says he has never killed anybody. If he had not escaped from prison they would not have said that he did anything.

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Dr. Percival Henry was called to tell you that in October 1972 he treated the accused at the General Penitentiary for a front tooth which was knocked out. That missing tooth left a space about half an inch wide in the front of his mouth and he says it was obvious when he spoke; he thinks the upper left lip tended to shift a little when he spoke.

In the Home  
Circuit Court

No.20  
Summing Up  
dated 7th  
May 1976

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Well, this doctor's evidence, members of the jury, was merely to bear out that on the 6th of April he would have got this missing tooth and the girl should have seen it. That was his part of the evidence.

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Mr. Gordon, the Resident Magistrate from Portland was called. The purpose of his evidence was to contradict Sadie Samuels on the question of what she said that the Resident Magistrate did not want to hear anything about any mask at the Gun Court. He tells you that he presided at the preliminary examination and that Miss Samuels gave evidence and that was written down and read over to her and she was told the usual thing that she could stop him if what he was reading was inaccurate. He says she did not stop him. He was asked to read the deposition and on reading it he says there is no mention of any mask in the deposition. He did not tell her he had no need of the evidence relating to a mask. He says as a Resident Magistrate he knows identification in matters of this nature is important, and he would have done anything which would redound to the benefit of the accused in conducting such preliminary examination. Naturally, I can hardly conceive, members of the jury, that a Resident Magistrate of Mr. Gordon's experience, knowing the importance of identification would have shut up the witness if she had been mentioning about the mask. Mr. Gordon says he never told her any such thing. She says Mr. Gordon told her that. The question is which one you are going to believe. He says if the mask had been mentioned he would have recorded it.

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In the Home  
Circuit Court

No.20  
Summing Up  
dated 7th  
May 1976

That is the evidence, members of the jury. If you accept what the accused has told you that he had nothing to do with anything that took place at Walsh's Beach Club on the night of the 6th of April, and he never was there on that night at all, he was in August Town, and that he took no part in the killing of Mr. Walsh, then he would not be guilty of any offence at all; if you are in doubt about that, then also he would not be guilty of any offence at all. Even if you should reject his evidence, that does not mean, members of the jury that you would automatically have to say that he is guilty. You would still have to go back and examine the evidence in this case and say whether on the overall picture the crown has so satisfied you that you can feel sure that this accused man was one of the two men who went to this beach club on the night of the 6th of April and took part in the firing of shots, three of which resulted in the death of Mr. Walsh, and it is only when you are so satisfied - you would have to be satisfied on the evidence of Sadie Samuels that she is making no mistake when she says that this accused was one of the two men - it is only when you are so satisfied that you can properly say that he is guilty of murder. In any other case your verdict would have to be one of not guilty.

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I don't think I can help you any further. Please consider your verdict now, Mr. Foreman and members of the jury.

REGISTRAR: Do you wish to retire, Mr. Foreman?

FOREMAN: Yes.

Officers sworn.

No. 21  
VERDICT  

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In the Home  
Circuit Court

No.21  
Verdict  
dated 7th  
May 1976

JURY RETIRES UNDER SWORN GUARD: 12.45 p.m.

JURY RETURNS UNDER SWORN GUARD: 1.05 p.m.

JUDGE TAKES HIS SEAT: 1.07 p.m.

JURY ROLL CALL ANSWERED.

REGISTRAR: Mr. Foreman, please stand.  
Mr. Foreman, Members of the  
jury, have you arrived at a  
verdict?

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FOREMAN: Yes.

REGISTRAR: Is your verdict unanimous, that  
is, are you all agreed?

FOREMAN: Yes.

REGISTRAR: Do you find the accused Dennis  
Reid guilty or not guilty of  
murder?

FOREMAN: Guilty.

REGISTRAR: Mr. Foreman, members of the  
jury, you say the accused is  
guilty of murder. That is  
your verdict and so say all of  
you?

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FOREMAN: Yes.

REGISTRAR: Thank you.

Dennis Reid, the jury having  
found you guilty of this  
indictment which charges you  
with murder, do you wish to say  
anything why the sentence of this  
court should not be passed upon  
you?

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ACCUSED: The only thing that I can say is  
that I am innocent.



In the Home  
Circuit Court

No.21  
Verdict  
dated 7th  
May 1976

S E N T E N C E

HIS LORDSHIP: Dennis Reid, the sentence of  
the court is that you suffer death  
in the manner authorised by law.

In the Court  
of Appeal

No. 22

No.22  
Notice and  
Grounds of  
Appeal  
dated 10th  
May 1976

NOTICE AND GROUNDS OF  
APPEAL

IN THE COURT OF APPEAL

NOTICE TO APPEAL OR APPLICATION FOR LEAVE TO  
APPEAL AGAINST CONVICTION OR SENTENCE

10

Criminal Appeal No. 77 1976

TO THE REGISTRAR OF THE COURT OF APPEAL

Name of Appellant: DENNIS REID  
Convicted at the Circuit Court held at (1) Kingston  
Office of which convicted (2) Murder  
Sentence: Death  
Date when convicted (3) 7.5.76  
Date when sentence passed (4) 7.5.76  
Name of Prison (5) St. Cath. Dist. Prison

I, the abovenamed Appellant hereby give  
you notice that I desire to appeal to the Court  
of Appeal against my (6) Conviction and Sentence  
on the grounds hereinafter set forth on page 2  
of this notice

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Signed (7) DENNIS REID

Signature and address of witness attesting mark

Dated this (8) 10th day of May 1976

In the Court  
of Appeal

QUESTIONS (9)

No.22  
Notice and  
Grounds of  
Appeal  
dated 10th  
May 1976

(Continued)

1. Did the Judge before whom you were tried grant you a Certificate that it was a fit case for Appeal? No.

2. Do you desire the Court of Appeal to assign you legal aid? Yes.

10 If your answer to this question is "Yes" then answer the following questions:-

(a) What was your occupation and what wages, salary or income were you receiving before your conviction? -

(v) Have you any means to enable you to obtain legal aid for yourself? No.

20 3. Is any Attorney-at-Law now acting for you? If so, give his name and address: Mr. Roy L.A. Taylor  
11 Duke St.  
Kingston

4. Do you desire to be present when the Court consider your appeal? Yes.

30 5. Do you desire to apply for leave to call any witnesses on your appeal? No.

If your answer to this question is "Yes", you must also fill in Form 21, and send it with this notice.

GROUNDS OF APPEAL OR APPLICATION

GROUND 1

The Learned Trial Judge erred -

- (a) in disallowing the submission of 'No Case to Answer' for reasons more particularly set out in Ground 2 hereafter appearing;
- (b) in refusing Defence Counsel's application to order that the witness Edwin Smart, whose name appeared on the back of the Indictment be put up for cross-examination for the reason that Counsel for the Crown had opened to the evidence, or to some aspects of the evidence, which it was contemplated, Mr. Smart would give.

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GROUND 2

The verdict was - (a) unreasonable and.

- (b) cannot be supported having regard to the evidence in view of the fact that -

- (a) the evidence of the sole witness who purported to identify the accused as the man who held her up at gun point was totally discredited on nearly every major aspect of her identification of the accused as well as on peripheral matters.

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- (b) (1) the sole identifying witness said she could be mistaken in her identification of the accused and, further -

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(11) certain aspects of the identification parade were unsatisfactory.

WHEREFORE THE APPLICANT HUMBL Y PRAYS :-

1. (a) that he be granted leave to appeal, and  
(b) that his Application may be treated as the Appeal;

2. That his conviction may be quashed, the sentence set aside and a verdict of acquittal be entered or a New Trial may be ordered;
3. That this Honourable Court may grant such further or other relief as to the Court may seem meet.

In the Court  
of Appeal

No.22  
Notice and  
Grounds of  
Appeal  
dated 10th  
May 1976

APPELLANT: DENNIS REID

WITNESS: C.O. EWART S/WDR.

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No. 23

SUPPLEMENTARY GROUNDS OF  
APPEAL

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No.23  
Supplementary  
Grounds of  
Appeal  
dated 7th  
January 1977

IN THE COURT OF APPEAL  
HOLDEN AT KINGSTON  
R.M.C.A.

ON APPEAL

DENNIS REID

VS

- FOR MURDER

THE QUEEN

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TAKE NOTICE that at the hearing of this Application for leave to appeal the Applicant intends to ask leave to argue the Supplementary Grounds of Appeal set out hereunder :-

GROUND 1

The Learned Trial Judge failed adequately or at all to assist the jury in resolving

In the Court  
of Appeal

No.23  
Supplementary  
Grounds of  
Appeal  
dated 7th  
January 1977

the issue of identity by dealing  
together or sufficiently with the  
matters relevant thereto.

GROUND 2

The Summing-Up was thrown out of a fair  
balance by the judge's comments and  
inaccuracies in reviewing the evidence.

Further, the contradictions as they  
related directly to the all-important  
question of identity were not adequately  
dealt with.

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WHEREFORE THE APPLICANT HUMBLY PRAYS :-

1. (a) that he be granted leave to appeal,  
and  
(b) that his Application may be treated  
as the Appeal;
2. That his conviction may be quashed, the  
Sentence set aside, and a verdict of  
acquittal be entered, or a New Trial  
be ordered;
3. That this Honourable Court may grant  
such further or other relief as to  
the Court may seem meet.

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DATED the 7th day of January 1976 (sic)

(Sgd) Roy Taylor

ROY TAYLOR  
ATTORNEY-AT-LAW FOR THE  
APPLICANT

FILED by ROY TAYLOR of No.11 Duke Street,  
Kingston, Attorney-at-Law for the Applicant  
whose address for service is that of his said  
Attorney-at-Law.

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No. 24

JUDGMENT

JAMAICA

In the Court  
of Appeal

No.24  
Judgment  
dated 11th  
March 1977

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 77/76

BEFORE: The Hon. Mr. Justice Swaby, J.A.  
(Presiding)  
The Hon. Mr. Justice Zacca, J.A.  
The Hon. Mr. Justice Melville, J.A.  
(Ag.)

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R. v. DENNIS REID

Roy Taylor for the appellant.  
Glen Andrade for the Crown.

January 10, 11, 12, 13 and March 11, 1977

SWABY, J.A.:

On March 11, 1977 we granted the application for leave to appeal against the conviction for murder and the sentence of death pronounced against the appellant in the Home Circuit Court on May 7, 1976, for having on April 6, 1975 murdered Fedlan Walsh. We treated the hearing of the application as the hearing of the appeal and by a unanimous decision allowed the appeal, quashed the conviction and set aside the sentence. By a majority decision it was agreed that in the interest of justice there should be a new trial of the case during the current session of the Home Circuit Court. We promised to put our reasons for our decision in writing. We now do so. In view, however, of the order for a new trial we consider it undesirable to discuss the evidence in any detail in giving these reasons.

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At about one o'clock in the early morning of April 6, 1975 Walsh's Beach Club situated at Eight Miles along the St. Thomas Road in the parish of St. Andrew was open for business. There is a bar, a restaurant and, a kitchen on the ground floor of the two storey building and what is described as a 'drive-in' on these premises. One Miss Sadie Samuels a waitress at the Club who gave evidence for the prosecution

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In the Court  
of Appeal

No.24  
Judgment  
dated 11th  
March 1977

at the trial said that she was at the hour previously mentioned seated beside a table at the door of the restaurant leading out to the drive-in when two men, one armed with a gun and wearing a mask entered the premises. The man with the gun pointed it at her and came up to her saying "don't move", while the other man went straight into the bar without stopping. She said that when she first saw the gun-man he was wearing a mask over his face but at some stage, she could not remember exactly when, the mask fell off his face before he left where he was with her. She recognised him as the appellant by lights which were turned on in and around the club, restaurant, bar and kitchen. After holding her at gun point for a few minutes the appellant left her and went into the bar and she ran into the kitchen. While in the kitchen she heard more than one gun shot coming from the direction of the bar, and as she was about leaving the kitchen she was again confronted by the appellant who was still carrying the gun in his hand. She recognised him by the aid of the kitchen and restaurant lights which were on. The appellant held her by her hand and pointing the gun at her at the same time ordered her to take off her 'pants'. She said she had taken off her pants when he told her to open her legs, but just then somebody rushed out of the bar into the restaurant and the appellant let go her hand, and ran out into the drive-in at the back part of the premises, carrying the gun in his hand, and she ran upstairs the building. She did not see the appellant again that night. After a while Miss Samuels said she returned downstairs where she saw the dead body of Mr. Fedlan Walsh lying on the floor.

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Doctor Victor Badhoo, a registered medical practitioner who performed a post mortem examination on the body of the deceased said that on external examination he found three bullet 'entrance' wounds on it. In his opinion death was due to shock from haemorrhage within the chest caused by the third bullet wound over the right deltoid muscle, the track of which he traced into the chest between the 3rd and 4th ribs into the lower part of the right lung, through the thoracic spine into the upper part of the left kidney through the back, the

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bullet being recovered under the skin in the left loin.

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10 The appellant was arrested on April 17, 1975 and an identification parade held at the Half Way Tree Police Station on April 23, 1975 when the witness Miss Sadie Samuels pointed him out as the man who came into the bar that night with the gun. The crown was unable to prove which of the two men who had entered the bar had fired the gun shots one of which killed Mr. Walsh and so had to base its case on the doctrine of common design.

20 At his trial the appellant made an unsworn statement from the dock in which he stated in effect that while he had been serving a sentence in the St. Catherine District Prison, he escaped from that prison on February 14, 1975. He had previously been at the General Penitentiary, and while there two of his front teeth were knocked out by another prisoner. After his escape from the St. Catherine District Prison he had been hiding at a relative's home near August Town which he hardly left until the night of April 17, 1975 when he went looking for his mother as he needed a few things. He was stopped by the Matilda's Corner Police on his way back to August Town whilst travelling in a taxi, as he was recognised because his photograph had been published in all newspapers and shown on television and his description given on the radio. He was taken to the Matilda's Corner Police Station where he had been placed on an identification parade in connection with a charge of murder. Five or six persons went on the parade to look at him and one of them whom he believed to be the witness Sadie Samuels pointed him out and he was subsequently charged with the murder of Fedlan Walsh. He was not a saint but he never killed anyone. Were it not because he had escaped from prison they could not have said he did anything. His defence was in effect an alibi. Two witnesses Dr. Percival Henry, and Mr. Uel Gordon, Resident Magistrate for Portland who held the preliminary examination into the charge testified on the appellant's behalf.

The grounds of appeal argued were :-

1. That the verdict was (a) unreasonable and



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of Appeal

No.24  
Judgment  
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March 1977

(b) cannot be supported having regard to the evidence in view of the fact that (i) the evidence of the sole witness, Sadie Samuels, who purported to identify the accused as the man who held her up at gun point was totally discredited on nearly every major aspect of her identification of the accused as well as on the peripheral matters, (ii) because the sole identifying witness said she could be mistaken in her identification of the accused and, because, (iii) certain aspects of the identification parade were unsatisfactory.

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2. That the learned trial judge erred in disallowing the submission of "no case to answer" for the reasons set out in ground 1 above.

3. That the learned trial judge failed adequately or at all to assist the jury in resolving the issue of identity by dealing together or sufficiently with the matters relevant thereto.

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4. The Summing-Up was thrown out of a fair balance by the judge's comments and inaccuracies in reviewing the evidence. Further, the contradictions as they related directly to the all-important question of identity were not adequately dealt with.

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Learned Counsel for the appellant submitted that the weaknesses in the identification could be succinctly stated as follows :-

(i) The limited time afforded the only eye witness, Sadie Samuels, for noting the features of the appellant - they were merely fleeting glances when the evidence was properly analysed.

(ii) The evidence as to lighting was totally unreliable on both occasions that Samuels allegedly saw the appellant on the night in question.

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(iii) Sadie Samuels admitted that she had heard a description of the appellant before going on the identification parade

after the commission of the offence on April 6, 1975 and before the date of the parade.

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dated 11th  
March 1977

(iv) The witness both at the preliminary examination and trial admitted that she could have been mistaken as to the identity of the appellant.

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(v) The failure of Sadie Samuels to mention that the appellant or either of the two men who had entered the Club premises was masked before the actual trial.

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(vi) The witness' failure to give a description to the police of the man whom she stated was the appellant though there were obvious peculiarities as identifying features, i.e. a large scar on his forehead, and two missing front teeth which she could not have failed to observe and so report same to the Police.

(vii) The conflict on the height of the appellant and the height of the person whom she said was armed with a gun and masked.

(viii) The fact that the photograph of the appellant had been published both in the newspapers, and on television before the murder.

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(ix) The fact that the appellant was unknown to the witness before the incident.

(x) The failure of four other persons called on the identification parade to identify the appellant.

(xi) The fact that the witness Sadie Samuels stated on a number of occasions that she was extremely frightened.

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(xii) The fact that the credibility of the identifying witness was entirely destroyed or at least severely impeached.

In the Court  
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March 1977

Learned Counsel for the defence then embarked upon a detailed examination of the evidence of the witnesses particularly that of Sadie Samuels dealing with the various "weaknesses" as set out under the twelve heads above, pointing out various contradictions and inconsistencies in her evidence, relating to her identification of the accused, and observing that the net result was that the quality of the identification evidence which depended solely on Miss Samuels' evidence was so poor and in his view totally discredited that no reasonable jury ought to have convicted the accused on that evidence. He further submitted that the learned trial judge ought in the state of the quality of the evidence to have ruled in favour of the "no case" submission made by him at the close of the prosecution's case.

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Dealing with grounds 3 and 4 Mr. Taylor mentioned various instances where he said the learned trial judge failed adequately or at all to assist the jury in resolving the issues of identity. There was no complaint about the general directions given to the jury concerning cases of visual identification, as this case was, but he submitted that it had fallen short of the assistance a trial judge should give which has been set out in numerous cases dealing with visual identity both locally and in the United Kingdom culminating in what might be considered a codification of these guidelines by Lord Widgery, C.J. in R. v. Turnbull (1976) 3 All E.R. p.549, at pp.551-554. Mr. Taylor dealt particularly with the "weakness" listed as (iii) above. It arose in this way. During the cross-examination of Detective Inspector Sweeney it was brought out that the appellant had escaped from the St. Catherine District Prison on February 14, 1975, and was not recaptured until April 17, 1975, eleven days after the events of April 6. It was alleged that a photograph of the appellant had been published in the Daily News on or about February 19, 1975 and circulated on television and possibly radio also. This matter was dealt with in the summing-up thus :-

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"Now, the witness Sadie Samuels was recalled at this stage, members of the jury, because up to when Mr. Sweeney gave evidence there was no suggestion put to her that she had received any aid in identifying this man

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at all. So when this came out in the evidence of Mr. Sweeney, it was only right and proper, and I allowed it, that the witness should be recalled for this to be put to her and remember I even commented at the time that I was glad she was not in court when Mr. Sweeney was giving his evidence because she was outside and she was sworn and she was asked these questions:

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March 1977

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Q: Did you ever see any photograph of the accused or pictures in any newspaper or on television any time between the 19th of February and the 24th of April?

A: No, sir.

Q: Did you hear of any description of the accused anywhere between the 19th of February and the 24th of April?

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A: Yes, up by where I was living.

Q: When?

A: In the same time when the killing go on out there.

Q: Before or after?

A: After.

She said between the killing and the parade she had not seen the accused anywhere and she had not seen any photograph of him either on the television or in a newspaper."

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After dealing with the further cross-examination of Miss Samuels on this aspect of the matter the learned trial judge continued:

"So, you are being asked by counsel for the defence to bear this in mind, members of the jury, that that man's description was circulated and his picture was publicised and people could have seen it and by that they could have been facilitated

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In the Court  
of Appeal

No.24  
Judgment  
dated 11th  
March 1977

in pointing him out. In other words they are asking you to say that this young lady - she hasn't said so because she specifically said she did not see any photograph, but they are asking you to say that since it was in the paper then there is a distinct possibility that this might have assisted her unconsciously or consciously to say that this man was one of the men at Walsh's Beach Club on the morning in question.

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But you saw the girl, members of the jury. If she was assisted by this photograph, it would mean that she would have seen the photograph on the 19th of February when it was published, remembered his face on the 6th of April and when she saw him at the club as she says and still remembered it on the 23rd of April when she saw him on the parade. You are the judges of fact, you must say what you make of all this evidence."

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The gravamen of defence counsel's complaint in this regard was that the judge apart from merely repeating the evidence of the witness that she had obtained a description of the appellant up where she was living, before attending the identification parade, no questions had been put by the Court, in the interest of justice, (Crown Counsel having failed to re-examine the witness with this in view), in order to ascertain whether the description of the appellant she had received had enabled her to point out the appellant on the identification parade and that in the absence of any such questions or directions the learned trial judge had not assisted the jury on how they should deal with her identification of the appellant in the state of her evidence on this aspect of the identification of the appellant. In the circumstances it could not be said that the appellant had been properly identified on Miss Samuels' evidence or that he had had a fair trial. Learned Counsel for the Crown while conceding that Miss Samuels' evidence regarding the description she got required clarification said that the appellant would have suffered no injustice having regard to the learned judge's general directions.

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We were, however, of the view that there was

merit in appellant's Counsel's submission. Bearing in mind that this was a case where visual identification was involved and that the evidence depended entirely upon that of the sole witness, Miss Sadie Samuels, the inconsistencies in her evidence surrounding her ability properly to identify the appellant required particularly careful directions as to any special weaknesses which appeared in the identification evidence, along the guideline indicated in these types of cases, now codified in Turnbull's case. It was unfortunate that the "description" evidence was allowed to remain as it was left to the jury, as this Court is unable to say whether Miss Samuels was able to identify the appellant wholly by reason of this prior description she had received, or whether it was wholly from her own powers of observation or a combination of both. At all events the evidence being in the state that it was, it appeared incumbent on the learned trial judge to assist the jury as to how they should treat this evidence. Had it been that the witness was able to identify the appellant other than from her own powers of observation serious thought would have had to be given to the "no case" submission made at the close of the Crown's case. If, however, the identification turned out to be from the witness' own observation, then the matter was one properly to be left for the determination of the jury. Miss Samuels had sworn that she had not known the appellant before the night of April, 6. In the circumstances we are unable to see how the jury could have resolved the question of the identity of the appellant so as to be sure because clarification had not been obtained of the witness' answer regarding the description of the appellant she said she had received. The omission to direct the jury on how that aspect of the evidence on identity should have been resolved was in our view a non-direction amounting to a misdirection which was fatal to the conviction recorded against the appellant.

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of Appeal

No.24  
Judgment  
dated 11th  
March 1977

Accordingly we granted the application for leave to appeal, treated the hearing of the application as the hearing of the appeal and ordered as previously stated.

In the Court  
of Appeal

No. 25

No.25  
Order granting  
Conditional  
Leave to  
Appeal  
dated 13th  
July 1977

ORDER GRANTING CONDITIONAL  
LEAVE TO APPEAL TO HER MAJESTY  
IN COUNCIL

IN THE COURT OF APPEAL

S.C.C.A. NO. 77 OF 1976

BETWEEN DENNIS REID DEFENDANT/APPLICANT  
A N D THE QUEEN RESPONDENT

UPON A MOTION for leave to Appeal to Her Majesty in Council from the Judgment of the Court of Appeal dated 11th March, 1977, made by or on behalf of the Defendant/Appellant coming on for hearing this day and upon hearing Mr. Roy Taylor on behalf of the Defendant/Appellant and Mr. Norman Sang on behalf of the Prosecution

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IT IS HEREBY ORDERED as follows :-

1. That leave be granted to the Applicant herein to appeal to Her Majesty in Council from the decision of the Court handed down on the 11th day of March, 1977:
2. That the Applicant shall, within 90 days from the date hereof, procure the preparation of the Record herein for despatch to England,

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and pursuant to the provisions of section 110(2)(b) of the Constitution of Jamaica and section 35 of the Judicature (Appellate Jurisdiction) Act, the Court certifies:

(i) That the following points of law arise for consideration:

- (1) Whether or not the Court of Appeal can properly order a new trial where the only evidence implicating the prisoner  
a) has been discredited and/or  
b) is palpably or manifestly unreliable;

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- (2) Whether or not a new trial might properly be ordered where the real issue in the case is the reliability of the visual

identification of a prisoner previously unknown to the identifying witness and the identifying witness was given a description of the prisoner prior to pointing him out on an identity parade.

In the Court  
of Appeal

No.25  
Order granting  
Conditional  
Leave to  
Appeal  
dated 13th  
July 1977

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(3) Whether or not in the instant case it was proper and reasonable to order a new trial.

(4) What are the principles which should apply in considering whether or not a new trial should be ordered.

(ii) That the said points of law are of exceptional public importance and that it is desirable in the interest of the public that a further appeal should be brought.

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DATED this 13th day of July, 1977.

BY THE COURT.

SGD. W. WATSON

REGISTRAR (Ag.)



In the ~~General~~  
Court of Appeal

No. 26

No.26  
Order granting  
Final Leave  
to Appeal to  
Her Majesty  
in Council  
dated 7th  
November 1977

ORDER GRANTING FINAL LEAVE  
TO APPEAL TO HER MAJESTY IN  
COUNCIL

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COURT OF APPEAL

IN THE COURT OF APPEAL

S.C.C.A. NO. 77 of 1976

BETWEEN: DENNIS REID APPLICANT

A N D : THE QUEEN RESPONDENT

BEFORE: The Hon. Mr. Justice Robinson (P)  
The Hon. Mr. Justice Zacca J.A.  
The Hon. Mr. Justice Melville J.A.

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The 7th day of November, 1977

UPON THE MOTION for Final Leave to appeal to Her Majesty in Council against the Judgment of the Court of Appeal of Jamaica dated the 11th day of March, 1977, coming on for hearing this day before the Court of Appeal, and after hearing Mr. Roy Taylor for the Applicant and Mrs. Marva McIntosh on behalf of the Respondent IT IS HEREBY ORDERED that final leave be granted to the Applicant to enter and prosecute his appeal against the Judgment of the Court of Appeal of Jamaica dated the 11th March, 1977.

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BY THE COURT

Sgd:

REGISTRAR  
COURT OF APPEAL

IN THE PRIVY COUNCIL

No. 37 of 1977

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

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B E T W E E N :

DENNIS REID

Appellant

- and -

THE QUEEN

Respondent

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RECORD OF PROCEEDINGS

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PHILIP CONWAY THOMAS & CO.,  
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