

Judgment 30 of 1978

30/78

IN THE PRIVY COUNCIL

No. 34 of 1976

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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 :

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

- and -

FREDERICK DALEY and BURNETT MCGHIE

Respondents

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RECORD OF PROCEEDINGS

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RECORD OF PROCEEDINGS

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No. 1

INDICTMENT  
JAMAICA

IN THE  
SUPREME COURT

No. 1

INDICTMENT  
2nd December 75

The Queen v. Burnett Meggie and Frederick Daly

In the Supreme Court for Jamaica

In the Circuit Court for the parish of Clarendon.

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

Burnett Meggie and Frederick Daley are charged with the following offence:-

STATEMENT OF OFFENCE

Murder.

PARTICULARS OF OFFENCE

Burnett Meggie and Frederick Daley, on the 22nd day of April, 1975, in the parish of Clarendon, murdered Sydney Smith.

(Sgd) G.R. Andrade  
for Director of Public Prosecutions  
9th September, 1975.

(b)(ii)



## CLARENDON CIRCUIT COURT

In the Supreme Court

MAY PEN

No. 2

Proceedings

TUESDAY, 2nd DECEMBER 1975

2nd December 1975

REGINA v. BURNETT MEGGIE - C.A. 140/75 (sic)  
FREDERICK DALEY - C.A. 141/75

10.00 a.m.

10 MR. ANDRADE: May it please you M<sup>r</sup>Lord the Queen  
 against Burnett Meggie and Frederick  
 Daley. Representation remains the  
 same M<sup>r</sup>Lord. Mr. Patrick Atkinson  
 for Meggie. Mr. Howard Hamilton  
 for Daley. The charge is murder  
 M<sup>r</sup>Lord. I appear for the crown.

20 REGISTRAR: Burnett Meggie you are charged that  
 you and Frederick Daley on the 22nd  
 of April 1975 in the parish of  
 Clarendon murdered Sydney Smith.  
 How say you are you guilty or not  
 guilty?

ACCD. MEGGIE: Not guilty.

REGISTRAR: Frederick Daley you are charged that  
 you and Burnett Meggie on the 22nd  
 of April 1975 in the parish of  
 Clarendon murdered Sydney Smith.  
 How say you, are you guilty or not  
 guilty?

ACCD. DALEY: Not guilty

30 REGISTRAR: Burnett Meggie, Frederick Daley the  
 names that you are about to hear  
 called are the names of the jurors  
 who are to try you. If therefore  
 you wish to object to them or any of  
 them you must do so as they come to  
 the book to be sworn and before they  
 are sworn and you will be heard.

B26. Sitira Golding challenged - Crown  
 B25. Linneth Grant challenged - Crown  
 67. Basil Lattibeaudiere  
 sworn - Foreman

In the Supreme Court

No. 2  
 Proceedings  
 2nd December 1975  
 continued

REGISTRAR:  
 (contd)

24. Leslie Graham challenged -  
 Defence (1)  
 28. Frank Hurdsmen challenged -  
 Defence (2)  
 18. Leslie Graham sworn

HIS LORDSHIP: No. no.

INSPECTOR: That is the name that is there  
 M'Lord AND number 18. sir. 10  
 Leslie Graham a truck owner.

HIS LORDSHIP: Call Leslie Graham again.  
 (Juror called.)  
 Looks like both of them are  
 coming. Mr. Graham, both of  
 you were together both of  
 you are Leslie Graham?

A. Yes, sir.

A. Yes, sir.

HIS LORDSHIP: Who is the farmer and who is the  
 truck owner? 20

A. Farmer, sir.

HIS LORDSHIP: Mr. truck owner, please stay at  
 the end.

REGISTRAR:

63. Ruby Lindo challenged - Crown  
 17. Clifton Gordon challenged - Crown  
 16. Constantine Fisher  
 challenged - Defence  
 (1) 30  
 11. Lilieth Evans no answer  
 5. Horace DaCosta Sworn  
 60. Ephraim Latchman  
 challenged - Defence  
 (1)  
 73. Caleb Lewison Sworn

MR. HAMILTON: M'Lord before the - may we have  
 a moment to consult and may we  
 also have a look at the list for  
 addresses. 40

MR. ATKINSON: Just to establish general location  
of abode.

In the Supreme Court

MR. HAMILTON: It is not announced but ...

No. 2  
Proceedings  
2nd December 1975  
continued

HIS LORDSHIP: I see. I see. I thought you  
gentlemen would have done this  
before though.

10 MR. ATKINSON: We would probably have to go through  
- probably a hundred and fifty, sir.

10:10 a.m.

10:16 a.m.

REGISTRAR:

51.	Mr. Wellesley Lawson	no answer
27.	Hibbert Henry	challenged - Defence (1)
32.	Inez Hibbert	challenged - Crown
74.	Hazel Lindsay	challenged - Crown
20 55.	Seymour Leiba	challenged - Defence (2)
6.	Glaister Dunkley	challenged - Crown
71.	Wesley Levy	no answer
70.	Leroy Levy	no answer
64.	David Lawrence	challenged - Defence (2)
41.	Carlos Johnson	challenged - Defence (2)
76.	May Mellad	challenged - Crown
30 72.	Patrick Lyn	no answer
3.	Easton DeSouza	challenged - Crown
7.	Kenneth Dunkley	Sworn
4.	Girlie Danvers	challenged - Crown
43.	Hubert Johnson	no answer
78.	Constantine Miller	challenged - Defence (2)
65.	Clive Patrick Lawrence	Sworn
40 Panel A.		
63.	Lewen Chin	no answer
2.	Cebert Allison	Affirmed
31.	Cephas Barnaby	challenged - Defence (2)
36.	Joseph Bartley	Sworn
65.	Vera Campbell	Sworn
74.	Colin Campbell	Sworn

In the Supreme Court

No. 2  
Proceedings  
2nd December 1975  
continued

REGISTRAR:  
(contd)

21.	Wilbert Brown	no answer
78.	Kenneth Dyer	Sworn
9.	Melbourne Bartley	Sworn

Members of the jury, the prisoners stand indicted for the offence of murder for that they on the 22nd day of April, 1975, in the parish of Clarendon murdered Sydney Smith. To this indictment they have pleaded not guilty and it is your charge to say having heard the evidence whether they be guilty or not.

10

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P R O C L A M A T I O N  
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In the Supreme Court

Prosecution  
Evidence  
  
No. 3  
Ceaphas Laidford  
Examination  
2nd December 1975

NO. 3.

EVIDENCE OF CEAPHAS LAIDFORD

20

CLARENDON CIRCUIT COURT

TUESDAY, 2ND DECEMBER,  
1975

Mr. Ceaphas Laidford called, sworn Time 11:04 a.m.

EXAMINATION-IN-CHIEF OF MR. CEAPHAS LAIDFORD  
BY MR. ANDRADE (CROWN ATTORNEY)

HIS LORDSHIP: Please come right back for me.  
Would you like to sit down?

WITNESS: Yes.

30

HIS LORDSHIP: Please sit if you want to.  
Please face the members of the jury. Please speak up so that everybody can hear. The accused men over there have to hear you and the people in the back have come to hear, too; so please speak up for me.

(WITNESS SITS)

MR. ANDRADE:

Q: Your name, sir, is Ceaphas Laidford?

A: Yes.

Q: You are a factory worker, sir?

A: Yes, sir.

Q: I believe you are employed at the Inverness -  
or on the Inverness Property?

10 A: Yes.

HIS LORDSHIP: No; louder please.

MR. ANDRADE:

Q: And that is in the Sandy Bay area?

A: Yes, sir.

Q: In fact, you live at Sandy Bay?

A: Yes.

Q: Now, did you know Sydney Smith, the deceased?

A: Yes, sir.

Q: What was he?

20 A: (no answer)

Q: On the property, what work he used to do?

A: Headman, sir.

Q: You know one Roy Burke?

A: Yes, sir.

Q: He worked at the factory too?

A: Yes.

Q: And you know Milton Smith?

A: Yes.

In the Supreme Court

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Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

In the Supreme Court

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Prosecution  
Evidence

No. 3  
Ceaphas Laidford  
Examination  
2nd December 1975  
continued

Q: He worked there too?

A: Yes.

Q: Now, sir, do you remember Tuesday, the 22nd of April, this year?

A: Yes, sir.

Q: You were at the factory; weren't you?

A: Yes, sir. 10

Q: Sometime about 11:40, something to 12.00, where were you?

A: In the shed.

Q: In the morning?

A: In the shed.

Q: You alone?

A: (no answer)

HIS LORDSHIP: In which shed ..?

WITNESS: In the factory yard.

HIS LORDSHIP: You were in a shed in the factory yard? 20

WITNESS: Yes.

MR. ANDRADE:

Q: Now, what kind of shed is that one - now, what you call that shed?

A: The carpenter shed.

Q: You have any other shed on the factory compound?

A: Yes.

Q: What kind of shed? 30

A: The welding shed.

Q: Any other?

A: Yes.

Q: How many you have; only two?

A: You have a next shed outside; next small shed.

HIS LORDSHIP: You were saying something about  
outside one?

10 WITNESS: The shed, sir.

HIS LORDSHIP: What you used that one for; the  
little one?

WITNESS: Is store-room.

MR. ANDRADE:

Q: So you were in the carpenter shed?

A: Yes, sir.

Q: And who was with you - if anybody?

A: (no answer)

Q: Who was with you?

20 A: Roy Burke and Milton Smith and Mr. Sydney Smith.

Q: That is the dead man?

A: Yes, sir.

Q: And what were you doing at about that time?

A: I was cooking.

Q: Cooking what?

A: Lunch.

Q: Now, while you were cooking your lunch, you see,  
did anybody come?

A: Yes, sir.

30 Q: I want you to speak louder than that, you know  
Mr. Laidford?

In the Supreme Court

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Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

In the Supreme Court

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Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

A: Yes, sir.

Q: You see, these two men on trial have to hear what you have to say; so open your mouth and talk loud. Don't be afraid of anything.

A: Yes.

Q: Now what happened while you were there?

A: While I was there, I see two men came.

HIS LORDSHIP: Mr. Laidford, if you don't speak up the people can't hear. As near as I am I can't hear you. I don't know if I am getting deaf. Do you want to stand up?

WITNESS: Yes, sir.

(Witness stands).

MR. ANDRADE:

Q: Tell us what happened while you were there?

A: While I was there in the shed, two men came to the shed door.

Q: Now, you see those two men here?

A: Yes.

Q: Where are they?

A: (Witness points to the accused men in the dock)

Q: You say they came to the shed door?

A: Yes.

Q: Did any of them say anything?

A: Yes.

Q: You know which one spoke first?

A: Yes, sir.



Q: Which one?

A: That one there; the outside one.

HIS LORDSHIP: That is the accused, Daley,  
is it?

WITNESS: Yes.

MR. ANDRADE:

10 Q: What he said?

A: He call to Mr. Sydney Smith.

HIS LORDSHIP: Sorry; there are two Mr.  
Smiths. Now, I don't know  
whether you are talking about  
the dead man or which one.

MR. HAMILTON: He said Sydney.

HIS LORDSHIP: You see how near I am? I can't  
hear you. What he said?

WITNESS: He come for some money now.

20 MR. ANDRADE:

Q: Tell us like how he said it, man. What he  
said; tell us the words he used?

A: He come for some money now.

Q: The other one said anything?

A: Not the same time.

Q: Did Mr. Smith answer him - Sydney?

A: Yes.

Q: What Sydney said?

A: Say, "What you saying to me?"

30 HIS LORDSHIP: He said, "What you saying to me"?

WITNESS: Yes.

MR. ANDRADE:

Q: Anything else?

In the Supreme Court

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Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

In the Supreme Court

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Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

A: Yes.

Q: What?

A: Mr. Sydney Smith told him must go and see the boss.

Q: The other one said anything?

A: Yes, sir.

Q: What?

A: After him told him must go and see the boss now, the next one ... .. 10

HIS LORDSHIP: The accused Meggie he is talking about now, the shorter one?

WITNESS: Yes ... say mi must move.

HIS LORDSHIP: Say you must move?

WITNESS: No; not me must move - Daley, sir.

HIS LORDSHIP: Who is to move?

WITNESS: Daley, sir; Daley was standing and then come up nearer now with two stones. 20

HIS LORDSHIP: He is saying that - Meggie is saying that Daley is to move?

WITNESS: He come up nearer to him.

HIS LORDSHIP: When Daley is speaking to the deceased man, what position were the both of them - both accused men?

WITNESS: Stand up to the door, the shed door. 30

HIS LORDSHIP: He said to Daley to move and he comes up now?

WITNESS: Near.

HIS LORDSHIP: Nearer; did he pass Daley or stand beside him or what?

WITNESS: Stand beside him.

CROWN ATTORNEY:

Q: You have to talk louder still. So what is the next thing - what happened next?

A: (no answer)

10

HIS LORDSHIP: He was saying something about two something - what did Meggie have that time, you remember?

WITNESS: Two stones.

HIS LORDSHIP: How?

WITNESS: (witness demonstrates)

HIS LORDSHIP: One in each hand?

WITNESS: Yes.

MR. ANDRADE:

Q: Did you see where he got the stones from?

20

A: No.

Q: I see. What happened when he came up with the two stones; what next happened?

A: And then Bailey come up?

HIS LORDSHIP: The man's name is Daley.

WITNESS: Daley come same time with one stone and iron.

HIS LORDSHIP: Where Daley get the stone and iron from?

WITNESS: I don't know.

30

HIS LORDSHIP: Yes, Mr. Andrade.

MR. ANDRADE:

Q: Yes; what happened next?

In the Supreme Court

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Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

A: Daley call to me - I must move for mi don't in there.

Q: Did you move?

A: Yes.

HIS LORDSHIP: What?

WITNESS: No; I never move same time.

HIS LORDSHIP: Look, please don't turn your back on the members of the jury. Turn, face them, because they have to watch you when you are giving your evidence.

10

(Witness turns to face the jury)

MR. ANDRADE:

Q: Mr. Smith said anything - Sydney?

A: Yes; Mr. Sydney clap me in the - mi left shoulder, musn't move; I must stan' up.

20

HIS LORDSHIP: Said you mustn't move?

WITNESS: Yes, sir.

MR. ANDRADE:

Q: You mustn't move, you must stand up?

A: (witness nods head indicating yes)

Q: Now, at that time you see, how far away was Sydney Smith from these two men?

A: (no answer)

Q: Point it out. (From where you are to where)

A: From here to where the officer.

30

Q: The Police Sergeant?

A: Yes, sir.

HIS LORDSHIP: How much yards you make it?

MR. ANDRADE: About five, six yards.

Q: Now, what is the next thing that happened after Mr. Smith said to you, "Don't move....."?

A: Daley fling the stone.

HIS LORDSHIP: Daley then flung the stone?

WITNESS: Yes.

MR. ANDRADE:

10 Q: Show us how he flung it nuh man?

A: Daley fling the piece of stone and then the piece of iron.

HIS LORDSHIP: He flung the stone and then the piece of iron?

WITNESS: Yes, sir.

MR. ANDRADE:

Q: At whom - who him fling it at; who him throw the stone at?

A: At Mr. Sydney Smith.

20 Q: Did the stone catch Mr. Smith - Sydney?

A: I never see the first stone catch him.

Q: When he threw the stone, did Mr. Smith stand up or did he move?

A: Him move.

Q: Shift it - you call it?

A: Yes.

Q: Now, the iron - when he threw the iron you see, did it catch Mr. Smith?

A: No, sir.

30 Q: Did Mr. Smith do anything?

A: Yes; him - he run and go down.

HIS LORDSHIP: Run and go down - where?

In the Supreme Court

Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

WITNESS: Go down the - below the work place.

MR. ANDRADE:

Q: You mean he shift it?

A: Yes.

HIS LORDSHIP: When you say run and go down, I don't understand. 10

WITNESS: After him fling it.

HIS LORDSHIP: Fling what?

WITNESS: The iron - after the iron fling.

HIS LORDSHIP: What was he doing - shifting the iron or the iron lick him, or what?

WITNESS: Shifting the iron.

HIS LORDSHIP: So the iron didn't catch him either? 20

WITNESS: (no answer)

MR. ANDRADE:

Q: Did you move; what you did?

A: I move.

Q: You move?

A: Yes.

Q: What is the next thing that happened now?

A: Move from - we move from out the shed. Me move from out the shed.

Q: You walked out or you - what? 30

A: Walk out.

Q: Walked out through - where?

A: The shed door.

HIS LORDSHIP: Was that the door where both  
accused men were?

WITNESS: Yes.

MR. ANDRADE:

Q: Meggie, did you see Meggie do anything?

A: Yes, sir.

10

Q: What?

A: Flinging the stone.

HIS LORDSHIP: What?

WITNESS: Flinging the stone.

HIS LORDSHIP: When Meggie is flinging the stone,  
where are you?

WITNESS: Mi leave from out the shed.

HIS LORDSHIP: You outside?

WITNESS: Yes.

20

HIS LORDSHIP: Had you gone outside when he flung  
the stones them or what?

WITNESS: Me outside.

HIS LORDSHIP: You were outside then?

WITNESS: (no answer)

HIS LORDSHIP: Where you was - you outside the shed  
or inside the shed when Meggie fling  
the stone?

WITNESS: Was inside the shed.

HIS LORDSHIP: You had not got outside yet?

WITNESS: No.

30

HIS LORDSHIP: Meggie throw stone - what - at whom?

WITNESS: Mr. Sydney Smith.

HIS LORDSHIP: How many?

In the Supreme Court

Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

WITNESS: Around four first.

HIS LORDSHIP: Inside the shed - whilst Smith is inside the shed?

WITNESS: While I was coming out.

HIS LORDSHIP: One minute, please. Meggie threw about four stones at the deceased, who was then in the shed - inside the shed that time? If is not so, don't say so, you know.

10

WITNESS: Not dying as yet.

HIS LORDSHIP: We don't reach that stage yet; we are talking about the stone throwing. How many stones you saw Meggie throw at Mr. Smith, inside the shed?

WITNESS: Around four.

MR. ANDRADE:

Q: Any of them catch him?

20

A: I never see.

Q: Did any of them catch him?

A: I never see any catch him inside the shed.

Q: Now, did Mr. Smith, Sydney, remain inside the shed, or did he come out?

A: He come out.

Q: How did he come out - walk out or run out?

A: He run out behind me.

Q: Run out behind you. Where you went when you came out the shed?

30

A: I was going to the next shed.

HIS LORDSHIP: Which shed is this you were going to?

WITNESS: Welding.



MR. ANDRADE: He said welding, M'Lord.

In the Supreme Court

Q: When Sydney Smith run out the shed, which direction was he running?

Prosecution  
Evidence

A: To the welding shed.

No. 3  
Ceaphas Laidford  
Examination  
2nd December 1975  
continued

Q: While he was running, did anything happen?

A: Yes.

10

Q: What?

A: See him fall on his face.

Q: Fall on his face?

A: Yes.

Q: Were these two men doing anything?

A: Yes.

Q: What?

A: Start to fling on Mr. Sydney Smith.

Q: Fling what?

A: Stone.

20

Q: Both of them?

A: Yes.

Q: Did any of those stones catch Mr. Smith?

A: Yes.

Q: Where?

A: His head.

HIS LORDSHIP: How many - one or more or one or what?

WITNESS: More than one; more than one. Around eight.

30

HIS LORDSHIP: Eight catch him in his head?

WITNESS: Yes.

In the Supreme Court

Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
2nd December 1975  
continued

HIS LORDSHIP: Throwing stones at him. Him fall down. Can you say how many stones caught him before he fell down?

WITNESS: Around eight.

MR. ANDRADE:

Q: Before he fell, you know?

A: Only one catch him before him drop.

10

HIS LORDSHIP: Do you know if that was the one which knock him down, and/or him fall down otherwise, than the stone knock him down?

WITNESS: I don't know.

HIS LORDSHIP: You don't know if is the stone knock him, which cause him to fall down?

WITNESS: I don't know.

HIS LORDSHIP: Alright, one minute; but when he fell down you said they were still throwing stones at him?

20

WITNESS: Yes.

HIS LORDSHIP: And how many more hit him?

WITNESS: About eight stones.

HIS LORDSHIP: About eight stones hit him, while he was lying on the ground?

WITNESS: Yes.

HIS LORDSHIP: Wait a minute. And about eight hit him?

30

WITNESS: Yes.

HIS LORDSHIP: You ask him what part of him the stone hit?

MR. ANDRADE: Yes.

HIS LORDSHIP: Can you say what part of Mr. Smith the stones hit, while he was on the ground?

WITNESS: Yes.  
 HIS LORDSHIP: Where the stones hit him?  
 WITNESS: Here. (Witness shows his right ear)  
 HIS LORDSHIP: Whilst deceased is on the ground,  
 the stone hit him on his ear - and  
 he shows his right ear.  
 10 MR. HAMILTON You asked him about the eight,  
 (Defence M'lord?  
 Attorney)  
 HIS LORDSHIP: Yes; that is what I thought I was  
 asking him. All of them hit him on  
 his right ear, or they hit him  
 anywhere else?  
 WITNESS: One hit him on his ears first, and  
 after him drop on the ground ... ..  
 20 HIS LORDSHIP: Hold on a minute. The first one  
 that lick him before him fall down,  
 do you know where that stone caught  
 him?  
 WITNESS: No.  
 HIS LORDSHIP: No - hold on a minute. That is the  
 first stone they threw before he  
 fell. He doesn't know where it hit  
 him.  
 MR. HAMILTON With respect, M'lord, the first  
 stone - one caught him before he  
 dropped?  
 30 HIS LORDSHIP: I don't know if the stone that knock  
 deceased caused him to fall down.  
 When deceased fell, both accused throw  
 stones at him.  
 MR. HAMILTON: Before that, M'lord, you had been asking  
 him if any of them had hit him before  
 he fell and he said yes, one hit him  
 and he pointed to his head - he touched  
 his head.  
 HIS LORDSHIP: No, Mr. Hamilton.  
 40 MR. HAMILTON: Yes, M'lord.

In the Supreme Court

Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Examination  
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continued

HIS LORDSHIP: You can ask him about that. I don't have any such thing at all. What I gather he is saying, he is running away from him, you know, the first stone that hit him, when Mr. Smith is running - You don't know where that stone hit him and you can't say if that is the stone which hit him and caused him to fall down; but when he is on the ground now, you say the first stone that hit him, hit him on his right ear?

10

WITNESS: Yes, sir.

HIS LORDSHIP: That is what I thought he said. Then you were asking if any stone hit him anywhere else, Mr. Andrade, I think.

WITNESS: In the head.

HIS LORDSHIP: All of them hit him in the head?

20

WITNESS: Yes.

MR. ANDRADE:

Q: Now Ceaphas, did you see where they got the stones from?

A: No.

Q: You didn't see where they pick up the stones from?

A: No.

HIS LORDSHIP: You don't know? What you are being asked, if you saw where the two accused men got the stones they were throwing at Mr. Smith, while he was on the ground - where they pick them up from?

30

WITNESS: A place near to where Mr. Sydney Smith fall.

HIS LORDSHIP: What is it, a stone-heap or lying around the place or-what?

WITNESS: Scattered around.

HIS LORDSHIP: Stones scattered around the place?  
You didn't see these men picking up  
any stones or - what?

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WITNESS: Yes.

MR. HAMILTON: I don't know what that 'yes' is.

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HIS LORDSHIP: Did you see Daley and Meggie pick  
up the stones off the ground and  
throw them?

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continued

10

WITNESS: Yes.

HIS LORDSHIP: Just one moment, please, Mr. Andrade.  
Mr. Laidford?

A. Yes sir.

HIS LORDSHIP: We were not there, you know, so not  
because I ask you you are going to  
say yes. If it is so say yes, if  
it is not so then tell us what  
happened. Yes, Mr. Andrade.

20

MR. ANDRADE: Now, Cephas. A. Yes, sir.

Q. When they were stoning Mr. Smith,  
you see, whilst he was on the ground,  
how far away were they? Point it  
out. From where you are to where?

A. From here to ... (indicating)

HIS LORDSHIP: Around where? A. About where...

HIS LORDSHIP: Sergeant, please go down. Stop the  
sergeant when he reaches where Mr.  
Smith was, you see. When he reaches  
where the men were throwing the  
stones.

30

A. Around there. ... (indicating) ...

MR. ANDRADE: I would say about twelve yards.

HIS LORDSHIP: How many do you say gentlemen?

MR. ATKINSON: It's about three-quarter lengths.

HIS LORDSHIP: Are these eighteen inch things up here.

In the Supreme Court MR. ANDRADE: Supposed to be

Prosecution MR. ATKINSON: Two-by-two.  
Evidence

No. 3 HIS LORDSHIP: .... (Counting) Twelve, thirteen  
and thirteen twos, twenty-six  
Cephas Laidford feet. About twenty-seven feet,  
Examination twenty-eight feet. How many you  
2nd December 1975 say?  
continued

MR. HAMILTON: I don't have a clue, sir. I  
measure it by a cricket pitch, 10  
M'Lord. Three-quarter.

HIS LORDSHIP: Accused men were from deceased  
when throwing stone at him ...  
(writing).

MR. ANDRADE: Now, Cephas. A. Yes, sir.

Q. When they were stoning Mr. Smith,  
you see while he was on the ground  
was he on his belly or on his  
back?

A. On his belly. 20

HIS LORDSHIP: Deceased was lying on his belly  
whilst men were stoning him?

A. Yes.

MR. ANDRADE: Now, when Mr. Smith, the deceased,  
fell, did he fall on his face,  
his side or his back, which one?

A. On his face.

Q. Now, where he fell, you see, was  
there anything there at the spot?  
Anything was there? 30

A. Yes.

Q. What?

A. A little wall, like.

HIS LORDSHIP: Like a what?

MR. HAMILTON: A wall.

HIS LORDSHIP: Any argument about this, gentlemen?

MR. HAMILTON: I don't wish him to be led at this stage.

MR. ANDRADE: Now, how you call it, a wall?

A. Yes.

Q. What they use it for?

A. Just up the hill.

10 Q. Run what? A. Tractor

HIS LORDSHIP: Tractor run go up where?

A. Against the wall.

HIS LORDSHIP: When the tractors fix they run go up against the wall?

A. Yes.

HIS LORDSHIP: What do you mean? They go beside the wall or they go on top of the wall?

A. On top of the wall.

20 HIS LORDSHIP: So, you can get underneath the tractor then?

A. Yes.

HIS LORDSHIP: I see. Yes?

MR. ANDRADE: Now, tell me something. Did any of those stones that they were throwing while you were outside did any of them catch you?

A. Yes, sir.

Q. Where? A. Me left side.

30 HIS LORDSHIP: Well, how many, first of all.

A. One catch me here.

HIS LORDSHIP: One of the stones that the men were throwing caught you on your left side?

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continued

A. Yes.

MR. ANDRADE: And what happened to you? Anything? Where the stone lick you, man, anything happen to you?

A. Yes, sir. Was feel it hurting me, sir.

HIS LORDSHIP: What?

A. I feel it hurt me, sir.

HIS LORDSHIP: It is still hurting you now? 10

A. Not now.

HIS LORDSHIP: You went to doctor? A. Yes.

MR. ANDRADE: What size stone they were throwing? Show us the size. About how big?

A. (Witness indicates)

HIS LORDSHIP: I am sorry. I missed that altogether. Show us again, please what size stone.

A. (Witness indicates) 20

HIS LORDSHIP: About the size of your two fists there?

A. Yes.

MR. ANDRADE: What kind of stone? Marl stone or rockstone?

A. Rock stone.

Q. Now what happened after they stopped stoning him? Where did they go?

A. They turn. 30

Q. Huh? A. They turn go out the gate.

Q. Did you see how they leave how they left the place?



- A. Yes.
- Q. How? A. Like going out the gate and stand up. After they leave from where-they going out like them going out to the gate and them stand up.
- Q. Did they say anything?
- A. Yes.
- Q. What they said?
- 10 HIS LORDSHIP: Wait. When are they talking? What time them talking? Them done the stoning or during the stoning them talk?
- A. After them fling the stone.
- HIS LORDSHIP: Huh. Huh. A. Them ...
- HIS LORDSHIP: Like them going to the gate?
- A. Yes.
- HIS LORDSHIP: That is the time them talk.
- A. Them stand up looking at Mr. Smith.
- 20 HIS LORDSHIP: You stand up there looking at Mr. Smith?
- A. Yes.
- MR. ANDRADE: Now, you said that they talk. What they say? Which one of them spoke?
- A. Daley, sir..
- Q. What he said?
- A. Say, "Me going out now. A soon come back".
- 30 HIS LORDSHIP: "A going out now...." A. Yes.
- HIS LORDSHIP: "...A soon come back". Yes?

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- MR. ANDRADE: Anything else? That was all he said?
- A. Yes, sir and after ...
- Q. And what happened after?
- A. And him was looking. Mr. Sydney Smith was crying
- Q. Now, how did they leave? Did they remain or did they leave? 10
- A. Them leave from there and go out.
- Q. Go out where?
- HIS LORDSHIP: Them walk 'way or what?
- A. Out to the bike.
- MR. ANDRADE: Did they mount the bike and left?
- A. Yes, sir.
- Q. Two bikes? A. Yes, sir.
- Q. Now did you do anything after they left? 20
- A. I was ...
- HIS LORDSHIP: You was what?
- A. I was looking at Mr. Sydney Smith meanwhile them was going.
- MR. ANDRADE: Did you speak to him or not?
- A. Yes, sir.
- Q. To who, Mr. Smith?
- A. Yes, sir, was calling him.
- Q. Did he answer you?
- A. No, no. 30
- Q. Apart from talking to him, did you do anything to him?

A. No, sir.

Q. Huh? A. No, sir.

Q. Did you touch him? A. Yes.

Q. What you did? A. I hold him.

HIS LORDSHIP: Hold what part of him?

A. His shoulder, here. Both shoulder.

10 MR. ANDRADE: And did you notice anything about Mr. Smith?

A. Yes.

Q. What you notice, man?

A. Notice that him did dead.

A. What you see?

A. See that him two eyes close and I put him down.

Q. You see anything wrong with his head?

A. Yes.

20 HIS LORDSHIP: Wait. Q. Well, tell us.

HIS LORDSHIP: Yes, what was wrong?

MR. ANDRADE: What you see wrong with his head?

A. I see the blood was coming from here ... (indicating)

HIS LORDSHIP: Right ear? A. Yes.

MR. ANDRADE: Plenty or little bit?

A. Just little amount.

HIS LORDSHIP: Just a little amount? A. Yes.

MR. ANDRADE: Only there blood was coming from?

30 A. There I see. Q. Huh??

A. There I see.

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HIS LORDSHIP:	There I see.	
MR. ANDRADE:	There you see. Now, did you anywhere after?	
A.	Yes, out the yard.	
Q.	You went?	
A.	To the welding shed.	
Q.	Did you leave the property?	
A.	Yes.	10
Q.	And where you went, man?	
A.	May Pen.	
Q.	Where in May Pen? A. Police station.	
Q.	Huh, huh. And did you report to the police?	
A.	Yes, sir.	
Q.	Did the police go back with you?	
A.	Yes, sir.	
Q.	To the spot? A. Yes.	20
Q.	Now, tell me, was that the first day you were seeing those two men or did you see them before?	
A.	Me see him before.	
Q.	Where?	
A.	Was riding the bike pass through.	
Q.	Pass through where? A. Works yard.	
HIS LORDSHIP:	To work what? A. Work yard.	30
HIS LORDSHIP:	Works yard? A. Yes, sir.	

MR. ANDRADE: That's on the property? A. Yes.

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Q. And how often before you saw them?  
How many times?

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A. Around three times.

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Q. Did a doctor also visit the scene?

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A. Yes, sir.

Q. That same day? A. Yes, sir.

10 Q. Now, when - let's go back to the  
shed, you see.

A. Yes.

Q. When they started stoning Mr. Smith ...

A. Yes, sir.

Q. ...in the shed ... A. Yes, sir.

Q. ...did you see Mr. Smith with any  
weapon at all?

A. No, sir.

Q. He had any at all?

20 A. No, sir.

Q. Mr. Smith attack them?

HIS LORDSHIP: One moment. Wait. A. No.

HIS LORDSHIP: I am not sure I am understanding you.  
When Mr. Smith was running out  
through - the carpenter's shed had  
only one door to get out?

A. Yes, sir.

HIS LORDSHIP: So when he was running out of the shed  
where were the two accused men?

30 A. Outside.

HIS LORDSHIP: Outside where?

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A. Outside the door.

HIS LORDSHIP: How far? So, they had moved away from the door then?

A. Yes, sir.

HIS LORDSHIP: How far away from the door at that time?

A. Around there.

HIS LORDSHIP: To where? A. Around there so. 10

HIS LORDSHIP: To where counsel is? A. Yes, sir.

HIS LORDSHIP: About how far would you say, gentlemen?

MR. HAMILTON: Seven, eight yards.

HIS LORDSHIP: Seven, eight yards. How Mr. Smith was running, slow, fast or what?

A. Slow, sir. 20

HIS LORDSHIP: He was running slow? A. Yes.

HIS LORDSHIP: Yes?

CROSS-EXAMINATIONCEPHAS LAIDFORD: CROSS-EXAMINATION - MR. HAMILTON

MR. HAMILTON: Mr. Laidford, before I commence my questions of you I wish to ask you to reflect on the evidence you have given.

A. Yes.

Q. And to tell me if there is any mistake that you might have made in your evidence that you would like to correct. You understand the question? 30

A. Yes, sir.

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Q. In other words all that you have said so far, up until now ...

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A. Yes, sir.

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Q. ... Any mistake in dey that you would a like change before you go on?

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A. I don't believe so.

10 HIS LORDSHIP: Huh? A. I don't believe so.

MR. HAMILTON: You don't believe so.

HIS LORDSHIP: Yes?

MR. HAMILTON: Have you told his Lordship and the jury any deliberate lies that you would like to correct?

A. No, sir.

20 Q. My first suggestion to you, Mr. Laidford, and I want you to understand me clearly, on the 22nd of April this year not one stone was thrown by any of these two men. Do you hear what I am saying?

HIS LORDSHIP: Do you agree with that?

A. No, sir.

30 MR. HAMILTON: You don't agree. My second suggestion to you, Mr. Laidford, is that the deceased, Sydney Smith, was never hit by any stone. You understanding me? You understand what I am saying? If you don't understand, mek sure. I am saying not one stone lick him in his head.

A. I sure that it lick it.

HIS LORDSHIP: You are sure that stone hit him in his head?

A. Yes, sir.

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MR. HAMILTON: You are sure. My third suggestion to you, sir, is this story about the accused being stoned to death ...

HIS LORDSHIP: The accused?

MR. HAMILTON: ...to death. Sorry, the deceased being stoned to death is something that has been made up. You understand what I mean by mek up?

10

A. I don't hear about it, sir.

Q. It's a lie which has been made up.

HIS LORDSHIP: Don't know about that ... (writing).

MR. HAMILTON: My fourth suggestion to you, sir, is that Sydney Smith met his death by tripping and falling and hitting his head on the same wall that you don't know what we talking about, on the same wall. You hear what I am saying? The same thing you call a wall.

20

HIS LORDSHIP: Hold on a minute now, that's about four questions in one. First of all, can you say ...

MR. ANDRADE: Not only that it's objectionable. That's a question for the doctor.

HIS LORDSHIP: Well, let him say it. First of all, did Mr. Smith trip? Can you say? Do you know if he tripped?

30

A. No, I don't know of it.

HIS LORDSHIP: You don't know if he tripped. You know if him buck him toe?

A. I don't know if him buck it but I see him fall on his face.

HIS LORDSHIP: You don't know if him buck him toe, you only see him fall on his face?

40



A. Yes.

HIS LORDSHIP: Next question is, did he drop and lick his head on the wall?

MR. HAMILTON: Yes, the same thing you call wall.

A. Never see that him drop and lick him head.

10 HIS LORDSHIP: You never see him drop and lick his head?

A. No.

20 MR. HAMILTON: Before I go any further, you know, me next suggestion to you is that you not as silly or stupid as you trying to make out, you know. You have much more sense that you trying to make out. You agree with me or are you as silly as you look? All right. I going to tell you why I say that. I am not here to embarrass you. I am not trying to embarrass you but this is a murder case. Don't you know that the wall, what you call 'wall-like' is a ramp? Don't you know the word 'ramp'?

A. Yes.

HIS LORDSHIP: You know the word, 'ramp'?

A. Yes.

30 MR. HAMILTON: He has answered the two suggestions, M'Lord. I really put two to him, that the man fell and hit his head.

HIS LORDSHIP: He said no.

MR. HAMILTON: Now, that ramp is a thing made of concrete?

A. Yes.

Q. Right? A. Yes.

Q. And you have two - the two - the concrete starts at the level of the

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- Q. (contd) ground and goes higher, going up so that the vehicles ride - drive up on it and the mechanics can stay underneath and work on the vehicle?
- A. Yes.
- Q. Isn't that it? A. Yes.
- Q. So, you have two concrete tracks which go up off the ground, correct? 10
- A. Yes.
- HIS LORDSHIP: Up? A. Yes.
- MR. HAMILTON: Don't whisper. Talk up. Each track, concrete track I will call them is about two feet, call it two feet wide? Huh, you agree? About eighteen - I am not pinning you - eighteen inches to two feet wide, each of them? 20
- HIS LORDSHIP: Do you know, Mr. ?
- A. No, because I don't measure them.
- HIS LORDSHIP: You don't know because you don't measure them.
- MR. HAMILTON: All right, there is a space between the two tracks though, right?
- A. Yes. Q. Huh? A. Yes.
- Q. When?
- HIS LORDSHIP: Sorry. What is this, an empty space? 30
- A. Yes.
- Q. Yes.
- HIS LORDSHIP: They are not full up with earth or anything like that?
- A. No, sir.

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MR. HAMILTON: When the deceased, Sydney Smith, fell, when he end up he go, as you said, on his face, did he not lie across the ramp; the two, what you call the two tracks of the ramp with his feet across one section and his chest and head across the other section?

10 A. Not across, just ... (indicating)

HIS LORDSHIP: You mean not across, about so, from here to here. Wait a minute, there are two tracks, one so and one so?

A. Yes.

HIS LORDSHIP: What the gentleman is putting to you is that when he fell he - his feet were across one and his head was across one. Do you agree with that or not?

20

A. His feet here and his chest here. His head never ...

HIS LORDSHIP: His head never reach across the other ramp?

A. No.

MR. HAMILTON: Oh.

HIS LORDSHIP: Wait a second ... (writing)... but his head never reach the other one. So what then, his head go down in the empty space in between?

30

A. No, just head.

HIS LORDSHIP: Him head reach the other side then? Him head reach the other region on the other side?

A. No, it just reach so.

HIS LORDSHIP: I don't understand you at all.

MR. HAMILTON: I see an example we can use here, sir; two books. (Picks up a rule and a piece of stick.) Can you see what I am showing him?

40

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HIS LORDSHIP: Yes.

MR. HAMILTON: Come down and show us down here. This would be the man. Show us how him lie down now.

MR. ATKINSON: The rubber is him head and the lead his feet.

A. Out so and him lie down here.

MR. HAMILTON: Put it to lie down. 10

A. (Witness demonstrates.)

HIS LORDSHIP: So the head actually touch on the other part?

A. Yes.

HIS LORDSHIP: What about his chest, did it reach over there?

A. No, sir. Here so.

HIS LORDSHIP: Oh, the chest in the middle?

A. Yes, sir.

MR. HAMILTON: Thank you. Go back for me. So his head did reach across to the other concrete track? 20

A. (Witness shakes head.)

HIS LORDSHIP: Don't bother ask him again.

MR. HAMILTON: All right. That's your understanding, M'Lord?

HIS LORDSHIP: That is what I understand. His head go across the other side where he showed there.

A. Across the other. 30

MR. HAMILTON: Now, my next suggestion to you, sir, is that - well, before I put the suggestion let me ask you - Mr. Sydney Smith was the ranger on that property, wasn't he?

A. Yes.

Q. Right? A. Yes.

HIS LORDSHIP: A little louder, please Mr. Laidford.

MR. HAMILTON: He is a ranger, he is entitled to carry a gun?

HIS LORDSHIP: Him can carry gun with him?

A. I don't know.

10 HIS LORDSHIP: You never seen him carry a gun?

A. Yes.

MR. HAMILTON: Forget whether him entitled. You see him with gun, long gun, shot gun? Aah?

A. Yes.

Q. Where he keep the gun? Isn't it over at the factory?

HIS LORDSHIP: Do you know where he keep the gun?

A. Down the factory.

20 MR. HAMILTON: Don't whisper man. Talk no, man. Him keep the gun where?

A. Down the factory.

HIS LORDSHIP: Sorry, what did he say? Where did he keep the gun?

A. In the factory, sir.

HIS LORDSHIP: In the factory, inside the factory.

A. Yes, sir.

HIS LORDSHIP: Deceased kept the gun inside the factory.

30 MR. HAMILTON: When you leave the shed - follow me closely now when you leave the carpenter shed where Mr. Sydney Smith was and you head in the direction in

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MR. HAMILTON: which he was going, would  
(contd) that take you towards the  
factory? Don't mumble man, yes  
or no?

HIS LORDSHIP: Huh?

A. No, sir.

MR. HAMILTON: Huh?

A. No, sir.

Q: So, I am suggesting to you, it is not true 10  
that when you come out of the shed, your  
carpenter shed, and you head, you go in  
the direction that Mr. - in other words,  
in the direction, towards the, where the  
ramp is, you are going in the direction  
towards the factory?

A: Nothing in the shed I was going ...

HIS LORDSHIP: Not you; Noel - what he is 20  
asking you is a general  
question. As you run from the  
carpenter's shed in the direction  
that the deceased man was  
coming, if you continue, go on,  
would he come to the factory?

WITNESS: No, sir.

HIS LORDSHIP: He wouldn't come to the factory?

WITNESS: No.

MR. HAMILTON:

Q: Alright, O.K. I am going to ask you, suppose 30  
you were in the welding shed and you wanted  
to go to the factory, would you go back  
towards the carpenter's shed, or would you  
go away from the carpenter's shed?

A: Would have to go away from the carpenter's  
shed.

Q: Tell me this too, if you were going in the  
- if you are in the carpenter's shed -  
forget about gun, going for gun or anything  
- you are in the carpenter's shed and you

Q: wanted to go to the factory, would you have  
(ctd) to pass the welding shed?

A: No.

Q: You don't pass the welding shed?

A: No.

Q: I don't mean you have to go right beside it.  
Would you have to pass the ramp?

10 A: No; you don't pass the ramp, but you go to  
the factory.

Q: Now let us - so now that you understand what  
it is that you had - I was asking you, one  
other thing: didn't Mr. Sydney Smith, when  
he ran from the property, from the carpenter's  
shed, did he in any way indicate that he was  
going for his gun?

A: I never know.

HIS LORDSHIP: You never hear him say so?

20 WITNESS: No.

MR. HAMILTON:

Q: Alright; now, Mr. Laidford, isn't it a fact  
that both these men were entitled to pass  
through that property?

A: I don't know, sir.

Q: Did you have - Had you not seen them riding  
through that property prior to this day?

A: Yes.

30 HIS LORDSHIP: He said so; he said he saw them  
about three times.

MR. HAMILTON: Much obliged.

Q: Do you know a place called the K.V. Line?

A: I don't know.

Q: You don't know?

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A: No.

Q: How long you working on the property?

A: Many years.

HIS LORDSHIP: Many years - about how many years?

WITNESS: Around thirty-five.

HIS LORDSHIP: Around thirty-five years?

WITNESS: Yes.

10

MR. HAMILTON:

Q: You don't know a tower, an electrical tower, that carries electricity from Old Harbour Station, that comes to a place - an electrical tower that is somewhere on that property - Public Service place, where electricity is generated - if you understand me ...?

A: It is an electrical - I don't know how to describe it.

20

Q: It is the tower. You know what I mean by tower?

A: No.

Q: You don't know any electrical place out there on the property?

A: I don't know, but I see them passing with the trucks, pass through the works, there.

HIS LORDSHIP: Who ask you anything about that?

MR. HAMILTON:

Q: You see Public Service truck pass through there?

30

A: Pass through the works.

Q: Alright, so now, I am suggesting to you that these men have been, since you have been working there, they have been working with the electrical company which made them pass up and down that property daily?



A: I don't know if they was working.

Q: You see them, though?

A: Yes; passing.

Q: Good; but you don't know if dem working?

A: No.

10 Q: I am further suggesting to you that you have an employer there, a manager, a man in the managerial position named Mr. Lawson?

A: Yes, sir.

Q: What is he - the factory manager?

A: Yes, sir; book-keeper.

Q: He is the book-keeper?

A: Yes.

Q: Sydney Lawson - right?

A: Yes, sir.

20 Q: I am suggesting to you that you know that Mr. Lawson has given them permission to work on that property - to pass through the property; not work on?

A: I don't know.

Q: You don't know? You swear that, Mr. Laidford?

A: Yes; I don't know.

Q: And just to round this off, I am suggesting to you that in April of last year, the same month there, they had been given permission to cut fence post on that property?

30 A: No, sir; I never know.

Q: You don't know; alright.

A: (no answer)

HIS LORDSHIP: April of last year - April, '75?

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continued

MR. HAMILTON: Yes, sir; the same month there,  
M'lord.

Q: Now, tell me this, you saw them before that  
day, before the 22nd of April, riding up  
and down, passing through in that very week  
- I believe?

A: Yes.

Q: You saw them with axes?

A: Yes, sir.

10

HIS LORDSHIP: Both of them with axes?

WITNESS: No; one axe.

MR. HAMILTON:

Q: One axe between the both of them?

A: Yes, sir.

Q: And cutlass?

A: I never see them with any cutlass; only  
axe.

Q: Now, didn't you, at some stage, discover  
that these men had cut over three hundred  
fence post on that property, prior to the  
22nd, the day that they came there -  
in other words, before the 22nd of April  
- remember the 22nd of April is the day  
that Mr. Smith died? Before that day,  
didn't you discover that these men had  
cut over three hundred fence post?

20

A: No.

HIS LORDSHIP: I don't know if he understands  
that. How did he discover it  
- somebody tells him or - what?

30

MR. HAMILTON: In any event we will come to it.  
I am going to tell him how he  
knows, sir.

Q: Were you not in the factory compound, when  
fence post - I won't give you any fixed  
number - when fence posts were brought to  
the compound and left there?

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A: Yes.

Q: I want to be more specific. One or two days before the 22nd - I want you to bring your mind - I don't want to talk about generally fence posts being brought there. Two days or so before the 22nd, weren't you in the compound when a whole heap of fence posts were brought there and put down in the factory yard?

10 A: Yes.

Q: But you don't know who cut them?

A: No.

Q: So, it is not a case that these men were trespassers on this place; you have seen them coming on, travelling up and down, within that very week. Prior to Mr. Smith's death, you saw them riding up and down quite freely through the property?

20 A: I see them riding, pass through the Thursday.

Q: Alright, O.K.; now, let us come to the 22nd. I am suggesting to you that when the men came up to the shed - first of all, you were doing the cooking, weren't you?

A: Yes.

Q: Didn't you have a cutlass in your hand, cutting up the chicken?

A: No.

30 Q: I am suggesting that when the men came up, the first thing they said was, very politely, "Who is the headman?"?

A: (no answer)

HIS LORDSHIP: Well hold on a minute. He must agree with you on one point.

MR. HAMILTON: Alright; I will leave out the politeness.

HIS LORDSHIP: Did he ask you who was the headman.

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MR. HAMILTON: The first thing was said - who is the headman here?

WITNESS: I never hear it.

Q: All you hear is 'want money'?

A: Yes.

Q: Whereupon - no, I am sorry. The question was not 'who was the headman'; they asked Mr. Smith, "Are you the headman? Did you hear that?"

10

A: No, sir; I never hear.

Q: No? And that Mr. Smith said yes - did you hear that?

A: I never hear that.

Q: When they came up, wasn't Mr. Smith sitting?

A: No.

Q: I am suggesting ... ..

HIS LORDSHIP: The deceased you are talking about; because there are two Mr. Smiths.

20

MR. HAMILTON: Quite right, M'lord.

Q: Mr. Sydney Smith, the deceased, was not sitting?

A: No.

Q: Was he close to you?

A: Yes.

Q: So, if any conversation went on between him - he and the men you should have heard?

30

A: Yes.

Q: You never saw him sitting on a stone in the shed?

A: No.

Q: After Mr. Smith said 'yes', did you not hear one of the accused, Daley, to be exact, ask, "Where is the wood?"?

A: No; I never hear.

Q: When the men came up, isn't it a fact, Mr. Laidford, when they came up to the door, both of them came up to the door without anything in their hands - isn't that a fact?

A: No, not a fact.

10 HIS LORDSHIP: Him (Pointing to the accused, Daley)

WITNESS: Not a fact.

MR. HAMILTON:

Q: When they came up to the door, did they have anything in their hands?

A: Yes.

HIS LORDSHIP: Let me see if I am getting you correct. Are you saying that when these two men came up to the door they already had the stones and iron in their hands?

20 WITNESS: Yes.

MR. HAMILTON:

Q: So, is not a case that they turned around and picked up the stones in front of the shed?

A: I never see them turn up - when I see them came and call to Mr. Sydney Smith, one ... ..

HIS LORDSHIP: When they call to him first, you didn't see them pick up the stone?

WITNESS: No.

MR. HAMILTON:

30 Q: Alright ... ..

HIS LORDSHIP: From they call to Smith you saw them with it?

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WITNESS: Yes.

MR. HAMILTON:

Q: Did you see their bikes where they had parked them?

A: Yes.

HIS LORDSHIP: Hold on a minute - no, no, what does that mean - are you speaking when they came up?

10

MR. HAMILTON: No; I don't mean it - When they came up where they parked and left it, wherever it was you said they had parked it? Some distance down. They had come up and left the bike and walked away from the bike.

HIS LORDSHIP: I don't know if he is saying that.

MR. HAMILTON: He eventually saw the bike when they were going. That is what I am asking. 'You had seen the bikes they had parked - not when they parked it'.

20

Q: Did you see the motor bikes that the men came there on that day; you took your eyes and see the bikes?

A: Yes.

Q: When you looked on those bikes, didn't you see the axe and a machete?

A: No; I never see it.

Q: Did you see the axe on the bike?

30

A: I never see the axe on that day?

Q: Machete?

A: No; not that day.

Q: I am suggesting to you, those men came up to the shed door with nothing in their hands. Do you agree or you don't?

A: I don't agree. I see them come, both of them had stone in their hands.

Q: I am further suggesting, what happened after the deceased said 'yes', he was the headman, Daley asked where is the wood?

A: (no answer)

HIS LORDSHIP: I think you put that already, He said no. You didn't hear Daley asking where is the wood?

10

WITNESS: No, sir.

MR. HAMILTON:

Q: I am suggesting to you that Daley then said - asked him again, did he remove the wood?

A: I never hear.

Q: That was when Mr. Smith said, "Go and talk with the manager"?

A: (no answer)

HIS LORDSHIP: You understand what is being suggested to you? You said he come and say he wants money. Well what is being put to you is that Daley said, "Where is the wood?".

20

MR. HAMILTON: Asked him why he moved the wood.

HIS LORDSHIP: Did you remove the wood; that is the question you asked. I gather that is the question. You see, he is talking about wood, asking Mr. Smith, did he take away the wood and Mr. Smith is saying to him he must go to the manager and talk to him.

30

WITNESS: Yes.

HIS LORDSHIP: Is that what happened; he wasn't talking about money?

WITNESS: No; he wasn't talking about wood. He was talking to him about money - money him come to him about.

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HIS LORDSHIP: Talk about he come for the money?

WITNESS: Yes.

MR. HAMILTON:

Q: And the next thing I want to suggest before I go any further is, that it was a long argument that went on out there between Smith and the two accused - first of all, it is not a question of as they come and say is the money ... the man tell you don't move and the accused men started to fling stones - they were - they started out there arguing for a long time?

10

A: No, sir; I never hear them arguing.

Q: And that what the gist of the argument was, the accused, both accused were asking him how him can come and remove the wood that they have cut. They take one week to cut and just as they about to pick it up, he come and remove it.

20

A: I never hear it.

Q: You never hear anything like that?

A: No.

Q: You know anything about ... ..

HIS LORDSHIP: Take one week to cut the wood?

MR. HAMILTON: Yes.

HIS LORDSHIP: Deceased had removed it?

MR. HAMILTON: Yes.

Q: You know anything about cutting fence posts?

A: (no answer)

30

HIS LORDSHIP: What does that mean; does he know how to cut them or - what?

MR. HAMILTON: I mean how long it would take to cut fence posts.

Q: You have any idea how long it would take a



MR. HAMILTON:

Q: person to cut over three hundred, four hundred  
(Ctd) fence posts - look for them, find them and  
stack them up - you have any idea how long  
it would take?

A: No.

Q: You think it could be done in one day?

A: No.

HIS LORDSHIP: He said he never know. How would  
he know. What sort of work you  
do, Mr. Laidford?

WITNESS: I work in the factory.

HIS LORDSHIP: Doing what?

WITNESS: Clean out the factory, and sisal.

HIS LORDSHIP: And - what?

WITNESS: And sisal.

MR. HAMILTON:

Q: So you only cut sisal; you no cut fence post?

A: No.

HIS LORDSHIP: Did he say cut?

WITNESS: Clean out.

MR. HAMILTON: I am asking him if he is a sisal cutter  
or a fence post cutter.

Q: Alright; I am saying there was the argument  
that was raging and that Mr. Smith was not  
giving them any answer, all him is there saying,  
"Why you no go talk to the manager?"

A: (no answer)

HIS LORDSHIP: Put it this way; you hear Mr. Smith  
say more than one time that both accused  
men must go and talk to the manager?

WITNESS: Yes, sir.

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HIS LORDSHIP: How many times did he say it?

WITNESS: He said it about three times.

MR. HAMILTON:

Q: And that what ... ..

A: (no answer)

HIS LORDSHIP: Wait, wait.  
Yes.

10

MR. HAMILTON:

Q: ... what the men were saying, they weren't asking for any money - at first they were asking to be allowed to move the wood from right there. Well, first of all, before I put that, wasn't the wood that they were talking about sitting down right beside the carpenter's shed?

A: I don't know.

HIS LORDSHIP: Did you see any wood beside the carpenter's shed?

20

WITNESS: Yes.

MR. HAMILTON:

Q: A whole pile of fence posts?

A: Yes.

Q: As a matter of fact, Mr. Laidford, don't dem same fence posts beside the carpenter's shed on the 22nd of April, if I go there now I would see the same fence posts sitting down same place?

30

A: Some is there, but it a long time it there.

Q: I am not talking about those; I am talking about the - those that came there before the tractor?

A: No, sir.

HIS LORDSHIP: You don't see them?

WITNESS: No.

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MR. HAMILTON:

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Q: Alright; I am suggesting to you, Mr. Laidford, that when they kept on saying, "Give us permission to come and tek up, because those are our fence posts", and Mr. ..man kept saying to go to the manager, it was then ...

10 HIS LORDSHIP: He is saying no, they are only talking about money, but he did hear the deceased saying about three times, they must go and talk to the manager.

HIS LORDSHIP: Did you hear any talk about fence post there, at that time?

WITNESS: No, sir.

MR. HAMILTON:

20 Q: So what dem was sending them to the manager for; what he keep telling him to go to the manager three times for?

A: Come to Mr. Sydney Smith about money.

HIS LORDSHIP: What they say about the money?

WITNESS: I come for the money now.

MR. HAMILTON:

Q: They don't even tell him what money they want?

A: I don't hear that.

30 Q: You swear you don't hear that: all the men saying, 'give me the money' and he is saying, 'go to the manager' and you don't know what money they are talking about?

A: No.

Q: Let me continue. You just going keep on saying ... .. I am suggesting to you that after they were asking about removing the wood and the man kept saying go to the manager, Daley then said, "Well pay us for the wood, if you not going to give us." That is when money came into it?

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A: (no answer)

HIS LORDSHIP: Did you hear Daley say that?

WITNESS: I never hear.

MR. HAMILTON:

Q: You didn't hear him say, 'pay us for the wood'?

A: (no answer)

HIS LORDSHIP: Then pay us for the wood if you  
are not giving it to us. 10

MR. HAMILTON: Yes, sir; that is it.

Q: Before I go any further, was any female,  
any woman present on the compound the day  
when these two accused came there?

A: Yes.

Q: Loise Ferron - was it Loise Ferron?

A: I don't know the right name.

HIS LORDSHIP: You don't know her right name?

WITNESS: No. 20

MR. HAMILTON:

Q: You don't know her right name?

A: Yes.

Q: But a woman was there?

A: Yes.

HIS LORDSHIP: Where was this woman; in the shed  
or outside?

WITNESS: At her home on the compound and  
came down.

MR. HAMILTON: 30

Q: Did she come down while the accused men were  
there?

A: No.

HIS LORDSHIP: When she came the men were not there?

WITNESS: No, sir; dem gone already.

HIS LORDSHIP: They had gone?

WITNESS: Yes.

MR. HAMILTON:

10 Q: Yes; so now, I am suggesting that after they started asking for the money, Sydney Smith got vexed and said, "As a matter of fact" - I apologise for the language - "tek yu rass clawt off the property."?

A: I never hear.

HIS LORDSHIP: Did Mr. Smith appear to be vexed to you?

WITNESS: No, sir.

MR. HAMILTON:

20 Q: The accused men said, "We are not leaving without we get some word about the money."?

A: I never hear them say that.

MR. HAMILTON: Mr. Smith picked up the stone on which he was sitting and say move from the door?

A. I never hear.

Q. To the both of them?

HIS LORDSHIP: This is see now, not hear now. Did you see Smith pick up the stone?

30 A. No, sir.

HIS LORDSHIP: Tell the accused man to move from the door.

MR. HAMILTON: They didn't move? A. (No answer)

Q. That is me next suggestion. You don't agree?

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Q. Where he flung the stone at them,  
through the doorway?

A. No.

Q. Huh? A. No, sir.

HIS LORDSHIP: That didn't happen? A. No, sir.

MR. HAMILTON: He then grabbed - try to grab the  
cutlass out of your hand saying,  
"Gi me the cutlass"?

10

A. No. No machete at all.

Q. Him call you Cephas?  
Him used to call you Cephas?  
Did Mr ...

HIS LORDSHIP: Wait.

MR. HAMILTON: Did Mr. Smith ... sorry. Did Mr.  
Smith call you Cephas?

A. Yes, sir.

Q. Him never say, 'Gi me the cutlass,  
yaa, Cephas". Nobody else in the  
place name Cephas?

20

A. Yes. Q. Only you one name  
Cephas?

A. Yes.

Q. He didn't say that and him try to  
grab it and you didn't give him?

A. Nobody no have no machete at all.

Q. Did Mr. Smith run inside, run into  
the store room?

A. Yes.

30

HIS LORDSHIP: Which Smith is that?

MR. HAMILTON: Mr. Sydney Smith? A. Yes.

Q. You don't tell us ... HIS LORDSHIP:  
Sorry, into the store room. Where  
is that?

- MR. HAMILTON: That is?
- A. In the same shed.
- Q. In the same shed. That's before he ran outside? A. Yes.
- Q. Yes, do you agree with me, Mr. Laidford, when this gentleman was questioning you - that this man run into any other room before him run outside, you never say so?
- 10 A. (No answer.)
- Q. Did you say so when this gentleman was asking you that Mr. Sydney Smith ran into this other room?
- A. Yes.
- Q. You said so?
- A. Him say beside the carpenter shed.
- Q. No, me not asking you what him say. I am asking you what you said. Did you?
- 20 A. Yes.
- Q. You said so? A. Yes.
- HIS LORDSHIP: You remember when that gentleman, Mr. Andrade was asking you question?
- A. Yes.
- HIS LORDSHIP: And you told us that he throw the iron?
- A. Yes.
- 30 HIS LORDSHIP: You told us that he, Mr. Smith, ran outside right away. When you were giving your evidence this morning you didn't mention that part about the deceased man going into the store room?
- A. No.
- HIS LORDSHIP: No.

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MR. HAMILTON: You did forget?

HIS LORDSHIP: Is that so? You did forget?

A. Yes.

MR. HAMILTON: Now, the reason I am suggesting to you is that he couldn't get away the cutlass from you, he ran inside the store room for some other weapon.

A. I didn't say so. 10

Q. I am not asking you ...

HIS LORDSHIP: Hold on now. You are saying the deceased man ran outside?

MR. HAMILTON: I am suggesting that the reason why you ran into the store room is because ...

HIS LORDSHIP: No, this man can't know what ...

MR. HAMILTON: A Jamaican man, you can know when a man looking weapon. O.K., but you know him went inside the store room? 20

A. (no answer.)

Q. I am suggesting that after he came from the store room the two men were still standing at the doorway and him say to them "Unoo 'tan dey 'tel me come back".

A. I never hear.

HIS LORDSHIP: Wait. Wait. Wait.

MR. HAMILTON: Sorry, sir. 30

HIS LORDSHIP: Well, let's put it this way first because it is double-barrelled. You say when he came out the storeroom where were the two men? Were they still at the door way or what?

A. Them move from the door way and dey out.



HIS LORDSHIP: They had then moved from the door way?

A. Yes.

HIS LORDSHIP: Did you hear the deceased man say to them, "Unoo stay dey..."

MR. HAMILTON: "...tan dey, 'tan dey 'til me come back".

HIS LORDSHIP: "...tan dey, 'tan dey 'til me come back"?

A. No.

MR. HAMILTON: Yes. What I understand your evidence to be, that these two men were stoning Mr. Smith inside the shed? Right?

A. Yes, sir.

Q. And he ran out through the same door through which they were stoning him? That is what he did?

A. Yes.

HIS LORDSHIP: Hold on now. He did seem to give us that impression at first. At what stage is he going into the store room now? Let's get that first.

A. Meanwhile the stone were flinging.

HIS LORDSHIP: Meanwhile the stones were flinging he went into the store room?

A. Yes, sir.

HIS LORDSHIP: Yes.

MR. HAMILTON: Yes, but ...

HIS LORDSHIP: I am sorry, I don't know if I am wrong but my impression is at the time when the deceased man is running out of the store room they are ...?

MR. HAMILTON: They are a bit away.

HIS LORDSHIP: Yes.

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MR. HAMILTON: But what I want to understand is the same door way through which the men were throwing stones, I don't mean they were throwing stones the same time. When he running from the store room it is the same place where they were stoning him?

A. No.

HIS LORDSHIP: How many doors the store room has?

A. One door to get from the carpenter shed into the store room.

HIS LORDSHIP: The store room and carpenter shed is inside each other?

A. Yes.

HIS LORDSHIP: So, when you are inside the store room now only one door?

A. Yes.

HIS LORDSHIP: So, when the men were stoning the deceased and he ran outside of the store room is the same door?

A. No, sir.

MR. HAMILTON: When he came out of the store room he came back into the carpenter shed, didn't he?

A. Yes.

Q. And when he came into the carpenter's shed, to leave the carpenter's shed he had to leave through the same door through which the men can stone him, isn't that right?

A. Yes, sir.

Q. Now, that carpenter's shed is made of zinc, right?

A. Yes, sir.

Q. And is attached to a huge, big building?

10

20

30

- |    |               |  |   |
|----|---------------|--|---|
|    | A.            | Yes, sir.  | In the Supreme Court  |
|    | Q.            | It is just a little section that is the carpenter's shed, am I right?  | Prosecution Evidence  |
|    | A.            | Yes, sir.  | No. 3   |
|    | HIS LORDSHIP: | One moment, please.  | Ceaphas Laidford<br>Cross-Examination<br>2nd December 1975<br>continued |
| 10 | MR. HAMILTON: | When the pictures go in ti will be made more understandable for the jury.  |   |
|    | HIS LORDSHIP: | The huge building.   |   |
|    | MR. HAMILTON: | And then to one little section of it, to one corner would be the carpenter's shed?   |   |
|    | HIS LORDSHIP: | You agree with that?   |   |
|    | A.            | Yes, sir.  |   |
| 20 | MR. HAMILTON: | Right. Now, the whole of that shed, suppose this was the carpenter's shed, running from here to that wall, go round inside, just in here, where the jury and everybody here, suppose this was the carpenter's shed, is it not a fact that those two outside walls, that wall and that wall are open, open right around and only the door, the one door way that you speak of; is one inside? |   |
| 30 | A.            | Yes.   |   |
|    | Q.            | In other words, you understand what I mean by open? You have a partition that comes up to may be about waist height going right around and you have a door; you have a partition running the - along the side sort of enclosing in the shed which would come to about the height of your waist but from there up is nothing, is open?  |   |
| 40 | A.            | Yes.   |   |

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- Q. And there is a door?
- HIS LORDSHIP: Does he agree? All I can hear is a little grumbling round here.
- MR. HAMILTON: You agree with that?
- A. Yes, sir.
- Q. Right. So, if you really ...
- HIS LORDSHIP: What it has, zinc or what?
- MR. HAMILTON: And that is made of zinc too? 10
- A. Yes.
- Q. That thing that goes around, sort of enclosed the carpenter's shed is made of zinc?
- HIS LORDSHIP: Right around? Sorry. Do you agree that from about your waist up would be open space?
- A. Yes.
- MR. HAMILTON: Now, you have said that the men were not - the men, when the deceased came out of the shed the men were a little away from the door way? 20
- A. (Witness nods)
- Q. But they were still in the vicinity of the door way, good. Right?
- A. Yes, sir.
- HIS LORDSHIP: That's when deceased is coming out?
- MR. HAMILTON: To leave that shed, to come out of that carpenter's shed it's quite possible to climb over any of that section that goes around which you agree with me is about waist height? In other words, to come out of that shed you don't have to come through the door way, do you agree? 30
- (sic)

A. No.

Q. Aaah? A. Only the doorway.

HIS LORDSHIP: You can't climb over the open section of the shed?

MR. HAMILTON: The open section, yu no could climb over it?

A. You would have to stand 'pon something to come over.

Q. Yes, I mean is there anything to stop you from climbing over?

A. Yes, the shed.

HIS LORDSHIP: What is there?

A. The end of the work bench was there.

MR. HAMILTON: But don't it would help you to stand upon the work bench to climb over?

A. Things are on the work bench.

HIS LORDSHIP: Things are on the work bench?

A. Yes.

HIS LORDSHIP: Oh, I see. He said you couldn't climb over at the time as things were on the work bench?

A. Yes.

MR. HAMILTON: Mr. Laidford, what is on the work bench?

A. Box and ...

HIS LORDSHIP: Talk up no, man.

A. Boxes and vessels in the water.

MR. HAMILTON: Are you saying, Mr. Laidford, that the boxes and vessels in the water block off the whole side that the man couldn't climb over any section to come outside rather than walk

In the Supreme Court

Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Cross-Examination  
2nd December 1975  
continued

MR. HAMILTON:  
(contd)

through the door? I want you to understand what I am saying. Imagine that this area here is the carpenter's shed, the door to come out, put it on one side, it's where that beam is. Look at that column, that is where the door way is. The whole of down here, the whole of up there is open and the whole of this long - the side here is open. Forget about the side where the door is. Concentrate on the other side that take you away from the tool shed. There is no way that that man couldn't climb out of that shed through that section to climb over to get out?

A. Yes but him just leave right through the door.

HIS LORDSHIP: So, he could have climbed over one of the sides?

A. Yes, sir.

MR. HAMILTON: Yes, but these men are the men that are raining down stones through that doorway and that is where he walk or run slow to come out, eh, Mr. Laidford? You see why I suggest to you at the beginning that not one stone was thrown by these men?

A. Yes.

Q. The entire day. Now, let me ask you something because I don't know if your Lordship saw it or my eyes were deceiving me. This morning did you point to your right of your head, hold it like this when you say that a stone lick the man in him head?

A. Yes.

Q. Did you do that this morning?

In the Supreme Court

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Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Cross-Examination  
2nd December 1975  
continued

A. Yes.

Q. Yes. Now, that stone, you say, lick him while him was running, the one that lick him here?

A. No.

HIS LORDSHIP: No.

10 MR. HAMILTON: All right, you didn't. Good. Was it the stone that lick him in his head that cause him to fall?

A. I don't see it.

Q. You what?

HIS LORDSHIP: I never see it. A. I never see it.

HIS LORDSHIP: Wait one moment.

MR. HAMILTON: You never see what? You never saw him fall or you never see the stone lick him in him head?

20 HIS LORDSHIP: What I gather he is saying now - your question was, was it the stone that lick him that caused him to fall and his answer was, I never see it. What I gather is that this morning you asked him was it the stone that caused him to fall and he said he couldn't say, to be more accurate. You can't say?

A. Yes.

30 MR. HAMILTON: When you say you saw these men throwing stones after the man fell and these stones throwing lick him in his head, Mr. Laidford, how close up to the deceased did they go?

A. From here so to about ...

Q. Oh, that was the distance he had pointed out.

HIS LORDSHIP: No, point it out again for me, please.

In the Supreme Court

Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Cross-Examination  
2nd December 1975  
continued

- A. From here ...
- HIS LORDSHIP: Huh. Huh?
- A. ... to there (indicating)
- HIS LORDSHIP: I gathered that is what he pointed out. That is as near as they got to him when they were throwing stones.  
(sic)
- MR. HAMILTON: Oh, I see. Did the men ever go any closer than that distance to the deceased? 10
- HIS LORDSHIP: Whilst he is on the ground?
- A. Yes.
- HIS LORDSHIP: They went closer than that to him.
- MR. HAMILTON: How close to him?
- A. About there so.
- Q. About there, where he is? Around where?
- A. Right where the officer is. 20
- HIS LORDSHIP: Whilst he is lying on the ground they went that close to him.
- MR. HAMILTON: So what they were doing then? They came and stayed that close up to stone him a little better?
- A. Yes, sir. To fling.
- Q. So, they came up that close to him and throw stones?
- A. Yes, sir.
- HIS LORDSHIP: They still flinging, eh? 30
- A. Yes, sir.
- MR. HAMILTON: Did they ever go any closer than this distance to him, than this distance there?



A. No.

Q. So, they never go right up to him and drop the stone in him head?

A. No.

Q. No. All right.

HIS LORDSHIP: Mr. Laidford, please come back for me at 2.00 o'clock.

In the Supreme Court

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Prosecution  
Evidence

No. 3

Ceaphas Laidford  
Cross-Examination  
2nd December 1975  
continued

10 MR. HAMILTON: M'Lord, could I just ask him one question before you go, just one question.

HIS LORDSHIP: Yes.

MR. HAMILTON: You said there was a pile of stones by where the deceased fell?

A. Don't see any pile of stones.

Q. All right, you said there were stones?

A. Scattered.

20 HIS LORDSHIP: Stones scattered? A. Yes.

MR. HAMILTON: Where the deceased fell?

HIS LORDSHIP: Is that so?

MR. HAMILTON: Did you say that?

HIS LORDSHIP: Where the dead man fall down or where?

A. In the works yard.

HIS LORDSHIP: In the works yard? A. Yes.

MR. HAMILTON: You say you saw all these stones hit him in his head, right?

30 A. Yes.

Q. When you picked up - when you went and looked on the deceased, did you see one cut on his head at all?

In the Supreme Court A. No. 12:49 p.m.

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Prosecution  
Evidence  
No. 3  
Ceaphas Laidford  
Cross-Examination  
2nd December 1975  
continued

HIS LORDSHIP: Please come back for me at 2.00 o'clock. Members of the jury, as learned counsel for the crown told you this morning in opening the case, when you sit there now you have now become judges of fact, you have to decide the truth of this matter, what happened. I can only direct you in law one way or the other so please do not let anybody at all speak to you about this case. Have no talks with anyone about the trial, you see because you realise how very important your side is. You have to decide about the truth of the matter so, please don't let anyone, no police, no witness or anybody in the case here discuss it or tell you what the case is about. Just tell them very politely you don't want to discuss it. Please remember that for me. 10

CROWN ATTORNEY: M'lord, with the agreement with my learned friend, I would like to interpose the photographer. He is here. Perhaps it would make the proceedings more helpful to the jury. 20 30

HIS LORDSHIP: Any objection?

MR. HAMILTON: I think it would be very helpful, M'lord.

HIS LORDSHIP: Very well.

In the Supreme Court NO. 4.

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Prosecution  
Evidence  
No. 4  
UTON MACFARLANE  
(interposed)  
Examination  
2nd December 1975

EVIDENCE OF UTON McFARLANE (interposed)

EXAMINATION-IN-CHIEF OF DETECTIVE CORPORAL U. MACFARLANE by MR. ANDRADE, (CROWN ATTORNEY) 40

Q: Your name is?

A: Uton MacFarlane.

Q: Detective Corporal, stationed at Mandeville Police Station?

A: Yes, sir.

Q: And you are a photographer?

A: Yes, sir.

10 Q: On Thursday the 22nd of April, this year - Tuesday, did you visit ... ..

HIS LORDSHIP: What time did you say; was any time given?

MR. ANDRADE: No, M'lord.

HIS LORDSHIP: I thought you had said time. With the rain coming down, I can't hear well.

MR. ANDRADE:

20 Q: Did you visit a scene in Inverness Property, in this parish?

A: Yes, sir.

Q: What time was that?

A: It would be about four to five o'clock.

HIS LORDSHIP: Four to five P.M.?

WITNESS: (No answer)

MR. ANDRADE:

Q: Were you given certain instructions?

A: Yes, sir.

Q: As a result did you do anything?

30 A: Yes, sir.

Q: What you did?

A: I took five photograph of the scene.

In the Supreme Court

Prosecution  
Evidence

No. 4

UTON MACFARLANE  
(interposed)  
Examination  
2nd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 4

UTON MACFARLANE  
(interposed)  
Examination  
2nd December 1975  
continued

Q: And you developed the negatives?

A: Yes, sir.

Q: Did you make photographic enlargements?

A: Yes, sir.

(Negatives shown to witness at this stage)

Q: Are those the negatives?

10

A: These are the negatives.

Q: How many?

A: Five.

MR. ANDRADE: I beg to tender them all together as Exhibit I in the case.

HIS LORDSHIP: Exhibit I.

MR. ANDRADE:

Q: And you made copies of the photographic enlargements?

A: Yes, sir.

20

Q: How many copies?

A: Eight copies.

MR. ANDRADE: I beg to tender them all as Exhibit II, M'lord. May the jury be distributed with copies of these?

HIS LORDSHIP: Yes.

MR. ANDRADE: And one for the defence counsel.

Q: Now, looking at the first photograph, what does this photograph depict?

30

A: It is a general view, showing the shed on the Inverness Property, sir.

Q: Photograph number two?  
 A: Photograph number two is showing a section of the bottom shed, where the deceased ran from, towards the top shed, sir, beside the ramp.

HIS LORDSHIP: Towards - what?

WITNESS: Towards the top shed, sir, beside the ramp.

10 MR. ANDRADE:

Q: Photograph number three?

A: Showing the body of the deceased lying between the ramp, sir.

Q: Four?

A: Showing the deceased lying between the ramp, also several stones around the body, sir.

Q: And five?

A: Five showing blood-stains circled in white, near the left elbow of the deceased, sir.

20 HIS LORDSHIP: Blood-stains circle ...?

WITNESS: Circle.

HIS LORDSHIP: In white?

WITNESS: White circle.

HIS LORDSHIP: Near to the elbow of - what?

WITNESS: The left elbow of the deceased.

MR. ANDRADE: Thank you.

HIS LORDSHIP: Let me ask you something: was this the position in which you saw the body when you got there?

30 WITNESS: Yes, sir.

HIS LORDSHIP: This was the position you saw it?

WITNESS: That was the position I saw it.

In the Supreme Court

Prosecution  
 Evidence

No. 4

UTON MACFARLANE  
 (interposed)  
 Examination  
 2nd December 1975  
 continued

In the Supreme Court

Prosecution  
Evidence

No. 4

UTON MACFARLANE  
(interposed)  
Examination  
2nd December 1975  
continued

CROSS-EXAMINATION

MR. ANDRADE:

Q: That was about five o'clock - between four and five?

A: Yes, sir.

(End of examination-in-chief) (Time:  
2:24 P.M.)

CROSS-EXAMINATION OF DETECTIVE CORPORAL  
UTON MACFARLANE BY MR. H. HAMILTON (DEFENCE  
ATTORNEY)

10

Q: The position in which you saw the body - am I correct, the head is resting on something like - there is a sort of something, making a sort of pillow or cushion under his head?

A: Yes, sir; I believe it is a crocus bag.

Q: Tell me something: the white that you circle, that you referred to in photograph five, am I correct, it can be seen in photographs three and four?

20

A: Yes, sir.

Q: The white, it is more a semi-circle?

A: A semi-circle.

Q: Yes, a semi-circle. It can be seen in three?

A: Yes, sir.

Q: And it can be ... ..

HIS LORDSHIP: Wait, wait.

30

MR. HAMILTON: I am sorry, M'lord.

HIS LORDSHIP: Will be seen in three?

MR. HAMILTON: In three and four.

Q: Now, have a look at it in four for me?  
(witness looks at photograph)  
In four that semi-circle in white is marking out an area of blood, blood-stained area.

A: Yes, sir.

Q: And when you saw the deceased, his head was nowhere near that white semi-circle?

A: No, sir.

Q: You saw it here?

A: Yes.

10 Q: Look at - I don't know if it is the best picture to look at - look at it in four, does it appear - look at it in four for me; does it appear as if just at the topmost end, the semi-circle, - you are following me? - that part of the concrete is eaten away or eroded away?

A: Yes, sir.

Q: Isn't that so?

A: Yes, sir.

20 Q: Just where the top part of the circle comes like this and goes around. Just that part of the concrete is eaten away or eroded?

A: Yes, sir.

Q: And just at where that point is, is where you see the blood-stain starting?

A: Yes, sir.

MR. HAMILTON: Thank you.

Time: 2:26 P.M.

MR. ATKINSON: No question.

30 MR. ANDRADE: No re-examination

May this constable be released? He is away from Mandeville.

HIS LORDSHIP: Yes.

In the Supreme Court

Prosecution  
Evidence

No. 4

UTON MACFARLANE  
(interposed)  
Cross-Examination  
2nd December 1975  
continued

In the Supreme Court

NO. 5.

Prosecution  
Evidence

EVIDENCE OF CEAPHAS LAIDFORD (Contd)

No. 5

MR. CEAPHAS LAIDFORD CALLED, STILL ON OATH Time:  
2:26 P.M.

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975

CROSS-EXAMINATION OF MR. CEAPHAS LAIDFORD  
BY MR. H. HAMILTON (DEFENCE ATTORNEY) (CONT'D)

Q: Now, may Mr. Laidford be shown one of the  
photographings - just to bring the jury  
to the picture? 10

HIS LORDSHIP: Where is the other one?  
Which are you showing him?

MR. HAMILTON: I am going to start at one.

Q: Look at this for me, Mr. Laidford, you  
see that thing there? Look at the picture,  
the first picture - right. With your  
permission, M'lord.

(Defence Attorney leaves his bench)

Q: (cont'd) You see the picture that you are looking  
at there, is this the part of the building  
that we are seeing here, is that the  
carpenter's shed, where you were, and Mr.  
Sydney Smith? 20

A: Yes.

HIS LORDSHIP: Have you seen that in the right  
hand corner? It is only a part  
of the carpenter's shed that you  
see there, and he agrees with  
that - is that right? 30

WITNESS: Yes.

MR. HAMILTON:

Q: The other building that you can see in the  
picture, where all the people are gathered,  
that would be the welding shed?

A: (no answer)



HIS LORDSHIP: What is that in the middle there -  
a cane cart?

MR. HAMILTON: This vehicle looking thing, this  
cart looking - this thing?

Q: What it is - what you use it for?

A: A tractor.

HIS LORDSHIP: Was it there at the time?

10 WITNESS: Yes, sir; it was there, about where  
it is in the picture at the time  
when Mr. Smith was running out of the  
shed.

HIS LORDSHIP: Yes.

MR. HAMILTON:

Q: And just in front of the welding shop, there  
is a ramp; the concrete ramp.

A: Yes.

20 Q: ... .. that the cars or vehicle, tractors,  
drive upon?

A: Yes, sir.

Q: Then in front, or behind the cart, you have  
a pile of wood posts?

A: Yes.

HIS LORDSHIP: Where is that; under the tree?

WITNESS: Yes.

MR. HAMILTON: Under the tree.

HIS LORDSHIP: Is that so?

WITNESS: Yes.

30 MR. HAMILTON:

Q: Look over to the right, beside the carpenter's  
shed, you see another thing looking like some  
kind of cart with wheels or something - you  
see it?

In the Supreme Court

Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

In the Supreme Court

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Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

A: Yes.

Q: Behind there, do you see a portion of post or wood piled up ...

A: (no answer)

HIS LORDSHIP: Where?

MR. HAMILTON: If you look very closely, M'lord, I don't know if you can see it from the other picture - yes; you see it in the other picture, in two. If you look in two you see it more underneath the other coconut tree.

10

Q: Have a look at two for me, please. In addition to the pile of wood in front of - underneath this big tree at this second picture, now turn the page, look on the coconut tree in the background, you see another bundle of wood or wood-pile - right?

20

A: Yes.

Q: Now, continue looking at number two for me. Which of these bundles of wood, or piles of wood was the wood that was brought there about two days before Mr. Smith died?

A: I don't know.

HIS LORDSHIP: You see a pile of wood under the tree in picture two, also look at it, you see a pile of wood under the tree there - not the coconut tree?

30

WITNESS: The guango tree.

HIS LORDSHIP: So the question is ... ?

MR. HAMILTON:

Q: Which one of these were brought there two days before, that you say the tractor brought? Was it the one under the tree or the one behind?

40

A: The one under the guango tree.

Q: Now one other thing: number two, I think, shows a better picture of what I was trying to describe with the carpenter's shed. That is the carpenter's shed with the big other building that is attached to it?

A: (no answer)

HIS LORDSHIP: The middle of it?

10 MR. HAMILTON: Just this section that you can see with the -

Q: Is the carpenter's shed?

A: Yes.

HIS LORDSHIP: You see a man standing there; is it a man's head?

WITNESS: Somebody is standing there; either a man or a woman.

HIS LORDSHIP: That is the - what shed?

WITNESS: That is the carpenter's shed.

20 MR. HAMILTON:

Q: Now, the rest of this building here is not the carpenter's shed - look at it, this big building here - what is that?

A: Is the fibre house.

Q: That is the fibre house?

A: (no answer)

30 HIS LORDSHIP: Let me ask you, Mr ..., this little piece here - you see the top open, you see the door, you see the open part there? That is as far as the carpenter's shed gate, top of it is open, and where the door - where the person is supposed to be, what is it - a door out of the carpenter's shed?

WITNESS: Yes.

In the Supreme Court

Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

HIS LORDSHIP: The carpenter's part only comes to the open part?

WITNESS: Yes.

HIS LORDSHIP: The closed up part is the carpenter's shed?

WITNESS: Yes.

HIS LORDSHIP: I see.

MR. HAMILTON:

10

Q: Remember you spoke about the store-room? You would have to go in further into the carpenter's shed and where you come to the wall inside the carpenter's shed would be where the store-room is?

A: Yes.

Q: Now you remember this morning, Mr. Laidford, I was asking - have a look at it -  
(witness looks at photograph)  
Well, you agree with me that the top of the thing was open; it came up to the height of the waist, and you agree with me, just as it was here - remember I kept asking you if the door was on one side, as it is here, if the man couldn't come out, he couldn't jump over the opening on the other side; remember I was asking you that?

20

A: (no answer)

Q: Look along the whole length of that now - are you saying ... ..

30

HIS LORDSHIP: Whole length of what?

MR. HAMILTON: The other side; not where the door is, M'lord. The door is on the other side. It would be the far side - like where that person's head is.

Q: You are following me, Mr. Laidford? Isn't it not possible ...

HIS LORDSHIP: In any event, I don't know how it is going to help you.

MR. HAMILTON: Well there would be - the defence is showing that there is no reason for him to be running away. That is the point I am getting at.

HIS LORDSHIP: I see. Let us put it this way, Mr. Laidford, I understand it that the bench with the bucket - and bucket was along that, the man couldn't jump over the place there - the side that is open - he couldn't jump over that side and get outside?

WITNESS: He could jump over there, but he never.

MR. HAMILTON: Oh, one other thing, Mr. Laidford, have a look at picture number three for me?

A: (looks at picture)

Q: When Mr. Sydney Smith fell, that is not how he ended up, how he is lying there now; in between the two ramp that is not how he ended up, how he is lying there now in between the two ramp; that is not how he fell?

A: No.

Q: Now, Mr. Laidford, you were telling His Lordship and the jury this morning, that when the men left they said words to the effect, 'Mi soon come back' or they soon come back?

A: Yes.

Q: You did say that?

A: Yes.

Q: I am saying - suggesting to you that the men said they were gone to get a transport to come back?

A: I never hear that.

In the Supreme Court

Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

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In the Supreme Court

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Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

Q: Now, remember just before you went for lunch, Mr. Laidford, I had asked you if you saw any injury - I don't remember what my exact words were, but I think it is either injury or cut to Mr. Sydney Smith's head - you remember me asking you that?

A: Yes.

Q: You remember you telling me no?

A: Yes. 10

Q: Isn't it not a fact that the only blood you saw on Mr. Sydney Smith was blood flowing out of his ear, out of his ear?

A: Yes, sir.

Q: Now, tell me this, Mr. Laidford, you saw those men throwing stones from the distance where this officer is to about here, at the deceased?

A: (no answer)

HIS LORDSHIP: Where to where? 20

MR. HAMILTON: The second - distance from this officer, because he said the men had come nearer.

Q: And you saw them throwing stones, you described as the size of this (counsel demonstrates)  
Would you say about a grapefruit?

A: Yes.

Q: And rock-stone, right?

A: Yes. 30

Q: And when he throw - each of them throw the stones, you see it lick the man in his head?

A: Yes, sir.

Q: And you saw that happen a total of nine times - eight times, while him on the ground, and the one that lick him before him drop?

A: (no answer)

HIS LORDSHIP: Hold on, Mr. Hamilton, I don't think he said that in it.

MR. HAMILTON: I am not misquoting him, sir.

10 HIS LORDSHIP: In the head, the first stone?

MR. HAMILTON: Yes, sir.

HIS LORDSHIP: How could he, Mr. Hamilton, because when he was asked if he saw one of the stones hit him before him drop - "I don't know if stone that knock the deceased could cause him to fall down".

20 MR. HAMILTON: No; he has already said, M'lord, - I think it was you he said it to - that the first stone that hit him was in the head. He said, no stone hit him anywhere else but his head.

HIS LORDSHIP: I gather that what he was saying, when the man fell down the first stone that hit him was in the head.

MR. HAMILTON: Well, if that is what he is saying, I stand corrected.

30 HIS LORDSHIP: He said both accused throw stones at him, whilst deceased on the ground. The stone hit him on the right ear. That is the first stone that took the accused whilst he was on the ground. What I gather him to say it is - was ... ..

MR. HAMILTON:

40 Q: The first stone, Mr. Laidford, that you take your eyes and see hit Mr. Smith - where it lick him?

A: I never see where the first stone hit him.

In the Supreme Court

Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

In the Supreme Court

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Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

HIS LORDSHIP: And at that stage, was he running or he was on the ground?

WITNESS: In the shed.

HIS LORDSHIP: Come out the shed; we are not in the shed anymore.

MR. HAMILTON: No stone hit him in the shed.

HIS LORDSHIP: He throw stone and iron, but no stone hit him in there. We are not talking about inside the shed. Let's get it straight: did you see any stone thrown by any of the men, hit Mr. Smith whilst he was inside the shed?

10

WITNESS: No.

MR. HAMILTON: You see, this comes from not talking up loud, you know, Mr. Laidford. Now, when he got outside now and is running away, one stone hit him?

20

A. (witness nods)

HIS LORDSHIP: The first stone that hit him now, when he is outside now, you can't say whether that stone hit him?

A. No, sir.

HIS LORDSHIP: What I am asking you, was he on the ground then or was he running then when that stone hit him?

30

A. On the ground.

HIS LORDSHIP: So you never saw any stone hit him then whilst deceased was running?

A. No.

HIS LORDSHIP: The first stone that hit him out there is when he is on the ground?

(sic)



A. Yes.

In the Supreme Court

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HIS LORDSHIP: Yes, Mr. Hamilton?

Prosecution  
Evidence

MR. HAMILTON: Well, sir, this is- I am of the impression that one stone hit him on the ground but he can't say where. Your Lordship may very well be clear but you crossed swords with me, M'Lord when I put mine.

No. 5

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

10 HIS LORDSHIP: I seem to have a different thing altogether. Now, let me understand you, Mr. Laidford, before Mr. Smith fell on the ground, outside now they were.

A. Yes.

HIS LORDSHIP: Anybody throw stones at him before him drop?

A. Yes, sir.

20 HIS LORDSHIP: Who were throwing the stones? Eh? The two men were throwing the stones at him?

A. Yes, sir.

HIS LORDSHIP: But you can't say whether the stones hit him before he dropped?

A. No.

30 MR. HAMILTON: Before I ask this witness one other question, M'Lord, I want to be guided by - does your Lordship have a note of this witness saying before lunch that a stone, while the deceased was running, a stone hit him but I cannot say if that caused him to drop?

HIS LORDSHIP: Wait a little now.

MR. HAMILTON: Just about that spot, M'Lord.

HIS LORDSHIP: Of course he said so. Whilst running

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CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

HIS LORDSHIP: I saw deceased fall on his face. Whilst deceased running I saw both men flinging stones on deceased. One caught him before he dropped.

MR. HAMILTON: Yes.

HIS LORDSHIP: I don't know if stone that knock deceased cause him to fall down. I am sure he said that and he goes on.

10

MR. HAMILTON: And that is why I was putting eight plus one equal nine.

HIS LORDSHIP: The first stones were inside the shed. These were all stones by Meggie.

MR. HAMILTON: But that's not what I am talking about now M'Lord.

HIS LORDSHIP: Whilst he is running I saw both men flinging stone at decease (sic) One caught him before he dropped. I don't know if stones that knock deceased cause him to fall down. When deceased fell both accused throwing stones at him and about eight were flung. That was first stone that hit deceased whilst he was on the ground. The stone that hit him on the ear.

20

MR. HAMILTON: Yes.

HIS LORDSHIP: That's what I have, Mr. Hamilton.

30

MR. HAMILTON: Now, Mr. Laidford, I come back to me nine now. You saw these men fling a total of nine stones?

HIS LORDSHIP: Is it in all you are saying that nine stones...?

MR. HAMILTON: No, a total of nine that hit him. It may be more according to him but it is nine that hit him in his head and when you pick him up and examine him you don't see one cut on his head, Mr. Laidford? Answer me. You saw one cut in his head?

40

A. Yes, on his head.

HIS LORDSHIP: Speak up. You saw the cut in his ear?

A. Yes.

HIS LORDSHIP: But none in his head?

A. Yes.

10 MR. HAMILTON: I suggest that it's only blood you saw coming from his ear, coming from inside, trickling from inside his ear. Now, you remember I ... Now, you remember I told you that this story mek up. You remember I ask you that and you tell me no?

A. Yes, sir.

20 Q. Tell me this, has the company offered a reward of five hundred dollars for people to give evidence leading to the conviction of these men?

A. I don't know.

Q. You know of any ...

MR. ANDRADE: Object to that. I object to that. How can he possibly answer.

HIS LORDSHIP: Mr. Andrade, it is something that he is going to say whether he knows of it or not.

30 MR. ANDRADE: Whether he knows or not.

MR. HAMILTON: That's all he can say. You don't know of it?

A. No.

HIS LORDSHIP: You don't know of that?

A. No.

MR. HAMILTON: I have no more questions to ask this witness.

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CEAPHAS LAIDFORD  
Cross-Examination  
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continued

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 CEAPHAS LAIDFORD  
 Cross-Examination  
 (continued)  
 2nd December 1975  
 continued

HIS LORDSHIP: Wait. Five hundred dollars for the conviction of these men?

MR. HAMILTON: It was offered before they were arrested.

HIS LORDSHIP: You let me know exactly what you are saying.

MR. HAMILTON: The question was, an offer, reward offered by the company of five hundred dollars for anybody who would give evidence leading to the conviction of person or persons in connection with this incident. 10

HIS LORDSHIP: Come again. I don't know of offer of five hundred dollars to anybody who can give evidence ...

MR. HAMILTON: Yes, give evidence leading to the arrest and conviction of person or persons in connection with the death of Sydney Smith. Huh? 20

A. I don't know.

Q. Five hundred dollars?

A. I never know, sir.

HIS LORDSHIP: Huh?

A. I never know, sir.

MR. HAMILTON: You don't hear and I have no more questions. 30

HIS LORDSHIP: You never heard of that? Up 'till now you never heard of that?

A. No.

HIS LORDSHIP: Will you speak up, please Mr.

MR. HAMILTON: As a matter of fact I have one more suggestion to put to him. Mr. Cephas Laidford, I suggest

MR. HAMILTON: to you you are the only man who has  
(Contd) ever said that these men take a  
stone and lick Sydney Smith, huh?  
Think about that. You know of  
anybody else.

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HIS LORDSHIP: That's not a question. You can  
ask him.

CEAPHAS LAIDFORD  
Cross-Examination  
(continued)  
2nd December 1975  
continued

MR. HAMILTON: Well, all right. I am suggesting  
to you you are the only man ...

10 A. No, sir.

Q. All right, sir. Leave him on  
that one.

HIS LORDSHIP: Yes, Mr. Atkinson? 2:52 p.m.

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CEPHAS LAIDFORD: CROSS-EXAMINATION MR. ATKINSON:  
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CROSS-EXAMINATION

MR. ATKINSON: Would you, Mr. Laidford, describe  
what you saw prior to the throwing  
of any stone as a fuss between  
these two men and Mr. Smith?

A. I ... (inaudible)...

20 Q. You know when two people have  
fuss, quarrel?

A. Yes.

Q. Would you say this was a fuss  
between the two men and Mr. Smith,  
before stones start throw,  
according to you?

A. I ...

Q. Speak up, please. Can't hear you.

A. I don't know about the fuss.

30 HIS LORDSHIP: What he is asking you, you wouldn't  
say what was taking place, the  
arguing between Mr. Smith and the  
two men, you wouldn't call that a  
fuss?

A. Yes, sir.

HIS LORDSHIP: You would call what was being said  
a fuss?

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CEAPHAS LAIDFORD  
Cross-Examination  
2nd December 1975  
continued

A. Yes.

MR. ATKINSON: What you hear Mr. Sydney Smith say that morning?

HIS LORDSHIP: Where, in the shed or out of it?

MR. ATKINSON: In the shed when the men first came up. Exactly what him say?

A. I don't hear him say anything before he call them 'bout the money. 10

Q. When them was talking to him what them say?

A. Him say ...

Q. Open your mouth and talk, man, mek we hear yu.

A. Is not him, is the boss.

HIS LORDSHIP: Is what? Is not him, is the boss? 20

A. Him mus' go and see the boss.

Q. Him no say anything more than that?

A. Is him first word I hear.

Q. Then what him say after the first word then?

A. Him don't say anything.

HIS LORDSHIP: Him don't say anything else?

A. After. Before.

HIS LORDSHIP: What? 30

A. Before them start.

MR. ATKINSON: Him say anything else besides that?

A. Yes, but him don't say anything at the same time.

- Q. When him say it?
- A. After him say to him say must go and see the boss.
- HIS LORDSHIP: Say what?
- A. Him stand up beside him after him say that, tell him to go and see the boss him stand up beside him and then him ...
- 10 HIS LORDSHIP: And then? And then what?
- A. After, Mr. Sydney Smith told him to go and see the boss.
- HIS LORDSHIP: Yes, what next?
- A. Him stand up beside him and him never say anything.
- HIS LORDSHIP: Him never say anything?
- A. No.
- 20 MR. ATKINSON: So, the only word him use is, "Me is not the boss, go and see the boss" that is all him say the whole day, the whole morning?
- A. Not the whole day.
- Q. Him say anything after that?
- A. No, for him run out and him ... (inaudible) ...
- Q. He were or, rather, was standing beside you from the time the men came up until the time stones start to fling?
- 30 A. Yes. Q. Eh? A. Yes.
- Q. And you were the nearest person to him, weren't you?
- HIS LORDSHIP: Sorry, Mr. Atkinson, are you referring to the incident inside the shed or outside?

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No. 5

CEAPHAS LAIDFORD  
Cross-Examination  
2nd December 1975  
continued

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CEAPHAS LAIDFORD  
Cross-Examination  
2nd December 1975  
continued

MR. ATKINSON: Inside.

HIS LORDSHIP: Were you the nearest person to him inside the shed when the stones were being thrown at him?

MR. ATKINSON: No, sir, from the time the men came up until the first stones were thrown at him.

A. Not me alone.

HIS LORDSHIP: You know what nearest mean? Closest. 10

MR. ATKINSON: Closest one. No you him stand up side a?

A. Him stand up side a me.

Q. Anybody else did stand up side a him beside you?

A. Yes, Milton Smith.

Q. Who? A. Milton Smith.

Q. Which one was closer, you or Milton Smith? 20

A. Mr. Sydney Smith.

Q. Who was closer to Mr. Sydney Smith, you or Milton?

A. Milton Smith closer.

Q. Closer to Mr. Smith than you?

A. Yes.

HIS LORDSHIP: That is, Milton was nearer to him than you?

A. Yes and Milton Smith that side.

HIS LORDSHIP: On the left? A. Yes. 30

MR. ATKINSON: But nobody never ask Milton to move?



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A. No.

Q. Them ask you? A. Yes.

Q. You was cooking chicken that day?

A. Yes.

Q. You know Church Pen in - near Old Harbour?

A. No, sir. Q. Eh? A. No sir.

10

Q. You don't know Church Pen?

A. No, sir.

Q. You know Old Harbour though?

A. Yes, sir.

HIS LORDSHIP: Huh? A. Yes, sir.

MR. ATKINSON: You ever go from Old Harbour to Spanish Town?

A. Yes. HIS LORDSHIP: Who?

MR. ATKINSON: You know the first little village as you left Old Harbour to go to Spanish Town?

20

A. (Witness shakes head.)

HIS LORDSHIP: Eh? A. I don't know.

HIS LORDSHIP: Talk up no please Mr. Laidford. (sic)

A. I don't remember.

HIS LORDSHIP: You don't remember that.

MR. ATKINSON: You see I am suggesting to you and you can say whether you know or you don't know, those two men come from Church Pen in Old Harbour, two of them. You know or you don't know?

30

A. I don't know, sir.

Q. What you saw? Did you see Mr. Smith stumble at all?

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CEAPHAS LAIDFORD  
Cross-Examination  
2nd December 1975  
continued

A. Yes, sir.

Q. Before him drop lick him - buck him toe?

A. I know.

Q. What him do?

A. I only see when him drop on his face.

HIS LORDSHIP: You don't see him stumble? 10

A. Yes.

HIS LORDSHIP: What is the answer?

A. Yes.

HIS LORDSHIP: You saw when him tumble? You know what them call tumble? You saw him stumble before him drop?

A. No, sir.

MR. ATKINSON: Yes or no. Which is it. You either see him stumble or not. 20

A. I don't see him stumble before him drop.

Q. You either see him or you don't.

A. After him drop him stumble to get up.

HIS LORDSHIP: After him drop him stumble to get up. Wait.

MR. ATKINSON: After him drop him stumble to get up?

A. (Witness nods.) 30

Q. That is what you say. And what happen when him try to get up?

A. I don't see him get up.

Q. You don't see him get up. I am suggesting to you from him drop him don't move again. From him hit the ground the first time him don't move again - the concrete ramp.

HIS LORDSHIP: Huh?

A. Yes, him was trying to get up.

MR. ATKINSON: You take your two eyes and see (sic) that? Eh?

A. Yes, sir.

Q. You see, Mr. I am suggesting to you, you know, that you can't say what part of his head hit the ground when him drop. All you can say is that him drop front ways but you don't know what part of him head lick the concrete. Can you?

A. (Witness shakes head.)

HIS LORDSHIP: Huh? You know him drop front ways but you can't say what part of him hit the concrete is that right?

A. Yes, sir.

MR. ATKINSON: What part of his head?

HIS LORDSHIP: Are you saying his head hit the concrete, is that what you are saying?

MR. ATKINSON: He demonstrated that this morning. Yes, sir, to Mr. Hamilton. On the ramp, sir.

HIS LORDSHIP: Was it his head that hit the concrete?

A. No, sir.

HIS LORDSHIP: What hit the concrete?

A. After him fall, so ... (witness mumbling and demonstrating.) After him fall on his face him head don't reach on the concrete.

HIS LORDSHIP: Him head don't reach on the concrete?

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2nd December 1975  
continued

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CEAPHAS LAIDFORD  
Cross-Examination  
2nd December 1975  
continued

- A. Yes.
- MR. ATKINSON: You remember demonstrating something on the little thing Mr. Hamilton make there this morning like a ramp with a lead pencil?
- A. Yes, but him head don't reach.
- Q. Don't give me no but thing. You remember before lunch? 10
- A. Yes.
- Q. You remember demonstrating and the pencil point was on one part of the concrete?
- HIS LORDSHIP: Yes, but does it necessarily follow that his head was on the concrete? What part of it you say? Wait a minute. Can you look at the picture there. Look at number four. One, two, go on again. Three. (witness turns pages.) What number is that? 20
- A. Four, sir.
- HIS LORDSHIP: Four. Four, the mark. Yes, you see that white mark there at the side. Can you say if that was where the blood stain was?
- A. (Witness looks at picture.). Yes. 30
- HIS LORDSHIP: Eh? It was there? If is not so say you don't know, you know, Mr. Laidford, if is not so. That is where the blood stain was?
- A. Yes, sir.
- HIS LORDSHIP: In picture four that was where blood stain was. So what was lying there, his head or his face or what part of his - Him drop on his face or what? 40

A. Drop on his face.

HIS LORDSHIP: Drop on his face? A. Yes.

HIS LORDSHIP: So what was at the spot there?  
Huh?

A. Piece of bag.

HIS LORDSHIP: Piece of what?

A. A piece of bag was on the ground.

10 HIS LORDSHIP: Where? A. Where him fall, sir.

HIS LORDSHIP: Piece of bag was on the ground where  
he fell?

A. Yes, sir.

HIS LORDSHIP: What kind of bag?

A. Crocus.

HIS LORDSHIP: Piece of crocus bag. See if you  
can imagine it, Mr. Atkinson. I  
gather he said that the man fell  
on his face, he didn't drop on  
20 the side of his head.

A. No, sir, just on his face.

HIS LORDSHIP: Huh? A. No, sir, just on his  
face.

MR. ATKINSON: But, Mr. Laidford, the only blood  
you see was coming out of his right  
ear. Isn't that so?

A. Yes.

Q. Yes, and you say, you agree that where  
30 the spot mark out in the picture is  
where the blood stain was, isn't that  
so?

HIS LORDSHIP: Huh? A. Yes.

MR. ATKINSON: Yes, well ... HIS LORDSHIP: Yes?

MR. ATKINSON: And his right ear was resting right  
on that spot of concrete where the  
blood mark out, wasn't it?

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CEAPHAS LAIDFORD  
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continued

A. (Witness shakes head.)

HIS LORDSHIP: Huh?

A. I don't remember.

HIS LORDSHIP: You don't remember.

MR. ATKINSON: You don't know?

HIS LORDSHIP: Says he don't remember.

MR. ATKINSON: And for the record, him right ear pon his right side of his head, is it? Now, you see, I am suggesting that he hit his right side of the head right where you see the mark there. The right side of him head lick the concrete right dere so. 10

A. I don't know.

HIS LORDSHIP: Huh? A. I don't know.

HIS LORDSHIP: You don't know? A. No, sir. 20

MR. ATKINSON: You see, I am suggesting to you, you know; you know which of these two men is Meggie?

A. Yes. HIS LORDSHIP: Huh?  
A. Yes.

MR. ATKINSON: Which one? A. The one at the side.

Q. Suggesting to you that Meggie didn't throw any stones up there that day. 30

HIS LORDSHIP: Did he throw stones, Mr ...?

A. Yes, sir.

HIS LORDSHIP: Huh? A. Yes.

MR. ATKINSON: What happen to the iron? Who you see throw the iron?

A. The other one ... (indicating)

HIS LORDSHIP: The end one? A. Yes.

HIS LORDSHIP: Daley threw the iron?

A. Yes, sir.

MR. ATKINSON: What happen to the piece of iron?

A. It leave in the shed.

10 HIS LORDSHIP: The police don't take it or anything?

A. No.

MR. ATKINSON: You see, I am suggesting the only person who threw one stone that day was Mr. Smith, the deceased.

A. (Witness shakes head.)

Q. The ranger.

HIS LORDSHIP: That is true. A. No, sir.

MR. ATKINSON: Mr. Smith had his hair cut about the same length as yours?

20 A. Yes, sir.

HIS LORDSHIP: That's the dead man he is talking about, you know, not Milton. That is right?

A. Yes, sir.

MR. ATKINSON: Low cut hair. And that is Mr. Smith in the picture? for the records.

A. Yes.

HIS LORDSHIP: Do you know who put him on the board like that? See him on a piece of board in the picture, four, and something under his head, do you know who put him like that?

30 A. No, sir.

HIS LORDSHIP: You don't remember is who?

A. No, sir. ...(shaking head.)

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continued

HIS LORDSHIP: Yes.

MR. ATKINSON: You see, I am suggesting to you that Mr. Smith got vexed because these two men still insisted that they had a right to the wood.

A. I don't know of that.

HIS LORDSHIP: Huh?

A. I never know if him get vex.

HIS LORDSHIP: You don't know if him get vex?

10

A. No, sir.

MR. ATKINSON: And I am suggesting to you that they were asking for their fence posts, the wood that them cut, weren't they?

A. I never hear.

Q. You never hear? A. (Witness shakes head.)

HIS LORDSHIP: Yes?

MR. ATKINSON: Look at picture number two, the one with the guango tree and the cart in the middle, second picture. Hold it up mek I see if is the same one you have. (Witness holds up papers.) Yes. Now, the factory, where is the factory? Where would the factory be now? Watch me now. Would be towards that side, there?

20

A. Yes.

Q. Yes, to the left side of the picture and this is the welding shed?

A. Yes.

Q. In that corner, here?

30



- A. Yes.
- Q. And pass the welding shed going back so is the factory?
- A. Yes.
- Q. Then why you were telling us this morning that you didn't have to pass the welding shed to go to the factory, coming from the carpenter's shed on the right? You remember telling us that this morning? It's all right. You didn't know they had pictures, did you? Yes, and I am suggesting to you that Mr. Smith, the deceased, tried to take away the machete from you and you wouldn't give him.
- A. No, not at all. No machete at all.
- Q. In a whole carpenter shed no have no machete?
- A. No. (shaking head.)
- HIS LORDSHIP: Sorry. The next thing, no machete in the carpenter's shed?
- MR. ATKINSON: Carpenter's shed.
- HIS LORDSHIP: Well, let me see if I - is he saying there were no machetes there at the time or is it your question that no machete is kept there?
- MR. ATKINSON: At all.
- HIS LORDSHIP: Normally they don't keep machete in the shed, carpenter's shed?
- A. No, sir.
- MR. ATKINSON: Any 'pon the property at all, the whole property?
- A. Yes.
- Q. Where them keep them?
- A. I don't know.

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Cross-Examination  
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continued

- Q. You don't know?
- A. I don't know where them keep them. I work there but I don't know where them keep them.
- Q. You work there but you don't know where them keep them?
- A. (Witness shakes head.) I don't keep machete.
- Q. You were boiling the chicken whole? 10
- A. No.
- Q. You were putting the whole chicken in the pot, so?
- A. Yes.
- Q. What you take put it?
- A. It's a small knife.
- Q. I am suggesting you use the machete.
- A. Is a plucked chicken. 20
- Q. I am not saying it wasn't plucked.
- A. No machete at all.
- Q. You were not using machete to cut up the chicken?
- A. No machete at all.
- Q. How long Mr. Smith work there, before you or you come after him?
- A. Before.
- Q. So, is thirty-five years you and him come all together? 30
- A. Yes.

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Cross-Examination  
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Q. And I am suggesting to you that when Mr. Smith couldn't get the machete he said to the two men, "Stay here, 'till me come".

A. I never hear.

Q. And he went towards the factory for his shotgun.

A. I never hear.

10 Q. Aaah? A. I never see that.

Q. You never see that. And in the blind rage him going cross ...

HIS LORDSHIP: Wait. Wait. ...(writing)... towards factory for his gun .../ (writing). Yes?

MR. ATKINSON: And in the blind rage he was going across for his shotgun, he tripped and hit the right side of his head on the concrete ramp.

20 A. (Witness shakes head.)

HIS LORDSHIP: Huh?

A. (Shaking head.) ...I don't know of that.

Q: You don't know, you never see - you don't know, you never see?

A: (no answer)

Q: And you never hear no talk there that day 'bout any wood between these men and Mr. Smith, the deceased. You never hear anybody mention wood out there that day?

10 A: No; I never hear.

Q: You was a watch what was happening - weren't you? You were looking at what was happening, Mr. Laidford?

A: I don't know.

Q: You don't know if you were looking?

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continued

A: About what?

Q: Were you watching what was transpiring  
between Mr. Smith and these men?

A: (no answer)

HIS LORDSHIP: You were looking at what was going  
on between the men?

WITNESS: No, sir.

MR. ATKINSON:

10

Q: You was listening to what was going on  
between the two of them?

A: No.

HIS LORDSHIP: You weren't listening to what  
they were saying?

WITNESS: No.

HIS LORDSHIP: You was there when it was  
happening?

WITNESS: On which day?

HIS LORDSHIP: The day when the man fell down.

20

WITNESS: (no answer)

MR. ATKINSON:

Q: The day when Mr. Smith fell down and hit  
his head on the ramp?

A: Yes.

HIS LORDSHIP: That is the day they are talking  
about.

MR. ATKINSON:

Q: The day when Mr. Smith fall down now, you  
see everything that happen between Mr. Smith  
and these two men?

30

A: Yes.

Q: And you hear everything that happen?

A: Not everything I hear.

Q: Well, inna di shed now, you hear everything that was happening, while Mr. Smith was in the shed?

A: Yes.

Q: You hear all a dat, so before the stone start fling, you hear everything?

A: Yes; I hear when dem call. I don't hear everything that dem say, but I hear when dem call to him.

Q: But the man stand in front of you?

A: Is not a long time him tek before him come out.

Q: Is not a long time him tek before him come out, but up to the time him come out you hear everything?

A: No; not everything.

Q: I am suggesting is one stone fling and is Mr. Smith fling it?

A: No; is more than one.

Q: Plenty stones always in that area, scattered all over the yard - isn't that so?

A: Not plenty, just a few.

Q: Few stones well scattered around the yard all the while?

A: No.

Q: No - what; no stone was not in the yard that day?

A: No; not plenty.

Q: The stone was scattered in the yard before the men dem come?

A: No.

Q: Stone ...

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continued

A: Stone was in there, but not - is not plenty.

Q: Mi no say plenty; mi say few stones, man,  
'round the place?

A: Yes.

Q: The shed - both sheds don't have no floor,  
is just ground-earth?

A: Concrete, please.

HIS LORDSHIP: Both sheds are concrete?

10

WITNESS: The welding shed is concrete.

MR. ATKINSON:

Q: The carpenter's shed have dirt on the  
floor?

A: Yes.

HIS LORDSHIP: Anything wrong with your voice?

WITNESS: Just hoarse.

HIS LORDSHIP: What makes you hoarse; you have (sic)  
cold or what?

WITNESS: Yes, sir; I did have cold.

20

(End of Cross-Examination by  
Mr. Atkinson)

Time: 3:20 p.m.

RE-EXAMINATION

RE-EXAMINATION OF MR. CEAPHAS LAIDFORD BY MR.  
ANDRADE (CROWN ATTORNEY)

Q: Ceaphas, listen, that day, the day Mr.  
Smith died, you see, did you see him  
throw any stones?

A: No.

Q: Did you see him fling any stones at  
these two men?

30

A: No, sir.

Q: Who throw all the stones?

- A: Daley and Meggie.
- Q: Show me them?
- A: See them there. (witness points to the accused men)
- Q: You mean these two men, Daley and Meggie?
- A: Yes.
- 1 Q: Now, look at the photograph again - come, turn it around, look at picture three, the third picture, turn it up let me see. (witness turns the picture)  
Yes; that is the one. Look in the photograph. You see some stones there?
- A: Yes.
- Q: What kind of stones those - rock-stones?
- A: Yes, sir.
- Q: You know how they got there?
- 20 A: Yes.
- Q: How the stones reach there?
- A: When the men was flinging the stone.
- Q: And look at the fourth picture - turn over. You see more stones there in that one?
- A: Yes.
- Q: What you say about those stones - same stones?
- A: (no answer)
- HIS LORDSHIP: There seems to be more stones here.
- 3 MR. ANDRADE:
- Q: The stones were about the same size - look in the fourth picture, Ceaphas - size?
- A: Yes; some big and some small.
- HIS LORDSHIP: Some big and some small that is in picture four?

In the Supreme Court

Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Re-examination  
2nd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Re-examination  
2nd December 1975  
continued

MR. ANDRADE: Yes.

Q: So then Ceaphas, the first picture - now turn the picture to number one. Go back, man, the beginning - you see the carpenter's shed door?

A: Yes, sir.

Q: The doorway now, tell me, was it through that door that Mr. Smith ran?

A: Yes, sir. 10

Q: That same door there?

A: Yes.

Q: And you see the sticks under the quango tree?

A: Yes, sir.

Q: You see the tractor?

A: Yes, sir.

Q: Now, when Mr. Smith fell on the ramp - you see the ramp over here - where about were the men there throwing stones - you see the tractor - beside the tractor? 20

A: (no answer)

HIS LORDSHIP: Which one you call the tractor?

MR. ANDRADE: The cart.

HIS LORDSHIP: That is the one under the guango tree; picture one? Can you give us any idea of where the men were standing when they were throwing the stones, or you can point out in the photograph? 30

WITNESS: No; I can't point out.

MR. ANDRADE:

Q: Is it that you don't remember or - what?



A: (no answer)

HIS LORDSHIP: Him just don't understand?

MR. ANDRADE: That will be all, M'lord.

Time: 3:25 p.m.

(End of re-examination)

HIS LORDSHIP: Go to literacy classes; improve  
yourself. Come down.

(Witness steps down)

In the Supreme Court

Prosecution  
Evidence

No. 5

CEAPHAS LAIDFORD  
Re-examination  
2nd December 1975  
continued

10

No. 6

EVIDENCE OF JOCELYN BOUCHER

MR. ANDRADE: M'lord, I'll take a short witness,  
Jocelyn Boucher.

JOCELYN BOUCHER CALLED, SWORN

HIS LORDSHIP: Sit, if you wish to.

(Witness sits)

EXAMINATION-IN-CHIEF OF MR. JOCELYN BOUCHER BY MR.  
ANDRADE (CROWN ATTORNEY)

Q: Now, your name is Jocelyn Boucher?

A: Yes, sir.

Q: You are a carpenter?

A: Yes, sir.

Q: And you live at Palmers Cross in this parish?

A: Yes, sir.

Q: Now, did you know Sydney Smith?

A: Yes, sir.

Q: Was he related to you?

A: My brother.

In the Supreme Court

Prosecution  
Evidence

No. 6

JOCELYN BOUCHER  
Examination  
2nd December 1975

20

30

In the Supreme Court

Prosecution  
Evidence

No. 6

JOCELYN BOUCHER  
Examination  
2nd December 1975  
continued

Q: About how old was he when he died?

A: Around fifty-six, sir.

Q: And you know what work he used to do?

A: Yes, sir.

Q: What?

A: He was all kind of man on the Inverness  
Property. 10

Q: Like what?

A: From a labourer right up to a manager.

Q: How long he really worked - how long he  
worked on the factory property?

A: Around thirty years.

Q: Did he live on the property?

A: No, sir. He had his home and they build a  
house. Some of the time he stop there;  
from the home to that house they give him  
on the property. He don't directly live  
on the property altogether. 20

Q: Where was his home?

A: Sandy Bay.

Q: Now, did you, on the 24th of April, this  
year, about 9:30 in the morning, attend  
the post mortem examination on the body  
of your brother?

A: Yes, sir.

Q: And was that post mortem examination  
performed by Dr. Morgan? 30

A: Yes, sir.

MR. ANDRADE: Thank you.

(End of examination-in-chief)

Time: 3:29 p.m.

MR. HAMILTON: No questions, M'lord.

MR. ATKINSON: No questions, M'lord.  
M'lord, I am in a little bit of difficulty, in that, I have to get to a certain place at a certain time. I have intimated this to my friend and ... ..

HIS LORDSHIP: In any event, I am in difficulty too. I am afraid I can't come tomorrow, if I don't stop from now.  
10 Mr. Foreman, members of the jury, please come back to me tomorrow at ten o'clock.  
Remember what I told you at lunch - don't discuss the case with anyone.

COURT ADJOURNED AT 3:35 P.M.

No. 7

EVIDENCE OF ROY BURKE

20 CLARENDON CIRCUIT COURT,

Wednesday, 3rd December, 1975.

COURT RESUMES AT - 10:30 A.M.

JURY ROLL CALL - ALL PRESENT

MR. ANDRADE: Call Roy Burke.  
(Witness called)

30 Before, I would like to apologise for this late start. The prisoners were kept - the prisoners are being kept in Lionel Town and it so happens this morning, M'lord, that the vehicle, the jeep in which they were travelling got broken down and in addition to that, the prisoners arrived in handcuffs without the key. Fortunately for us, M'lord, we found one nearby, which was able to work.  
40 I trust tomorrow, M'lord, there will be no recurrence of this.

In the Supreme Court

Prosecution  
Evidence

No. 6

JOCELYN BOUCHER  
Examination  
2nd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 7

ROY BURKE  
Examination  
3rd December 1975

In the Supreme Court

Prosecution  
Evidence

No. 7

ROY BURKE  
Examination  
3rd December 1975  
continued

HIS LORDSHIP: I am very sorry for the late start, members of the jury, but we send people for the people and they just didn't get here on time at all.

ROY BURKE, SWORN Time: 10:33 a.m.

EXAMINATION-IN-CHIEF OF MR. ROY BURKE BY  
MR. ANDRADE (CROWN ATTORNEY)

Q: I am going to ask you to speak loudly. This lady and gentleman have to hear what you are saying and the members of the jury have to hear you, and the accused men.

10

A: Yes.

HIS LORDSHIP: Do you want to stand, or you want to sit down?

WITNESS: I will sit.

HIS LORDSHIP: Sit down then.  
(witness sits)

MR. ANDRADE:

20

Q: Now, sir, your name is Roy Burke?

A: Yes.

HIS LORDSHIP: No, Mr. Burke, louder than that.

WITNESS: Yes.

MR. ANDRADE:

Q: And you are a tractor driver?

A: Yes.

Q: You work on the Inverness Property, owned by Jamaica Cordage Company?

30

A: Yes, sir.

Q: That is at Sandy Bay?

In the Supreme Court

Prosecution  
Evidence

No. 7

ROY BURKE  
Examination  
3rd December 1975  
continued

A: Yes.

Q: Sandy Bay area?

A: Yes.

Q: Now, do you know Milton Smith?

A: Yes.

Q: Ceaphas Laidford?

10 A: Yes, sir.

Q: Did you know Sydney Smith, the deceased?

A: Yes, sir.

Q: Now, do you remember the 22nd of April, this year, which was a Tuesday?

A: Yes, sir.

Q: Were you at work?

A: Yes, sir.

Q: Now, while you were at work in the morning, did anything happen that you saw?

20 A: No, sir - in the morning.

Q: About what time?

A: About 12:00 noon.

HIS LORDSHIP: About midday.

MR. ANDRADE:

Q: Where were you at that time?

A: In the next shed.

Q: That was on the property?

A: Yes; on the property.

30 Q: That is the same shed you call the welding shed?

A: Yes.

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No. 7

ROY BURKE  
Examination  
3rd December 1975  
continued

Q: Any other shed on the compound there?

A: Several.

Q: Like what now?

A: You have the factory, you have the carpenter shed and mechanic shed.

Q: The what?

A: The mechanic shed.

Q: How far away from the mechanic shed is the carpenter shed?

10

A: One chain.

Q: Now, about 12:00 noon you said you were in the mechanic shed, or the welding shed?

A: Yes, sir.

Q: Now, what happened at around that time?

A: Well, two men rode on their bike and they came back ten minutes later.

HIS LORDSHIP: Sorry; they did what?

WITNESS: They rode on the motor cycle; two motor cycle.

20

HIS LORDSHIP: They rode through and went ...

WITNESS: Through the bushes; yes, sir.

HIS LORDSHIP: About ten minutes later they came back?

WITNESS: Yes, sir.

MR. ANDRADE:

Q: Now, you see those two men here?

A: Yes, sir.

Q: Could you point them out, please?

30

A: Those two men over there. (Points to the accused men)

Q: What happened when they came back?

A: They rode back and they parked their bike and - about one and a half chains from the shed and they walk.

Q: Which shed?

A: The carpenter shed.

Q: After they parked the bike about one and a half chains away, what they did?

A: They walked and come up to the carpenter shed.

Q: Anybody in the shed?

A: Yes.

Q: Who?

A: Mr. Smith and Ceaphas Laidford.

Q: You know what was happening in the shed at that time?

A: Well, they were looking after lunch, but I didn't give any statement 'bout lunch.

Q: You don't have to worry what statement you gave, just tell us what you know about it - right?

A: Yes.

Q: What happened now, when they walked up to the shed?

A: They walked up to the shed and they stood up to the doorway and then they stood there for a while.

Q: What were they doing?

A: They were talking to the men inside.

Q: Could you have heard what they were saying?

A: No.

Q: Anything else happened?

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ROY BURKE  
Examination  
3rd December 1975  
continued

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ROY BURKE  
Examination  
3rd December 1975  
continued

A: And after that the men dem start to have a fuss.

HIS LORDSHIP: Which men start to have a fuss?

WITNESS: Both accused and the men dem were inside the shed.

HIS LORDSHIP: You hear everything everybody talking?

WITNESS: I hear a fuss but I couldn't tell what the fuss was about. 10

HIS LORDSHIP: Could you say what the fuss was about?

WITNESS: No.

MR. ANDRADE:

Q: You still in the mechanic shop?

A: Yes.

Q: What next happened?

A: Then after that two men start to throw stones.

Q: Where they got the stones from? 20

A: They picked it up outside.

HIS LORDSHIP: Where?

WITNESS: In the carpenter shed.

MR. ANDRADE:

Q: You were able to see?

A: (no answer)

HIS LORDSHIP: Hold on a moment. They had picked up stones from outside?

WITNESS: Yes.

MR. ANDRADE: 30

Q: Where you able to see at whom they were throwing the stones inside the shop?



A: Well, Mr. Smith was inside there and - both Smiths.

HIS LORDSHIP: No, no; can you say at whom the stones were being thrown, from where you were at the mechanic shop; can you say whom they were throwing at?

WITNESS: They were throwing stones at Mr. Smith.

10 HIS LORDSHIP: Which of the Smith?

WITNESS: The dead man.

MR. ANDRADE:

Q: You saw that?

A: Yes.

Q: Small stones or big stones?

A: They not so big; stone what anybody can manage.

Q: Apart from throwing stones, did any of them throw anything else?

20 A: Like who so, please?

Q: Did any of the two men throw anything else, apart from throwing stones?

A: Well, only stones I see, because I was in the mechanic shed.

Q: Did Mr. Smith the deceased, did he do anything while they were throwing stones?

A: Yes, he get up and went into the carpenter's shed - the lock up room.

Q: Has the store-room got a door?

30 A: Yes, sir.

Q: And when he went in, did he do anything with the door?

A: He went inside there and he closed the door.

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Evidence

No. 7

ROY BURKE  
Examination  
3rd December 1975  
continued

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Evidence

No. 7

ROY BURKE  
Examination  
3rd December 1975  
continued

Q: When he was inside there, what were these two men doing?

A: Still throwing stones.

Q: How long ... ..

HIS LORDSHIP: Both men were still throwing stones?

WITNESS: Yes, sir.

HIS LORDSHIP: Where were they throwing them now? 10

WITNESS: Inside the carpenter's shed.

HIS LORDSHIP: Well, what I mean, what were they throwing them at?

WITNESS: On the store-room.

MR. ANDRADE:

Q: How long did Mr. Smith remain inside?

A: About five minutes.

Q: All this time where was Ceaphas?

A: Ceaphas was in the carpenter's shed. 20

Q: What about Milton Smith?

A: Yes; him in the carpenter's shed.

Q: Did Ceaphas remain there, or did he leave?

A: He was inside there a little while.

Q: What happened after Mr. Smith was in the store-room for about five minutes?

A: He went out - he come outside.

Q: Was it through the same door?

A: Through the same door. 30

Q: When he came out, where were the two men - here?

A: Were outside.

HIS LORDSHIP: Outside where?

WITNESS: Outside the door.

HIS LORDSHIP: Were they still at the same spot where they were throwing the stones or they moved some distance?

WITNESS: They moved some distance.

10 HIS LORDSHIP: About how far they were from the door of the carpenter's shed now, can you say?

WITNESS: Yes.

MR. ANDRADE:

Q: Can you point it out from where you are, the doorway of the shed where the men were?

A: The doorway out to the other desk. About there.  
(witness points out a distance)

20 HIS LORDSHIP: How much you make that, gentlemen?

MR. HAMILTON: Ten yards, sir.

MR. ANDRADE: Ten, eleven yards.

HIS LORDSHIP: Eleven yards?

MR. HAMILTON: Eleven, twelve yards.

HIS LORDSHIP: You, gentlemen say, you know, I don't know. Yes?

MR. ANDRADE: Now, when Mr. Smith came out what did he do?

A. He run outside and he fell.

30 Q. Run outside the shed?

A. Yes.

Q. Were these two men doing anything while he was running?

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Evidence

No. 7

ROY BURKE  
Examination  
3rd December 1975  
continued

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ROY BURKE  
Examination  
3rd December 1975  
continued

- A. While he was running the men still outside.
- Q. Doing what?
- A. Have the stones.
- HIS LORDSHIP: They have the stones, they didn't throw any at him?
- A: When he drop. When he came out from the shed. 10
- HIS LORDSHIP: Hold on a minute now. Whilst he is running out from the store room the men have stones but they did't throw any, is that what you are saying or you can't say?
- A. I can't say.
- HIS LORDSHIP: What you can't say, if they threw them then. Then what happened next, you say? 20
- A. Well, Mr. Smith came out and he fell at the ramp, the foot of the ramp.
- HIS LORDSHIP: Huh. Huh.
- MR. ANDRADE: Yes, what happened?
- A. And when he fell at the ramp, Ceaphas came after him and going towards him and ...
- HIS LORDSHIP: Wait. Huh, huh?
- A. ... after him and he came - he go there and stand up over him. 30
- MR. ANDRADE: Yes, but before that, we don't reach that stage yet.
- MR. HAMILTON: No, no.
- MR. ANDRADE: Mr. Hamilton, with all respect.

MR. HAMILTON: It is your witness.

HIS LORDSHIP: What is this all about, gentlemen?  
Ceaphas went and stood over him.

MR. ANDRADE: What are you objecting to?

MR. HAMILTON: I am objecting my learned friend  
attempting to lead the evidence.  
It is his evidence, not his, so  
the witness has told him in a  
particular sequence so he can't  
attempt to lead him. That's my  
only point, M'Lord.

HIS LORDSHIP: Huh, huh?

MR. ANDRADE: Before Ceaphas came up where were  
these two men while Mr. Smith was  
on the ramp?

A. Ceaphas came out after when Mr.  
Smith drop.

Q. Yes.

A. And two men came round ...

HIS LORDSHIP: Wait.

A. ... where they was.

MR. ANDRADE: Go slowly, you see. Your Lordship  
has to write down ...

HIS LORDSHIP: Then two men came where?

A. Around, around from the carpenter's  
shed.

HIS LORDSHIP: Around from the carpenter's shed. Huh,  
huh? Yes?

MR. ANDRADE: What happened when they came around from  
the carpenter's shed? Where did they  
go, the two men?

A. They don't go anywhere.

Q. What did they do, anything?

A. They throwing stones.

In the Supreme Court

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Evidence

No. 7

ROY BURKE  
Examination  
3rd December 1975  
continued

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No. 7

ROY BURKE  
Examination  
3rd December 1975  
continued

HIS LORDSHIP: Give him a chance, please. They came from round the carpenter's shed now and what did they do?

A. Yes, meanwhile Mr. Smith on the ramp and they throwing stones still.

HIS LORDSHIP: Throwing stones at who?

A. Mr. Smith.

HIS LORDSHIP: Both men or one? Were both accused throwing stones while Mr. Smith was lying there?

10

A. Yes.

HIS LORDSHIP: Whil he was lying at the ramp?

A. Yes, your honour.

MR. ANDRADE: And how far away were they from Mr. Smith while he was lying down there? How far away were they from him throwing the stones? Point it out.

20

HIS LORDSHIP: You have to demonstrate again. Stop him when he gets to the distance.

A. Coming from the carpenter's shed.

MR. ANDRADE: Look, man. Look 'pon the sergeant.

A. Around the carpenter's shed.

HIS LORDSHIP: No. Listen. The two men now, Mr. Smith is lying on the ramp, both men throwing stones on him All you are being asked is what distance they were away from the men when - Mr. Smith, at that stage.

30

A. About that distance.

HIS LORDSHIP: Where the sergeant is now?

A. Yes.

HIS LORDSHIP: Same distance?

MR. HAMILTON: Same distance.

MR. ANDRADE: Now, what part of the ...

HIS LORDSHIP: One moment, please. Huh, huh?

MR. ANDRADE: Now, what part of his body were they stoning?

HIS LORDSHIP: No, no. Can you say if any of the stones caught him?

A. I couldn't say.

HIS LORDSHIP: You can't say.

MR. ANDRADE: Now, at what stage Ceaphas came up?

HIS LORDSHIP: Wait. Can't say if stones caught the accused.

MR. ANDRADE: Now, at what stage Ceaphas came up to Mr. Smith?

A. After he fell.

Q. While they were stoning him?

A. After he left, fall down, Ceaphas came up.

HIS LORDSHIP: No, no. Ceaphas is going up to him, you say?

A. Yes.

HIS LORDSHIP: What the gentleman is asking you, what the accused men doing at that time, are they still stoning him or he finish stoning or gone off or what?

A. Still throwing stones.

HIS LORDSHIP: Still throwing stones when Ceaphas went up to the deceased.

MR. ANDRADE: Did any of the stones hit any other person than Mr. Smith?

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No. 7

ROY BURKE  
Examination  
3rd December 1975  
continued

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ROY BURKE  
Examination  
3rd December 1975  
continued

- A. Well, I couldn't say.
- Q. Did Ceaphas remain there or did he move?
- A. He remove.
- Q. After he removed were the two men there still throwing stones or had they stopped?
- A. Still throwing stones.
- HIS LORDSHIP: Still throwing stones at the deceased. Stones throwing at the dead man, Smith? 10
- A. Right.
- MR. ANDRADE: Did you do anything?
- A. No. (Shakes head.)
- Q. You remain in the mechanic shop or did you leave there?
- A. I left.
- Q. How?
- A. After one of the stones came inside the carpenter's shed. 20
- HIS LORDSHIP: After one of the stones came where?
- A. Into the shed, mechanic shed.
- MR. ANDRADE: Where you went, Mr. Burke?
- A. I went through the window to the book keeper's quarters.
- Q. Where? A. Through the window to Mr. Lawson's quarters.
- HIS LORDSHIP: So, you went through the window to Mr ...? 30
- A. Lawson.



In the Supreme Court

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No. 7

ROY BURKE  
Examination  
3rd December 1975  
continued

HIS LORDSHIP: To Mr. Lawson?

A. Yes.

MR. ANDRADE: Is the book keeper?

A. Yes.

HIS LORDSHIP: Did he say house or what?

MR. HAMILTON: Quarters.

10 HIS LORDSHIP: Quarters is the word used.

MR. ANDRADE: How long you remained in there?

A. Stay there 'bout five minutes.

Q. Where you went after?

A. After I came out, I came back out  
was there.

Q. Came back out to where?

A. To the carpenter's shed.

HIS LORDSHIP: To the mechanic shed. Sorry.  
Would you like some water, Mr.  
Burke?

20 Came back to the mechanic shed  
and you were saying something  
about what?

MR. ANDRADE: No, he came back out.

A. After the two men had left.

Q. How you know that?

A. I was there and the two men left and  
I came back.

Q. How you know they had left?

30 HIS LORDSHIP: One moment, please. Hold on, please.  
Where are you then? You heard the  
motor cycles starting up?

A. Around the book keeper's house.

In the Supreme Court

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Evidence

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ROY BURKE  
Examination  
3rd December 1975  
continued

HIS LORDSHIP: Oh, you were at the book keeper when you heard the motor cycles start.

MR. ANDRADE: And when you came back out did you see the two men there?

A. No, sir.

Q. Drink your water, please.

HIS LORDSHIP: Yes, when he came back he didn't see the two men.

10

MR. ANDRADE: Yes, now where was Mr. Sydney Smith now, the deceased, was he same place or where?

A. Yes, same place on the ramp.

Q. Did Ceaphas do anything?

A. Yes, Ceaphas went up and hold him and say ...

HIS LORDSHIP: Sorry. What you mean by hold him?

A. Raise him up.

20

HIS LORDSHIP: How did he raise him?

A. Lif' him up.

HIS LORDSHIP: Raised and called him?

A. Yes. HIS LORDSHIP: Huh, huh?

MR. ANDRADE: Did you yourself go up and look at him?

A. No, when Ceaphas said Mr. Smith dead.

Q. No, I said did you go up and look at him?

30

A. No.

Q. I see. Now, let's go back to Mr. Sydney Smith, that's the dead man, you see; when he fell, how did he fall, on his side, face or back or where?

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ROY BURKE  
Examination  
3rd December 1975  
continued

A. On his face.

Q. Now, from the time he fell, you see?

A. Yes, sir.

Q. Did you ever see him get up?

A. No.

Q. Did he get up?

10 A. No.

HIS LORDSHIP: He never got up. Is that what you are saying? From he fell he never got up?

A. (Witness shakes head.)

HIS LORDSHIP: Well, did you see him try to raise up or anything like that?

A. No.

HIS LORDSHIP: Didn't see him?

A. No, never.

20 HIS LORDSHIP: He just stayed same place?

A. Yes.

MR. ANDRADE: Roughly, how many stones they throw at him whilst he was lying down there? How many, roughly?

A. Well, I couldn't say but several stones was thrown.

Q. That day did you see Ceaphas, at the time of the throwing of the stones, you see, when they were stoning Mr. Smith, did you see Ceaphas with any machete?

30

A. No.

HIS LORDSHIP: No, no. Hold on a minute. This was in the shed. This was in the shed. Did you see Ceaphas?

In the Supreme Court

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ROY BURKE  
Examination  
3rd December 1975  
continued

MR. HAMILTON: And it is not a part of our case, M'Lord, that Ceaphas ever ... oh, Ceaphas, I am sorry, I thought you were saying deceased.

HIS LORDSHIP: You see, he put the questions in a general way. You don't know if he is referring to when he is going outside or if he could see him in the shed. I gather he can see in the shed. Can you say if Ceaphas had a cutlass or you don't know? 10

A. No, your honour.

HIS LORDSHIP: You can't say?

A. He didn't have any.

HIS LORDSHIP: While Ceaphas in the shed he did not have a cutlass.

MR. ANDRADE: When Mr. Smith ran out the shed, you see?

A. Yes.

Q. Carpenter's shed, which direction was he going? 20

A. Coming towards the mechanic shed.

Q. Now, while they were stoning Mr. Smith, did you hear any of them say anything?

HIS LORDSHIP: Mr. Andrade, please, there are two separate incidents of stoning. Will you please confine the witness.

MR. ANDRADE: At any time at all did you hear any of them say anything? 30

A. No.

HIS LORDSHIP: While they were throwing the stones in the shed or whilst he was outside lying down did you hear any of them say anything?

A. No.

MR. ANDRADE: Now, did the police arrive later on?

A. Yes.

Q. The doctor?

A. Yes.

Q. Thank you, Mr. Burke. 11:01 a.m.

In the Supreme Court

Prosecution Evidence

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ROY BURKE  
Examination  
3rd December 1975  
continued

10 ROY BURKE: CROSS-EXAMINATION - MR. HAMILTON :

MR. HAMILTON: Mr. Burke, did you ever see any injury at all to ...

CROSS-EXAMINATION

HIS LORDSHIP: The deceased?

MR. HAMILTON: Yes, I forgot his first name.

MR. ANDRADE: Sydney.

MR. HAMILTON: Sydney, Mr. Sydney Smith, any injury?

A. Well, I didn't know. I didn't look on him.

20 HIS LORDSHIP: So, you never saw the injury then?

A. (Witness shakes head.)

MR. HAMILTON: If you didn't go that means you didn't see.

A. No, I never went up.

HIS LORDSHIP: You never saw the injuries on him?

A. (Witness shakes head.)

30 MR. HAMILTON: When, these men, you saw them first, not the first time they pass through to go to the bush, when they came back, when they park their bikes, did you see any cutting implements, wood cutting implements on their motor bikes?

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ROY BURKE  
Cross-Examination  
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continued

- HIS LORDSHIP: Axe or cutlass?
- A. No.
- MR. HAMILTON: Axe or cutlass?
- A. No.
- Q. Did you see? You don't remember?
- A. Yes.
- Q. What is it? 10
- HIS LORDSHIP: What is the answer?
- A. Say I don't remember seeing it.
- MR. HAMILTON: Don't remember seeing it when they came back. You were in the mechanic shed, correct?
- A. Yes.
- Q. So that when Sydney Smith was running towards the ramp from the carpenter's shed he was running towards you? 20
- A. Well, I couldn't say.
- HIS LORDSHIP: Running in your direction?
- MR. HAMILTON: No, what I mean he was running in your direction as opposed to running away from you, eh? He was coming in your direction?
- A. I couldn't say if he was coming in my direction.
- Q. No, no, I don't mean if he was coming. All right. I know he may have intended to stop there or he may have continued on, I don't mean that he was coming to you personally. 30
- HIS LORDSHIP: But, Mr. Hamilton, it seems to be self evidence .

MR. HAMILTON: Well, it is.

HIS LORDSHIP: Why bother him then?

MR. HAMILTON: When he fell, when he was in the carpenter's shed, the carpenter's shed is about a chain away from your place, right?

A. Yes.

Q. When he fell at the ramp, wasn't he about a half a chain from you?

A. Yes.

Q. So, he had come closer to you?

A. (Witness nods.)

Q. That is the point I am making, o.k.?

A. (Witness nods.)

Q. When he was running, is it not a fact that as he reached to the ramp he tripped at the ramp and fell. Is that not so?

20 HIS LORDSHIP: Eh?

A. (Witness pauses.) Yes, I believe so.

MR. HAMILTON: One last question, Mr. Burke. Out of all ...

HIS LORDSHIP: I don't see-how can it be the last question having regard to what you are saying? Any how go on.

MR. HAMILTON: Out of all these several stones that you say were thrown that day, am I correct that you cannot say that you saw one stone thrown by either of these men hit Mr. Smith?

A. No.

Q. You agree with me, you cannot say?

A. Cannot say.

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continued

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Q. You didn't go up to the deceased but did you ever see any blood on the, on the ...

HIS LORDSHIP: Ramp.

MR. HAMILTON: ...ramp, the concrete ramp?

HIS LORDSHIP: The concrete ramp?

MR. HAMILTON: After or may be while he was still there?

A. Yes.

Q. You saw blood?

A. Yes.

Q. Wasn't that blood just about the spot where Mr. Sydney Smith's head was resting after he fell?

HIS LORDSHIP: Huh?

MR. HAMILTON: The blood that you saw on the ramp, isn't that so?

HIS LORDSHIP: Come on, Mr. Burke, is it or is it not?

MR. HAMILTON: Was.

A. Yes, I believe so.

HIS LORDSHIP: You think so.

MR. HAMILTON: In other words, you were not shown these photographs but have a look at this for me. (Exhibits shown witness and given to jury.) Turn to a picture there marked number four - no, number three. You see it? Hold the picture. this one ... (indicating) Yes, that one. You can see it? All right. Now, when - to begin with, when Mr. Sydney Smith fell wasn't he like how he is now?

A. No.

10

20

30



- Q. No. Right. He was lying across it?
- A. Yes.
- Q. Like that, right, with his feet...
- HIS LORDSHIP: Wait. Wait.
- MR. HAMILTON: I am sorry, M'Lord.
- HIS LORDSHIP: Uuum?
- 10 MR. HAMILTON: Yes. His feet were across this section and his chest and head across the other section?
- A. Yes.
- HIS LORDSHIP: And head and chest across on the other one?
- A. (Witness nods.)
- HIS LORDSHIP: You agree with that?
- A. Yes.
- 20 MR. HAMILTON: Did you know, Mr. Burke, that Mr. Smith fractured his collar bone? Did you know that?
- HIS LORDSHIP: Hold on a minute now.
- MR. ANDRADE: This is hearsay, ought to be hearsay.
- HIS LORDSHIP: Is that the collar bone? Is that the point? Not both of you on your feet. I don't know if its a misunderstanding of medical terms.
- MR. ANDRADE: I object.
- HIS LORDSHIP: Why, can't he ask him?
- 30 MR. ANDRADE: No, M'Lord, because the source of his knowledge would have to be ? (sic) mens rea.
- HIS LORDSHIP: I don't know if he examined the body so, if he did hear it would be hearsay.

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ROY BURKE  
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continued

- MR. HAMILTON: All right.
- HIS LORDSHIP: But let's not quarrel about it. Our quarrel is, is it the sternum.
- MR. HAMILTON: I thought it came down, M'Lord, I thought they called the whole thing the sternum.
- HIS LORDSHIP: The whole thing is the collar bone. 10
- MR. HAMILTON: I don't know if that is the part that was broken.
- HIS LORDSHIP: I understand that both of these are collar bones but this is the sternum. I don't know, I may be wrong so please let me know which part you are putting to him.
- MR. HAMILTON: I won't press it but my learned friend did open to the sternum. 20
- HIS LORDSHIP: Sternum.
- MR. HAMILTON: O.K. All right, I can still ask the question that I wanted to get out. Do you agree with me that in the way Mr. Sydney Smith fell it is quite possible that he could have hit his chest on the other ramp, across the other side?
- HIS LORDSHIP: You have the picture? 30
- MR. HAMILTON: You have the picture. You see the inner edge there. Having regard to how you saw him fall could you tell us - have you seen it, members of the jury, look at picture there, here is the right hand side of the ramp, on the other side, apparently stubbing his foot over here and falling, hitting his chest. 40  
That could have - can you say?

- A. Well, I can't say.
- HIS LORDSHIP: Wait a minute, please. I can't say ... (writing) if when deceased fell he hit chest against other side of ramp. Picture three.
- MR. HAMILTON: When you saw him lying, his chest and his head was over on this side here?
- 10 A. No, across.
- HIS LORDSHIP: No, his chest and his head were over on the left hand column here?
- A. Yes.
- HIS LORDSHIP: I don't know what more than that you want.
- MR. HAMILTON: Same point I was trying to get out, M'Lord. Tell me this Mr. Burke. Throughout the whole time that the men were talking over at the other side - wall, let's start with when they came up; when they first came up you heard them talking but you couldn't hear what they were saying?
- 20 A. No.
- HIS LORDSHIP: That's when they were at the door, at the carpenter's shed?
- A. Yes.
- 30 MR. HAMILTON: When they first came up?
- A. Yes.
- MR. HAMILTON: So, whatever was said by these men when they first came up was said softly?
- A. Yes...(nods.)
- HIS LORDSHIP: Do you agree with the word, softly?
- A. Yes.

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ROY BURKE  
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continued

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ROY BURKE  
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continued

HIS LORDSHIP: In other words they talking that you can't hear?

A. Couldn't hear.

HIS LORDSHIP: You are a chain - something away?

A. One chain.

HIS LORDSHIP: But he is ...

MR. HAMILTON: He said one chain. 10

HIS LORDSHIP: But he is half a chain away from the other thing, but he is somewhere inside that mechanic shop but when he falls on the ramp he is half a chain away so he must be chain and a half away.

MR. HAMILTON: All right.

HIS LORDSHIP: So, what you mean? They were whispering or talking normally? 20

A. They were talking. I couldn't hear what they are saying.

HIS LORDSHIP: In a normal tone of voice? Not quarrelling?

MR. HAMILTON: Not quarrelling at first?

A. Not quarrelling at first.

Q: One other thing before I just leave: Mr. Laidford came out of that carpenter's shed after Sydney Smith? 30

A: Yes.

Q: Just one little thing here - Mr. Burke - I have to apologise to Your Lordship. Your Lordship will understand why, but I have to ask about this, M'Lord - didn't you attend an identification parade in this matter?

A: Yes.

Q: Wasn't there one Loise Ferron at that parade?

A: I don't remember.

HIS LORDSHIP: Do you know the lady?

WITNESS: (no answer)

MR. HAMILTON:

Q: Was there a lady at the parade, a female?

10 A: I don't remember.

Q: I am suggesting to you, you see Mr. Burke, first of all, that the only injury that the deceased, Sydney Smith, suffered was ... ..

HIS LORDSHIP: Hold on, how can you ask him that?

MR. HAMILTON: But I am giving a time. Let me finish my question, M'lord?

Q: The only injury that Mr. Sydney Smith suffered was when he fell - was in falling?

20 A: I didn't see any. I didn't go look at the body.

Q: The only injury that Mr. Sydney Smith suffered was when he fell?

A: (no answer)

HIS LORDSHIP: But he can't say. He just said 'I didn't see any injury on him.'

MR. HAMILTON: I have to put my case to him, M'lord.

HIS LORDSHIP: No, no; that part can't be put.

MR. HAMILTON:

30 Q: I am suggesting to you that no stones at all were thrown by these accused men that day - not one?

A: (no answer)

HIS LORDSHIP: You agree with that. Mr. Burke?

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ROY BURKE  
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continued

WITNESS: No.

MR. HAMILTON:

Q: And that is the reason why even though Sydney Smith is running towards you he falls, as you say, a chain ... ..

HIS LORDSHIP: Hold on. Is that a question or is that an argument?

MR. HAMILTON:

Q: Even though he came closer to you at the time ...

10

HIS LORDSHIP: Certainly, that is not a question, it is a speech you are making to the jury.

MR. HAMILTON: I will try and make it into a question.

Q: I am suggesting to you the reason why you say that you can't tell, you can't say that any stones hit him is, because no stones were thrown?

20

A: Stones were throwing, of course.

HIS LORDSHIP: That is outside, you know?

MR. HAMILTON: I am not talking about inside.

HIS LORDSHIP: Hold on, Mr. Hamilton, what I gather the witness is saying, he is not saying that whilst the deceased man is running outside that any stone is thrown. It is after he has fallen down, is that both men come from around the carpenter's shed somewhere, and started to stone the deceased; that is his evidence.

30

MR. HAMILTON: That is my suggestion. You said stones were thrown; I said none were thrown.

Q: And that the only stone thrown that day was one stone, thrown by Mr. Smith from inside the carpenter's shed?

40

A: I never see that.

Q: Mr. Sydney Smith?

A: I never see that.

Q: When these men went up to the door, wasn't Mr. Smith sitting down?

A: Yes.

Q: You saw him sitting down?

10 A: Yes.

Q: When they went up to the doorway, Mr. Sydney Smith, can you say what he was sitting on - could you see what he was sitting on?

A: No.

Q: Well, I am suggesting to you he was sitting on a stone?

A: (no answer)

20 HIS LORDSHIP: How can you suggest to him and he can't say? You have a way of proceeding on a - when a man says no, he is not in a position to say. This gentleman, you are putting something to him which he cannot answer. He has already said, 'I did not see what he was sitting on' and I gather your case is, he was sitting on a stone, he picks up the stone and throws it at the man. You can't put this to this witness.

30 MR. HAMILTON: Alright; Your Lordship is right.

Q: Did your company offer any reward in relation to this case?

A: I couldn't say.

Q: How you mean you couldn't say?

A: I don't know nothing about that.

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ROY BURKE  
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ROY BURKE  
Cross-Examination  
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continued

Q: Have you ever heard about that?

A: No.

(End of cross-examination by  
Mr. Hamilton)

Time 11:22 a.m.

CROSS-EXAMINATION OF MR. ROY BURKE BY MR.  
P. ATKINSON (DEFENCE ATTORNEY)

10

CROSS-EXAMINATION

Q: Now, did you see anything, apart from  
stones, thrown - like bottles or  
anything else?

A: No.

Q: Pure stones you see?

A: Stones.

Q: Mr. Andrade, Crown Counsel, had asked  
you about Ceaphas looking after lunch,  
and you say you didn't give any  
statement about lunch - you are testifying  
as to what you actually saw?

20

A: That's right.

Q: And you are not saying what anybody tell  
you to say?

A: Anybody can tell me to say anything?

Q: And you see when the two men came up  
to the shed?

A: Yes.

Q: First - these two accused men, they had  
anything in their hands?

30

A: No.

HIS LORDSHIP: When they going up to the  
carpenter's shed they had  
nothing in their hands?

WITNESS: No.



MR. ATKINSON:

Q: Is not a question that one go up with a stone in his hand and the other with an iron and a piece of stone in his hand?

A: (Witness nods head.)

Q: What is the answer?

A: Call out the question again?

10 HIS LORDSHIP: You didn't see when they were going up to the door - one with a stone and one with a piece of iron?

WITNESS: When the men went up, they didn't have anything in their hands.

MR. ATKINSON:

Q: Now, you say Mr. Smith got up and went in the store-room?

A: Yes.

20 Q: You could see that?

A: Yes.

Q: So you could see that he was sitting down inside there?

A: Yes.

Q: What you call a fuss - quarrel?

A: Yes.

Q: And you say that the two men outside and the men inside the shed were quarrelling?

A: Yes.

30 Q: You see, I am suggesting to you that none of these two men threw any stones?

A: Yes.

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ROY BURKE  
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ROY BURKE  
Cross-Examination  
3rd December 1975  
continued

Q: Yes - what, you agree with me or you are saying yes, then throw stones?

A: Yes; dem throw stones.

Q: That was in your statement?

A: Yes.

Q: How long you been working at this factory?

A: (no answer)

10

HIS LORDSHIP: The company?

WITNESS: About thirty years.

MR. ATKINSON:

Q: So you know Ceaphas and the deceased, Mr. Smith, for thirty odd years?

A: Yes.

Q: And you know Milton Smith too, for about thirty odd years?

A: Yes.

Q: Now, you saw Mr. Smith run towards your direction - you see that with your two eyes and you see where?

20

A: Yes.

Q: And you see where the two men were at that time?

A: Yes.

Q: And you never see those two men throw any stones at that time, while him running?

30

A: (no answer)

HIS LORDSHIP: What is the answer?

MR. ATKINSON:

Q: Did you see them throw any stones at that time, while him running?

- A: No.
- Q: And as him drop so, Ceaphas went over to him?
- A: Yes.
- Q: And how long Ceaphas spend over there before him leave?
- A: Not long.
- 10 Q: How long - seconds, minutes, three minutes?
- A: He didn't stay at any time.
- Q: He touched him at that time?
- A: No.
- Q: And according to your story now, the statement what you give when Ceaphas went up to him stone start throw?
- A: Yes.
- Q: Then you see that?
- A: Yes.
- 0 Q: And you take your two eyes and see where Mr. Smith was, on the ground at that time?
- A: Yes.
- Q: But that no near near to where you was, where Mr. Smith was?
- A: Yes.
- HIS LORDSHIP: I am sorry, I am not following that question.
- MR. ATKINSON: Where Mr. Smith was lying on the ground was near enough to where he was.
- 50 HIS LORDSHIP: But that distance was half a chain.
- MR. ATKINSON:
- Q: What you call half a chain - look at picture number three for me, this shed right here - so that is where you was?

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ROY BURKE  
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continued

A: Yes.

Q: And this is where Mr. Smith was lying,  
across here?

A: Yes.

Q: No near, near that - well, that is the  
distance, so we can see the distance.  
And you saw Mr. Smith lying there and  
you saw stones - them throwing, and you  
never see none of them stone hit him  
down?

10

A: No; because I left.

Q: While you were there and while you were  
seeing the stones, you never see any  
hit him, while he was there?

A: No.

Q: It is not a question that you saw eight  
stones hit him while he was on the  
ground?

A: (no answer)

20

HIS LORDSHIP: How can you put this to him?

MR. ATKINSON: Alright.

Q: About how much stones throw before you  
leave?

A: (no answer)

HIS LORDSHIP: In all or what?

MR. ATKINSON: Before he left.

HIS LORDSHIP: In all - because there was  
an incident in the shed and an  
incident outside; so if you  
gentlemen would just separate  
them so the witness can know  
what is happening.

30

MR. ATKINSON:

Q: While Mr. Smith lying on the ground, how  
much stones you see throw in that direction,  
before you left?

A: I see about two stones throw.

HIS LORDSHIP: I thought you said several, in answer to that gentleman.

WITNESS: I said when Mr. Smith is on the ground.

HIS LORDSHIP: Is on the ground - I thought you answered and told Mr. Andrade that you can't say the number, but is several - so several is two?

10

WITNESS: Several stones - this question.

HIS LORDSHIP: This question is what, now?

WITNESS: How many.

HIS LORDSHIP: How many you see thrown at Mr. Smith, while he was on the ground?

WITNESS: While he was lying on the ground.

HIS LORDSHIP: So you are saying it is two?

WITNESS: Several stones.

20

HIS LORDSHIP: What is two in answer to?

WITNESS: (no answer)

MR. ATKINSON:

Q: Two was a mistake?

A: Yes; a mistake.

Q: Now, in that yard where the two sheds are, there are a lot of stones lying around the place at all times?

A: Yes, yes; stone in the yard there.

Q: All the while?

30

A: Yes.

Q: And if you go there now, you see stones?

A: Stone is there - who carry it there?

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ROY BURKE  
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continued

Q: Whoever want to carry it there - right now stone is right there?

A: Yes.

Q: Last year this time you have stones all over the place - don't is stoney ground?

A: Yes.

Q: And you say from the time Mr. Smith trip and drop so, him don't move again?

10

A: No.

Q: You see, I am suggesting to you, sir, that no stones were thrown by those two men in that shed at all - in the shed, to start with?

A: Which shed?

HIS LORDSHIP: The carpenter's shed.

MR. ATKINSON:

Q: The carpenter's shed?

A: Yes.

20

Q: And that no stones were thrown at them, at Mr. Smith at all?

A: These two men ...

Q: Yes?

A: No, no.

HIS LORDSHIP: No - what?

WITNESS: I didn't see Mr. Smith throw no stones at all.

MR. ATKINSON:

Q: Don't you know these two men before?

30

A: No.

Q: As a matter of fact, didn't you go to school with Daley's brother?

A: I don't remember.

Q: Don't you go to school at Church Pen?

A: Yes.

Q: You went to school at Church Pen, just nearby Old Harbour?

A: Yes.

Q: How you think I would know that - I wouldn't be going to school those days.

10

MR. ANDRADE: Argument.

MR. ATKINSON:

Q: Don't you know the Daley family live in Church Pen, Old Harbour?

A: I can't remember; is long time.

Q: You are not saying no - you can't remember?

A: Can't remember.

HIS LORDSHIP: You don't know any Daley living in Church Pen?

20

WITNESS: Can't remember.

(a man is called into court)

MR. ATKINSON: I am going to ask him to look at this gentleman.

HIS LORDSHIP: Yes.

MR. ATKINSON:

Q: You see him?

A: Yes.

Q: You remember that face?

30

A: I don't remember the face.

HIS LORDSHIP: Who is he?

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ROY BURKE  
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continued

MR. ATKINSON: Daley's brother.

HIS LORDSHIP: What is his first name?

MR. ATKINSON: Ernest - Daley.

Q: You forget all your school friends?

A: Long time.

HIS LORDSHIP: You don't remember going to school with that gentleman who was called up?

10

WITNESS: No.

MR. ATKINSON:

Q: Is Church Pen you go to school though?

A: Not Church Pen; Old Harbour.

Q: You didn't say Church Pen, a while ago?

A: You say it.

Q: You didn't hear me say Church Pen, near to Old Harbour?

A: Yes.

20

Q: And you didn't say yes to that?

A: Yes.

Q: So, what you are saying now - is not Church Pen you go to school - you want to change that now and say is Church Pen?

A: Church Pen have a school, please ...

HIS LORDSHIP: Where was the school?

WITNESS: At Old Harbour.

(End of cross-examination by Mr. Atkinson)

30

Time: 11:36 a.m.



RE-EXAMINATION OF MR. ROY BURKE BY MR. ANDRADE  
(CROWN ATTORNEY)

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ROY BURKE  
Re-Examination  
3rd December 1975

Q: Outside, when Mr. Smith was on the ground  
you ran?

A: Yes.

HIS LORDSHIP: Who?

MR. ANDRADE: The witness here.

10 Q: You ran through the window. At the time  
when you ran, were these two men still  
throwing stones?

A: Yes; because one of the stones came into  
the shed; that is why I run.

Q: And when the stone was thrown in the shed,  
that is why you run?

A: Yes.

MR. ANDRADE: Thank you, Mr. Burke.

Time: 11:37 a.m.

NO. 8

In the Supreme Court

20 EVIDENCE OF MILTON SMITH

Prosecution  
Evidence

No. 8

MILTON SMITH  
Examination  
3rd December 1975

MR. MILTON SMITH CALLED, SWORN Time 11.38 a.m.

HIS LORDSHIP: Would you like to sit, Mr. Smith?

WITNESS: Yes, thank you.

30 HIS LORDSHIP: Listen, I am going to ask you to  
speak loud. The members of the  
jury have to hear you, the accused  
men have to hear you and the  
people at the back.

EXAMINATION-IN-CHIEF OF MR. MILTON SMITH BY MR.  
ANDRADE (CROWN ATTORNEY)

Q: Your name, sir, is Milton Smith?

A: That's right, sir.

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MILTON SMITH  
Examination  
3rd December 1975  
continued

Q: I believe you are a carpenter?

A: Yes, sir.

HIS LORDSHIP: No, Mr. Smith, you are dropping  
the voice again. You make one  
loud noise - answer, then you  
gone right down.  
Yes, Mr. Andrade.

MR. ANDRADE:

Q: You work on the Inverness Property, owned  
by Jamaica Cordage Company? 10

A: Yes.

Q: Now, do you know one Mr. Sydney Smith?

A: Yes.

Q: You know Mr. Ceaphas Laidford?

A: Yes, sir.

Q: Now, you recall the 22nd of April, this  
year?

A: Yes, sir.

Q: At about midday on that day, where were  
you actually? 20

A: In my work-shed.

Q: Which shed?

A: The carpenter's shed; sitting on the  
bench.HIS LORDSHIP: Speak up, please. You were in  
the carpenter's shed sitting  
on - what?WITNESS: Sitting on the work-bench in  
the carpenter's shed, sir. 30HIS LORDSHIP: I see. It is his work-shed.  
He is a carpenter. Yes, Mr.  
Andrade.

MR. ANDRADE:

Q: Now, at about that time, when you were sitting on your work-bench, you see, did anything happen at all?

A: Yes, sir.

Q: What happened? Tell the court in your own words what you saw about that time?

10 A: I saw two men coming from in the back of the compound; each of them had a motor cycle ...

HIS LORDSHIP: Each on a motor cycle?

WITNESS: Each of them had a motor cycle, sir.

HIS LORDSHIP: Yes; you saw them coming?

WITNESS: Coming towards the works-yard, I say, to Mr. Smith.

MR. ANDRADE:

20 Q: What happened to the motor cycle - they ride it right up or did they park it or - what; did you see what happened to the motor-cycle?

A: Yes.

Q: Well, tell us?

A: Yes.

Q: What happened?

A: They stopped.

Q: After they stopped, they parked the cycle?

A: They parked the cycle.

Q: And where they go after that?

30 A: I could not tell.

Q: When next you saw them?

A: Right in front the shed.

In the Supreme Court

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Evidence

No. 8

MILTON SMITH  
Examination  
3rd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Examination  
3rd December 1975  
continued

Q: You see those two men here?

A: Yes, sir.

Q: Point them out for me?

A: Those two over there. (witness points  
to the accused men)

Q: Did you know them before?

A: No, sir.

HIS LORDSHIP: You didn't know them before.  
Had you ever seen them before?

10

WITNESS: I saw them before.

HIS LORDSHIP: Mr. Andrade, you have to ...  
...

MR. ANDRADE:

Q: Now, Mr. Smith, at that time, when they  
came up to the shed, who was in the  
shed with you, if anybody?

A: Ceaphas Laidford, Mr. Sydney Smith  
himself, and myself.

Q: Say it again, you are not talking  
loud?

20

A: Ceaphas Laidford, Mr. Smith and myself.

HIS LORDSHIP: I know he said something, but  
what he said I really couldn't  
say.

MR. ANDRADE:

Q: You are not talking loud.

A: (no answer)

HIS LORDSHIP: I have to be writing, I can't  
watch you all the while; so  
talk as loud as you can.

30

MR. ANDRADE:

Q: Now, what happened when the two men came  
up to the shed; can you tell the court  
what is the first thing that happen?

A: The first thing that happen when they come up, one say, "Whey mi wood? You is the headman?".

HIS LORDSHIP: To whom was he speaking?

WITNESS: To Mr. Sydney Smith.

HIS LORDSHIP: He is giving that as the first question, but the first question is, 'you is the headman'.

In the Supreme Court

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Prosecution  
Evidence

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MILTON SMITH  
Examination  
3rd December 1975  
continued

10 MR. ANDRADE:

Q: Did Mr. Smith answer him, sir?

A: He said, "Yes".

Q: Now, the next thing that was said?

A: Him say, "Well, whey mi wood, sah?"

Q: Mr. Sydney Smith said anything - did Smith answer him?

A: Yes, sir.

Q: Tell us now?

20 A: He said, "I don't know nothing about any wood".

Q: When he said that, what was the next thing that happen?

A: When he said that, the next thing that happen, another one said, "Where is the wood? I want some money now."

HIS LORDSHIP: Which is the other one that is saying that now?

WITNESS: The fairest one.

HIS LORDSHIP: Meggie - Meggie said - what?

30 WITNESS: "Where is the wood? If we can't - since I can't get back the wood, I want mi money - some money."

HIS LORDSHIP: We want some money?

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Evidence

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MILTON SMITH  
Examination  
3rd December 1975  
continued

- A. We want some money.
- MR. ANDRADE: Now, did you say anything? What next happened?
- A. I say to Mr. Smith, it look like those two men mad.
- Q. Did you talk soft or did you talk loud?
- A. Talk loud. 10
- HIS LORDSHIP: They could have heard what you were saying? Those two men?
- A. (Witness nods.)
- HIS LORDSHIP: Yes?
- MR. ANDRADE: Yes, and did Mr. Sydney Smith, the dead man, say anything to you when you said that?
- HIS LORDSHIP: What next happened when you spoke?
- A. It look like they mad fe true.
- HIS LORDSHIP: Huh. Huh? 20
- MR. ANDRADE: And what is the next thing that happened now?
- A. The tallest one ...
- HIS LORDSHIP: That's ... ? His name is Daley, you see, the short one is Meggie.
- A. Smith said, I have a good mind to shot the rawss man ...
- HIS LORDSHIP: I have a good mind to shot them in them rawss clawt. Huh. Huh?
- MR. ANDRADE: Now, what is the next thing that happened after that? 30
- A. Happen after?
- Q. Yes, man. Did any of them continue to talk or what?

A. The clearest one, the shortest one say, "Yu bwoy a ride the horse."

In the Supreme Court

HIS LORDSHIP: Well, what was he doing?

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A. Pointing to me.

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HIS LORDSHIP: You? ... (writing) Pointing to me; A yu bwoy ride the horse.

MILTON SMITH  
Examination  
3rd December 1975  
continued

MR. ANDRADE: Do you ride a horse? Do you ride a horse?

10

A. Yes.

Q. Now, when was the first time you were seeing these two men before that day?

A. On the Thursday before.

Q. Huh? A. On the Thursday.

Q. Where? A. Before?

Q. Where? A. At the cow pen.

Q. On the property? A. On the property.

20

Q. And what were you doing when you (sic) saw them?

A. We was checking some cows, checking the cattle.

Q. You were walking?

A. Sitting on the rail by the cow pen.

Q. And did you see them after that, before that day?

A. (Witness shakes head.) Never see them after. The Saturday before them say that ...

30

HIS LORDSHIP: Hold on a minute. One moment, please. This thing is happening on a Tuesday - not a Tuesday saw them on the Thursday?

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MILTON SMITH  
Examination  
3rd December 1975  
continued

- MR. ANDRADE: The Thursday prior to that he saw them
- HIS LORDSHIP: I don't know. Is that what he is saying? I have here, seeing them both on the Thursday before.
- MR. ANDRADE: I asked him the first time.
- HIS LORDSHIP: So, when you saw them the Thursday, was that the first time you were seeing both of them? 10
- A. First time.
- HIS LORDSHIP: I am sorry, I didn't get that part, you see. So, you saw them Thursday and you are now saying you saw them Saturday again?
- A. The Saturday morning.
- MR. ANDRADE: And where you saw them?
- A. On the estate.
- Q. What were you doing when you saw them? 20
- A. Riding a horse.
- Q. Good, let's go back to the shed now, you see. Now, after he said to you, a yu bwoy riding the horse, what is the next thing that happened?
- A. He said, "Yu black bwoy, move".
- HIS LORDSHIP: That's Meggie saying that?
- A. I don't remember which one, sir. 30
- HIS LORDSHIP: One said, "Yu black bwoy, move". Wait. Said to Ceaphas ... (writing)... "Yu black bwoy, move".
- A. "Yu not in it".



HIS LORDSHIP: ... "Yu not in it"?

A. Mr. Sydney Smith say to Ceaphas, "Yu stay, stay beside me".

HIS LORDSHIP: "Stay beside me"?

A. Yes. "Stay beside me".

MR. ANDRADE: And when he said that did he do anything, Smith, Sydney?

10 A. No, sir.

Q. Just spoke so?

A. Just spoke and pat him on his shoulder.

HIS LORDSHIP: Pat Ceaphas on the shoulder.

MR. ANDRADE: Now, what is the very next thing that happened after that?

A. I was still writing up my estimate.

20 HIS LORDSHIP: You were still writing up your estimate?

A. Still writing.

MR. ANDRADE: Yes?

A. And the next thing I know, stone start to fling.

Q. By who?

A. By the two.

MR. HAMILTON: What? A. Two accused.

MR. ANDRADE: Then who was throwing the stone, man?

30 A. Two of them.

Q. Where? A. At the shed.

Q. At whom? A. I don't know.

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MILTON SMITH  
Examination  
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continued

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MILTON SMITH  
Examination  
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continued

- Q. What you did?
- HIS LORDSHIP: Wait. Wait. Inside the shed. Wait, please. You don't know at whom the stones were being thrown?
- A. No. HIS LORDSHIP: Yes? Not at you, though. They were not being thrown at you?
- A. I got hit, sir.
- HIS LORDSHIP: You got hit?
- A. I got hit, sir.
- HIS LORDSHIP: How many stones hit you?
- A. Two stones.
- HIS LORDSHIP: Two stones hit me.
- MR. ANDRADE: Who throw the two stones?
- A. Both of them were throwing. I couldn't say which one.
- Q. But you got hit? A. Yes, sir.
- Q. By whom?
- HIS LORDSHIP: Two? A. Two.
- MR. ANDRADE: Where?
- A. One in the back and one in the left foot.
- Q. How you felt when you got hit?
- A. Was cramped.
- Q. What size stones they were throwing?
- A. Well, I couldn't say.
- Q. Then you didn't see the one that hit you?

10

20

30

- A. I didn't have time. I got to keep ducking.
- HIS LORDSHIP: Yes, Mr. Smith, what happened? It is perhaps true that at that time when the stones are coming at you, you can't, you don't have any time to look at them but eventually they went away, didn't they?
- A. No, sir.
- 10 HIS LORDSHIP: Eventually, sometime afterwards the men went away?
- A. A long time afterwards.
- HIS LORDSHIP: A long time afterwards, if you wish then but you didn't have time to look at them, you. They were in the shed there, I hope, you didn't have time to look at them?
- A. They still stoning.
- 20 HIS LORDSHIP: I know but when the whole thing done and police and everybody come, you didn't look at the stones - is inside the shed, stones are being thrown?
- A. Right, sir.
- HIS LORDSHIP: You didn't look at the stones?
- A. So shocked.
- HIS LORDSHIP: I see. Never looked at stones ... (writing)... At size stones as I was so shocked. Any how, I am sorry for that digression, Mr. Andrade.
- 30 MR. ANDRADE: Yes, he was dodging and two stones hit him as far as I can gather. Tell me something, this carpenter's shed, what is it made of?
- A. Zinc and aluminium sheeting.
- HIS LORDSHIP: Zinc around the side?
- A. Zinc around the side.

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MILTON SMITH  
Examination  
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continued

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MILTON SMITH  
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continued

HIS LORDSHIP: And aluminium sheeting on top?

A. On top.

MR. ANDRADE: Can you say that any of the stones flung in the shed knock any other person apart from you? Can you say?

A. No, I couldn't say.

HIS LORDSHIP: Can't say. 10

MR. ANDRADE: Did the stones hit anywhere in the shed?

A. Yes, sir.

Q. Where?

A. By the door and by the - another part inside the shed.

HIS LORDSHIP: Sorry, which door is this now?

A. The shed door.

HIS LORDSHIP: That's the door that leads outside ...? 20

A. Store room door.

MR. ANDRADE: Store room. Store room door?

A. Yes, sir.

HIS LORDSHIP: And where else did he say?

A. The side.

MR. ANDRADE: A part, is it made of wood or zinc?

A. Zinc.

Q. Anything happen to the zinc? 30

A. It's torn.

HIS LORDSHIP: Sorry. A. It's torn, sir. The zinc is torn.

HIS LORDSHIP: One moment, please. Huh, huh?

MR. ANDRADE: Now, Mr. Sydney Smith, what did he do? Did he remain there?

HIS LORDSHIP: This is the other Mr. Smith, isn't he?

MR. ANDRADE: This is Milton. Sydney, what did he do?

10 A. He went into the store room adjoining the carpenter's shed.

HIS LORDSHIP: Sorry. Adjoining the carpenter's shed?

A. Yes, sir.

MR. ANDRADE: Was it through the door that he went?

A. Yes, sir.

Q. Did he do anything with the door when he went in?

A. Close the door.

Q. What?

20 HIS LORDSHIP: A little louder, please, Mr. Smith.

A. He close the door.

MR. ANDRADE: While he was inside there were these two men doing anything?

A. Still throwing stones.

Q. At where?

A. In the shed, the same carpenter's shed.

Q. What you mean?

A. The same carpenter's shed, they still throwing stones.

30 Q. Any particular place in the shed?

A. Couldn't tell because I was so shocked.

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MILTON SMITH  
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continued

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continued

- Q. Now, did you remain in the shed or did you remove from there?
- A. Remain.
- Q. You remained?
- A. I remained in the shed.
- Q. And what happened after, the next thing that happened?
- A. Mr. Sydney Smith run out. 10
- HIS LORDSHIP: Well - sorry. Just one moment. Whilst you are here now, whilst these two accused men were throwing the stones inside the shed, did any of them say anything?
- A. I said something, sir.
- HIS LORDSHIP: You said something to who?
- A. I said, "What happen"?
- MR. ANDRADE: To whom were you speaking?
- A. Both of them. They just keep on throwing. 20
- HIS LORDSHIP: But did they say anything?
- A. No, sir.
- HIS LORDSHIP: I said to accused, "What happen"? None replied, they kept throwing the stones. You said the next thing that happened now is that Mr. Smith came back out?
- A. From the store room.
- MR. ANDRADE: How did he come out? Walk out or what? 30
- A. Run. HIS LORDSHIP: Huh?
- MR. ANDRADE: Speak up.
- A. Run.

- |    |               |   |   |
|----|---------------|---|---|
|    | Q.            | Where he run to?  | In the Supreme Court  |
|    | A.            | Running towards the mechanic shed.  | <hr/> Prosecution<br>Evidence                                 |
|    | Q.            | Ran out the shed?   | No. 8   |
|    | A.            | He run out from the store and from my shed.   | MILTON SMITH<br>Examination<br>3rd December 1975<br>continued |
|    | Q.            | And when he ran out where were the two men here?  |   |
| 10 | A.            | In front of the same ...  |   |
|    | HIS LORDSHIP: | Eh?   |   |
|    | A.            | In front of the shed.   |   |
|    | HIS LORDSHIP: | In front of what shed?  |   |
|    | A.            | My shed, the carpenter's shed.  |   |
|    | HIS LORDSHIP: | Well, immediately in front of it or what?   |   |
|    | A.            | Little way out.   |   |
|    | MR. ANDRADE:  | How far? Point it out.  |   |
| 20 | A.            | It is just in front of the door the men were standing, by the door.                                       |   |
|    | Q.            | Now, what happened while he, while Mr. Smith was running outside now?                                     |   |
|    | A.            | They was still stoning him.   |   |
|    | Q.            | Both of them?   |   |
|    | HIS LORDSHIP: | Wait. Wait.      A. Both of them.   |   |
|    | HIS LORDSHIP: | Huh, huh?   |   |
|    | MR. ANDRADE:  | When Mr. Smith was running outside, did they throw any stone inside the shed? Inside the shed, your shed? |   |
| 30 | A.            | (Witness nods.)   |   |
|    | Q.            | When Mr. Smith outside?   |   |
|    | A.            | Was running out, they was still throwing stone inside.  |   |

In the Supreme Court

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MILTON SMITH  
Examination  
3rd December 1975  
continued

- Q. Inside your shed?
- HIS LORDSHIP: Hold on, Mr. Andrade, perhaps you not hearing properly, you know.
- MR. ANDRADE: Well, he won't talk loudly.
- HIS LORDSHIP: You see, what he is saying is whilst Mr. Smith is running out of the shed the men are still throwing stones inside the shed but his question to you is - just let me get that, please. Your answer is that whilst Mr. Smith was running out the shed the men were still throwing stones inside the shed? 10
- A. No, while he was running out they were still stoning him.
- HIS LORDSHIP: That is what you said a while ago, they were still throwing stones inside the shed? 20
- A. Whilst he is running.
- HIS LORDSHIP: Hold on a minute. The men are throwing the stones. I don't know if they stop or the - Mr. Smith comes out from store room and run towards where the men are, is that right?
- A. Right, sir. 30
- HIS LORDSHIP: Any stones still being thrown in that period?
- A. Right, sir.
- HIS LORDSHIP: Inside or outside the shed?
- A. Inside.
- HIS LORDSHIP: So, whilst he is coming out they are still throwing stones inside the shed?
- A. Inside.



HIS LORDSHIP: That is what I thought you said.  
Can you say at whom? At whom they  
were throwing stones then?

A. At Mr. Sydney Smith.

HIS LORDSHIP: So, he runs out now?

A. Runs out.

10 HIS LORDSHIP: And is running towards the  
mechanic shed. What happened  
during that period?

A. Well, the next thing I know ...

HIS LORDSHIP: No, no. He gets outside now, you  
know; that's Mr. Sydney Smith  
and he is running towards the  
mechanic shed, did the men throw  
stones at him at that stage, whilst  
he is running?

A. Yes, sir.

20 HIS LORDSHIP: Yes, Mr. Andrade?

MR. ANDRADE: What next happened to Mr. Smith, if  
anything?

A. I saw him fell.

Q. Where?

A. Beside the ramp.

HIS LORDSHIP: Speak up, please. You dropping your  
voice again.

A. Beside the ramp.

30 MR. ANDRADE: How did he fall? On his back or side  
or his face or whatever?

A. On here ... (indicating).

Q. Speak up no, man.

A. On his two hands.

HIS LORDSHIP: Fell on his two hands?

A. On his two hands, like this.

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MILTON SMITH  
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continued

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continued

HIS LORDSHIP: And what? What, Mr. Smith?  
He goes down on his two hands?

A. Goes down on his two hands.

HIS LORDSHIP: And what happened? His face  
didn't touch the ground?

A. No, sir.

HIS LORDSHIP: No, his face didn't touch the  
ground. Yes?

10

MR. ANDRADE: While he was down there, you  
see, like that, were these two  
men doing anything?

A. Still throwing stones at him.

HIS LORDSHIP: Huh, huh?

MR. ANDRADE: Did Mr. Smith try to do  
anything?

A. The only thing I know, remember,  
he tried to ... to look at them.

Q. He did what?

20

HIS LORDSHIP: Wait. The only thing I remember  
Smith trying to do was look  
around. Shows. Turning head to  
the left ... (writing)... You  
looking around. You say he was  
turning his head to the left hand  
side?

A. (Witness nods.)

HIS LORDSHIP: In what position was he then, is  
he flat out on the ground or  
still resting on his hands?

30

A. On his hands.

HIS LORDSHIP: He is still resting on his hands  
then?

A. Still on his hands.

HIS LORDSHIP: Yes, Mr. Andrade?

MR. ANDRADE: What happen to Mr. Smith, did he remain on his hands or did he go down?

A. I couldn't tell after that.

Q. Why?

A. Because I tried to move.

Q. You tried to move?

A. Tried to move and run and I find this place cramp.

HIS LORDSHIP: Wait. I tried to run but my leg was cramped.

MR. ANDRADE: Now, when they were stoning Mr. Smith while he was down there on the ground, how far away were they from him? Just point it out.

A. Between three-quarter chain.

Q. Point it out.

A. Three-quarter chain.

Q. From where you are to where?

A. Here to behind the door.

Q. The two of them were about there?

A. Where?

Q. When they were stoning Mr. Smith on the ground, man.

A. When they were stoning Mr. Smith?

Q. When Mr. Smith lie down 'pon the ground the two of them were stoning him, how close or how far away were they?

A. About twelve feet.

Q. Show us what you call twelve feet. Point it out.

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MILTON SMITH  
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continued

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MILTON SMITH  
Examination  
3rd December 1975  
continued.

- A. From here to there.
- Q. From where you are to the door?
- A. Yes.
- HIS LORDSHIP: Show us where. Where you are to where?
- A. There.
- HIS LORDSHIP: To this court room door here and you say that's the twelve feet? I would like you to work for me. Anyhow, that's about the distance the men were from the deceased man when they were stoning him, whilst he was on the ground? 10
- A. That's the last time I saw them.
- HIS LORDSHIP: Let me get it properly. I am sorry to interrupt, Mr. Andrade but, up to when you last saw the deceased man had he yet gone down on his face, do you know? or was he on his face then? 20
- A. The last time I saw him he was on his back.
- HIS LORDSHIP: No, no. I am trying - forget when you tried to run away but when you last saw the deceased man at that stage, in what position was he, was he down on the ground or on his hands? 30
- A. On his hands.
- HIS LORDSHIP: Still on his hands and looking around?
- A. (Witness nods.)
- HIS LORDSHIP: In other words he don't fall down flat on his face yet?
- A. (Witness shakes head.) 40

- HIS LORDSHIP: So, you got away now and the next time you saw the deceased man he was lying on his back?
- A. On his back.
- HIS LORDSHIP: Well, perhaps we could just get this straight. Is it like how he is in the picture, that's the next time you saw him?
- A. (Witness nods.)
- 10 HIS LORDSHIP: That's in picture three. Yes, Mr. Andrade?
- MR. ANDRADE: What happened to you after that now? Did something happen to you? What happened to you after that?
- A. After what, sir?
- Q. After, while you were in the shed there, anything happen between you and anybody?
- A. Yes, sir.
- 20 Q. Well, tell us about that?
- A. I went into ... I saw the clearest one, the shortest one coming towards me.
- Q. You mean Meggie.
- HIS LORDSHIP: Hold on a minute now. So, they stop stoning the man now or one is coming towards you or what?
- A. I saw Meggie coming toward me, sir, with a post, a fence post.
- 30 HIS LORDSHIP: Wait a minute, gentlemen, I am a little lacking. The next thing happening, you are still in the carpenter's shed, both men stoning deceased, deceased falling down on his hands, what happen to you?
- MR. ANDRADE: They stop stoning him or continue or what?

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MILTON SMITH  
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continued

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MILTON SMITH  
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continued

HIS LORDSHIP: You trying to follow him or what?

A. I tried to run follow him but I couldn't move.

HIS LORDSHIP: I tried to run follow deceased but couldn't move. And the next thing you saw now is Meggie coming towards you?

A. Toward me. 12:10 p.m.

HIS LORDSHIP: Next thing you saw was Meggie coming towards you?

10

MR. ANDRADE: With what, if anything?

A. A post.

Q. Show the jury how he did it?

A. Hold it like this.

Q. What kind of post?

A. Fence post.

HIS LORDSHIP: Both arms are shoulder high? Yes?

A. Yes, sir.

20

MR. ANDRADE: Did you do anything?

A. I draw back inside the store room where Mr. Sydney Smith run from.

HIS LORDSHIP: Sorry, you drew back inside the store room?

A. Store room where Mr. Sydney Smith run from.

HIS LORDSHIP: Aah, hah?

MR. ANDRADE: What happened to the post that Meggie ...?

30

A. Him jam at me with the post.

HIS LORDSHIP: And you did what?

A. The door was closed.

HIS LORDSHIP: How you mean the door was closed?

A. Just closed.

HIS LORDSHIP: That's the store room door. In other words you mean just close of its own weight?

10 A. I don't know if it is the post or what.

HIS LORDSHIP: Oh, you can't say. Yes, Mr. Andrade? So - sorry, where were you now, inside the store room or out in the shed?

A. Inside the store room.

HIS LORDSHIP: I was then in the store room. Yes, Mr. Andrade?

MR. ANDRADE: Your door was now closed?

A. Yes, sir.

20 Q. Did you try to look outside? What you did next?

A. I tried to peep through the crevice of the door to see what next happen.

Q. Were you able to see anything?

A. I see the same fellow with the post kick the pot off the fire and jam it.

Q. So, the pot was on the fire?

30 HIS LORDSHIP: Mr. Andrade, give me a chance no. You are leaving me a mile behind and when you are to go you won't go.

MR. ANDRADE: I am sorry.

HIS LORDSHIP: Now, the last thing, he is peeping through the crevice and what you say? what Meggie knock? the pot off the fire?

A. With the post.

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- HIS LORDSHIP: Huh, huh?
- MR. ANDRADE: By this time, was ...
- HIS LORDSHIP: Something else, he was saying something else which I didn't get. He knock the pot off the post - off the fire, beg your pardon, what next happen?
- MR. ANDRADE: Where was Ceaphas? Was he in the shed at that time? 10
- A. I don't know.
- Q. Did you see him?
- A. I don't know.
- Q. Did you see him?
- A. No.
- HIS LORDSHIP: That's in the carpenter's shed there you didn't see him.
- MR. ANDRADE: As a matter of interest, you see, what was in the pot?
- A. Nuh lunch. 20
- Q. What lunch, man? What unoo cooking?
- A. Breadfruit and dumpling.
- Q. And what else?
- A. Nothing.
- Q. Only breadfruit and dumpling you were having for lunch that day?
- A. You couldn't eat that alone.
- Q. Well, what, were you eating it alone? 30
- A. Chicken preparing.
- HIS LORDSHIP: Then what happened to the chicken?



A. I couldn't tell, sir, I was so shocked.

HIS LORDSHIP: No, no. Up to the stage this thing was happening, what was the condition the chicken was in?

A. The chicken was being preparing.

HIS LORDSHIP: How you mean preparing?

A. I come on and see Ceaphas cutting up.

MR. ANDRADE: What was he cutting it up with?

A. His knife.

HIS LORDSHIP: Cutting the chicken when I came up. You see, gentlemen, you take me off at a tangent again. I was of the impression that the accused man, Meggie, jam the pot of stuck the pot off the fire with his post but he was saying something else which I haven't got at all.

MR. ANDRADE: Coming back. You see, pot came up so I deal with the pot.

HIS LORDSHIP: I see.

MR. ANDRADE: You saw Meggie jamming pot with the same post?

A. Yes, sir.

Q. Anything else you saw from inside the store room?

A. Apart from Meggie jamming the pot?

Q. Huh, huh? Did you see where he went or what happen?

A. He ran outside.

HIS LORDSHIP: After he jam off the pot he ran outside?

A. He ran outside.

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continued

10

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continued

- HIS LORDSHIP: With the post or he left it or what?
- A. With the post.
- HIS LORDSHIP: Yes?
- MR. ANDRADE: Now, at that time, you see, did anyone speak?
- A. I hear a voice, a lady's voice.
- Q. No, sir. All right. Good, was the voice good? 10
- A. Loud enough, say "Run, Ceaphas, run, don't mek dem kill yu".
- Q. You could have heard from inside the store room?
- A. From inside.
- Q. What did the voice say?
- A. "Run, Ceaphas, run, don't mek dem kill yu".
- HIS LORDSHIP: Where were the accused men at that time, when that voice spoke - the woman's voice? 20
- WITNESS: I heard the sound.
- HIS LORDSHIP: When you heard the lady's voice calling, "Run Ceaphas, run; don't let them kill you", could you see the accused men at that stage, or one, or - what?
- WITNESS: No, sir.
- HIS LORDSHIP: You didn't see them at all? 30
- WITNESS: No, sir.
- MR. ANDRADE:
- Q: After you heard the voice, did you hear anything else?
- A: The engine of the motor cycle started.

HIS LORDSHIP: After you heard the woman called?  
 WITNESS: After I heard the woman called.  
 HIS LORDSHIP: Immediately after, or sometime after?  
 WITNESS: Immediately after, sir.  
 MR. ANDRADE:

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Q: After you heard the engine of the motor cycle, did you do anything?

A: Limped towards the office.

Q: What?

A: I go towards the office.

Q: You go towards the store-room?

A: From the store-room I go towards the office.

Q: Any particular reason?

A: To try to telephone.

Q: Did you use it?

20

A: It was dead.

Q: From the office - from the office, where did you go?

A: Back to where Mr. Smith was lying.

Q: Did you look at him?

A: Of course, sir.

Q: You noticed anything about him?

A: I saw he was bleeding from his right ear.

Q: Show me?

A: (witness shows his right ear)

30

Q: Right ear?

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A: And there was a bruise on his chin.

Q: How did he appear to you?

A: I thought he was still alive, because ten minutes ago, or five minutes, the man was with me; so I go to pull his shirt and try something like this - no beating. I hold his pulse. I look upon the rest of the people and said, "He is dead".

HIS LORDSHIP: You felt his heart and you took his pulse, and what it seemed like - him alive or dead? 10

WITNESS: He is dead.

MR. ANDRADE:

Q: Now, at any time you see Mr. Smith - anytime while in the shed, did you see Ceaphas with any cutlass?

A: No, sir.

Q: He had a cutlass? 20

A: No, sir.

HIS LORDSHIP: Ceaphas?

MR. ANDRADE: Yes.

HIS LORDSHIP: Yes.

MR. ANDRADE: Thank you, Mr. Smith.

Time 12:20 p.m.

HIS LORDSHIP: Mr. Smith, you are telling us that you saw the accused - deceased man go down on his hands, both accused men throwing the stones at him; it was just outside the ramp. Now, do you know if any of those stones thrown at the deceased by the accused men caught the deceased man? 30

WITNESS: I could not say.

HIS LORDSHIP: Now, when you came back in that ten minutes - you are going to the office, trying to use the phone and then coming back to where Mr. Smith, the deceased man is lying - when you came back you say you saw him bleeding from his ear and bleeding from his chin - in what position was he then?

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10 WITNESS: On his back.

HIS LORDSHIP: He was then on his back - with the piece of crocus bag or board underneath him?

WITNESS: No.

HIS LORDSHIP: Why you told me so a while ago? Now, he was on his back now?

WITNESS: On the ground.

HIS LORDSHIP: In what position - across the ramp - still over - was he lying as it is in picture three?

20

WITNESS: Where?

HIS LORDSHIP: See it here; see him lying down on his back here with a piece of bag or board, or crocus bag. He was not in that position?

WITNESS: Not the piece of board.

HIS LORDSHIP: He is lying in the position he is, but the board or what wasn't there at the time, but he was then lying in that position? In other words, he is down in the middle, he is not across it?

30

WITNESS: He wasn't across it.

HIS LORDSHIP: He was not across?

WITNESS: No, sir.

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HIS LORDSHIP: I see. That is what I want to know. You are sure about that; he wasn't lying across the ramp?

WITNESS: No, sir.

HIS LORDSHIP: So, let me see if I understand your evidence, quickly: you never see the deceased man lying across the ramp?

WITNESS: No, sir.

Time: 12:24 p.m.

10

CROSS-EXAMINATION

CROSS-EXAMINATION OF MR. MILTON SMITH BY MR. H. HAMILTON (DEFENCE ATTORNEY)

Q: Mr. Smith, you are not related to Sydney?

A: No.

Q: It is my suggestion to you, Mr. Smith, that in your evidence that you have just given, you have told some lies? I don't know where to begin to question you.

A: (no answer)

HIS LORDSHIP: Are you telling lies, Mr. Smith?

20

WITNESS: Prove the lies.

HIS LORDSHIP: Are you telling lies, Mr. Smith - not prove any lies - are you telling lies?

WITNESS: No, sir.

MR. HAMILTON:

Q: O.K. I will seek to prove them. According to the evidence when the deceased fell, the first part of his body to touch the ground where his hands - is that correct?

30

A: That is what I said.

Q: In answer to His Lordship a while ago, you have said that the deceased was lying as he is in the picture, picture number three. At no time did you see the deceased lying across the ramp?

A: No, sir.

Q: At no time?

A: Yes, sir.

Q: Is it not a fact, Mr. Smith, that when the deceased was running he butt his foot on the ramp, the end of the ramp, just by where it joins the earth?

10 A: It could be.

HIS LORDSHIP: No, no; not could be.

MR. HAMILTON:

Q: Aren't you positive - I am putting it to you, aren't you quite positive that when Mr. Smith was running, he butt his foot and ...?

A: Against the ramp - yes.

Q: You are in no doubt about that?

A: No.

20 HIS LORDSHIP: His answer is that he is in no doubt about it?

MR. HAMILTON: That is right, M'lord.

Q: Is it also not a fact, Mr. Smith, that despite the number of stones you say were thrown that day, you cannot say that you saw one stone thrown by either of these men, hit the deceased - isn't that a fact?

A: You remember I say I don't know how many stones thrown?

30 HIS LORDSHIP: But even then - having regard to whether it was one, a million or what, you didn't see any hit Mr. Smith?

WITNESS: No; I can't tell.

MR. HAMILTON:

Q: Now, did you give evidence at the preliminary hearing in this very May Pen Court?

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A: (no answer)

HIS LORDSHIP: What page is that?

MR. HAMILTON: That is page 11, M'lord and 10  
in typescript.

HIS LORDSHIP: Where is this?

MR. HAMILTON: Starting with the cross-examination,  
M'lord.

HIS LORDSHIP: There are two cross-examination. 10

MR. HAMILTON: The second part by the court.

HIS LORDSHIP: The second one then?

MR. HAMILTON: Yes; the very first line, M'lord.

Q: Now, Mr. Smith, when you gave evidence ...  
...HIS LORDSHIP: Hold on; you are putting the cart  
before the horse. Suppose you  
start with the horse first.MR. HAMILTON: Yes; I am going to the preliminary  
- well I have already done it.HIS LORDSHIP: When - I have not heard one word 20  
of it.

MR. HAMILTON: You mean the foundation?

HIS LORDSHIP: You have to put the specific things  
first. How are you laying the  
foundation and you have not put  
the specific thing first?MR. HAMILTON: Has this witness not said that no  
no time had he seen the deceased  
lying across the ramp?

HIS LORDSHIP: Yes. 30

MR. HAMILTON: That is what I am referring to. I  
think I have got the answer again -  
already from him.

HIS LORDSHIP: You ever said so and so.



MR. HAMILTON: Oh, I know what you mean.

Q: Have you ever said on a previous occasion, that when the deceased fell, he fell face downwards and ended up lying across both arms of the ramp?

A: (no answer)

HIS LORDSHIP: Come again?

10 MR. HAMILTON:

Q: Fell, face downwards.

A: Face downwards.

Q: Let me repeat it slowly, Mr. Smith. You say I must prove it. He fell face downwards and ended up lying across both arms of the ramp?

A: I can't remember ever saying it.

HIS LORDSHIP: Well, first of all, would that statement be true?

MR. HAMILTON:

20 Q: Would it be true ... ..

HIS LORDSHIP: Would that statement be true at all: when the deceased fell, he fell face downwards and ended up lying across both arms of the ramp?

WITNESS: That would not be true.

MR. HAMILTON:

30 Q: Remember you have just told me that the first part of the body of the deceased to touch the ground was his hands - he fell on his hands and raised up, looking around, like a man about to start a race - did you say it on a previous occasion - and specifically at the preliminary hearing - the deceased fell on his stomach with his face downwards?

A: (no answer)

HIS LORDSHIP: Have you ever said that?

WITNESS: Read it again for me, please?

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continued

MR. HAMILTON:

Q: Deceased fell on his stomach with his face downwards - you say that, man?

A: I say go down on his hands.

Q: You never say it?

A: No, sir.

HIS LORDSHIP: You never said that? Is that right, Mr. Smith; you never said that?

10

WITNESS: No.

MR. HAMILTON:

Q: Did you ever, also, not say the deceased's chest was the first part of his body which struck the other side of the ramp?

A: No.

HIS LORDSHIP: The answer was no?

MR. HAMILTON: Yes, M'lord.

20

Q: You never said the part of the ramp the deceased's chest struck was concrete?

A: I said the ramp is concrete.

Q: We know the ramp is concrete; we can see it in the picture. I am asking you a specific question. The part of the ramp the deceased's chest struck was concrete?

A: (witness shakes head, indicating no)

Q: Don't shake your head, man; say it loud?

30

A: No.

Q: Now, you gave evidence at the preliminary hearing in this - it was not in this courtroom, it was the courtroom in the other end of the building; the judge was Mr. Parkinson?

A: Yes.

Q: You remember seeing me there?

A: Yes.

Q: Was this in July of this year?

A: I don't remember the month.

Q: But you remember giving evidence?

A: Yes.

10 Q: You gave your evidence on oath, just as you have done today - swear to tell the truth?

A: Right.

Q: You saw the judge writing down what you were saying; just as how His Lordship has been writing down?

A: Right.

Q: When you were finished giving evidence, did he ask you to listen while he read it back to you, to see if you made any mistake?

20 A: Yes.

Q: And you listened?

A: Yes.

Q: You tell him you made any mistake?

A: No.

Q: Did you sign it?

A: Sign it.

Q: Didn't make a mark; you signed it. So you can read and write - can't you?

A: Yes, sir.

30 Q: And you signed it at the bottom of each page, as being correct - what was written there?

A: Yes.

MR. HAMILTON: May he be shown his signature, please?  
(Document shown to witness)

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Q: Is that your signature, sir?

A: Yes.

MR. HAMILTON: Will you, Madam Clerk, please show him the particular section - you find it - where cross-examination continues - just the first - don't give it to him, just let him read that first sentence.  
(Witness is shown document)

Q: Can you read - read it very quietly; don't let any juror hear. 10  
(Registrar reads to witness)

Q: Alright, just the first sentence. You heard what she read to you?

A: Yes.

Q: Do you still say, Mr. Smith, that you never told the judge, in answer to questioning you - when deceased fell, he fell face downwards and ended up lying across both arms of the ramp? 20

A: No.

HIS LORDSHIP: You still never told him; although they point it out on the paper, Mr. Smith?

WITNESS: I said when he fell down, he fell hands down.

HIS LORDSHIP: This is your signature down here, Mr. Smith - Milton Smith?

WITNESS: Yes, sir.

HIS LORDSHIP: When deceased fell, he fell face downwards and ended up lying across both arms of the ramp. There can be no doubt that, that is what is there. Deceased fell on his stomach, with his face ... - no doubt about that - with his face downwards. 30

MR. HAMILTON: Now, I will put the next one to him.

HIS LORDSHIP: The deceased chest, the first part of his body which struck other side of ramp. You are saying that each side of the ramp was about twenty inches wide - and that is true?

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WITNESS: Yes, sir.

MILTON SMITH  
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HIS LORDSHIP: That comes immediately after - "each side of the ramp was about twenty inches wide."

10 WITNESS: That is true.

HIS LORDSHIP: Then how you didn't tell him the rest?

WITNESS: (no answer)

MR. HAMILTON:

Q: May I enquire from you, Mr. Smith, did you tell him the space between both sides is two foot, six to three feet, each?

A: Yes; I told him that.

HIS LORDSHIP: The next one you put ...?

20 MR. HAMILTON:

Q: The space between both sides is about two foot, six, to three feet?

A: Yes.

HIS LORDSHIP: He told him that?

WITNESS: Yes.

HIS LORDSHIP: Did he say that this statement is right also - that is correct; that is the truth?

30 WITNESS: Yes; both these statements is the truth. The distance between the two ramps is about twenty inches - two feet, six to three feet.

HIS LORDSHIP: Each side of ramp is about twenty inches wide and the distance between the two sides is about two feet, six to three feet. And you did tell the Resident Magistrate both those things?

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WITNESS: Yes, please.

HIS LORDSHIP: Just one moment, Mr. Hamilton. Mr. Smith, now, did you hear the judge read back those things that the gentleman read to you a while ago?

WITNESS: Yes.

HIS LORDSHIP: Did you or did you not tell the Resident Magistrate that, at the preliminary enquiry; did you, or did you not tell the Resident Magistrate that, at the preliminary enquiry: When the deceased fell, he fell face downwards and both arms lying across the ramp?

10

WITNESS: I don't remember. It is such a long time.

HIS LORDSHIP: Try and remember, you see, the whole thing. When the deceased fell, he fell face downwards and ended up lying across both arms of the ramp. Then it continues, "The deceased fell on his stomach with his face downwards. The deceased's chest was the first part of his body which struck other side of the ramp." It went on, "Each side of ramp is about twenty inches wide. The space in between the both sides about two foot, six to three feet." You are not saying that the R.M. wrote down all those things and you didn't say that? You remember?

20

30

WITNESS: I am trying to remember.

HIS LORDSHIP: Try and remember. I don't think you are suggesting that the judge would write down something you didn't say. And even if he wrote down something you didn't say, when he was reading it back to you - did he read it back to you?

40

WITNESS: Yes, sir.

HIS LORDSHIP: You can correct him at that stage.

WITNESS: O.K. said I admit. I try. If I check back and admit he fell face down.

HIS LORDSHIP: The whole thing; because it is very important to the defence. Would you like to think about it?

WITNESS: That is O.K.

10 HIS LORDSHIP: Try and jog your memory and try to picture the man lying down there. Members of the jury, please remember what I told you. I am not going to remind you. You must not discuss the case with anyone.

LUNCHEON ADJOURNMENT - 12:45 P.M.

JURY ROLL CALL - ALL PRESENT

HIS LORDSHIP: He is still on his oath.

REGISTRAR: You are still on your oath.

20 HIS LORDSHIP: Yes, Mr. Hamilton?

MR. HAMILTON: Well, I think your Lordship ...

HIS LORDSHIP: Pardon?

MR. HAMILTON: Your Lordship was ...

HIS LORDSHIP: No. Well, I was sort of supervising.

MR. HAMILTON: Was bowling just before the lunch. It was your question that he went away to reflect on, M'Lord and I prefer leaving it to you.

30 HIS LORDSHIP: Well, if you prefer, I'll ...  
What is the position now, Mr. Smith, did you tell the learned resident magistrate what counsel was putting to you?

A. (witness shakes head.)

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- HIS LORDSHIP: Or you didn't tell him?
- A. (Witness shakes head.)
- HIS LORDSHIP: You didn't tell the judge that in the lower court, what was read out to you?
- A. No, sir.
- HIS LORDSHIP: Huh?
- A. No, I can't remember. 10
- MR. HAMILTON: I don't know if I am wrong. I would be guided by your Lordship. I am of the opinion, M'Lord, he was talking so low sometimes, I thought that before lunch he had said the words, "I'll admit to". I don't know what he was saying, if he was admitting to anything. Did you use those words at all before lunch, "I'll admit to" or "admitted to" or words to that effect? 20
- A. No, I just can't remember.
- Q. Did you ever use the words, "I'll admit to"?
- A. (Witness shakes head.)
- HIS LORDSHIP: You didn't?
- A. (Witness shakes head.)
- HIS LORDSHIP: Don't shake your head, Mr. Smith. Please answer. You did not use those words? 30
- A. I'll admit but admit to what.
- HIS LORDSHIP: Oh, I'll admit but admit to what.
- MR. HAMILTON: That's what you said?
- A. I said I'll admit.
- Q. Oh, you did use the words; you said I'll admit but to what?



- A. (Witness nods.)
- Q. Well, you want to admit to anything?
- A. Just don't remember.
- HIS LORDSHIP: Speak little louder, please. You don't remember using those words?
- A. No.
- 10 MR. HAMILTON: So, you admit to don't remember. So, tell me something, Mr. Smith - right, you remember. I'll have to spend a little time with you on this, not too long, don't fret. You did say the space between both sides was from two to three feet?
- A. I said that.
- Q. Right after you didn't say the part the deceased' chest was on was concrete?
- 20 A. I don't remember saying that the part wey him go down ...
- Q. Part of ramp the deceased' chest struck was concrete?
- A. Didn't say the part of ramp.
- Q. Where his chest struck?
- A. Didn't say struck.
- Q. Now, didn't you say ... you see?
- 30 HIS LORDSHIP: Wait one moment, please. But didn't say his chest struck?
- A. Yes, sir.
- MR. HAMILTON: Right after that did you say deceased was running in direction of mechanic shop, did you say that?
- A. Yes. Yes.
- Q. Oh, so right after the part that you don't say, you said that deceased was running in the direction of mechanic shop?

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- A. Direction?
- Q. Huh, huh? But there is an office beyond it, you said that?
- A. I said that.
- Q. So, when the judge write down that him write down correct what you say. When him write down the first part it no correct, huh, Mr. Smith?
- A. (Witness shakes head.) I don't remember saying that. 10
- Q. You don't remember? Well, if it never happened you couldn't have said it. If you never saw these things happen on the 22nd of April you couldn't have said it?
- A. I was in a shock.
- HIS LORDSHIP: No, no, this is at the preliminary enquiry, you know.
- MR. HAMILTON: The shock mus' done now. Yu all now in a shock? 20
- A. (Witness shakes head.)
- Q. So, may be everything you say you still in a shock?
- HIS LORDSHIP: Huh? What is his answer?
- A. No.
- MR. HAMILTON: Mr. Smith, after that you said the office is beyond, did you say deceased was authorised to carry a gun? 30
- A. Yes.
- Q. You said that? A. Yes.
- Q. Huh, huh? Did you say, "I don't know where gun is kept?"
- MR. ANDRADE: I object to this line of cross-examination.

A. Yes.

MR. ANDRADE: It is improper for my learned friend to be looking at the deposition and asking him if he said this, if he said that. You only use the deposition if he is contradicted. Right now there is no contradiction of, if he is contradicted you must first lay a foundation.

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10 HIS LORDSHIP: Yes?

MR. ANDRADE: But right now it is improper to look at the deposition and say did you say that, did you say this.

HIS LORDSHIP: Let me put it this way, Mr. Andrade. Can't he try to show that what he is saying there is the truth? Does it go any higher than that?

MR. ANDRADE: Though he is agreeing with what he said earlier?

20 HIS LORDSHIP: Well, if it is of paramount importance, I think. Here is a man who is denying something that defence is saying and he now proceeds to say I said something immediately following that. Certainly it must be.

MR. ANDRADE: It is admitted.

30 HIS LORDSHIP: The fact that he might be reading it from the deposition, is it any more than he is putting it from the deposition or that he thinks it is true? It certainly is, in my opinion, more important, affecting this man's credit. Go on, Mr. Hamilton. He said I don't know where deceased authorised to carry gun. I don't know where gun is kept. What you are being asked is, did you say so, remember? That is what the gentleman is asking you.

40 A. Yes.

HIS LORDSHIP: Sorry. Deceased was authorised to carry a gun. I don't know where the gun is kept. You did say that?

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- A. Yes.
- MR. HAMILTON: Did you say, "I don't know if deceased was running to get his gun?"
- HIS LORDSHIP: Well, hold on now. I think, perhaps, you are stretching your leg a little too far now, whether he did or didn't. I don't think even if he answered that question - I don't know how he could. 10
- MR. HAMILTON: Oh I see. This may be in his state of mind. Let me ask you this. You were asked, I believe, by my learned friend, Mr. Andrade, if you didn't see or if you saw Ceaphas with any machete that day and your answer was no.
- HIS LORDSHIP: Well, I don't know if he went as far as that day, I think it's in the shed. 20
- A. Still no.
- HIS LORDSHIP: The answer is still no.
- MR. HAMILTON: All right. I know the answer was still no. Now, are there any machetes on that property?
- A. Of course.
- Q. I would have thought so. Right. Being a big property and all that, did you see ...
- HIS LORDSHIP: No, you going little too far now, putting questions of fact now, I think you are going a little too far. 30
- MR. HAMILTON: All right. There are machetes to be found on the Inverness property?
- A. Of course. Yes. Yes.
- Q. Have you never said there are no machetes to be found on the Inverness property? 40

MR. ANDRADE: Object.

In the Supreme Court

A. No, I never said that.

Prosecution  
Evidence

MR. HAMILTON: I take it all back. I am misquoting. Now, Mr..... so, your final position - might as well just come to this - your final position is that all these things I have asked you about, about the man falling across the ramp and his chest hitting the concrete part of the ramp, you never ever said to the judge ...

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Hamilton  
3rd December 1975  
continued

10

A. Said he go down on his hand.

Q. Yes. So, you never said he fall across the ramp?

HIS LORDSHIP: When you were giving evidence at the preliminary enquiry?

MR. HAMILTON: Huh, or you said so?

A. (Witness shakes head.)

HIS LORDSHIP: Don't shake your head. Please answer.

20

A. No, sir.

MR. HAMILTON: No, sir. HIS LORDSHIP: Never said it.

MR. HAMILTON: Mr ... HIS LORDSHIP: One moment.

MR. HAMILTON: Mr. Smith, I am suggesting - just as I started out my questions and ending - that you have deliberately lied to his Lordship and this jury in what you have said by talking about the man falling down and dropping on his hands, I am suggesting it is a deliberate lie and that you have changed your story.

30

HIS LORDSHIP: No, no, it is double barrelled. Are you telling a deliberate lie? You see? Did you ever say the man fell down on his hands?

A. Said all along the while, sir.

In the Supreme Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Hamilton  
3rd December 1975  
continued

HIS LORDSHIP: That's all you said all along.

MR. HAMILTON: I am suggesting also that you are deliberately lying when you say you never saw, when you say in this court today that you never saw the man lying across the ramp.

A. I never saw him lying?

HIS LORDSHIP: Huumm, you are not telling a deliberate lie? 10

A. No, sir.

MR. HAMILTON: And that you have deliberately changed your evidence that you are giving to this jury from what you gave at a previous trial on the same case, on oath.

A. No, I haven't changed.

HIS LORDSHIP: Huh? A. Same evidence.

MR. HAMILTON: And that the truth of what happened that day is that Mr. Sydney Smith while running butt his foot on the ramp and fell. 20

HIS LORDSHIP: He said that already, didn't he?

MR. HAMILTON: Yes, but I am putting it back to him. You agree that he butt his foot and fell, right?

A. I didn't say fell, I said go down.

Q. Butt his foot. What caused him to go down was butting his foot, isn't that so? 30

A. That's what I said.

Q. Right. Also, am I correct that you saw - when you say you saw blood coming from his ear, the blood was coming from inside his ear, isn't that so?

A. Yes.

- Q. Yes. HIS LORDSHIP: Huh, huh?
- MR. HAMILTON: That you said you went up to him after he was down there, after you went away and you come back you went and looked at him?
- A. Yes.
- Q. Am I not correct, Mr. Smith, in saying Mr. Sydney Smith had no injuries to his head whatsoever?
- A. I think so, yes.
- Q. Did you see any?
- A. I saw blood coming from his ears.
- Q. Yes, you saw blood coming from his ears. You saw any cuts on his ears?
- A. No, I didn't stop to look for a cut.
- Q. You saw no cut on his ears I am asking you. Did you see any cut?
- A. No.
- Q. You see any cut on his head?
- A. No.
- Q. No. And he had - didn't have two bruises on his chin, both sides. He had one small scratch on the left side of his chin, not two.
- A. I wouldn't know.
- Q. Did you see two, I am asking you, one to the left side?
- A. It could be one, it could be two.

In the Supreme Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Hamilton  
3rd December 1975  
continued

2:25 p.m.

In the Supreme Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975

MILTON SMITH: CROSS-EXAMINATION - MR. ATKINSON:  
-----

MR. ATKINSON: Tell me something, you claim you saw Meggie come inside the shed with a post?

A. Yes.

Q. How you say him hold the post again?

A. Position like this ... (indicating). 10

Q. You see that?

A. Yes, sir.

Q. Now, tell me something, Ceaphas Smith was there that time?

A. Who?

Q. I mean Ceaphas Laidford, man.

A. I couldn't tell.

Q. You can't tell, you didn't notice Ceaphas?

A. (Witness shakes head.) 20

Q. Roy Burke, him was in the mechanic shed at that time?

A. I don't know.

Q. I am suggesting to you that that is not true, you know.

A. I am telling you what is the truth.

HIS LORDSHIP: Speak up, please, Mr.

A. I am telling you what is the fact.

MR. ATKINSON: I am going to ask you a question but before I ask you I am going to tell you something. Mr. Ceaphas Smith and Mr. ... 30

A: Who?



Q. Mr. Ceaphas, you know which Ceaphas I am talking man, Laidford. No one Ceaphas you know?

A. Yes.

Q. And Mr. Roy Burke has testified here on oath and none of them mentioned ...

MR. ANDRADE: No, no, no. This is improper again.

10 HIS LORDSHIP: It doesn't follow that because they have said so it is so.

MR. ATKINSON: Perhaps you might hear the whole question, sir.

HIS LORDSHIP: Yes, let me hear the whole question first because what you are doing there is really making a speech.

MR. ATKINSON: This is a formal question that has been tested at the highest level.

HIS LORDSHIP: Go on, let me hear it.

20 MR. ATKINSON: Mr. Burke and Mr. Laidford ...

HIS LORDSHIP: Have not said anything about this.

MR. ATKINSON: ... have not mentioned anything about Meggie running into the shed with any fence post. Would you like to change your testimony in the light of that?

A. Because me alone was in the shed. I couldn't say who else was there.

HIS LORDSHIP: You alone was in the shed.

MR. ATKINSON: Tell me something, Meggie come inside the shed and pick up the post?

30

A. No.

Q. Him bring it from outside?

A. Outside.

Q. Him stay from outside and run inside with it?

In the Supreme Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

- A. Yes.
- Q. So, if people outside in that yard they could see him run inside the shed with it?
- A. Of course.
- Q. Then how you tell me you alone was inside the shed?
- A. Me alone was in the shed. 10
- Q. If Roy Burke was inside the shed and looking in that direction wouldn't he have been in a position to see somebody running into the shed with a post like that?
- A. I don't know.
- Q. The shed open that he could see through? You are a smart man as far as you are concerned are you not? 20
- A. (Inaudible.)
- Q. You know how the mechanic shed set out?
- A. Of course.
- Q. If you stand up in that mechanic shed you can look right towards the doorway of the carpenter shed?
- A. Of course. 30
- Q. So, if you personally was in the mechanic shed and look into the carpenter's shed you could see somebody running in there?
- A. Yes.
- Q. But you couldn't say if Mr. Roy Burke standing in there he could see?

- A. Yes.
- Q. I see. You have a special vision. Now, when you say thing happened now you couldn't run because your foot cramp?
- A. Of course.
- Q. And you just draw inside the store room?
- 10 A. Yes.
- Q. And as God would have it the door just closed itself?
- A. Yes.
- Q. And you don't know who close it?
- A. No.
- Q. And you don't know if Meggie close it?
- A. Yes, sir.
- Q. But you know the door just close like that?
- 20 A. That's what I say.
- Q. Any duppy inside that shed?
- A. I don't know.
- Q. But nobody else was inside the shed but you and Meggie?
- A. At that time.
- Q. And no breeze was bloding. Tell me a nice gush of wind was bloding?
- A. I didn't see it blow.
- 30 Q. Gush of wind was bloding inside?
- A. I don't know.

In the High Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

In the High Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

Q: Suggesting you are not speaking the truth.

A: Why? Q. What?

A: Why?

Q: Don't answer me why, just tell me whether you are speaking the truth or not?

A: Yes.

10

Q: Tell me something now, how soon after Mr. Smith buck him toe that you claim Meggie run inside the shed with this post - right away, or long time past or what?

A: About five seconds.

Q: Him come inside there?

A: Him come inside.

Q: No time at all past - just five seconds?

A: Just five seconds.

Q: And where you were now, was how far from the doorway of the shed?

20

A: (no answer)

HIS LORDSHIP: At what stage?

MR. ATKINSON:

Q: Where you were when him come in it with the fence post?

A: About ten feet.

Q: Point out ten feet from the doorway of the shed to where you were in the shed?

A: From here to the next point. (witness points out a distance).

30

Q: The width of your bar?

A: (no answer)

HIS LORDSHIP: Sorry, which one you are pointing at?

WITNESS: From this to this corner.

HIS LORDSHIP: That is about ten feet, it seems.

MR. ATKINSON:

Q: And how far were you from the store-room - about ten feet too?

10 A: No.

Q: About how far?

A: Just about two feet.

Q: You say you trying to run. Where you were trying to run from at first?

A: To follow Mr. Smith; to run out from the shed.

Q: When you see him with the post coming, you were going to run out of the shed?

A: (no answer)

20 HIS LORDSHIP: That is not what he was saying. Were you going to run out of the shed when you saw Meggie coming with the post?

WITNESS: Yes.

MR. ATKINSON:

Q: Where you were going to run?

A: I don't know.

A: And you draw inside the store-room and the door closed by itself?

30 A: Yes.

Q: And see him inside there turning over the pot and-what else?

A: I don't know whether is jamming close the door, but him jam to the door.

In the High Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

In the High CourtProsecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

Q: Which way the door open - it open towards the store-room or open out?

A: Out.

Q: It did open wide?

A: (no answer)

HIS LORDSHIP: What was he saying about the door?

MR. ATKINSON: It opens wide and opens out. 10

HIS LORDSHIP: Opens out where?

WITNESS: Out.

MR. ATKINSON: Probably is all the breeze blow off the post that cause it to close.

WITNESS: I don't know.

Q: So all that time then, Meggie could not have been outside throwing stones by Mr. Smith lying down by the ramp, because he was outside jamming pot and jamming door what is your answer? 20

A: After the stone were being thrown.

Q: Didn't you tell the court that is five seconds after Mr. Smith trip that he came inside with the post?

A: Yes.

Q: Then what you telling me - that after stones being thrown? I am suggesting to you, you are not speaking the truth, because, I am suggesting that neither of these two men threw stones that day? 30

A: Of course, they throw stones.

Q: But five seconds after he was in there running down with post?

A: (no answer)

HIS LORDSHIP: No,; that is not a question any longer; that is an argument. That is enough. One can allow some latitude, but since you are going over it again, I think you are going over it a little too far. 40

MR. ATKINSON:

Q: And I am suggesting to you that Ceaphas was using a machete to cut up the chicken?

A: No, no.

Q: You know, the next suggestion I am going to - I am suggesting that Mr. Smith was trying to take away the machete from Ceaphas?

10 A: There is no machete in that shop and there will never be.

Q: You won't mek dem bring any cutlass in there?

A: No.

Q: And there will never be?

A: No; if mi leave there somebody go there and bring a cutlass, but as long as me working there, no cutlass.

HIS LORDSHIP: You don't use cutlass in your work?

WITNESS: No, sir.

20 MR. ATKINSON:

Q: And you are a carpenter?

A: Yes.

Q: You use plane, though?

A: Yes.

Q: Ceaphas was the person standing nearest to Mr. Smith?

A: (no answer)

HIS LORDSHIP: At what stage?

30 MR. ATKINSON: Up to the time when dem leave the carpenter's shed. Up to the time when Mr. Smith run to the store-room, Ceaphas was the nearest person standing next to him, because you say "he pat him on the shoulder", and I say, "don't go anywhere else"?

In the Supreme Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

WITNESS: Yes.

Q: And Mr. Smith, before the men came, before the stones start flinging, according to you, was sitting down in that shed, in the carpenter's shed?

A: Which one of the Smith - me?

Q: No.

A: (no answer)

10

HIS LORDSHIP: No, the dead man.

WITNESS: Him was standing.

HIS LORDSHIP: Him was not sitting?

WITNESS: No, no; him wasn't sitting down; him was standing.

MR. ATKINSON:

Q: So him couldn't get up when dem coming; because he was standing?

A: No; him was standing.

Q: Another thing I want to ask you: where Mr. Smith trip and drop - at the foot of the ramp - the closest person to him was Mr. Roy Burke, who was in the mechanic shed ...

20

HIS LORDSHIP: Well, could you see Mr. Burke at that stage?

WITNESS: No, sir.

MR. ATKINSON:

Q: You couldn't see him?

A: No - I could have seen him, but I wasn't looking.

30

Q: And you swear that the deceased fell on his hands, the last time you saw him, before everything over, he was up on his hands like that, (defence attorney demonstrates) looking around?



In the Supreme Court

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Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

A: Yes.

Q: You swear that is what you saw?

A: (no answer)

Q: Was the company offering a reward concerning this case at all?

A: I don't know.

10

Q: Five hundred dollars?

A: I don't know.

HIS LORDSHIP: You don't know if the company offered a reward of five hundred dollars?

WITNESS: No, sir; I don't know.

MR. ATKINSON:

Q: What you say this morning - that you heard a female voice shouting out, "Run Ceaphas, run. Don't let dem kill you"?

20

A: Yes.

Q: You hear that?

A: Yes.

Q: Then you didn't peep outside to see what was going on at that time? You were too shocked?

A: I start trembling.

Q: That is when you start ... ..

A: Before I start tremble.

Q: But you peeped at one stage, though?

A: Right, sir.

30

Q: And is only one Ceaphas out there - you don't call Mr. Smith Ceaphas?

A: Ceaphas.

Q: You recognise the female voice?

In the Supreme Court

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Prosecution  
Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

A: Yes.

Q: Whose voice was it?

A: Is a lady live next door.

Q: What is her name?

A: Miss Mac.

Q: Not one Loise Ferron?

A: No.

10

Q: You know Loise Ferron?

A: If I see her face. I don't know her name - no, I don't know people.

HIS LORDSHIP: Loise Ferron - is it? But you might know her if you see her face?

WITNESS: Yes.

MR. ATKINSON: M'lord, on the basis of a previous examination sir, I would like, I wish to tender the relevant aspect of the deposition, sir. I wish to tender ... ..

20

HIS LORDSHIP: That is alright. I know.

MR. ATKINSON: I know what you are thinking.

HIS LORDSHIP: Can you?

MR. ATKINSON: The basis is there.

HIS LORDSHIP: So the fact that Mr. Hamilton didn't want to do that ...

MR. ATKINSON: No ... ..

MR. HAMILTON: No; he replied to me.

30

HIS LORDSHIP: You wish to tender it?

MR. ATKINSON: Yes.

HIS LORDSHIP: You want to tender the deposition. That would be Exhibit ...

MR. ANDRADE: Exhibit III, M'lord.

In the Supreme Court

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HIS LORDSHIP: In due course - what is happening here, we will deal with it later on. In this, whether somebody - when somebody gives evidence on oath before you, it differs substantially from what he said at the preliminary. The deposition can be put in before you to contradict what he said in court before you. That is all it is being put in for ...

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Evidence

No. 8

MILTON SMITH  
Cross-Examination  
by Mr. Atkinson  
3rd December 1975  
continued

10

MR. ATKINSON: That is the cross-examination, M'lord.

Time: 2:44 p.m.

MR. ANDRADE: I would like to pose a little question to the witness - a little demonstration.

RE-EXAMINATION OF MR. MILTON SMITH BY MR. ANDRADE  
(CROWN ATTORNEY)

RE-EXAMINATION

20

Q: You said that - Mr. Smith, you said that Sydney fell - how?

A: (no answer)

HIS LORDSHIP: We are not going over that again? There is no doubt in anybody's mind what he said. There can be no doubt that what he is saying is that the man went down on his hands.

MR. ANDRADE:

30

Q: Now, when he went down on his hands like that, you see, on his hands, - did you know the walls, the two walls of the ramp?

A: Yes.

Q: Now, in relation to those two walls, where was his hands - his body lying?

A: He fell on this - one part of the ramp like this, and his hands was on the other side.

MR. ANDRADE: I want the jury to see that quite clearly.

In the Supreme Court

Prosecution  
Evidence

No. 8

MILTON SMITH  
Re-Examination  
3rd December 1975  
continued

HIS LORDSHIP: I don't know how you are going to ... anyway, try. Look at picture three. This is the ramp here. The carpenter's shed would be over - somewhere over this side. So he is running from here coming here now - is that right? He is against here now, this first ramp here, and his hands over on this one over here. You see that, members of the jury, there can be no doubt about that. That is what he said.

10

MR. ANDRADE: With that, M'lord, no further questions.

HIS LORDSHIP: Thank you, Mr. Smith. Come down, please.

Time: 2:45 p.m.

MR. ANDRADE: We will take a short witness, M'lord.

In the Supreme Court

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Evidence

No. 9

CLIFTON HOWARD  
Examination  
3rd December 1975

No. 9

20

EVIDENCE OF CLIFTON HOWARD

MR. CLIFTON HOWARD CALLED, SWORN Time: 2:46 p.m.

EXAMINATION-IN-CHIEF OF MR. CLIFTON HOWARD BY MR. ANDRADE (CROWN ATTORNEY)

HIS LORDSHIP: Would you like to sit down, Mr. Howard, please.

WITNESS: Yes.  
(Witness sits)

30

MR. ANDRADE:

Q: Now, I believe your name is Clifton Howard?

A: Yes, sir.

Q: And you are a chauffeur?

A: Yes, sir.

Q: Employed to the Jamaica Cordage Company at Inverness?

A: Yes, sir.

Q: Now, do you recall the 17th of April, this year?

A: Yes, sir.

Q: You remember what day of the week?

10

A: It was a Thursday.

Q: On that day, sometime in the early afternoon do you recall what you were doing?

A: Yes, sir.

Q: What?

A: I was driving along to the - front the Sandy Bay Road to Inverness Estate.

Q: What?

A: A tractor.

HIS LORDSHIP: Driving from Sandy Bay?

20

WITNESS: Yes, sir.

HIS LORDSHIP: To the property?

WITNESS: Yes, sir.

HIS LORDSHIP: A tractor?

WITNESS: Yes, sir; a road that leads off the main road to the property. I saw those two accused men ...

HIS LORDSHIP: You were on this road now?

WITNESS: No; I leave off the main road, taking the road on the right hand side to the property.

30

HIS LORDSHIP: It was whilst you were on this road that you saw these accused men?

WITNESS: Whilst I reach on the main road, taking the - leave off the main road, taking the road that leads to the property.

In the Supreme Court

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Evidence

No. 9  
CLIFTON HOWARD  
Examination  
3rd December 1975  
continued

In the Supreme Court

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Prosecution  
Evidence

No. 9

CLIFTON HOWARD  
Examination  
3rd December 1975  
continued

MR. ANDRADE:

Q: Is that the property road?

A: (no answer)

HIS LORDSHIP: No; I gather there is another road. He gets off the main road, then he takes this road - whether parochial or not - then he gets on the property.

MR. ANDRADE:

10

Q: Anything happened?

A: Yes; I saw those two accused men leaning on a mango tree. Both men leave the mango tree and comes towards me on to the road, coming. That elder one over there ...

HIS LORDSHIP: Which is the elder one over there - you mean the taller one?

WITNESS: Yes.

HIS LORDSHIP: That is Daley? That is the gentleman on the right?

20

WITNESS: Yes; he says to me "if dem send you over the bush to draw some post", I must not go because if ah go there dem will shoot me.

MR. ANDRADE:

Q: Did you answer this?

A: Yes; I make an answer to dem. Man - I said, "Man, I am employed to this company and anywhere they send me on their property, I will have to go." When I was about the drive off, the smallest one said to me ....

30

HIS LORDSHIP: Which is the smallest one now?

WITNESS: That one. (witness points towards the dock).

HIS LORDSHIP: The one on the left?

WITNESS: Yes.

HIS LORDSHIP: Meggie, he said what?

WITNESS: He said, "That black boy, we must kill him."

MR. ANDRADE:

Q: He said that black boy, we must kill him - referring to who?

10 A: (no answer)

MR. HAMILTON: Objection, M'lord; if on this evidence my learned friend wishes to lead evidence against some threat being made against the deceased and this is the purpose to it, I am objecting. As a matter of fact, I would like this witness to be out of hearing while I am making my submissions, M'lord.

20 (Witness leaves courtroom) (Time: 2:52 p.m.)

MR. HAMILTON: Yes, M'lord, on this basis a person can't come and say a person says, that black boy, we must kill him, as if there is one black boy in Jamaica. This is not specific. If he proposes to try and lay some foundation - that black boy, the ranger, or Mass. Sydney. or - saying these men are issuing a threat then, but he can't on the strength of that ask the jury to say that black boy, we must kill him - how we don't know they are not speaking about this witness in the box? I am objecting, unless there is some foundation to show ... ..

30 HIS LORDSHIP: What are you objecting to at the moment?

40 MR. HAMILTON: That this witness, to say who it refers to, because who this witness thinks it's referring to has no bearing. It is for the jury to draw reasonable inferences, based upon what was said, or allegedly said, we can't safely assume

In the Supreme Court

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No. 9

CLIFTON HOWARD  
Examination  
3rd December 1975  
continued

In the Supreme Court

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Evidence

No. 9

CLIFTON HOWARD  
Examination  
3rd December 1975  
continued

MR. HAMILTON:  
(Contd)

that it could have been the deceased, Sydney Smith and the deceased alone; because if it could be the deceased and somebody else, it is motive, in my submission. This witness has not said anything so far, for a jury to say, well based upon that, what this man has said, I should reasonably draw the inference that they must have been talking the deceased - five days before they said, I am going to kill this man. He is saying five days before they said they are going to kill him, then five days they come and kill him. He really hasn't given anything upon which ... ..

10

HIS LORDSHIP:

Can you give anything but opinion evidence on this matter?

MR. HAMILTON:

If it is only opinion, it is objectionable; he is not an expert. What he believes is being referred is not what the test is. If, for example, the nick-name of the deceased was Black Boy and he could say, well, everybody calls the deceased Black Boy .....

20

HIS LORDSHIP:

It would speak for itself.

MR. HAMILTON:

It doesn't even say, 'tell that black boy'. He is moving off - 'that black boy, we must kill him.' - how we don't know it is him, assuming it was said, because if it is something to be put to the jury to be acted on, it must be something that is cogent, that they can draw a reasonable inference on. I don't think that what he has said so far - if he can give more evidence to show that there was something that made him realise that they were referring to the deceased, then I would have no objection.

30

40

MR. ATKINSON:

I would adopt and just accentuate. What the crown is really asking of this witness: give me your opinion



MR. ATKINSON: as to what it means and what it  
(Contd) relates to; and that is the function  
for the jury. What my friend is  
doing leaves all the circumstances  
and leaves the words ... ..

In the Supreme Court

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Prosecution  
Evidence

No. 9

HIS LORDSHIP: Before asking this question.

CLIFTON HOWARD

MR. ATKINSON: I don't think he can ask that -  
did you understand - because that  
could only be evidence for his  
10 particular state of mind, for  
something else. So since his state  
of mind is not relevant ... ..

Examination  
3rd December 1975  
continued

HIS LORDSHIP: Why not?

MR. ATKINSON: What he thinks, sir?  
If it were going, sir, to produce  
some further evidence connected with  
this witness, I could understand,  
20 but all this witness is being asked  
- give us your interpretation who  
it means - and then using it as  
evidence. It is for the jury to  
hear the words here.

HIS LORDSHIP: They would eventually have to decide.

MR. HAMILTON: Let me indicate my full position. If  
my learned friend has nothing further  
to ask this witness, I would like to  
cross-examine this witness before he  
answers.

HIS LORDSHIP: You want me to send the jury out?

MR. HAMILTON: I don't mind. The jury can stay. I  
30 have no fear.

HIS LORDSHIP: Can you, at this point?

MR. ANDRADE: I submit I can. The only person who,  
to whom the question was - the only  
person who can properly be asked what  
he understood by the question, was the  
witness.

HIS LORDSHIP: They are not really objecting to asking  
40 the witness that; they are asking  
what is the foundation, because it is  
really an inference or an understanding

In the Supreme Court

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Prosecution  
Evidence

No. 9

CLIFTON HOWARD  
Examination  
3rd December 1975  
continued

HIS LORDSHIP: of what this witness understands. (Contd)  
The quarrel here now is, should you merely just ask that, or should there be a basis for it; something on which this witness knows, that he is saying, 'well, this is why I conclude he is referring to "A" or "B" or "Y".

MR. ANDRADE: Yes, M'lord, but that would be putting the cart before the horse. I can't ask such a question before the witness says he is referring to so and so. As I say, it is purely a question of weight, if the jury feels it refers to this man, or if the jury feels it refers to another man - black man.

HIS LORDSHIP: Suppose it has no weight, can they hear?

MR. ANDRADE: It has some weight.

HIS LORDSHIP: It might turn out ... ..

MR. ANDRADE: Having regard to the antecedent, that a man was killed two days after by these men, who spoke these words, this, I submit, is relevant. If it is relevant, it is admissible as showing the state of mind, the intention ...

HIS LORDSHIP: I agree with you gentlemen, I think there should be a foundation. I am not saying that it would not be strictly admissible, but probably prejudicial effect would outweigh its probative value. It may be relevant. It is the kind of evidence that might be so prejudicial, that we ought to have some foundation before we do this. I think that is what should happen. Perhaps if you put it this way: you came to a conclusion, having regard to what he said, on what is that conclusion based.

MR. HAMILTON: M'lord, I am still wondering if you would still question him, M'lord.

HIS LORDSHIP: Perhaps - let me hear what he has to say first, and if there is anything further you have to say to him - call him back.

In the Supreme Court

Prosecution  
Evidence

(witness returns to the box) (Time:  
3:00 p.m.)

No. 9

CLIFTON HOWARD  
Examination  
3rd December 1975  
continued

HIS LORDSHIP: Let him come back, please. You are still on your oath, Mr. Howard.

A. Yes, sir.

10 MR. ANDRADE: Mr. Howard? A. Yes, sir.

Q. Answer me yes or no, you see. When they said ...

HIS LORDSHIP: Not they.

MR. ANDRADE: Meggie said, that black bwoy, they must kill him ...

HIS LORDSHIP: Not they, Meggie.

MR. ANDRADE: Meggie, when Meggie said, "That black bwoy, we mus' kill him", do you know to whom they were referring, yes or no.

20

A. Yes.

HIS LORDSHIP: Huh, huh?

MR. ANDRADE: Answer, yes. Now, you knew the ranger?

HIS LORDSHIP: Wait a minute.

MR. ANDRADE: Do you know the ranger. Wait, wait, wait.

A. Yes.

HIS LORDSHIP: Wait a minute now. How do you know to whom he refers at that stage?

30

A. To how them talk to me.

HIS LORDSHIP: To how them talk to you what?

A. Say, that black bwoy ...

In the Supreme Court

Prosecution  
Evidence

No. 9

CLIFTON HOWARD  
Examination  
3rd December 1975  
continued

- HIS LORDSHIP: To how they talk to you, what?
- A. To how they talk to me I know it wasn't me they was talking.
- HIS LORDSHIP: No, no. Hold on a minute. What did they say to make you think it was not you they were talking about, to put it that way?
- A. Oh. When they say, that black bwoy, I know it wasn't me they talk. 10
- HIS LORDSHIP: Well, did they say anything else?
- A. No, sir.
- HIS LORDSHIP: That was all the conversation you had there?
- A. Them that I say, that black bwoy, we mus' ...
- HIS LORDSHIP: We mus' kill him. Did you know of anything happening before that day between those two men and anybody on the property? 20
- A. Well, no, sir.
- HIS LORDSHIP: You did not. I did not know ... (writing)... of anything happening between accused and anyone on the property. I am not going to allow it, Mr. Alberga - Mr. Andrade, beg your pardon.
- MR. ANDRADE: Allow what, M'Lord?
- HIS LORDSHIP: It is quite obvious what is happening here. 30
- MR. ANDRADE: So, may I be permitted ...
- HIS LORDSHIP: A hindsight. I'am not allowing it.
- MR. ANDRADE: May I be permitted to put this question? Did you know the ranger?
- A. Yes.

HIS LORDSHIP: No, not immediately after this. No, no, no, no, you can't put that.

In the Supreme Court

MR. ANDRADE: On what basis, M'Lord?

Prosecution  
Evidence

HIS LORDSHIP: Oh no, Mr. Andrade.

No. 9

MR. ANDRADE: May I be permitted then, M'Lord, to ask the colour of the ranger?

CLIFTON HOWARD  
Examination  
3rd December 1975  
continued

10

HIS LORDSHIP: No, no, no. You see, the whole object here is ... no, no, nothing like that.

MR. ANDRADE: That was all the conversation you had with these men?

HIS LORDSHIP: Huh?

A. No, sir, it don't finish.

MR. ANDRADE: That was all the talking between you and these two men?

HIS LORDSHIP: And the two men on that day?

A. I don't finish yet.

20

HIS LORDSHIP: I don't want you to finish. Did they say anything else to you or you anything else to them?

A. No, sir.

HIS LORDSHIP: I don't want to hear anything else.

MR. ANDRADE: After that did you go anywhere?

A. I go over to the farm.

Q. Did you see anyone in particular?

A. Yes.

Q. Who you saw?

30

A. I saw Mr. Smith and ...

HIS LORDSHIP: Wait. Saw Mr. Smith. Which Smith is this?

MR. ANDRADE: Which one of the Smiths is this now?

In the Supreme Court

Prosecution  
Evidence

No. 9

CLIFTON HOWARD  
Examination  
3rd December 1975  
continued

A. The one that died.

Q. Sydney?

A. Yes.

Q. And when you saw him, you see ...

HIS LORDSHIP: He was saying he saw Mr. Smith and somebody else.

A. Mr. Lawson.

MR. ANDRADE: Mr. Lawson is who - now? 10

A. The book keeper.

HIS LORDSHIP: Yes?

MR. ANDRADE: And what happened when you saw them, you spoke to them?

HIS LORDSHIP: Well, hold on a minute now.

MR. ANDRADE: You spoke to them?

A. Yes, both men.

HIS LORDSHIP: Wait. Yes, now, please.

MR. ANDRADE: I can't take it any more. 3:05 p.m.

CROSS-EXAMINATION

CLIFTON HOWARD: CROSS-EXAMINATION - MR. HAMILTON: 20

HIS LORDSHIP: Is that so, Mr. Hamilton?

MR. HAMILTON: Oh no, just one suggestion based upon ... What's your name? Have a godd name too, Howard, surprising. Mr. Howard?

A. Yes.

Q. I am suggesting to you, you see, sir, that it's an untruth.

A. No, sir, it's not an untruth. 30

Q. You don't even know what I am saying is untruth, man. Give me a chance no. What I am going to say is untruth, since yu so ready to jump ...

In the Supreme Court

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Prosecution  
Evidence

No. 9

CLIFTON HOWARD  
Cross-Examination  
3rd December 1975  
continued

MR. ANDRADE: Argument.

MR. HAMILTON: I am suggesting that you never saw these men? What time did you say it was? Did you put a time on it?

10

A. About one o'clock.

Q. About one o'clock?

A. Yes.

Q. That on the 17th of April this year you did not see these men on any road leading off the Sandy Bay road.

A. Yes, sir, I have seen them. 3:07 p.m.

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CLIFTON HOWARD: CROSS-EXAMINATION - MR. ATKINSON:

CROSS-EXAMINATION

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MR. ATKINSON: Had you ever seen them before that day?

20

A. No, sir, it was the first time.

Q. Next time you saw them was at court after that?

A. (Witness nods.)

Q. Don't nod your head.

A. Yes, sir.

HIS LORDSHIP: You next saw them at court?

A. Yes, sir.

MR. ATKINSON: When you give your statement to the police?

30

A. Aaaam.

Q. How long after Mr. Smith died?

In the Supreme Court

Prosecution  
Evidence

No. 9

CLIFTON HOWARD  
Cross-Examination  
3rd December 1975  
continued

A. Five days.

Q. Five what? A. I ...

HIS LORDSHIP: Days.

A. I give the statement the twenty-second, no, the day after Mr. Smith, aaam.

MR. ATKINSON: What you are saying, five days, about?

10

A. The day after.

HIS LORDSHIP: The day after?

A. Yes.

MR. ATKINSON: The first time you point out these two men as the men you had a conversation with was at the preliminary enquiry, was it not?

A. Yes.

Q. You never went to any I.D., identification parade at the station?

20

A. No.

Q. You see, I am suggesting to you that ...

HIS LORDSHIP: Wait, nuh.

MR. ATKINSON: I am suggesting to you that not speaking the truth about this whole incident.

A. I speaking the truth.

Q. That you never saw any of these two men.

30

A. I saw them.

Q. And that they said nothing to you.



A. Of course they speak to me that's why I get to know them.

In the Supreme Court

Q. Thank you. 3:08 p.m.

Prosecution  
Evidence

MR. ANDRADE: No re-examination. Thank you. Have a seat.

No. 9

Mr. Sydney Lawson, please.

CLIFTON HOWARD  
Cross-Examination  
3rd December 1975  
continued

No. 10

In the Supreme Court

10

EVIDENCE OF SYDNEY LAWSON

Prosecution  
Evidence

3:09 p.m.

SYDNEY LAWSON SWORN: EXAMINATION - MR. ANDRADE:

No. 10

SYDNEY LAWSON  
Examination  
3rd December 1975

HIS LORDSHIP: Would you like to sit down, Mr. Lawson? Please do. I am going to ask you to speak as loudly as you can for me so that the members of the jury can hear and the accused can hear you.

20

A. Yes, M'Lord.

HIS LORDSHIP: And the people at the back.

MR. ANDRADE: Now, sir, your name is Sydney Lawson?

A. Yes, sir.

Q. You are a book keeper at the Inverness property, Jamaica Cordage Company Limited?

A. Yes, sir.

30

Q. Now, do you remember the 17th of April, this year?

A. Yes, sir.

Q. Some time between eight and nine in the morning where were you?

A. Please, sir?

In the Supreme Court

Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

- Q. Where were you between eight and nine?
- A. I was in the office, sir.
- Q. Your office?
- A. Yes, sir.
- Q. Now, while in your office between that time, did anyone in particular come to your office?
- A. Yes, sir.
- Q. How many persons?
- A. Two persons, sir.
- Q. Who were they?
- A. The two accused, there, sir.
- Q. Was that the first time you were seeing them?
- A. No, sir.
- Q. I see. Now, when they came into your office ...
- A. Yes, sir.
- Q. What happened?
- A. They ask me for permission ...
- Q. Both of them?
- A. Yes, sir, both of them came into the office.
- Q. Both of them ask you?
- HIS LORDSHIP: Both of them asked you permission?
- A. No, sir, not both of them. The bigger one, sir, asked me permission.
- HIS LORDSHIP: The bigger one, taller man, Daley?

10

20

30

A. Yes, sir, Daley.

HIS LORDSHIP: ... (writing) ... asked me permission. Huh, huh?

MR. ANDRADE: Yes, asked you permission to do what?

A. To go through a gate that leads from the factory compound, sir.

HIS LORDSHIP: From factory compound to? From the factory compound to where?

A. To a public service line that leads - that is on the property, sir.

HIS LORDSHIP: Service line that is on the property?

A. Yes, sir.

MR. ANDRADE: Yes. Did you tell them?

A. Yes, sir.

Q. What you said to him?

A. I told them that I could not give them any permission to go through the property because three men came from K.I.C. Electrical Engineering Company ...

Q. Yes.

A. ... and told the deceased, Sydney Smith that ...

HIS LORDSHIP: Wait a minute. Are you using the word deceased to them when you were speaking to them?

A. No, sir, because he was alive at that time.

HIS LORDSHIP: Well, what you said to them then?

A. I told him that three men came in a van from K.I.C. and told Sydney Smith that - that R.A. Silvera & Silvera had lost the contract and that they, K.I.C. now had the contract for the public service line and that they had given no one any permission to go and cut anything in the pathway of the line.

In the Supreme Court

Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

10

20

30

In the Supreme Court

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Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

HIS LORDSHIP: Yes?

MR. ANDRADE: Next thing happen?

A. Well, they ask me where ...

Q. They two; two of them?

A. Daley, sir, because I now know his name.

HIS LORDSHIP: Huh, huh?

MR. ANDRADE: Ask?

10

A. Ask me where was Mr. Smith or the head man, as he uses the word.

Q. You replied to him?

A. Yes, sir, I told him that he had ridden out to the field.

Q. Well, what happened next? Did they remain there or did they leave?

A. Yes, sir, they remain there and they are talking and on the spur of the moment Mr. Smith came in.

20

Q. Now, in their presence and hearing, did you speak to Mr. Smith?

A. Yes, sir.

Q. What you said to him?

A. I told Mr. Smith that these two men came and asked for permission.

HIS LORDSHIP: Wait, nuh. Both accused. Huh, huh?

A. ... to go through the gate.

30

HIS LORDSHIP: Eh, eh?

A. Yes, sir. He in reply told them just about the same thing that I have told them, that they couldn't go through because K.I.C. men had told us.

HIS LORDSHIP: Huh, huh?

MR. ANDRADE: When Mr. Smith told them that, any of them spoke?

A. Yes, sir.

Q. Who was it?

A. Mr. Daley, sir.

Q. Huh?

10 A. Mr. Daley.

Q. What he said?

A. Daley? No, no, sir, the smaller one first spoke.

Q. Which one is that now?

A. That one, sir, the one to the left ... (indicating).

Q. Witness points to Meggie. What he said?

A. Said, "Look at him, I could suck him blood"?

20 Q. Look at him, what?

A. I could suck him blood.

HIS LORDSHIP: I could suck yu what?

A. Him blood.

MR. ANDRADE: Look at him. What he did?

A. Look at him.

Q. Referring to what?

HIS LORDSHIP: He is then?

A. Pointing.

HIS LORDSHIP: Just as how you did it?

30 MR. ANDRADE: Pointing to who?

In the Supreme Court

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Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

- A. Mr. Smith because it was both of us and himself and he wasn't pointing to me.
- HIS LORDSHIP: Yes?
- MR. ANDRADE: Daley, now, the other one, did he say anything?
- A. Yes, sir.
- Q. What he said?
- A. The bigger one said, "Leave that out, man". "Now, look, man ... 10
- HIS LORDSHIP: Daley said, "Leave that out, man" ... (writing).
- MR. ANDRADE: Speaking to who?
- A. Speaking to his companion.
- Q. Meggie?
- A. Meggie, that's right. In relating to Smith at this same time he said, "look, man...".
- HIS LORDSHIP: Wait now, is he pointing at Smith? 20
- A. Yes, sir.
- HIS LORDSHIP: He said, "look, man, I am cutting three hundred posts...."
- MR. ANDRADE: Yes?
- A. ..."and when I cut them you stop me from take it off the compound".
- HIS LORDSHIP: You stop me?
- A. Yes, sir.
- HIS LORDSHIP: ... from taking? 30
- A. ... from taking it off the compound, I kill ..."
- MR. HAMILTON: Who is saying that now?

HIS LORDSHIP: Daley.

MR. ANDRADE: Did that conversation end there or anything else was said?

A. No, sir. Prior to this ...

HIS LORDSHIP: Sorry, what you are being asked, was anything else said on that occasion between the men and Smith and yourself?

10 A. Smith and myself?

HIS LORDSHIP: A, a?

A. No, sir. They asked if they could take their tools out.

HIS LORDSHIP: Who is asking this now?

A. Mr. Daley.

HIS LORDSHIP: Daley asked if they could take their tools out?

A. Yes, sir.

MR. ANDRADE: Out from where? Could you say?

20 A. From where they have been working.

HIS LORDSHIP: Where they had permission to go through the gate would have been meant.

MR. ANDRADE: What you told them?

A. Well, I had to send a man to open the gate and let them take the tools out, sir.

Q. They took our their tools?

A. Sorry.

Q. Did they take out their tools?

30 A. Yes, sir.

Q. And did they leave?

A. Yes, sir.

In the Supreme Court

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Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

- A. Yes, sir.
- HIS LORDSHIP: Wait. ...(writing) ... sent a man to open the gate?
- A. Yes, sir.
- HIS LORDSHIP: I don't quite follow this sort of thing here, you see. This gate that you are letting them into, is that to let them into the compound of the place?
- A. No, sir.
- MR. ANDRADE: From?
- A. The road from the gate goes into the factory compound. We have a gate that is locked, off the factory compound. If you open that gate you will go to the ...
- HIS LORDSHIP: Hold on. You come from the road?
- A. Yes, sir.
- HIS LORDSHIP: This is from the gate that leads to the Sandy Bay main road?
- A. Yes, sir. You leave Sandy Bay main road, you turn on a branch road into the factory compound.
- HIS LORDSHIP: Now, to get into the factory compound you have to open any gate?
- A. Well, we have a gate but we didn't have to open that gate, sir.
- HIS LORDSHIP: So, I see. There is a gate but it is kept open so he comes into the compound?
- A. He come through the compound, right.
- HIS LORDSHIP: Gate that leads into the compound but that is usually open. A, ah?

10

20

30



A. Yes, sir, but leading from the factory compound to the woodland there is a gate.

In the Supreme Court

Prosecution  
Evidence

HIS LORDSHIP: There is another gate now?

No. 10

A. There is a gate, another gate to go through and that is the gate that they were asking to get open.

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

10 HIS LORDSHIP: Oh, I see. You have another gate now to get into the wood lands?

A. Yes, sir, where we have cows and all that - into the wood lands.

HIS LORDSHIP: And it was that gate that had to be opened?

A. Yes, sir.

20 HIS LORDSHIP: I see. So, in other words now, if they got through that gate to get to the wood land, get their tools and come back, is that what you are saying?

A. Yes, sir and that is when they spoke these words to Mr. Smith.

HIS LORDSHIP: Before they went to the wood land or after?

A. When they came back.

HIS LORDSHIP: So, this conversation that you are having with the men now, the men had already gone for the tools and come back?

A. They go for the tools and come back.

30 HIS LORDSHIP: Mr. Smith is present?

A. While they were in the wood land Mr. Smith came.

HIS LORDSHIP: I am a little confused. They come and they ask you to open the gate.

A. Yes, sir. I told them I could not open the gate so they asked me where Mr. Smith was.

In the Supreme Court

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Prosecution  
Evidence

No. 10

SYDNEY LAWSON

Examination

3rd December 1975

continued

HIS LORDSHIP: They waited until Mr. Smith came?

A. Yes, sir.

HIS LORDSHIP: This conversation about sucking blood and all like that, at what stage is that taking place?

A. It was at the stage where they go and take the tools and come back.

HIS LORDSHIP: After Smith came the gate was opened, they went for the tools and they came back? 10

A. Yes, sir.

HIS LORDSHIP: I see. Hold on a minute. After Smith came the gate was opened and the men came back with their tools?

A. Yes, sir.

HIS LORDSHIP: And you are saying it is when they came back now with the tools...?

A. Yes, sir. 20

HIS LORDSHIP: What part this conversation is now taking place?

A. The threatening, sir? They are going to suck their blood and they are going to cut three hundred posts and if he stops them from taking it out they are going to kill him?

HIS LORDSHIP: Well, will you start again, Mr. Lawson. I am sorry. You see, when you said it first you gave it as if everything was happening at one time. 30

A. Yes, sir.

HIS LORDSHIP: The two men - let me see if I can get it straight - the two men come, they ask you to open the gate?

A. Yes, sir.

HIS LORDSHIP: Is that all that they were saying at that stage?

A. Asking me to ...?

HIS LORDSHIP: Well, did you tell them about K.I.C. men coming and ...?

A. Yes, I told them two days before K.I.C. men came and told me Silvera and Silvera had lost the contract and they had not given anyone permission to go and cut wood.

10

HIS LORDSHIP: Then what happened next now?

A. Mr. Smith came now, sir and I told him what these men were asking for, permission, and he told them just about what I told them.

HIS LORDSHIP: Quite.

A. Well, while I was there he couldn't say everything but while I through they were saying was a wicked man and they were going for the tools.

20

HIS LORDSHIP: They went for the tools?

A. Right and they came back.

HIS LORDSHIP: When they came back now, is there any conversation taking place?

A. Yes, sir, they said now - that's the time they talk about sucking of the blood.

HIS LORDSHIP: Without more - that's all they said now?

A. When they came back to the office.

HIS LORDSHIP: When the accused men came back what happened now?

A. He said, "Look at him, you are a wicked man". I didn't bring in all this before because you can't remember everything at one time. He said "Look at him, I could just suck his blood".

30

In the Supreme Court

Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

In the Supreme Court  


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Prosecution  
Evidence  
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SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

HIS LORDSHIP: This is what Meggie is saying about Smith?

A. Yes, sir.

HIS LORDSHIP: I see, and then the rest of what conversation you said the accused, Daley, said?

A. Daley said ...

HIS LORDSHIP: Came after that?

A. Yes, sir. 10

MR. ANDRADE: About what time was that? What time of day was that?

A. I would say between eight and nine o'clock that this second conversation is taking place. All the conversation was just based between that time, sir.

HIS LORDSHIP: Between eight and nine?

A. Yes, sir.

MR. ANDRADE: You know Clifton Howard? 20

A. Please, sir?

HIS LORDSHIP: You know Clifton Howard?

A. Yes, sir.

MR. ANDRADE: You know Clifton Howard?

A. Yes, sir. He is the tractor driver employed to the Jamaica Cordage Company working at Inverness.

Q. Did you see him at any time at all during that day? 30

A. Yes, sir.

Q. What time of the day was it?

A. Well, say between the hours of one and two, sir.

Q. Did he speak with you?

In the Supreme Court

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A. Yes, sir.

Prosecution  
Evidence

Q. When he spoke with you do you know where Mr. Sydney Smith was?

No. 10

A. He was in the office with me, sir. Is there the argument was.

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

Q. All right, we don't want to hear.

10 HIS LORDSHIP: Let me just get one thing straight. When these accused men were talking the morning, eight or nine o'clock ...

A. Yes.

HIS LORDSHIP: Was Howard present then?

A. No, sir. No, sir.

HIS LORDSHIP: Oh, I see.

MR. ANDRADE: You see how relevant certain things are, my Lord.

20 HIS LORDSHIP: But it still has to come from him. You see what I am getting at?

MR. ANDRADE: Now, you said before that you had seen the two men before that day?

A. Yes, sir.

Q. Where?

A. On the factory compound, sir.

Q. Doing any particular thing?

A. Well, sir ...

HIS LORDSHIP: Sorry. I had seen both men before on the factory compound?

30 A. Yes, sir.

HIS LORDSHIP: And you want him ....? I am so sorry, I don't want to interrupt because I don't know what it's all about.

In the Supreme Court

Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Examination  
3rd December 1975  
continued

MR. ANDRADE: Not really, M<sup>r</sup>Lord.

HIS LORDSHIP: I see.

CROSS-EXAMINATION

CROSS-EXAMINATION OF MR. S. LAWSON BY MR. H.  
HAMILTON (DEFENCE ATTORNEY)

10

Q: Mr. Lawson, I am suggesting to you ...  
...

A: Yes, sir.

Q: ... that on the 17th of April ... ..

A: Yes, sir.

Q: ... .. when these men came to your book-  
keeper office ...

A: Yes, sir.

Q: ... .. what you did was, you phoned R.A.  
Silvera, Mr. Don MacFarlane in Kingston?

A: Yes, sir.

20

Q: And this was because Daley had told you  
that he was employed to R.A. Silvera?

A: Yes.

Q: And this was because he was employed by  
R.A. Silvera, and that he was doing for  
R.A. Silvera - was cutting fence posts?

A: No, sir; I didn't know about that.

HIS LORDSHIP: Did he tell you that?

WITNESS: He told me, sir.

MR. HAMILTON:

30

Q: Just answer my question - did he tell you  
that?

A: Repeat, please?

HIS LORDSHIP: Did he tell you that he was employed to R.A. Silvera, to cut wood and post?

WITNESS: No, sir; he told me ... ..

HIS LORDSHIP: He did not tell you that?

WITNESS: I am going to tell you what he told me.

10 HIS LORDSHIP: Answer me.

WITNESS: I tell you that he told ... ..

HIS LORDSHIP: No, Mr. Lawson, please; did the accused, Daley, tell you ...?

WITNESS: No, sir; he told me that he was employed by R.A. Silverssa, and he was sent by a man by the name of Don MacFarlane, to cut wood in the Public Service line.

HIS LORDSHIP: In the Public Service line?

20 WITNESS: Yes, sir.

MR. HAMILTON:

Q: And didn't you tell him that you don't know Don MacFarlane?

A: No; I didn't know him - up to now.

Q: Didn't he give you a letter from Mr. MacFarlane; didn't he show you any letter at all?

A: No, sir.

Q: However, you phoned Mr. MacFarlane in Kingston?

A: Daley asked me.

30 Q: And as a result you phoned him?

A: Daley asked me, sir, to phone.

Q: Since you don't know Mr. MacFarlane?

A: Daley asked me to pick up R.A. Silvera number and phone and ask for one Don MacFarlane.

In the Supreme Court

Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Cross-Examination  
3rd December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Cross-Examination  
3rd December 1975  
continued

Q: So you phoned Mr. MacFarlane and you looked up the number in the directory?

A: Yes, sir.

Q: So you know - you phoned the right number for R.A. Silvera?

A: Yes.

Q: When you phoned Mr. MacFarlane, did not Mr. MacFarlane whoever the person who answered - answered and said yes, he knows these two men. He has sent them to cut wood?

10

A: He told me, sir.

Q: Just answer me yes or no?

A: Mr. MacFarlane did not told me that. I can give you ... ..

Q: What him tell you?

A: I can give you Mr. MacFarlane argument. Mr. MacFarlane told me that he wanted three hundred hard wood, fence post, and these two accused told him that they could get it from the headman at Inverness. He then told them that they could go and look about the post; when it is ready he would send the money and truck for it, since they were going to get it from the headman.

20

Q: While we are on the subject, is it not a fact that whoever has the contract, the electrical contract, whichever electrical company has the contract can give permission to cut wood along the power line?

30

A: In the pathway so, but at that time ...

HIS LORDSHIP: Could cut?

MR. HAMILTON: Could give permission to anyone to cut wood along the pathway?

WITNESS: In the pathway.

Q: Or in the pathway of the power line?



A: But at that time R.A. Silvera had lost the contract and did not have the contract again.

Q: We are coming to that. Whether Silvera lost the contract - what you say, they lost the contract? They had a contract at some time?

A: At some time.

Q: And these men - you did open the gate and allow these men to go in that day?

A: Which day, sir -

10 Q: The 17th?

A: To get their tools out.

Q: We are coming to the reason you allowed them to go in?

A: Yes, sir.

Q: Just answer my question and we will get along very rapidly.

A: Sure, sir.

Q: When they were allowed in to go and collect their tools, nobody went with them?

20 A: No, no.

Q: They never follow them to see they only collect their tools?

A: But they came back with their tools.

Q: Nobody followed them?

A: Nobody followed them.

Q: So, if they had gone in only to collect their tools, they could have stayed and cut wood?

A: (no answer)

30 HIS LORDSHIP: Argument. Having regard to what Mr. Lawson said, it is possible for them to cut wood - having regard to the time they came back ...

MR. HAMILTON: That is on his account, which brings me to ...

In the Supreme Court

Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Cross-Examination  
3rd December 1975  
continued

In the Supreme Court

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Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Cross-Examination  
3rd December 1975  
continued

HIS LORDSHIP: Unless you are putting it.

MR. HAMILTON:

Q: We finish the conversation with Mr. MacFarlane. You said that - in other words when you spoke to him, he acknowledged that he knew these two men?

A: Yes.

Q: Isn't it a fact that it is only one time you have phoned Mr. MacFarlane?

10

A: One time I phone Mr. MacFarlane.

Q: When did you know or hear before - I ask you, tell me this - I am suggesting first of all to you, that it is not true when you say that these men went away and returned to your office? I am suggesting it is not true; do you agree with me?

A: No.

Q: Did you ever - when you - at any time previously, ever state that these men had gone away and it was when they came back ...

20

HIS LORDSHIP: What does that mean. Where is that?

MR. HAMILTON: I am just asking.

HIS LORDSHIP: Now, what is the object of this now? Would you tell me what is the object of this now?

MR. HAMILTON: I am only asking if this isn't the first time he went away that this blood sucking was not in the office.

30

HIS LORDSHIP: You saw what happened here to-day - wasn't it - didn't you - not with ...

MR. HAMILTON: Not with him.

HIS LORDSHIP: With him; he was giving me the story in one thing.

MR. HAMILTON: Sometimes you can't be guided by these things that you say.

HIS LORDSHIP: There you are.

MR. HAMILTON: I don't propose to get into any argument. I don't want to ask him any unfair questions, because there is no necessity.

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Evidence

No. 10

SYDNEY LAWSON  
Cross-Examination  
3rd December 1975  
continued

10

Q: Mr. Lawson, on the 17th, it is my suggestion to you, that when you phoned Mr. MacFarlane, it was to find out if these men were really employed to R.A. Silvera?

A: These men told me that they were employed to R.A. Silvera and they were sent ...

Q: And you phoned to confirm it?

A: He asked me to phone Mr. MacFarlane and ask him if he didn't send them - to confirm it was true.

Q: And you did so?

20

A: Yes.

Q: I am suggesting that after you spoke to Mr. MacFarlane, you gave - you opened the gate and gave them permission to go on to the property?

A: To take their tools out.

Q: Not to take out their tools out; to cut wood?

A: To take out the tools; to take the tools out.

Q: You had heard, you said, it was some two days before or few days?

30

A: I said few days.

Q: So from sometime before the 17th you had heard that Silvera had lost the contract?

A: Certainly.

Q: Follow me very closely now. I am suggesting to you that, that is not true?

A: Yes; it is true.

In the Supreme Court

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Prosecution  
Evidence

No. 10

SYDNEY LAWSON  
Cross-Examination  
3rd December 1975  
continued

Q: If you had known - and this is where I want you to follow me very closely - if you had known from two days before, or few days before the 17th that Silvera had lost the contract, why would you be phoning Mr. Silvera to confirm that these men were working with Silvera - because even if they worked with Silvera, they wouldn't have the right to do so?

A: I wasn't asking Mr. Silvera. These men ask me to phone Mr. Don, but Mr. Don told me that he wanted the post of himself and he asked these men and these men told him they could get it. I wasn't phoning Mr. Silvera. I was only confirming these men argument - since he had some we were - so that they could improvise something that they could get the post to buy ... Sydney Smith told them that he would get them to cut the post and pay them to cut it.

10

20

Q: I agree with all you are saying.

A: But I don't agree with all you are saying.

Q: Mr. MacFarlane had given them the contract to cut the fence post?

A: Mr. MacFarlane didn't say so.

Q: What he said?

A: He said he wanted three hundred fence post and these men told him that they could get it from the headman down there, and they asked him to see the headman; when it was ready he would send the truck and the money.

30

Q: He was to cut it?

A: They - Mr. Don, he send them to get it from the headman, according to their argument - excuse me, sir.

Q: That is your understanding ...

A: (no answer)

HIS LORDSHIP: That is what he said Mr. MacFarlane told him.

MR. HAMILTON:

Q: Did you know that these men had already cut wood from the Monday?

A: From the Monday; no, sir.

Q: You didn't ...

10 HIS LORDSHIP: This is Thursday - when you are talking to them you didn't know that the men had actually cut it themselves already?

WITNESS: Not post already. Well, when they came, they told me, when I send them through the first time, they told me they were going to cut some sticks along the line.

MR. HAMILTON:

20 Q: On the Thursday when you saw them in your office, did you know that from the Monday they had already been cutting post?

A: No, sir.

Q: And pile it up on the property?

A: No, sir.

Q: Did you ever see, on the Saturday, the amount of posts that were brought into the compound?

A: On the Saturday?

Q: Yes; leave the Thursday?

30 A: No, sir; no, sir.

Q: You never see any post brought into the property?

A: I was not on the farm on Saturday.

HIS LORDSHIP: At any time, did you see posts brought on the property, after that Thursday?

WITNESS: I have seen post pile in the compound,

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No. 10

SYDNEY LAWSON  
Cross-Examination  
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continued

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3rd December 1975  
continued

WITNESS: but I never been on, present when  
(Contd) it came in; so I don't know where  
it came from.

MR. HAMILTON:

Q: Mr. Fennel - Mr. Everald Fennell.

A: Yes, sir.

HIS LORDSHIP: Is he at Jamaica Public Service  
Company?

10

WITNESS: No; of Jamaica Cordage Company.

MR. HAMILTON:

Q: I want you to understand what it is, so that  
even if we misunderstand anything else, we  
don't misunderstand this: What I am  
suggesting to you is that you did not stop  
these men from going on the property on the  
17th, to cut wood?

A: Yes, sir.

Q: O.K.; that is the first thing. Secondly,  
that what happened is that you were stopping  
them when they came there, the gate, was  
across the same gate that you spoke of,  
that leads to the woodland, it was closed  
and they said they came to enquire about it,  
and that what was happening is that you  
would have stopped them. You - rather, they  
had been stopped and they were admitted  
into the property after you spoke to Mr. Don  
MacFarlane?

20

30

A: To take their tools out.

Q: You say to take their tools out. I say to  
go and cut wood.

A: Since Mr. Don didn't send anybody to cut  
wood.

Q: You never let them into the property after  
you spoke to Don MacFarlane?

A: To take their tools out.

Q: You let them out of the property?

- A: To take their tools out.
- Q: But you never send anybody to follow them to say, make sure they only take their tools out?
- A: No, sir.
- Q: And finally, my suggestion to you is that, having left you, by the time they ... ..
- A: Yes, sir; it was my office.
- 0 Q: ... .. by the time they finish the conversation and you had phoned to Mr. MacFarlane, it was about ten o'clock?
- A: No, sir; it was in my office, the company's phone, and you could never tell me that it was ten o'clock.

HIS LORDSHIP: Don't argue with the gentleman; answer the question, please.

MR. HAMILTON:

- Q: Isn't your telephone number 6210?
- 20 A: Sure.
- Q: So having - let me just finish the suggestion - that you spoke to Mr. MacFarlane, you let them through - you say to only go and pick up their tools?
- A: Yes, sir.
- Q: My further suggestion is that they went on this property and cut wood until about 3:30?
- A: No, sir.
- Q: You said no?
- A: If these fellows had cut wood until 3:30, how do they tell Clifton Howard any message?
- Q: They cut wood until 3:30?
- A: No, sir.

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No. 10

SYDNEY LAWSON  
Cross-Examination  
3rd December 1975  
continued

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SYDNEY LAWSON  
Cross-Examination  
3rd December 1975  
continued

Q: And you say you never know that wood had been cut from the Monday? Coming down, did any of them ask for permission, since you were stopping them, since you say you were stopping them on the 17th, did they ask for permission to remove the wood?

A: Permission to come and remove it - no sir.

Q: So that was already there. So, you are saying - how long would it take - you are a book-keeper; I don't know if you have experience - how long would it take for two men to cut three hundred and fifty, nearly three hundred and sixty fence post?

10

A: Over three hundred fence post - how long? I got men cutting fence post for me and sometimes for a week they have not done that, and they are partners.

Q: That is two men?

A: Partners.

Q: Thank you very much.

20

A: I don't know how long they stay on it.

A: And I am suggesting to you that not only did they cut on the Thursday, they came back and they cut on the Friday?

A: Well, if they came back and cut on the Friday ...

Q: Do you know, or you don't know?

A: I don't know; I did not see them.

Q: And that on the Saturday - it was on the Saturday that Mr. Fennell ordered the removal of these fence posts from into the works yard to be brought into the compound?

30

A: No, sir; I don't know about that. I don't know about that.

Q: And that Sydney Smith never stopped them on the Thursday, or told them anything about K.I.C. on the Thursday, to prevent them going on the property.



A: Yes, in my presence, because they were both in my presence when Sydney Smith came back and told them the same thing.

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Q: And do you agree with me that if there had not been - they had not been stopped, but rather, they had been given permission to go on to the property to cut wood on the 17th, - there would be displeasure between them and Sydney Smith - you agree with that?

No. 10

SYDNEY LAWSON  
Cross-Examination  
3rd December 1975  
continued

A: They was not given any permission on the 17th to go and cut no wood.

HIS LORDSHIP: Wait, please, Mr. Lawson.

WITNESS: Thank you, Your Lordship.

MR. HAMILTON: M'lord, might this be a convenient time?

HIS LORDSHIP: Finish with him tomorrow?

MR. HAMILTON: I can't concentrate. I may have to have a little more time.

HIS LORDSHIP: What this is all about?

MR. HAMILTON: I am suggesting to him, if these men had not gotten permission to go on to the property - they have been making out they had no reason to be displeased with him, because he didn't on the 17th April - that this thing about threat, is a total fabrication.

WITNESS: I was there. I was on spot.

HIS LORDSHIP: You just answer what the gentleman is asking; nothing else. Members of the Jury, please come back at ten o'clock.

ADJOURNED AT 3:57 P.M.

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SYDNEY LAWSON: CROSS-EXAMINATION -- MR. ATKINSON:

CROSS-EXAMINATION

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MR. ATKINSON: Mr. Lawson?

A. Yes, sir.

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No. 10

SYDNEY LAWSON

Cross-Examination  
3rd December 1975  
continued

Q. Not really going to - considering - just tell me that you agree or disagree. I am suggesting to you that Meggie never said anything about sucking any blood or made any threats at all.

A. Yes, sir, he said so.

Q. That's the cross-examination.

MR. ANDRADE: Thank you, sir. No re-examination.

3:58 p.m.

10

HIS LORDSHIP: Thank you, very much, Mr. Lawson.

MR. ANDRADE: Is this the convenient time, M'Lord?

HIS LORDSHIP: Yes. Members of the jury, will you please come back tomorrow. Ten o'clock tomorrow morning.

MR. HAMILTON: May it please you, M'Lord, I wish to apologise to your Lordship and the jury on behalf of myself and Mr. Atkinson. I attempted, I don't know if your Lordship got a call --- when we realised we would be late.

20

HIS LORDSHIP: Yes, I did. Huh, huh.

MR. HAMILTON: I mean - I would be much obliged tomorrow - too much problems to mention.

HIS LORDSHIP: Yes.

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JURY ROLL CALL - ALL PRESENT

In the Supreme Court

Prosecution  
Evidence

No. 11

EVERLAND FENNEL

Examination  
4th December 1975

No. 11

30

10:49 a.m.

EVIDENCE OF EVERLAND FENNEL  
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EVERLAND FENNEL: SWORN: EXAMINATION - MR. ANDRADE:  
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MR. ANDRADE: Mr. Everland Fennel, please.

HIS LORDSHIP: Mr. Fennel, you may sit, if you can but I am afraid I have to ask you to speak as loudly as you can.

A. Yes, sir.

MR. ANDRADE: Yes, sir. Your name is Everland Fennel?

A. Yes.

HIS LORDSHIP: No, louder than that, please.

10 A. Yes, sir.

MR. ANDRADE: You are the general manager?

HIS LORDSHIP: The jurors have to hear you, you see; the shorthand writers have to take down what you say.

A. Beg your pardon, sir.

MR. ANDRADE: You are the general manager of Jamaica Cordage Company Ltd.?

A. Yes, sir.

Q. It's a registered company?

20 A. Exactly.

Q. That company owns the Inverness property at Sandy Bay?

A. That's right, sir.

HIS LORDSHIP: Yes?

MR. ANDRADE: Did you know Sydney Smith?

A. Yes, sir.

Q. The deceased?

A. Yes, sir.

Q. What work he used to do there.

30 A. Well, he was farm manager.

HIS LORDSHIP: He was farm manager?

In the Supreme Court

Prosecution  
Evidence

No. 11

EVERLAND FENNEL

Examination

4th December 1975

continued

In the Supreme Court

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Prosecution  
Evidence

No. 11

EVERLAND FENNEL  
Examination  
4th December 1975  
continued

- A. That's right. Headman and ranger.
- HIS LORDSHIP: Farm manager, headman and ranger. In other words, head cook and bottle washer?
- A. Yes, sir.
- Q. He was in charge of the general running of the estate?
- A. (Nods.) That's right. 10
- Q. Who?
- A. He was in charge of the general running of the estate.
- Q. Now, do you recall, sir, the 20th of April, this year, a Sunday?
- A. Very well, sir.
- HIS LORDSHIP: Yes?
- MR. ANDRADE: Did you see the deceased, Sydney Smith? 20
- A. Yes, sir.
- Q. Did he speak to you?
- A. He did.
- HIS LORDSHIP: Yes?
- MR. ANDRADE: As a result of his speaking to you, did you do anything?
- A. Yes, we went into the property.
- HIS LORDSHIP: Into the property?
- A. That's right, sir.
- MR. ANDRADE: Any particular place? 30
- A. Well, where the public service now is putting a new power line

In the Supreme Court

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Prosecution  
Evidence

No. 11

EVERLAND FENNEL  
Examination  
4th December 1975  
continued

A. through the property.  
(Contd)

HIS LORDSHIP: The public service now putting  
... (writing) ... new power  
line through the property.  
Yes?

MR. ANDRADE: Did you see anything in particular  
there, sir?

A. Some freshly cut round wood  
timber.

HIS LORDSHIP: What you call fence posts, Mr.?

A. Yes, sir.

HIS LORDSHIP: Fence posts. Huh?

MR. ANDRADE: Did you do anything with these  
freshly cut fence posts?

A. We had them loaded on a tractor  
and brought into the yard.

HIS LORDSHIP: And taken to the compound?

A. Compound.

HIS LORDSHIP: Yes?

MR. ANDRADE: Can you say how many pieces?

A. One hundred and sixty-five pieces.

Q. To the best of your knowledge -  
well, did you yourself give  
anyone permission to cut those?

A. No, sir.

HIS LORDSHIP: Yes?

MR. ANDRADE: Do you know these two men?  
(Indicating direction of dock.)

A. Never seen them before the  
inquest.

Q. Can you say to whom those posts  
belong?

In the Supreme Court

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Evidence

No. 11

EVERLAND FENNEL  
Examination  
4th December 1975  
continued

- A. (Witness shakes head.)
- Q. Aaah? A. No, sir.
- Q. Can't say?
- A. No, sir. I mean the company's property but to whom they were intended for I don't know.
- Q. Would you show the witness, please, exhibit three; photograph and - could you look at picture number two, sir? 10
- A. Yes, sir.
- Q. Do you see some posts there?
- A. That's right, sir.
- HIS LORDSHIP: There are two sets of posts there, some under a coconut tree, some under the guango tree? 20
- A. Yes, sir.
- MR. ANDRADE: Now, was any of these sets of posts the posts that you brought up there?
- A. No, sir.
- HIS LORDSHIP: None of these?
- A. These were stacked elsewhere.
- HIS LORDSHIP: They were not stacked under the guango tree?
- A. No. 30
- HIS LORDSHIP: Posts under the guango and coconut trees not posts ... (writing) ... Yes?
- MR. ANDRADE: As general manager, can you say who had the contract for running the J.P.S. line at the time when you saw the posts?

A. At the time it was Silvera.

In the Supreme Court

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Q. When you saw the posts?

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Evidence

A. I beg your pardon?

No. 11

Q. When you saw the posts, man?

EVERLAND FENNEL

A. They had stopped work on the line.

Examination

4th December 1975

continued

Q. Who are they?

10

A. Tractor - Silvera & Silvera.  
There was cessation of work and at the time the posts were found there was no work going on on the property.

HIS LORDSHIP: One moment, please. Time posts found no work on the line?

A. On the line, sir.

HIS LORDSHIP: The question is, Mr. Fennel, is who at that time had contract to run the line? Was it Silvera or somebody else?

20

A. Well, I still believe it was Silvera.

MR. ANDRADE: Are you sure?

A. Not certain.

Q. How long before had Silvera ceased working on the property?

A. I would say a few weeks. May be a month before.

30

Q. That will be all.

10:57 a.m.

HIS LORDSHIP: Sorry, before you start, Mr. Hamilton and gentlemen, what is passing through my mind, what is the relevance of all this?

In the Supreme Court

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Evidence

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EVERLAND FENNEL  
Examination  
4th December 1975  
continued

MR. HAMILTON: It is very relevant to the defence.

HIS LORDSHIP: Well, let me put it this way. It isn't relevant what the defence itself is. Wait! Even if you are proving in law that he has no right to be there, does he honestly think he has a right to be there?

MR. HAMILTON: We intend to show why it matters, M'Lord.

10

HIS LORDSHIP: Very well. Go ahead.

CROSS-EXAMINATION

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EVERLAND FENNEL: CROSS-EXAMINATION - MR. HAMILTON:  
-----

MR. HAMILTON: Now, Mr. ?

HIS LORDSHIP: Fennel.

Q. ...Fennel, you say that work by Silvera had ceased about a few weeks to about a month prior?

20

MR. ANDRADE: No, no.

HIS LORDSHIP: About a month he puts it.

MR. HAMILTON: Yes. Were you aware, sir, that R.A. Silvera had had a strike on at that time?

A. That's why the work ceased.

Q. That was why the work ceased?

A. Yes.

30



In the Supreme Court

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Evidence

No. 11

EVERLAND FENNEL  
Cross-Examination  
4th December 1975  
continued

Q. Now, the next thing is, sir, these posts that you found, you found them on - let me just use your own words - on a section of the property where the J.P.S. were putting up a power line?

A. That's right.

Q. Is that a place called the K.B. line?

110 A. One-thirty-eight K.B. line.

HIS LORDSHIP: Area posts found called 138-K.B. line.

MR. HAMILTON: Yes.

A. Your Honour, may I say something, sir. It is a 138-K.B. line that is putting through the property, the way through called the construction of the 138-K.V. line.

20 MR. HAMILTON: Oh, they were putting up a 138-K.B. line?

HIS LORDSHIP: No, they were putting ...

MR. HAMILTON: In other words, where that line was running, whoever it is had the contract is whoever had access into that part of the property where the line was going?

HIS LORDSHIP: No, no, is that what you want?

30 MR. HAMILTON: Well, the person who was doing the cutting of it, whoever the contractor were laying the K.B. line would they not have permission to cut down the wood in that area?

A. They had permission to cut down wood needed for the construction.

In the Supreme Court

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EVERLAND FENNEL  
Cross-Examination  
4th December 1975  
continued

Q. Yes. Right! Right! And what you saw when you went to this spot was freshly cut?

A. (Witness nods.)

Q. Posts? A. That's right.

Q. Apart from - well, didn't you give Mr. Smith, Sydney Smith, the deceased, instructions to have those posts removed to the property - to the compound?

10

A. You mean the one sixty-five posts?

Q. Yes, those that you saw. Wasn't you who instructed? Just answer my question because we can't have any conversation that take place. It's not technical but you can answer. Were these removed at your instructions? That is what I want.

20

A. Yes, they were.

Q. Did you go any other part of that line with Mr. Smith?

A. No, not at the time.

Q. Pardon me?

A. Not that day.

Q. Not that day. So, do you know if you removed any more woods or pieces of wood along that area?

30

HIS LORDSHIP: Who did?

MR. HAMILTON: Mr. Smith. In addition to?

A. No, he didn't remove any more. The one sixty-five posts were posts that were freshly cut and we went and inspected that Sunday.

Q. Listen, the K.V. line where these people have - isn't it about eleven miles long? Yes?

40

- A. Yes, through the property.
- Q. You didn't go the whole length of the K.V. Line with him, did you?
- A. No, we didn't go to the whole length of the line.
- Q. No. Your instructions - tell me if I am wrong - was that he was to remove any freshly cut wood that was on the line?
- A. Your Honour, may I say this, sir. I was - I went ...
- HIS LORDSHIP: No. You took all those that you saw?
- MR. HAMILTON: You told him to remove all those that you saw?
- HIS LORDSHIP: What I want to know, did you give him instructions to remove any other?
- MR. HAMILTON: Suppose there were more wouldn't he have removed those based on your instructions?
- A. I don't know. I didn't instruct him to remove any other posts.
- HIS LORDSHIP: So, you don't know if he did?
- A. He never did, sir.
- MR. HAMILTON: You can't say if he never did. Did you remain with him the whole day?
- A. I remained with him the whole day.
- Q. The whole day?
- A. The whole time that he removed the one sixty-five. He didn't take a whole day to remove it.
- HIS LORDSHIP: What I think Mr. Hamilton's question is directed to, to any other time, not this specific time.
- A. No, sir, no more posts were removed.
- MR. HAMILTON: Well, did you count these pieces of wood?

In the Supreme Court

Prosecution  
Evidence

No. 11

EVERLAND FENNEL  
Cross-Examination  
4th December 1975  
continued

10

20

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In the Supreme Court

Prosecution  
Evidence

No. 11

EVERLAND FENNEL  
Cross-Examination  
4th December 1975  
continued

A. Counted them one by one.

Q. And you know that they came up to one sixty-five?

A. One sixty-five.

Q. Well, I am suggesting, sir, that there were more than one sixty-five and they were not in one place. They were a total of three hundred and sixty-five pieces of wood along the whole K.V. line.

10

A. I wouldn't know about that.

Q. You wouldn't know about that because you didn't got the whole of the K.V. line.

A. That's right.

Q. Tell me something. These posts that were removed, that you know about, that were removed to the compound, are they still at the compound now?

20

A. I suppose they are.

HIS LORDSHIP: Yes?

MR. HAMILTON: Oh! Thank you. 11:05 a.m.

CROSS-EXAMINATION

EVERLAND FENNEL: CROSS-EXAMINATION - MR. ATKINSON:

HIS LORDSHIP: Yes, Mr. Atkinson?

MR. ATKINSON: Tell me, Mr. Fennel, do you know if the company offered a reward concerning this case?

A. A reward is offered.

30

Q. What?

A. A reward is offered.

Q. What is the extent of that reward?

	A.	Five hundred dollars on conviction.	In the Supreme Court
	Q.	Five hundred dollars for conviction?	Prosecution
	A.	Yes.	Evidence
	Q.	And this would be shared by the witnesses. Who the reward go to?	No. 11
	A.	The person who led - who gave the evidence for the prisoners arrest and conviction.	EVERLAND FENNEL Cross-Examination 4th December 1975 continued
10	Q.	That would mean the witnesses?	
	HIS LORDSHIP:	The persons who gave what?	
	A.	Gave evidence leading to the arrest and conviction.	
	MR. ATKINSON:	And Mr. Fennel, Mr. Ceaphas Laidford, he works with you?	
	A.	He is a permanent employee.	
	Q.	Mr. Milton Smith?	
	A.	Permanent employee.	
20	Q.	Mr. Roy Burke?	
	A.	Permanent employee.	
	Q.	They are all aware of this reward?	
	A.	I don't know.	
	MR. ANDRADE:	I object. Object! Object! He can't know what is in another man's mind.	
	MR. ATKINSON:	How did the company announce this offer for reward?	
	A.	It was relayed to the police officers in charge of the parish.	
30	A.	Yes.	
	Q.	And in fact, Mr. Fennel, the company has also instructed a lawyer to watch brief on behalf of the deceased?	
	A.	That's right.	
	HIS LORDSHIP:	Where are we going?	<u>11:07 a.m.</u>

In the Supreme Court

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Prosecution  
Evidence

No. 11

EVERLAND FENNEL  
Re-examination  
4th December 1975

EVERLAND FENNEL: RE-EXAMINATION - MR. ANDRADE:

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MR. ANDRADE: Just one question, Mr. Fennel. As far as you know were any other posts, fence posts removed from the entire length of the K.V. line other than those one sixty-five pieces?

A. As far as I know, sir, no more. No other posts were removed by Mr. Smith.

10

Q. You know of any other at all?

A. No, sir.

Q. Thank you, sir. 11:08 a.m.

HIS LORDSHIP: Thank you, Mr. Fennel.

MR. ANDRADE: Call Ivor Cowan

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In the Supreme Court

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Prosecution  
Evidence

No. 12

IVOR COWAN  
Examination  
4th December 1975

No. 12

EVIDENCE OF IVOR COWAN

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IVOR COWAN: SWORN: EXAMINATION - MR. ANDRADE:

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A. Ivor Cowan. Detective acting corporal of police stationed at May Pen police station in the parish of Clarendon.

MR. ANDRADE: Now, sir, on the 22nd of April, this year, about one p.m. where were you?

A. I was at the May Pen police station.

Q. Did anyone in particular come there and make a report to you?

30

A. Yes, sir.

- |    |               |   |   |
|----|---------------|---|---|
|    | Q.            | Who was that?   | In the Supreme Court  |
|    | A.            | Ceaphas Laidford.   | Prosecution<br>Evidence                                     |
|    | Q.            | Did you do anything as a result of that report?   | No. 12  |
|    | A.            | Yes, sir.   | IVOR COWAN<br>Examination<br>4th December 1975<br>continued |
|    | Q.            | What?   |   |
| 0  | A.            | I went to the compound of Inverness cordage factory at Sandy Bay in Clarendon.  |   |
|    | Q.            | Did you see anything in particular when you got there, sir?   |   |
|    | A.            | Yes, sir.   |   |
|    | Q.            | What?   |   |
|    | A.            | I saw the body of deceased, Sydney Smith, lying at the foot of a motor vehicle ramp off the compound.   |   |
| 20 | Q.            | About what time of day was that when you actually got there?  |   |
|    | A.            | This was about 1:20 p.m.  |   |
|    | HIS LORDSHIP: | Yes?  |   |
|    | MR. ANDRADE:  | And did you notice anything about the body?   |   |
|    | A.            | Yes, sir.   |   |
|    | Q.            | What?   |   |
|    | A.            | The body was lying faceward on the ground at the end of the motor vehicle ramp.   |   |
|    | Q.            | Anything else you noticed?  |   |
| 70 | A.            | Deceased' right foot was resting on one end of the ramp. Deceased was bleeding from his right ear and there was a wound at the left side of his chin. |   |
|    | Q.            | I am going to show you - will you show the witness, please, exhibit three. Would you look at it, in particular  |   |

In the Supreme Court

Prosecution  
Evidence

No. 12

IVOR COWAN  
Examination  
4th December 1975  
continued

- Q. (Contd) photograph number three. Now, would you hold it up, please. Tell the court, looking at photograph number three, exactly in what position you saw the body. First of all, is that the ramp?
- A. Yes, sir.
- Q. You speak of?
- A. This is the motor vehicle ramp.
- Q. Turn it around, man, so that the jury can see what you talking about. Go back a little more for me, please. (witness indicates.) 10
- Q. Yes. Now, show the court where exactly you saw the body, in what position.
- HIS LORDSHIP: First of all, was he in the position as he is now in the photograph?
- A. No, your Honour.
- HIS LORDSHIP: Aa, aah! 20
- A. The position that the deceased's body was in then ...
- HIS LORDSHIP: Turn it around.
- MR. ANDRADE: Turn it around so that the jury can see what you talking about.
- A. His face was in this direction.
- HIS LORDSHIP: The left hand side of the picture?
- A. Yes, sir. And his right foot was resting at this end of the ramp.
- HIS LORDSHIP: Turn it around. In the middle you pointing to? 30
- A. Yes, sir.
- MR. ANDRADE: Turn it around that I can see it.
- MR. HAMILTON: What was there?



In the Supreme Court

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 Prosecution  
Evidence

No. 12

 IVOR COWAN  
Examination  
4th December 1975  
continued

HIS LORDSHIP: Left foot - right foot, beg your pardon was resting in the middle of the right side of ramp. (shown paper). Yes?

A. And the hand was below this section of the ramp.

HIS LORDSHIP: The head is below the section of the ramp?

A. Yes.

10 HIS LORDSHIP: Where are you pointing? Just point and show the members of the jury. It is not on the ramp at all?

A. No, sir.

HIS LORDSHIP: In other words, where you are pointing would be somewhere near the end of the ramp?

A. Yes, sir, at the end of the ramp and completely off the ramp.

MR. ANDRADE: Do you know if the body was removed?

20 A. Yes, sir.

Q. How?

A. Well, the officer in charge of the parish came and put it in this position.

Q: Officer?

A. The then officer in charge of the parish.

Q. What's his name?

A. Mr. Germaine.

30 Q. Any particular reason why?

HIS LORDSHIP: Wait! Yes?

MR. ANDRADE: Yes?

A. The deceased! hand was some what under his stomach, like this ... (indicating) ... and it was suggested that rigor mortis ...

In the Supreme Court

Prosecution  
Evidence

No. 12

IVOR COWAN  
Examination  
4th December 1975  
continued

- HIS LORDSHIP: That's when you saw the body?
- A. Yes.
- HIS LORDSHIP: Right hand was ...?
- A. Yes, sir, somewhat in this position ...(indicating).
- HIS LORDSHIP: Was under the body?
- A. Yes, sir.
- HIS LORDSHIP: And the suggestion was what? 10
- A. That rigor mortis would take place and it was placed in this position.
- MR. ANDRADE: Stretched out, in other words?
- A. Yes, sir, stretched out.
- HIS LORDSHIP: Yes?
- MR. ANDRADE: Did you make any other observations of the area?
- A. Yes, sir.
- Q. What were those observations? 20
- A. I made observations of a carpenter shed which was pointed out to me. I noticed that several stones of various sizes ...
- HIS LORDSHIP: Yes, several stones?
- A. Yes, sir, was at the front of a door adjoining the carpenter's shed.
- MR. ANDRADE: Scattered or - stones scattered? 30
- A. Appeared to be freshly placed there.
- Q. How you know all that? How you know all that? How you know whether it freshly placed or not?

A. (No answer)

Q. We are asking you to speak from your knowledge, what you saw, you see? You also saw stones where the deceased' body was lying?

In the Supreme Court

Prosecution  
Evidence

No. 12

IVOR COWAN  
Examination  
4th December 1975  
continued

A. Several stones.

Q. Did you go inside the shed too?

A. Yes, sir.

10 Q. What about there?

HIS LORDSHIP: Which shed?

MR. ANDRADE: Carpenter's shed.

A. Carpenter's shed. I saw stones in the carpenter's shed.

HIS LORDSHIP: I noticed stones were outside, they were various sizes by door there.

MR. ANDRADE: By the door, outside the door?

HIS LORDSHIP: Inside carpenter's shed.

20 MR. ANDRADE: You were in charge of the investigations, so to speak, of this case?

A. Yes, sir.

Q. You investigated?

A. Yes, sir.

Q: Did you speak with one Milton Smith?

A: Yes, sir.

Q: Did you take a statement from him?

A: (no answer)

HIS LORDSHIP: What is this for?

30 MR. ANDRADE: Rebut a presumption raised by the defence, about this five hundred dollars reward.

In the Supreme Court

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Prosecution  
Evidence

No. 12

IVOR COWAN  
Examination  
4th December 1975  
continued

HIS LORDSHIP: To rebut that? Let me see now.  
What are you proposing to do ...

MR. ANDRADE: Ask when he took the statement.

HIS LORDSHIP: Oh, I see. But then, you see  
where are we, because we don't  
know when this reward was  
offered. This is the problem.

MR. ANDRADE: Evidence will no doubt, be  
coming from the defence about  
that. We have to anticipate  
that. 10

HIS LORDSHIP: You took evidence from Milton  
Smith?

WITNESS: Yes, sir.

MR. ANDRADE:

Q: When you took the statement, sir.

A: That same day I took the statement.

HIS LORDSHIP: That is the ...?

WITNESS: 22nd. 20

MR. ANDRADE:

Q: What about Ceaphas Laidford, when he  
gave his statement?

A: The same day, sir.

Q: Everalld Fennell?

A: The same day.

Q: Sydney Lawson?

A: Not that same day, sir.

Q: When?

A: Sometime after, sir; don't remember  
the exact date. 30

Q: And Clifton Howard?

A: I think it was that same day the statement was taken from Howard.

Q: What about Roy Burke?

A: That same day, sir; the 22nd.

Q: Now, do you know anything about the company offering a reward?

A: I heard of it, sir.

10 Q: Can you say when - how long after you visited the scene?

A: About two weeks after I heard of it.

Q: Now did you summon Dr. Morgan?

A: Yes; I did.

Q: Did he arrive that day?

A: Yes, sir.

Q: While you were there?

A: Yes, sir.

Q: Did the doctor give certain instructions?

20 A: Yes, sir.

Q: As a result was the body removed?

A: Yes, sir; the body was removed.

Q: To Johnson's Funeral Parlour?

A: Yes, sir.

Q: On the 24th of April, this year, were you present at the post mortem examination performed by Dr. Morgan?

A: Yes, sir; I was.

30 Q: Was the body identified by Jocelyn Boucher?

A: Yes, sir.

Q: Now, continuing your investigations, sir, did you contact any other police officer?

In the Supreme Court

Prosecution  
Evidence

No. 12

IVOR COWAN  
Examination  
4th December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 12

IVOR COWAN  
Examination  
4th December 1975  
continued

A: Yes, sir.

Q: Who was that and where?

A: Detective Corporal Donaldson at the Old Harbour Police Station in St. Catherine.

Q: Just a moment. Now on the 14th of May, did you go to the - did you go any particular place?

A: Yes, sir.

Q: Where to?

10

A: Old Harbour Police Station.

Q: Did you see anyone in particular there?

A: Yes, sir.

Q: Who was it you saw?

A: At the cell block I saw the two accused.

Q: Did you take custody of them?

A: Yes, sir.

Q: On the 21st of May, did you arrest both and charged them with murder?

A: Yes, sir.

20

Q: Did you caution them after arrest?

A: Yes, sir; made no statement; said nothing.

MR. ANDRADE: That will be all.

Time: 11:23 a.m.

CROSS-EXAMINATION

CROSS-EXAMINATION OF DETECTIVE COWAN BY MR. HAMILTON (DEFENCE ATTORNEY)

Q: Detective Cowan, you contacted Detective Donaldson at Old Harbour, because he is a photographer?

30

A: (no answer)

HIS LORDSHIP: No; to get them in custody, apparently.

MR. HAMILTON: You are talking the same day - I am sorry, Detective MacFarlane - didn't you also contact on the same day, Detective Upton MacFarlane?

WITNESS: Detective MacFarlane.

HIS LORDSHIP: This is on the 22nd?

10 WITNESS: Yes, sir.

MR. HAMILTON:

Q: He is a police photographer?

A: Yes, sir.

Q: And as officer in charge of this case, you gave him certain instructions?

A: Yes, sir.

Q: It was on your instructions that he took these photographs?

A: Yes.

20 Q: Now, these photographs that were taken, or the areas that were photographed were based upon information that you had received from witnesses - from potential witnesses.

A: Yes, sir.

Q: And you consider these photographs that were taken, important?

A: Yes, sir.

Q: Important material to put before a jury to try this case?

30 A: Yes, sir.

Q: You regard these photographs as important material to put before a jury in assisting this case - and I believe you have received Corporal - that part of your observations, you observed several stones which were in this carpenter's shed, you said they were freshly placed there - you observed this yourself?

In the Supreme Court

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Prosecution  
Evidence

No. 12

IVOR COWAN  
Cross-Examination  
4th December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 12

IVOR COWAN  
Examination  
4th December 1975  
continued

A: Observe that there were stones in the carpenter's shed.

Q: Am I correct in saying that of all these photographs that are here, there is not one photograph in the carpenter's shed, of the interior of the carpenter's shed - am I correct? Look at the photographs man, if you see any inside the carpenter's shed.

(witness looks at photographs)

10

A: There is no photographs of the interior of the carpenter's shed.

MR. HAMILTON: Thank you.

(End of cross-examination by Mr. Hamilton)

(Time: 11:26 a.m.)

Time: 11:26 a.m.

CROSS-EXAMINATION

CROSS-EXAMINATION OF DETECTIVE COWAN BY  
MR. P. ATKINSON (DEFENCE ATTORNEY)

Q: You said you went to the scene and conducted investigations there?

20

A: Yes, sir.

Q: And you say you took some statements, most of the statements that same day?

A: Yes, sir.

Q: This was later at the station?

A: No, sir.

Q: Where?

A: At the factory compound.

Q: You took it at the factory compound; about what time you took the statements?

30

A: Between 1:20 to 5:00 p.m. that day.

HIS LORDSHIP: Between 1:20?

WITNESS: 1:20 p.m. to 5:00 p.m.



MR. ATKINSON:

Q: You would have been done with your observations and photographs and the matters concerning the doctor, before you start the doctor?

A: No, I would have made my observations then statement.

Q: Then the doctor come and the photographs?

A: Well, whilst taking the statement, a message was sent to the doctor.

Q: And you say that you heard about the reward two weeks later?

A: Yes, sir.

Q: That was when you heard about it?

A: Yes, sir.

Q: You know one Loise Ferron?

A: Yes, sir.

Q: Look at photograph two for me, please?

(witness looks at photograph)

Look in your left hand corner of the photograph. You see a lot of tiny stones - gravel there?

A: Where?

Q: The left hand corner - that little white area, run 'cross whole heap a gravel? Look by the light post.

A: (no answer)

HIS LORDSHIP: Wait, wait; a number of fine gravel?

MR. ATKINSON: Yes.

Q: By the light post you see stones on the ground there?

A: Yes, sir; I see stones.

In the Supreme Court

Prosecution  
Evidence

No. 12

IVOR COWAN  
Cross-Examination  
4th December 1975  
continued

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In the Supreme Court

Prosecution  
Evidence

No. 12

IVOR COWAN  
Cross-Examination  
4th December 1975  
continued

Q: Look towards the guango tree there, you see more stones there?

A: Yes, sir; I see more stones.

Q: In fact, the place is a rocky terrain, officer?

A: Lot a stones in there.

(End of cross-examination by Mr. Atkinson)

Time: 11:30 a.m.

10

MR. ANDRADE: No re-examination.

HIS LORDSHIP: What I would like to know - I don't think the stones inside the shed were so big - you couldn't see them?

WITNESS: No, sir.

HIS LORDSHIP: You could have given us more to see. He has any of inside of the shed - anyhow, that is not really a question; it is a comment. Why you didn't take out the stones that you saw inside the shed?

20

WITNESS: No specific reason.

HIS LORDSHIP: You never heard about any iron?

WITNESS: No reason; no specific reason.

HIS LORDSHIP: Let me remind you. You never got any information that iron was involved - I am putting it bluntly to him, that he never got any information that a piece of iron was involved.

30

WITNESS: No, sir; I alone did all the statement.

HIS LORDSHIP: I don't care whether you did all the statement or not. You took Ceaphas' statement - that is Laidford?

WITNESS: Yes, sir.

HIS LORDSHIP: Yes, thank you.

(Witness steps down)

In the Supreme Court

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Prosecution  
Evidence

No. 12

IVOR COWAN  
Cross-Examination  
4th December 1975  
continued

No. 13

In the Supreme Court

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Prosecution  
Evidence

No. 13

DR. S. MORGAN  
Examination  
4th December 1975

10

EVIDENCE OF DR. SAMUEL MORGAN

Time: 11:32 a.m.

EXAMINATION-IN-CHIEF OF DR. S. MORGAN BY MR. ANDRADE  
(CROWN ATTORNEY)

Q: Your name is Samuel Morgan, please?

A: Yes.

20

HIS LORDSHIP: Would you like to sit, doctor?  
(witness sits)

MR. ANDRADE:

Q: Your name is Samuel Morgan?

A: Yes.

Q: And you are a Registered Medical Practitioner  
and District Officer for May Pen area?

A: Yes.

Q: The 22nd of April, this year, did Detective  
Cowan speak to you?

A: Yes.

30

Q: As a result, did you visit a certain area,  
Inverness Property?

A: I did.

Q: What you saw when you got there?

In the Supreme Court

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Prosecution  
Evidence

No. 13

DR. S. MORGAN  
Examination  
4th December 1975  
continued

HIS LORDSHIP: Wait, wait ...

A: I saw the body of the deceased was lying on his left side and large stones scattered around in the - particularly in the vicinity of his head.

Q: Tell me something, doctor, did you make notes of your observations?

A: No; I didn't make any notes.

Q: At that time?

10

A: Yes.

Q: Well, you noticed anything about the body that you can remember?

A: (no answer)

HIS LORDSHIP: What you are being asked about - when you were examining the body at the scene?

WITNESS: Yes, M'lord.

HIS LORDSHIP: You didn't make any notes at that time?

20

WITNESS: No; I didn't make any notes.

MR. ANDRADE:

Q: Well, do you remember what you saw?

A: No; but I have it here.

Q: I am not concerned with what you have. At the time when you went to visit the body, did you make any observations - that is the whole purpose of getting you out there.

A: (no answer)

30

HIS LORDSHIP: He has given information of what he made. What I gather, he did not make notes at that time of that observation.

MR. ANDRADE:

Q: Did you make observations?

A: Yes.

Q: Can you recall the observations you made?

A: (no answer)

10 HIS LORDSHIP: He just told us - "I saw body of deceased lying on the ground large stones lying around, especially in the vicinity of the head. I did not make notes at that time."

MR. ANDRADE:

Q: When did you make notes?

A: When I performed the post mortem.

Q: Was that on the 22nd of April, this year?

A: It was.

20 Q: Two days after?

A: It was.

Q: Was that at the Johnson's Funeral Parlour?

A: Yes.

Q: Would you like to refresh your memory from those notes?

A: Yes; I wish.

HIS LORDSHIP: Permission granted to refresh his memory.

MR. ANDRADE:

30 Q: Was the body identified to you?

A: It was.

Q: By whom?

A: By one Jocelyn Boucher.

In the Supreme Court

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Prosecution  
Evidence

No. 13

DR. S. MORGAN  
Examination  
4th December 1975  
continued

In the Supreme Court

Prosecution  
Evidence

No. 13

DR. S. MORGAN  
Examination  
4th December 1975  
continued

Q: Now, externally what you saw?  
A: Externally there were signs of haemorrhage from the right ear.

Q: Indicated; turn to the jury so that they can see you.

A: (witness turns to the jury and indicates)  
There was also a small laceration on the chin - left side of the chin.

Q: Small laceration? 10

A: Yes.

Q: And you dissected the body?

A: I dissected the body.

HIS LORDSHIP: I take it, doctor, these are all your external findings?

WITNESS: Yes, M'lord.

MR. ANDRADE:

Q: Internally, what were your findings?

A: On dissection, there was a fracture of the skull, at the right margin of the occipital and right parietal - right occipital and right parietal bones. 20

Q: Where you saw the fracture; show us again where you saw the fracture, doctor?

A: The right margin of the occipital and right parietal - somewhere off here. (doctor indicates)  
There was sign of haemorrhage at dissection of the skull.

Q: Yes? 30

A: The haemorrhage penetrated the dura mater - the hard covering of it.

HIS LORDSHIP: Dura mater - this is the hard covering over the brain.

MR. ANDRADE:

Q: So, you say that the haemorrhage - this is bleeding, really?

A: Yes; bleeding.

Q: It penetrated the hard covering of the brain?

A: Yes; and enveloped all the occipital region - that is this region, here. (doctor indicates)

Q: That is the back of the head?

A: Yes; the occipital region.

10 Q: All of that area was bleeding?

A: When I dissected it.

Q: You saw blood all around the area?

A: Yes; all that section of the brain was covered in blood. The occipital region and the posterior half - the haemorrhage was all around here.

20 HIS LORDSHIP: The back of the head there; the posterior half of the right parietal ... - the right side of the head there?

WITNESS: Yes.

MR. ANDRADE:

Q: Anything else you observed?

A: Also fracture of the sternum, this bone here, at position of third upper section by about here. (doctor indicates)

30 HIS LORDSHIP: Would you just let me see what that is doctor - point it out for me, please? You start counting from the collar-bone?

WITNESS: The sternum; the bone on which the ribs are attached in front.

HIS LORDSHIP: The rib-bone comes off the chest-bone?

WITNESS: The third section of the sternum - the upper section. That is about

In the Supreme Court

Prosecution  
Evidence

No. 13

DR. S. MORGAN  
Examination  
4th December 1975  
continued

In the Supreme Court  
Prosecution  
 Evidence

No. 13

DR. S. MORGAN  
 Examination  
 4th December 1975  
 continued

WITNESS: here. (doctor indicates). There  
 (Contd) was no abnormality of the heart;  
 no abnormality of the lung.

MR. ANDRADE:

Q: Or other lungs?

A: Yes; no abnormality. The spleen, the  
 stomach, intestines, no abnormality. The  
 kidneys; no abnormality.

HIS LORDSHIP: In other words, there were no 10  
 other signs of injuries that  
 you saw?

WITNESS: No, M'lord.

MR. ANDRADE:

Q: Did you conclude the cause of death?

A: My conclusion was that death was due to  
 shock and haemorrhage, due to multiple  
 internal injuries.

Q: To multiple internal injuries to the ...?

A: To the sternum and skull. 20

HIS LORDSHIP: To the sternum and skull?

WITNESS: Yes.

MR. ANDRADE:

Q: When you speak of shock, you mean clinical  
 shock?

A: Well, typically describe it shock, as  
 effect on the system.

HIS LORDSHIP: As an effect - shock would be  
 described as ...

WITNESS: (no answer) 30

MR. ANDRADE:

Q: What is shock - the shock you spoke about;  
 shock due to haemorrhage - explain it?



A: Well, shock can be described as a result of a blow on the system, whereas that has - that results to certain adverse effect condition.

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HIS LORDSHIP: That results in certain adverse effect?

WITNESS: Adverse effect - and it may be of such a degree ...

A. Adversely affect it and it may be of such a degree as to cause death.

MR. ANDRADE: And what caused the shock in this case that caused death?

A. Well, in my opinion, shock was due to blow or blows received.

Q. Blow received. Now, tell me, doctor, would the fracture of the occipital and right parietal bone ...

A. Yes.

Q. Indicated here.

A. Yes, sir.

Q. Could that have been caused by a person flinging a stone and hitting the deceased in that region?

A. Yes.

Q. Having regard to the area of the skull that you saw affected ... (indicating)

A. Yes.

Q. Area that you saw was affected, about what size stone would you say was used?

A. Well, no direct size stone on the area affected.

HIS LORDSHIP: Sorry, what is your answer?

MR. ANDRADE: Having regard to the haemorrhage you saw at area of the head affected can you assist ...

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MR. ATKINSON: The doctor has said, - "I can't say".

HIS LORDSHIP: I haven't heard the doctor answer as yet. All I have is, "Having regard to the area I saw affected" - I don't know what his answer is.

A. Well, there was no direct relation ...

MR. ANDRADE: Can't hear you, you know, doctor. 10

A. I saw there is no direct relation between the size of the stone and area.

HIS LORDSHIP: Wait! There is no direct relation between the size of the stone ...

A. I said, direct relation, M'Lord.

HIS LORDSHIP: That's what I have, no direct relation between the size of the stone ...

A. And the area affected. 20

MR. ANDRADE: Fine. Stop there. Could a pebble have caused it?

A. I ... (inaudible)

HIS LORDSHIP: Let me say, doctor, all Mr. Andrade was asking you, could you assist the members of the jury with regard to what size stones were used to inflict the injury, if a stone was used, having regard to the fracture that you saw and the haemorrhage underneath the fracture. That is all you are being asked. Was it something this big or a pumpkin or grapefruit or somebody's head? 30

A. Well, it would be a fairly large stone.

MR. ANDRADE: That's what you are being asked. Now, doctor, what degree of force was used? 40

HIS LORDSHIP: Can you say?

A. Yes, I would say a strong degree of force.

MR. ANDRADE: Strong degree of force. Having regard to the position of the fracture in the head which I believe you indicated at the back.

A. Indicated at the back, here ... (indicating).

Q. This section, here?

A. Yes. (indicating).

Q. Is it consistent with the deceased running and the person throwing from behind and hitting the deceased here?

HIS LORDSHIP: How can you put that?

MR. ANDRADE: More sideways.

HIS LORDSHIP: How can you put that? The only evidence that you have is when he is on the ground. That's all the evidence you have.

MR. ANDRADE: I am putting both. I am dealing with one first.

HIS LORDSHIP: What I am saying is, can you base your question on the hypothesis that you cannot prove?

MR. ANDRADE: The evidence is that the deceased was running, M'Lord.

HIS LORDSHIP: Yes?

MR. ANDRADE: The evidence is that while he was running they were throwing stones.

HIS LORDSHIP: Yes, and the evidence is that I cannot say if any hit him.

MR. ANDRADE: That isn't saying that none hit him.

HIS LORDSHIP: Are you? Let me see now ...

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MR. ANDRADE: We have the physical evidence of the injury here ...

HIS LORDSHIP: Wait a minute, please. In other words an inference that you are saying the jury can draw?

MR. ANDRADE: Precisely.

HIS LORDSHIP: Let me hear the question again, please.

MR. ANDRADE: Having regard to the position of the injury you saw on the head, here, the fracture of the skull, is it consistent with the person who is throwing standing in a position behind and throwing the stone at the deceased?

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A. (Witness nods.) It is consistent.

MR. HAMILTON: M'Lord, before the answer is taken, I think why your Lordship was minded to stop the question is it is not a question that any inference can be drawn, there is evidence. There is evidence from the one witness who speaks of any hitting, Ceaphas Laidford, that a stone did hit, not a question that it is being suggested and I it was who thought he had said that it was here he had been hit while he was running and he said no.

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HIS LORDSHIP: When he is on the ground?

MR. HAMILTON: When he is on the ground that that hit himself too. In other words, the point I am making, M'Lord, the positive evidence of hit while running was not here.

HIS LORDSHIP: Let me put it this way. The question is this allegation, several stones being thrown, can you say it's an inconsistent theory?

40

MR. HAMILTON: I would say it is inconsistent bearing in mind ...

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HIS LORDSHIP: What about the others?

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MR. HAMILTON: None of the others are even saying he was hit. It is only Laidford he can rely on. My point, M'Lord, he cannot ask for an inference. That is why your Lordship may have asked the question. He is asking for an inference in the face of direct evidence. It is not a question that the person had said the men had been hit but I don't know where he had been hit, then he could ask for positive ...

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HIS LORDSHIP: But isn't that what the evidence is?

MR. HAMILTON: No, he was saying it is not here, the one that he was hit when he was running.

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HIS LORDSHIP: The evidence is, I can't say where he was hit and there is only evidence of stones being thrown.

MR. HAMILTON: Your Lordship pleases.

HIS LORDSHIP: Let me get that question again, Mr. Andrade. Having regard to area of skull fracture, could you what?

MR. ANDRADE: Is it possible that the person who flung - rather, that the stone could have been thrown at the deceased by a person who was standing behind?

30

A. It is possible.

HIS LORDSHIP: He standing behind ... (writing) Eh?

A. It is possible.

HIS LORDSHIP: And it is possible. Yes?

MR. ANDRADE: Is it also possible, doctor, that whilst the deceased was lying down that the stone could have been thrown at his head hitting him in that position?

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- A. Yes.
- HIS LORDSHIP: Yes?
- MR. ANDRADE: Doctor, the head injury - I call it that for brevity - the head injury, the fracture of the skull - are you hearing me clearly, doctor?
- A. Listening.
- Q. Yes, could that alone have been responsible for the death? 10
- A. Yes.
- Q. That alone. And how soon after would death have occurred, doctor?
- A. I wouldn't be able to say.
- HIS LORDSHIP: Eh?
- A. I wouldn't be able to say, M'Lord.
- HIS LORDSHIP: Why?
- A. It could have happened instantly, it could have happened some time afterwards. 20
- MR. ANDRADE: It could have happened what?
- A. It could have happened instantly or it could have happened a short time afterwards.
- HIS LORDSHIP: Or a short time afterwards?
- A. Yes.
- HIS LORDSHIP: Or how long after? Let's put it that way.
- MR. ANDRADE: From instantly to how long? 30
- HIS LORDSHIP: That is we are referring only to the injuries of the head now.
- A. Well, say it could have happened instantly or of up to two, three hours.

HIS LORDSHIP: Yes?

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MR. ANDRADE: The bleeding that you saw coming from the right ear, can you say what accounted for that?

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A. Well, I think the bleeding was consistent with the haemorrhage that occurred in this section of the brain ... (indicating).

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HIS LORDSHIP: I gathered you said this section.  
10 Did you indicate or?

A. I said the bleeding, M'Lord, was consistent or could be - I could say could be, as a result of the haemorrhage which I had observed in this section of the brain ... (indicating), as my previous evidence throughout, here and here ... (indicating).

HIS LORDSHIP: Yes?

20 MR. ANDRADE: Could it have been as a result of a separate and individual blow? That is what I want to find.

HIS LORDSHIP: What does that mean, separate and individual?

MR. ANDRADE: Blow to the head, here, in that region; here (indicating)?

A. Possibly.

Q. Possibly.

30 HIS LORDSHIP: Bleeding could be from the area ... (writing) One moment - One moment, please ... as a result ... (writing) ... well, you see I am a little confused here now. What I gather the doctor is saying, having regard to the haemorrhage, here, the hit at the side of the head which causes this bleeding underneath the skull, the haemorrhage in the ear could have been caused from that. What does that bleeding mean? 40 Does it mean that another hit to the ear

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HIS LORDSHIP: separate from that of the skull  
(Contd) could have caused the bleeding?  
Is that what you are saying,  
doctor? I don't know, you know.

A. In my dissection ...

HIS LORDSHIP: Well, certainly, I should have  
thought in a dissection you would  
have seen some evidence if the  
dissection is done properly.

A. I didn't see any more evidence of 10  
injuries to the brain other than  
those I have described.

MR. ANDRADE: So, then, can you fairly conclude  
then as to the reason for the  
bleeding through the ear?

A. Well, in my opinion the bleeding 20  
from the ear is related or, it  
could be as a result of the  
haemorrhage to this section of  
the brain ... (indicating)...  
which I have described.

(Foreman of the Jury stands)

MR. ANDRADE: How would you describe ... sorry.

HIS LORDSHIP: Yes?

MR. ANDRADE: Foreman of the jury would like  
to say something.

FOREMAN: Beg your pardon, M'Lord, one of  
my members would like to leave. (sic)

HIS LORDSHIP: Oh! Sorry. Please, any other 30  
of your members would like to go?  
I know how inconvenient it is.  
Well, I will rise for five minutes.

12:00 noon

12:08 p.m. JURY ROLL CALL - ALL PRESENT

HIS LORDSHIP: Yes, Mr. Andrade?

MR. ANDRADE: Now, doctor, having regard to the  
injuries, the head fracture and  
the fracture of the sternum, those  
two fractures.



- A. Yes.
- Q. In your opinion, doctor, which of these two fractures was the more telling?
- A. I would say the head injury.
- Q. More serious?
- A. I would say the head injury was the more serious, in my opinion.
- Q. And, naturally, that would have - the head injury would have accounted for quicker death?
- A. In my opinion? Yes.
- Q. About how - well, let's deal with the abrasion, you said, to the chin.
- A. Yes.
- HIS LORDSHIP: The right side you are pointing, the left side he said.
- MR. ANDRADE: Left side. Was it an abrasion you saw there?
- A. Laceration.
- Q. Laceration?
- A. Yes.
- HIS LORDSHIP: Small laceration to the left of chin, left side of the chin ... (indicating).
- MR. ANDRADE: Is that also consistent with a blow inflicted by a stone being thrown?
- A. Could be. Could be.
- Q. But what?
- A. Could be.
- Q. But what? You see, you are the doctor. You must assist us.
- A. Well, he could have received it otherwise.

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Q. Like tripping and falling?

A. Yes.

Q. And what about the chest now, the sternum?

A. Well, in my opinion the chest, the fracture of the sternum could have been caused by a blow received.

Q. Blow received?

A. Yes.

10

Q. Would you look, doctor at - may the doctor be handed exhibit three, please and the jurors.

HIS LORDSHIP: I think the jurors have theirs already.

(Exhibit handed witness.)

MR. ANDRADE: Look at picture, photograph number three, doctor.

HIS LORDSHIP: Number?

MR. ANDRADE: Number three.

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A. Number?

Q. Number three, third photograph?

A. Yes.

Q. You see the body there? Do you see the body there, doctor?

A. Yes, I have seen the body.

Q. And you see stones around the head?

A. Yes.

Q. Around the ramp?

30

A. I have seen the stones.

Q. When you got to the scene, doctor, were those stones there? Did you see stones around the head?

A. Yes, I told you I saw stones scattered around the body.

Q. And these are the stones you saw? Can you say?

HIS LORDSHIP: Aren't you going a little too far?

10 A. I can't say they are the stones but I saw stones scattered around when I saw it.

MR. ANDRADE: The same in exhibit four, the next photograph, rather, photograph number four?

A. Yes.

Q. You see all size stones there, doctor?

A. Yes.

20 Q. And looking at the larger stones would you say if the injury you saw could have been caused by any of these?

HIS LORDSHIP: That's four you are talking about?

MR. ANDRADE: Yes, photograph.

HIS LORDSHIP: Injuries to where?

MR. ANDRADE: The head.

HIS LORDSHIP: Number four you are to look at, doctor.

MR. ANDRADE: Just number four.

30 A. Oh, yes.

Q. You see the stones around the body?

A. Oh, yes, I do see the stones.

Q. Could the injuries have been caused - the head injuries have been caused by those stones or any of them?

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HIS LORDSHIP: Well, let's look at the big stones there, members of the jury. There seems to be one big one there, another one on the right and, one, two, three, four to the left. That is so, gentlemen? We are not talking about the one to the ...

MR. ANDRADE: What is your answer, doctor? 10

A. The injuries could have been caused by any of these stones.

HIS LORDSHIP: Any of these six? The bigger ones there? See one up there, doctor? See, one - three; three, four, five, six, any of these six hard ones?

A. Yes.

MR. ANDRADE: And the injuries to the chest?

HIS LORDSHIP: Wait! Wait! Wait! 20

MR. ANDRADE: The injury to the sternum, doctor, also, could these injuries have been caused by any of these stones?

A. Yes, could be.

HIS LORDSHIP: Let me put it this way. Is the crown proceeding on the assumption that the deceased' injury was caused by stones?

MR. ANDRADE: The doctor is saying it is consistent. 30

HIS LORDSHIP: It is consistent but the theory you are putting to the jury, is that your theory?

MR. ANDRADE: That is the question I am asking.

HIS LORDSHIP: Yes, go on, please.

MR. ANDRADE: That will be all.

CROSS-EXAMINATION OF DR. S. MORGAN BY MR. H. HAMILTON  
(DEFENCE ATTORNEY)

In the Supreme Court

Time: 12:15 p.m.

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Q: Doctor, first thing, in answer to His Lordship, you have already indicated that apart from the signs of blood coming from the right ear and the small laceration to the chin, you saw no other external sign of injury to the deceased?

A: No; I did not.

Q: To be more specific, doctor, in your external examination at the time of the post mortem, did you find any hematoma to the skull?

A: I did not.

HIS LORDSHIP: Mr. Hamilton, suppose you break this down ...?

MR. HAMILTON: I am going to break it down.

Q: Would you explain to the jury what is hematoma?

A: Hematoma is a swelling; rising.

20

Q: Or "koko"?

A: Swelling, due to blood accumulated on the skin - rising, swelling, on any part of the body, due to blood under the skin.

Q: Are you familiar with the old Jamaican expression, a "koko"?

A: Yes.

Q: In relation to the head it would be a koko?

A: Yes.

Q: You saw none?

30

A: No.

Q: In your examination of the skull, did you find any laceration or breaking to the skull - externally?

A: No.

Q: And laceration - and when you say laceration or abrasion, we mean any bruising of the skin - well, what is a laceration; you tell me?

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A: Laceration - tear; a laceration is described as - as tearing of the skin  
...

HIS LORDSHIP: Laceration is a cut on the skin - cut and it bleeds.

WITNESS: A rough cut - yes- a rough cut.

MR. HAMILTON:

Q: And an abrasion is a bruise? 10

A: Abrasion - bruise; you know?

Q: You saw none of these?

A: I didn't see any of them.

Q: Let us continue. Suppose, doctor, you heard that, that deceased that you had examined, the same one you examined, he had been hit in the head with eight or nine stones, of the size that my learned friend has just showed you in the picture - remember those he was just showing you? 20

A: Yes.

Q: Yes; eight or nine stones thrown at a distance of at least ten yards, would you not have expected to find - hitting, sorry, hitting the deceased in the head - would you not have expected to find evidence of an external injury to the head?

A: This question is a bit wide. 30

Q: This is my question and I will repeat it: If you heard as a doctor, that this man, the same man you see lying here (defence attorney points to picture) - you see the white of his hair, that is in the picture?

A: Yes.

Q: If you had heard that he had been hit in his head with eight or nine stones from

Q: a distance of ten yards - like from me to you;  
(Ctd) that is where the stones were thrown from - all  
of them hitting him in his head, would you  
have expected to find evidence of external  
injury?

A: Yes; because I don't deal with hearing.

HIS LORDSHIP: What hearing?

WITNESS: The doctor don't deal with hearing;  
the doctor deals with examination.

HIS LORDSHIP: You are being told, a man is being  
hit eight or nine times in his head  
with stones, would you have expected  
to find external injury?

WITNESS: Possibly, yes.

MR. HAMILTON:

Q: Please have a look at the picture for me,  
doctor?

HIS LORDSHIP: Which are you referring to?

MR. HAMILTON: I am looking at four.

Q: Have a look at picture four for me, because  
- look at the stones that my learned friend  
... - you see the stones are around; look  
at them man - nine of them, you have been  
told that the man has been hit in his -  
you are being told that the man has been  
hit in his head. This is the history. In  
other words, you are getting that this  
patient or deceased person had been hit  
eight or nine times with stones of this  
size in his head, would you not have  
expected to find some signs of external  
injury?

A: Can't answer yes or no. Possibly, yes.

Q: Are you saying, seriously doctor, that  
eight or nine stones hit him and you would  
expect no signs to be there?

A: The answer was possibly yes.

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Q: Doctor, have I not asked you that same, same question already and you have told me yes, without any possibly; have I doctor - didn't I ask you that same question at the preliminary hearing and you told me yes?

A: (no answer)

HIS LORDSHIP: Where is that?

10

MR. HAMILTON: Page twenty-two, M'Lord.

Q: "Under normal circumstances - yes". Isn't that your answer?

A: Yes.

Q: If you were to hear, doctor, that, that man had been hit eight or nine times with stones in his head, at a distance of ten yards - isn't your answer that under normal circumstances you would expect to find external injuries?

20

A: Yes.

Q: Suppose you were to hear that one of these stones hit him - suppose you were to hear - I am not talking about the head - that one of these stones that you see in the picture hit him on his ear, would you not expect to ...

HIS LORDSHIP: Can you put it like that?

MR. HAMILTON: I don't want to misquote. I thought one of the witnesses said it hit him in his ear.

30

HIS LORDSHIP: I don't think so. That is why I stopped you. Are you, gentlemen, saying ear? I gather you are talking about behind the head.

MR. HAMILTON: While deceased was on the ground, the first stone hit him on his right ear.

40



Q: Now, forget about the head. On the ears; if a stone of these size hit him from a distance of ten yards, on his right ear, would you not have expected to find some external injury to the ear?

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A: Not necessarily.

HIS LORDSHIP: What?

WITNESS: Not necessarily.

HIS LORDSHIP: Wait a minute. You wouldn't expect to find an injury?

WITNESS: Not necessarily.

MR. HAMILTON:

Q: A stone of this size hit a man on his ear and you wouldn't expect to find injury?

A: Not necessarily; I think I spoke to you in the enquiry.

Q: I didn't ask you a thing about ear in the enquiry. However, the long and short of it is that you found no external injury to this man's head?

A: No; I didn't find any.

Q: Now, the injury to the sternum, which you call the chestbone, suppose you were to hear that the deceased in running, fell and hit his chest ... ..

HIS LORDSHIP: Would you care to put the whole thing?

MR. HAMILTON: I am coming. I just want to find ...

Q: Yes; If you were told that deceased, while running, tripped over one leg of this ramp ...

HIS LORDSHIP: Show him picture three and let him look at it.

MR. HAMILTON: Yes.

Q: Look at picture three, doctor?

(doctor looks at picture)

You found three?

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continued

A: Yes.

HIS LORDSHIP: Well first, let's show him one -  
you see the ramp in it, there;  
you see the ramp?

WITNESS: Yes.

HIS LORDSHIP: You see the building on the right  
hand side? Somebody is running  
from the building on the right,  
called the carpenter's shed, going  
across, hitting his foot against  
the ramp, here, and tripping and  
falling over ...

10

MR. HAMILTON:

Q: And hitting his chest on the other wall,  
or inner edge of this other wall, could  
he not have incurred the fracture, or  
sustain the fracture to the sternum?

A: It is possible.

Q: Now doctor, the blood, as I understand it,  
the bleeding from the right ear, in your  
opinion was as a result of the internal  
haemorrhage from the brain?

20

A: In my opinion.

Q: Do you agree with me that if that blood  
came out on to the ground, that blood would  
have to run out from out of the brain,  
out through the ear to get on to the  
ground?

A: Repeat the question, please?

30

Q: What I want to suggest to you, let me  
just shorten the question; that might  
help you.

A: Yes.

Q: If the head of the deceased was lying on  
the ground on its right side, wouldn't  
that blood that was in the brain, causing  
haemorrhage, could it not drain out of  
the ear on to the ground?

A: It could.

Q: Did you observe any blood-stains on the ramp, when you went there?

A: No; I didn't.

Q: Now ... ..

HIS LORDSHIP: Sorry; did you say the right side?

MR. HAMILTON: I asked him if he saw any blood-stains on the ramp.

HIS LORDSHIP: You didn't put any side?

MR. HAMILTON: No; I didn't put any side.

Q: If a person had fallen - in other words, if the person sustained the fracture to the sternum by falling, do you agree with me, it would have had to be a heavy fall, to fracture the sternum?

A: Yes.

Q: And I believe that what in fact you are saying, doctor, in relation to the fracture, is that this fracture was ...

HIS LORDSHIP: Hold on a minute, please. You are pointing to your head. Remember the shorthand-writer is taking down ...

MR. HAMILTON: Yes; fracture ...

Q: The fracture to the skull was as a result of ...

A: What is - I said due to it - a blow.

Q: Yes; a blow to the area?

A: A blow.

Q: A blow to that area where the fracture is?

A: Yes.

Q: It is possible, as you have said in answer to my learned friend, that this blow could have been as a result of a stone hitting the area?

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A: Yes.

Q: But it is equally possible, is it not doctor, that if a person in falling had hit that area, a fracture could equally have been inflicted - the fracture on the concrete - look at it for me; same picture three - did that section of the head, look, you see this side of the concrete?

A: (no answer)

10

HIS LORDSHIP: On the left hand side there; you see a little white circle down the bottom there?

WITNESS: Yes.

HIS LORDSHIP: Members of the jury, you remember that right hand circle?

MR. HAMILTON:

Q: If a person had fallen and hit their head on that part of the concrete, a fracture could also be sustained?

20

A: It is possible.

MR. HAMILTON: No further questions.

Time: 12:33 p.m.

CROSS-EXAMINATION

CROSS-EXAMINATION OF DR. S. MORGAN BY MR. P. ATKINSON (DEFENCE ATTORNEY)

Q: Doctor, you say that in your opinion death could have been instantly, or up to two, three hours?

A: Yes.

Q: The blow you said, that would cause that fracture you saw ...

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HIS LORDSHIP: Wait a minute; fracture of the skull or fracture of the sternum?

MR. ATKINSON: Fracture of the skull.

HIS LORDSHIP: I don't know whether you want to deal with it any more.

MR. ATKINSON: Just one point.

Q: The result of the fracture of the skull, it could have caused ... ..

HIS LORDSHIP: The fracture of what skull?

MR. ATKINSON:

Q: That blow most likely, could have caused unconsciousness, if a person lived for three hours?

A: Yes.

HIS LORDSHIP: What is your question?

MR. ATKINSON: The blow that caused that fracture could have caused unconsciousness quite quickly.

HIS LORDSHIP: When would it cause unconsciousness; would it be as he got it - could you say?

WITNESS: No; when he get it - but it could have caused unconsciousness.

HIS LORDSHIP: Doctor, what I gather you say, within two to three hours, that blow, all the nerves is shattered and blood is seeping inside the parietal - the covering of the brain. Well at some time there, it comes a stage when the man would become unconscious.

WITNESS: Yes.

MR. ATKINSON:

Q: Can you give the court some idea, how long after you say, how long that unconsciousness could have been?

A: The unconsciousness could have been almost immediately after the blow, or shortly afterwards.

HIS LORDSHIP: Could you tell me what you mean by shortly, please? To some of us, shortly means tomorrow. Like "soon come" - - all tomorrow him don't come yet.

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Cross-Examination  
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continued

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continued

WITNESS: Five to ten minutes.

MR. ATKINSON:

Q: About what height person was the body you saw?

A: I didn't measure his height. What I know, he was a man of roughly - he was a man of just medium built.

HIS LORDSHIP: Height, we want.

MR. ATKINSON:

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Q: Medium - Height we want. It was above five, eight; five, nine?

A: (no answer)

HIS LORDSHIP: Do you agree it was five, eight; or five, nine?

WITNESS: I couldn't give you a figure. I know it was medium height.

MR. ATKINSON:

Q: And where you point to the jury to the sternum - where you point it out?

20

A: Well, the margin of dissection, the third is from here to here. The third is the bone that extends from here to the stomach; so the third margin would be about here. (witness indicates with his finger).

Q: Keep your finger there. And the fracture was the ear, a little bit to the back, about here?

A: Yes.

HIS LORDSHIP: Look where Mr. Atkinson is showing you - the back of the right side of the head?

30

WITNESS: Yes.

MR. ATKINSON:

Q: Would you agree that the distance of the

MR. ATKINSON:

Q: average height person would be about eighteen (Ctd) inches to two feet?

A: I don't know.

Q: Suppose my head is turned that way - what I am asking you - you regard me as medium?

A: You are more than medium height.

Q: Yes; the distance, would you agree that the fracture of the sternum is about here?

A: The third upper margin.

Q: Here?

A: Go up.

Q: About there?

A: Yes.

Q: If my head is turned like that, that the distance between here and here is about two feet?

A: I couldn't say.

HIS LORDSHIP: Within two feet?

WITNESS: (no answer)

MR. ATKINSON:

Q: Within two feet - just less than two span?

A: Roughly.

Q: Within two feet?

A: (no answer)

(End of cross-examination by Mr. Atkinson)

HIS LORDSHIP: Doctor, the injury that you saw to the sternum, that, by itself, could have caused death?

WITNESS: Yes.

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HIS LORDSHIP: What would be the possibility if there was that injury alone and he got medical treatment, what are the possibility of death, as far as that is concerned?

WITNESS: Well, I would say the possibility of bleeding would be fifty, fifty.

HIS LORDSHIP: Doctor, the theory has been put to you that if this deceased man, running, tripped along the edge of this ramp here, hit his chest here, could he in the same way, tripping, hitting the head on the concrete - tripping, hitting the chest on the ramp and hitting his head on the concrete ...

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WITNESS: At the same time?

HIS LORDSHIP: Yes; he is running, falling down, hits his right side of his head on the ramp, here, could it have caused the fracture to the - the fracture that you saw there?

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WITNESS: Not very likely.

HIS LORDSHIP: Let me put it this way: in what position did you see the body when you went to the scene - was it as in picture three here; was the body in that position when you saw it, when you went to the scene, or you don't remember, or what?

30

WITNESS: The body was lying on the left side.

HIS LORDSHIP: Is that what you mean; is that what you mean? It seems to be inclined to the left here. I don't know - is it the position that you saw?

WITNESS: I don't think ...

40

HIS LORDSHIP: I gather your answer is, that this is in the position that you saw it?



WITNESS: He was lying on the left side,  
when I saw the body.

HIS LORDSHIP: Let me put it this way: was he in  
that position - you see, between  
both sides of the ramp there, or  
was he crosswise the ramp, when you  
went?

WITNESS: I can't say, M'lord.

HIS LORDSHIP: You remember seeing the body on the  
left side?

WITNESS: Yes.

HIS LORDSHIP: You saw bleeding from the right ear?

WITNESS: Right ear.

HIS LORDSHIP: What quantity of bleeding would you  
say it was - large quantity, small  
quantity or what?

WITNESS: I didn't take the quantity.

HIS LORDSHIP: Oh, doctor, you are a medical man  
and you are going there, let me hear  
what you have to say but I would  
have thought you would have observed  
all these things.

A. Bleeding? Yes.

HIS LORDSHIP: Yes?

A. From the right ear.

HIS LORDSHIP: How much? Well, can you answer that?

A. It was sufficient.

HIS LORDSHIP: It was sufficient what?

A. To be observed.

HIS LORDSHIP: Well, let me put it this way, doctor.  
If you were told that blood stains or  
blood was on the ramp can you explain  
how it could get there if you saw the  
body on the left side? In other words,

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continued

HIS LORDSHIP:  
(Contd)

let me put it this way, was the bleeding sufficient that it could have - the bleeding is only through the right ear, according to you that would imply that there is none from the left.

A.

From the right ear.

HIS LORDSHIP:

All right, or, let me put it this way. Was there any from the left?

10

A.

No.

HIS LORDSHIP:

Having regard to what you saw was it possible for the bleeding from the right ear - that means it would have to go across, come across and go on the right side to get to the ground, was the bleeding sufficient to do that?

A.

You are referring to the bleeding from the right ear?

20

HIS LORDSHIP:

Doctor, there was bleeding from nowhere else.

A.

I am sorry. I would have to check. What is the position of the ramp then?

HIS LORDSHIP:

See the ramp there. I don't think the ramp has removed. See the blood stains, you see, at a little white mark that I showed earlier?

30

A.

That's right.

HIS LORDSHIP:

That is where the blood stain is.

A.

Also, there would be a laceration from the chin, that could cause it too.

HIS LORDSHIP:

Oh, doctor. Are you telling me that the laceration from the chin could have caused the bleeding too? What size laceration you saw?

40

A. Small.

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HIS LORDSHIP: How small?

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A. M'Lord....?

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HIS LORDSHIP: What's the largest laceration? Let me put it this way. I am asking you blood could have got there and how it could lead from the right ear across. Now, you are telling me about the laceration on the chin. Are you saying that the laceration on the chin could have - blood from the laceration on the chin could have caused the bleeding, on the ground there?

DR. S. MORGAN  
Cross-Examination  
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continued

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A. I am not saying that.

HIS LORDSHIP: Well, tell us what you are saying then?

MR. HAMILTON: He has already answered, M'Lord. He said the blood would have come from the right side.

20

HIS LORDSHIP: But he saw ...

MR. HAMILTON: But he came at five o'clock, M'Lord. Whether there was already rigor mortis ...

HIS LORDSHIP: So, I need not pursue this then?

MR. HAMILTON: No, M'Lord.

HIS LORDSHIP: Yes, there is some evidence of moving.

MR. HAMILTON: Yes.

HIS LORDSHIP: Why do you say that's not likely?

30

MR. HAMILTON: Not very likely, sir.

HIS LORDSHIP: Not very likely that this man couldn't have tripped and fractured his skull?

A. Well, the fracture was here, right, so, quite possibly if he had fallen and tripped (sic) he would have fallen on his chest and then

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DR. S. MORGAN  
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continued

A.  
(Ctd) fractured his chest but the blow, if he fell on his chest then he wouldn't have hurt this side of his head in the same blow.

HIS LORDSHIP: Yes, not ...

A. Why, because he fell on his chest, like this.

HIS LORDSHIP: His chest is hitting. Look at the fracture situation, you know. His chest is lying in an edge of the ramp, here; look at it. Look at the width of it. Could his head have hit the concrete over there at the same time?

10

MR. HAMILTON: M'Lord, there is something I would just wish to put to the doctor if you noticed where the semi-circular white mark is the concrete appears to be eaten out.

20

MR. ATKINSON: That's on picture five, sir ...

HIS LORDSHIP: And the evidence is to the effect that the concrete is broken there.

MR. HAMILTON: I think we got some evidence. It is not evidence that it is broken right where the blood is, sort of eaten out.

HIS LORDSHIP: What I am asking the doctor is, if he could have fallen and hit the right side of his head there. What are you saying, doctor, are you saying it is not very likely?

30

A. Well, I thought the question put to me was he fell on the left side, fell on his face.

HIS LORDSHIP: No, running up. That's the fracture situation.

A. It's possible, M'Lord.

HIS LORDSHIP: It's possible?

40

A. Yes.

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HIS LORDSHIP: I mean your common sense should tell you so. Gentlemen, anything you would like to ask the doctor further?

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MR. ANDRADE: I haven't re-examined him yet.

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continued

HIS LORDSHIP: I know but I want to give these gentlemen a chance.

10 MR. ATKINSON: No, M'Lord, that is the only point we are ...

HIS LORDSHIP: Yes, Mr. Andrade? 12:53 p.m.

12:53 p.m.

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DR. SAMUEL MORGAN: RE-EXAMINATION - MR. ANDRADE:

RE-EXAMINATION

20 MR. ANDRADE: Doctor, the evidence in this case is that the deceased was running and while he was running stones were being hurled at him, he fell. While he was on the ground stones were still being thrown at him. What your findings are, doctor, as you have stated before now, the injury, the fracture to the skull; the injury, the fracture to the sternum, are those findings consistent with the evidence?

HIS LORDSHIP: Hold on, please, Mr. Andrade. You seem to be asking the doctor to usurp the function of the jury.

30 MR. ANDRADE: Certainly, I can ...

HIS LORDSHIP: No, you can't draw the overall picture like that but if you were to bunch them together and to ask the doctor's opinion you want him to take away the jury's function.

MR. ANDRADE: Not in the least, M'Lord.

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continued

- HIS LORDSHIP: No, I can't allow you that question at all.
- MR. ANDRADE: Doctor, which is more likely ...
- MR. ATKINSON: I am objecting to that.
- MR. ANDRADE: I have not yet concluded my question.
- HIS LORDSHIP: Premature. Which is?
- MR. ANDRADE: Which is more likely, doctor? 10
- MR. ATKINSON: Which is more?
- MR. ANDRADE: You want to re-examine him?
- MR. ATKINSON: M'Lord, I am merely asking to tell the doctor not to answer unless ...
- HIS LORDSHIP: Yes, please don't answer it doctor unless the question is finished.
- MR. ANDRADE: Doctor, which is more likely? Could the injury to the head have been caused by a blow or falling? 20
- MR. ATKINSON: I am objecting. That's exactly what I thought. Which is more likely! Caused by a blow on the head or falling!
- HIS LORDSHIP: He is an expert witness. He is supposed to be an expert, rather. Let me put in that way. He can ask his opinion. 30
- A. What's the question?
- MR. ANDRADE: You didn't hear it?
- HIS LORDSHIP: Doctor, having regard to what you went and saw, which is more likely? You have heard both theories; man falling and hitting his head and chest at the same time ...

A. Yes.

HIS LORDSHIP: And the other theory, falling down and hitting his head on the stones, which is more likely having regard to what you saw there?

A. I think being hit on the head with the stones is more likely.

MR. ANDRADE: You would say definitely that is more likely?

A. More likely, I would say.

Q. Would the injury, the fracture to the sternum, would that injury have caused instant death?

A. Not instant.

Q. Thank you.

A. Not instant.

Q. Thank you, doctor, you have answered.

HIS LORDSHIP: Yes?

MR. ANDRADE: You know, my learned friend - you remember Mr. Hamilton here asking you about external injuries, if stones had been thrown at the head of the deceased and causing injuries and you said not necessarily but under normal circumstances you would expect to find ...

A. Yes, sir.

Q. ... external injuries?

A. Yes, sir.

Q. And you would explain? Could you explain?

A. Well, you see, it is not every case that a person receives a heavy blow - not in every case where a person receives a heavy blow which caused damage internally.

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continued

HIS LORDSHIP: One moment, please, doctor.

A. Sorry.

HIS LORDSHIP: Which causes?

A. Damage internally or is there evidence, there is some sign there is some external injury.

MR. ANDRADE: Like a?

A. Like a haemotoma or so.

10

Q. Doctor, would you expect to find a fracture of the sternum if the person, the deceased in running fell face downward on the hands?

HIS LORDSHIP: On the hands?

MR. ANDRADE: Yes.

HIS LORDSHIP: Can you really put forward that theory?

MR. ANDRADE: Yes, that's the evidence of Smith.

HIS LORDSHIP: No, no! There is no evidence before the court. The man has to go back on his evidence. How you can leave that for the jury? You know I must take away that from the jury.

20

MR. ANDRADE: What, M'Lord?

HIS LORDSHIP: His falling down on his hands. Can't put it to the jury; you know that, Mr. Andrade. He has to go back on what he has said.

30

MR. ANDRADE: With respect, M'Lord, he hasn't gone back.

HIS LORDSHIP: What?

MR. ANDRADE: The re-examination has cleared it up.



HIS LORDSHIP: The man who said the deceased fell down on his hands - I am shocked to hear you say that.

MR. ANDRADE: No, M'Lord.

HIS LORDSHIP: Are you really putting forward this ears theory, Mr. Andrade:

MR. ANDRADE: Yes, M'Lord, with respect.

10 HIS LORDSHIP: Well, I am very sorry - not in agreement with you and I am not putting it to the jury. On the basis of the evidence I must take it away from the jury. There is no evidence. There is a witness who has said the man fell down on his hands. He admits or, he denies saying at the preliminary enquiry that the man fell down on his face and chest and the deposition is  
20 put in and you are saying that there is evidence to go to the jury? I am very surprised to hear that.

MR. ANDRADE: It's a question of inference for the jury.

HIS LORDSHIP: No inference, no inference at all.

MR. ANDRADE: Whether it was at the preliminary examination or what he has said here amounts to a vital or, discrepancy, M'Lord.  
30

HIS LORDSHIP: There is no evidence. If the jury have to decide whether this man fell down on his hands or his face and relying on that witness' evidence I must take away the issue from them in law so, please do not put forward that theory to the doctor. It can't be put.

MR. ANDRADE: I will abide by your Lordship's ruling.  
40

HIS LORDSHIP: But you have to, I hope and I am sure you know that I am right.

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continued

MR. ANDRADE: I don't think I have any more questions.

HIS LORDSHIP: Thank you very much, doctor.

1:00 p.m.

MR. ATKINSON: M'Lord, I was going to ask your leave, sir, just explanation, one question.

HIS LORDSHIP: Let me hear the question.

MR. ATKINSON: On the point about what is more likely, what he saw, being hit by a stone... 10

HIS LORDSHIP: Would be more likely not hit by a stone.

A. I think being hit on the head, the stone is more likely.

MR. ATKINSON: What I want to ask here, having regard to the fact that there were no external signs of injury whatsoever would he say that it was more likely that he was hit by a flat surface rather than a jagged one? 20

HIS LORDSHIP: Where is the evidence? Oh, I see!

MR. ATKINSON: By a flat surface because, remember, you know, sir, ...

HIS LORDSHIP: Well, hold on a minute. One can probably say that this is flat but - hold the - because the thing there is supposed to be broken. 30

MR. ATKINSON: The jagged edge because if somebody is running and you hit the ground you couldn't stop there, you might slide a little bit forward.

HIS LORDSHIP: Look here, I think you better go to the jury with it because I don't know what else you are going to get. 40

MR. ATKINSON: All right, sir.  
 HIS LORDSHIP: Thank you, doctor.  
 MR. ANDRADE: Could the doctor be excused?  
 A. Thank you, sir.

In the Supreme Court

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 Evidence

No. 13

DR. S. MORGAN  
 Re-Examination  
 4th December 1975  
 continued

No. 14

In the Supreme Court

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PROCEEDINGS

No. 14

Proceedings  
 4th December 1975

10

HIS LORDSHIP: I think you are presuming a little too much here, Mr. Atkinson.

MR. HAMILTON: It is more argument, M'Lord.

HIS LORDSHIP: More argument than anything else.

MR. ATKINSON: As you say it is more common sense.

HIS LORDSHIP: Yes, Mr. Andrade?

MR. ANDRADE: That is my case, may it please you, M'Lord, Mr. Foreman, members of the jury.

20

HIS LORDSHIP: Well, members of the jury, I think we have closed one curtain. Can you get back by 2:00 o'clock? I think there is some difficulty, some members of the jury getting back. Please don't let me inconvenience you, gentlemen. I realise there is a difficulty that beset one particularly in small towns when you are getting lunch and things like that. Would you like to come back at 2:00 or 2:15? Please let me know? Gentlemen, you say. You know we want to assist as much as possible.

30

FOREMAN: We have agreed on 2:00 o'clock.

HIS LORDSHIP: And that is the jury's wish and command. 2:00 o'clock, gentlemen.

----- 1:03 p.m.

In the Supreme Court

No. 14

Proceedings  
4th December 1975  
continued

## L U N C H

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2:15 p.m.

JURY ROLL CALL - ALL PRESENT

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MR. HAMILTON: M'Lord, I had made a request of my learned friend, Mr. Andrade, before he closed his case and both of us - it slipped us both. It is in relation to recalling, to put a suggestion to Mr. Laidford which I had not done - Ceaphas, but I don't know if he has gone, sir.

10

HIS LORDSHIP: What is this, now? See here! Call Mr. Laidford, please.

MR. HAMILTON: He is gone. All right, sir. He is gone back.

HIS LORDSHIP: If you wish to have him back, you know.

MR. HAMILTON: (Speaks with Mr. Andrade). It's all right, sir.

20

REGISTRAR: Burnett Meggie and Frederick Daley, you have heard the evidence against you. Now is the time for you to make your defence. You may do one of three things. One, you may go into the witness box and give evidence on oath and be cross-examined like any other witness and afterwards you may also, if you so choose, call witnesses in your defence. Two, you may make a statement to the jury where you stand in which case you will not be cross-examined or three, you may say nothing at all. You are also entitled to call any witness you may desire in support of your defence. Do you understand? Which do you desire to do?

30

40

MR. ATKINSON: May it please you, M'Lord.

HIS LORDSHIP: I thought it was agreed that he is first.

MR. ATKINSON: I beg your pardon, sir?

HIS LORDSHIP: I thought it was agreed that Mr. Hamilton is first.

MR. HAMILTON: I don't know if you misunderstood. I thought it was in relation to cross-examination.

HIS LORDSHIP: No, you started like that.

10 MR. HAMILTON: Very well, very well.

MR. ATKINSON: Save and except, sir, because I had intended to open my case because I had intended to call a witness. Either way it doesn't matter.

MR. HAMILTON: My learned friend wishes to open. You are first.

HIS LORDSHIP: You can't have it both ways.

20 MR. HAMILTON: I agree but since it was for completeness. We didn't know what the defence was going to be and he proposes to open to the jury.

HIS LORDSHIP: But why should that be? You have chosen to be first. You had agreed to be first.

MR. HAMILTON: Yes, but I don't have no right to open.

HIS LORDSHIP: Well, it depends on what you are doing.

MR. HAMILTON: I have no witnesses, M'Lord.

30 HIS LORDSHIP: You are not calling any evidence at all?

MR. HAMILTON: No.

HIS LORDSHIP: Well, let me know what you are doing. Is that your case then?

MR. HAMILTON: I am not calling any witnesses apart from the accused, so, I am not entitled to open.

In the Supreme Court

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Proceedings  
4th December 1975  
continued

- HIS LORDSHIP: Well, as I said, I don't know what you are doing so, what ever you are doing go ahead and do.
- MR. HAMILTON: Your Lordship is like Mohammed Ali today. I can't keep up with the shuffle, M'Lord. Very well, M'Lord, so I am first.
- HIS LORDSHIP: Well, you elected to be first. I thought that was the agreement. 10
- MR. HAMILTON: Well, M'Lord, my learned friend will open when the time comes. At this stage the accused, Daley, will make a short statement from where he stands. 2:20 p.m.

In the Supreme Court

Defence Evidence

No. 15

FREDERICK DALEY  
Statement  
4th December 1975

DEFENCE EVIDENCE

No. 15

- THE ACCUSED: FREDERICK DALEY: UNSWORN:  
----- 20
- HIS LORDSHIP: Yes, Mr. Daley?
- ACCUSED: I am Frederick Daley.
- HIS LORDSHIP: A little louder, please, if you don't mind. I am Frederick Daley. Huh, huh!
- ACCUSED: And my occupation is welder, fitter and erector.
- HIS LORDSHIP: Sorry. Welder...?
- MR. HAMILTON: Fitter and erector. 30
- HIS LORDSHIP: That's fitter and erector, that's the word I didn't hear. Huh, huh!
- ACCUSED: I was working on a 138-K.B. line.
- HIS LORDSHIP: I was working on a 138-K.B. line, huh, huh?

ACCUSED: Yes, sir, from Old Harbour Bay to Parnassus in Clarendon.

In the Supreme Court

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HIS LORDSHIP: Wait, not so fast. To Parnassus?

Defence Evidence

ACCUSED: Yes.

No. 15

HIS LORDSHIP: Huh?

FREDERICK DALEY  
Statement  
4th December 1975  
continued

ACCUSED: In Clarendon.

HIS LORDSHIP: Huh, huh?

10 ACCUSED: Not Jamaica Public Service Company ...

HIS LORDSHIP: Huh?

ACCUSED: R.A. Silvera was the contractor.

HIS LORDSHIP: Was the contractor?

ACCUSED: Yes, sir.

HIS LORDSHIP: Huh, huh?

20 ACCUSED: Three months after the job began there is a dispute from the workers that cause management to close the job down.

HIS LORDSHIP: One moment, please. Management to close the job down... (writing).

ACCUSED: Yes, sir.

HIS LORDSHIP: Huh, huh?

ACCUSED: A few weeks after the job close down, I and my brethren, Meggie, goes into Kingston at the R.A. Silvera office to talk to ...

HIS LORDSHIP: Huh?

30 ACCUSED: ... to talk to the chief accountant, Mr. McFarlane. I ask him when do he think the job will be back in process. He told us that he don't know because the job is now in conference.

HIS LORDSHIP: Sorry. Told us he don't know because the job is now in conference?

In the Supreme Court

Defence Evidence

No. 15

FREDERICK DALEY  
Statement  
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continued

ACCUSED: Yes, because ...

HIS LORDSHIP: Wait! Wait! Huh, huh?

ACCUSED: ... with the Jamaica Public Service Company, the union and R.A. Silvera himself so there is nothing he could do now.

HIS LORDSHIP: Huh, huh, go ahead, please.

ACCUSED: He then ask us to go on the K.B. power line ...

10

HIS LORDSHIP: K.B. what?

ACCUSED: ... tower line.

HIS LORDSHIP: Hour line?

ACCUSED: Yes, sir.

HIS LORDSHIP: Tower?

ACCUSED: Yes, sir.

HIS LORDSHIP: Yes?

ACCUSED: ... to cut some hardwood fence post.

HIS LORDSHIP: Hardwood what?

20

ACCUSED: Hardwood fence posts.

HIS LORDSHIP: A! A!

ACCUSED: We told him, yes, we will. We then go and cut the wood and left it.

HIS LORDSHIP: And left it?

ACCUSED: Yes, sir.

HIS LORDSHIP: A! A!

ACCUSED: ... on the K.V. tower line. After we left the wood there and went home and come back again the other day we cut ...

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HIS LORDSHIP: We cut?



ACCUSED: Yes, until in the evening. We go home. The third day we went through and we cut wood until in the evening. We left and we go home. We then went the Thursday morning, the 17th.

In the Supreme Court

Defence Evidence

No. 15

FREDERICK DALEY  
Statement  
4th December 1975  
continued

HIS LORDSHIP: Went the Thursday morning the 17th... (writing).

10 ACCUSED: ...of the four ... seventy-five.  
Go through the Inverness work yard.  
On our way going through the back  
gate of the works yard we saw the  
gate lock. We then turn around and  
go to the office of the Inverness  
works yard where we saw two men was  
sitting in a office. We park our  
bike outside and step up on the  
20 passageway to the office and I said,  
"Love" to these two men and they  
reply, "Good morning". I said to  
them that I and my brethren, Burnett,  
...

HIS LORDSHIP: I and my brethren?

ACCUSED: Burnett ...

HIS LORDSHIP: Sorry.

30 ACCUSED: ... Burnett, I and my brethren,  
Burnett was the one that is working  
on the K.V. tower line and we have  
sent by the chief accountant, Mr.  
McFarlane from the R.A. Silvera  
office.

HIS LORDSHIP: From?

40 ACCUSED: The R.A. Silvera office and I am  
asking you people to open the gate  
and let us through. They reply  
that they don't know Mr. McFarlane.  
I said to them that Mr. McFarlane  
is the chief accountant that works  
at the R.A. Silvera office. The  
man dem say, "We don't know him".  
I told him, here is his 'phone  
number and his name, talk to him on  
the 'phone. The man then get up.

HIS LORDSHIP: Wait! Wait! ... talk to him on  
the 'phone ... (writing)

In the Supreme Court  
Defence Evidence

No. 15

FREDERICK DALEY  
 Statement  
 4th December 1975  
 continued

ACCUSED: The man then get up, take up the 'phone and were talking to Mr. McFarlane. I and my brethren did not hear what they were saying. We were on the passage way of the office.

HIS LORDSHIP: Sorry, you are in the passageway of what?

ACCUSED: Of the office. 10

HIS LORDSHIP: Office. Yes?

ACCUSED: After the man finish 'phone he then hang up the 'phone, turn to the back window of the office and call one of his co-worker and hand him a key and tell him go and open the gate and let these men through.

HIS LORDSHIP: Yes?

ACCUSED: He then come to the door at the passage and said, "O.K. you people can go and finish cut your wood". We then told him, "Thank you, sir" and we ride off through the gate up to the K.V. line where we cut wood until evening about three to three thirty. 20

HIS LORDSHIP: Yes? Go on.

ACCUSED: We left and then go home. On Friday, the 18th of the fourth, seventy-five we pass through, go up to the K.V. line. We cut wood for a part of the day and stop cutting and were carrying out the wood from out of the bush to the nearest point where the truck could get it. We were then carrying the wood until in the evening we left and go home. 30 40

HIS LORDSHIP: Yes?

ACCUSED: On the Saturday morning the 19th of April, '75 which were the appointed day for the truck to come for the wood we pass through and go to the K.V. line and ...

HIS LORDSHIP: Wait! Wait! We pass through ...  
(writing) ... Yes?

ACCUSED: And we finish carry out the wood and  
we were there waiting for the truck  
to come. The truck did not come and  
we left there 'bout five to five-  
thirty in the evening.

10 HIS LORDSHIP: Left five to five-thirty p.m. Huh,  
huh?

ACCUSED: On Tuesday morning the 22nd of  
April, my brethren, Burnett, has  
a bike to pass.

HIS LORDSHIP: Sorry, has a?

ACCUSED: Bike, sir.

HIS LORDSHIP: To pass?

ACCUSED: Yes, sir, down here in May Pen and  
the both of us ride to May Pen here  
at the passing depot where they  
20 pass.

HIS LORDSHIP: At the passing depot?

ACCUSED: Yes, sir.

HIS LORDSHIP: And he got it passed?

ACCUSED: Yes, sir. After that we left on our  
way go home.

HIS LORDSHIP: Going home. Huh, huh?

ACCUSED: Yes. I told him that the person that  
we borrow the axe from is asking for  
it so we had to go up to the K.V. line  
where we left the tool and pick it up.  
We then ride through the Inverness  
works yard up to the K.V. line. When  
we go on our way going to the K.V. line  
we saw tractor-trailer wheel mark.

HIS LORDSHIP: Sorry. Tractor and trailer?

ACCUSED: Yes, sir, wheel mark.

HIS LORDSHIP: I see.

In the Supreme Court

Defence Evidence

No. 15

FREDERICK DALEY  
Statement  
4th December 1975  
continued

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In the Supreme Court

Defence Evidence

No. 15

FREDERICK DALEY  
Statement  
4th December 1975  
continued

ACCUSED: All along the way before us.

HIS LORDSHIP: Yes?

ACCUSED: Up to where we left the wood. When we reached the spot the wood was taken away, both spot.

HIS LORDSHIP: Was taken away from both spots?

ACCUSED: Yes, sir. We then take out the axe and cutlass from where we hide it in the bush, put on our bikes and then ride out. On our way going through the back gate of the works yard I saw the wood packed up and on the left hand side of a welding shed, between the shed and a coconut tree. The road leads to the right hand side of the shed where we ride up to the side of the shed, saw one man standing in that shed. 10

HIS LORDSHIP: Huh, huh, standing in that shed ... (writing) ... 20

ACCUSED: We then pass that shed and went on to the shed where we saw three men was in that other shed. We then ride about half a chain away from that other shed to park our bike out of the way of the equipment, tractor and trailer that is passing through. 30

HIS LORDSHIP: Huh, huh, Yes?

ACCUSED: We then lean up our axe and our machete at the side of our bike ...

HIS LORDSHIP: Wait! Wait! Lean up axe and machete and what?

ACCUSED: ... alongside our bike, sir.

HIS LORDSHIP: Alongside bike?

ACCUSED: Yes, sir and we walk up to the shed where these three men were. The shed were made of wood and 40

ACCUSED: zinc. The bottom side of the shed  
(Ctd) were closed up from the foundation  
to about four feet.

In the Supreme Court

Defence Evidence

No. 15

FREDERICK DALEY  
Statement  
4th December 1975  
continued

HIS LORDSHIP: Yes?

ACCUSED: The top side of the shed was open  
right around to the back of a store  
room.

HIS LORDSHIP: Yes?

10 ACCUSED: Two men were standing up around a  
table.

HIS LORDSHIP: Two men were standing up at a table?

ACCUSED: Yes, sir.

HIS LORDSHIP: Huh, huh!

ACCUSED: They were cooking. 2.38 p.m.  
One man has a machete in his hands  
shaped in the size - a machete  
shaped in the size of a butcher  
knife. It is a working machete  
20 and it work down to a small instrument  
and they use it as a knife. The other  
man was sitting on a stone on the  
ground. I said, "Love" to these men.  
They did not answer. I said, "Which  
of you is the foreman"? One man  
said, "He is the foreman". I said  
to him, "Why you remove our wood that  
we cut".

HIS LORDSHIP: Wait! You remove our wood?

30 ACCUSED: Yes, sir.

HIS LORDSHIP: That we?

ACCUSED: That we cut...

HIS LORDSHIP: That we cut.

ACCUSED: ..."and left on the K.V. tower line".  
The man replied saying, "Go and ask  
the manager".

HIS LORDSHIP: Go and ask the manager?

In the Supreme Court

Defence Evidence

No. 15

FREDERICK DALEY  
Statement  
4th December 1975  
continued

ACCUSED: Yes, sir. I keep telling him that I don't know the manager.

HIS LORDSHIP: Wait! Keep telling him that I don't know the manager?

ACCUSED: Yes, sir. He said I have to go and talk to the manager. I said I don't know him and I have to talk to you and either you give us our wood that you take away... 10

HIS LORDSHIP: Wait! Either you give us our wood that you take away ... (writing)

ACCUSED: Or pay us for it.

HIS LORDSHIP: Pay us for it?

ACCUSED: Yes, sir.

HIS LORDSHIP: Huh, huh? Yes?

ACCUSED: The man then get up and get mad at us.

HIS LORDSHIP: Get up and get mad at us? 20

ACCUSED: Yes and said, I beg pardon to the court, your Honour - and said, "Of a matter of fact unoo tek unoo rawss clawt off the property".

HIS LORDSHIP: Of a matter of fact unoo tek unoo rawss clawt off the property... (writing)?

ACCUSED: Yes, sir. While telling us that he then rush to the man... 30

HIS LORDSHIP: He then rush to the man?

ACCUSED: Yes, sir that stand at the table...

HIS LORDSHIP: Huh, huh?

ACCUSED: ... attempt to take away the machete. The man did well not to let go the machete. He

ACCUSED: then rush to where he was sitting  
(Contd) down and take up the stone and fling it  
at us.

In the Supreme Court

Defence Evidence

No. 15

FREDERICK DALEY  
Statement  
4th December 1975  
continued

HIS LORDSHIP: Fling it at us?

ACCUSED: Yes, sir, then rush goes into the  
room.

HIS LORDSHIP: Then rush...(writing) goes into the  
room. Huh, huh?

10

ACCUSED: In the shed and as if he was searching  
for something.

HIS LORDSHIP: Huh, huh?

ACCUSED: He then rush from out of the room  
through the doorway of the shed and  
said, "Unoo 'tan dey 'till a come"!

HIS LORDSHIP: Huh, huh?

ACCUSED: He was running towards the ramp.

ACCUSED: He was running towards the ramp,  
where he reached to the side of the  
ramp. He then "bucked" his foot  
on the edge of the ramp and fell  
across the ramp, with his chest and  
head resting on one leg of the ramp,  
and his head looking to his left  
side - I mean his face, sir; his  
face looking towards his left side.  
His feet stretch out...

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HIS LORDSHIP: Wait, wait; I see. In other words,  
he is lying down on his right side,  
his face towards the left?

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ACCUSED: Yes, sir; stretched across towards  
the other side of the ramp. He did  
not made any other move.

HIS LORDSHIP: Sorry; I did not ...

ACCUSED: He made - did not make any other  
move. I turned to the other two  
man that was in the shed. I told them  
that I am going to get a truck to  
come for the wood. We then ride out,  
sir. On our way, reaches in Old

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In the Supreme Court

Defence Evidence

No. 15

FREDERICK DALEY

Statement

4th December 1975

continued

ACCUSED:  
(Contd)

Harbour. I went to the office of Mr. Vernon Vaz. I told him what has happen. He said to I, "Rasta, go and tell them that I sent you to get your wood; for you is an honest man and you work hard for your honest living". I left the office with the intention to get a truck to go for the wood. I did not get any truck. We left and then go home. Few days after I heard the rumour - people, the people, they were saying that I and my brethren stone a man to death - Meggie. I told them we don't know anything about that. We were there through and from the town as usual, sir, until about three weeks after, the 14th of May, we were detained by the Old Harbour Police, and from then on we are - from then on we are in jail, sir.

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HIS LORDSHIP: Go ahead, please?

ACCUSED: Yes, sir; I did not throw any stone. I did not go to these people with no "ignorancey". That is all.

(Time: 2:49 p.m.)

HIS LORDSHIP: That is all - is that all?

30

ACCUSED: Yes, sir.

HIS LORDSHIP: Very well; please sit down, Mr. Daley.

MR. HAMILTON: That, may it please Your Lordship and jury, is the case for the defence, Daley.

Time: 2:49½ p.m.

MR. ATKINSON: As intimated, on behalf of Meggie, I wish to open, just for the record. He will make a statement from where he stands and will be calling a witness as to that.

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HIS LORDSHIP: Hold on a minute. What for?

MR. ATKINSON: Facts, sir; not character; facts.

HIS LORDSHIP: Factual basis?

MR. ATKINSON: Yes, sir.

HIS LORDSHIP: What is bothering me - do you intend to say what he is going to say, considering it is only statement?

10 MR. ATKINSON: No, no.

HIS LORDSHIP: You see the difference?

MR. ATKINSON: Yes.

(MR. ATKINSON'S ADDRESS - FROM: 2:50 p.m. - 2:57 p.m.)

No. 16

UNSWORN STATEMENT OF BURNETT MEGGIE, ACCUSED.

Time: 2:57 $\frac{1}{4}$  p.m.

ACCUSED: M'Lord, my name is Burnett Meggie. My address, Old Harbour Bay P.O.

20 HIS LORDSHIP: Old Harbour Bay?

ACCUSED: Yes, M'Lord; occupation is equipment operator. I and my bretheren, Frederick Daley, was working at 138 K.V. tower line for the Jamaica Public Service Company, from Old Harbour Bay to Panarshus in Clarendon. R.A. Silvera was the contractor. I and Daley was elected delegates that represent the workers. It happened that we had a strike that it cause the job to close down, indefinite.

30 After the job close down, we went to the R.A. Silvera office and the Chief Accountant, Mr. Don MacFarlane, asked us to go on the K.V. tower line and cut some fence post for him. We went out and started cutting the wood, the 14th of the 4th, 1975. We went back the second day, which was the Tuesday and did the same thing.

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In the Supreme Court

Defence Evidence

No. 15

FREDERICK DALEY  
Statement  
4th December 1975  
continued

In the Supreme Court

Defence Evidence

No. 16

BURNETT MEGGIE  
Statement  
4th December 1975

In the Supreme Court

Defence Evidence

No. 16

BURNETT MEGGIE

Statement

4th December 1975

continued

ACCUSED:  
(Contd)

We went back the Wednesday and did the same thing. Thursday while heading to the K.V. line and reaches the back gate of the Inverness Property, we saw that the back gate was locked. We turn back to the sisal works yard, where we saw two man was sitting into an office. We parked our bike and stepped up on the passage way and says, "Love". Their reply was, 'good morning'. We start to tell them that we are the ones who use to work on the K.V. tower line and we are sent by Mr. Don MacFarlane from the R.A. Silvera Ltd., to go and - on the K.V. tower line and cut some fence post for him. Their reply was that they do not know Mr. MacFarlane. Daley then "taked" out a letter that he did have, with Mr. MacFarlane name and address, his telephone number, and gave it to one of the man and said, "Phone him." He then phone Mr. MacFarlane, but we did not heard what they was saying, because we were about sixteen feet from the telephone. After he hangs up the phone, he call one of his co-worker at the back window of his office and gave him a key and told him that he must go and open the gate for these two men. He then turn to us and say, "O.K. man; you can go ahead." We say, "Thank you, sir." After he open the gate, we went up on the K.V. line and cut wood until about four o'clock in the evening and went home. We went back the 18th of the 4th, '75... ..

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HIS LORDSHIP: That is the next day?

ACCUSED: Yes, sir; that was the Friday... and cut wood a part of the day, and carry out a big pile to the gate, to the nearest point where the transport could reach it. We went home and come back the 19th of the 19th of the 4th, '75 which was the appointed day for

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ACCUSED:  
(Contd)

Mr. MacFarlane to come for the wood. Well, eventually he did not come. We then hide our cutlass and machete into the bush and went home. We did not went back until the 22nd of the 4th, 1975. I come down to May Pen here, to got my bike passed, I and my friend, Daley. After we got through and heading home, Daley says to me, the man that we borrow the axe from is asking for it; so we had to go up and picked it up. We went up and picked up the tools. When we reaches - while we pick up our tools and was coming out and reaches into the sisal works yard of the Inverness Property, we saw the identical wood, packed up beside a shed, where a one hand man was standing into the shed. We ride on slowly until we reaches another shed that contains three more men. We then park our bike about half chain from the three man shed, out of the way of the tractors and trailers. We then lean up our axe and cutlass on the bike and went up to the three man shed, which was about one chain from the one hand man shed. One of the man was sitting down on a stone and the other two was cutting up chicken with a cutlass in the shape of a butcher knife. We said, "Love", but they did not answer us. Daley says, "Are you the headman?", and the one what was sitting down says, "Yes; is me is the headman." Daley say, "Why you remove our wood?" He say, we must go and ask the manager. Daley say, "I do not know the manager." We still ask him, "Why you take away our wood?" He said, "Go and talk to the manager." Daley then said, "I have to talk to you, because I do not know the manager; and either you give us the wood or you pay us for it." He then said, "As a matter of fact" - I beg pardon to the court - the man said, "uno tek uno rass clawt off a di property." He then rushed towards the men that did have the cutlass and was trying to get it, but eventually

In the Supreme Court

Defence Evidence

No. 16

BURNETT MEGGIE  
Statement  
4th December 1975  
continued

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In the Supreme Court

Defence Evidence

No. 16

BURNETT MEGGIE

Statement

4th December 1975

continued

ACCUSED:  
(Contd)

he did not. He then rushed and pick up the stone that he was sitting down on and fling it after us, and we disguise it. He then rushed into the store-room, as if he was searching. He didn't stay in there no time. We saw him rush out. After he rush out through the door he say, "Uno stay dey till a come." While he was running, he was also looking back on us and we saw he tripped his foot on the leg of the ramp and fell and hit his head. Well, so far, M'Lord, we did not know that something was wrong with him. I then say, quietly, to the rest of two men, "Look man, we don't come to rob uno; we don't come to steal uno cow. We take it the hardest way by going into the wood to cut wood, to achieve bread for ourselves and children." After I said that, we say, "Alright, we a go look a truck and come back fi di wood, sah." We then walked quietly down to our bike and picked up our tools and got on to our bike and went away.

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HIS LORDSHIP: Yes?

ACCUSED: When we reaches into Old Harbour, my brother told me that he is going to report it to Mr. Vernal Vaz and the rest of arrangement was that he will go to Church Pen and look a truck and I will go to Old Harbour Bay and see if I can get one so, anyone get a truck first will contact each other. Well, eventually, what the truck was charging was too high so we had was to postpone it.

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HIS LORDSHIP: Huh, huh?

ACCUSED: Well, we ups and down as usual and a couple day after we heard the rumour all over the town...

HIS LORDSHIP: Huh, huh?  
 ACCUSED: ... that I and my brethren, Daley,  
 stone a man to death.

HIS LORDSHIP: Yes?

ACCUSED: Until the police detain us the  
 fourteenth of the fifth, 1975.

HIS LORDSHIP: Yes, 14th?

10 ACCUSED: Yes, M'Lord.

HIS LORDSHIP: Fourteen, five.

ACCUSED: Until this time.

HIS LORDSHIP: Huh?

ACCUSED: Now, M'Lord, I did not threaten no  
 one. I did not throw no stone.

HIS LORDSHIP: Yes?

ACCUSED: I did not kill no one.

HIS LORDSHIP: Huh?

ACCUSED: That's the end of it, my Lord.

20 3: 17 p.m.

HIS LORDSHIP: Yes, Mr. Atkinson?

MR. ATKINSON: Yes, sir. Can you call Mr. Don  
 McFarlane for me.

No. 17

EVIDENCE OF DON MCFARLANE.

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 DON MCFARLANE: SWORN: EXAMINATION - MR. ATKINSON:  
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30 HIS LORDSHIP: Would you like to sit, Mr. McFarlane?

A. Yes.

HIS LORDSHIP: Please do and face the members of the  
 jury for me and speak up so the  
 accused men can hear you.

In the Supreme Court

Defence Evidence

No. 16

BURNETT MEGGIE  
 Statement  
 4th December 1975  
 continued

In the Supreme Court

Defence Evidence

No. 17

DON MCFARLANE  
 Examination  
 4th December 1975

In the Supreme Court

Defence Evidence

No. 17

DON MCFARLANE

Examination

4th December 1975

continued

- A. Yes, sir.
- MR. ATKINSON: Your name is?
- A. Don McFarlane. Don.
- HIS LORDSHIP: Donald?
- A. Don McFarlane.
- MR. ATKINSON: And where do you live, Mr. McFarlane?
- A. I live in Kingston, 2 Charlton Mews. 10
- Q. And your occupation?
- A. I am director, secretary, accountant for R.A. Silvera Ltd.
- Q. You are director?
- A. Director, secretary and accountant for R.A. Silvera Ltd.
- Q. You know the defendant, Frederick Daley and Burnett Meggie? 20
- A. I most certainly do, sir.
- Q. How did you come to know them?
- A. Well, both men were employed to the company.
- Q. Which company?
- A. R.A. Silvera Ltd.
- Q. You say both were employed to R.A. Silvera?
- A. Yes, sir. 30
- Q. Limited.
- HIS LORDSHIP: When?
- MR. ATKINSON: When was this?

A. The employment commenced somewhere in January of 1974.

In the Supreme Court

Q. January of last year?

Defence Evidence

No. 17

A. Yes, when the job started.

DON McFARLANE

Q. What job was this?

Examination

4th December 1975

continued

A. This was the 138-K.V. transmission line under contract from the Jamaica Public Service Company.

10

Q. Your company had a contract with the J.P.S.?

A. Yes.

Q. To do what?

A. Erect a 138-K.V. line on the Inverness property.

Q. And this line was supposed to run where?

A. The line was supposed to run from the Old Harbour power station in and to the Parnassus sub-station.

20

Q. In to?

A. In and through Old Harbour power station to the Parnassus sub-station.

Q. And it would necessarily have to pass through the Inverness estate?

A. Yes, that is quite true.

Q. You say your company was on contract to the J.P.S. to run that line?

30

HIS LORDSHIP: He said that.

MR. ATKINSON: Yes, I am just asking a question. Are you still on contract then?

A. No, not any longer.

Q. Since when are you not on contract to run that line?

In the Supreme Court

Defence Evidence

No. 17

DON McFARLANE

Examination

4th December 1975

continued

A. Since the end of May...

Q. End of May this year?

A. That's right.

Q. And how did that contract terminate?

A. R.A. Silvera Ltd. under the guidance of the contractors terminated the contract with the Jamaica Public Service ...

10

Q. You terminated the contract?

A. Yes.

Q. It is not a question that Silvera lost the contract?

A. No.

Q. Now, was the - was work still being done on the line in April of this year, say on the 17th - between 17th and 22nd of April, this year?

20

A. No, there was no work being done.

Q. Why was this?

A. Because we have two sections.

HIS LORDSHIP: Everybody is agreed to that? Strike was on. Was a strike on?

MR. ATKINSON: Was there an industrial dispute?

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A. Yes, we had industrial disputes.

Q. Now, some time in April while the work was phased out, did you instruct these two men to do anything?



In the Supreme Court

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Defence Evidence

No. 17

DON McFARLANE

Examination

4th December 1975

continued

A. Yes, we did.

Q. What was that?

A. I instructed the two men, having spoken to them over the period of time, to cut some posts from the line.

Q. You instructed them to cut the posts?

A. Yes.

10 Q. Would your company have the authority to decide whether the posts could be cut and by whom on that line?

A. Yes.

Q. You wouldn't have to seek permission from anyone?

A. No, not at all.

HIS LORDSHIP: Yes?

MR. ATKINSON: What was the arrangement with the cutting of the posts?

20 A. Well, the arrangement of the cutting of the posts, the job was given to Daley and Meggie to cut approximately three to four hundred posts from a certain area specified on the line. The arrangement was that ...

HIS LORDSHIP: Go ahead, please.

A. The arrangement was that they should in so doing cut the posts and the company would send its vehicle to pick up the posts at a later date.

30 MR. ATKINSON: They would cut the posts and the company send its vehicle to pick up the posts at a later date?

A. (witness nods.)

Q. You remember what day? Was any date arranged for the company to send the vehicle?

A. This was Saturday. I think it was arranged for the 28th.

In the Supreme Court  
Defence Evidence

No. 17

DON McFARLANE  
 Examination  
 4th December 1975  
 continued

- HIS LORDSHIP: Sorry, was the vehicle to go that day or was there specific arrangement.
- A. No, the vehicle was to go on the Saturday.
- MR. ATKINSON: Some where around the 20th?
- A. Yes.
- Q. The 20th was in fact a Sunday?
- A. About. It was arranged for the Saturday. 10
- Q. Now, how would you remember that day specifically?
- A. Well, frankly I recall that Wednesday, a meeting with some of our associates in Grand Cayman and since I was summoned to court here I decided to check my diary to specify certain dates.
- Q. And you went to Grand Cayman or what? 20
- A. Yes, I went to the meeting in Grand Cayman.
- Q. And when did you go?
- A. I went there the Friday.
- Q. And came back the Monday?
- HIS LORDSHIP: Went there?
- MR. ATKINSON: On the Friday and came back the Sunday?
- HIS LORDSHIP: Came back the Sunday? 30
- A. The Monday.
- MR. ATKINSON: Now, the Friday would be the 18th?
- A. Yes, sir.

In the Supreme Court

Defence Evidence

No. 17

DON MCFARLANE  
Examination  
4th December 1975  
continued

Q. Now, the day, Mr. - that is the Thursday the 17th, did you receive a 'phone call concerning this job?

A. Yes, I most certainly did, sir.

Q. And where did that 'phone call come from?

A. This 'phone call was from a gentleman at the factory down in Old Harbour section.

10

Q. Down where?

A. It was some where between - it's a factory in - just outside of Old Harbour coming back to May Pen here.

HIS LORDSHIP: I think the gentleman is Mr. Lawson from?

MR. ATKINSON: In Jamaica Cordage?

A. Right. HIS LORDSHIP: Yes?

20

MR. ATKINSON: And what was the context of the conversation?

A. When he spoke to me he wanted to find out if the men had authority to ...

Q. Which men?

A. Both Meggie and Daley.

HIS LORDSHIP: Yes, had authority?

A. Yes, if they had authority to go on the line.

30

MR. ATKINSON: To go on the line. What was your reply?

A. Well, my reply then to him at the time was they did have authority and that the company had the authority for the clearing of the right-of-way of that eleven mile line.

HIS LORDSHIP: That also the C.D. ?

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continued

A. The C.D. authority for the right of way line from Old Harbour through to Parnassus.

MR. ATKINSON: And what did he say to that, the other person?

A. Yes, he agreed that he would let them through.

Q. The conversation continued or that was the end of it?

A. No, that was the end of it. 10

Q. Did you receive any other 'phone calls concerning these men going through either before that or after that?

A. No, sir.

Q. That was the only 'phone call?

A. That was the only 'phone call.

Q. Did you on that telephone call tell that person, Mr. Lawson, that these men had told you that they could have got permission from the head man to get the posts? 20

A. No.

HIS LORDSHIP: Hold on a minute. Was it put exactly like that? To buy from the head man?

MR. ATKINSON: Did you tell him that these men had told you that they had permission to buy posts from the head man on the property? 30

A. No, because we had no need to buy posts.

HIS LORDSHIP: Sorry. The men didn't tell me that they could get posts to buy. No need to, as what?

A. I said we had no need to buy the posts.

MR. ATKINSON: And why you had no need to buy the posts?

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continued

A. Because we had permission to clear the right of way for the construction of the contract.

Q. Permission by contract?

A. Yes.

10 Q. Now, did the company - you say these two men were employed since January of '74, did the company make any provision for their transportation?

A. Yes, we did.

Q. What was that?

A. First of all I should tell you, sir, that the reason why we provided transportation for these men ...

20 HIS LORDSHIP: Well, first of all you provided transportation for them?

A. Yes, sir.

MR. ATKINSON: What form of transportation?

A. Motor cycles.

HIS LORDSHIP: A motor cycle each?

A. Yes, sir, which, I should mention, I registered in the company's name.

MR. ATKINSON: Registered in the company's name?

A. Yes.

Q. You were saying why they provided?

30 A. Well, the reason for this, sir, is because these men were - we had to select - because of problems we were having on the job, we had to select certain delegates and we selected ...

HIS LORDSHIP: Wait a minute. And we had to select certain delegates?

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continued

- MR. ATKINSON: And? A. Well, ...
- Q. Yes, you said had to select certain delegates and what?
- A. Right. Well, when we had decided this with the union who was in charge with us on the project the union released the union men and the men had to elect their delegate and Mr. Daley and Mr. Meggie were elected along with other men and the company had decided to provide these men with motor cycles because we had eleven miles of line to run. 10
- Q. I see. So, they were elected union delegates and the company provided them together with others with motor cycles?
- A. Right.
- Q. During this time, Mr. McFarlane, did you have an opportunity to observe the character of Meggie? 20
- A. Yes, I did.
- Q. How would you describe him?
- A. Well, in describing both ...
- Q. Just start with Meggie for me.
- HIS LORDSHIP: Wait. Yes?
- MR. ATKINSON: Yes?
- A. I have been associated with Meggie because of this project and, frankly, it is only when I sat down and spoke with him the first time I realised the type of person he was, you know, a very deep-seated christian type of person. 30
- HIS LORDSHIP: Wait! Wait!
- A. Well, I came to this assumption for the simple reason from how these men spoke, you know and ...

HIS LORDSHIP: No. Hold on a minute now, can he go into details. You see, what he has to do is to give us his opinion.

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MR. ATKINSON: Oh - just give us your opinion.

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continued

HIS LORDSHIP: I don't know. He can't tell us the details, can he? That's for the crown in this case.

10

A. Well, I found that they were also very, very conscious of their family life.

HIS LORDSHIP: You are referring to both now?

A. Well, Mr. Meggie, yes.

HIS LORDSHIP: You said, they. So, what, you are speaking of both then because so far you were telling us about Meggie and his deep-seated sort of christian ...?

20

A. Well, the truth of the matter is that I never spoke to them as individuals, one at a time.

HIS LORDSHIP: You were always speaking to both?

A. Right, because they were union delegates.

HIS LORDSHIP: I see. So, in other words, what you are saying applies equally to one as much as the other?

30

A. Yes.

MR. ATKINSON: What about the attitude to work?

A. They are very, very hard working men.

Q. They are?

A. They are very hard working men.

HIS LORDSHIP: Huh, huh?

MR. ATKINSON: Would you describe them as respectful?

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continued

A. Yes, and I would add to that too because I can't really believe from this experience that I have had on the job with them and in the office I find that they are non-violent type of people.

Q. You find that they are non-violent type.

A. Yes, that is true.

Q. That's the examination. 3:34 p.m.

10

CROSS-EXAMINATION

DON McFARLANE: CROSS-EXAMINATION - MR. HAMILTON:

HIS LORDSHIP: Yes, Mr. Hamilton?

MR. HAMILTON: Now, you say - what you said in relation to Meggie applies equally to the both of them?

A. Yes.

Q. But, Mr.? I mean Mr. McFarlane haven't you had an occasion where you have actually seen Daley exposed to a violent situation?

20

A. Yes, I have.

Q. Would you tell his Lordship and the jury about that?

HIS LORDSHIP: Wait! Wait!

MR. HAMILTON: Just a minute. Don't answer.

HIS LORDSHIP: Can he tell us this?

MR. HAMILTON: Yes, M'Lord, this is something of which he is going to speak of his own knowledge.

30

HIS LORDSHIP: I gather that he is - this witness is being put forward on behalf of both of you, am I right?



MR. ATKINSON: Character-wise.

MR. HAMILTON: But I am cross-examining. I didn't call him.

HIS LORDSHIP: But can you cross-examine as to character?

MR. HAMILTON: Yes, M'Lord.

HIS LORDSHIP: It is, as it were, your own character witness?

10 MR. HAMILTON: Yes, M'Lord, it is my character witness and it is my case I closed you know, sir.

HIS LORDSHIP: I am not concerned about that, it is still character witness. Can you cross-examine him?

MR. HAMILTON: But in any event a character witness can't affect the other speeches.

20 HIS LORDSHIP: I know, Mr. but when you are giving this sort of evidence isn't it generalised character?

MR. HAMILTON: Yes.

HIS LORDSHIP: Well, can you now go into the disposition, as it were, individual incidents? Can you?

MR. HAMILTON: Well, I would have to ask Mr. Atkinson to ask questions.

HIS LORDSHIP: No, you can't either. It is for you to test the credibility.

30 MR. HAMILTON: A cross-examination cannot only involve an attack, M'Lord.

HIS LORDSHIP: You are not attacking him, you know.

MR. HAMILTON: No.

HIS LORDSHIP: But what I gather you want now ...

MR. HAMILTON: One can only attract information.

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continued

- HIS LORDSHIP: The reason why he is basing - this is his opinion - the reason is that I have seen so and so, I have seen so and so. The point is, can you do that?
- MR. HAMILTON: Yes, M'Lord.
- HIS LORDSHIP: Why?
- MR. HAMILTON: I will tell you why. 10
- HIS LORDSHIP: Huh, huh?
- MR. HAMILTON: Because when I ask these questions it is not because I am doing it from the point of view of cross-examination.
- HIS LORDSHIP: Huh, huh?
- MR. HAMILTON: I am entitled to ask this witness questions notwithstanding the fact that my case is closed.
- HIS LORDSHIP: I am not saying you can, Mr. Hamilton. Please don't misunderstand. 20
- MR. HAMILTON: So long as we have got that out of the way. The case of cross-examination isn't my problem. Then I am entitled to elicit information from this witness, not because he is mine, as if he were the crown's witness.
- HIS LORDSHIP: No, you can't. The part of the evidence in so far as it affects the jury, certainly but what you want or want to ask him about is character, right? 30
- MR. HAMILTON: Well, if your Lordship is right which I feel - look ...
- HIS LORDSHIP: Well, I don't know.
- MR. HAMILTON: Well, look at it from this point of view. There would be no harm, it wouldn't jeopardise my address position had I called this witness and confined him only ... 40

HIS LORDSHIP: To character.

MR. HAMILTON: ... to character.

HIS LORDSHIP: Ah! That's it now. If you had called him to character, could you put the questions you propose putting to him now?

MR. HAMILTON: Yes, M'Lord.

HIS LORDSHIP: Why?

10 MR. HAMILTON: Because it is giving sort of factual - it is not character general character business. In other words you are saying we would be going into a fact?

HIS LORDSHIP: Yes, in other words you would be going into a reason why he is giving his opinion; attempting to make up an assessment of character of this man. Mr. Andrade, he can do it. He can testify as to why he is saying so and so as to the man's character.

20 MR. HAMILTON: It would seem to me that that interpretation would work some hardship on the defence.

HIS LORDSHIP: On the defence?

MR. HAMILTON: It would seem so to me. I can't find a legalistic reason.

HIS LORDSHIP: Well, what is character, usually? When you call evidence as to the character what is it usually about?

30 MR. HAMILTON: The man's opinion at that time that the person - he holds the person under review.

HIS LORDSHIP: What sort of evidence does he give?

MR. HAMILTON: It is opinion evidence.

HIS LORDSHIP: Yes.

MR. HAMILTON: It is.

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Cross-Examination

4th December 1975

continued

HIS LORDSHIP: But what sort of opinion evidence.  
General character?

MR. HAMILTON: I am glad you have raised this  
point.

HIS LORDSHIP: Huh?

MR. HAMILTON: If we were giving anything in  
relation to the incident or  
even relating back, connecting  
with. Suppose it was even  
something in relation to it?

10

HIS LORDSHIP: That would be a factual situation,  
the evidence, in other words,  
because he has actually done both  
things. He has given evidence  
as to the facts surrounding the  
particular case and he has also  
given character evidence.

MR. HAMILTON: Yes, yes; Quite.

HIS LORDSHIP: But if you want evidence to the  
factual side - so far as the  
evidence is concerned I can't  
stop you but so far as you want  
to get the individual items  
concerned as to character, can  
you?

20

MR. HAMILTON: It is just that there is no  
precedent.

MR. ANDRADE: May I say something, M'Lord.  
This witness has not only ...

30

HIS LORDSHIP: Huh, huh?

MR. ANDRADE: ... not only given evidence  
concerning Meggie but also ...

HIS LORDSHIP: But also Daley.

MR. ANDRADE: ... but also Daley. He was  
called by Mr. Atkinson. He is  
not Mr. Hamilton's witness.  
Mr. Hamilton didn't call him.

HIS LORDSHIP: Huh, huh?

MR. ANDRADE: It would seem to me perfectly -----, subject to your Lordship's ruling that Mr. Hamilton be offered the right to cross-examination.

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HIS LORDSHIP: Well, let me put it this way. Could both of them call him?

DON McFARLANE  
Cross-Examination  
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continued

10 MR. HAMILTON: Yes, it would have been very awkward, M'Lord. I call him and stop him, on character and then Mr. Atkinson stop him and cross-examine.

HIS LORDSHIP: Yes, it wouldn't make sense.

20 MR. HAMILTON: Yes, that's why I am grateful to M'Lord, to show us that he has some compassion in the proper traditions, M'Lord and I acknowledge it. It doesn't really seem, M'Lord, that I should be fettered in my cross-examination.

HIS LORDSHIP: I am not saying ...

MR. HAMILTON: The word might be strong, M'Lord, but what I am thinking of is evidence.

HIS LORDSHIP: Any how, go on because a little different situation arises here. Now, will you let me hear the question?

30 MR. HAMILTON: The question is, as a union delegate, Mr. have you ever, yourself, witnessed any sort of what you might call violent situation which arose in his presence?

A. And in my presence?

Q. Yes and in his presence?

A. Yes, I have.

Q. What is it?

A. I recall some months ago where what is usually called retroactive payment...

40 HIS LORDSHIP: Retroactive what?

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A. Retroactive payment, sir for the men. This was being paid in the office and quite a few men came and collected their cheque and left. Well, there was one particular fellow who came in, you know, and was really making quite a lot of noise. He was making a lot of noise with regard to the quantity which he had received and Mr. Daley then tried to calm him down and he actually spat on the man at the time.

10

MR. HAMILTON: Who spat on who?

A. On Daley - the man that was making the noise.

HIS LORDSHIP: He actually spat on Daley?

A. Yes.

MR. HAMILTON: Spat on him where?

A. Well, like yo- spat on someone.

20

HIS LORDSHIP: Well, where did it actually catch him? In his face or?

A. Well, I don't know where it caught him. I...

MR. HAMILTON: Yes?

A. I recall that Mr. Daley said, "Well, really, I am your union delegate, you know and I am asking you to be more polite" and he turned to him and said something to the effect that Jah's rod...

30

HIS LORDSHIP: Jah?

A. Something to the effect - Jah's rod meaning God's rod.

HIS LORDSHIP: That's what Daley said?

A. Yes. Yes, and, you know, tending to his children and with that he

A. walked away. You know, at the  
(Ctd) moment I thought it was commendable  
for the man in not creating a scene  
inside the office.

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MR. HAMILTON: Thank you.

DON McFARLANE  
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continued

10 DON McFARLANE: CROSS-EXAMINATION - MR. ANDRADE:

CROSS-EXAMINATION

MR. ANDRADE: Mr. McFarlane, are you very certain  
of the dates?

A. Yes, I am most certain of the dates.

HIS LORDSHIP: What dates are you talking?

A. What dates are you talking?

MR. ANDRADE: Y'u spoke of some dates in your  
evidence. Are you certain of  
them?

A. Yes, I am certain of them.

20 Q. You sure you haven't made a  
mistake?

A. I shouldn't think so.

Q. You don't think?

A. Well, I put it this way, I haven't  
made a mistake.

30 Q. You see, because right off the  
cover, Mr. McFarlane, I am  
suggesting to you that on the 17th  
of April, this year, Silvera &  
Silvera had no contract on the  
Inverness property to cut any  
power line through their contract  
had ceased.

MR. HAMILTON: Just a minute. I must object to  
that.

HIS LORDSHIP: Huh, huh?

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DON McFARLANE  
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continued

- MR. HAMILTON: He has no basis in fact for that suggestion.
- HIS LORDSHIP: He has?
- MR. HAMILTON: His own witness, Mr. Fennel.
- HIS LORDSHIP: He is asking the jury not to believe Mr. Fennel but Mr. Lawson so he can put it in that case, I think he is committing himself to Mr. Lawson's evidence on that point, isn't that so? 10
- MR. HAMILTON: Very well. Mr. Lawson said he didn't.
- HIS LORDSHIP: And Mr. Fennel said he did.
- MR. ANDRADE: He did in fact. I am putting to him positive evidence.
- HIS LORDSHIP: Hold on. Let me put it this way, you see, I don't know the gentleman. Mr. Fennel is saying Silvera had still had the contract and Mr. Fennel is the manager. 20
- MR. ANDRADE: He said he believed.
- HIS LORDSHIP: He said he thinks, believes it, - whatever it is and he is the manager.
- HIS LORDSHIP: He thinks - whatever it is, he is the manager and your case - what you are putting forward to Mr. Lawson, who is a book-keeper - you are putting forward Mr. Lawson's version. 30
- MR. ANDRADE: The man who spoke with him.
- HIS LORDSHIP: Very well; go ahead.
- MR. ANDRADE:
- Q: You spoke with Mr. Lawson?
- A: Well, I spoke with a gentleman on the phone.



Q: By the name of Lawson; didn't he identify himself to you?

A: His words to me was ... ..

HIS LORDSHIP: The person you had spoken to, did you get the name of Mr. Lawson?

WITNESS: No; I didn't know what name I got. I distinctly remember him saying he was the man in charge of the factory.

10

MR. ANDRADE:

Q: That was on the 17th of April?

A: Yes, sir.

Q: And the whole substance of that conversation was about those two men cutting wood on the Inverness Property?

A: That is right.

Q: Did you, at that time, know of K.I.C.?...

A: No.

20

Q: Do you now know of K.I.C.?

A: I know now of K.I.C.

Q: Who are K.I.C.?

A: Kingston Industrial Construction, sir.

Q: An electrical company?

A: Yes.

HIS LORDSHIP: What?

WITNESS: Kingston Industrial Construction, sir.

30

HIS LORDSHIP: On 17/4/75 you didn't know of them; you didn't know of them on the 17th of April?

WITNESS: No; I didn't know of them on the 17th of April as having anything to do with this particular contract.

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continued

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continued

MR. ANDRADE:

Q: You knew of them before?

A: Yes; as a company.

Q: Electrical company?

A: Yes.

Q: And K.I.C. took over from you?

A: I am sorry, sir, but K.I.C. can't take over the contract from us.

10

HIS LORDSHIP: Did they, or did they not?

WITNESS: They did not.

MR. ANDRADE:

Q: Did you complete the work on the estate?

A: We did not, sir.

Q: After you ceased - to the best of your knowledge - is it a fact that K.I.C. take over the work?

A: K.I.C. did not take over any work pertaining to the project.

20

Q: Did K.I.C. do any work then?

A: You are asking me ...

HIS LORDSHIP: One moment; you are using the word 'works' as if it is ...

MR. ANDRADE: Electrical works we are talking about. The work - it is understood.

HIS LORDSHIP: You are talking about contract and work. A contract is a different thing from working. Putting up the line there - I don't know what you are talking about. What I gather Mr. MacFarlane to be saying, they had the contract to perform the work. So are you referring to

30

HIS LORDSHIP: that aspect of the matter, when  
(Contd) you say work?

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MR. ANDRADE: I can simplify it.

Q: Your contract was terminated?

DON McFARLANE  
Cross-Examination  
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continued

A: Our contract was not terminated.

HIS LORDSHIP: When - was it terminated?

10 WITNESS: If my lord permit me to explain this  
one: We had a contract - Jamaica  
Public Service. The contract takes  
certain times to phase in. When you  
start your production and when you  
close down, your contract, it takes  
time to phase out. The duration of  
this time will run anytime between a  
month to six weeks, to phase out,  
because you have ... At the time  
when we shut down contract, we  
20 notified the Jamaica Public Service  
Company at a meeting, that we had  
intention of closing down the  
contract, and that we had also had  
intention of dismissing the men  
that were employed to us, through  
the union... At this stage of the  
game the Jamaica Public Service  
had certain directions pertaining  
to whether or not we will do the  
30 contract and whether or not we will  
have the contract refinanced at a  
new level, as we noted that we could  
not do the job at this stage. We  
did not get any answer at all from  
the Jamaica Public Service on this  
matter. For some weeks our material,  
equipment and - and we had a watchman  
employed to us till the job, as far  
as this contract was supposed to have  
40 been - well, we decided to pull out  
our equipment - was the end of April  
through May.

HIS LORDSHIP: So up to the end of May you were in  
a state of flux?

WITNESS: Yes, sir.

HIS LORDSHIP: Yes; Mr. Andrade.

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continued

MR. ANDRADE:

Q: You decided to pull out?

A: Precisely.

Q: Your contract was to build the power line from Old Harbour to Pernarsus?

A: Our contract was to construct fifty-eight towers, some ranging from fifty feet high to a hundred feet high, and doing that, we were, on the contract, supposed to have run lines to take the power supply from Old Harbour Power Station into Pernarsus.

10

Q: Well, did you perform your contract completely?

A: We did not perform it completely. We took the contract to a stage ...

Q: And isn't it a fact that K.I.C. took over from you at that stage?

20

A: K.I.C. did not take over any contract from us. The contract that was later administered when the Jamaica Public Service called in various contractors - I must make it very emphatic - the contract that we have with the J.P.S. was a fixed contract rate for a certain - "X" hundred thousand dollars. The contractors were later called in by the principal owners, J.P.S., whom then decided to select three companies to do the same job.

30

Q: You said the contractors were called in by J.P.S.?

A: Yes.

Q: Who were they?

A: The contractors that were called in were K.I.C., Hines Brothers and another company.

Q: At what stage was that done?

40

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continued

A: This was done after we had several deliberations with the Jamaica Public Service Company - sometime after May.

Q: So you know that K.I.C. was one of the companies, the contractors involved - so to speak?

A: I am associated with K.I.C., because I know the managing director. We have had discussions on the matter pertaining to his doing the work from where we left off.

10

Q: When you say associated, you don't work with him?

A: No; but as one director ... ..

Q: You speak to the other directors?

A: We discuss this matter; yes.

Q: So, you should know then, whether K.I.C. got the contract to complete or not?

A: Yes.

20

Q: Who got the contract to complete?

A: K.I.C. got part of the contract, ... got the contract, which is Hines Brothers and Douglas Pierce.

Q: The Inverness Property, who got that section?

A: I don't know, but I know that Hines Brothers - K.I.C. and Douglas Pierce. I do know as a fact that K.I.C. got the larger portion of the contract.

30

Q: The conversation you had with Mr. Lawson, the gentleman who phoned you on the 17th, you see, from Inverness or Jamaica Cordage Company - you might remember Jamaica Cordage Company - isn't it a fact that you told Mr. Lawson that these men had told you that they could get fence posts for you?

A: No, sir.

HIS LORDSHIP: Let me put it this way, Mr. MacFarlane: you see, we have

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continued

HIS LORDSHIP: been told by Mr. Lawson that  
(Cont'd) the posts were personally for  
you, and they told you that  
these men - that they could  
get these posts from the headman  
at Inverness - that was not  
what you spoke to Mr. Lawson  
about?

WITNESS: No, sir; I did not speak to  
him on that. 10

HIS LORDSHIP: Did you at any time, ever ask  
these men to get the post for  
you personally?

WITNESS: No, sir.

MR. ANDRADE:

Q: So it wouldn't be true if they told that  
story?

A: No; I don't think that would be true,  
sir.

Q: Now, Mr. MacFarlane, you described the  
character of these two men in glowing  
terms... 20

A: I wouldn't say glowing terms, sir. That  
is what I have observed.

Q: You would call them paragon of virtue?

A: No, I wouldn't say that.

Q: In other words, they wouldn't use  
abusive or indecent language?

A: Well, the best of us use indecent  
language sometimes. 30

Q: Have you ever heard them?

A: Well, frankly speaking, I have never -  
I can't honestly say I have heard any  
of those two men use indecent language.

Q: Would they be the type to say, "Look  
at him. I could a suck him blood",  
or things like that?

A: No, sir; I have never heard anything about that.  
I might even elaborate on that ...

HIS LORDSHIP: One moment; yes.

MR. ANDRADE:

Q: Would Daley be the type to threaten to kill anyone?

10 A: Not from the knowledge that I have of him.  
I will tell you. You say I spoke of this man of glowing fashion - M<sup>r</sup>lord may I ...

HIS LORDSHIP: No.

MR. ANDRADE:

Q: You will get all the chance in the world.  
You are there to answer my questions. How long have you known these two men?

A: (no answer)

HIS LORDSHIP: From January, '74.

20 MR. ANDRADE:

Q: How long have you known these two men?

A: (no answer)

HIS LORDSHIP: From January, '74, he said, when they started working with the company. Yes?

MR. ANDRADE:

Q: Where do they live - do you know?

A: Well, I know that they live at Old Harbour Bay, somewhere near to the police station.

30 Q: Old Harbour?

A: Old Harbour Bay, near to the police station.

Q: You say they are unionised workers?

A: Yes.

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No. 17

DON McFARLANE  
Cross-Examination  
4th December 1975  
continued

In the Supreme Court

Defence Evidence

No. 17

DON McFARLANE  
Cross-Examination  
4th December 1975  
continued

Q: And they have been unionised workers since 1974; have they?

A: Yes.

Q: And as Director/Secretary, you are in close contact with them?

A: Well, from a financial point of view; yes.

Q: What extent is that contact, Mr. MacFarlane? 10

A: Well, as far as paying the men and cost of material that is going out on a job, to assess any damages to any of the vehicle or any equipment that you might have. This is because we have a time-keeper on the job who is responsible to me for salaries that are made on the job site.

Q: You see, the time-keeper would be more in contact with than that you. 20

A: I can hardly say.

Q: When would you see them?

A: I would see these men usually - and I have seen them once a week.

Q: Where?

A: In most cases, in the office.

Q: How long?

A: You mean what period of time they would spend? 30

Q: How long each time - the average?

A: The average would be an hour.

Q: Doing what?

A: Discussing the project.

Q: With the two of them?

A: Yes.



In the Supreme Court

Defence Evidence

No. 17

DON McFARLANE  
Cross-Examination  
4th December 1975  
continued

Q: Only those two?

A: Well, others too.

Q: That is the only opportunity you ever had of observing them?

A: I will say this, sir, because each delegate have a group of men with whom he work.

Q: Yes or no?

A: No; that would not be the only opportunity; on the job site.

Q: On the job site. You ever been on Inverness Property?

A: No; I have never been on Inverness Property.

Q: You know anything of Inverness itself, personally?

A: I have only passed through Inverness.

HIS LORDSHIP: When you say Inverness, you mean passing through the property where the lines are?

WITNESS: Where the lines are.

HIS LORDSHIP: Oh, you have passed through there?

WITNESS: Yes, sir.

MR. ANDRADE:

Q: So for the week, sometimes only once a week you see them?

HIS LORDSHIP: Usually I have seen accused, usually in the office, usual time, one hour.

MR. ANDRADE:

Q: So on the basis of that limited time, you are saying they are non-violent?

A: You see, we have supervisors on the job.

HIS LORDSHIP: Are you saying that the supervisors are reporting to you?

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DON McFARLANE  
Cross-Examination  
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continued

WITNESS: No; the supervisors and the delegates report to me on certain aspects of the job, at which time I would probably make a decision, whether I should visit the site or not.

MR. ANDRADE:

Q: You will agree with me, Mr. MacFarlane, that your contact is very limited with these men? 10

A: No.

Q: You are a director/secretary, you are in an office. These men are way out in the bushes ... ..

HIS LORDSHIP: This is argument; not question.

MR. ANDRADE:

Q: Would you agree with me in saying that your contact with them is very limited indeed? 20

A: No; I wouldn't agree.

Q: Wouldn't agree that one hour once a week in your office is very limited?

A: I wouldn't.

Q: You have to strike an average and the average is once a week, one hour in your office - you are saying it is not limited?

A: It might sound limited to you. I could say to you, right, that on several occasions the men might come into the office with a problem on the job site and this job site is just ... 30

Q: You are now saying several occasions - are you suggesting that they have been into your office several times within the week?

A: Well, I recall for one week they have been in my office on occasions. 40

In the Supreme Court

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Defence Evidence

No. 17

DON McFARLANE  
Cross-Examination  
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continued

Q: How many?

A: It might have been two or three times.

Q: Doing what? Do you know?

A: Yes.

Q: Why?

A: We had some men come in to pick up a unit and these men stole certain materials from the compound in Kingston and took it back to the country, and we are investigating the matter.

Q: Your company provided them with two motor cycles?

A: Yes, sir.

Q: S90, was it?

A: I don't know.

Q: You don't know?

A: No; I don't know. I know it is motor cycles bought by the company and registered by the company.

Q: How much did these two bikes cost the company?

A: The bikes cost the company, I believe, five hundred and odd dollars, each.

Q: Brand new bikes?

A: They were brand new bikes.

Q: Then does the company give unionised delegates or members or just these two?

A: All delegates.

Q: How many delegates you have?

A: We have about four delegates.

Q: You have a work force of how many?

A: We have a work force - commencing work force with fifty odd men.

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In the Supreme Court

Defence Evidence

No. 17

DON McFARLANE

Cross-Examination

4th December 1975

continued

HIS LORDSHIP: What does that mean - your overall workmen or on this particular job?

WITNESS: On this particular job.

MR. ANDRADE:

Q: Overall, how many?

A: We were forced by the union to employ more men on the project and we ended up - when we shut down the job - with eighty-two men. 10

Q: On Inverness - on this project?

A: On this project; yes.

Q: And you have other projects going, apart from just this?

A: We have; we have projects in Montego Bay.

Q: And a total work force of how many?

A: Well, if you ask me the total work force now or the total work force then ...

Q: Then?

A: The total work force in the island - I would say somewhere about three hundred. 20

Q: And for them you have four union delegates?

A: No; these union delegates refer to this job.

HIS LORDSHIP: When you say four, I thought you are referring to this job at Inverness.

WITNESS: I am referring to this job.

MR. ANDRADE: 30

Q: For how many union delegates you have in all - that is a simple question, Mr. MacFarlane?

A: We can - one - we can have sixteen, we can have twenty, depending on the ...

Q: How many do you have in all?  
 A: At what time; at what stage of our operations?  
 Q: How many union delegates you have ever had - the highest number of delegates?  
 HIS LORDSHIP: From one to twenty - he said twenty then.

A: It could be one to twenty.

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MR. ANDRADE:

Q: Have you heard the question?

HIS LORDSHIP: He has answered it - twenty.

MR. ANDRADE: Will Your Lordship allow me to cross-examine the witness?

HIS LORDSHIP: Have you ruled? Next question.

MR. ANDRADE:

Q: Have you provided motor cycles for all the twenty of them?

A: No.

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Q: Then how many in all have you provided motor cycles for?

A: We have provided motor cycles for delegates on the Jamaica Public Service job.

HIS LORDSHIP: Only this job?

WITNESS: Only this job.

HIS LORDSHIP: O.K. that is the answer - only on this job.

MR. ANDRADE:

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Q: Having provided the motor cycles for them, I take it you look after the licensing of them and the passing of them?

A: I have already said that.

HIS LORDSHIP: That is the answer.

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Defence Evidence

No. 17

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 continued

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Cross-Examination

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continued

MR. ANDRADE:

Q: And if it were to pass, you would look after it too?

A: Yes.

Q: You wouldn't have to drive out to May Pen to license and pass it too?

A: We license our vehicle in Kingston and pass them in the company's name and pass them.

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Q: And when they are to be passed you pass them in Town, too?

A: Precisely.

Q: You wouldn't have to come to May Pen to pass bikes?

A: I wouldn't have either ...

HIS LORDSHIP: No, no; you just answer what you are asked.

MR. ANDRADE:

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Q: You know, Mr. MacFarlane, I am going to be quite frank with you: you know, you are trying to help out these two men?

A: (no answer)

HIS LORDSHIP: Are you? Answer yes or no.

WITNESS: No; Your Honour.

MR. ANDRADE:

Q: You are trying to help them out by painting this non-violent picture of them?

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A: (no answer)

HIS LORDSHIP: Certainly, it is not a question; it is an argument.

MR. ANDRADE: It is a suggestion I am putting.

HIS LORDSHIP: You gentlemen complain when defence do it. This is not a question; it is an argument.

In the Supreme Court

Defence Evidence

No. 17

MR. ANDRADE:

DON McFARLANE  
Cross-Examination  
4th December 1975  
continued

Q: You can't be sure that these men wouldn't threaten anybody?

A: (no answer)

10 HIS LORDSHIP: How can he be?

MR. ANDRADE: I am asking a question, M'lord, let him answer.

HIS LORDSHIP: No, no; these are not questions at all.

MR. ANDRADE:

Q: Finally, let me suggest to you, Mr. MacFarlane, that on the 17th of April, this year, your company - Silvera - had no business at all on the Inverness Property?

20 A: No, Your Honour; I don't agree.

Q: And in fact, the only company that was concerned with it, was K.I.C.; not you?

A: (no answer)

Q: And that at no time at all you told the person on the phone that these men had authority to cut wood?

A: I told him that they had the authority, sir.

30 Q: And that, Mr. MacFarlane, is a deliberate falsehood?

A: (no answer)

MR. ANDRADE: No further questions.

Time: 4:12 p.m.

RE-EXAMINATION OF MR. DON MACFARLANE BY MR. P. ATKINSON (DEFENCE ATTORNEY)

RE-EXAMINATION

Q: Would you keep the motor cycles?

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DON McFARLANE

Re-Examination

4th December 1975

continued

A: The men would keep the motor cycles.

Q: And take it to their homes?

A: If necessary.

Q: Suppose after the initial licensing and passing came up, the vehicle is required to be passed sometime later, would it be perfectly normal if one of the men took it and pass it himself?

A: They would bring the bike into the office.

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Q: Just for passing?

A: Yes.

Q: But if one of the men decided to pass it on his own ... ..

MR. ANDRADE: Objection.

HIS LORDSHIP: No, Mr. Atkinson.

MR. ATKINSON: That is the case for the defence.

Time: 4:13 p.m.

HIS LORDSHIP: Thank you, Mr. MacFarlane.

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(Witness steps down)

HIS LORDSHIP: Mr. Foreman, members of the jury, will you please come back to me tomorrow morning at ten o'clock. Remember, do not discuss the case with anyone.

In the Supreme Court

No. 18

NO. 18

SUMMING-UP

Summing up

8th December 1975

CLARENDON CIRCUIT COURT,  
MAY PEN,  
MONDAY, 8TH DECEMBER,  
1975.

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REGINA v. BURNETT MEGGIE - C.A. 140/75  
FREDERICK DALEY - C.A. 141/75



TIME: 10:13 a.m.

In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

MELVILLE, J.:

10 Mr. Foreman and your members, the accused men, Burnett Meggie and Frederick Daley are charged with murder, the particulars being that they on the 22nd of April, 1975 murdered Sydney Smith. Now, you know who the accused men are. The one nearer to you is the accused, Meggie, the one farther away is the accused, Daley.

20 Now, in this as in every criminal case the onus of proof lies through out on the crown. The crown has brought the accused men here and they must satisfy you by the evidence that they put before you that you feel sure of the guilt of the accused men. They have set up their defence and the gist of it is that they didn't throw any stones at all. You heard them. They made unsworn statements from the dock and in one case Mr. Meggie called a witness. You will weigh that evidence and consider that as against the evidence given by the witnesses for the crown. You have to make up your mind which you believe although, as I said, they have established their defence. They said they didn't throw any stones at all. They were there having a conversation with this man but they didn't throw any stones at all. If that is true Mr. Foreman and your members, then they could be guilty of nothing at all but remember that they have not got to prove anything at all. They have set up their defence before you, it is for you to consider. If you accept it please let them go. If when you have considered what they are saying and what the witnesses for the crown are saying if you are left in any reasonable doubt acquit them because they have no onus of proof on them, it remains throughout on the crown and the crown must satisfy you by the evidence that they put before you that you feel sure of the guilt of the accused men before you can convict one or the other or both of them.

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40 There are differences in the evidence given by the witnesses for the Crown and between what the accused men are saying also. Now, you saw the witnesses up there. You have to make up your mind which of them you believe. Who is telling you the truth. Who is fabricating.

As I understand it what the defence is saying is that all that the witnesses for the crown have come to court for particularly, they are all here

In the Supreme Court

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No. 18

Summing up  
8th December 1975  
continued

because of the reward that has been offered for the conviction - for anybody who is convicted on this offence. It is for you members of the jury. As I said, you saw them, you heard them give evidence, you have to make up your mind who is telling the truth, who is mistaken. That is your function. In that regard you may accept all of what one witness says and you may reject all of what another one says and/or you may accept a part and reject a part of another witness' statement. 10

As I said you have to make up your mind as to what are the facts. That also applies to the statements made by the accused men and the evidence called on behalf of the defence. You saw the witness, you accept or reject it as you see fit. You may accept part or whatever you wish. You may accept none of it. Anyhow, one witness gave evidence.

Remember also that you are entitled to draw reasonable inferences from facts that you find proved. That is your function, members of the jury. I am to direct you on the law which you are to apply to the particular fact as you find them. In the course of my directions I may make comments on the evidence which has been given by one side or the other, if I do, just as all three learned gentlemen who addressed you on behalf of the crown and on behalf of both defence. They are asking you to draw certain inferences from certain facts. Well, members of the jury, if you agree with any of these inferences that they ask you to draw you are entitled to do so. If you don't want to draw such inferences then you reject them. If I myself make any comment on the facts then you are entitled to reject those comments also just like anybody else. You see, we can all comment on the facts and ask you to draw certain inferences but if you don't choose to draw such inferences then you are entitled to what inferences you are going to draw. 20 30 40

Now, the law which you will have to apply in so far as murder is concerned is this. Murder is committed where one person by a deliberate or voluntary act intentionally kills another. Now, to amount to murder the crown must satisfy you about certain things: That the accused men did a deliberate act. In this case what the crown is alleging is that they threw stones at this 50

In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

10 deceased man and that at the time when they did they had the intention either to kill him or to cause him really serious injury and in addition to that they have to satisfy you that it was not - there was no lawful excuse for the act. What that means, members of the jury, is that the act was unprovoked - I will have to deal with provocation here to you - and that the killing was not done in self-defence. Those are the essential ingredients which you have to be

10 satisfied about. The accused men deliberately did some act which resulted in the death of the deceased man; it was they who killed him by an act which caused his death. This was a voluntary and deliberate act, not an accident and at the time they either had the intention to kill him or to cause him real serious injury which resulted in his death.

20 Now, you can't know what is in a person's mind. It is not like when you are driving a vehicle along the road where you can see the speedometer is showing you twenty-five miles when you are in a thirty miles per hour limit; so what the law says, you can look at what the person is alleged to have done and if the person has said anything you take that into consideration and ask yourselves whether a reasonable person in those circumstances would do or say such things, having regard to what was done or said, and if you come to the conclusion that the accused must have intended to cause serious injury at least, or to kill the person, and if you think that that is

30 so, Members of the Jury, you may draw the inference. If I were to pick up a loaded firearm and point it at you and fired at close range, you may well think I intended to cause you serious injury, or to kill you.

40 You have these men allegedly throwing stones at the deceased man and if any of them caused his death, then it is for you to say whether that amounts to murder or not; but you have to be satisfied that at the time the accused men were not acting under provocation or were they acting under self-defence. On the facts put before you, Members of the Jury, self-defence does not arise. Indeed, what the men are saying is 'I didn't throw any stones at this deceased man at all.' If you accept that they would be guilty of nothing. On the other hand the Crown is saying, 'Yes, they threw stones at the deceased man.' So the very important question you have to decide is: 'Did any of the stones cause the man's death?

## In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

There is great controversy about whether the stones hit the man in his head, or not, or whether he fell and hit his head. or whether the stone hit him in the chest. Under the medical evidence, these are the injuries that caused his death - injury to the skull and injury to the chest; so you have to make up your minds in what circumstances those were inflicted, bearing in mind, as I told you earlier on, that if you have any reasonable doubt at all, or he suffered these injuries when he fell down, then you must always resolve those doubts in favour of the accused man. Of course nobody can tell you Daley flung the stone or Meggie flung the stone that hit this deceased man - if any did hit him - so what you have to do here, Members of the Jury - the law says that where two or more persons plan together to carry out a common unlawful purpose, then if they proceed to execute that plan, anything done by any of them in furtherance of that common plan is deemed in law to be the act of the other. Perhaps if I may illustrate that for you: Three of us go to break a shop. One goes to the end of the road and he is there watching. Another goes up to the top and he is waiting with the vehicle for us, to recover the stolen goods. I go in and actually do the breaking and take out the goods; you see, I am the actual person doing the breaking and entering and taking out the goods, but because all three of us are there, each playing his common part, carrying out the purpose, the one at the end of the road, the one at the top and the one waiting with the vehicle to take away the goods, all of us are guilty in law, although I am the only person going in and doing the actual breaking and taking out of the goods. You see, that is the principle that applies here.

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Now, in that case, if you think that these two men were acting together, acting in concert to carry out an unlawful purpose, a common unlawful purpose, and in the course of that the deceased man was killed, then the act of one becomes the act of the other. So here the Crown cannot say the accused Meggie threw the stone, if you accept, that hit this man in his head, or the accused Daley who did it, yet if you think that they were there on this common plan, joint venture as it were, and they are carrying out that plan - throwing the stones, then the act of one becomes the act of the other. So you

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In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

10 see, it will rest on that common design, common  
plan, if you think that that is so. If it is not  
so, Members of the Jury, if they were not acting in  
concert to carry out the common plan, then even if  
you think one or the other threw stones and caused  
the death of this man acting independently of each  
other, it would not have satisfied you as to which  
of them caused the death and you will have to let  
both of them go on that ground alone. What I say,  
the Crown, they are basing their case on common  
design. Both of them were there, probably angered  
by what happened and - you can decide - and both  
of them throwing stones at the deceased man. So  
in that case if you think there was common purpose  
between them to cause really serious injury and in  
that frame of mind one or the other or both threw  
stones and caused this man's death, then you may  
say they are equally guilty of whatever offence  
made out by the Crown. And in that frame of mind  
20 one or other or both threw stones that caused this  
man's death then you may say they are equally guilty  
of whatever offence brought by the Crown. Those  
are the principles of law you will have to apply.

30 There is only one matter I will have to remind  
you of and that is manslaughter. Manslaughter is an  
unlawful killing of a person without the intention  
to cause the death of the person. Now, that is going  
to arise in two separate cases in this case and I  
shall confine myself separately and tell you for  
instance, if you think that the accused men, one or  
the other, threw the stones and hit the deceased  
man in his chest or head or both and that at the  
time they intended to kill him or to cause serious  
injury to him, that would be murder in law;  
deliberately throwing stones at him. Apparently  
there is one other cut on his chin but the two  
really serious injuries are one to the head, the  
one that fractured the skull and the one that  
fractured the chest. First of all you have to  
40 say how they were caused. If you think that the  
stones were thrown by these two men or either of  
them and at the time they really intended to cause  
him real serious injury that that would be in law  
murder but if at the time you find that these men  
were acting under provocation that would reduce  
the crime from murder to manslaughter, in that  
aspect you have not murder but manslaughter to  
consider and dealing with the law I have to come  
to another aspect. I will come to that later on.

50 Before I do that I think I should just outline

In the Supreme Court

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Summing up  
8th December 1975  
continued

the principles of the case. You remember the witnesses that gave evidence, I shall remind you of it in a little while. You have to make up your mind what are the true facts, what happened and remember, as I said, if you are unable to make up your mind on any particular aspect of the evidence you must always resolve that doubt in favour of the accused men. Now, there is perhaps just one other thing I would remind you about before I start going through the evidence for you. Now, this is happening particularly in the case of the witness, Mr. Laidford and also in the case of the witness - I think it is - is it Mr. Smith? yes, the other Mr. Smith. Remember the deceased man is Sydney Smith but we have another gentleman, Mr. Smith also, as witness. Now, what you have to realise is that where a witness says something before you on oath as all witnesses give evidence on oath in the box here, now, if that witness before you says something contrary to what he said before on a matter of importance - this applies to Mr. Laidford's evidence - well, if that witness has given any explanation why he is making these two inconsistent statements as it were then, members of the jury, if that explanation satisfies you then you may take that into consideration and say what weight you are going to put on the person's evidence. When you hear this massive cross-examination going on of the witness it is really to test his credit to see of you can rely on the person's account of what he is telling you, you see, so all this forms a part of it. So, and I repeat, if he says something before you and says something contrary and this has happened in Mr. Laidford's case, he has given no explanation as far as I can remember, so if that is the position where he gives no explanation at all then you disregard his evidence on that particular point. In this case Mr. Laidford gave none. I don't think he was asked at all why he is saying these two different things. Perhaps you look at him up there, you may say he is not perhaps a person of very high intelligence at all, barely literate. If I may say so, that is my impression of him. It is your impression that is asked for. You may take that into account. He is saying this inconsistent thing. You saw him there. You have to bear in mind that he has said certain

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(sic)

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In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

things and then he later on, when he is being cross-examined, he contradicted himself on those points and he has given you no explanation; so how you have to look at the matter in law - you must disregard that part of the evidence. Firstly you have to make up your minds whether he is just stupidly making those answers, or perhaps you think he is deliberately not telling the truth. They have been called liars by the Defence. That is for you, Members of the Jury. You are the only ones who can say whether anybody is lying or not. What the lawyer means by lying is the person who is saying something that he knows is not true, or he is recklessly - he makes the statement recklessly, not caring whether it is true or not. That is what we mean by lie, when lawyers call them a liar. You see, you have to know the distinction between the two things. I may say something - that pane of glass is blue. You may say you know the Judge is wrong; it is green. But I might honestly think it is blue. You see the difference, Members of the Jury? So you have to look at the difference, Members of the Jury, and see whether Mr. Laidford is deliberately telling lies, or any of the other witnesses telling lies. You have to make up your minds about that.

I say this to you, if you find a witness deliberately lying to you, then you must be very, very careful how you accept the rest of the witness' evidence. Even if you find the person deliberately telling lies, it is open to you to accept another part of his evidence; but you should be very careful how you do that. You should look to see if the rest of the evidence is corroborated by other evidence from somewhere else, somebody else, which tends to say that what he is saying is the truth. Perhaps you might want to look for that. I don't know. It is entirely for you. But you may still be entitled to act on his evidence, the rest of it, if you think that it is truthful; but as I say, you have to be very, very careful in doing that.

There is one other matter I should remind you of. I think this is the witness Mr. Smith. Remember when he was in the box he gave you a demonstration of how the deceased man fell on his hands before he actually went down on the ground? Indeed, he didn't see him go down on the ground at all. You find out that somewhere else, at the preliminary enquiry, he is alleged to have said

In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

certain other things, different from what he said in the witness box. You remember that incident? He was saying the man had fallen flat on his stomach and differently from what he said in the witness box before you. What you must bear in mind is, what he is alleged to have said elsewhere, at the preliminary enquiry, is not evidence before you. It is only put in to contradict what he is saying in the witness box before you here; so there you have a vast difference. He was even allowed time - you remember? He was saying at one stage: "Well, I don't really remember". But we had the adjournment about that time and he came back and categorically denied ever saying that to the Resident Magistrate. He gave no explanation for these inconsistencies. He said something differently here from what he said at the preliminary enquiry. The point is, if you had to depend on the witness' evidence as to the truth of how this man fell, whether he fell down on his hands, or whether he fell down on his face, and if you had to rely on Mr. Smith's evidence alone, then the position would be that as if he gave no evidence before you at all. When you find it inconsistent you disregard that part of his evidence altogether. Now, having done that you have to make up your minds whether you can accept the rest of it as being truthful or not; bearing in mind what I told you about a liar, if you think he is deliberately doing it to mislead, then perhaps you would have no choice but to reject his evidence entirely. In so far as whether he fell on his face or he fell on his hands you can't accept his word on that at all. You can't act on it. So when it comes to how the deceased man fell, you have to disregard Mr. Smith's evidence altogether, because he has said these two inconsistent things and has given you no explanation for it. That is how you have to treat his evidence.

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Now the first witness, you remember, was this gentleman, Members of the Jury. They started out by giving you the facts of the case. Perhaps I will do it a little differently and take you to how this thing sort of happened, chronologically, and in that regard the first

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witness we have is Mr. Lawson, who told us about the sequence of events, how they happened. Remember that her is the book-keeper and he is starting and telling you about this incident on the 17th which was Thursday, I think. He said somewhere between eight or nine o'clock in the morning both these accused men came, he didn't know them before, came to his office. The accused, Daley, asked him - well, before we start on the evidence perhaps we could get the layout of the place.

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Summing up  
8th December 1975  
continued

10 Now, you know there is what I called the mechanic shed. The first witness, Mr. Laidford, referred to it as the welding shed but everybody called it a mechanic shed so we stick to it and call it that. You saw it, where this ramp is in front where the deceased man fell, then about a chain away there is what is called the carpenter's shed, this is where the witnesses for the crown are telling you the first incident took place.

20 Now, in that carpenter's shed remember this is attached to a bigger building, I think they called it - anyhow the sisal factory or warehouse - some big building beside it there you can actually see a part of it, that is, from the pictures that were actually put before you - I think also picture two this part of the building here, I don't know if it is a factory or what but it is separate part from the carpenter's shop.

30 Now, in the carpenter's shop itself there is a storeroom, separate door leading in that storeroom. Now, apparently, the only other entrance into the carpenter's shed - remember they were referred to it there in the picture, one, and from that you get across to the next shed as it is called now around the side of the carpenter's shed. Remember they all told you it was zinned up to part way, I think it was referred to as waist high and that goes around two or three sides, I don't remember how much

40 but the whole idea is that it has open space on top so, for instance if you are in the mechanic shed you can stay in that mechanic shed and see what happens and apparently you can stay in the carpenter's shed and see what happens in the mechanic shed. That is the general layout. And there are a lot of stones lying about in the yard. Remember Mr. Laidford is saying when the deceased was running from the carpenter's shed to the mechanic shed he was not going in

50 the direction of the factory but remember he

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admitted that you could go that way and go to the factory. Now, that is the general layout.

In this compound, apparently, remember you are coming off the main road, main to Kingston and you get to a sort of public road, I don't know what but remember it leads to this cordage factory and when you get there now there is an entrance to the gate there, apparently that is kept open, I don't know; when you get to the compound there is another gate somewhere at the back of this compound which is apparently kept open and apparently locked at other times. No, this back gate was the gate in question where the men had to ask permission to get from there to the rest of the property. Remember somebody is telling you that cows or what is kept there and I think there is common ground.

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(sic) At this time there was some works going on by the Public Service Company. You have to make up your mind which it is, R.A. Silvera or C.I.C. who had the contract but, apparently, they had permission to run those lines through the property and apparently, where the lines are going they are also entitled to clear it, cut away the trees and woods. Apparently everybody agrees on that so those are the common features there.

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Now, with that I will start with the evidence, as I said, of Mr. Lawson. He is the book-keeper on the property of, remember it is Jamaica Cordage Company Limited and he said that on the 17th of April, this year, between eight and nine o'clock both accused men came to his office. He didn't know them before but, apparently, there was no dispute about that, that these are the two men because they are saying that themselves.

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Well, he said Daley asked them to go through the gate from the factory compound to get to where the line - k.v. line I think it is called - was being put up. Well, he said Daley asked him for permission to go through the gate from the factory compound to get to where the line, the K.V. line I think it is called, is being put up and he is telling both (sic) accused men that he couldn't give them permission, because the men had come from K.I.C. Engineering Company and told Sydney Smith, that

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is the deceased man, that R.A. Silvera lost the contract and the contract was now being operated by K.I.C., and K.I.C. had not given anybody permission to go on the line to cut anything in the pathway of the line. Remember he said Daley is asking? He is the one who used the expression to Mr. Smith.

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10 Then he went on to qualify. He asked for the headman. Daley is asking for the headman and he Mr. Lawson is telling him that the headman is gone out riding on the fields. Well, you remember, Members of the Jury, that he is giving you the story at first as if everything is happening together - that they are going there and certain words are being used by these accused men to Smith; but what apparently happened when he corrected it later on, both accused men are asking permission to go for their tools, the axe and the cutlass, which they had left where the line is being cut and in about ten minutes time they are returning, the gate having been opened and they go and come back, and at that stage, somewhere along there, Mr. Smith the deceased man is there, and a conversation is taking place in front of all of them, both accused men, Mr. Lawson and the deceased man, Smith. And when Mr. Smith is there now he is telling both accused men that - more or less the same thing that Mr. Lawson is telling them - the men from K.I.C. saying they don't have the contract and Silvera's men don't have no right to go and cut wood where the line runs, and according to this witness, Mr. Lawson, the accused Meggie is saying - he said, "Look at him. I could suck him blood." And then you remember he showed you how the accused man, Meggie, was pointing his finger at the deceased man? Then the accused, Daley, saying, "Leave that out man", he is speaking to the accused man, Meggie, and then he is now pointing to Smith and saying, "I am cutting three hundred post and when I cut them you stop me taking it off the compound I kill you." There it is, you have to say what the words, "I could suck him blood", used by Meggie, if he did use them, what they meant. Remember these accused men are saying they never threatened anybody at all. You have to make up your minds whether Mr. Lawson is speaking the truth that these men used the words. (sic)

50 According to what Daley is telling them, he is cutting the post, three hundred, and if they don't allow him to take them out, he is going to kill - and there you may think is a conditional threat. If

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you allow him to take the post everything is alright. You have to make up your minds whether those words were used. The accused men are denying any such thing at all. Well, he said thereafter both men left. Remember this is between eight and nine o'clock on the Thursday morning.

Then there is the other witness now, Mr. Clifton Howard. He is the tractor driver, who is coming at one o'clock and speaking to Mr. Lawson. Mr. Lawson said Howard came to him and spoke to him between one and two o'clock the same afternoon. Now, when he is cross-examined, Members of the Jury, you remember that there was some talk about their - about telephoning this gentleman, Mr. Don McFarlane. He came and gave evidence on behalf of Meggie before you. He is supporting what both accused men are saying. Now, what this witness, Mr. Lawson, is saying, what Mr. McFarlane told him on the phone was that these two accused men had come to him and told him that they could get three hundred fence post from the headman at Inverness, and that when the posts were ready he, McFarlane, would send the truck and the money to collect the posts. You remember there is a conflict here between what this witness is saying and what Mr. McFarlane is saying. You see, the whole impression this witness is giving you is that Mr. McFarlane is saying - well, the men are telling him yes they can get posts and they can get it from the headman at Inverness. In other words, they were seeking permission to get the posts, whereas Mr. McFarlane said at that stage they still had the contract - Silvera. Remember he is working with Silvera and they were entitled to take posts as of right; so there is no question of asking Mr. Lawson permission to get these posts.

He had a right to go and cut them and this is the difference there so you have to make up your mind about what was said in that conversation between Mr. McFarlane and this witness, Mr. Lawson. One or the other is probably making a mistake or one or the other is probably deliberately not speaking the truth. You must make up your mind what

you make of it. There are two different versions altogether.

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10 Well, he said - McFarlane under further cross-examination, sorry. Mr. Lawon that after this conversation on the telephone with Mr. McFarlane he did have the gate opened, this back gate on the compound but he is allowing the men to go on it for the purpose of collecting tools and coming back. Remember he said that these men went and took the tools and came back, about ten minutes. Well, the men are saying that this isn't so at all. They said the gate was opened for them to go and cut wood as they were entitled to do. Remember, members of the jury, you have that conflict in the evidence, you have to say whether what the accused are saying is true or what Mr. Lawson is saying is correct.

20 Well, when he is further cross-examined he said he couldn't say if the accused men had cut wood and piled it up along the line there and, indeed, he doesn't know. Remember those posts are being subsequently taken away by Mr. Fennell and brought to the compound. This witness, Mr. Lawson, said he didn't know anything at all about that. Remember Mr. Fennell is the manager of the company. Well, you remember it was being put to him whether he knew if these accused men had been cutting posts from earlier on this week. 30 You see, this is Thursday and they are saying they had been cutting posts from Monday. Well, this witness said he didn't know if the men were cutting posts at all during that period and as I said, he didn't know when the posts were brought to the compound. Well, the nearest guage of the matter is the Thursday morning now - Thursday afternoon - this witness Mr. Clifton Howard, remember he is the tractor driver, yes, he is employed to the company also and on the 17th in 40 the early afternoon he is driving a tractor, this is by the road between the factory and the main road, I don't know if he is going towards the factory or coming towards the main road, it doesn't matter. Anyhow he said that he saw the two accused men under a mango tree and when they saw him coming out they followed him and the accused, Daley, said that if they sent him over the bush to draw some posts he musn't go because if he went they would shoot him, they meaning 50 the accused men and he replied to them, "Man, I am employed to this company and anywhere they

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send me on this property I would have to go." Then when he was about to drive off the accused, Meggie, said to him, "That black bwoy, we mus' kill him." Well, you remember this little argument taking place about that to the witness, what did he understand about, "That black bwoy, we mus' kill him" and as Mr. Hamilton pointed out in his address to you, apparently what he wants to get is if he knew that it was the deceased man, Sydney Smith. Anyhow, what he is saying, this accused man knew nothing at all about it. Remember the defence is saying that he doesn't know a thing about it at all, if it is true, so you may well think that what he is doing is drawing an inference when he realises that Mr. Smith is dead for remember he is not giving the statement to the police until the Wednesday, the next day so you may well say where a witness is adding two and two together and really usurping your function because what he really wants to tell you is that he thought the accused was referring to the gentleman, the deceased but he came to that inference afterwards, when he was dead. Well, that is a function for you, Mr. Foreman, members of the jury. If any such inference is to be drawn that is an inference for you to draw.

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Anyhow, he went on to tell you, Mr. Howard, that later on he went and spoke to the book-keeper, Mr. Lawson himself, spoke to the deceased man, Mr. Smith. Well, that, members of the jury, was the background, these two witnesses, Mr. Lawson and Mr. Howard are telling of the threats. In the one case, Mr. Lawson, issued directly by these two accused men, in the case of Daley, it is a conditional threat, if you don't allow me to take away the wood what is going to happen; in the case of Mr. Howard he himself is being told that he wasn't to draw the wood, he could be shot and he is using these words, "That black bwoy, we mus' kill him", you say whether in the circumstances you can think that the accused, Meggie, was there referring to the deceased man. If you don't think it is a reasonable inference, Members of the Jury, then forget all about the evidence and don't pay it any mind at all.

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Then we come to the actual incident on

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Tuesday the 22nd of April. Now, remember this witness, Mr. Ceaphas Laidford. He is in the carpenter's shed along with the deceased man, also another gentleman, Milton Smith. The three of them are in there. Remember he is preparing lunch.

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10 Now remember a lot of what I told you of the layout of the place is coming from Mr. Laidford's evidence. Whilst he is there preparing lunch, according to him, the two accused men came to the door - and you will remember he is saying when he saw them the accused men, Meggie had two stones in his hands, and the accused man Daley had a stone and a bit of iron. He doesn't know how they came by them, but he just saw them at the door. Then according to him Daley said to the deceased that he come for some money now. Then the deceased said, "What you saying to me?" The  
20 deceased is telling Daley that he had to go and see the boss. Then at that stage the accused, Meggie, told Daley that he must move. At that stage remember he is standing behind Daley, according to this witness and at that stage Meggie comes up now with the two stones in his hands. Then Daley according to him, is saying to him, the witness, 'move, for he is not in it.' Remember? And then Mr. Smith the deceased man patting him on the shoulder and telling him not  
30 to move, he must stand up. Now, he puts that distance, Members of the Jury, that the accused men were then, about five to six yards from the deceased man. Remember the Sergeant is showing us from the dock here, when he went to stand by the front bench. Counsel there probably estimated that to be five to six yards. Then at the stage Daley flung the stone first and then the piece of iron at the deceased. He can't say if the stone or the iron caught him.  
40 You remember he showed you how the deceased man shifted as the accused man, Meggie threw the stones that he had.

50 Well, indeed we went on further to say that Meggie in all threw four stones at the deceased man inside the shed there, but he can't say if any of those stones caught the deceased man. Now, you remember it wasn't - he gave his evidence in chief now, telling you about a lot of other things and it is when he is cross-examined he is telling you that it was whilst the men were throwing the stones at the deceased man that the deceased man was going into the little store-room that was

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inside this carpenter's shed. Remember - well he said he didn't remember that part at all. You saw him, Members of the Jury, you have to make up your minds. It turns out that the deceased had gone into that room and the deceased is coming back out of that room, running out of the carpenter's shed. Now, remember this witness is putting himself as going out of the carpenter's shed ahead of the deceased man. Remember? When we deal with some of the other witnesses they are putting it some other way. The deceased is running out first. The accused man Daley is going after him. Members of the Jury, you have these differences in evidence. You have to say what is the truth. You saw the witnesses there. You make up your minds which of them is giving you a more accurate account of this incident.

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According to this witness Laidford, he is running out of the shed first and going out and the deceased is coming out behind him, and whilst he is running both men are throwing stones at the deceased, and he is telling you how the deceased fell down on his face. Remember later on he can't say what caused the deceased man to fall, but he knows he fell down on the ramp. Well, he went on to tell you that one of the stones caught the deceased man before he dropped; but he doesn't know if that stone that knocked him caused him to fall. Now remember he wasn't asked - indeed he has not told us where that stone hit the deceased man, but what he is saying is when the deceased man fell both accused men were still throwing stones at him.

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Both accused men were still throwing stones at him and he told you that about eight hit deceased whilst he was on the ground and of all these stones, the eight of them hitting him in the head. Well, you heard the comments of the defence on this. Having regard to the doctor's evidence you have to say, ladies and gentlemen, whether this is indeed true or not and I don't know what you may think, Mr. Laidford is the person who likes to make the case look better than it is. You have to make up your mind about it but he said stones hit the deceased in his head and remember the doctor's evidence, the

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doctor didn't see any cut at all except the little one on his chin.

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10           Anyhow, Mr. Laidford continued to tell you that whilst the deceased is on the ground one stone hit him he said, on the right ear. Remember he is showing you, he was showing somewhere about the back of the head and the region of the ear but he puts it at that right ear. Remember the comment  
20           of defence on that? How could stone lick this man on his ear and you don't see a little cut about it? It is for you to say, members of the jury, whether it is an ear or above the ear or what. It is a question of fact for you. And that was the first stone that hit the deceased whilst he was on the ground. Bap, over the head. There you have that, members of the jury. As I said his is the only direct evidence. Remember he is saying where and stones hit the deceased  
30           whilst he is on the ground. Remember he is telling you that he sees both accused men picking up the stones from the ground and throwing at the deceased whilst the deceased is lying on the ramp, falling over the ramp.

30           Now, at first he pointed out from the witness box to at about the second spectator's bench, down there; that is where the men are standing at first and throwing the stones and I think we estimated that as about twelve yards. I don't know, members of the jury, you see the distance there, from the box, here, straight down to the second bench in the court here; that is where they are but later on, you remember, in the cross-examination they were coming up nearer and the distance is from here to the court door, over there. I don't know, we had some difference there. We started about twelve feet, six yards, right up to ten yards the learned gentlemen said. You see the distance from the  
40           witness box to the court room door there, the one leading down to the cells, apparently. I don't know the distance, looks like about six yards to me. Anyhow, that was the distance that he was showing that the men were throwing stones at the deceased man while he is on the ground and he said that the deceased man was lying on his belly on the ground. The deceased fell on his face. And remember he is being asked about this thing and it turns out to be what everybody calls the ramp. Remember he called it a wall at first, the ramp that you see  
50           in the picture here, he is saying that the deceased fell over. Indeed, one of the stones that were

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being thrown caught him at the side.

Now, at some stage or the other, members of the jury, according to him he is going up, apparently he is lifting up this man. I don't know if it is when the stones are thrown or what stage but some other witness seems to give you the impression that whilst the stones are being thrown this witness, Mr. Laidford, is trying to go up to the deceased man, trying to lift him up. Anyhow, later on, he tells you that later on he is coming up to the deceased man and lifting him up and telling you that the deceased man "look dead" to him.

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Whilst the stoning is over the accused, Daley, is saying, "I am going out now, I soon come back", then both men mounted the bike and rode away. The order in which it is given seems to suggest that it is when the men are going that he is lifting up the deceased man and seeing blood coming from his right ear, just a little from his mouth. He went to May Pen police station and made a report; police came back to the spot. Now, he said during the time that the deceased man was being stoned, either in the shed or whilst he was running across, before he fell on the ground, the deceased man had no weapon with him at all.

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Now, when the deceased is running out of the shed to go across the ramp - remember the yard there? - to go across the ramp the accused men had moved away. Remember he pointed out from the witness box - they are always pointing out distance to where Mr. Andrade is - he said about a yard away. Now, Members of the Jury, remember later on in his cross-examination we tried to get him to point out where the accused men were standing, when they were throwing the stones, but remember he said he couldn't point out where they were at all. Indeed he is the person who is connecting the picture with these stones, pointing out the ramp with the various things as I have explained to you already.

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Well, when he is cross-examined by Mr. Hamilton at first he said he was sure that the stones hit the deceased in his head. Then it was suggested to him that it was a made-up

10 story - they are making up the story about stoning this man, and he said no, he doesn't know anything about that. He couldn't say whether the deceased tripped or not or whether he butt his toe, all he could say is he saw him fall on his face. He didn't see the deceased drop and hit his head on the ramp. In other words then he is telling you that there is this empty space between the ramp, as you can see there. It is concrete going up slant, it is not a level thing you know. He couldn't tell the distance between them.

20 Now, you remember, Members of the Jury, that at first he was trying to say that the deceased's head didn't go across - if you look at the picture here, I think picture - which is it - three, which gives you the best view. You can look at the picture if you wish, Members of the Jury. He is trying to say at first he didn't go across to the left hand side of the ramp, you see. Remember that? He said, 'no, his head didn't go over there at all.' His chest was sort of hanging in the air in the empty space over here, but remember when he was asked to demonstrate down there with the two pieces of sticks and the pencil he showed the deceased lying fully across the ramp, his body on the left hand side of the ramp, whilst his feet is over the right hand side of the ramp here. Well, he said that that was the position the deceased man fell in.

30 Then he was asked about the deceased carrying a gun. Remember he is a ranger. Yes, he did see him carrying a gun and the gun is kept inside the factory. Remember later on the suggestion put to him, that the deceased man was running to the factory to get his gun? Well, Members of the Jury, no direct evidence has been put that that was what was in the deceased man's mind. Remember what the deceased is saying - if you think you had stay there until I come back - then he started running, going in the direction of the factory. At first, remember he is insisting, Mr. Laidford, that the direction the deceased man running was not in the direction of the factory at all. He said the factory is somewhere beyond. He didn't say exactly where, but later on, remember, when Mr. Atkinson is cross-examining him he said, yes, that where the deceased man was running you could go in that direction to get to the factory also. So there you have all those little matters where he differs as he goes along. I don't know whether

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he is so stupid - can't explain himself properly - or as the Defence is suggesting, he is not speaking the truth at all; he is making up the story. It is a matter for you, Members of the Jury.

He said he did not hear the deceased man say anything to indicate that he was going for his gun. He is asked a lot about whether these men were entitled to pass through the property and go on the line and cut wood, and the witness said, "I don't know." Well, remember Members of the Jury, it turns out that his job is to sweep up sisal on the factory; so you may think he is not misleading you when he says he doesn't know anything about the K.V. line or anything. Remember he has been working on the property for some thirty-odd years, but it is for you. He remembers that he had seen the men on the week before riding through the property, both of them, and on one occasion he saw them with an axe. He didn't see them with any cutlass, neither did he see any cutlass or axe on the 22nd.

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Remember what these men are saying, they had gone for the tools, because they wanted to give it to somebody whom they had borrowed an axe from and they had it with them. This witness said he didn't see any.

Now, it was being put to him that when he was in the shed he had a cutlass cutting up this chicken. Well, there could be no doubt in my mind, members of the jury, that what was being put to him was a cutlass, lo and behold when these men come on they tell you that it was a cutlass that was worked down so it is now a cutlass-knife. I don't know. The suggestion put to him was that he had a cutlass. He had no cutlass, he said knife. Whether it is a cutlass or a knife nobody asking. The accused is saying he had a cutlass worked down to a knife. Remember the suggestion is that the deceased man was trying to take away the cutlass from this witness, Mr. Laidford and he said no, no such thing happened at all. Indeed, all the witnesses who were in that shed said no, the deceased never tried to take away any cutlass from this witness at all.

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Well, of course, you remember he is cross-examined at considerable length about the argument, the conversation that the accused men are having with the deceased when they came up to the door and it turns out, you may well think, that this Mr. Laidford either hasn't heard half of what was said because he admitted it in the end but he stoutly denied that there was any talk about these men coming for wood. Everybody else says that. He said he never heard. He said they asked for money. I don't know if he is trying to say that they came to rob because it is sort of common ground that they came for wood and said if you are not giving me the wood then pay me for it anyhow. Mr. Laidford said, not correct, he didn't hear anything about wood at all. He said they came and asked about money but remember he is admitting here that he didn't hear the whole conversation and he wasn't listening too keenly.

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Well, what he said was happening between the accused men and the headman, the deceased, was he would call it a few minutes, they were not arguing for a long time. Well, you remember when he is further cross-examined he is saying that he was sure that the stone had caught the deceased in his head and a stone thrown by each accused man had caught the deceased in his head. Now, he said that no stones, as far as he could remember he didn't see any stones hit the deceased man whilst they were being thrown at the deceased in the shed and then he went on to say that he never saw any hit the deceased when the deceased was running. The first stone hit the deceased whilst the deceased was on the ground. Now, members of the jury, this is what he is saying to Mr. Hamilton in cross-examination, you know, and that is exactly contrary to what he had said earlier to Mr. Andrade because he said earlier on that the first stone that hit the man, he was still running, he can't say where nor can he say if that stone caused the deceased man to fall down. Here he is changing now and putting it a little different. Is it that he saw stones being thrown? You are to make up your mind but in so far as he said the first stone hit I don't know if you can accept his evidence because he has said two different things; stone hit him whilst he is running and the first stone never hit him whilst he is running; first stone hit the deceased whilst he is on the ground.

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You have to make up your mind whether the first version that he gave to the crown is correct; stone hit him whilst he is running. It is for you. The important thing is for you to say whether these accused men were throwing stones at the deceased man because they are outrightly denying that, they are saying they never threw any stones at him at all.

Now, you remember another suggestion was being put to him, another part of the defence that it is when the both accused men went up to the door of the carpenter's shed the deceased was sitting on a stone there. Now, in this regard, you remember that one of the crown witnesses backed up what the defence was saying that the deceased man was sitting down, remember this is Mr. Burke but he can't say what he was sitting on. Remember Mr. Burke is in the mechanic shed. He is supporting what the accused men are saying that the deceased was sitting but they are putting him as sitting on a stone and remember he is taking up this stone and throwing it at them. Mr. Laidford said no, he was not sitting on a stone, the deceased was standing in the carpenter's shed and he never threw any stones at the deceased man at all.

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MR. ANDRADE: The accused.

HIS LORDSHIP: ... never threw the stone at the accused. I beg your pardon. Here you have again this difference between what Mr. Laidford is saying and what the accused men are saying in so far as throwing stones are concerned and in so far as sitting down he is putting the deceased as standing not sitting so you have to make up your mind whether the deceased was sitting or standing and if he was sitting, was he sitting on a stone and if he was sitting on a stone did he intend throw the stone at the accused men. All these are matters for you. Remember you had the photographer giving evidence and Mr. Laidford cross-examined about these proofs.

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Now, the position that the deceased man is lying is not the position he was in at all, when he fell. You see he is right across the ramp, and I think - you see that little white

circle - you remember - still looking at picture three, I think this witness agreed that there was blood stain - that blood stain was on the ground and apparently this deceased is being moved and being placed in this position afterwards, perhaps you may think, by the police. It is for you.

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10 He was asked about the stones there, you remember, the size of the stone, Members of the Jury, one thing I ask you to do is, to bear in mind when you are looking at these photographs: photographs, they represent in a true fashion where the body is, but perhaps photographs in so far as the size of things and the distances are concerned, they can be very deceiving; so you bear it in mind when you look at these things. I don't know if you should rely too much on the size as presented in the photograph there. It is a question of fact for you. Anyhow, you can  
20 apply your common sense.

Remember he is saying at first, Mr. Laidford, when he is giving the size stones that were thrown at the deceased man, you remember how he cupped his hands and showed you those stones? That looked fairly big to me. I don't know. You saw.

30 When he is being cross-examined he is saying the stone is the size of a grapefruit. I don't know what size grapefruit he was trying to say. He was asked about the stones scattered here in picture three. You see those various stones there? He is giving you the impression that those were some of the stones that hit the deceased. It is a question of fact for you. You see them also in picture five - stones scattered around there. Anyhow, his actual evidence is that the stones were about the size of a grapefruit. That is what he said.

40 Well, you remember he was asked about the posts that he saw brought there and those in picture - what is it? - picture one, I think. He is saying that those sticks under the guango tree there - you see the guango tree? - he thinks those are the ones that were brought by the factory there.

Well, you remember what was being put to all these witnesses, that the accused man, Daley, said - this is when the incident was over - he was going to get a truck - get transport to come back. Well

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all the witnesses said he said he would soon come back, or something to that effect. That was what they were saying.

Well, members of the jury, again he is repeating to Mr. Atkinson, when he is being cross-examined, that the first stone that hit the deceased, the deceased at that time was lying on the ground and insists that both accused men were throwing stones at the deceased whilst he was running outside but he can't say if any of them hit him. Then, here again, it is contrary to what he is saying at first. You have to make up your mind whether you can accept any of this evidence at all as to that part of it, as to whether any stones actually hit the man or what or indeed if any stones were thrown because the accused are saying that no stones were thrown.

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Well, it is being put to all these witnesses the company had offered a reward of five hundred dollars if anybody could give evidence leading to the arrest and conviction for the death of Mr. Smith and indeed when defence was addressing they are saying that this is why these men are giving evidence because of the hope of the reward, getting some of the reward. I don't know, members of the jury. This amount suggested is five hundred dollars. The witness, Mr. Laidford, is saying he hasn't heard of any reward at all. When the corporal came the corporal is saying he is giving his statement the very day of the incident. If that is true you can say whether he is looking any reward or what, I don't know, you see, if his evidence is coloured by money, getting the reward or what.

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When he is cross-examined by Mr. Atkinson he said he would call it a fuss was going on between the deceased man and the men in the carpenter's shed. He didn't see the deceased man stumble, he only see him drop. When he is using the word, stumble, he said after he was falling, he said he stumbling, trying to get up. By that I take it to mean that he was trying to raise up himself. He knew that the deceased man fell front ways but he can't say what part of him hit the concrete but, again, members of the jury, I don't know what is wrong with him, he said that the deceased

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10 man's head didn't reach the concrete but when he is showing it in the picture for you he is showing that where the circle is, the right hand side, the white circle, that was where the deceased man's head was resting because he saw blood there but it was at that spot but he couldn't say if the deceased' right side of the head hit that side of the ramp when he fell. Well, you looked at him there, he showed you how and he is saying this man's hair was low cut. You can look at the picture there and see that the hair is low cut also. Well, that was what he had to tell you, Mr. Foreman and your members.

20 Remember we had then corporal Uton McFarlane, the photographer. He went there to Inverness about four to five o'clock the evening and he took photographs. He developed them, made enlargements and he put them in the booklet form, which you see here before you. Picture one, you see the mechanic shed there with the ramp by it and you can see in the right hand corner there the carpenter's shed with the door there, generally showing the shed. Number two shows sections of the bottom shed. You can see it plainer there on the right hand side there, a little door there; it looks like somebody is there and he is saying that that was where the deceased was alleged to have run from to go across to the carpenter's shed. You can see how different the angle looks there, members of the jury, in  
30 picture two, that is why I say you have to be careful when you look at these photographs so, please, when Mr. McFarlane is telling you that that is the shed that the deceased was supposed to have run from that is hearsay but it is supported by the rest of the evidence if you can say it is so.

40 Then, three is showing the body of the deceased lying between the ramp and number four also. Four shows deceased lying between the ramp and you can see several stones around the body there, he says, while five shows the deceased again with the bloodstained circle. You see it on the lefthand side there - righthand, beg your pardon. Picture five, that is where the blood is. Now remember that when he is cross-examined he says about that circle the edge of the concrete there is broken. That was what he had to tell you, Mr. Foreman and your members.

Then we had Mr. Joselyn Boucher. Remember he

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is the brother of the deceased man and he is identifying the body to Dr. Morgan, who did the post mortem on the 24th of April, at the Johnson's Funeral Parlour at Four Paths. Anyhow, he said that the deceased man worked from a labourer right up to the manager on the property. Remember he had been there about thirty years, and he said he was a general - a sort of general man in charge of everything, and indeed Mr. Fennell is saying the same thing too.

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Then Members of the Jury, you had the witness, Roy Burke. Now, he is the tractor driver and perhaps you will remember that this is the gentleman who had one arm, because you remember when the accused men is referring to him - as passing the one-armed man. You may well think that when they passed Mr. Burke was there. It is an inference for you again, Members of the Jury. Anyhow, according to Mr. Burke he was in the carpenter's shed - sorry, in the mechanic shed on this day. He puts it about mid-day - remember? - and whilst he is there he sees the two accused men ride up on the bike. They went to the bushes, spent about ten minutes and then came back, then they went and parked the bike about one and a half chains from the carpenter's shed, walked to the shed. Here it is this witness is saying that both of these accused men had nothing at all in their hands when they were going into the carpenter's shed. Well, at that stage the deceased man, Smith, Mr. Laidford and the other gentleman, Mr. Smith - what other Smith he is? - Milton, Mr. Milton Smith - they are all in the carpenter's shed. Remember Milton and Laidford - Ceaphas is cooking whilst this witness is putting the deceased man as sitting down in there; but remember where he is in the mechanic shed the zinc is only half way up, he can't see what the man is sitting down on. Here you have it, Members of the Jury, the accused men are saying the deceased man was sitting on the stone against what Mr. Laidford and what Mr. Milton Smith were saying. It is for you.

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Anyhow, according to this witness, Mr. Burke, both men go up to the door and they were talking, but he can't hear what they

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10 were saying, because, perhaps because of the distance he was away. He likened what was happening there to a fuss, but remember he can't say who was speaking in there. Then after that both accused men started to throw stones in the carpenter's shed. They had picked up the stones from outside. You see - so here it is you are being asked to say, well these stories that you hear are so different. Members of the Jury, it could be that from the time Laidford looked around he saw the men with the stones in their hands, but remember he is the only one mentioning iron, but everything else stays together. But this witness is seeing them picking up the stones from outside and throwing them at the deceased inside of the carpenter's shed. He said they were not so big; stones that a man can manage. I don't know what that means.

20 Then this deceased got up and went into the lock-up room - storeroom, as it is called - in the carpenter's shed and the accused men were still throwing stones on the door there - of the carpenter's shed - on the door of the store-room; beg your pardon. Well, the deceased remained in there for about five minutes, then he came outside. Then he came back out and he is running from the carpenter's shed now towards the mechanic shed. Now, at that stage he puts the witnesses - sorry, the accused men as being about eleven yards away. Remember he pointed out from the witness box here to the side of the dock there? The accused men had removed that distance away from the door of the carpenter's shed. Remember he pointed out from the witness box, here, to the side of the dock there the accused men had removed that distance away from the door of the carpenter's shed. Whilst the deceased was running across now he sees both accused men and he says that they had stones in their hands at that stage, when the deceased is running out and running across the yard to the ramp but he can't say if they threw any stones at him at that stage, whilst he is running. Now, remember, here again is the difference of Ceaphas now running after the deceased man, in other words Ceaphas gave you the impression that he came out first and the deceased behind whereas the witness is saying that the deceased came out first and Ceaphas came out behind him.

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Well, the deceased is running towards the ramp and then he dropped and whilst he is on the

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ground both men started to throw stones at him then, whilst he is lying on the ramp. Now, remember he has put that distance whilst the deceased is lying on the ramp to where the men are throwing stones as being the same distance again from the dock, here, to the witness box; from the dock to the witness box about eleven yards, estimated; that was where they were then they were throwing stones but again, remember this witness can't say if any of the stones caught the deceased man. Now, members of the jury, you were told that why this man couldn't say any stones or what not; remember later on he is saying the stones are being thrown, one comes inside the shed where he is and he got out through the window and runs away. This is all for you, members of the jury.

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Again, you remember when Mr. Smith comes he is telling you about the pot being hit off and you haven't heard anything about it from this witness, Burke. What is more natural than Mr. Burke has run gone about his business after this pot incident is taking place because if the incident is right, by then Mr. Burke is making his way to the bookkeeper's place whilst the pot incident is going on. You say what you make of it. Nobody else is mentioning the pot incident.

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Well, this witness, you remember, definitely says that he can't say if any of the stones thrown whilst the deceased man is on the ground hit the deceased at all because you remember he is saying stones going through whilst he is in the next shed and he is jumping through a window and going to the bookkeeper, that is Mr. Lawson's quarters, he is spending about five minutes there then whilst he is at the bookkeeper's residence he hears the motorcycle start, when he came back to the scene he didn't see the two men at all. The deceased was same place on the ramp. Then, at that stage, according to him Ceaphas is going up and raising up the deceased, calling to him but, apparently, the deceased didn't answer.

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Now, this witness, you remember, didn't go to look at the deceased man at all but he said that the deceased fell on his face. From

the deceased fell he never got up. He didn't try to raise up. he just stayed same place where he fell. Is this witness giving you a truthful account of what was happening there, members of the jury?

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10 Now, he can't say how many stones are being thrown at the deceased while he is on the ground but he knows that there were several stones. Now, he never heard any of the accused men say anything at all during the time they were throwing stones at the deceased man either in the shed or whilst the deceased man is lying outside on the ramp. Again, he is confirming what Ceaphas is saying that it wasn't a cutlass that Ceaphas had at all. Ceaphas had no cutlass.

20 When he is cross-examined he is saying that where the deceased man fell from the ramp he was - he the witness was about half a chain away from him at that time. Remember he is in the mechanic shed and he gave you his evidence. He says "when the deceased running, I believe he tripped at the ramp and fell". Then we went on further to say that he definitely butt his foot, against the ramp and fell across. Now, this witness is definitely saying that when the deceased man fell he hit his chest against the edge of the ramp. Remember this is part of the defence, you see; fell and hit his chest against the ramp, with his head over on the other side of the concrete. Members  
30 of the Jury, you may think that that is what happened. I don't know. It is a question for you, because remember blood is seen at the edge of the ramp there, you see, and he is saying that he hit his chest on the inner edge here, you see that, of the concrete; and he agrees that the chest is lying across there and the deceased man's head is over on the left hand side of the ramp.

40 Now, he did not see the deceased man throw any stones at all. It was put to him and he said it is not correct. Now, here you remember - well this man is sort of supporting what the accused man is saying; they are more or less saying what he is saying. The only important difference is that the accused men are saying that the deceased man took up the stone he was sitting on and threw it at them. Mr. Burke is saying that never happened at all; he never threw it at all. Of course, he goes on to say that the accused men did throw stones at the deceased whilst he is lying on the  
50 ground by the ramp; but he can't say if any caught

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him. That is the important difference between what this witness is saying and what the accused men are saying. And again he confirms that the deceased man had nothing in his hands at all when he was running.

Now, you remember, Members of the Jury, that he said at one stage he saw about two stones thrown at the deceased whilst he was on the ground, and he immediately corrected it to say that was a mistake, it was several stones. So you have to say whether this witness is telling the truth or not. He did mention two stones at one stage, but he corrected it, as I said. He can't say - he didn't see any of the stones hit the deceased whilst the deceased was lying across the ramp. 10

Now, he said as the deceased fell down Ceaphas went up to him, but he didn't stay any time. He didn't touch him then. You may ask yourselves why, if this is really true. This is because the stones were coming down on him, why Ceaphas had to take away himself. So Ceaphas tells you when he went out the stone hit him. It is a question of fact for you to say whether these men were throwing stones or not. And he confirms again, Members of the Jury, when he was cross-examined by Mr. Atkinson, that from the time the deceased tripped and dropped he did not move. You remember one of them is telling you - Mr. Smith - when we come to deal with his evidence - how he is trying to lift up his head like. We will come to that. 20 30

When he was running through the window, this is this window, jumping through the window and going to the book-keeper's the men were still throwing the stones and the reason why he ran is because one of the stones had come in the shed at him. Rather, not at him, the other witness of fact, this gentleman Mr. Milton Smith and this thing, as it were his workshop. He is sitting in there writing up his estimates. The deceased man is standing in there and Mr. Ceaphas Laidford is there cooking. Then the two men came up. He saw them parked the motor bike. He didn't see them again until the next thing he sees them come to the door of the carpenter's shed. He is the gentleman 40

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who is giving you a lengthier conversation taking place between the deceased and the accused men. This is what he is telling you happened: The accused Daley said, "You is the headman"? - speaking to the deceased. The deceased is saying, "Yes." The accused Daley is saying, "Wey wi wood sah?" The deceased said, "I don't know nothing about any wood." Meggie said, "Where is the wood. Since I can't get the wood I want some money."

10 Then he said loudly - this is the witness Smith - "It look like these two men mad". And the deceased is saying, "It look like dem mad fi true." Now, he is the only person telling you about this part of the conversation like that, you see. Then the accused Daley is saying, "I have a good mind to shoot dem in dem rass clawth." The accused Meggie said, pointing to him, witness Smith, "You boy, a you boy ride di horse?" Remember he is riding a horse on the

20 Saturday when he had seen these men on the property. He had seen them also on the Thursday, but he was checking cows at the cow pen at that stage, but on the Saturday he was riding a horse when he saw the accused men. Then one of them says, apparently he doesn't know which, he doesn't say, he is speaking to Ceaphas now, "You black bwoy, move, you not in it". Now, Ceaphas is telling you something to the like effect, he is being told to move by

30 Meggie but at that stage Mr. Smith, the deceased man, is patting him on the shoulder telling him not to move. Now, remember during all this Mr. Smith is still writing up his estimate, according to him, and the next thing he knows is that stones start to come in that side there and both accused men starting to throw stones inside the shed but this day, he says, he didn't know who was throwing the stones and one of them hit him and he is, according to him, he is

40 cramped and later he is shocked too. He can't say what size stones because he was so shocked. Then again he is telling you about the make of the shed which I have told you about already. Then, the deceased man went inside the storeroom and closed the door and at that stage both accused men are still throwing stones inside there; he can't say what particular place because this time he is in the shed. Whilst the men are throwing the stones he is saying, what happen,

50 but nobody is answering at all, they just

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continued throwing the stones.

Now, he puts the accused men as being immediately by the door, in other words they are throwing stones and then the deceased comes out the storeroom and he runs, apparently, past them and he is going towards the shed and whilst deceased was running both accused were still stoning him. Now, here you have another witness supporting what Mr. Ceaphas is saying, whilst he is running across the ramp the men are throwing stones at him. Deceased fell beside the ramp and remember now this is the gentleman whom I already pointed out to you who is saying that the deceased fell down on his hands and remained in that position. The men are still throwing stones at him. He can't say if any stones catch him, you remember, and it is in that position, he can't say, on his hands, as it were, his face and chest hadn't touched the ground yet. He is trying to escape because his leg is cramped. Well, apparently, it is that time he is trying to go in the storeroom because this man, Meggie, is trying to come at him with the post remember he is telling you when he is close to the storeroom Meggie coming at him with the post and the door closes and he sees Meggie hit the pot off the fire and then goes outside back with the post. Now, remember he can't say what is happening to the deceased man during that time.

The next thing when he comes out he sees the accused man lying across the ramp - the deceased man, beg your pardon. Now - I am sorry, members of the jury, this is the witness who is putting the accused men as being from here to the door there; that is the distance they are from him when they are throwing stones at him. Now, he is putting it much nearer than the others. Here again, members of the jury, you have to make up your mind whether these men are really trying their best in their ignorant way to tell you what happened. Remember our Jamaican people on a whole have no concept of time. Remember he was telling you that the men were stoning for five seconds when



Meggie left and started coming at him with the post. I don't know how many stones can be thrown in five seconds. Perhaps it is more than that. He had no idea of the time.

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10           Anyhow, the important part of his evidence, members of the jury, well, let me give you this first. Remember that after the men had left some woman is calling out. Remember Ceaphas running and after the men left he went and felt deceased man's pulse and his heart and he thought the deceased man was dead. Now, again this witness is reminding you that Ceaphas never had any cutlass at all and it wasn't true that the deceased man was trying to get the cutlass from Ceaphas to go at the accused men. Remember that is part of the case for the defence, only that the cutlass has turned round into a knife, a filed down knife. Remember he is trying to go somewhere to go to telephone, to make a 'phone call but the telephone was dead. He came back after ten minutes. Was he going to the office or where? - Yes he went to the office, he said. He limped to the office, tried to get a telephone, but the phone was dead. When he came back about ten minutes later, he puts the deceased as lying in the position that he is in picture three. Now, somebody is making a mistake, Members of the Jury, because you remember it is when the constable is coming, because of rigor mortis, the hand is under the body and he is perhaps stretching him out and putting him in that position. One thing you may be clear about, whenever the body fell it is being removed at some time or the other, if the doctor's evidence or the constable is right, because when they came they saw the deceased man lying in the different position. The important part, the thing to notice in so far as Mr. Smith's evidence is concerned - remember he is telling you here in court - and I have already pointed it out to you - that the deceased man fell with his hands raising up off the ground. In other words, the front of his body is not touching the ramp at all. But when he gives his evidence in the preliminary he is cross-examined and he was asked, 'When deceased fell he fell facing forward and ended up lying across both arms of the ramp. Deceased fell on his stomach with his face downwards. The deceased chest was the first part of his body which struck other side of ramp. The part of the ramp the deceased chest struck was concrete?' Now, that was what was put to him, Members of the

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Jury, and remember he is saying, he was trying to say he didn't remember. Then we adjourned at lunch and he thought it over and came back and said he never said any such thing at all. He denied. Indeed, the deposition was put in to contradict him on this part of the evidence. Now, Members of the Jury, he is saying the deceased's chest was the first part of the body which struck the other part of the ramp. Then I read another sentence, the part of - the section where deceased struck was concrete - now he is admitting that he said those things at the preliminary enquiry, but he is denying that he said all the rest. Now you remember those two statements are coming in between. He said 'yes I did say all those things and those are true' but he denies all the other things about this man falling down on the chest and hitting his chest against the ramp. Remember I pointed out to you, when the deposition is put in it is done to contradict what is said before you here. You cannot accept Mr. Smith's evidence on this part of the evidence, because he is saying two contrary things and he has given you no explanation as to why he said it.

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What I want you to bear in kind - I remind (sic) you - when he is saying - when it is put to him that the man fell down and hit his chest on the ramp, that is no evidence of that - you see what I mean? Indeed you have that evidence from the gentleman, Mr. Burke; so if you think that that is the truth, Members of the Jury, you may accept it, but in so far as what this witness is saying at the preliminary enquiry, that the man fell on his chest and hit it against the ramp, you can't accept Mr. Smith's evidence on this point at all, for the reason I have explained to you already.

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Now, he has said this major inconsistent thing in his statement here. It is for you, Members of the Jury. You disregard this part of his evidence and look at the rest of it and say whether you can accept any part of it, and say whether, having regard to what he is there saying, you can accept any part of the evidence at all. It is entirely a question of fact for you; but you can't act on his evidence in so far as how the deceased man fell.

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Well, he told you, Members of the Jury, that he was in shock for several days after. Well, he was asked whether he was in shock here in the box giving evidence. He said no, he wasn't in shock here. Not everything he said was subject to shock. Again he is repeating that the deceased man was authorised to carry a gun but he does not know where the gun was kept and he is denying that any machetes were kept in the carpenter's shop.

10 Remember how vehement he was about that because as long as he is in charge of the carpenter's shop no cutlass is there. He doesn't use cutlass in his carpenter's work. It is for you to say, members of the jury, whether you can accept that part of his evidence.

20 He did see blood coming from inside the ear of the deceased man. He can't say if the deceased man had injuries to his head. He was alone in the shed when Meggie came with the post. Remember my comment on that already according to what the defence has said and he said he can see from the carpenter's shed into the mechanic shed and vice-versa and he insists that there was no cutlass in the carpenter's shed; that Ceaphas didn't have a cutlass at all. Deceased was not sitting, he was standing. Again, different from what Mr. Burke is saying.

30 Now, these two witnesses, you remember, both Mr. Smith and Mr. Burke, the question of reward was put to them and they said they never heard about any reward at all; they didn't know if it. You must say whether you can believe them or not. Well, according to this witness he was trembling because of what happened there that day. Now, again, when he is re-examined he is saying - oh, sorry, he was still insisting that it was 'hands down' - when he was re-examined - where the deceased fell across with his hands on the ramp.

40 As I said you can disregard that part of his evidence altogether.

Then, members of the jury, you had the evidence of Mr. Everland Fennell. Now, he is the general manager of the company and he told you that the company owns the Inverness property at Sandy Bay and he is telling you again that the deceased was the farm manager, was the headman and the ranger; in other words, was everything there. He was in charge of the general running

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of the estate.

Now, on the Sunday the 20th April, this deceased had spoken to him. They went on the property where the Public Service line was being cut. They saw a number of posts, some freshly cut and he had them removed. There were one hundred and sixty-five pieces. He was of the impression that Silvera still had the contract so even when this general manager here is contradicting Mr. Lawson he is a mere bookkeeper because he is saying that he thought Silvera still had the contract.

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Well, he had the posts removed and remember as I said earlier on when he looked at the picture, those under the coconut tree and under the guango tree he said those are not the posts and the posts are still at the compound there. Now, apparently, what he is saying is that he didn't travel along the whole distance of the line. Remember the accused men are saying that they piled up posts at two different spots along where they were cut but this Mr. Fennell is saying that he only went to one spot there and took up the posts because you remember, the accused men are saying it is over three hundred posts so I don't know what happened to the rest of the posts. Mr. Fennell is only removing those from that spot; one hundred and sixty-five.

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Anyhow, the important thing he said was yes, the company had offered a reward of five hundred dollars for the conviction of anyone who could give evidence leading to the arrest and conviction of the person responsible. Laidford, Smith and Burke are permanent employees, yes. Remember these men are working there for over thirty years and the deceased also. Well, he can't say if any of these men knew of the reward. Remember the reward had been told to the superintendent of police in charge of the parish.

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Then, members of the jury, we had the evidence of detective acting corporal Cowan. He was apparently the officer in charge on the 22nd of April, one o'clock until the afternoon. Mr. Ceaphas Laidford came and made a report. He went back to the factory compound with

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Ceaphas. There he saw the body of the deceased. Now, he puts it that the deceased' feet are over on the right hand side of the ramp, here at the bottom but the head is completely off the left hand side of the ramp, there, members of the jury; you remember? In other words, his head is not lying on it at all so it is evidence that somebody must have removed or I don't know if he went down there, I don't know, perhaps you may think that it was removed. Anyhow he puts the deceased man's head as across the other side of the ramp, his body is somewhere where you see the board lying there now, as it were, which is in a different position from where the other witnesses are saying it was. His right foot was resting in the middle right side of the ramp and his head was below the ramp. Remember I pointed out those to you? Well, the body was removed. Remember he is telling you about the, Mr. Germaine, the officer thought that rigor mortis would set in, because the hand was under the body, so it was probably removed and put in the position as it appears in the picture. He took observation in the shed. He saw several stones of various sizes scattered around; and he gives the impression that the stones were freshly put there. Disregard that, Members of the jury - total nonsense. He took a statement from Mr. Milton Smith that same - Laidford on that same day, also Fennell. He is not sure, but he thinks Sydney Lawson was not the same day but sometime after. He doesn't remember when, but he thinks Howard was taken the same day. Mr. Burke was taken the same day. Much is being made by the defence that these persons who are giving you the evidence are telling you untruth. In other words, because - with the hope of getting the reward money. First of all I don't know if they would sell their souls for five hundred dollars and it is to be divided among all of them. They are being asked. Here you have the evidence. You have to remember the vital differences here. Were stones thrown or were stones not thrown. You say, Members of the Jury. Anyhow, it was put to them that they are not speaking the truth, because of that. Here is the constable saying he is collecting statements every day. Remember he is taking the statement. He has sent for the doctor and the photographer and whilst they are on their way he is taking statement from these people there. Anyhow, you remember he is saying he took it the same day from Howard, that is a

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tractor driver who is under the guango tree;  
but Mr. Howard is saying it was the day after.  
You say.

Now, this officer is telling you he only heard about the reward only two weeks after. Dr. Morgan came on the scene. Doctor gave instructions. The body was removed to Johnson's Funeral Parlour. On the 24th he was present when the doctor did the post mortem on the body of the deceased man. It was identified by Mr. Boucher. He got in touch with Detective Corporal Donaldson and Corporal Donaldson took the picture - sorry, McFarlane. Beg pardon, it was later on he got in touch with Detective Donaldson at Old Harbour. On the 14th of May he is going, taking the men from there - or the 16th he went? Anyway some day he went, taking them from Old Harbour - don't know where he took them to - May Pen or somewhere, or Lionel Town. Anyway, he arrested them on the 21st of May, cautioned them, they said nothing. Remember I put my mouth in it and asked him why he didn't take up the stones inside the shed? Because defence is saying no stones were thrown in there at all. He said he had no specific reason for not taking up the stones. He said he thought it important, when he was cross-examined, yet he didn't get the photographer to take any photograph of inside there. If he thought they were really important he would first have the photographer take pictures of what he saw in there and then he would have taken the stones to show what size stones were being thrown. Unfortunately, nobody seem to have done that to say what size stones were being thrown or what. You have to go by what the witnesses are saying and look at the photograph to say what shape stones are there, and I say you mustn't judge the size too much from the photograph. This witness is saying he didn't hear any mention of any iron at all. That would mean, Members of the Jury, if he is speaking the truth, it would mean that Mr. Laidford when giving his statement didn't tell him of anything about iron being thrown. Here again, it is for you to say whether the officer is making a mistake or Mr. Laidford. It clearly lends itself to the inference that if he didn't mention any iron to the officer in the statement, that perhaps there wasn't any iron at all, or perhaps he didn't consider it important. He didn't mention it. Anyhow the officer is saying

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that he never heard of any iron at all, any piece of iron being there.

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10 Then we come to the very important evidence of Dr. Samuel Morgan. He is the District Medical Officer for May Pen and he is a registered medical practitioner. Now, on the 22nd of April, he is going to Inverness property. There he sees the dead body of the deceased lying on the left side but he can't remember whether it is on the ramp or not. There are several large stones scattered around him especially in the vicinity of the head, remember he was pointing out those in some of the pictures and he made no notes of these observations that he saw there so he is telling you that from memory but of the post mortem examination that he did he made notes from those and he refreshed himself from those and gave you his findings.

20 The body was identified by Mr. Boucher. He said externally there were signs of haemorrhage from the right temple, and haemorrhage is just bleeding, from the right ear and he pointed inside the ear, remember. There was a small laceration on the left side of the chin. Remember when Mr. Smith was trying to tell you that there were two cuts on the chin and feeling his chin, like that; the doctor said it was only one he saw. That was all the external injury he found.

30 Now, on dissection there was a fracture of the skull on the right margin of the occipital and right parietal bones and remember he showed you at the back of the head there, somewhere right behind, right there. There were signs of haemorrhage, bleeding again, at this section of the skull. The haemorrhage penetrated the dura mater, remember that is the hard covering of the brain and involved all the occipital region and the posterior half of the right parietal. Remember he showed you the right side of the head, here at the back, that is the area that  
40 the haemorrhage covered under the brain.

There was fracture of the sternum, that is the chest bone, here, he told you of the upper third section. There were no other abnormalities in any other organs of the body and he gave you his opinion that death was due to shock and haemorrhage due to the multiple internal injuries to the sternum, head and chest. In other words, members of the jury, those were

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the two important injuries which caused the death.

Then he said the fractures of the skull could be caused by a stone that was flung and he went on to say that a fairly large stone with a strong degree of force would have to cause the fracture to the skull. Then he was asked, having regard to where he saw the injury on the skull there if the stone could have been thrown from behind by a person who was standing behind the deceased and he said it is possible and he said also it is possible that that blow could have been delivered whilst the deceased man was lying down. The head injury alone could have been responsible for the death and death could have happened instantaneously or a short time afterwards and a short time, according to him, members of the jury, could be up to two to three hours afterwards.

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The bleeding from the right ear was coincident with the haemorrhage of the section of the brain as he indicated and again he went on to say that it is possible that the bleeding from the ear could be the result of a separate blow. He saw no other injury to the brain. The head injury was more serious and would account for a quicker death. The laceration to the chin could be caused by a stone or by tripping and falling. The fracture of the sternum could be caused by a blow he said and he was told to look at picture three, what is that now? Anyhow what he is saying is that the blow to the chest could have been caused by a stone. I think, members of the jury, he was being directed there to say whether the stones around the body were the stones he saw or not. Of course, the doctor couldn't say that so that wasn't pursued or he told you he couldn't say it.

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Well, when he is cross-examined he said he found no swelling to the head - remember the coco there, he had got a blow there - he saw none at all, saw none; saw no laceration or abrasions to the skull on the outside. Remember laceration is just a tearing of the skin.



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10 Now, he said this - Members of the Jury, if you were told that eighteen or nineteen stones were thrown at this man's head from a distance of ten yards away, under normal circumstances, you would expect to find signs of external injury. Perhaps your common sense would tell you that. Anyhow, he said he didn't find any. Then he went on to say that if a stone is thrown and hits the right ear, he wouldn't necessarily expect to find injury to the ear. Not even a little bruise? Well, Members of the Jury, I pause here to say that this doctor is like any other witness that comes before you. Of course, he is supposed to be a trained person who should be able to help you in so far as his expert knowledge is concerned, but if you hear the doctor talking rubbish you can disregard it like the evidence of any other witness before you. Perhaps I'll illustrate - as a boy stoning mangoes and a stone clap you in you head you either see a koko come up or you get cut. You standing ten yards away throwing stones and hitting any part of your body, you may think with a stone, unless you have marshmellow stones, that you don't see injuries on the body, he didn't look, or he looked and there was none. If he looked and there was none, it means that Mr. Laidford can't be telling you the truth. It is as simple as that. Well, he said he looked and there was none.

30 I believe he is insulting your intelligence when he tells you that - my comment on the evidence; you can reject it as you see fit, Members of the Jury.

40 Well, he went on to say that if the deceased man is running and trips and falls over the edge of the ramp, it is quite possible that he could have fractured the skull on the inside of the ramp here. - Sorry, the chest - the sternum; but he wouldn't agree that in the same one fall he could hit his head and fracture the skull also. He said it is possible and it is hardly likely. He is there to give you his expert opinion. That is a great point in issue here - whether he could have hit his chest when he fell down, the force he fell down with, he also hit his head. Because, remember what Mr. Atkinson said - he hit his head on the smooth surface of the concrete there that is why you don't see no external marks, but it could fracture his skull. It is a question for you, Members of the Jury. The doctor gives it as his

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opinion: that it is possible, but it is hardly likely. You say whether you will accept his view or not. And then you remember when he is putting them separately? - it is possible that you could fall down and hit your chest against the concrete there and fracture the sternum, and it is possible that you could fracture the head in the way it was fractured. But I think that he disagreed with that point - happening at the same time - hitting the chest, hitting the head at the same time, all in the same blow. That is what I interpret him to be saying. It is a question of fact for you, Members of the Jury.

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When he is cross-examined by Mr. Atkinson he said that unconsciousness would follow shortly after the blow to the deceased - I presume this is to his head - and he puts the time to be five to ten minutes after the person would become unconscious. Remember he was being asked the distance of the fracture of the sternum to the head and he eventually agreed - he didn't want to agree at first, but he eventually agreed that that distance of 18 inches - in other words, the two blows that are responsible for the death, he got both of them when he tripped and fell over the ramp: that is what I gather the defence to be putting forward to you. I have already mentioned that he did agree that separately stones could cause these separate injuries to the chest and to the head. Separately he could also, when he fell, hit both chest and head, that could be caused like that but for both he said, both chest injury and head injury to happen in the same fall he thought to be not every likely but it is possible and then he went on to say that it is not every case where a person received a heavy blow which caused damage internally that there is some external injury. So, there again, members of the jury, you have it. He said that it is not every time you get a blow outside that you would see signs of internal injury but not every time you would see signs of external injuries; that is what he said, members of the jury. You say whether you accept it or not. That is what the Crown had to tell you, members of the jury.

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(sic)

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These accused men, as I said, made unsworn

statements in the dock. Now, you must bear in mind that what they said was not sworn evidence nor was it tested by cross-examination but you must bear in mind that the law gives them this right. You saw them when they were giving their stories, did they impress you as telling you the truth? You must also bear in mind that the Crown must prove the case to you, they are not to prove anything at all.

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10 Now, the first person to give his story was Mr. Daley. Remember he told you that he is a welder, fitter and erector and at this time he was working on the one-thirty-eight k.v. line from Old Harbour to Parnassus. He is really employed to R.A. Silvera under contract to the Public Service Company. Well, apparently after three months, after they had been working there for three months they had an industrial dispute and the work closed down. Well a few weeks after himself and -

20 he refers to his brethren - me and my brethren, Meggie, that is the other accused man, went into Kingston and they spoke to the chief accountant Mr. McFarlane. He was asking them, apparently he was asking Mr. McFarlane when work was likely to start again and he, Mr. McFarlane, is telling him that he really couldn't say.

30 Well, he went on to tell you that Mr. McFarlane asked them to go on the line and cut some hardwood fence posts and they agreed to do that but remember he is telling you that they went from apparently the Monday, the Tuesday, the Wednesday and they cut wood those three days. Well, on the Thursday when they were going back now, remember, apparently riding their motorbike and so to the back gate of the compound. Well, when they went on the Thursday morning now the gate is locked and he tells you they went to the office where they saw two men sitting down. Well, remember he is not using any names when he is

40 telling you his story but these apparently, are Mr. Lawson and Mr. Smith, the deceased man, if you accept the evidence of Mr. Lawson because Mr. Lawson said he had a conversation with these two accused men. The accused men are saying there are at least two men but they are not calling any names so it is a matter of inference for you, members of the Jury. Anyway he said he is going towards the office and saw the two men there, he is going up in the passageway there and he is saying, love and the men didn't answer. He told

50 him that himself and his brethren, Meggie, were

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working on the line and the chief accountant, Mr. McFarlane from Silvera & Silvera told him to cut some posts, he said he didn't know a Mr. McFarlane. Remember he is telling them that Mr. McFarlane had sent them to cut the posts, to Mr. Lawson and he said he did not know McFarlane because C.I.C. now had the contract. Remember he said that Mr. Lawson went and telephoned himself but that he couldn't hear what Mr. Lawson was saying on the telephone but after the telephone conversation remember he is telling you that he called one of the workers and telling them to open the gate and let the men through and Mr. Lawson told him, "O.K., you people can go and finish cutting your wood". Here is where the difference is between what Lawson is saying and these two accused men. Lawson is saying he let them through to collect their tools and come back, the accused men are saying they let them through after the conversation with Mr. McFarlane and they went and cut wood. It is for you to say, as I said, members of the jury, who is telling the truth. (sic)

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Anyhow, to continue; he said he worked that day, same day, the Thursday from three-thirty cutting wood. On the Friday they went back again and cut wood. Now, they piled up some of them that day and remember he is telling you that the truck was to come on the 19th, that is the Saturday now, that is the day when the truck is to come for the wood. That was the day when the truck should come for the wood. They passed through on the Saturday morning and they went and brought out the wood now. Remember they are packed up in two piles, according to him and up to 5:30 they were waiting, the truck had not come, so they left. So on the Tuesday, according to him, the accused Burnett had his bike to pass at May Pen, so both of them rode to May Pen, got the bike passed and remember that the person who they borrowed the axe from wanted the axe, so they say let the two of them go to the woods for the axe and they went and got it. Now, when they went and picked up the axe and the cutlass, apparently he saw tractor marks - the markings of the tractor that the trailer left on the ground, and all the wood had gone - all the wood they had packed up there had

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continued

been removed. He apparently followed the tractor  
 and came down by the shed there now. I think it is  
 the mechanic shed. He saw the wood packed up by  
 the side of the shed, between the shed and the  
 coconut tree - you saw the coconut tree in the  
 picture there. They are saying - Daley is saying  
 that is the wood. They went and parked the bike,  
 went to this shed where they saw these three men.  
 Remember, as I said, he isn't calling any names.  
 10 These men are supposed to be Mr. Ceaphas Laidford,  
 Mr. Smith and the deceased man, Mr. Sydney Smith.  
 They left the axe and the cutlass by the bike, went  
 up to the shed. They saw the deceased sitting on  
 the stone in there. The other two men were standing  
 at the table cooking. One of the men had a  
 machete - this apparently referring to Ceaphas - but  
 the machete had been worked down now, until it  
 now reached the shape of a knife. Then Daley is  
 saying "love" to the men. They didn't answer.  
 20 Well, he asked which of them is the foreman. One  
 said, "Me is the foreman". Then he said to him,  
 "Why you remove our wood that we cut and left on  
 the K.V. tower line?" The man said, "Go and ask  
 the manager". "I keep telling him that I don't  
 know the manager. He said I have to go and talk  
 to the manager. I said I don't know him and I  
 have to talk to you, and either you give us our  
 wood that you take away, or pay us for it. The  
 man got up and got mad at us and said, 'as a  
 30 matter of fact unoo tek unoo rass clawt off di  
 property',; then he then rushed to the man at the  
 table" - Ceaphas apparently - "trying to take away  
 the machete." I don't know what he means by the  
 machete; machete or machete knife he means. He  
 said, "The man did well not to let go the  
 machete. He rushed to where he was sitting, take  
 up the stone and fling it at us. Then he rushed  
 go into the shed" - that is apparently the little  
 store-room now - and in there searching as if he  
 was searching for something. He run out of the  
 40 room through the door-way of the shed and say,  
 "Unoo stay dey till I come." He was running  
 towards the ramp. When he reached the side of  
 the ramp he then bucked his foot on the side of  
 the ramp and fell across the ramp with his head  
 and chest resting towards one side of the ramp  
 and his face looking towards the right side.  
 In other words he is falling down on the left  
 side. "He did not make any other move." Then  
 50 he turned to the two men in the shed and told  
 them they were going to get a truck to come for  
 the wood; then they rode out. Remember he is

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telling you they went to Old Harbour. He went to Mr. Vernon Vaz, the J.P.; explained to him what had happened and Mr. Vaz is telling them they were entitled to the wood, because they were hard-working and honest working men. He is trying to give you some of his character. Anyhow, he continued to tell you he left to get a truck to go for the wood, but he didn't get any truck. He went home. A few days later he was up and down the town. He heard rumours that they were saying that he and his brethren, Meggie, stoned a man to death, but he told the people it wasn't true. Anyhow he continued to tell you that he left to get a truck to go for the wood, he didn't get any truck. He went home a few days later and he was up and down the town. He heard rumours, that they were saying he and his brethren, Meggie, stoned the man to death but he told the man it wasn't true. Then about three weeks later, the 14th of May, Police detained them and from then he has been in gaol. He did not throw any stone. He did not go to those people with any ignorancy. This is what he had to tell you. In effect, members of the jury, he didn't throw any stones.

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Now, you remember he himself didn't say any thing about any of the threats which he is alleged to have made. He is telling you that he didn't. When we come to Mr. Meggie - he is telling you that he didn't threaten anybody, didn't throw any stones. Now, when we come to Meggie he is in effect telling you the same thing as what Daley said. He is an equipment operator living at Old Harbour Bay and he and his brethren, Frederick Daley were working on the line from Old Harbour to Parnassus. There was a strike and the job sort of closed down indefinitely. After the strike they went to Mr. McFarlane who asked them to go to the line and cut fence posts for him. They started cutting on the 14th and cut for three days. When they went back the Thursday morning that the gate was locked and they went to the office but he added that there the accused, Daley is showing the men there a letter with Mr. McFarlane's name and number. He gave it to one of the men and asked them to telephone Mr. McFarlane. He is adding details to the story here. He is

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'phoning but they couldn't hear because he was about six feet away. Then after the telephoning the gentleman was calling somebody to open the gate and that they could go away and they thanked him and they went. He said they worked 'till 4:00 p.m.; went back on the Friday and cut more wood and on the Saturday they went back. The Saturday now is the 19th when this truck should come for the wood. Eventually the truck didn't come. They hide their axe and cutlass in the wood and went home. Tuesday the 22nd they come to May Pen to get the bike passed. Daley is telling you that the gentleman who they got the axe from wanted it and they went back and got the tool then when they were coming back now they saw the very wood, the identical wood, according to him, packed up by the shed where he saw a one-hand man in the shed. Now, you say whether he is referring to this witness, Mr. Burke. Remember Burke had one arm.

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continued

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They went to the other shed where three men were, parked, leaned up the axe and cutlass and this was a different shed from where the man with the one-hand was; this is the carpenter's shed now. One man was sitting on a stone and two others were cutting up a chicken with a cutlass in the shape of a butcher's knife. They said love and there was no answer and Daley asked who was the headman, the one who was sitting said he was. Daley asked why he had removed our wood and he told him to go to the manager. Daley said he didn't know the manager. He was still asking why they take away his wood and he still said they had to go to the manager and Daley said I have to talk to you because I don't know the manager and either you pay us for the wood or give us the wood and the man getting vexed and said, "Tek unoo rawss clawt off the property" and he picked up the stone he was sitting on and flung it after us and when he did this he rushed in the store room and he didn't stay any time, we saw him rush out from there. He said, "Unoo stay there 'till I come" and while he was running he was looking back. Now, there was this bit of evidence that Daley didn't speak about, the deceased man was looking back.

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He saw him trip on the edge of the ramp and he fell. We did not know something was wrong with him. Then we said to the other two men, "We don't come to rob unoo. We don't steal. We take it the hardest way by going

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into the woods to cut wood to achieve bread for ourselves and our children" and we said, "All right, we going to look for a truck to come back and get our wood" and they went to their bike and went away.

Remember the part that he told us how he went to Old Harbour; the arrangement with a man to try and get a truck and telling us that the price was too high, that is how he puts it and they had to postpone it that time, according to him. The accused, Daley, told us he was going to Mr. Vaz and they were up and down after that. A couple days later they heard the rumours they were alleged to have stoned this man to death when the police came. His last words were, "I did not threaten no one; didn't throw any stones; did not kill no one." There it is, members of the jury, he is saying he didn't threaten anybody, he didn't throw any stones at anybody at all.

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Now, this witness, Mr. Donald McFarlane was called on behalf of the accused, Meggie. Now, he is director, accountant at R.A. Silvera Limited and also a secretary. He knows both men from January, 1974 when both were employed on this line. Now, I think this gentleman is telling you that they were appointed union delegates, I am not sure but this is coming also from Mr. McFarlane. Now, these men were employed on this line from Parnassus to Old Harbour and a part of it would have to pass through the Inverness property. Now, that contract has sort of closed down during May and perhaps in April also, I think, but the contract was not terminated. Remember there was a lot of talk about termination. No work has been done since the strike has been on and the work itself has been phased out until by about some time in May, I think, that they had sort of given up the contract.

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Now, remember that this is all taking place long before any giving up of the contract if what Mr. McFarlane is saying is correct. Now, whilst the men were on strike he told both accused to cut posts from the line. He wouldn't have to seek anybody's



permission to do that and it is common ground that whoever has the contract has the authority to cut posts or, at least along the line. They were to cut about three or four hundred posts. The company would send a vehicle for it.

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10 Now, you remember how he said he knows that  
(sic) it was the week of the 20th because he went to  
Cayman on the Friday and came back on the Monday  
and it was the day before he went to Cayman that  
he had this telephone conversation with this  
gentlemen. He couldn't say exactly who it was  
but perhaps you may well think it was Mr. Lawson  
and here again I remind you that he is saying  
that he told this gentleman that the accused men  
had authority to go on the line and he had given  
the men authority to go and cut the posts.  
20 Remember Mr. Lawson, as I already pointed out,  
is saying no, that isn't so, it is a different  
conversation they had. You have to make up your  
mind which of them is telling the truth.

Now, this witness is telling you he had no  
other 'phone call at all and there would be no  
necessity for him to buy the posts at all because  
they had the contract. They would have the right  
to cut and take away these posts without getting  
any authority from anybody on the property at  
all.

30 Now, he went on to tell you that each of the  
accused men - the bike that they were riding  
belongs to the company. The company gave it to  
them to ride because they were union delegates.  
He told you about how the union and the management  
got together and these men were appointed delegates  
and because of the distance of the line they had  
to supervise - indeed when he was cross-examined  
he said there were four delegates and each of  
the four delegates got a bike.

40 Now, he went on to tell you that ever since  
these men had been working with the company on  
this contract at Inverness there, he got to know  
the men there, and he went on to tell you about  
their character. He was deeply impressed by the  
deep seated christianity of both accused men. He  
had spoken to them, and both along with other  
people when they have delegates meetings. And  
remember he was telling you that somebody had  
stolen something from the company? He had to  
come down to the lines here, apparently, and he

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continued

had occasions to speak to them. Roughly he is speaking to these accused men once a week for about an hour. Anyhow, he says that the men are very conscious of the family life. They are hard-working men. They are respectful, and he couldn't believe that any of them would be associated with violence at all.

You remember when he was cross-examined he is telling you of the experience that he had with the accused man, Daley. Some other person, I think - was it a driver? - a fellow-worker who is having trouble on this pay day, having trouble over his pay, so the accused Daley is trying to calm him down and the fellow actually spat in Daley's face, but instead of retaliating, as you think the normal Jamacian would do, he said "Jah rod - Jah, God will defend his children." In other words he is leaving him to God, and he walked away and left the man, instead of doing anything. This is an example of the non-violent nature of this man, Daley.

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As you will remember, he was cross-examined, and he told you how the contract actually go, how these other three companies, Hines, K.I.C. and some other contractor actually started doing the work they were doing: but the three firms were now doing the work that they were doing. He went on to say that he didn't think that Daley would be the type of person to trouble anybody, indeed any of the two men, at all. The men weren't getting the post for him personally, but they were getting it out for the company.

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Now, the only thing they differed on was that both accused men told you they came to Old Harbour to get the bike passed. Well, Mr. McFarlane said later that that wasn't any of their business at all. When the vehicles had to be passed, when bikes or vehicles or whatever it is, they usually come into head office in Kingston and somebody else does it. Well, there you have this difference here, Members of the jury. That is what they are saying. Now that, Mr. Foreman and your members, was the evidence that was put before you. What you are going to accept of it, what you are going to reject, is

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entirely a matter for you.

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continued

10 Before we go any further, let me deal with  
this evidence of character. Now, this is what  
Mr. McFarlane has said. He has actually given  
factual evidence as to the conversation which  
took place between Mr. Lawson and himself. I  
have already pointed out the difference. It is  
entirely different. Mr. Lawson is saying that  
Mr. McFarlane is telling him that these men told  
him they could get post from the headman there  
and they were coming to get it to buy. Whereas  
Mr. McFarlane is saying these men had authority  
to cut the post and telling that to Mr. Lawson;  
so you make up your minds about that factual  
part - about it. But in so far as character  
evidence is concerned, when he gives evidence of  
these men good character - evidence of general  
good character cannot avail the accused men  
where the facts clearly prove their guilt. Good  
20 character should be taken into account in the  
accused favour with the other facts and  
circumstances, not as positive evidence  
contradicting any evidence that has been brought  
by the prosecution, but on the basis that a  
person of proved character is less likely to  
commit this type of offence than one of bad  
character. Also on the basis that a person of  
good character is more worthy of belief than one  
of bad character. In trying to decide whether  
30 or not to believe the accused that he did not  
commit the crime, bear in mind and take into  
account in their favour the fact, if you accept  
the evidence, that they are persons of good  
character. That is how you deal with evidence  
of character, Members of the Jury. It can't  
substitute for evidence. If you believe the  
evidence of the prosecution, then that can't  
help you; but if there is any doubt in your  
minds about it, then take the character of these  
40 men in your favour on the basis that these  
persons of good character is more likely to be  
worthy of belief than a person of bad character.  
That is how you treat character evidence, Members  
of the Jury. That is what you have to say.  
What it boils down to, Members of the Jury, is  
that these accused men, as I understand it, are  
saying that they went there, they spoke to the  
headman, he was the one who got in temper, throw  
stones at them, run out of the building as if he  
was going for some instrument and tell you that  
50 it was entirely his fault. He brought on whatever

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continued

happened to him. In other words, they wouldn't be responsible for what happened to him at all. If you accept that you must acquit these two men. When you consider all the evidence in this case if you are in doubt as to what happened you have to acquit them; but even if you reject what they are saying you have to go back to the crown's evidence and ask yourselves, 'has the crown satisfied you that you feel sure of the guilt of the accused men? It is only then you may say that they are guilty - and what are you going to say they are guilty of? Now, you have three verdicts open for you. Either guilty of murder, both guilty of manslaughter or not guilty of anything at all. Remember I told you already that these men were acting together - common purpose. I told you already if they are acting independently - acting on your own, not carrying out a joint plan between them, again you have to acquit them, because the crown cannot adduce any evidence as to who throw what. You can only say murder if you take an inference that either when the deceased man is running - I don't think that any of the stones caught him - either when he is running the stone hitting him in the head or chest. I think the crown is putting forward this, although - I say you are to draw the reasonable inference that the deceased was not hit down by a stone, and I say that for this reason: remember everybody seems to be giving the impression that the accused man was running away? Indeed one of them puts the accused man to the door. I think Mr. Smith, he puts the accused man as being at the door when the deceased is running pass; so if that is so, Members of the Jury, on his evidence I don't see how any stone could catch him in his chest, because he is running away from them. Indeed on the evidence of Mr. Burke and Mr. Smith, perhaps stones were thrown, if you accept it, by these accused men. Did any of these stones, either when he is running or when he is falling on the ground, and caused the fracture to the skull? If you think so, and perhaps if you accept the doctor's evidence that is not likely. Remember he said that both the chest injury and the head injury could be caused by the same fall? It is a question of fact - inference for you to draw. Nobody can say I saw, except Mr. Ceaphas. If

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continued

10 you think any stone thrown by these men directly  
caused the injury to the head or skull of the  
deceased, then you have evidence, if you accept  
it. In that case ask yourself: 'when they did  
that, did they intend to kill him or to cause  
serious injury?' If that is so, Members of the  
Jury, then in those circumstances you may say  
guilty of murder. But to come back, as I was  
telling you about the injury to the chest, one  
20 witness as I said, put the accused man at the  
door. Here I am giving you my inference,  
commenting on the facts, you may reject it as  
you see fit. It seems to me that the stones  
are coming from behind this man, the deceased  
is running and the men are throwing stones from  
behind him. If that is so, members of the jury,  
how could he get this injury in his chest?  
It must be when he falls down but it is a question  
for you. The crown is going on the proposition  
30 that it was hitting him in his chest. I don't  
know, you say. Does it seem so to you? It  
seems more likely to me what Mr. Burke is saying,  
when he falls down he drops, boof; "him don't get  
up". You remember how Mr. Burke told you about  
it dramatically. He fell and from he fell he  
didn't move. Is that when he fell and fractured  
his chest and skull? Whilst he is on the ground  
or whilst he is on the ground the stones are  
40 falling and hitting him and causing the chest  
injuries or the head injuries then because  
remember the doctor is saying that the brain  
injury was the substantial cause of death. Of  
any of the two injuries the chest injury could  
be a fifty-fifty chance; that he would die if  
he didn't get prompt treatment at all. The  
head injury he said from ten minutes to two  
hours so you may probably say it is not the  
chest injury that caused his death.

40 Remember the defence has not got to prove  
anything. The onus of proof lies throughout  
on the crown so if you have any reasonable doubt  
at all about whether he fell and hit his head  
and chest you must resolve that doubt in favour  
of the accused men, namely, give them the benefit  
of the doubt but if you find any evidence there  
that you can draw the inference that it was a  
stone that hit him in his head and caused his  
death then, members of the jury, it would be  
murder or, did they when they threw the stones  
50 intend to cause him serious injury? But then  
before you can say murder the crown has to prove

In the Supreme Court

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No. 18

Summing up  
8th December 1975  
continued

that it was not done under provocation and this is provocation: Provocation in law is some act or series of acts done by the deceased to the accused or in his presence which would cause in any reasonable person and actually causes in the accused men a sudden and temporary loss of self control. Now, there you have two things, members of the jury, the act or acts of provocation and followed by the loss of self control, both must exist, and whilst in that state they must have retaliated.

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Now, the act or acts of provocation may consist of things said or things done or both things said and things done by the deceased man or anybody acting on his behalf to the accused men. What was done or said must be such as would cause a reasonable man to lose his self control, you see, a sudden and temporary loss of self control and it must have actually caused in the accused men this sudden and temporary loss of self control and whilst in that state did the act.

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Now, perhaps it is not really a defence, members of the jury. What it really does, it reduces the offence from murder to manslaughter if you think that although the person intended to kill or to cause real serious injury yet at the time when he did the act he was acting under provocation that would only make the offence manslaughter even if he intended to kill or to cause serious injury; even if he intended to kill or to cause serious injury it is reduced to manslaughter yet, according to the defence there was no burden on the accused to prove that he was provoked, it is for the crown to prove that the act was not done under provocation.

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The first issue was that the accused must have lost his self control and whilst he was under the attack. The loss of self control must have been under provocation whether by things said and done or what was said or done to provoke the accused must have been enough to make a reasonable man lose his self control and do as the accused did. In determining this question the jury should take into account everything both done and said according to the effects which in your opinion

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In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

10 it would have on a reasonable man. If the accused was not suffering from a loss of self control at the time then there is no legal provocation. If knowing he was suffering from a loss of self control what was done and/or said taking everything into account was not enough to make a reasonable man do as the accused did then again there is no legal provocation, it is only if both exist together that that can be said to be provocation sufficient to reduce murder to manslaughter. So, members of the jury, you have to say here was there provocation. So Members of the Jury, you have to say here whether there were provocative acts, that is, if you think that these men, what they did amounted to murder were there provocative acts there to reduce that murder to manslaughter? Now, you remember what the Crown witnesses are saying here. You may take what the accused men are saying they had done to them. The trouble started over this wood. They had cut 20 the wood, apparently, the accused men, and when they came back to look at them the Tuesday the wood had gone. When they came to the works yard and saw the wood, it is the first time they are realising the wood is there, and they are going immediately to speak to the headman and the other men who are there. Remember the conversation, Smith is saying, asking about the wood, saying they must go to the manager? They don't know the manager, they want the wood. "If you don't give us the wood, pay us for the wood." Then both men are quarrelling. 30 Mr. Smith is saying, Mr. Milton Smith, both of them - referring to both accused men as mad men. In addition to that, that is what they are saying happened, plus the fact that they won't give up the wood. Would that be a provocation to let them do what the accused men did? This is if you accept it. Then also, Members of the Jury, both what is said to them and what is done to them. They are adding to that, if you believe that part of it is true. First the deceased man, Smith, is trying to 40 grab the machete or knife, coming to them, going into the store-room, searching for something and then running out of the - sorry; after he goes for the knife, he is throwing the stone at them. Of course, they apparently shift it; all those you may say are acts of provocation. You must say whether all those provocative acts combined with what was said to them, if you find that anything was said to them, would those acts in the circumstances cause them to retaliate in the way a man, if he was 50 provoked under those circumstances, would retaliate,

In the Supreme Court

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Summing up  
8th December 1975  
continued

in the way the accused men retaliated? If you thought that he would not do what they did, then provocation wouldn't help you. It is only if a reasonable person would behave in the way they did, having regard to what you find were done or said to these accused men, which would provoke them and cause them to lose their self-control and did in fact behave in that way, as how the accused men behaved, then if you think so, Members of the Jury, or if you are in doubt - in favour of the accused, then say they acted under provocation in which case would reduce the offence from murder to manslaughter; so on that basis, Mr. Foreman and your members, you may say murder - or manslaughter on the ground of provocation, depending on what you find. Now, that is one aspect of the matter. I am going to ask you to keep them separately in mind. There is another aspect in which manslaughter arises. Both learned gentlemen, I think Mr. Andrade for the Crown and Mr. Hamilton, they addressed you on this aspect of the matter. Mr. Atkinson didn't address you on this matter at all. Manslaughter arises in another way. Again if you think it was not - if you accept that the deceased man fell down and fractured his sternum and his skull in the same one blow - in other words, it was when he tripped and fell that he got those two injuries, even if his death came in those circumstances, the men would still be guilty of manslaughter and this is the principle you would have to apply; that is why I am asking you to keep them separately. If it is manslaughter then I am going to ask you to just say whether it is manslaughter by reason of provocation, remember I just gave you directions on that, or manslaughter in trying to escape. This is what I will call this other aspect now which I am now going to tell you about and it is this: Where one person causes in the mind of another by violence or the threat of violence a well founded sense of danger to life or limb as to cause him to suffer or to try to escape and in the endeavour to escape he is killed, the person creating that state of mind is guilty of at least manslaughter. I will repeat that for you, members of the jury.

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Where one person, in this case two, one or two persons causes in the mind of another by violence or threat of violence a well founded sense of danger to life or limb as to cause that other to try to escape and in the endeavour to escape he is killed the person or persons creating that state of mind is guilty of at least manslaughter.

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Summing up  
8th December 1975  
continued

10 Now, what the crown has to prove here to satisfy you on this aspect of the matter is that the deceased was in fear of the accused, fear as I explained it to you, fear of life or limb, injury to life or limb, that that fear caused him to try to escape, that in the course of and as a consequence of trying to escape he was killed, that is, if you think that these men caused fear in him and he is running away, he is trying to escape and falls down breaking his chest and his head and his brain or so, I will repeat that for you - that in  
20 the course of, as a consequence of trying to escape that that fear was well founded, you have to look at the circumstances there, did this man believe that his life was in danger, serious harm was going to be done to him; stoning inside the shed, did that take place, whilst in the store room stones being thrown against him; running out; while going out were stones being thrown at him at that stage causing him to butt his foot and falling down that, members of the jury, was the fear, well  
30 founded, well grounded it doesn't matter which; that the fear was caused by the conduct of the accused men immediately prior to the fall and there was no lawful excuse for the men for doing what they were doing and in addition that the accused men knew that what they were doing was wrong then, in addition to that, members of the jury, the attempt that the deceased man made to escape must be the consequence of an unlawful act on behalf of the accused men, some unlawful act. If you are throwing  
40 stones at a person, members of the jury, tending to hit him with them that is an assault in law. If you put the person in fear also by the mere throwing them at him but they don't catch him, that is an assault in law. If the stones actually catch him it is an assault and a battery. You see that is the legal position. When you are throwing these stones at him was he in fear by reason of what these men were doing?

50 Now, the attempt to escape, was it the natural consequence of an unlawful act being done to him by these accused men? In other words is it a natural

In the Supreme Court

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No. 18

Summing up  
8th December 1975  
continued

thing for these accused men to do? You remember there was some evidence there that he could have gone over the side of the carpenter's shed. Remember the top part is open but that doesn't help the accused men because the crown hasn't got to prove that there was no other means of escape. They haven't got to prove that the route the deceased man took that there were no other routes open to him. What you have to decide is was it reasonable, was it the natural consequence of the behaviour of those two men on that day, well, if he fell on account of that, members of the jury, probably if you think that, all the other ingredients that I told you about have been proved.

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Then we come to the last one; the attempt to escape must be the natural consequence of the unlawful act by the accused men and the unlawful act that they did must be such as all sober and reasonable people would inevitably recognise must subject the deceased to at least the risk of some harm resulting there from albeit not serious harm.

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So those are the ingredients here, Members of the Jury. Was this deceased man trying to escape because of what they were doing to him, both in the shed and outside? Did he fall because he was trying to escape from them? In other words, was he escaping because his fear was well grounded, he believed that serious injury was intended towards him, or they might have intended to kill him, or something like that? Was it the conduct of these accused men that caused him to be in fear, and did he fall as a consequence of this? Did they know that they were doing something wrong at the time and realised that some harm or serious injury must have occurred to him. In the circumstances, if you are satisfied about that aspect of it, Members of the Jury, then you must say that the accused men are guilty of manslaughter. As I say, you have to believe that both of them were acting in concert, both of them throwing stones. In that case it doesn't matter which one flung or not, it doesn't matter which hit him or not, if you believe both of them were acting in concert, a joint venture. So those are the three issues open to you for conviction, and I am going to ask you, when you return a verdict if you think it is murder, well you

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say so. You can say either guilty of murder, in which case you wouldn't consider manslaughter, or if you are not sure about it you can say manslaughter, the two I mentioned to you; deliberately hitting him with stones and he died from that, whether they did that acting under provocation, those are the manslaughter. If you come back and say manslaughter or provocation I know what your findings are. I have explained to you, manslaughter by the deceased trying to escape. On the other hand, Members of the Jury, if you are in doubt as to whether it is manslaughter or not at all, then you must give the accused men the benefit of the doubt. They have not got to prove anything at all. As I said to you the onus remains throughout on the Crown.

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Summing up  
8th December 1975  
continued

Now, perhaps I have not dealt very fully with this question of ownership. You see, as I see it, I don't know if it matters very much whether it is Silvera who had the contract, in which case they would have a right to send the men there to cut the wood, or whether at that stage they didn't have the contract, in which case Silvera's men would have no permission to go there unless they got permission from the property people. It doesn't matter whether the contract was with Silvera or K.I.C. because the important thing is, what was in the minds of these men. Did they - in the minds of these men, did they honestly think that Silvera had the contract? It is put before you. If you think that Silvera had the contract - and this is coming from Mr. Fennell himself, Manager. He said yes, he thought so; and from Mr. McFarlane himself, he said, yes, they had the contract. It is only going to show you that it goes to the credibility of the witnesses. Remember the whole set up is that these men are coming to tell lies that they threatened them or things like that. If indeed they have a right to cut them, the wood, there would be no necessity to threaten them and indeed they didn't threaten them. Look at the background evidence to see if what the defence is putting forward is really the truth; whereas the other men came and said, well, these men come and threaten us. There again it helps you as to Mr. Lawson's state of mind. He is saying these men have no right to go there. "All I have to do is give them permission to go and take back their tools off the property." All of that you have to consider to say what side you are going to

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accept or not.

In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

So, will you please go for lunch and come back for me at two o'clock?

Court resume 2.09 p.m. Jury Hall call all present summing continued.

Members of the jury, I think I have reviewed all the evidence to you, more or less, but you have to remember that in addressing you I can't go through the evidence in great detail. I have endeavoured to pick out what I thought were the salient points for you before so in your deliberations if you remember any bit of evidence that I might have not mentioned and you think it is important you are at liberty to take that into consideration. You are also to draw any other inference from those other facts which you think necessary to the circumstances.

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Now, perhaps, I do not think I addressed you on this matter at all. Clarendon is said to be maybe one of the biggest parishes but still it is a very small place in comparison to other places. You may have heard something about this case before, it may even have been in the newspapers, I don't know. The important thing you have to bear in your mind is that if you did hear any such thing whether from reading the newspaper reports or whether you have heard it from going on the streets please remember do not let that in one way or the other affect you. What you are to consider, members of the jury, is the evidence you have heard from the witnesses in the box here and what inferences you are going to draw from that. You are also to take into consideration the addresses and inferences that the learned gentlemen at the bar are asking you to draw. If you do not accept them reject them but please remember do not let extraneous influences affect you. Please give consideration only to what you heard from the witness box, the addresses from the learned gentlemen and the inferences that you are going to draw from the facts that you find proved.

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Now, I don't know if I had told you anything about motive. It is really not necessary for the crown to establish by what motive a particular crime is committed but if they can do it they usually do. Perhaps here, members of the jury, you may have no doubt what

In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

caused the whole thing is the fuss about the wood if you think the crown's case is correct, perhaps the inference is that these gentlemen were annoyed perhaps to a great extent that they had laboured to cut wood a whole week if what they are saying is true and it does seem so, that the wood is now confiscated and without giving them any compensation at all, so in that regard you may well agree. I think Mr. Hamilton told you, what reason would these men want to threaten or do them violence because they are going to get payment from Silvera, I don't know if that is the inference you are going to draw at all from what was said, "Give us the wood or pay us", it is for you. All those matters you have to consider and say what inference you are going to draw but remember, as I said, the crown has not got to prove a motive. If they can they usually do. Perhaps there is motive there depending on what you make of it. It is entirely for you.

Now, there is another matter I want to bring to your mind. You look at the gentlemen at the back and there could be no doubt that they are rastafarians. Remember Mr. Hamilton asked you not to comment on that, I don't know what are your views but as Mr. Hamilton pointed out there are good, bad and indifferent people whatever religious persuasions they are, the important fact you are going to bear in your mind is not, oh, these gentlemen are rasta men so they must be guilty, you don't do that at all, members of the jury, you look at what they say, listen to the evidence and make up your mind without having any preconceived ideas about these gentlemen because of their religious belief. Indeed, if you accept the evidence of Mr. McFarlane at this point it would seem that these gentlemen are very quiet, hardworking men but as I pointed out to you, evidence of good character cannot avail the accused men if the evidence satisfies you that you feel sure that they have committed some crime or other. When you are in doubt then you are entitled to take their good character in consideration and put it in the scale in their favour so, well, let me go a little further. I gather Mr. Hamilton is saying that when Mr. Andrade was addressing you he said, "Look at them!", look at them, you know, in a sort of - well, I don't know exactly how to say, in a sort of manner, they are not human beings as it were because, you know, some of them are dread; I think this how Mr.

In the Supreme Court

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Summing up  
8th December 1975  
continued

Atkinson puts it, some of them members of the jury, are considered to be dread, well, please dont let any such thing operate in your mind at all. Look at them, view the evidence and say whether you can accept what they are saying or not or, do you believe what the witnesses for the crown are saying. I myself did not get the impression that Mr. Andrade was casting some sort of aspersion to you because they are rastafarians; Mr. Atkinson is trying to create this impression in your mind, I don't get this thing. Perhaps what he is saying is look at them and look at the crown witnesses, that is what I gather Mr. Andrade was saying. Mr. Hamilton puts it another way, as if to say, look at them, these are rasta men. Well, if what Mr. Anrade was trying to say was intended to convey that to you please put that from your mind altogether. I didn't gather he was saying this but what I want to remind you of is whatever view you might take of it do not look at them and say because they are rastafarians without doubt they must be guilty, that is quite wrong. As I may have pointed out some of these gentlemen are the quietest and most respectable people you can find. You have other ruffians who pass under disguise when they are the real criminals. In this court well you just have to look at the evidence here, look at the evidence these gentlemen have given and see if you can accept it.

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Now, there is one other little part I didn't mention to you. Remember Mr. Boucher told you that Mr. Smith, the deceased man, was about 56 years old, a man getting on in age. Now, that distance between the two sheds - the carpenter shed and the mechanic shed, as it is called - is about a chain. Now, here is this man - Ceaphas says indeed he is not running very fast; that is how he puts it, but whatever speed he is running at, Members of the Jury, he is running over there when he is falling down. You take that into consideration. "Bam, bam, bam" in his head; stones are going at him. Of course, they are all hitting him after he has fallen down. Maybe there is time to do that. You have to make up your minds about it. I don't know what you make of it. Remember that they are hitting him before he fell - a majority apparently after he fell on

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the ground. Then he is changing that up again and saying one hit him whilst he is on the ground and one whilst he is walking. You remember I reviewed it? You have to look - you saw him there, you say if you accept that or if you can accept the evidence from the other witnesses - this Mr. Burke who said he didn't see them throw any stones whilst he was on the ground. Can you accept the other part of it; stones being thrown? Take the inference that one of those stones, or more than one hit him, particularly in the head and caused the injury - murder in those circumstances I would say. And if so, was there provocation - these men being deprived of their wood, anything said or done - you have to find, what was said or done to them, would that have caused a reasonable person to lose his self-control and behave in the way these accused men did - throwing stones at the deceased man?

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If you think that it was murder reduced by provocation, then that should make it manslaughter, even if they intended to kill him. If you think that they deliberately killed him, not by reason of provocation - If they went to kill him and wasn't provoked, the proper verdict would be murder. If they deliberately killed him, but when they did it they were acting under provocation, throwing the stones at him, then it would be manslaughter. I am going to ask you to say manslaughter by virtue of provocation if you so find.

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On the other hand, if you think that, or if you are in doubt about it, that he fell down flat on his chest and hit his head at the same time in the fall - in other words, they wouldn't have done anything to cause his death, but that in the circumstances if he was trying to escape by reason of what these men were doing to him, then that would be manslaughter, and if you think that that is the right verdict, Members of the Jury, you will come back and I think the registrar will ask you, 'manslaughter by virtue of fright' in the case of manslaughter by fright, they wouldn't have caused his death at all, but in trying to escape because of what they are doing - trying to do to him, having regard to what you have to find, he is escaping because of what they were doing to him and things like that, these men knew they were doing wrong, intended to cause harm, on that basis you may say manslaughter also.

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In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

In the Supreme Court

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Summing up  
8th December 1975  
continued

Now, if you are in doubt any at all or if you believe what they are saying, what the accused men are saying which in effect is that they did nothing at all, this is the deceased man, they did nothing to him, in other words, he was the man who really was throwing stones at them and running as it were, going for a weapon oh, well, if you think in those circumstances that caused him to fall, members of the jury, these men would not have any responsibility for it at all and in that case you would find them not guilty of the whole indictment, that is, not guilty of murder and not guilty of manslaughter.

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If you are in doubt, if you reach any stage where you have any doubt on any aspect you must always resolve that doubt in favour of the accused because the onus of proof remains throughout on the crown, it does not shift and they must satisfy you that you feel sure of the guilt of the accused men before you may say they are guilty of one or either - of any of the charges. Those are the issues before you, members of the jury, I don't know if any of these gentlemen think I left out anything.

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MR. HAMILTON: M'Lord, the last one that you mentioned shortly before lunch.

HIS LORDSHIP: Huh! Huh!

MR. HAMILTON: If - suppose the man was running because stones were thrown but he really did fall as the defence said, hit his head and fall and as a result of the injuries - M'Lord, I don't know if you pointed out to the jury that they could only arrive at that if they had rejected the crown's version.

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HIS LORDSHIP: Not really rejecting the crown's version.

MR. HAMILTON: No, no, not of the stones hitting him in his head. As if he had been hit, not the stones hitting him at all, either before he fell or after he fell and that if that were so - just this aspect -

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In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

MR. HAMILTON: if they were of the view no stones  
(Contd) had hit him it would support the  
defence's contention of no stones  
thrown. Just from that aspect of  
it. In other words, you see the  
point I am trying to make, M'Lord?

HIS LORDSHIP: Hmmm.

MR. HAMILTON: The non-hitting in the head of stones  
is support to the defence's contention  
of no stones being thrown.

HIS LORDSHIP: I wouldn't put it as high as that Mr.  
Hamilton. Perhaps - you have heard  
him, members of the jury.

MR. HAMILTON: Yes.

HIS LORDSHIP: No stones hitting him in the head and  
remember that is only coming from Mr.  
Ceaphas. The others are saying  
stones are thrown but they can't say  
any hitting him. The important issue  
is whether stones were thrown at him  
or not from in the shed, running  
across or even when he fell, that's  
the important issue there as I see  
it but as Mr. Hamilton rightly says,  
infers or made the assumption, if it is  
that no stones were thrown because  
this is what they are saying, they  
didn't throw stones at him at all -  
look at it members of the jury.  
Remember again, as I said, what has  
been suggested by the defence that  
it is only meant particularly for  
the eyewitnesses, I don't think it  
was put to the manager, Mr. Fennell  
but in so far as Mr. Howard - remember  
the man who is talking about threats  
under the mango tree - the suggestion  
is that they are only coming here  
because of the reward and this is really  
the inference the defence is asking you  
to draw to support their case. So,  
there you have it, members of the jury,  
it is for you to say what inference you  
are going to draw. It is entirely for  
you.

In the Supreme Court

No. 18

Summing up  
8th December 1975  
continued

MR. ATKINSON: M'Lord, just on the same note but as regards Burke's testimony. He says that no stones were thrown during the running.

HIS LORDSHIP: I have told the jury that.

MR. ATKINSON: Yes, but just in terms - in those circumstances it would seem to me that the jury may well find that the throwing of stones may not necessarily be what caused the flight. 10

HIS LORDSHIP: That is for them. You remember that, members of the jury? Mr. Burke said they had stones in their hand but he didn't see any thrown at that stage when the deceased was running. After he fell he saw stones being thrown at him. You have to look at the overall circumstances. 20

You ought to look at the overall circumstances, look at the whole of it were these men putting him in fear by their conduct; that is it. So there again, Members of the Jury, I think I reviewed the evidence very carefully for you. You see what you make of it. Remember if it is murder, guilty of murder. If it is manslaughter, you are going to be asked if it by provocation or by reason of fright. Guilty or not guilty as you see fit. These are the issues before you. 30

Will you please consider your verdict:

(Time: 2:24½ p.m.)

JURY RETIRE AT - 2:25 p.m.

COURT RISE AT 2:25½ p.m.

JURY RETURN AT - 3:06 p.m.

COURT SIT AT 3:07 p.m.

JURY ROLL CALL - ALL PRESENT

No. 19

In the Supreme Court

VERDICTIn the Clarendon  
Circuit Court

No. 19

Verdict and  
Sentence

8th December 1975

REGISTRAR: Mr. Foreman, please stand?

(Foreman stands)

Q: Mr. Foreman and Members of the  
Jury, have you arrived at your  
verdict?

A: Yes.

Q: Members of the Jury, are you agreed  
on your verdict?

A: Yes.

Q: How is your verdict, unanimous; that  
is you are all agreed?

A: Yes, Ma'am.

Q: How do you find the prisoner Burnett  
Meggie, guilty or not guilty of  
murder?

A: Not guilty of murder.

Q: How do you find the prisoner, Frederick  
Daley, guilty or not guilty of  
murder?

A: Not guilty.

Q: How do you find the prisoner Burnett  
Meggie, guilty or not guilty of  
manslaughter by provocation?

A: Not guilty.

Q: How do you find the prisoner, Frederick  
Daley, guilty or not guilty of  
manslaughter by provocation?

A: Not guilty.

Q: How do you find the prisoner Burnett  
Meggie, guilty or not guilty of  
manslaughter by reason of fright?

A: Guilty.

In the Supreme Court

In the Clarendon  
Circuit Court

No. 19

Verdict and  
Sentence

8th December 1975

Q: How do you find the prisoner Frederick Daley, guilty or not guilty of manslaughter by reason of flight?

A: Guilty.

HIS LORDSHIP: You say both prisoners are guilty of manslaughter by reason of flight?

A: Yes.

Q: That is your verdict and so say all of you? 10

A: Yes.

(Time: 3:09 p.m.)

EVIDENCE OF CHARACTER

CLIVE GUY GRAHAM, DETECTIVE CORPORAL, stationed at May Pen, in the parish of Clarendon, sworn, states:

Antecedent history of prisoner Frederick Daley, indicted for murder in the May Pen Circuit Court. 20

He was born at Church Pen, Old Harbour in the parish of St. Catherine on the 10th of October, 1943.

Mother: Jane Ann Simpson, Housewife of 4 Goulbourne Lane, Old Harbour.

Father: John Daley, now deceased.

He grew up with his mother and father and at the age of seven (7) years he attended the Old Harbour Primary School. He left at the age of fourteen (14) years, having attained fifth standard. He is able to read and write. After leaving school, he went to learn trade at Kingston Industrial Works as an apprentice welder fitter and erector, earning an average of five pounds (£5) - ten dollars (\$10). This he did for two years, then he started to work as a qualified welder, fitter and erector with the said firm earning twenty-five (£25) - fifty dollars (\$50) - per week. He did this job 30

for about four years after which he left and worked with several other construction companies earning an average of one hundred and twenty dollars (\$120) per week. He finally left to work with R.A. Silvera Electrical Construction Company Limited, earning one hundred dollars (\$100) per week. This he did up to the time of his arrest.

In the Supreme Court

In the Clarendon Circuit Court

No. 19

Verdict and Sentence

8th December 1975 continued

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He is unmarried, but he is the father of seven (7) children, ages ranging from nine years to one year and 5 months, all of whom are dependent on him for support.

He has no previous conviction recorded against him.

He is described as an ambitious and hardworking person and is liked in the community where he resides.

The above information was received from the accused himself, relatives and police knowledge of him.

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Antecedent history of prisoner, Burnett Meggie, committed to stand trial in the May Pen Circuit Court:

He was born at Rose Hall District in St. Elizabeth on 21st December, 1951.

Mother: Enid Binns of a Kingston address.

Father: Musgrave Meggie of Rose Hall District, St. Elizabeth.

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At the age of three years he attended the Rose Hall Infant School in St. Elizabeth until he attained the age of eight years, then left to Rose Hall Primary School in St. Elizabeth, where he stayed until he reached the sixth form. He never sat for any examination. He is able to read and write well.

After accused left school at the age of sixteen years he left St. Elizabeth to Old Harbour Bay where he lived with his aunt and started to do fishing with one Rene Elliott of Old Harbour Bay. Accused was then earning a weekly salary of

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In the Supreme Court

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In the Clarendon  
Circuit Court

No. 19

Verdict and  
Sentence

8th December 1975  
continued

about fifty dollars (\$50) to sixty dollars (\$60) per week. He did fishing for a year and six months then started learning to operate crane with Crane Stock International at Old Harbour Bay Power Station in St. Catherine. He then earned sixty dollars (\$60) to seventy dollars (\$70) per week. He remained in this job for three years, then left and started to work with Jamaica Public Service at Old Harbour Bay, St. Catherine as an apprentice mechanic, during which time he earned about twenty dollars (\$20) per week. He remained in this job for nine months, then left to work with R.A. Silvera Limited as an N.W.U. Delegate during which time he earned eighty dollars (\$80) weekly. Accused was still in this job at the time of his arrest.

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He is unmarried, but is the father of six children, ranging from ages five years to three months, all of whom are dependent on him for support.

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He has no previous convictions recorded against him.

He is spoken of as being a very loving and peaceful and is hard working.

This information was obtained from police files, accused himself, and enquiries made about him.

HIS LORDSHIP: Yes, Mr. Hamilton?

MR. HAMILTON: No questions.

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HIS LORDSHIP: Mr. Atkinson?

MR. ATKINSON: No questions.

HIS LORDSHIP: Call on him, please.

REGISTRAR: Burnett Meggie ...

HIS LORDSHIP: No, both of them.

REGISTRAR: Burnett Meggie and Frederick Daley, the jury having found you guilty on this indictment ...

HIS LORDSHIP: Of manslaughter.

In the Supreme Court

REGISTRAR: ... of manslaughter, do you wish to say anything why the sentence of the court should not be passed upon you?

In the Clarendon  
Circuit Court

No. 19

HIS LORDSHIP: Yes, Mr. Hamilton?

Verdict and  
Sentence

MR. HAMILTON: May it please you, M'Lord, I have always felt that this must be the most difficult time for any judge to determine what is the appropriate sentence to be imposed after verdict. It is never an easy task for a judge to determine sentence. Indeed I am sure that there must be many instances in a judge's life after passing a particular sentence that he has had cause to reflect and wonder if he imposed a light sentence to meet the situation but, of course, a judge is only human. He can, if he should ever wonder having passed sentence, he must be forgiven if he had erred or he may have not taken various factors into consideration because, as I said, M'Lord, a judge is human. No one can pass sentence on another without being afforded the benefit of some insight into a peron's life because to do so one does so in a vacuum and what may be right for one situation may not necessarily be right for another and it is for those reasons, M'Lord, I address you and I commend to you the fact that the jury by their verdict discredited the crown's case.

8th December 1975  
continued

HIS LORDSHIP: Not completely.

MR. HAMILTON: To an extent. They accept what the defence had said from the beginning, that the deceased met his death by falling. It is in that light that I am asking you to weigh the sentence clearly. The death of the deceased was not contemplated by these accused men on the 22nd of April and if they did not contemplate it, M'Lord, I am

In the Supreme Court

In the Clarendon  
Circuit Court

No. 19

Verdict and  
Sentence  
8th December 1975  
continued

MR. HAMILTON:  
(Contd)

asking you to take into account all that has been said on their behalf both by Mr. McFarlane and by the police to the effect that they have hitherto led unblemished lives. They have tried to work hard and the fact that they are convicted today may be the result of the zeal with which they pursued hard work and the injustice as the jury found that they may have felt in being deprived of the efforts of their hard work. Not one stone caused the death of that man. I eventually describe it as a freak death, that he could have fallen in the way he did and died. I ask you with all humility, M'Lord, to punish them no more than what that temporary loss of self-control as the Jury have found, may have contributed to the deceased's death, and ask you and implore, they have been a long time in custody awaiting the outcome -

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HIS LORDSHIP: This is from May of this year, is it?

MR. HAMILTON: Yes, M'Lord. There is nothing more, M'Lord - there is more that Mr. McFarlane could have said, as he said to me if he had more workmen like these men may be he would never have had the work closure. They differ from other members of the community in their religious belief but I commend to you, M'Lord, that their life-style and the way they conduct their own self-discipline is an example to many, and I know Your Lordship will not be - because as Your Lordship warned the Jury not to - will not be unmindful of the fact that many who bring their religion in disrepute are those who masquerade as rastafarian

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MR. HAMILTON:  
(Contd)

and are not true rastafarians.  
I ask you therefore, M'Lord, to  
temper justice with mercy and if  
they did not foresee and intend  
this awful consequence on that  
day, let their punishment be no  
more than the eternal knowledge  
that they take with them to the  
grave, that they in some way  
contributed to loss of life.  
May it please you.

In the Supreme Court

In the Clarendon  
Circuit Court

No. 19

Verdict and  
Sentence  
8th December 1975  
continued

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(Time: 3: p.m.)

MR. ATKINSON:

I am sure Your Lordship in your  
career as a Judge will not have  
come across many character  
antecedents as good as those you  
have before you, for persons who  
were not born in a situation of  
...

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HIS LORDSHIP:

It seems to imply that your client  
is the more aggressive of the  
two.

MR. ATKINSON:

That aspect of the evidence had  
not been accepted. From the very  
outset he attended school, he  
has been trying the very moment  
he left school until he was  
incarcerated on this offence,  
he has been trying and the  
description given in the  
antecedent history would tend  
to deny this aggression that  
was the evidence in this Court,  
because it said that - he is  
spoken of being very loving,  
peaceful and hardworking by  
those with live with him, and  
those who know him.

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M'Lord, I ask you to bear this  
in mind. I know your task is  
difficult and I ask you to take  
all the circumstances into  
consideration and pass a sentence  
as lenient as you can.

HIS LORDSHIP:

Thank you, gentlemen.

Time 3 (sic)

3.24 p.m.

In the Supreme Court

S E N T E N C EIn the Clarendon  
Circuit Court

No. 19

Verdict and  
Sentence  
8th December 1975  
continued

Mr. Daley and Mr. Meggie, I am in agreement with every word the jury have said. The jury have brought in, to my mind, the proper verdict. The evidence must have left them in some doubt as to whether those stones thrown by you deliberately caused that man's death in the sense that you actually hit him directly as against his falling down and receiving this injury as the doctor found on him but there can be no doubt that in law you still can be liable. If the jury have found and as I have directed that you were stoning this man, one or both of you, that you have excellent records - Mr. McFarlane speaks very highly of both of you and I have no doubt that he meant it sincerely, the police records have said that, I have no doubt that they have given you a very good recommendation, what surprises me is that you gentlemen didn't seem to have given some thought to the number of children you gentlemen had before you let the devil sort of carried you away a little because that I think is what actually happened. You must have been extremely annoyed that you worked all week, things are hard, you are on strike, I don't suppose you got any pay in that period; you work, you cut these posts and when you go somebody gone with them and when you go back to the ranger instead of giving you some sort of good word he sends you a little farther but gentlemen, this is what I want to remind you, this is why we have courts. Some people may think that under the present conditions that justice is too slow in the court but eventually you do get justice here, you know. If you had said well, I that is your attitude let me (sic) take it to my boss and perhaps the matter could be thrashed out in court and if you were right, as I presumed you were right, certainly this could have been thrashed out in court but what is happening these days, everybody is taking the law in their own hands, the law unto themselves. Now, gentlemen, the minute that starts then the institutions, the courts in particular are going to break down and then it is anarchy going to happen, you know but things are, I don't know, I know, here, a lot of people say the court is the last bulwark existing between freedom of the state and the people, I don't know, but you can well realise that if the institution of the courts go then we are going to be in very,

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very serious trouble and you cannot proceed to take the law into your own hands.

You see, this is what has happened here. In a moment of anger, I would say any reasonable person can be angry but then you have to think not only of yourselves, you know but of your family, family background, nobody seemed to have given it any thought. True it is that Mr. Smith is a gentleman still getting on in years but, perhaps, he had a number of years ahead of him. Life may have been hard for him, I don't know, but he would still like to enjoy those years although he didn't through it directly he has been cut off. What about him? I don't know if he has a family, I know he has a brother. What about his family, if he has one? Now he is gone who is going to look after them? These are matters that nobody seems to have thought of before they got into these situations and I have to balance what you gentlemen did and against your excellent record and again this is not what one would call normal run-of-the-mill occasions, people picking up guns or cutlass, shooting or cutting off heads; I have to bear that in mind, also the very excellent records that you both have but, again, people looking on out there; suppose every little thing people start throwing stones and he runs away and break his neck you would still be liable for it and so I hope you gentlemen will bear those matters in mind and never ever get involved in these things again. As I said it is not one of the usual run-of-the-mill things as it were, callousness as it were but yet if I may put it that way, but yet it is wrong in law and I have to take into consideration the public and as I said, too many people seem to be taking things into their own hands.

3.29 p.m.

HIS LORDSHIP: I have to take into consideration the public interest. As I say, too many people seem to be taking the law in their own hands. The least wrong they have, they are going to do justice themselves; not going to wait on the Court any longer, but eventually it will come out in the end that justice will be done. If you take the law in your own hands as you did in this case, you will have to suffer punishment. Now, as has been said, it is always a very difficult thing - what is the appropriate sentence in the circumstance? I have to take into consideration your former and unblemished record, but I also

In the Supreme Court

In the Clarendon  
Circuit Court

No. 19

Verdict and  
Sentence  
8th December 1975  
continued

In the Supreme Court

In the Clarendon  
Circuit Court

No. 19

Verdict and  
Sentence

8th December 1975  
continued

have to look in the angle of Mr. Smith's family, if he had one. People should not be encouraged to take the law in their own hands. Again, you have been in custody since May, approximately six months. Mr. Meggie, as it appears to me you are the gentleman who is the more aggressive of the lot. The evidence seem to disclose that. You are the man bringing down brimstone and fire on the people's head, as it were, whereas the accused man Daley is more sober; not that he is not issuing threats, but on condition. Daley, you are as much to be blamed as Mr. Meggie. For instance, if you had put a restraining hand on him, perhaps nothing would have come of it, but when he does that, that sort of pushes you over the brink and you also start to throw stones; so there it is. 'Though he is a little worse than you, I cannot differentiate between both of you. Both of you were involved in this thing.

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In all the circumstances you each go to prison for thirty months at hard labour. I think that is being extremely lenient.

The adjournment was taken at 3.35 p.m.

In the Court of Appeal

No. 20

Grounds of Appeal  
9th January 1976

No. 20

GROUNDS OF APPEAL

IN THE COURT OF APPEAL

ON APPEAL

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REGINA )  
 )  
VS. )  
 )  
FREDERICK DALEY )  
BURNETT MEGGIE )

TAKE NOTICE that the following are the Grounds of Appeal on which the Defendants will crave leave to rely inter-alia at the hearing of their Appeal herein:-

1. That the Learned Trial Judge by introducing the very novel term "Manslaughter by Flight", it then

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became incumbent on him to give very careful directions to the Jury on this issue, because the very phrase by itself could mislead the Jury into thinking that any "flight per se" would render the accused accountable.

In the Court of Appeal

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No. 20

Grounds of Appeal  
9th January 1976  
continued

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2. The Learned Trial Judge in leaving to the Jury the question of "Manslaughter by Flight" failed completely to direct their minds to the issue of the foreseeability of harm on the part of the accused.
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3. The Learned Trial Judge in directing the Jury on the question of "Manslaughter by Flight" entirely omitted to put that aspect of the Defence which would be relative on these issues viz:- That the Defence had advanced a reason for the deceased's so-called "flight" which was that the deceased might have been running to get his shot gun, and the Jury were never directed as to how they should treat this contention.
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4. The manner in which the verdict was taken in the instant case was unprecedented and, it is respectfully submitted, wrong - because the Jury returned a verdict of Not guilty of Manslaughter and then another verdict of Guilty of Manslaughter, which were both accepted by the Court.
5. The fact that the Court left to the Jury two such alternatives on the issues of Manslaughter, viz:- Manslaughter by Provocation and "Manslaughter by Flight" by itself indicates a conflict of the evidential position in the Crown's case.

Dated the 9th day of January, 1976.

(Sgd) BURNETT MEGGIE  
DEFENDANT APPELLANT

40 FILED BY MESSRS. RAMSAY, HAMILTON, ATKINSON, of British American Building, 53 Knutsford Boulevard, New Kingston, Attorneys-at-Law for the Defendant herein.

In the Court of Appeal

No. 21.

SUPPLEMENTARY GROUNDS OF APPEAL

No. 21

REGINA

Supplementary Grounds  
of Appeal  
25th May 1976

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE COURT OF APPEAL

REGINA	)	
	)	
VS.	)	MANSLAUGHTER
	)	
FREDERICK DALEY	)	
BURNETT MEGGIE	)	

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TAKE NOTICE that the following are the Supplementary Grounds of Appeal on which the Appellant will crave leave to rely, inter alia at the hearing of the Appeal herein:-

1) That the Learned Trial Judge mis-directed the Jury on an important aspect of the Defence - "It doesn't matter whether the contract was with Silvera or K.I.C. because the main thing is what was in the minds of these men" - as it was a vital issue of the Defence that Silvera had the contract as the necessity to issue any threat would therefore be removed. (p. 76)

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2) That the Learned Trial Judge failed to uphold the objection by Defence Counsel, that the statement by the witness Howard - "That black boy we must kill him" should be excluded. (Page 17)

3) That the Learned Trial Judge failed adequately to deal with two points raised by Defence Counsel at the end of the Trial Judge's Summation, viz:

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(a) That in order that the Jury properly consider the possible verdict of "Manslaughter by Flight" they would have to reject a substantial aspect of the Crown's case, i.e. That the deceased had been hit in his head by stones, and

(b) That "the non-hitting" in the head

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by stones is support of the Defence's  
contention of no stones being thrown.  
(Page 84)

Dated the 25th day of May, 1976

SETTLED (Sgd) Howard Hamilton

Filed by MESSRS. RAMSAY, HAMILTON, ATKINSON, of  
British-American Building, Knutsford Boulevard,  
New Kingston, Attorneys-at-Law for and on behalf  
of the Petitioner herein.

In the Court of Appeal

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No. 21

Supplementary Ground  
of Appeal  
25th May 1976  
continued

No. 22

JUDGMENT

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEALS NOS. 140 and 141  
of 1976

BEFORE: The Hon. Mr. Justice Graham-Perkins,  
J.A.  
The Hon. Mr. Justice Zacca, J.A.  
The Hon. Mr. Justice Watkins, J.A.  
(Ag.)

R E G I N A v. FREDERICK DALEY and BURNETT  
McGHE

P. Atkinson for Daley.

Howard Hamilton for McGhe.

J.S. Kerr, Q.C., Director of Public Prosecutions  
and Mr. N. Sang for the Crown.

May 26, 27, 28, 31; June 4, 11,  
15, 1976

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GRAHAM-PERKINS, J.A.

The appellants were, on December 8, 1975, convicted  
by a jury before Melville, J., of manslaughter on an

In the Court of Appeal

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No. 22

Judgment  
15th June 1976

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In the Court of Appeal

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No. 22

Judgment  
15th June 1976  
continued

indictment which had charged that they, on April 22, 1975, murdered one Sydney Smith (hereinafter called 'the deceased'). They were each sentenced to thirty months at hard labour. Thereafter they successfully applied to a single judge for leave to appeal against their conviction and sentence. The application was granted on the ground that the defence advanced by the appellants at their trial was not fairly and adequately put to the jury. This Court, however, granted the appellants leave to argue additional grounds which may be said to raise questions of fundamental importance in connection with criminal trials.

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In support of the indictment for murder the prosecution led evidence by which it sought to establish that the deceased met his death as a result of injuries to his head and chest inflicted by stones thrown by one or other of the appellants, acting together in circumstances amounting to murder. The evidence on which the prosecution relied was placed before the jury principally through three persons who claimed to be eye-witnesses, and a doctor. This evidence described the following general picture.

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During the week preceding April 22, 1975, the appellants had been cutting fence posts on certain lands access to which was gained by a gate on premises occupied by the Jamaica Cordage Co. Ltd. On these premises the company operated a factory and among the several buildings thereon were, as far as is material to this case, a building accommodating under a single roof a warehouse, a carpenters' shed and a storeroom, and another building, a mechanics' shed. The storeroom is a small room in the larger carpenters' shed (hereinafter called 'the shed'). Some 12 yards from the shed and approximately mid-way between the shed and the mechanics' shed is a concrete ramp tapering from a height of 4 feet at its highest section to ground level. The terrain between the ramp and the shed is level and free of obstruction to anyone going from the shed towards the ramp.

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The deceased had worked with the company for some considerable time, 30 years I think, as a ranger. The appellants had cut a number



In the Court of Appeal

No. 22

Judgment  
15th June 1976  
continued

of posts and had stacked them at some point on the lands on which they had been working, presumably with the intention of returning with some kind of transport to remove them at some later date. The deceased, apparently being of the view that the appellants were not entitled to the posts they had cut, removed them from where they had been stacked and placed them somewhere in the vicinity of the mechanics' shed. On April 22, the appellants

10 arrived at the company's premises and, on discovering that the posts they had cut had been removed, went to the deceased and demanded that he hand over the posts to them or that he pay for them. The deceased and two other persons, the witnesses Laidford and Smith, were then in the shed. In reply to the appellants' demand the deceased told them that they would have to see the company's manager. The appellants who,

20 according to Laidford, were then armed, Daley with a stone and a piece of iron, and McGhe with two stones, became irate at the deceased's refusal to hand over the posts to them. Daley then threw the stone and the piece of iron with which he was armed at the deceased. McGhe followed this by throwing the stones he had at the deceased whereupon the latter ran into the storeroom in the carpenters' shed and closed the door. The deceased remained in the storeroom for some five minutes. Both appellants threw stones at the

30 door of that room. Thereafter, according to Laidford, he (Laidford) ran from the shed followed by the deceased. They both ran towards the appellants and near by them. After he had passed the appellants, the appellants threw stones at the deceased. It is not clear how Laidford was able to see exactly what happened after he ran from the shed since it appears that he ran in the same general direction as the deceased and remained in front of the deceased. However, in

40 his examination-in-chief, Laidford swore that although he was unable to say what caused the deceased to fall while running, he did see one stone hit the deceased before the latter fell at or near the ramp. As the deceased lay on the ground he saw some eight stones hit him on his head. In cross-examination he said he did not, indeed, see any stone hit the deceased while he was running and before he fell. I observe here that this was by no means the only

50 self-contradiction that emerged in the evidence of Laidford.

In the Court of Appeal

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No. 22

Judgment  
15th June 1976  
continued

Another eye-witness to the events on April 22 was Roy Burke. He described the incident between the deceased and the appellants as "a fuss". He said that he saw the appellants pick up stones from the ground outside the shed and throw them at the deceased who was then sitting on a stone in the shed. He saw the deceased enter the storeroom. It does not appear that the appellants made any attempt to enter the storeroom or, indeed, the shed at any time during this exercise of stone throwing. Nor does it appear from the evidence at all whether the appellants continued throwing stones at the door to the storeroom during the entire period of five minutes that the deceased remained in there, or how many stones were thrown at the door to that room. When, according to Burke, the deceased left the storeroom the appellants had by then removed from the point from which they threw the first stones to a point about 11 yards from the door to the shed. The deceased ran across the yard in the direction of the ramp and the mechanics' shed. Burke swore that at this time he saw the appellants with stones in their hands but could not say whether they threw any at the deceased or not. He did, however, see the deceased fall some 11 yards from where the appellants stood. After the deceased had fallen Burke saw the appellants throw several stones at him as he lay on the ground but, here again, he could not say if any of these stones hit the deceased. He saw the deceased hit his chest against one of the edges of the ramp.

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The other witness, Milton Smith, testified as to the incident in the shed and the deceased leaving the storeroom and running across the yard in the direction of the ramp and the mechanics' shed. He saw the appellants throwing stones at the deceased as he ran but could not say if any of these stones hit the deceased. He saw the deceased fall on his hands beside the ramp. He was unable to say what caused the deceased to fall.

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What emerges from the narrative so far related is that no attempt was made by anyone at the trial to elicit from any of the eye-witnesses the cause of the deceased's fall. Burke did say, when pressed, that the deceased

"definitely butt his foot against the ramp and fell across". Just before saying so, however, he had said: "When the deceased was running I believe he tripped at the ramp and fell." The witness, Laidford, who said in examination-in-chief that he saw one stone hit the deceased did not say at what point in the deceased's progress across the yard he was hit by this stone. It will be recalled, however, that he changed this version during cross-examination. True it is that two witnesses, Laidford and Smith, spoke of stones being thrown by the appellants at the deceased while the latter was running towards the ramp, but neither was required to describe this incident in any greater detail than the bald assertion that the appellants threw stones at the deceased. At the end of the prosecution's case the cause of the deceased's fall remained unknown.

In the Court of Appeal

No. 22

Judgment  
15th June 1976  
continued

In addition to the eye-witnesses already noted the prosecution called Dr. Samuel Morgan who conducted a post mortem examination on the body of the deceased. Externally, the doctor saw signs of haemorrhage inside the right ear. The only injury he saw was a small laceration on the left side of the chin. On dissection the doctor found a fracture of the skull on the right margin of the occipital and right parietal bones. There were signs of haemorrhage at that section of the skull and this penetrated into the dura mater and involved the occipital region and the posterior half of the right parietal. There was also a fracture of the upper third of the sternum. In Dr. Morgan's opinion death was due to shock and haemorrhage following upon the injuries to the head and sternum. He thought that the head injury alone could have caused death and that death would have been instantaneous or at least within two or three hours. It would have required "a fairly large stone thrown with a strong degree of force" to cause the fracture to the skull. He thought, too, that the injury to the sternum could have been caused by a stone. In cross-examination, however, the doctor agreed that both the injury to the head and to the sternum could have been sustained as the result of a fall. He saw no external signs of injury by a stone or stones.

In the Court of Appeal

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No. 22

Judgment  
15th June 1976  
continued

It will now be appreciated that at the outset the case sought to be put before the jury by the prosecution was a case of murder pure and simple - a stoning to death of the deceased by the appellants. Indeed, we are told that in opening the case to the jury learned counsel for the Crown indicated that the prosecution would in due course ask them to say that on the evidence that would be presented to them this was a case of murder, or at least a case of manslaughter as the result of provocation depending on the view they took of the deceased's conduct in relation to the posts which the appellants had cut and which, rightly or wrongly, they regarded as their property.

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In answer to the case advanced by the prosecution the appellants denied throwing a single stone at the deceased at any time. Their defence was to the following effect: They were employed by R.A. Silvera Ltd. who, on behalf of the Jamaica Public Service Co. Ltd., had begun to run lines along certain lands and for this purpose they had to cut away a number of trees. A Mr. McFarlane attached to R.A. Silvera Ltd. confirmed to the manager that they had been sent to cut away trees. They cut a number of fence posts and stacked them intending to remove them in a day or two. On April 22 on their way to where they had stacked the posts they saw these posts near the mechanics' shed. They went towards the shed where they saw the deceased, Laidford and Smith. They asked the deceased why the posts had been removed and the deceased told them that they should see the manager. They said they did not know that the manager was in any way concerned with the posts and insisted on talking to the deceased. An argument followed and the deceased became irate and ordered them to leave the property. They did not leave immediately but continued arguing with the deceased. The deceased rushed towards Laidford who was then cutting up a chicken with a machete or a large knife. Failing to gain possession of this knife from Laidford the deceased picked up a stone and hurled it at the appellants. He then rushed into the storeroom in a manner which suggested that he was looking for a weapon. Shortly after he emerged from the storeroom, ran past them

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and shouted "Uno stand dey till I come." He then ran in the direction of the mechanics' shed where, according to the witnesses for the prosecution, he was known to keep a gun. While running towards the ramp he tripped and fell hitting his chest and head against the ramp. The deceased did not move after he fell. They left the premises immediately saying that they would return with a truck to move the posts they had cut.

In the Court of Appeal

No. 22

Judgment  
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continued

10 It will, I think have been observed that the structure on which the case for the prosecution had been built had, by the time Dr. Morgan left the witness box, completely collapsed. Whatever, if anything, was left of the case for the prosecution it was, quite clearly, no longer a case of murder or, indeed, a case of manslaughter on the ground of provocation. Nevertheless, the appellants were required to answer and did, indeed, seek to answer the prosecution's allegation of murder; and in so doing they also, incidentally, answered the alternative adumbrated by the prosecution in its opening, namely, manslaughter on the ground of provocation. When, however, counsel for the prosecution came to make his final address he now sought, in effect, to abandon the case to which he had opened. This was, undoubtedly, due to the very pathetic figure cut by Dr. Morgan in the witness box. The learned trial judge, I observe, made some very unkind, albeit justified, observations about the evidence of the good doctor. He told the jury, inter alia, that the doctor had insulted their intelligence by saying that the deceased could have been hit on his head by stones and not show so much as a slight bruise.

40 I am by no means certain as to exactly what occurred during the closing addresses of counsel. It appears that Mr. Atkinson who addressed the jury first did not attempt to deal with what was in the end described by the learned trial judge, rather inelegantly I think, as "manslaughter by flight". I think Mr. Atkinson was perfectly correct in refraining from dealing with this matter assuming, of course, that it had occurred to him at all. The possibility of a verdict of "manslaughter by flight" was mentioned for the first time during the trial when counsel for the prosecution referred to it in his closing address. Mr. Hamilton told us that he did refer

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to it in his address which followed that of counsel for the prosecution but that he did so only by way of objection to the introduction by the prosecution, at that eleventh hour, of what he described as a completely new case which the appellants had not had an opportunity to meet. Neither Mr. Kerr nor Mr. Sang was able to advise us what occurred during counsel's closing addresses. Be that as it may, when the trial judge was approaching the end of his summing-up, having dealt with the possibility of a verdict of manslaughter on the ground of provocation, he said, inter alia:

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"There is another aspect in which manslaughter arises. Both learned gentlemen, I think Mr. Andrade for the Crown and Mr. Hamilton, they addressed you on this aspect of the matter. Mr. Atkinson didn't address you on this matter at all. Manslaughter arises in another way. Again if you think it was not - if you accept that the deceased man fell down and fractured his sternum and his skull in the same one blow - in other words, it was when he tripped and fell that he got these two injuries, even if his death came in these circumstances, the men would still be guilty of manslaughter and this is the principle you would have to apply; that is why I am asking you to keep them separately. If it is manslaughter then I am going to ask you to just say whether it is manslaughter by reason of provocation, remember I just gave you directions on that, or manslaughter in trying to escape. This is what I will call this other aspect now which I am going to tell you about and it is this: Where one person causes in the mind of another by violence or the threat of violence a well-founded sense of danger to life or limb as to cause him to suffer or to try to escape and in the endeavour to escape he is killed, the person creating that state of mind is guilty of at least manslaughter.

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The learned trial judge then proceed to deal in extenso with the law relating to "manslaughter

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in trying to escape". In my view his directions, though lengthy, were not altogether related to the evidence and, in any event, contained certain inaccuracies. I find it unnecessary, however, to dwell on these directions at any length since, in my view, the really important question raised in this appeal is whether the trial judge, in the particular circumstances of this case, ought to have left it to the jury to find a verdict of what I prefer to call constructive manslaughter.

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Before attempting an examination of this question I am constrained to express the gravest doubts whether on an indictment for murder a verdict of manslaughter is at common law, returnable on a ground other than provocation or the absence of an intention to kill. In successive editions of Archbold's Criminal Pleading Evidence and Practice the following statement appears:

"Upon an indictment for murder, if the prosecutor fails in proving malice aforethought the prisoner may be convicted of manslaughter."

See, for example, the 37th edition at p. 172. Significantly, however, this statement finds no place in the 38th edition. The authority invariably cited in support of the statement is *R. v. Mackalley*, 9 Co. Rep. 61b. In the 32nd edition the statement appears in the same terms except that for the words "malice aforethought" the words "malice prepense" appear. The statement, however expressed, appears to have been used as the foundation of an assumption that on an indictment for murder a jury may, regardless of the circumstances of any given case, return a verdict of manslaughter. I am aware of no authority that has ever examined the implications and scope of any such assumption. Indeed, in *Director of Public Prosecutions v. Nasralla*, (1966) 10 W.I.R. 299, Lord Devlin, speaking for the Privy Council, said, at p. 301:

"By a well-established rule of the common law which the industry of counsel has shown to have originated in *R. v. Salisbury* (1553) 1 Plowd. 100, it is open to the jury if they are not satisfied of the prisoner's guilt on a charge of murder, to convict of manslaughter."

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Here again, it is to be observed, with respect, that this dictum of Lord Devlin appears to embrace the assumption just noted since it does not, ex facie, recognize any distinction between one kind of manslaughter and another, for example, between manslaughter founded on provocation and manslaughter by some unlawful act. It must be borne in mind, too, that up to comparatively recent times where an act or acts was or were capable of giving rise to different bases of criminal liability it was the practice for indictments to detail with essential particularity the bases of such liability. An example of this is R. v. Evans, decided in 1812, where the indictment charged that the accused killed his wife (a) by beating her; (b) by throwing her out of the window; and (c) and (d) that he beat her and threatened to throw her out of the window and to murder her and that by such threats she was so terrified that, through fear of his putting his threats into execution she threw herself out of the window, and, by the beating and the bruises received by the fall she died. In any event R. v. Salisbury (*supra*) does not, on any view, authorise a verdict of manslaughter on an indictment containing a single count for murder quite regardless of the particular circumstances in which the deceased met his death.

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It will, perhaps, be useful to examine briefly the historical development of the difference between murder and manslaughter. In its earliest history the common law recognised no distinction between murder and manslaughter. Where one person killed another as a result of any unlawful act such a killing was, save in those very exceptional cases where it was held to be justifiable, categorised as murder, the circumstances in which the deceased met his death being regarded as totally irrelevant to the question of guilt. There were no degrees of liability in respect of a voluntary and unlawful act causing death. When the concept of moral blame began to take shape as the foundation of responsibility for the infliction of injury, undoubtedly the result of ecclesiastical influence, those who sought to chart the direction in which the common law should continue its advance did not, understandably, demonstrate the consistency

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and logic that might have been thought to be necessary at that time. Nevertheless, the concept found gradual acceptance among the judges of the 15th and 16th centuries and in the end came to be enshrined in the maxim actus non facit reum nisi mens sit rea. Thereafter homicides came to be distinguished according to whether they could be held to be justifiable, excusable, murder, manslaughter or suicide. Two other kinds of homicide, infanticide and child destruction, were the creation of comparatively modern legislation. The mens rea of murder, as a matter of history, was identified among early writers by such terms as malice aforethought, malice prepense and malice praecogitate. But these and other expressions used by textbook writers and judges during the development of the concept of mens rea did not always convey the same meaning. In 1611, in Mackalley's Case (supra) for example, the view of all the judges sitting in the Court of Exchequer Chamber was that in an unprovoked killing the law implied malice prepense "for by the law of God everyone ought to be in love and charity with all men". By the middle of the 19th century the mens rea in murder had come to be identified as an appreciation in the mind of an accused that his conduct might cause the death of some person. The cases decided between the middle of the 19th century and the first quarter of this century demonstrate that the attitudes of mind which satisfied the criteria encompassed in the mens rea of murder were (i) an intention to kill the person who was actually killed; (ii) an intention to kill some person, the identity of the person killed being irrelevant; (iii) an intention to kill some person other than the person actually killed; and (iv) an intention to do an act in the knowledge that such act could cause the death of some person. The foregoing attitudes of mind were irrelevant in those cases where (a) one person killed another by an act of violence "in furtherance of a felony involving violence", and (b) an officer of justice was killed by any person resisting such officer in the execution of his duty. In these latter cases foresight of the consequences of the accused's conduct assumed no significance.

Turning now to manslaughter, it has always

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been the practice, when once it was distinguished from murder, particularly among judges and those writers of the 17th and 18th centuries (like Coke, Hale, Hawkins, Foster and East) who made such a significant contribution to the early development of the law of manslaughter, to divide this crime into two principal categories, namely, (i) voluntary, and (ii) involuntary manslaughter. The manifest purpose of this division, certainly more important today than it was when Foster and East wrote, was, undoubtedly, to distinguish between those cases which involved an intentional killing in circumstances which were held to reduce the crime of murder to that of manslaughter - voluntary manslaughter, and all other cases in which an accused neither intended nor foresaw death as a consequence of his conduct - involuntary manslaughter.

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At common law voluntary manslaughter occurred in one case, and in one case only, namely, where one person killed another under the stress of provocation and it was, originally, precisely for this reason that the practice arose, when the petit or common jury as we know it today came into being, of permitting a conviction for manslaughter on an indictment which had charged murder. But this practice, at any rate in the early history of manslaughter, really availed an accused nothing. In the third quarter of the 18th century Foster was able to write in his Crown Law:

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"The distinction between murder and manslaughter, as it is stated by our oldest writers, seemeth to have been in their time merely nominal. By the one they meant an insidious secret assassination ... And homicide under these circumstances, if the offender was not apprehended, subjected the township, as I have already observed, to the amerciamento, to which they gave the name of Murdrum. Every other species of felonious homicide they called simply homicidium nequiter et in felonia factum. But both offences with regard to the consequences of a conviction were the same, both capital; unless the privilege of clergy

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interposed, and when it did both were treated alike. The legal notion of murder in contradistinction to manslaughter was afterwards enlarged, and took in every species of homicide, whether openly or privily committed, if attended with circumstances indicating a preconceived malice in the large sense of that term .....

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10 Mackalley's Case (supra) was, perhaps, the earliest case in which this nominal distinction appeared. Like R. v. Salisbury (supra) Mackalley's Case proceeded on a very narrow ground and dealt with a very particular situation. In the latter case all the judges of England met to consider, inter alia, objections taken to a special verdict. It is important to understand the reason assigned by these judges for their view that a verdict of manslaughter could be sustained on an  
20 indictment charging murder. At p. 545 of the All E.R. Rep. (1558-1774) the reason is expressed in the following terms:

"So if one is indicted for the murder of another upon malice prepense and he is found guilty of manslaughter, he shall have judgment upon this verdict, for the killing is the substance, and the malice prepense the manner of it, and when the matter is found judgment shall be given thereupon although the manner is not precisely pursued."

30 Later, on the same page, the following appears:

"I moved all the judges and barons, if in this case of killing a minister of justice in the execution of his office the indictment might have been general, without alleging any special matter, and I concede that it might well be, for the evidence would well maintain the indictment for as much as in this case the law implied maliceprepense."

40 Be it observed that Mackalley's Case concerned the killing of a minister of justice, a circumstance which, in the view of the common law, constituted the necessary "malice prepense" in murder, and that in 1611 that expression bore a meaning quite distinct from that which is contemplated today by the mens rea of murder.

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Apart from those cases noted above in which an accused's mental attitude was regarded as irrelevant there grew up side by side the dual doctrines that an intentional killing by reason of provocation and a killing in which there was some equivocation as to the accused's intention resulted in a verdict of manslaughter. It is unchallengeably clear that these were the only instances known to the common law in which, on an indictment for murder an accused might be found guilty of manslaughter. In all other cases, necessarily of involuntary manslaughter, the indictment specifically charged manslaughter when this offence came to be distinguished in its practical consequences from the offence of murder. Examples of those cases in which the indictment charged murder and in which the evidence, in the view of the trial judge, demonstrated some measure of uncertainty as to the intention of the accused are R. v. Walters, (1841) C. & M. 164; R. v. Bubb, (1851) 4 Cox C.C. 455; R. v. Greenwood (1857) 7 Cox C.C. 404 and R. v. Bottomley, 115 L.T. 88.

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All the authorities dealing with cases of involuntary manslaughter show that this was either the subject of a particular charge in an indictment or, as the early cases show, the subject of a count in an indictment which had also charged murder.

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Notwithstanding what emerges from the foregoing I am prepared to assume that it is open to a jury to return a verdict of manslaughter in any case in which an indictment charges murder simpliciter. I turn, therefore, to the proposition advanced by Mr. Kerr. He put it this way:

"Quite independently of counsel's opening address to the jury in a criminal trial it is perfectly proper for counsel, when all the evidence is in, to address on such issues as arise on the evidence and to seek from the jury any alternative verdict that could reasonably be founded on such evidence."

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In support of this proposition Mr. Kerr relied on the following authorities which it becomes necessary to examine.

(1) R. v. Carter and R. v. Canavan (1964) 1 All E.R. 187. In this case the appellants were convicted of "robbery together" contrary to s. 23 (1)(a) of the Larceny Act, 1916. The indictment had charged that they "being armed with an offensive weapon, to wit a razor blade, together with another person robbed (M) of £10." The jury found that the appellants had indeed robbed M. but that they were not armed. The judge had not dealt with the latter situation in his summing-up although counsel for the prosecution had made reference thereto. Delivering the judgment of the Court of Appeal Lord Parker L.C.J., said, at p. 188 :

"The only question here which concerns this Court is whether, the learned Commissioner not having left the alternative to the jury, the jury were entitled to return the verdict of the alternative offence."

I have the gravest difficulty in understanding what the learned Chief Justice meant by his reference to "the alternative offence". Section 23 (1) of the Larceny Act, 1961, provides: "Every person who - (a) being armed with an offensive weapon or instrument, or being together with one other person or more robs, ..... any person" is guilty of felony. I would have thought that that subsection created one offence, an offence which has come to be known as "robbery with aggravation". This offence of robbery may be committed by a person who is "armed with an offensive weapon", or who is "together with one other person or more". It is perfectly legitimate, of course, to charge both species of aggravation in the indictment. See Sookdeo v. R., (1963) 6 W.I.R. 450. What is unmistakably clear is that there is not one offence of robbery when armed and another offence of robbery "being together with" another person. And where two persons are jointly charged in a single count it is nothing to the point that, in proof of the offence, the prosecution fails to satisfy the jury as to one or other or both of the accused being armed. On analysis it is, in my respectful view, quite impossible to see how anyone could successfully challenge the right and, indeed, the duty of a jury to return a verdict of guilty of robbery with aggravation - two forms of aggravation being alleged - on an indictment which had, in fact,

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charged robbery with aggravation. In the result I am unable to regard R. v. Carter and R. v. Canavan as being relevant.

(2) R. v. Poritt (1961) 3 All E.R. 463. In this case the indictment charged capital murder and the appellant's defence was that he had shot at his stepfather's assailant but had, unhappily, killed his stepfather, and that he had used his gun in defence of a near relative then in imminent danger of being killed. It was not at any time during the trial suggested by the defence that a verdict of manslaughter could be returned on the evidence. The judge did not in his summing-up refer to manslaughter. On appeal against conviction the appellant contended that the jury should have been directed that it was open to them to find a verdict of manslaughter on the ground of provocation under s. 3 of the Homicide Act, 1967. In delivering the judgment of the Court of Criminal Appeal Ashworth, J., said at p. 468:

"As has already been said the issue of manslaughter was not raised at the trial but there is ample authority for the view that notwithstanding the fact that a particular issue is not raised by the defence, it is incumbent on the judge trying the case, if the evidence justifies it, to leave that issue to the jury. The leading case so far as chronology is concerned is R. v. Hopper in this court, but the same principle has been emphasised in a number of other cases and, for convenience, one can read what I think is the last of them, Bullard v. R. In that case Lord Tucker said:

'It has long been settled law that if on the evidence, whether of the prosecution or of the defence, there is any evidence of provocation fit to be left to a jury, and whether or not this issue has been specifically raised at the trial by counsel for the defence and whether or not the accused has

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said in terms that he was provoked, it is the duty of the judge, after a proper direction, to leave it open to the jury to return a verdict of manslaughter if they are not satisfied beyond reasonable doubt that the killing was unprovoked."

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10 (3) R. v. Thompson, (1960) 2 W.I.R. 265. This case is to the same effect as those at (1) and (2) above.

(3) Palmer v. R., (1971) 1 All E.R. 1077. Lord Morris, delivering the opinion of the Privy Council, said, at p. 1080 :

20 "As, however, there was evidence that made possible the view that whoever it was who fired might have done so in self-defence the learned judge very fairly left the matter to the jury. It is always the duty of a judge to leave to a jury any issue whether raised by the defence or not which on the evidence in the case is an issue fit to be left to them. There was a very clear direction that the onus remained on the prosecution to satisfy the jury beyond doubt that the killing was not done in self-defence."

At p. 1088 Lord Morris continued:

30 "But their Lordships consider in agreement with the approach in DeFreitas v. R. that if the prosecution had shown that what was done was not done in self-defence then that issue is eliminated from the case. If the jury consider that an accused acted in self-defence or if the jury are in doubt as to this then they will acquit .... In a homicide case the circumstances may be such that it will become an issue whether there was provocation so that the verdict may be one of manslaughter. Any other possible issues will remain. If in any case the view is possible that the intent necessary to constitute the crime of murder was lacking then that matter  
40 would be left to the jury."

With the greatest respect I do not regard any of the foregoing cases, relied on so strongly by Mr. Kerr, as relevant to the real question posed in this appeal, namely, whether the "issue" of involuntary or constructive manslaughter ought to have been left to the

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jury in the circumstances in this case. It is, perhaps, desirable to restate the following observations made as long ago as 1901 by the Earl of Halsbury, L.C., in Quinn v. Leatham, (1901) A.C. at p. 506:

"..... there are two observations of a general character which I wish to make and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides."

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I respectfully adopt the foregoing observations. They are as valid today as they were 75 years ago and, in my view, are applicable to all judgments of all courts.

Murder is by definition an offence committed where one person, by a deliberate and voluntary act, intentionally kills another without lawful excuse and in the absence of provocation. On a trial for murder the onus remains throughout on the prosecution to establish each of the several elements involved in the foregoing definition. Leaving aside the particular circumstances in which an accused seeks to rely on such matters as insanity or diminished responsibility in respect of which he carries the burden of proof on a balance of probability, the prosecution, on the trial of an indictment for murder, is required to establish (i) the identity of the accused as the person inflicting the fatal injury on the deceased; (ii) that he inflicted that fatal injury by a deliberate and voluntary act; (iii) that at the time he inflicted that injury there was present in his mind an intention to kill, or to cause grievous bodily harm to, the deceased; (iv) that he did not act in necessary self-defence and (v) that he did not act under the stress of provocation.

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When an accused, charged with murder, pleads the general issue by pleading "not guilty" to the indictment it falls to the prosecution to prove every circumstance, every essential element, that constitutes that offence. It is important, therefore, to appreciate what is meant by the word "issue" in the context in which that word is used in the cases noted above. An issue does not arise in vacuo. In civil actions in the High Court issues arise for determination when the parties have answered each other's pleadings in such a manner as to arrive at some material point affirmed on one side and denied by the other. It is by this means that a trial judge - or a jury in those exceptional cases where it is still possible to have trial by jury - knows precisely "the point in question" between the parties. From the point of view of criminal procedure, however, a plea of not guilty, as already observed, puts in issue every essential element of the offence charged in the indictment. This follows from the well-established rule that there can be no "admission of facts" in a criminal trial following a plea of "not guilty". The fact that an accused does not seek to challenge one or more of the elements of the offence charged does not relieve the prosecution of the obligation to establish that element, or those elements, beyond a reasonable doubt. At the end of the evidence, however, there will be some "point (or points) in question" between the prosecution and an accused in respect of which the one will have affirmed and the other will have denied. This point in question, or "real issue" or "live issue", as it is sometimes conveniently called, will relate, and can only relate, to some particular circumstance of the offence charged. For example, the point in question, on a trial for murder, may relate to the requisite intention, the prosecution affirming, as it must, that the accused intended to kill or inflict grievous bodily harm, the accused denying any such intention while not seeking to challenge, either explicitly or impliedly, the existence of the other elements involved in the charge. The manner of such denial assumes no particular significance since an accused may himself lead evidence as to his state of mind at the relevant time, or he may be content merely to ask the jury to say that on the evidence adduced before it the prosecution has not discharged the burden of establishing in him the intention necessary to constitute the crime of murder. Again, the point in question may relate

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to the issue whether the accused acted in necessary self-defence or not. Here the accused may himself lead evidence with a view to having this issue resolved in his favour, or he may, by cross-examination, elicit evidence on the basis of which he would be able to ask the jury to say affirmatively that he had acted in self-defence, or at least that they are not sure whether he had so acted or not. Be it observed, too, that in this latter circumstance although an accused does not specifically rely on any question of provocation he would ordinarily be entitled to have that issue left to the jury for the reason that the same evidence which has been adduced or elicited in support of an unsuccessful defence of self-defence may often be relied on, in whole or in part, as constituting provocation sufficient to reduce the crime from murder to manslaughter, since conduct which cannot justify may well excuse (see Bullard v. R.) the onus being on the prosecution to eliminate provocation as an issue.

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The point I wish to emphasise is that with regard to the essential elements constituting the crime of murder, all of which become issues on a plea of not guilty, any one (or more) of them may be "the point in question" on the trial of a person accused thereof, and it is always the duty of the trial judge to leave to the jury any issue or issues in respect of which the evidence may sustain a finding in favour of an accused.

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In support of the indictment for murder in this case the prosecution sought to establish (a) that the appellants, acting in concert, deliberately and voluntarily threw a stone or stones at the deceased which stone or stones inflicted an injury to the latter's head (and chest) resulting in his death; (b) that this act of stone-throwing was done by the appellants in circumstances in which they could not be heard to say that they were acting either in self-defence or under provocation (subject to the qualification introduced in prosecution counsel's opening address noted earlier in this judgment);

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10 and (c) that at the material time there was present  
in the mind of each of the appellants an intention  
to kill, or to inflict grievous bodily harm on,  
the deceased. The appellants did not raise any  
question of self-defence. Nor did they, either  
explicitly or impliedly, raise any question as  
to the absence of an intention to kill or cause  
grievous bodily harm, or any question as to  
provocation. The appellants, as noted earlier,  
answered the allegations levelled at them by the  
prosecution by a specific denial that they had  
thrown any stones at the deceased. They went  
further. They asserted that when they insisted  
on being paid for the posts the deceased became  
annoyed and ordered them to leave the premises.  
They did so but not before the deceased,  
apparently in search of some weapon, entered  
the storeroom and thereafter left the shed,  
20 running towards the ramp against the side of  
which "he bucked his foot" and fell. By their  
clear answer to the allegation of murder the  
appellants made the deceased's accidental  
death the live issue between themselves and  
the prosecution. Put another way, while all  
the other elements of the offence were, by  
the appellants' plea of not guilty, always in  
issue the real point in question was the  
30 second constituent element of the offence of  
murder, namely that they did not, by any act  
on their part, inflict the fatal injury to the  
head of the deceased as the prosecution had  
alleged.

40 It was no part of the case for the  
prosecution that by throwing stones at the  
deceased the appellants caused him "to  
entertain a well-grounded fear of danger to  
his life or limb so as to cause him to try  
to escape and that in the course of that  
endeavour to escape he met his death by falling  
against the ramp." This not being the case  
advanced by the prosecution the appellants  
did not, understandably, seek to make any  
answer thereto. Accordingly they did not seek  
to show as, clearly, they would have been  
entitled to show, that, assuming a finding  
against them that they had thrown stones at  
the deceased, he did not leave the shed and  
run in the direction of the ramp because of  
any reasonably apprehended danger to his life  
50 or limb. The evidence that the appellants

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did not at any time enter the shed or the storeroom into which the deceased had gone, coupled with the evidence that the appellants had moved some 11 yards away from the shed some time after the deceased entered the storeroom and the evidence that the deceased could have left the shed by a means other than taking a route which brought him into close proximity to the appellants, was evidence which would have been relevant to the deceased's state of mind and would certainly have been explored by the appellants' counsel if they had set out to answer a charge of constructive manslaughter. Nor did the appellants, for the same reason, seek to show that the deceased's fall could not, on the evidence led by the prosecution, be attributed to any stones allegedly thrown by them. Indeed, the prosecution advanced no reason for the deceased's fall. There was certainly no evidence on the part of the prosecution that in his supposed bid to escape the deceased ran into the ramp. It was left to the appellants to assign the cause of the deceased's fall. It would, perhaps, have been a reasonable inference for the jury to draw, if they had considered the matter, that the deceased who had been familiar with the ramp and its surroundings for some 30 years would not have found it difficult to bye-pass it. A vital issue, therefore, assuming a case of constructive manslaughter, would have been whether the throwing of stones by the appellants at the deceased was the sine qua non of the latter's fall as distinct from the causa causans of that fall. This "issue" was never even adumbrated during the course of the trial as it would certainly have been on an indictment charging manslaughter.

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For the foregoing reasons I am compelled to the conclusion that the trial judge ought not, in the particular circumstances of this case, have asked the jury to consider constructive manslaughter for the simple reason that it was never an issue between the prosecution and the appellants.

Before, however, parting with this case it will, perhaps, be useful to examine some

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continued

of the authorities dealing with this question of constructive manslaughter. The most recent case is that of R. v. Mackie (1973) 57 Cr. App. Rep. 453, on which the trial judge appeared to rely. In that case the appellant was convicted of the manslaughter of a boy aged 3 to whom he stood in loco parentis. The boy fell downstairs at a time when he, another small boy and the appellant were alone in the house in which they lived, and died as a result of his injuries. The case for the prosecution was that the appellant had disciplined the boy excessively in the past and that the boy was frightened of him and fell downstairs in an attempt to escape being ill-treated. In delivering the judgment of the Court of Appeal, dismissing the appeal against conviction, Stephenson, L.J., said, at pp. 459-460: "We think that the relevant law was correctly embodied in Mr. Hall's proposition in accordance with such authorities as EVANS (1812), RUSSELL on Crime 12th Edn., p. 414; PITTS (1842) Car. & M. 283; HALLIDAY (1890) 51 L.T.N.S. 701 and CURLEY (1909) 2 Cr. App. Rep. 109; and similar cases where the injuries were not fatal such as BEECH (1911) 7 Cr. App. Rep. 197; LEWIS (1970) Crim. L.R. 647 and ROBERTS (1972) 56 Cr. App. Rep. 95. We are of the opinion that Mr. Hall's formulation of the questions to the jury correctly applied the law laid down in these cases."

The learned Lord Justice then set out the criteria which, in the court's view, were to be applied in determining responsibility for the victim's injuries. He said: "Where the injuries are not fatal, the attempt to escape must be the natural consequence of the assault charged, not something which could not be expected, but something which any reasonable and responsible man in the assailant's shoes would have foreseen. Where the injuries are fatal the attempt must be the natural consequence of an unlawful act and that unlawful act 'must be such as all sober and reasonable people would inevitably recognize must subject the other person to, at least, the risk of some harm resulting therefrom albeit not serious harm'." For this latter proposition reliance was placed on R. v. CHURCH (1965) 49 Cr. App. Rep. 206; (1965) 2 All E.R. 72; and R. v. LIPMAN (1969) 53 Cr. App. Rep. 600; (1969) 3 All E.R. 410.

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No. 22

Judgment  
15th June 1976  
continued

I proceed to examine the authorities which were regarded in R. v. Mackie (supra) as correctly laying down the law.

In R. v. Evans (supra) there was strong evidence that the death of the wife was occasioned by the blows she received before her fall, but Heath, Gibbs and Bayley, JJ., were of opinion that if her death was occasioned partly by the blows and partly by the fall, yet if she was constrained by the accused's threats of further violence, and from a well-grounded apprehension of his doing such further violence as would endanger her life, he was answerable for the consequences of the fall, as much as if he had thrown her out of the window himself. The accused was, however, acquitted, the jury being of opinion that the wife had thrown herself out of the window by her own intemperance, and not under the influence of any threats issued by the accused.

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In R. v. Pitts (supra) it was alleged against the accused that the deceased had slipped into a river in endeavouring to escape from an assault made with intent to murder or to rob. Evidence was led that the body of the deceased was found in a river and that it bore marks of violence, but not sufficient to cause death. It appeared that death had been caused by drowning. Erskine, J., told the jury that a man might throw himself into a river under such circumstances as rendered it not a voluntary act, by reason of force applied either to the body or to the mind; and it then became the guilty act of him who compelled the deceased to take the step. The learned judge further directed the jury that the deceased's apprehension must have been of immediate violence and well-grounded from the circumstances by which he was surrounded; and that they should be satisfied that what the deceased did was such a step as a reasonable man might take.

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In R. v. Halliday (supra) the accused was charged with inflicting grievous bodily harm on his wife contrary to s. 20 of the Offences against the Person Act, 1861. The

evidence showed that he was drunk and had said to his wife "I'll make you so that you can't go to bed". The wife became frightened and opened the window of her room and got one leg out in an attempt to get out. Her daughter caught hold of her and held her. The accused got within reach of his wife and demanded that the daughter let her go. The daughter did so and her mother fell into the street and broke her leg. It was held, following R. v. Martin, (1881) Q.B.D. 54 (the theatre case), a correct direction to the jury, that if the wife's apprehension was well-grounded, taking into account the circumstances in which she was placed, and if getting out of the window was an act such as under the circumstances a woman might reasonably be led to take, they should find the accused guilty.

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continued

In R. v. Beech (supra) the indictment charged the appellant with unlawfully inflicting grievous bodily harm. The appellant went to the complainant's house late at night and gained entry by breaking a window. He went upstairs and began to force open the door of the complainant's bedroom which was locked. She told him that if he forced her door he would not find her in the room. He nearly succeeded in forcing the door when the complainant jumped through the window and was injured. The trial judge directed the jury that if they found that the conduct of the appellant amounted to a threat of causing injury to the complainant, and that the act of jumping through the window was a natural consequence of his conduct, and that the grievous bodily harm was the result of his conduct, they should convict him. This direction was held to be right.

In R. v. Lewis (supra) the appellant was convicted of maliciously inflicting grievous bodily harm on his wife. Her evidence was that he had treated her with considerable violence and as a result she locked the door of the matrimonial home (a third floor flat) against him and refused to let him in. He shouted threats at her and said that he would kill her. She heard the sound of breaking glass from one of the rooms of the flat. She was in another room and she jumped out of the window because, she said, she had no alternative being in fear of what he would do if she stayed in the flat. She broke both her legs. The trial

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continued

judge directed the jury in accordance with R. v. Halliday (supra) and his direction was held to be right.

In R. v. Roberts (supra) a young girl who was a passenger in the appellant's car injured herself by jumping out of the car while in motion. Her explanation was that she had been assaulted and threatened by the appellant. The trial judge directed the jury that if they felt sure that they could accept the evidence of the girl on what induced her to jump out of the car they should convict of assault occasioning bodily harm. It was held, following R. v. Beech, that the proper test being not whether the appellant actually foresaw the girl's conduct which resulted in the actual bodily harm, but whether that conduct could reasonably have been foreseen as the consequence of what he had said or done, the summing-up was not open to objection.

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A careful examination of the judgments in each of the foregoing cases reveals that each was predicated on the premise of two common and fundamental factors. In the first place, in each case the act causing death or injury, forced upon the victim by the reasonably apprehended violence of the assailant was regarded not as the voluntary act of the victim but the act of the assailant himself and so the actus reus of the crime charged. Secondly, in each case the very manner of escape pursued by the victim as the natural consequence of the assailant's conduct was a manner of escape which, by its very nature, was inherently dangerous in the sense that the consequence suffered by the victim was the natural and, perhaps, inevitable consequence of the manner of escape. Although I do not question the decision in the case of Mackie I venture to think that the criterion which the court thought to be applicable in those cases where the injuries are fatal is at least open to debate in that it does not accurately reflect the bases on which the decisions just examined were reached.

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Can the foregoing considerations,



nevertheless, be said to be applicable to the manner of escape described by the evidence in the instant case? Is an attempt to escape from possible hurt by stones by running away from the scene, and running on ground thoroughly familiar to the victim, an act which by its very nature involves the natural consequence of injury? Can it make any difference to the nature of this act - the act of running away from the scene - that the victim trips and falls for some reason unknown and suffers a fractured skull resulting in death? Can it be said that the act of falling while running is an act forced upon the deceased by the appellants' conduct so as to make it the act of the appellants and, therefore, the actus reus of manslaughter? I suggest that the answers to these questions, not debated at the trial herein, may very well be in the negative.

I come now to R. v. Church (supra). It is important to observe that in this case the trial judge had directed the jury in the following terms:

"If, by an unlawful act of violence done deliberately to the person of another, that other is killed, the killing is manslaughter even though the accused never intended either death or grievous bodily harm to result. If (the deceased) was alive, as she was, when he threw her in the river, what he did was a deliberate act of throwing a living body into the river. That is an unlawful killing and it does not matter whether he believed she was dead, or not, and that is my direction to you"

and

"I would suggest to you, though, of course, it is for you to approach your task as you think fit, that a convenient way of approaching it would be to say: What do we think about this defence that he honestly believed the (deceased) to be dead? If you think that is true, why then, as I have told you, your proper verdict would be one of manslaughter not murder."

The Court of Criminal Appeal held that these

## In the Court of Appeal

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continued

directions were wrong because the trial judge had, in effect, told the jury that whenever an unlawful act was committed in relation to a human being which resulted in death there had to be, at least, a conviction for manslaughter. The court thought that for such a verdict to follow, the unlawful act must be such as all sober and reasonable people would inevitably recognize must subject the other person to, at least, the risk of some harm resulting therefrom. Be it observed, however, that the particular factual situation with which the court was dealing was one in which one person had killed another "by an unlawful act deliberately done (by the former) to the person of" the latter. The court was not there dealing with a situation in which the "actus reus" alleged was not necessarily, or inevitably, a natural consequence, or, indeed, a direct consequence, of an unlawful act by the person whose conduct was the subject of enquiry. To this extent it is somewhat difficult to appreciate why the court in Mackie's Case (supra) regarded R. v. Church as apposite to the circumstances with which it was there concerned.

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In R. v. Towers, (1874) 12 Cox C.C. 533, the accused was charged with manslaughter arising out of the death of a 4½ month old child allegedly caused by convulsions following upon flight when the child's nurse screamed rather loudly as a result of being hit by the accused. Denman, J., in his summing-up, regretted the lack of assistance from previously decided cases and left it to the jury to determine "whether this death was directly the result of the prisoner's unlawful act - whether they thought that the prisoner might be held to be the actual cause of the child's death ....." He continued: "If, therefore, the jury thought that the act of the prisoner in assaulting the girl was entirely unconnected with it, that the death was not caused by it, but by a combination of circumstances, it would be accidental death and not manslaughter. See also R. v. Hickman, (1833) 5 C. & P. 151.

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If anything emerges from R. v. Towers and R. v. Hickman it is that up to the latter part of the 19th century the rule as to strict liability was, in the view of some judges, still very much a part of the common law. Liability depended not on foreseeability but rather on the direct consequence principle.

10 All the cases noted above reveal that the courts demanded, as a matter of causation, a more logical nexus between an accused's act and the deceased's death than a mere coincidence, without more, in the time and place of the occurrence giving rise to the charge. They insisted that the accused's conduct be not merely the causa sine qua non, but the causa causans of the death. This approach is strikingly illustrated in R. v. Bennett, 28 L.J.M.C. 27 and R. v. Fenton, 1 Lew. 179. In R. v. Bennett fireworks  
20 manufactured by the defendant exploded, through the negligence of the defendant's servants, causing a rocket to shoot across the street and set fire to a house thereby bringing about the death of an occupant. Cockburn, C.J., and Willes, J., in the Court for Crown Cases Reserved, set aside a conviction for manslaughter by adopting the "necessary and immediate consequence" test. The keeping of the fireworks "caused the death only by the super-addition of the negligence of someone else".

30 In R. v. Fenton (supra) the defendants threw stones down a mine causing scaffolding installed therein to break with the result that the lift in which miners were descending collapsed causing them to be thrown out and killed. Tindal, C.J., spoke of the causal factor in these terms:

40 "The real question is whether the death is to be fairly considered as the consequence of the unlawful act; if it followed therefrom, as an effect from a cause the offence is manslaughter, and, if not, it is an accidental death".

The foregoing examination of the approach to causation, albeit brief, suggests that it is not an accurate statement of the law to say, as the trial judge said in this case and as was said in the Mackie Case, that liability attaches, inter alia, where the deceased is killed "in the course

In the Court of Appeal

No. 22

Judgment  
15th June 1976  
continued

of and as a consequence of trying to escape".

For the reasons that I have attempted to give in this judgment I would allow the appeal and set aside the convictions.

WATKINS, J.A. (Ag.):

I have had an opportunity of reading the judgment of Graham-Perkins, J.A. and I am to say that I am in entire agreement therewith.

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ZACCA, J.A.

I have had an opportunity of reading the judgment of Graham-Perkins, J.A. I regret that I cannot agree with his reasoning and conclusions.

In my view the learned trial judge was correct in leaving for the consideration of the jury the issue of Manslaughter on the basis of "trying to escape". It is an issue which arose on the evidence and it was the duty of the trial judge to leave it for the consideration of the jury whether or not the Attorneys for the Crown or Defence dealt with it.

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It was open to the jury on the evidence to find that the deceased was trying to escape from the applicants by reason of their stoning him and that his fall and injury was as a result of this stoning and his trying to escape. The jury, therefore, could properly have arrived at the verdict which they did.

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I would therefore dismiss these applications for leave to appeal.

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No. 23

No. 23

ORDER GRANTING CONDITIONAL  
LEAVE TO APPEAL TO HER MAJESTY  
IN COUNCIL

Order Granting  
Conditional Leave to  
Appeal to Her Majesty  
in Council  
24th September 1976

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 140 and 141,  
1975

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BETWEEN THE DIRECTOR OF PUBLIC PROSECUTIONS (APPLICANT)

In the Court of Appeal

AND FREDERICK DALEY (RESPONDENT)  
BURNETT MCGHIE "

No. 23

Order Granting  
Conditional Leave to  
Appeal to Her Majesty  
in Council  
24th September 1976  
continued

Upon the application of the Director of Public Prosecutions for leave to appeal to Her Majesty in Council and upon hearing Mr. J.S. Kerr, Q.C., Director of Public Prosecutions, The Court of Appeal in granting leave certifies:

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1. That the decision of the Court of Appeal in the instant Appeal involves the following points of law of exceptional public importance:

- (1.) Whether or not on an indictment which charged murder it is open to the jury to return a verdict of manslaughter (regardless of the category) where there is sufficient evidence to support such a verdict.

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- (2.) Whether quite independently of Counsel's opening to the jury, it is proper for Counsel for the Crown in his closing speech to address the jury on such issues as arise from the evidence and to seek from them any verdict which is returnable on the indictment and may reasonably be founded on such evidence.

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- (3.) Whether or not irrespective of the address of Counsel on either side it is the duty of the trial judge to leave to the jury all issues that arise from the evidence and to direct them on such alternative verdicts that may be open to them having regard to such evidence; and

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- (4.) Whether or not in the instant case the issue of "manslaughter by flight" as defined by the trial judge fairly arose on the

In the Court of Appeal

No. 23

Order Granting  
Conditional Leave to  
Appeal to Her Majesty  
in Council  
24th September 1976  
continued

evidence and whether or  
not his directions in  
that regard were fair,  
clear and adequate.

2. That it is desirable in the public  
interest that a further appeal should be  
brought.

AND IT IS HEREBY further ordered that  
the applicant takes the necessary steps for  
the purposes of procuring the preparation of  
the record and dispatch thereof to England  
within eight (8) weeks hereof.

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Dated this 24th day of September, 1976.

Registrar  
Court of Appeal  
Jamaica

FILED by the Crown Solicitor of seventy nine  
Barry Street, Kingston on behalf of the  
abovenamed applicant

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In the Court of Appeal

No. 24

Order Granting Final  
Leave to Appeal to  
Her Majesty in Council  
22th November 1976

No. 24

ORDER GRANTING FINAL LEAVE  
TO APPEAL TO HER MAJESTY  
IN COUNCIL

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL

NOS. 140 & 141/75

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BEFORE: THE HON. MR. JUSTICE SWABY, J.A.  
THE HON. MR. JUSTICE WATKINS, J.A.  
THE HON. MR. JUSTICE HENRY J.A.  
(ACTG.)

BETWEEN THE DIRECTOR OF PUBLIC  
PROSECUTIONS APPELLANT

A N D FREDERICK DALEY RESPONDENTS  
BURNETT MCGHIE

THE 12TH DAY OF NOVEMBER, 1976.

UPON THIS MOTION for Final Leave to Appeal from the Judgment of the Court of Appeal dated 15th day of June, 1976, coming on for hearing this day before the Court of Appeal and upon hearing MR. HENDERSON DOWNER on behalf of the Appellant.

In the Court of Appeal

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No. 24

Order Granting Final Leave to Appeal to Her Majesty in Council 12th November 1976 continued

IT IS HEREBY ORDERED as follows:

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That Final leave be granted to the Appellant herein to appeal to Her Majesty in Council from the decision of the Court of Appeal handed down on the 15th day of June, 1976.

BY THE COURT

.....  
W.W. COKE,  
Actg. Registrar,  
Court of Appeal,  
Jamaica, West Indies.

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 :

THE DIRECTOR OF PUBLIC  
PROSECUTIONS Appellant

- and -

FREDERICK DALEY and  
BURNETT McGHIE Respondents

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RECORD OF PROCEEDINGS

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