

36/81

IN THE PRIVY COUNCIL

No. 30 of 1979

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

B E T W E E N :

NEVILLE NEMBHARD

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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O N A P P E A L  
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RECORD OF PROCEEDINGS

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O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

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B E T W E E N :

NEVILLE NEMBHARD Appellant

- and -

THE QUEEN Respondent

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RECORD OF PROCEEDINGS

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No. 1

In the Home  
Circuit  
Court

10

STATEMENT AND PARTICULARS  
OF OFFENCE

No.1  
Statement  
and  
Particulars  
of offence

The Queen v. Neville Nembhard  
in the Supreme Court for Jamaica  
In the Circuit Court for the Parish of Kingston

11th  
September  
1974

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

Neville Nembhard is charged with the following  
offence :-

STATEMENT OF OFFENCE

20

Murder.

PARTICULARS OF OFFENCE

Neville Nembhard, on either the 13th or 14th  
day of January, 1974, in the parish of Kingston,  
murdered Linval Campbell.

for Director of Public Prosecutions,  
11th September, 1974

In the Home  
Circuit Court

No.2  
Proceedings

13th April  
1977

No. 2  
PROCEEDINGS

HOME CIRCUIT COURT,  
KINGSTON.

13th April, 1977

R E G I N A vs. NEVILLE NEMBHARD

ON RESUMPTION: 11.12 a.m.  
CROWN ATTORNEY: May the accused man be pleaded.  
HIS LORDSHIP: He was pleaded originally. 10  
That plea remains. When was  
he pleaded ?  
REGISTRAR: On the 10th of February, 1975.  
HIS LORDSHIP Yes, go ahead.  
REGISTRAR: Mr. Neville Nembhard.....  
MR. Macaulay: He is telling you that he  
has pleaded before.  
REGISTRAR: Mr. Neville Nembhard, these  
names I am about to call are  
the names of the jurors who  
are to try your case. If, 20  
therefore, you wish to  
challenge them or any of them  
you must do so as they come to  
the book to be sworn and before  
they are sworn, your objections  
shall be heard.

EMPANELLING OF JURY:

REGISTRAR: No. 5 Mr. Linton Weller No answer  
8 Mrs. Lilieth Fraser Sworn  
20 Mr. Stanford Bowers No answer  
14 Mr. Andrew Abrahams No answer 30  
23 Mr Vincent Banton No answer  
26 Mrs. Delores Chung Sworn  
32 Miss Olive Datadeen Sworn  
35 Mr. Edward Diedritch Sworn  
80 Miss Lucille Graham Challenged  
by Crown  
71 Mrs. Viola Howell No answer  
38 Mr. Edward Erlington No answer  
41 Mr. Frederick Duggan Affirmed

	No.44 Mr.Frederick Donaldson	Sworn	In the
	53 Miss Gretel Henry	Challenged	Home
		by Crown	Circuit
			<u>Court</u>
	50 Mrs. Pearl Hall	No answer	No.2
	17 Mr. Anthony Bernard	Challenged	Proceedings
		by Crown	13th April
	74 Mr.Basil Minott	Challenged	1977
		by Defence	(continued)
	47 Mr.Allan Gray	No answer	
10	56 Mr.Winston Howell	Sworn	
	77 Mr.Delroy Molton	No answer	
	59 Miss Evelyn Latty	No answer	
	68 Mr.Ronald Mullings	No answer	
	65 Mrs. Veta Malabre	Sworn	
	85 Miss Ruth Richards	No answer	
	62 Miss Joyce Leehing	Sworn	
	73 Mr.Robert Young	Sworn	
	79 Mrs.Daphne McDonald	No answer	
	67 Mrs.Elsie Lye Fong	No answer	
20	58 Miss Gertrude	Challenged	
	Johnson	by Crown	
	Miss Myrtle Bennett	Challenged	
		by Crown	
	38 Mr.Edward Erlington	Challenged	
		by Defence	

HIS LORDSHIP: Mr.Erlington you were in the wrong court? We called your name earlier.

30 REGISTRAR: 10 Mrs.Enid Wallace Challenged by Defence  
4 Mrs. Myrnell Wright Foreman  
16 Miss Rebecca O'Sullivan Sworn

USHER: All sworn

REGISTRAR: Members of the jury, please confer among yourselves and select a foreman. A lady ....

40 HIS LORDSHIP: The idea, members of the jury, is that you should get a spokesman from among yourselves. It is a difficult thing because some of you have never seen each other in all your life but you have to try your best and see who you think in a

In the Home  
Circuit Court

No.2  
Proceedings

13th April  
1977

(continued)

democratic way, and the foreman can be a woman. You must see who will best able to be a spokesman for all of you and when you go to consider your verdict that person has to preside over the proceedings, so you try and select from among yourselves the person who you think best fitted for this job whether a lady or gentleman. 10

REGISTRAR: Foreman selected please stand. Members of the jury you have selected Mrs. Murnell Wright to be your foreman and so say all of you.

JURY: Yes.

REGISTRAR: Madam Foreman, members of the jury, the prisoner at the bar, Mr. Neville Nembhard, is charged with the offence of murder. The particulars are that Mr. Neville Nembhard on the 13th day of January, 1974, in the parish of Kingston, murdered Linval Campbell. To this indictment he has pleaded not guilty, and it is therefore your charge having heard the evidence to say whether he be guilty or not guilty. 20 30

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

HIS LORDSHIP: All the jury who did not answer to their names each one is fined twenty dollars unless each shows cause for non-attendance. Please see that the Inspector gets the names of all those who did not answer so that we can make effort to find out why they did not answer, and see if they can attend tomorrow. 40

USHER: Witnesses in this case keep out of hearing.

CROWN ATTORNEY OPENS TO THE JURY FROM 12.04 p.m. to 12.18 p.m.

CROWN ATTORNEY: I propose to call Maria Campbell who is the deceased's wife. 50

MARIA CAMPBELL

In the Home  
Circuit Court

Prosecution  
Evidence

No.3  
Maria Campbell

Examination

13th April  
1977

MARIA CAMPBELL, SWORN, EXAMINED BY CROWN  
ATTORNEY Time: 12.10

HIS LORDSHIP: Will you pull the chair up  
and have a seat.

WITNESS: Thank you, sir.

CROWN ATTORNEY:

Q: Is your name Maria Campbell?

10 A: Yes, sir.

Q: And are you the widow of Mr. Linval  
Campbell?

A: Yes, sir.

Q: In January of 1974, the 13th of January,  
where were you living?

A: I was living at 13 Goffe Way, Kingston 14.

HIS LORDSHIP: That is which town?

A: Denham Town area.

20 CROWN ATTORNEY: And did you live with your  
husband there at that premises:

A: Yes, sir.

Q: Your husband, what was his occupation?

A: He was a Detective Acting Corporal.

Q: And what station he was attached to,  
madam?

A: At the time May Pen in Clarendon. At  
the time of his death he was attached to  
May Pen.

HIS LORDSHIP: Police Station?

30 A: Yes, sir.

CROWN ATTORNEY: That is in the parish of  
Clarendon?

A: Yes, sir.

Q: And he would travel to and from daily?

A: Yes, sir.

Q: You say he was a detective, therefore  
he never wore uniform?

A: No, sir.

Q: Now, do you know if he carried a firearm?

40 A: Yes, sir, he usually.

Q: He normally carried a firearm?

A: Yes, sir.



In the Home  
Circuit Court

Prosecution  
Evidence

No.3

Maria Campbell

Examination

13th April

1977

(continued)

HIS LORDSHIP: What, a revolver?

CROWN ATTORNEY:

Q: What sort of firearm?

A: A revolver.

Q: Now, on the day of the 13th of January, 1974, who left home first?

A: I sir.

Q: You left home. To where?

A: To my work.

Q: What work do you do, madam?

10

A: I am a nurse, sir.

Q: And when you were leaving to work where was your husband?

A: He had accompanied me to the bus stop.

Q: Walked?

A: Yes, sir.

Q: And when you - what time that was?

A: About 5.30 a.m.

Q: Now, did you return home that night?

A: Yes, sir.

20

Q: About what time?

A: About 8.00 p.m.

HIS LORDSHIP: About what?

A: About 8.00 p.m., sir.

CROWN ATTORNEY:

Q: During that time, between the time that you left your husband and 8.00 p.m. when you came back home you had not seen him?

A: No, sir.

30

Q: Now, where were you at about 8.30 p.m.?

A: I was in my bedroom, sir, at home.

Q: While in your bedroom was your attention drawn to anything?

A: Yes, sir.

Q: What it was?

A: Two shots, gun shots.

Q: The sound of two shots?

A: Yes, sir.

Q: Where you heard those?

40

A: Immediately in front of my living room towards the gate and the verandah.

Q: The two shots that you heard how did they follow one another?  
A: In quick succession.  
Q: And upon hearing those two shots what did you do next?  
A: I screamed and I ran straight in my living room. I looked through the window.  
10 Q: When you were looking through your window in the living room towards where were you looking?  
A: On the verandah, sir.  
Q: That is the front verandah?  
A: Yes, sir.  
Q: It faces the street?  
A: Yes, sir.  
Q: And you looked through that window. Were you able to see outside?  
A: Yes, sir.  
20 Q: By what means?  
A: My verandah was lit.  
Q: With what?  
A: Electric light, sir.  
Q: Where?  
A: On the verandah.  
Q: Where the lights were, in the ceiling?  
A: Yes, sir, on the verandah.  
Q: Was it bright?  
30 A: Yes, sir, it was a bright light that we keep there all the while.  
Q: And how far did the illumination extend to, how far would the light shine?  
A: Outside the gate.  
Q: How far is your gate to the verandah?  
A: The gate open in the street, sir.  
Q: How far is the gate to the street?  
A: It is about four yards.  
Q: Would the light shine out to the gate?  
A: Yes, sir.  
40 Q: When you looked out there did you see anything or anybody?  
A: I saw my husband, sir.  
Q: Where you saw him?

In the Home  
Circuit Court  
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No. 3  
Maria Campbell  
Examination  
13th April  
1977  
(continued)

In the Home  
Circuit Court

Prosecution  
Evidence

No. 3  
Maria Campbell

Examination

13th April  
1977

(continued)

A: Prostrate with his head reasing in my garden, sir, at the gate.

Q: Did you see anyone else?

A: No, sir.

Q: Now, having seen him, looking through the window and seeing him, what did you do next?

A: I ran straight out.

Q: Through what?

A: To him. 10

Q: By which way you went out?

A: Through the front door.

Q: You went out to the gate?

A: Yes, sir.

Q: What did you do upon seeing him?

A: I lifted his head.

MR. MACAULAY: I did not get that please.

CROWN ATTORNEY: Please repeat what you did.

A: The last part?

HIS LORDSHIP: She said, "I lifted his head into my hands." 20

CROWN ATTORNEY: Did anybody speak as you did that?

A: He spoke to me, sir.

HIS LORDSHIP: Just a minute now. Did you say, "I lifted his head into my hands"?

A: I took my hand and lifted his head.

HIS LORDSHIP: It might have been lap, you see. That is right, hand. You said he spoke to you? 30

A: Yes, sir.

CROWN ATTORNEY:

Q: Did you notice anything about him as you lifted his head?

A: He was bleeding.

Q: From?

A: A wound in his left side, sir.

HIS LORDSHIP: A wound where?

A: Left side.

HIS LORDSHIP: Of what? 40

A: His body.

CROWN ATTORNEY:

Q: Anywhere else?

A: One at the left side of his neck.  
Q: How did he appear to you as he spoke?  
A: Well, talking loud, loud, very loud, very loud.  
Q: How long have you been a nurse, madam?  
A: At that time, sir, it was about fourteen years, sir.  
Q: And how did he appear to you?  
A: The pulse was low but his mouth was very strong.  
Q: You said the pulse was low. What did you do?  
MR. MACAULAY: She said the pulse was low and something.  
HIS LORDSHIP: But his mouth was very strong.  
CROWN ATTORNEY:  
Q: This bleeding that you saw how was the bleeding?  
A: It was bleeding profusely, sir.  
Q: Both wounds?  
A: No, sir, the one at the left side.  
Q: As he spoke to you, did he indicate to you how he was feeling?  
A: Yes, sir.  
Q: As a result of what he said what did you do?  
A: I still held his hand, his head.  
Q: Tell me something. You told us that you felt his pulse. Was that before he indicated his feelings or after?  
A: Before he told me something.  
Q: Told you something?  
A: Yes, sir.  
Q: What I am asking, when you felt his pulse was it before he told you or after he told you?  
A: Before.  
Q: You felt his pulse before?  
A: Yes, sir.  
Q: Then he told you something?  
A: Yes, sir.  
Q: How did he say he was feeling?  
A: Well, he said he was going to die.  
Q: As a nurse having heard what he said

In the Home  
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Prosecution  
Evidence  
No. 3  
Maria Campbell  
Examination  
13th April  
1977  
(continued)

In the Home  
Circuit Court

Prosecution  
Evidence

No. 3

Maria Campbell

Examination

13th April  
1977

(continued)

how did he appear to you, what his  
condition appeared to you?

A: Well, as I said before he was very loud  
in saying a lot of things to me, and I  
will quote what he said, sir.

HIS LORDSHIP: No, no, the gentleman has  
not asked you to say what he said yet.  
What he was asking you - are you a  
trained nurse, madam, or a practical  
nurse? 10

A: Trained nurse.

HIS LORDSHIP: The gentleman wants to know  
what was his physical condition.

A: His physical condition, he was very  
strong.

CROWN ATTORNEY:

Q: Now as he spoke to you did he call  
names? Please don't tell me any name.  
Did he call names?

A: Yes, sir. 20

Q: One name or more than one name?

A: One name, sir.

Q: Did you know that name?

A: Yes, sir.

Q: Did you know the person to whom he was  
referring?

A: Yes, sir.

Q: For how long did you know that person?

A: At the time of his death I knew him  
ten years. 30

Q: Did you know where that person was  
living at the time?

A: Yes, sir.

Q: You knew the address?

A: Yes, sir.

Q: What was the address?

A: I think it was - 14, 12, 11 - I think  
it was 10, sir.

Q: 10 what?

A: 10 Goffe Way. 40

Q: Is that the same road that you lived on?

A: Yes, sir.

Q: How far is 10 Goffe Way from your house?

A: 10 Goffe Way from my house is about  
12 yards.

Q: Is it on the same side of the road?  
A: Opposite.  
Q: So, would you describe that address as across the road from you?  
A: Yes, sir, just across.  
Q: And this name, this person to whom he referred was he living at that place for the ten years that you knew him?  
A: Yes, sir.  
10 Q: Your husband was taken to the hospital that night?  
A: Yes, sir.  
Q: And your husband died that night?  
A: He died the following morning at about quarter to one or thereabouts.  
Q: The following morning you say?  
HIS LORDSHIP: You were present?  
A: No, sir, I wasn't present when he died.  
20 HIS LORDSHIP: You can't tell us the time. Anyway he died the following morning.  
A: Yes, sir.  
CROWN ATTORNEY:  
Q: Did you accompany your husband to the hospital?  
A: Yes, sir.  
Q: Which hospital?  
A: Kingston Public Hospital.  
Q: Who took him there?  
A: The police, sir.  
30 Q: Now, do you know Naico Fraser?  
A: Yes, sir.  
Q: She is related to you?  
A: Yes, sir.  
Q: What relation?  
A: my adopted daughter.  
HIS LORDSHIP: What is her name?  
A: Naico Fraser.  
CROWN ATTORNEY:  
Q: She is your adopted daughter?  
40 A: Yes, sir.  
Q: Did she live with you at that time?  
A: Yes, sir.

In the Home  
Circuit  
Court

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Prosecution  
Evidence

No.3  
Maria  
Campbell  
Examination

13th April  
1977

(continued)

In the Home  
Circuit Court

Prosecution  
Evidence

No. 3  
Maria Campbell

Examination

13th April  
1977

(continued)

Q: While you were at the gate with your husband did you see her come (illegible)

A: Yes, sir.

Q: When she came on was your husband still talking?

A: Yes, sir.

Q: And did she leave?

A: Yes, sir, she ran for the police.

HIS LORDSHIP: Just one minute. What was the answer?

10

A: She ran for the police.

CROWN ATTORNEY:

Q: Now, at the hospital was your husband still conscious, at the hospital?

A: Yes, sir.

Q: Was he still talking?

A: Yes, sir.

Q: How would you describe his condition at the hospital?

A: Well, according to his words he was - according to his words that he was saying ....

20

HIS LORDSHIP: No, no, you weren't asked about what words he was saying. What was the question, Mr. Reckord?

CROWN ATTORNEY: The question, M'lord, was at the hospital what was his condition.

HIS LORDSHIP: Not what he said his condition was, you are being asked from your point of view what was his condition.

30

A: His condition was looking good to me, sir.

CROWN ATTORNEY:

Q: He said anything at the hospital about his condition, how he felt?

A: Yes, sir.

Q: What did he say?

A: He was talking to a detective, sir.

Q: What was he saying?

A: He said.....

40

Q: About his condition, madam. Did he say anything about his condition?

A: He didn't tell me about his condition, sir, he was just talking.

Q: When he told you or he told the police,

did you hear him say anything about his condition at the hospital?

In the Home  
Circuit Court

A: Yes, sir.

Prosecution  
Evidence

Q: What?

A: That he was going to die.

No.3  
Maria Campbell

HIS LORDSHIP: Who was he telling this?

Examination

A: He was telling a detective, sir.

13th April  
1977

CROWN ATTORNEY:

10 Q: Now at your gate when you went out to him, the name that he called was it as a result of any question by you or he spoke and just told you the name.

(continued)

A: No questions, he just spoke.

Q: At the hospital, was it as a result of any questioning by you or the police when he spoke or he spoke freely?

A: He just spoke, nobody questioned him, sir.

Q: Where was he lying when he was speaking?

A: On a stretcher.

20 Q: Where, where?

A: In the Casualty.

Q: Were any doctors or nurses around?

A: Yes, sir.

Q: They were attending to him?

A: Yes, sir.

Q: As he spoke?

A: Yes, sir.

Q: At the hospital did he call any names that you recognised?

30 A: Yes, sir.

Q: Was it the same name or a different name that you heard before?

A: The same name.

Q: You recognised who it was?

A: Yes, sir.

Q: What he was saying both - firstly, at the gate? What he spoke about? What was he speaking about at the gate?

40 A: He was going to die and I am going to lose my husband.

HIS LORDSHIP: Just a minute.

CROWN ATTORNEY: What I really want to find out, madam, was he speaking about how he



In the Home  
Circuit Court

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Evidence

No. 3  
Maria Campbell

Examination

13th April  
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(continued)

got his injury?

A: Yes, sir.

MR. MACAULAY: I think that is a bit too  
leading.

CROWN ATTORNEY: Now, at the hospital, what  
was he - you said that he was talking  
a lot and so forth. What was he talking  
about?

A: How he got his injury, sir, and how and  
who gave it to him. 10

Q: Tell me, something, madam, was Mr.  
Campbell attached to any church?

A: Yes, sir.

Q: What church he joined?

A: East Queen Street.

Q: Now, madam, at the gate as you had your  
husband's head in your hand what was  
he saying?

MR. MACAULAY: Objection.

HIS LORDSHIP: Just a minute, what was he  
saying? 20

A: Yes, M'Lord.

HIS LORDSHIP: Is there an objection being  
taken?

MR. MACAULAY: I have taken the objection.

HIS LORDSHIP: I didn't hear you. You must  
have taken it to Mr. Reckord.

MR. MACAULAY: I took the objection.

HIS LORDSHIP: Not to me.

MR. MACAULAY: You didn't hear, M'Lord. 30

HIS LORDSHIP: Yes.

CROWN ATTORNEY: I am sorry, M'Lord. Just  
one more question before Your Lordship  
pleases. Mrs. Campbell, you told us  
that you knew the name your husband  
was calling, you knew the person.

A: Yes, sir.

Q: Did you know if your husband knew that  
person also?

A: Yes, sir, yes, sir. 40

Q: You and your husband have been living  
at the same address for years?

A: Yes.

Q: And this person was living at this other  
address for years also?

A: Yes, sir.

Q: And of your own knowledge you knew that your husband knew that person?

A: Person, yes, sir.

Q: Now, the question now is, madam, who it was that your husband said that caused him the injury?

10 HIS LORDSHIP: Just a minute now. The previous question to which the objection was taken was, at the gate what was he saying, and that is objected to. You are altering the question now?

CROWN ATTORNEY: Yes, Lord, I am altering the question and putting it specifically.

HIS LORDSHIP: Madam, please don't answer you see, don't answer until you are told. What is the question now?

20 CROWN ATTORNEY: The question is M'Lord, at the gate what was the name that her husband called.

HIS LORDSHIP: It is your question, you know.

CROWN ATTORNEY: Yes, M'Lord. I put it to her and Your Lordship was asking me to repeat it.

HIS LORDSHIP: What was the name that your husband called?

CROWN ATTORNEY: Yes, M'Lord, as the person that caused his injury.

30 HIS LORDSHIP: At the gate what was the name that your husband called the person that caused his injury. Of course, you know she has not actually said - when you asked about the name being called, you just referred to a name, but it wasn't a name related to anything.

CROWN ATTORNEY: With respect, M'Lord, I think she did say. I asked her what was he speaking about.

40 HIS LORDSHIP: You asked her and she said he was speaking about - just a minute - he was speaking about how he got his injury but that was not related to the previous question about the name.

CROWN ATTORNEY: Very well, I see Your Lordship's point. Mrs. Campbell.....

HIS LORDSHIP: Well, now, if Mr. Macaulay is objecting to this last question there is no point. Might as well we resolve that problem before we ask the details, because

50 it is good enough as it is. At the gate

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In the Home  
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No. 3  
Maria Campbell

Examination

13th April  
1977

(continued)

what was the name that your husband called as the person that caused his injury. As I have said that wasn't - she had not said anything like that before.

CROWN ATTORNEY: Yes, M'Lord.

HIS LORDSHIP: If you stop at the name that he called the rest can be got eventually, if it is permissible to ask the question at all. 10

CROWN ATTORNEY: Very well, M'Lord. May I be permitted just to bridge that gap.

HIS LORDSHIP: Yes.

CROWN ATTORNEY: You said he called a name, madam, and you said that he gave.....

HIS LORDSHIP: If you go too much into it - unless it is permissible to give evidence of the conversation or what he said you will be really going over the line without getting a ruling as to whether the conversation is admissible or not. You see, if it is admissible then you can get the entire statement as to what was said. but if you are going to have a contest about it let us have it rather than getting these - in other words, do I understand that the only thing that the objection is being taken to is the name? Is that so? If that is so you can get all the rest if you like. 20 30

MR. MACAULAY: M'Lord, let me put my position clear. If Your Lordship is going to rule that the conversation is admissible, that is the end of the matter. I can take no further objection, but if my friend is going to ask her specifically of the conversation Your Lordship will not be able to rule on that unless the entire conversation is admissible. I mentioned this, I am objecting to the entire conversation. 40

HIS LORDSHIP: Not a conversation properly speaking. It is a statement that he is supposed to have made and it would be the entire statement because it is not only the question of the name, it is the question of the entire statement. It is the entire statement that has to pass the test, Mr.Reckord, so what you are really doing, you are really getting the conversation except for the 50

name, not the conversation, the statement, except for the name. This is in effect what you are doing, but you have to get the statement admitted before you can get any part of it. In other words, the whole statement is inadmissible unless it passes a certain test.

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(continued)

10 CROWN ATTORNEY: I appreciate that, M'Lord.  
Mrs. Campbell, you said a name was  
called by your husband?

A: Yes, sir.

Q: And you said that your husband said how  
he got his injury?

A: Yes, sir.

Q: That name that you heard called, was  
he saying that that person caused his  
injury?

A: Yes, sir.

20 MR. MACAULAY: M'Lord, objection.

HIS LORDSHIP: Let us deal with the question  
as to whether it is admissible or not.

CROWN ATTORNEY: Very well, M'Lord.

HIS LORDSHIP: Mr. Macaulay, Mr. Reckord  
changed the question to which you objected  
and he asked, "At the gate what was the  
name that your husband called?" He  
added, "...as the person that caused his  
injury." Do you object to that as well?

30 MR. MACAULAY: What he is now asking, M'Lord,  
as I understand it was that the name  
of the person which she heard the husband  
call, was the person who caused the  
injury.

HIS LORDSHIP: No, not that.

40 MR. MACAULAY: I am not referred to that, I am  
referring to the one that he asked  
earlier. After you took your first  
objection he asked another question which  
was, "At the gate what was the name that  
your husband called as the person that  
caused the injury?" You are taking  
objection to that second one as well?

MR. MACAULAY: Yes, M'Lord, that is the  
interesting part of the statement.

HIS LORDSHIP: Where do we go from here now?

50 MR. MACAULAY: M'Lord, I think, with respect,  
if Your Lordship will hear me, because  
a ruling on this deals with the entire  
matter. M'Lord, in the first place what

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(continued)

the accused man says is not evidence in the case - the deceased man says is not evidence in the case unless it is shown to be a dying declaration. M'Lord, I think no authority is needed for that, M'Lord, and, M'Lord, in this case it must be shown, two things must be shown, (1) that there was, might I use the old phrase, certain expectation of death and secondly, that what was said was in relation to the subject matter of the charge; and I think my friend has elicited from the witness that what he said was in relation to how he came to die so my objection cannot be based on that part. I am going to invite Your Lordship, because the evidence that has been led so far is that he said that he was going to die, and M'Lord, the former evidence she gave, twice, that immediately after that she said that his condition was very strong, which she repeated twice, and then later she also said that the husband said he was going to die, but according to her, his condition looked good to her. M'Lord that on that bit of evidence I would submit - those bits of evidence, first he was going to die, she followed it by saying his physical condition was very strong, she told us that immediately after that, "I felt his pulse before he told me something. He said he was going to die. His physical condition, he was very strong." Then later at the hospital, just before he said at the hospital he is going to die, his condition was looking good to me; at the hospital he said he was going to die, but in both cases he was going to die she follows it up with the assessment. M'Lord, I ask your permission in this case to put certain questions to the witness before finally formulating my objection, ask Your Lordship to put certain questions to her. It is a matter of the discretion of Your Lordship.

HIS LORDSHIP: Yes. Now is this in the presence or in the absence of the jury?

MR MACAULAY: In this particular case it doesn't matter to me.

HIS LORDSHIP: Then go ahead then.

QUESTIONS OF THE WITNESS BY MR. MACAULAY

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MR. MACAULAY:

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Q: You remember giving evidence in the  
Halfway Tree Court in 1974?

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A: No, sir, I have never been to Halfway  
Tree Court.

Q: Sutton Street, sorry?

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A: Yes, sir.

10 Q: And you took the oath, you swore on  
the Bible?

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A: Yes, sir.

Q: Before the Judge at Sutton Street?

A: Yes, sir.

Q: That was in this case?

A: Pardon?

Q: Your giving evidence in this case  
before the Sutton Street Magistrate?

A: Yes, sir.

20 Q: And after you took the oath she was  
writing down what you were saying?

HIS LORDSHIP: Eh?

MR. MACAULAY: Eh? I am thinking Mrs. Walcott  
was there.

HIS LORDSHIP: This is Mr. Sinclair?

MR. MACAULAY: Unfortunately, my notes don't  
show who.

HIS LORDSHIP: The very first page will tell you.

30 MR. MACAULAY: What I am saying is unfortunately,  
they just sent this up to me, a photo  
copy.

HIS LORDSHIP: I see.

MR. MACAULAY: Now, after giving your evidence,  
she read it back to you, she read back  
what she wrote down?

HIS LORDSHIP: Eh, eh?

A: Yes.

MR. MACAULAY:

40 Q: And then asked you whether you would like  
to correct it or add to it, did she, did  
he?

A: Yes.

MR. MACAULAY: I am still thinking of Mrs. Walcott.  
Then she asked you to sign it - he asked  
you to sign it?

A: Yes, sir

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(continued)

Q: And you signed it as being true and correct?

A: Yes, sir.

Q: Now madam, did you say in that court that, "My husband was at the hospital" - did you say that, "My husband was calling the name of Detective Walker on the scene , or words to that effect?

A: Yes, sir.

HIS LORDSHIP: The name of what?

10

A: Detective Walker, sir.

MR. MACAULAY: Who was on the scene.

HIS LORDSHIP: Sorry, I did not hear the question.

MR. MACAULAY: Did you say, "My husband was calling the name of Detective Walker who was on the scene at the hospital."?

A: Yes, sir.

Q: Did you say that he was saying something to Walker who was writing what he said?

20

A: Yes, sir.

Q: Did you say, "I heard what my husband said."?

A: Yes, sir.

Q: Did you say, "My husband said he wanted to go home."?

A: Yes, sir.

Q: Did you say, "He told Walker that someone shot him."?

A: Yes, sir.

30

Q: Did you say, "My husband said he was vexed, he had not done anyone anything?

A: Yes, sir.

Q: Did you say, "He didn't say anything more as to his feelings."?

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

HIS LORDSHIP: Just one minute now, yes.

MR. MACAULAY: Now, did you also say before the Judge at Sutton Street - we have dealt with the hospital now, I am dealing now with what happened at the gate - did you say, "I observed that he was bleeding from his neck and side."?

40

A: Yes, sir.

Q: Did you go on to say, "He didn't tell me how he felt."?

A:	"He did not tell me how he felt"? I did not sir.	In the Home <u>Circuit Court</u>
Q:	Now, you remember there was an attorney who asked you questions after the Clerk of the Courts questioned you, another attorney asked you questions?	Prosecution Evidence No.3 Maria Campbell
A:	Yes, sir.	Cross- Examination
10 Q:	In answer to that attorney did you say, "The only expression he made as to how he felt was that he was vexed because he did not do anyone anything?"	13th April 1977
A:	He didn't tell me that, sir. He told me .....	(continued)
HIS LORDSHIP: No, no, what you are being asked is whether you used those words at the other court at Sutton Street. Please repeat the words.		
20 MR. MACAULAY:	"The only expression he made" - speaking of your husband "as to how he felt was that he was vexed because he did not do anyone anything."?	
A:	No, sir.	
Q:	Did you say that?	
A:	No, sir.	
Q:	Madam - the original.	
HIS LORDSHIP: Mr.Macaulay, it is three minutes after one. Could we continue after lunch?		
MR. MACAULAY: We will take the adjournment now.		
30 HIS LORDSHIP:	And then continue that after.	
MR. MACAULAY: It would be convenient.		
40 HIS LORDSHIP:	Yes. Members of the jury, we are about to take the adjournment for lunch. We will return at 2.00 o'clock. Take an hour's adjournment. I hope that that will be sufficient time for you to go where you have to go and return. To just give a word of caution to the jury quickly, members of the jury, particularly those who have never served on a jury before any case and all cases tried in the Circuit Court are serious cases, but it sometimes happens that a juror is innocently walking along to lunch or coming back from lunch and someone approaches the juror to speak. Normally if someone comes up to you to speak it is polite to find out what the person wants. It might be just, hello, or the time or something like that. Now, some	
50	people who have connection one way or another	



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with a case might think that it is quite proper to go and speak to a juror out of court about the case. Some people quite innocently, think they can tell the jury how the case went. That is wrong because the jury must only learn of the case from the witness box. Others will know that it is wrong but want to get a punch in so they go to the jury and say it is lie the witness is telling or say how it went. So, what I usually ask the jury to do is this, when you are on the jury you be as discourteous as you can possibly be. Don't allow anybody who you don't know to come and speak to you. If they come to you like they are going to speak to you, "Hands off, I am not supposed to speak to anybody." Adopt that attitude. This is what happens. A person comes and speaks to you. He might be asking you the time. Then somebody sees him, comes and tells the lawyers, the lawyer come to the judge and say, "Mr. X who is a witness of the deceased or the brother of the accused or the brother of the deceased was talking to a juror." We don't want to go and try another case to find out what he was telling the juror. What usually happens is that we have to stop the case. It says justice must not only be done but must manifestly be seen to be done. If a relative or a friend is talking to the jury justice can't be done. You can talk among yourselves but don't allow any strangers at all to speak to you, and, of course, if you know that a person is a witness in the case that person must not come near you. So, I just give you those words of caution. Bear them in mind. I won't bother to repeat it.

Please return at 2.00 o'clock.

Resumption at 2.00 p.m.  
JURY ROLL CALL: ALL PRESENT

MRS. MARIA CAMPBELL: CROSS EXAMINATION CONTD.  
BY MR. MACAULAY

Q: Mrs. Campbell, I want to show you a piece of paper. Could you show her that piece of paper for me Mr. Registrar. Do you still say that when you went before the Judge in the R.M. Court at Sutton Street you did not say... speaking of when you met your husband at the gate.

"He did not tell me how he felt"  
You say that in court?

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A: No answer.

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Q: I say, did you say: "He did not tell  
me how he felt" Did you say that to  
the Judge in the Sutton Street Court?

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A: Yes, sir.

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Q: You said that?

A: Yes, sir.

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10 Q: Thank you very much. Did you say to  
the Judge in the court below: "He did  
not say anything more as to his  
feelings"

(continued)

A: What court was that, please?

Q: The Sutton Street Court?

A: He did not say

20 Q: Let me tell you what you admitted this  
morning. You admitted that your  
husband was calling to Det.Walker.  
(Your husband, deceased) You admitted  
that you said that he was saying something  
to Mr. Walker who was writing what he  
said. You admitted that you heard what  
your husband said that he told Walker  
that someone shot him. And I put to you  
that he did not say anything more as to  
his feeling. You did not agree that you  
said that at the Sutton Street Court.

A: They did not ask me that.

30 Q: I am saying: you went on to say: "He did  
not say anything more as to his feelings?"

A: He did not ask me anything more than that.

40 HIS LORDSHIP: No, not talking about what you  
were asked. You are being asked about  
what you say, and what you are being  
asked is whether having seen that document  
which is shown to you, you still say that  
he did not say anything more as to his  
feeling. Did you say anything more at  
the preliminary enquiry?

MR. MACAULAY: Do you agree now, having looked  
at the piece of paper, that your husband  
did not say anything about his feeling  
to you at the hospital?

A: No, he did not say it to me.

MR.MACAULAY: My Lord let me interpose a  
question.

Q: Did you say in the Sutton Street Court

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(continued)

before the Judge that the only  
expression he made as to how he felt  
was that he was vexed because he  
don't do anything.

A: He was talking.

Q: He said so?

A: Yes, sir, he was not talking to me.

Q: Did those expressions he made as to  
how he felt, he was vexed?

A: He was talking to Det. Walker. 10

Q: I wasn't asking any question as to  
what he said to Det. Walker. The only  
thing you heard him say. Let me put  
it another way as to how he felt. He  
was vexed because he did not do any-  
thing.

A: He said more than that.

Q: Talking about his feelings?

A: Pardon me?

Q: About his feelings, how he felt? 20

A: He told Det. Walker how he felt.

Q: I put to you this morning that you  
said at the Sutton Street Court when  
the other lawyer asked you questions  
that.. the only expression he made to  
how he felt was when he was vexed  
because he did not do anything. Do you  
recall that you said that?

A: Yes sir, but he wasn't talking to me  
at the time. 30

Q: Do you recall that you said that?

A: I don't recall that, sir.

MR. MACAULAY: My Lord, I don't think I  
can take the matter any further than  
that.

HIS LORDSHIP: I don't think there is any  
point in putting the deposition. She  
said she don't remember saying.....

MR. MACAULAY: Just one thing I want to ask.  
You have admitted certain things to  
the court what you said before the  
Magistrate at Sutton Street court. 40  
What you said to the Magistrate at  
the Sutton Street court are those  
statement true?

HIS LORDSHIP: What statements?

MR. MACAULAY: First, he did not tell me how  
he felt. Was that true?

	A: He didn't tell me at that time?	In the Home
	Q: At the gate?	<u>Circuit Court</u>
	A: No sir, not at the gate I am speaking: Casualty. They did not ask me what he said at the gate at Sutton Street Court.	Prosecution Evidence No.3 Maria Campbell
10	HIS LORDSHIP: Listen to what you are asked. You said you agree that at the preliminary enquiry he did not tell me how he felt	Cross- Examination 13th April 1977
	A: I said at the preliminary enquiry he did not tell me at the hospital but he told me at the gate and the lawyer then	(continued)
	HIS LORDSHIP: What she is saying now	
	MR. MACAULAY: I am not going to press it.	
	A: The lawyer then said to me.....	
20	HIS LORDSHIP: Just a minute. You said that at the preliminary enquiry when you said:"He did not tell me how he felt" you were referring to what?	
	A: The hospital sir.	
	MR.MACAULAY: Was that statement true?	
	A: Yes sir.	
	Q: Is that true today, you are speaking the truth today when you say that?	
	A: Always.	
	HIS LORDSHIP: You said you were not asked at the preliminary enquiry?	
30	A: What he told me.	
	Q: At the gate.	
	A: He did not ask me, sir.	
	MR. MACAULAY: Am I right My Lord, she was speaking about the hospital then?	
	HIS LORDSHIP: Yes, so she says.	
	MR. MACAULAY: You were surprised to hear that your husband had died as you did not expect it?	
	A: Yes sir.	
40	MR. MACAULAY: Thank you, My Lord.	
	HIS LORDSHIP: Mr.Reckord, I suppose you have the right to re-examine her on anything that she has said.	

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(continued)

MRS. MARIA CAMPBELL: RE EXAMINATION BY

MR. RECKORD (2.24 p.m.)

Q: You said he did not speak to you at the hospital? To whom was he speaking?

A: Pardon me, sir.

Q: You said at the hospital he did not speak to you about his condition?

A: Yes sir.

Q: Did he speak to anybody about his condition?

10

A: Yes sir.

Q: To whom?

A: Det. Walker.

Q: And where was he at that time?

A: In the casualty on a stretcher.

Q: Doctors around him?

A: Yes sir.

Q: Nurses?

A: Yes sir.

Q: Attending.

20

A: Yes sir.

Q: Did you know Det. Walker before that day?

A: Yes sir.

Q: To your knowledge did your husband know Det. Walker?

A: I think both of them work together.

Q: Worked together?

A: I suppose so.

Q: Before your husband got injured then, was he a healthy man?

30

A: Yes sir, very healthy and a normal person.

Q: You said that he was speaking loudly at the gate?

A: Yes sir.

Q: Does he normally speak loudly?

HIS LORDSHIP: Just a moment. Now actually, we are concerned really now with what arises out of the cross-examination.

MR. RECKORD: Your Lordship pleases. That will be all. 40

MR. MACAULAY: May I submit My Lord, that in

light of the evidence that has been adduced, the crown has not led sufficient evidence to show that at the time when the statements were made by the deceased he was in a hopeless expectation of death. My Lord, I wont refer to the evidence because it is a matter which Your Lordship has to decide. I am not dealing with the jury at this time and to waste Your Lordship's time. That is all I have to say, My Lord.

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(continued)

10

HIS LORDSHIP: What you are saying in effect is: That having said he is going to die is not sufficient.

20

MR. MACAULAY: That is one. In the alternative the evidence which has emerged which she said is true the correct story of the other evidence which was led by the Crown: that he did not say how he felt. And then My Lord, there is further evidence which supports that; that she admits that she says, "My husband said that he wanted to go home."

HIS LORDSHIP: Where is home?

MR. MACAULAY: I would think 'home' is heaven my Lord.

HIS LORDSHIP: Some people call it home.

30

MR. MACAULAY: Her husband said This is the man who said "I want to go home" But there is contradicted evidence.

HIS LORDSHIP: You mean the evidence of the statement made by the deceased.

MR. MACAULAY: We have two versions My Lord, one that he said "I am going to die" We have the other version that he did not say how he felt. In fact what he said was.....

40

HIS LORDSHIP: No, No. What she said is that he did not tell her how he felt at the hospital. But she has said that when she admitted to you at the preliminary enquiry that she said that she meant to refer to what happened at the hospital

MR. MACAULAY: I looked at the evidence which she gave at the hospital towards the end.

HIS LORDSHIP: Am I permitted to look at it?

MR. MACAULAY: Your Lordship has the evidence

HIS LORDSHIP: Yes but .....

50

MR. MACAULAY: My submission is that you are

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entitled to look at the evidence My Lord.

HIS LORDSHIP: Not the deposition

MR. MACAULAY: Not the deposition. She admitted it so there is no point in putting the deposition there. She said at the hospital he said he was going to die. That is the evidence this morning.

HIS LORDSHIP: Yes.

MR. MACAULAY: She said it is true that at the hospital he did not tell me how he felt. 10

HIS LORDSHIP: What I understand you to be saying is that she did not tell me how he felt but she said he was speaking to Det.Walker. So I understand her to be saying from that that he wasn't speaking to me when he spoke at the hospital in relation to: "I am going to die" He was speaking to Det.Walker. 20

MR. MACAULAY: May I submit with greatest respect My Lord, when she gave the evidence this morning the impression that I got was that she was not relating to the court what he said to her.

HIS LORDSHIP: What I have here is 'At the hospital the deceased was still talking, his condition was looking good to me' He did not tell me about his condition at the hospital I heard him telling a Detective that he was going to die. That is the evidence I have. Is that your notes? 30

MR. MACAULAY: Your note is accurate.

HIS LORDSHIP: Well, I hope so. It is not always accurate. And this is what I understand her to be saying now. In other words, he wasn't speaking to me he was speaking to the Detective at the hospital. 40

MR. MACAULAY: I rest my submission on that statement. The fact that he said: "I am going to die", is not enough.

HIS LORDSHIP: What you suggest is necessary further?

MR. MACAULAY: It is necessary further. May I just refer to..... That is the evidence which she admits. "My husband said he wanted to go home". My Lord, that to go with the statement, assuming 50

he said that he was going to die, that doesn't suggest that at that point he had given up all hope.

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10 HIS LORDSHIP: You are showing some significance in the fact that he said "I want to go home". A man who had received some serious bullet wounds wanted to go home before he received his treatment? And you are saying that that is consistent with his statement that he is going to die.

20 MR. MACAULAY: And he said that he wanted to go home. It may well be that the way he felt he didn't want to lie around the hospital. It can be argued by the Crown that he wanted to die there rather than dying in the hospital but it could be argued by us at that state that he had given up all hope of survival.

30 HIS LORDSHIP: I may say of an experience I had in Linstead. I was going to buy some gas at the gas station somewhere on the windward side and I reversed and a motorcyclist came by the car and I hit him with the back of my car, and he was there saying, I am going to die, I am going to die. That doesn't mean that he had given up all hope of survival. You have not got sufficient experience in our Jamaican as yet. It is surprising that he spoke at all. They normally lie down as if they are dead.

40 MR. MACAULAY: My submission is that the Crown must lead evidence which satisfies Your Lordship. I don't want to go into the standard of proof but the Crown must lead some evidence to show that he abandoned any hope of survival. That is what is lacking here. That is the gravamen of my submission.

HIS LORDSHIP: There is not much more that one can say about that.

MR. MACAULAY: If Your Lordship concedes and make a ruling but I don't think I will take it any further.

50 MR. RECKORD: I respectfully submit My Lord, that the Crown has led sufficient evidence to ground the admittance of this bit of evidence that the Crown proposes to give. I wish to refer to the Third Edition of Cross on Evidence at Page 419, dealing with Dying Declarations. And the basis of the admission My Lord - and I wish to



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adopt these as my own views on the evidence. "The oral or written declaration of a deceased person is admissible evidence of the cause of his death at a trial for his murder or manslaughter provided he was under a settled hopeless expectation of death when the statement was made and provided he would have been a competent witness if called to give evidence at that time." 10

And this principle was illustrated by C.B.Eyre in a case of R. v. Woodcock.

The principle on which this piece of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful is considered by law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of Justice. 20

My Lord, the condition of admissibility Your Lordship is quite aware of but I would just name them out. First of all (i) the death of declarant. There is evidence..... 30

HIS LORDSHIP: No one is concerned.

MR. RECKORD: I respectfully submit that that is a subjective test and not the evidence of what somebody else may think. It is the hopeless expectation of the person who got the injury.

HIS LORDSHIP: That is why I was wondering what you were asking the witness how he looked to her.

MR. RECKORD: She is a nurse and I said a nurse of 14 years, how did he look to you? 40

HIS LORDSHIP: Well, that is irrelevant, regardless of how he felt. "Subjective to the deceased."

MR. RECKORD: Subjective to the deceased person and I respectfully submit that the evidence given by this witness says: that on more than two occasions he was saying the same thing at his home at the gate and he has repeated the same thing at the hospital, not to her but to the Officer. And I respectfully 50

submit My Lord, that in view of the seriousness of the injuries that he received, in view of the fact that death took place within four hours of his receiving the injuries.

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HIS LORDSHIP: You have not got any evidence of that as yet.

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MR. RECKORD: My Lord, the lady said that he died before one o'clock.

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10 HIS LORDSHIP: It turns out that that is hearsay.

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MR. RECKORD: The man is dead My Lord, she said that he died about one o'clock.

(continued)

HIS LORDSHIP: When I asked her if she was there she said No, so I recorded that as hearsay. What I recorded is that he died next morning; he died the following morning.

20 MR. RECKORD: That is within a short time. In fact My Lord, there are cases on record where the declarant died some ten - 11 days after and it was admitted in evidence. And here these serious injuries were received by the gentleman who is a policeman who apparently knew that he was going to die, apparently knowing the necessity of making these declarations. Because, My Lord, I would respectfully submit that there may be  
30 even circumstances, the person did not say they are going to die and such declaration would be admissible if the circumstances point to their impending death.

HIS LORDSHIP: Say for instance, if he starts to make a Will and all that. If he doesn't say that then. You have any motor car and all that.

40 MR. RECKORD: Dissolution of property. My Lord, I respectfully submit that in the particular case, the evidence that has been given by this lady -- is that the evidence the prosecution intends to lead should be admitted.

HIS LORDSHIP: Do you wish to say anything more, Mr. Macaulay?

50 MR. MACAULAY: I will illustrate a case at this point My Lord. It is a case -- unfortunately we have not got it here the report here. - DANOE in New South Wales. My Lord, having reviewed all these well known authorities. He said that it is true that the deceased did not claim to make a statement of

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impending death. But he goes on.  
Proof of that is not necessary, if it  
appears to the Judge. Direction is made  
under that sanction. This is where I am  
interested -- whether it is proof direct  
or being inferred from the declarant's  
evidence or the opinion of the medical  
expert.

Your Lordship asked my friend whether  
the question of a trained nurse could  
be taken and my submission is, this  
is essentially a matter for the Judge. 10  
I have my view about it and Your Lordship  
at the end will decide. I have informed  
my learned friend that I would like to  
make one comment. That on the evidence -  
Doctors and Nurses were there and they  
have not brought any evidence from  
these people to say what he said and  
what was his condition. 20

HIS LORDSHIP: From them to say what the  
deceased said and what was his condition  
at the time. I have to rule on this  
and it seems to me that the question  
of what the deceased actually said and  
whether or not it was said, if a  
question of fact. Eventually, if I  
admit the evidence I have to admit it  
on the assumption of what is said is  
true because it is for the jury..... 30  
in the final analysis to say whether  
it was said or not. But assuming that  
the deceased did say what the witness  
has said his widow has said, when he was  
at the gate "I am going to die", one  
has to take into account what she said  
at the preliminary enquiry, and she  
admits having said: "He did not tell me  
how he felt". But she has explained  
that when she said those words she was 40  
speaking in the context of what was said  
at the Hospital. Assuming that it is  
true as she said that he said to her at  
the gate while she held him in her arms,  
that he is going to die, and in view of  
the injuries that he actually did receive  
and which eventually I suppose there is  
medical evidence about; and the fact  
that at the hospital she said that she  
heard him say so. Assuming it to be 50  
true that she told the Detective that he  
was going to die, it seems to me that  
that would be sufficient evidence and the  
fact that he actually died within a few  
hours, that would be sufficient evidence  
from which it can be said that he was  
under an accepted hopeless expectation

of death. The fact that the witness has admitted that she heard him say.... My husband said that he wanted to go home....If it does anything - that statement, it strengthens the question of hopeless expectation of death because it seems to me that it would be very odd if a person like a Detective who was shot in the parts of the body that he was shot, wouldn't be wanting to go home before he receives any treatment at all. It may be that this statement which he said in cross-examination, that he said would serve to strengthen than to detract from the state of mind and I rule that there has been sufficient evidence brought to ground the admissibility of this statement that the witness said was made to her by the deceased at the gate.

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(continued)

MR. MACAULAY: Your Lordship pleases.

MR. RECKORD: Your Lordship is finished with the statement at the gate. Do I understand you to mean My Lord that as far as the hospital is concerned it is....

HIS LORDSHIP: Well

MR. MACAULAY: Your ruling is very clear. You said her statement at the gate is admissible.

HIS LORDSHIP: I understood you to be seeking to admit the evidence of what was said at the gate.

MR. RECKORD: That was what my question was directed at the time.

HIS LORDSHIP: If the witness has heard another statement which you want to get in then we will deal with it when the time comes.

MR. RECKORD: Go through the same thing My Lord?

HIS LORDSHIP: But at this stage which we are, the question at which the objection was taken was "at the gate". That is the one I am concerned with. Both statements to which Mr. Macaulay took objection. That is the one I am dealing with.

MRS. CAMPBELL: RE EXAMINATION BY MR. RECKORD  
CONTD.

Re-  
Examination  
(Contd.)

Q. Mrs. Campbell, I am going to take you back to the gate. There you were and you came out and you had your husband's head in your hands and he was speaking. Now, please tell the court what he said from he started to speak?

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A: When I lifted him with my hands he  
said to me: "B, I am going to die"

HIS LORDSHIP: Called you 'B'.

A: Yes sir, because I was 'Black' before  
I was married so he called me 'B'.

"You are going to lose your husband.  
It is Neville Nembhard. Miss Nembhard's  
grandson that shot me and take my gun.  
Your husband did not do him anything.  
Just as I came through the gate and  
turned to lock the gate I saw him over  
me and your husband could not help  
himself."

10

MR. RECKORD: Now, this Neville Nembhard  
that he called, did you know Neville.  
Did you know the name Neville Nembhard?

A: Yes sir.

Q: Who is Neville Nembhard?

A: He is sitting in the dock there, sir.

Q: This young man here?

20

A: Yes sir.

Q: You told us this morning that you knew  
that he lived across the road from you?

A: Yes sir.

Q: Who else lived in that house?

A: His grandmother.

Q: The accused's man grandmother?

A: Yes sir.

Q: You know her?

A: Yes sir.

30

Q: Long time?

A: Yes sir.

Q: Now your yard, what sort of gate is there?

A: An iron gate.

Q: Normally kept closed or opened?

A: Normally kept closed, sir.

Q: So to come in you will open and then  
close back?

A: Yes sir.

Q: On the morning when your husband accomp-  
anied you to the bus stop, do you know  
if he had his gun with him?

40

A: Yes sir.

Q: He did have it?

A: Yes sir.

MR. RECKORD: You saw him lying at your gate, do you know if he had his gun with him then?

A: When I felt his pocket and I did not find it, I felt his waist-band and it wasn't there.

Q: He usually keeps it in his waist?

A: In his waist.

10 Q: And you checked his pocket and his waist and you did not find it?

A: No sir.

Q: Now, at the gate about how many times did he call the name "Neville Nembhard"?

A: Several times, sir.

Q: How long were you at the gate with him before the police car came to take him away?

20 A: The police car came at quarter to nine, sir.

HIS LORDSHIP: How long had you been out there with him?

A: Ever since he got the shot, sir, about ten to fifteen minutes.

CROWN ATTORNEY: When the police came did they take him immediately?

A: Immediately, sir.

Q: And you went in the vehicle?

A: Yes sir.

30 Q: Now, at the hospital you said that he spoke with Det. Walker?

A: Yes sir.

Q: How long after he arrived at the hospital did he start to talk to Mr. Walker?

A: Well, Mr. Walker and I accompanied him.

Q: In the vehicle?

A: No, in another vehicle. Mr. Walker drove along, several other policemen.

40 Q: About how long did it take you to reach the hospital?

A: About five to seven minutes.

Q: At the hospital now, he was taken in?

A: In the Casualty.

Q: Having arrived in the hospital ward and put down.....

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(continued)

HIS LORDSHIP: Not ward.

A: Casualty Department.

MR. RECKORD: Sorry, in the Casualty Department.  
How long after he arrived there that he  
spoke with Det. Walker?

A: About two - three minutes after.

Q: Where were you in relation to Det. Walker  
when your husband was speaking to Mr.  
Walker?

A: I was standing at the stretcher along 10  
with Det. Walker.

HIS LORDSHIP: Are you calling Det. Walker.

MR. RECKORD: No my Lord.

HIS LORDSHIP: Are you going to seek to elicit  
what was said to Det. Walker?

MR. RECKORD: Yes My Lord, I propose to  
elicit what was said to Det. Walker.

HIS LORDSHIP: In the light of what she said  
in cross-examination and so forth; is  
it going to take the matter any further? 20

MR. RECKORD: I would think so, My Lord.

HIS LORDSHIP: In other words, it might be  
that at one stage he had a certain view  
of his...

MR. RECKORD: ...condition, My Lord.

HIS LORDSHIP: Yes, which might have changed.

MR. RECKORD: According to my instruction, it  
had not changed. My instructions do not  
bear that.

HIS LORDSHIP: But in the light of what she 30  
has admitted of having said so, and I  
think Det. Walker is the person to lay  
the foundation. You are going to ask me  
to assume that as a state of mind.

MR. RECKORD: Not to assume My Lord, because  
of the exact words that he used in her  
presence.

HIS LORDSHIP: But then, according to what...  
It is not as clear cut as the other one  
because in the light of what she said in 40  
cross-examination to Mr. Macaulay, what  
she said is in conflict to what she says  
here. He did not say how he felt.

MR. RECKORD: ...."He did not tell me at the  
hospital how he felt".

HIS LORDSHIP: Wait, wait, the emphasis being  
on "me".

MR. RECKORD: Yes, My Lord.

MR. MACAULAY: She admits it.

HIS LORDSHIP: Yes, I was forgetting that.  
That came out during the exchanges  
between Mr. Macaulay and myself.

MR. RECKORD: Yes My Lord.

HIS LORDSHIP: Yes, the only thing: does it  
take it any further by repeating the  
thing a hundred times?

10 MR. RECKORD: One of the comments that can  
be made in situations of this nature  
is that the witness or the person who  
actually spoke is not here for cross-  
examination. The person who spoke  
the word is not here for cross-  
examination therefore there is no  
opportunity to correct the mistakes  
that might have been made earlier.

20 MR. MACAULAY: I take it that His Lordship  
would not direct the jury on that  
point. The point I am making. A  
person says nothing at the time, but  
when next asked about the same thing  
he says, Oh, I am sorry, I made a  
mistake but when it is said on more  
than one occasion there is a deliberate  
attempt to say the same thing, no  
mistake like one would possibly make  
when you make it on one occasion. That  
30 is the point that I am trying to bring  
out here, My Lord. Consistency of  
something that was said earlier and  
consistent with the same thing. Your  
Lordship pleases.

HIS LORDSHIP: You were at the Casualtiy  
Department by the stretcher.

MR. RECKORD: Thank you My Lord.

Q: Mrs. Campbell how was he speaking to  
Det. Walker? Was it in the same strong  
voice as he spoke to you?

40 A: Yes sir.

Q: And you heard clearly what he was saying?

A: Yes sir.

Q: Was Det. Walker doing anything while your  
husband was talking?

A: He was writing.....

Q: ....down. What was he writing?

HIS LORDSHIP: Well, she can't say.

MR. RECKORD: She can My Lord, by looking at  
what he was writing.

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(continued)

HIS LORDSHIP: You were looking at the paper  
to see what he was writing?

A: Yes sir.

HIS LORDSHIP: You were looking at the paper?

A: Yes sir.

MR. RECKORD: Tell me, madam, were you on the  
same side of the stretcher with Det. Walker?

A: Yes sir.

Q: How near to him.

A: Pardon me.

10

Q: How near were you to him?

A: Here and here sir (Indicating)

Q: Was there anybody between yourself and him?

A: No sir, the doctors over the other side  
of the stretcher.

HIS LORDSHIP: Anyway, let's go further into  
what was being written.

MR. RECKORD: We are going to go through what  
was being said.

HIS LORDSHIP: That is right. You might get  
evidence of what was written and not what  
was being said.

20

MR. RECKORD: What did you hear your husband  
saying to Det. Walker?

A: He said, 'Walker.....'

MR. MACAULAY: My Lord, I know we were going to  
get to this stage and to be quite honest  
My Lord, I have not really made up my  
mind whether it is proper for me to  
raise an objection but in the light of  
certain answers which she had given to  
this court, it appears to me that if this  
question was put, it would be an indirect  
attempt to contradict what she said is  
true. But because she is giving definite  
answers on this point, it may well be  
argued against me that that when she  
was giving evidence she gave evidence for  
the purpose of Your Lordship deciding  
whether or not this piece of evidence is  
admissible and that evidence was not  
evidence that was related to the proof of  
the offence. If I don't raise the point  
now.... This is the difficulty which I  
have. That wasn't for the jury's consid-  
eration it was for the Judge.

30

40

HIS LORDSHIP: Actually, it occurred to me  
that, whether first of all what took place  
in your cross-examination, whether it

should have been in the absence of the jury. And you said it really didn't matter and then....You see, when you have a trial within a trial I bracket off that part. So I actually put a bracket around this and then it occurred to me that that bracket should not be put because it is evidence which the jury heard and which they have to take into account on any matter they have to consider. So, in any way, that is evidence for the jury's consideration.

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10

MR. MACAULAY: I don't think I will raise the objection.

(continued)

HIS LORDSHIP: The only thing that concerns me which I would like to hear you on is this. Suppose you have a case where -- I suppose it follows logically. Suppose you have a case where it can be established that a deceased person was in hopeless expectation and policemen, while he was in that state, took a statement from him. Could that statement be made afterwards? I suppose so.

20

MR. MACAULAY: My Lord.....

HIS LORDSHIP: I think there is something in "CROSS", which suggests that if for instance, a deposition was taken and the essential was the proof of the deposition going in itself or absence, it can go under this exception provided there is proof of that hopeless.....

30

MR. MACAULAY: I am saying two ways My Lord. If my friend is trying to get a particular witness who is not available. My submission is that firstly, the witness himself must give the oral evidence as to what he took down. That would be my first objection. My second objection is that, assuming that I am wrong, on the first, then under Section 24, from the evidence the only thing that will be admitted in his absence would be his deposition.

40

HIS LORDSHIP: Whose deposition?

MR. MACAULAY: Of the witness who took the document but not his notes and I am prepared to attack it on that ground. Is this the distinction because Your Lordship, at the end of the day, would have to warn the jury that although the evidence is admitted, it is not subjected or tested by cross-examination. Your Lordship would have to warn the jury insofar as the

50

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(continued)

declaration is concerned. My Lord, in the case of the deposition, it is different. That is to say, the deposition would not be admitted unless it was shown that there was opportunity given to the accused man or his legal advisor to test it.

HIS LORDSHIP: Well, I don't know how it is going to be sought out.

MR. MACAULAY: I am anticipating myself, if such an attempt is made. 10

HIS LORDSHIP: What is concerning me at the moment arises from something that you said; whether the effect of what Mr. Reckord is doing now is not really getting to the evidence of the absent witness.

MR. MACAULAY: My Lord, I have, in answer to that, so that is why I thought to mention to Your Lordship. So I mention it at that point because I don't know how to deal with it because I can't really say that this witness can't say what she heard - the dying declaration. I can't say that but the point is that she has to give evidence to prove that it was a dying declaration. She can say what she heard and if once she says this, she is entitled to give the evidence because it is direct evidence of what she heard. This declaration was made to someone else. That means that the evidence that was given by someone was being brought in. That is the dilemma in which I find myself. It is the right course to do but at the end of the day, My Lord.....why I said that, you will have to exclude any evidence that you think prejudicial. Fortunately Judges have that power. I think Your Lordship will have to resolve to that at the end of the day. 20 30 40

HIS LORDSHIP: I suppose if a declaration is being made to "X" in the presence of "Y", and "X" is absent, provided the proper foundation is made it would be .....

MR. MACAULAY: ....admissible.

HIS LORDSHIP: Alright Mr. Reckord.

MR. MACAULAY: But you have a case when evidence of a declaration has been made by someone in the preliminary court we get to the situation where his evidence 50

would not be admissible as to what that declaration was because the condition of the court would be followed, but you can by beating around to get that evidence. But this is not the position.

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(continued)

HIS LORDSHIP: That is not permissible at all. That wouldn't be permissible to by-pass it.

10 MR. MACAULAY: But in effect that is what it would mean.

HIS LORDSHIP: It is not so because it is not as if the witness is seeking to say what she heard is said at the preliminary enquiry. She is saying what she heard the deceased said.

20 MR. MACAULAY: That is admissible but the effect of it is, that something which you don't get out of section 24. And I am saying My Lord, that at the end of the day it is the good sense of the Judge to exercise whether to exclude the evidence.

30 MR. RECKORD: My Lord, in reference to what my friend mentioned just now, I would just like to bring to the Courts' attention a paragraph - Archbold 38th Edition, (1297), dealing with Dying Declarations. Part of the first paragraph, My Lord 1297. Where a declaration in articulo mortis was reduced in writing and signed by the parties, the Judge required production of the original and refused to receive either copy of the papers. And this is the important point. Parole evidence of the declaration. This is a case long ago. R. v. GAY, 7.C, at Page 230. I just thought I would bring it to attention.

40 HIS LORDSHIP: This is what I am saying. You see, one has to be careful. You see you introduced this question of what was being written and one has to be careful. One doesn't offend the rule of giving evidence, because if you have a statement for the dying declaration and you have a person making a statement which is being taken down in writing, you understand, and it is sought to prove what was being said, surely the rule is that the statement must be produced and a person who was standing by and listening would be permitted to state what was being written down.

50

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(continued)

MR. RECKORD: Yes, My Lord, but the person would not be permitted to state what was being written down, only the writer, but a person who is not....for instance as in the present case. This lady is giving what...."I heard my husband said to Det. Walker. He was writing. I heard him say this."

HIS LORDSHIP: You see, if what Det. Walker was writing or was doing was making a written statement or written notice of the declaration, then that passage that is just read from Archbold would preclude this witness giving evidence of what was written. It is a different thing if he is speaking to Det. Walker and all he is doing is making his own little note and he is not purporting to take down into writing what was being said. That is why I wondered why you asked about it; whether she saw what was being written. If the Detective was making a written record of the declaration it would offend against the other rule to allow her to give evidence of it. In other words, the records should be produced.

10

20

MR. RECKORD: My Lord, the prosecution doesn't intend to ask this witness to give evidence of what was written down.

30

HIS LORDSHIP: But you just asked her.

MR. RECKORD: I asked her because I am putting before the jury all that happened on that day.

HIS LORDSHIP: But the effect of your questions was that he was making a record of what was being said.

MR. RECKORD: He was writing it, My Lord. Well, Your Lordship made a distinction making notes or making a record. The Detective is not here, the prosecution cannot say....The lady cannot say what he was doing. "I saw him writing as my husband was talking", and the evidence the prosecution proposes to lead..... "What did your husband say?"

40

HIS LORDSHIP? No, I am not going to allow it because you are running the risk of offending the other rule---- Giving evidence of the contents of a written document."

50

MR. RECKORD: My Lord, in view of the passage that I read, I won't complain.

RE-EXAMINATION OF MRS. CAMPBELL CONTD.

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Q: Your step-daughter, did you see her  
at the hospital?

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Evidence

A: Yes sir.

Q: When you were leaving did you leave  
alone or did you leave her there?

No. 3  
Maria Campbell

A: I left her there.

Re-  
Examination

Q: Did she come later on?

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A: She came home and told me that he died.

10 Q: About what time she returned home?

(continued)

A: Nearer on to one o'clock the next  
morning.

Q: And she gave you some information?

A: Yes sir.

MR. RECKORD: That will be all. Thank you.

MRS. CAMPBELL: FURTHER CROSS-EXAMINATION

Cross-  
Examination

BY MR. MACAULAY (3.22 P.M.)

20 Q: Now, about the light, Mrs. Campbell.  
You said there are lights on the  
verandah?

A: Yes sir.

Q: Now, are there any lights along the  
street?

A: Yes sir.

Q: Where is the light post?

A: About three yards from the end of my  
fence. It is a corner house and the  
light is right there.

HIS LORDSHIP: Your house is a corner house?

30 A: Yes sir.

MR. MACAULAY: Three yards from the light post  
and how far from the gate?

A: About four yards.

HIS LORDSHIP: Light post about three yards  
from the corner?

A: From the corner, sir.

Q: About four yards from the gate?

A: Yes sir.

40 MR. MACAULAY: Did you by any chance notice -  
observe the position of the wounds which  
your husband received?

A: In the neck here. (indicating)

Q: Was it in the back of the neck?

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(continued)

A: No sir, at the side here (indicating)  
Q: How many injuries did you see. You saw  
bleeding from the neck and you also  
said on the left side of the neck. On  
the left side where?

A: Here (indicating)

Q: Towards the back?

A: Right by the side here (indicating)

Q: So there is one here and one here.  
(indicating)

10

HIS LORDSHIP: Mr. Macaulay, I think you are  
putting it a little further back,  
unconsciously I am sure

MR. MACAULAY: That is all, My Lord.

HIS LORDSHIP: Any re-examination, Mr.Reckord.

MR. RECKORD: No My Lord.

Prosecution  
Evidence

No.4  
Ronald McNeish

Examination

13th April  
1977

No. 4

RONALD McNEISH

MR. RONALD McNEISH SWORN: EXAMINATION IN  
CHIEF BY MR. RECKORD (3.26 P.M.)

20

Q: What is your name?

A: Ronald McNeish.

Q: What is your occupation?

A: I am a Male Orderly at the Jubilee  
Hospital. Otherwise them call us  
Porter but the right name is Male  
Orderly.

Q: Now Mr. McNeish, Mr. Linval Campbell,  
Det. Actg. Corporal Campbell was your  
brother?

30

A: Well, we are brothers by one mother but  
different father.

Q: Did you on the 15th of January, 1974,  
attend a postmortem examination carried  
out on his body?

A: Yes sir.

Q: Where was this?

A: At the K.P.H.Morgue.

Q: And did you identify his body to Dr.DePass?

A: Yes sir.

40

	Q.	To be that of your brother Linval Campbell?	In the Home Circuit Court
	A:	Yes sir.	Prosecution Evidence
	Q:	The Doctor carried out a post mortem examination on him?	No.4 Ronald McNeish
	A:	Yes sir.	Examination
	Q:	About how old was your brother at the time of his death?	13th April 1977
	A:	About 43 to 44 but my age is 52.	(continued)
10	Q:	You were older than he?	
	A:	Yes sir.	
		Thank you very much Mr. McNeish	

No. 5  
NIOKA FRASER  
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Prosecution  
Evidence  
No.5  
Nioka Fraser  
Examination

MISS NIOKA FRASER SWORN: EXAMINATION IN CHIEF BY MR. RECKORD (3.30 p.m.)

	Q:	Are you Nioka Fraser?
	A:	Yes sir.
	Q:	What work do you do?
20	A:	I am a teacher.
	Q:	In January of 1974, where were you living?
	A:	At Goff Road.
	Q:	What number?
	A:	13.
	Q:	Whose house was that?
	A:	Det. Corporal Linval Campbell's home.
	Q:	The night of the 13th of January, where were you at about 8.30 p.m.? Were you at home?
30	A:	No sir. I wasn't at home.
	Q:	You were somewhere?
	A:	Yes sir.
	Q:	And as a result of what you heard did you go anywhere?
	A:	Yes sir.



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No.5  
Nioka Fraser

Examination

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1977

(continued)

Q: Where did you go?

A: To my home.

Q: When you reached at your gate did you observe anything?

A: Yes sir.

Q: What?

A: I observed Det. Campbell lying on the pathway.

Q: Where is the pathway?

A: At the gate. 10

Q: Anybody was with him?

A: There was a crowd around.

Q: Was anybody holding him?

A: Well, I think his wife was there.

Q: When you went there was he silent or was he speaking?

A: He was speaking.

Q: Could you hear clearly what he was saying?

A: Yes sir. 20

Q: What you heard him saying?

HIS LORDSHIP: Just one minute. Now Mr. Reckord, we are not going to..... She thinks his wife was there. Is this something else apart from what is meant.

MR. RECKORD: No My Lord.

HIS LORDSHIP: How are we going to know. I don't want a running commentary from the gate, house, down to the morgue.

MR. RECKORD: I don't propose to ask her anything about the hospital. 30

HIS LORDSHIP: I know, but I don't want us to get into the position where everything that is being said by the deceased all over the hospital. Let us have something. There is no advanced notice of this or anything in it that it is absolutely necessary. Is there any advanced notice?

MR. RECKORD: Yes My Lord. 40

HIS LORDSHIP: Where.

MR. RECKORD: There is no advanced notice to the defence My Lord, but I had advanced notice of it. I interviewed the witness this morning myself and my instructions were of something said at the gate.

I won't press it My Lord.

10 MR. MACAULAY: Permit me to comment on this, My Lord. I have always understood it and always tried to open up some kind of offences that unless there is something to clear up from the witness' deposition one doesn't expect Counsel for the Crown to interview witnesses before they come into court. I find it strange. If there is ambiguity in the statement or something to be explained from the deposition.

In the Home  
Circuit Court  
Prosecution  
Evidence

No.5  
Nioka Fraser  
Examination

13th April  
1977

(continued)

20 HIS LORDSHIP: Quite frankly, Mr. Macaulay, I have heard it before where this had been done. There was one case brought to my attention where Counsel for the defence was doing it in the face of the circuit court. The judges were there and Counsel for the Defence came and asked me whether it was proper and I said, of course not. I don't think it was proper. But I was subsequently told that it was quite proper. Things must have changed but in the years when I prosecuted I was the Clerk up to the time when I was Crown Counsel and ceased accepting criminal cases in 1962, I had never at any time interviewed a witness. I had always thought it wasn't right to do it.

30 MR. MACAULAY: It is surprising to me.

40 HIS LORDSHIP: Well, the etiquette of the bar - English Bar from which we sprung is that Counsel never speaks to a witness at all and I suppose that is what guided some of us. Counsel never speaks under any circumstances with a client or a witness. As a matter of fact I was reading very recently where one of the things which is being said, how the Bar Counsel conducts himself, is that when the witness speaks in court Counsel is knowing for the first time what the witness is going to say apart from what is on the paper and that is what guided me and I have never interviewed a witness. I might have spoken to a policeman -- have you got your witness I have never interviewed a civilian witness but apparently it is a done thing. Any-  
50 thing to say about it Mr. Macaulay?

MR. MACAULAY: I have nothing to say about it except the reason for the danger for it is that the Defence comes into court on the basis of what they have. We don't want to tell the jury what he... and you

In the Home  
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Prosecution  
Evidence

No.5  
Nioka Fraser

Examination

13th April  
1977

(continued)

come prepared to meet that. If Counsel for the Crown has something to add to it that gives us additional evidence but to come here and find something completely different. That is, the defence is at a complete disadvantage. This is something I did not anticipate.

HIS LORDSHIP: If it is a matter as important as what is going to be sought the defence should have notice of it. It is a matter of extreme importance. 10

MR. MACAULAY: What I see here, My Lord, is not at the gate but at the hospital. He said he is not going to pursue it.

MR. RECKORD: My Lord, there are no more Solicitors who usually do those things.

HIS LORDSHIP: That is why I said, things must have changed. What is happening now is that my friend is complaining about that Counsel for the Accused should not interview his witness either. Why should it be a one way thing. How we learn our thing, neither for the defence not for the prosecution. 20

MR. RECKORD: But now Defence Counsel interviews all the witnesses complainant and accused persons.

MR. MACAULAY: Counsels who appear with me have never seen me interviewed witnesses. 30

MR. RECKORD: Madam, having come to the gate and see Mr. Campbell there, you said he was talking. As a result of what he was saying did you do anything?

A: Yes sir.

Q: What you did?

A: I ran to the police station.

Q: Which police station?

A: Denham Town.

Q: Did you make a report there? 40

A: Yes sir.

Q: Did you come back to the scene?

A: Yes sir.

Q: When you came back did you see Mr. Campbell?

A: Yes, he was still at the gate.

Q: He was still at the gate?

A: They were putting him into the jeep.

Q: Police jeep?  
A: Yes sir.  
Q: And they took him off to the hospital?  
A: Yes sir.  
HIS LORDSHIP: You went to the hospital?  
A: Yes sir.  
Q: In the jeep?  
A: No sir.  
10 MR. RECKORD: What time did you leave the hospital?  
A: I left when he died.  
Q: About what time was this?  
A: About after 12.00. I am not too certain of the time but I know it was very late.  
Q: Do you think twelve o'clock had passed?  
A: I am not certain. I don't know exactly what time.  
20 Q: You remained there until he died. You went home, you told Mrs. Campbell what took place?  
A: Yes sir.  
MR. RECKORD: That will be all for me.  
HIS LORDSHIP: Mr. Macaulay?  
MR. MACAULAY: No questions at all.

In the Home  
Circuit Court  
Prosecution  
Evidence  
No.5  
Nioka Fraser  
Examination  
13th April  
1977  
(continued)

No. 6  
SYLVESTER TULLOCH

Prosecution  
Evidence  
No.6  
Sylvester  
Tulloch  
Examination  
13th April  
1977

DET. INSP. TULLOCH SWORN: EXAMINATION IN CHIEF BY MR. RECKORD (3.43 P.M.)  
30 Sylvester Tulloch, Det. Inspector of Police.  
Q: Stationed?  
A: Now stationed at Elletson Road, Kingston  
Q: On 13th January, 1974, were you stationed at Denhan Town Police Station?  
A: Yes sir.  
Q: In January, did you know Constable Edric Walker?  
A: Yes sir.

In the Home  
Circuit Court

Prosecution  
Evidence

No.6

Sylvester  
Tulloch

Examination

13th April  
1977

(continued)

- Q: He was stationed at your station?
- A: Yes sir.
- Q: He made a report to you on that day?
- A: On that night.
- Q: The following morning 14th January, did you assist in investigation with a murder case?
- A: Yes sir.
- Q: Of....
- A: Det. Actg. Cpl. Linval Campbell. 10
- Q: At the station that day did anyone come there?
- A: Yes sir.
- Q: Who it was?
- A: The accused Neville Nembhard.
- Q: How did he come. Do you know?
- A: He was taken there by a lady, his aunt.
- Q: When she took him there did she say anything.
- A: She said to me: "This is Neville Nembhard." 20
- Q: In presence.....
- A: In his presence and hearing.
- Q: When she said so did you say anything to the accused man?
- A: Yes sir, I identified myself to him by saying I am Det. Tulloch. I am making enquiries relating to the murder of Det. Act.Cpl. Linval Campbell last night. The accused then said "I know nothing about it, I was not there." 30
- Q: What time was this Inspector?
- A: It was about 2.00 p.m. in the day on the 14th.
- Q: You detained the accused man at the station there?
- A: Yes sir.
- Q: Was he locked up in a cell there?
- A: Yes sir.
- Q: Other persons were in custody there? 40
- A: Yes sir.
- Q: On the 19th of January was he still there in custody?

	A: 74, Yes sir.	In the Home Circuit Court.
	Q: Did you arrest the accused man?	Prosecution Evidence
	A: Yes sir.	No.6 Sylvester Tulloch
	Q: Charged him for the murder of Linval Campbell?	Examination
	A: Yes sir. Cautioned him he made no statement.	13th April 1977
	Q: Do you know Goff Way?	(continued)
10	A: Yes sir.	
	Q: Is that in the Denham Town Police Area?	
	A: Yes sir.	
	Q: What distance is the station to Goff Way?	
	A: As the crow flies I would say about eight chains but on the road about 12 chains.	
	That is all, thank you.	

DET. INSPECTOR TULLOCH: CROSS EXAMINATION  
BY MR. MACAULAY

Cross-  
Examination

20	Q: Officer, you were the investigating officer, were you not?
	A: Yes sir, one of the investigating officers.
	Q: This murder is supposed to have taken place at 13 Goff Way?
	A: That is right.
	Q: The home of Det. Campbell?
	A: Yes sir.
	Q: Did you dust those premises at all for finger prints?
30	A: No sir.
	Q: Did you at any time obtain any statement from any Eye-Witness to the incident. Did you at any time interview any eye- witness to the incident?
	A: I interviewed Mrs. Campbell.
	HIS LORDSHIP: No eye-witness to the actual shooting?
	A: No sir.
40	MR. MACAULAY: Did the accused at any time tell you that he was not there?
	A: Yes sir. "I know nothing about it. I was not there." That is what he said.
	Q: Did the accused at any time tell you

In the Home  
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Prosecution  
Evidence

No.6

Sylvester  
Tulloch

Cross-  
Examination

13th April  
1977

(continued)

Re-  
Examination

where he was?

A: Yes sir.

Q: Did you investigate whether it was true?

A: Yes, I investigated.

MR. MACAULAY: That is all from this witness.

DET INSPECTOR TULLOCH: RE-EXAMINATION BY  
MR. RECKORD (3.50 P.M.)

Q: When was it he told you where he was,  
after arrest or before?

A: Before his arrest.

10

Q: Was it on the same date when he was  
brought in by his aunt?

A: Yes sir.

MR. RECKORD: That is all, My Lord.

My Lord, there are two other witnesses  
for the prosecution that the prosecu-  
tion proposes to call. Dr. DePass  
and one Lascelles Samuels. My Lord,  
I have arranged with Dr. DePass to be  
here at ten o'clock in the morning.  
The witness Lascelles Samuels was  
personally warned to appear today has  
not turned up. He can be found easily,  
My Lord, and efforts will be made to  
contact him. It is now twelve minutes  
to four. I respectfully ask for an  
adjournment at this stage.

20

MR. MACAULAY: May I indicate to the court  
that we have two witnesses for the  
defence, My Lord.

30

HIS LORDSHIP: Have you made arrangements  
for their attendance?

MR. MACAULAY: They are here My Lord. If  
we get the two witnesses for the Crown  
tomorrow, we won't have much to say in  
the light of our defence and we might be  
able to finish by lunch time.

HIS LORDSHIP: Members of the jury, we  
usually sit until four o'clock but I  
won't grumble that we are losing ten  
minutes. Thank you very much. Please  
return at ten tomorrow morning.

40

14th April 1977

In the Home  
Circuit Court

10.10 a.m. - COURT RESUME. JURY ROLL CALL  
TAKEN.

Prosecution  
Evidence

CROWN COUNSEL: May it please you, m'lord,  
(Mr.Reckord) the prosecution intends to  
call two witnesses this morning  
- Dr. Eric dePass and Lascelles  
Samuels.

No.7  
Eric dePass  
Examination  
14th April  
1977

NO. 7

10

ERIC dePASS

DR. ERIC dePASS SWORN: EXAMINED BY CROWN  
COUNSEL

Q: Now sir, are you Eric dePass?

A: Yes sir.

Q: Are you a registered medical practitioner?

A: Yes, sir.

Q: And Government Pathologist?

A: Yes, sir.

20

Q: Dr. dePass, on the 15th of January, 1974  
did you perform a post mortem examination  
on a male body?

A: Yes, sir.

Q: And that body was identified to you, doctor?

A: Yes, sir.

Q: By whom?

HIS LORDSHIP: You may refer to your notes doctor.

A: Thank you, m'lord.

CROWN COUNSEL: Who identified the body?

A: Ronald McNeish.

30

Q: To be the body.....

HIS LORDSHIP: No, no. That is strictly inadmissible.

Q: Your Lordship pleases. Now doctor, on  
external examination of that body what were  
your findings?

A: There were two wounds -- four wounds on the  
body, firstly a bullet entry wound on the  
left upper abdomen, half an inch in diameter,  
at the lower border of the left costal  
margin, approximately four inches from the  
midline and 5½ inches below the left nipple.  
Somewhere about here (witness indicates)

40



In the Home  
Circuit Court

Prosecution  
Evidence

No.7

Eric dePass  
Examination

14th April  
1977

(continued)

Q: That is where the entry wound was?

A: Yes, the first wound.

HIS LORDSHIP: Would you call that in front?

A: Well, the left upper abdomen, M'lord.

HIS LORDSHIP: But would you say it is the  
back part of the body at all?

A: No, m'lord, on the abdomen, in front.

Q: Yes, doctor?

A: There was an area of burning of the  
lateral border of the wound. In other 10  
words, on the outside of the wound the  
skin showed an area of burning around it.

Q: Can you give any opinion as to what  
caused that burning?

A: Powder, and it indicates the nearness  
of the body to the weapon when the  
bullet was discharged.

Q: Gun powder, would you say, doctor?

A: Yes, sir.

HIS LORDSHIP: Gun powder burns, and it 20  
indicates what?

A: How near the gun was to the body when  
it was discharged.

HIS LORDSHIP: A minimum of how much?

A: A maximum of 2 feet. Beyond that you  
wouldn't get any powder burns.

HIS LORDSHIP: Beyond 2 feet you wouldn't  
get any powderburns?

A: No, sir.

Q: Any other injuries, doctor? 30

A: Yes, sir. Secondly, a bullet exit wound  
in the right side of the abdomen, that  
is on the right side of the abdomen -  
still in front, but on the right side of  
the abdomen, and blood was oozing from  
this wound. Thirdly, a bullet entry  
wound on the right side of the root of  
the neck; the direction was slightly  
downwards. Fourthly.....

HIS LORDSHIP: Just one moment, doctor. Will 40  
you indicate the area again, please?

A: The right side of the root of the neck.  
The bullet went in here and came out  
here. (Witness indicates). The next  
wound I am going to describe is an exit  
wound on this side of the neck. So one  
bullet went in here.....

	HIS LORDSHIP: Is that the fourth wound?	In the Home
	A: Yes, m'lord.	<u>Circuit Court</u>
	HIS LORDSHIP: Yes, the fourth wound?	Prosecution
	A: The fourth wound is a bullet exit	Evidence
	wound on the left side of the root of	No.7
	the neck.	Eric dePass
	HIS LORDSHIP: Where you have just shown?	Examination
	A: Yes, m'lord. On this side. (witness	14th April
10	indicates). Those were my main	1977
	external findings, sir.	(continued)
	Q: Did you do a dissection of the body,	
	Dr. dePass?	
	A: I did, sir.	
	Q: And upon dissection what did you find?	
	A: In the chest there were approximately	
	160 c.cs. of sero-sanguineous fluid	
	in the right chest cavity - the cavity	
	which houses the lung - the pleural	
	cavity.	
	HIS LORDSHIP: Sero-sanguineous means?	
20	A: Blood-stained fluid. Not blood, but	
	heavily blood-stained fluid. In the	
	abdomen there were approximately 200 c.cs.	
	of blood and clots in the peritoneal	
	cavity, that is the cavity that houses	
	the bowel. The bullet passed from left	
	to right across the abdomen. I think	
	that is bullet entry wound number 1.	
	HIS LORDSHIP: Passed from?	
	A: From left to right across the abdomen.	
30	HIS LORDSHIP: And downwards?	
	A: Yes, m'lord, from left to right, burning	
	a hole in the posterior surface of the	
	duodenum, the first part of the small	
	bowel, furrowing - grooving - the lower	
	surface of the left lobe of the liver.	
	HIS LORDSHIP: Furrowing?	
	A: Yes, m'lord, furrowing or grooving the	
	lower surface of the left lobe of the	
40	liver, penetrating the right lobe and	
	exiting through the muscles and skin on	
	the right side of the abdomen, that is	
	at wound number 2. There was some bruising	
	in the omental tissue. That is the	
	tissue that hangs down around the small	
	bowel. Those were my internal findings,	
	sir.	
	Q: The first wound that you found on the	
	left had a connection with the exit wound	

In the Home  
Circuit Court

Prosecution  
Evidence

No.7  
Eric dePass  
Examination

14th April  
1977

(continued)

- that you found on the right?
- A: I thought so, sir.
- Q: And the same thing for the neck?
- A: Yes, sir.
- Q: Did you form an opinion as to the cause of death?
- A: I did, sir.
- Q: What was your opinion?
- A: Death, I thought, was due to shock and haemorrhage, secondary to a gunshot wound of the abdomen. 10
- HIS LORDSHIP: The one in the neck didn't affect any vital organs?
- A: No, m'lord. It wouldn't have caused death.
- CROWN COUNSEL: That will be all, thank you, doctor.
- HIS LORDSHIP: So actually what happened, doctor, from what you saw of the injuries externally, injury -- one went from right to left and the other one went from left to right? 20
- A: Yes, m'lord. The one in the neck went from right to left, the one in the abdomen went from left to right.
- MR. MACAULAY: No questions, m'lord. M'lord, there is an application I have to make. My learned junior indicated it to crown Counsel and the application is, that I cross-examined Inspector Tulloch yesterday and I put to him that the accused told him where he was and that he investigated it, and on reflection of the matter I thought that when the accused comes to give evidence, as indeed he will, it could well be said that I did not put to the Inspector what in fact the accused told him, or where he told him he was. 30
- HIS LORDSHIP: Is what the accused told the Inspector evidence at all? 40
- MR. MACAULAY: My submission, with respect, is that it is.
- HIS LORDSHIP: On what basis is it admissible?
- MR. MACAULAY: If the accused was not giving evidence it would not be admissible. I would be prepared to concede that. I have had the argument before, but, m'lord, I am mindful of the comments

which have been made quite properly by your lordship and by counsel, that when we go in and tell you that our defence is an alibi one of the comments which will be made by me to the jury is that the alibi would disclose that at the first opportunity the accused told the Inspector where he was, and one of the questions I put to the Inspector was that the alibi had been investigated.

In the Home  
Circuit Court

Prosecution  
Evidence

No.7  
Eric dePass

Examination

14th April  
1977

(continued)

10

HIS LORDSHIP: Yes, but I am still not convinced that because the accused is going to give evidence about it, that that makes that conversation, or what he told the Inspector, admissible, but I will allow it.

20

MR. MACAULAY: No, no. It doesn't make it admissible, m'lord; I must be quite honest here. It does not, but some Judges allow it. On the purely academic argument it is not admissible, but I am afraid of the comment which may be made.

HIS LORDSHIP: I certainly wouldn't or couldn't comment on it if I thought it wasn't properly admissible.

MR. MACAULAY: Well, m'lord, I don't need to make the application.

30

HIS LORDSHIP: And I wouldn't allow Mr. Reckord to do it either, because I was going on to say that if you went to the extent of asking him what the accused told him - and you have already asked him whether he investigated it - Mr. Reckord might want to find out what was the result of his investigation and you wouldn't allow that, would you? You would object to it, wouldn't you? Naturally!

40

MR. MACAULAY: Naturally, but not properly because it would arise out of cross-examination.

HIS LORDSHIP: Yesterday Mr. Reckord, I could see, was tempted to ask him; I could see him muscling up and I was waiting for him.

MR. MACAULAY: Thank you, m'lord. I withdraw the application, if the bench is not going to comment.

50

HIS LORDSHIP: No, I couldn't do that, because I don't think it is admissible at all.

MR. RECKORD: M'lord is right. It was exercising my mind and I was toying with the idea,

In the Home  
Circuit Court

Prosecution  
Evidence

No.7

Eric dePass  
Examination

14th April  
1977

(continued)

and then I thought it wasn't the  
correct thing, therefore I refrained.

HIS LORDSHIP: I could see it from the  
question was asked. I anticipated that  
you would be tempted to find out.

MR. MACAULAY: I think your lordship is  
aware that what usually happens is  
that Crown Counsel makes the point that  
this is an after-thought, and this is  
what I wanted to avoid, so that is why I 10  
made the application. As long as the  
bench is not going to comment I will  
not press the application.

HIS LORDSHIP: Mr. Reckord did ask the  
question, what was said to the Inspector  
by the accused when he was brought in,  
and we were told that the accused said,  
I didn't do it; and remember the  
Inspector said the accused told him 20  
where he was. What I wondered then was  
in what circumstances he told him where  
he was, if it followed naturally on  
the statement which he made when he  
came. If that is so then it would be  
alright, but we don't know under what  
circumstances he came to say where he  
was.

MR. MACAULAY: If it followed on the  
accusation then it would be admissible  
as a complete reaction to the accusation. 30

HIS LORDSHIP: Alright. Who is your next  
witness, Mr. Reckord?

CROWN COUNSEL: Lascelles Samuels. Please  
call Lascelles Samuels.

Prosecution  
Evidence

No.8

Lascelles  
Samuels

Examination

14th April  
1977

No. 8

LASCELLES SAMUELS

LASCELLES SAMUELS, SWORN: EXAMINED BY  
CROWN COUNSEL

Q: Are you Lascelles Samuels?

A: Yes, sir. 40

Q: What work do you do, Mr. Samuels?

A: I am a labourer, sir.

Q: And where do you live?

A: 6 Goffe Way.

Q: Were you living at this address on the  
13th of January, 1974?

	A: Yes, sir.	In the Home Circuit Court
	Q: Now, about 8.15 p.m. on the 13th of January, 1974, where were you? Do you remember where you were?	Prosecution Evidence
	A: Yes, sir.	No.8
	Q: Where?	Lascelles Samuels
	A: At my house, sir.	Examination
	Q: Do you know where Detective Campbell lived?	14th April 1977
10	A: Yes, sir.	(continued)
	Q: You knew his house?	
	A: Yes, I knew the house.	
	Q: From your house to his house, about how far that was?	
	A: About four yards above my yard.	
	Q: Four different houses you mean?	
	A: Yes, sir, above my house.	
	Q: Is it on the same side or the other side?	
	A: On the other side.	
20	Q: On the other side of the road?	
	A: Yes, sir.	
	Q: But four houses between the two houses?	
	A: Yes, sir.	
	Q: Is that so?	
	A: Yes, sir.	
	Q: Now, while you were in your house on that night did you hear anything?	
	A: Yes, sir.	
	Q: What you heard?	
30	A: I hear two shots fire, sir.	
	Q: Two what?	
	A: Two shots fire.	
	Q: Where you hear the shots fire from?	
	A: Well, I don't know which part	
	Q: Out in the street or where?	
	A: Out the street.	
	Q: Towards Detective Campbell's side or the other side?	
	HIS LORDSHIP: You just heard two shots?	
40	A: I just hear two shots, sir.	
	Q: After you heard the shots did you ever go	

In the Home  
Circuit Court

Prosecution  
Evidence

No.8

Lascelles  
Samuels

Examination

14th April  
1977

(continued )

out into the street?

A: Not the same time, sir.

Q: About how long after?

HIS LORDSHIP: Just one moment. Do you mean you hear shots around that area all the time? I was going to ask that question, but anyway you say you didn't go out same time?

A: No, sir, I didn't go outside same time.

Q: Did somebody stop you? 10

A: Yes, I was going out and my sister stop me.

Q: About how long after you heard shots you went outside?

A: About 5 minutes.

Q: And when you went outside did you go anywhere in particular?

A: When I go outside I see a small crowd.

Q: Where you see this small crowd?

A: At Mr. Campbell gate. 20

Q: Did you go down to the gate?

A:, Yes, sir.

Q: When you got there who did you see?

A: I saw Mr. Campbell lying on the ground and him wife hold him up.

Q: When you went down there now, with this crowd - this small crowd did you hear anybody talk?

A: Yes, sir. I hear Mrs. Campbell was asking for Neville. 30

HIS LORDSHIP: You heard who?

A: Mrs. Campbell was asking for Neville.

HIS LORDSHIP: Which Neville?

A: Neville Nembhard, sir.

HIS LORDSHIP: This accused?

A: Yes, sir.

Q: You heard anybody else talking apart from Mrs. Campbell?

A: No, sir.

Q: When you went there was Detective Campbell<sup>40</sup> talking at all?

A: No, him wasn't talking at that time. I don't hear him talk. When I was there him wasn't talking.

	Q: You say when you went you didn't hear Detective Campbell talk at all?	In the Home <u>Circuit Court</u>
	A: Up to the time.....	Prosecution Evidence
	Q: Well, did you leave?	
	A: Well, not same time.	No.8
	Q: I asked if you left at all. Did you leave at all?	Lascelles Samuels
	A: Yes, I leave.	Examination
10	Q: Up to the time when you left did you hear Detective Campbell talk?	14th April 1977
	A: No, sir.	(continued)
	Q: The only person you hear talking was Mrs. Campbell?	
	A: Yes.	
	HIS LORDSHIP: You mean of the two?	
	CROWN COUNSEL: Yes, m'lord. Now, as a result of -- I will rephrase the question. You say you left. Where did you leave to?	
20	A: Well, I find out from the crowd.....	
	HIS LORDSHIP: No, no. Don't tell us anything about what you found out from the crowd. Go ahead, Mr. Reckord.	
	Q: You spoke with somebody in the crowd?	
	A: Yes.	
	Q: And you got some information?	
	A: Yes.	
30	Q: I don't want to hear what you asked, just answer yes or no. After you spoke with some people in the crowd did you get some information?	
	A: Yes, sir.	
	Q: And as a result of the information that you got did you go anywhere?	
	A: Yes.	
	Q: Where did you go?	
	A: I go up 6th Street.	
	Q: Up to sixth Street?	
	A: Yes.	
40	Q: When you went there were you going to look for somebody?	
	A: Yes, sir.	
	Q: Who were you going to 6th Street to look for?	
	A: Neville.	



In the Home  
Circuit Court

Prosecution  
Evidence

No.8  
Lascelles  
Samuels

Examination

14th April  
1977

(continued)

Q: Which Neville?

A: Neville Nembhard.

Q: Did you know Neville Nembhard before that day?

A: Yes.

Q: Is he a good friend of yours?

A: Yes, sir, good friend.

Q: When you went to Sixth Street did you see him?

A: Yes, sir, I see him.

10

Q: Where did you see him?

A: In Daddy yard.

HIS LORDSHIP: Daddy or Dolly? A. Dolly.  
One of his friends.

Q: This yard at Sixth Street, tell us how far it is from Mr. Campbell's yard? About how far?

A: I would say about a half mile.

HIS LORDSHIP: Mr. Reckord, are you going to rely on this evidence which you are seeking to get now?

20

MR. RECKORD: Yes, m'lord.

HIS LORDSHIP: For what purpose?

MR. RECKORD: M'lord, the purpose of the evidence is to elicit the behaviour of the accused when first confronted with this news.

HIS LORDSHIP: Yes, but in view of what is here, will it help at all?

MR. RECKORD: I respectfully submit, m'lord, that it will.

30

HIS LORDSHIP: When you say help, I mean from the point of view of your case.

MR. RECKORD: Yes, m'lord. I understand.

HIS LORDSHIP: It can?

MR. RECKORD: Yes, m'lord.

HIS LORDSHIP: Alright.

MR. MACAULAY: From my point of view I like the evidence.

HIS LORDSHIP: You don't mind the evidence?

40

MR. MACAULAY: I want it, m'lord, because I am going to cross-examine this witness on that point to indicate what the defence is.

HIS LORDSHIP: Yes, Mr, Reckord, go ahead.

MR. RECKORD: Thank you, m',ord. Now, Mr. Samuels, you say you saw Neville at Dolly's yard. Exactly where in this yard you saw him?

A: Just out in the yard.

Q: He was out in the yard. Front of the yard, back of the yard, or to the side?

A: Inside of the yard.

10 Q: Was it round to the back, Mr. Samuels, or in front?

A: Front.

Q: Facing the street?

A: The front don't face the street, sir.

HIS LORDSHIP: Where does it face?

A: The front face up to the back part.

HIS LORDSHIP: What you call the front?

A: The front which part the door is.

20 HIS LORDSHIP: In other words you are speaking about the front of Dolly's house?

A: Yes, it don't face the street.

HIS LORDSHIP: The gentleman is asking you, not the front of Dolly's house, but about the front of the yard in which Dolly's house is. You understand?

A: Yes, sir.

30 HIS LORDSHIP: So, was it the front of the yard? We are not talking about the front of the house. Was it the front of the yard or not? The front of the yard is the part towards the street.

A: Well, I would say behind.

HIS LORDSHIP: Behind what?

A: Behind the house, sir.

Q: So people on the street couldn't see him?

A: No, sir.

Q: You would have to go into the yard and go around to the front door of the house, and he was around there in the yard?

40 A: Yes, sir.

Q: In the yard?

A: Yes, sir.

Q: When you went there was he alone in the yard?

In the Home  
Circuit Court

Prosecution  
Evidence

No.8  
Lascelles  
Samuels

Examination

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(continued)

In the Home  
Circuit Court

Prosecution  
Evidence

No.8  
Lascelles  
Samuels

Examination

14th April  
1977

(continued)

A: No, sir.

Q: Other people were there?

A: Yes, sir.

HIS LORDSHIP: Dolly was there?

A: Yes, sir.

Q: About how many other people?

HIS LORDSHIP: Just a minute. When you say there, you mean there with him, or in the yard generally?

MR. RECKORD: In the yard.

10

A: I don't know the certain amount that was there, but I know people was there.

HIS LORDSHIP: People were there with him or just people in the yard?

A: People in the yard, sir.

HIS LORDSHIP: I mean, was he in a group of people?

A: No, he wasn't in a group of people.

HIS LORDSHIP: Was he alone or with Dolly?

A: Other people were standing in the yard and I believe he was sitting down playing a game.

20

CROWN COUNSEL: Did you speak to him?

A: Yes, sir.

Q: What did you say to him?

A: Well, I tell him that Mr. Campbell got shot and his wife is asking for him.

HIS LORDSHIP: Is asking for who?

A: For Neville.

Q: When you told the accused man that, did he say anything?

30

A: No, he never say nothing.

Q: When you told him this news, that Mr. Campbell got shot, you say he said nothing. How did he appear to you?

A: He appear as if him was frightened or surprise.

HIS LORDSHIP: What?

A: Him look frightened and surprised.

Q: Well, what is the next thing that happened after you told him this, he said nothing, and you noticed his appearance? What is the next thing that happen?

40

	A: Well, me and him and Dolly and some other people walk come down.	In the Home Circuit Court
	Q: Walk where?	Prosecution Evidence
	A: Walk come down to the scene, sir.	No.8
	Q: Walk down to the scene?	Lascelles Samuels
	A: Walk down to where the incident take place.	Examination
	Q: When you reached the scene did you see Mr. Campbell there?	14th April 1977
10	A: No, I never see him.	(continued)
	Q: You knew Mr. Campbell long before that night?	
	A: Yes, sir.	
	Q: This yard, Dolly's yard, you know if Mr. Campbell usually walk on that road where Dolly's yard is?	
	A: I don't know, sir.	
	HIS LORDSHIP: What road?	
	A: Sixth Street.	
20	Q: Is this a yard where Neville always go?	
	A: Yes.	
	Q: And you always go there?	
	A: Not plenty times; one or two times.	
	Q: Mr. Samuels, you told us this morning - since you are in the box - that you didn't hear Mr. Campbell talk at all. The only person you heard talking was Mrs. Campbell, from you arrived up to when you left. About how long you remained there, from you arrived to when you left to look for this gentleman? About how long you remained?	
30	A: I don't believe it ketch three minutes.	
	HIS LORDSHIP: Louder..	
	A: I don't believe it ketch four minutes.	
	Q: And you didn't hear Mr. Campbell talk at all?	
	A: No.	
40	CROWN COUNSEL: M'lord, there are certain questions I wish to put to this witness. He is a prosecution witness but as a result of my instructions there are certain questions that I intend to put to him with respect to his testimony here today. I propose to do so now, m'lord.	

In the Home  
Circuit Court

Prosecution  
Evidence

No 8  
Lascelles  
Samuels

Examination

14th April  
1977

(continued)

HIS LORDSHIP: I don't think you will be successful in what you propose to do, in the sense that you are going to have to ask me to make a certain ruling before you can ask certain questions. Before you can ask the questions which I anticipate you want to ask him, have I got to rule on the matter?

CROWN COUNSEL: I don't think so at this stage, m'lord. Perhaps later after that question and answer is given. If I don't pursue it there would be no necessity for a ruling, m'lord, depending on the answer he gives. 10

HIS LORDSHIP: Let me hear the question.

MR. MACAULAY: Bearing in mind that he doesn't cross-examine his witness.

Q: Mr. Samuels, did you every say before .....

MR. MACAULAY: That is what I am objecting to. He will have to show that the witness is hostile. The fact that it doesn't come up for proof doesn't make it ---- he must go beyond that - that is insufficient. I am sure that is what your Lordship was indicating to him. 20

HIS LORDSHIP: On what basis do you ask that question, Mr. Reckord?

MR. RECKORD: M'lord, the instructions that I have and in fact they are contained in the depositions. 30

HIS LORDSHIP: I know; I have it before me, but what is the principle of evidence or the rule of evidence upon which you propose to ask that question? You have to satisfy me that on the rules of evidence, as we know them, you can properly ask the question without my having to make a ruling before you can ask it. 40

MR. RECKORD: M'lord, there are two branches upon which a witness may be attacked: (1) when they do not live up to proof, and (2) when they become hostile. These are two separate aspects; one aspect is when your lordship has to give a ruling, but I am not asking that this witness be treated as hostile. I do not propose to cross-examine the witness. My only question is did he ever say on a previous occasion something else. 50

HIS LORDSHIP: But then, not even defence

counsel can ask that unless it is for a particular purpose. Defence counsel can ask about what he said on a previous occasion for the purpose of contradicting him. You cannot contradict your own witness. So for what purpose do you ask the question?

MR. RECKORD: Very well, m'lord, I will waive the question.

10 HIS LORDSHIP: In any event the course which you wanted to pursue would wipe out completely any value from what you wanted to establish took place at the yard, because the result of pursuing that course would be to wipe out his evidence and you might be in the position where you wouldn't be able to use evidence which he has given which you say you wish to use.

20 MR. MACAULAY: We would be back to square one if he wipes out his evidence.

HIS LORDSHIP: He might not have called him at all.

In the Home  
Circuit Court  
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No.8  
Lascelles  
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Examination  
14th April  
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(continued)

LASCELLES SAMUELS: CROSS-EXAMINED BY DEFENCE COUNSEL (MR. MACAULAY)

Cross-  
Examination

Q: Mr. Samuels, this woman you call Dolly her other name is Ivy White?

A: I just know her by Dolly.

30 HIS LORDSHIP: You don't know her by any other name?

A: No, I don't know her by any other name.

Q: Please call Ivy White?

(IVY WHITE CALLED INTO COURT ROOM)

HIS LORDSHIP: Don't say anything, just look. Now look at her properly. Please go back out, miss.

(IVY WHITE LEAVES COURT ROOM)

Q: Do you know that woman?

A: Yes, sir.

40 HIS LORDSHIP: Is that Dolly?

A: Yes, sir.

Q: As a matter of fact, on the evening of the 13th of January, 1974 when you went to -- by the way, she lives at No.3 Sixth Street? Is that correct?

A: I don't know if is No.3. I don't know the number, but is Sixth Street.

In the Home  
Circuit Court

Prosecution  
Evidence

No.8  
Lascelles  
Samuels

Cross-  
Examination

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(continued)

Q: Now, as a matter of fact when you went to the yard where her house is you went into the house - into a room - didn't you?

A: Up by Dolly yard?

Q: Yes?

A: No, I never went into her room.

Q: But didn't you go into the house?

A: No, I didn't go into the house.

Q: I am putting it to you that you went into the house? 10

A: Outside I see him.

Q: And in the house you saw Olga Bennett? You remember that?

A: Olga Bennett?

HIS LORDSHIP: You know Olga Bennett?

A: No, sir.

MR. MACAULAY: Call Olga Bennett, please?

HIS LORDSHIP: When she comes just do the same thing. Just look. 20

(OLGA BENNETT CALLED INTO COURT ROOM)

HIS LORDSHIP: Alright, you can go back now.

Q: You saw that lady there?

A: I saw that lady there.

HIS LORDSHIP: Did you know her before? Did you know her name?

A: I know her but I don't know her by her name.

HIS LORDSHIP: You know her by any name at all? 30

A: I don't quite remember.

Q: And you also saw Norman Frazer?

A: Yes, sir.

Q: Is that correct?

A: Yes, sir.

Q: I won't ask him to identify Frazer. All of you left for the scene? You, Frazer, these two ladies you just identified, you all left and went to the scene, to Goffe Way? 40

A: Yes, sir.

Q: I now go one step further. Counsel asked you how did the accused man appear to you. The other three people with whom

you went, apart from the accused, were also surprised, were they not?

A: Well, only Neville I talk to, so I don't know.

Q: Counsel for the crown asked you how did Neville look to you. I am putting it to you, how did the others appear to you, because they were present when you spoke to Neville?

10 A: Well I don't know, because I never talk to them.

Q: Were they not present when you talked to Neville?

A: Them wasn't present. They were in the yard but they never amongst me and Neville.

HIS LORDSHIP: When you spoke to Neville?

A: No, sir.

20 Q: Mr. Campbell was well known around that area of Trench Town?

A: I don't know. I know him but I don't know if him well known.

Q: He was popular around that area?

A: I don't know if him popular. I know him but I don't know if him popular.

Q: At what time did you get to the house - Dolly's house?

A: I don't remember the time.

30 Q: You said about 8.15 you heard shots. About what time you got to the house?

A: I wasn't concentrating on the time, sir. I just go there and give Neville the message.

Q: You weren't concentrating about 8.15?

HIS LORDSHIP: No, no. The time 8.15 was put to him.

40 Q: You heard these two shots at 8.15, you went to the scene immediately afterwards. Did you go to the scene immediately afterwards? Immediately after you heard the shots?

A: Not immediately, about 5 minutes.

HIS LORDSHIP: And he spent about four minutes there.

Q: And from there you went to Dolly's house.

A: Yes.

Q: So about half an hour's time you were at Dolly's house?

In the Home  
Circuit Court

Prosecution  
Evidence

No.8  
Lascelles  
Samuels

Cross-  
Examination

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1977

(continued)



In the Home  
Circuit Court

Prosecution  
Evidence

No.8  
Lascelles  
Samuels

Cross-  
Examination

14th April  
1977

(continued)

A: Beg pardon?  
Q: Half an hour?  
A: I don't know the time, sir.  
Q: Had you ever been to Dolly's house before that day?  
A: Yes.  
Q: And you played cards there, didn't you?  
A: Not me.  
Q: But people play cards there?  
A: Them play card there, but I never play. 10  
HIS LORDSHIP: You walked from Goffe Way to Dolly's house at Sixth Street?  
A: Yes, sir.  
HIS LORDSHIP: About how long it took you to go there?  
A: About three or four minutes.  
Q: So let me get it quite clearly now. You heard the shots at about 8.15. Is that correct?  
A: Yes, sir. 20  
Q: About five minutes later you were on the scene?  
A: Yes, sir.  
Q: You spent four minutes there and then you took about three or four minutes to go up to Dolly's house where you saw the accused. Is that correct?  
A: Yes, sir.  
MR. MACAULAY: Thank you.

Re-  
Examination

LASCELLES SAMUELS: RE-EXAMINED BY CROWN COUNSEL (MR. RECKORD): 30

Q: When you left Mr. Campbell's gate to look for Neville did you go straight to Dolly's house or you went to any other place first and then ended up at Dolly's house?  
A: I went straight to Dolly's house.  
Q: You went straight to Dolly?  
A: Yes, sir.  
HIS LORDSHIP: You know where Neville lived? 40  
A: Yes, sir.  
HIS LORDSHIP: Where did he live?

	A: He live about two yards from me.	In the Home
	Q: So you didn't go over to his yard first, or anywhere else?	<u>Circuit Court</u>
	A: No.	Prosecution
	Q: You just spoke to some people and then went up to Sixth Street?	Evidence
	A: Yes, sir.	No.8
	MR. RECKORD: Thank you.	Lascelles
	MR. MACAULAY: Arising from that last answer, m'lord, may I with your leave put this question to him, that is after he heard Mrs. Campbell asking.....	Samuels
10	HIS LORDSHIP: Go ahead and put the question.	Re-examination
	Q: After you heard Mrs. Campbell asking for Neville, you did not go to Neville's yard?	14th April
	A: No, sir.	1977
	Q: You went to Dolly?	(continued)
	A: Yes, sir.	
20	Q: Why?	
	A: Because Mrs. Campbell was asking for Neville and I enquire - I ask in the crowd which part Neville deh.	
	Q: What?	
	A: I ask in the crowd if them know which part Neville deh.	
	HIS LORDSHIP: He asked in the crowd if they knew where Neville was.	
30	MR. MACAULAY: And the information was that Neville was at Dolly's house?	
	A: Yes, sir.	
	HIS LORDSHIP: Anything arising out of that, Mr. Reckord?	
	MR. RECKORD: No, m'lord.	
	MR. MACAULAY: M'lord, may I ask one more question? I don't think we have established it yet. The question I want to put is whether his yard, Mr. Campbell's yard and Neville's yard were near together.	
40	HIS LORDSHIP: We have that. He said Neville's yard is two yards from his, and Mr. Campbell's yard is 4 yards away on the other side, and Dolly's yard is half mile away.	
	MR. MACAULAY: Thank you, m'lord.	

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MR. RECKORD: M'lord, the name of Detective Edrick Walker appears on the indictment. He is not here. The police report is that he has left the Force and now resides in the United States. Notice was served, m'lord, for further evidence from the witness George Fenton, but he cannot be located. 10

HIS LORDSHIP: Have you tried since yesterday?

MR. RECKORD: Yes, m'lord, but the officer responsible has not been successful in locating the witness. So, that, may it please you my lord, Mr. Foreman and members of the jury, is the case for the prosecution.

HIS LORDSHIP: Yes, Mr. Macaulay?

MR. RECKORD: M'lord, before my learned friend opens his case, I wish to make an application in view of the evidence as to the exact time of death. The indictment charges him with the 13th of January, 1974. I am making application to amend the date to read, "on either the 13th day of January, 1974 or the 14th day of January, 1974". 20

HIS LORDSHIP: Any objection?

MR. MACAULAY: I would object to that, m'lord. I would not object to an amendment which said, "on a day unknown between the 14th and 15th", but I cannot subscribe to either or. But I have no objection if he is not certain of the date, to say between the 12th and 14th - on a day unknown between such and such a date. If he amends it that way I wouldn't object. 30

HIS LORDSHIP: You want to alter your application? 40

MR. RECKORD: No, m'lord, I do not wish to alter the application.

HIS LORDSHIP: Well I grant the application as made, 'on either the 13th or 14th day of January'.

CROWN COUNSEL: Your Lordship pleases.

MR. PICKERSGILL: M'lord, the accused, Neville Nembhard, will give sworn testimony, and the defence will call witnesses. 50

HIS LORDSHIP: Are you opening?  
MR. PICKERSGILL: No, m'lord.

In the Home  
Circuit Court  
No.9  
Proceedings  
14th April  
1977  
(continued)

No. 10  
NEVILLE NEMBHARD

Defence  
Evidence  
No.10  
Neville  
Nembhard  
Examination

NEVILLE NEMBHARD, SWORN: EXAMINED BY  
DEFENCE ATTORNEY (MR. PICKERSGILL)

Q: Your name is Neville Nembhard?  
A: Yes, sir.  
Q: Where do you live, Neville?  
10 A: 10 Goffe Way, Kingston 14.  
Q: And how long have you been living there?  
A: Many years, sir.  
Q: Do you recall the 13th of January, 1974?  
A: Yes, sir.  
Q: Could you explain to this court, slowly,  
what you did basically for that day,  
starting say from mid-day?  
A: Well, I woke up on the 13th of January,  
20 that was a Sunday morning, and I do  
some little chores around me house and  
by that time my grandmother was gone  
to church.  
Q: Neville, we can't hear you. By that  
time what?  
A: By that time my grandmother was gone to  
church, when I left home.  
Q: Yes?  
A: When I left home my grandmother was gone  
30 to church and I went up to Dolly's house,  
me and one Norman Frazer.  
Q: You went up to Dolly's house?  
A: Yes, sir, and I was up there till about  
1 o'clock. It was in the midday I came  
back down my house.  
HIS LORDSHIP: You were there till about what  
time?

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In the Home  
Circuit Court

Defence  
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No.10  
Neville  
Nembhard

Examination

14th April  
1977

(continued)

- A: About mid-day, and I was around the vicinity.
- HIS LORDSHIP: Eh? A. I was around the area, sir.
- Q: Yes?
- A: Well, in the afternoon, by that time me and Norman Frazer was speaking, I saw a youth who I knew that live in Dolly's yard came and told me that Dolly send to ask me if I had a pack of cards 10  
that she had.
- Q: Dolly sent to ask you if you had borrowed cards from up there?
- A: Yes. I told him no, and me and Norman Frazer and the youth went up to Dolly's yard, and I was up there.....
- HIS LORDSHIP: Just a minute. Yes, you were up there what?
- A: I went up there and by that time Dolly had found the cards that she was asking 20  
for and we start to play cards.
- Q: Approximately what time was this?
- HIS LORDSHIP: Who started to play cards? You or they?
- A: They, but I was looking on.
- Q: About what time was this?
- A: That was in the afternoon. I don't know exactly what time, but it was in the afternoon.
- Q: Continue. 30
- A: When I went down to Dolly's yard they were playing until it came up night and I went into Dolly's house and was watching the 7.30 news on television when I saw Lascelles Samuels came up on the step. He wasn't exactly in the house. He told me that he heard Mrs. Campbell asking where I was.
- Q: He told you that he heard Mrs. Campbell asking where you were? 40
- A: Yes, and that Mr. Campbell had gotten shot. Well, I was not too frightened but I held my head and speak to meself.
- HIS LORDSHIP: You held your head and did what?
- A: Spoke to meself.
- HIS LORDSHIP: When you say you held your head you mean you literally held your

head, or you meant you kept control  
of yourself?

A: Yes, I just hold me head and.....

HIS LORDSHIP: Spoke to yourself?

A: Yes, sir, and by that time Dolly had  
heard and everybody was speaking  
about it. Everybody was giving their  
different opinion, making all kinds  
of expression. Well, me and Norman  
Frazer and Olga and Lascelles Samuels  
and a couple more - about two more  
youths that live in the yard, came  
back on the scene, the scene of the  
crime, but I didn't see anyone.

HIS LORDSHIP: Came back?

A: Came back on the scene of the crime.  
That is about two doors -- where Mr.  
Campbell reside the house in front of  
me is just two doors from his house.  
You can stay from my yard.....

CROWN COUNSEL: I am not hearing him, m'lord.

HIS LORDSHIP: He said where the deceased  
lived, the house in front of where he  
lives is two doors away. Yes, go on.

A: Well, I went to the scene of the crime  
and people were asking me where I was.  
I was speaking to a lot of people and  
they were asking me where I was and so  
forth. After that I went to my house.

Q: How long you knew Mr. Campbell?

A: Long time. Ever since I live at Goffe  
Way.

Q: From when?

A: About 1965.

Q: And you have known him all that time?

A: Yes, sir.

Q: And you live reasonably near to him?

A: Yes, sir.

Q: Mr. Campbell and yourself had any fuss?

A: No, sir.

Q: You had any reason at all to do him any  
harm?

A: No, sir.

MR. PICKERSGILL: That will be all, m'lord.

In the Home  
Circuit Court

Defence  
Evidence

No.10  
Neville  
Nembhard  
Examination  
14th April  
1977  
(continued)

In the Home  
Circuit Court

NEVILLE NEMBHARD: CROSS-EXAMINED BY CROWN  
COUNSEL (MR. RECKORD)

Defence  
Evidence

No.10  
Neville  
Nembhard

Cross-  
Examination

14th April  
1977

Q: Mr. Nembhard, you stayed at Dolly's house on the second visit from about what time?

A: It was in the afternoon.

Q: Yes, but do you have any idea to give us?

A: No, sir, I would say about 4 or I would say after 5.

10

Q: You made your second visit about 5?

A: Yes, sir.

Q: You made your second visit after 5 and you remained there until Mr. Samuels came and gave you this news?

A: Yes, sir.

Q: And all this while, from 5 until after 7.30 what were you doing?

A: I was watching the card game. I was in the yard.

20

Q: You were in the yard?

A: Yes, and I was watching.....

Q: You were in the yard up to 7.30?

A: I was in the yard up to when Lascelles Samuels came.

Q: I am trying to distinguish between the yard and in the house?

A: Oh,oh.

Q: So you were out in the yard from.....?

A: When I went in the house the 7.30 news was going on.

30

Q: So you were out in the yard before that?

A: Yes, sir.

Q: And you were just watching the playing?

A: Yes, sir.

Q: You didn't play at all?

A: No, sir.

Q: How many people were out there playing?

A: A lot of people.

Q: Not one game going?

40

A: Just one game.

Q: What game was it?

A: Ordinary card game.  
Q: Was it donkey, strip-me-naked, or what? Or was it poker? Which one were they playing?  
A: They wasn't playing strip-me-naked, but I know they were playing cards.  
Q: Were they playing 21?  
A: I don't know, sir.  
10 HIS LORDSHIP: You don't know the name of the game they were playing?  
A: No, sir.  
HIS LORDSHIP: They were playing for money?  
A: Yes, sir.  
Q: They were playing for money?  
A: Yes, sir.  
Q: And it was only one game, with all the players in that one game? Not separate games in which there were some persons in one corner and so forth?  
20 A: No, sir.  
HIS LORDSHIP: Were they playing at a table or what?  
A: I don't really remember if is a table.  
HIS LORDSHIP: But they were all involved in this one game?  
A: Yes, sir.  
Q: You were there for over two hours. You don't remember them sitting around a table?  
30 A: I said they were playing around something, but I don't know if is a table.  
Q: You were there watching them?  
A: They were sitting down.  
Q: Were they sitting down on the ground or standing up?  
A: No, sir, I think they were sitting down.  
Q: Was Dolly playing?  
A: Yes, sir.  
Q: Dolly was playing?  
A: Yes, sir.  
40 Q: What about Olga? Was she playing?  
A: Yes, sir.  
Q: What about the youth, Norman Frazer?

In the Home  
Circuit Court

Defence  
Evidence

No.10  
Neville  
Nembhard

Cross-  
Examination

14th April  
1977

(continued)



In the Home  
Circuit Court

Defence  
Evidence

No.10  
Neville  
Nembhard

Cross-  
Examination

14th April  
1977

(continued)

- A: I don't remember if him was playing.  
I don't think him was playing.
- Q: You don't remember if he was playing?
- A: I don't think he was playing.
- Q: What about the other two youths that  
walked down with you to the scene?
- A: I don't remember if they were playing.
- Q: You don't remember if they were playing?
- A: No, sir.
- Q: Tell me, is this a regular gaming yard, 10  
or was that the only occasion that they  
just start up a game?
- A: Well, I wouldn't say occasionally,  
but....
- Q: They play there often?
- A: Yes, sir.
- Q: And you visit there often?
- A: Well, I wouldn't say often. When me  
mind tell me.
- HIS LORDSHIP: How often your mind tell you to 20  
go there? You go there every day or once  
a week or once a month or once a year?
- A: I have no precise time.
- HIS LORDSHIP: Dolly is your girl friend?
- A: No, just a friend.
- Q: Tell me, they play there every evening,  
whether you go or not? Do you know?
- A: No, I wasn't up there all the while.
- HIS LORDSHIP: He can't tell when he is not 30  
there.
- MR. RECKORD: M'lord, at my club I know they  
play there every evening, although I  
don't go there every evening.
- HIS LORDSHIP: I know you can say that but  
you couldn't say that in Court.
- MR. RECKORD: What I am saying, m'lord, is  
that I know they play dominoes there  
all the time. I am not talking about  
gambling, m'lord.
- HIS LORDSHIP: The rules of the game here is 40  
that you cannot say that.
- MR. RECKORD: I agree with that, m'lord.  
Mr. Nembhard, whenever you go there  
they play? They are always playing when  
you go there?
- A: Not all the while.

	Q: You have been there on occasion and they are not playing?	In the Home Circuit Court
	A: Yes, sir.	Defence
	Q: And even when you remain there you are not playing?	Evidence
	A: Yes.	No.10
	Q: When you went there about 5 o'clock, they were already playing?	Neville
	A: Well they had found the cards.	Nembhard
10	HIS LORDSHIP: They started to play before you got there or after you got there?	Cross- Examination
	A: I don't remember exactly.	14th April 1977
	Q: When you went there at mid-day were they playing?	(continued)
	A: No, sir.	
	Q: Tell me something, in January 1974 you weren't working?	
20	A: Well, I helped my grandmother. My grandmother is a teacher. She teach a prep school.	
	Q: Were you working out? I don't mean working in the yard. Were you working out at any place on the 13th of January, 1974?	
	A: No, sir.	
	Q: You weren't employed to anybody?	
	A: Not except my grandmother.	
	HIS LORDSHIP: You mean on that day or in that period?	
30	MR. RECKORD: I asked him about the 13th of January, but I am going to ask generally. On the 13th of January, 1974 you were not working out anywhere?	
	A: No, sir.	
	Q: Were you employed to anybody during that period?	
	A: No, sir.	
	Q: How old were you then?	
	A: Seventeen.	
40	Q: And you weren't working at all?	
	A: No, sir. I told you that my grandmother have a school and I used to help her.	
	Q: Where?	
	A: At her school.	

In the Home  
Circuit Court

Defence  
Evidence-

No.10  
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(continued)

Q: Helping to teach?

A: Sometimes.

Q: You weren't helping at the school on the  
13th of January?

A: No, sir, because it.....

HIS LORDSHIP: He said that it was a Sunday.

Q: Thank you, m'lord. You don't help  
at Sunday school?

A: Well, no sir.

Q: Your grandmother on that day had gone  
out to Sunday school? 10

A: Sunday school keep in the afternoon.

HIS LORDSHIP: She had gone to church?

A: She had gone to church in the morning.

Q: She usually teach at Sunday school?

A: Yes, sir.

Q: When you came back at 12 o'clock was  
your grandmother at home?

A: Yes, sir.

Q: And when you left -- about what time  
you left your home? You said you  
reached Dolly's yard about 5. What  
time you left your yard? 20

A: Well, I told you that I don't remember,  
but when I left my grandmother was there.  
She was teaching Sunday school.

Q: So from the time you arrived at Dolly's  
yard at about 5, did you leave at all?

A: Not until Lascelles Samuels came and  
told me about this thing. 30

Q: Now, you told us you were watching  
television when Lascelles came. When  
you went in to watch television was Olga  
still playing?

A: I don't remember, sir.

Q: Was she in the house watching television  
with you?

A: No, sir. I think Dolly was by the step.

HIS LORDSHIP: By the step?

A: Not by the step, by the door exactly. 40

HIS LORDSHIP: The door of what?

A: The house.

HIS LORDSHIP: When?

A: At the time when Lascelles Samuels came.

	HIS LORDSHIP: Dolly, you said?	In the Home
	A: Yes, sir.	<u>Circuit Court</u>
	HIS LORDSHIP: You say Olga was not	Defence
	watching television with you?	Evidence
	A: She could be in the house but I don't	No.10
	remember. I have no knowledge of where	Neville
	Olga was.	Nemhard
	Q: When you left outside to go and watch	Cross-
	television was Dolly playing cards?	Examination
10	A: I don't remember, sir.	14th April
	Q: You don't remember? What about Olga?	1977
	When you left to go and watch television	(continued)
	was Olga playing cards?	
	A: I don't remember, sir.	
	Q: When Lascelles came and told you, were	
	you the only person inside the house	
	watching the television?	
	A: I said Dolly was by the door.	
20	HIS LORDSHIP: Inside by the door you mean,	
	or outside?	
	A: I think she was inside.	
	Q: But a while ago you said.....	
	A: I said she was by the door but I thought	
	it was inside.	
	HIS LORDSHIP: This is Dolly's room?	
	A: Yes, sir.	
	Q: Tell me, how near the game was going on	
	to Dolly's step? How near the game	
	was being played to her step?	
30	A: Very near.	
	Q: So people were more or less actually on	
	her doorstep? Some of the players?	
	A: Yes, very near to the doorstep.	
	Q: Olga lives in that same yard?	
	A: At the time.	
	Q: Does she live in the same house with Dolly?	
	A: No, sir.	
	Q: You knew her room?	
	A: Yes, sir.	
40	Q: This is a tenement yard?	
	A: Yes, sir.	
	Q: And so they have separate rooms?	
	A: Yes, sir.	

In the Home  
Circuit Court

Defence  
Evidence

No10  
Neville  
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(continued)

- Q: Did you know how near Dolly's room was to Olga's room door?
- A: Very near you know.
- Q: The next one beside Dolly's?
- A: No. Like Dolly's own here, Olga is down so. (Witness indicates)
- Q: So you have other rooms between the two?
- A: Not between, beside.
- HIS LORDSHIP: Are they in the same building? Olga's room and Dolly's room, are they in the same building? 10
- A: In the same yard but not joined together.
- HIS LORDSHIP: Are they in the same building?
- A: No, sir; is a yard.
- HIS LORDSHIP: They have several rooms or several houses in the yard, or is it just one big house?
- A: Several houses.
- HIS LORDSHIP: So I am asking whether Dolly's room and Olga's room are in the same house or different houses? 20
- A: Different houses.
- Q: Anyway, when Samuels came and gave you the message was anybody else inside the room there with you?
- A: Not to my knowledge.
- Q: When Mr. Samuels spoke to you did he speak loud, so that people outside could hear?
- A: Well I don't think so, because is a person that doesn't speak loud, and then he came up to me and told me. 30
- Q: He just came up to you and told you?
- A: Yes.
- Q: You heard -- please repeat for me what it was that Mr. Samuels told you when he came? Try and remember the exact words, if you can.
- A: Well he told me that Mr. Campbell got shot and Nurse was asking for me. 40
- Q: Those were the only words he said to you?
- A: That I can remember.
- Q: Did you know who he was speaking about?
- A: Yes, sir.
- Q: Did you know who he was saying got shot?

A: Yes, sir.  
 Q: How did you know to whom he was referring?  
 A: He told me Mr. Campbell and I know Mr. Campbell.  
 Q: How old were you at the time? Seventeen?  
 A: Yes, sir.  
 10 Q: Was that the only person in Jamaica you knew named Campbell on the 13th of January, 1974? Detective Campbell was the only person in Jamaica who you knew by the name of Campbell?  
 A: I know many people named Campbell, but how he came and told me I figure it was him.  
 Q: Would you say you know over 20 or 30 people named Campbell in Jamaica?  
 20 A: Well, I have heard a lot of people name Campbell.  
 Q: What about in the Denham Town area? About how many people you know named Campbell? More than one?  
 A: I doesn't know any more, that I personally know.  
 HIS LORDSHIP: You don't what?  
 A: Know any other Campbell in Denham Town, sir.  
 30 Q: A friend of yours just said Campbell get shot, Nurse asking for you and you knew who he was talking about?  
 A: Yes, because Nurse is Mr. Campbell's wife, so when he said that I know who he was referring to.  
 Q: So it is because he said Mr. Campbell got shot and Nurse asking for you why you knew that he was referring to Detective Campbell because you knew that his wife was a nurse?  
 40 A: And they call her Nurse.  
 Q: That is the reason you knew that he was referring to Detective Campbell?  
 A: Yes, he told me that Mr. Campbell got shot.  
 HIS LORDSHIP: What the gentleman is asking you is whether you knew it was Detective Campbell because Mr. Samuels said Nurse is asking for you? Is it because he used the word Nurse why you knew it was Detective Campbell?

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Defence  
Evidence

No.10  
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(continued)

In the Home  
Circuit Court

Defence  
Evidence

No.10  
Neville  
Nembhard

Cross-  
Examination

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1977

(continued)

- A: Yes, sir, that could be why.
- Q: That is the reason?
- A: Yes, sir, that could be why.
- Q: When your lawyer, Mr. Pickersgill, was asking you questions did you not tell the Court that what Mr. Samuels came and told you was that he heard Mrs. Campbell asking where you were and that Mr. Campbell had got shot? Were those the words you told us in examination-in-chief when your lawyer was asking the questions? 10
- A: Yes, sir.
- Q: You used the words Mrs. Campbell?
- A: I don't remember if it is Mrs. Campbell.
- HIS LORDSHIP: You don't remember what?
- A: It is Mrs. Campbell. I thought it was Nurse he said, but I doesn't have any firm remembrance. I doesn't firmly remember, but I thought it was Nurse he said. 20
- Q: I am going to suggest to you that the reason why you knew it was Detective Campbell he was referring to is because you were the person who did it?
- A: Did what?
- Q: Did the shooting and killed the gentleman?
- A: Which shooting, sir?
- Q: You don't know what shooting I am talking about?
- A: Yes, sir. 30
- Q: Then why do you ask me which shooting I am talking about?
- A: But I don't do any shooting, sir!
- Q: I am suggesting - you agree or you disagree -- I am suggesting that the reason you knew that it was Detective Campbell that Mr. Samuels spoke about was because you were the person who actually shot Mr. Campbell?
- A: I didn't shoot Mr. Campbell, sir. 40
- Q: You knew Mr. Campbell very well?
- A: Yes, sir, we were neighbours.
- Q: And Mr. Campbell knew you very well?
- A: Yes, sir.
- Q: You think you could mistake Mr. Campbell on a bright lit street if you were to see him nearby?

	A:	Well people favour people you know, sir.	In the Home Circuit Court
	Q:	I am talking about you, Mr. Nembhard.	
	A:	Well, maybe.	Defence Evidence
	Q:	If you saw Detective Campbell, when he was alive, nearby to you in a bright lit area would you mistake him?	No.10 Neville Nembhard
	A:	Maybe.	Cross- Examination
	Q:	How long you say you knew him? From 1965?	14th April 1977
10	A:	From 1965.	(continued)
	Q:	And in 1974, after about 9 years, if you saw him near, within arms length, on a bright lit night, you would mistake him?	
	A:	Yes, sir, maybe.	
	Q:	When I say 'seen Mr. Campbell.' I mean if you were to see his face within arms length on a bright lit night. Would you mistake him?	
20	A:	I said maybe, you know, sir.	
	Q:	You have any brothers?	
	A:	Yes, sir.	
	Q:	Younger or older than you?	
	A:	Younger.	
	Q:	How much younger than you? How much older are you than he is?	
	A:	About five years.	
30	Q:	If you saw your brother within arms length on a bright lit night - saw his face - you think you would mistake him for anybody else?	
	A:	Yes. Well, you see, my brother doesn't reside where I live, so maybe I could mistake him because all the while I pass him on the road and doesn't know is him.	
	Q:	How old were you when you were living with your grandmother?	
	A:	Ever since I knew myself.	
40	Q:	If you were to see your grandmother on the 14th of January, 1974 - if you saw her within arms length - and I mean seeing her face -	
	A:	Looking into her face?	
	Q:	Yes, looking into her face, within arms length, would you mistake her for somebody else?	



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(continued)

- A: No, sir.
- Q: You wouldn't mistake her?
- A: I said if I was looking into her face, staring into her face, I wouldn't mistake her.
- Q: But if you were looking into your brother's face, staring at him you would mistake him?
- A: I told you that I don't grow with my brother. I doesn't know him that much, 10  
so I could mistake him.
- Q: When your lawyer was asking you questions you told the court, "Me and Norman Frazer and Olga and Lascelles Samuels and two more youths came back on the scene of the crime". I am suggesting that when you say you came back on the scene you mean you were there before and having done what you did you went away and came back, and that is why you 20  
say came back on the scene?
- A: I wasn't there before. Is there I live that is why I said came back, because that is where I live.
- Q: You said came back because?
- A: Is there I live, sir.
- Q: I am suggesting it is because you were there earlier on and shot the gentleman?
- A: I told you I didn't shoot the gentleman. I told you is there I live, sir. 30
- Q: You live across the road?
- A: Which road, sir?
- Q: You don't live on the same road as Mr. Campbell?
- A: Is just a path-way.
- Q: Do you live on the same road as Mr. Campbell?
- A: Yes, sir.
- Q: And when you came back there people were asking where you were? 40
- A: Yes, sir. Not exactly at Mr. Campbell's gate, but along the road.
- Q: People were asking you?
- A: Yes.
- Q: Where you were?
- A: Yes.

	Q: You have any idea why they were asking for you?	In the Home <u>Circuit Court</u>
	A: Well, the idea could be the same idea why Lascelles Samuels came and ask for me.	Defence Evidence
	Q: Did you regard it as something very serious, what Mr. Samuels came and told you?	No.10 Neville Nembhard
	A: Well.....	Cross- Examination
10	Q: Yes or no?	14th April 1977
	A: Well, I didn't involve with police; it was first.....	(continued)
	Q: I am not asking you about getting involved with any police. My question is, did you regard what Mr. Samuels told you as something very serious?	
	A: Could be.	
	Q: What did you regard it as? Let me ask you this way.	
20	A: Well, shooting is a very serious matter, and if I heard that somebody got shot and him wife asking for me I have to still regard it a way.	
	Q: You still do what?	
	A: Still regard it a way. Can't just take it cheaply.	
	Q: I still don't understand really what you mean by that. Let me ask you this: Did you understand from what Mr. Samuels told you that they were saying that it was you who shot Mr. Campbell?	
30	A: He didn't say those words.	
	Q: I know he didn't say so, Mr. Nembhard. Please answer the question. Did you understand from what Mr. Samuels told you that they were calling your name as responsible for the shooting?	
	A: No, he didn't tell me that I was responsible for the shooting.	
40	Q: I know he didn't.	
	HIS LORDSHIP: He told you that Nurse was asking for you?	
	A: Yes, sir.	
	HIS LORDSHIP: What you are being asked now is, did you understand from the fact that he told you that Mr. Campbell got shot and that Nurse was asking for you, did you	

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(continued)

understand from that, that it was  
you who shot Mr. Campbell? Did you  
understand that?

A: Well, it could be a lie that she was  
asking for me.

HIS LORDSHIP: No, no. It could be a lie, and  
I am sure you are saying it is a lie.  
The question is, did you understand,  
when Mr. Samuels said this to you, that  
it was being said that it was you who  
was responsible for the shooting? 10

A: In fact I didn't really believe that  
they would say is me.

HIS LORDSHIP: You are still not answering  
the question. Do you understand what  
I am asking you? Mr. Samuels came and  
told you that Mr. Campbell got shot and  
that Nurse or Mrs. Campbell was asking  
for you?

A: Yes, sir. 20

HIS LORDSHIP: Did you understand from what  
was said to you that it was being said  
that - whether right or wrong - that  
it was being said that it was you who  
shot Mr. Campbell? That is what the  
gentleman is asking you.

A: If I thought it was me?

HIS LORDSHIP: If you thought from what Mr.  
Samuels said to you that it was being  
said that it was you who shot Mr. Campbell? 30

A: Could be, sir.

HIS LORDSHIP: Not could be. Did you think  
so, or not?

A: Well, I didn't have a strong conviction.

MR. MACAULAY: M'lord, the question being  
asked of the witness is whether in his  
opinion he interpreted what Samuels said  
as an allegation against him.

HIS LORDSHIP: That is what he is being asked.

MR. MACAULAY: Whatever he says in answer 40  
would be an opinion - it would be  
opinion evidence, he would be giving his  
opinion as to his interpretation of what  
Mr. Samuels said.

HIS LORDSHIP: Are you saying it is not  
permissible for him to give that  
evidence?

MR. MACAULAY: He cannot be asked to say what  
he understood by what is said to him?

	HIS LORDSHIP: He cannot properly be asked that? Is that what you are saying?	In the Home <u>Circuit Court</u>
	MR. MACAULAY: M'lord, what I am saying is this: he can be asked what he understood this gentleman to say, but it is being put to him did he understand it to mean that an accusation was being made against him. That is what I understand the question to be.	Defence Evidence No.10 Neville Nembhard
10	HIS LORDSHIP: What he is being asked is what did he understand -- he was being asked, did you understand by what was said to you that it was being said that you had shot Campbell.	Cross- Examination 14th April 1977 (continued)
	MR. MACAULAY: It was being said by somebody else or by whom?	
	HIS LORDSHIP: It was being said by Mrs. Campbell, for instance.	
20	MR. MACAULAY: It was being said by Mrs. Campbell? We are not here interpreting what Mrs. Campbell said, we are interpreting what Samuels said Mrs. Campbell said.	
	HIS LORDSHIP: All the witness is being asked is whether in view of what Mr. Samuels said, that Mr. Campbell got shot and Mrs. Campbell or Nurse is asking for you -- the question was did he understand from that that it was being said that he.....	
30	MR. MACAULAY: Being said by Mrs. Campbell?	
	HIS LORDSHIP: By anybody. It was being said that he shot Mr. Campbell.	
	MR. MACAULAY: With the greatest of respect, m'lord, he could be asked what he understood the words of Mr. Samuels to mean, but I think it goes much further than that in this case. He was not being asked to interpret the words of Mr. Samuels, he is being asked whether he understood that some other persons, whether Mrs. Campbell or some other person, were of the opinion that he.....	
40	HIS LORDSHIP: No, no, not of the opinion - were saying .	
	MR. MACAULAY: I stand corrected. Were saying that he was responsible for the shooting. That is not interpreting what Mr. Samuels said.	
50	HIS LORDSHIP: However it is asked, all he is being asked is, did he understand by what	

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(continued)

Mr. Samuels said that he was being  
accused, whoever is accusing him.

MR. MACAULAY: This is that I think I should  
protect my client from. No accusation  
was made at all. The question was put  
in a form as if an accusation was made.  
No accusation was made. What Mr. Samuels  
said.....

HIS LORDSHIP: Alright, there is no accusation  
in the words used, but what did he 10  
understand by what was said to him?

MR. MACAULAY: I have no objection to that,  
but when it is put as if an accusation  
was made that is what I am objecting to.

HIS LORDSHIP: In cross-examination he can  
be asked that question.

MR. MACAULAY: Your lordship pleases.

HIS LORDSHIP: Start again, Mr. Reckord.

Q: Now Mr. Nembhard, you told us that Mr.  
Samuels made a statement to you and 20  
that when he made it you said you were  
a bit frightened.

HIS LORDSHIP: Did he say that?

MR. MACAULAY: My lord, he didn't say that;  
it was Mr. Samuels who said this.

HIS LORDSHIP: He said, "Well, I was not  
too frightened, because I held my  
head and spoke to myself".

Q: You put your hand to your head?

A: Yes, sir. 30

Q: Was that a sign of distress?

A: No, I wasn't distressed.

Q: Or was it a sign of deep thought?

A: When he say Mr. Campbell get shot I was  
frightened to hear that Mr. Campbell  
get shot.

MR. MACAULAY: I don't know exactly what he  
means by that.

A: I was frightened to hear that him get  
shot. 40

Q: You were so frightened that it left you  
speechless?

A: I wouldn't exactly say speechless because  
I was saying something to myself, and  
I heard other people speaking, expressing  
their own opinion.

	Q: Mr. Samuels came in the room and spoke to you alone? People outside don't know what happen yet?	In the Home <u>Circuit Court</u>
	A: I told you that Dolly was by the door but I doesn't remember how she heard, but I know people were expressing their opinion.	Defence Evidence No.10 Neville Nembhard
10	Q: I don't mean 15 minutes after the information was passed to you. I mean immediately you got the information from Mr. Samuels. You put your hand to your head, you said. You weren't in distress, although you were frightened to hear that Mr. Campbell got shot. I asked you if you were in deep thought; I don't know if you answered that question, but you said you were speaking to yourself. Now, my question is, you were so frightened of hearing that piece of news that you could not say one word. Is that so?	Cross- Examination 14th April 1977 (continued)
20	A: What could I say? I couldn't say anything.	
	Q: You didn't say anything?	
	A: No, sir.	
	Q: I am asking that question again: the thing that Mr. Samuels told you, did you understand from what he was saying that you were the person responsible for the shooting? Did you understand that?	
30	A: Somebody could have said.....?	
	Q: Mr. Nembhard, what class you left school in?	
	A: Ninth Grade.	
	Q: And you help your grandmother teach?	
	A: Prep school.	
	Q: Basic training you have to get at prep school?	
40	HIS LORDSHIP: Just one minute. Did he say somebody?	
	A: You were asking me if somebody could have said it.	
	Q: Did you understand that somebody was saying that you shot Mr. Campbell?	
	A: I didn't believe that on what he told me, sir.	
	MR. MACAULAY: With respect, I object to this question on the ground that it is an unfair question. One assumes that when the accused	

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(continued)

man is being cross-examined, the prosecution are putting their case based on the evidence available to them. What the prosecution's evidence clearly was, is that Mrs. Campbell was asking for this accused man, Neville Nembhard. There is not the slightest suggestion whatever in the prosecution's case that there was any accusation being made by Mrs. Campbell against the accused man. What is this witness to say? He is being asked what did he understand Mr. Samuels to be saying. It does not arise from Mr. Samuels' evidence at all.

10

HIS LORDSHIP: As I understand the whole exercise, involving the evidence of Mr. Samuels, that evidence would be entirely irrelevant unless the prosecution is saying or asking the jury to say what was the reaction of the accused when he was told this. So the question of what his reaction was involves the other question of whether he regarded what was said as an accusation that he was involved in the shooting. Because if he doesn't regard it as an accusation then the question of his reaction is quite irrelevant to the whole of the case.

20

MR. MACAULAY: That is why I say, m'lord, that the assumption is that in fact an accusation was actually made.

30

HIS LORDSHIP: I see the point you are making.

MR. MACAULAY: No accusation is made so one cannot go to the jury, for example, and say to the jury this is a reaction when the accusation was made. There is no accusation. The reaction could only be put to the jury if there was in fact an accusation.

40

HIS LORDSHIP: Well, Mr. Macaulay, if anybody were told these words, so and so got shot and somebody is asking for you, on the face of it that is not an accusation, but then of course, depending on the circumstances a person can understand from it, or he may not understand from it, that he is being accused because he is being asked for, and all that counsel is seeking to get from this witness is whether, although on the face of it it is not an accusation, whether he understood it to be an accusation and that is quite permissible.

50

MR. MACAULAY: I am not saying that the

question is not admissible, my lord,  
all I am saying is it was unfair, and  
you have a general discretion to say  
although it is permissible I am not  
going to allow it. Let us assume that  
he said he understood it to be an  
accusation, that does not make it an  
accusation, and if it doesn't make it  
an accusation what is the value of  
his reaction? It doesn't take us any  
further because the value of your  
reaction is if there is in fact an  
accusation. This is a point which  
your lordship made in Donald Parkes.

In the Home  
Circuit Court

Defence  
Evidence

No.10  
Neville  
Nembaard

Cross-  
Examination

14th April  
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(continued)

10

HIS LORDSHIP: If he says that he understood  
it to be an accusation, then?

20

MR. MACAULAY: Does it make it an accusation?  
It doesn't make it an accusation, m'lord,  
but if your Lordship can go to the  
jury and say to the jury, well now, he  
understood it to be an accusation, what  
was the reaction. I mean it would be  
assuming that he so understood it was  
in fact an accusation and therefore his  
reaction is a fact of the matter, to  
use your lordship's words, to be taken  
along with other matters in deciding  
guilt or innocence. That would be unfair  
to my client, completely unfair,  
because what is happening here is that  
as soon as he answers that question  
counsel for the Crown is going to go to  
the jury and say, you see this man knew  
he was being accused and what was his  
reaction.

30

CROWN COUNSEL: M'lord.....

HIS LORDSHIP: Let Mr. Macaulay finish.

40

CROWN COUNSEL: But this is being said all in  
the presence of the witness and it may  
very well put him on his guard. You see,  
m'lord, he hasn't answered my question  
yet.

MR. MACAULAY: Let me assure you, I had no  
intention of putting him on his guard.

HIS LORDSHIP: No, no, Mr. Macaulay. You have  
the right to say what you said, if the  
objection can properly be made.

CROWN COUNSEL: I didn't refer to him as the  
accused, I referred to him as a witness.

50

HIS LORDSHIP: But he cannot be sent outside.  
The ordinary witness could be sent outside,  
but he can't be sent outside.



In the Home  
Circuit Court

Defence  
Evidence

No.10  
Neville  
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(continued)

MR. MACAULAY: If the answer is an affirmative answer, which counsel for the Crown wants, then counsel - rightly or wrongly - can go to the jury and say to the jury what was the reaction to this thing which had been said which is in the nature of an accusation, and then we have the whole theory of Donald Parkes, which your lordship said can be put along with other matters in deciding the question of guilt, but, my lord, his understanding does not convert what is on the face of it and on the evidence into an accusation, so that we have the situation, my lord, not only that it is unfair from the point of view that counsel for the Crown can go to the jury, but your lordship would need to give the jury a meticulous direction to decide whether or not that statement involved an accusation. It is only if it is so treated that they can deal with the question of his reaction in all these circumstances. And when we look at the whole thing we have the evidence of Mrs. Campbell positively saying that it is him, but your lordship remembers Mrs. Campbell's evidence which is positive to the point that an accusation was made by Mr. Campbell. So what is there in issue? Your lordship's overall duty is to see that the trial is fairly conducted, that is why you have wide powers. So I would say, my lord, that I would not normally object, but with respect, I am saying in this case, it would be unfair.

HIS LORDSHIP: Yes, Mr. Reckord? What Mr. Macaulay says is that I can only properly tell the jury to consider the conduct of the accused or consider the response of the accused to the accusation, if in fact an accusation was made. What he is saying is that on the face of it what was said by Mr. Samuel's was not an accusation, so to ask the witness, the accused, what he understood by it, doesn't convert it into an accusation, and if he even says yes, I understood it as such, what do I tell the jury when the time comes? Do I tell the jury that here was an accusation made and his reaction was so and so, or do I tell the jury here was a statement which was not on the face of it an accusation, and his reaction was so and so. You see the difference, Mr. Reckord?

MR. RECKORD: I see the difference, m'lord.  
HIS LORDSHIP: What do you say to that?  
MR. RECKORD: My submission to that, m'lord,  
is that a person makes their answers  
either verbally or by action, but they  
can make answer only to such questions  
as they understand the question to be.  
If on the face of it I ask a question  
of several persons, and one understands  
it to be an accusation and gives me an  
answer, and the others regard it not as  
accusation and give me an answer which  
is entirely different then the answer,  
m'lord, must be taken to correspond to  
what the person understands the question  
to be. It depends upon what I understand  
by these words.

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HIS LORDSHIP: But put it this way - suppose  
he said I understood it to be an accusa-  
tion, would it be permissible to you,  
for instance, to say to the jury he  
understood it to be an accusation because  
he knew he did it?

MR. RECKORD: No, m'lord. My learned friend  
Mr. Macaulay intimated at first that he  
understood it to be an accusation and  
there it is he remained silent. That is  
something for the jury to determine. What  
is the behaviour of a person on being  
told that people regard him as having  
something to do with it? If he understands  
it to be that, m'lord.....

HIS LORDSHIP: First of all, if you are to use  
this at all the jury will have to decide  
whether this can fairly be said to be an  
accusation at all.

MR. RECKORD: With respect, m'lord, it would --  
it is what does he understand it to be.

HIS LORDSHIP: The jury will have to say whether  
this was an accusation or could properly  
be regarded as an accusation, and, therefore,  
what was his reaction.

MR. RECKORD: M'lord, in the Jamaican context,  
the Jamaican way of life, if something  
happens and you hear them calling a man's  
name, it means one thing.

HIS LORDSHIP: It is not just calling a name  
you know.

MR. RECKORD: M'lord, the question was not put  
in any inverted commas, and that is not  
the only evidence the jury will have to  
consider. The jury will also have to consider  
what Mrs. Campbell herself said.

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(continued)

HIS LORDSHIP: In relation to this particular aspect of it, the question of what Mrs. Campbell said she was told is not relevant, because you are just dealing with a pure statement that was made, and the reaction to the statement that was made.

MR. RECKORD: The statement that was made to him was - I don't want to misquote it, but the statement that was made is "Mrs. Campbell is asking for you". 10

HIS LORDSHIP: You see, Mr. Reckord, you must remember that I will be obliged to tell the jury that the fact that Mrs. Campbell was asking for him is not evidence that he did anything, and all they are to do is to look at the words that were used to the accused and to say whether they, first of all -- the jury will have to say whether it was an accusation or whether he could reasonably regard it as an accusation; because unless he can regard it as an accusation, or he did regard it as an accusation, then his reaction is irrelevant. So you see the position. What Mrs. Campbell knew or was told is irrelevant. 20

MR. RECKORD: My submission is that it must be relevant. If a statement is made to a person, for the answer to have any meaning at all, what do you understand the statement to mean? It could have been put in pretty language and he did not know what it meant, but he could say, 'I believe he was saying so and my reaction to it was this'. It would have been an entirely different thing if he did not understand what the man was saying. 30

HIS LORDSHIP: Very well. Yes? 40

MR. RECKORD: May I put the question, m'lord?

HIS LORDSHIP: I am trying to find out whether Mr. Macaulay has anything more to say.

MR. MACAULAY: I don't have very much to say except that your lordship has summarised my argument as to how to put the matter to the jury. I have nothing more to say except that as a matter of law, with respect, such a question is permissible. But that is not the point. When one looks at the different things your lordship will have to put to the jury and how they have to deal with it, especially in a case like this, I am 50

prepared to concede that the interest of justice doesn't mean only Mr. Nembhard, it means the public as well, but I ask you to exercise your discretion, my lord.

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(continued)

HIS LORDSHIP: I will allow it. It might make my job more difficult but that is what happens. Counsel create problems for Judges.

10 MR. RECKORD: I have no intention of creating problems for you, my lord, but I have with me here an authority in which your lordship had some great part to play, that is the case of R. v. Parkes.

HIS LORDSHIP: You mean a recent one?

MR. RECKORD: 1971, m'lord.

HIS LORDSHIP: I didn't have anything to do with Parkes.

20 MR. MACAULAY: With respect, m'lord, Parkes was the first case I did in Jamaica and that was the one in which your lordship  
.....

HIS LORDSHIP: Parkes? I was thinking of Hall. It was 1973 or 1974.

CROWN COUNSEL: 29 of 1974, m'lord.

HIS LORDSHIP: Yes, Mr. Reckord.

CROWN COUNSEL: Now Mr. Nembhard, back to the same question again. Mr. Samuels is your friend?

30 A: Well he lives two doors from me.

Q: Was he your friend, Mr. Nembhard?

A: I speak to him.

HIS LORDSHIP: You didn't regard him as a friend?

A: We only speak, sir.

Q: You say when you say two yards you mean two houses from you?

A: Yes, sir.

Q: How long have you known Mr. Samuels?

40 A: Very long. When I went to live there he wasn't living there, is long after.

HIS LORDSHIP: Long after you went to live there he came to live there?

A: Yes, sir.

HIS LORDSHIP: How old were you when you went to live there - at Goffe Way?

A: I was very young.

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(continued)

HIS LORDSHIP: You could talk?

A: Yes, sir.

Q: Are you younger than Mr. Samuels?

A: I said when I went to live there he  
wasn't living there.

Q: Who is older, you or Mr. Samuels?

A: I don't know, sir.

HIS LORDSHIP: Were you living there before  
Detective Campbell came to live there?

A: I don't remember, but I know him for a 10  
long time.

Q: You know this man for years; you talk to  
him but you don't regard him as your  
friend. He comes to you and tells you  
something, when he told you that some-  
thing, I asked you at first and you  
didn't answer, or you didn't answer me  
so that I could understand, so let me  
ask you again. What did you understand  
he was saying to you? 20

A: Well, I.....

Q: In plain ordinary language?

A: Well, I didn't regard what him saying as  
implicating me with the shooting.

Q: You didn't what?

A: I did not understand him as saying that  
I did the shooting.

Q: What did you understand him to mean?

A: Well, I just understand that Mrs.  
Campbell was just asking for me - asking 30  
where I was.

Q: You understood she was just asking for  
you?

A: Yes, where I was.

Q: What shocked you more - was it the death  
of Mr. Campbell or Mrs. Campbell asking  
for you? Which one shocked you more?

HIS LORDSHIP: He hasn't said he was shocked.

MR. RECKORD: M'lord, it is just semantics.

HIS LORDSHIP: No, no. 40

MR. RECKORD: Frightened. M'lord, I think  
the witness said that when he heard that  
Mr. Campbell.....

HIS LORDSHIP: He said, I was frightened to  
hear that Mr. Campbell got shot.

Q: I used the word shocked. I am sorry. I seem to have been substituting. Were you also frightened that Mrs. Campbell was asking where you were?  
A: No, sir.  
Q: You weren't frightened about that?  
A: No, sir.  
Q: You didn't say a word to Mr. Samuels after he gave you this information?  
10 A: No, sir.  
Q: Did you speak to Olga?  
A: I think I spoke to her.  
Q: You think so?  
A: Not Olga direct. I think I spoke that everyone could hear.  
Q: And Olga could hear?  
A: Yes, sir.  
Q: What about Dolly? Did you speak to Dolly?  
20 A: Yes, I think so.  
Q: After Samuels spoke to you?  
A: I think so.  
Q: Did you speak to her directly or you just spoke and she heard?  
A: I thought I just spoke and she hear.  
Q: What about Norman Frazer?  
A: Well I didn't remember speaking to him.  
Q: You just spoke so everybody could hear?  
A: Yes, sir.  
30 Q: But you didn't say anything to Mr. Samuels?  
A: No, sir.  
Q: Did you leave the yard after Mr. Samuels spoke to you?  
A: Yes, I and Mrs. Samuels and.....  
Q: How long you remained at the yard after Samuels gave you this news about Mr. Campbell's shooting?  
A: I doesn't remember, but I know.....  
40 Q: Did you leave quickly or you remained for some time?  
A: Not exactly same time.  
Q: A minute, five minutes, half hour, or what?

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No.10  
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Circuit Court

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(continued)

- A: I would say about three minutes.
- Q: And then you left with Samuels and the other people down to the yard?
- A: Yes, sir.
- Q: Now, you heard that Mrs. Campbell was asking for you did you go and look for Mrs. Campbell?
- A: Yes, I went to the yard and I saw it closed up. No one was there.
- Q: You went and knocked? 10
- A: I didn't knock. I heard that she was away.
- Q: You got information that she wasn't there?
- A: Yes, sir.
- Q: So you had gone down there to see her?
- A: Yes, sir.
- Q: You say crowd was still there when you went there?
- A: People was on the street, but no crowd was at Mr. Campbell's yard. 20
- Q: You live in the area?
- A: No one was at Mr. Campbell's yard but people were in the street still discussing it.
- Q: At the gate?
- A: Not at the gate. I mean people were in the street.
- Q: I don't mean casual passers; I mean crowd gather discussing it? 30
- A: Not exactly at Mr. Campbell's gate, on the street.
- Q: How far from Mr. Campbell's gate?
- A: To where?
- Q: How far were people from Mr. Campbell's gate?
- A: People scatter, scatter all 'bout on the street.
- Q: You say Mr. Samuels came to the yard and told you that Mrs. Campbell was asking for you? 40
- A: Yes.
- Q: Did you ever say before, on any occasion, that Mr. Samuels told you that Mr. Campbell was asking for you? Did you say

that on any occasion before this?

A: No, sir.

Q: Never said so?

A: No, sir, not to my remembrance.

Q: You may have said it and you don't remember?

A: Well, he didn't told me that so I didn't see any reason why I should say that.

10 HIS LORDSHIP: Mr. Reckord, can you pursue that?

MR. RECKORD: I am not going any further with that, m'lord.

Q: Mr. Nembhard, were you surprised or frightened that Mr. -- let me ask you this way: did you gather that Mr. Campbell had died?

A: (No answer)

20 Q: When was the first time you knew that Mr. Campbell had died?

A: The morning when I woke up.

Q: The following morning?

A: Yes, sir.

Q: Were you surprised or frightened that he had died?

A: Well, I felt sorry for him.

Q: Did you, the following morning, find out from Mrs. Campbell why she was asking for you?

30 A: Well, I didn't see her.

Q: The following morning?

A: I didn't see her.

Q: You went there to look for her?

A: Yes, sir.

Q: Was that before the death or after the death -- or after you heard of the death?

A: I woke up and heard.

Q: And was it after that that you went to see Mrs. Campbell and you didn't find her?

40 A: Yes, sir.

Q: You went to her yard?

A: I look inside her yard.

Q: You didn't go and ask for her?

A: The place was closed up and I heard that she

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Circuit Court

Defence  
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(continued)



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Circuit Court

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(continued)

was gone somewhere else.

Q: Mr. Nembhard, you know, I am going to suggest that when Mr. Samuels came and told you that Mr. Campbell was dead and that Mrs. Campbell was.....

A: He didn't tell me that Mr. Campbell was dead.

Q: Very sorry. That Mr. Campbell was shot, and that Mrs. Campbell was asking for you, I am suggesting that you were very shocked and frightened? 10

A: I was frightened because Mr. Campbell got shot.

Q: You were shocked and frightened that they were asking for you?

A: No, sir.

Q: Because you thought he was dead already?

A: Me, sir? When he told me is the first I hear.

Q: You thought he was dead? 20

A: Why, sir?

Q: Because you shot him twice, one in the neck and one in the abdomen

A: Me, sir?

Q: Yes.

A: You saw me do that?

Q: You mustn't ask me that, I am the person asking the questions. You knew Mr. Campbell carried a gun?

A: If I knew he carried a gun? Well, he is a police and police carry gun. 30

Q: You ever see a gun in Mr. Campbell's waist?

A: No, sir.

Q: Never?

A: No, sir.

Q: For the nine or ten years you never see him carry a gun in his waist ?

A: One time I see him draw a gun.

Q: I didn't ask about drawing a gun. For the nine or ten years you know Mr. Campbell, have you ever seen him with a gun? 40

A: No, sir.

MR. RECKORD: That will be all, thank you, m'lord.

NEVILLE NEMBHARD: RE-EXAMINED BY DEFENCE  
ATTORNEY (MR. PICKERSGILL)

In the Home  
Circuit Court

Q: Mr. Nembhard, you said at the time  
when this incident occurred you were  
17. You remember the date of your  
birth?

Defence  
Evidence

No.10  
Neville  
Nembhard

Re-examination

A: Yes, sir.

Q: What is it? When were you born?

A: 30th of April.

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10

Q: What year?

A: 1956.

Q: Did you say that you were not frightened  
to hear that Mrs. Campbell was asking  
for you?

A: No, I wasn't frightened.

Q: Because if in fact you were, you would  
not have gone down there, would you?

HIS LORDSHIP: No, no, that is a comment.

20

Q: Did you go down to Mrs. Campbell, having  
heard that she was asking for you?

A: Yes, sir.

Q: You also said that you felt sorry for  
Mr. Campbell, that he had died?

A: Yes, sir.

Q: And did you not also say you were  
frightened to hear that Mr. Campbell got  
shot?

A: Yes, sir.

Q: You made two attempts to find Mrs. Campbell?

20

A: Yes, sir.

Q: When you went back down the same night?

A: And in the morning.

MR. PICKERSGILL: That will be all, m'lord.

No. 11

OLGA BENNETT

Defence  
Evidence

No.11  
Olga Bennett

Examination

OLGA BENNETT, SWORN - EXAMINED BY MR.  
PICKERSGILL (DEFENCE ATTORNEY)

14th April  
1977

Q: What is your name?

A: Olga Bennett.

30

Q: Where do you live?

A: 16A Welcome Avenue, Kingston 11.

In the Home  
Circuit Court

Defence  
Evidence

No.11  
Olga Bennett  
Examination

14th April  
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(continued)

Q: That is where you live at the present time?

A: Yes, sir.

Q: Can you say where you were living in January of 1974?

A: Yes, sir. I was living at 3 Sixth Street.

Q: Do you remember the 13th of January, 1974?

A: Yes, sir.

10

Q: Could you, from about 12 o'clock in the day, could you relate to the Court what happened where you were living?

A: The 13th of January, 1974 I saw Neville visit where I live two times.

HIS LORDSHIP: Who is Neville?

A: Neville Nembhard, the accused, sir.

HIS LORDSHIP: He visited what?

A: Two times for the day, sir. The first time he visit the home 12.

20

Q: At about 12?

A: Yes, sir. And the second time around 6.

Q: Yes? So when he came back the second time at about 6, what happened?

A: When he come there bout six Dolly call him, because she have a card and she couldn't find it, so she send and call him. Well, when him come the card was found and them was playing some games.

Q: Card games?

30

A: Yes, sir. After them was playing game and so on we was there watching the game.

HIS LORDSHIP? Who?

A: Me was there, Neville was there, Dolly was there.

HIS LORDSHIP: Who was watching the game?

A: Me was watching the game, Dolly was watching the game.

Q: You weren't playing?

40

A: No, I wasn't playing.

Q: Who was playing?

A: Dolly was playing.

HIS LORDSHIP: You were watching. Who else was watching? Dolly?

	A: Who was watching Dolly playing the game?	In the Home Circuit Court
	HIS LORDSHIP: You started to say you were watching the game. Who else was watching the game?	Defence Evidence
	A: At the said time Neville was watching the game too.	No.11 Olga Bennett
	HIS LORDSHIP: And you?	Examination
	A: Yes, sir.	14th April 1977
10	Q: This was about 6 you say?	(continued)
	A: Yes, sir.	
	Q: 6 p.m.?	
	A: Yes, sir. Well, after them was watching the game now, and it was 'bout 7.30 and such = it wasn't daylight saving time.....	
	Q: Card game still being played?	
	A: Yes, sir.	
	Q: From about 6 to 7.30?	
20	A: Yes, and Neville leave and go inside Dolly house, and after him leave and watching the news the game was playing same way. After the game was playing go on, it finish.	
	HIS LORDSHIP: What finish?	
	A: The Peter Pat game - the card game.	
	HIS LORDSHIP: That game finish?	
	A: Yes, sir, and Dolly and Neville friend went into Dolly house while I sit at my doorway same way.	
30	HIS LORDSHIP: Whose friend?	
	A: Neville friend.	
	HIS LORDSHIP: What's his name? Well is it a girl or a boy - man or woman?	
	A: Me don't remember him name, but him outside there now.	
	HIS LORDSHIP: Norman Frazer?	
	A: Yes, sir.	
	HIS LORDSHIP: Where they went?	
40	A: Inside Dolly house. Then when I sit down still I see Samuels pass where I sitting. He didn't say anything at all to me.	
	Q: What did he do or where did he go?	
	A: Him go straight into Dolly house and after him go into Dolly house them come out back	

In the Home  
Circuit Court

Defence  
Evidence

No.11  
Olga Bennett

Examination

14th April  
1977

(continued)

and Dolly turn and say to me. "Olga..."  
HIS LORDSHIP: Just a minute now. That is  
not evidence. Mr. Pickersgill, take  
charge of your witness.

Q: Dolly said something to you?

A: Yes, Dolly come.....

Q: Don't tell us what Dolly said. As a  
result of what Dolly said did you people  
go anywhere, or do anything?

A: If me do anything? 10

Q: As a result of what Dolly said, did you  
do anything?

A: If we do anything?

HIS LORDSHIP: After Dolly come and talk to  
you, what happened? Don't tell us  
what she told you.

A: A oh!

MR. PICKERSGILL: Don't tell us what she told  
you, just tell us what happened.

HIS LORDSHIP: We have some very peculiar 20  
rules that people cannot understand,  
and sometimes I don't blame them, but  
they have certain rules that we have  
to obey for the time being until they  
change the law and one of the rules is  
that what you and Dolly talk about you  
are not permitted to tell us here.

Q: So, Dolly said something to you. What  
did you, Dolly and the others do after  
that? 30

A: We stand up in the yard and then we  
leave.

Q: Where did you go?

A: Down a Neville home.

Q: You went down to Neville's home?

A: Yes, about 12 we went down there

Q: You knew of a policeman by the name of  
Mr. Campbell?

A: Yes, I know him.

Q: You knew where he lived? 40

A: Yes, sir.

Q: Was it near to Neville's home?

A: Yes, sir.

Q: When you reached down there, near to  
Mr. Campbell's home, did you see people?

A: No, I didn't see anybody. Out there  
 did dark because no light didn't on  
 the street. So after we.....

Q: Where was that?

A: Down at Goffe Way we went.

HIS LORDSHIP: It was dark and nobody what?

A: Nobody wasn't there.

Q: We are not talking about in Mr.  
 Campbell's home. Did you see anybody  
 in the street at all?

A: When?

Q: When you went down to Goffe Way?

A: I didn't see anybody because the place  
 did dark, and the twelve of us leave  
 and go home back. Leave Neville down  
 there.

Q: Do you remember about what time you  
 left your home to go down to Neville's  
 house?

A: When we left?

Q: Roughly?

A: About 9.30.

HIS LORDSHIP: When you left where?

MR. PICKERSGILL: This is after the card  
 game and the t.v. and you hear what you  
 heard, about what time?

HIS LORDSHIP: No, no. She thinks you mean what  
 time she left Neville's home to go back  
 to her home.

Q: After the card game and the t.v. news,  
 and the person came and you heard what  
 you heard, about what time was that,  
 roughly?

A: About quarter past nine or so.

HIS LORDSHIP: When was that?

A: I mean when I leave my home, because we  
 didn't leave same time.

HIS LORDSHIP: It was about quarter past nine  
 that you left to go down to Neville's  
 home?

A: Yes, sir.

Q: Do you know Ivy White?

A: Yes, sir.

Q: Does she live - well, do you know where  
 she lives?

A: Yes, sir.

In the Home  
Circuit Court

Defence  
 Evidence

No.11  
 Olga Bennett  
 Examination

14th April  
 1977

(continued)

In the Home  
Circuit Court

Defence  
Evidence

No.11  
Olga Bennett

Examination

14th April  
1977

(continued)

HIS LORDSHIP: She is Dolly?

A: Yes, sir, Dolly name Ivy White.

Q: And you were at that time living in  
the same yard?

A: Yes, sir.

Q: Neville used to come there?

A: Yes, sir, but most of the time when  
he come there him just come to Dolly.

MR. PICKERSGILL: That is all, m'lord.

Cross-  
Examination

OLGA BENNETT: CROSS-EXAMINED BY CROWN COUNSEL 10  
(MR. RECKORD):

Q: Miss Bennett, from the time Neville,  
the accused man, came there that evening,  
to the time when Lascelles came and the  
news break, were you always at the yard?

A: Yes, sir.

Q: You never leave at all?

A: No, sir.

Q: What about Neville?

A: Him didn't leave neither, sir. 20

Q: How you know?

A: Is only one time him leave, when Samuels  
come told him.

Q: What I mean is, how you know he never  
left at all?

A: If him did leave I would see him because  
where me living like where me sit here,  
Dolly house is like where the jury them  
sit.

Q: Plenty people were playing into the 30  
yard that night?

A: Is only three of them was playing the  
games but plenty people did stand up.

Q: Plenty people were there?

A: Yes, sir.

HIS LORDSHIP: Plenty people were watching?

A: Yes, your honour.

HIS LORDSHIP: We'll take the adjournment now,  
members of the jury, until 2 o'clock.

Court resumes. Jury roll call answered.  
Prisoner in the dock.

In the Home  
Circuit Court

OLGA BENNETT still on oath.

Defence  
Evidence

CHIEF JUSTICE: Sorry, we are a little  
late in starting but Counsel came to  
see me in Chambers in connection with  
another matter. This sort of thing  
happens sometimes, you know.

No.11  
Olga Bennett  
Cross-  
Examination

CROSS-EXAMINATION (continues);

14th April  
1977

10 CROWN ATTORNEY (Mr. Reckord):

(continued)

Q: Miss Bennett.

A: Yes sir.

Q: When we took the luncheon adjournment  
you told the Court that you were in  
the yard from 6 o'clock and you never  
left until when Mr. Samuels came.

A: Yes sir.

Q: And you told the court that the accused  
man never left?

20 A: No sir, he did not leave.

Q: My next question to you is how you know  
he never left from he came at 6.00 until  
when you left with Lascelles?

A: If him did leave, sir, I would see him.

CHIEF JUSTICE: She had said that before.

CROWN ATTORNEY: Thank you mi lord. About  
how many persons in all were in the  
yard that evening, the Sunday evening?

A: While the card game was playing?

30 Q: Yes. About how many?

A: About 30-odd persons.

Q: Thirty?

A: Yes, because it is a Government yard.

Q: Government yard; would you call it a  
tenement yard?

A: Yes.

40 Q: Now, I am talking about the people who  
are around the game playing, those playing  
and watching, about how many? Not how  
many people live in the yard? All right,  
about how many people were playing?

A: The game?

Q: Yes?

A: Is three persons was playing the game.



In the Home  
Circuit Court

Defence  
Evidence

Noll  
Olga Bennett

Cross-  
Examination

14th April  
1977

(continued)

Q: And they were playing for money?

A: No sir.

Q: What?

CHIEF JUSTICE: What was the name? Pitta-Pat?

A: Just friendly.

Q: You don't play for money? Nothing wrong if you say they play for money. I don't think the police even bother to arrest for gambling?

A: We were not playing for money; we play 10  
all the while.

CROWN ATTORNEY: All Sundays?

A: Not all Sundays, just right through the time; not like every Sunday but that Sunday evening.

Q: That Sunday evening you were not playing for money at all?

A: No sir.

Q: And you say it was about three persons playing? 20

A: Yes sir.

Q: About how many people were watching?

A: The game?

Q: Yes?

A: About 10 people.

Q: So you have about 13 people there now, those playing and those watching?

A: Yes sir.

Q: Do you know when every one of them left, if they left at all? Every single one? 30

A: What was watching the game?

Q: Yes?

A: They live in the yard.

Q: If they leave the game and going in the room you would know?

A: Yes sir.

Q: Every single one?

A: Yes sir.

Q: You would not have anybody outside, not playing, but watching? 40

A: Outside?

Q: Not from that yard?

A: Nobody outside was playing.

Q: Is only yard people?  
A: Yes sir.  
Q: What about Neville, he was not playing?  
A: No, he was not playing but he was watching the game and leave and go inside.  
Q: What about you, you were not playing?  
A: No sir, I was sitting and eating.  
10 Q: What about Dolly, she was not playing?  
A: Yes, she was playing.  
Q: You certain that you were not playing?  
A: I was not playing.  
Q: No time at all?  
A: No sir, I was eating.  
Q: Why I am asking you about this is because Neville here say you were playing, you know?  
A: No, your honour.  
20 Q: So he wrong:  
A: No, I was not playing, and I did have a plate in my hand.  
Q: So Neville make mistake; Neville, the accused man, when he told the Court you were playing?  
A: I was not playing.  
Q: What about Norman Fraser?  
A: He was not playing neither, your honour.  
Q: What he was doing?  
30 A: He was just looking; stand up and look and that time Neville go inside the house; he go inside after.  
Q: Tell me something; Norman live in that yard too?  
A: No sir.  
Q: So you have people who were not living in the yard watching?  
A: Who was watching the game, you know sir, live in the yard; I am not talking Neville.  
40 Q: But Norman don't live there and he was watching?  
A: But him come there.

In the Home  
Circuit Court

Defence  
Evidence

No.11  
Olga Bennett

Cross-  
Examination

14th April  
1977

(continued)

In the Home  
Circuit Court

Defence  
Evidence

No.11  
Olga Bennett

Cross-  
Examination

14th April  
1977

(continued)

- Q: Listen, please lady?
- A: Yes sir.
- Q: Did you have people who don't live in that yard watching the game?
- A: Yes.
- Q: How many who don't live there watching the game?
- A: How many who don't live there watching the game?
- Q: Yes. 10
- A: Three of them not living there was watching the game.
- Q: Who are the three?
- A: Neville, Fraser and another one; I don't remember his name.
- Q: You remember when Fraser came there to the yard?
- A: Yes.
- Q: Did he come alone?
- A: No. 20
- Q: Who he came with?
- A: With others, I don't remember the name.
- Q: Neville leave the yard before Lascelles come?
- A: No sir.
- Q: What about the other one what he came with, did he leave the yard?
- A: No sir.
- Q: And Neville did not leave?
- A: No sir. 30
- Q: And none of the three people playing, did they leave the yard?
- A: No sir.
- Q: And Neville did not leave?
- A: No sir.
- Q: And none of the three people playing, did they leave the yard?
- A: No sir.
- CHIEF JUSTICE: So you say that Norman Fraser came with another one? 40
- A: Yes sir.
- Q: You don't know that one's name?
- A: No.

	Q: So that other one is the third person whom you say don't belong to the yard, who was watching the game?	In the Home <u>Circuit Court</u>
	A: Yes sir.	Defence Evidence
	Q: I see.	No.11
	CROWN ATTORNEY: All right. Norman Fraser left the yard; the other friend who came with Norman never left the yard, and Neville never left the yard?	Olga Bennett Cross- Examination
10	A: No sir.	14th April 1977
	Q: Did any of the people watching the game who live in the yard, did they leave the yard at all?	(continued)
	A: No sir, they did not leave the yard.	
	Q: You were keeping eyes on everybody? Were you watching everybody?	
	A: Not directly watching but we live side and side.	
20	Q: In 1974, that day, did you have baby or anything?	
	A: Yes sir.	
	Q: You had a baby?	
	A: Yes sir.	
	Q: You did not have to look after the baby?	
	A: The baby was sleeping.	
	Q: From 6 o'clock the evening? What time the baby go to bed?	
	A: My baby what I have sleep long.	
	CHIEF JUSTICE: Plenty mothers would like that.	
30	A: When that took place in 1974, I did have a young baby in 1973.	
	CROWN ATTORNEY: This is January, 1974, just when the year turn over?	
	A: Yes sir.	
	Q: What I am asking about is if you did not have to look about the baby, but you are looking and watching 12 to 13 people.	
	A: The children was inside.	
	Q: Is one baby you had?	
40	A: What you say sir?	
	Q: I am shouting you know lady. Lady, my throat is bad as it is and I am shouting, and every question I ask you, you ask me, 'what sir'?	
	A: He ask if it is one baby I have and I told	

In the Home  
Circuit Court

Defence  
Evidence

No.11  
Olga Bennett

Cross-  
Examination

14th April  
1977

(continued)

him no.

CHIEF JUSTICE: How many you have?

A: I have 6 children.

CROWN ATTORNEY: In 1974 how many children you had, in January of '74? How many children you had to look after in your yard?

A: Three children to look after in my yard.

Q: Very well, in 1974 you had a husband or a boy friend? 10

A: Yes, I have a boy friend.

Q: Did you not have to look about his dinner?

A: No sir, me and him did pull up so I did not have any dinner to look after.

Q: You have the three children looking about and you watching?

A: The children were not watching.

Q: You watching the men so that they don't leave the yard?

A: I just sit and if anybody move I suppose to see. 20

Q: You were sitting down and you say eating your dinner?

A: Yes, I had a plate in my hand.

Q: What about the children, you did not have to share their dinner?

A: That time they get their dinner already sir.

Q: All right. You said Neville was outside watching the game? 30

A: Yes sir.

Q: And then he went in the house?

A: Yes sir.

Q: What time he went in the house?

A: Him went in the house after him hear the news going on, and he go in there.

Q: You know what time it was when the news was going on?

A: The news start on T.V. at 7.30.

Q: It suppose to start at 7.30? 40

A: Yes.

Q: Sometimes it start later, you agree?

A: Yes.

Q: I am asking, if you had a watch and look at the time or you just took it that it was the regular time, the 7.30 time?

A: I did not have any watch sir, I did not have any clock.

Q: Anyhow you say the 7.30 news was going on?

A: Yes sir.

10 Q: And Neville go in?

A: Yes sir.

Q: He go in with anybody?

A: He first go inside.

Q: Anybody else?

A: Fraser.

Q: And who else?

A: Neville.

Q: And who else?

A: Nobody else.

20 Q: Where you stay?

A: Me sit at my doorway where me live; me can see in the house.

Q: Is not your house he went in?

A: No sir, in Dolly's house.

Q: Did you see where Dolly was?

A: Yes.

Q: Where?

A: Dolly was at her door playing cards.

30 CHIEF JUSTICE: Didn't Dolly go into the house too?

A: After the card game finish they went inside.

Q: Neville went in to watch television?

A: Yes and when the game was finished Dolly and Norman went in after the game was finished; Norman.

Q: You getting confused?

A: Fraser.

40 Q: You mixing it up; you said Neville went in and was watching television?

A: Yes, Neville first go inside.

Q: And when the game finish Dolly go in and Norman go in?

In the Home  
Circuit Court  
Defence  
Evidence  
No.11  
Olga Bennett  
Cross-  
Examination  
14th April  
1977  
(continued)

In the Home  
Circuit Court

Defence  
Evidence

No.11  
Olga Bennett

Cross-  
Examination

14th April  
1977

(continued)

A: Yes sir.

Q: That is what you said before?

A: Yes sir.

CROWN ATTORNEY: Now when Norman went in the news was still going on?

A: Yes sir.

Q: And when Dolly go in the news was still going on?

A: Yes sir, but the game did finish.

Q: She did not remain at her doorway? 10

A: No sir.

Q: She went right in?

A: No sir, she went straight inside.

Q: So when Lascelles Samuels came down, how many of them were in Dolly's T-V room?

A: Lascelles Samuels, him pass me and go straight in and him go in and buck up....

Q: Who in there?

A: Dolly.

Q: Who else? 20

A: Neville, Fraser and Samuels, four of them.

Q: All right, three of them were in there and Samuels come in and make four?

A: Yes sir.

Q: Let me make a note of that. So when Lascelles came he went straight inside?

A: Yes sir.

Q: He did not stay outside at the doorway?

A: No.

Q: He went into the room where the T-V is? 30

A: Yes sir.

Q: You hear what he say inside there?

A: No sir, I don't hear what him saying.

Q: Now when Neville - when Norman came, sorry, I am getting mixed up with the names - when Lascelles came, was the news still going on?

A: What you say sir.

Q: All right, when Lascelles came, and went into the T-V room, was the news still going on? 40

A: Yes sir, news done and then the weather  
.....

Q: So which one was going on when Lascelles came, the news report of the weather report, or the sports report?

CHIEF JUSTICE: What was going on when Lascelles came down?

CROWN ATTORNEY: When Lascelles came and went in the room, what was going on?

A: I believe it was the news going on.

10 Q: You know, when you say news, are you referring to the weather news or the sports news?

A: Not the sports news.

Q: It did not reach sports yet?

A: No.

Q: It did not reach weather yet?

A: No.

Q: It did not reach weather; it did not reach sports?

A: No.

20 Q: Good. Now you say you left the yard along with Neville and others?

A: Yes sir.

Q: And went down to Goffe Way?

A: Yes sir.

Q: All right. Now when you go down there did you see where Neville went?

A: Him don't went anywhere more than he just stand up and look because the place did dark.

30 CHIEF JUSTICE: What place?

A: Down Goffe Way.

Q: You mean the street lights were off?

A: Yes.

Q: You all go down there? I ask you if you see Neville go anywhere; go to anybody home or do anything?

A: Him go home and we go home.

Q: Did you see him go to, say, Mr. Campbell's house?

40 A: No sir.

Q: Lady, did you see him go over there, that is all me ask you?

A: No sir.

Q: You sure, or you did not see?

In the Home  
Circuit Court  
Defence  
Evidence  
No.11  
Olga Bennett  
Cross-  
Examination  
14th April  
1977  
(continued)



In the Home  
Circuit Court

Defence  
Evidence

No.11  
Olga Bennett

Cross-  
Examination

14th April  
1977

(continued)

- A: I am sure he did not go over there  
sir.
- Q: Lady, do you regard Neville as your  
friend?
- A: Yes sir.
- Q: Very good friend?
- A: Yes sir.
- Q: You will do anything for him?
- A: Yes sir.
- Q: If you see him in trouble you would help 10  
him, at least try to?
- A: If me see him in trouble?
- Q: You heard my question?
- A: If I see him in trouble I will help him  
because I know personally that he was  
at my home when that take place sir.
- Q: But you don't know when the thing take  
place because you were at your home?
- A: Yes sir, I was at my home.
- Q: When what take place? 20
- A: When the killing take place he was at  
my home; he was at Dolly home.
- Q: When what take place?
- A: When the killing take place.
- Q: You know what time the killing take  
place?
- A: I don't know the time sir.
- Q: Then how you can be swearing for Neville?
- A: Through I know he was at the home; he  
did not leave and go nowhere. 30
- Q: But lady, you don't know when the  
killing take place?
- A: I don't know when the killing take  
place but I can swear say he was at the  
yard where I live.
- Q: I am putting a supposition to you; suppose  
the killing took place at 5 o'clock,  
where would Neville be at that time?
- DEFENCE ATTORNEY: I object to that mi lord.
- CROWN ATTORNEY: Lady, it matters not what 40  
time the killing took place, you would  
still say Neville was at your yard?
- A: But he was really at my home sir.
- Q: Eh! A: He was really at my home.

	Q: You would do anything to help Neville, even to tell a little lie for him?	In the Home <u>Circuit Court</u>
	A: No sir, God see and know I am not telling any lie.	Defence Evidence
	Q: Lady, you would never think of telling lies to help your very good friend?	No.11 Olga Bennett
10	A: Not because me and him is friends, I am not telling no lies; I am talking the truth sir, he was at my home.	Cross- Examination
	Q: What was the time that you leave your yard to go down to Goffe Way, about what time that was?	14th April 1977
	A: I leave the yard about quarter past nine and went to Neville home.	(continued)
	Q: About what time?	
	A: About quarter past nine.	
	Q: When you leave to go down the yard, what - was the news still going on?	
20	A: No sir, that time news done sir, news finish.	
	Q: How long after Lascelles came that you went down? How long after he came that you went down with the crowd?	
	A: When Lascelles come...	
	Q: ....and the news break, how long unnoo leave and go down Goffe Way? Did you stay one minute, five minutes, ten minutes, half an hour or what?	
30	A: We stay about 10 minutes.	
	Q: Finally, I am making the suggestion to you that you are here only to cover up for him, to come here and tell the court that he was at your yard all the while between 6.00 to 9.15?	
	A: Is not cover up sir; I am just talking the truth; he was there all the while. I am not telling any lie, I just come here to talk the truth.	

40

(Time: 2.37 p.m.)

RE-EXAMINATION BY MR.MACAULAY:

Re-  
Examination

Q: Is it a lie that Lascelles Samuels went to your house at 6.15 and met the accused Neville Nembhard there? Is that a lie? You are told that everything is a lie. Is it a lie that Lascelles went to your house and met Neville Nembhard there, is that a lie?

A: Samuels did not come to my home?

In the Home  
Circuit Court

Defence  
Evidence

No.11  
Olga Bennett  
Re-examination

14th April  
1977

(continued)

CHIEF JUSTICE: To the yard?

A: If him did come there?

Q: The Attorney is asking you whether it is a lie that Lascelles came to the yard where you live and met Neville?

A: Him come there come see Neville, yes.

Q: Thank you, stand down.

(Time: 2.40 p.m.)

Defence  
Evidence

No.12  
Ivy White  
Examination

14th April  
1977

No. 12

IVY WHITE

10

Witness: IVY WHITE is sworn.

EXAMINED BY DEFENCE ATTORNEY (Mr.Pickersgill):

Q: You have to speak that everyone in the Court can hear you. Is your name Ivy White?

A: Yes sir.

Q: Are you also known as Dolly?

A: Yes sir.

Q: Where do you live?

A: I am living at Majestic Gardens now. 20

Q: Do you remember where you were living on the 13th of January, 1974?

A: Yes, at 3 Sixth Street.

Q: Do you remember that day?

A: Yes sir, the 13th

Q: Could you say to this Court, Dolly, from say about 12 o'clock in the day, could you describe to the court what happened?

A: Yes, about 12 o'clock on a Sunday, I was sitting at my doorway. 30

Q: Not so fast.

A: And I saw Neville come up there to me. He come inside and drink some water out of the 'fridge. I said to him, 'do something for me'.

CHIEF JUSTICE: You and he had a conversation?

	A: Yes sir.	In the Home Circuit Court
	DEFENCE ATTORNEY: Don't bother with the conversation, move on.	Defence
	CHIEF JUSTICE: You are not permitted to tell me what you and he talked about.	Evidence
	A: Well, he go away and after he go away, into the evening I send and call him with a little boy.	No. 12 Ivy White
	CHIEF JUSTICE: He came?	Examination
10	A: He came around 6 o'clock, and I ask him for a card, but when I did send and call him I find the card before him come and we was there playing cards and he was sitting there watching the card game until about 7.30	14th April 1977
	Q: He, who? Neville?	(continued)
	A: Yes, Neville.	
	CHIEF JUSTICE: Until about?	
20	A: Until about the 7.30 news, and he went inside the house.	
	Q: Whose house? Yours?	
	A: Yes, my house to watch T.V. and I was outside playing cards the same way. Well, I finish play and say to Neville, 'let we go over White Street'.	
	DEFENCE ATTORNEY: All right, you finish playing. Did anyone else come into the yard?	
30	A: Yes, Tony, Lascelles Samuels.	
	Q: Did you see him do anything?	
	A: Him come straight in my room; yes, him say something to Neville.	
	CHIEF JUSTICE: You can get that Mr. Pickersgill, if you want it.	
	DEFENCE ATTORNEY: Samuels came in and spoke to Neville?	
	A: Yes.	
	Q: Did you hear what Samuels said to Neville?	
	A: Yes sir.	
40	Q: What did Samuels say?	
	A: He said to Neville that Mr. Campbell get shot and him wife asking for Neville.	
	Q: After that Dolly, what happened?	
	A: I went outside and I call Olga and said to her .....	
	Q: You spoke to Olga? A: Yes.	
	CHIEF JUSTICE: No, she is giving some conversation.	
50	DEFENCE ATTORNEY: I am very sorry my Lord. You went down there and saw two people and then what you did after, did you return to your home?	
	A: I return home back. (Time 2.48 p.m.).	

In the Home  
Circuit Court

Defence  
Evidence

No.12  
Ivy White  
Examination

14th April  
1977

(continued)

DEFENCE ATTORNEY: What happened after  
that?

A: I called Olga and said.....

CHIEF JUSTICE: Don't tell us what you and  
Olga talked.

DEFENCE ATTORNEY: What happened after you  
spoke to Olga?

A: I went down to Christopher Road and  
Goffe Road.

Q: You alone? 10

A: With Neville, and Samuels, and Olga,  
and children.

Q: How many in all?

A: About 12 to 13, of us.

Q: This was about what time?

A: About 9.00 to 9.15.

Q: And you went down to Goffe Road?

A: Yes.

Q: What happened down there? Did you see  
anything down there? 20

A: When I go down there I saw two persons  
what I know, Fraser..... and I said  
to her what happen.....

CHIEF JUSTICE: No, she is giving some  
conversation.

DEFENCE ATTORNEY: I am very sorry mi lord.  
You went down there and you saw two  
people and then what you did after, did  
you return to your home?

A: I return home back. 30

(Time: 2.48 p.m.)

Cross-  
Examination

CROSS-EXAMINATION BY CROWN ATTORNEY  
(Mr. Reckord):

Q: How long --- let me put it this way,  
about what time it was that Lascelles  
Samuels, the gentleman you call Tony,  
about what time it was that he came into  
your room?

A: I did not directly know the time.

CHIEF JUSTICE: About? 40

A: It was going to, about, say 9.00.

CROWN ATTORNEY: When you say your room, you  
mean the room where the T.V. is?

A: Yes.

	Q: The room you were in, that is the T.V. room?	In the Home Circuit Court
	A: Yes, that is my room.	Defence
	Q: The same room where Neville was?	Evidence
	A: Yes sir.	No.12
	Q: And you are certain that you and Neville, and Norman, were in the room?	Ivy White
	A: Yes.	Cross- Examination
	Q: When Lascelles came?	14th April 1977
10	A: Yes.	(continued)
	Q: Certain?	
	A: Certain.	
	Q: Why I am asking you about that is because Neville himself said only him alone was in there and somebody else was at the doorway?	
20	A: I was in my room at the time when Samuels come inside there. I was putting something into my cabinet at the time when Samuels come inside the room.	
	Q: And you heard what Samuels said?	
	A: He did not talk soft, or he did not high talk to him, he just come in.....	
	CHIEF JUSTICE: He did not high talk and he did not talk softly.	
	CROWN ATTORNEY: Him talk loud?	
	A: Him don't come in and bawl out.	
30	Q: But anybody in the room could hear?	
	A: Yes.	
	Q: But Neville said he talked to him alone and nobody else was in there?	
	A: Norman was inside the room.	
	Q: In the same room?	
	A: Yes, and my baby.	
	Q: What about Olga and her baby?	
	A: She was outside at her doorway.	
	Q: Did she have her baby?	
40	A: I don't remember but she was sitting at her doorway.	
	Q: Did she have anything with her?	
	A: She was eating.	
	Q: Night come down yet? A: Yes.	

In the Home  
Circuit Court

Defence  
Evidence

No.12  
Ivy White

Cross-  
Examination

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(continued)

- Q: When Lascelles came?  
A: Yes.  
Q: I see. Now this game you were playing, what sort of game? You were playing yourself?  
A: Yes.  
Q: What sort of game:  
A: Pitta-Pat.  
Q: You were playing for anything?  
A: Yes, I was playing for money. 10  
Q: You certain?  
A: Yes.  
Q: And Olga would see that you were playing for money?  
A: Olga could see where I sitting playing the card game.  
Q: She could see that people were playing for money?  
A: Yes, because she was there watching the same. 20  
Q: Yes, but she has told us that nothing like that was going on.  
CHIEF JUSTICE: How many of you were playing?  
A: Three of us.  
Q: You and who?  
A: Me and a man named Gene Autry and Roberts.  
Q: That is the old time cow boy man? And did you have a crowd of people around you watching?  
A: Not a crowd but a few of us. 30  
Q: About how many people were watching?  
A: About say five somebody was there and the children in the yard.  
Q: Not about say 10 to 12 people?  
A: No, about 5, and the children gather round there too, playing.  
Q: And you saw when Neville went into the room?  
A: Yes.  
Q: While you were there playing you see when 40 he go in the room?  
A: I could see him, it is the doorway like this I sit down, if he go inside I must see him and if he come out I must see.  
Q: He must pass you? A: Yes.

	Q: Everybody that go into the room, you are in a position that they must pass you?	In the Home <u>Circuit Court</u>
	A: Yes.	Defence Evidence
	Q: So when Neville came the game was finished already?	No.12 Ivy White
	A: No, when he come I was playing card.	Cross- Examination
	Q: So when he went in the room you were not in there?	14th April 1977
	A: What you saying?	
10	Q: You did not hear? You say when Neville came you were playing cards?	(continued)
	A: Yes.	
	Q: Sorry, Lascelles?	
	A: No, I did not playing card when Lascelles come, I was inside my room.	
	Q: I am sorry. So when Lascelles came, when Lascelles came, he came when the game finish?	
	A: Yes.	
20	Q: You won?	
	A: Is the money I go put down what I win.	
	CROWN ATTORNEY: Madam, you are a good friend of Neville?	
	A: Yes sir.	
	Q: Good friend?	
	A: Yes.	
	Q: You would protect him?	
	A: Is my baby father let me know him as him send him up to my yard and I get to use to him.	
30	CHIEF JUSTICE: You older than Neville?	
	A: Yes.	
	Q: Him is boy to you?	
	A: Yes.	
	CROWN ATTORNEY: Now when Lascelles came and gave Neville that news, did Neville say anything?	
	A: Neville look frighten.	
	Q: Did he say anything?	
40	A: Me?	
	Q: Him, Neville?	
	A: I don't remember if he say anything; I don't quite remember.	



In the Home  
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Defence  
Evidence

No.12  
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Cross-  
Examination

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(continued)

Q: Did you see him do anything?

A: He look frighten to me but I don't quite remember if he said anything at the said time.

Q: You see him hold him head?

A: I don't quite remember.

Q: I see you don't remember lady. Lady, from Neville came there at 6 o'clock the evening, till the time when all you walk around to Goffe Way, did you leave the yard? 10

A: No.

Q: Did anybody leave the yard?

A: No.

Q: None of the children? None of the big people? Nobody leave the yard?

A: No.

Q: How you so certain?

A: But I see it right there. The light into the yard. Is mostly big people; is about 20 four of we as young people live inside the yard, the rest is big person and they in their house and me and me and the children them; me mostly harbouring the little children outside to keep my company.

Q: Between 6 o'clock to 9 o'clock nobody left that yard?

A: Nobody what I was there with don't leave until we and Neville leave and go down Goffe Way. 30

Q: And you certain that not even Neville left the yard?

A: Neville never left there until we and him.....

MR. McCAULAY: I don't understand what she has said

CHIEF JUSTICE: She said no one what I was there with left the yard.

MR. McCAULAY: Grateful, mi lord.

CROWN ATTORNEY: Lady, I am suggesting that you 40 come here to cover up for Neville?

A: I come to speak the truth.

Q: Now you say Lascelles come to your room about 9.00 p.m.?

A: I don't say 9.00.

Q: You said 'about'?

A: I said something to nine, because I don't have no watch on my hand.

CHIEF JUSTICE: She said it was going to, say, about 9.00.

A: About those times.

10 CROWN ATTORNEY: Thank you mi lord. How long after Neville - sorry, Lascelles came there that you all left to go down Goffe Way? How long Lascelles spend there before you leave? One minute? Three minutes? Ten minutes? About how long?

A: About, say, five minutes.

Q: All right. Tell me something. Your friend that was at the house that night, Norman, is he here today?

A: Outside.

Q: You speak with him today?

A: If I speak with him today?

20 Q: Yes?

A: I talk to him all the while.

Q: Today?

A: Me and him outside.

Q: I say, if you were talking to him?

A: Yes.

Q: You were not discussing the case?

A: We don't have to discuss the case?

Q: I am just asking you lady?

A: No.

30

(Time: 3.00 p.m.)

NO RE-EXAMINATION

(Time: 3.00 p.m.)

DEFENCE ATTORNEY (Mr.McCaulay) ADDRESSES THE JURY.

(Time: 3.30 p.m.)

CROWN ATTORNEY (Mr.Reckord) ADDRESSES THE JURY.

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Evidence  
No.12  
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Cross-  
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No. 13

SUMMING-UP

No.13  
Summing-Up

15th April  
1977

R. v. NEVILLE NEMBHARD

SUMMING-UP OF THE HON. MR. JUSTICE SMITH, C.J.

Time: 10.13 a.m.

Madam Foreman and members of the jury, this accused, Neville Nembhard, is in your charge for the offence of murder. The particulars of the offence are that he on either the thirteenth or the fourteenth day of January, 1974, in the parish of Kingston, murdered Linval Campbell. That is the charge against him. 10

Your function as jurors in the case is to decide whether or not on the evidence that you have heard in this Court, the accused is guilty of the charge against him. I emphasise that you arrive at his guilt or innocence on the evidence that you have heard in court and you are not to be influenced by any extraneous considerations at all. Mr. Macaulay in his address to you emphasised this and I am under a duty to underscore it or re-emphasise it. The position is that in the system of justice which we administer here and I think it has the reputation of being one of the best in the world, not Jamaica - I am not sort of boasting about Jamaica - but the system which we inherited from Britain has the reputation of being one of the rarest in the world; and in the operation of that system people's guilt or innocence or people's liability, if it is a civil case, is determined in a forum. This forum where you have judges and or jurors, here people come and testify on oath, under the solemn conviction of an oath to speak the truth. They don't always, but this is the way it is done and you see them, you hear them give evidence and you judge from what they say and from how they impress you, by the way they give their evidence whether one is speaking the truth or not. You cannot judge a case on rumours or what somebody tells you outside or from what you read in the newspapers. Most times they are inaccurate and justice is not administered in that way, and that is why we ask jurors, if the case has some notoriety about it, the type of case where it is likely that jurors might have read about it or heard it discussed, we try to ask the 40 50

jurors to make sure that whatever they might have heard or read about the case is left outside of the court. When you come here you come with a fresh, open fertile mind which is to be affected purely by the evidence that you have heard in court. It is necessary for me to emphasise this, as Mr. Macaulay has said, because the deceased, Mr. Linval Campbell, was a member of the police force. He was a Detective, and in these days we have quite a number of killings of policemen, and, of course, of civilians - more civilians than policemen, but the fact is that some people, you know, as Mr. Macaulay said, feel very strongly about members of the security forces who are protecting us when they get killed, and so, you are not to be influenced by that at all, the fact that people are being killed, policemen are being killed and so forth. The point is that there are a number of murderers who are walking free in our society today, a number of them; because as you know there are a number of unsolved murders, and they are walking free in our society today, and the reason for it is they have not been able to find evidence to bring to put them before the court. So, the fact that somebody gets killed and nobody gets punished for it is just one of the things that happens; and it doesn't only happen in Jamaica, it happens all over the world. People commit offences and they are not detected. Sometimes more commit offences than are found. So, when somebody is charged with an offence it would be wrong for anybody, in particular jurors, to say, well, they have caught somebody, therefore, it is a serious offence, so somebody must be punished for it. Well, it is not necessary that somebody be punished for it. The person to be punished for it is the person who actually did it, and so that is why you are here.

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(continued)

This accused is charged with the murder of Detective Linval Campbell, and you will have to say whether evidence has been placed before you on which you can feel sure that he is the person who committed the murder, and if you are not sure about it, then he is entitled to go free. In other words, if you are not sure about it or if you believe he is innocent, then the true murderer is still to be caught. That is the position and it doesn't follow because he is here he must be punished for it. He will only be punished for it if you feel sure that evidence has been brought which convinces you of his guilt. And, of course, you are not to allow sympathy, which is a natural feeling in any human being, sympathy for the widow, who you saw give

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(continued)

evidence, of Detective Campbell or for himself who is dead - although he might be better off than we are. You are not to be influenced by any feeling of sympathy for him or his widow or indeed for the accused who is a young man who is facing a serious charge. Feelings of sympathy and all that sort of thing must be left outside and you must, as I have said, bring an impartial, unbiased judgment to bear on the evidence that you have heard in court and you will have to say at the end of the day whether that evidence is sufficient to convince you of the guilt of the accused. If it is not then he is entitled to be acquitted. 10

You are the sole judges of the facts in the case. It is not my duty to decide the facts. My duty is to tell you the law which is applicable to the charge against the accused and to the facts and circumstances of the case, and I am under a duty to assist you on the facts by reminding you of the evidence that was given so that it will be fresh in your mind; to marshal the evidence in a way which you can perhaps better understand it. I am entitled in order to assist you to make such comments on the evidence as I think might be of assistance to you. Now, if I express any view on the facts with which you agree then, members of the jury, you are free to use what I say in your deliberations, if you think what I say can help you, but you must discard any views of the facts which I express with which you do not agree and substitute your own views. You are the sole judges of the facts in the case. 20 30

The burden of proof is on the prosecution. The prosecution have brought the accused here and they have to prove his guilt to your satisfaction. The burden is on the prosecution. There is no duty on the accused to prove his innocence. He is, in law, presumed to be innocent until you by your verdict say he is guilty, and the prosecution must prove the charge against the accused so that you feel sure of his guilt. That is the standard of proof required. You must feel sure of his guilt before you can convict him. So, you may not convict the accused of this charge unless when you have considered the evidence in the case you are satisfied by the evidence so that you feel sure of his guilt. 40 50

Now, to explain the charge of murder to you, members of the jury. A simple definition of murder is that the offence is committed where one person by a deliberate or voluntary

act intentionally kills another. That is the simple definition of murder, an intention a deliberate intentional killing of another. Now, to amount to murder the killing must first of all be the result of a deliberate or voluntary act, that is to say, it must not be accidental. If it is accidental, it is no offence at all, and the killing must be intentional; that is to say, the act which resulted in death must have been done or committed with the intention, that is to say, a state of mind in the person doing the act either to kill the deceased or to inflict really serious bodily injury on him. So, those are the ingredients of the offence. So, the prosecution must prove, members of the jury - and each ingredient of the charge must be proved where you feel sure that it has been established - the prosecution must prove the death of the particular person named here, that is to say, the death of Linval Campbell. They must prove that it was the accused who killed him, and that is the real point in this case. That is the real issue in the case. All the other issues are there for your consideration but the one on which issue is really joined in the case is the question of who killed Detective Campbell, and the accused is saying, "I did not." The prosecution asks you to say that he did, and that is the real issue that you are trying today.

The third matter which the prosecution must prove is that the killing, if you find that the accused did kill the deceased, was done by a voluntary or deliberate act. And then, it must also be proved that there was intention either to kill or to cause serious bodily injury.

Now this intention; although it is a state of mind members of the jury, it has to be proved just like any other fact. Just like (a) the killing is proved, intention has to be proved; and (b) intention is not capable of positive proof because nobody can look into another person's mind and see what he has in there. And the only practical way of proving a person's intention is by inferring from his conduct, from what he said or from what he does. If I am up here and I get up and walk through the door you wouldn't know my intention until I did it. If I say I was going to get up and walk through the door, then I express my intention. But if I didn't express my intention in that way but I just get up and walk through the door then since the mind controls the actions of the body you will be able to say, well, he must have

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(continued)

decided to get up and walk through the door, and this is what he did. So that is how you prove intention, by inferring from conduct. And in this case, members of the jury, you might not have great difficulty in inferring intention because the evidence is that this deceased was shot twice, once in his abdomen and once in his neck, and you will have to say whether any person who at short range takes a gun and fires it in the body of another, unless he is made, when the circumstances are not overwhelming from which you can say that anybody who does that, intended either to kill the deceased or to cause him serious bodily injury.

10

As I have said, I don't think that these issues will give you any cause or any difficulty at all and the real issue is: Who it was that killed Det.Campbell. And or probably, that is not the real issue. The question is not who it was, the question is: Is it the accused? Was it the accused who caused his death? So those are the ingredients of this charge of murder about which you have to be satisfied.

20

Now, let us turn to the evidence in the case. Now, members of the jury, there are some facts which are not in dispute at all. Det. Actg. Corporal Linval Campbell, at the relevant time which is in January of 1974, lived at 13 Goff Way, which on the evidence is in the Denham Town area of Kingston. He lived there with his wife Mrs. Maria Campbell who also gave evidence. Mrs. Campbell told you in evidence that her husband the deceased, was stationed at May Pen at the time and that she last saw him on the morning of 13th January when at about 5.30 o'clock in the morning he accompanied her to the bus stop. She is a nurse. He carried a gun he was a Detective, which it is customary, and he had his gun that morning when he accompanied her to the bus stop. Well, she did not see him again for the day until she was at home, and a little after eight that night she heard two shots out by her gate. She looked and she saw her husband lying there. She went out and saw that he was injured. He was bleeding from his neck. I think she also said from his abdomen, and an alarm was made. He was taken to the hospital and he died.

30

40

50

Now those matters are not in dispute at all. They were not challenged in any way by the defence.

Now you have evidence that he is  
dead in fact and that he died on either  
the 13th or 14th of January. Well  
evidence was given members of the jury by  
an adoption of the Campbells; that is  
Nioka Fraser, and she is a teacher and  
remember she gave evidence that about  
eight thirty o'clock on the night of 13th  
January she heard something. She was not  
10 at home and she went home, saw the deceased  
lying in the path way; there was a crowd.  
She ran to the Denham Town police station  
and made a report and returned and saw them  
putting the deceased in the jeep. He was  
taken away to hospital. She subsequently  
went to the hospital and remained there until  
he died. She wasn't able to tell you directly  
when he died. Mr. Reckord tried to find out  
20 when it was, whether it was midnight or  
after one o'clock she couldn't say. But  
certainly he died next morning and that is why  
the indictment was amended to read "either  
the 13th or the 14th" because the prosecution  
cannot say. Well, it doesn't matter whether  
it was one or the other. The indictment has  
been amended and you will have to say  
whether he died either on the 13th or 14th  
January.

Now, what was it that caused his death?  
30 And this evidence is given by Dr. Eric DePass.  
Dr. DePass examined his body and told you  
what he found. Now that body was identified  
by Mr. Ronald McNeish who gave evidence here,  
and told you that he is a half brother of the  
deceased, and from the 15th of January he  
went to the morgue. He actually works at the  
Jubilee Hospital and he went to the K.P.H.  
morgue where he identified his deceased brother  
to a Dr. Eric DePass who performed the post  
40 mortem examination. And for what it is worth,  
Mr. McNeish said that the deceased was about  
44 years of age.

Now this is evidence given by Dr. DePass  
as to the cause of the death of Linval Campbell.  
The Doctor found four wounds externally when  
he examined the body. The first was a bullet  
entry wound on the left upper abdomen half  
inch in diameter at the lower border of the  
left intercostal margin, approximately four  
50 inches from the midline and five and a half  
inches below the left nipple. Now remember  
the Doctor indicated the site of the wound  
the abdomen four inches from the midline and  
five and a half inches below the left nipple.  
Now, the size of that injury would be of some  
importance later on when I refer to other  
aspects of the evidence so bear in mind where



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the Doctor said he saw the injury. You remember when Mrs. Campbell was giving evidence Mr. MacCaulay asked her where that injury was. Remember she showed and he showed and I was saying that he was showing much farther back than she said. The Doctor showed us exactly where it was. So you have the Doctor's evidence as to the actual site of the entry wound.

The second was an exit wound which the doctor said would be the exit wound of that entry wound which I have just described. That exit wound was in the right side of the abdomen, and the doctor showed you the side over here, and blood was oozing from that wound. 10

The third was a bullet wound on the right side of the root of the neck. The doctor showed you that down here somewhere in this area, and the direction of the wound was slightly downwards. 20

The fourth injury was a bullet exit wound - which would be an exit wound of that third wound - on the left side of the neck. So those were the injuries which the doctor saw - two bullet wounds, and when I say two bullet wounds I mean two entry bullet wounds and two exit bullet wounds.

When the doctor dissected the body he found sero-sanguineous, that is blood-stained, fluid in the chest - the right chest cavity, and in the abdomen he found a large quantity of blood and clots in the peritoneal cavity. The sero-sanguineous fluid was in the right pleural cavity, and he found that the first bullet wound - the first bullet in its course from entry to exit, across the abdomen, passed from left to right, across and downwards, burning a hole in the first part of the small bowel, furrowing or grooving the lower surface of the left lobe of the liver, penetrating the right lobe of the liver and exiting through the muscles and skin on the right side of the abdomen. That was the course of the bullet that was fired into the abdomen, and the doctor's opinion was that the deceased died from shock and haemorrhage, secondary to the gun shot wound of the abdomen. The doctor said the one in the neck wouldn't have caused his death as no vital tissue or vessel was apparently affected by that one in the neck. The one in the abdomen is the one that caused his death. 30 40 50

So if you accept the doctor's evidence  
that is what caused Mr. Campbell's death.

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(continued)

Now, what we are trying here to  
decide is how did he come to get these  
injuries and who it was that inflicted  
those injuries. You will bear in mind  
that the doctor said that the wound in the  
abdomen went from left to right and the  
one in the neck went from right to left.  
10 Well, now, the prosecution alleges and  
asks you to say that this accused is the  
person who fired these shots, that is the  
shots that killed the deceased, and they  
haven't brought any evidence here of any  
witness who saw him, who actually saw it,  
to tell you who did it. Of course that  
isn't necessary in the proof of charges,  
members of the jury. It is not necessary  
to have eye witnesses. Cases can be proved  
20 by surrounding circumstances. What they  
have done in this case is to give evidence  
of an eye witness - normally when you have  
a murder case you have a live witness who  
comes and gives the evidence, but in this  
case what the prosecution have done, and  
the law permits them to do it, is to bring  
evidence of an eye witness, that is to say  
the deceased himself, to say who killed  
him.

30 Now that is permissible in certain  
circumstances, and you have heard it  
referred to as a dying declaration. Normally  
people -- well, as I have told you before,  
our system of justice is that you try a  
case on the evidence of witnesses who come  
to court and testify, and one of the  
advantages of that system is that the witness  
takes an oath which is supposed to bind  
his conscience, the oath being to speak the  
40 truth and it is supposed to bind his conscience.  
You know of course, being people of the world,  
if everybody honoured the oath that they take  
in court we wouldn't have any problems, because  
we wouldn't have to try cases if everybody  
came and spoke the truth, and everybody would  
know that it is the truth. You wouldn't need  
judge or jury. But you know people tell lies,  
naturally. In other words they take on oath  
but it doesn't bind their conscience, or the  
50 fact that they have taken an oath doesn't  
prevent them telling lies, and that is why  
a jury is there and that is why a jury has to  
look at a witness and say, well now, is he  
speaking the truth? I know he has taken an  
oath but he might be telling lies, especially  
when you have one person saying one thing and

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(continued)

another person saying something opposite, so both of them couldn't be speaking the truth and one must be lying; both have taken oaths, who is the one not speaking the truth, and that is your job to find out. So that is the ideal way of doing it - bring the witness, bind his conscience by an oath, and let him speak of what he saw or heard.

But the law says that where a person is dead, and when he is at a stage where, as the authorities put it, there is a settled hopeless expectation of death, in other words a person knows that he is at the point of death, and he makes a statement about the cause of injuries which he has received, and this only applies in a criminal case where a person receives injuries and somebody is being tried for his injuries and when the person who is dead was on the verge of death, he knew that he was going to die, and he makes a statement as to how he came by his injuries which is going to cause his death, then the law allows evidence of that statement to be given before a jury for the jury to take it into account in deciding how he came to receive his injuries. 10 20

The reason for that, members of the jury, for this sort of exception to the normal rule, is this, that it is recognised, or this is the way it is rationalised, that a person in that condition, in that state, that mental state, where he knows he is going to die, particularly a religious person, his state of mind has the same sort of sanctity or it is the same way as if he had come and sworn on the bible to speak the truth, and so it measures up, so to speak, with the person who comes and swears to tell the truth. In other words you wouldn't expect a man at that stage to tell a lie. How the authorities put it is that when he is at the point of death, when every hope of the world is gone, in other words he knows that he is going, and his mind is induced by the most powerful considerations to speak the truth, as it is put, a situation so solemn and so awful is considered by law as creating an obligation equal to that which is imposed by a positive oath administered in court. So it is equated to a person who comes and swears, and so the prosecution is permitted to bring that evidence before you for your consideration. 30 40 50

Now, before that evidence is admitted,

the judge, as a matter of law, has to decide whether the pre-requisites to the admission of the evidence are satisfied or not. You remember when Mrs. Campbell was giving evidence, Mr. McCaulay was allowed to cross-examine her before she finished giving her evidence, and that was the exercise upon which I was deciding whether I should allow the evidence to be admitted. In other words, the law lays down certain pre-requisites - he has to be in this settled state of hopeless expectation of death and has to state how he got his injuries, and it has to be a case in which the person is being tried for causing him injuries, so I, having decided that, decided whether the evidence is to be admitted or not.

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(continued)

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Well now, I admitted the evidence, but members of the jury, when the evidence is admitted like that, and I rule that it is admissible, I was not saying that it is the truth or any such thing; what I was saying is that it is to be admitted for your consideration. So the position is that although it is admitted in those circumstances, you will have to examine it in the same way as if Detective Campbell had actually come here and given the evidence himself. You will have to examine it and test it to see whether it is credible evidence, evidence upon which you can say because of it, you feel sure that the accused was the person who inflicted the injury. So, please remember this and please also remember that you are entitled to test the situation on the same basis upon which I admitted it, that is to say, if for any reason you think that the evidence given by Mrs. Campbell doesn't convince you that the deceased Mr. Campbell was in this state where he was at the point of death, when every hope of the world is gone - in other words, if when he made the statement he was just saying so and the question of his injuries did not matter to him, and he thought he was going to live, then the considerations which would make his statement acceptable would be gone.

So you have to take all of those into account in deciding what weight or what credit you are going to attach to this statement. Also, you will have to decide whether Mrs. Campbell is speaking the truth when she said that that statement was made to her. That is the first hurdle that you

(continued)

have to pass. Do you believe Mrs. Campbell? Do you believe her that she went out there? Do you believe her that her husband told her the things which she said she was told? That you have to decide first of all.

Having decided that, if you believe that she is just making it up, or she was not told, then that is an end of the matter. Or, if you are not sure whether she was told or not, that is an end of the matter, because so far as the prosecution's case is concerned, that is really the only evidence in the case; so if you don't believe Mrs. Campbell as to what she was told, or if you think she was not told anything at all, then that is an end of the case; or, if you are not sure about it.

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If you believe her that the deceased did tell her then, you have to examine the circumstances and say whether in the light of what he is supposed to have said, you are convinced by this, taking all the circumstances into account, so that you can feel sure that in fact it was this accused who shot the deceased.

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So, let us look at the evidence given then, by Mrs. Campbell. I have told you in a general way already what happened that day the 13th of January, but to be a little more detailed she said that on the night of the 13th she had returned home at about 8 o'clock the night, and at about 8.30 she was in her bedroom, when she heard two shots coming from towards her gate, in quick succession. She screamed and ran to the living room, looked through the window and saw the deceased prostrate at the gate with his head lying in the garden. She saw no one else out there. She went out. She ran to him, lifted his head in her hand and he spoke to her. He was bleeding from a wound on the left side of his body and one on the left side of his neck. She said he spoke to her loudly, very loud. His pulse was low, but his mouth was very strong. He was bleeding profusely from the wound on his left side. She said he told her he was going to die. She regarded his physical condition as very strong, but, of course, this is subjective, members of the jury. The point is, how he left and what was the state of his mind when he made the statement, if you believe a statement was made. As I have said, you have first to decide whether you believe Mrs. Campbell. Then she

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was asked a number of questions by Mr. Reckord, sort of vague questions. Well, at that stage he was laying the foundation upon which he was going to ask me to admit the evidence, so a lot of it was quite vague.

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10                   Eventually, after I heard the matter,  
and had heard submissions of counsel, I  
admitted the evidence. So we go directly  
to what she said the deceased told her,  
and this is what she said - and this is  
the all-important evidence in so far as the  
prosecution is concerned. She said he  
said, 'B', he called her 'B' because  
apparently of her maiden name. "'B', I am  
going to die. You are going to lose your  
husband. It is Neville Nembhard, Miss  
Nembhard grandson that shot me and take  
my gun. Your husband did not do him anything.  
20 Just as I came through the gate and turned  
to lock the gate I saw him over me, and your  
husband could not help himself."

So that is the statement, members of  
the jury, and the prosecution is asking you  
to say that that identifies this accused  
as the person who shot the deceased, and  
they are asking you to say he not only  
shot him, he took his gun as well.

30                   Now, do you believe Mrs. Campbell  
that that statement was made to her. Well,  
in considering that, you saw her give  
evidence, and you will have to say how she  
impressed you. Does she impress you as a  
person who was speaking the truth? But when  
the evidence as to the admissibility of this  
statement was being given she was cross-  
examined in your presence and she was asked  
about things that she had said at the  
40 Preliminary Enquiry, and she admitted, members  
of the jury, saying this: "My husband was  
calling the name of Detective Walker who was  
on the scene." This is in reference to the  
hospital, when they were at the hospital.  
"He was saying something to Walker who was  
writing what he said. I heard what my husband  
said. My husband said he wanted to go home.  
He told Walker that someone shot him. My  
husband said he was vexed, he had not done  
anyone anything." And then following on that  
50 she denied having said at the Preliminary  
Enquiry these words, "He didn't say anything  
more as to his feelings." She denied that  
she said that at the Preliminary Enquiry. Now,  
further she said at the Preliminary Enquiry  
in relation to what was said at the gate, the

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deceased didn't tell her these words - sorry, the deceased didn't - in relation to what was said at the gate at the Preliminary Enquiry she had denied that she said, "He didn't tell me how he felt." Remember she had said that he said he was going to die, and what was being sought to be shown here is that she had said the contrary of that that "He didn't tell me how he felt." When she was shown her depositions, members of the jury, she said, yes, she did say that, "He didn't tell me how he felt." but she said she didn't say that in relation to what took place at the gate, she said that in relation to what took place at the hospital. You see, at one stage it was being sought to get in evidence what the deceased said at the hospital because it was alleged that he said something further there and eventually after arguments and all that sort of thing I ruled it out, so, a lot of these questions were asked in anticipation of Mr. Reckord trying to get evidence as to what was said at the hospital. That is what Mr. Macaulay examined into, that aspect of it.

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Now, what is said at the Preliminary Enquiry is not evidence upon which you can act here unless the witness admits having said it and says that what was said there is true, and this witness said that when she said, "He didn't tell me how he felt at the hospital," that was true. But, of course, we are not concerned here now with what was said at the hospital, but I did not allow that evidence in. As I was saying what was said at the Preliminary Examination is only brought before you, members of the jury, in order to assist you or for you to take it into account in testing the credit of the witness here. In other words, if a witness speaks about an important aspect of the case here in the witness box and it can be shown that that witness has said something to the contrary on a previous occasion whether at the Preliminary Enquiry or on another occasion, something contrary to that, then a jury is entitled to know of it so that the jury will be able to say, well, if the witness is speaking the truth why has he or she said two different things about the same matter, and it is in that way you take it into account in testing the credit of the witness here. Well, actually nothing emerged from this cross-examination. I have just reminded you about it, but nothing emerged eventually which really contradicted what the witness said. The deposition wasn't put in evidence

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or any such thing. Mr. Macaulay didn't go that far, and I have just reminded you because the evidence was before you and you will have to take all the circumstances into account and say whether or not you believe Mrs. Campbell, and most importantly whether you believe her as to what she said her husband told her at the gate. So, that is the evidence about what was said at the gate.

10 Do you believe Mrs. Campbell or not? If you don't believe her, members of the jury, or you are not sure whether to believe her or not, then that is an end of the matter. You must acquit the accused. Now, if you believe her that the deceased did tell her this, you will have to test the statement and say whether you can rely implicitly on it. If you believe the statement was made, Mr. Campbell is saying how he got his injuries and who caused them, if you believe he made the statement and he has described accurately what he said took place, were the circumstances such that he could identify positively the person who attacked him in order to convince you that a mistake has not been made in the identification of the person who shot him? In other words, you have to examine it in the same way as you would examine the evidence if he had come here and said the same thing.

30 Another thing which you bear in mind when you consider evidence of this sort is that you have not had the advantage of the witness coming here and having what he said tested by cross-examination. The statement is there, it is not tested, so it suffers or it is at a disadvantage in so far as you are concerned as against evidence given from the witness box where the witness states a fact and counsel can test him or her on it as to whether it is true or not.

40 Now, where an offence is committed, members of the jury and the question at issue is the identity of the person who committed the offence, a judge is under a duty to warn a jury or to caution a jury is the better word, to caution a jury how to approach evidence of visual identification, that is to say, a jury has to be reminded that in human affairs mistakes are made all the time; on the question of identity, visual identity. What I mean is it may have happened - it would be surprising if it has never happened in your experience - where somebody comes up to you and speaks to you and this he or she is mistaking you for somebody else and only finds out afterwards, then, "Oh, I am sorry,

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I made a mistake," that sort of thing.  
Or you might have had the experience  
where you have been up to somebody or  
seen somebody, not necessarily nearby,  
but passing nearby and you mistake that  
person for somebody that you know.

Now, the reason why there has to be  
caution is this, that a person might  
believe sincerely that the person his or  
her saw is so and so and yet is making a  
mistake. Let me emphasise it for you. 10  
Suppose you are down Harbour Street and  
you see a car passed in the broad daylight,  
you see a person in it and you saw well  
it is so and so who is my friend. When you  
see him two week time you say Hay, Johnny,  
what were you doing in that pretty car  
that motor car driving on Harbour Street  
two weeks ago? He said, well, two weeks 20  
ago, no man I was in Miami. That is a  
favourite place. I don't think it is a  
favourite place again - you better say  
on the North Coast. And your reaction to  
that would be: But I could have sworn it  
was you. Now, those words 'I could have  
sworn it was you", is really the foundation  
for this caution that I am giving you and  
which Judges are obliged to give cause if  
anything turns on the fact that that 30  
person was seen on Harbour Street, you  
would probably be prepared to go into a  
witness box and swear that you saw him  
passed. That is why you said "I could have  
sworn it was you". You would probably go  
into the witness box and swear that you  
saw him passed and yet you would be making  
a mistake. So a person who is making a  
mistake probably is unwittingly making a  
mistake though he genuinely feels he is 40  
not making a mistake. And that is why we  
have to be careful.

And so you have to make sure members  
of the jury, that the person doing the  
identification saw the person being identified  
in circumstances in which the question of a  
mistake is reduced to NIL so that you can  
say because of the circumstances, I feel sure  
that he is making a mistake. So you have  
to consider the time of the day in which 50  
the person was seen. Was it night or was  
it day. If it is day then the chances of  
making a mistake are less than if it was night.  
If it was night was there light or not?  
If there was light, was it bright light or  
not. The brighter the light the less chance  
of a mistake. The less the light the more  
the chance of a mistake. How near was the

10 person seen. If it was far, less chances  
or more chances of mistake than if he was  
near. For how long was the person seen?  
The longer the time the less chance of a  
mistake, things like that. And of course  
the most important thing was the person being  
identified known to the person doing the  
identification, because if the person was  
being seen for the first time the more chance  
of a mistake than if he is well known. That  
is commonsense. But even in a case where  
a person is well known to another the mistake  
can be made. If the circumstances under  
which the person is identified are not  
satisfactory. So those are the things you  
look for and you will have to make sure at  
least you have to feel sure before you can  
act on what Det. Campbell is alleged to have  
said if you believed that he made a statement.

20 You have to make sure members of the jury,  
that when he said that it was the accused  
Neville Nembhard, you have to feel sure that  
he saw him in circumstances in which you can  
say you are convinced and feel sure that he  
did not make a mistake. Right? Well, that  
is so.

30 Let us examine that aspect of the  
evidence that turns on the question of identity.  
The first thing is that it is admitted that  
the accused was well known to Det. Campbell.  
He told you so himself when he gave evidence.  
The accused said: "The deceased Det. Campbell  
know me very well and I know him very well."  
So he said. Well, the fact is, and this is  
admitted on both sides. It is not in dispute  
that the accused lived with his grandmother  
two doors away from where the deceased Campbell  
lived on Goff Way. He lived there and Mrs.  
40 Campbell said she knew the accused Mr. Nembhard  
for some ten years and she thought that he  
lives at number ten Goff Way. And the accused  
when he gave evidence told you that that is  
where he lives at 10 Goff Way. You see when  
Mrs. Campbell was giving this evidence she  
wasn't calling any name so I am going back now.  
Later on when the evidence was admitted she  
said whose name the husband called but when she  
was being examined by Mr. Reckord, she said this  
50 in answer to Mr. Reckord "He called names as  
he spoke to me. He called one name I knew the  
name and the person for ten years I knew where  
the person was living. I think the person lives  
at 10 Goff Way about 12 yards from my yard on  
the opposite side of the road. The deceased  
knew the person." Well at that stage that is  
the highest Mr. Reckord could go because the

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evidence wasn't admitted yet. But subsequently when the evidence was admitted she said she identified the name, she identified the accused as well. In other words she knew that he was speaking of this particular Neville Nembhard. She said "I knew Neville Nembhard, he is sitting in the dock. He lived at a house in front of me. His grandmother lived in that house. I knew her for a long time." 10

So, if you believe that members of the jury, Det. Campbell knew the accused very well for a number of years you take that into account.

Now in what circumstances was he shot and in view of the circumstances would he have had a sufficient opportunity to see who attacked him? Well now we go back to what was said in the statement, assuming you believe the statement was made. Mr. Campbell said (the deceased) "Just as I come through the gate..." Remember she said this gate at her yard is an iron gate and it is usually kept closed. The deceased is supposed to have said: "Just as I came through the gate and turn to lock the gate I saw him over me and my husband couldn't help himself." Now if you accept that do you believe that he received the injury right at his gate when he came in and was locking the gate? Well Mrs. Campbell said, this was where she saw him. He was prostrate there at the gate in the pathway and other witnesses said that is where he was. 20 30

Well now, at the gate was there any light? Was there sufficient light by which Mr. Campbell could see who it was that attacked him? And Mrs. Campbell's evidence was that she ran when she heard the shot, looked through the window of her living room and she said the verandah was lighted with electric light, a bright light, which shone down to the gate. You will have to say whether you believe her, that there was that light; and in answer to Mr. Macaulay she said this: "My house is at a corner and there is a light post about three yards from the corner fence and about four yards from my gate." Well of course she didn't expressly say whether the light was on or not at the light pole, and you bear in mind that two of the witnesses who gave evidence for the defence say that when they went down there the place was in darkness. I don't know whether they are referring to the street that 40 50

was in darkness - I got that impression at one stage - or that Mr. Campbell's house was in darkness. This was the evidence given in relation to the question of whether there was light or not.

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10 At least there is positive evidence, if you believe Mrs. Campbell, about the light on the verandah. It was a bright light, she says, and she could look out and see her husband there. So that is the evidence as to the question of light.

20 For how long did the deceased see his attacker? Well, there is no evidence as to that. If he was here to give evidence perhaps he could be asked about that, but he isn't here. How close was the deceased to his attacker? How close was he seen? Was he seen near enough to convince you that seeing a person he has known very well for a long time, seen him near enough, that he couldn't possibly have made a mistake? You will have to say whether that is so or not. As regards the proximity - how close he was - according to the statement that Mrs. Campbell said was made, she said the deceased said, 'Just as I came through the gate and turn to lock the gate I saw him over me and your husband could not help himself'.

30 Now, as far as that is concerned, you will have to say whether the doctor's evidence supports that - the proximity of the attacker to the deceased - because the doctor's evidence is that in regard to the injury to the abdomen - the entry wound to the abdomen, there was an area of powder burns around that wound, which the doctor said indicated the nearness of the gun to the body when it was fired, and he said that to get powder burns like that the gun would have to be at a maximum of 2 feet from the site of the injury to cause it to burn the skin. So you will have to say whether, if you accept Dr. DePass' evidence as to the powder burns, whether that, taken together with what is contained in this statement of the deceased, 'I saw him over me', whether that suggests that this person was right there; and it is those circumstances which you have to take into account in order to decide whether he saw his attacker in circumstances where he couldn't possibly have made a mistake.

50 The question of knowing the accused very well, the accused admitting this, the question of the light - you will have to say whether

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there was sufficient light - and the question of the proximity, those are matters which are relevant to the question of identity.

Now, before I turn to what the accused and his witnesses told you there are two other matters which I will have to mention. Mr. Macaulay in his address to you mentioned the question of motive, members of the jury. He said what reason would there be in the world for this young man to go and kill Mr. Campbell. When the accused was giving evidence he said that Detective Campbell and he never had any fuss and he had no reason to do him any harm. In other words, there was no motive for his killing Detective Campbell. Well, members of the jury, that is a matter for you to take into account. In other words, where the prosecution can prove a motive for a person committing an offence, then they bring evidence of the motive for the jury's consideration, and the jury is entitled to take it into account in deciding whether to believe that the particular person committed the offence or not. But the prosecution is under no duty to prove a motive. If the prosecution brings evidence which convinces you that a particular person committed an offence then it is not necessary to prove motive - the motive for committing the offence - because no one knows really what is in the mind of man. So they haven't got to prove motive. But where an offence is committed and there is no motive shown for it, that is a matter which the jury is entitled to take into account in the favour of the person accused. If you are convinced otherwise, proof of a motive is not necessary. If the question of whether I did it or not is in issue, and there is no motive for the offence, it is a matter which the jury is entitled to take into account in favour of the person charged, in deciding whether or not the person in fact committed the offence. So that is how you deal with the question of motive.

In the statement that Mrs. Campbell said her husband made, he said, 'He shot me and take the gun'. Well, was the motive robbery of the gun or not? I just mention that in passing. Of course there is no positive evidence that Detective Campbell had his gun at that time, but if you are relying on the statement that he made he did have it. When I say positive evidence, I mean there is no evidence, other than what he said, as to whether he had the gun or not. His wife said he always carried his gun; she saw him

with his gun that morning, and in fact she said when she went out there that night she felt his pocket and his waist for his gun and didn't find it. So you just bear that in mind on the question of motive. But as I have said if you find there is really no motive for the killing then that is a matter which goes in favour of the accused.

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10 Now there was the other evidence called  
by the prosecution, members of the jury,  
which was given by Mr. Lascelles Samuels  
Quite frankly, I do not see that this bit  
of evidence, in so far as the prosecution  
relies on it in support of the case that they  
present, I cannot see that it really helps  
the prosecution. In other words, I do not  
see that the circumstances are such that you  
can place any firm reliance on what transpired  
there. What happened was this, Mr. Samuels,  
20 Mr. Lascelles Samuels, claims to have been  
a friend of the accused, although the accused  
says they were not really friends. He lived  
at 6 Goffe Way and he was in his house at  
about 8.15, he said, when he heard two shots.

30 Now that differs from what Mrs. Campbell  
said. She said 8.30, but anyway, these  
people are estimating time, guessing time, and  
after about 5 minutes he goes out and he saw  
the small crowd and saw the deceased lying at  
his gate and his wife holding him up, and  
according to him he heard Mrs. Campbell asking  
for Neville. He spoke to the crowd, got  
certain information and went up to Sixth Street  
where he saw Neville and told him that  
Detective Campbell had been shot and Mrs.  
Campbell was asking for him.

40 Now you have to bear certain things in  
mind regarding this type of evidence. The  
first thing is this: when he said he heard  
Mrs. Campbell asking for Neville that is not to  
be taken as any evidence against Neville that  
he committed the offence. Well, the first  
thing is that Mrs. Campbell did not see who it  
was who shot her husband, and as Counsel said,  
it may be that it is because of what she was  
told by the deceased why she was asking for  
Neville, but the fact that he said that she  
was asking for Neville is not proof that  
50 Neville did anything. Just like when he said  
that somebody in the crowd said 'where Neville  
is?', that is not proof of where Neville was.  
You see, Mr. McCaulay relied on it and said  
that when he asked where was Neville, asked the  
crowd, somebody in the crowd told him where  
Neville was. That was not in evidence, what  
somebody in the crowd tells him is not evidence.

The only use that that evidence has is it explains why Lascelles Samuels did not go to Neville's house, because, normally, if he wanted to find him, you would expect him to go to his house; and the question was asked of Mr. Samuels, 'Why did you go to Sixth Street, why not his house?', and he said that somebody in the crowd told him where to find him.

Mr. McCaulay, in his address, relied on that as being evidence that Neville was not on the scene, but was at Sixth Street. That is not evidence. We don't know who in the crowd said it. You cannot take into account what unknown people say; it is not evidence. It explains Mr. Samuels' conduct in going to Sixth Street, that is the only purpose that it serves. The fact of Mrs. Campbell asking for Neville is not evidence. 10

Members of the jury, we have certain rules of evidence which are very difficult for a lay person to understand, some of them don't make sense to us lawyers either, but these things have been laid down over the years, and we have to respect them. When we give you the type of evidence that you are looking at here - suppose you were walking on the street and somebody robbed you, took away the lady's handbag, or the gentleman's pen - he sees him, or you see him. Afterwards you go around to Cross Roads, anywhere, and you see the same man, and you say to a policeman, 'this man just robbed my handbag'. Well, now that statement, 'this man just robbed my handbag', is not evidence that he robbed the handbag. So if somebody heard you say, 'this man just robbed my handbag', they could not go into court and give that as evidence as proof that he did it. If you, yourself, go into court and say, 'I was in the street and he came and robbed my handbag; this is the man', that is evidence he robbed you, but the fact that you state afterwards to somebody that he robbed the handbag is not evidence that it happened. But if when you say, 'this man robbed my handbag', and he says, 'yes, I really do it but I am sorry', the statement that he makes now becomes evidence and it becomes evidence because he has admitted it, that is what makes it evidence, his admission that the statement is true makes it evidence. But if he denies it, the statement cannot be used as evidence that he robbed it. 20  
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40  
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So what the prosecution sought to do was

this: they sought to prove that Mr. Samuels now went and told the accused what Mrs. Campbell said and they are going to ask you now, members of the jury, to say that his conduct, his reaction when Mr. Samuels told him, shows that he was admitting, or accepting, that he had shot the deceased. This is what Mr. Samuels' evidence is all about, and from all the circumstances I do not think that the prosecution has suggested at all - first of all it has to be an accusation, and the person must know he is being accused of something, and then, in response to it, his conduct shows whether he admits it or not. But what is he told? Mr. Samuels says he told the accused that Mr. Campbell get shot and his wife is asking for him. Would he know that he is being accused of doing the shooting or would you, members of the jury, looking on, and hearing that, could you say, reasonably, that that was an accusation that he had done the shooting.

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You see, Mr. Reckord says, well everybody knows when that sort of thing happens, when you call him by name it means you are involved in it. But that is a different thing, if the evidence was that the accused was told Mr. Campbell get shot and his wife is calling your name, that might have made all the difference between whether it was an accusation or not; or if the evidence was that Mr. Campbell get shot and Mr. Campbell is calling your name - perhaps you would say that the accused must have realised he was being accused of doing the shooting, but where the evidence is, 'Mr. Campbell get shot and his wife is asking for you', is that an accusation or not? Can you reasonably regard it as an accusation?

All right, Mr. Reckord tried to get from the accused whether he regarded it as an accusation, and after quite a lot of argument and so forth, Mr. Reckord says that it is because of the argument why he got the answer he got, eventually, any way he got the answer; the only answer he got and the answer was that the accused said when Mr. Reckord asked him, 'What did you understand that Samuels was saying to you?', the accused said, 'I did not understand him as saying that I did the shooting', so therefore he did not regard it as an accusation.

But, of course, if you thought, if you, members of the jury, think that the words are clearly an accusation, even though he said he did not understand it, that way you perhaps could



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look at it and see; but even so I think that that would be dangerous because the whole point is that the statement must affect the mind of the accused and he must react to it in a way in which you can say his reaction shows guilt. So, if he did not understand it in that way well the question of his mind is irrelevant. In any event even assuming that he understood what did Mr. Samuels say his reaction was? 10  
Frightened. Well, all right, Mr. Samuels said that he appeared to him frightened. Mr. Samuels said when he told him that the accused did not say anything. Well, of course, if he did not understand he was being accused what was he going to say? "I am sorry to hear that Mr. Campbell is dead"? The fact that he looked frightened and surprised, what is wrong in looking frightened if your neighbour gets shot? Of course 20  
you would look surprised, frightened, perhaps frightened. Mr. Reckord said he looked frightened because he knew he - remember the suggestion he put to him, "You were frightened because you thought that the man was dead you were frightened to hear that he is alive and he called your name." But what Mr. Reckord put is it supported by the circumstances? And quite frankly, members of the jury, I don't know that you can 30  
really be sure that his conduct - and you will have to be sure before you could use it at all - that his conduct showed that he was admitting an accusation that he had shot Mr. Campbell. I don't think it measures up to that at all. As a matter of fact at one stage I asked Mr. Reckord whether he was bothering with it but he led the evidence and it was there. I don't think it can help 40  
you at all. What you have to concentrate on, if you believe the statement was made by Mr. Campbell you take that into account and decide whether you can safely rely on what was said by Mr. Campbell, the deceased, bearing in mind that it has not been tested under cross-examination, bearing in mind the circumstances in which he was shot for you to say whether you can feel sure that no mistake had been made and that the accused is the 50  
person who shot him.

Well now, in deciding whether to believe what is in the statement or not you have to take into account the evidence given by the accused and his witnesses, because he has said, and has brought witnesses to support him, that he was not there, and if he was not there he could not have committed the offence,

and Mr. Campbell must have made a mistake or was telling a lie on him. So, you have to take into account what the accused said. Now, the accused gave sworn evidence, and you are not to discredit his evidence merely because he is answering a charge against him. You must give to his evidence and that of his witnesses the same fair, impartial consideration and you must test their evidence in the same way as you consider and test the evidence of the witnesses for the prosecution.

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Well, now, the question of bias arises because Mr. Reckord asked the witness, "Are you a good friend of Neville?" He said, "Yes, I regard the accused as my very good friend. Yes, I would do anything for him. If I see him in trouble I will help him, as I know him personally. He was at my home, at Dolly's house, when it take place." So, she is a friend, and Miss Ivy White, who is called Dolly, she said, "Yes, he is my friend, a good friend." Well, now, members of the jury, sometimes the only person that you can get to give evidence for you is a good friend or somebody who is related to you. Suppose you were in your house and somebody comes and breaks in and commits some offence against you, well, who you expect to give evidence in court? Either your wife or your husband or your child or your mother, somebody who is there. Well, the fact that the person might be biased towards you because of friendship or relationship doesn't mean that they are going to tell a lie. Of course, the jury is always entitled to take it into account and say, well you know, let us examine this carefully because he is a good friend so he might try and help him out, but the fact that he is a good friend that alone doesn't mean that he is going to tell a lie and you will have to examine the evidence just as you examine the evidence of anybody else, and as Mr. Macaulay said, the same could be said about Mrs. Campbell and the deceased you know. You just bear it in mind at the back of your mind when you are considering the evidence and see how the witnesses impressed you when the evidence was given.

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Well, now, what the accused said, members of the jury, is that on this day, which was a Sunday, he went up to Dolly's house and this is at No. 3 Sixth Street. He went up there with a man named Norman Fraser, and he went up there the morning and was up there until about midday. Well now, the other witnesses don't

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agree with that. Both Olga Bennett and Ivy White, this lady Dolly, both of them said that the accused came there at midday, at about midday. He said he went there before and left at about midday. Now, these differences in what the accused said and what Olga Bennett said or as against what Ivy White said these are matters which you take into account in deciding whether it is a trumped up thing, in other words, they 10 have made it up to say he was up there. That is why questions were asked, "Where were you, where was so and so and so on? What were you doing?" All of that is to probe the witness's evidence to find out whether this is a made up story. So, any differences that you find of importance in what the three witnesses said amongst themselves, the accused and his two witnesses, are matters which are relevant in your consideration of 20 whether they are speaking the truth or not, and I just point this one out. I am not going to point out all of them. He said he went up and left at about midday. They said that he got there about midday, but the relevant time is later on, so, according to the accused, he returned after a little boy had come with a message from Dolly. He went back up there, up to Dolly's yard, and he went there with Norman Fraser. Well, 30 now, I think it was Dolly who said that the accused did not come with Norman Fraser at all but he said that he and Norman Fraser went up there. Cards were being played in the yard and he was an onlooker. He wasn't playing. They played cards until night. He watched them and then he went into Dolly's house at the time when the T.V. news came on at 7.30 and he was in there, in the room watching television alone, except that Dolly 40 was standing by the door. We are not sure, he did not say whether outside the door or inside the door, but she was at the door. Otherwise he was alone in the room, as I understand what he is saying. He said while in there Lascelles Samuels came up on the step. Of course, in addition to these three witnesses, the accused and his two witnesses, you can take into account Lascelles Samuels' 50 evidence on this aspect of the matter, because what in effect Lascelles Samuels has said is that, "I went there five minutes after the shot was fired; that I heard the shot, spent about three or four minutes and I went up, another three or four minutes, up to Sixth Street and I saw the accused up there." So, you can take that into account as to the question of whether or not the accused was at

Sixth Street at the relevant time or not. He went up there and saw him there. Well, of course, it only took him four minutes or three minutes to go from Goffe Way to Sixth Street, so it could be that the accused, it is possible for the accused when you are looking at Samuels' evidence, alone it is possible for the accused to be down at Goffe Way and to have gone up to Sixth Street, but the fact is that he found him in the yard when he went up there.

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Well, now, the accused in his evidence said that when Samuels came in he was in Dolly's room watching television Campbell said he was not in the house he was in the yard. This is a matter which you may take into account. You have got to say whether this is the truth or not. You have to test the evidence to see whether it is true or not, prosecution and the defence and according to the accused, he told me he heard Mrs. Campbell asking where I was and that Mr. Campbell had got shot. When he was cross-examined he was asked what in fact were you told. What he said at first is what Samuels said he told him but when he was cross-examined by Mr. Reckord he said Samuels told him that Mr. Campbell got shot and nurse was asking for him. And he explained that he knew Mrs. Campbell is a nurse. Well I don't know that it makes much difference when he said Campbell or nurse. He wasn't too sure whether it was Mrs. Campbell or nurse. Samuels said that he said Mrs. Campbell, so according to the accused to continue his evidence he said: "Well I was not too frightened when I was told that because I held my head and spoke to myself".

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Well, you heard Mr. Reckord's comment on that but I have dealt with that evidence already and he told you that he didn't think you can put much store by it. He said by that time Dolly had heard and everybody was speaking about it. "Me and Norman Fraser Olga and Lascelles Samuels and about two more youths came back on the scene of the crime." Those were the exact words of Mr. Reckord's comment on it. If you think there is any merit on what Mr. Reckord said you take that into account. You are not obliged to accept his comment or any comment I make on it. He said when he got down there because the fact is according to a comment from what he is saying he was told that this lady was looking for him so he was going to her. But he said when he went down there the house in front when he went

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down there people were asking me where I was "After that I went into my house" It was in cross-examination that he said that he went down there and he saw the house in darkness. Mr.Reckord suggested to him that when he said about two more youths and himself come back on the scene of the murder, he is suggesting to him that he said that because he had been there and had committed the murder and the accused response to that was: "No I use those words 'come back' because it is there I was". So that is his explanation why he used those words "I came back on the scene." Well that is the evidence that he gave. 10

He was cross-examined, members of the jury, and he was asked about what happened when he went to Dolly. He was always outside until 7.30 he went in. He didn't play at all. All the witnesses said that he didn't play cards. He said Dolly was playing and Olga, but Olga said she wasn't playing. Dolly confirmed that she was playing. As a matter of fact it was only about three of them playing, she was one. Remember she was the one who apparently won two. Mr. Nembhard, the accused said: "I did not know where Olga was when I was watching television. Dolly was by the door of the house when Samuels came. He said I thought he was inside, inside the door. Of course Dolly said that she was in the room. She was not only in the room, she had gone to put up her winnings in the cabinet and she heard. 20 30

Now he say Mr. Samuels said "I spoke to the accused nobody else could hear". That is what he said and the accused confirmed that, that he just spoke to him and he didn't believe Dolly heard. But Dolly said he spoke in an ordinary voice; the words she used. 40

These are matters you take into account in order to decide whether in fact the accused was really up there at the relevant time.

Now in cross-examination, and you take this into account, members of the jury, on the question of identification and mistaken identity. Mr. Reckord asked him whether he knew Det. Campbell very well and he said YES. He said, if you saw him close by at nights where there are lights into a brightly lit area could you mistake him. He said "Maybe I would." And he was asked in relation to a younger brother whether he would mistake him in similar circumstances and he said "Maybe 50

I would because he didn't grow with me." So Mr. Reckord said: "Alright then, what about your grandmother who you had lived with?" Apparently accused lived with her all his life. "Suppose you see her in similar circumstances would you make a mistake?" He said "I wouldn't make a mistake with a grandmother." But the whole question was being asked whether Mr. Campbell did make mistake when he said it was Neville Nembhard who shot him. But further in cross-examination he was being asked. How did you know when Mr. Samuels say Mr. Campbell got shot that it was Det. Campbell? How did you know if you didn't know before? That is how he was being asked in cross-examination and he said "I know he was referring to Mr. Campbell: I know many people call 'Campbell' but the way he came and told me I know it was him." And Mr. Reckord pressed it and he said: "I know other Campbell in Denham Town" so that could be one reason why he knew it was Det. Campbell. And then he went on to say: "I knew because Nurse is Mr. Campbell's wife" and it may be because he said Nurse that could be why he knew it was Det. Campbell. And he said he doesn't remember whether Samuels said Mrs. Campbell or Nurse but he thought it was Nurse he said. So that would be an indication to him that it was Det. Campbell who had been shot. And he said he wasn't frightened when Mrs. Campbell was asking for him. I was frightened to hear that Mrs. Campbell was asking for me. That is his evidence members of the jury.

He denied that he shot Mr. Campbell. He expressly denied that in cross-examination.

Olga Bennett gave evidence as I have said and she supports his evidence that he was up there at No. 3 Sixth Street and that the time when this thing was happening he the accused was in Dolly's room watching television. But she said it was after the game that he was there watching television, that is the accused, and after the game of cards was finished Dolly and the accused man's friend, Norman Frazer, went into the room and were in there, that Samuels came and went in at that stage. Of course the accused said it was only himself and Dolly who were in the room, but here is Olga saying that Frazer was also in the room. These are matters which you take into account in deciding whether to believe these witnesses or not. Eventually all of them left at about 9.15 and went down to the home of the accused.

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She said, 'When we reached deceased's home it was dark and nobody was on the street'. The accused said that there were people out there, though the house was in darkness. She also told you that she never left her home at all, from the accused came there at about 6 o'clock she never left the yard at all, so she would have seen if he left, and she can swear that he didn't leave. She said she knew when Frazer came, and he came 10 with another youth, not the accused. The accused said he and Frazer went there.

When it was suggested to her that she had just come to help out the accused who is her friend, she said no, she saw him there. 'I know him personally; he was at my home at Dolly's house when the incident took place. I am not telling any lies'.

Ivy White gave evidence to the same effect, with the differences which I have 20 already pointed out to you. She said that after she went in to put down her winnings she was in the room and she heard what was said, and she went with the others, subsequently, down to Goffe Way. She puts the time when Lascelles Samuels came to her house at about 9 o'clock, and she said the accused man, Norman Frazer, and herself were in the room when Lascelles came, which is what Olga Bennett said. The accused doesn't put 30 Mr. Frazer in the room at all. According to her, anyone in the room could hear what Samuels was saying. She too says the accused did not leave the yard. "No one what I was there with left the yard between 6 o'clock and 9 o'clock".

When it was suggested to her that she had come here to cover up for Neville she said no, I come to speak the truth. That is the evidence. 40

Now, members of the jury, it is not for the accused to prove where he was; he has not got to prove anything at all; there is no burden on him to prove where he was when Mr. Campbell got shot. The burden is on the prosecution to prove that he was not up at Sixth Street but that he was down at Goff Way shooting Mr. Campbell. That is where the burden is, on the prosecution, to prove that he was not at Sixth Street as he says and as his witnesses say, but that he was at Goff Way 50 shooting Mr. Campbell. So, if you believe the accused that he was up at Sixth Street at the relevant time when Mr. Campbell must have been shot, or if, in view of the evidence that he has given, and the evidence that his witnesses have given, you are not sure that he

was up there or not, that is an end of the case, because the prosecution would have failed in discharging the burden of proving that he was down at Goffe Way at Mr. Campbell's gate. That is if you either believe the accused and his witness, or you are not sure they are speaking the truth or not. If that is how you feel you must acquit the accused.

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10           If you disbelieve the accused and his witnesses, that he was up at Sixth Street at the relevant time, if you disbelieve them, you are not to convict him because you do not believe him -- because you do not believe them. You are not to convict him because you disbelieve them. You still have to go back and look at the bit of evidence that the prosecution has put before you, that is to say the state-  
20           ment which the deceased is alleged to have made; you have to look at it, taking into account, first of all, whether Mrs. Campbell spoke the truth, and as I have said, if you don't believe her, or if you don't know whether to believe the statement was made or not, you acquit him. If you feel sure the statement was made to her you have to examine the circumstances which must have existed at the time when Mr. Campbell was  
30           shot; you have to take into account his state of mind when he made the statement; was he in a state of mind where you would feel that you could safely rely on what he was saying, as being the truth? You have to take into account the caution that I have given about mistaken identity and whether the circumstances were such, having regard to distance, light and so forth, that you can feel that a mistake was not made in the identity of the accused.  
40           And if you are not sure whether a mistake was made or not, or if you do not think that you can safely rely at all on what the deceased is alleged to have said, then you must acquit the accused.

50           If you believe the deceased made the statement, having disbelieved the accused and his witnesses, if that is what you find, that they were not speaking the truth, if you disbelieve them, and you are considering the statement now, which it is alleged the deceased made, if you feel sure the statement was made, and if you feel sure that what Mr. Campbell is supposed to have said is the truth, and you can safely rely on the identity of the person that he has given in the statement, if you feel sure it is the same person he was speaking about, that is the



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accused, then, members of the jury, if that is what you find there is evidence upon which you can convict the accused of murder, because all the ingredients necessary to prove the charge of murder would have been established - the question of killing a person deliberately, with the intention either to kill or to cause serious bodily injury, all those ingredients would be present. If you feel sure of the truth of the statement, you can safely rely on it, and you believe that the statement has positively identified the accused as being the person who shot the deceased, and you feel sure no mistake has been made, if that is how you feel and that is how you find, then it is open to you to convict the accused of murder.

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Now, members of the jury, will you please consider your verdict and say whether you find the accused guilty or not guilty of this charge of murder against him.

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(12 noon)

REGISTRAR: Mr. Foreman, do you wish to retire?

FOREMAN: Yes.

12.03 p.m. - JURY RETIRE.

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No.14  
VERDICT

JURY RETURN at 1.23 p.m.  
JURY ROLL CALL ANSWERED. PRISONER IN THE DOCK.

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(Time: 1.24 p.m.)

V E R D I C T

REGISTRAR: Madam Foreman, please stand.

Madam Foreman, members of the jury, have you arrived at your verdict.

A: No; eleven to one.

CHIEF JUSTICE: No, no, you have not arrived at a unanimous verdict?

A: No.

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Q: For me to accept a verdict in this case it has to be unanimous. Now is there any further directions which it is thought that I may give which may be of assistance to you in arriving at unanimity? I don't want any reference to be made to any particular juror or any such, but is there any further directions which might be of assistance in your arriving at a unanimous decision?

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A: Yes sir. The light; the identity and how the shots were being fired.

Q: Yes, the distance; the light; and where the shots were being fired - the parts of the body?

A: Yes sir.

Q: You may sit madam. Now these matters are, of course, relevant on the question of identity, and quite frankly when I was dealing with the aspects of the evidence which related to identity, I omitted to speak of the areas of the body the doctor identified as the areas in which he saw the injuries, because that would also be a matter for your consideration, the question of identity.

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Now the doctor, you remember, indicated the areas in which there were these injuries. Remember I described them to you already and remember when I described them to you, I said that later on I would refer to this again, but it slipped me. Now, as I told you, the doctor said, in his opinion, one bullet went from left of the body to right; and one went from the right of the neck to the left. Well now, the areas in which there were these injuries: the doctor said the one to the abdomen, the entry wound, was four inches from the midline, and remember I asked the doctor where he would describe the injury as being, and he said in front. Of course, it would be in front, if he said the abdomen, it would be in front, and he said it was four inches from the midline. That also is relevant on the question of where the deceased - sorry, where the assailant was, and it went across.

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Well, we don't want to speculate, and the jury should not speculate, but you can take that into account, the fact that the injury was inflicted on the front of the body,

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and you would have to say, whether the assailant would, in the circumstances - the doctor was not asked where the person would be standing, perhaps it would be almost impossible for the doctor to say - you will have to say whether it assists you on the question of the ability of the deceased to see his assailant; whether it assists you, because the injury which the doctor saw, both injuries, were to the front of the body. The doctor indicated the root of the neck in front, a spot he indicated in the front. That matter is a relevant matter for your consideration as well. 10

Now, what you have to do is you can probably relate that to what is in the statement which Mrs. Campbell said her husband made, because, remember I told you that what he said was 'just as I came through the gate and turned to lock the gate, I saw him over me' - that is what he said. You can probably relate that to the site of the injuries which the doctor described, what he said they were, to the front of the body. 20

As regards the light, I have already dealt with that because I told you that Mrs. Campbell said that the light from her verandah was a bright light and it shone all the day down to the gate. She said, 'I looked through the window; the verandah was lighted with a bright light, electric light shone to the gate'. Remember, I also mentioned the question of Mr. McCaulay asking Mrs. Campbell about the street lights, and she said there was a light at the corner because their house is a corner lot, and there is a street light which was three yards from the fence, and four yards from the gate. I got the impression that she was saying that was a street light which was lighted; I don't know whether you got that impression, that she was saying that was a street light which was lighted - I don't know whether you got that impression from what she said. 30 40

She said, 'My house is at the corner and a light post is about 3 yards from the corner and about 4 yards from the gate.' I don't remember whether she was asked if it was lit that night. And, remember what Miss Olga Bennett said, that the whole place was in darkness - I don't know whether she was referring to the whole street, or the house of the deceased, or what. She said, 'When we reached to the deceased's home it was dark and 50

nobody was on the street'. So whether she was referring to the house being dark or the street being dark, I don't know; but that is the evidence, members of the jury.

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And the question of the distance: remember I said you can use not only what was in the statement, what the doctor said as to the powder burns. Anything else?

10 A: No.

CHIEF JUSTICE: Will you please go back and discuss it again.

20 The whole idea is the collective judgment, the decision of the jury that is required in a case like this, but each person has to make up his or her own mind on the matter, and in making up one's mind, one is entitled to take into account, you know, the views of others, provided it is based on the evidence. You discuss it among yourselves and exchange views; if one has a very firm view, he is not obliged to give it up so as to agree with somebody else's view. You can hold to your view if you have good grounds to hold to your view, but there has to be a certain amount of give and take, and discussion amongst yourselves, so go out again and have another try and see if you can arrive at unanimity.

30 CROWN ATTORNEY: Since the foreman had said something about the lights, I distinctly remembered Mrs. Campbell said her verandah to the gate was about 3 to 4 yards.

40 CHIEF JUSTICE: Oh, yes, I said it shone to the gate. This is what she said, and I did not think that in those circumstances the question of the distance was important, but she actually said it was about 4 yards from her verandah to the gate, but in any event she said the light shone to the gate.

DEFENCE ATTORNEY (Mr.McCaulay): I was the first to rise, but I gave way to my friend. A short matter: your lordship said that each of them is entitled to his view, but provided he is convinced that he is right.....

50 CHIEF JUSTICE: That is what I meant; you can hold to your view if you are convinced that your view is the right view. You are not obliged to give it up just to agree with somebody else. You listen to the other person's view, but if you are firm in your view, you are convinced that it is the right view, based on what you have heard and the evidence you accept,

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then you can hold to it and you need not  
change.

MR. MCCAULAY: I am much obliged. I am sorry.  
It is clear.

(Time: 1.35 p.m.)

JURY RETIRE AGAIN UNDER SWORN GUARD.

{Time: 1.37 p.m.} COURT RISES

{Time: 1.41 p.m.} JURY RETURN

{Time: 1.44 p.m.} COURT RESUMES.

JURY RETIRE FOR SECOND TIME: 1.35 p.m.

10

JUDGE ENTERS AT 1.44 p.m.:

JURY ROLL CALL ANSWERED:

V E R D I C T

REGISTRAR: Madam Foreman, please stand.  
Madam Foreman, members of the  
jury, have you arrived at a  
verdict?

MADAM FOREMAN: Yes.

REGISTRAR: Is your verdict unanimous,  
that is are you all agreed? 20

MADAM FOREMAN: Yes, sir.

REGISTRAR: Do you find the accused, Neville  
Nembhard, guilty or not guilty  
of this offence which charges  
him with murder?

MADAM FOREMAN: Guilty.

REGISTRAR: Madam Foreman, members of the  
jury, you say the accused  
is guilty of this offence,  
that is your verdict and so say 30  
all of you?

MADAM FOREMAN: Yes, thank you.

REGISTRAR: Neville Nembhard, the jury  
having found you guilty of  
indictment which charges you  
with murder, do you wish to say  
anything why the sentence of  
this court should not be passed  
upon you?

ACCUSED: I am innocent, sir. 40

HIS LORDSHIP: Anything to say, Mr.Macaulay?

	MR. MACAULAY:	No, M'lord.	In the Home
	HIS LORDSHIP:	Well, the accused gave his age that he was born in April of 1956. Is the prosecution accepting that that is his correct age.	<u>Circuit Court</u>
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	MR. MACAULAY:	I asked Mr. Pickersgill to re-examine on that point.	(continued)
10	HIS LORDSHIP:	He said he was born on the 30th of April, 1956.	
	CROWN ATTORNEY:	Yes, M'Lord.	
	HIS LORDSHIP:	You are accepting that?	
	CROWN ATTORNEY:	From my instructions, M'Lord.	
	HIS LORDSHIP:	Mr. Reckord, you would know what happened on a former occasion. You have any record?	
20	CROWN ATTORNEY:	Yes, M'Lord, I don't have it here, but I have it. The matter of age never came up for consideration on that occasion.	
	HIS LORDSHIP:	On, that occasion?	
	CROWN ATTORNEY:	No, M'Lord, it was never considered at all.	
	HIS LORDSHIP:	How is that? Very strange.	
	MR. MACAULAY:	If I might be of some assistance, here M'Lord.	
30	HIS LORDSHIP:	Just one minute, all right. Well, now, we better - the question of his age has not been raised on a prior occasion at all?	
	CROWN ATTORNEY:	No, M'Lord, it was never raised. I have had the opportunity of reading the full transcript of the judge's summing-up and of the sentence and no mention was ever made at all.	
40	HIS LORDSHIP:	I see. Well now, you say you accept it? You better get strict proof of his age. Mr. Macaulay, I would like to have strict proof of his age. I asked Mr. Reckord whether.....	
	MR. MACAULAY:	He said he accepts it.	
	HIS LORDSHIP:	Yes, but of course, he looked - I saw what he looked at and the instructions which are usually contained in the police report of the antecedent history is usually	

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got from the accused, most of  
the information is from the  
accused.

MR. MACAULAY: That is, you would prefer some-  
thing from Spanish Town?

HIS LORDSHIP: Oh yes, you know, I have a  
responsibility and I have to  
see it carried out. Will you  
see that steps are taken to  
have his age proved? 10

CROWN ATTORNEY: Yes, M'Lord.

MR. MACAULAY: When do we come back?

HIS LORDSHIP: Well, I am in court next week -  
one day. Where are you next  
week?

MR. MACAULAY: I am in the Appeal Court.

HIS LORDSHIP: It would not take five minutes.  
If you are in Appeal Court we  
will just send for you or it  
can be done in an afternoon. 20

MR. MACAULAY: I open the appeal.

HIS LORDSHIP: Yes, it will be at your conven-  
ience in the afternoon. Tues-  
day afternoon for instance?  
We should be able to get it by  
Tuesday. Sentence deferred  
until Tuesday afternoon.

MR. MACAULAY: Your Lordship pleases.

HIS LORDSHIP: All right, take him down. Mr.  
Nembhard, I will pass sentence 30  
on Tuesday next week, understand?  
What date is that? Madam Fore-  
man, members of the jury, thank  
you very much. Those of you  
who are having your baptism in  
jury service I hope your  
experience was not, you know  
too terrible. Well, you have  
some further time to serve,  
not like you are serving a 40  
sentence, and I hope you won't  
regard it as that. Thank you  
very much for your service. I  
have deferred sentence because  
the law has just recently been  
changed and if a person is  
convicted of murder and he was  
under the age of eighteen on  
the day on which the offence  
was committed he cannot be 50  
sentenced to death. Instead  
the judge has to order that he  
be detained during Her Majesty's

10

pleasure. Now, from what was said in the witness box he would have been under eighteen at the time when Mr. Campbell was killed, in which event I would have to order him to be detained, but we only have his word as to when he was born, and of course, no person can give proof or strict proof of his age for obvious reasons, so I have deferred the sentence so I can get his birth certificate to verify what he said as to his age, so that is why I have deferred the sentence.

In the Home  
Circuit Court  
No.14  
Verdict  
15th April  
1977  
(continued)

10.00 o'clock on Monday morning.

20

A D J O U R N M E N T

Time: 1.52 p.m.

No. 15

NOTICE TO APPEAL

J A M A I C A

Criminal Appeal No.  
90/77

In the Court  
of Appeal  
No.15  
Notice to  
Appeal  
19th April  
1977

CRIMINAL FORM 1

IN THE COURT OF APPEAL

NOTICE TO APPEAL OR APPLICATION FOR LEAVE  
TO APPEAL AGAINST CONVICTION OR SENTENCE

30

TO THE REGISTRAR OF THE COURT OF APPEAL

Name of Appellant: Neville Nembhard  
Convicted at the Circuit Court held at (1)  
Kingston

Offence of which convicted (2) Murder

Sentence: To be detained during the Governor  
General's pleasure

Date when convicted (3) 15th April, 1977

Date when sentence passed (4) 15th April, 1977

Name of Prison (5) General Penitentiary

40

I, the above-named appellant hereby give



In the Court  
of Appeal

No.15  
Notice to  
Appeal

19th April  
1977

(continued)

you notice that I desire to appeal to the  
Court of Appeal against my (6) Conviction  
on the grounds hereinafter set forth on  
page 2 of this notice

Signed (7) Neville Nemhard

Signature and address of witness  
attesting mark.....

Date this (8) 19th day of April 1977

Q U E S T I O N 9

- 1. Did the Judge before whom you were tried grant you a certificate that it was a fit case for appeal: No. 10
- 2. Do you desire the Court of Appeal to assign you Legal Aid? Yes.

If your answer to this question is "Yes" answer the following questions:-

(a) What was your occupation and what wages, salary of income were you receiving before your conviction? Unemployed 20

(b) Have you any means to enable you to obtain legal aid for yourself? No.

- 3. Is an Attorney-at-law now acting for you? If so give his name and address: Berthan Macaulay  
Mr.Bobby Pickersgill acted for me at my trial

- 4. Do you desire to be present when the Court consider your appeal? No. 30

- 5. Do you desire to apply for leave to call any witnesses on your appeal? No.

If your answer to this question is "Yes", you must also fill in Form 21, and send it with this notice.

"GROUNDS OF APPEAL"

The verdict is unreasonable and having regard to the evidence cannot be supported.

No. 16

ORDER REFUSING APPLICATION  
FOR LEAVE TO APPEAL

In the Court  
of Appeal

No.16  
Order refusing  
application for  
Leave to  
Appeal

9th November  
1977

J A M A I C A Rule 62(1)

CRIMINAL FORM 17

IN THE COURT OF APPEAL

NOTIFICATION TO APPELLANT OF RESULT OF  
APPLICATION

10

Criminal Appeal No.90 of  
1977

THE QUEEN vs. NEVILLE NEMBHARD - Murder

To the abovenamed Appellant

This is to give you notice that the Court  
has considered the matter of your application  
for -

(a) leave to appeal to the said Court;  
against conviction

(b) Legal Aid

20

and has finally determined the same and has  
this day given judgment to the effect following:-

"9th November, 1977

Application for leave to appeal refused."

/s/G.E.Grosett,  
Ag. Dep. Registrar

Dated this 9th day of November, 1977

30

I, Hazel Eleanor Harris, Registrar of the  
Court of Appeal of Jamaica hereby certify that  
the foregoing is a true and correct Copy of the  
Order of the Court delivered on the 9th day of  
November, 1977, in the matter of Neville Nembhard  
v. Queen.

Sgd: H.E.Harris  
Registrar,  
Court of Appeal  
Jamaica.

In the Privy  
Council

No. 17

No.17  
Order granting  
Special leave  
to Appeal to  
Her Majesty in  
Council.

ORDER GRANTING SPECIAL  
LEAVE TO APPEAL TO HER  
MAJESTY IN COUNCIL

6th February  
1979

AT THE COURT AT BUCKINGHAM PALACE

The 6th day of February 1979

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY IN  
COUNCIL

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 20th day of December 1978 in the words following viz:- 10

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Neville Nembhard in the matter of an Appeal from the Court of Appeal of Jamaica between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal from a Judgment of the Court of Appeal of Jamaica dated the 9th November 1977 which dismissed the Appeal of the Petitioner against his conviction in the Home Circuit Court for the Parish of Kingston of murder: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal against the Judgment of the Court of Appeal of Jamaica dated the 9th November 1977 and for further or other relief: 20 30

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that special leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Jamaica dated the 9th November 1977: 40

"And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an

authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

In the Privy  
Council

No.17  
Order granting  
Special  
Leave to  
Appeal to  
Her Majesty  
in Council  
6th February  
1979

10 HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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

(continued)

N.E. LEIGH

IN THE PRIVY COUNCIL

No. 30 of 1979

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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 :

NEVILLE NEMBHARD

Appellant

- and -

THE QUEEN

Respondent

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RECORD OF PROCEEDINGS

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PHILIP CONWAY THOMAS & CO.  
61 Catherine Place,  
Westminster,  
London, SW1E 6HB

Solicitors for the  
Appellant

CHARLES RUSSELL & CO.  
Hale Court,  
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Solicitors for the  
Respondent